

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**CWPIL No. 11 of 2020 a/w
CWP No. 2687 of 2020**

Reserved on: 01.12.2020

Decided on: 03.12.2020

CWPIL No. 11 of 2020

Court on its own motion

...Petitioner

Versus

State of H.P. & Ors.

...Respondents

CWP No. 2687 of 2020

Inderjit Singh

...Petitioner

versus

State of H.P. & Ors.

...Respondents

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting? ¹ Yes

For the Petitioner(s) : Mr. B. C. Negi, Sr. Advocate as Amicus Curiae with Ms. Shreya Chauhan, Advocate, in CWPIL No.11 of 2020.

Mr. Sanjeev Bhushan, Sr. Advocate with Mr. Rakesh Chauhan and Mr. Hamender Singh Chandel, Advocates, appeared to assist the Court.

Mr. Vishal Mohan, Advocate, for the petitioner in CWP No. 2687 of 2020.

For the Respondents : Mr. Ashok Sharma, Advocate General with Mr. Ajay Vaidya, Sr. Additional Advocate General, Ms. Ritta Goswami, Mr. Nand Lal Thakur, Addl. Advocate Generals, for respondents No. 1, 3 to 7.

Mr. Rajesh K. Sharma, Assistant Solicitor General of India, for respondent No. 2/UOI.

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

“A stitch in time saves nine” if at all the respondent-State had kept this phrase in mind, the State would not have been facing so many new cases of COVID-19 and consequential deaths arising therefrom.

2. However, it is not the Government which is solely responsible for the rise in COVID-19 cases. We may note with regret that the public at large has also exhibited behaviour which is nothing short of being callous, negligent and irresponsible.

3. It was in May, 2020, that a Public Interest Litigation being **CWP No. 1440 of 2020**, titled **Sushma Kuthiala vs. State of Himachal Pradesh and others** came to be filed before this Court assailing therein the office order dated 04.05.2020, whereby the Deen Dayal Upadhyaya Hospital (for short ‘DDU Hospital’), Shimla was declared as a Dedicated COVID Health Centre and Dedicated COVID Hospital.

4. This petition was though dismissed vide order dated 14.05.2020, but there was a pertinent observation made in para-16, which reads as under:-

“16. It appears that the DDU Hospital has been notified as Dedicated Hospital on the basis of opinion of the experts in the field. This hospital has been Dedicated as COVID Hospital on the basis of facilities available and also it was notified on the

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basis of inflow of patients and facilities available, namely, the ventilators, ICUs etc.. The existing facilities have been notified for the purpose of Dedicated Hospital whereas in case of Indus Hospital, such facilities are not available there and it requires sufficient time for creating such facilities. While notifying the DDU Hospital as Dedicated Hospital it is the State who has to do it since it has acted as such by issuance of notification declaring the DDU Hospital as Dedicated COVID Hospital on the basis of various factors. According to the learned Senior Additional Advocate General, for making Indus Hospital as Dedicated COVID Health Hospital, it requires a considerable long time and it would not be possible to wait for that time due to fast spreading of this infectious disease.

5. It was on the very next day i.e. 15.05.2020, that a meeting was held wherein deliberations with regard to the gap analysis of equipments in DDU Hospital, but unfortunately no further steps in this regard were taken promptly.

6. It is only now that the government has authorized the following institutions to hire manpower temporarily on outsource basis through authorized service provider agencies till 31.03.2021 to handle and manage COVID-19 pandemic in the State of Himachal Pradesh:-

Name of the Institution	Categories of manpower	Number of manpower to be hired	Remarks
Indira Gandhi	Nurses	15	Only to deal

