

Case :- P.I.L. CIVIL No. - 10341 of 2021

Petitioner :- Dr. Sandeep Pandey

Respondent :- U.O.I. Thru. Ministry Of Home Affairs, New Delhi & Ors.

Counsel for Petitioner :- Rajat Rajan Singh

Counsel for Respondent :- A.S.G., C.S.C.

Hon'ble Ritu Raj Awasthi, J.

Hon'ble Manish Mathur, J.

Heard learned Counsel for the parties through video conferencing.

In this Public Interest Litigation, the petitioner has prayed for ex gratia compensation under the Disaster Management Act, 2005 for persons who have lost their lives due to COVID-19 pandemic.

Learned counsel for the petitioner informs that after filing of this writ petition, he has come to know that the Apex Court in a suo motu matter vide order dated 30.4.2021 has suggested the Central Government to consider payment of compensation etc. to the victims.

Learned Additional Chief Standing Counsel, Sri H. P. Srivastava informs that this Court at Allahabad is also dealing with PIL No. 574 of 2020 in which the issue pertaining to COVID-19 has been taken up.

List this case in the month of July, 2021.

In the meantime, in case any decision in this regard is taken by the Apex Court or by this Court at Allahabad, that may be brought on record.

Order Date :- 10.5.2021

kvg/-

CODE NO.
MISC. BENCH - 2021 (PIL)

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW.**

Writ Petition No. (M/B) of 2021 (PIL).

Dr. Sandeep Pandey

.....PETITIONER.

Versus:

Union of India and others.

.....RESPONDENTS.

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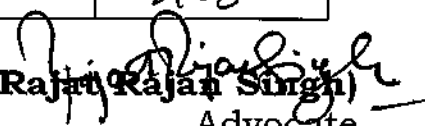
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Lucknow
Dated: 18/04/21


Rajat Singh
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Counsel for the Petitioner
Enrollment No.04117/14
AOR No. : B/R 1437
Mobile No.: 9839773999

IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW.

Writ Petition No. (M/B) of 2021 (PIL).

Dr. Sandeep Pandey

.....PETITIONER.

Versus:

Union of India and others.

.....RESPONDENTS.

SYNOPSIS

The Present Public Interest Litigation is filed seeking direction to:

- i. Review/Alter the National and State Plan for Disaster Management and include policy for Ex-Gratia Payment to the family of deceased people, who lost their life due to this Disaster of COVID19.
- ii. Direct the State Government and Testing Labs to send RTPCR report of COVID19 through Whatsapp immediately, without waiting to upload the same on ICMR portal.
- iii. direct the State Government to ensure medical care of serious Non-COVID patients in separate facility.

Section 12 of the Disaster Management Act 2005 mandates payment of Ex-Gratia amount to the person affected by the Disaster, however neither the Central Government nor the State Government has evolved any scheme for payment of Ex-Gratia/compensation to the victims of COVID19.

The Hon'ble Supreme Court in the case of Gaurav Kumar Bansal vs Union of India (W.P. Civil 444 of 2013) has directed the National Disaster Management Authority and the State Disaster Management Authorities to periodically review the National and State Level Plan and also directed for providing minimum standards of relief to all concerned.

The aforesaid Judgment of the Hon'ble Supreme Court is not followed in its true letter and spirit.

In the second wave of COVID19 pandemic there is complete failure of health care system, due to which infected people are unable to get beds and resultantly succumbing to death outside hospitals and in their home. It is the failure on the part of the Government to provide basic health facilities to its citizens. The action/inaction of the Government is complete violation of Right to Life and Right to Health guaranteed under Article 21 of the Constitution of India.

Considering the urgency involved the present Petition for larger Public Interest, interreference by this Hon'ble Court is sought.

Lucknow
Dated: 18/04/2021


Rajat Rajan Singh

Advocate
Counsel for the Petitioner
Enrollment No.04117/14
AOR No. : B/R 1437
Mobile No.: 9839773999



IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW.

Writ Petition No. (M/B) of 2021 (PIL).

Dr. Sandeep Pandey

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.....RESPONDENTS.

