

BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS  
(Special Original Jurisdiction)

W.P.No. 7456 of 2020

S.Jimraj Milton  
S/o. A.Sugirtharaj,  
1<sup>st</sup> Floor, Fatema Manzil,  
No.150, Linghi Chetty Street,  
Chennai – 600 001

...Petitioner

-Vs-

1. The State of Tamil Nadu  
Rep by its Health Secretary  
Secretariat, Fort St. George,  
Chennai – 600 009

...Respondent

AFFIDAVIT OF S.JIMRAJMILTON

I, S.Jim Raj Milton, S/o. Mr. A.Sugirtharaj aged about 35 years, having office at No.150, 1<sup>st</sup> Floor, Fatema Manzil, Linghi Chetty Street, Chennai – 600 001 do hereby solemnly affirmed and sincerely states as follows:

1. I submit that I am the petitioner herein I am fully acquitted with facts & circumstances of this case. I am filing the above writ petition to challenge the impugned government order passed by the respondent in G.O.Ms.No.174 dated 03.04.2020 in so far as insisting the affected victims to get treatment in private hospitals on their own costs and further direct the respondent to make arrangement by providing treatment in all the private hospital with free of cost and pass further orders.

2. I submit that, I am practicing Advocate before this Hon'ble Court and I am devoted to the cause of Human Rights in a Democratic Society. I along with the like-minded friends joint together and functioning as an Organization namely "People Rights Protection Centre- (PRPC)" and am the Secretary of Chennai Unit and I espouse noble causes and one of the ways in which we try to vindicate such rights by resorting Public Interest Litigation. I strongly believe

in the rule of law and the wisdom of judiciary and the scope & jurisdiction for it to resolve vital issues affecting society at large.

3. I submit that, the COVID-19 is the infectious disease caused by the most recently discovered corona virus family. This new virus and disease were unknown before the outbreak began in Wuhan, China in December, 2019. It is estimated that one out of every sixth person who gets COVID-19, becomes seriously ill and develops difficulty breathing and needs hospital treatment. I further submit that when someone who has COVID-19 coughs or exhales, they release droplets of infected fluid. Most of these droplets fall on nearby surfaces and objects - such as desks, tables or telephones. People could catch COVID-19 by touching contaminated surfaces or objects and then touching their eyes, nose or mouth. If they are standing within one meter of a person with COVID-19 they can catch it by breathing in droplets coughed out or exhaled by them. In other words, COVID-19 spreads in a similar way to flu. Most persons infected with COVID-19 experience mild symptoms and recover. However, some go on to experience more serious illness and may require hospital care. Risk of serious illness rises with age: people over 50 seem to be more vulnerable than those under 50. People with weakened immune systems and people with conditions such as diabetes, heart and lung disease are also more vulnerable to serious illness. I also submit that, the risk of catching COVID-19 from the faces of an infected person appears to be low. While initial investigations suggest the virus may be present in faces in some cases, spread through this route is not a main feature of the outbreak. The World Health Organisation (WHO) is assessing ongoing research on the ways COVID-19 is spread and will continue to share new findings. Because this is a risk, however, it is another reason to clean hands regularly, after using the bathroom and before eating.

4. I submit that, considering the present situation arising out of corona virus infection in the country, the respondent issued G.O.Ms.97 dated

15.03.2020 to prescribe regulations to prevent the outbreak of corona virus disease (COVID-19) under the Epidemic Diseases Act, 1897. In that order, the government stated in fourth regulation about designated laboratory. Central or State Government have to authorize the designated laboratory and further it stated about each and every department wise precautionary regulation to control the COVID-19 spread. The government of Tamilnadu recognizes the listed Government and private hospitals as a designated laboratory for COVID-19. India in the third stage of community spread of COVID-19. Spread of virus all over India in large numbers, In that Tamil Nadu become 2<sup>nd</sup> by more than 500 confirmed cases. Apart from this the Government is taking various controlling measures to outbreak of COVID-19 in particularly, increasing the testing laboratory is primary work to control the spread of virus. Hence, hospitals are play vital role in this crises. World health organization declares about this situation as a heath emergency. At the emergency situation of the nation, government should provide all kind of essential service without cost. In that services basic medical facilities and COVID testing should be provide to all public irrespective of any cost by including authorised private hospitals also.

