

In the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench,
Lucknow

Writ petition No- 7967 (M/B Civil) of 2020

Provincial Medical Service Officers (R) Welfare Association,

UP, Lucknow through its General Secretary

Petitioner

Versus

State of UP and others

Respondents

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Lucknow

Dated- 30/04/2020

(Dr Nutan Thakur)

Counsel for Petitioner

In the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench,
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LIST OF DATES AND EVENTS

S No	Date	Event
1.	23/08/2018	First MD of UPMSC takes charge

The matter is related with the arbitrariness, huge corruption, impropriety and illegalities being done by the Uttar Pradesh Medical Supply Corporation Limited and the complete inaction and apathy being shown by the Uttar Pradesh Government towards these illegalities and corruption. The matter is also related with the immediate and imminent danger to life and physical safety of government doctors, including members of Petitioner-society, which is extremely urgent in nature and needs immediate attention of this Hon'ble Court.

Hence this Writ petition

Lucknow
Dated- 30/04/2020

(Dr Nutan Thakur)
Counsel for Petitioner

In the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench,
Lucknow

Writ petition No- 7967 (M/B Civil) of 2020

Provincial Medical Service Officers (R) Welfare Association, UP, Lucknow

----- Petitioner

Versus

1. State of UP, through the Principal Secretary, Medical and Health Services Department, Government of Uttar Pradesh, Civil secretariat, Lucknow
2. State of UP, through the Principal Secretary, Medical Education Department, Government of Uttar Pradesh, Civil secretariat, Lucknow

3. Director General, Medical Health Service, UP, Lucknow, Swasthya Bhawan, Lucknow- 226001
4. Director General, Medical Education, Jawahar Bhawan, Lucknow- 226001
5. Uttar Pradesh Medical Supply Corporation Limited through its Managing Director, SUDA Bhawan, 7/23, Sector-7, Gomti Nagar, Lucknow, Uttar Pradesh 226010

----- Respondents

Writ Petition under Article 226 of the Constitution of India

To,

The Hon'ble Chief Justice and His other Hon'ble companion Judges of the aforesaid Court:

The humble petition of the above named petitioner most respectfully begs to submit as under

1. That this petition is being filed under Article 226 of the Constitution of India by the petitioner-Society praying before this Hon'ble Court to kindly direct the State of Uttar Pradesh (Respondent No 1) to take cognizance of the facts, issues and problems raised in this Writ Petition as regards the arbitrariness, huge corruption, impropriety and illegalities being done by Respondent No 5, the Uttar Pradesh Medical Supply Corporation Limited (UPMSC, for short) as narrated in this Petition and as having come through various other complaints and to undertake some action being suggested in subsequent Para, for the reasons

being enumerated in the Writ Petition, in the interest of life and physical safety of government doctors, including members of Petitioner-society.

2. The petitioner-Society declares that it has not filed any other Writ petition before the Hon'ble Court either at Allahabad or its Lucknow bench pertaining to the subject matter and/ or for the relief prayed for in the instant writ petition. It is further declared that in respect of the same subject, no caveat notice had been received by the petitioner-Society.
3. That the petitioner-Society is a registered Association of the allopathic doctors working in Provincial Medical and Health Service cadre (PMHS, for short) under the Societies Registration Act 1860. Serving and retired members of PMHS are members of the petitioner-Society. Dr Rajendra Kumar Saini is the General Secretary of the petitioner-Society, fully authorized to file this petition on its behalf. The relevant documents available with the deponent Dr Rajendra Kumar Saini in the prevailing circumstances of Covid-19 pandemic are being filed herewith as Annexure No 1, while all other documents required and directed by this Hon'ble Court shall be presented as soon as the present situation ends and normalcy has returned.
4. That the matter is related with the arbitrariness, huge corruption, impropriety and illegalities being done by the UPMSC and the complete inaction and apathy being shown by the Uttar Pradesh Government towards these illegalities and corruption. The matter

is also related with the immediate and imminent danger to life and physical safety of government doctors, including members of Petitioner-society, which is extremely urgent in nature and needs immediate attention of this Hon'ble Court.

5. That the State Government decided to form UPMSC in September 2017 under the Companies Act. As per the official website of the UPMSC- "UPMSC has come up as an organization for the centralized and transparent procurement and distribution of drugs, equipments and other consumables. UPMSC ensures availability of quality drugs, medical equipments at lowest costs at various warehouses across the state under the charge of UPMSC." Its objectives are as follows-"To act as the central procurement agency for all essential and specialized drugs, medical devices of good quality and also equipments for the health care institutions - Ensuring availability of all the drugs & consumables and medical equipment. - To act as a transparent body for purchase and distribution of medicines and medical equipments. XXXX"
6. That UPMSC is controlled by a Board of Directors headed by the Principal Secretary, Medical and Health Department. The Managing Director (MD, for short) of UPMSC is the principal officer of the organization. Among the UPMSC officers, there are all kinds of officers including Executive Directors, General Managers, Managers, Finance Controllers, Company Secretary etc but there is only a single doctor in entire UPMSC. While the MD is an IAS officer, almost all other officers in key positions are completely

unrelated with the Medical profession. Today, UPMSC makes all purchases for the Medical and Health Department and some purchases for the Medical Education Department.

7. That before coming into existence of UPMSC, there was a body called Central Medical Drug Store (CMDs, for short), which performed the same function as that of UPMSC. In contrast to UPMSC, CMDs was headed by a Government doctor of PMHS and was placed under DGMH. As per the records, UPMSC came into existence on or around 23/08/2018, when Sri GS Naveen Kumar became its first MD followed by Ms V Hekali Zhimomi and Ms Shruti Singh, the current MD. All the 03 MDs have been IAS officers.
8. That UPMSC makes very tall claims about itself. For instances, the MD of UPMSC says-“Our end goal is of a healthier state and we work day and night to accomplish that. XXX The Corporation is motivated by a zest of providing the people of the state with the best healthcare and medicines. We wish to become a textbook example of excellence for serving the most suitable medicines. XXX Two most imperative words in UPMSC are “quality and timeliness” etc etc.
9. That the reality of UPMSC is exactly opposed to what the officials and the website of UPMSC claims. Right through the beginning of the incorporation of UPMSC, there have been serious allegations of corruption, impropriety, acute inefficiency, gross ineffectiveness, dearth of medicines and equipments and so on.

