

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7431 of 2020

M.Munusamy

... Petitioner

-VS-

1. The Secretary to its Represents
The Union Government of India,
Rajiv Gandhi Bhawan, Safdarjung Airport,
New Delhi-110 003.
2. The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi-110 011.
3. Executive Directors, Indian Railways,
Government of India,
Rail Bhawan,
New Delhi-100 001.
4. The Chief Secretary of Tamil Nadu,
Secretariat, Chennai-600 009.
5. The Secretary of Tamil Nadu,
Health and Family Welfare Department,
Chennai-600 009.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing that Union Government and Tamil Nadu Government ought to have been increased in private hospitals and ought not to have increased in carriages due to lack of sanitation and infrastructure.

For Petitioner : Mr.Krishna Murthy
For Mr.N.Mahendra Babu
For R1 and R2 : Mr.V.Chandrasekaran &
Mr.K.Srinivasa Murthy
Sr. Panel Counsel
For R3 : Mr.P.T.Ramkumar &
Mr.P.Srinivasan

For R4 & R5 : Mr.S.R.Rajagopal
Addl. Advocate General
Asst. by Mr.V.Jayaprakash Narayanan
Govt. Pleader

ORDER

This Writ Petition has been filed for a direction to both the Union and Tamil Nadu Governments to increase a number of private hospitals to provide medical aid to the Corona infected patients, instead of confining them in carriages for treatment, on the ground of lack of sanitation and infrastructure.

2. Heard the learned counsel for the parties by Video Conference through Zoom App.

3. It is the case of the petitioner that the infectious disease, namely, Covid-19 attacks directly on the respiratory system of the human body, followed by severe cough, cold and fever. On account of the spread of the said virus, the Union Government had announced lock down throughout the Country as national disaster. It is the further case of the petitioner that both the Central and State Governments, instead of adding infrastructure facilities in private hospitals, have chosen to provide treatment to Corona affected persons in carriages for the reasons best known to them and those carriage would not have been maintained with proper sanitation, thereby leading to a health hazard to patients, who are going to be confined therein. Therefore, the petitioner has approached this Court for a suitable direction in this regard so as

not to convert carriages into hospitals to give treatment to Corona affected persons therein.

4. Mr.P.T.Ramkumar and Mr.P.Srinivasan, learned counsel appearing for Railways have strenuously argued that the patients are categorized as three groups, namely, i) mildly and very mildly affected persons, ii) moderately affected persons and iii) severely affected persons. Those, who fall under the Group-I (mild and very mild) will be confined into the Coaches, which are merely going to be used as Isolation Wards and will not at any cost be used as hospitals. They further argued that the coaches purported to have been converted into Isolation Wards have not been provided with any ventilator facilities and therefore, the apprehension of the petitioner that there will not be proper treatment provided to patients in case they are confined into carriages, is baseless. It is further brought to the knowledge of this Court that the carriages are going to be used as Mobile Isolation Wards and the carriages will be moved to nearby needy places, where there is no place for setting up isolation wards. Train coaches converted into isolation wards will be pressed into service to quarantine patients, if required and the coaches can be stationed at idle railway lines without causing any hindrance to traffic.

5. At this juncture, Mr.P.T.Ramkumar appearing for R3 has stated that with regard to conversion of coaches, a detailed status report has been filed before the Hon'ble Supreme Court in SLP Nos.468 and 469 of 2020 and

therefore, the present writ petition is not maintainable before this Court. He has also relied upon a Circular dated 31.03.2020, issued by the Railway Board in respect of conversion of Coaches into isolation wards to quarantine the virus affected persons and the relevant portion of the said Circular is extracted hereunder:

“No. 2019/M (C)/202/1 New Delhi, Dt. 31. 03. 2020

3. For conversion of ICF/Hybrid GS coaches into Quarantine/isolation coaches, the following shall be kept broadly in mind:

a. One Indian style toilet to be converted into a bathing room.

i. This can be done by placing wooden batten structure/Chequered sheet on the entire lavatory floor which also covers the squatting pan and does not create any level difference on the floor.

ii. It is to be equipped with bucket, mug and soap dispenser also.

iii. Taps with lift type handle/long handle will need to be provided in washbasins.

iv. Similar tap to be provided at proper height so that bucket can be filled.

b. The first cabin near the bathing room shall be provided with two hospital/plastic curtains transversely in the aisle so that the entry and exit to the entire cabin can be screened off.

i. This cabin will be used as store/paramedics area.

ii. Two Oxygen cylinders will also be provided by the Medical department for which suitable clamping arrangement on the side berth side of this cabin may be provided.

c. Extra bottle holders shall be provided in each cabin for holding medical equipment, two for each berth.

d. Extra 3 peg coat hooks, 2 per cabin to be provided.

e. Mosquito net to be provided on windows to avoid mosquito's entry inside and have proper ventilation too.

f. Each cabin will be provided with 3 dustbins with foot operated lids of Red, Blue and Yellow Colour suitably lined with garbage bags.

g. All charging points for laptop and mobile to be functional. h. It must be ensured that all amenity fittings are in place, upholstery is in good condition and broken panels etc. are replaced.

