

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. NO. _____ OF 2020

IN

SUO MOTO WRIT PETITION (CIVIL) NO. 7 OF 2020

IN THE MATTER OF:

IN RE THE PROPER TREATMENT OF COVID 19 PATIENTS AND
DIGNIFIED HANDLING OF DEAD BODIES IN THE HOSPITALS
ETC.

AND IN THE MATTER OF:

UDIAN SHARMA

Advocate,

... Applicant

AN APPLICATION FOR DIRECTIONS

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS OTHER COMPANION JUDGES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE HUMBLE NAMED APPLICANT

MOST RESPECTFULLY SHOWETH

1. That the captioned petition concerning the process regarding the proper treatment of COVID-19 patients and dignified handling of

dead bodies in the hospitals, etc. is currently sub-judice before this Hon'ble Court. The Applicant is a law-abiding citizen of this country and also an advocate enrolled with the Bar Council of India. It is pertinent to state here that the Applicant is a COVID-19 patient and is approaching the court vide the captioned intervention application to highlight the ground reality of how COVID-19 patients and dead bodies are being treated by the hospitals and the health departments.

2. That the Hon'ble Supreme Court has passed slew of directions to the Centre and the State authorities, ever since COVID-19 cases have emerged in India. These directions have led the authorities to formulate many guidelines and protocols to prevent the further outbreak of Coronavirus. This Hon'ble Court has ensured that the authorities have to mandatorily preserve the human dignity and the fundamental rights to live and die with dignity, while curbing the outspread of the virus.

3. That the Hon'ble Supreme Court on 12.06.2020 has taken a *suo moto* cognizance of the issue regarding the harassment of COVID-19 patients and mishandling of bodies of those who succumbed to the virus. This Court vide its order dated 12.06.2020 while issuing notice to the Governments of NCT of Delhi, Gujarat and Tamil Nadu has observed that the media reports indicate a “sorry state of affairs of care of COVID patients in Delhi and some other states”.

4. That it is most pertinent to state herein that the Applicant, due to the condemnable inactions of the hospitals and the State authorities has lost his grandfather, namely Jagdish Chand Gautam on 30.05.2020. The Applicant's entire family suffered due to lack of any first aid and subsequently refusal of admission to any of the hospitals. This is a clear violation of the fundamental rights of the Applicant and his entire family, including his 86 years old grandfather who lost his life fighting the virus while he was negligently stranded outside a government hospital and mishandled by the authorities.
5. That the Applicant also draws the attention of this Court to the failure of the health authorities in regard to the measures taken post the death of the Applicant's grandfather. The family was not contacted by either the hospital or by the health authorities for any help or assistance or even for testing. The authorities failed to comply with the ICMR guidelines and the protocols.
6. That in light of the above observations, the Applicant has no remedy save and except to ventilate his grievances through this application before the Hon'ble Supreme Court.
7. That the present application for directions in the captioned case is being filed along with an application seeking intervention in the captioned *suo moto* writ petition.

8. That at present the Applicant is not a party to the captioned case. The Applicant is filing the present application in his personal capacity to highlight the complete apathy and disorganized state of affairs prevalent in the State of Delhi as well as in the entire country, from the horrid experiences he and his family faced in fighting the virus while suffering a loss of kin. It is relevant to note that such a state of affairs has completely crippled their existence, and their fundamental rights were violated which forced them to approach this Hon'ble Court.
9. The Applicant herein is an advocate enrolled with the Bar Council of India, who regularly appears before this Hon'ble Court. It is most pertinent to state here that the grandfather of the Applicant was a retired government school headmaster, who has heavily throughout his life has believed in the courts of this country. He was not only a litigant, but also fought for the rights of many, and helped the needy to get justice from the courts. He was regularly contacted by many people when their rights were violated.
10. That the loss of the Applicant's grandfather's life due to the gross negligence of the Hospital and State authorities unequivocally depicts how the State has failed in helping the retired senior citizen who served this country. The hospitals not only failed in giving the Applicant's grandfather a bed, but also failed in giving him a first aid. No oxygen cylinder was provided to him, and he was lying unattended outside the building of Safdarjung hospital, with a 104.2 fever. The appalling condition of the hospitals can be seen

from the fact that he or any other patient was not even provided with a paracetamol capsule, let alone a ventilator. The Applicant's grandfather passed away while waiting for a bed outside the gate of the Safdarjung Hospital for the entire night. The aforementioned facts indicate that the Hospital acted in blatant violation of the revised guidelines dated 31.03.2020 on Clinical Management of COVID-19 patients issued by Ministry of Health and Family Welfare.

