

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH  
CHAUHAN  
AND  
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA**

**Writ Petition (PIL) No. 58 of 2020**  
**Writ Petition (PIL) No. 97 of 2019**  
**Writ Petition (PIL) No. 50 of 2020**  
**Writ Petition (PIL) No. 51 of 2020**  
**Writ Petition (PIL) No. 67 of 2020**  
**Writ Petition (PIL) No. 70 of 2020**

**09<sup>TH</sup> JUNE, 2021**

Mr. Shiv Bhatt, the learned counsel for the petitioner in WPPIL No. 58 of 2020.

Mr. Abhijay Negi, the learned counsel for the petitioner in WPPIL Nos.97 of 2019 and 67 of 2020.

Mr. Dushyant Mainali, the learned counsel for the petitioner in WPPIL No. 50 of 2020.

Mr. Piyush Garg, the learned counsel for the petitioner in WPPIL in WPPIL No.51 of 2020.

Mr. Navnish Negi, the learned counsel for the petitioner in WPPIL No.70 of 2020.

Mr. S.N. Babulkar, the learned Advocate General assisted by Mr. C.S. Rawat, the learned Chief Standing Counsel for the State of Uttarakhand.

Mr. Rakesh Thapliyal, the learned Assistant Solicitor General for the Union of India.

**COMMON ORDER:**(per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

In pursuance of the order dated 20.05.2021,  
Mr. Amit Negi, the learned Secretary, Medical Health  
and Family Welfare, Mr. Dilip Jawalkar, the learned

Secretary, Tourism, Government of Uttarakhand, Mr. Ved Prakash Mishra, Director, Department of Pharmaceuticals, Mr. Manmohan Sachdeva, Chief Advisor in the National Pharmaceuticals Pricing Authority, and Dr. Sanjay Roy, the learned Director, Department of Health and Family Welfare, Government of India have joined this virtual Court through video conferencing.

2. Mr. Amit Negi, Mr. Dilip Jawalkar, and Mr. Amit Sinha, the learned Inspector General/Nodal Officer, Police Headquarter, Uttarakhand, have filed their respective reports. The same shall be taken on record.

3. Mr. Amit Negi, submits that the State Government is taking every single possible step to tackle the COVID-19 pandemic. Due to the steps taken by the State Government, the number of COVID-19 cases has drastically decreased in the State in the last one month. Moreover, in order to strengthen the health care system within the State, the State Government is constantly in touch with the Central Government to provide better infrastructure for the people of the

State. He informs this Court that there are presently fifty-one testing centres apart from eleven mobile testing teams which are functioning in District Dehradun. Moreover, according to him, the number of samples being tested is steadily increasing from January, 2021 till May, 2021. According to him, in January, 2021, 3,57,424 samples were tested, whereas in May, 2021, 10,56,940 samples have been tested. Thus, there is a phenomenal increase in the testing of samples. Furthermore, according to him, Uttarakhand stands at No.4 in the country for testing per million.

4. Mr. Amit Negi, further informs this Court that since the oxygen cylinders have to be supplied to the State, the State Government has convinced the Central Government to increase the allocation of oxygen to Uttarakhand from 183 MT to 200 MT. The same has been sanctioned by the Central Government vide letter dated 23.05.2021. Moreover, whereas earlier the State was required to collect its oxygen quota from Jamshedpur in Jharkhand, and from Durgapur in West Bengal, the Central Government has permitted the Uttarakhand State to collect its oxygen quota from its

own oxygen production units, which are being operated and functioning within the State of Uttarakhand.

5. According to Mr. Amit Negi, the Plasma Therapy, which was being used earlier for the treatment of COVID-19 patients, has been dropped in accordance with the Clinical Management Protocol for COVID-19, version 6, dated 24.05.2021, issued by the Government of India.

6. Further, considering the drastic reduction in number of COVID-19 patients, the State Government is slowly but surely unlocking the lockdown, and permitting the people to have easy access to shops and malls. However, the Government will strictly enforce the SOP to be followed by the people at large.

