

DISTRICT: KAMRUP(M)

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

(CIVIL EXTRA ORDINARY JURISDICTION)

PUBLIC INTEREST LITIGATION NO. 48 /2020

CATEGORY :

CODE :

To

The Hon'ble Mr. Justice Ajai Lamba, B.A. (Hons., English), LLB, the Chief Justice of the Hon'ble Gauhati High Court and his Lordships' other companion Justices of the said Hon'ble court.

IN THE MATTER OF:

A Public Interest Litigation under Article 226 of the Constitution of India read with GAUHATI HIGH COURT (PUBLIC INTEREST LITIGATION) RULES 2011 for issuance of a writ in the nature of Mandamus or any other appropriate writ, order or direction of the like nature.

-AND-

IN THE MATTER OF:

Enforcement of Fundamental Right under Article 21 of the Constitution of India.

-AND-

IN THE MATTER OF:

Violation of the fundamental Rights as guaranteed under the Constitution of India and other laws/rules incorporate there-under.

-AND-

IN THE MATTER OF:

Mr Debabrata Saikia,

aged about 53 Years, S/O late Hiteswar Saikia, Assam Legislative Assembly Hostel, Dispur, Guwahati- 781 006.

...Petitioner

-Versus-

1. Union of India,
Represented by the Secretary, Ministry of Health and Family Welfare, Govt of India, Nirman Bhavan, New Delhi 110 001
2. The State of Assam ,
Represented by the Chief Secretary to the Govt. of Assam, Dispur, Guwahati-781006.
3. The Secretary , Govt of Assam, Health and Family Welfare Department, Dispur, Guwahati-781006.

.....**Respondents**

The humble petition of the petitioner above-named: -

MOST RESPECTFULLY SHEWETH:

- 1.** That the petitioner states that it has no personal interest in the litigation and the petition is not guided by self gain or gain for any other person / institution/ body and that there is no motive other than of public interest in filing this writ petition.
- 2.** That the source of knowledge of the facts alleged in the writ petition is obtained from the first hand experience and direct knowledge from the various public in general. Further, additional facts have been obtained from newspaper and the petitioner has also verified the same.
- 3.** That by way of this petition , the petitioner is seeking reliefs which would in the long run benefit the general public of the State of Assam who are otherwise not in a position to approach the Hon'ble Court with the individual petition.
- 4.** That the Respondents are likely to be affected by some of the reliefs sought in the writ petition. To the knowledge of the petitioner no other persons/bodies/institutions are likely to be affected by the reliefs/ orders sought in the writ petition.
- 5.** That the petitioner begs to state that he is a Member of Assam Legislative Assembly and also the leader of the Opposition. He is elected from the Nazira Constituency and has been representing the said constituency for last two terms. The petitioner is a public spirited person and deeply concerned with the unnecessary death of common people due to failure of producing the non COVID medical certificate while seeking urgent admission in various hospitals in Assam.

6. That the petitioner begs to state that it is further stated the petitioner has the means to pay the costs, if any, imposed by the Court.
7. That the petitioner states that due to urgent nature of case no representations could be made to the Authorities concerned. An immediate interference is required to circumvent any such deaths due to failure of producing the non COVID medical certificate while seeking urgent admission in various hospitals in Assam.
8. That the petitioner has not filed any Public Interest Litigation or preferred Letter Petitions in regard to the subject matter of this petition.
9. That the petitioner begs to state that as per various newspapers reports there are many instances in recent times when numerous Hospitals in Assam have refused to entertain the urgent admissions of many critically ill people due to non production of non COVID medical certificate. Such people also include accident related critically injured cases, in which urgent medical care is vital and of paramount importance. Resultantly, many people succumbed to their injuries sustained during the accidents. Also other vulnerable patients like pregnant women, cardiac patients etc are also not admitted in the hospital without the non COVID medical certificate. Essential critical services required on urgent basis to those suffering from serious ailments are also not admitted and provided with requisite immediate services.
10. That the petitioner begs to state that in recent times , newspapers covered many instances of death of non COVID patients due to failure of getting admission in various hospitals in Assam as the patients enabled to produce the non COVID certificates. Some of such headlines as covered in various newspapers are –

