

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

WITH

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

20TH APRIL, 2021

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

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

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

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

Mr. V.K. Kaparuwan, learned Standing Counsel for the Union of India.

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

In compliance of the order dated 31.03.2021, Mr. Om Prakash, the learned Chief Secretary, State of Uttarakhand, and Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, are present before this Court through *video conferencing*.

2. This Court has asked Mr. Om Prakash, the learned Chief Secretary, with regard to the steps being taken by the State Government in tackling the COVID-19 pandemic which has started spreading its tentacles throughout the State.

3. Mr. Om Prakash, the learned Chief Secretary, informs this Court that on 22.04.2021, the Government has scheduled a Cabinet meeting where not only serious discussions, but also important decisions would be taken with regard to tackling of COVID-19 pandemic in the State. Presently, the State Government has already imposed a lockdown on the weekend; it has imposed night curfew throughout the State; it has deferred examinations. However, it is for the Cabinet to decide whether the school and colleges throughout the State should be closed; the period for which the educational institutions should be closed; whether a lockdown, and the duration of lockdown, should be imposed upon the State or not?

4. Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, Government of Uttarakhand, informs this Court that on a daily basis, the Government is issuing media bulletins with regard to the number of samples tested, the number of positive cases discovered, the number of recoveries recorded in the State, the number of samples which have yet to be tested, and the reports have yet to be released. As an example, Mr. Amit Negi, the learned Secretary, states that on 19.04.2021, in Dehradun district, 6,551 tests were carried out. Out of which 649 persons were found COVID-19 positive and the remaining were found to be negative. According to Mr. Amit Negi, in the last week, from 13.04.2021 to 19.04.2021, the positive cases have increased

by 6.4% in the State. Moreover, according to the media reports, in the last one month, the rate of increase of positive cases has been anywhere from 8% to 10% of the population.

5. Mr. Shiv Bhatt, the learned counsel for the petitioner in Writ Petition (PIL) No.58 of 2020, submits that, according to the news item published in *Dainik Jagran*, on 19.04.2021, the increase in number of COVID-19 positive cases has jumped from 3.05% to 13.54% within a period of twelve days. According to the news item published in *Amar Ujala*, on 19.04.2021, in Dehradun district, all beds available in the hospitals are full. Furthermore, according to the media report, the anti-viral injection called '*Remdesivir*', is no longer available in the State. Moreover, according to the guidelines recently issued by the Indian Council for Medical Research ('ICMR' for short), dated 06.04.2021, there are 162 kits which are available for testing. However, the testing being carried out in the State is on the lower side.

6. He further submits that, according to the information issued by the State Government, there are three types of hospitals which have been earmarked for COVID-19 treatment:-

Firstly, the Dedicated COVID-19 Hospitals, which are five in number, throughout the State. In these hospitals, there are 895 isolation beds, out of these, 668 beds are connected with Oxygen tanks. In these five hospitals, there is a total of 191

Intensive Care Unit beds ('ICU beds' for short), and there are 261 Isolation beds for suspected cases.

Secondly, there are Dedicated COVID-19 Health Care Centres. Such Health Care Centres exist only in twelve districts of the State. Putting together, all the beds available in these Health Care Centres, figures are 1071 Isolation beds, out of these Isolation beds, 539 beds are earmarked as Isolation beds for COVID-19 patients. Out of these 539 beds, 465 beds are connected with Oxygen tanks. There are 82 beds available in the ICU, and 532 beds available as Isolation beds.

Thirdly, there are 314 Dedicated COVID-19 Centres spread throughout the State. A total of 22,361 Isolation beds exist in these 314 Dedicated COVID-19 Centres. There are 12,640 Isolation beds for COVID-19 patients, and 9,721 Isolation beds for suspected COVID-19 patients. It is unknown as to how many beds are connected with Oxygen tanks.

7. Mr. Dushyant Mainali, the learned counsel for the petitioner in Writ Petition (PIL) No.50 of 2020, has highlighted some of the lacunae in the Health Care System prevailing in the State. According to the learned counsel, on 16.04.2021, the Union Health Ministry had advised that COVID-19 dedicated facilities need to be setup which should be equipped with *"all supportive and ancillary services in the*

hospital". Further, despite the said advice of the Union Health Ministry, there is a shortage of ICU beds, and Non-ICU beds in the State. For example, both in Dehradun and in Haldwani, there is a huge scarcity of ICU beds for COVID-19 patients. Despite the fact that the Central Government has advised that hospitals being run by CPSUs should be utilized, no such step has been taken by the State Government to utilize the hospitals being run by the CPSUs.

