

WP (PIL) No. 06/2020

IN RE- COVID 19 MANAGEMENT

For Petitioner : Mr. Jorgay Namka, Amicus Curiae.

For Respondents No. 1, 2 and 12 : Ms. Sangita Pradhan, Asst. Solicitor General of India.

For Respondents No. 3 to 11 : Mr. Sudesh Joshi, Addl. Advocate General
Mr. Hissey Gyaltzen, Asst. Govt. Advocate

Date: 25/05/2021

CORAM :

HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

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PER J.K. MAHESHWARI, CJ

1. In furtherance to the previous orders, the State Government has explained regarding RT-PCR testing facilities, *inter alia* contending that they are going to establish one RT-PCR testing laboratory at Jorethang, South Sikkim whereby people of West and South Sikkim may be benefitted. Nothing is said to set up RT-PCR Laboratory in North District where the problem of landslide and blocking of road always took place, that too in rainy season cannot be ruled out.

2. The Government has to explain the aforesaid issues and from the date of application seeking permission to establish RT-PCR Laboratories, it should be granted by the Central Government within a period of two weeks without awaiting long, however, the contention of Assistant Solicitor General to grant one month time for permission is not accepted.

3. So far as dedicated Covid-19 ICU facilities in District Hospital are concerned, it is said that there are no ICU facilities available in North District and South District. In West District, proposal is made for setting up of a Covid-19 dedicated ICU facility. Steps taken concretely have not been brought on record. The Government has to explain what are the steps taken for setting up

of ICUs to augment the situation faced by the citizens of the State of Sikkim combating Covid-19 Pandemic.

4. So far as Oxygen Plants and Cylinders are concerned, in the previous affidavit dated 13.05.2021, present requirement and further requirement of Oxygen were stated to be sufficient but the said requirement has been catered by the present resources or not is not on record. It is merely said that the steps were taken for augmenting the requirement, so the response is not clear. It is said that fully equipped Covid-19 dedicated ambulances are available with the State Government. However, at present, on the said statement, we are not commenting and in case, any point is being raised, it may be reassessed.

5. There cannot be any dispute that the State Government has to make facilities available in co-ordination with the Central Government for the citizens due to surge of Covid-19 cases and to combat the situation of Covid-19 pandemic. This petition was filed on the basis of the letter dated 26.08.2020 written to the High Court. The State Government, being welfare State, since the time of pandemic from February 2020, must have assessed the resources available and how it can be augmented, if problem arises in the State. Therefore, it is a matter of policy with the State Government. The response filed by the State Government from time to time is voluminous but what was the policy decision for augmenting pandemic situation is not on record.

6. In previous date of hearing, it was found that in the entire State of Sikkim RT-PCR facility is only available in the two centres of the East District i.e. STNM Hospital, Sochakgang and Central Referral Hospital, Tadong. Issues also discussed as to why RT-PCR facilities are not available in any other Districts of the State of Sikkim. It cannot be out of place to mention that until the person is detected from suffering of Covid-19, steps for treatment cannot be taken. Therefore, the first step is to detect Covid-19 in a person and thereafter steps for adequate treatment have to be made available with all infrastructure and medical facilities including the staff. The steps taken to that effect must be

clarified by the State comparing to their Policy and the need, including its implementation.

7. As per the argument of learned Amicus, it is clear that in North District, District Hospital is not functional and even ICU facilities are not available. It is not clear how the people of North District would be treated by Covid-19 pandemic along with other Districts i.e. West and South Districts. Policy to that effect, if any framed by the State, must be made available.

8. The next issues regarding Oxygen supply and set up of the Oxygen Generation Plant are concerned, the clarity of the present need and augment of the future need is said, but available resources is not on record. It may be brought on record by way of an affidavit.

9. It was national news yesterday that about 99 monks of the Sikkim State were found Covid-19 positive in two Monasteries. It must be explained that whether they have been contaminated due to their visit to perform the rituals of the Covid-19 patients or otherwise, how, once the Monasteries are closed, there cannot be a question of effecting everyone and especially, only in these two monasteries in the State, therefore, the State must explain the reasons for the aforesaid carelessness/negligence and apprise the Court about the steps taken.

10. In addition to the aforesaid, issue regarding prevention of Covid-19 pandemic situation is having much relevance. Since the surge of Covid-19 pandemic started, in addition to the guidelines issued by the Government for prevention, the efforts made to that effect and the result of its failure by this second wave has not come on record. Therefore, the guidelines of social distancing, implementation or its non effectiveness must be made clear. Thereby the situation for the possible third wave of the Covid-19 may be mitigated.

11. The other preventive steps may be possible by way of vaccination. Learned Additional Advocate General made an attempt to satisfy this Court that

to procure vaccination, as required, orders have been placed and the amount have been deposited. It is said that due to non availability of the vaccine it has not been received but the said steps itself is not sufficient. It is brought to the notice of the Court that the slot opening for vaccination in the East District only for very short time in a day is going on but in other Districts of the State like West, South and North, vaccination is not effectively provided to the citizens. It has also been brought to the notice that registration for vaccination to the age group of 18-45 years is only open in the East District but not in the other Districts. Learned Additional Advocate General has made an attempt to satisfy this Court that in other Districts citizens above the age group of 45 years have been provided vaccine except to the age group of 18-45 years which is only in the East Sikkim. This appears to be discriminatory.

12. It is to observe that for the purpose of vaccination State Government must have carved out a policy for such vaccination in all four Districts of the State of Sikkim and in due time the centres in other Districts would have been established looking to the population ratio. The availability of the vaccination would have been decided for all four Districts which includes the citizens above the age group above then 45 years and age group above then 18 years. The said policy must be produced along with details of supply and availability of the vaccine in those Districts of the Sikkim and how many persons have been vaccinated by those centres with first or second dose with their respective data be made available for perusal of the Court.

13. It is not out of place to mention here that everyday death rate is increasing in the State of Sikkim. Justification for such increase is not on record. Although, partial Lockdown has been imposed in the State from first week of May and Complete Lockdown with effect from 15.05.2021 but everyday there is an increase in the death of Covid-19 patient. Justification to that effect must be brought on record.

14. The other issues have been discussed that includes the repair of Electronic Cremation Machine and number of deaths which are being taken place in the State.

15. All these aspects must be explained by the State Government and the Central Government. The Central Government shall explain that as and when the help was sought on the above issues and other ancillary issues by the State Governments it was made immediately available to them.

16. Covid-19 pandemic issue is being faced by the State Government and Central Government since February 2020. Looking to the scope of this Public Interest Litigation, it is required to be examined that the steps so taken by the State Government to combat the situation and to augment the problem of citizens by their policy decision, justification of the policy and its implementation in right perspective may be looked into. Therefore, all the aforesaid aspects be explained within a period of 10 days from today by the State Government as well as by the Central Government.

17. On the next date of hearing the Additional Chief Secretary and Secretary, In-charge of Health and Family Welfare Department, Government of Sikkim involved in the aforesaid issue as well as other ancillary issues in question will remain present with other Officers, if so advised, by way of virtual hearing to assist the Court.

18. Let the response be filed by the Central Government and State Government on or before 12:30 PM of 03.06.2021.

19. List this case for further orders on 04.06.2021.

Judge

Chief Justice