

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

WPA 6322 of 2020
I.A. No. CAN/1/2020
(CAN 4851 of 2020)

Prithvijoy Das & Anr.

-Vs.-

State of West Bengal & Ors.

Before: The Hon'ble The Chief Justice Thottathil B. Radhakrishnan
&
The Hon'ble Justice Arijit Banerjee

For the Petitioners : Mr. Krishnendu Banerjee, Adv.
Mr. Jaydeb Das, Adv.
Mr. Biswajit Dutta, Adv.
Mr. Rajkumar Gupta, Adv.

For the State : Mr. Kishore Dutta, Ld. AG
Mr. Sayan Sinha, Adv.

Heard On : 19.08.2020 & 15.09.2020

CAV on : 15.09.2020

Judgment On : 16.09.2020

1. Primarily two issues have been raised by the petitioners in this Public Interest Litigation. Firstly, the issue of disposal of the dead body of a Covid-19 victim, with due care, respect and dignity. The other issue is regarding admission of Covid-19 patients (whether detected or suspected) to hospitals.

2. We have heard Learned Counsel for the petitioners and Learned Counsel for the State. The first issue is fully covered by our Judgment delivered on 16.09.2020 in **WPA 5479 of 2020 (Vineet Ruia v The Principal Secretary, Ministry of Health & Family Welfare, Govt. of W.B. & Ors.)**. To the extent that issue is concerned, that Judgment in the case of Vineet Ruia will govern the present writ petition also.

3. As regards the other issue, the grievance of the petitioners appears to be that there is no way of knowing as to how many beds for Covid-19 patients are available in the State and Private Hospitals at any given point of time. There is no database in this regard which a person in need may access. Further, the allegation is that in spite of beds being available, hospitals are refusing to admit Covid-19 patients.

4. Learned Counsel for the State apprised us that the State Government has created a database which can be accessed by anybody and which gives all requisite information regarding availability of beds in the hospitals, admission of Covid-19 patients in the hospitals, discharge of such patients from the hospitals, etc. Learned Counsel vehemently denied that there has been any case where any Government hospital has denied admission to a Covid-19 patient in spite of availability of beds.

5. The petitioners' allegations are based only on newspaper reports. It is trite law that newspaper reports are not admissible in evidence and it is generally unsafe for a court of law to issue orders on the basis of newspaper reports. Unless a newspaper report is supported by the affidavit of the reporter, the report is of little evidentiary value.

6. However, we appreciate the anxiety of the petitioners and we agree that no hospital can refuse to admit a Covid-19 patient if beds for such patients are available. This is one of the basic tenets of medical ethics. The primary object of a hospital, be it Government or Private, should be to render healthcare to those who are in need of it. The refusal on the part of a hospital to do so without valid reason, *e.g.*, non-availability of beds, will amount to a culpable breach of the fundamental duty of a medical institution. In case the petitioners have a concrete instance of any hospital denying admission to a Covid-19 patient despite beds being available, the petitioners will be at liberty to draw the same to the notice of The West Bengal Health Regulatory Commission constituted under The West Bengal Clinical Establishments (Registration & Regulation) Act, 2010, which has supervisory powers over the hospitals and medical institutions in the State. Upon such complaint being made, the said Commission may take action in accordance with law against the erring hospital as it may think fit and proper.

7. WPA No.6322 of 2020 is accordingly disposed of. However, there will be no order as to costs.

8. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)