Secondly, there is a huge demand of anti-viral injection called '*Remdesivir*' for the seriously affected COVID-19 patients. However, there is a lack of stock of the said anti-viral injection. Therefore, according to the learned counsel, the State Government should clarify the steps it is taking for stocking sufficient number of such anti-viral injection for the use of the people in the State.

Thirdly, there is a slow pace in detecting COVID-19 virus. Just in Dehradun district, there are 8,024 results which are still waiting to be declared. According to the learned counsel, since there is a lack of authorized laboratories which can carry out these tests, the test results are unknown for days on end. Such uncertainty plays *havoc* not just with the treatment of the patient, but more importantly endangers the life of the patient. Therefore, the learned counsel suggests that the number of authorized laboratories should be increased in the State.

Fourthly, despite the fact that RT PCR tests are no longer very accurate in detecting the second strain of COVID-19 virus, despite the fact that the best possibility of detecting the virus is through CT scan, the number of CT scan machines available in the State is very dismal. Although these CT scan machines are available in the private hospitals, but private hospitals are not permitting the people to use the Golden Card Scheme, which was floated by the State Government itself. The Golden Card Scheme covered the retired and serving people of the State. However, the benefit of the said Scheme is not being extended by the private hospitals to such card holders. Hence the people are denied easy accessibility to CT scan machines. Thus, the diagnosis of the virus is far too little.

Fifthly, the private hospitals are charging exorbitant amounts from the COVID-19 patients, and their family members. According to the learned counsel, on 02.09.2020, the State Government had issued a schedule with regard to the rates chargeable by the private hospitals. However, the Government Order dated 02.09.2020, is being followed more in breach, than in adherence.

Lastly, the learned counsel submits that 'Real Time Data' with regard to the availability of the number of beds in the hospital, with regard to the number of clinics authorized to carry out the test is not available to the people on the

internet. Therefore, the State Government should be directed to place the essential information in its media bulletin. Such information would permit the people to take a decision with regard to the place where they would like to be tested, and the hospital that they would like to have the patient treated.

8. Mr. Piyush Garg, the learned counsel for the petitioner in Writ Petition (PIL) No.51 of 2020, has drawn the attention of this Court with regard to the on-going Kumbh Mela in Haridwar which is scheduled to end on 30.04.2021. The learned counsel submits that, although the State Government claims that it would like to break the chain of infection of COVID-19, yet it is permitting large gathering in the Kumbh Mela. Already about sixty-two Seers have been affected by the Corona virus, already six of the Akharas have pulled out of the Kumbh Mela, already the Hon'ble Prime Minister has suggested that Kumbh Mela should, henceforth, be celebrated in "symbolic manner", yet the State Government is not taking any strict action with regard to the on-going Kumbh Mela. He further submits that, in the near future, in the third week of May, 2021, the temples of Char Dham, namely Yamunotri, Gangotri, Kedarnath and Badrinath, would open their doors for receiving the pilgrims at their respective places. According to the learned counsel, the moment the doors of these holy temples are open, a large number of pilgrims will wind their way to these holy temples. Yet, the State Government has not come up with any SoP, or

any concrete plans for regulating, or controlling the number of pilgrims who would be allowed to reach these holy temples, and the number of persons who would be permitted to gather at these temples. Therefore, according to the learned counsel, like the Kumbh Mela, even these holy temples will be the next hot beds for the spread of COVID-19 pandemic. Therefore, the learned counsel pleads that the State Government should be asked to declare its SoP with regard to the forthcoming opening of the doors of the Char Dhams in the State.

9. Heard the learned Chief Secretary, the learned Secretary, Medical Health and Family Welfare, and the learned counsel for the parties.

10. It is an open secret that India has emerged as the leading country facing the fourth wave of COVID-19 pandemic. According to the media reports, the increase in positivity rate has doubled from last year. While, last year in 2020, the rate of positivity was 8%, just in one month, it has shot up to 16.2%. Many of the States such as Maharashtra, Telangana, Karnataka, Rajasthan, are already reeling under the onslaught of COVID-19 pandemic. Presently, even the capital of the country, Delhi, is devastated by the pandemic.

11. All over the world, and within the country, people have expressed their concern with the on-going Kumbh Mela and its impact on the spread of COVID-19. Hence, the States

like Maharashtra and Karnataka have already announced that those who would be returning from the Kumbh Mela would necessarily have to undergo quarantine for ten days.