11. That the Applicant and his family were alone in fighting the Corona virus. Even after the death of the Applicant's grandfather, they were not contacted by any of the authorities, especially when the entire family, which includes the Applicant's 82 years old grandmother, was suffering from the deadly virus and grieving due to the loss of their grandfather. There was literally no support, intervention or sensitization from any of the authorities, before or after the death of the Applicant's grandfather.
12. That the Applicant would also like to bring forth the poor mismanagement of the hospital and the State authorities in mishandling the dead body of the Applicant's grandfather. This fact in general has been discussed by this Hon'ble Court in the captioned *suo moto* writ petition on 12.06.2020.
13. The authorities are not following the protocols for cremation of the dead bodies who have passed away due to COVID-19. Moreover the Applicant's family faced grave difficulties while performing

the last rites of their grandfather, there is no mechanism which is being uniformly followed by the authorities in assisting the grieving families.

14. That it was most unfortunate for the Applicant's father to encounter people who have lost someone due to COVID-19, and are themselves suffering from the deadly virus, standing in lines and waiting for any sort of donation so that they can perform the last rites of the deceased. People are desperately waiting for any help, or for wood, the most natural resource of it all to do the last rites.
15. This is a case where a citizen's right to live and to die with dignity is being violated by the State authorities. Right to live and die with dignity is a fundamental right, which has been recognized by this Hon'ble Court on various occasions. The relevant decisions on this point is *Common Cause (A. Regd. Society) v. Union of India* and Another, (2018) 5 SCC 1, whereby this Hon'ble Court held 'that right to life and liberty as envisaged under Article 21 of the Constitution of India is meaningless unless it encompasses within its sphere individual dignity. It was further held that right to live with human dignity would mean existence of such right up to the end of natural life.'
16. Similarly, this Hon'ble Court in *State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117, has held that right to health is integral to right to life as guaranteed under Article 21 of the Constitution of

India. Failure on part of the government hospitals to provide timely medical treatment results in violation of the patient's right to life.

17. Thus, failure on part of the hospitals to adhere to the ICMR guidelines and protocols for management of patients and providing them proper treatment resulted in gross violation of right to live and die with dignity of the Applicant's grandfather as guaranteed under Article 21 of the Constitution of India.
18. That the present application for directions is being filed since the Applicant and his family who have suffered due to the mismanagement and inactions of the hospitals and the health departments as they were denied their legitimate rights by the State authorities. The effect of these inactions by the State agencies are the following:
 - a. The Applicant in the start could not even get tested. The Government hospitals, without any reason were denying tests even to symptomatic patients, and to get tested from a reputable private lab was an impossible task due to their delayed appointments and technical online process.
 - b. The Applicant's 86 years old grandfather was mishandled when he went to the RML Hospital to get tested. There was no infrastructure to accommodate the patients. The patients with high fever were not even given a paracetamol capsule to control the fever. The patients were asked to buy medicines from private chemist shops.

c. The test result of the Applicant's grandfather was shared with the family after he had passed away. The results were shared after 4 days when he was tested. The family had to beg to the hospital authorities to give the results so that they can collect the body from the Safdarjung Hospital.

d. The Applicant's grandfather was left unattended and passed away at the gate of the Safdarjung Hospital, even when the family had gotten a referral certificate for admission from the RML Hospital. He was not even given any medicine, food or water, let alone an ICU with ventilator for the entire night. His oxygen saturation was at 82 and despite that he was not given any oxygen supply, which is in blatant violation of the revised guidelines dated 31.03.2020 on Clinical management of COVID-19 patients issued by Ministry of Health and Family Welfare.

e. Guidelines dated 15.03.2020 issued by Ministry of Health and Family Welfare on management of dead body were not complied with by the Hospitals or the Health departments for the last rites:-

- There is an obligation on the staff to unzip the face end of the body bag by using standard procedures for the relatives to see the body for one last time. The Applicant's father was not allowed to see his father's

body for the last time, thereby violating the said guidelines.

f. The health departments grossly failed in performing their duties post the death of a family member from COVID-19. No one from the hospital or the health department came to visit the family, even when they were informed that the entire family had severe symptoms and there were other elders at the house. The area around the Applicant's house was not sanitized nor were the family members and neighbors sensitized. There was no intervention from the authorities to even test the remaining family members, or for any medical assistance. The family members were not even asked to self isolate themselves nor were they asked to stay at home. There was no intervention from the government.

