

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 through video conferencing.

2. Sri Badugu Deva Paulson, Secretary (Home), Government of U.P., Lucknow, Sri Ramakant Pandey, District Magistrate, Bijnor, Sri Shambhu Kumar, District Magistrate, Bahraich and the Principal Swaroop Rani Nehru Medical College, Allahabad also appeared through video conferencing and have been heard.
3. A compliance affidavit has been filed by Sri A.K. Goel, learned Additional Chief Standing Counsel, High Court, Allahabad on behalf of the State which is taken on record. The response filed on behalf of Central government by Sri Purnendu Kumar Singh, the Central Government Counsel is also taken on record. The affidavit filed on behalf of State Election Commission, U.P. is also taken on record. We have also received the reports of Nodal Officers of various districts which are also kept on record.
4. Sri Bhanu Bhushan Jauhari, learned Advocate has also filed an intervention application. Office is directed to allot regular number to the intervention application.

5. We had in our last order directed the State respondent to appoint a three member Pandemic Public Grievance Committee in every district to look into the grievance of individuals and to redress their respective grievances and further to look into all the viral news relating to the district concerned. In the affidavit filed today, a Government Order dated 13.05.2021 has been brought on record by which three member committee has been directed to be formed in every district in compliance of our order. While the modalities of appointment of committee has been given in the order, it has not been directed as to how and in what manner the public grievance committee would redress the grievance of an individual. We accordingly direct that all the complaints received by the committee, will be discussed by the Committee with the District Nodal Officer appointed in every district by State Government and the Nodal Officer shall ensure that each and every grievance stands redressed within 24-48 hours. We also enlarge the scope of Committee to look into the complaints of supply of oxygen to those who are in home isolation, the private hospitals and nursing homes of the district concerned.
6. In compliance to our direction fetching details of the health infrastructure of five districts *qua* its population, the reports

obtained from each of the five districts have been brought on record vide Annexure no. 24 to the affidavit. Upon perusal of the report submitted by the District Magistrates of the respective districts, we have no hesitation in observing that health infrastructure is absolutely insufficient in city areas to meet the requirement of city population and the rural areas the Community Health Centres are virtually lacking in respect of life saving gadgets. In most of the districts, the Level-3 hospital facilities are not there.

7. We take the example of district Bijnor as a test case to assess the overall health care system in smaller cities and rural areas of the State. In district Bijnor the urban population as per 2011 census is shown to be 925312. We have no doubt in observing that it must have gone up 25% more by 2021, but to our utter surprise there is no level-3 hospital in district Bijnor. The three Government Hospitals have only 150 beds, whereas, the total of number of BIPAP machines is 5 and High Flow Nasal Cannula is only 2. Thus, these important life saving devices in these days of pandemic where lungs with covid involvement are resulting in serious breathing problem, are very negligible in number. The rural population in the Tehsils is around 2755000, again as per 2011 census and so it must have also increased 25% by now. If we take

the population of rural areas to be 32 lacs then since there are only 10 Community Health Centres, so one health centre has the load of 3 lac people and against 3 lac people it has only 30 beds. Meaning thereby, one CHC can cater the need of health care to only 0.01% population and there is no BIPAP machine or High Flow Nasal Cannula available. Only 17 oxygen concentrators are available with 250 oxygen cylinders against 300 beds. There is no description as to what is the capacity of oxygen cylinders and whether in CHC there are trained hands to operate these oxygen cylinders and concentrators. The District Magistrate, Bijnor informed the Court that these facilities were available since the first wave of Pandemic had hit the State. Meaning thereby, there has been no further increase in supply of life saving gadgets to district Bijnor since last one year and thus the situation has not improved at all in terms of health care in district Bijnor. These facts therefore, are quite opposed to the Government's claim.

8. The number of testing in the urban areas so far has been 26245 since 31.03.2021 till 12.05.2021 and in rural areas it has been 65491 during the same period. The District Magistrate, Bijnor informed that testing for Covid was being done both by RTPCR and Antigen kit in 60:40 ratio. In the

population of 32 lacs, if the testing is done of only 1200 persons and that too in 60:40 ratio then the situation is not happy. The manner in which the pandemic has hit the rural areas of the State, the district administration is required to have a robust way of conducting tests.

