

Court No. - 46

Case :- HABEAS CORPUS WRIT PETITION No. - 399 of 2021

Petitioner :- Rahul Yadav

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Pankaj Sharma,Prakash Sharma

Counsel for Respondent :- G.A.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Piyush Agrawal,J.

1. Heard Sri Pankaj Sharma, learned counsel for the petitioner and Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Shiv Kumar Pal, learned Government Advocate and Sri Rishi Chadhdha, learned AGA for State -respondents.

2. On oral request, learned counsel for the petitioner is permitted to implead Director General, Medical & Health, Government of UP as respondent no. 8 in the writ petition. Necessary impeachment may be carried out in the array of parties during course of the day.

Trace of corpus :-

3. On 19.8.2021, this Court has passed the following order :-

"Heard Sri Sharda Prasad Misra, learned counsel for the petitioner and Sri Rishi Chadda, learned A.G.A. for the State respondents.

On oral request of learned counsel for the petitioner, Principal Secretary/ Additional Chief Secretary (Home), Government of Uttar Pradesh, Lucknow and Principal Secretary/Additional Chief Secretary (Medical & Health), Government of Uttar Pradesh, Lucknow, are allowed to be impleaded as respondent Nos.6 and 7. Necessary correction in the array of parties be carried out during the course of the day.

Although this Court directed to file counter affidavit but despite orders of this Court the respondent nos. 2, 4 and 5 have merely filed their personal affidavit without giving para-wise reply to the contents of the writ petition.

The personal affidavits placed today by the learned A.G.A. before this

Bench is being returned to the learned A.G.A. for filing it by E-mode.

In his personal affidavit the respondent no. 2 i.e. the Chief Medical Officer has stated that the respondent no.3 i.e. the Chief Medical Superintendent, T.B. Sapru Hospital, Prayagraj, has the administrative and financial control over the aforesaid Hospital i.e. Tej Bahadur Sapru Hospital, Prayagraj and he is under direct control of the Director Medical Health. He has stated in paragraph 6 of his personal affidavit that as per report submitted by the Chief Medical Superintendent T.B. Sapru Hospital, Prayagraj, dated 18.08.2021, the corpus, namely, Ram Lal Yadav, was missing from his bed of the hospital since morning of 08.05.2021.

In his personal affidavit the Superintendent of Police, Prayagraj has stated that the CCTV Cameras of Tej Bahadur Sapru Hospital were not found functional and as such the Chowki In-charge, Indu Verma, who visited Beli Hospital could not obtain C.C.T.V. Footage. He mentioned various efforts being made to trace the corpus. He has also stated the the corpus Ram Lal Yadav was working as Junior Engineer in Electricity Department, New Delhi, and was staying there as he also has a house at New Delhi as told by people of his residential village in District Kaushambi to the team of two constables.

In his personal affidavit the District Magistrate, Prayagraj has stated that a fact finding inquiry has been set up on 18.08.2021, appointing the City Magistrate, Prayagraj to enquire into the matter and submit a report within a week.

It is a matter of serious concern that gross negligence has been prima facie shown by the Officers/Doctors/Staff of T.B. Sapru Hospital, Prayagraj. The facts stated by the Senior Superintendent of Police, Prayagraj, in his personal affidavit also indicates apathetic condition of T.B. Sapru Hospital, Prayagraj, where even C.C.T.V. Cameras are non functional. Undisputedly, the corpus was admitted in T.B. Sapru Hospital for treatment as he was tested corona positive. Neither the District Administration nor the Police nor the Hospital appears to be serious about the missing of the corpus although more than three months have passed since the missing report was registered on 08.05.2021.

This prima facie shows not only gross negligence and dereliction in duty by the Officers/Doctors/Staff of the TB Sapru Hospital, Prayagraj but also indicates total carelessness in treatment, look-after and safety of COVID patients at T.B. Sapru Hospital, Prayagraj.

Matter requires immediate attention of Principal Secretary, Medical Health and the Principal Secretary Home, Uttar Pradesh for immediate action and response failing which this Court may consider to call for personal presence of both the aforesaid Principal Secretaries/Additional Chief Secretaries.

