

HIGH COURT OF MEGHALAYA
AT SHILLONG

PIL No. 4 of 2020

Date of Order: 16.04.2020

The High Court of Meghalaya Bar Association & Anr. Vs. The Union of India & 6 Ors.

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioners(s) :	Mr. S.P. Mahanta, Sr Adv with Mr. K.Paul and K.Ch.Gautam Advs
For the Respondent(s):	Ms. A. Paul, ASG. for R 1. Mr. A. Kumar, AG for R 2-6.

i) Whether approved for reporting in Law journals etc.:	Yes/No
ii) Whether approved for publication in press:	Yes/No

Per H.S. Thangkhiew, (J):

1. This Public Interest Litigation under Article 226 of the Constitution of India for effective monitoring of the measures undertaken by the State Government to contain the spread of the COVID-19 outbreak and to mitigate the plight of the citizens of Meghalaya has been filed by the High Court of Meghalaya Bar Association.

2. An additional affidavit has also been filed today itself, by the petitioners to bring on record subsequent developments and the crisis that had emerged, while disposing of the mortal remains of (L) Dr. Sailo who had fallen victim to this dreaded disease.

3. The State Government has also filed a status report today detailing therein the steps and measures that have been undertaken by the State Government in combating the spread of this disease.

4. Mr. S.P. Mahanta, learned Sr. counsel while opening his submissions, has firstly drawn the attention of this Court to the averments contained in paragraphs 12 to 18 of the petition, which deals with the manner of opening shops and establishments keeping social distance in mind, the need to check the rise in prices of essential commodities, the aspect of financial aid to the daily wagers and labourers and also the identification of the beneficiaries for the purpose of providing financial aid to the daily wage earners and labourers.

The learned Sr. counsel had also voiced the concern that there should not be any victimization of the persons requiring assistance and help, and that their grievances be addressed. The learned Sr. counsel further submitted that there is a need for setting up screening booths in adequate numbers, and the respondents be directed to disclose the number of PPE's and test kits available with the Government and their availability thereof, to the hospitals and health centres across the State.

The learned Sr. counsel has also submitted that there is no designated COVID hospital and that no notification has been issued with regard to the manner in which the State would handle the burial and cremation of the persons who fall victim to this virus and also the manner in which the quarantine centres are managed, more particularly after the detection of positive cases in the city of Shillong.

5. Mr. K. Paul, vice president of the High Court Bar Association in addition to the submissions made by the learned Sr. counsel has raised extreme urgent concerns with regard to the events that have transpired since 13.04.2020, when the first positive COVID case was detected in Shillong which had led to the to the death of senior doctor, and flagged the

incompetent manner in which the State authorities handled the situation. He submits that Bethany Hospital apart from IIM, Shillong had been identified as quarantine facilities and that the patients and occupants of the institution have not been given any assistance or adequate food and water and that they are on the point of starvation. He submits that even though food was arranged and supplied from outside by citizens themselves to feed the inmates, there were no personnel in place to receive the said food packets for distribution and the road leading Bethany hospital had been sealed and barricaded thus preventing the aid reaching the stranded patients and inmates.

The learned counsel has also submitted that though the positive case was detected since 13.04.2020 and persons who had come in contact with the said doctor had come forward, the test of these persons who were in primary contact with the doctor are yet to be conducted. He further submits that the State has not taken any measures to effectively address this aspect of the matter, which is of extreme importance. The learned counsel then vehemently submits that another aspect which has shocked the conscience of the society is the incident that occurred on 15.04.2020 wherein the local bodies prevented the cremation and burial of the senior doctor who had expired. He submits that appropriate directions were necessary to be issued to meet such situations and that the said actions of the local bodies were in violation of law and that the said persons are liable to be punished accordingly.

The learned counsel has also flagged the concern that though the testing of the primary contact is yet to be completed, the District Administration has relaxed the curfew and has allowed over 1500 shops to open, which he submits might lead to disastrous consequences. He therefore submits that the Court should monitor the manner and method in which the State authorities are dealing with the crisis to stem the spread of the COVID 19 virus.

6. Mr. A. Kumar, learned AG appearing on behalf of the State respondents firstly has raised the question of maintainability of the petition. He submits that apart from the maintainability aspect, the petitioners should first see the steps taken by the State authorities, instead of making vague allegations. He submits that all necessary preventive measures have been taken with regard to this pandemic situation and the same is being handled by the State also in accordance several directions that have been issued by the Hon'ble Supreme Court in various petitions with have been taken up in this connection.

The Learned AG then refers to the status report more particularly paragraph 8 at page 36 to show that adequate measures have been taken. He also draws the attention of the Court to Annexure-72 of the report at page 197 and 198 which reflects that urgent steps have been taken by the State authority with regard to testing, and availing of cash support of residents of Meghalaya stranded outside the State. With regard to the testing of the primary contact of the infected persons, he submits that the contention that no test has been conducted is incorrect and that as far as possible taking into account the availability of facilities, tests are being carried out. He therefore submits that all possible steps have been taken by the State authorities who are continuing to do so with whatever resources available. On the aspect of the denial of cremation and burial, he submits that the same was extremely unfortunate, but that however, other organizations have since come forward with offers to allow such burial or cremation. He lastly submits that keeping in view of the many Supreme Court directions and the prevailing circumstances, the State is doing its utmost best to handle the situation, and that the prayer as made out in the petition is untenable.

