

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(Through Virtual Mode)**

CJ Court

WP(PIL) No.5/2020

Court on its own motion

...Petitioner(s)/Appellants.

Through: Ms. Monika Kohli, Amicus Curiae.
Mr. Aditya Gupta, Advocate.
Mr. Ashok Sharma, Advocate.
Mr. Mubeen Khan, Advocate.
Mr. Zeeshan Hyder, Advocate.
Mr. D. C. Chouhan, Advocate.

Vs.

Union Territory of J&K and others.

....Respondent(s)

Through: Mr. D. C. Raina, Advocate General, with
Mr. Aseem Sawhney, AAG, &
Mr. Sajad Ashraf, GA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER

03.06.2021

01. Heard Ms. Monika Kohli, Amicus, Mr. D. C. Raina, learned Advocate General, Mr. Aditya Gupta, Advocate, Mr. Ashok Sharma, Advocate, Mr. Mubeen Khan, Advocate, Mr. Zeeshan Hyder, Advocate and Mr. D. C. Chouhan, Advocate.

02. In this Public Interest Litigation in context with Covid-19 pandemic, several miscellaneous applications or separate writ petitions in public interest

were filed which were directed to be treated as miscellaneous applications in the main petition itself.

03. One of the miscellaneous application i.e., IA No.4526/2021 filed by Mr. Balvinder Singh through Mr. Dinesh Singh Chauhan, Advocate, *inter alia* prays that as no post-mortem or autopsy is necessary on account of death due to Covid-19, the dead body should be handed over to the next of kins of the deceased, the face of the deceased be allowed to be seen by the relatives and they be permitted to perform rituals such as sprinkling of holy water etc before cremation.

04. The Government of India, Ministry of Health and Family Welfare, Directorate General of Health Service (EMR Division), has issued Covid-19 Guidelines on dead body management. The said guidelines *inter alia* provides for standard precautions to be followed by health care workers while handling dead bodies of Covid patients; the manner of removal of the dead body from the isolation centre; handling of the dead body in Mortuary; transportation and cremation. It *inter alia* provides that ordinarily autopsy on Covid-19 dead bodies is not necessary and for special reason if it is to be performed, the procedure prescribed has to be followed. It provides that the dead body should be secured in a body bag and its handling should follow standard precautions and the vehicle after transfer of the body to the cremation/ burial place be decontaminated with 1% Sodium Hypochlorite. The cremation/ burial ground including the staff should be sanitized and the staff should take all standard precautions of hand hygiene, use of masks and gloves. The cremation/ burial is supposed to be in the presence of the close relatives and that the viewing of the face of the body by unzipping or opening the body bag is permissible so that

the relatives may not only see the body for the last time but perform rituals such as reading from religious scriptures, sprinkling of holy water and other last rites that does not require touching of the body. However, bathing, kissing, hugging of the dead body would not be allowed. Since the ashes does not pose any risk, they can be collected for performing any other rituals or the last rites.

05. In other words, according to the guidelines, the dead body has to be carried to the cremation/ burial ground in a secured bag by the authorities for the performance of the last rites which shall ordinarily be in the presence of the relatives. We are informed that a maximum of 20 relatives are permitted. The guidelines also provides for viewing of the face of the deceased by the relatives and performing of rituals except for touching of the body.

06. In view of the above guidelines and the permission accorded to view the face of the dead body by unzipping the bag and to perform last rites and rituals without touching the body, we are of the opinion that the religious sentiments of the family members have been sufficiently taken care of by the Government. The Ministry of Health and Family Welfare has framed the aforesaid guidelines in consultation with the experts dealing with Covid-19 pandemic and, as such, if the guidelines do not permit handing over of the dead body specifically to the next of the kins and simply allow them to participate in the cremation/ burial and to perform the last rites that is more than sufficient otherwise it would be difficult to contain the spread of the disease. It is to be borne in mind that the larger public interest always prevails over personal rights and the traditions and customs have to yield to the national interest especially in these unprecedented times.

07. Accordingly, we dispose of the aforesaid application expressing hope that the authorities will strictly follow the above guidelines and would not cause any harassment to the next of kins of any person dying due to Covid-19 in viewing the face of the deceased and in allowing them to perform the last rites in the manner laid down.

