

IN THE HIGH COURT OF ORISSA, CUTTACK.

W.P.(c) PIL No. 12430 of 2020
(ORIGINAL JURISDICTION CASE)

Subject Code: 219900

In the matter of:

An application under Article 226 of the
Constitution of India, 1950.

AND

In the matter of:

An application arising out of Articles 21 of the
Constitution of India, 1950.

AND

In the matter of:

An application arising out of the Epidemic
Diseases Act, 1897 and the Odisha COVID-
19 Regulations 2020.

AND

In the matter of:

Ananga Kumar Otta,

.
... .. **Petitioner.**

VERSUS

1. Union of India, represented by the Secretary,
Ministry of Health & Family Welfare, 156-'A' Wing,
Nirman Bhavan, New Delhi-110011.
2. State of Odisha represented by the Principal
Secretary, Department of Health & Family
Welfare, Lok Seva Bhawan, Bhubaneswar, Dist.:
Khurda-751001.
3. State of Odisha represented by the Additional
Chief Secretary, Department of Revenue &
Disaster Management, Lok Seva Bhawan,
Bhubaneswar, Dist.: Khurda-751001.
4. District Magistrate and Collector, Kendrapara,
District Collectorate, At./P.O./P.S.: Kendrapara ,
Dist. : Kendrapara

... .. **Opposite Parties.**

The matter out of which the present application arises was never before this Hon'ble Court in any form whatsoever as per the instructions of the petitioner.

To

The Hon'ble Mr. Justice Mohammad Rafiq, M.Com. LL.B, the Hon'ble Chief Justice of the High Court of Orissa and His companion Justices of the said Hon'ble Court.

Humble petition of the
petitioner named above;

MOST RESPECTFULLY SHEWETH:

01. That in the present writ application, the petitioner begs to submit that the disclosure of the identity of the patient suffering from the attack of Corona virus, leads to devastating consequences. Country is awash with digital platforms of all hues and opinions that operate without constraints and have the potential to cause far more damage. It seems that the Government itself has dual stand.

02. That the present writ petition is filed in public interest and the petitioner does not have private or personal interest in respect of the subject matter or the relief sought for in the present Writ Petition. Further, it may be pertinent to state that the petitioner, a member of the High Court Bar Association, does not have any sort of personal grievance against any of the opposite parties.

03. That the petitioner has approached this Hon'ble Court through this Writ Petition on his own and has not received or obtained any amount from any source whatsoever towards the expenses involved in the filing of the present Writ Petition. It may not be out of place to mention that the lawyers engaged by the petitioner having expressed their concern over the matter, agreed to pursue and conduct the case without charging any remuneration or obtaining fees for their job.

04. That at the outset, it may be submitted that several cases have been reported of the people affected with COVID-19 as well as healthcare workers, sanitary workers and Police, who are in the frontline for management of the outbreak, facing discrimination on account of heightened fear and misinformation about the peculiar manner of infection.

05. That due to the need to counter such prejudices, the Government of India in an advisory said that those affected by corona virus or under quarantine, should not be identified. Most states in India have a strict policy similar to that of ICMR – of not revealing the identity of COVID-19

patients. And in cases where the identity is revealed, people have faced consequences. For example, it is ascertained that at Pune, authorities have warned of strict action against those who reveal the identity of COVID-19 positive patients on social media and the Police at Mangaluru in Karnataka announced that stringent action will be taken against those who reveal the identity of COVID-19 positive patients on social media. Similarly, in Jammu, a Medical Superintendent was suspended after disclosing the identity of a suspected COVID-19 patient in Rajouri district of Jammu and Kashmir. His actions allegedly violated doctor-patient confidentiality.