4. No Insulation of Bamboo Chic/Khus etc is to be provided for either WGSCN coaches as advised vide Board's letter at reference (II) or GS quarantine/isolation coaches. The coaches shall be intensively cleaned before before being offered for occupation.

5. The Zonal Railways are advised to plan for the above modifications immediately and advise the date of readiness of these rakes to Board immediately. Converted GS coaches rakes and converted WGSCN coaches rakes are to be maintained separately.

6. Utilisation certificates will need to be furnished to Ministry of Health and Family Welfare (MoH&FW) and Ministry of Finance (MoF). It is desirable that all details of coach modifications, purchases, and manufacture of various items, sanitation and cleanliness, pertaining to COVID-19 are separately and concurrently captured.

7. This issues with the approval of MRS and MT.”

He has further stated that in addition to issuance of the aforesaid Circular, the Ministry of Health & Family Welfare, Directorate General of Health Services (EMR Division) have also framed certain guidelines on appropriate management of suspected / confirmed cases of COVID-19.

6. Mr.V.Chandrasekaran & Mr.K.Srinivasa Murthy, learned Senior Panel Counsel appearing for R1 and R2 have contended that the Government is really intended to use carriages as Isolation Wards to accommodate mildly and very mildly affected persons and from the secondary stage onwards, the patients will be shifted to hospitals. The Government has been taking all steps to prevent the spread of Corona virus and unless social distancing is maintained, it will be very difficult to control over the spread of virus. As a precautionary measure and preparedness, the Government has in-principle decided to use carriages for isolating Corona infected persons and such carriages will not at any stretch of imagination, be used as a substitute for private hospitals for the present.

7. The learned Additional Advocate General, assisted by Mr.V.Jayaprakash Narayanan, learned Government Pleader appearing for R4 and R5 has submitted that the relief sought for in the present writ petition is in the nature of Public Interest Litigation, which cannot be sought for before this Court and therefore, the Writ petition is liable to be dismissed *in limine*.

8. Heard the learned counsel for the respective parties.

9. A circumspection of the entire facts and circumstances of the case, coupled with the arguments on either side unfolds the fact that the Government is going to use carriages only as isolation wards and not hospitals

for the **PRESENT** and they are preparing for untoward incidents that may arise as in U.S.A., England, Italy, Spain, France, etc. The learned Standing Counsel for Railways have categorically stated that coaches, which are going to be used for accommodating mildly and very mildly Corona infected persons, will be moved to particular places and villages, having no place for isolating them to ensure maintaining social distancing. It was further stated that such converted coaches will not be provided with any ventilators for giving treatment to patients, clearly meaning thereby that the Government have no idea to substitute coaches for private hospitals. Prevention is better than cure. In case of emergency in future, the Corona affected patients cannot be made to run from pillar to post to isolate themselves, in case they do not find suitable places / beds for isolation and therefore, with the vast vision, the Government has decided to convert coaches as mobile isolation wards to meet the emergent situation, which cannot be faulted with. The coaches can be easily detached for the purpose of isolation in order to maintain social distancing, than a pucca constructed building. The Policy decision taken by the Government for conversion of coaches cannot be blindly interfered with by this Court, unless it is perverse or illegal, as it involves the interest of public at large and this Court cannot sit on the administrative side and express its view in respect of conversion of coaches. The present petition appears to have been filed only with an intent to gain publicity and it has no public interest.

10. This Court cannot issue a blanket direction to the Government to

increase the strength of private hospitals to treat Corona infected persons and in that event, the hospitals, which have been constructed violating the sanctioned building plan, may also seek for regularization of the plan on the ground that they were given permission by the Government to treat Corona patients. Moreover, insofar as private hospitals are concerned, it cannot be expected that all are always service oriented, as the administration of certain private hospitals has already gone into the hands of Corporate agents / money mongers and by using the present scenario, they will certainly attempt to mint money, instead of providing proper and good care to patients. If the Doctors do not fall prey to exploiting private hospitals, their profession is the best in the world and their noble services are exploited by handful of private hospitals for their benefit by extending peanuts to them. Of course, there are always a few bad nuts in any profession and the medical profession is not an exception. In this critical situation, the yeomen services that are being rendered by Doctors to Covid patients cannot be let slip from memory forever and this Court really extends its profound appreciation to Doctors, Nurses, Police, Last Grade Employees of Corporation and the Officials of the Health Department.