LIST OF DATES AND EVENTS :

Sl No.	Date	Event
1.	16.07.2020	ICMR issued guidelines for Testing Labs to upload District Wise Real Time Data to on Website of ICRM.
2.	05.04.2016	Hon'ble Supreme Court directed the NDMA to communicate to the concerned Chief Secretaries of the States to draw District Level Plan under Section 31 of the Act.
3.	08.05.2017	A National Plan was drawn up and placed before the Supreme Court and the Writ Petition was disposed off.
4.	11.03.2020	Due to the drastic consequence emerging from the assault of COVID-19, the World Health Organization (hereafter "WHO") declared the spread of infection caused by the COVID-19 as a "Pandemic".
5.	25.01.2020	Government of India issued

X

		guidelines to all its departments as well as to all the states and its various authorities to take appropriate measures for prevention spread of COVID19.
6.	31.01.2020	First case of COVID19 was reported in India and thereafter COVID19 started wreaking havoc in India and to contain the spread of this virus, the Government of India invoked Disaster Management Act 2005 and declared the spread of COVID19 as notified disaster on 14.03.2020.
7.	14.03.2020	Government of India issued notification modifying the earlier notification deleting point no.1 and 2.
8.	24.03.2020	Government of India announced a nation wide lockdown of 21 days, restricting the movement of the entire population of the Country. Such lockdown was extended from time to time in phases and is currently in operation for areas declared as containment zones.
9.	15.04.2021	Hon'ble Bombay High Court directed that authorities to provide the report of COVID19 test on Whatsapp of the Patient and then positively upload it on ICMR portal within 24 hours.
10.		There is violation of basic human

		right and Fundamental Right of Right to Life and Right to Health guaranteed under Article 21 of the Constitution of India.
11.		Hence the Present PIL.

Lucknow
Dated: 18/04/2021



Rajat Rajan Singh
Advocate
Counsel for the Petitioner
Enrollment No.04117/14
AOR No. : B/R 1437
Mobile No.: 9839773999

IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW.

C.M. Application No. (W) of 2018.

In re;
Writ Petition No. (M/B) of 2021 (PIL).

Dr. Sandeep PandeyPETITIONER.

Versus:

Union of India and others.RESPONDENTS.

APPLICATION FOR INTERIM RELIEF:

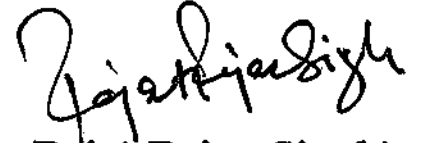
The Applicants-Petitioners named above, most respectfully submits as under: -

For the facts and circumstances stated in the accompanying writ petition, duly supported by an Affidavit, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to direct the State Government and all testing labs to provide RTPCR report of COVID 19 through Whatsapp, as early as possible, without waiting for uploading the same on ICMR portal.

Further, this Hon'ble Court may kindly be pleased to stay the operation and implementation of the modified notification no. 33-4/2020-NDM-I dated 14.03.2020, as contained in **ANNEXURE NO.3**, so far as same deletes the provision for Ex-gratia payment to victims of COVID19. And direct the State Government to provide some interim relief in the nature of Ex-gratia payment to family of deceased person who succumbed to COVID19.

Any other suitable order or direction which is deemed fit and just in the circumstances of the case may also kindly be passed in favour of the Petitioners.

Lucknow
Dated: 18/04/2021



Rajat Rajan Singh)

Advocate

Counsel for the Petitioner

Enrollment No.04117/14

AOR No. : B/R 1437

Mobile No.: 9839773999

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW.**

Writ Petition No. (M/B) of 2021 (PIL).

Dr. Sandeep Pandey, aged about 55 years,
Son of Sri Uma Shanker Pandey,
resident of A-893, Indira Nagar, Lucknow

.....PETITIONERS.

VERSUS:

1. Union of India, through Ministry of Home Affairs,
Government of India,
New Delhi
2. National Disaster Management Authority,
Government of India, NDMA Bhawan,
A-1, Safdarganj Enclave, New Delhi
through its Member Secretary
3. State of U.P. through its Additional Chief Secretary,
Department of Home, Government of U.P.,
Civil Secretariat, Lucknow
4. Additional Chief Secretary,
Department of Medical Health and Family Welfare
Government of U.P.,
Civil Secretariat, Lucknow
5. Uttar Pradesh State Disaster Management Authority
Lucknow, through its Vice Chairman

संदीप

6. Relief Commissioner,
Department of Disaster Management
Government of U.P., Lucknow
7. Indian Council of Medical Research
Ramalingaswami Bhawan, P.O. Box No. 4911
Ansari Nagar, New Delhi through its Secretary

.....RESPONDENTS.

