

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
Writ Petition (PIL) No. 97 of 2019
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
Writ Petition (PIL) No. 61 of 2021
Writ Petition (PIL) No. 71 of 2021
Writ Petition (PIL) No. 72 of 2021
Writ Petition (PIL) No. 77 of 2021
Writ Petition (PIL) No. 90 of 2021

28TH JULY, 2021

Mr. Shiv Bhatt, the learned counsel for the petitioner in WPPIL No. 58 of 2020 and WPPIL No. 77 of 2021.

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

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

Mr. Abhijay Negi, the learned counsel for the petitioner in WPPIL Nos.97 of 2019, 67 of 2020, and 72 of 2021.

Ms. Snigdha Tiwari, the learned counsel for the petitioner in WPPIL No.71 of 2021.

Mr. Sandeep Tiwari, the learned counsel for the petitioner in WPPIL No.61 of 2021.

Mr. Arjun D. Singh, the petitioner party-in-person in WPPIL No. 90 of 2021.

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

Mr. Rakesh Thapliyal, the learned Assistant Solicitor General for the Union of India.

Mr. Sandeep Tandon, the learned counsel for the CBI.

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

In pursuance of the order dated 07.07.2021, Dr. S.S. Sandhu, the learned Chief Secretary, Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, Mr. Dilip Jawalkar, the learned Secretary, Department of Culture & Religious Affairs, and Mr. S.A. Murugesan, the learned Secretary, Disaster Management are present before this virtual Court through video conferencing.

2. Mr. S.A. Murugesan, the learned Secretary, Disaster Management, Government of Uttarakhand has submitted an affidavit on behalf of the learned Chief Secretary. Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare has submitted two affidavits, and Mr. Dilip Jawalkar, the learned Secretary, Department of Culture & Religious Affairs has also submitted an affidavit. All the affidavits shall be taken on record.

3. In the affidavit filed by Mr. S.A. Murugesan, he informs this Court that in total there are 8,590 Isolation Centres which have been established in panchayat ghar, community centres, dharmashalas, multi-purpose halls, schools etc. throughout the State. These Isolation Centres have about 24,258 beds. In the affidavits, he has also provided a district-wise breakdown with regard to the number of Isolation Centres, and with regard to the number of beds.

4. He further submits that by order dated 12.07.2021, the State Government had directed the district administration to analyze the influx of tourists during the weekends at the tourist spots in their respective districts, and to cap the number of persons permitted to visit such tourist destinations keeping in mind its capacity and its geographical conditions. Moreover, the district administration was directed to ensure strict compliance of COVID Appropriate Behavior. Therefore, in pursuance of the said order, the District Magistrates of all the districts have issued the necessary orders to regulate the influx of tourists. The

same was given wide publicity for the benefit of tourists.

5. A bare perusal of the affidavit clearly reveals that in Dehradun district and in Haridwar district, there are only 433 and 480 Isolation Centres respectively. Surprisingly, in district like Pauri Garhwal, there are larger number of Isolation Centres as Pauri Garhwal has 1,278 isolation centres. Therefore, this Court has asked a pointed query to Mr. S.A. Murugesan whether the number of Isolation Centres established and functioning at Dehradun and Haridwar districts are sufficient or not? To this pointed query, Mr. S.A. Murugesan submits that since Dehradun and Haridwar districts have sufficient medical health infrastructure, the number of Isolation Centres is presently kept at the numbers indicated above. However, as and when the requirement increases, in case, the State were to undergo the third wave of COVID-19 pandemic, the number of Isolation Centres would certainly be increased in Dehradun and Haridwar districts.

6. Although, in the affidavit, Mr. S.A. Murugesan claims that the District Magistrates have issued

instructions for regulating the influx of tourists, the instructions so issued are not available in the Court file. Therefore, he is directed to submit before this Court the directions so issued by the respective District Magistrates of all the districts.