19. That the factual narrative of the Applicant's story can be explained by dividing the narrative into two parts, which will depict the gross negligence and mishandling of the COVID-19 patients and the dead bodies by the hospital and State authorities:

A. PRE- MORTEM OF THE APPLICANT'S GRANDFATHER.

a. The moment the Applicant saw that everyone at his house started getting fever and dry cough, the Applicant contacted many governmental agencies and private labs in order to get tested. However, all attempts of the Applicant failed, as all the governmental helplines

(Central and State) were not helpful and they advised them to wait and not get tested. The private labs either by that time (fourth week of May) had stopped testing or were giving long waiting time to get tested and an additional 3-4 days time for the results.

- b. Moreover the process to get tested from a private lab is extremely overwhelming. The sick patient is required to have an internet access, fill out detailed forms, upload a doctor's prescription, which mentions the COVID-19 test along with the symptoms. The patient is also required to print a "TRF form", fill it, scan it and upload it along with the main form. Then the patient is required to wait for a period of at least 3 days for the appointment.
- c. In the meanwhile, the Applicant's grandfather's fever went up to 104.5 degrees, hence they could not have waited for 3 days and gone through the process when everyone at home was sick and had high fever. Therefore, the Applicant's family on 27.05.2020 after taking advice of few doctors, decided to take him to the RML Hospital, Delhi.
- d. It is extremely pertinent to state here that at the RML Hospital the 86 years old retired senior citizen had to stand in multiple queues for 6 hours, where he was not provided with any medication, water or even first aid. Due to the lack of infrastructure and high fever, he

fainted before he could get tested. The authorities failed in providing any support to any of the patients there, and the risk of exposure was extremely high as the entire camp was poorly managed. The Hospital was not even handing out paracetamol to the patients with high fever, and were advising them to buy medicines from private chemists.

- e. Subsequent to his testing, the waiting period was terrible and painful for the entire family. There was literally no support from the State authorities. The family was told that they will be informed about the test if it comes positive after 7 days, and if it was negative the hospitals will not contact them.
- f. In any case the family was not informed by the Hospital, even though the sample was tested on 28.05.2020 as per the report which state that he tested positive for COVID-19. The Applicant's grandfather's health deteriorated and he started feeling breathless.
- g. The Applicant called up many government and private hospitals, and told them about his grandfather's condition and asked if they could admit him. Every hospital refused. The few private ones who agreed (with an extraordinary admission fee, running into lacs) put a condition that they will only test him and send him back,

and that they would only call him back once the results were out. This meant another wait for 3-4 days.

- h. The family after getting in touch with few doctors, who tirelessly helped the Applicant on call and directed them to take him to a government hospital. As advised when he was taken to the RML Hospital for first aid, he was given an oxygen cylinder, but after an hour was referred to Safdurjung Hospital, as RML Hospital had no beds for COVID-19 patients anymore.
- i. That on 30.05.2020, when the Applicant's grandfather was taken to Safdurjung Hospital, he was forced to wait at the gate of the hospital. The patient with high fever, and a serious case of breathlessness was not given any first aid for the entire night and was left outside unattended by any of the staff. The family members of the Applicant, who also were sick, were made to run from pillar to post to get him ventilator, or at least an oxygen cylinder. It was told to them that a bed would be only be made available when another patient suffering from COVID-19 will eventually die.
- j. The 86 years old retired senior citizen was made to suffer the entire night, feeling breathless and got no care from the hospital, passed away around 4:30 in the morning.

B. POST- MORTEM OF THE APPLICANT'S GRANDFATHER.

a. Ironically after the passing of the Applicant's grandfather, the Safdarjung Hospital allowed entry to him. As he was still in the "suspected category", as the results were still not sent to the Applicant, the body was kept in the morgue. The hospital staff told them that they will test him again for COVID-19, and only then the body will be released.

b. Subsequently when the authorities at RML Hospital was informed about the situation, the Applicant then received the report of his grandfather.

c. It is most pertinent to mention here that as the authorities failed to save the Applicant's grandfather due to their negligence, they also failed in intervening and helping the family who had suffered a loss of kin and were suffering from the deadly Corona Virus.

d. The family was not tested for COVID-19, even after the passing of one of the family members. No one from the health department visited the house of the Applicant, to either sanitize the neighborhood or to sensitize them about the situation. The Applicant's family on their own decided to strictly self isolate them.

e. The family was not contacted by any Hospital to check on the family members, which includes an 82 year old lady, who had lost her life partner to COVID-19.

