

Court No. - 7

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. In online hearing of this Public Interest Litigation, we have heard Shri Manish Goel, learned Additional Advocate General assisted by Shri A.K. Goel, learned Additional Chief Standing Counsel, Shri S.K. Singh, learned Additional Solicitor General of India, Shri Amrendra Nath Singh, President Allahabad High Court Bar Association, Shri

Shubham Dwivedi, learned Advocate Commissioner, Shri A.P. Paul, Shri Anuj Singh, Ms. Shushi, learned Advocates, Shri Ashish Mishra, learned Advocate appearing for High Court, Shri Mohit Jain and Shri Amit Saxena, learned Advocates for Moti Lal Nehru Medical College with which the Swaroop Rani Nehru Medical College is attached.

2. Today as the threat of the pandemic looms large and public health system is not able to cater the need of the people as per demand, so people have themselves put a lockdown to their normal activities. The roads and streets have gone deserted and commercial activities in major cities of the state of Uttar Pradesh have nearly come to a standstill. City population is in complete grip of Corona virus called COVID-19 and so people are getting infected in a large number every day forming a complete chain for every next coming day. People are waiting in queues outside every hospital in search of a bed for survival but only a very few lucky ones are getting chance and even non-Covid patients and those who have become negative and are facing acute respiratory problem due to Covid involvement in lungs, are not getting

beds. Thus, public health infrastructure has attained saturation.

3. Government hospitals and even well-established private hospitals are not able to cater the need of the people today. Besides that, doctors, medical and paramedical staff, other health workers have all gone completely exhausted. Even private hospitals while have come forward to provide their existing infrastructure to help the government in the current crisis are extremely insufficient. Reports are coming that health workers of these hospitals are hesitant in serving Covid infected patients. Further the private hospitals are running out of stock of life saving drugs like Remdesivir and they needed oxygen and what is worst is, as we have been informed, certain people in private hospitals and in the medicine market are minting money out of this crisis. Further at times, as newspapers report, the patients are being given fake injections.

4. We have carefully gone through the affidavit of compliance filed by one Tarun Gupta, Secretary (Home), Government of Uttar Pradesh in which it is claimed that to

address the issue of supply of liquid medical oxygen (LMO), the Government has undertaken massive task and the State has got allotted about 857 metric tone of the liquid medical oxygen. It is claimed that the amount of oxygen that is being received through the logistics provided by State itself, it will be able to tackle the situation caused by the shortage of oxygen. Various steps undertaken by the Department of Medical and Health Services of Government of U.P. in this regard have also been enumerated in various paragraphs of the affidavit and which includes distribution of oxygen to the hospitals in various districts of the State as per the demand. It is also claimed that a control room has been set up in this regard under the leadership of Director (Medical Education), Jawahar Bhawan, Lucknow so that the gap between demand and supply of the oxygen is removed. The affidavit also discloses that in the entire State of U.P. there are 23799 isolation beds and 5913 ICU/SDU beds in 185 L-2 level hospitals, whereas, 8156 isolation beds and 3466 ICU/SDU beds are there in L-3 category government hospitals that are 20 in number. The number of beds in private 307 hospitals in the State have been shown to be 17614 in isolation bed

category and 5510 in ICU/SDU bed category. It is also stated in the affidavit that a 600 beds covid hospital which is under construction at Lucknow with the support of DRDO is expected to become functional by the end of April 2021. It is also stated that on an average 80000 RTPCR tests conducted in the State besides the true nat test and CBNAAT tests that are available in each district. It is also stated that till date 39905293 tests have been conducted so far and the covid vaccination to the tune of 9783416 have been carried out in the first dose and 20464 have also been vaccinated for the second time. It is also stated that integrated covid command centre has started functioning since last year from 28.03.2020 and updated information is being given on a toll free number 1800-180-5145. It is also stated that a district level ICCC is working 24x7 and complete guidance is given to a covid patient and those who are in home isolation are being provided with medicine kits. Regarding treatment of non covid patients it is stated that a tele consultation platform has been opened. As far as spread of the virus is concerned, it is stated in the affidavit that standard operating procedure had already been issued on 01.03.2021 by the Ministry of Home,