The State Government shall also immediately ensure that all infrastructure facilities and security equipments, safety and security

measures of high standards be installed with inbuilt provisions of its regular maintenance and periodical audit. Report/plan in this regard shall also be placed before Court by the Principal Secretary/Additional Principal Secretary, Medical Health and the Principal Secretary/Additional Chief Secretary, Home on the next date fixed.

The respondent no.1 shall ensure that before the next date fixed the corpus may be traced and a report in this regard be placed before this Bench.

Before the next date fixed the respondent no.3 i.e. the Chief Medical Superintendent T.B. Sapru Hospital, Prayagraj, shall also file counter affidavit by means of his personal affidavit.

On the next date fixed the respondent nos. 2, 3, 4 and 5 shall remain personally present before this Court.

Put up as a fresh case on 27.08.2021 at 10 A.M. for further hearing."

4. Today, five personal affidavits all dated 26.8.2021 have been filed on behalf of respondent nos. 3, 4, 5, 6 and 7. Learned AGA is directed to file the same through e-mode itself and Registry is directed to upload the same forthwith.

5. Vide paragraph no. 5 of his personal affidavit filed by Additional Chief Secretary, Home and vide paragraph no. 14 of the personal affidavit filed by Senior Superintendent of Police, Prayagraj, they have sought a week's further time to trace the corpus Ram Lal Yadav and to produce him before this Court. **Time as prayed for is granted.**

6. In paragraph no. 4 of his personal affidavit, the Additional Chief Secretary, Home (respondent no. 6) has stated that DIG / S.S.P. Prayagraj has been directed to constitute an S.I.T. under the guidance and supervision of an officer of the rank of Superintendent of Police and the S.I.T. so constituted shall submit its report to the Government within 07 days. However, there is nothing on record to show that S.I.T. has yet been constituted. Paragraph no. 4 of the personal affidavit filed by Additional Chief Secretary, Home (respondent no. 6) is reproduced below:-

"4. That it is respectfully submitted that through the aforesaid letter dated 26.8.2021 the answering respondent i.e. Additional Chief Secretary (Home), Government of Uttar Pradesh has directed the DIG / SSP, Prayagraj to constitute a SIT under the guidance and supervision of an officer of the rank of Superintendent of Police. The SIT so constituted by the DIG /SSP, Prayagraj shall submit its report to the State Government within 7 days."

7. In view of the aforesaid, we direct DIG / S.S.P. Prayagraj to comply forthwith with the order of Additional Chief Secretary Home and Compliance report as well as the report of S.I.T. so constituted be submitted before the next date fixed.

Action against the erring employees:-

8. The affidavit filed by the District Magistrate, Prayagraj (respondent no. 4) shows that he has written a letter dated 26.8.2021 to the Additional Chief Secretary, Medical Health and Family Welfare, Government of UP for certain actions, but the affidavits of the respondent nos. 6 and 7 do not reveal that any action has been taken.

Regarding Infrastructure, Medical Equipments, Safety Equipments, Security Measures etc. at T.B. Sapru Hospital, Prayagraj:-

9. In his personal affidavit, respondent no. 4, i.e. District Magistrate, Prayagraj, has referred to his **Letter No. 2221 / S.T. dated 26.8.2021 addressed to the Principal, Motilal Nehru Hospital, Prayagraj and Chief Medical Officer, Prayagraj** annexing therewith SOPs for making immediate compliance and to submit periodical report. The SOP annexed with the said letter is reproduced below:-

SOPs FOR HOSPITALS

Standard Operating Procedures for Security equipment, Safety and security measure of high standards to be installed with inbuilt provisions of its regular maintenance.

1. **CCTV Cameras** – For effective monitoring in the hospitals CCTV

cameras to be installed with minimum 3 months of recording backup. A nodal officer should be appointed for regular monitoring.

*2. **Security Staff at hospitals** – For effective management, security guards must be appointed in 3 shifts for 24 hours along with a notified nodal officer.*

*3. **Attendance Register** – To monitor entry and exit of staff deployed in the hospitals, attendance register should be regularly updated in every ward under supervision of ward incharge.*

*4. **Visitor's Card** – Only one attendant at a time to be allowed with a Visitor's Card. The visiting hours will be restricted to 0600 hrs to 0800 hrs and 1600 hrs to 1800 hrs.*

*5. **Fire Safety** – To ensure regular inspection of fire safety equipment in all the hospitals by Fire Safety Department.*

*6. **Monitoring of Electrical appliances / medical instruments** – To ensure regular inspection of electrical appliances, wiring, backup generators installed in hospital by experts.*

7- Proper communication and counselling of patients & attendants on daily basis.