7. Mr. Amit Negi, further claims that there is an audit of number of deaths occurring in the hospitals. However, this statement has not been buttressed by any evidence in the affidavit. As far as the *Remdesivir* injection is concerned, he claims that the State has sufficient number of *Remdesivir* injection, as 1,73,000

vials have been allocated to the State by the Central Government.

8. This Court has brought to the notice of Mr. Amit Negi, the emergence of *Mucormycosis* cases (the black fungus, the yellow fungus and the white fungus). According to the data, issued by the Health Bulletin of the Uttarakhand State Control Room COVID-19, there has been a phenomenal increase of black fungus cases between 31.05.2021 to 08.06.2021. While, on 31.05.2021, there were 221 cases and 17 deaths which occurred due to black fungus, on 08.06.2021, there are 332 cases and 50 deaths due to black fungus. Therefore, this Court has enquired from Mr. Amit Negi, with regard to the strategies and plans for tackling the emergence of black fungus, as it is a possible threat to the life of people.

9. This Court has also pointed out to Mr. Amit Negi, that the Scientific Community is already prophesizing about the emergency of the third wave of COVID-19. Already information has started coming in from Vietnam that a third mutant has emerged which is the combination of U.K. mutant and B.1.617 mutant.

Moreover, there is an emergence of mutant named 'Delta'. Therefore, this Court has asked Mr. Amit Negi to outline the strategies and the plans which are being formulated by the State Government.

10. According to the Scientific Community, the third wave of COVID-19 is most likely to adversely affect the health of the children. Therefore, this Court has asked Mr. Amit Negi to explain the strategies and plans of the State Government for tackling the menace of the third wave of the COVID-19.

11. Mr. Amit Negi submits that already a High Powered Committee, consisting of leading pediatricians, has been constituted. A Second Committee under the Director, Medical, Health and Family Welfare, has also been constituted for examining the possibility of emergence of the third wave, and for suggesting ways and means to deal both with the emergence of the black fungus and the third wave. As soon as the recommendations are submitted before the State Government, the Government will take necessary steps in accordance with the said recommendations.

12. Speaking about the availability of *Liposomal* injections, the injections which are useful for tackling and for curing the black fungus, Mr. Ved Prakash Mishra, the Director, Department of Pharmaceuticals has explained to this Court that, in fact, an injection called '*Amphotiricin B*' comes in two varieties, namely, the conventional one, and the *Liposomal* one.

13. According to Dr. Sanjay Roy, the Director of Medical Health, Ministry of Health and Family Welfare, Government of India, there is a paucity of the said *Liposomal* injection for two reasons: firstly, the production within the country is a dismal one, as prior to emergence of the black fungus, the said injection was not in demand. In April, 2021, the Indian companies produced merely 62,000 vials of the said injection. However, as soon as the country was hit by black fungus, the production in June, 2021, has increased to 3,57,000 vials. Moreover, in order to combat the menace of black fungus, the Central Government has already imported 9.5 lakhs vials from the United States of America.

14. Mr. Manmohan Sachdeva, the Chief Advisor in the National Pharmaceuticals Pricing Authority, informs this Court that, so far the State of Uttarakhand has been allotted 1,990 vials, out of which 1,760 vials have been collected by the State.

15. According to Mr. Ved Prakash Mishra, Dr. Sanjay Roy and Mr. Manmohan Sachdeva, the Central Government is dedicated to combatting the menace of black fungus, as it is a life threatening illness. Moreover, all three of them have pointed out that the black fungus is treated not just through medication (injection) that is required, but more so, by surgical interventions which are required for scraping away the black fungus from within the body. For, the black fungus has a tendency to affect nasal cavity, the eyes, the brain, and even the lungs. Thus, an immediate surgical intervention is required to ensure that the black fungus does not spread within the body. After all, the more it spreads, the more it endangers the life of the patient.

