

Sr. No. 1

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) PIL no. 4/2020
(Through Video Conferencing
from Srinagar Wing)

Azra Usmail

.....Petitioner(s)

Through:- Mr. Faisal Qadri, Adv,
Ph. No.9419018022 (on Voice Call
from his residence at Srinagar)
Mr. Salih Pirzada, Advocate
Ph. No.8493000298
(on Video Conference from his
residence at Srinagar)
Mr. Shah Faisal, Advocate,
(on Video Conference from High
Court at Srinagar)
Mr Shafqat Nazir, Advocate
(on Video Conference from High
Court at Srinagar)

v/s

Union Territory of Jammu and Kashmir

.... Respondent(s)

Through:- Mr. Shah Amir, AAG,
Ph. No. 7006429903 (on Video
Conference from his residence at
Srinagar).

WP(C) PIL no. 5/2020
(Through Video Conferencing
in Jammu)

Court on its Own Motion

Ms. Monika Kohli, Amicus (on Video
Conference from her office at Jammu)

v/s

Union Territory of Jammu and Kashmir

.... Respondent(s)

Through:- Mr. Amit Gupta, AAG (on Video
Conference from his residence at Jammu)
For Govt. of UT of Jammu & Kashmir
Mr. Vishal Sharma, ASGI (on Video
Conference from his residence at Jammu)
For NIC
Mr. Ravinder Gupta, Advocate.

(on Video Conference from the office of CGM, BSNL), for BSNL

Mr. Adarsh Sharma, Advocate
M.No. 9419135512 (on Voice Call from his residence at Jammu), for Shri Mata Vaishno Devi Shrine Board.

Mr. K. S. Johal, Sr. Advocate (on Video Conference from his residence), for Gurkirat Singh Sekhon

Mr Abhay Kumar, SIO NIC, J&K

Mr Shahzad Azim, Registrar IT (on Video Conference from his residence)

Coram:

HON'BLE THE CHIEF JUSTICE (on Video Conference from residence at Jammu)

HON'BLE MR RAJNESH OSWAL (on Video Conference from residence at Jammu)

ORDER

1. This hearing is convened pursuant to our order dated 30th March 2020.

2. We have been joined by Ms. Monika Kohli, learned Amicus Curiae on video conference from her office. Mr. Ravinder Gupta, Adv for BSNL from the office of BSNL Mr. Vishal Sharma, ASGI and Mr. Amit Gupta, AAG has joined on video conferencing from their respective residences in Jammu.

Mr. Adarsh Sharma, Advocate has joined us on phone from his office. Mr. Abhay Kumar, SIO, NIC, J&K is on video conference from his office at Udhampur.

3. Additionally, we have been joined by Mr. Shah Amir, AAG on video conferencing from his residence in Srinagar. Mr. Faisal Qadri, advocate has joined us on voice call from Srinagar. Mr. Shah Faisal and Mr Shafqat

Nazir, Advocates have also joined on video conferencing at the High Court while Mr. Salih Pirzada, Adv for petitioner has joined on video conferencing from his office.

4. Before dealing with reports, applications and e-mails, we propose to flag some more issues which need attention.

I. Joining stakeholders in decision making

5. In all hospitals, health care institutions, there are associations of the health care professionals including the resident doctors, faculty members, nurses, the safai karamcharis, etc. These personnel are working on the ground and would be aware of the specific difficulties and needs required to address the issue.

6. Therefore, the authorities could consider asking for nominations from these associations and joining them in the discussions and decision making being undertaken towards addressing the current crisis.

7. Let the consideration of this issue and decision thereon be placed before us by the Secretary, Department of Health and Medical Education.

II. Needs of healthcare personnel

8. The personnel engaged in the treatment of COVID-19 patients and prevention of the infection would be working beyond the call of their routine duties and also overtime. It is possible that the administration may have accounted for such a contingency.

However, if this has not been done, the administration may consider the possibility of running 24 hours canteens/kitchens in all

hospitals/institutions to enable provision of the necessities of the healthcare and other personnel engaged in addressing the COVID-19 issues.