7. Mr. K. Ch. Gautam, learned counsel submits that to avoid such unpleasant occurrences as had happened on 15.04.2020; it is of prime importance that the State authorities enlighten the general public and

sensitize them accordingly to make them aware as to the actual facts and circumstances of such situation.

8. Ms. A. Paul, learned ASG has also reiterated the concerns raised and submits that till the primary contacts are not traced, curfew should be strictly imposed. General concern has also been shown by the learned counsels that the incidents that have occurred will dissuade health care workers and doctors from treating such patients. Concern has also been raised in the manner in which people are being treated and ostracized by the society just because they have come in contact or visited Bethany Hospital during the relevant period and prayer has been made in this regard, that pending their testing, or test results, they be shifted to a secure quarantine facility.

9. We have heard the learned counsels for the parties and understanding the gravity of the situation, and the apprehensions and panic that is in the minds of the public, an area of deep concern is the prevalent ground situation and the level of preparedness of the State machinery to handle the situation.

10. The State Government has today itself filed the status report for which the petitioners submit, they are yet to examine in detail to offer any response comments or suggestions at this stage. Similarly, the petitioners have filed an additional affidavit which has raised certain issues on the developments after the detection of the first case, which however in the mind of this Court needs immediate attention while leaving the other issues to be addressed on the next date.

11. The contents of the additional affidavit had already been submitted orally by the learned counsel for the petitioners which have been noted by this Court, and in brief are given hereunder as follows:

- i) Testing of persons who had voluntarily come forward to disclose their contact with the deceased doctor, to arrangements

for food and water to the patients stranded inside the Bethany Hospital.

- ii) The obstruction and refusal to permit the burial and cremation by the local Durbar Shnong.
- iii) Non-designation of any dedicated COVID Hospital.
- iv) Non-designation of designated place for burial and cremation of COVID-19 victims.

12. After giving our thoughtful consideration to the submissions advanced and the concerns raised, it is imperative that steps be immediately taken by the state respondents to ameliorate the situation in any manner if possible.

13. A Public Interest Litigation is not adversarial litigation and the concerns raised are genuine and serious. With regard to the general submissions and the status report so filed by the State Government, on other aspects the same needs examination especially by the petitioners as to its veracity and correctness. On the latter aspect, however on the subsequent events after the detection of the first case and the unfortunate demise of the senior doctor, this court cannot but remark on the inept way the same was handled by the State authorities and the conduct of the Local Bodies/Durbar Shnongs which has shocked the conscience of every right thinking individual. It is noted that the State authorities have reposed immense faith on these Durbar Shnongs to ease the troubles of the citizens in this crisis, but what was seen was these two Durbar Shnongs of Nongpoh and Jhalupara by their actions and conduct, instead of being part of the solution were adding to the problems. In the interim, as the situation as put forth is alarming, we accordingly direct as follows:

- i) That the State Health authorities shall immediately ensure the testing of the primary contacts and also in the event, the same is not possible to be conducted immediately, to place the persons who have voluntarily come forward in quarantine, till such test

has been conducted and to render adequate assistance as required.

- ii) That the State authorities are to ensure that adequate assistance is rendered to the patients who are stranded in Bethany Hospital and also who are housed in the other quarantine facility and that adequate food and water be made available for which the help of the civil society can also be availed to procure the same for distribution.
- iii) That they are also to ensure that personnel are available with adequate personal protection to receive the food packets for distribution to the inmates.
- iv) That the State authorities are to strictly follow the guidelines on dead body management as prescribed by the Government of India and by the World Health Organization (For short 'WHO') such as the supply of PPE's to the detailed staff, apart from notifying the same for the information of the general public for their sensitization.
- v) That any person, local body/Durbar Shnong or organization which obstructs the State authorities in the control of the pandemic or any matter connected thereto, such as dead body management, cremation and burial shall be dealt with in accordance with law and cases to be registered under appropriate provisions of law.
- vi) That the State authorities shall sensitize the public especially where the cremation of burial grounds are situated to avoid any further unfortunate incident as had been witnessed on 15.04.2020.
- vii) That the State authorities to take stern action for enforcement of the Rule of Law, especially in the light of the said incidents on 15.04.2020 wherein public had broken the curfew and all social

distancing norms, in coming out in protest against the proposed cremation .

- vii) To adhere to the procedure of handling COVID-19 suspects and infected cases as contained in the protocol dated 25.03.2020 (Annex R/34 pg 110 of Status Report)

14. List this matter on **21.04.2020** for response by the petitioners on the status report and for further orders.

15. This matter having been taken up today via video conferencing, the signed copy of this Order is kept on the record of the case.

(W. Diengdoh)
Judge

(H.S. Thangkhiew)
Judge

Meghalaya
16.04.2020
"D. Nary-PS"