10. That the facts about gross impropriety, irregularities and corruption in UPMSC have been in news right through the beginning. For example Article titled “सरकारी अस्पतालों में एंटी रेबीज वैक्सीन खत्म, मरीजों को बाहर से खरीदने पड़ रहे इंजेक्शन” dated 11/03/2019 by Sri Chandrakant Mishra in Ganv Connection said-“सरकारी अस्पताल में दवाइयों की आपूर्ति करने वाली संस्था उत्तर प्रदेश मेडिकल सप्लाइ कारपोरेशन मुहैया नहीं करा पा रही वैक्सीन, पीड़ित लोगों को प्राइवेट अस्पताल में एंटी रेबीज वैक्सीन के लिए 300 से 350 रुपए अदा करने पड़ रहे. XXXX सरकारी अस्पताल में दवाइयों की आपूर्ति की जिम्मेदारी उत्तर प्रदेश मेडिकल सप्लाइ कारपोरेशन के पास है। जहां से आवश्यकता से काफी कम दवाएं ही उपलब्ध हो पा रही हैं। इस वजह से सरकारी अस्पतालों में जरूरी दवाओं की किल्लत चल रही है। कुत्ता, बंदर और बिल्ली काटने पर लगने वाला एंटी-रेबीज इंजेक्शन भी सप्लाइ नहीं हो पा रहा है। मरीजों को बाहरी दुकानों पर निर्भर रहना पड़ता है।”

11. That similarly article titled “उत्तर प्रदेश मेडिकल सप्लाइ कारपोरेशन में सरकारी पैसे पर अय्याशी” dated 04/09/2019 in Jubileepost.in said- “कारपोरेशन के गठन और इसकी कार्यप्रणाली पर शुरू से ही सवालिया निशान लगने लगे थे। प्रबंधक मानव संसाधन

उत्तर प्रदेश मेडिकल सप्लाइज कॉरपोरेशन लिमिटेड की सूचना के अनुसार कारपोरेशन में स्थाई रूप से कोई भी पद स्वीकृत नहीं है और संविदा पर कुल 19 कार्मिक कार्यरत हैं । कारपोरेशन में मेडिकल सप्लाइ का बजट लगभग 7 से 800 करोड़ रुपए वार्षिक का है। इस कारपोरेशन में सरकार का एक भी स्थाई प्रतिनिधि शामिल न होना बड़े ही आश्चर्य का विषय है, जबकि खरीद इतने बड़े बजट की है। नियमों के अनुसार निदेशक स्तर का विशेषज्ञ सरकारी चिकित्सा अधिकारी और भुगतान पर नियंत्रण के लिये नियमित वित्त नियंत्रक के पद कारपोरेशन में अवश्य होना चाहिये। प्राप्त जानकारी के अनुसार रिटायर्ड फाइनेंस कंट्रोलर कुँवर दग वृजेन्द्र बहादुर सिंह और रिटायर्ड ड्रग कंट्रोलर अशोक महरोत्रा को Consultant Quality के पद हेतु संविदा पर तैनाती दी गई है और उनका वेतन ₹ 200000 (दो लाख रुपये) प्रतिमाह का भुगतान किया जा रहा है XXXX सूत्रों के अनुसार सप्लाइ कारपोरेशन का गठन होते ही मंत्रियों और अधिकारियों से सांठ-गांठ करके अधिकांश संविदा पदों पर उन्हीं कर्मियों का चयन किया गया जो स्वास्थ्य महानिदेशालय में स्थित सीएमएसडी स्टोर में कंपनियों की पैरवी किया करते थे। इनकी सक्रियता के कारण और अब पूरी तरह से वही कमीशन आधारित व्यवस्था कारपोरेशन में व्याप्त हो गई है और

अंजाम देने वाले भी वही लोग हैं जो अब संविदा कर्मियों के रूप में काम कर रहे हैं। चर्चा यह भी है कि स्वास्थ्य विभाग में अस्पतालों में उच्चीकरण के नाम पर करोड़ों रुपए के उपकरणों का सप्लाई करने वाला एक ठेकेदार कारपोरेशन के गठन का मास्टरमाइंड है और उसी के रिश्तेदार या फिर उसके नजदीकी ही कारपोरेशन में नौकरी पर हैं और वह वहां अब उसी ठेकेदार की मर्जी से दवाओं की आपूर्ति की जाती है। XXXX विभागीय सूत्रों का कहना है कि केवल उन्हीं की दवाओं की सप्लाई की जा रही है जिनमें कमीशन ज्यादा है और उनकी कोई विशेष आवश्यकता नहीं है।“

12. That article titled “दवाओं की कमी से जूझ रहे अस्पताल, यूपी मेडिकल सप्लाई कॉर्पोरेशन दवाओं की आपूर्ति में फेल” dated 07/10/2019 by Sri Amit Yadav in Amar Ujala, Lucknow, said-“प्रदेश के सरकारी अस्पताल दवाओं की कमी से जूझ रहे हैं। नॉर्मल सलाइन, एंटीबायोटिक, दिल की बीमारियों, कैल्शियम की दवाओं की भी कमी है। दवा काउंटर पर मरीजों को लंबी लाइन के बाद डॉक्टरों की लिखी आधी दवाएं ही मिल रही हैं। यूपी मेडिकल सप्लाई कॉर्पोरेशन दवाओं की आपूर्ति में फेल हो गया है। प्रदेश में 242 छोटे-बड़े अस्पताल हैं। इनमें जिला महिला, जिला पुरुष, संयुक्त चिकित्सालय और सीएमओ ऑफिस