9. Perhaps, responsible NGOs and citizen volunteers could be joined for regulating these facilities.

10. Let the **Secretary, Department of Health and Medical Education** look into this matter and submit a report.

III. Ensuring provision of care to dependants/families of healthcare personnel/government personnel/officials engaged in the COVIC-19 management

11. It is also essential to address certain specific needs of those engaged in the COVID-19 issues. Management of the current situation requires them to be out of homes way beyond normal eight hour duty routines. Many of them may be having family responsibilities. There could be family members or dependents with health issues, who may be facing difficulties on account of the personnel not being available to attend to their needs.

12. In order to ensure the full attention of the personnel addressing COVID-19 issues, it is necessary that they be kept free of any personal tensions and needs.

13. It is, therefore, necessary to create a network/body of persons who would attend to the needs of the family members/dependents of all personnel (including those in the healthcare services) attending to COVID-19 issues. This would enable efficient and optimised response by the persons addressing COVID-19 issues.

14. A direction is issued to the **Secretary, Department of Social Welfare** to examine and take a decision on creation of machinery for addressing

this aspect. Again, the administration could look to the NGOs/Citizen Volunteers for mobilising a proper system for this and creation an e-request dedicated mechanism for interaction.

15. A nodal officer would need to be identified for this purpose who would monitor the working of the system.

16. Let a report be filed by **Secretary, Department of Social Welfare** before the next date.

17. Pursuant to our last order, several reports have been received. We deal with them in seriatim.

IV **Removal of lockdown - desirable public response – provision of information**

18. We note one critical issue has to be also immediately addressed by the authorities. As of now the lockdown has been ordered till the 14th of April, 2020. The situation as may obtain on that day cannot be anticipated.

19. However it is essential to be prepared for the possibility of a partial or a full removal of the lockdown restrictions. There are no confirmed reports about the progression of the infection or life of the virus.

20. It is therefore imperative to prepare the public about the permissible conduct upon removal of the restrictions (partial or complete); progression of the COVID-19 virus infection and life of the virus; possibility of carriers existing and infecting despite the lockdown and all related information.

21. Given the topography of the two Union Territories; remoteness of some of the areas; extent of illiteracy, poverty and difficulties in accessing

information by the public, it is essential that widespread dissemination of the above information using all mediums as are available, is commenced forthwith.

22. The Jammu and Kashmir State Legal Services with its wide out reach of Para Legal Volunteers and Anganwadi Workers could be a valuable tool in these efforts.

23. We therefore direct Secretary, Health and Medical Education Department; Secretary, Social Welfare Department; Director, Information Department; Member Secretary, JK State Legal Services Authority immediately take such appropriate action as may be required on the above.

24. The action plan in this regard shall be placed before us by the Director, Information before the next date.

V. Availability of Safety Equipments to Health Care Professionals

25. Many complaints are being received about dearth of safety kits for health care workers. Let the Department of Health and Medical Education inform this court with regard to availability of personal protection equipments for the safety of all healthcare workers. The steps taken to ensure availability of equipment as also the proposals for ensuing the same to all healthcare professionals in Jammu and Kashmir as well as Ladakh should be placed before us before the next date of hearing.

VI. Report of the High Powered Committee (appointed in terms of the order dated 23rd March 2020 of the Supreme Court of India in Suo Motu Writ Petition (C) No. 01/2020) with regard to prisoners

26. A copy of the order No. 100-Home of 2020 dated 2nd April 2020 notifying the '*Jammu and Kashmir Suspension of Sentence Rules, 2020*' has been forwarded to us.

Let the Rules be urgently implemented and steps for grant of special parole to prisoners as is envisaged therein be taken on priority.

27. The Registry has received an e-mail dated 2nd April 2020 from Staff Officer to the Director General of Police (Prisons) forwarding the order dated 1st April 2020 passed by the High Powered Committee (comprising of Justice Rajesh Bindal-J, Executive Chairperson, JKSLSA and its Chairman; Shri Shaleen Kabra, Secretary, Home; Shri B K Singh, DGP (Prisons) and Shri M. K. Sharma, Member Secretary, JKSLSA. A Corrigendum dated 1st April 2020 to the said order has also been forwarded.

These orders make several directions which the District Courts have to comply.

