

Supreme Court - Daily Orders

Kush Kalra vs Union Of India on 9 December, 2020

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.1213 OF 2020

KUSH KALRA

...PETITIONER(S)

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

This writ petition has been filed under Article 32 as Public Interest Litigation. The petitioner prays for following relief in the writ petition:

“A. Issue a writ of certiorari quashing the decision taken by Respondent Nos. 4 to 38 of affixing posters outside residences of Covid-19 positive persons who are under home isolation;

B. Issue a writ of mandamus directing Respondent Nos.4 to 38 to issue appropriate Orders to ensure that its authorities put an end to the practice of Signature Not Verified Digitally signed by Rachna Date: 2020.12.09 16:50:26 IST affixing posters outside residences of Reason:

Covid-19 positive persons who are under home isolation;

C. Issue a writ of mandamus directing Respondent Nos.4 to 38 to issue appropriate Orders to ensure that its authorities and officials do not disclose the names of Covid-19 positive persons to any person or resident welfare associations/neighbourhood welfare groups/ apartment block groups etc.;

D. During the pendency of this Writ to issue appropriate Orders to forthwith stop the circulation of names of Covid-19 positive persons in any Whatsapp Group belonging to resident welfare associations/ neighbourhood welfare groups/apartment block groups etc.; and E. Pass such other and further orders as the nature and circumstances of the case may require thought fit by this Hon’ble Court.”

2. In the writ petition although apart from Union of India, all the States and the Union Territories have been impleaded as party respondents, but we have not issued notice to the States and Union Territories. Learned Solicitor General has appeared for Union of India, respondent No.1 and has also filed an affidavit dated 30.11.2020.

3. This writ petition is being decided without issuing notice to respondent Nos.2 to 38 after hearing the learned Solicitor General appearing for Union of India.

4. The petitioner in the writ petition questions the decision taken by the various States and Union Territories and the authorities to affix posters outside the residences of persons who are COVID-19 positive and are required to stay home isolation. The petitioner prays that directions be issued to stop publishing the names of COVID-19 positive persons by the official of the Health Department in the States and Union Territories and also to stop freely circulating their names in welfare associations of colony and apartment complex which are serious violation of fundamental rights, right to privacy and right to live with dignity.

5. We have heard Shri Chinmoy Pradip Sharma, learned counsel for the petitioner and Shri Tushar Mehta, learned Solicitor General. Shri Chirag M. Shroff has also appeared for NCT of Delhi.

6. Learned counsel for the petitioner in support of the writ petition makes following submissions:

(i) Affixing posters outside residences of Covid-19 positive persons amounts to unprecedented violation of the right to privacy which is a Fundamental Right guaranteed under Article 21 of the Constitution of India. The importance of the Fundamental Right to Privacy and its essence stands recognised by this Hon'ble Court in its judgment rendered in the case of Justice K. S. Puttaswamy(Retd.) vs. Union of India reported in (2017) 10 SCC

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(ii) Covid-19 positive persons are having to live in their homes with posters publicly affixed outside their residences and their names being widely disclosed and circulated in public forums are the most inhuman and indignifying experience. This subjects the persons into becoming talk of the neighbourhood and their private lives and illness becomes the topic of idle gossip. Moreover, the dignity of a person lies in the ability to live in the society with respect. When posters are affixed and names are circulated publicly, the private life of an individual is subjected to public scrutiny which destroys the very ethos of one's dignity.

(iii) Covid-19 positive persons cannot be denigrated merely because they have contracted the illness. Illness of a person cannot be made a reason or ground for discrimination and differential treatment. These are the principles upon which Article 14 of the Constitution is founded. Moreover, the Constitution does not and can never permit discrimination on the ground of illness and physical suffering.

(iv) Covid-19 with its malefic effects is the most harrowing experience, both physically and mentally. To add to this is the traumatising experience of living in isolation and the severe curtailment of freedom. A Covid-19 positive person is already subjected to restrictions by the State in the form of isolation which amounts to curtailment of rights under Article 19 of the Constitution. The State cannot be permitted to affix posters outside residences and circulate names which leads to further curtailment of the rights of such persons guaranteed by Article 21 of the Constitution.