Government of India and the Police Headquarter, Lucknow has been directed to ensure strict implementation of those guidelines. Those migrant workers who are entering Uttar Pradesh from another States are put to covid test as a measure to contain any possibility of spread of infection by them. Besides above, detailed work plan and guidelines have been issued on 07.04.2021, it is stated, in compliance of the order of the Court dated 06.04.2021. Even it is claimed that the Police Head Quarter had issued guidelines vide order dated 13.04.2021 during Panchayat Elections to prevent the covid 19 pandemic. It is stated that night curfew in 10 districts have been imposed from 8 p.m. to 7.00 a.m. as a measure to contain the spread of pandemic and directions have been issued by the Police Head Quarter on 16.04.2021 for strict action to be taken against those who are violating guidelines under Section 15(3) of the U.P. Epidemic Disease Covid-19 Regulations, 2020. Regarding distribution of oxygen cylinders in level-1, level-2 and level-3 hospitals and for wearing of mask, specific guidelines have been issued on 20.04.2021.

It is also stated that the directions have been issued to

check the black marketeers of life saving drugs by issuing guidelines on 20.04.2021 in compliance of the order of the Court. It is also stated that the corona curfew from Friday evening to Monday morning has been declared for the entire State, as a major step to check the spread of virus.

Besides above, various public awareness programmes, it is stated have been launched through print media, electronic media, social media and digital media. The Government, it is also stated has made extensive use of public announcement system to generate awareness amongst the people regarding precautions to be followed to prevent the spread of covid and also to motivate the public to be part of vaccination programme. Cleanliness drive, spread of disinfectant and sanitization drive have also been undertaken with the help of Vyapar Mandal, Welfare Associations and Mohalla Nigrani Samitis in various areas.

5. Thus, the Government by means of this affidavit has shown not only its concern for the recent spread of virus but its willingness and bonafides to take every possible step in the interest of public so that the magnitude with which the virus

has acquired degree of infection, is reduced at the earliest.

6. From the perusal of affidavit what we find is that the Government has come out with various plans, programmes, guidelines but the hard fact is that except, as the Government claims in its statistics that number of total infected persons have come down in the last 2-3 days, nothing more is seen to give some respite to our doctors, medical and paramedical staff and those who are involved in CT Scanning and pathology because large number of such workers have gone positive and the backup system seems not to be working to the satisfaction of the people.

7. People are by and large getting disheartened and when their near and dear ones die they go frustrated at the system of healthcare in the state and soft targets of their ire are the medical and paramedical staff.

8. Shri Amrendra Nath Singh, learned Advocate has cited problems of people in reaching to Level-1 covid centre situate in Kalindipuram. He has submitted that Level-1 covid centre can be further opened in an area near K.P. College either

taking ground of K.P. College to create a make shift centre or even the hall of K.P. College can be utilised. He has also submitted that similarly Level-1 centre should be opened in the other areas of the city so that people are encouraged to shift themselves to Level-1 centres and it will be then easy for the control command centre set up in the district, to address the issue of admission in hospitals of such covid patients, if need be. He has further submitted that the facilities in the Kalindipuram Level-1 covid centre are also not upto mark as there is issue of light, non availability of mosquito repellents and even potable water to the patients who have chosen themselves to be shifted there for observation by the covid teams. He has further proposed that for the Advocates a special vaccination drive may be undertaken by assigning a particular centre nearby High Court so that maximum number of Advocates may be vaccinated.

9. Shri A.P. Paul has submitted that people are not being admitted to hospitals easily and those who are admitted in the Government hospitals and are turned Antigen negative, are being forced to leave the hospital even though their SPO2 is

below 90. He has also argued that those patients who though are RTPCR negative but there is covid involvement in their lungs, are not being admitted to private hospitals because of problem of referral letters of Chief Medical Officer or District Magistrate and to obtain the same is a tedious job.

10. Shri Anuj Singh, learned Advocate who has filed the letter petition, has questioned the wisdom of the Government in bringing the idea of referral letters for admission of patients to the Government and private hospitals. He has submitted that “the mechanism of “referral letter” is putting life of covid patients at high risk. Family members are spending days and days in order to receive letter and then they have to wait for another few days for allocation of hospital. The CMO helplines are not working and calls always remain disconnected. It is almost impossible for an ordinary citizen to get access to the CMO office. The struggle to first arrange medicine followed by oxygen and then finishing the arduous task of registration process at CMO office, for receiving a basic human right such as medical aid, is only adding misery to the lives of innocent residents of State”. The letter petition

is directed to be numbered and is taken on record.