Medical College Shimla				with the COVID-19 patient.
	Lab Technician	15		Only for COVID-19 testing and daily report to the higher authorities
	Class-IV	15		Only for COVID-19 related duties.
	Data Entry Operator	1		Only for COVID-related duties
Dr. Tanda, Kangra RPGMC District	Nurses	15		Only to deal with the COVID-19 patient.
	Lab Technician	10		Only for COVID-19 testing and daily report to the higher authorities
	Class-IV	12		Only for COVID-19 related duties.
	Data Entry Operator	1		Only for COVID-related duties
SLBSGMC Mandi at Ner Chowk	Nurses	15		Only to deal with the COVID-19 patient.
	Lab Technician	10		Only for COVID-19 testing and daily report to the higher authorities
	Class-IV	12		Only for COVID-19 related duties.
	Data Entry Operator	1		Only for COVID-related duties
Pt. Chamba, District Chamba, H.P. JLNGMC	Nurses	10		Only to deal with the COVID-19 patient.
	Lab Technician	10		Only for COVID-19 testing and daily report to the higher authorities

	Class-IV	10	Only for COVID-19 related duties.
	Data Operator Entry	1	Only for COVID-related duties
Dr. RKGMC, Hamirpur, District Hamirpur	Nurses	10	Only to deal with the COVID-19 patient.
	Lab Technician	10	Only for COVID-19 testing and daily report to the higher authorities
	Class-IV	5	Only for COVID-19 related duties.
	Data Operator Entry	1	Only for COVID-related duties
Dr. YSPGMC Nahan, District Sirmaur, H.P.	Nurses	10	Only to deal with the COVID-19 patient.
	Lab Technician	10	Only for COVID-19 testing and daily report to the higher authorities
	Class-IV	5	Only for COVID-19 related duties.
	Data Operator Entry	1	Only for COVID-related duties
DDU ZH Shimla	Nurses	10	Only to deal with the COVID-19 patient.
	Lab Technician	5	Only for COVID-19 testing and daily report to the higher authorities
	Class-IV	5	Only for COVID wards.
	Data Operator Entry	1	Only for COVID related duties.
Zonal Hospital Dharamshala	Nurses	10	Only to deal with the COVID-19 patient.

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	Lab Technician	5	Only for COVID-19 testing and daily report to the higher authorities
	Class-IV	5	Only for COVID wards.
	Data Operator Entry	1	Only for COVID related duties.
MS Khaneri (Rampur)	Nurses	10	Only to deal with the COVID-19 patient.
	Class-IV	5	Only for COVID wards.
	Data Operator Entry	1	Only for COVID related duties.
Civil Hospital Shimla	Nurses	10	Only to deal with the COVID-19 patient.
	Class-IV	5	Only for COVID wards.
	Data Operator Entry	1	Only for COVID related duties.

7. Evidently, Shimla has become the Corona capital of the State as it has witnessed an increase of 183.1% cases since October 31, 2020 to November 30, 2020 and in addition thereto, six others Districts of the State have witnessed multiple increase, as is evident from the statistics published in the newspaper 'Times of India', which read as under:-

District	State	Cases on Nov 29	% increase since Oct 31
Shimla	Himachal	7,073	183.1
Lahaul & Spiti	Himachal	1,075	177.8
Kullu	Himachal	3,588	131.5
Mandi	Himachal	6,571	117.2
Chamba	Himachal	1,952	69.9

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Hamirpur	Himachal	2,088	69.1
Kangra	Himachal	5,135	66.7
Gurgaon	Haryana	49,112	63.6
Idukki	Kerala	11,717	62.7
Ganganagar	Rajasthan	5,845	60.6
Faridabad	Haryana	40,152	58.7
Bilaspur	Himachal	2,036	58.6
Hisar	Haryana	15,624	56.6
Tonk	Rajasthan	2,751	53.8
Hanumangarh	Rajasthan	2,635	52.3
Bametara	Chhattisgarh	3,724	51.1
Balod	Chhattisgarh	6,966	51.0
Korba	Chhattisgarh	13,278	50.9
Wayanad	Kerala	10,656	50.6