28. Let all Principal Districts and Sessions Judges ensure that the orders of this High Powered Committee are complied with forthwith and compliance report shall be sent by the PDJs to Shri M. K. Sharma, Member Secretary, JKSLSA before the next date of hearing. A summary of the action report shall be placed before us by Mr. M K Sharma, Member Secretary by the next date.

29. The concerned Principal Districts and Sessions Judges shall ensure that all visiting judges in the Jail as also the concerned courts take immediate action based on the recommendation of the Committee in the two orders dated 1st April 2020.

30. Let a copy of this **order be circulated on e-mails** to all the **Principal Districts and Sessions Judges** for their immediate **compliance**.

31. At this stage, Mr. Vishal Sharma, learned ASGI has intervened to submit that there are certain specific offences, for instance, those under investigation/ investigated by the Enforcement Directorate, which require special consideration.

Mr. Vishal Sharma is given liberty to place all these concerns in writing before the High Powered Committee which may examine the issues and to pass appropriate directions. The same shall be e-mailed to Mr M.K. Sharma, Member Secretary at mkjkjudiciary@gmail.com

32. Mr. Salih Pirzada, Advocate has submitted that the High Powered Committee has overlooked the aspect of **detenues** who have been detained **under the Public Safety Act**. As per Mr. Pirzada, the order of the Supreme Court makes a reference only to prisoners without specifying the provision of law under which they may have been imprisoned.

Mr. Salih Pirzada, Advocate may place his submissions by e-mail to Mr M.K. Sharma at his above address who would place the same before the High Powered Committee for urgent examination and dealing with the issues pointed out.

The High Powered Committee shall keep in view the urgency of the entire matter.

VII. Addressing Issues of Safety, Care, Health and violence against Professionals and Clinical Establishments- Need for a legislative framework.

33. A Report dated 31st March 2020 has been filed by Mr. Sajad Amin Shah, Additional Secretary to the Government (Health and Medical Education Department). It is reported that directions have been issued to the IGP (Jammu), IGP (Kashmir) and IGP (Ladakh) to ensure that complete safety and security is provided to the personnel who are serving at all government facilities.

34. We are assured that these directions shall be strictly complied with.

35. We have in previous orders noted certain incidents of violence against the healthcare professionals. It is important to note that such personnel include not only doctors but also nurses, paramedical workers, mess boys, laboratory technicians, ambulance drivers, security personnel etc. In the current situation, medical, nursing as also paramedical students may be roped in for assisting the efforts. Violence includes not only acts against these personnel but also damage to hospitals, clinics, ambulances etc.

36. Judicial notice can be taken of the fact that such violence is not new. However, such violence at this time highlights dangerous consequences which can result as huge spread of the COVID-19 infection; imperil lives of healthcare personnel as also damage to public property earmarked as at present to meet the needs of the COVID-19 infection. It does not need elaboration that infrastructure at every level is in short supply and has to be protected. The pandemic and current crisis brings to the fore the critical issue of addressing the issues of violence to healthcare personnel and damage to the property of healthcare establishments.

37. So far as the issues of violence against healthcare professionals are concerned, recourse has generally been taken to the existing provisions of the criminal law to deal with such violence. Thus general provisions of the Indian

Penal Code ('IPC' for brevity hereafter) such as '*voluntarily causing hurt*' (Section 323); '*punishment for voluntarily causing grievous hurt*' (Section 325), '*punishment for assault or criminal force*' (Section 352), '*criminal intimidation*' (Section 506) and others have been used to criminalise incidents of violence of healthcare professionals. So far as damage to property is concerned, resort is taken to the provisions of the IPC which prescribed punishment for 'mischief' (Section 425).

38. We are informed that 19 states have enacted their own specific laws addressing violence against healthcare professionals and establishments specifically.

39. We are also informed that a 'Draft Bill' on violence against the healthcare professionals and establishments was released by the Ministry of Health and Family Welfare on 8th March 2019 inviting public comments till the end of September, 2019. It appears that this Draft Bill was rejected by the Home Ministry for the reason that many elements of 'violence' as defined in the Draft Bill were already covered by the existing provisions of the Indian Penal Code.