शामिल हैं। XXXX एक साल बाद भी अस्पतालों में दवाओं की उपलब्धता में दिक्कतें बरकरार हैं। बेहोशी की दवा किटामाइन बहुत अधिक मात्रा में आपूर्ति की गई है, जबकि यह कम इस्तेमाल होती है”, while another article titled “जरूरी दवाओं की किल्लत...पर, आयरन की 35 लाख गोलियां भेजीं बिना डिमांड” dated 19/12/2019 in Amar Ujala said-“यूपी मेडिकल सप्लाइ कारपोरेशन दवाओं की सप्लाइ में मनमानी कर रहा है। जिन दवाओं के लिए बार-बार डिमांड भेजी जा रही है, उनकी सप्लाइ तो नहीं दी जा रही, जबकि बिना डिमांड के जिले को आयरन की 35 लाख गोलियों का आवंटन कर दिया गया। XXXX जिला अस्पताल समेत सीएचसी, पीएचसी पर एंटी बायोटिक्स के साथ दर्द, खुजली, बच्चों की बीमारियों में काम आने वाली दवाओं की किल्लत बनी हुई है। बार-बार मांग पत्र और रिमाइंडर भेजे जाने के बाद भी कारपोरेशन जिले के जरूरत की दवाइयों की सप्लाइ नहीं दे रही, पर आयरन टेबलेट की सप्लाइ में ज्यादा दिलचस्पी दिखा रहा है। XXXX स्वास्थ्य विभाग की ओर से बार-बार एक्सीक्लोफेनिक, डिक्लोफेनिक, बेंजाइल बेंजोएट लोशन, अमोक्सिसिलिन, सिप्रोफ्लॉक्सिन जैसी जरूरी दवाओं के लिए डिमांड भेजी जा रही है। इनकी सप्लाइ जिले को नहीं की जा रही। इनमें सबसे जरूरी एंटी बायोटिक के साथ दर्द और त्वचा

रोग संबंधी दवाएं भी शामिल हैं। इसके साथ ही बच्चों की बीमारियों में काम आने वाली दवाओं की भी किल्लत है। जिला अस्पताल में जन औषधि केंद्र खुलने से लोगों को जरूर राहत मिली है। मलेरिया का इंजेक्शन, उल्टी की दवा के सैंपल हो चुके फेल उत्तर प्रदेश मेडिकल कॉरपोरेशन ही पिछले दिनों मलेरिया बुखार में काम आने वाले आर्टीमिथर नाम के 85 हजार इंजेक्शन की जिले को सप्लाई दी थी। मलेरिया के मरीजों को स्वास्थ्य विभाग यह इंजेक्शन लगाता रहा। जिले में मलेरिया ने सैकड़ों लोगों की जान भी ले दी। बाद में पता लगा कि मलेरिया का इंजेक्शन अधोमानक है। इसके साथ ही उल्टी रोकने में काम आने वाली एक दवा का नमूना भी जांच में फेल हो चुका है। XXXXX स्वास्थ्य विभाग को स्थानीय स्तर पर दवाओं की सप्लाई कर चुके दवा कारोबारी अखिल रस्तोगी का कहना है कि दवाओं की खरीद अब सीधे शासन स्तर पर हो रही है। यह ऊंचे स्तर का भ्रष्टाचार है। इसी के चलते जिले को जरूरी दवाएं समय से नहीं मिल पा रहीं। दरअसल, स्थानीय स्तर पर होने वाली खरीद से नेताओं और अधिकारियों को कमीशन नहीं मिल पाता था। ऐसे में अब सब कुछ शासन स्तर से ही खरीदा जा रहा है। कई दवा कंपनियां कारपोरेशन के अधिकारियों से सांठगांठ कर उनको कमीशन देकर

अपनी दवाओं को इसी तरह खपा दिया करती हैं। निष्पक्ष जांच हो तो कई खुलासे हो सकते हैं। यूपीएमएससी कई बार बिना डिमांड के दवाओं का आवंटन कर रहा है। बिना डिमांड जिले को 35 लाख आयरन टेबलेट का आवंटन कर दिया गया।“

13. That an article titled “एक साल में ही यूपी मेडिकल कारपोरेशन बना लूट का अड्डा, अधोमानक दवाओं की खरीद करके अस्पतालों को कर रहा है सप्लाई” dated 26/12/2020 by Sri Om Kumar in https://balliaexpress.blogspot.com/2020/01/blog-post_617.html said-“फिलहाल यूपी मेडिकल कारपोरेशन द्वारा सात करोड़ से अधिक की घटिया दवाओं की खरीद का मामला चर्चा में है। XXXX ऐसी फर्म जिनकी दवायें अधोमानक पाई गयीं, उन्हें कारपोरेशन ब्लैक लिस्टेड नहीं करता है, जबकि स्वास्थ्य महानिदेशालय से जब दवा की खरीद की जाती थी तब फर्मों की दवाओं के सैम्पल एक बार फेल होने पर उस फर्म को ब्लैक लिस्टेड कर दिया जाता था। जानकार बताते हैं कि अब घटिया दवाओं की सप्लाई करने वाली फर्मों के दबाव में, कारपोरेशन ने तीन बार सैम्पल फेल होने पर ही फर्म की फेल हुई दवा को ब्लैक लिस्ट करने का नया नियम बना दिया है, लेकिन उस दवा कम्पनी को ब्लैक लिस्ट नहीं करते हैं। इसीलिये घटिया दवाओं की सप्लाई बेखौफ

