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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.353 of 2021

Shivani Kaushik

... .. Petitioner/s

Versus

Union of India & Ors.

... .. Respondent/s

With

Civil Writ Jurisdiction Case No.17398 of 2018

Rohit Kumar

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

With

Civil Writ Jurisdiction Case No.9639 of 2021

Gaurav Kumar Singh

... .. Petitioner/s

Versus

The Union of India & Ors.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 353 of 2021)

For the Petitioner/s	:	Ms. Shivani Kaushik (In Person) Mr. Mrigank Mauli, Amicus Curiae
For the UOI	:	Dr. K.N.Singh (ASG) Mr. Anshuman Singh, Advocate
For the Respondents	:	Ms. Kanak Verma, CGC Mr. Abhimanyu Singh, Advocate
For the State	:	Mr. Lalit Kishore, AG Mr. Anjani Kumar, AAG-4 Mr. S.D. Yadav, AAG-9 Mr. Alok Kumar Rahi, A.C. to AAG-4
For Respondent No. 5	:	Mrs. Binita Singh, Advocate
For Respondent No. 6	:	Mr. Shivender Kishore, Sr. Advocate
For the Respondents	:	Mr. S.D. Sanjay, Sr. Advocate
For the PMCH	:	Mr. P. K. Shahi, Senior Advocate Mr. Vikas Kumar, Advocate
For PMC	:	Mr. Prasoon Sinha, Advocate
For DMCH	:	Mr. Bindhyachal Rai, Advocate
For GMC	:	Mr. Rabindra Kr. Priyadarshi, Advocate
For the Intervener	:	Mr. Yogesh Chandra Verma, Senior Advocate Mr. Rajiv Kumar Singh, Advocate

(In Civil Writ Jurisdiction Case No. 17398 of 2018)

For the Petitioner/s	:	Mr. Manish Kumar No 13, Advocate Ms. Parul Prasad (Amicus Curiae) Mr. Rohit Kumar (In Person)
For the State	:	Mr. Anjani Kumar, AAG IV Mr. Subhash Prasad Singh, GA-3
For Respondent No. 6	:	Mr. Kumar Ravish, Advocate
For the Respondents	:	Mr. Shivendra Kishore, Sr. Advocate Ms. Binita Singh, Advocate

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(In Civil Writ Jurisdiction Case No. 9639 of 2021)

For the Petitioner/s : Mr. Sumeet Kumar Singh, Advocate
Mr. Nikhil Singh, Advocate
For the UOI : Dr. K.N. Singh (ASG)
Mr. Anshuman Singh, CGC
For AIIMS, Patna : Mr. Binay Kumar Pandey, Advocate
For the State : Mr. Lalit Kishore, Advocate General.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

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(The Court proceedings are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their homes/offices.)
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27 25-05-2021 Three Member Team of Experts comprising of Dr. Umesh Kumar Bhadani, Dr. Ravi Kirti and Dr. Ravishankar, have submitted their report on the issue of sufficiency or lack of infrastructure, be it of beds; oxygen; medicines; human resource; and security, for meeting the requirement of the current Pandemic Covid-19. The Committee visited not only the Hospitals, both Government and Private but also some of the Covid Care Centre (CCC); Dedicated Covid Health Centre (DCHC) and Dedicated Covid Hospitals (DCH) within the State.

2. Save, and except for one Institution, namely ESIC Medical College and Hospital, Bihta, the Committee did not find a significant deficiency in the infrastructure.

3. At ESIC Medical College and Hospital, Bihta, the Committee found a lack of medicines and human resource, including security personnel.

4. The report records justification for further not enhancing the bed capacity for covid patients. The

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recommendation of the Committee as summarized is extracted hereinunder:

“Summary of Covid Centres Outside Patna

- i. Most of centres are well equipped with oxygen beds and higher centres with ICU beds and ventilators also.
- ii. No specific deficiency of oxygen supply. One centre mentioned about requirement of Oxygen flow Meters (JNLMC Bhagalpur)
- iii. Manpower in most of centres adequate.
- iv. Patients are admitted in bigger centres but smaller centres have facility but no patient admitted.”

