

1.
17-04-2020
bm/debajyoti

Through Video Conference

W.P. No.5328 (W) of 2020

Dr. Faud Halim

Vs

State of West Bengal & Others

with

W.P. No.5334 (W) of 2020

In re : Letter of Dr. Vimal Khawas

with

W. P. No.5335 (W) of 2020

In re : Letter of Mr. Ritesh Tiwari

with

W. P. No.5336 (W) of 2020

In re : Letter of Raja Satyajit Banerjee

Mr. Bikash Ranjan Bhattacharya, Sr. Advocate,
... For the Petitioner in W.P.5328(W) of 2020.

Mr. Ritesh Tewari, Petitioner-in-person in
W.P.5335(W) of 2020.

Mr. Raja Satyajit Banerjee, Advocate-in-person
in W.P.5336(W) of 2020.

Mr. Kishore Dutta, learned Advocate General
... For the State.

1. W.P.5328 (W) of 2020 is listed for consideration in terms of the two orders minuted on 16-04-2020. The other three writ petitions are numbered with reference to three

letters which have been addressed to the Chief Justice on the same subject.

2. Heard Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel, appearing for the petitioner in W.P.5328 (W) of 2020 and Mr. Kishore Dutta, learned Advocate General for the State of West Bengal as well as Mr. Raja Satyajit Banerjee, learned advocate, appearing in person in W.P.5336 (W) of 2020 and Mr. Ritesh Tiwari, petitioner in person in W.P.5335 (W) of 2020.

3. We see that by and large all issues relevant for consideration are placed on record in W.P.5328 (W) of 2020. We, accordingly, proceed to treat that petition as the lead case.

4. Learned Advocate General impeached the maintainability of W.P.5328 (W) of 2020 by pointing out that the petitioner therein is a political activist and has filed the writ petition without disclosing his political affiliation of being a member of a particular political party. It is, accordingly, argued that the writ petition is actuated by political motives and is not one aimed at securing any sort of public interest worth consideration at the instance of the petitioner therein. Learned Advocate General relied on judgments of the Hon'ble Supreme Court of India reported in (2005) 5 SCC 136, (2006) 6 SCC 613, (2013) 2 SCC 398, (2004) 3 SCC 349, (2010) 3 SCC 402 and of this Court reported in (2018) 1 High Court Cases (Cal) 12 to buttress his argument that the writ petition may not be entertained as a Public Interest

Litigation. Be that as it may, he also quite rightly and candidly pointed out that even if this Court is of the view that larger public interest requires to be looked into further by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, he would assist the Court with all relevant and requisite materials, to ensure that the management of COVID-19 pandemic crisis is appropriately handled in the State of West Bengal. Learned Advocate General also submits that there are no judicially manageable standards available to the Court to decide the issues agitated in the writ petition.

5. We are of the view that this is not an occasion or time for us to consider the maintainability of this writ petition and this is not a matter which should be thrown out at the threshold, since the question raised and which may arise on the basis of the materials on record prompts our conscience to have a deeper look into the materials that are being produced on behalf of the State Government in the form of affidavits as suggested by learned Advocate General. He has also made reference to two reports which have been sent down by Dr. Soumitra Mohan, Secretary, Department of Health and Family Welfare, Government of West Bengal through the Registrar General of this Court on 16-04-2020 and 17-04-2020 respectively. In such a situation, we proceed keeping open all issues for consideration as and when it becomes relevant to be dealt with in the form of adjudication. For the present, we

would take note of the requisites to push forward the efforts taken by this nation including the State of West Bengal in fighting the pandemic COVID-19 which is a matter of grave concern for all stakeholders and the entire citizenry of this nation. We may here and now note that the virus which has now been named as COVID-19 makes no distinction on the basis of caste, creed, colour, sex, religion, domicile or geographical identity to affect any person in any economic strata. Therefore, we are of the view that the identifying characteristic to consider whether there is public interest in this litigation need not presently stall the further proceedings in the matter.

6. The writ petition is filed seeking a direction on the respondent authorities to make widespread and rapid testing among the population of West Bengal for COVID-19 for early detection and prevention of further spread. A further direction on the respondent authorities is sought for taking immediate step to convert Calcutta Medical College for use only to house COVID-19 patients and also for improving health infrastructure by arranging sufficient test kit and/or protection measures for doctors to make it compatible to combat the present pandemic situation. The petitioner further seeks a direction on the respondent authorities to ensure supply of food materials to all sections of marginalized people including migrated workers, pregnant women, young mothers and children. As an interlocutory order, the writ petitioner seeks an order

directing the State to prepare and submit before the Court a plan for rapid testing and/or increasing the amount of testing for COVID-19 among the population in West Bengal.