5. I submit that, as per the Press release No.230, 235 & 248 of Tamilnadu government on respective dates 27.03.2020 and 02.04.2020, In that the Hon'ble Chief Minister stating about various medical facilities arrangement like increasing of beds, testing centers and other essentials services. It includes the government make arrangements for free medical services by private hospitals for COVID-19 treatments. Then the government constitutes 9 Special Team by consisting of Senior IAS officers to monitor in various fields of essential service and controlling of COVID-19 spread. Among the aforesaid team, the 3<sup>rd</sup> special team comprises of Dr. K. Gopal IAS, Dr. Chandramohan IAS and Mr.S. Nagarajan IAS appointed to monitor the spread of COVID-19, Collaborate with private hospitals to provide medical support to the public and ensuring the

arrangement for isolation wards and medical equipments. In above Press Release No. 248 stating both the Government and private hospitals accommodate 22000 isolation beds and 5934 ICU beds. By way of increasing large number of isolation beds and other medical facilities, will control the virus spread and recovery of affected persons. Only with collaboration of government and private hospitals can handle the crises. So these medical service should be provided to the public at free of cost at this emergent period.

6. I submit that, in these circumstance to my shock & surprise the respondent now the government authorizes 110 private hospitals all over Tamilnadu for COVID-19 treatment and other testing purpose in the G.O. no. 174 dated on 03.04.2020 to prevent the spread of this communicable disease. It's one of the effective actions taken by the government. But in the same G.O. para four stating about the willing patients can approach the listed private hospital in the annexure with their own cost. How the government can authorize the private hospitals to collect money from the public for the COVID-19 treatment, which declared as the national disaster by the government itself. Article 38 of constitution ensure providing affordable healthcare is welfare of the people and Article 39(e) calls the state to make sure that health and strength of workers, men and women, and the tender age of children are not abused. So it's deadly against out right. At an emergent situation these essential should provide at free of cost with the reasonable financial support.

7. I submit that Article 21 of Our Constitution guarantees Right to live the dignified life includes Right to healthy life of every citizens. The pandemic COVID-19 disease destroyed the precious life and economy of the all the Countries irrespective of boundaries. China, countries in Europe and U.S.A was hit by the Corona and affected unimaginable but left with some good and

bad lessons. The Countries who have the health sector owned by the private players were most vulnerable than the countries who have health sector which was controlled by the Government. Even Cuba not only to control the disease in more efficient and effective way but went ahead to supply the health professionals to other countries and help indeed. So, it is Right to health can effectively ensure by the State by taking over control of the health network under one umbrella and ensure the safety of people with no cost on the affected people.

8. I submit that, the government passed a G.O. No. 180 to provide free treatment to the essential service workers like sanitary, police and conservancy employees and employees of state government, if they confirmed COVID-19 positive cases in either government or private hospitals. Action of government is appreciable, but this should be ensured to every citizens. When compare to state government employees, even they have financial backup to handle this crises period. But the daily wagers, laborers, contract workers and predestine dwellers they don't have any financial background or savings. They depend on day to day work. Due to 21 day lockdown by the government, it may also extend after 15<sup>th</sup> of April. Their standard of living is already questionable, at this disaster lockdown period, when compare to virus spread, poverty will kill them early. The pandemic is terrible but it is also a temporary crisis for the middle class. This class can observe social distancing more effectively than the rest and therefore is less prone to become the prime victim of the disease. Further, they are comfortable with their economic situation, their medical needs are insured and timely and their habitats are gated and secured. Therefore, even if the crisis extends for a month or two, this class will be able to bear the burden. So the Government has to make this order to all citizens without any discrimination. When compare to them, marginal sector is highly affected. It's unfortunate situation, so the government must ensure free

health services to all citizens irrespective of class discrimination. It's against the Article 14 of Indian constitution.

9. I submit that, COVID-19 is a global epidemic. There is a growing acceptance within the middle classes that everybody is untouchable today. From someone at the highest levels of power to a beggar on the street, anyone can be the carrier of the deadly disease. Each body is suspect and dangerous as it can contaminate with a mere touch. We are treating each one as an impure 'other' and disciplining ourselves to keep a safe social distance. 'Your touch may kill!' we are told in each news bulletin. Ostracizing oneself from the social is the new norm. Under the burden of several deaths, families, societies, religions, nation-states, ethics and even the Gods are collapsing. Only the secluded, alienated 'untouchables' will survive. The pandemic is terrible but it is also a temporary crisis for the middle class. This class can observe social distancing more effectively than the rest and therefore is less prone to become the prime victim of the disease. Further, they are comfortable with their economic situation, their medical needs are insured and timely and their habitats are gated and secured. Therefore, even if the crisis extends for a month or two, this class will be able to bear the burden.