5. The Committee has also made recommendations with regard to investigation and management of Covid-19 which is extracted as under:

“RECOMENDATIONS OF COMMITTEE

A. Regarding Investigations for Covid-19

- Pathological Test:

Rapid Antigen Test (RAT) is possible in smaller centres and it takes about 30 minutes for the result. It is kit based and can be performed with very little training. The result is easy to be interpreted. Training is required to collect the sample and doing the test with kit. The sensitivity of test is not very high and there are chances of false negative results. Chances of false positive result is smaller. Test can be done in any setup. This test should be made available to smaller centres.

If test is negative and there are no symptoms, there is no need of doing RTPCR test. They should be observed for 5-7 days if there are history of contact with symptomatic or positive patients.

If RAT is negative and there are symptoms, RTPCR sample should be sent. Treatment should be started immediately.

If RAT is positive and patient is asymptomatic, treatment of Covid should be started without delay. RTPCR is not necessary in this case.

Standard ICMR guidelines are available for RAT test.

Blood Tests for Covid Profile: Complete Blood Count

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(CBC), Serum Ferritin, CRP, D-Dimer, LDH etc are other blood test which are done to know the severity of disease and required to plan the management to avoid serious complications.

Facility of these tests are present in higher centres and private labs only.

X-Ray of Chest: X-Ray of Chest is possible in many centres and shows presence and severity of disease especially in advanced cases. Early cases can be missed but moderate to serious disease changes is visible in X-Ray. This modality should be used where available.

HRCT: HRCT is very **sensitive** test and it shows changes in lungs even with negative RTPCR. The characteristic changes due to Covid is visible in HRCT and grading of disease can also be done. It can be used as diagnostic as well as prognostic importance. Treatment should be started depending on symptoms even without positive test result.

B. Management of Covid-19

1. Most of cases of Covid have mild symptoms and 80% can be managed at home or quarantine centres under guidance and monitoring of medical professionals.
2. Patients progressing to moderate to severe disease need admission to advance centres. About 20% patients progresses to moderate to severe stage. Early recognition of symptoms ie. Respiratory distress and Low Oxygen Saturation are most important indication of hospital admission.
3. Oxygen, Corticosteroids like Dexona & Methylprednisolone and Low Molecular Weight Heparin (LMWH) are mainstay of treatment in severe cases. Head down lying (prone position) is another important guideline for management.
4. Different modes of delivery of oxygen should be available at all centres of Covid treatment. Many of patients improve with simpler mode of oxygen treatment along with Corticosteroids and LMWH.
5. Training of health professionals should be done to recognize early symptoms and start appropriate treatment as soon as possible. It is not always necessary to delay treatment in need of positive test. **It is symptoms which are important and management started in right time is key to success and many lives can be saved.**
6. Availability of Oxygen and Life Saving Medicines like Corticosteroids, LMWH, Paracetamol, IV fluids should be made available to all centres.
7. Very few patients require advance modes of treatment like ventilator. About 5% of patients need critical care. There should be arrangement of ambulances with clear-cut destination guidelines to take serious patients to higher

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centres. There should be a centralized coordination for this. A chain of treatment centres should be created with guidelines and SOP for treatment and transfer. Centralized Control should be created with Experts and Administrative staff with dynamic real time monitoring for various parameters of management.

8. A core team should be prepared for Covid management. The team may consist of doctors from various streams like testing, management and prevention along with planners and administrators to with a aim to implement short term, intermediate and long term and goals.