8. For any emergency, alarm facility should be maintained in hospital and fire / emergency assembly points to be notified in hospital campus.

10. In paragraph no. 30 of her personal affidavit, respondent no. 3 i.e. Chief Medical Superintendent, T.B. Sapru Hospital, Prayagraj has stated that a plan for future safety and security has been made by the Nodal Officer and approved by the Chief Medical Superintendent, T.B. Sapru Hospital, Prayagraj on 25.8.2021. Copy of the plan as annexed along with the affidavit is reproduced below :-

Tej Bahadur Sapru Hospital, Prayagraj.

Covid -19 L2 Hospital

Date:25.8.2021

Nodal officer, Dr. Anand Singh

Standard Operating Procedures for Security equipment, Safety and security measures of high standards to be installed with inbuilt provisions of its regular maintenance.

1. Monitoring of 52 CCTV Camera regularly and effectively with regular maintenance having 10 TB sufficient recording space for 30 days and for this a competent nodal officer, Dr. Anand Singh has

been appointed for this, and 50 more CCTV camera needed to monitor uncovered area more effectively with 10 TB memory recording space for 30 days.

2. The security guard must be posted according to scheduled, as present time 12 security guards available for 3 shift. To improve hospital security we need 12 more security guards for 24 hours, area wise.

3. For effective management of security guards there must be a nodal officer and regular training and checking.

4. Check in and Check out, in hospital must be under strict monitoring maintain register in every ward under supervision of ward staff.

5. One Visiting Card must be issued for attendant of admitted patients and visiting hour of attendant to patients limited to 06 to 08 AM in the morning and 04 to 06 PM in the evening and at a time only one attendant will be allowed to visit the patient.

6. Fire safety is being maintained in hospital and regular yearly certified by the fire authority.

7. Electrical appliances / medical instruments are being regularly monitor by experts and electrical wiring/ generator installed in hospital are also being regularly monitored for 24 hour power backup.

8. For communication with patients attendant and staff 30 sets.

9. For any emergency, alarm facility in hospital and assemble point in hospital campus.

sd/-

Chief Medical Superintendent

T.B. Sapru Hospital,

Prayagraj.

11. Considering the SOPs as well as the plan prepared by the Chief Medical Superintendent, T.B. Sapru Hospital, Prayagraj as afore-quoted and also the stand taken by the Additional Chief Secretary, Medical Health and Family Welfare, Govt. of UP, we are constrained to observe that **either the State Government has not yet prepared uniform SOPs for District Hospitals in Uttar Pradesh including T.B. Sapru Hospital, Prayagraj or deliberately the same has not been brought on record. It is unbelievable that the State Government, which is running large number of Hospitals in the State of Uttar Pradesh, would not have any**

uniform SOPs or Plan for appropriate administration, management and security of the Hospitals. Therefore, we direct the Additional Chief Secretary, Medical Health and Family Welfare, (respondent no. 7) to file his personal affidavit on or before the next date fixed annexing therewith details of SOPs / Plan prepared by the State Government for all levels of Hospitals i.e. District hospitals, Community Health Centres and Primary Health Centres. He shall also clearly state in his affidavit as to whether SOPs / Plan as prepared by the State Government, is being strictly implemented at all the hospitals and if not then within what period, it shall be fully implemented.

12. The respondent no. 7 as well as the Director General, Medical Health shall file their personal affidavits clearly stating therein the standards and norms of infrastructure, medical equipments as well as other equipments, security and safety measures etc. prescribed by the State Government for District Hospitals, Community Health Centres and Primary Health Centres, Moti Lal Nehru Medical College and S.R.N. Hospital Prayagraj, as well as existing facilities available. The aforesaid information shall be given in a tabulated form. The last column of the chart shall indicate shortage / deficit including shortage / deficit of man power. In respect of Moti Lal Nehru Medical College and S.R.N. Hospital present requirement in consultation with the Principal shall also be assessed and be brought on record.