- f. That on 31.05.2020, after 24 hours the family was merely told to collect the body of the Applicant's grandfather, for last rites. The hospital failed to explain to the family members any protocol or guidelines regarding the last rites.
- g. The condition of the cremation grounds were extremely horrid and there were numerous people lining up who had lost someone due to COVID-19, but did not have the money to perform the rituals or to even buy wood for the dead bodies.
- h. It is most vehemently stated that the State authorities are not helping these families even after someone has lost their kin to COVID-19, which is mainly due to the gross negligence of the State authorities.
- i. Even after all this, the health departments failed to conduct any tests on the family members of the Applicant, or visit the Applicant's house to help and assist them to fight this deadly virus.
- j. As on 15.06.2020, it has been more than 16 days now since the Applicant's grandfather had passed away. The family members had to adopt measures on their own to fight the fever and subsequently the virus, and all of it while grieving for the loss of an extremely loved father, husband and a grandfather.

20. That it is most vehemently stated that this failure of the State authorities have far reaching consequences. If not informed, advised and assisted at the right time, any COVID-19 positive person can knowingly or unknowingly infect thousands of people every day.
21. Moreover, if the authorities do not intervene and help the remaining family members at their home, it will lead to a catastrophic rise in the number of COVID-19 cases and eventually uninformed deaths.
22. Further, if there is no timely intervention from the authorities, there is a high risk for people with financial problems and space restraints to self isolate themselves. Hence, if any COVID-19 patient steps out of her/his house sick, to either earn a livelihood or even to visit a doctor's clinic or a chemist to buy that '30 rupees paracetamol packet', will have catastrophic and calamitous outcomes.
23. That the Applicant's and his family's, especially his grandfather's fundamental rights have been violated by the State authorities and the government hospitals. This is a clear case where a citizen's right to live and die with dignity has been grossly and negligently violated by the government agencies.

24. That the mishandling of the COVID-19 patients in the hospitals/ health departments and lack of any sort of first aid and care has lead to a sorry state of affairs. To add on to this, the way the dead bodies are being treated is extremely appalling and needs urgent intervention by the State. Inaction on part of the State and Centre depict a state of lawlessness, which has breached and violated fundamental rights of citizens at large.
25. That the Applicant states that no other application or Writ Petition has been filed by the Applicant herein seeking same or similar relief before this Hon'ble Court or any other court.
26. That the Applicants have filed this application in a bona fide manner and in the interest of justice.

PRAYER

In the facts and circumstances of the case set out hereinabove, this Hon'ble Court may graciously be pleased to:

- i) Pass a writ of mandamus or any other appropriate writ to the concerned government authorities to ensure that the hospitals implement the guidelines dated 15.03.2020 issued by Ministry of Health and Family Welfare on management of dead body of COVID-19 patients. And/Or;
- ii) Pass a writ of mandamus or any other appropriate writ to the concerned government authorities to ensure that the hospitals implement the guidelines dated 31.03.2020 on Clinical

Management of COVID-19 issued by Ministry of Health and Family Welfare. And/Or;

- iii) Pass a writ of mandamus or any other appropriate writ to the concerned government authorities to implement the guidelines issued on intervention from the health departments to assist the affected families from Covid-19. And/Or;
- iv) Pass a writ of mandamus or any other appropriate writ to the concerned government authorities to mandatorily attend to the family members of the deceased, firstly to assist them, to sensitize them regarding the prevention of outspread of this virus, and for contact tracing. And/Or;
- v) Direct the State agencies and hospitals authorities to send results/reports to the patients within 48 hours, especially earlier in cases where the patients are at a higher risk for severe illness. And/Or;
- vi) Direct the State agencies to devise a policy for the testing process at the government hospitals, which shall significantly reduce the time taken for any person to get tested, and eventually reduce the risk of exposure. And/Or;
- vii) Direct the government hospitals, to keep a supply of medicines, especially paracetamol capsules to control high fever for the patients as a measure of first aid. And/Or;

- viii) Direct the concerned government authorities to cap the high prices of oxygen cylinders, so that COVID-19 affected families can themselves use the cylinders at home as a measure of first aid during self isolation. And/Or;
- ix) Pass a writ of mandamus or any other appropriate writ to the concerned government authorities to ensure that the dead bodies of the patients dying from COVID-19 are handled with dignity and the family members get an opportunity to perform the last rites by improving the condition at the cremation grounds. And/Or;
- x) Pass such other order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE APPLICANTS, AS ARE DUTY BOUND, SHALL EVER PRAY.

FILED BY:-

PLACE: NEW DELHI
DATE: 15.06.2020

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