CONCLUSIONS:

- PATHOLOGICAL TEST IS IMPORTANT FOR THE INDIVIDUAL AS WELL AS FOR SOCIETY. IT IS MORE IMPORTANT FOR SOCIETY AS A CRITERIA FOR ISOLATION & PREVENTING SPREAD.
- MANAGEMENT IS MORE IMPORTANT FOR INDIVIDUAL & IT SHOULD BE DONE WITHOUT WAITING FOR THE TEST REPORT. VALUABLE TIME IS LOST IN STARTING THE TREATMENT IN WAITING FOR THE TEST RESULT. PATIENTS HAVE TO SUFFER MORE FROM HOSPITAL TO HOSPITAL FOR ADMISSION IN ABSENCE OF TEST REPORT.
- HOSPITAL SHOULD START TREATMENT ON THE GUIDELINES OF COVID AND TAKE ADMISSION ACCORDINGLY. REFUSING PATIENTS IN THE NAME OF TESTS IS NOT JUSTIFIED.”

6. We are of the considered view that such recommendations must be examined by the Government; Medical Health Institutions- Government or Private; and all other stakeholders for application to the extent possible.

7. However, when it comes to Bihta, we notice that it needs to be dealt with separately. The Institution is manned separately by three entities, namely (i) the management of ESIC Medical College and Hospital; (ii) the Army Medical Corp; and (iii) the Government of Bihar.

8. We have perused the affidavit dated 19th of May,

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2021 filed by Ms. Soumya Chakraborty, currently posted as Dean of ESIC Medical College and Hospital, Bihta. In Paragraph 14, the deponent has raised the following issues concerning lack of infrastructure:-

“14. That the Answering Respondent humbly states and submits that this Hon’ble Court in its Order dated 18.05.2021 has also directed the Respondent Hospital to indicate the lack of infrastructure/ facilities in administering the COVID Care and treatment to the patients, in that regard, it is humbly stated and submitted that the ESIC Medical College and Hospital requires the following in order to fight the COVID Pandemic and administer the proper COVID Care Treatment to the patients:-

i. The Hospital needs an Oxygen generation plant of 2000 litres per minute capacity for which numerous letters have been written to the Government.

ii. An RTPCR Lab for the diagnosis of COVID. The State Government has sent some equipment but some are still pending and the sooner the State Government sends all the equipment, the sooner the Hospital can set up the RTPCR Lab.

iii. A CT (Computed Tomography) Scan Machine for HR CT of Chest for severely infected patients.

iv. In the absence of a CT Scan Machine, Ultra-sonography (USG) is also a technology that can be applied. But for operating the machine, PCPNDT permission is still awaited from the State Government for which an application is pending before the Civil Surgeon’s Office.

v. The Ward boys provided by State of Bihar were incapable of handling COVID cases and ran away from their duty without information. The

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agency supervisor also went missing many times. The Auxiliary Nurse and Midwife (ANM) and General Nursing and Midwife (GNM) provided by State Government were also not capable of handling COVID cases and did not have knowledge and skill about administering medicines and fluids and COVID care services. The Security Staff as provided by the State Government also refused to go to COVID care ward and red zone area. Therefore, the ESIC Hospital is in urgent need of paramedics and ward boys.

vi. Sanitization staff, sweepers and body wrappers are needed as there has been no support in dead body management from the state. ESIC has formed its own Death Management Committee and has been still running supporting AMC, ESIC and State Government.

vii. Anesthesiologist and ICU Experts and Physicians are needed as well as lab technicians. Earlier, the IGIMS Patna had provided Experts in Medicine and Anesthesia for COVID Care for two weeks but they withdrew their support after starting their own COVID care. The Hospital is in extreme difficulty in providing COVID Care and Treatment due to deficiency of COVID care related Doctors e.g Medicine expert, Anesthesia Experts, Intensivists, Psychiatrists and Paramedics. The ESIC Hospital has only 1 Senior Resident in Medicine, 1 Senior Resident in Anesthesia.

viii. The permission to use Narcotic Scheduled Drugs in Schedule 1 like morphine and other narcotic life saving drugs administered to COVID patients is still awaited from State Drug Control Authorities even though the same has already been applied some time back.

ix. PPE Kits sent by the Government were

incomplete. Therefore, adequate number of NIOSH certified N95 masks and PPE kits are required.

x. No Advance Care Life Support (ACLS) ambulance was provided to ESIC Hospital though promised by State Government and only 1 Basic Life Support (BLS) Ambulance was given to ESIC Hospital. However, after AMC joined to run 76 beds, the State Government has given expert Ward Boys, Paramedics, Anesthetists, physicians, ACLS ambulance, mortuary van, Balanced Diet through therapeutic kitchen, Deputed members from health to supervise and expedite the AMC COVID care facilities. Therefore, the ESIC Hospital is in dire need of 1 BLS and 1 ACLS ambulance and 1 Mortuary Van.”