7. Moreover, according to the media report, and according to the large number of tourists pouring into Nainital, it is rather obvious that too many tourists are coming to the hill stations. Due to the large influx of tourists, the SOP for Covid Appropriate Behaviour is observed more in breach, than in adherence. Yet the entire affidavit is silent with regard to the steps which are required to be taken by the police against the erring tourists. Therefore, this Court directs Mr. S.A. Murugesan to ensure that Mr. Amit Sinha, the learned Inspector General/Nodal Officer, Police Headquarter, submits his affidavit with regard to the steps taken by the police while dealing with the erring tourists. For, no one can be permitted to violate the Covid Appropriate Behaviour to jeopardize the lives of the local population.

8. Another affidavit has been submitted by Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare. According to Mr. Amit Negi, the State is following the guidelines issued by the Government of India in June, 2021 regarding operationalisation of COVID Care Services for Children and Adolescents. According to the guidelines, *“National and International data of the first and second wave of COVID-19 indicated a maximum of 2-3% of such children requiring hospitalization. However, to meet the surge of India, we need to be ready for a little higher number and for an indicative projection, a figure of 5% of children with COVID have been estimated to be requiring hospitalization”*.

9. Moreover, a complete chart has been given in the guidelines in order to indicate the level of preparedness that is required for each State. According to the data, at the peak, there were about 10,000 cases which were reported in Uttarakhand. Therefore, according to the table given in the said guidelines, the total number of beds required for children at the peak of the surge would be 600; the total number of ward

beds required for children would be 360; and the total number of High Dependency Unit (HDU)/Intensive Care Unit (ICU) beds required for children would be 240.

10. Mr. Amit Negi informs this Court that taking the guidelines issued by the Central Government as the basis, but simultaneously, expecting the larger number of children who may be adversely affected by COVID-19 virus, the State Government has ensure that there are 1,945 pediatric oxygen beds, and 739 NICU/PICU beds earmarked for children in the State. Thus, according to him, the State is well-equipped to tackle any challenge that may come in its way in the wake of the third wave of COVID-19 pandemic. He further informs this Court that, presently, the number of COVID-19 cases in the State is on the decline. Moreover, the difficulty that arose in the past due to the spread of black fungus is also on the decline. As far as the availability of ambulances is concerned, Mr. Amit Negi, informs this Court that there are 272 ambulances in the Dial-108 Emergency Service. Out of these, 54 ambulances are Advanced Life Support (ALS)

Ambulances, and the remaining 218 are the Basic Life Support (BLS) Ambulances in the State.

11. Furthermore, considering the fact that more ALS ambulances may be required for the benefit of the people, Mr. Amit Negi, informs this Court that the State Government has already sent requisition and a proposal to the Central Government for buying 41 more ALS ambulances. However, the Central Government is yet to take a decision on whether it will permit the State to buy, or to outsource these 41 ALS ambulances.

12. Mr. Amit Negi, further submits that since there is a large number of vacancies in the cadre of Medical Officers, the selection process has already commenced. So far, 451 Medical Officers have been selected, out of which 250 Medical Officers have already joined their duties. The rest of them have yet to join their duties.

13. As far as the availability of vaccines is concerned, Mr. Amit Negi, submits that only yesterday the State has received three lakhs vaccines from the Central Government. Therefore, the State is well-

equipped to vaccinate its people. Furthermore, as and when the requirement arises, the State shall send requisition for sufficient number of vaccination to the Central Government. According to him, the State has "*one of the best performances*" in vaccinating its people in the country. Thus, Mr. Amit Negi, submits that the State is well-prepared to tackle the possible emergence of the third wave of COVID-19 pandemic.

14. Mr. Shiv Bhatt, the learned counsel for the petitioner in Writ Petition (PIL) No.58 of 2020 and Writ Petition (PIL) No.77 of 2021, submits that despite the fact that in the last order passed by this Court, this Court had directed Mr. Amit Negi to reveal the number of pediatric ventilators and pediatric wards, the said figure have not been revealed in the affidavit filed by Mr. Amit Negi.

Secondly, on the last occasion, Mr. Amit Negi had admitted that about 300 samples have been sent for testing to the National Centre for Disease Control, wherein one sample of *Delta plus* variant was discovered. The sample was from district Udham Singh Nagar. However, there is no statement made by Mr.