(a)Former referee, Sports Organiser Achintya Baishya dies without medical attention.”,

(b)Youth injured in accident dies due to Covid protocol

Result of test came Covid-negative after 11 hours of death

Emergency medical care in Assam Medical College crippled

(c) Sensation over death of patient without medical attention at Jorhat

Patient was not examined on the pretext of Covid

(d) Treatment not provided on the pretext of Covid protocol

Person injured in accident dies at Dibrugarh Medical College without medical attention

Copies of various newspapers reports are annexed herewith and marked as **ANNEXURE**

1.

- 11.** That the petitioner begs to state that such non COVID medical certificate are insisted by the hospitals before admission, despite the office communication bearing no. DO 7(23)/2020-NHM-I dated 28.04.2020 made by Respondent no 1 to all the States and UTs. It inter alia has stated that "It is also noticed that many places the hospitals / clinics are insisting on a COVID 19 test before providing services" . Further, it stated that "...that anyone needing any essential critical services including dialysis, blood transfusion, chemotherapy and institutional deliveries, not denied such services."

Copy office communication bearing no. DO 7(23)/2020-NHM-I dated 28.04.2020 is annexed herewith and marked as **ANNEXURE**

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- 12.** That the petitioner begs to state that the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty.

Failure of a hospital to provide a patient timely medical treatment results in violation of the patient's right to life.

- 13.** That the petitioner begs to state that preservation of life is of paramount importance. As once life is lost, *status quo ante* cannot be restored, it is the professional obligation of all doctors (government or private) to extend medical aid to the injured and such emergency cases immediately to preserve life without any formalities whatsoever.
- 14.** That the petitioner begs to state that Art. 21 of the Constitution cast the obligation on the State to preserve life. It is the obligation of those who are in charge of the health of the community to preserve life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life.
- 15.** That the petitioner begs to state that the failure on the part of the hospital to provide timely medical treatment to a person in need of emergency treatment results in the violation of his right to life guaranteed under Article 21. A hospital is duty bound to accept accident victims and patients who are in critical condition and that it cannot refuse treatment on the ground that the victim is not in a position to produce the non covid certificate.
- 16.** That the petitioner begs to state that in a welfare state, primary duty of the government is to secure the welfare of the people and more over it is the obligation of the government to provide adequate medical facilities for its people. The government discharges this obligation by providing medical care to the persons seeking to avail those facilities. Article 21 imposes an obligation on the state to safeguard the right to life of every person preservation of human life is thus of paramount importance. Failure on the part of a hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed under Article 21.

17. That it is stated that the actions of the Respondent authorities are malafide and violative of the fundamental rights of the petitioner as guaranteed to him under Articles 14 and 21 of the Constitution of India.

18. That this application is made bonafide and for the ends of justice.

It is therefore prayed that Your Lordships would be pleased to admit this application, call for the records and issue a Rule upon the respondents to show cause as to why a writ in the nature of Mandamus should not be issued ,

(a) directing the Authorities to ensure the admission of all patients in various hospitals of the State of Assam without the production of non COVID certificate.

(b) directing the Authorities to conduct the mandatory magisterial inquires of any deaths resulting due to non admission of patients for failure to produce the non COVID certificate and punish the culprits as per law;

(c) directing the Authorities to release the adequate compensation to the families of victims , if the magisterial inquiry concludes the death as a result of non admission in hospitals due to failure to produce the non COVID certificate .

And/or, upon cause or causes being shown and upon hearing the parties Your Lordships would be pleased to make the aforesaid Rule absolute, and/or further be pleased to pass such other

order/orders as Your Lordships would deem fit
and proper;

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