

Court No. - 3

Case :- HABEAS CORPUS WRIT PETITION No. - 399 of 2021

Petitioner :- Rahul Yadav

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Pankaj Sharma,Prakash Sharma

Counsel for Respondent :- G.A.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

1. Heard learned counsel for the petitioner and Shri M.C. Chaturvedi, learned Additional Advocate General assisted by Shri Rishi Chaddha, learned A.G.A. for the respondents.

2. This habeas corpus writ petition has been heard on 30.6.2021, 17.8.2021, 19.8.2021, 27.8.2021, 13.9.2021, 14.9.2021, 15.9.2021, 21.9.2021, 29.9.2021, 8.10.2021, 9.11.2021, 16.11.2021, 2.12.2021, 29.3.2022, 6.4.2022 and 7.4.2022 and detailed orders were passed from time to time and time as prayed was granted to the respondents to produce the corpus.

3. In the present habeas corpus writ petition, following are the respondents:

1. State of U.P. Through Principal Secretary Lal Bahadur Shashtri Bhawan (Annex building) Sarojini Nagar Marg, Lucknow Uttar Pradesh, India- 226001.

2. Chief Medical Officer Stanley Road, Prayagraj, Uttar Pradesh, India- 226002.

3. Chief Medical Superintendent T.B. Sapru Hospital Prayagraj, Uttar Pradesh- 226002

4. District Magistrate, Prayagraj, Uttar Pradesh- 211002

5. Superintendent of Police, 9A/23 Beli Road, Old Katra, Prayagraj, Uttar Pradesh- 21102

6. Principal Secretary/Additional Chief Secretary (Home), Government of Uttar Pradesh, Lucknow (added by order of the Court dated 19.8.2021).

7. Principal Secretary/Additional Chief Secretary (Medical & Health), Government of Uttar Pradesh,

Lucknow (added by order of the Court dated 19.8.2021).

8. Director General, Medical & Health, Government of U.P. (added by order of the Court dated 27.8.2021).

4. On 7.4.2022, incorporating some portions of some of the earlier orders; this Court passed the following order:

"1. Heard Shri Pankaj Sharma, learned counsel for the petitioner and Shri S.K. Pal, learned Government Advocate for the State-respondents.

2. Undisputedly, the corpus Ram Lal Yadav, who was unable to walk, was admitted in Tej Bahadur Sapru Hospital, Prayagraj on 04.05.2021 as a covid patient but no information is available with regard to him since 08.05.2021. It is admitted to the respondents that the corpus Ram Lal Yadav was under treatment in the aforesaid Hospital and was not discharged. Since the respondent-authorities were not producing the corpus, therefore, his son Rahul Yadav has filed the present habeas corpus writ petition, which has been heard on several occasions.

3. In the order dated 19.08.2021, this Court observed as under:-

"It is a matter of serious concern that gross negligence has been prima facie shown by the Officers/Doctors/Staff of T.B. Sapru Hospital, Prayagraj. The facts stated by the Senior Superintendent of Police, Prayagraj, in his personal affidavit also indicates apathetic condition of T.B. Sapru Hospital, Prayagraj, where even C.C.T.V. Cameras are non functional. Undisputedly, the corpus was admitted in T.B. Sapru Hospital for treatment as he was tested corona positive. Neither the District Administration nor the Police nor the Hospital appears to be serious about the missing of the corpus although more than three months have passed since the missing report was registered on 08.05.2021.

This prima facie shows not only gross negligence and dereliction in duty by the Officers/Doctors/Staff of the TB Sapru Hospital, Prayagraj but also indicates total carelessness in treatment, look-after and safety of COVID patients at T.B. Sapru Hospital, Prayagraj.

Matter requires immediate attention of Principal Secretary, Medical Health and the Principal Secretary Home, Uttar Pradesh for immediate action and response failing which this Court may consider to call for personal presence of both the aforesaid Principal Secretaries/Additional Chief Secretaries."

4. Again on 27.08.2021, this Court passed a detailed order. On 13.09.2021, again a detailed order has been passed by this Court observing as under:-

"8. The report of the SIT dated 05.09.2021 records petitioner's contention, as under :-

" मुझे आशंका है कि मेरे पिताजी को तेजबहादुर सप्रु (बेली अस्पताल) के लोगों ने ही कहीं गायब कर दिया है। अनुरोध है कि मेरे पिताजी को गायब करने के सम्बन्ध में तेज बहादुर सप्रु अस्पताल (बेली अस्पताल) के लोगों

के विरुद्ध अभियोग पंजीकृत करने की कृपा करे।"

9. Perusal of the report of the SIT shows that as per statement of the Beli Police Choki Incharge Indu Verma, Namish Kumar Ward Boy and various patients/their family members, the CCTV Cameras of T.B. Sapru Hospital were not functional including on 7/8.05.2021. The SIT has recorded in its investigation report that the corpus Ram Lal Yadav, aged about 82 years was unable to walk "चलने फिरने में असमर्थ".