7. We record the submission of learned Advocate General that the matter is being considered further and the State may be given liberty to place on record an affidavit including the reports submitted from time to time. We have already noted that the two reports of Dr. Saumitra Mohan, Secretary, Department of health and Family Welfare, Government of West Bengal dated 16-04-2020 and 17-04-2020 sent through the Registrar General have reached us. We have perused those reports and grant liberty to the State to place those reports also supported by requisite affidavits. Further reports and materials as may be necessary and relevant shall be placed on record by the State by way of affidavit from time to time without awaiting further orders of this Court.

8. Referring to the report of the Secretary, Department of Health and Family Welfare dated 16-04-2020, we see that it delineates and refers to 47 identified aspects after stating how COVID-19 spreads and that the different aspects require attention as stated in that report.

9. Adverting to the Health Secretary's report dated 17-04-2020, we note that it states "The total number of samples tested by the ICMR-approved testing laboratories is mentioned in the daily bulletin which is

uploaded on the website of the Department of health and Family Welfare, thereby making the information available in the public domain. This figure is collated from multiple laboratories and, thereafter, updated once daily".

10. It is further stated in the aforesaid report that "...as the number of testing laboratories in the State increased, there has been a steady rise in the number of tests being conducted across the State. It is a matter of record that there was only one testing laboratory in the State when sample testing for COVID-19 started. It is a result of the repeated requests made by the State Govt that the ICMR has approved several more testing laboratories in West Bengal. Today, there are seven testing laboratories (including 5 Govt and 2 private) in the State and there are several more which are in the process of being developed. It is a matter of record that currently, as a result of the rise in the number of ICMR-approved laboratories, more than 300 samples are being tested daily. This figure is expected to increase in the days ahead". The State report further states: "The State Govt. has issued an Advisory on 13th April, 2020 in which testing of samples, as per the ICMR's latest testing protocol, has been advised to the health authorities in the State. In the said Advisory, all symptomatic contacts, whether primary or secondary, and all asymptomatic primary contacts of COVID-19 positive patient, have been advised to be tested. Further, all cases detected to be SARI (Severe Acute Respiratory Illness) are also to be tested

as per general rule. As regards the alleged deficiency in the supply of personal protective equipment (PPEs), the same is strongly denied. As of 16th April, 2020, a total of 258805 PPEs, 152460 N-95 masks, 453775 two-layered masks, 917750 three-layered masks, 475000 gloves and 53769 litres of sanitizer have been supplied to the health facilities in the State”.

11. In the light of the aforesaid, we see that while the Government has issued Advisory to the Health Authorities in the State regarding testing of samples as per ICMR's latest testing protocol, it tends to indicate that more than 300 samples are tested daily. The report dated 17-04-2020 states that this figure is expected to increase in the days ahead. We are of the view that it is necessary that the official respondents give a deeper look to the requirement of more number of samples being collected and subjected to tests on war-footing. Neither the writ petitioner nor the letter petitioners have indicated that there is community spread. The reports of the Health Secretary also do not indicate community spread which has to be prevented at all costs. However, we think that having regard to the fact that the ICMR testing protocol and WHO guidelines require adherence to effective screening on war-footing, we need to be told by the State as to the acceleration of the rate of sample collection and testing which is being obtained on the aforesaid basis. This has to be reckoned *qua* all mandatory yardsticks.

12. Learned Senior Counsel, appearing for the petitioner in W.P.5328 (W) of 2020 has sounded a criticism against the manner of certification and the auditing of the reason for death before issuing the Death Certificate. We would not venture to say anything on that aspect now. We are aware of various possibilities relatable to the cause of death and the necessity to identify the reason behind a particular death. However, we expect the Government to place their response in this regard with the views of the health personnel concerned.

13. Anxiety was expressed by learned Senior Counsel, appearing for the petitioner in W.P.5328 (W) of 2020, that so far as the efforts like quarantine, managing the COVID-19 cases, that is to say the doctors, nurses, para-medical persons and the other health service oriented persons as well as those coming into regular close contact with such situation, there is deficit in facilities for their protection and safety from the point of view of health. This is a concern which obviously has to be addressed by the concerned authorities. We expect the State Government to place a report in this regard as well.

14. The primary grievance of the petitioner in W.P.5328 (W) of 2020 as ventilated through his learned Senior Counsel appears to be that the State is allegedly not following the guidelines and advisories issued by the World Health Organization (WHO) and the Indian Council of Medical Research (ICMR) as regards

tackling the menace of COVID-19. Learned Advocate General disputes this submission. We are of the view that WHO and ICMR being expert authorities in the field, their guidelines and advisories are required to be followed by all stake-holders including the State Administration and we are sure the same shall be done. The affidavit to be filled on behalf of the State should also include the State's response to the aforesaid grievance of the petitioner.

15. Post on 23-04-2020 at 10-30 A.M. Copies of the State's affidavit shall be made available through e-mail or otherwise to the Learned Advocate representing the petitioner in W.P. 5328 (W) of 2020 and to the petitioners appearing in person at least one day before the next date of hearing.

(Thottathil B. Radhakrishnan, C.J.)

(Arijit Banerjee, J.)