

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 and 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 : Mr. Shivani Kaushik (In Person)

Mr. Mrigank Mauli

For the UOI : Mr. Dr. K. N. Singh (ASG)

For the State : Mr. Lalit Kishore, AG

Mr. Anjani Kumar, AAG-4

Mr. S. D. Yadav, AAG-9

For Respondent No. 5 : Mrs. Binita Singh

For Respondent No. 6 : Mr. Shivender Kishore, Sr. Adv.

For PMC : Mr. Prasoon Sinha

For DMCH : Mr. Bindhyachal Rai

For GMC : Mr. Rabindra Kr. Priyadarshi

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

For the Petitioner/s : Mr. Manish Kumar No 13

For the Respondent/s : Mr. Subhash Prasad Singh, GA-3

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

For the Petitioner/s : Mr. Sumeet Kumar Singh

For the UOI : Mr. Dr. K. N. Singh (ASG)

For AIIMS, Patna : Mr. Binay Kumar Pandey



CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

**HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

7 19-04-2021 **Re : I.A. No. 01 of 2021 & 02 of 2021**

CWJC No. 353 of 2021 and other analogous matters

When the present proceeding under Public Interest Litigation was taken up on 17.04.2021, we had taken judicial notice of acute shortage of Remdesivir injection in the State of Bihar and consequent illicit trade of this drug in the black market.

Considering the materials, which were made available to us and conflicting views that had emerged in relation of some of the technical aspects qua the requisite medical facilities for managing and treating COVID-19, patients, we had requested the Director, All India Institute of Medical Sciences, Patna (for short AIIMS, Patna) to join today's online hearing of this matter. Accordingly, Dr. P. K. Singh has joined today's *online* court proceeding. He informed, *inter alia*, to this Court that there is no scientific proof or suggestion/indication to the effect that the said Remdesivir injection is of any help for treating COVID infected patients. The statement made by Dr. P.K. Singh, Director, AIIMS, Patna came as a revelation even for the



Executive Director, State Health Society, inasmuch as, in view of the concern expressed by this Court in the order dated 17.04.2021, passed after taking into account the stand of the State Government regarding the requirement of the said medicine, the State Government has, according to him, taken steps for bulk acquisition of the said injection. Dr. Singh, Director, AIIMS, Patna disclosed to this Bench that it was because of a misconception or wrong perception prevailing in the minds of the general public that suddenly the said Remdesivir injections have gone out of the market possibly because of creation of unnecessary artificial requirement and consequent shortage on account of hoarding and panic purchases. He has further informed this Bench that none of the guidelines issued by the World Health Organization (WHO) or the Government of India prescribe administration of Remdesivir injection as part of an effective treatment of COVID-19 disease. He has sent to this Court COVID-19 Management Protocol for mild cases, moderate cases and severe disease. In none of the said three protocols administration of Remdesivir injection is prescribed for COVID-19 patients. A copy of the Standard COVID-19 Management Protocol has been made available to this Bench by Mr. Pandey, learned counsel appearing on behalf



of AIIMS, Patna, which shall form part of the present proceeding and is kept on record.

Dr. Navin Chand Prasad, the Director-in-Chief, Health Services, Government of Bihar, has also joined the present proceeding online and concurred with the view expressed by the Director, AIIMS, Patna regarding the general wrong perception prevailing in the minds of General public regarding effectiveness of Remdesvir injection for treatment of COVID patients. He has gone to the extent of telling this court that in many cases the Doctors are being forced to administer this drug to COVID patients at the insistence of the patients and in some cases their attendants. We, at this stage restrain ourselves from making any comment in this regard. We, however do observe that State, in consultation with the experts must take all possible measures to address this aspect and do the needful.

It has been stated at the bar that the post of Controller of Drugs in the State has not been filled up on a regular basis and a person is holding the said post on *ad hoc* basis since years together. The State Government is directed to inform this Court as to whether it has a regular Controller of Drugs or not.

At this stage we reiterate our view, as expressed in our earlier orders, to the effect that any inaction on the part of the



State, within the meaning of Article 12 of the Constitution of India, in providing adequate health care to its citizen, particularly during the prevailing COVID-19 situation, would be violative of right to life under Article 21 of the Constitution of India.

