

A.F.R.

Court No. - 68

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 574 of 2020

Petitioner :- In-Re Inhuman Condition At Quarantine Centres And For Providing Better Treatment To Corona Positive

Respondent :- State of U.P.

Counsel for Petitioner :- Gaurav Kumar Gaur,Aditya Singh Parihar,Amitanshu Gour,Jitendra Kumar,Katyayini,Rahul Sahai,Rishu Mishra,S.P.S. Chauhan,Satyaveer Singh,Shailendra Garg,Sunita Sharma,Swetashwa Agarwal,Uttar Kumar Goswami

Counsel for Respondent :- C.S.C.,Dhiraj Singh,Hari Nath Tripathi,Purnendu Kumar Singh,Satyavrat Sahai,Sunil Dutt Kautilya

Hon'ble Siddhartha Varma,J.

Hon'ble Ajit Kumar,J.

Compliance affidavit filed today by Sri S.D. Kautilya, Advocate be kept on record.

Order on Letter Petition

Letter petition filed by Ms. Urmika Pandey be kept on record.

Let a copy of this petition be served upon the State within 48 hours.

Office is directed to allot regular number to this petition.

When the case is listed next, the name of Ms. Urmika Pandey be shown in the cause list.

Order on Letter Petition

Letter petition filed by Mr. Diggaj Pathak be kept on record.

Let a copy of this petition be served upon the State within 48 hours.

Office is directed to allot regular number to this petition.

When the case is listed next, the name of Mr. Diggaj Pathak be shown in the cause list.

Order on Letter Petition

This letter petition filed by Mr. Sunil Choudhary is taken on record.

Office is directed to allot regular number to this petition.

Copy of this petition has already been served upon the State.

In this letter petition, the grievance has been raised in respect of an incident that had taken place at S.R.N. hospital with a patient under treatment namely, Ayush Shukla. It is alleged that instead of conducting an inquiry into the complaint made on behalf of the mother of the patient, the doctors of the hospital got lodged first information report bearing Case Crime No.- 117 of 2020 against the patient and his mother under various sections in the Indian Penal Code.

The high handedness of the doctors towards patient during COVID-19 has been complained of as a misconduct and the allegations are also to the effect that Chief Medical Officer of Prayagraj acted in connivance with the doctors of the S.R.N. hospital and forwarded the complaint to the Kaudihar block, Prayagraj, whereas the incident had taken place on 13/14.5.2020 at S.R.N. hospital, Prayagraj.

Mr. Manish Goyal, learned Additional Advocate General seeks time to have instructions in the matter by the next date fixed.

Time prayed for is allowed.

When the case is listed next, the name of Mr. Sunil Choudhary be shown in the cause list.

In Re: Civil Misc. Intervention Application No. Nil of 2020

(Dated 21.9.2020 filed by Sri Shahid Kazmi, Advocate on behalf of Vishal Talwar)

This application be kept on record and be given a number.

Learned Additional Advocate General may take instructions in the matter.

Sri Shahid Kazmi, learned counsel may also provide a list of Doctors who intend to continue and serve the Corona patients on contract basis.

Order on the petition

Heard learned counsel for the parties.

Today, we have heard this case on the following five issues:-

I. Encroachment of public land and the menace of parking;

II. Discharge of function by the Town Vending Committee;

III. Disposal of used masks;

IV. Public wearing of masks; and

IV. Further medical facility during COVID-19.

In compliance of our order dated 18th August, 2020, the Advocate Commissioners Sri Chandan Sharma and Sri Dwivedi, have submitted their joint report, which has been taken on record.

Issue No.I:

Sri Chandan Sharma, learned Advocate has submitted that particularly in respect of point No.- (A) & (B) of our order dated 18th August, 2020 that after conducting inspection of various areas of the city where the encroachment removal drive had been undertaken by the Municipal Corporation, they have found that still substantial part of the public land and road side land continued to be occupied by the encroachers and that encroachment drive is yet to be carried out at several places. In those areas where drive has been undertaken, the unauthorized encroachers have reoccupied the places. He has submitted that after the encroachments were removed, it was a bounden duty of the concerned police station to have undertaken the exercise of restraining these encroachers from reoccupying those places.