11. When the matter was taken up for hearing on 07.04.2020, it was represented by Mr.V.Jayaprakash Narayanan, learned Government Pleader that a Writ Petition in W.P.No.7425 of 2020 has been filed in the form of PIL, seeking to convert the private colleges and hostels for accommodating migrant workers and road side dwellers so as to prevent the spread of Corona Virus. He

contended that Government cannot insist the owners of private colleges and hostels to offer their premises for such conversion and it is for them to voluntarily offer their premises for isolation. However, a Single Judge is not empowered to comment anything on the matter, pending before the Division Bench. It cannot be lost sight of the fact that after normalcy is restored, the parents will be reluctant to permit their children to study in those colleges / stay in the hostels, thinking that those places ought to have been used for isolating Corona affected persons and in that event, the privates colleges would incur financial loss and the loss cannot be recovered from anyone, much less the Government, as the Government itself is in severe financial crisis due to unforeseen pandemic outbreak. Moreover, it is very difficult to fumigate structured buildings, whereas it is very easy to fumigate Railway coaches, which are ambulatory in nature and the people, who are very sick can easily be transferred to higher centres.

12. A Hon'ble Division Bench of this Court in the case of *India Awake for Transparency, Rep. by its Director, Rajender Kumar, Unit 1, Mezzanine Floor, 24 Desikar Street, Mylapore, Chennai 600 004 vs. The Secretary, Department of Health and Family Welfare, Government of Tamil Nadu, Chennai and another [W.P.No.7443 of 2020]*, while ordering notice on 08.04.2020, narrated the impact of Corona virus and insisted upon the need for self-quarantine in a novel way as under:

"Pandemic has no religion; It knows no region; It won't

come on its own; Unless there is an invitation; Crowding can lead to its aggravation; So maintain sanitation and reduce social interaction; That will alone prevent transmission."

13. The Hon'ble Supreme Court in the case of *Hashank Deo Sudi vs. Union of India [W.P.(Civil) Diary No.10816 of 2020] decided on 08.04.2020*

directed free tests to be conducted for Covid Patients, taking note of the serious and prevalent situation and the directions issued to that effect read as follows:

"We, thus, issue following interim directions to the respondents: (i) The tests relating to COVID-19 whether in approved Government Laboratories or approved private Laboratories shall be free of cost. The respondents shall issue necessary direction in this regard immediately. (ii) Tests relating to COVID-19 must be carried out in NABL accredited Labs or any agencies approved by WHO or ICMR."

14. In the midst of argument, the learned counsel for the petitioner has drawn reference to Article 21 of the Constitution of India to state that no person shall be deprived of his life or personal liberty and the decision to confine Corona affected persons amounts to violation of such liberty guaranteed under Article 21 of the Constitution of India. The petitioner must realize that the Covid Virus does not know any Law, much less Article 21 of the Constitution of India and it will invariably affect rich and poor, stronger and weaker sections irrespective of caste, creed and religion and therefore, the said contention is not acceptable.

15. The person like the petitioner should understand that he should not always make hurdles to the remedial measures taken by the Government and

he must be slow in filing such type of petitions, which will create a kind of desperation and vexation in the Government machinery and slow down the process. When the developed countries like U.S.A., England, etc have been struggling to control the impact of virus on the society, India, being a Developing Country should be more cautious and if the Virus is allowed to be spread in the Nation, there will definitely be cluster of corpses and there will be no sufficient burial / crematory grounds available to bury and cremate dead bodies. Indian population has already exploded and there are no fully equipped hospitals to suit the need of the hour. If the Virus attacks lakhs of people in India, a pitiable condition may arise, where the Doctors will decide who should be saved? and who should die?, as there are no sufficient medical equipment, such as ventilators, adequate supply of oxygen, beds, etc. available in India. We have already caused considerable damage to Nature, which is the owner of the land and it is the time of Nature to strike us in the form of virus. Famine and water crisis are also on the way, as we have destroyed the agricultural lands and water bodies. Nature is now retaliating.