12. Even, according to Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, the rate of increase of positivity within the State, in the last one week, has been 6.4%. Taking this figure as the base figure, and extrapolating it for the near future, obviously, if this trend continues for another three to four months, not only Uttarakhand, but even the nation, will hit its peak after three to four months. The rough estimate is that by the end of July, 2021 or beginning of August, 2021, six lakhs people may be adversely affected by the COVID-19 pandemic within the State. Therefore, the present issue and the future concern is the level of preparedness of the State to fight the war which has just begun with COVID-19.

13. Both the Central Government and the ICMR have repeatedly been advising the State to increase the number of testing within the population. Although, Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, may be justified in claiming that the track record of Uttarakhand is far better than the other States, and far above the rate prescribed by the ICMR, but it is no reason to rest on our oars. The percentage prescribed by the ICMR is the minimum percentage that is required to be done. But there is no need

that we should stop only at the minimum percentage. Considering the fact that there is rapid increase in positivity, considering the fact that it has already doubled in one month, the State needs to be over vigilant, and ever ready to increase the number of testing throughout the State, in general, and in bigger cities of the State, such as Dehradun, Haridwar and Haldwani, in particular, in order to gauge the extent of positivity in the State. The Court is informed that there are only 132 authorized clinics/hospitals for carrying out the COVID-19 test. But considering the fact that a large extent of the State is covered by mountains, and the fact that the villages and hamlets are spread at mountain tops, the State Government is directed to seriously consider the use of "mobile vans" which can penetrate into the heartland and into the interior parts of the State for carrying out the test. Such steps have already been taken by the Government of Andhra Pradesh. There is no reason why the similar strategy should not be adopted by the State of Uttarakhand.

14. Under the present circumstances, this Court issues the following directions to the State:-

(i) To increase the number of authorized laboratories/clinics/hospitals which can carry on the testing for a larger percentage of population.

(ii) To increase the number of testing being done in the big cities of the State. In the big cities, like Dehradun,

Haridwar and Haldwani testing should be increased to at least 30,000 per day. As mentioned hereinabove, according to the Central Government, about 162 different types of kits are available for testing the population. The State Government should consider the use of other kits, besides the Rapid Antigen Kit, or the RT PCR tests, for increasing the tests being carried out on daily basis.

(iii) In order to increase the testing facilities in the hill districts of the State, the State Government should consider sending of 'mobile vans' which are fully equipped for carrying out the testing of COVID-19 virus.

(iv) The State should increase the number of Dedicated COVID-19 Hospitals. For, merely having five Dedicated COVID-19 Hospitals is too little to tackle the menace, especially when the pandemic is likely to spread and increase throughout the State in the coming months.

(v) The State is also directed to consider the feasibility of establishing temporary hospitals with the help of the Defence Research and Development Organization ('DRDO' for short), or with the help of any other Central agency. Since a few temporary hospitals have already been constructed for the benefit of Kumbh Mela, the said hospitals should not be dismantled till the COVID-19 pandemic is over.

(vi) The State should also increase the number of COVID-19 Health Care Centres. Since, presently, the Health Care Centres are established only in twelve districts, the Health Care Centres also need to be established in the thirteenth district of the State.

(vii) The State is further directed to increase the number of beds available in the hospitals. It shall ensure that the majority of the beds are equipped with Oxygen tank and sufficient numbers of bed are equipped with ventilators. If necessary, the number of ICUs in the hospitals should be increased. This is essential as it is claimed that the second strain directly affects the lungs of the patient. Therefore, the patient needs to be given intensive care, and may require to be put on ventilator immediately.

(viii) As aforementioned, CT scan machines are essential in detecting the presence of the second strain of COVID-19 virus. Therefore, the State Government should endeavor to increase the CT scan machines available in the State. At least, every Government Hospital must be equipped with CT scan machines. Since the Government Hospitals cater to larger section of the population, the Government Hospitals should be equipped with CT scan machines on war footing.

(ix) According to media reports, the Government Hospitals are not well-equipped with PPE kits. In the absence of the PPE kits, the medical staff, especially, the lower

medical staff, is reluctant to take care of the COVID-19 patients. Therefore, the State Government is directed to ensure that the PPE kits and other protective gears, such as gloves, masks, and sanitizer are provided to all the medical staff, especially to the Doctors, Nurses, Ward Boys to look after the COVID-19 patients. Until and unless our front line worriers are protected from COVID-19 virus, it will be impossible for us to win the battle against the COVID-19 virus.

(x) This Court is also informed that the contractual employees working in the Dr. Sushila Tiwari Government Hospital, Haldwani have been on strike for the last six to eight months. Due to the strike, the entire hospital campus has turned into a garbage dump. The unhygienic condition, prevailing both inside and outside the hospital, poses a grave threat to the health of COVID-19 patient. Therefore, the State Government should try to resolve the dispute between the contractual employees and the management. The Government should, on war footing, ensure that the campus is immediately cleaned and hygienic conditions are maintained in the campus.

