

ITEM NO.39 Court 9 (Video Conferencing) SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).7147/2021

(Arising out of impugned final judgment and order dated 17-05-2021 in PIL No.574/2020 passed by the High Court Of Judicature At Allahabad)

STATE OF UTTAR PRADESH

Petitioner(s)

VERSUS

(IN RE: INHUMAN CONDITION AT QUARANTINE CENTRES AND FOR PROVIDING BETTER TREATMENT TO CORONA POSITIVE) Respondent(s)

(IA No.63364/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 21-05-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Tushar Mehta, SG
 Mr. S.V. Raju, ASG
 Mrs. Garima Prashad, AAG
 Mr. Abhishek Sharma, Adv.
 Mr. Abhinav Agrawal, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

This petition has been filed by the State of Uttar Pradesh challenging the order dated 17.05.2021 passed by the Division Bench of the High Court in Public Interest Litigation No. 574 of 2020 in Re: Inhuman condition of quarantine centres and for providing better treatment to corona positive.

At the outset, we may appreciate the efforts made by the High Court of Allahabad as well as various other High Courts in taking up the matters relating to management of COVID-19 in different

parts of the country. The initiative in this regard by various High Courts is laudable. However, while dealing with such matters, because of the concern and anxiety which the courts may have for the corona patients and the general public, and in an endeavour to grant utmost relief to those suffering, sometimes unwittingly, the Courts overstep and pass certain orders which may not be capable of being implemented.

In the present case, the petitioner is aggrieved by the order dated 17.05.2021. According to Shri Tushar Mehta, learned Solicitor General appearing for the State of U.P., howsoever much the State may be desirous of implementing the directions issued by the High Court, the same are incapable of being implemented. As an example, learned SG has brought to our notice the direction as has been issued in paragraph 18 of the said order that every 'B' Grade and 'C' Grade town of the State should be provided with at least 20 ambulances, and further that every village should be provided with at least 2 ambulances having Intensive Care Unit facilities, and the same should be done within one month. Learned SG has submitted that there are over 97000 villages in the State of U.P. and it is practically and humanly impossible to provide two ambulances with such facilities in each village in the entire State in such a short period. Learned SG has stated that the endeavour of the State is to provide as many facilities as possible and they are prepared to work in that direction but the order issued to that effect which cannot be implemented would cause embarrassment to the State Government and officers who may not be able to implement the same and could be hauled up by the Court.

Another example which the learned SG has placed before us is in paragraph 17, whereby it has been directed that all nursing homes in the state should have oxygen facility on every bed, and nursing homes which have more than 20 beds should have at least 40 per cent beds as Intensive Care Units and 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, which should be compulsory for all the nursing homes/hospitals in the State. Another direction pointed out is that all the 5 medical colleges in the State be upgraded at the level of Sanjay Gandhi Postgraduate Institute, Lucknow within a period four months, and if necessary, emergency laws should be applied for the acquisition of land for them. Learned SG submits that it is practically not feasible to upgrade the medical colleges as postgraduate institutes of the level of Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow especially in such a short period. The further submission is that certain directions/observations have also been made requiring big medical companies to manufacture vaccines after taking formula from just any of the vaccine manufacturers in the world and start producing vaccine, which also, according to learned SG, is incapable of being implemented by the State Government, and may also have national and international ramifications.

Learned SG has also brought to our notice that certain observations have been made with regard to the existing medical

facilities in the State and the Court has observed that the entire medical system of the State pertaining to smaller cities and villages are "Ram Bharose", i.e. in the hands of God. According to him, such observations demoralize the spirit of doctors and para medical staff who are working day and night and are trying their level best to take full care of the rising number of corona patients.

In our view, the submission that such observations were not warranted and the same may create panic amongst the citizens of the State and nullify the endeavours of the State Government in doing whatever best they are able to do for control of the pandemic and give relief to the patients, has some force.

These are some of the observations/directions which, in our view, may be well meaning, and may have been passed by the Court in the anxiety for the good of the general public, but since apparently the same are incapable of being implemented, the said directions need to be treated by the State Government only as observations and as advise of the Court, and not directions passed by the Court. By our passing this order, it would not mean that the State Government is not to work in the direction of providing the facilities to the patients and the citizens of the State which are capable of being implemented as per the guidance of the High Court by order dated 17.05.2021. We hope and trust that the State Government will make every endeavour to provide as many facilities as possible.

Learned SG has further submitted that some directions issued by the High Court vide the impugned order and also earlier orders

with regard to the control of pandemic and supply of medicines and treatment etc. may have ramifications affecting the other States also and while passing such directions the High Court should take into consideration the overall/complete picture at the national level. He has further submitted that there are certain policy decisions to be taken, which are in the domain of the Executive, which has the benefit of experts opinion and also has the complete data, which, according to the learned SG, may not be available with the Court and, as such, the same should be best left for the Executive to deal with.

Learned SG has further submitted that since the concerned issues are matters of grave importance and because such matters are also pending in other High Courts and are mostly being dealt with by the Bench presided over by the Chief Justice of the respective High Courts, it would be desirable that this matter may also be dealt with by the Bench presided over by the Chief Justice of the Allahabad High Court.

Be that as it may, it is a normal practice, which is also desirable, that such matters of public importance are dealt with by the Bench presided over by the Chief Justice, but since the constitution of Benches is the prerogative of the Chief Justice, in our view, it would be for the Chief Justice of the High Court to consider such aspect and pass appropriate orders.

Further while again appreciating the efforts of the judges of the High Court in looking to the matter in depth while passing orders, we are of the opinion that the High Court should normally consider the possibility of the implementation of the directions

given by it, and such directions which are incapable of being implemented should be avoided. The doctrine of impossibility, in our view, would be equally applicable to Court orders as well.

While concluding, we may also mention that in matters which have transnational and international ramifications, the High Court should normally refrain from issuing directions in such matters, especially when such matters of national level are being considered by this Court in separate proceedings.

Considering the totality of the facts and circumstances, we thus stay the impugned order dated 17.05.2021. However, we make it clear that further proceedings before the High Court are not being stayed.

We direct that this matter be now listed on 14.07.2021.

We appoint Mr. Nidhesh Gupta, learned senior counsel, as Amicus Curiae to assist the Court in this matter.

The Registry is directed to supply a copy of this petition to Mr. Nidhesh Gupta within three days.

(ASHWANI KUMAR)
ASTT. REGISTRAR-cum-PS

(R.S. NARAYANAN)
COURT MASTER (NSH)