9. Thus, the way in which the things have taken shape in district Bijnor and likewise other four districts whose data is before us, we have no hesitation in saying that in rural areas things would not improve in this way. For a rural population of 32 lacs, as is the case of district Bijnor, every day 4 to 5 thousand tests should be conducted and all the tests should be through RTPCR. This is the time if we fail to identify a Covid infected person at the earliest, we are definitely inviting a third wave. If we have to test 30% of the population i.e. almost 10 lacs in the rural areas of district Bijnor within three month's time, then we will have to conduct 10000 tests per day, but from the statement made by the District Magistrate we do not see any such robust testing in near future in district Bijnor and condition in other four districts are also same. If this is the state of affairs of five districts, one can guess where we are leading people of this State to i.e. third wave of the pandemic.

10. Therefore, we direct the State Government to immediately improve and increase the testing methods of the rural population and the population of small cities and towns and also provide sufficient health care infrastructure in compliance of our direction no. 19(iii) of our order dated 27.04.2021.

11. In respect of a viral news of one Santosh Kumar missing from the District Hospital, Meerut, vide annexure no. 31 of the affidavit, the State has brought on record the documents pertaining to the inquiry made. A three member committee submitted a seven point report to the Principal, Medical College on 12.05.2021 in which it was admitted that Santosh Kumar aged about 64 years was admitted to Medical College, Meerut on 21.04.2021 on a reference made by District Hospital, Ghaziabad and he was kept in isolation ward. One Dr. Tanishq Utkarsh was on duty at the time of his admission. It has come in the report that it was around 7-8 p.m. of 22.04.2021 when the patient had gone to washroom, he fainted there. Dr. Tulika who was a junior resident and was on night duty told the committee that Santosh Kumar, who was in fainted condition, was brought upon a stretcher and efforts were made to revive him, but he succumbed and by the time efforts were being made, the

morning team had arrived. However, it was admitted that team incharge Dr. Anshu, who was on night duty, was not present. Dr. Tanishq Utkarsh got the body removed from the place and all efforts to identify the person went in vain. He could not trace out the file of the patient in isolation ward and even after counting the number of patients and file, the dead could not be identified. Thus, it was taken to be a case of unidentified body and even the team that was on night duty, could not recognize it and so the body was packed in a bag and was disposed of. From the narration of facts, as have emerged out from the inquiry, it comes out to be a case of high degree carelessness on the part of the doctors who were on night duty. It is quite surprising that Dr. Tanishq Utkarsh and his team that was on duty at the time of admission of patient on 21.04.2021, he himself could not identify the person. If this is the state of affairs of treatment at medical College in the city like Meerut then the entire medical system of the State pertaining to the smaller cities and villages can only be taken to be like a famous Hindi saying '**Ram Bharose**'. Surprisingly enough, the action taken was only that there was of just withholding of annual increments of the paramedical staff and the doctors. We are not satisfied the way the State has dealt with this issue. A

patient is admitted to the hospital in an absolute care of doctors and paramedical staff and if the doctors and paramedical staff adopt such casual approach and show carelessness in the performance of their duty, then it is a case of serious misconduct because it is something like playing with the lives of innocent people. The State needs to take stern action against those responsible, may be they are the highest in the ranks. It should compensate the dependents who have suffered the irreparable loss because of such carelessness. The Additional Chief Secretary (Medical and Health), Government of U.P. is therefore, directed to file an affidavit fixing responsibility in the matter. An affidavit shall also be filed on behalf of the Chief Secretary as to what is the stand of the Government and how it intends to compensate the dependents of the deceased. Necessary compliance affidavit may be filed within a week.

12. Now coming to the vaccination issue, the Additional Solicitor General of India Sri S.P. Singh has informed the Court that he has filed a comprehensive affidavit of the Secretary concerned of the Central Government regarding availability of vaccine in the country.

13. In view of the above discussions and the fact that the people of this State have faced the pandemic for over last three months and are under serious threat of its third wave, two things become very clear:

(i) We need to vaccinate each and every individual in the country; and

(ii) We need to have an excellent medical infrastructure.

14. So far as the vaccination part is concerned, we have been informed that a global tender has been invited by the Uttar Pradesh Government. In addition to what the Government is doing, the viability of the following may also be checked.

(i) Such people who might like to buy the vaccines for the havenots, may be allowed to do so and may also be given certain benefits under the Income Tax Act. In the global tenders, the Government after getting the reasonable prices may negotiate with the world manufacturers and try to buy as many vaccines as can be bought from wherever the vaccines are available.

(ii) Big business houses who take various advantages under the taxation laws by donating to various religious organizations may be asked to divert their funds to vaccines.