8. As observed earlier, effective steps in matters of both infrastructure and manpower have only been taken now when there is a huge spike in the COVID-19 cases as is now evident from the reply affidavit, the relevant portion whereof reads as under:-

“2. That it is humbly submitted that at present there is no shortage of Oxygen in any of the dedicated COVID hospitals and sufficient number of Oxygen Cylinders alongwith the Oxygen Concentrators are available in all the Government Medical Colleges of the State of HP and the other Dedicated Covid Hospitals (DCHs) and the Dedicated Covid Health Centres (DCHCs). It is added that there are sufficient numbers of beds available for COVID-19 patients and some more beds including the ICU beds are proposed. The status qua the availability of the beds and the Oxygen Cylinders in the Medical Colleges of State as well as the other Dedicated Covid Hospitals (DCHs) and the Dedicated Covid Health Centres (DCHCs), is

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tabulated and collectively placed on record as Annexure R-1, for kind perusal of the Hon'ble Court. Apart from above, it stands already approved by the present deponent to purchase the additional Oxygen Cylinders for the Dedicated Covid Hospitals at Zonal Hospital Shimla and Zonal Hospital Dharamshala, whereupon the orders for purchase of 64 Type-D cylinders and 50 Type-B cylinders have already been placed by the Senior Medical Superintendent, DDU ZH Shimla to M/s Mandav Air Industry, District Mandi, H.P., on the rate contract of IGMC Shimla on 20.11.2020 and 24.11.2020, respectively.

3. That it is further submitted that the Government of India has also sanctioned installation of Oxygen Generation Plants in the seven hospitals of the State including the Zonal Hospitals Dharamshala and Mandi. These oxygen generation plants will be fully funded by the Government of India and tender for the same has already been floated by Government of India. For installation of these Oxygen Generation Plants, civil and electrical work has to be done by the State Government. As per information conveyed by the Government of India, the work of installation and commissioning of these Oxygen Generation Plants will start in the month of January 2021, detail whereof in the State of HP is as under:-

Sr. No.	Name of Health Institution	Capacity of oxygen plant in litres per minute
1	SLBS Govt. Medical College Nerchowk at Mandi	500
2	Dr. R.P. Govt. Medical College, Tanda	900
3	DDU Zonal Hospital,	300

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	Shimla	
4	Zonal Hospital Dharamshala	300
5	Dr. YPS Govt. Medical College Nahan	300
6	Dr. R. K. Govt. Medical College Hamipur	300
7	Pt. J.L. N. govt. Medical College Chamba	400

4. That it is submitted that the respondent-State with the help of CSIR-CBRI Roorkee is going to create make shift hospitals in the following health institutions of the State.

Sr. No.	Name of location	Number of Beds
1	IGMC, Shimla	55
2	Dr. RPGMC, Tanda	66
3	CHC, Nalagarh	45

5. These make shift hospitals will soon start functioning in the State. In view of rising number of Covid patients in District Shimla, the respondent-Department has notified the MGMSC Khaneri at Rampur (20 bedded) and CH Rohru (40 bedded) as Dedicated Covid Health Centres, on the approval of the Government. It will decrease the patients load at DDU ZH, Shimla and IGMC, Shimla.

6. That it is submitted that in view of the spread of COVID-19 and to cope up with the pandemic, the respondent-State vide its order dated 25.11.2020 has authorized the various health institutions including the zonal Hospital Shimla and Zonal Hospital Dharamshala to hire manpower (under different categories) temporarily on outsourced basis through authorized service provider agencies till 31.3.2021 to

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handle and manage COVID-19 pandemic in the State of HP, copy of the order dated 25.11.2020 is placed on record as Annexure R-II for kind perusal of the Hon'ble Court. It is added that this will definitely result into expediting the test reports ultimately reducing the duration of such tests. In addition to above, keeping in view the need to increase the number of sampling and testing in the State, it has also been decided and ordered vide circular dated 25.11.2020 to get the walk in kiosks established through the respective Chief Medical Officers in the State of H.P. at the suitable places in all the towns like Shimla, Mandi, Dharamshala, Kullu, Solan, Una, Hamirpur, Bilaspur etc. for collection of the samples during the prefixed timing everyday, copy of which circular is placed on record as Annexure R-III for kind perusal of the Hon'ble Court.