**PUBLIC INTEREST LITIGATION UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA:**

To,

The Hon'ble Chief Justice and his other
Companion Judges of the aforesaid court.

The Petitioner named above, most respectfully
submits as under:-

1. That the Petitioner states that he has not filed any other Writ Petition on the same subject matter and for the relief being prayed for by him in the instant writ petition before this Hon'ble Court either at Allahabad or at Lucknow.

The Petitioner has not received any notice, information or copy of caveat application from any of the Respondents or from other sources.

2. That the Petitioner is filing the instant Writ Petition in Public Interest. The Petitioner has no personal interest in the litigation and the petition is not guided by self-gain or for gain of any other person/ institution/body and that there is no motive other than of public interest in filing the Writ Petition. The present Writ

Petition is being filed *pro bono publico* by the Petitioner having no personal interest in the matter and the reliefs sought and there is no authoritative pronouncement by the Supreme Court or High Court on the question raised.

3. That the result of this litigation will not lead to any undue gain to the Petitioner or anyone associated with him or any undue loss to any person, body of person or the State.
4. That the Petitioner is the National Convener of the National Alliance of People's Movement, a Social Service Organization and he has been engaged in the field of social work since very long. In recognition of social works done by the Petitioner in various field, which affect the society at large, the Petitioner was awarded internationally acclaimed "Magsaysay Award" in the field of social work. The Details of social work done by the Petitioner and awards received for such social work is annexed as **ANNEXURE No.1** to this Writ Petition.
5. That the brief facts giving rise to the instant Public Interest Litigation are as follows:
6. That the entire human race is facing the worst crisis of this century brought about by a virus named as Corona Virus (COVID19). It has brought about a tearful end to lakhs of people all over the world.
7. That on 11.03.2020 due to the drastic consequence emerging from the assault of COVID-19, the World Health Organization (hereafter "WHO") declared the

spread of infection caused by the COVID-19 as a "Pandemic".

8. On 25.01.2020, the Government of India issued guidelines to all its departments as well as to all the states and its various authorities to take appropriate measures for prevention spread of COVID19.
9. That on 31.01.2020, the first case of COVID19 was reported in India and thereafter COVID19 started wreaking havoc in India and to contain the spread of this virus, the Government of India invoked Disaster Management Act 2005 and declared the spread of COVID19 as notified disaster on 14.03.2020. True Copy of the notification no. 33-4/2020-NDM-I dated 14.03.2020 is being annexed herewith as **ANNEXURE No. 2** to this Writ Petition.
10. That a perusal of the aforesaid notification reveals that the Government of India provided a list of norms and assistance from State Disaster Response Fund (SDRF) in the wake of COVID19 virus outbreaks.
11. That at Serial No.1 Ex-Gratia Payment of Rupees 4 lakhs per deceased person including those involved in relief operations or associated in response activities, was mentioned.

Similarly, at Serial No.2 the cost of hospitalization for managing COVID19 patients at rates fixed by the State Government, was mentioned.

12. However, to the reasons best known to the Government of India, the notification dated 14.03.2020 was modified on the same day and the

point no.1 and 2 were deleted. True Copy of the notification no. 33-4/2020-NDM-I dated 14.03.2020 is being annexed herewith as **ANNEXURE No. 3** to this Writ Petition.

13. That the result of the modified order is that the provision of payment of Ex-Gratia amount to the family of deceased person and the cost of hospitalization was removed from the list of items and norms of assistance from State Disaster Response Fund.
14. That such an action of the Government of India is blatant violation of the basic human right and fundamental right to life of a person guaranteed under Article 21 of the Constitution of India.
15. That the Central Government also invoked an enactment of ancient vintage i.e. the Epidemic Disease Act 1897 and declared it Epidemic. True Copy of the Epidemic Disease Act 1897 is being annexed herewith as **ANNEXURE NO. 4** to this Writ Petition.
16. That from 24th March 2020 the Government of India announced a nation wide lockdown of 21 days, restricting the movement of the entire population of the Country. Such lockdown was extended from time to time in phases and is currently in operation for areas declared as containment zones.
17. That in the meanwhile the Government of India approached the World Health Organization and the World Bank for financial assistance of at least 1

Billion Dollar in urgent basis for the fight against the spread of COVID19.