की जा रही है । XXXXX आयरन एंड फोलिक एसिड सीरप की 50लाख मात्रा पर रु 7.29 की दर से रु 3,64,50000 का भुगतान किया गया। टेबलेट मेटफार्मिन पर रु 1050000, इंजेक्शन आर्टिसुनेट पर रु 12.23 की दर से रु 183450, 50 लाख सिरप ओडेनस्ट्रान पर रु 2,38,000,00 का भुगतान किया गया तो एटोरवास्टिन 10 के लिए 6 लाख 50 हजार का भुगतान किया गया, इंजेक्शन डेक्सामेथासोन की 12,50,000 मात्रा की खरीद पर 37,75,000 रुपये, इरथ्रोमाइसिन पर रु 2 करोड़ रुपये, आई ड्रॉप कार्बोजाईमिथाइल सैलूज की खरीद पर रु 9,52,000 का भुगतान किया गया। आई ड्रॉप माक्सीफ्लाक्सासिन के लिए रु 21,20,000 का भुगतान, इंजेक्शन रैंटिडीन के लिए रु 1,31,000, कैप्सूल क्लाक्सासिलिन 250mg के लिए रु 1,10,000 और एसीटेलोप्राम के लिए रु 19,50,000 खर्च कर दिये गये। इन सभी दवाओं के सैंपल जांच में फेल हो गए। फर्मों से अधोमानक दवाओं के पैसे की नहीं होती रिकवरी सैंपल फेल होने और दवाओं के अधोमानक घोषित होने के बाद भी कार्पोरेशन के अधिकारी इतने बेलगाम हैं कि फर्मों से इन अधोमानक दवाओं की सप्लाई करने के दण्डस्वरूप पेनाल्टी कौन कहे उस दवा की भुगतान की गयी कीमत की रिकवरी भी संबंधित फर्म से नहीं हुई ।“

14. That similarly article titled “मानकों पर फेल दवाओं से बरेली में हो रहा मरीजों का इलाज” dated 01/02/2020 in Dainik Jagran by Sri Ravi Mishra said-“XXX एजिथ्रोमाइसिन सीरप के सैंपल फेल होने के बाद अब करीब डेढ़ दर्जन दवाओं के सैंपल भी मेडिकल कॉरपोरेशन ने फेल कर दिए हैं। खास बात कि कॉरपोरेशन ने ही दवाएं भिजवाई थीं। दवाएं भेजने के बाद प्रयोगशाला में सैंपल चेक हुए। रिपोर्ट आई तो दवाएं अस्पतालों से निकलकर मरीजों तक पहुंच चुकी थीं। XXXX कारपोरेशन जिन कंपनियों से दवाएं खरीद रहा हैं, उनमें से कई की दवाएं अब तक मानक पर खरी नहीं उतर सकी है। एफएसडीए और कारपोरेशन ने कई जिलों में दवाओं की जांच करवाई, जिसमें कई अधोमानक पाई गईं। जिले में करीब डेढ़ दर्जन दवाओं के नमूने फेल हुए। इसकी रिपोर्ट तब आई जबकि वह दवा या तो पूरी बंट चुकी थी या फिर बहुत कम बची थी। अधोमानक दवा के इस्तेमाल से मर्ज ठीक नहीं हुआ और अस्पतालों में मरीजों की भीड़ बढ़ती गई”, while another news article in Janmat News dated 01/02/2020 titled “यूपी मेडिकल कारपोरेशन की लापरवाही.....अस्पतालों में दवाओं की “मारामारी” said-“उत्तर प्रदेश मेडिकल सप्लाय कारपोरेशन दवाओं की आपूर्ति करने में पूरी तरह विफल हो गया है, इस दौरान जिन दवाओं

की आपूर्ति हो रही है वो भी अधोमानक है. XXXXX उत्तर प्रदेश मेडिकल सप्लाइ कारपोरेशन की एमडी श्रुति सिंह की हठधर्मिता के चलते कई जीवन रक्षक दवाओं का अभी तक टेंडर नहीं किया गया जिसके चलते प्रदेश में डेंगू से कई मरीजों की मौत हो गयी. 6-6 माह होने पर भी दवाओं का टेंडर एमडी नहीं कर पा रही है और जीवन रक्षक दवाओं जैसे पैराश्रीन, टैमीफास का टेंडर किया भी गया तो उन कंपनियों कंपनी के खिलाफ अन्य लोग कोर्ट चले गये। जिस कारण मामला कोर्ट लंबित हो गया. अब आलम यह है कि प्रदेश के जिला अस्पतालों एवं सीएचसी व पीएचसी पर दवाएं ही उपलब्ध नहीं है जिससे मरीजों की लगातार मौतें हो रही है और कारपोरेशन के द्वारा जो दवाएं सप्लाइ की जा रही है वो अधोमानक है, विगत 1 वर्ष में लगभग 2 दर्जन से अधिक दवाएं मानको के अनुरूप न होने और नकली होने के कारण कारपोरेशन को दवाओं को वापिस लेना पड़ा। जानकारी के मुताबिक एनएचआरएम घोटाले से जुड़े आरोपी और अब सीबीआई के मुख्य गवाह बन चुके आरोपी को उत्तर प्रदेश मेडिकल सप्लाइ कारपोरेशन ने दवा सप्लाइ करने की अनुमति दी है, जिसमे करीब 40 दवा की कंपनियां भी शामिल है । उपरोक्त आरोपियों से एमडी की व्यावसायिक नजदीकिया होने का आरोप लगाया जा रहा है जो कि जांच का विषय है। XXXX इसी के

साथ ही भ्रष्टाचार के आरोप सहित एमडी पर मनमाने ढंग से काम करने की बात भी कही जा रही है।”

