

In Residence

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 574 of 2020

Petitioner :- In-Re Inhuman Condition At Quarantine Centres And For Providing Better Treatment To Corona Positive

Respondent :- State of U.P.

Counsel for Petitioner :- Gaurav Kumar Gaur, Abhinav Gaur, Aditya Singh Parihar, Amitanshu Gour, Arvind Kumar Goswami, Bhagwan Dutt Pandey, Ishir Sripat, Jamil Ahamad Azmi, Jitendra Kumar, Katyayini, Pradeep Kumar Srinette, R.K. Shahi, Rahul Sahai, Rajeev Kumar Singh, Rishu Mishra, S.P.S. Chauhan, Sarveshwari Prasad, Satyaveer Singh, Shailendra Garg, Siddharth Shukla, Sunita Sharma, Suo Moto, Sushil Kumar Mishra, Swetashwa Agarwal, Uttar Kumar Goswami, Vibhu Rai

Counsel for Respondent :- C.S.C., Arun Kumar, Ashish Mishra, Dhiraj Singh, Hari Nath Tripathi, Purnendu Kumar Singh, Satyavrat Sahai, Sunil Dutt Kautilya, Suresh Chandra Dwivedi, Tahir Husain, Vishakha Pande

Hon'ble Siddhartha Varma, J.

Hon'ble Ajit Kumar, J.

1. We have heard Sri S.V. Raju, learned Additional Solicitor General of India assisted by Sri Abhishek Sharma, learned Standing Counsel, Sri Manish Goyal, learned Additional Advocate General assisted by Sri A.K. Goyal, learned Additional Chief Standing Counsel, both representing the State of U.P., Sri S.P. Singh, learned Additional Solicitor General of India assisted by Sri Purnendu Kumar, learned Advocate, Sri Tarun Agrawal, learned counsel appearing for the State Election Commission, Sri Amrendra Nath Singh, learned Senior Counsel and President of Allahabad High Court Bar Association, Sri Anuj Singh, Sri Rajat Rajan Singh and Sri A.P. Paul, learned Advocates. All the learned Advocates appeared through video conferencing.

2. Sri Abhishek Prakash, District Magistrate, Lucknow and Sri K. Balaji, District Magistrate, Meerut, also appeared in person through video conferencing in compliance of our last order.

3. The compliance affidavit filed on behalf of the State of U.P. as well as State Election Commission are taken on record. The intervention application filed by Sri A.P. Paul and Sri Rajat Rajan Singh, learned Advocates respectively are also taken on record. Office is directed to allot regular number to both the intervention applications.

4. Upon going through the affidavit filed today by Sri Manish Goyal, learned Additional Advocate General, we do find that things which were actually out of control have been demonstrated to have now been somehow managed. We have also been informed that number of active cases in State of U.P. were day by day declining and procurement/ production and supply management of oxygen had also of late been managed and was being streamlined.

5. We have no reason to doubt that the gradual decline in active Covid cases had been due to restrictions imposed by the State Government on public movement and public activities in the State of U.P. and constructive efforts that are put in by the District Administration in various districts and the Police Administration of all these districts in ensuring that the restrictions as imposed by the State Government are honoured by the people. The regular electricity supply by the Electricity Department in the entire State of U.P. was also a task undertaken by and large to the satisfaction of the people. Although all efforts taken till now are quite appreciable but we hasten to add that this is no time to relax as a lot of action is still needed to be taken more especially in the field of public health care, facility and overall public health infrastructure in view of the impending threat of a third wave of Covid-19 pandemic.

6. Learned Additional Advocate General has also informed us that conditions of referral letter of the Chief Medical Officer/ District Magistrate for Covid patients in the hospital has been done away with.

7. The District Magistrate, Lucknow who has appeared in person online informed the Court that he had already submitted report in respect of two private hospitals, namely, Sun Hospital and Samarth Hospital. He, however, further explained that he had already conducted preliminary investigation through SDM (Sadar) Sri Prafulla Kumar and it had surfaced out during investigation that Sun Hospital was already having sufficient oxygen cylinders as six jumbo oxygen cylinders were reported to be available on the day when notice was published by the hospital and thus according to him, it was quite apparent that the hospital had with a *mala fide* intention to create panic amongst the people, posted the notice notoriously showing scarcity of the oxygen in the hospital. He has further submitted that as far as the other hospital is concerned that was a non-Covid hospital and had wholly illegally admitted the Covid patients and in respect of which the proceedings had already been drawn against that hospital by issuing show cause notice. He further added that Sun Hospital had also been issued with show cause notice and proper actions would be taken after considering the reply. The District Magistrate, Lucknow further submitted before the Court that in Lucknow district a Nodal Officer had been appointed to ensure continuous supply of oxygen as per the need to the hospitals, be it government or private. He further submitted that total demand of Liquid Medical Oxygen varied because of varying numbers of Covid patients and demands were made on day to day basis. He further submitted that earlier the demand was on an average about 135 metric tones of oxygen which was more or less supplied to Lucknow district. He further assured the Court that he would personally get the things streamlined and monitor the same on a day to day basis and will take stock of the situation and will also instruct the Nodal Officer to ensure that there was no gap between the demand and supply of the Liquid Medical Oxygen.