That it is further submitted that apart from all above, 500 oxygen concentrators had been received from the government of India and 477 have been distributed amongst the various health institutions as per the detail given hereunder:-

Sr. No.	Name of Distt./Institution	Quantity
1	CMO Kangra	25
2	ZH Mandi	5
3	IGH, Shimla	25
4	CMO Chamba	10
5	CMO Solan	20
6	RH Solan	5
7	ESI Kattha Solan	10
8	CMO Una	15
9	RH Una	5
10	CH Haroli Una	10
11	ZH Dharamshala	15

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12	CMO Mandi	20
13	SLBSGMC Nerchowk	15
14	CMO Sirmaur	16
15	CH Sarhan, Sirmaur	9
16	KNH, Shimla	10
17	YSPGMC, Nahan	17
18	CMO Kullu	15
19	RH Kullu	5
20	CHC Tegubehar, Kullu	10
21	RPGMC, Tanda	25
22	CMO Shimla	25
23	CMO Bilaspur	10
24	RH Bilaspur	5
25	CH Ghumarwin	10
26	Bhota Hamirpur	10
27	CMO Hamirpur	15
28	CH Nurpur, Kangra	5
29	CH Palampur	5
30	CH Rohru	5
31	RKGMSC, Hamirpur	15
32	MGMSC Khaneri	5
33	MS DDUZH	20
34	CMO Kinnaur	20
35	Medical College Chamba	15
36	CMO Keylong	5
37	CMO Chamba	20
	Total	477

7. That it is submitted that recently the State Government has launched Him Suraksha Abhiyan in the State where by the health teams are visiting people house to house in order to generate awareness about the COVID-19 Appropriate Behaviour-Mask use, hand hygiene, social distancing and also to increase Health seeking behaviour in

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order to prevent mortality and morbidity. A dedicated number has been asked to be assigned to each Walk-in-Kiosk and these mobile numbers are being widely publicized and displayed at prominent places. Wide spread publicity will also be done through News paper, local channels or by other available means conveying that if any person want to get his/her test done for COVID-19, he/she may message his/her complete details mentioning name, age, address, AADHAR Number on the Mobile number mentioned for the KIOSKS through SMS/Whatsapp.

9. Even these steps as detailed in the affidavit of Mr. Amitabh Awasthi, Secretary (Health) to the Government of Himachal Pradesh, dated 26.11.2020, are not sufficient.

10. The instant petitions are not in the nature of adversial litigation, but have been filed for a specific purpose and are on the docket of this Court to serve public cause.

11. Today (1.11.2020), in pre-lunch session, we interacted with Ms. Rakhil Kahlon, Special Secretary (Health) and Dr. Ramesh Chauhan, Medical Superintendent, DDU, Zonal Hospital, Shimla and the matter was adjourned to post lunch-session as the Amitabh Awasthi, Secretary (Health) was stated to be busy in the special session of the Cabinet and even Dr. Janak Raj, Medical Superintendent, IGMC, Shimla, was also not available.

12. During post lunch session, both these officials were also present and we were informed that the Government has

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taken up the issue of pandemic very seriously and many directions to this effect have already been issued pursuant to the Cabinet decisions that have earlier been taken in this regard.

13. Even today, many far-reaching decisions have been taken by the Cabinet but the same cannot be divulged by the Secretary (Health) as the same are yet to be notified.