On this above issue, reply is needed to be obtained by the

Additional Advocate General as to why police administration has not undertaken the desired exercise and, accordingly, we direct that the copy of the report be supplied to the Additional Advocate General who shall address us on this issue on the next date fixed.

On the question of parking of vehicles on public places and on road side land which has been creating traffic congestion, it has been submitted by Sri Sharma that parking areas have not been identified by the Nagar Nigam and even in Civil Lines area where vehicle parking has been developed of several floors, it is not being utilized and vehicles are being parked on the road. On a pointed query being made to Sri Kautilya, learned counsel appearing for the Nagar Nigam as to why the parking place which has already been constructed, has not been utilized, Sri Kautilya submitted that Vyapar Mandal of Prayagraj has shown concern for this on the ground that if people are not permitted to bring their vehicles near the shop, it causes loss to their business. Although he submits that drive of removal of illegally parked vehicle has already taken place in the past with the help of police, it is a matter of concern that the Nagar Nigam and the Police are unable to make people park their vehicles at their designated places.

Be that as it may, we want to clarify that no illegal parking of vehicles can be permitted in Civil Lines area where a parking place has already been assigned and a huge building for the same has

been constructed. People may utilize the services of electric rickshaw etc. to reach the places of shops but the vehicle should be parked in the parking zone only. For this, we direct Nagar Nigam and Vyapar Mandal to discuss this issue sitting across the table and if Vyapar Mandal has still any problem with the direction that we are issuing for clearing public road from unauthorized parked vehicles, they should move proper applications before this Court for the ventilation of their grievance. However, we direct that the parking issue be resolved within two weeks.

Issue No.II:

On the issue of vending zones also, Sri Sharma has submitted a report and has also annexed an order of Chairman of Town Vending Committee, according to which, only 7 zones have been approved and allotments have been made. It is another matter that till date people have not occupied those places which have been allotted to them. He has brought to the notice of the Court that 29 zones are still pending for approval by the Committee. Sri Kautilya, learned Advocate appearing for Nagar Nigam has submitted that Town Vending Committee has been constituted under the Chairmanship of the Municipal Commissioner under the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

On being repeatedly asked as to why the Committee has not

further approved the remaining vending zones, Sri Kautilya has submitted that he would take up the issue with the Municipal Commissioner.

Looking at the scenario of the city of Prayagraj where almost every nook and corner and every street is flooded with *Thela* and street vendors who continue their businesses from morning till evening, causing not only traffic congestions but also result in serious threats of COVID-19 upon the society, we are of the considered opinion that the Committee should not further linger the matter of approval of the vending zones that have been placed before it for consideration and we further find, so also Sri Sharma argues, that 38 vending zones are not sufficient to accommodate thousands of vendors in the city and therefore, we direct that the Committee shall in consultation with the Nagar Nigam and the District Administration further earmark vending zones in different parts of the city besides 29 zones which are still under consideration before the Committee. However, we clarify that these vending zones should not be developed on the road side land of the city along the main roads of the city and also they should not be in the congested areas of the city where crowd accumulates. We also direct that after vending zones which are pending consideration are approved, immediate allotment exercise shall be undertaken and once the allotment is made as per the rules and the Act, vendors will be permitted

to occupy the places. If they fail to occupy the allotted places, their vending license should be cancelled and they should be restrained from carrying on any business activity in the places from where they had been directed to be removed.

Accordingly, we order that the Town Vending Committee shall swing into action immediately and the exercise of approval of pending zones be completed within a week from today and allotment exercise shall further be carried out within three days thereafter and side by side exercise to further identify vending zones shall also be carried out and be completed within the next 15 days. A comprehensive report regarding approval of the allotment shall be submitted on or before 1st October, 2020 and exercise for identifying new vending zones and its approval shall be further carried out in next 15 days and report regarding that shall also be submitted by 17th October, 2020.