18. That as per the news report of Economic Times, the World Health Organization approved 1 Billion Dollar aid to India for fight against the COVID19. True Copy of the News Clipping dated 03.04.2020 is being annexed herewith as **ANNEXURE No. 5** to this Writ Petition.
19. That during the lockdown period and thereafter the Government took various steps to curb the spread of COVID19 in India, but all the efforts of the Government have proved to be failed, in view of the current situation of COVID19 in India.
20. That currently India is going through the second wave of COVID19 in India and this time its causing more damage to the nation and people at large than last year. In 2020 the Government was not prepared to handle the crisis of a pandemic but now after lapse of more than 1 year there is no improvement in the situation of health facility.

At present as per the official website of the Ministry of Health and Family Welfare, Government of India there are total 1801316 Active Cases and 177150 people have died due to this virus. A printout of data of COVID19 in India is being annexed herewith as **ANNEXURE NO. 6** to this Writ Petition.

21. That this time there are daily reports in the newspapers that due to unavailability of beds and effective medical treatment, COVID19 infected people

are dying on roads. True copies of the News Paper Clippings are collectively annexed herewith as **ANNEXURE No. 7** to this Writ Petition.

22. That after one year of this pandemic if the Government is unable to provide beds to the citizens and give effective medical response, it is the fault of the Government and no one else.
23. That Right to Life is guaranteed under Article 21 of the Constitution of India. In the case of **Occupational Health and Safety Association vs Union Of India reported in (2014) 3 SCC 547** the Supreme Court held that Right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from Article 21 of the Constitution. Therefore, it is the duty of the Government to provide timely medical treatment to a patient.
24. That failure on the part of the Government Medical Hospital to provide immediate medical treatment to a patient amounts to violation of Article 21 of the Constitution which relates to right to life.
25. That in the case of **Pt. Permanand Katara vs Union of India reported in (1989) 4 SCC 286**, the Hon'ble Supreme Court held that failure on the part of Government Hospital to provide timely medical treatment to a patient in need of such treatment amounts to violation of Right to life.
26. That in the case of **Smt. Nilabati Behera alias Lalita Behera vs State of Orissa reported in (1993) 2 SCC 746**, the Supreme Court held that a claim in public

law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights and such a claim based in strict liability made by resorting to a constitution remedy under Article 32 and 226 is in distinct form and in addition to the remedy under the private law.

27. That as such the unavailability of beds in Hospitals and lack of oxygen supply, which is the major cause of death of COVID19 infected people is violation of Right to Life of people at large.
28. That the Disaster Management Act 2005 (hereinafter "Act of 2005") was enacted for effective management of disaster. Under the framework of the Act of 2005, a National Disaster Management Authority has been established at National Level. The Authority is headed by the Prime Minister of India. True copies of the Disaster Management Act 2005 is being annexed herewith as **ANNEXURE No. 8** to this Writ Petition.
29. The under Section 6 of the Act of 2005, very wide powers have been conferred upon the National Authority to lay down policies of disaster management, approve national plan, lay down guidelines for state authorities, recommend funds for the purpose of mitigation etc.
30. That under Section 14 of the Act of 2005, State Disaster Management Authority has been established in each state, headed by the Chief Minister of the respective state.

31. That Section 11 of the Act of 2005 provides that there shall be drawn up a plan for disaster management for the whole of the country called National Plan. It shall include measures to be taken for prevention of disaster, or the mitigation of their effects. The National plan is required to be reviewed and updated annually.

Similarly, Section 23 provides for the State Level Plan and Section 31 provides for District Level Plan for dealing with the crisis of any Disaster.

32. That Section 12 of the Act of 2005 provides that the National Authority shall recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include:

- a. the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation;***
- b. the special provisions to be made for widows and orphans;***
- c. ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood;***
- d. such other relief as may be necessary.***

33. That as such under Section 12 there is statutory duty on the Government to grant Ex-Gratia assistance to every person who has lost his life due to the disaster. However as per the knowledge of the Petitioner till date

4/9/14

there is no policy or national plan for COVID19 or any other plan laying down standards of relief to citizens affected by COVID19.