(<https://www.prssindia.org/theprssblog/explaining-draft-bill-violence-against-healthcare-professionals-and-clinical-establishments>)

40. An elaborate study stands conducted by VIDHI Center for Legal Policy captioned '***Violence Against Healthcare Professionals in India: Recent Legal and Policy Issues***' January 2020 (authored by Dhvani Mehta, Rakesh Sharma, Akshat Aggarwal, Shriya Srivastava), which is reported at https://vidhilegalpolicy.in/wp-content/uploads/2020/01/200131_Violence-against-Healthcare-Professionals-Recent-Legal-and-Policy-Issues.pdf

This study has undertaken an incisive examination of the matter from legal, sociological and academic aspects. The report is divided into three chapters, The first chapter puts together data on trends in violence against the healthcare professionals in India, the second undertakes examination of the existing provisions of criminal law which can be used to deal with such violence and analysis of the specific provisions of the Draft Bill. The third chapter discusses solutions aimed at addressing the violence as also systemic causes; obligations of the healthcare establishments to create violence free workplaces; the need for changes to be effected to medical education; as also focus being addressed on public education and overhauling the regulation and governance of healthcare in India.

41. Two annexures are enclosed to the Report. As Annexure-I, a table containing a catalogue of news reports relating to violence against healthcare professionals between January 2018 and September 2019 is provided. As annexure II, a table containing a clause by clause analysis of the draft bill which was proposed by the Ministry of Health and Family Welfare has been enclosed.

42. So far as the present consideration is concerned, we are restricting our consideration to the need of an adequate legal framework to address the violence against healthcare professionals and clinical establishments.

43. The above report has *inter alia* pointed out the following deficiencies in the existing law:

- (i) *The element of obstruction to the discharge of duty by the healthcare professionals is not specifically covered as an offence under the Indian Penal Code or under any other law.*

(ii) *The aspect of prescribing the offence of violence against the healthcare personnel and clinical establishments as a cognisable and non bailable offence.*

(iii) *Provision of stringent and increased imprisonments and higher quantum of fines and prescription of mandatory minimum punishments.*

44. The report has also pointed out the scanty number of cases registered regarding this kind of violence and the lack of prosecutions.

45. It is apparent from the above narration that it is absolutely imperative to recognise violence against healthcare professionals and clinical establishments as specific cognizable and non-bailable offences. It is equally imperative to provide enhanced sentences of imprisonment and fines. Mandatory minimum sentences are required.

46. It is also essential to define the meaning of violence.

47. Liability has to be recognised as absolute and strictly enforced.

48. We are pained to note that such a critical matter is being randomly addressed and 19 legislations are in existence in separate States with reports on the matter showing hardly any prosecutions. The Draft Bill proposed in March 2019 has also resulted in no law.

49. Whether the competent authorities deemed it appropriate to make amendments in the existing legal framework of the Indian Penal Code or decide to legislate a separate enactment for the purpose, it cannot be denied that this matter deserves priority attention.

50. Such violence is the subject matter of a dedicated legislation in the United State of America being the "***Occupational Safety and Health Act***"

51. Section 340 of the ***Criminal Code, 1899 (Queensland Australia)***

describes “***Serious Assault***” which in Sub Section (2AA) Clause 3 includes the following as a public officer:

“a health service employee under the Hospital and Health Boards Act 2011”

52. We may also note that to address the basic issues relating to the current pandemic, it has been necessary to take recourse to the **Epidemic Diseases Act of 1897**. This legislation has to be visited in the light to technology developments and the current experiences. Thus even the provisions of this enactment need a serious re-examination.

53. These matters would need critical attention of the Central Government as well as the Governments of Union Territories of Jammu and Kashmir and Ladakh.

54. We may note that it is only after appropriate legislations has been put in place that the aspect of its enforcement would also require to be strictly monitored.

55. Let a copy of this order be placed before the **Home Secretary and Secretary of Ministry of Health and Family Welfare of the Central Government** as also the **Secretaries Home and Secretaries Health and Medical Education of the UTs of the Jammu and Kashmir as well as Ladakh**.

VIII Issue of impact of pollen from poplar trees

56. Mr. Shafqat Nazir has pointed out the possible impact of pollen/seeds with cotton fluffs released by poplar trees in the Kashmir Valley.

