

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CJ Court

Case: WP (C) PIL No. 5 of 2020
(Through Virtual mode)

Court on Its Own Motion

...Petitioner(s)/Appellant(s)

Through: Ms. Monika Kohli, Amicus Curiae
M/s. Sunil Sethi,
U.K.Jalali, K.S.Johal, Abhinav
Sharma, Pranav Kohli, and Rohit
Kapoor, Sr. Advocates
Sh. Ajay Bakshi, Advocate

v/s

Government of India and Others

.... Respondent(s)

Through: Sh. D.C.Raina, Advocate General
with Sh. K.D.S. Kotwal, Dy. AG

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

ORDER

1. Heard Smt Monika Kohli, learned amicus curiae, Sh. Sunil Sethi, Sh. Abhinav Sharma, Sh. Pranav Kohli, Sh. Rohit Kapoor, all Senior Counsel and host of others. Sh. D.C. Raina, Learned Advocate General assisted by Sh. K.D. S. Kotwal, Deputy Advocate General, has appeared for the Union Territory.
2. The Court had taken suo moto action for initiating this Public Interest Litigation concerning Covid-19 pandemic. The order sheet reveals that as many as 18 issues were raised which arise for consideration. The said issues were dealt with by the Court individually and separately on various occasions. The Court also records that now issues Nos. VII, XVII, XVIII and XXI remain to be resolved.

3. Pending consideration of the aforesaid issues, the Union Territory was in the spate of second wave of Covid-19 Pandemic, which gave rise to several new points in respect whereof many applications came to be filed by individuals.

4. Mrs Monika Kohli, learned amicus curiae has expressed anxiety that as lawyers everyday both in Jammu and Srinagar Wings of High Court are getting infected by Covid-19 and they have not been vaccinated, there is threat to their life which needs to be addressed immediately by getting them vaccinated.

5. She has further submitted that the families of the lawyers who have died recently due to Covid-19 may be provided some financial assistance.

6. One of the applications for consideration is civil misc. application No. 3913/2021, wherein it has been stated that under the directions of the administration to overcome the short supply of oxygen, it has been directed that “all plants shall run on full capacity and there shall be no diversion of oxygen cylinders for non medical purposes i.e full oxygen capacity be stocked for medical purposes” but its outcome is that persons who are otherwise at home and are not serious patients but need oxygen have been deprived of oxygen cylinders. Thus a prayer has been made that administration be directed to supply oxygen cylinders for use by the patients who are not admitted in the hospitals but are otherwise suffering from serious ailments and are home quarantined.

7. Mr Pranav Kohli, senior counsel assisted by Mr Arun Dev Singh in respect of the above application submits that some mechanism should be evolved so that supply of oxygen to the persons who are getting treatment at home of their serious ailments or those who have been home quarantined due to non-availability of beds in hospitals, may continue uninterrupted.

8. Sh. Sunil Sethi, senior counsel highlighted the short supply of Remdesivir and deficiency of doctors and nursing staff as well as the oxygen to treat the Covid patients. He insisted that the government be called upon to provide complete statistics in regard to the above items and to make operational the oxygen plants which are under erection for some time.

9. Sh. Rohit Kapoor, senior counsel argued that Covid-19 is an infectious disease and there is no one in the entire Union Territory who is an expert doctor to treat infectious diseases. The government as such be directed to take services of

infectious diseases specialists from other states. He pointed out that there is one such specialist from the Union Territory of Jammu and Kashmir based at Hyderabad who is ready and willing to extend his services to the Union Territory.

10. Sh. Abhinav Sharma, senior counsel highlighted the shortage of ventilators and submitted that the government is not disclosing the correct figures but the fact is that ventilators in sufficient numbers are not available.

11. The Advocate General in response to all the above problems raised by the various lawyers has filed affidavit of the Financial Commissioner, Health and Medical Education Department dated 04.05.2021 giving description of the facts and figures and the steps taken by the government to combat the second wave of Covid-19 pandemic in the Union Territory.

12. The affidavit of Sh Atal Dulloo, Financial Commissioner, Health and Medical Education Department aforesaid states that there is no shortage of supply of oxygen in Union Territory rather the supply is adequate and that drugs are also available in adequate quantities to tackle Covid-19 patients. According to him 3 oxygen generation plants of 3166 LMP and 6 oxygen plants of 6590 LMP are functional in the provinces of Jammu and Kashmir respectively. Further 4 plants of 4000 LMP and 17 plants of 30000 LMP would be made functional within 15 days in the provinces of Jammu and Kashmir respectively.

13. The affidavit further states that there is no shortage of beds in the hospitals. There are 1354 and 1708 total 3062 Covid dedicated beds in the province of Jammu and Kashmir respectively. The beds with oxygen are 1127 and 1597 total 2724 in Jammu and Kashmir respectively. The number of ICU beds with ventilators are 227 and 111 total 338 in Jammu and Kashmir respectively. In addition to this tele-consultation is also available for all Covid patients in the Union Territory. In addition to this government has issued the directions that all oxygen plants shall run on full capacity and there shall be no diversion of oxygen to non medical purpose.