Affidavits of C.M.S. T.B. Sapru Hospital and S.S.P. Prayagraj :-

13. In her affidavit, Chief Medical Superintendent, T.B. Sapru Hospital, respondent no. 3, has given an assurance that everything is quite up to the mark in T.B. Sapru Hospital. She tried to mislead

the Court by stating that CCTV cameras were functional but its footage could not be given since concerned police authority has asked for it after a long period, whereas the storage capacity of CCTV cameras were of only four days. In this regard it would be appropriate to refer the paragraph no. 5 of the personal affidavit of Senior Superintendent of Police, Prayagraj dated 18.8.2021, which is reproduced below:-

"5. That on 8.5.2021, a memo was sent from Beli Hospital (Tej Bahadur Sapru Hospital) to the Beli Police Chowki. On this information Police Chowki Incharge Indu Verma visited the Hospital and the doctors present informed that Sri Ram Lal Yadav is missing from his Bed. Chowki Incharge, Beli also inquired from the doctors and staff about the exact time, but no one could provide the exact time of the missing of the fact of the petitioner. The said Chowki Incharge also found that CCTV camera at the Trauma Centre were also not functional and thus CCTV footage could not be obtained. The Chowki Incharge also contacted the relatives of Sri Ram Lal Yadav and obtained his photograph, thereafter missing report was filed by the petitioner on 26.5.2021."

14. From perusal of the affidavit of Chief Medical Superintendent, Tej Bahadur Sapru Hospital, Prayagraj, it appears that intimation was given by the Ward Boy or some other staff to the Chowki Incharge, T.B. Sapru Hospital, Prayagraj on 8.5.2021. As per the afore-quoted paragraphs of the personal affidavit filed by Senior Superintendent of Police, Prayagraj, the Chowki Incharge enquired and found that C.C.T.V. cameras of Trauma Centre were not functional and thus C.C.T.V. footage could not be obtained.

15. On one hand in his personal affidavit, the Senior Superintendent of Police, Prayagraj has taken a stand that C.C.T.V. cameras were not functional but on the other hand Chief Medical Superintendent, T.B. Sapru Hospital, Prayagraj has taken the stand on the basis of a report of "Data Operator dated 17.5.2021" that storage capacity of the C.C.T.V. cameras installed at the T.B. Sapru Hospital, Prayagraj, is only of 04 days and as such it is not possible to give the C.C.T.V. footage / recording after lapse of such a long period.

16. Thus, on perusal of the affidavits of Senior Superintendent of Police, Prayagraj as well as Chief Medical Superintendent, T.B. Sapru Hospital, Prayagraj, **prima facie**, it appears that entire hospital as well as the police authorities were negligent and committed dereliction in their duties in the matter of tracing the corpus Ram Lal Yadav. From perusal of the affidavit of Chief Medical Superintendent, T.B. Sapru Hospital, Prayagraj, it also appears that Doctors as well as Staff of the Hospital were well aware of the incident of missing of the corpus since the morning of 8.5.2021. They were so careless and irresponsible that they even have not taken any effective steps in discharge of their duties. Even subsequent action shown to have been taken, appears to be an eye wash. Merely 03 contractual / out sourced employees namely Ashish Srivastav, Vikas Patel and Vinay Kumar have been dis-engaged. The C.M.S., T.B. Sapru Hospital, Prayagraj recommended to suspend a Staff of the Hospital namely Smt. Pooja on 28.5.2021 but for the reasons best known to the Director General, Medical Health that no action has been taken despite the reminders sent by the Chief Medical Superintendent dated 15.6.2021. Thus, **prima facie**, it shows irresponsible and negligent attitude of the authorities including the Director General of Medical Health.

17. Considering the facts and circumstances of the case, we direct that appropriate corrective measures be immediately taken by the respondent no. 3 so as to ensure improvement in working of the Hospitals, security and safety measure etc. This should be in reality and not as a part of paper work.

18. We also direct the respondent no. 7 that while filing his personal affidavit on the next date, he shall also clearly state the complete plan for periodical audit of all important and life saving medical equipments including safety and security equipments in

all the Government Hospitals and dispensaries in the State of Uttar Pradesh.

19. The affidavits dated 18.8.2021 filed by the State-respondents on 19.8.2021 have not yet been uploaded although the same have been filed by the learned AGA. We, therefore, direct the Registry that all the three affidavits dated 18.8.2021 filed by learned AGA on 19.8.2021 shall be uploaded forthwith.