Amit Negi whether any other *Delta plus* variant patient has been discovered in the 300 samples sent by the State, or not? Moreover, there is no indication in his affidavit with regard to the possible number of *Delta plus* variant virus in the State. According to Mr. Shiv Bhatt, the learned counsel, the *Delta plus* variant has already started emerging as a threatening virus. In Maharashtra, certain number of cases of *Delta plus* variant has been discovered, yet there is no information whether the variant has reaching the State of Uttarakhand, or not?

Thirdly, although the process of selection may be initiated by the State, but according to the data furnished by the State itself, there are large numbers of vacancies in different cadres of Medical Health Department. According to the data released by the State, there are about 1,253 vacant posts of Medical Officers, 349 posts of Staff Nurse, 169 posts of Laboratory Technicians, and 547 posts of Female Health Workers (ANMs). According to the learned counsel, the Staff Nurses, Laboratory Technicians, and the Family Health Workers form the bedrock of the

Health Care System. Due to the large number of vacant posts in these three different cadres, the Health Care System continues to be a weak one. Therefore, even if 451 Medical Officers have been selected, in the absence of the essential staff, even these Medical Officers will be ineffective in treating the COVID-19 patients. Therefore, Mr. Shiv Bhatt, the learned counsel prays that the selection process for the different posts should be initiated immediately.

15. Mr. Abhijay Negi, the learned counsel for the petitioner in Writ Petition (PIL) No. 97 of 2019, submits that although the State Government had made a public announcement that it is increasing the stipend being paid to the intern Doctors, according to the affidavit filed by Mr. Amit Negi, the matter relating to the amount to be paid to the intern Doctors is "still under consideration of the Government". Therefore, according to Mr. Abhijay Negi, the learned counsel, the intern Doctors continue to be paid as low as Rs. 7,500/- per month, which is far less than the stipend being paid to their counterparts in the State of Himachal Pradesh, where the stipend is about Rs. 17,500/-. Moreover,

since the intern Doctors are at the forefront of the frontline workers for treating COVID-19 patients, until and unless the stipend is phenomenally increased, the intern Doctors will continue to suffer financially, physically and psychologically. Therefore, the learned counsel submits that the stipend should be increased immediately by the State Government.

16. He further points out that even the measly sum of Rs. 7,500/- per month is not being paid on a timely basis. The stipend for the month of June, 2021 has been released only recently in the month of July, 2021. Therefore, the intern Doctors continue to suffer both a financial crisis, and the social stigma. According to the learned counsel, the State is being highly unfair with the intern Doctors.

17. The learned counsel further points out that despite the existence of the Uttarakhand Anti-Littering and Anti-Spitting Act, 2016, the said Act is not being implemented by the Nagar Palikas, the Municipal Corporations and the Municipalities for ensuring hygienic conditions of the towns and villages. Despite the fact that Section 9 of the said Act contains a penal

provision, the said penal provision is not being implemented. Consequently, the towns and cities in the State continue to be both unhygienic and unclean. The unhygienic and unclean condition would further aggravate not only the emergence of the third wave of COVID-19, but would also give rise to other diseases during the monsoon season. Therefore, the learned counsel prays that the State Government should be directed to implement the provisions of the said Act strictly through its competent agencies.

18. The learned counsel further submits that there is a vaccination hesitancy in the minds of the people due to superstition or misinformation. Therefore, in order to remove the superstition or misinformation, the State Government must inspire and motivate the people to undertake the vaccination.

19. Furthermore, there is no incentive scheme launched by the State Government, which will applaud those entities, which continue to abide by the SOPs. Since, there is no encouragement or appreciation by the State Government of those entities, which do abide by the SOPs, such followers of SOPs are disheartened

when they see others, who are going scot-free while they violate the SOPs. Therefore, according to the learned counsel, an incentive scheme should be framed by the State Government so as to encourage more and more entities such as Restaurants, Hotels, Cinema Halls, Malls, Shopkeepers, etc. to follow the SOPs throughout the State.

20. Ms. Singdha Tiwari, the learned counsel for the petitioner in Writ Petition (PIL) No. 71 of 2021, submits that although the affidavit filed by Mr. Amit Negi claims that the district administration is taking substantial steps for vaccinating the physically challenged people, there is no evidence to establish the said plea. Moreover, while dealing with those persons, who are totally paralyzed, by establishing "Near to Home Vaccination Centres" their vaccination cannot be achieved. For, those, who are paraplegic would not even be in a position to leave their homes, and to report to the "Near to Home Vaccination Centres".