15. That this fact was also said in article by Sri Sachin Kumar in blog Bhavna ki Pukar dated 11/02/2020 titled “यूपी के सरकारी अस्पतालों में मिलने वाली कई दवाओं के सैंपल फेल”-“पिछले कुछ महीनों के आंकड़ों को देखे तो जिलों में दवा भेजने का जिम्मा लेने वाले मेडिकल कारपोरेशन की करीब 17 दवाओं का सैंपल सरकारी लैब में फेल हो चुके हैं। XXXX इन दवाओं का सैंपल हुआ फेल 1- सीएमसी आई ड्रॉप: आंखों के लिए। 2- इंजेक्शन डोबिटामिन: जीवन रक्षक दवा। 3- टेबलेट एरिथ्रोमाइसिन: गले में इंफेक्शन के लिए एंटीबायोटिक। 4- नियोस्पोरिन पाउडर: जख्म को सुखाने के लिए। 5- लिग्नोकेन जेली: आग से झुलसे मरीजों के लिए। 6- इंजेक्शन आर्टिसोनेट: मलेरिया की दवा। 7- इंजेक्शन लिग्नोकेन विद एडीनोलिन: आपरेशन से पहले मरीज को बेहोश करने के लिए। 8- नियोमाइसिन बेसीट्रेसिन विद जिंक पाउडर: फोड़ा-फुंसी को सुखाने की दवा। वहीं मेडिकल सप्लाय कारपोरेशन की तरफ से मेसर्स हिमालया मेडिटेक प्राइवेट लिमिटेड की रैनिटीडाइन हायड्रोक्लोराइड इंजेक्शन, डोबुटामाइन हायड्रोक्लोराइड

इंजेक्शन, मेसर्स ओमेगा फार्मा की ओर से एरिथ्रोमाइसिन स्ट्रेटस टैबलेट की आपूर्ति की गई थी जो जांच में फेल हो गए।”

16. That recently the corruption and improprieties of UPMSC came in larger public eyes after the supply of sub-standard PPE kits came in light. It began when a few Medical Colleges informed the Director General of Medical Education (DGME, for short), Uttar Pradesh about supply of sub-standard PPR kits. Based on these inputs, through letter No ME/Covid-19/156 dated 13/12/2020 titled “उत्तर प्रदेश मेडिकल सप्लाई कारपोरेशन द्वारा आपूर्ति की गयी पीपीई किट के संबंध में”, DGME Dr K K Gupta wrote a letter to all Medical colleges in the State saying- “उपर्युक्त विषय के संबंध में अवगत कराना है कि जीआईएमसी मेडिकल कॉलेज नॉएडा के निदेशक एवं प्रधानाचार्य मेरठ द्वारा उनके कॉलेज/संस्थान में उत्तर प्रदेश मेडिकल सप्लाई कारपोरेशन द्वारा आपूर्ति की गयी पीपीई किट की गुणवत्ता को अधोमानक बताया गया है. अतः आपको निर्देशित किया जाता है कि कृपया अपने कॉलेज/संस्थान में अधोमानक पीपीई किट या अन्य सामग्री प्राप्त होती है तो उसका उपयोग कदापि न किया जाये व भारत सरकार की गाइडलाइन्स का अनुश्रवन किया जाये. साथ ही उक्त अधोमानक सामग्री को अविलंब वापस कर उसके स्थान पर गुणवत्ता युक्त पीपीई किट या अन्य सामग्री भी प्राप्त की जाये. कृपया

उपरोक्तानुसार कार्यवाही सुनिश्चित करते हुए इस कार्यालय को अवगत कराने का कष्ट करें.”

17. That the above letter got leaked in media and was covered by the Media in a big way. For instance article dated 17/04/2020 by Sri Qazi Faraz Ahmad in News18 website titled “Don’t Use Substandard Protective Gear, Warns UP DGME as Medical Colleges Receive Faulty PPE Kits” said- “The Director-General Medical Education of Uttar Pradesh, Dr KK Gupta, has written to various medical colleges asking them to not use substandard and faulty Personal Protective Equipment (PPE) supplied to the doctors across the state. The letter has raised serious questions over the efficacy of UP Medical Supply Corporation, which has supplied the PPEs to various medical colleges and institutes in the state. XXXX Sources in the Health Department revealed that the PPE kits that were being supplied by the UP Medical Supply Corporation are not as per the length mentioned in the guidelines of the Government of India. The length of PPE kits that were supplied were in the range of 3.45 ft to 4.45 ft, which is less than the average length of a person in the country. Besides, the strings of the PPE kits broke in many cases leaving the doctors exposed to the danger. The same kits are being used at various government hospitals.”

18. That it is truly sad that instead of looking into the facts and the allegations, the State Government has tried to defend this wrongdoing. For instance, this news article by IANS news agency dated 30/04/2020 titled “Yogi govt denies fault in purchase of PPE

kits” said-“The Uttar Pradesh government has clarified that no irregularities had been committed in procurement of PPE kits that were supplied to doctors and para-medical staff of government medical colleges across the state, after start of the Covid-19 pandemic. Additional chief secretary Avanish Kumar Awasthi said 3,500 PPE kits worth Rs 3.5 lakh were purchased in October 2019 by the Uttar Pradesh Medical Supply Corporation for doctors and para-medical staff treating the H1N1/SARS patients in medical colleges. The standard of the kits was for protection from H1N1/SARS. He said that at the time of start of Covid pandemic there was a shortage of PPE kits so the government sent those (H1N1/SARS) kits to the medical colleges. "After the purchase of kits for protection from Corona, the state government withdrew all H1N1/SARS kits that were dispatched to medical colleges earlier. The H1N1/SARS kits were used by doctors in various medical colleges and there was no report of infection. The old kits were purchased at the rate of Rs 115 per kit whereas the kits for protection from Corona are now being purchased at Rs 1,086 per kit," he said. The official further said that now the state government was purchasing PPE kits made for protection from Corona from a central government factory in Coimbatore, DRDE in Gwalior, Heavy Vehicles Factory in Tamil Nadu and Small Arms Factory, Kanpur. Surprise check of the quality of the kits is being done by Small Arms Factory, Kanpur as well, he added. The official said that no irregularity was committed in the purchase of PPE kits.