10. Dr. Ram Chandra Maurya, Ward Boy Anurag Upadhyay, Staff Nurse Anand Kumar Dueby, Ward Boy Pramod, Contractual employee Kuldeep Kumar and Staff Nurse Surya Kant of T.B. Sapru Hospital, have specifically stated that the corpus Ram Lal Yadav was unable to walk and was on oxygen support and he was seriously ill."

5. On 15.09.2021, this Court passed a detailed order and directed in paragraph 20 as under :-

"20. Considering the facts and circumstances, the personal affidavits filed by the respondents on earlier occasions and the instructions of the Home Department, we again direct the respondents, namely, the Additional Chief Secretary (Home) and the Senior Superintendent of Police, Prayagraj, to trace out and produce the corpus - Shri Ram Lal Yadav before this Court or submit a progress report in this regard on the next date fixed."

6. On 21.09.2021, this Court passed the following order:-

"A personal affidavit of Additional Chief Secretary, Home, Government of Uttar Pradesh and a personal affidavit of Senior Superintendent of Police / D.I.G., Prayagraj both dated 20.9.2021 have been filed today. The same may be filed through e-mode. Both the affidavits are unsatisfactory.

As per the report of S.I.T. dated 5.9.2021 based on evidences collected by the S.I.T., including statements of the attending ward boy and nursing staff etc., the corpus Ram Lal Yadav was in Trauma Centre of T.B. Sapru Hospital, where he was lastly seen at about 1:00 A.M. of 8.5.2021 and he was unable to walk. The report of S.I.T. also contains statement expressing "मेरे पिताजी को तेजबहादुर सप्रु (बेली हॉस्पिटल) के लोगों ने ही कहीं गायब कर दिया है।

We find that all the respondents have admitted that the corpus Ram Lal Yadav was hospitalized in T.B. Sapru Hospital and yet they have not produced the aforesaid corpus before this Court.

In view of the aforesaid, we direct all the respondents either to produce the Corpus Ram Lal Yadav before this Court on the next date fixed or to show cause.

Put up as fresh case on 29.9.2021 at 10:00 A.M. for further hearing."

7. On 08.10.2021, this Court again passed a detailed order and observing in paragraph 12 as under:-

"12. On one hand a clear stand has been taken that the corpus Ram Lal Yadav was not even able to walk and has not moved out from the hospital while on the other hand the Chief Medical Superintend has taken the stand that the corpus- Ram Lal Yadav is not in custody of the hospital and the Additional Chief Secretary (Medical Health and Family Welfare) has

taken the stand that the entire matter regarding missing of corpus Ram Lal Yadav is being dealt with all due sensitivity. Thus the stand being taken by the respondents on affidavit prima facie shows that the respondents are not making proper efforts to trace and produce the corpus before this Court who is missing since 8.5.2021 from inside the hospital."

8. On 09.11.2021, this Court gave one more opportunity to the respondents to produce the corpus before this Court on the next date fixed, observing as under :-

"Heard learned counsel for the petitioner and Sri Rishi Chaddha, learned Standing Counsel for the State Respondents.

Unsatisfactory affidavits have been filed on 08.11.2021 by the State Respondents.

Perusal of the affidavits reveal that no serious effort has been made by the respondents even after passing of the order dated 08.10.2021 directing them to produce the corpus, namely, Ram Lal Yadav before us. The affidavit of the respondent no. 3, Chief Medical Superintendent, Prayagraj, prima facie, appears to be misleading. Instead of producing the corpus before this Court, the respondent no. 3 in his affidavit, has made all efforts to allege that the corpus was able to walk.

In paragraph no. 6 of the personal affidavit dated 28.09.2021/08.11.2021 of Senior Superintendent of Police, Prayagraj, it has been stated that a report was sought from the Additional District Magistrate and the Chief Medical Officer, Prayagraj regarding the details of unknown dead bodies but no such record or details are available in their offices. This prima facie indicates that there were unknown dead bodies but records thereof have not been maintained/kept by the respondents for the reasons best known to them.

Affidavits of the respondents dated 08.11.2021 do not disclose compliance of the order of this Court dated 08.10.2021, in which it was made clear that in the event, the corpus Ram Lal Yadav is not produced before the Court, this Court may consider to impose exemplary cost.

It shall not be out of place to mention that this Court has passed several orders since August, 2021 and yet the corpus, Ram Lal Yadav has not been produced before the Court who was admittedly in the custody of the Hospital authorities and was undergoing treatment. The Senior Superintendent of Police, Prayagraj in his affidavit dated 28.09.2021 (paragraph no. 10), has clearly stated that "No evidence as such could be gathered, by which it can be said that the corpus Ram Lal Yadav moved out from the Hospital either alone or along with some one." Thus, it is the responsibility of the respondents to produce the corpus before this Court but they have continuously failed in their duty to produce him.

One more opportunity is accorded to the respondents to produce the corpus before this Court on the next date fixed, failing which this Court may consider to impose exemplary cost.

We request to the State Government to depute an Additional Advocate General to assist this Court in the matter on the next date fixed.

Put up this case as fresh on 16.11.2021 before appropriate

Bench."