(xi) According to the media reports, despite the Government Order dated 02.09.2020, the private hospitals are over-charging the COVID-19 patients. Therefore, Mr. Amit Negi, the learned Secretary, Medical Health and Family

Welfare, is directed to personally inquire into the charges being levied by the private hospitals. In case, Mr. Negi finds that any private hospital is over-charging the COVID-19 patients, and is violating the Government Order dated 02.09.2020, then he is directed to take strict action against the erring hospitals in accordance with law. Moreover, considering the fact that the private hospitals were granted land at a concessional rate under the condition that 25% of the beds available in the hospitals would be reserved for people belonging to the category of the Below Poverty Line, Mr. Negi, the learned Secretary, is directed to inquire whether the said condition is being following or not by the private hospitals? In case, it is discovered that the private hospitals are flouting the said condition, then strict action should be taken against the erring hospitals in accordance with law.

(xii) The State Government is directed to publish the names and locations of the testing centres, and the names and locations of Hospitals/ Dedicated COVID-19 Health Care Centres in the media bulletin on a daily basis. The media bulletin should clearly indicate the total number of beds available in each hospital/ Dedicated COVID-19 Health Care Centres, and the number of vacant beds available in each hospital. It should also indicate the class of the beds, i.e. the number of beds attached with ventilators, number of beds attached with Oxygen tanks, and the number of beds without any Oxygen tank.

(xiii) The State Government is further directed to immediately issue a SoP with regard to the opening of Char Dhams. The SoP must indicate the procedure for registration of the pilgrims, the number of pilgrims allowed to travel to the respective Dham, the accommodation which would be available for the pilgrims, the number of pilgrims allowed to enter each temple at the Dham. Moreover, the State Government shall ensure that the SoP issued by the Central Government and the SoP issued by the State Government are strictly complied with by the pilgrims. For, the opening of the Char Dhams cannot be permitted to become another hot bed for the spread of COVID-19 pandemic.

(xiv) The State Government is directed to procure and to distribute sufficient number of anti-viral injection, namely '*Remdesivir*', on war footing throughout the State.

(xv) Mr. Om Prakash, the learned Chief Secretary, is directed to submit a report with regard to the Cabinet decision which may be taken on 22.04.2021. He shall also inform this Court about any policy decision taken by the State Government for tackling the COVID-19 pandemic.

(xvi) On the other hand, Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, is directed to submit a detailed report with regard to the implementation of the directions mentioned hereinabove. He shall also inform this Court with regard to the increase in the number of

authorized laboratories/clinics/hospitals which are permitted to carry out the testing for COVID-19 virus. He should reveal the number of tests being carried out in the big cities and the heavily populated districts of the State. He should indicate whether the State Government is planning to establish temporary hospitals or not? He should further reveal the increase in number of ICUs, increase in number of beds, and increase in the availability of protective gears such as PPE kits, masks, gloves, and the amount of sanitizers available in the major Government Hospitals of the State. He should also indicate the amount of anti-viral injection, namely '*Remdesivir*', procured by the State Government, and about its distribution, and availability with the Government Hospitals. He should also reveal the number of CT scan machines which are being installed in the Government Hospitals throughout the State, and the time frame which may be required for such installation. He should also indicate whether the strike by the contractual employees of Dr. Sushila Tiwari Government Hospital, Haldwani has been resolved or not? Whether the said campus has been cleaned and restored to its pristine condition or not? He should also reveal the outcome of the inquiry held by him against the erring private hospitals. He should also inform this Court whether the District Monitoring Committees are functioning at the district level or not? Whether they are filing their monthly reports with the learned Secretary or not? In case, such

reports are filed, whether any concrete steps are being taken by the Department with regard to improving the conditions of the hospitals or not? Lastly, he should indicate the steps taken by the Department against the erring doctors who continue to indulge in private practice despite the fact that they are working for the Government Hospitals.

15. The said reports by the learned by the learned Chief Secretary and by the learned Secretary, Medical Health and Family Welfare, shall be submitted on or before 07.05.2021.

16. Mr. Om Prakash, the learned Chief Secretary, Government of Uttarakhand, Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, and the learned Secretary, Finance, Government of Uttarakhand are directed to be present before this Court through *video conferencing* on 10.05.2021.

17. List this case on 10.05.2021.

(RAGHVENDRA SINGH CHAUHAN, C.J.)

(ALOK KUMAR VERMA, J.)

Dated: 20th April, 2021

NISHANT