16. According to Mr. Manmohan Sachdeva, the removal of black fungus requires not only the

expert/specialist Doctors, but also requires sophisticated instruments, equipments, and operating theaters. Once this fact was pointed out to Mr. Amit Negi, he informs this Court that the major Government Hospitals, and the hospitals attached with the Medical Colleges are well equipped to tackle the black fungus and to cure the patient. He further informs this Court that already facilities do exist in AIIMS at Rishikesh.

17. According to Mr. Amit Negi, vide notification dated 22.05.2021 'black fungus' has been notified under the Epidemic Act. Therefore, according to him, the Government is taking all precautions and necessary measures to deal with the emergence of black fungus.

18. Lastly, Mr. Amit Negi, submits that, considering the possible threat of the third wave of COVID-19, the Government is planning to strengthen the health care system, especially, keeping in mind that the possible victims of the third wave may be the children. In order to ward off the third wave, inoculation in the State is being done at a rapid pace. Considering the fact that there are vulnerable segments of this population who do not have easy access to the

health care centres, such as the Tribal population, the elderly population, Mr. Amit Negi, submits that the Government has started establishing "Near to Home Vaccination Centres". Moreover, steps are being taken to inoculate the Tribal population which is dispersed through the difficult terrains of the State.

19. Moreover, since the Government is aware of the fact that there is a large *Nepalese* population which does live within the State, since the Government is well-aware that the *Nepalese* are not permitted by the Government of Nepal to return home, the State Government has already sought instructions from the Central Government with regard to the inoculating the *Nepalese* population within the State. According to Mr. Amit Negi, the instructions are awaited.

20. Mr. Piyush Garg, the learned counsel for the petitioner in Writ Petition (PIL) No.51 of 2020, submits that while the Government is doing a laudable job in tackling the COVID-19, there are still certain lacunae which should be filled up by the State. Firstly, according to him, private hospitals are being unfair and unjust with the patients coming in. The private hospitals have

reserved large number of beds for the upper echelon or the elite of the society. Therefore, these beds are not being earmarked for the poor persons. Moreover, these beds are being given to the rich, even if the rich persons suffer from the mild symptoms and can easily be treated at home. Such misconduct by the private hospitals is depriving the poor persons of the medical treatment.

21. Secondly, although the Government has issued a circular clearly demarcating the upper cap with regard to the fees chargeable by the private hospitals, the private hospitals do not take the said amount as "*the maximum fees chargeable*". Instead, they are treating the fees prescribed by the Government as "*the minimum fees chargeable from the patients*". Therefore, Mr. Piyush Garg, prays that the Government should be directed to issue a fresh circular clearly prescribing the upper cap as the maximum amount which is chargeable by way of fees from the patients by the private hospitals.

22. Mr. Navnish Negi, the learned counsel for the petitioner in Writ Petition (PIL) No. 70 of 2020, has

drawn the attention of this Court to the conditions prevailing in district Pauri Garhwal. According to him, the Nodal Officer of Pauri Garhwal had issued a data concerning the beds available in different hospitals in the district. According to the said data, the Dedicated COVID Health Centres in the District Hospitals had ten ventilators. However, the data further clearly reveals that all the ventilators are dysfunctional. Moreover, the data reveals that the ICU at the District Hospitals has only four beds. Therefore, according to the learned counsel, district Pauri Garhwal does not have a single working ventilator. Moreover, the number of beds available in the ICU are too little to handle the large number of COVID-19 patients within the said district.

23. Secondly, Mr. Navnish Negi, submits that there is a contradiction in the data being issued by the Government itself. Taking an example of Kotdwar, the learned counsel submits that according to the Nodal Officer, the Dedicated COVID Health Centre in Kotdwar does not have a single bed in the ICU. However, according to the State Bulletin, issued by the State Government, the same hospital is shown as having six

beds in the ICU. Therefore, the correct data is not being published by the State Government.

24. Thirdly, he submits that the Primary Health Centre at Pauri Garhwal does not have water supply, although the Centre caters to the needs of thirty-three villages.

25. Lastly, he submits that at the village level, there are no isolation centres which have been established. Considering the fact that the village houses tend to be small in size, considering the fact that it would be extremely difficult to quarantine the COVID-19 patients within such small houses, the learned counsel suggests that perhaps isolation centres should be developed and demarcated at the Village Panchayat level.