16. It was clinically proved that Corona is Ribo Nucleic Acid (RNA) and not Deoxyribo Neclectic Acid (DNA). RNA requires living cells to develop and multiplies, whereas Corona enters lungs, multiplies and may be fatal. In order to curtail its spread, the Government had announced lockdown and suggested for isolation. Corona Virus appears to be more contagious and infectious, on account of which, there is a chance of losing innocent civilians. In

Mahabharata, Krishna will inform Draupati that in the battle, the loss will be on both sides, and even good people will also die on either side. Vikarna, brother of Duriyothanan, who is known for his honesty and integrity, though condemned the act of Draupati, was killed by Beema and Gadothgajan and Abimenu too were also killed on the side of Pandas. The battle at Kurukshetra was between siblings and in the present situation, human beings are waging a War against an unknown enemy, which could not be seen in a naked eye and is dangerous. The petitioner, instead of coming forward with the aforesaid relief, must contribute by making good suggestions for improvement to curb the spread of virus. In our Country, many people are trying to blame others, instead of realizing that they are solely responsible for getting infected with virus without following the norms, that are required to safeguard themselves and others. In this case, Railways have identified Coaches for segregation and isolation of Group-I patients to ensure that they are not abandoned.

17. Last but not the least, Corona Virus teaches several lessons to everyone. There cannot be any difference of opinion with regard to the fact that human beings cannot wage a battle against Nature and it is the Nature that will always win the war and we, being human beings are only mortals. I am sure that this Virus will change the entire World Order and survivors of this generation could see the differences between post Corona and Pre Corona impact in all over the World.

18. In the result, this Court is of the view that the direction sought for in this petition cannot be issued and if any negative direction is issued in this case, that will reduce the energetic services being rendered by the personnel of various Department and therefore, the Writ Petition is liable to be dismissed. Accordingly, the present Writ Petition is dismissed as devoid of merits. No costs.

19. Before parting with this order, I want to emphasise that though Court proceedings are conducted through Zoom Video Conference by utilizing the services of private service providers on account of the national disaster of pandemic outbreak, it should not at any cost be videographed and left exposed on the open web and in such an event, appropriate action will be taken against persons, who are responsible for such misdeed and will be punished under the penal provisions. Further, no Court proceedings shall be telecast without taking prior permission either from the the Hon'ble Chief Justice and the concerned Judge / Judges.

S.VAIDYANATHAN, J.

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09.04.2020

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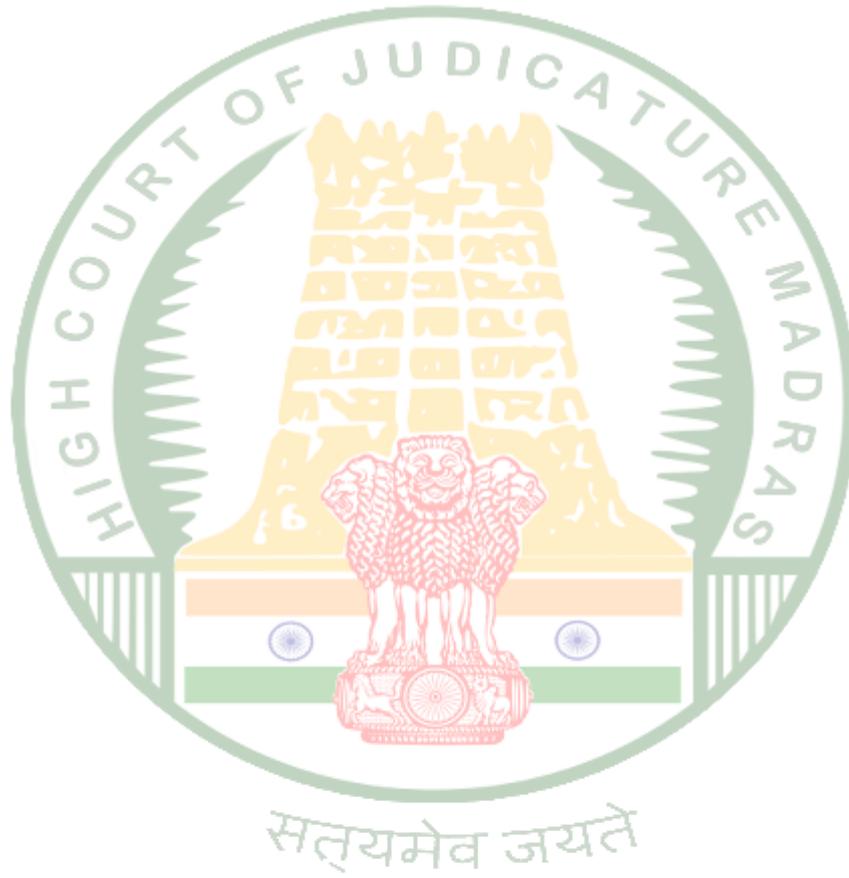
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