(v) The practise of affixing posters is not known or proven to serve any purpose. The decision to do so has been taken without any application of mind. It is extremely important to note that pasting of posters by the Respondents has turned out to be counterproductive. In order to avoid drawing undue attention in case of testing positive, persons are shying away and deliberately choosing not to test themselves to shield themselves from the public embarrassment and stigmatisation which is being caused by pasting of posters outside their residences. A person who is Covid-19 positive should be at liberty to cope and recover from the serious illness rather than having to deal with unnecessary and undue attention from neighbours and other residents in the colony/neighbourhood.

7. Learned counsel for the petitioner further submits that the petitioner has also filed a writ petition being Writ Petition(C) No.7250 of 2020 in the High Court of Delhi where NCT of Delhi has submitted that no posters shall be posted outside the residence of any home isolation patient and all the posters which are already posted outside the residence of home isolation patients shall be removed. The Delhi High Court noticing the above submission of the NCT of Delhi has disposed of the writ petition by order dated 03.11.2020.

8. Learned Solicitor General submits that in the guidelines which have been issued by the Government, Ministry of Health and Family Welfare for home isolation, there are no guidelines for pasting of posters outside the residence of COVID-19 positive persons. He has referred to the guidelines dated 02.07.2020 issued on the subject (Revised guidelines for Home Isolation of very mild/pre- symptomatic/asymptomatic COVID-19 cases).

9. Shri Mehta submits that the Department of Family Welfare has also issued a D.O. letter dated 19.11.2020 to Additional Chief Secretaries/Principal Secretaries/ Secretaries(Health) All States/UTs that the Government of India, Department of Health and Family Welfare, Ministry of Health and Family Welfare Guidelines do not contain any instruction or guidance regarding affixing posters or other signage outside the residences of those found COVID-19 Positive.

10. We have considered the submissions of the learned counsel for the parties and have perused the records.

11. The guidelines dated 02.07.2020 issued by the Government of India, Ministry of Health and Family Welfare brought on record as Annexure 'A' to the affidavit dated 30.11.2020 of the Union of India does not contain any guidelines regarding pasting of posters outside the residences of COVID-19 positive persons rather Government of India, Ministry of Health and Family Welfare has issued D.O. letter dated 19.11.2020 which has been brought on record by the Union of India to the

following effect:

“It has been brought to the notice of this Ministry that in some States, the practice of affixing posters outside the homes of persons found positive is being followed. There is a possibility that in some States this practice may also be resorted to even in such cases where the positive persons are not under home isolation but have been shifted to a COVID Care Centre or are under hospitalization.

2. In this context, the following is reiterated as a guidance for all States and Union Territories:

i) MoHFW Guidelines do not contain any instructions or guidance regarding affixing of posters or other signage outside the residences of those found COVID positive.

ii) The Guidelines issued by Central Government in this regard are very clear. The same, issued on 2nd July, 2020 for positive patients under home isolation, are attached herewith and can also be accessed at <https://www.mohfw.gov.in/pdf/RevisedHomeIsolationGuidelines.pdf> These Guidelines must be followed by all concerned in letter & spirit.

3. I request your intervention to ensure scrupulous adherence of MoHFW Guidelines.”

12. Learned Solicitor General has categorically cleared the stand of the Union of India insofar as pasting of posters outside the residences of COVID-19 positive persons. It is stated that neither any such direction has been issued by the Government of India nor it is obligatory to any State or Union Territory to paste the posters outside the residences of COVID- 19 positive persons. The petitioner in the writ petition has also pleaded that the State of Punjab and NCT of Delhi which had earlier issued directions for affixing posters outside the residence of COVID- 19 patients have withdrawn the said orders and now no posters are being pasted on the outside of the houses of COVID-19 positive persons.

13. Although, various submissions have been made by the petitioner in support of the writ petition but in view of the guidelines issued by the Ministry of Health and Family Welfare which are referable to exercise of power by the authority under Disaster Management Act, 2005 which does not contain any requirement of pasting of posters against the houses of COVID-19 patients, the above detailed submissions need no consideration in the present writ petition. The Union of India has already issued D.O. letter dated 19.11.2020 extracted above to guide the States and Union Territories, we only observe that no State or Union Territory is required to paste posters outside the residence of COVID-19 positive persons, as of now. The State Governments and Union Territories can resort the above exercise only when any direction is issued by the competent authority under the Disaster Management Act, 2005. The writ petition is disposed of accordingly.

.....J.

(ASHOK BHUSHAN)J.

(R. SUBHASH REDDY)J.

NEW DELHI,
DECEMBER 09, 2020.

(M.R. SHAH)