21. The learned counsel further submits that although it is claimed that camps are being held for the benefit of the physically challenged people, since the

camp dates are not announced in advance, many of the physically challenged persons do not even know that a camp is being launched by the State. Therefore, the learned counsel submits that the camp dates should be announced well in advance through the local media, both print and electronic, so that the physically challenged persons would be informed well in advance about the dates, the place and the time of the camps.

22. Mr. Arjun D. Singh, the petitioner-in-person in Writ Petition (PIL) No. 90 of 2021, informs this Court that, by the order dated 25.07.2021, the State Government has withdrawn the requirement that 25% of the beds in the private hospitals should be reserved for the weaker sections of the society. According to him, this is a retrograde step. With the possibility of the third wave hitting the State in the second or third week of August, 2021, the said order should never have been passed. For, in case the third wave were to strike in August, 2021, again large number of beds would be required for the benefit of those who are financially weak. Therefore, he prays that the State

Government should be directed to reconsider its decision, and to recall the order dated 25.07.2021.

23. The petitioner-in-person has further relied on the "Performance Audit Report of the Comptroller and Auditor General of India on District Hospital Outcomes for the year ended 31st March 2019". This is Report No. 1 of the year 2021 published by the Government of Uttarakhand. While dealing with the conditions and availability of the Ambulances, the report states that *"as per IPHS, a district hospital is required to have three running Ambulances with well-equipped Basic Life Support (BLS). It should be desirable to have one Advanced Life Support (ALS) Ambulance. The serviceability and availability of equipment and drugs in Ambulances are required to be checked on a daily basis"*. However, the report has pointed out glaring lacunae with regard to the Ambulances which are attached to the District Hospitals. For example, the *"Ambulances, which were attached to the District Hospital, Almora, Joint Hospital, Udham Singh Nagar, District Female Hospital, Haridwar, and District Hospital, Haridwar were used for multiple purposes*

such as delivery of mails, electricity bill payments, and attending Court cases." In fact, *"none of the test checked hospitals had three running Ambulances with well-equipped BLS"*. Furthermore, the *"Ambulance with ALS was not available in any of the test checked hospitals."* *"The available Ambulances were running with expired fitness, insurance and pollution certificates, which are mandatory for the operation of a vehicle."* The available vehicles were not provided with adequate technicians, as required under the IPHS. Even the oxygen cylinders were being operated by the Ambulance drivers, rather than by technicians, as required under the procedure. Moreover, these Ambulances were not even parked near the Emergency Ward, as required by law. Thus, according to the learned counsel, the Ambulances attached with the Hospitals need to be reviewed, their performance capacity, capability and preparedness needs to be examined.

24. Moreover, in the affidavit filed by Mr. Amit Negi, while the affidavit deals with 108 Ambulances fleet, it is totally silent about the Ambulances attached

to the District Hospitals. Therefore, the petitioner-in-person prays that a direction should be issued to the State Government to examine the availability and preparedness of the Ambulances attached with the District Hospitals, and in case any lacunae is discovered, the same should be filled up by the State Government as expeditiously as possible.

25. Considering the facts mentioned hereinabove, considering the different pleas raised, and the submissions made by the different learned counsel, this Court directs the State Government and the learned Secretaries as under :-

- (i) Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, is directed to inform this Court with regard to :
 - (a) the availability of paediatric ventilators and paediatric wards available in the Government Hospitals;
 - (b) with regard to the steps taken, if any, for filling up the vacancies of Staff Nurses, Lab Technicians, Female Health Workers (ANMs), and the present status of the selection process, if

already initiated; (c) with regard to either the presence, or the discovery of the Delta Plus variant in the State; and (d) with regard to the 300 samples, which were sent to the NCDC lab at Noida, and whether any case of Delta Plus variant has been discovered in those 300 samples, or not?