10. I submit that, the disaster management Act 2005 emphasis the government has whole authority in all sectors to control the essentials services at that disaster period. Section 31(d) (iii) ensure the procurement of essential resources to response the event of disaster. The lockdown has already disproportionately hurt marginalized communities due to loss of livelihood and lack of food, shelter, health, and other basic needs. The government does have a responsibility to protect the health and well-being of

the population, but some of these steps have left tens of thousands of out-of-work migrant workers stranded, with rail and bus services shut down.

11. I submit that, As local, state, and federal policymakers work to address alarming existing and potential shortages in supplies and capacity (testing, ventilators, beds, and staff, to name a few) to prepare for the expected increase of COVID-19 patients in the coming weeks and months, it is critical that early efforts also build on the new legislation that covers testing costs to provide free treatment for those exposed to coronavirus. Providing free treatment is important for many of the same reasons that free testing is so urgent. First, by ensuring people do not avoid testing (as testing capacity slowly ramps up) because they fear the unmanageable costs of care, it will help urgently address the public health crisis and slow the spread (flattening the curve). Second, doing so will ensure better health outcomes for people who are sick by enabling them to seek care. And third, it will reduce the financial burdens of care during what is rapidly turning into an economic emergency.

12. I submit that, due to government's lethargic act the wide spread of disease happen. Improper screening of foreigners from abroad into Tamilnadu leads to this transmission of virus. The ICMR study also revealed that the screening measures like temperature check at airports were not sufficient to test for symptoms. It said that 46 per cent passengers may have been missed in screening at the airports, as many of those returnees may not have showcased the symptoms at the airport screening. Recent studies have shown that asymptomatic can be as infectious as the patient with symptoms. Therefore, there was a need to track post-travel symptoms among people The death rate is increased day by day. In the beginning of 15.03.2020 itself, the government has pass G.O. how to regulate the various department to restrict

spread of COVID-19. But the actions are taken slowly, due to day to day increase of death rate. , the state has to increase the number of testing lab and beds. But the labs and hospital must provide free service to safeguard economically weaker section. Every sectors working people affected due to lockdown, even the advocates also been struggling in these periods without any cases, likewise all the unorganized work force in industries are damaged. We can't imagine the suffering of underprivileged sections. They don't have any kind of sanitation facilities, proper shelter, food and all other basic needs. how can they get treatment in private hospitals by paying cash. Minimum estimation for requirement for treatment from 25,000 to 2,00,000 has to spend. It's declared indirectly that, person who is having money only can get the medical facilities to secure their lives and others only can die.

13. I submit that, countries like Spain, Singapore are nationalize the private hospitals and providing free treatment at these emergency crises. Singapore is providing all treatments to its people at free of cost and also provide 100 dollar per day for the people who are suffering. Even, in India Andhara pradesh, Maharastra are taken the private hospitals under the government control to provide the medical support to all affected people without cost. These are good initiatives taken by those governments. In the face of the COVID-19 pandemic, in addition to lockdowns, curfews and economic upheaval, most planning centers and living rooms have been debating the shortage of ventilators and the need for critical care in the days to come. Further, the government should be see heartbreaking scenes from Italy, Iran and New York, where many lives have been lost, hospitals are full and ventilators are in short supply. It is important to delve on these issues and develop rational approaches and solutions, in the Indian context, to an impending surge of critically ill patients. The modern ventilator is an advanced medical device that performs the complex task of allowing a patient

to survive respiratory illnesses in various settings. To ICU specialists, also known as intensivists, the ventilator is a powerful ally when managing patients who need critical care. Likewise, Tamilnadu government also takes an appropriate action to provide all the authorised 110 private hospital to provide free medical treatment for COVID-19 confirmed cases and increase the temporary medical infrastructure.

14. I submit that, the impugned order of the respondent in so far as insisting the people to get treatment in private hospital in their own costs is illegal and unsustainable in the eye of law for the following among other

#### GROUND

- a. The so far as clause 4 of impugned order insisting the people to get treatment in their own cost is highly illegal & arbitrary.
- b. The impugned government order is violating the right to live guaranteed by Art 21 of the Constitution of India.
- c. The impugned government order is extended treatment in free of cost to the government servants. But without any valid classification the same was denied to ordinary people. Hence the said order is utter violation of Art 14 of Constitution of India.
- d. The impugned government order is against the basic principles of the constitution of India to protect their people
- e. The impugned order is in contradiction of the basic duty of the government to secure it people by providing medical assistance for any panic disease at free of cost without any discrimination.
- e. The respondent ought to have taken actions under Section 31(d) (iii) of National Disaster Management Act, 2005 to ensure the procurement of essential resources to response the event of disaster

f. Right to health can effectively ensure by the State by taking over control of the health network under one umbrella and ensure the safety of people with no cost on the affected people.

g. COVID-19 is a global epidemic & natural calamity and all the affected persons should be treated as equally.

f. The respondent should be adopted the treatment & relief work done by other countries affected by COVID-19 patients.