06. That the Government of Odisha broke its own norms of not revealing the identity of corona virus patients as it named the fifth person in the State who tested positive, that was on 2nd April, 2020, when Bhubaneswar Municipal Corporation revealed the identity with an explanation from the Commissioner that "The man is mentally retarded, and for the last three months he has not gone anywhere except to some local hospitals for treatment... He has no records of travel. As there is no other known way of finding out how he contacted the virus, we have issued an appeal to people to inform us and go on quarantine." The one-off announcement might have been made over fears that the patient who is

mentally challenged might have triggered community transmission of COVID-19.

This sort of revelation of the identity of the patient has come at a time when the Government itself has lodged cases against people for trying to reveal the identity of the infected persons. It may be noted that on 1st April, 2020, Bhadrak Police arrested 3 persons for revealing the identity of a 29-year-old chef working in Dubai who tested positive on 31st March, 2020. A day later, it was reported that Begusarai Police in the State of Bihar has filed an FIR against three people for revealing the identity of a COVID-19 patient on social media.

07. That the incidents of the like nature reflect the varying ways in which the Country is handling the crucial issue as to whether the identity of a patient infected with COVID-19 should be revealed or not. Latest, is an information which relates to the junk of a PIL before the Hon'ble High Court of Madras, seeking disclosure of the identity of COVID-19 Patients. The plea for disclosure of the identities of COVID-19 patients in Tamil Nadu was that unless the identity of affected persons was revealed it would be impossible for others to know whether they have come

across an infected person and decide on self quarantining and the COVID-19 bulletins issued by the Government only mentioning the city/town, age, gender and primary or secondary contact details of patients is grossly insufficient.

08. That on the other hand, 'easier contact-tracing' is the reasoning put forth by States, which have taken the decision to reveal the identity of COVID-19 patients e.g. in Gujarat, the Deputy Chief Minister has revealed that the State Government has decided to officially declare the names of COVID-19 positive patients. Speaking to the reporters on 23rd March, 2020, the decision was justified by saying that revealing the identity of the COVID-19 patients would mean that "their neighbours, business associates, or those who came in contact with them can get themselves checked." Similarly, in Uttar Pradesh, the Chief Medical Officer has told COVID-19 patients to reveal their identity themselves. Speaking to *The Times of India*, the Health Official said, "Self-identification by patients will alert others who were in contact with them and they can take steps to not infect more people. They must get themselves isolated/tested."

09. That the Union Government in its Ministry of Health and Family Welfare has issued an advisory to the citizens, asking them to not “spread names or identity of those affected or under quarantine or their locality on the social media.” But what is the stance taken by the Governments — both at the Centre and at the State-level — on the issue?

10. That the Head of Research Management, Policy, Planning and Coordination at Indian Council of Medical Research (ICMR), explains to *'The Quint'* that India’s policy is not to reveal the identity of the patient. It has been added thus; “We are not revealing the identity of the patient. This is the stance the ICMR has taken. We do not disclose the name, age and in fact, anything about the patients.” Expanding further by saying that health is a state subject, the Head of Research Management, Policy, Planning and Coordination added; “We don’t know about the states adopting their own policy. Because health is a state subject, so we cannot say anything about the State Governments.” This means that even though ICMR has a policy on not revealing the identity of COVID-19 patients, the State Governments can formulate their own policies based on the situation prevailing therein.

11. Thus, the issue as to not keeping the patients' identities anonymous is required to be examined in the light of underlying issues of privacy, the stigma of being seen as a COVID-19 patient, and the urgency of response to a fast-spreading communicable disease. But does revealing the identity of a COVID-19 patient lead to better and more comprehensive contact-tracing? As the number of COVID-19 cases rise, an increasingly difficult choice presents itself to the State Governments. To combat stigma and respect the COVID-19 patient's privacy by not revealing their identity? or will a public health emergency with a communicable disease compel it to take a different stance? On the anomaly, an independent researcher of global health, bioethics and health policy, explains before *'The Quint'*, a news website that the important factor is the question of "value-add." According to his opinion, revealing the identity in public is not a good idea, because of stigmatisation and it must not be done unless there's a value-add in revealing the identity of the patient. Ideally, if identity of a COVID-19 patient has to be revealed, it should only be done with the consent of the person, and for some specific purpose. He further opined that a lot can be accomplished to a large extent, including contact-tracing, using de-identified details.