34. That neither the Central Government nor the State Government has framed any policy or plan for compensating the family of a person who lost his life due to COVID19.
35. That other than this issue the Central as well as the State Government has advised that people with mild infection or asymptomatic people should remain quarantine at home. This has been done to meet the shortfall of number of beds in the State. But the other aspect of the matter is that many people have died during home quarantine period and the insurance companies are not allowing their claim, as 24-hour hospitalization is must before claiming benefit of health insurance policy. True Copy of the Model National Mediclaim Policy of National Insurance Company is being annexed herewith as **ANNEXURE No.9** to this Writ Petition.
36. That as such the Government should provide the minimum expenses for COVID19 infected people, who are quarantined at home.
37. That till 2016 there was no National Plan as required under Section 11 of the Act of 2005 to meet out the crisis of disaster. After the landslide disaster of Uttarakhand in 2013, a Writ Petition was filed before the Hon'ble Supreme Court seeking formulation of National and State Level Plan for effective fight against any future disaster. It was alleged in the Petition that

many States are not fully prepared to deal with a disaster and therefore necessary directions are required from the Court for proper implementation of the Act.

38. That the Hon'ble Supreme Court vide its Order dated 05.04.2016 passed in W.P. Civil 444 of 2013 (Gaurav Kumar Bansal vs Union of India), directed the NDMA to communicate to the concerned Chief Secretaries of the States to draw District Level Plan under Section 31 of the Act. On this date the Court was informed by NDMA that there was no National Plan by that date. True Copy of the Order dated 05.04.2016 of Hon'ble Supreme Court is being annexed herewith as **ANNEXURE No.10** to this Writ Petition.
39. That after the aforesaid order of the Hon'ble Supreme Court, a National Plan was drawn up and placed before the Supreme Court and the Writ Petition was disposed off by means of the Judgment dated 08.05.2017. True Copy of the Judgment dated 08.05.2017 of Hon'ble Supreme Court is being annexed herewith as **ANNEXURE No. 11** to this Writ Petition.
40. That a perusal of the aforesaid Judgment reveals that in Para 5 of the Judgment the Court recorded that despite several Orders by the Supreme Court some State including Uttar Pradesh did not frame the State Level and District Level Plan. However after efforts of the Court all the States framed State Level Plan and District Level Plan, barring few Districts.
41. That the Hon'ble Supreme Court considering the steps taken by the NDMA observed that the National and State Level Authorities need to be vigilant and ensure

that if any unfortunate disaster strikes there should be total preparedness and minimum standards of relief should be provided to all concerned. With the above observations the Writ Petition was disposed off.

42. That as per the official website of the NDMA, the latest revised National Disaster Management Plan is of the year 2019. True Copy of the relevant part of National Disaster Management Plan 2019 is being annexed herewith as **ANNEXURE No. 12** to this Writ Petition.
43. That Para 2.2.3.3. (Internal Page 38) of the National Plan provides for Biological and Public Health Emergencies (BPHE). It provides:

Biological and Public Health Emergencies includes biological emergencies, pest attacks, epidemics. Biological Emergencies is caused due to natural outbreaks of epidemics or intentional use of biological agents (viruses and microorganisms) or toxins through dissemination of such agents in ways to harm human population, food crops and live stocks to cause outbreak of disease.

44. That the Novel Corona Virus (COVID19) will come only under this category of Disaster or Hazard. However, under the National Plan there is no action plan or framework to deal with the epidemic like COVID19. Only general framework has been provided under the National Plan.
45. That the COVID19 was declared Epidemic and Disaster in March 2020 and after lapse of more than a year the National Policy of Disaster Management has neither

been reviewed nor it has been amended to include effective steps to prevent spread of COVID19 in India.

46. That it is categorically submitted here that in the present scenario and considering the spread of COVID19, the National Plan for Disaster Management is an incomplete framework and policy.
47. That Chapter 11 of the National Plan deals with Financial Arrangements. It provides for National Disaster Response Fund and State Disaster Response Fund. As per the Plan the two funds have provisions for the following:
 - a. Gratuitous Relief
 - b. Search and Rescue operations, as per actual cost incurred
 - c. Relief measures
 - d. Air dropping of essential supplies
 - e. Emergency supply of drinking water
 - f. Clearance of affected area, including management of debris
 - g. Agriculture, Animal husbandry, fishery, Handicraft, artisans
 - h. Repair/ Restoration (of immediate nature) of damaged Infrastructure
 - i. Capacity development

48. That as such there is provision under the National Plan for providing Gratuitous Relief to the persons affected due to the disaster. The original order dated 14.03.2020 of the Central Government provided for grant of Gratuitous Relief to the COVID19 affected persons or to those who lost their life due to COVID19, but arbitrarily the same was modified and deleted.