11. Ms. Shushi learned counsel has submitted that there is scarcity of oxygen in private hospitals and since the Government has taken up the task of giving admission to covid patients in private hospitals also at its own cost, it must ensure supply of liquid medical oxygen in adequate amount to private hospitals. She has further submitted that it is because of this scarcity that private hospitals are insisting patients to bring their own oxygen cylinder, if they wanted admission. It is also submitted by her that refilling of oxygen cylinders of the individuals at the oxygen filling centres are not being given priority. They have to remain in queue for nearly 12 hours and more to get their cylinders filled with liquid medical oxygen and local administration is also harassing such people. Learned counsel has submitted that the situation is quite chaotic as far as medical health is concerned.

12. Shri Anuj Singh also submitted that in cities like Lucknow if the cylinders are not filled in within time where 15-16 filling stations have been provided, one can imagine how worst would be the situation in smaller districts like

Chandauli, Bahraich, Basti, Banda, Chitrakoot etc.

13. Shri Amrendra Nath Singh and Shri A.P. Paul at this stage have also submitted that Government is only giving a very rosy picture but the situation on ground has gone from bad to worst and the lockdown of all commercial activities and the public movements except in cases of health emergency, could be the only solution. They have submitted that merely creating a portal and announcing helpline numbers would not help.

14. They have submitted that though the Government had given helpline numbers, but are not accessible because either lines are too busy or the reply comes that number is “out of coverage area”. They have vehemently submitted that health care system has completely collapsed and the Government is covering up its failure in the name of guidelines. What is worst, as is submitted that it is showing the attitude of 'My way or no way’.

15. Shri A.P. Paul has also brought to notice of the Court that there is news item published in news daily “Amar Ujala”

that around 135 persons (Teachers, Shiksha Mitras and Investigators) who were on an election duty in the those recent phases of Panchayat elections that have already been held, have turned first covid positive and then died for its severity.

16. The situation overall in the major cites of Uttar Pradesh has gone very chaotic for the current Covid surge. Whether it is day or night the ghost of Corona is marching on the roads and streets of the major cities of the state and it can be anybody's fate. Those who are resource full will survive and the rest as histories of past pandemics tell us may die for want of proper healthcare.

17. As the Government in its wisdom has resolved to only two days weekend lockdown to break the chain and has further proceeded with some measures as a sequel to that but mere fact that number of positive cases as have been shown to have been reduced a little in numbers due two weekend lockdown days, nothing remarkable seems to have been achieved on the front of public health care to the satisfaction of the people.

18. From the above discussion we find two things are required to be streamlined immediately; A) the management of public health infrastructure; and B) raising or enhancing the infrastructure to at least meet 1% of the city's population in every district of the state.

19. As far as management of existing infrastructure is concerned, what we find is that hospitals and their staff though are working day and night i.e. 24 x 7 but the management of system is still not up to mark. For easing out the situation and the given paraphernalia we propose the following steps to be taken by the Government immediately in the cities of Lucknow, Prayagraj, Varanasi, Agra, Kanpur Nagar, Gorakhpur and Jhansi:

(i) Major government hospitals of the above cities of Lucknow, Prayagraj, Varanasi, Agra, Kanpur Nagar, Gorakhpur and Jhansi should have health bulletin system twice a day apprising people of health updates of the patients to avoid visiting attendants to hospitals. The hospitals may use large screens to give details of patients and their saturation levels. This

will definitely help in reducing the number of visitors every day to the hospitals and chances of spread of further infection. The government is also directed to declare on its district portal of the above cities the occupied and vacant positions of beds in covid wards and ICUs of all government hospitals and covid assigned private hospitals and government is also directed to make wide publication of its district covid portals and sites in news papers and also through public announcement systems.

(ii) Mere antigen negative report should not be a ground to throw a patient out of the hospital as such patients can still infect others. They needed to be shifted to non-Covid wards for at least a week and for this government needs to gear up to set up makeshift wards on the campus of the hospitals if there is a space so that there may not be problem of nursing staff and health workers. Availability of oxygen is to be ensured in those wards also as SPO2 level still can be on a lower side.