26. Mr. Dushyant Mainali, the learned counsel for the petitioner in Writ Petition (PIL) No.50 of 2020, has pointed out that the Central Government has issued an SOP on 06.05.2021 with regard to the vaccination of persons who do not have the prescribed identity cards. According to the SOP, each State is required to

constitute the District Task Force. It is the duty of the District Task Force to identify persons, or group of persons, who do not possess any of the seven identity cards prescribed for availing COVID-19 vaccination services. According to him, so far such District Task Force has not been constituted by the State. Therefore, the people, including the nomads, persons in the old age homes, road side beggars, people residing in Rehabilitation Centres or camps and other identifiable eligible persons, have not been identified in the State. Thus, a large segment of the population continues to be deprived of the vaccination.

27. He further points out that the Tribal population which does not possess any of the seven identity cards prescribed for availing COVID-19 vaccination services are equally deprived of inoculation. Thus, he prays that direction should be issued to the State Government to constitute the District Task Force, and to ensure that these vulnerable sections of society are duly inoculated by the State.

28. Mr. Abhijay Negi, the learned counsel for the petitioner in Writ Petition (PIL) Nos. 97 of 2019 and 67

of 2020, has pointed out that, while the State Government has Designated Covid Hospitals, a large segment of the population needs its regular or ordinary medical ailments to be taken care of. However, the Designated Covid Hospitals are refusing to treat the patients suffering from other medical ailments. Thus, those, who are suffering from kidney dis-function, cardiac problems, or from other ailments, are not getting sufficient medical attention. This negligence on the part of the medical fraternity is jeopardizing the lives of many people. Therefore, he prays that the Government should be directed to designate "Non-Covid Hospitals", which can provide critical care to the ordinary patients or to the non-covid patients.

29. Secondly, Mr. Abhijay Negi informs this Court that in Chandigarh the Government has sought the help from the Civil Society by creating a portal where people may volunteer their services for dealing with the problems created by the COVID-19 pandemic. Mr. Abhijay Negi suggests that a similar portal should be opened in Uttarakhand so that the dedicated segment of the Society can step forward and partner with the

State Government to resolve the problems of the people, the problems created by the pandemic. According to the learned counsel, such volunteers may be needed in the future, considering the possibility of the onslaught of the third wave.

30. Thirdly, Mr. Abhijay Negi, suggests that, perhaps to motivate the people to follow the SOP and to adhere to the guidelines issued by the Central Government and the State Government, iconic figures belonging to the State of Uttarakhand should be engaged by the State Government. For, it is these iconic figures who inspire and are the role models for our society.

31. Mr. Shiv Bhatt, the learned counsel for the petitioner in Writ Petition (PIL) No. 58 of 2020, submits that as is being done in other States, the vaccination process in this State should also be expanded to being from "door to door". Giving an example of Madhya Pradesh, he claims that in Madhya Pradesh, a nurse is accompanied with an Asha Worker, and a Home Guard, who goes from door to door and vaccinates the people at large.

32. Secondly, Mr. Shiv Bhatt submits that, despite the repeated requests of the Asha Workers and the Aaganbadi Workers, the Government has not even provided PPE kits to these workers, who are actively engaged in the war against COVID-19 pandemic. Moreover, despite the fact that the Government claims that home isolation kits are being given to the families of the COVID-19 patients, the same is untrue.

33. Furthermore, according to Mr. Shiv Bhatt, according to the SOP dated 16.05.2021 issued by the Government of India, Ministry of Health and Family Welfare dealing with the Containment & Management in Peri-urban, Rural & Tribal areas, it is the duty of the State Government to provide oximeters and thermometers at the village level. However, the same is not being done in the State. Moreover, despite the fact that the said SOP requires that certain number of personnel should be attached with the Health Care Centers, the staff, which is being provided to the Health Care Centers, is highly inadequate. Furthermore, while it is the requirement that the home isolation kits must include certain items, even on this point the SOP is not

being adhered to by the State Government. Moreover, although the said SOP deals with the disposal of bio-medical waste, even on this point, the SOP is being flouted.