20. The aforementioned directions and prima facie conclusion are as under :-

(i) Today, five personal affidavits all dated 26.8.2021 have been filed on behalf of respondent nos. 3, 4, 5, 6 and 7. Learned AGA is directed to file the same through e-mode itself and Registry is directed to upload the same forthwith.

(ii) Vide paragraph no. 5 of his personal affidavit filed by Additional Chief Secretary, Home and vide paragraph no. 14 of the personal affidavit filed by Senior Superintendent of Police, Prayagraj, they have sought a week's further time to trace the corpus Ram Lal Yadav and to produce him before this Court. **Time as prayed for is granted.**

(iii) In view of the aforesaid, we direct DIG / S.S.P. Prayagraj to comply forthwith with the order of Additional Chief Secretary Home and Compliance report as well as the report of S.I.T. so constituted be submitted before the next date fixed.

(iv) Respondent no. 6, 7 and 8 shall file their personal affidavits stating therein action taken against the erring

officers / employees.

(v) we direct the Additional Chief Secretary, Medical Health and Family Welfare, (respondent no. 7) to file his personal affidavit on or before the next date fixed annexing therewith details of SOPs / Plan prepared by the State Government for all levels of Hospitals i.e. District hospitals, Community Health Centres and Primary Health Centres. He shall also clearly state in his affidavit as to whether SOPs / Plan as prepared by the State Government, is being strictly implemented at all the hospitals and if not then within what period, it shall be fully implemented.

(vi) The respondent no. 7 as well as the Director General, Medical Health shall file their personal affidavits clearly stating therein the standards and norms of infrastructure, medical equipments as well as other equipments, security and safety measures etc. prescribed by the State Government for District Hospitals, Community Health Centres and Primary Health Centres, Moti Lal Nehru Medical College and S.R.N. Hospital Prayagraj, as well as existing facilities available. The aforesaid information shall be given in a tabulated form. The last column of the chart shall indicate shortage / deficit including shortage / deficit of man power. In respect of Moti Lal Nehru Medical College and S.R.N. Hospital present requirement in consultation with the Principal shall also be assessed and be brought on record.

(vii) Thus, on perusal of the affidavits of Senior Superintendent of Police, Prayagraj as well as Chief

Medical Superintendent, T.B. Sapru Hospital, Prayagraj, **prima facie**, it appears that entire hospital as well as the police authorities were negligent and committed dereliction in their duties in the matter of tracing the corpus Ram Lal Yadav. From perusal of the affidavit of Chief Medical Superintendent, T.B. Sapru Hospital, Prayagraj, it also appears that Doctors as well as Staff of the Hospital were well aware of the incident of missing of the corpus since the morning of 8.5.2021. They were so careless and irresponsible that they even have not taken any effective steps in discharge of their duties. Even subsequent action shown to have been taken, appears to be an eye wash. Merely 03 contractual / out sourced employees namely Ashish Srivastav, Vikas Patel and Vinay Kumar have been dis-engaged. The C.M.S., T.B. Sapru Hospital, Prayagraj recommended to suspend a Staff of the Hospital namely Smt. Pooja on 28.5.2021 but for the reasons best known to the Director General, Medical Health that no action has been taken despite the reminders sent by the Chief Medical Superintendent dated 15.6.2021. Thus, **prima facie**, it shows irresponsible and negligent attitude of the authorities including the Director General of Medical Health.

(viii) Considering the facts and circumstances of the case, we direct that appropriate corrective measures be immediately taken by the respondent no. 3 so as to ensure improvement in working of the Hospitals, security and safety measure etc. This should be in reality and not as a part of paper work.

(ix) We also direct the respondent no. 7 that while filing his personal affidavit on the next date, he shall also

clearly state the complete plan for periodical audit of all important and life saving medical equipments including safety and security equipments in all the Government Hospitals and dispensaries in the State of Uttar Pradesh.

(x) On the next date Senior Superintendent of Police, Prayagraj and Chief Medical Superintendent, T.B. Sapru Hospital, Prayagraj shall remain present in the Court.

21. Put up as fresh case on **10.9.2021** for further hearing.

22. Personal appearance of remaining State-respondents is dispensed with on future dates until required.

Order Date :- 27.8.2021
Rahul Dwivedi/-

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