

HIGH COURT OF SIKKIM

Record of proceedings through video conferencing

WP(PIL) No. 06 of 2020

In Re: Covid 19 Management

Date: 07/07/2021

CORAM:

**HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.**

For Petitioner(s) : Mr. Jorgay Namka, Advocate as *Amicus Curiae*.

For Respondent(s)
R-1, R-2 & R-12 : Ms Sangita Pradhan, Assistant Solicitor General of India

R-3 to R-11 : Mr. Sudesh Joshi, Additional Advocate General
Mr. Hissey Gyaltzen, Assistant Government Advocate
Dr. Pempa Tshering Bhutia, Director General-cum-Secretary, Health and Family Welfare Department, Government of Sikkim
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Bhaskar Raj Pradhan J.

1. We have perused the affidavit filed by the State respondents dated 05.07.2021 which states that it is in pursuance to the order dated 23.06.2021 passed by this Court. The affidavit deals with four things. Firstly, it deals with the covid care facilities in the State. Secondly, it deals with the vaccination drive of the State. Thirdly, it deals with the proposed setting up of Viral Research and Diagnostic Laboratory (VRDL) and finally, with regard to the proposed policy to meet the third wave.

2. With regard to the Covid care facilities, it is submitted that there is one Covid Dedicated Hospital, 2 Dedicated Covid Health Centres and 28 Covid Care Centres in the State. The affidavit

assures this Court that these facilities have been established in accordance with the guidelines issued by the Centre. A district wise covid facility table has also been provided. A perusal thereof, discloses much lesser than what we expect the State to do. We had in our order dated 23.06.2021 directed the State to furnish details of the measures taken and facilities provided *vis à vis* guidelines issued by way of an affidavit including the human resources. The affidavit is, however, silent on which guideline that has been followed by the State, what was the requirement as per the guidelines and what are the measures taken and facilities provided as per the guidelines including the human resources. The chart annexed as Annexure R-1, reflects availability of Medical Officer, Staff Nurse or Medical Attendant only in some Covid Care Centres. A perusal of the chart with the data for 8 Covid Care Centres in North district, which does not admittedly have even a dedicated Covid Health Centre, reflects a rather grim situation. Each of these centres, having between 5 to 54 beds, seems to be manned by only one human resource. The State has not thought it fit to apprise this Court, what level of human resources is available in these Covid Care Centres. The chart also reflects that these Covid Care Centres have been provided with medical facilities. However, the affidavit is silent as to what was the requirement of the guidelines and whether the medical facilities provided in these Covid Care Centres satisfies the guidelines. We are not satisfied with the affidavit.

3. The State submits that the vaccines are allotted by the Centre in an equitable manner as per the population of the State. Once the vaccines arrive at the State Vaccine Store in STNM Hospital, Gangtok, the State Immunization Officer allocates the vaccines to the districts keeping certain factors in mind, such as, target population to be covered in the districts, availability of

vaccines in the various levels of the districts, daily consumption of vaccines per day, etc. The affidavit, however, is silent about any attempt being made by the State to communicate with the Centre to increase the quota of vaccines keeping in mind the unique factors in the Sikkim situation highlighted in our order dated 23.06.2021.

4. Insofar as setting up of VRDL is concerned, the affidavit states that the request of the State for setting up VRDL at district Namchi had been refused vide letter dated 24.06.2021. The State has neither provided the copy of the letter dated 24.06.2021 nor provided any information as to why it was refused. This becomes more important because of the previous orders passed by this Court, whereby we had implored the Centre as well as the State to act in unison to set up such testing facilities in all the districts of Sikkim.

5. We note that the State respondents have requested for Mobile I-LABS as well as two Mobile Testing Laboratories. We also note that the State respondents have approved the proposal of TATA MEDICAL AND DIAGNOSTIC (TATA MD) to establish RTPCR laboratory for the Namchi and Gyalshing District Hospitals, within 6 to 8 weeks.

6. Although, during the hearing on 23.06.2021, the learned Additional Advocate General had orally submitted that a policy to meet the third wave of Covid would be in place within a week and the augmentation done as per the policy before the onslaught of the third wave, we are concerned that they now seek time till the first week of August to do so. While we do understand that formulating a good policy may require a huge amount of brain storming and resource collection in the present situation, let the

policy framing may not be an excuse to strengthen up and build on the infrastructural and human resources capabilities to meet the 3rd wave, which today, does seem likely to happen. The augmentation must go on.

7. With regard to the ambulances, the learned Additional Advocate General concedes that there is a mismatch between what is stated in the affidavit and what is stated in the chart provided. He seeks to rectify it.

8. The learned Assistant Solicitor General of India submits that she could not file the affidavit on behalf of the Central Government since she received the affidavit late. She too, seeks time to do so.

9. During the hearing, the learned *Amicus Curiae* raised an issue before this Court about action being sought to be taken by the State Government against a Medical Practitioner for unauthorized RAT testing placing a copy of Memo No. 2379/H&FW dated 2.7.2021, under the signature of the Director (ADM), Health & Family Welfare Department. The learned Additional Advocate General seeks time to file response to this as well.

10. In the Sikkim Express dated 7th July, 2021, there is a news item titled "Covid outbreak in South shelter home". It is reported that 25 covid positive cases have been reported from Mangalbarey in South District including 16 from a shelter home there. It is further reported that the infected children and the staff of Mangalbarey shelter home have been shifted to Covid Care Centre at CCCT Chisopani. The report further mentions that recently 21 children and 3 caretakers of a Child Care Institute at Rabongla had tested COVID-19 positive and are presently admitted at the Covid care

centre, Kamrang. The report also voices the concern that shelter homes, childcare institutions and other similar institutions cannot totally follow the COVID-19 protocols like social distancing for practical reasons and as such few initial COVID-19 cases quickly infect the other persons staying in institutions and become covid hotspots. We are concerned and take cognizance of this news report and seek a report from the State respondents. More importantly, as time is of the essence, we direct the State to immediately take stock of the situation in all shelter homes, childcare institutions, old age homes, destitute homes, observation homes, open shelters, place of safety, special homes and all other such care facilities available in the State, both governmental and non-governmental, to insulate the inmates and staff from the pandemic. Although, we are concerned about the limitations of human resources with the State Government, we implore the State Government to take all such measures including vaccinating those eligible in these care facilities, at the earliest.

11. The order dated 23.06.2021 had also directed the State as well as the Centre to file necessary affidavits showing compliance to the directions issued by this Court from time to time along with the reports sought for therein. No affidavit of compliance has been filed either by the Centre or by the State.

12. List the matter on 28.07.2021, before which date all the necessary reports and affidavits shall be filed.

Judge

Chief Justice

Index : ~~Yes~~ / No
Internet : Yes / ~~No~~

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