9. We are informed that now the State has appointed Mr. Kumar Ravi, OSD [Health] to liaison with the authorities ensuring proper infrastructure to be put in place.

10. Dr. K.N. Singh, learned Additional Solicitor General states that perhaps the Army Medical Corp also has certain issues regarding lack of infrastructure, which probably are not pointed out in this affidavit.

11. If that were so, we direct the Officer Incharge of the Army Medical Corp to file his personal affidavit indicating the lack of infrastructure, be it of any form.

12. Needful be positively done within three days. Advance copy be supplied to the State.

13. Let the Liaisoning Officer, namely Shri Ravi Kumar file his personal affidavit pointing out the remedial steps taken for putting in place a robust infrastructure, also meeting the

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deficiencies pointed out by the deponent (Ms Soumya Chakraborty) and the one which may be pointed out by the Officer Incharge of the Army Medical Corp. This he shall positively do so within five days.

14. A common issue that surfaced during the hearing is the non-availability of skilled human resources to man the essential equipment installed in the wards, ICUs for administering treatment to the patients.

15. At this point, we refrain from issuing any direction, save and except suggest that perhaps, as pointed out by Sri P. K. Shahi, learned Senior Counsel, a capsulated course of training be prepared for giving basic training to the unskilled youth, ready and willing to work at the designated centres. This can easily be done as per the Skill India Mission.

16. We are also in agreement with the suggestion put in by Sri S. D. Sanjay, learned Senior Counsel that the Government as also Medical Health Institutions, Public and Private, must proactively take steps for disseminating information and put in place a grievance redressal mechanism for this alone would instill confidence in the mind of the general public.

17. We also find favour with the suggestion given by Sri Yogesh Chandra Verma, learned Senior Counsel that the State must have a State Level Protocol, enabling a common person to understand the need of dealing with the virus. The State has adopted the policy of test, track and treat, but for an illiterate person in the village, disseminating information has to be in his language or how he understands best. Further, Sri Verma has pointed out instances of maltreatment of patients and attendants.

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Undoubtedly, the issue needs immediate attention. The purported illegality and brutality exhibited by the police in enforcing the lockdown also needs to be checked by the Authorities.

18. As such, in reference to the report of the experts, we issue the following directions:-

- (i) The recommendations of the Committee be examined by the Government; Medical Health Institutions- Government or Private; and all other stakeholders, for their application to the extent possible.
- (ii) Mr. Kumar Ravi, OSD [Health] shall liaison with the authorities managing the Hospital at Bihta, ensuring proper infrastructure is put in place.
- (iii) The Officer Incharge of the Army Medical Corp shall file his personal affidavit indicating the lack of infrastructure, be it of any form. This he shall do within three days.
- (iv) Mr. Kumar Ravi shall file his personal affidavit also dealing with the same, ensuring a robust infrastructure functional in all respects is put in place.
- (v) A capsulated course of training is prepared for giving basic training to the unskilled youth, ready and willing to work at the designated centres.
- (vi) The Government, as also Medical Health Institutions, Public and Private, must proactively take steps for disseminating information and put in place a grievance redressal mechanism, for this

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alone would instill confidence in the mind of
general public.

- (vii) The Government must develop a State Level Protocol, enabling a common person to understand the need of dealing with the virus. The State has adopted the policy of test, track and treat, but for an illiterate person in the village, disseminating information has to be in his language or how he understands best.
- (viii) The issue of maltreatment of patients and attendants needs to be addressed immediately.
- (ix) The purported illegality and brutality exhibited by the police in enforcing the lockdown also need to be checked by the Authorities.

19. List on 2nd June, 2021 at 10. 30 A.M.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini/

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