8. District Magistrate, Lucknow assured the Court that besides the fact that appropriate action was already underway against the two private hospitals even in future if he came across any such news

viralled regarding ill-treatment of patients in the hospitals and artificially created scarcity of the oxygen, he would take immediate action in the matter. Since the explanation submitted by the District Magistrate, Lucknow, *prima facie*, appears to be satisfactory, we exempt him from personal appearance in future until and unless required again.

9. We, however, direct the District Magistrate, Lucknow to submit a detailed report of the action taken against the two private hospitals if in his final opinion it is found that mischief has been committed by them deliberately endangering lives of innocent and creating unnecessary panic to serve the vested interests.

10. The District Magistrate, Meerut, who has also appeared in person online to explain about the alleged deaths for want of oxygen in Medical College, Meerut in its Trauma Centre, submitted that the deaths were not caused for want of supply of oxygen but for some other reasons. He submitted that proper oxygen was already there to the requirement of the hospital and there was no scarcity of the same. On a pointed query being made as to what was the exact stock in the hospital on the fateful day, the District Magistrate, Meerut, could not give any satisfactory reply. He also could not reply as to what was the cause of the deaths if it was not for want of oxygen. The District Magistrate, Meerut, in our considered view, has not conducted enquiry in the letter and spirit of the mandate contained in our order. He should have obtained specific information especially when judicial notice had been taken of the viralled news item and concrete material should have been placed before us as reply to our query.

11. We, accordingly, direct that the District Magistrate, Meerut shall hold a comprehensive investigation into the matter and will submit report to the Court again by personally appearing online on the next date fixed.

12. Sri S.V. Raju, learned Additional Solicitor General of India submitted that oxygen supply was no more an issue in the State of U.P. though there was some gap between demand and supply but the gap was not so significant that any patient would die for want of oxygen. Besides that, he submitted that oxygen generation/ production has already started in the State and supply was continuous. He further submitted that as far as the disposal of the confiscated articles like life saving drugs Remdesivir injection, oxygen cylinders and oximeters were concerned, the concerned Magistrate was himself sufficiently empowered to pass order immediately under Section 451 and 457 of Code of Criminal Procedure, 1973. In this regard, he drew our attention towards the judgment of the Supreme Court in the case of **Sunderbhai Ambalal Desai v. State of Gujarat** reported in **2002 (10) SCC 283**.

13. Thus, he argued that all the concerned Magistrates, before whom the case was going on in relation to the seized case properties like life saving drugs Remdesivir as well as oxygen cylinders and oximeters and such other related seized articles could exercise powers vested under Section 451 Cr.P.C. expeditiously and police was required to approach learned Magistrates under Section 457 Cr.P.C. for immediate disposal of such seized articles.

14. Accordingly, we hereby direct to all the concerned Magistrates in the entire State of Uttar Pradesh to immediately dispose of the case properties like life saving drugs namely Remdesivir, Oxygen cylinders and oximeters and such other related articles within a week of the case being instituted before them. We also direct the Director General of Police to immediately issue advisory to all the Senior Superintendents/ Superintendents of Police in the State to direct the concerned police officers who have seized or would seize in future such articles from illegal possessions, to immediately within 24 hours of such seizure, approach concerned Magistrates for the disposal of such property and in the event they approach the concerned Magistrate, he shall

dispose of the case properties exercising power under Section 457 Cr.P.C. within three days thereafter in view of the current pandemic caused by Covid-19.