The then committees of experts, doctors and officers had approved the purchase of kits. They are according to standards and rules set by the state government.”

19. That the falsity of the State Government statement is made clear through this article “घटिया पीपीई किट की खरीद मामले में झूठ बोल रहा है कारपोरेशन!” published in news website jubileepost.in on 18/04/2020 which says-“जुबली पोस्ट ने इसकी पड़ताल की और पाया कि- कई जिलों के अस्पतालों के सूत्रों का कहना है कि स्वाइन फ्लू के लिए कोई भी पीपीई किट कारपोरेशन ने सप्लाई ही नहीं की थी। सवाल यह भी है कि जब कारपोरेशन चिकित्सा इकाइयों की मांग पर कोई भी खरीदारी करता है और उसी की डिमांड के अनुसार इकाइयों को सप्लाई कर देता है तो ये पीपीई किट किसी भी जिले में क्यों नहीं भेजी गई ? शासन का कहना है कि यह खरीद अक्टूबर-नवंबर 2019 में की गई थी लेकिन जो पीपीई किट सप्लाई की गई है, उसकी पैकिंग पर मैन्यूफैक्चरिंग डेट फरवरी और मार्च 2020 की है। कारपोरेशन को यह भी बताना चाहिए कि मैन्यूफैक्चरिंग डेट बाद की हो और खरीद पहले ही हो जाए।“

20. That what is even more ironical and worrisome is the fact that instead of taking the matter in the right spirit and acting against the culprits, an enquiry has been initiated by the state

government by Special Task Force (STF, for short) into the alleged leak of the letter of DGME, on PPE kits. A Home department officer said the DGME letter was deliberately leaked to a section of the media to embarrass the state government. Thus instead of enquiring into the sub-standard PPE kits, the State Government is more interested in investigating into the leakage of the DGME letter, which anyways served the purpose of bringing the true facts before the public and making everyone aware of the wrong doings that were being made by UPMSC. It is really sad and worrisome that the State Government is saving UPMSC and is enquiring into leakage of DGME letter. A copy of the UP Government Press Note dated 26/04/2020 is being attached as Annexure No 2.

21. That the result of this apathy can be seen through another article “यूपी मेडिकल सप्लाइ कॉर्पोरेशन ने फिर कर दिया नया घोटाला?” dated 27/04/2020 in jubileepost.in which says-“ताजा मामला घटिया ट्रिपल लेयर मास्क की खरीद का है। हापुड़ जिले के सीएमओ ने दिनांक 22.04.2020 को कार्पोरेशन के प्रबंध निदेशक को पत्र लिख कर बताया है कि कार्पोरेशन द्वारा भेजे गए ट्रिपल लेयर मास्क मानक के अनुसार नहीं हैं। सूत्रों के अनुसार जिलों में भेजे गये मास्क इतने निम्न स्तर के हैं कि उसे बांधने के लिये लगे स्ट्रिप टूट जा रहे हैं और कपड़े की क्वालिटी बेहद खराब है। एक प्रश्न यह भी है कि 19 रुपये की दर से मास्क कब खरीदा गया। जुबिली पोस्ट को

मिली जानकारी के अनुसार कार्पोरेशन ने ये मास्क 19 रुपये में खरीदा। जबकि केन्द्र सरकार ने 21 मार्च 2020 को पहले 10 रुपये, फिर दिनांक 24 मार्च 2020 को 16 रुपये अधिकतम खुदरा विक्रय मूल्य निर्धारित कर दिया था। सवाल ये हैं कि जब खुदरा मूल्य ही 16 रुपये का निर्धारित है तो थोक मूल्य इससे कम ही होना चाहिए। जिलों से जुटाई गयी सूचना के अनुसार स्थानीय स्तर पर ट्रिपल लेयर मास्क जिलों में साढ़े छः रुपये से लेकर सात रुपये तक के खरीदे गये हैं और कार्पोरेशन के भेजे मास्क से अच्छे हैं। जानकारी के अनुसार कार्पोरेशन के द्वारा तीन हजार मास्क छोटे जिलों के सीएमओ के यहां भेजे गये हैं। मूल्यों में फर्क के हिसाब से देखा जाए तो कार्पोरेशन द्वारा घटिया मास्क खरीद कर लाखों रुपये के सरकारी राजस्व का चूना सरकार को लगा दिया गया ।“

22. That another example of complete apathy, mismanagement, impropriety and senselessness of the functioning of UPMSC is seen through floating of Tender Ref. No: UPMSC/Drugs-041/184 dated 21/04/2020 titled e-TENDER FOR THE SUPPLY OF DRUGS/ITEMS (PPE KIT FOR COVID-19) TO UTTAR PRADESH MEDICAL SUPPLIES CORPORATION LIMITED which says-“Online tenders are invited from licensed manufacturers for supply of PPE Kit for COVID-19 to UPMSC. The details of tender, list of items and Tender Documents

are made available on website <https://etender.up.nic.in> and www.upmsc.in. The last date/time of online submission of the tender documents is 27 April, 2020 upto 12:00 Hrs.” and Tender Ref. No: UPMSC/Drugs-042/184 dated 22/04/2020 titled “e-TENDER FOR THE SUPPLY OF DRUGS/ITEMS (BODY BAGS FOR PPE KIT FOR COVID-19) TO UTTAR PRADESH MEDICAL SUPPLIES CORPORATION LIMITED, which says-“Online tenders are invited from licensed manufacturers for supply of Body Bags for PPE Kit for COVID-19 to UPMSC. The details of tender, list of items and Tender Documents are made available on website <https://etender.up.nic.in> and www.upmsc.in. The last date/time of online submission of the tender documents is 28 April, 2020 upto 12:00 Hrs.”