9. On 02.12.2021, this Court again passed a detailed order and observed as under:-

"The highlighted portion of the aforequoted minutes of the meeting dated 30.11.2021 leaves no manner of doubt that the corpus Ram Lal Yadav remained in custody of the respondents and he was even unable to walk and has not gone outside the hospital.

Learned counsel for the petitioner submits that constituting an upgraded SIT is nothing but merely an eye wash and infact the respondents are deliberately not producing the corpus before this Court. He further submits that false and misleading affidavits have been earlier filed by the respondents.

Learned Additional Advocate General, prays for some further time to enable the respondents to produce the corpus before this Court.

Considering the request of learned Additional Advocate General, the case is adjourned for today.

Let this case appear in the additional cause list for further hearing on 20.12.2021, on which date the question of filing false affidavit shall also be considered."

10. On several other occasions, the aforesaid habeas corpus writ petition was heard and time was granted to the respondents to produce the corpus but the respondents have not produced the corpus.

11. Perusal of the personal affidavit of Shri Sarvashresth Tripathi, Senior Superintendent of Police, District Prayagraj filed on 27.12.2021 and the report dated 17.12.2021 forwarded to the Additional Chief Secretary (Home), Government of Uttar Pradesh, Lucknow, filed as Annexure-1 thereof, shows that the corpus was 82 years old and on 07.05.2021 his oxygen level fell down to 68% and was shifted from New Emergency Ward to Trauma Centre of Tej Bahadur Sapru Hospital and information to this effect was given to his son Rahul Yadav. The corpus was neither discharged nor was handed over to his son or any family members.

12. The S.I.T on 05.09.2021 has recorded the petitioner's contention as under :-

"मुझे आशंका है कि मेरे पिताजी को तेजबहादुर सप्रु (बेली अस्पताल) के लोगों ने ही कहीं गायब कर दिया है।"

13. Till date, the respondents have not produced the corpus although about 11 months have passed.

14. Under the circumstances, this Court takes a serious view of the matter and directs the respondents to produce the corpus Ram Lal Yadav on the next date fixed, failing which this Court may consider to call for personal presence of all the concerned respondents and may also consider to impose exemplary costs considering the facts and circumstances of the case.

15. List/put up in the additional cause list on 25.04.2022 for further hearing at 2:00 p.m. "

5. Learned Additional Advocate General has apprised that an affidavit of compliance dated 22.4.2022 has been filed by the

Senior Superintendent of Police, Prayagraj, which has been uploaded on 23.4.2022 as the present habeas corpus has been filed through e-mode. He also produced a copy of the aforesaid original affidavit of compliance before us which has been returned to him after perusal. In paragraphs 5, 8 and 9 of the aforesaid affidavit of compliance of the Senior Superintendent of Police, Prayagraj dated 22.4.2022, uploaded on 23.4.2022, it has been stated as under:

"5. That during the course of inquiry of the investigation, it has been revealed that the father of the petitioner was unable to walk on account of his serious condition. He was not carrying any mobile phone nor was he carrying any money with him.

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8. That during the course of investigation, the investigating officer has seized two hard disc drives in which the CCTV Footage of Sir Tej Bahadur Sapru Hospital were captured and stored in between 04.05.2021 to 08.05.2021. These hard disc drives have been sent to Forensic Science Laboratory Varanasi for any possible data retrieval. The report of the Forensic Science Laboratory Varanasi regarding any data retrieval from the aforesaid hard disc drives is still awaited.

9. That it is further submitted that at the time when Shri Ram Lal Yadav went missing from the hospital, he was 82 years old. From perusal of the CCTV Cameras of the Integrated Control and Command Center as well as the CCTV Footage outside the hospital, there is no evidence which has been collected which shows that Shri Ram Lal Yadav went outside the hospital. Up till now no conclusive evidence is available with the police on the basis of which it can be concluded as to whether Shri Ram Lal Yadav is still alive or not. The police team still making efforts to recover/trace Shri Ram Lal Yadav."

6. On a query made by this Court, learned Additional Advocate General has stated that the seized hard disc drives of the CCTV camera installed at T.B. Sapru Hospital, Prayagraj, between 4.5.2021 to 8.5.2021, has been sent for examination to the Forensic Science Laboratory on 19.4.2022 for retrieving data from the aforesaid hard disc and the report is still awaited.

7. The facts as briefly noted above and also facts as noted in our earlier orders, indicate that there is failure on the part of the respondents to produce the corpus who was under their custody and thus, prima facie, the corpus appears to be under illegal

detention of the respondents.

8. Under the circumstances, we are left with no option except to direct all the respondents to produce the corpus Ram Lal Yadav before this Court on the next date fixed, failing which, the respondents shall remain personally present before this Court.

9. List/put up in the additional cause list for further hearing before this Bench on 6.5.2022 at 10:00 AM.

10. The petitioner shall also carry out the necessary correction in the array of parties in terms of the order dated 19.8.2021 and 27.8.2021 within two days.

Order Date :- 25.4.2022

A. V. Singh