14. The Secretary (Health) informed us that-

i. there is no dearth of space, beds or oxygen in the IGMC hospital as one complete floor has now been converted into a COVID ward and if required, floor after floor of the premises which are otherwise vacant in the new OPD block, would be converted into COVID ward(s).

ii. Oxygen Cylinders are available in abundance and now the demands for additional cylinders has also been raised but the difficulty is that entire country is facing dearth thereof, however, the matter is being persuaded seriously.

iii. makeshift hospitals in Shimla, Mandi and Nalagarh will be readied within next 15 days. This was being done so that patients from far flung areas could easily reach these nearby hospitals instead of travelling to Shimla.

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- iv. The government has issued strict warning and consequential action against the doctors, paramedics and medics on non-COVID duties who were reluctant to treat patients with other diseases.
- v. The doctors found negligent in discharge of their duties will not be spared and strict punitive action will be taken against them.
- vi. 30 more ambulances have been added from the districts to supplement the emergency services. Besides, instructions have been given to district administrations to hire four wheel drive ambulance in snowbound areas including Shimla, Rohru, Rakmpur, Kullu, Lahaul & Spiti and Kinnaur districts.
- vii. Any complaints about 108 ambulance provider regarding poor response will be dealt strictly.
- viii. Oxymeter alongwith all the medicines are being provided in the Kit to those of Covid patients who are staying in their homes.

15. The Secretary (Health) was apprised of the practice of conspicuously affixing the posters outside the residence of COVID patients, which creates stigma and often leads to a situation where the patient(s) may be treated so-called untouchable(s) as has otherwise been observed by the Three-Judge Bench of the Hon'ble Supreme Court, however, since this

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issue is *sub judice* before the Hon'ble Supreme Court, we need not comment or make any observations in this regard, save and except, that the State would be well advised to re-visit such practice(s) and protocol(s).

16. We are further informed that the Government has now directed that only 50 persons would be permitted to attend marriage, social, religious and political functions and the Government is seriously contemplating the involvement of private labs for testing COVID positive patients and the rates for such tests shall be competitive and less than those prevailing in the adjoining States.

17. Directions have also been issued to all the hospitals to ensure that senior doctors visit the notified COVID hospitals and Ward(s) at least three times in a day.

18. We are also informed that effective policing is difficult as nearly 1400 police personnel have themselves tested positive for COVID-19.

19. The Medical Superintendents IGMC and DDU Hospital have expressed apprehension that the staff to be appointed on outsource basis, after appointment, may resort to strike or dharana, therefore, some directions in this regard need be issued.

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20. After due deliberations, we feel that the following directions for the time being are absolutely necessary to tackle the steep surge in COVID-19 cases:-

- i. The State shall ensure that senior doctors in all the notified COVID hospitals visit the ward on regular basis in accordance with the instructions issued by the Government.
- ii. The State is directed to consider the feasibility of having liquid oxygen tankers stationed at all the notified COVID hospitals.
- iii. Respondents to ensure that the manpower hired temporarily on outsource basis through authorised service providers be appointed as expeditiously as possible and in no event later than 5th December, 2020.
- iv. The State is directed to ramp up the testing by adopting the approved measures by associating private Labs or their technicians, or both.
- v. It shall be mandatory for the sample collecting authority to obtain contact number, e-mail id, if any, apart from other details like age, address etc. at the time of taking samples, so that the result of the test can be communicated on e-mail, whatsapp etc. Such report be supplied in a time bound manner and in no

event beyond 48 hours, bearing in mind the necessary protocols.

vi. Wide publicity be given in the news, print and social media regarding testing that are to be conducted in walk-in kiosk in all the towns like Shimla, Mandi, Dharamshala, Kullu, Solan, Una, Hamirpur, Bilaspur etc. for the collection of samples during the pre-fixed time everyday.

vii. A dedicated helpline in all the COVID Hospitals be notified so that the family members, near and dear ones of the COVID patients can get in touch with such patients to know about his/her well being etc.

viii. Such patients, who are willing to afford, be permitted to have trained nursing attendant at their own costs as this would be a long way to reduce the burden on the hospital staff.