49. That in Uttar Pradesh after the interference of the Supreme Court a State Level Disaster Management Plan was prepared in 2016-17. After that as per the knowledge of the Petitioner, this plan has neither been reviewed nor amended till date to include the pandemic like COVID19. True Copy of the relevant part of UP State Disaster Management Plan 2016-17 is being annexed herewith as **ANNEXURE No. 13** to this Writ Petition.

Chapter 6 (6.6) provides for relief packages and disbursal of funds to the affected people.

50. That non review/updation of State Disaster Management Plan is the reason of present crisis. Despite knowing about the virus, the Government did not created any infrastructure dedicated for COVID19, so that if second wave comes the Government would be ready and people will atleast gets beds to get admitted.

51. That Chapter 10 (10.04) provides that the State Plan should be reviewed and updated regularly by the month of April based on inputs from Authorities. However in utter violation no such review has been done till date.

21/4

52. That in UP, considering the spread of COVID19, an act namely Uttar Pradesh Public Health And Epidemic Diseases Control Act, 2020. True Copy of the Uttar Pradesh Public Health And Epidemic Diseases Control Act, 2020 is being annexed herewith as **ANNEXURE No. 14** to this Writ Petition.
53. That under the Act a State Epidemic Control Authority has been constituted, headed by Chief Minister. The Act mainly provides for punishment for different actions relating to COVID19.
54. That in exercise of power under the aforesaid Act a notification was issued on 31.03.2021, declaring Uttar Pradesh to be affected by COVID19.
55. That last year the Government of UP also issued a Government Order dated 11.04.2020 providing for payment of ex-gratia payment of Rs. 50 Lakh to families of personnel involved in prevention and treatment of COVID19. True Copy of the Government Order dated 11.04.2020 is being annexed herewith as **ANNEXURE No. 15** to this Writ Petition.
56. That as per the information provided by Chief Minister of U.P. in assembly toll October 2020 19 personnel have been provided this ex-gratia payment. However, the Petitioner begs to submit that till today hundreds of personnel involve in prevention and treatment of COVID19 have died but the Government has not granted any ex-gratia relief to them.
57. That people are dying because they are unable to get the medical care they deserve as Citizen of this

country, and for this the Government is absolutely liable. Therefore, as a compensatory measure and some relief to the family of victims, the State Government should frame a scheme for payment of Ex-Gratia amount to the family of deceased person who lost his life to COVID19.

58. That the ICMR issued guidelines dated 16.07.2020 for Testing Labs to upload District Wise Real Time Data to on Website of ICRM. True Copy of the Guidelines dated 16.07.2020 of ICMR are being annexed herewith as **ANNEXURE No. 16** to this Writ Petition.
59. That as per the guidelines of the ICMR, all the testing Labs are in India are required to upload the results of COVID19 tests on the login portal of ICMR, but this procedure is causing delay of 2-3 days in giving reports to the suspected patients.
60. That due to delay in giving reports of COVID19 test number of people have succumbed to death, as they could not get medical help at the appropriate time.

Various media reports have covered this issue that testing delays in UP is a very big issue. True Copy of the media reports on delayed testing is being annexed herewith as **ANNEXURE No. 17** to this Writ Petition.

61. That most recently this issue of delayed reports of testing cropped up before the Bombay High Court at Nagpur Bench, where the court recognized the fact that there is delay in giving reports of of RTPCR Test due to guidelines of uploading the report first on ICMR portal. The Hon'ble Bombay High Court directed that

दिनांक 21/7/19

authorities to provide the report of COVID19 test on Whatsapp of the Patient and then positively upload it on ICMR portal within 24 hours. True Copy of the Order dated 15.04.2021 passed in Suo Motu Public Interest Litigation 4 of 2020 is being annexed herewith as **ANNEXURE No. 18** to this Writ Petition.