Issue No.-III:

On the issue of disposal of used masks in disposal bins at different places, Sri Kautilya has submitted that as far as the offices are concerned in the city, the collection bins have been placed and besides that, persons have also been employed by Nagar Nigam to collect masks from identified places for disposal. However, he further submits that as far as commercial places are concerned the shop keepers may also be

directed to keep disposal bins for used masks outside their shops so that people visiting the shops, can throw their masks in them and Nagar Nigam shall carry out exercise of collecting used masks from such places on a day to day basis.

We find the above request so made, to be genuine considering that fight against COVID-19 is to be jointly fought by one and all and so we direct that Nagar Nigam shall inform all the commercial shop keepers of different commercial places to place disposal bins for collecting used masks and Nagar Nigam shall collect the same on a day to day basis.

It is further directed that if shop keepers violate the directions issued hereinabove, they shall be given notice by the Nagar Nigam and shall appropriately be penalized for the same.

On the issue of removal of unauthorized construction of permanent structures of road side land/ public land, there appears confusion regarding powers between two authorities, namely, Nagar Nigam and Urban Planning and Development Authority. Learned counsel for the Nagar Nigam submits that in view of insertion of Section 26 (A) vide 1997 amendment in the Uttar Pradesh Urban Planning and Development Act, 1973 the powers have been taken away for the operation and vested in the Planning Development Authority whereas it has been argued by Sri Paul, learned counsel appearing for

the Development Authority that the powers under Section 295 and 296 and onwards except Chapter IX of the Corporation Act, 1959 still have not yet been repealed.

Both the counsel seek time to address on this issue and, accordingly, the matter is adjourned for this purpose till Monday.

Yet another issue had been raised on the last date by the learned counsel for the Nagar Nigam relating to the financial constraints of the Corporation in performing its duties as enumerated under Section 112-B and Section 114 of the Uttar Pradesh Municipal Corporation Act, 1959.

Learned counsel for the Nagar Nigam has drawn our attention towards Sections 138(A) and Section 139 of the Corporation Act, 1959 which provide for review of the expenses to be incurred by the State Finance Commission and then recommendation for making deficiency of the shortfall, good. The creation of funds of the Corporation did consist, as he argues, of funds to be given as grant-in-aid by the Government from the State Consolidated fund.

Sri Goel, learned Additional Advocate General had sought time to have instructions in the matter and today Sri Goel has submitted that the instructions are still awaited and has sought a week's further time in this regard. Accordingly, the matter on this issue is adjourned as well and we hope and trust that Sri Goel shall have sufficient instructions in the

matter by the next date.

Issue No.- IV :

Now, coming to the issue of containment of wide spread pandemic COVID-19, we have repeatedly in our earlier orders raised concern regarding non-compliance of the COVID-19 guidelines which have been modified from time to time as the Government has proceeded to unlock the Government and public activities in stages.

Ever since the first lock down was imposed on 25.03.2020, we have been experimenting with various ways and means to control the pandemic. To control the pandemic, we have to stop the spread and also treat the people who have got the infection of COVID-19 virus. As of today, to stop the spreading of pandemic, humanity has realized that the only methods available to it were that it has to maintain social distancing and wear masks.

The New England Journal of Medicine (NEJM) which was published on 08.09.2020 reports that the latest research is that wearing of masks does not only prevent the person who is wearing the mask from getting the infection but it says that if everyone wears a mask it shall also lessen the force of the virus for the whole world, resulting in the elimination of the virus. From the reading of the article it appears to us that this is the last opportunity now available to rescue civilization

from the effect of this pandemic. If we do not take action today, we will not be able to face our progenies, who would always look up to us questioningly as to why we did not take requisite actions despite the fact that we had the power to take the same. The article about which we would further elaborate in this judgment of ours says that the mutating/ changing virus might get a vaccine in the coming months but it also says that there is no surety of the fact that it would last for a very long time. It also mentions that today there is no proof of the fact that what would be the after effects of the vaccine. This much the researchers, however, are sure that if 100% masking is done by us then the virus by itself would die a natural death.