14. It has also been stated as per the latest treatment protocol issued by the All India Institute of Medical Sciences all Covid patients have been classified as mild, moderate and severe for the purposes of hospitalization. It is only in severe cases where oxygen is needed that hospitalization may be necessary. Covid control

rooms have been established in all the districts of Union Territory for attending the grievances related to Covid-19 of persons found Covid positive and are operational 24 X 7. Free ambulance service is available 24 X 7 to all on toll free number 108 and at toll free number 102 for pregnant women and sick infants.

15. In the end it has been stated that the government of Union Territory is taking every conscious step to protect the citizens from the deadly disease and that there is no need of panic.

16. Learned Advocate General on the basis of above affidavit submits that there is no problem of supply of oxygen and there is no ban on use of oxygen for patients at home. They can have the supply of oxygen on medical prescription through Nodal officers. There is no difficulty in getting the lawyers above 45 years of age, registered and vaccinated in a group. But the lawyers between the age group of 18 to 45, as per the procedure provided by the government of India, have to get themselves registered online. Once they are registered, they will be vaccinated as per their turn or on the slot available.

17. It is pertinent to mention here that the Court has taken suo moto action in the matter not as if it is a Public Interest Litigation or an adversary litigation or where any lis is to be adjudicated upon but as a process of the Court for protecting life of the citizens by ensuring adequate medical help both in terms of medical advice and life supporting material.

18. The Court is conscious of the fact that government is taking due steps for controlling the pandemic and to provide full medical support. The newspaper reports specially one appearing in State Times dated 04.05.2021 reveals that the government in addition to what has been stated above, have constituted Covid management teams at all levels i.e at District, Tehsil, Block and Panchayat levels consisting of D.C, S.P and CMO or other Senior Officers including the Principal of the concerned medical colleges at district levels. The government has also announced special financial incentives for Covid-19 warriors.

19. In view of the above said circumstances, welcoming the efforts of the government and taking stock of the entire situation, we find that still much more is required to be done and directions of the Court are primarily needed in respect of the following points:

- i. Registration and vaccination of lawyers;
- ii. Supply of oxygen to patients at home;
- iii. Seeking the services of infectious disease specialist;
- iv. To remove the deficiency, if any in regard to availability of ventilators, oxygen, beds and medication including remedisivir; and
- v. For removing shortage of doctors and the staff, if any.

20. Insofar as the registration and vaccination of lawyers above the age of 45 years is concerned, it poses no problem in the light of the submission of the learned Advocate General. It can easily be resolved by directing the Registry of the Court to discuss the issue with the Finance Commissioner, Health and Medical Education with the help of Advocate General to get some date fixed for the registration of such advocates and thereafter some dates for their vaccination which may be notified to carry out vaccination in groups either at some suitable place in the High Court Campus or Medical College or Hospital as may be agreed upon. The above exercise be completed within a week beginning from tomorrow i.e 6th of May, 2021.

21. In regard to vaccination of lawyers between the age group of 18 to 45 they are advised to get themselves registered for vaccination online as per the prescribed procedure and once they are registered they will be provided facility of vaccination in group again on appropriate dates and a suitable place or otherwise they will be given a slot for vaccination on priority at the earliest, if possible within a period of two weeks from the date of registration.

22. In case any family of the lawyer is in need of financial assistance either on account of medical expenditure or due to the death, the family members may approach the Bar Association with an application. On the application being forwarded, the Court would speedily consider it and endeavor to provide maximum financial aid out of the welfare fund. At the same time, government is also directed to consider for making some additional budgetary allocation, as the funds available may not be sufficient to meet the requirement.

23. To resolve difficulty faced in the supply of oxygen to the patients at home, the Financial Commissioner, Health and Medical Education is directed to nominate adequate number of Nodal Officers for each city and to publicise their full details with contact number etc so that such patients or their relatives may approach them

with proper medical prescription for the supply of oxygen and once they are so approached they shall take immediate and adequate steps to ensure the supply of oxygen where it is found to be needed without causing any harassment to any one.

24. We are not sure as to the availability of infectious diseases specialists in the Union Territory or whether such specialist is necessary in the present situation, nonetheless the Financial Commissioner, Health and Medical Education is expected to explore the number of such specialists available throughout the country and the possibility, if any of them is willing to serve the Union Territory, if such service of an expert is genuinely needed.

25. The shortage of oxygen, medicines including Remdesivir or of doctors or staff is not born out from any material on record therefore it is not appropriate for the Court to enter into the aforesaid arena at this stage and leaves it upon the Financial Commissioner, Health and Medical Education to come out on affidavit within two weeks with complete details of the number of hospitals both government and private available for Covid treatment, number of beds available thereof, District wise/City wise, quantity of Remdesivir allotted to the Union Territory, the exact quantity of Remdesivir received and used etc with the corresponding figures of the requirement.

26. Since we have already observed that this is not an adversarial litigation, we hope and trust that no one would make any effort to draw any mileage out of it so as to reduce it to a personal interest litigation or a publicity interest litigation and the media would also act cautiously in the best interest of the public and country.

27. List on 20.05.2021.

(SANJAY DHAR)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

Jammu
05.05.2021
Tilak