During the course of hearing of the present proceeding certain controversies have emerged qua the claim of the State Government about the availability of facilities in the Dedicated COVID Hospitals (DCHs) and Dedicated COVID Health Centers (DCHCs) as well as COVID Care Centers (CCCs) and the existing ground realities. In the Court's opinion, in the wake of this extraordinary and alarming situation prevailing in the State, different organs created by different statutes are required to act in unison to meet the present challenge posed by the outbreak of second wave of COVID-19 pandemic, for the furtherance of the public welfare.

In the aforesaid context, certain statutory provisions under the Protection of Human Rights Act, 1993 (hereinafter referred to as "the Act, 1993") enacted for better protection of human rights, need reference for the present, especially in light of the nature of order which we intend to pass today. Bihar State Human Rights Commission (herein after referred to as the



"BHRC"), constituted under Section 21 of the Act, 1993 is in place in the State of Bihar. Section 21(5) of the Act empowers the BHRC to enquire into violation of human rights in respect of matters relatable to any of the entries enumerated in List II and List III of the 7th Schedule of the Constitution of India. 'Prisons', 'Public health and sanitation; hospitals and dispensaries' and 'burial and burial grounds; cremation and cremation grounds' figure at items no. 4, 6 and 10 of List II of the 7th Schedule respectively. Section 29 of the Act, 1993 prescribes that the provisions of Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission. It is to be noticed that the aforesaid sections under the Act, 1993 are relatable to constitutional functions and powers of the National Human Rights Commission under the Act, 1993.

For the present, we are concerned with Sections 12, 13, 14 and 18 of the Act, 1993. Section 13 read with Section 29 of the Act, 1993 empowers the State Commission under the Act, 1993 to conduct inquiries, whereas Section 14 deals with commission's power in relation to investigation pertaining to any inquiry. Section 18 of the Act states the steps during and after an inquiry, which the State Commission may take.

Considering the aforesaid provisions stipulated under



the Act, 1993, we have considered it appropriate, in the facts and circumstances of the situation, and in the interest of justice to direct the BHRC to:-

- (i) Get an inspection done of one of the Dedicated COVID Hospitals (DCHs) i.e. NMCH, Patna tomorrow (20.04.2021) in the presence of Director, AIIMS, Patna.
- (ii) Learned Chairman of the BHRC is requested that if it is not convenient for him to visit the said DCH, he shall ensure that a senior officer, not below the rank of the Secretary of the BHRC, shall visit the aforesaid hospital along with the Director, AIIMS, Patna, in light of the aforesaid order. It is clarified here itself that the Director, AIIMS, Patna has already given his consent to visit the said hospital tomorrow (20.04.2021), during the course of online hearing of this matter.
- (iii) It can be noticed from our order dated 17.04.2021 that we had incorporated in the said order, the data made available by the Principal Secretary, Health Department, Government of Bihar regarding availability of COVID Care Centers, Dedicated



COVID Care Health Centers and Dedicated COVID Hospitals in the State of Bihar .Learned Chairman, BHRC is requested to cause or cause the same to be done, in such manner as may be considered appropriate by him, by himself or any team constituted by him, surprise inspections of the said CCCs, DCHCs and DCHs to find out as to whether adequate facilities are available there or not with the desired standard of sanitization and cleanliness.

- (v) The Secretary, BHRC shall be required to submit his report of inspection of NMCH by Wednesday (21.04.2021). He is further directed to join the Court proceedings on 21.04.2021 at 4.30 p.m., a link of which shall be sent to him by the Registry.

Let today's order and the orders of this Court dated 15.04.2021 and 17.04.2021, passed in the present matter, be communicated to the Secretary, BHRC forthwith.

In our previous orders, we had noticed acute shortage of beds in and around Patna in various hospitals, with adequate facilities, for treating serious COVID patients. We had directed the state respondents to ensure that ESIC Hospital at Bihta starts



functioning immediately. We have been informed by Dr. K.N. Singh, learned Additional Solicitor General for India that *five* doctors, *fifteen* nursing staff have reached ESIC Hospital at Bihta and more doctors and nursing staff from Armed Forces are likely to be deputed in the said hospital soon. It is stated at the Bar that the said hospital is a well equipped hospital with ventilators and other equipments available there.