23. That the above facts make it clear that when the pandemic was is news and view as early as in January 2020 and was definitely said to be arriving in India in late February 2020 about which the Hon’ble Prime Minister had given National address on 19/03/2020, announcing Janata curfew on 22/03/2020 followed by complete lockdown on 24/03/2020 with effect from 25/03/2020, UPMSC has finally arisen on 21/04/2020 when it floated tender for supply of PPE Kit for COVID-19 followed by tender on 22/04/2020 about bags for these PPE kits. This single example completely exposes the complete apathy, inefficiency, unreliability, meaningless and disjoint of UPMSC. It also makes clear the kind of risk to which the Government doctors of this State

are being exposed to, merely because of the wrong-doings and gross negligence of UPMSC. It is truly sad and disheartening that despite these hard facts, the State Government has not asked a single question from UPMSC about this clear and extremely serious dereliction of duty, which has put the life and personal safety of the entire medical fraternity of the State.

24. That all the above facts make it clear that-
- (a) UPMSC has completely failed to serve the purpose for which it had been established.
 - (b) Right from the beginning, UPMSC has been under huge controversies.
 - (c) There have been charges of rampant corruption against UPMSC and its various officials, including the present MD.
 - (d) UPMSC has been completely apathetic to the needs and requirements of the Health services of the State.
 - (e) It seems to be more interested in its own nefarious and improper gains and in corruption.
 - (f) It is clear that the UPMSC is violating all the Government norms for sale, purchase and procurement and is being guided by certain vested Thekedar (contractors), close to the authorities in UPMSC.
 - (g) There is a close nexus between the contractors and officials of UPMSC, who seem to be getting complete patronage of the Health and Family Welfare Department and the powerful politicians, who are seen to be giving all kinds of protection

to UPMSC, otherwise it would not have been possible to ignore all kinds of extremely serious complaints of corruption, apathy, inefficiency and impropriety coming against UPMSC right through its inception.

- (h) The sub-standard PPE kit episode is only the tip of the Iceberg, while the problem lies much deeper.

25. That the above facts make it clear that the primary reasons for such sad state of affairs are as follows-

- (i) The complete disconnect between the office of DGMH, DGME and UPMSC, who have almost no linkage in present setup.
- (ii) The lack of command and control of DGMH over UPMSC.
- (iii) While the Health services of the State is being run and governed by DGMH, a separate and disjoint body UPMSC has been made responsible for purchase of medicines and equipments, which is working in completely arbitrary manner because of having no control from DGMH office.
- (iv) UPMSC being headed by an IAS officers directly responsible to State Government and having nothing to do with DGMH.
- (v) Almost complete lack of government doctors in UPMSC.
- (vi) Presently there is only 01 doctor in UPMSC, while all other officers of UPMSC are from other fields.
- (vii) This situation is leading to complete lack of understanding regarding purchase of medicines and equipments required by the doctors for proper regulation of health services.

(viii) UPMSC is also being run without proper rules, regulations and norms and hence they are working in a completely reckless manner.

(ix) It is also quite obvious from the above facts that UPMSC has the complete patronage of the high and the mighty, which is the only reason why no single enquiry has been started till date against this body, despite all kinds of extremely serious complaints of gross corruption, impropriety, apathy. On the contrary, STF investigation was initiated on leak of a letter that served the purpose of transparency and accountability.

26. That it is also quite obvious that majority of the serving members of the Association are getting directly affected by the misdeeds and improprieties of UPMSC, in all manners. They are not getting proper medicines and equipments for the patients in the various hospitals all over the State wherever they are serving. They are being abused and accused for the lack of these medicines and equipments. On certain occasions they also get manhandled by angry crowds, who become berserk and agitated by lack of medical facilities and medicines, that are generally supposed to be available in Government hospitals. In addition, poor and sub-standard equipments also put the doctors in clear danger, including danger to their life, well-being and their personal safety. In times of calamity and epidemic/pandemic etc like the current Covid-19 situation, the dangers to life and personal safety becomes much more aggravated and serious. UPMSC is also not looking into the

genuine requirements of the doctors and is not catering to their needs for necessary equipments and necessary paraphernalia, which is making life extremely precarious, risky and dangerous for the Government doctors. In fact, the various members of the Association serving in fields in the hospitals are under tremendous stress. The seriousness of the situation has aggravated a lot during the Covid-19 period, more so after coming into light of the sub-standard PPE episode and the State Government response to it.

27. That it is in such conditions, that the Association has been forced to bring this matter before this Hon'ble Court in a situation of extreme urgency. It is quite obvious that while the matter is related with the immediate and imminent danger to life and physical safety of government doctors, including members of Petitioner-society, which is extremely urgent in nature and needs immediate attention of this Hon'ble Court. Providing substandard PPE kits and other medicines and medical equipments, which are proving to be extremely dangerous to the Government doctors, many of who are members of the petitioner-Society has forced it to present the Petition before this Hon'ble Court in this extraordinary situation, which this Hon'ble Court has been kind enough permission for urgent hearing. In view of the above factors, the matter needs urgent/immediate hearing and relief.