62. That as for providing immediate medical care to the COVID 19 patients, the report should be provided on Whatsapp as earliest as possible without waiting for the feeding of the same on ICRM portal.
63. That other than this there are Non-COVID Patients who have to undergo surgery or treatment or dialysis, but due to acquisition of most of hospital for COVID19 purpose, they are unable to get the treatment. Therefore a separate facility should be established in each district for treatment and health care of Non-COVID patients.
64. The Government also need to provide compensation to those citizens who are infected with this virus and lost their livelihood and incurred expenses for its treatment at home, as the Health Insurance Policy of all Insurers requires minimum 24-hour hospitalization for getting the claim.
65. That it is submitted that the doctrine of "**Parents Patriae**" refers to the obligation of the State to protect the rights and privileges of its citizens. The doctrine suggests that the Government acts like a Parent for its citizens and therefore all measures for repatriation, rehabilitation and welfare of the Citizens should be taken by the Government. Therefore the Government is

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duty bound to compensate to the victims of COVID19 for loss occurred due to the disaster.

66. That the Article 21 protects Right to Life and casts a corresponding duty on the State to protect the fundamental right and in case of violation of such right the State should compensate its Citizens.
67. That it is submitted here that a separate fund is required to be created under the Disaster Management Act 2005 for providing Compensation or Ex-Gratia Payments to victims of COVID19.
68. That the action/inaction of the Respondents has resulted into mass violation of the Human Rights and Fundamental Right guaranteed under Article 21 of the Constitution of India.
69. That there is extreme urgency in the present Writ Petition, as the issue involved is for good of larger public interest and considering the present situation, urgent hearing of the present Petitioner is prayed.
70. That the present Petition is filed though E-mode without proper affidavit and Advocate Welfare stamp of Oudh Bar Coupon. The same shall be filed after resuming normal functioning of this Hon'ble Court, till then exemption from same may kindly be granted.
71. That having left with no other alternative and efficacious remedy available, the Petitioners invokes extra ordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India, inter-alia, on the following-

21/4/19

GROUND:

- A. Because the Government of India vide notification dated 14.03.2020 deleted the provision for Ex-Gratia Payment to victims of COVID19 and the cost of hospitalization from State Relief Fund.
- B. Because such an action of the Government of India is blatant violation of the basic human right and fundamental right to life of a person guaranteed under Article 21 of the Constitution of India.
- C. Because there are daily reports in the newspapers that due to unavailability of beds and effective medical treatment, COVID19 infected people are dying on roads.
- D. Because after one year of this pandemic if the Government is unable to provide beds to the citizens and give effective medical response, it is the fault of the Government and no one else.
- E. Because Right to Life is guaranteed under Article 21 of the Constitution of India. In the case of **Occupational Health and Safety Association vs Union Of India reported in (2014) 3 SCC 547** the Supreme Court held that Right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from Article 21 of the Constitution.
- F. Because failure on the part of the Government Medical Hospital to provide immediate medical treatment to a patient amounts to violation of Article 21 of the Constitution which relates to right to life.
- G. Because in the case of **Pt. Permanand Katara vs Union of India reported in (1989) 4 SCC 286**, the

Hon'ble Supreme Court held that failure on the part of Government Hospital to provide timely medical treatment to a patient in need of such treatment amounts to violation of Right to life.

- H. Because in the case of **Smt. Nilabati Behera alias Lalita Behera vs State of Orissa reported in (1993) 2 SCC 746**, the Supreme Court held that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights and such a claim based in strict liability made by resorting to a constitution remedy under Article 32 and 226 is in distinct form and in addition to the remedy under the private law.
- I. Because as such the unavailability of beds in Hospitals and lack of oxygen supply, which is the major cause of death of COVID19 infected people is violation of Right to Life of people at large.
- J. Because under Section 12 of Act of 2005 there is statutory duty on the Government to grant Ex-Gratia assistance to every person who has lost his life due to the disaster. However as per the knowledge of the Petitioner till date there is no policy or national plan for COVID19 or any other plan laying down standards of relief to citizens affected by COVID19.
- K. Because neither the Central Government nor the State Government has framed any policy or plan for compensating the family of a person who lost his life due to COVID19.
- L. Because that many people have died during home quarantine period and the insurance companies are not allowing their claim, as 24-hour hospitalization is

must before claiming benefit of health insurance policy.