34. Lastly, Mr. Shiv Bhatt submits that there is a glaring inconsistency in the data submitted by Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare. According to the affidavit submitted by Mr. Amit Negi, the total number of samples tested in the month of May, 2021 were 10,56,940. However, on the same page, at bottom, the number of samples tested each week in the month of May, 2021 add up only to 1,36,400. Therefore, according to Mr. Shiv Bhatt there is a glaring inconsistency/contradiction between the two figures on the same page.

35. Admittedly, due to the efforts of the Government, and due to the nature of the virus itself, the second wave of the COVID-19 pandemic is on the decline not only in the State of Uttarakhand, but also in the nation as well. However, the Scientific Community is already forecasting the possible emergence of the third wave. According to the Scientific Community, the

third wave is likely to hit India in the last week of August, 2021. Moreover, according to the Scientific Community, the third wave will strike the children.

36. Furthermore, there is a growing emergence of Mucormycosis cases (the Black Fungus, the Yellow Fungus and the White Fungus). As mentioned hereinabove, the number of Mucormycosis cases is increasing by leaps and bounds just within a period of one week. As mentioned hereinabove, according to Mr. Ved Prakash Mishra, Mr. Manmohan Sachdeva, and Dr. Sanjay Roy the treatment of Black Fungus is a complicated one. For, it requires both lifesaving medicines (injections) and the surgical interventions. This would further require the availability of expert Doctors, and high quality instruments and machines. Therefore, the State will have to be well prepared to tackle the menace of both the third wave of COVID-19, and the continuation of Mucormycosis.

37. Keeping these factors in mind, and keeping the suggestions made by the learned counsel for the petitioners, this Court issues the following directions :-

(i) The State Government must plan and strategize as to how to tackle the emergence of the third wave. As soon as the recommendations of the High Powered Committee, consisting of the leading Pediatricians, and the recommendations of the another Committee, constituted under the Director General, Medical, Health and Family Welfare, are made available to the State Government, the Government must implement the said recommendations on war footing both in letter and spirit.

(ii) In order to deal with the menace of Black Fungus, the Government must come up with concrete plans. Since the Government claims that it has ample infrastructure both in terms of medical infrastructure and in human resources, since it claims that Black Fungus can be treated in different hospitals throughout the State, the necessary information with regard to the existence of such facilities should be disseminated to the

public at large through electronic and print media.

(iii) The State Government, in collaboration with the Central Government, must ensure that the lifesaving drugs such as "*Liposomal Amphotericin B*" are steadily and continuously supplied to the State in order to ensure its free availability.

(iv) The infrastructure required for treating Black Fungus should be strengthened by the State Government in the different hospitals, which are functioning throughout the State.

(v) Mr. Amit Negi is directed to explain the discrepancy in the data with regard to the number of samples tested in the month of May, 2021. For, *prima facie*, there is, indeed, a discrepancy in the data furnished by the learned Secretary, Medical Health and Family Welfare.

(vi) The Department of Medical Health and Family Welfare is also directed to issue a circular, both for the benefit of the public at large and for the private hospitals, clearly prescribing the upper cap applicable to the fees being charged by the private hospitals. The said circular should make it amply clear that the fee structure being prescribed is the maximum that a private hospital can charge from a patient. In case the private hospitals are found to be charging more than the prescribed fees, the State should take strict action against the erring hospitals in accordance with law.

(vii) The State Government should also endeavor to upgrade the District Hospitals by increasing the number of beds in the ICU, and by increasing the number of ventilators, which are available with the District Hospitals.

(viii) The Health Department should carry out an audit with regard to the

functioning of the ventilators, and with regard to the functioning of the other lifesaving equipments, which are already in stock in the District Hospitals.