(iii) Every bed in level two hospitals must be supported with a BiPAP machine and there should be availability of High Flow Cannula Mask at the rate of one per two beds and there should be ventilator available in ICUs at the rate of one per three beds available in ordinary covid wards.

(iv) Government hospital should be provided with sufficient medicines and injections including Remdesivir for patients to be treated, oxygen supply to hospitals should remain uninterrupted. This should be ensured at all cost so that no one should die for want of oxygen. If even after seven decades of our attaining freedom with so many heavy industries set up, we are not able to provide oxygen to our citizens, it's a matter of shame. We further direct that despite rules regulations framed for transporting and disposal of industrial oxygen, it should be immediately diverted to the use of people making it Medical Oxygen and its immediate uninterrupted supply for the said purpose be ensured

by the Government.

(v) Health workers should be engaged on contract basis. Also such other staff including data feeders and computer operators should be likewise employed as testing sample and their collections are to be carried out on a very large scale continuously so that a large number of the cities' population is at least tested for Covid and it gets its result in time. It is unfortunate that even one percent of the city's population of each of the major districts of the State that are hit by Covid has not been tested so far ever since the second wave has hit the State.

(vi) The management of the Doctors, medical and paramedical staff needs an urgent attention. They are all working day and night and are getting infected as well when they remain amidst the Covid patients day and night. Effort should be to rotate the staff six hourly to give it the required rest.

(vii) Now since the existing medical health

infrastructure in the major cities of Uttar Pradesh has attained saturation, a sustained growth thereof by way of enhancement has to be made. While building structure is a time taking task, optimum use of existing building should be made and setting up of makeshift wards upon the open space on the campuses of the hospitals should be thought of; the Government and district administration is directed to study viability of setting up more and more Level-1 covid centres with all requisite facilities so that people voluntarily approach there and stay to curb further spread and help in admission to L2/L3 as per need.

(viii) The number of ambulances must be increased immediately and these ambulances that are requisitioned or purchased must be well equipped with life saving devices;

(ix) The Government must ensure that every death in all covid hospitals and assigned private hospitals and other Covid Centres in every district is reported

to a Judicial Officer to be appointed by District Judge at the end of the day. The Government shall also ensure the correctness of the data forwarded to the officer concerned each day. It is also directed that the police station Incharge officer, in whose territorial limit the cremation place is situate, shall ensure that cremation in Covid death cases is strictly followed as per the guidelines in this regard issued by the Government. He shall also ensure that the details of every covid death is entered in the register maintained at the cremation area which shall also be communicated to the concerned municipal body or Nagar Nigam. The Government shall ensure that every hospital where covid death has taken place, the dead body is packed as per the protocol before it is sent to the cremation place to be finally cremated. The Municipal Commissioners of Nagar Nigam and other officers of Nagar Palikas must be put to task to ensure disposal of dead body of a covid deceased strictly as per protocol.

(x) Above all the administration of government hospitals is emerging as a larger issue these days and it should be addressed. Food, sanitation and other budgetary aspects should not come in the way of treatment of those admitted and patients must be supplied with good quality food and potable water and paper napkins at every meal which should be served at least 4 times a day in all levels of covid hospitals and covid centres.

(xi) Sanitization of hospitals, its corridors and washrooms must be undertaken at least three times to four times a day.

(xii) The hospitals that have been taken over or assigned as Covid health centres must be ensured to be well-equipped with all needed medical devices including BiPAP machine High Flow Cannula Mask and ventilators and that too all should be in sufficient numbers and constant oxygen supply must also be ensured to these hospitals.

20. We, make it clear that we will not tolerate any paperwork or public announcements to show account of the steps taken and its sufficiency as it is now an open secret that government had gone complacent due to weakening of virus impact by the end of 2020 in the state and the government got more involved in other activities including Panchayat elections. Had it been constantly vigilant, it would have prepared itself to face the onslaught of the pandemic in its second wave. Posterity would never forgive us if we remain oblivious to the real public health issues and let the people die for want of adequate health care.

21. Though we, acknowledge the fact that government alone can not fight with its available resources and needs people's cooperation and active participation of various other non government bodies, but those in power must shun the attitude of '**My Way or no way**' and should welcome suggestions from all the quarters.