ix. It be ensured that wrapping up of the dead body(ies) of those COVID patients, who unfortunately succumb to the disease, under no circumstances is/are carried out/done in the Ward and the body is removed immediately from the Ward.

x. It be ensured that the toilets are kept in clean and hygienic condition round a clock and a dedicated helpline be provided to the patients, in case, they

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have any complaint regarding not only the toilets but other facilities.

xi. Provisions for hot water and steamer(s) be made by providing those in adequate quantities alongwith electricity extension boxes.

xii. The State may also consider making COVID test mandatory for the people entering the State from the outside.

xiii. The rules regarding the wearing of mask, social distancing and quarantine be strictly enforced by associating not only the local police but also by engaging the employees of the Municipal Corporation, Home Department and local volunteers.

xiv. It be ensured that no person or family is ostracised by the Society only because the family is COVID positive.

xv. No social or public gathering shall be permitted henceforth without the prior approval of the Magistrate with intimation to the local police station who shall then be duty bound to ensure that such gathering does not exceed the prescribed limit. In addition thereto, it shall also be the duty and responsibility of the office bearers of the Panchayati Raj Institutions and local urban bodies, as the case

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may be, to ensure that the protocols and procedures including wearing of mask, social distancing, home isolation, public gathering etc. are strictly adhered to.

xvi. It be ensured that every person, more particularly, who are engaged in delivery of essential services observe SoPs strictly and their test be conducted on priority basis.

xvii. The State would consider providing additional incentives to those deployed in COVID-19 duties including the outsourced workers, more particularly, Class-III and IV, who are working in the COVID wards.

xviii. The patients undergoing treatment at home will be contacted by dedicated medical personnel at least twice a day over his/her telephone so as to monitor the treatment at home.

xix. The State will ensure that the medicine kits being provided to patients undergoing treatment at home are of good and standard quality so as to remove any kind of doubt regarding its efficacy.

xx. The State would also consider having flexi or staggered office time from 9:30 a.m. for the first shift and 10:00 a.m. for the second shift which shall finish

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at 4:30 p.m. and 5:00 p.m., respectively This will help in reducing over-crowding in buses.

xxi. The general public be educated about COVID-19 by hoardings, messages through Radio, T.V., booklets etc. by convincing them that it is a collective fight by the society and no one should violate the regulations, procedures and protocols. The people should also be educated about the infection of the Corona, its prevention and treatment.

xxii. Similar exercise shall be taken by all the Secretaries, State Legal Services Authority at their own level and through the PLV's etc.

xxiii. The Director General of Police is directed to depute extra police personnel(s) from the battalion and other places so as to ensure that no one unnecessarily leaves or enter the containment zones.

xxiv. All those involved in COVID duties irrespective of their rank and files, are restrained from going on strike/dharna and, in case, any one of them have any difficulty, then they are at liberty to approach this Court individually or through the learned Amicus Curiae for redressal thereof, but under no circumstances they would resort to arm twisting by

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resorting to strike or dharna. In case, any one of them resort(s) to such mis-adventure, then in addition to any other action, which respondents-State may take including blacklisting the firm(s), terminating the services of such employees, he/they shall be liable to be prosecuted and punished for contempt under the Contempt of Courts Act, for deliberately disobeying the directions of the Court.

xxv. Ambulances, six in number, which are fitted with ventilator(s) and other equipments and are stated to be idle, shall be put to use forthwith.

xxvi. Adequate provisions be made for diet, rest etc. for those who have been deputed in connection with COVID-19 duties and if found necessary, assistance of NGOs, Charitable Institutions may be taken.

21. Status report and point wise response to the suggestions given by the learned Amicus Curiae, as found mentioned in order dated 13.11.2020 alongwith latest status of the make-shift hospitals be filed by the Secretary (Health) in the open Court on the next date of hearing.

List on 10.12.2020.

(Tarlok Singh Chauhan)
Judge

(Jyotsna Rewal Dua)
Judge

3rd December, 2020. (Pankaj/sanjeev)