- M. Because the Government should provide the minimum expenses for COVID19 infected people, who are quarantined at home.
- N. Because the COVID19 was declared Epidemic and Disaster in March 2020 and after lapse of more than a year the National Policy of Disaster Management has neither been reviewed nor it has been amended to include effective steps to prevent spread of COVID19 in India.
- O. Because in the present scenario and considering the spread of COVID19, the National Plan for Disaster Management is an incomplete framework and policy.
- P. Because non review/updation of State Disaster Management Plan is the reason of present crisis. Despite knowing about the virus, the Government did not created any infrastructure dedicated for COVID19, so that if second wave comes the Government would be ready and people will atleast gets beds to get admitted.
- Q. Because Chapter 10 (10.04) provides that the State Plan should be reviewed and updated regularly by the month of April based on inputs from Authorities. However in utter violation no such review has been done till date.
- R. Because there is huge delay of 2-3 days in providing report of COVID19 to patients, due to which the infected person is unable to get adequate medical care.
- S. Because other than this there are Non-COVID Patients who have to undergo surgery or treatment or dialysis, but due to acquisition of most of hospital for



- COVID19 purpose, they are unable to get the treatment. Therefore a separate facility should be established in each district for treatment and health care of Non-COVID patients.
- T. Because Article 21 protects Right to Life and casts a corresponding duty on the State to protect the fundamental right and in case of violation of such right the State should compensate its Citizens.
- U. Because a separate fund is required to be created under the Disaster Management Act 2005 for providing Compensation or Ex-Gratia Payments to victims of COVID19.
- V. Because the action/inaction of the Respondents has resulted into mass violation of the Human Rights and Fundamental Right guaranteed under Article 21 of the Constitution of India.
- W. there is extreme urgency in the present Writ Petition, as the issue involved is for good of larger public interest and considering the present situation, urgent hearing of the present Petitioner is prayed.
- X. Because since the right to a secured life of Petitioners as well as fellow citizens is also at stake therefore the issue is being raised as a public interest litigation, which required immediate interference of this Hon'ble Court, otherwise it would cause irreparable loss and injury to the society at large.

PRAYER:

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased:-

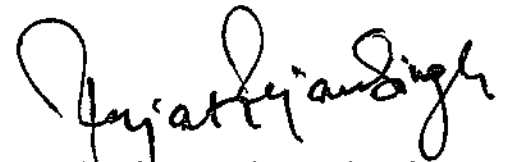


- (i) to issue a writ, order or direction in the nature of Mandamus commanding the Respondent No.2 to review and re-formulate the National Plan for Disaster Management, as per the requirements and needs of COVID19 Pandemic.
- (ii) to issue a writ, order or direction in the nature of Mandamus commanding the Respondent No.5 to review and re-formulate the U.P. State Plan for Disaster Management, as per the requirements and needs of COVID19 Pandemic.
- (iii) to issue a writ, order or direction in the nature of Certiorari quashing the modified notification no. 33-4/2020-NDM-I dated 14.03.2020, as contained in **ANNEXURE NO.3**, so far as same deletes the provision for Ex-gratia payment to victims of COVID19.
- (iv) to issue a writ, order or direction in the nature of Mandamus directing the Central and State Government to formulate a scheme for payment of Ex-Gratia/ Compensation amount to family of the deceased person, who lost his life due to COVID19.
- (v) to issue a writ, order or direction in the nature of Mandamus directing the State Government to make arrangements for serious Non-COVID patients at a separate facility.
- (vi) to issue a writ, order or direction in the nature of Mandamus directing the State Government and all testing labs to provide RTPCR report of COVID 19 through Whatsapp immediately, without waiting for uploading the same on ICMR portal.



- (vii) to issue a writ, order or direction in the nature of Mandamus directing the State Government and all testing labs to upload the report of RTPCR on ICMR portal within 24 hours of providing report to the patient on Whatsapp.
- (viii) to issue any other writ, order or direction which this Hon'ble Court may deem just and proper in circumstances of the case;
- (ix) to allow this writ petition.

Lucknow
Dated: 18/04/2021



Rajat Rajan Singh)

Advocate

Counsel for the Petitioner

Enrolment No.04117/14

AOR No. : B/R 1437

Mobile No.: 9839773999