It may be submitted that in the Country, the stigma associated with contracting COVID-19 is a crucial issue – evidenced by reports of quarantine posters stuck outside people’s homes, the eviction of doctors and nurses from their rented homes for fear of ‘infection,’ spraying disinfectant on migrant workers, et al.. It has come to fore that at Lucknow, the family of a COVID-19 patient was harassed with abusive phone calls blaming them for “bringing the virus to Lucknow” after the personal details of the patient and his family members were leaked. In fact, the stigma of being a COVID-19 patient, and the fear of social boycott, is preventing people from coming forward. For instance, eleven people suspected of corona virus, with a travel history to Dubai, reportedly fled from a hospital in Maharashtra's Navi Mumbai in March due to fear of social stigma. Said Researcher has further explained how revealing the identity of a COVID-19 patient in public could cause stigmatisation, and consequently, jeopardise efforts to control the spread of the virus. According to him, “Revealing the identity of the patient could lead to stigmatisation. It could also lead to potential harm to the individual, and implications for the family members, and their loved ones.”

12. That there has been several such incidents of social boycotting in the Country amidst the slogan '*corona harega, desh jitega*' and '*jaan hai to jahaan hai*' to '*jaan bhi, jahaan bhi*'. To win over the battle against corona virus may be tough, but a tougher struggle awaits a patient after his recovery. A 28-year-old man from Shivpuri in Madhya Pradesh, who had returned from Dubai on 18th March, 2020 and tested positive for the virus on 24th March, after his discharge from hospital on 4th April found it so difficult to live with his family that he decided to put their house up for sale. It was only due to social boycott. His father disclosed before the media that neighbours had even got milk and vegetable vendors to stop supply to their house and revealed; "We do not want to live in this colony anymore. So we decided with a heavy heart to sell our house," The former COVID-19 patient said the attitude of the neighbours changed when he tested positive and when his father, mother and sister, who were quarantined, came home after their reports returned negative for the virus. The man said he had defeated corona virus by keeping his morale high but the attitude of his neighbours had defeated him. Narrating the ill-treatment meted out to him and his family, the man said neighbours who used to visit their home often now bang

their doors on their face if they pass by their house. "Some neighbours were nearer to us than even our relatives. But now they treat us like criminals and untouchables and it seems like we are in hell," he said. The man's father, a retired assistant superintendent of police, said people bang on their doors late in the night to harass them. The young petroleum engineer said he wished to return to Dubai once things normalised, but as he was worried about his parents and sister, he decided to sell off the house and shift to Gwalior. Reportedly, the Superintendent of Police assured to provide all help to the family.

13. That in the aftermath of social boycotting. a 37-year-old man hanged himself to death in Una district of Himachal Pradesh. Some villagers, suspected him to be suffering from COVID-19 despite testing negative for it and he was dropped at his residence by the health officials from the quarantine centre. Commenting on it, the DGP in a recorded message on social media said, "Some villagers pointed out that this man was a suspected COVID-19 patient. He was quarantined and tested negative for the infection. When he returned to his village, he was discriminated against and socially boycotted by villagers. At this, he committed suicide." The DGP has urged people to

maintain social distancing (to check the spread of COVID-19), which "does not mean social discrimination".