08. Since large number of applications by all and sundries were being moved raising grievances and making suggestions, the court on the last occasion directed that all such applications/ grievances and suggestions be routed to the learned Advocate General via the Amicus Curiae, who would take up the matter with the Government and report thereafter.

09. In pursuance to the above, the learned Advocate General has filed affidavit of Mr. Atal Dulloo (IAS) Financial Commissioner, Health & Medical Education Department, Civil Secretariat, Jammu on 31.05.2021 comprehensively stating the actions taken by the Government in regard to Covid-19 pandemic in the Union Territory of Jammu & Kashmir.

10. The aforesaid affidavit states that the Union Territory of J&K has made all conscious efforts to tackle the pandemic to its best abilities and has left no stone unturned to come up to the expectation of the masses. The General Administration Department vide order dated 02.05.2021 constituted a Crisis Management Group (CMG) comprising of; the Chief Secretary, J&K, as Chairman, and Financial Commissioner, Finance Department, Financial Commissioner, Health & Medical Education Department, Principal Secretary to the Government, Home Department and Principal Secretary to the Government, PW(R&B) Department, as its members. The said Group is supposed to meet daily to interact with all other officers and medical

specialists to review the covid situation, testing rates, positivity, mortality, recovery, hospital occupancy, oxygen and medicine requirement, steps taken for preventing the spread of the Covid, to monitor the vaccine rollout and fine tune vaccination strategies etc.

11. The affidavit also states that the department of Health and Medical Education vide order dated 18.05.2021 accorded sanction to the establishment of two 500 bed temporary Covid Hospitals, one at Jammu and the other at Srinagar, in collaboration with the Defense Research and Development Organization (DRDO), Ministry of Defense, Government of India. The 500 bed temporary Covid hospital at Jammu has already been inaugurated and it will be made functional within two days. The 500 bed temporary Covid Hospital at Srinagar, would be made functional with effect from 7th June, 2021. In addition to it, 1366 posts of different categories have been created as per details enclosed so as to make these two hospitals fully operational and the expenditure in this regard would be borne out of the budget of the Union Territory.

12. The Chairman, State Executive Committee, Department of Disaster Management, Relief and Rehabilitation and Reconstruction on the an overall assessment of the Covid-19 situation in Jammu and Kashmir vide order dated 22.05.2021 has issued directions, *inter alia*, putting sealing on gatherings especially in marriage functions to the extent of 25 only to continue; to make Covid testing more targeted and focussed in areas with high positivity and upon the unvaccinated population; for providing Corona Kits to all Covid positive patients; to open 5 to 10 bed Covid care centre in each Panchayat with all basic facilities; not to deny any patient admission to a hospital or treatment

facility on the ground that they do not have a Covid positive test report; Asha and Anganwari workers have been directed to be trained and empowered to assist in covid migration efforts and to ensure only 50% attendance in Government offices.

13. In regard to oxygen for the Covid-19 patients, the Administration has ensured adequate supply of oxygen 24x7 to all healthcare institutions dealing with Covid-19 positive patients. It is stated that the medical oxygen in Union Territory of J&K is derived from three sources i.e., (1) Captive PSA Oxygen Generation Plants located with the selected hospitals; (2) Oxygen Cylinders (Type D and Type B) which are refilled at Oxygen Producing Plants within the Industrial Estates; and (3) Liquid Medical Oxygen Tanks. The total oxygen availability from all the three sources as on 24th May, 2021, was around 131789 cubic mtrs. It is further stated that there are eight industrial plants in Jammu division which provide an average of 2000 D-Type Cylinders per day. Similarly, there are four Industrial Plants in Kashmir which provide an average of 2000 D-Type Cylinders per day. Thus, supplying around 30,000 cubic mtrs of oxygen per day.

14. An oxygen Control Room has been set up which is operational 24x7 in both the Divisions of the Union Territory for the management of oxygen. Two senior officers of the Industries and Commerce Department have been designated as Nodal Officers for these Oxygen Control Rooms to remain in touch with the consumers and suppliers and to take immediate necessary steps wherever needed.

15. The affidavit also mentions that there are dedicated Covid Hospitals for patients who have been clinically assigned severe; dedicated Covid Health

Centres for patients clinically assigned as moderate; and Covid Care Centres for patients clinically assigned as mild. To cater the need of mild cases or covid suspected cases, Covid Care Centres with capacity of 10,000 beds have been arranged across the Union Territory. The affidavit contains details of hospitals available in J&K for covid treatment with details of dedicated beds, isolation beds and ICU beds.