During the course of previous hearing we were given an impression that two hospitals, namely, Medanta and Rajendra Nagar Eye Hospital in Patna are going to be utilised for admitting and treating COVID patients. The Executive Director, Bihar Health Society has, however, informed that till date the hospitals have not become functional for treating COVID patients though steps are being taken to make them functional as soon as possible. We have considered it desirable to monitor developments in this regard in the present proceedings.

At this stage, we express our strong displeasure over absence of any comprehensive action plan of the State Government, formulated for meeting the present surge of COVID cases, which was directed to be placed before this Bench. Mr. Lalit Kishore, learned Advocate General has assured this Court that all necessary steps shall be taken on war footing



for preparing and presenting a comprehensive action plan to meet the challenge which the State is facing because of COVID-19 pandemic.

Regarding availability of Oxygen in different hospitals, Mr. Manoj Kumar, the Executive Director, State Health Society has informed this Court that in Patna Medical College and Hospital and Nalanda Medical College and Hospital, oxygen generating plants are functional and in DMCH process of purity check is in progress and the plant is likely to become functional soon. He has further informed that in seven other hospitals, installation of oxygen generating plants is in progress.

We note here, at this stage, that the Director, AIIMS, Patna during hearing of the present proceeding has agreed that effectiveness of HFNCs in different hospitals can also be explored as an alternative to ventilators. It will be for the State of Bihar to consider this aspect of the matter and inform this Court.

We had also taken note of the difficulties being faced in carrying out RT-PCR tests. It was pointed out at the Bar that kits are not available for such tests in the private laboratories because of lack of supply. It has also emerged that the test reports are not being made available to the persons who undergo



such tests, within a reasonable time. Mr. Manoj Kumar has admitted that the government laboratories have failed to provide test reports to all persons who have been tested by such laboratories, within a reasonable time, because of the volume of such tests as also for the reason that communication of the test reports are being prioritized only to such patients who test positive. He has informed this Bench, however, that the Health Department and the Society is taking all possible steps to clear the backlog and ensure that the reports are made available within a reasonable time.

Serious issues have been raised about deaths taking place in various government and private hospitals because of lack of supply of oxygen. This Court cannot overlook such aspects if such allegations are true as it directly relates to a citizen's fundamental right. If the Court reaches a conclusion that COVID patients have been or are being allowed to die because of lack of oxygen supply, the Court exercising its power of judicial review will surely intervene and pass appropriate orders in this regard. Till date, however, we do not have any material except submissions advanced at the Bar in this connection. We have been informed at the bar that an officer of Patna High Court has succumbed to COVID disease because



oxygen was not available in the hospitals. We intend to take up this matter in the present proceeding by way of an example to examine whether Court's intervention's is needed or not. For the said purpose, we direct the Registrar General, Patna High Court to submit an exhaustive report to this Court explaining in detail the circumstances in which the said officer of the High Court died. It is made clear that, at this stage, the Court needs to know about the correctness of the assertion that the officer died because of lack of supply of oxygen in the hospital/ hospitals.

Further, the Executive Director, State Health Society is directed to inform this Court regarding the process of disposal of 'COVID testing kits in private laboratories', 'syringes used for vaccination', 'PPE kits', and masks.

Let the Government of India place before us its National Clinical Management Protocol issued by the Ministry of Health and Family Welfare.

Mr. Rajiv Kumar Singh, learned counsel appearing in IA No. 2 of 2021 in CWJC No. 353 of 2021 has brought to our notice "The Bihar Epidemic Diseases, COVID-19, Regulation 2020", issued *vide* notification dated 17.03.2020, in exercise of powers conferred under Sections 2, 3 and 4 of the Epidemic Diseases Act, 1897, by the Department of Health, Government



of Bihar in the wake of outbreak of COVID 19. The said Regulation notified on 17.03.2020 came into force immediately and was directed to remain valid for a period of one year from the date of publication of this notification. It has been urged that in view of the second wave of COVID-19 outbreak, which appears to have more disastrous consequences, similar Regulation ought to have been notified. On perusal of the said regulation, we are, *prima facie*, satisfied that at-least a re-look is required by the State Government in this regard. Let Mr. S.D. Yadav, learned Additional Advocate General No. 9 seek instructions from the State Government in this respect.

List this case on 21.04.2021 at 4.30 p.m.

Let the Bihar State Human Rights Commission through its Secretary be impleaded as party respondent in the present matter.

(Chakradhari Sharan Singh, J)

(Mohit Kumar Shah, J)

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