Sri Goel has placed before this Court the instructions that he has received *qua* policing and setting up the requisite Task Force to ensure that the public wears masks, besides the statistics regarding registration of the first information reports, submission of the charge sheets in cases of violation of COVID-19 guidelines inviting application of Penal provisions under Sections 188/267/270 of I.P.C. and the Pandemic Act.

Sri Goel has drawn the attention of the Court towards the order issued by the Deputy Inspector of General of Police/ Senior Superintendent of Police, Prayagraj on 22nd September, 2020. In this order task forces have been constituted police station wise in the municipal area of Prayagraj. He informs that two task forces have been

constituted at each of the police station and each task force, it has been submitted, would consist of a Sub-Inspector, a head constable and a constable. It is submitted by Sri Goel that this task force shall carry out a round the clock vigil in the city in coordination of each other in the territorial limits of their respective police stations to ensure that the public wearing of masks would not only remains a slogan but would become a public order. He submits that policing shall be made more strict and the vigil shall be intensified on public roads and public places to ensure that everyone wears a mask once he is out of his house. He has assured that this police task force is in addition to the forces that have already been deployed by the police department in the city area to ensure full and strict compliance of COVID-19 guidelines. Though we do not doubt the concern shown by the administration and the *bona fides* of the police administration in the city to take steps to convince and at times force people to wear masks so that the pandemic is contained but we find from the photographs that have been brought on record by the learned Additional Advocate General as part of the instructions that huge assemblies of people at various public places are still there and that people also are not wearing masks as a routine. The police force thus, in our clear view, does not constitute requisite force and if situation like this continues, we do not think that the pandemic is going to be contained. The manner, in which the positive cases are being reported every day, fully establishes that until a person is tested,

his status *qua* COVID-19 is not known and he continues to infect all those who come in contact with him and thus the chain goes on. The testing of COVID-19 infection is only an exercise to identify people and isolate them but it has its own limitations and no one can rule out that if the number of testing is increased by five times, the number of positive patients would also increase by five times. Thus, whatever the statistics is being published regarding number of positive cases, it can be said is only the tip of the iceberg. There is no possibility of any vaccination getting into action in the State very soon as the researches are still underway at different stages by different research institutes and scientists.

Under the circumstances, therefore, one has to find out ways and means to contain spread of pandemic COVID-19. Research in New England Journal of Medicine as we have already referred to above in earlier paragraphs of this order further states “*viral shedding from the noses and mouths of patients who were presymptomatic or asymptomatic – shedding rates equivalent to those among symptomatic patients. Universal facial masking seemed to be a possible way to prevent transmission from asymptomatic infected people*” and that is why much emphasis has been laid from time to time that “public wearing mouth/face cover masks” should be followed in all areas be it of community spread or other areas with high rates of transmission. The journal reports

further that while we await results of vaccine trials, any public health measure that could increase proportion of asymptomatic SARS-CoV-2 infections may both make the infection less deadly and increase population wide immunity without severe illness and deaths.

We are, therefore, convinced with the study shown in the journal leading to the conclusion that the “100% population masking” is the only strategy by which we can attempt on containing the spread of pandemic COVID-19 totally.

Dr. Naresh Trehan of Medanta Hospital, New Delhi has expressed his view that COVID-19 infection should not be taken lightly as it may seriously and adversely affect the heart and lungs and it could be known only after passage of some time and at times the infection could even be brought home by those who are hale and hearty because of carelessness of people and their elderly family members and children at home may get infected adversely and, therefore, besides the doctor, and Government, public has also to involve itself in the fight against COVID-19.

Another doctor, Dr. Devi Shetty of Bengaluru has expressed his view that this pandemic may well continue to last for a further year and, therefore, more and more doctors have to be appointed to meet the situation that may arise because of the large scale infected people coming to the hospital in near future.

Dr. S.K. Sarin of Delhi has stated that it is imperative to make a rule "no mask no entry" in public places and institutions including banks etc. He rightly said that if everyone wears a mask, it will act like a vaccine and no second person will get infected.