(ix) The State Government is directed to implement the SOP dated 06.05.2021, issued by the Central Government, with regard to vaccination of persons who do not possess the prescribed identity cards. The State Government should specifically endeavor to inoculate the Tribal population, the elderly population, the physically challenged persons, and the eligible homeless people.

(x) The State should also consider the feasibility of creating Isolation Centers at the Panchayat Level so as to ensure that the villagers can safely be quarantined in the said Isolation Centers.

(xi) Since large percentage of the population is a non-covid affected population,

since large number of people continues to suffer from different medical ailments, since such persons are not being treated properly by the Designated Covid Hospitals, the State Government should also consider designating Non-Covid Hospitals so that the large population may be referred to such Non-Covid Hospitals for the treatment of their medical ailments.

(xii) The State Government should also consider the feasibility of soliciting the help from the Civil Society by creating a portal where volunteers can give their data, and can volunteer their services for resolving the problems created by the COVID-19 pandemic. This may become necessary in case the third wave of COVID-19 strikes the State.

(xiii) The State Government should also consider the feasibility of roping in celebrities, who are the role models for the people of the State for educating the people

about COVID-19 pandemic and with regard to adhering to the SOP issued to the SOP issued by the Central Government and State Governments. For, many a times, it is the celebrities, who act as a catalyst, and as motivators for the public at large.

(xiv) Considering the fact that the population is unevenly distributed, considering the fact that in the mountainous areas of the State, the population is highly dispersed, the State Government should consider the possibility of creating a system which would permit the nurses, accompanied with an Asha Worker and a Home Guard, who can go door to door and inoculate the eligible persons in each village. For, until and unless inoculation is carried out on war footing, it will be extremely difficult to prevent the onslaught of the third wave.

(xv) Since, according to the SOP issued by the Government of India, Ministry of Health & Family Welfare dated 16.05.2021, it

is the duty of the State to ensure surveillance, screening, isolation and referral of the cases from the villages, since it is the duty of the State Government to provide home isolation kits, and to provide oximeters and thermometers at the village level, the State is directed to adhere and implement the SOP dated 16.05.2021 both in letter in spirit.

(xvi) The State Government is directed to examine the complaint that Asha workers and *Aaganbadi* workers, who are dealing with COVID-19 pandemic, are not being provided with the necessary PPE kits and other protective gears. In case such an allegation is found to be true, the State Government is directed to immediately ensure that PPE kits and other protective gears are, indeed, provided to the Asha workers and *Aaganbadi* workers.

(xvii) The State Government is further directed to implement the SOP dated

16.05.2021, issued by the Government of India, dealing with Containment & Management in Peri-urban, Rural & Tribal areas.

(xviii) Mr. Amit Negi is directed to file sufficient cogent and convincing evidence to establish that death audit is being carried out. The said death audit report should also be accompanied with the corresponding death certificate of the patient.

(xix) Mr. Amit Negi is directed to submit a detailed report with regard to the directions issued by this Court in the present order on or before 21.06.2021.

(xx) Due to the paucity of time, this Court has not been able to interact with Mr. Dilip Jawalkar, the learned Secretary, Tourism. However, as this Court is concerned with the possibility of the opening of the Char Dham, as is being contemplated by the State Government, this Court directs

Mr. Dilip Jawalkar, the learned Secretary, Tourism to be present before this Court on 16.06.2021. This Court also directs Mr. Om Prakash, the learned Chief Secretary, to be present before this Court through video conferencing facility.

38. The presence of Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare is dispensed with on the next date.

39. The presence of Mr. Ved Prakash Mishra, Director, Department of Pharmaceuticals, Mr. Manmohan Sachdeva, Chief Advisor in the National Pharmaceuticals Pricing Authority and Dr. Sanjay Roy, the learned Director, Department of Health and Family Welfare, Government of India is also dispensed with on the next date.

40. The Registry is directed to tag the file of Writ Petition (PIL) No. 77 of 2021.

41. List this case on 16.06.2021.

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**RAGHVENDRA SINGH CHAUHAN, C.J.**

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**ALOK KUMAR VERMA, J.**

Dt: 09<sup>th</sup> June, 2021  
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