14. That a corona virus survivor and his family in the district of Siwan under Angauta Panchayat in Nautan block at Bihar is reportedly facing social boycott days after the patient was cured and his family completed 14-days of quarantine apart from testing negative for the disease, not once but thrice. After he tested positive, he was taken to Nalanda Medical College and Hospital (NMCH) and 13 of his family members were sent to a quarantine centre in Patna. The ostracized family revealed that they do not venture to come out of the home to avoid questioning glaze and said something must be done to prevent social distancing from turning into social discrimination. It is stated by a cousin of the corona virus survivor; "Only a coronavirus survivor and his/her family members can understand the kind of social stigma we face these days. It's painful and depressing," . He added; "However, back home, our neighbours failed to maintain common courtesy. People are not ready to even look at us. Their kindness will boost our morale and will help us get over the physical pain and the mental trauma," People in other areas (Tola) of the village, he said, consider the entire area as a prohibited zone. "There's a rumour in

the village that our family got into trouble because of black magic and some unseen forces," He added further; "It's the hostile response which has forced my cousin to remain under home quarantine despite being declared fit by the doctors. Even the members of the family avoid going out,"

It has been admitted by the authorities that there were reports of social discrimination from the corona virus survivor's area and it is explained that it is mainly because of fear and lack of knowledge about the disease among the residents and there was a need to raise awareness among people, especially in rural areas, about the disease. It is stated that the people in the rural area are required to be explained the difference between 'social distancing' and 'social discrimination' and to clear this confusion, once a patient recovers, he or she is declared a corona virus survivor, he must be given a grand welcome in the Panchayat.

15. That two women from Sardarpara area of Nabdwip Town in the State of West Bengal faced harassment and being the daily labourers did not find engagement on account of the rumor spread in the locality that they have been found positive in COVID-19 testing, notwithstanding

the fact that they were taken by Police and later on COVID-19 test turning out negative, they were discharged from Hospital. They had to lodge an F.I.R. against the person spreading such rumor and that the person spreading such rumor was arrested. It is submitted that a rumor itself has caused undue hardship and affected the livelihood of the person concerned.

16. That the petitioner has assimilated the reports regarding the consequences that ensue in case the identity of the person suspected of getting infected by corona virus as available from various sources. The situation is almost identical across the Country and is alarming. In the context, it may be submitted that the petitioner has reasons to apprehend that similar situation may be there even in the State of Odisha. It is learnt that the fifth patient whose identity was disclosed, violating the norms under the refuge that contact-tracing was not possible and it was necessary for enlightening others, who might have come in contact with him, is facing stigmatisation. In a still worse situation, the identity of thirteen persons in the district of Kendrapara, whose COVID-19 test turned out as positive, has been disclosed with impunity and has become viral in social media. It is learnt that father of one of the patient received

a message through 'Whatsapp', a social media platform, wherein the details of all thirteen patients e.g. their names, age, respective address with SRF ID were mentioned. Further particulars of the sender and the recipient, though traced out, are not disclosed herein with an apprehension that it may thereby cause prejudice to the patients and their family members. Petitioner, however can cause the production of a copy of the said message with details, in a sealed cover, if directed by the Hon'ble Court.

17. That the petitioner begs to submit that 'Public Health and Sanitation; Hospitals and Dispensaries' comes within List-II- State List under the Seventh Schedule of the Constitution. It is the primary duty of the State to maintain confidentiality in the matter of treatments and is therefore, a part of ethics for the treating Doctors, not to divulge the details of the patients. It may be submitted that through legislation under the Juvenile Justice Act, 2015 and POSCO Act 2012, there has been adequate safeguard for not revealing the identity of a minor. Likewise, the State Government has also made provision under Regulation 4 of the Odisha COVID -19 Regulations 2020 on the score that no person/ institution / organisation will use any print or electronic media for information regarding COVID-19 without

prior permission of the DMET,DPH,OHS or Collector or Medical Superintendent as the case may be, with a view to avoid unauthenticated information and/or rumors regarding COVID-19. If any person/ institution / organisation is found indulging in such activity, it becomes a offence punishable under the Regulations and other provisions of law. Under Regulation 3.vii of the Odisha COVID -19 Regulations 2020, it has been stipulated that under no circumstances the name, exact address and telephone number of the person suspected of getting infected shall be disclosed. It may be stated that in exercise of the power conferred under Section 2 of the Epidemic Disease Act,1897 and in conformity with Rule 17 of guidelines issued by the Press Council of India, the State Government had also issued Media Related guidelines on 21.03.2020, which also prohibited the publication of name and address of the person infected/affected by COVID-19 virus, names of parents/relatives , treating doctors, assisting medical staff, for the security and safety of them. All these measures have been thrown to winds and the name and address of thirteen persons have become viral.