(ii) The State is directed to take a decision with regard to the increase in the stipend of the intern Doctors as expeditiously as possible, and preferably before the next date of this case. Moreover, the State is directed to ensure that the stipend is paid to the intern Doctors on time, rather than with delay.

(iii) The State is further directed to enforce the Uttarakhand Anti-Littering and Anti-Spitting Act, 2016, and to issue the necessary directions for the implementation of the same for the benefit of the competent authorities under the Act.

(iv) The State is directed to initiate a campaign for removing any superstition, suspicion, or misinformation that people may have with regard to vaccination for COVID-19. Simultaneously, the State is directed to increase the number of vaccinations being carried out throughout the State.

(v) The State is directed to instruct all the District Magistrates to discover the number of physically challenged persons within their jurisdiction, who may be unable to come to the "Near to Home Vaccination Centres". As and when such persons are discovered by the District Magistrates, it shall be the duty of the concerned District Magistrate to ensure that those physically challenged persons, who cannot possibly leave their homes, are inoculated by the medical staff at their homes. The steps so taken by the District Magistrates shall be informed to this Court by the next date. Moreover, the District Magistrates are directed to ensure that in

case any camps were to be held for the benefit of the physically challenged persons, the date, the time, and the place is informed well in advance to the community at large by the use of print and electronic media. The necessary arrangements at the camps should be made to ensure that comfortable accommodation is provided to the physically challenged persons, and their other needs such as food, water and availability of toilets are met by the Civil Administration, or by the Medical Health Department.

(vi) The State is also directed to reconsider its decision of withdrawing the 25% reservation of beds in the private Hospitals for the weaker sections of the society. Therefore, the State should reconsider whether it should withdraw the order dated 25.07.2021, or not?

(vii) Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, and the State are directed to consider the Audit

Report vis-à-vis the condition, the capacity, and the lack of infrastructure of the Ambulances, which are attached with the District Hospitals. Mr. Amit Negi should also inform this Court with regard to the steps taken for filling up the lacunae pointed out in the Audit Report by the next date.

26. Mr. Shiv Bhatt, the learned counsel for the petitioner in Writ Petition (PIL) No. 58 of 2020, has filed an application, wherein he has sought the continuation of the Stay Order dated 28.06.2021 passed by this Court, whereby this Court had stayed the opening of the Char Dham Yatra. The learned counsel submits that since the stay was granted by this Court only for a period of four weeks, and since the said period of four weeks is over today, the SLP filed by the State Government, against the said order, before the Hon'ble Supreme Court has become infructuous. Moreover, as the stay period ends today, he prays that since the conditions continue to be as hazardous as ever, and considering the fact that even the Central Government and the ICMR are constantly speaking about ensuring

that people do not congregate in large numbers for religious purposes, he submits that the Stay Order dated 28.06.2021 should be continued by this Court.

27. On the other hand Mr. S.N. Babulkar, the learned Advocate General for the State, submits that the SLP filed by the State, against the Stay Order dated 28.06.2021, has not become infructuous even by efflux of time. Furthermore, he submits that the State would not have any objection if the stay were to continue till the Hon'ble Supreme Court decides the SLP.

28. Heard Mr. Shiv Bhatt, the learned counsel for the petitioner in Writ Petition (PIL) No. 58 of 2020 and Mr. S.N. Babulkar, the learned Advocate General for the State.

29. Admittedly, an SLP has been filed by the State against the Stay Order dated 28.06.2021, which is presently pending before the Hon'ble Supreme Court. Considering the concession made by Mr. S.N. Babulkar, the learned Advocate General for the State, this Court directs that the Stay Order dated 28.06.2021 shall

continue till the Hon'ble Supreme Court pronounces its judgment in the said SLP.

30. Dr. S.S. Sandhu, the learned Chief Secretary, Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, Mr. Dilip Jawalkar, the learned Secretary, Department of Culture & Religious Affairs, and Mr. S.A. Murugesan, the learned Secretary, Disaster Management are directed to be present in the hybrid Court, through video conferencing, on the next date.

31. List all these cases on 18.08.2021.

RAGHVENDRA SINGH CHAUHAN, C.J.

ALOK KUMAR VERMA, J.

Dt: 28th July, 2021
RAHUL