15. Now coming to the issue of non-compliance of undertaking given before the Supreme Court in Special Leave Petition (Civil) Diary No.(s) 10698 of 2021, we notice that in the affidavit filed on behalf of the State Election Commission certain photographs of the counting centres have been annexed and some of the CCTV clips compressed in a Pen Drive have also been provided along with the affidavit. Sri Tarun Agrawal, learned counsel appearing for the State Election Commission submitted that reports from majority of the Nodal Officers were still awaited regarding compliance of the Covid protocol as per the undertakings given to the Supreme Court. He has further argued that regarding deaths of the polling officers and agents during the polling, 77 deaths have come to be reported so far from 28 districts and reports from other districts were still awaited. He submitted that he would come with all the reports within next one week. However, at the same time he submitted that the State Government had decided to give compensation of Rs.30,00,000/- to the family members of the deceased polling officers and in that regard he has brought on record the State Government policy vide Annexure-4 to the affidavit.

16. On the question of role of the State Election Commission in conducting the elections more particularly in the face of current pandemic, learned counsel for the State Election Commission has sought time till next Tuesday to study the matter and to address the Court on the said issue.

17. On the question of availability of vaccine, proposed expenditure and the steps taken in the face of the fact that threat of third wave of Covid-19 pandemic looms large and how much vaccines were available, Sri S.P. Singh, learned Additional Solicitor General of India informed the Court that the available vaccine in the make of Covaxin

and Covishield were available to the tune of 8.5 crores for the month of May, 2021. He further submitted that Central Government had the necessary budget as per the announcement made in the Parliament by the Finance Minister to the tune Rs.35,000 crores to spend on Covid-19 vaccines. According to him, the Central Government was intending to procure vaccines from other vaccine producers also and for this purpose the conditions in the guidelines for the license *qua* emergency use of vaccines had also been relaxed. He submitted that 1.5 lacs Sputnik Covid vaccines had already arrived in India from Russia till now.

18. Since Sri S.P. Singh made a statement that now the vaccines were available in the global market and anybody could purchase it, we also put a query to Sri Manish Goyal, learned Additional Advocate General as well as Sri S.V. Raju, learned Additional Solicitor General of India appearing for State of U.P. as to what was the stand of State of Uttar Pradesh in the above regard. They made statements that the Government had already floated global tenders for the said purpose.

19. We are of the opinion that tender is a long drawn process and if we run late in vaccinating large number of population in the State, we may lose the real desired result of vaccination as the virus may achieve such mutations which may neutralize the vaccine also. Besides that since large number of people are getting infected every day and the Scientists are of the view that third wave is almost at the door steps of India, it is necessary that Government should enter into direct dialogue with vaccine producers with the help of Indian Diplomats in those countries. We must remember that in the context of Covid-19 virus unless every individual is protected, no one is safe.

20. We, accordingly, direct the State Government to find ways and means to ensure immediate procurement of vaccines so that all in Uttar Pradesh may get vaccinated with its complete doses within

3-4 months time and tell us on the next date fixed how it proposes to expedite purchase of vaccines from global market.

21. Sri Rajat Rajan Singh, learned Advocate has moved an intervention application in which it has been pleaded that Government must come up with specific policy to vaccinate physically challenged persons. Sri Rajat Rajan Singh, who also appeared through video conferencing has drawn the attention of the Court to the guidelines issued by the World Health Organization for disability considerations in respect of physically challenged persons during the Covid-19 outbreak and submitted that it is quite unfortunate that till date in the entire vaccination programme undertaken by the State Government it was not provided as to what were the guidelines for vaccination specific to the physically challenged persons.

22. We find merit in the argument advanced by Sri Rajat Rajan Singh and direct him to supply a copy of the petition to the learned Additional Advocate General as well as learned Additional Solicitor General of India so that on the next date fixed both the Advocates may place before the Court the guidelines prepared for vaccination programme specific to the physically challenged persons.

23. Sri Anuj Singh, learned Advocate, who has appeared through video conferencing has brought to the notice of the Court that the surge of pandemic was now being seen in rural areas also and the situation had alarmingly worsened for want of proper medical care. He has also argued that in those districts where medical health infrastructure was weak, a large number of deaths were reported but since the concentration of the Government in the recent past had been towards the major cities, the smaller districts and cities got unfortunately ignored and also did not get the attention of media.

24. We, accordingly, direct the Additional Advocate General to apprise us on the next date fixed as to how the State Government was dealing with the surge of pandemic in rural and sub-urban areas and smaller cities of the State.

25. Put up this matter again on 11th May, 2021 at 11:00 am.

26. A copy of this order is directed to be communicated to Additional Chief Secretary (Home) and Director General of Police, U.P. as well as the Secretary (Law) State of U.P. within 24 hours.

Order Date :- 7.5.2021

Atmesh

(Ajit Kumar,J.)

(Siddhartha Varma,J.)