Master Circular on Acts and Regulations (COVID-19) of the State Government is annexed and is marked as **ANNEXURE:1.**

AND

Master Circular on other important information (COVID-19) of the State Government is annexed and is marked as **ANNEXURE:2.**

18. That while the petitioner seeks appropriate direction for a high level enquiry to set the criminal law into motion against the person through whom such information could be divulged and confidentiality was lost, it is simultaneously prayed that in order to check the devastating consequences, the appropriate Government may be directed to undertake a programme for making the people understand as to why there should not be any social boycotting.

Being aggrieved by the disclosure of identity of persons infected/affected by COVID-19, since divulged from the source and due to absence of social awareness programme to eradicate the evils of social boycotting, the petitioner

begs to present the writ application on the following amongst other;

G R O U N D S

A. For that the disclosure of identity of thirteen persons infected/affected by COVID-19 in the district of Kendrapara has raised a question about lack of adequate safeguard, for which such disclosure is prohibited and therefore, needs judicial intervention for a stern action on the basis of high level enquiry as may be directed there for.

B. For that the facts of the case would suggest that appropriate directions have to be issued in order to ameliorate the situation and further to advance befitting programmes to prevent social boycotting and make the people aware of the difference between 'social distancing' and 'social boycotting'.

C. For that in absence of appropriate measures against the persons guilty of spreading the information prohibited under law/guidelines, for maintaining tranquility, the people infected/affected by COVID-19 will suffer more damage than the disease itself.

D. For that the interest of the public demands an early action in the matter since it has distressing consequences and the people infected/affected by COVID-19 and their family members are to be saved from undue harassment.

E. For that inaction of the Government cannot be countenanced in law and equity since the same is clearly an act of a wrong to the society. Unless a judicial review of the situation is undertaken, public at large will suffer irreparable loss.

P R A Y E R

It is therefore, prayed that this Hon'ble Court may be pleased to issue a writ in the nature of Mandamus directing the appropriate authority to take stern action against the persons for whose connivance or negligence the identity of persons infected/affected by COVID-19 could be divulged and may be pleased to direct appropriate Government to frame Rules/Guidelines and/or to take steps for ameliorating the problems of persons infected/affected by COVID-19, whose identity has been disclosed and may

further be pleased to pass such other or further writ(s), order(s), or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

And, for this act of kindness, the petitioner as in duty bound shall ever pray.

Cuttack,

Date: 19.05.2020.

Advocate
for the petitioner.

AFFIDAVIT

I, Ananga Kumar Otta,

do hereby solemnly affirm and state as follows.

1. That I am the petitioner in the above noted case.
2. That the facts stated above are true to the best of my knowledge and belief.

Deponent.

CERTIFICATE

Certified that the grounds set forth above are good grounds and having prepared the same, I undertake to support those grounds at the time of hearing.

Cuttack,

Date: 19.05.2020.

Advocate.

UNDERTAKING

Petitioner undertakes to file English translation of the vernaculars in ANNEXURE: 2, if directed by the Hon'ble Court.

Cuttack,

Date: 19.05.2020.

Advocate.

CERTIFICATE

Due to non-availability of cartridge papers, this writ application has been prepared on thick papers, in my office.

Cuttack,

Date: 19.05.2020.

Advocate.

IN THE HIGH COURT OF ORISSA, CUTTACK.

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Cuttack,
19.05.2020.

Advocate
for Petitioner