28. That the following main actions that seem required in consequence to the above mentioned facts are as follows-

- (a) State of Uttar Pradesh to immediately form a permanent combined body consisting of the DGMH, DGME and MD, UPMSC to look into the needs/requirements of purchase of medicine and related equipments.
- (b) State of Uttar Pradesh to immediately direct this combined body of DGMH, DGME and UPMSC to work together and make a complete and fool-proof assessment of the needs of the doctors and health care staff as on date for fighting Covid-19 and to get all the needs/requirements fulfilled in the minimum possible time period to properly fight Covid-19, so as to save the lives and personal safety of the health care staff.
- (c) Making an arrangement where UPMSC comes under direct control of DGMH with some control of DGME, so that there is a direct and complete connect between the actual needs and requirements of Health department and Medical Education department and the supply of medicines and equipments made in this regards.
- (d) Posting sufficiently large number of Government doctors in UPMSC in various positions, including as head/MD of UPMSC, working under DGMH, so that the complete disjoint and disconnect being seen presently between the functioning of UPMSC and the requirement of Health department ends and UPMSC becomes a body better equipped to understand the needs and requirements of the Health department.

- (e) In-depth independent audit of the various works done/undertaken by UPMSC since its inception, so as to bring the truth about the working and functioning of UPMSC so far.
- (f) High level independent enquiry into the various facts/allegations made against UPMSC in this Writ Petition and having been made so far from different levels and pending with the State Government.

29. That in such circumstances, left with no other option and having no any efficacious and effective alternative remedy available to the petitioner-Society and the matter being extremely important and urgent to them as it is related with their fundamental right to live with dignity granted under Article 21 of the Constitution, this writ petition is being filed under Article 226 of the Constitution of India on the following amongst other grounds

30. That the petitioner's photograph and Identity proof have been enclosed along with

GROUND

- (1) Because the matter is related with the arbitrariness, huge corruption, impropriety and illegalities being done by the Uttar Pradesh Medical Supply Corporation Limited.
- (2) Because complete inaction and apathy is being shown by the Uttar Pradesh Government towards these illegalities and corruption.

- (3) Because the matter is related with the immediate and imminent danger to life and physical safety of government doctors, including members of Petitioner-society.
- (4) Because the matter is extremely urgent in nature and needs immediate attention of this Hon'ble Court.
- (5) Because many doctors and health care personnel are getting severely affected by the misdeeds and apathy of UPMSC.
- (6) Because there is an imminent need to look into the state of affairs of UPMSC because of all the reasons mentioned above.
- (7) Because there is large scale and rampant corruption, inefficiency, impropriety and apathy being shown by UPMSC.
- (8) Because the petitioner being an Association having serving members of PMS as its members, has a direct locus to raise and contest the given issue.

PRAYER

Wherefore, it is most respectfully prayed that this Hon'ble Court may be pleased to-

- a. to kindly issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction thereby directing the State of Uttar Pradesh (Respondent No 1) to immediately form a permanent combined body consisting of the the Director General, Medical and Health, UP, Director General, Medical Education, UP and Uttar Pradesh Medical Supply Corporation Limited to look into the needs/requirements of purchase of medicine and related equipments.

- b. to kindly issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction thereby directing the State of Uttar Pradesh to immediately direct this combined body of Director General, Medical and Health, Director General, Medical Education and UP Medical Supply Corporation Limited to work together and make a complete and fool-proof assessment of the needs of the doctors and health care staff as on date for fighting Covid-19 and to get all the needs/requirements fulfilled in the minimum possible time period to properly fight Covid-19, so as to save the lives and personal safety of the health care staff.
- c. to kindly issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction thereby directing the State of Uttar Pradesh to make an arrangement where UP Medical Supply Corporation Limited comes under direct control of Director General, Medical and Health, with some control of Director General, Medical Education, so that there is a direct and complete connect between the actual needs and requirements of Health department and the supply of medicines and equipments made in this regards.
- d. to kindly issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction thereby directing the State of Uttar Pradesh to post sufficiently large number of Government doctors in UP Medical Supply Corporation Limited in various positions, including as its Managing

Director, working under Director General, Medical and Health, so that the complete disjoint and disconnect being seen presently gets completely taken care of.

- e. to kindly issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction thereby directing the State of Uttar Pradesh to get In-depth independent audit of the various works done/undertaken by the UP Medical Supply Corporation Limited since its inception, so as to bring the truth about the working and functioning of UP Medical Supply Corporation Limited so far.
- f. to kindly issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction thereby directing the State of Uttar Pradesh to get high level independent enquiry done into the various facts/allegations made against UP Medical Supply Corporation Limited in this Writ Petition and having been made so far from different levels and pending with the State Government.
- g. kindly issue any order as this Hon'ble Court deems fit in the interest of justice.

Lucknow
Dated- 30/04/2020

Dr Nutan Thakur
Counsel for Petitioner

In the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench,
Lucknow

Writ petition No- (M/B Civil) of 2020

Provincial Medical Service Officers (R) Welfare Association,

UP, Lucknow through its General Secretary Petitioner

Versus

State of UP and others Respondents

AFFIDAVIT

the deponent, do hereby solemnly affirm and state on
oath as under -

1. That the deponent is the General Secretary of the above Association, the sole Petitioner in this petition and being fully authorized by the Association, deposes on its behalf as being fully conversant with the facts and circumstances of the case.
2. That the contents of the paragraphs 1-4, 7, 23-30 of the Writ petition are true to my personal knowledge, 5, 6, 8-22 based on documents and records and NIL believed to be true or are based on legal advice.

3. That the Annexure No 1 to 2 are a true copy of their originals.

Place Lucknow

Date- 30/04/2020

Deponent

VERIFICATION

I, the deponent above named, do hereby verify that the contents of paragraphs 1 to 3 above this Affidavit are true and correct to my knowledge and belief. No part of it is false and nothing material has been concealed. So, help me God

Signed and verified this the 30th day of April 2020 at Lucknow

Deponent

Identification

I identify the deponent, on the basis of records produced before me, who has signed before me.

Advocate

Solemnly affirmed me on 30/04/2020 at

AM by the

deponent

who has been identified by Dr Nutan

I have satisfied myself by examining the deponent that he understands the contents of this Affidavit which have been read over and explained to him by me.

Oath Commissioner