Under such circumstances, we issue a writ of mandamus for the whole of the State of Uttar Pradesh that no person should be seen outside his/ her house without a mask on his/her face and he or she should check that the mask covers both the nose and the mouth. The police in all the districts of the State of Uttar Pradesh should in all police stations of all the districts deploy Task Forces to implement this mandamus. Each task force should consist of many more police personnel than presently have been deployed. Needless to say that violation of this mandamus would entail rigorous punishments. The Police and the Administration cannot get away by saying that people are to be blamed for not wearing the masks. They cannot say that despite their best efforts, masks are not being worn. The people and the Administration should realize that today wearing of masks is not only for the protection of the person who is wearing it but it is now also important for protecting the whole society and if a person commits a crime against society, he has to be punished. We further direct that the police of the entire State of Uttar Pradesh has to necessarily take appropriate action under

relevant provisions of the various Penal laws, the moment it finds a person without a mask in the public.

The Advocate Commissioners whom we have appointed shall report to the Zonal officers and the Municipal Commissioners through the email Id which have been provided to them in the Court itself by Sri Kautilya, learned counsel appearing for the Municipal Corporation. They shall also mail their report regarding the exercise of the task forces on a daily basis to the Registrar, Legal Cell, High Court Allahabad on his email Id and shall also forward the same to the Additional Advocate General.

On the next date fixed we shall have due consideration of the reports submitted by the Advocate Commissioners regarding the policing to enforce public wearing of masks, by the task forces.

Issue No.- V:

So far as the treatment part is concerned, it is evident that despite the best efforts of the Government there are shortcomings. From the various arguments which have been placed at the Bar before us, we find that there are certain remedial measures which are important and they should be brought in:-

- (i) Medical facilities should be made available to one and all.**

(ii) The Task Forces which have been constituted for rendering medical help should have empathy towards the ill.

The Court is aware of a case where after the COVID-19 patient had passed away. A phone call came to the relative of the person who had died asking him as to whether the person who had got infected would go for hospitalization or would he like to remain in home isolation. To the first call, the relative had responded that the person about whom the enquiry was being made had already died. Thereafter, repeated phone calls were being made to the relative of the deceased asking the very same question as to whether the person who had got infected would like to get hospitalized or would prefer home isolation. The relative kept on informing that the person about whom the enquiry was being made had passed away. The telephone calls were being made from the following numbers:-

(i) 8887680362; (ii) 0532-2641582; (iii) 0532-2641579; (iv) 8299373859; (v) 0532-2641594; (vi) 0532-2641584; (vii) 0522-2723481; (viii) 0532-2500281; and (ix) 0532-2500287

The Court, therefore, feels that the portal is not being updated. In the case in hand, the person who had got infected had died but it is a matter of concern as to what would happen if a person had not died and had informed to the person who was making the enquiries about his illness etc.? One can understand the plight of a person who instead of

getting medicines and medical advice gets only telephone calls.

The Court finds that these enquiries, therefore, are only empty formalities and there is no sincerity on the part of the person who makes the enquiry, which surely shows that the portals are only for namesake and are not actually being updated. From all this, the Court gathers that the phone calls were being made from professional call centres who were not interested in the treatment of the person infected but were only making empty phone calls for some payment they might be getting.

Thus, the Administration in this regard is directed to ensure that every information which is provided, should be entered against the name of the person in respect of whom the enquiry was being made and the portal should genuinely be updated on a day to day basis. Further problem which has come to the notice of the Court is that if a person who is in home isolation requires CT scan and X-ray then no pathology entertains that patient. Every district in the State of U.P. should have a dedicated clinic (it can be in the clinics of the municipality of every district) where a person who is in home quarantine can go and get his/her CT scan or X-ray done.

Put up this matter again on 28th September, 2020 at 10:00 A.M.

Let a copy of this order be sent to the Additional Chief Secretary (Home), State of Uttar Pradesh, Director General of Police, Uttar

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Pradesh, Lucknow and all the District Magistrates, Senior Superintendents of Police and Superintendents of Police of all the districts of the State within 48 hours for necessary action and compliance of this order at their end.

Order Date :- 23.9.2020
Atmesh/ Siddhant

(Siddhartha Varma,J.)

(Ajit Kumar,J.)