(iii) Since the vaccine producing countries are advocating for expansion of vaccine manufacturing and distribution to meet the challenge of global health crisis caused by Covid pandemic and in that process are agreed to the waiver of intellectual property protection, our central agencies may give the green signal to various manufacturers who have the infrastructure to manufacture the vaccines on a large scale so that they may manufacture vaccines of whichever kind they feel suitable. The vaccines may be first vigorously tested and only thereafter may be given out for use by the public. For this various incentives may be announced.

(iv) Big medical companies which are working in the country may not have their own vaccines but they may take the formula from just any of the vaccine manufacturers in the world and start producing the vaccine. In this way, they would help the country to meet the shortage of vaccines which it is facing today. For that matter, one cannot understand as to why the Government of ours which is a welfare state is not trying to manufacture the vaccine itself on a large scale.

15. These are only suggestions and the viability of having them may be checked by the Government. By the next date, a report may be submitted before this Court. While preparing the report, the Central Government may not

depend on its bureaucrats only. It may use the best brains which might be available to it.

16. So far as the medical infrastructure is concerned, in these few months we have realized that in the manner it stands today, it is very delicate, fragile and debilitated.

17. When it cannot meet the medical requirements of our people in normal times then it definitely had to collapse in the face of the present pandemic. For the development of the medical infrastructure, the viability of having the following may be looked into by the State Government at the highest level and a report be definitely submitted on the next date by the Health Secretary of both the Centre and the State.

(i) All nursing homes should have an oxygen facility on every bed.

(ii) Every nursing home/ hospital which has more than 20 beds should have at least 40 per cent beds as Intensive Care Units.

(iii) Of the designated 40 per cent; 25 per cent should have ventilators, 25 per cent should have High Flow Nasal Cannula and 50 per cent of the 40 per cent reserved beds should have bipap machines. This should be made compulsorily for all the nursing homes/ hospitals in the State of Uttar Pradesh.

(iv) Every nursing home/ hospital which has more than 30 beds should compulsorily have an oxygen production plant.

(v) In the State of Uttar Pradesh, we find that apart from various Institutes like Sanjay Gandhi Postgraduate Institute and the Universities like the King George's Medical University and Banaras Hindu University, we have five more medical colleges in Prayagraj, Agra, Meerut, Kanpur and Gorakhpur. These Colleges should have enhanced facilities as are there with the Sanjay Gandhi Postgraduate Institute within a period of four months. Emergency laws should be applied for the acquisition of land for them. Funds should be provided to them forthwith so that they graduate from a medical college to an Institute of the standard of the Sanjay Gandhi Postgraduate Institute. For this there should also be given a certain extent of autonomy.

(vi) So far as the villages and small urban areas are concerned, they should be given all kinds of pathology facilities and treatments should be made available in Community Health Centres which are at par to the treatment given by Level-2 hospitals in bigger cities. If a patient however becomes serious in the rural areas or in small towns then ambulances with all kinds of Intensive Care Unit facilities should be provided so that the patient can be brought to a hospital which has proper medical facilities in a bigger town.

18. We suggest that every B Grade and C Grade town of the State of Uttar Pradesh should be provided with at least 20 ambulances and every village should be provided with at

least 2 ambulances having Intensive Care Unit facilities. Ambulances should be made available within a period of one month. With these ambulances patients from smaller towns and villages can be brought to bigger hospitals in bigger towns.

19. The Government should not linger this matter but by the next date it should come up with a definite report as to how this upgradation of Medical Colleges shall be done in four months' time.

20. We hereby direct appointment of Nodal Officers by the District Judges of districts Bijnor, Bahraich, Barabanki, Shrawasti, Jaunpur, Mainpuri, Mau, Aligarh, Etah, Etawah, Firozabad and Deoria in terms of our order dated 27.04.2021. These Nodal Officers shall submit their reports within a week's time in the light of directions contained in our order dated 27.04.2021. The State respondents are also directed to give the details relating to the above districts in terms of our order dated 11.05.2021.

21. The Principal of SRN Hospital shall also apprise about the working of Centralized Monitoring System of both

Covid and Post Covid Wards including ICUs by the next date fixed by filing an appropriate affidavit in this regard.

22. Put up this matter on 22nd May, 2021 at 02:00 pm.

23. Let a copy of this order be sent within 24 hours to the Chief Secretary, Government of U.P., Lucknow and Additional Chief Secretary (Medical and Health), Government of U.P., Lucknow for necessary compliance at their end.

Order Date :- 17.5.2021

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(Ajit Kumar,J.)

(Siddhartha Varma,J.)