22. Now today when the Government at this late stage has come out with detailed plans to contain the spread of the pandemic, we can only hope and trust that new plans do work

as public health cannot be compromised with at any cost. The government's bonafides we don't doubt nor do we have any reason to doubt but plans must be translated into action with the spirit with which they have been made.

23. We acknowledge and appreciate the duties that administration has relentlessly performed during the last 3-4 days but they need to put in more looking to the surge of pandemic these days.

24. Though we have examined and dismissed the plan placed before us today to curb the pandemic but seeing **“Sursa like mouth”** of this pandemic we want the Government to come with more stringent measures by the next date fixed.

25. The directions which we have given above as (I) to (xii) should be carried out in letter and spirit. A blue print for raising the existing infrastructure should be produced before us on the next date. A compliance affidavit of an officer of the level of a secretary to the government shall be filed on the next date fixed.

26. Learned Additional Advocate General is directed to place before us also on the next date following details in respect of cities of Prayagraj, Lucknow, Varanasi, Agra, Kanpur Nagar, Meerut, Ghaziabad, Gautam Buddha Nagar, Gorakhpur and Jhansi :-

1. The existing total number of beds in the government hospitals in the level two and level three wards and their current occupancy as on 2nd of May 2021. Per day demand shall also be informed to us. Government shall also inform as to why the various community health centres are not being converted into level 2 hospitals. This would lesser the burden of main hospitals;

2. Total number of beds in ICUs and its occupancy. Total number of BiPAP machines and high flow Cannula masks and ventilators shall also be provided in respect of government hospitals and covid assigned private hospitals;

3. Statistical details of the oxygen supply to the

government hospitals where there are no oxygen producing plants shall also be provided. Exact need of the hospitals and the working of the oxygen plants wherever they are there in the hospitals shall be provided along with their capacity;

4. The exact number of supply of life-saving drugs including Remdesivir in government hospitals;

5. Details of meals that are given to the patients. The number of times, quality of meals and vitamin and calorie value of such meals per serving should be placed before us. The source of the meals shall also be given;

6. Number of existing ambulances and their status; and

7. Modalities adopted for admission to level 3 and private hospitals.

8. Exact number of covid deaths reported between 19th April 2021 to 2nd May 2021.

9. Viability to use LPG Cylinders for filling Liquid Medical Oxygen to meet the demand of cylinders.

27. All the above details must also be disclosed in respect of the private hospitals which have been assigned as Covid hospitals. Fee structures of these private hospitals if they have been permitted to charge from the patients shall be placed before us, status of oxygen supply to private hospitals and their need shall also be placed before us on the next date fixed.

28. We request the District Judges of Lucknow, Allahabad, Varanasi, Kanpur Nagar, Agra, Gorakhpur, Ghaziabad, Gautam Budh Nagar, Jhansi to nominate a judicial officer Civil Judge (Sr. Division) or above.

29. Such nominated officer shall work as nodal officer in their districts and shall report to the Registrar General every weekend and the said report shall be placed before us on the

date of hearing to ensure compliance of our directions no. (ix).

30. Now having verified the news item dated 26.04.2021 published on the official website of Hindi news daily 'Amar Ujala' <https://www.amarujala.com> wherein it has been reported that 135 Teachers, Shiksha Mitras and Investigators, who were assigned election duty, have died, we proceed to take judicial notice of the same

31. It is reported that the people have leveled allegations that during recent phases of the Panchayat elections held, none of the covid guidelines have been followed. It appears that neither the police nor, Election Commission did anything to save the people on election duty from getting infected by this deadly virus.

32. In view of the above, let notices be issued to U.P. State Election Commission, Lucknow to explain by the next date fixed as to why it failed in checking non compliance of covid guidelines during various phases of the panchayat elections held recently and why action may not be taken against it and

its officials for the same and to prosecute those responsible for such violations.

33. The State Election Commission is further directed to take immediately all such measures in forthcoming phases of panchayat elections in the State to ensure that the covid guidelines dated 20.04.2021 of social distancing and face masking is religiously complied with, else action is liable to be taken against the officials involved in the election process.

34. Put up this matter again on 03.05.2021 at 11.00 a.m. Copy of this order be placed before the Chief Secretary, State of U.P. within 24 hours.

(Ajit Kumar,J.) (Siddhartha Varma,J.)

Order Date :- 27.4.2021/IrfanUddin