16. The above affidavit is quite comprehensive and takes care to inform the Court about all arrangements that have been made by the Government to deal with the covid crisis.

17. Mr. Mubeen Khan, Advocate, and Mr. Syed Zeeshan Hyder, Advocate, have moved application IA No.4119/2021, for a direction to get District Poonch equipped appropriately and adequately with Covid-19 related infrastructure. The affidavit of the Financial Commissioner, Health & Medical Education Department, contains details of hospitals available in District Poonch with number of Covid dedicated beds, isolation beds and ICU beds. The Government has taken steps for having Covid management facilities in the entire Union Territory of Jammu & Kashmir including Poonch and as such, it cannot be said that the facilities in District Poonch are lagging behind. In case the applicants feel that the facilities are inadequate or that doctors or the other medical staff is not available, they can bring these facts to the notice of the learned Advocate General through Ms. Monika Kohli, Amicus Curiae who will take up the matter, if necessary, with the State Government and apprise the Court about the actual position by the next date.

18. Mr. Aditya Gupta, learned counsel on behalf of Snehal Arora, filed a PIL which was directed to be treated as a miscellaneous application in the

present petition itself. It came to be registered as CM No.4120/2021. In this application several prayers have been made.

19. The first prayer is for a direction upon the Government to convert Government stadiums into vaccination centres.

20. We do not think that such a prayer requires to be considered by the Court as it is for the administration to consider, if they are short of place for vaccination centres. If there is any shortage or need for extra place for vaccination centres, the administration would certainly evolve methods to arrange for adequate space and establish the same. Moreover, the administration has undertaken the vaccination drive even institutional-wise, in a way converting important institutions into vaccination centres temporarily for a limited purpose. The creation of large vaccination centres may not be ex facie feasible as it would result in concentration of large number of people at one place which would be very risky and may be a cause of spread of Covid-19.

21. The other prayer is to establish liquid oxygen plant in the Government Medical College, Jammu, and allied hospitals. The learned Advocate General in this regard submits that there is no shortage of oxygen supply as of now and he has pointed out to certain paragraphs of the affidavit of the Financial Commissioner, Health & Medical Education Department.

22. There may not be any shortage of oxygen presently but for future to combat the anticipated third wave of Covid-19, it would be appropriate if the Government consider establishing of oxygen generation plants in each of the Government Medical Colleges or the allied hospitals. This would be beneficial

for the medical world for all times to come in extending medical treatment to all categories of patients.

23. A prayer has also been made for establishment of a Covid-19 treatment/ care hospital in every district.

24. The aforesaid prayer is virtually meaningless in the light of the affidavit of the Financial Commissioner, Health & Medical Education Department.

25. The argument to make large scale temporary appointments of doctors, nurses and other staff for treatment of Covid-19 patients is apparently not tenable inasmuch as sufficient posts in this regard have already been created and as informed by the Advocate General even retired doctors and staff have been called to render help in the management of the Covid crisis. It is informed that large number of temporary appointments have been made to handle the situation and the Government is not shying away in engaging as many hands as possible if there is any genuine need.

26. The submission that private hospitals should also be allowed to administer Covid vaccine, cannot be considered at this stage as on this aspect of the matter, there is no response from the Government and we are not aware if only Government hospitals or centres alone are administering vaccination and it is not in private hands rather the newspaper reports reveal that private hospitals are also engaged in vaccination program.

27. We request the learned Advocate General to apprise the court on this aspect of the matter on the next date or may file an appropriate affidavit in this regard.

28. We expect that all applications or grievances may first be considered at the level of the Advocate General to enable him to file proper response.

29. We hope that the Government would prepare itself in advance to face the third wave, if any, and for that purpose care should be taken to vaccinate each and every citizen at the earliest, by carrying out fresh drive institution-wise so that if anyone has remained unvaccinated he is also covered. The Government may also ensure establishment of oxygen generation plants, as observed earlier, in every Government and allied hospitals or at any other place deem fit and proper. At the same time temporary arrangements so far made may not be completely dismantled and may be kept in readiness for future.

30. List on 6th July, 2021.

Jammu
03.06.2021
Abdul Qayoom, PS

(VINOD CHATTERJI KOUL)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