14. I submit that, the lockdown is not only solution to control the COVID pandemic, parallel measure has to taken by the government by way of proper sample testing and find out the confirmed persons keep them in separate isolation wards. But this is possible by increasing screening and regular monitoring of home quarantine persons. Then only we can outbreak the pandemic. How can pedestrian dwellers, daily wagers will check for sample testing of COVID-19? Leading a normal life is great task for them, due to lockdown they don't have work also, Whether the Rs.1000 given by the government is enough for this 21 days? At this situation economically weaker section people are getting loan for high interest to manage this crisis. In this, if they having the symptoms of COVID 19 pandemic, how they can get treatment? Only limited government hospitals are testing of COVID, that too in few districts. When compare to government hospitals more than 110 private hospitals going to treat for corona pandemic after this G.O. no. 174 on their public own cost. How the people can afford for their treatment without income. To Outbreak the pandemic, sample testing, isolation beds has to increase, only then we can get the exact analysis of pandemic. For that sampling testing, we must come into door to door medical screening, and if the person having a symptoms he must provide quarantine facility and further he should be treated in hospitals. So the government has made a

arrangement for making a free medical treatment and hospitalization in private hospitals.

Hence, for the aforesaid reasons it is therefore prayed that this Hon'ble Court may be pleased to grant an order of interim stay to stay the operation of the particular clause 4 in the impugned G.O.174 dated 03.04.2020 pending disposal of this writ petition.

Hence, for the aforesaid reasons it is therefore prayed that this Hon'ble Court may be pleased to grant an order of interim direction, direct the respondent to provide treatment for the COVID-19 patients even in the private hospital at free of cost pending pending disposal of this writ petition

15. I submit that, in the above circumstances I have no other alternative and efficacious remedy except to approach this Hon'ble Court under Article 226 of the Constitution of India by invoking extraordinary Original Jurisdiction of this Hon'ble Court and I further submit that, I have not filed any other Writ Petition for this payer before any Court of Law.

For the aforesaid reasons, it is therefore prayed that this Hon'ble Court may be pleased to issue a WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate Writ or order or direction in the nature of Writ under Article 226 of the Constitution of India to call for the records pertaining to G.O.M.S.No.174 dated 03.04.2020 passed by the respondent and quash the in so far as clause 4 of the same and further direct the respondent to ensure to provide medical assistance irrespective of all COVID-19 affected patients at free of cost and pass further or other order as this Hon'ble Court may deemed necessary under the circumstances of the case and thus render justice.

Solemnly affirmed at Chennai  
this the 7<sup>th</sup> day of April, 2020  
And signed his name  
In my presence.

BEFORE ME,

ADVOCATE :: CHENNAI

BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

W.M.P.No. of 2020

in

W.P.No. 7456 of 2020

S.Jimraj Milton  
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...Petitioner

-Vs-

1. The State of Tamil Nadu  
Rep by its Health Secretary  
Secretariat, Fort St. George,  
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...Respondent

AFFIDAVIT OF S.JIMRAJMILTON

I, S.Jim Raj Milton, S/o. Mr. A.Sugirtharaj aged about 35 years, having office at No.150, 1<sup>st</sup> Floor, Fatema Manzil, Linghi Chetty Street, Chennai – 600 001 do hereby solemnly affirmed and sincerely states as follows:

1. I submit that I am the petitioner herein I am fully acquitted with facts & circumstances of this case. I am filing the above writ petition to challenge the impugned government order passed by the respondent in G.O.Ms.No.174 dated 03.04.2020 in so far as insisting the affected victims to get treatment in private hospitals on their own costs and further direct the respondent to make arrangement by providing treatment in all the private hospital with free of cost and pass further orders.

2. I submit that, the aforesaid government order published in the government official website and not privately circulated. Hence, we unable to produce the original copy of the said impugned government order and we only filed the web-copy of the said order.

For the aforesaid reasons, it is therefore prayed that this Hon'ble Court may be pleased to dispense with production of the impugned government order in G.O.Ms.No.174 dated 03.04.2020 issued by the respondent under render justice.

Solemnly affirmed at Chennai  
this the 7<sup>th</sup> day of April, 2020  
And signed his name  
In my presence.

BEFORE ME,

ADVOCATE :: CHENNAI