57. It is submitted that an order stand passed by the High Court of Jammu and Kashmir directing felling of these trees. It is submitted that this pollen remains in air for between 25-30 days and creates havoc so far as respiratory diseases are concerned. Mr. Nazir submits that this pollen may have the potential to hold the COVID-19 virus and resulted in aggravation of the spread of this infection as well.

58. Let this aspect be examined by the Secretary, Health and Medical Education, and, if the impact as suggested is correct, immediate remedial action be taken.

59. It shall be responsibility of the applicant to electronically provide the copy of this application to Mr. Amit Gupta, learned AAG to ensure further action.

An action taken report be filed before us.

IX Status of residents of J&K/Ladakh lodged in prisons in other parts of India

60. Time is also sought by Mr. Amit Gupta, learned AAG to file report regarding conditions of prisoners lodged outside the State.

Let the same be filed before us before the next date.

X Provision of infrastructure of JJBs and Observation Homes.

61. A status report from Ms. Sabnam Kamli, KAS, Mission Director, ICPS filed by Mr. Amit Gupta.

We are informed in this report about the status of the provision of permanent infrastructure for JJBs and Observation Homes. This aspect would be examined after the current crisis comes to an end.

Additionally, in this report we are informed that the facilities from video conferencing have been enabled in the existing JJBs and Observation Homes.

Let these facilities be maintained efficiently.

XI E-mail received from Mr. Nitin Bakshi, Advocate

62. A status report has been received from the office of the Inspector General of Police, with regard to the.

Let a copy of this status report sent by the IGP directly to Mr. Nitin Bakshi who shall ensure compliance with the requirements set out therein. Action be taken thereon by the police authorities in accordance with law.

XII Matter regarding Gurkirat Singh Sekhon, New York City

63. With regard to e-mail dated 30th March 2020 received from Mr. Karman Singh Johal, Advocate, an extremely detailed response has been received from the Ministry of External Affairs.

64. Mr. Vishal Sharma, learned ASGI has forwarded a detailed e-mail dated 1st April 2020 from Ms. Harsha Garg, Consultant (legal), CPV Division, MEA giving a detailed report of the action taken by the Indian Consulate at New York on the grievance of Mr. Gurkirat Singh Sekhon. A perusal of this response would show that the Indian Consulate has responded extremely promptly to the request received from Mr. Sekhon on the On-line Grievance

Mechanism of the Consulate on 26th March 2020. The Consulate has reported that it responded to this request within 30 minutes of the receipt thereof. The reasons for which he could not be evacuated were informed to Mr. Sekhon and have been detailed in the response placed before us. The Indian Consulate has also given a detailed report with regard to the prevalent situation in New York City. Several elaborate steps have been taken by the Consulate General of India at New York and the Embassy of India, Washington DC to assist the Indian nationals have been set out in this report.

65. The details of the tremendous efforts by the Government of India and the officials of the Ministry of External Affairs, New Delhi for the safety of Indian nationals abroad have further been detailed as also the proposed steps depending on change of situation. A series of advisories stand issued with regard to COVID-19 based on the changing situation.

66. In view thereof, we have no manner of doubt that the Ministry of External Affairs, New Delhi is deeply concerned with the safety and well-being of all Indian nationals abroad and is doing its utmost possible to ensure the same. Mr. K. S. Johal, learned Senior Advocate also appreciates the prompt assistance which has been and is being rendered to Indian Nationals abroad especially in the United States of India.

67. We would fail in our duty if we do not record our deep appreciation for the tremendous efforts of the Indian Consulate in New York City and the Embassy of India at Washington DC as also the Ministry of External Affairs, New Delhi in prioritising and addressing all concerns of Indian nationals who are in the United States of America.

68. Let a copy of the e-mail received from Ms. Harsha Garg be forwarded to Mr. Karman Singh Johal, Advocate for his perusal.

XIII Stranded Pilgrims at Shri Mata Vaishno Devi Shrine, Katra

69. We have also received a report on the allegations with regard to the pilgrims allegedly stranded at Katra. This report has been filed by Mr. Adarsh Sharma, Advocate on behalf of Shri Mata Vaishno Devi Shrine, Katra. We are informed therein that so far as 400 stranded pilgrims from Bihar are concerned, these persons were camping at Shiv Market/Shiv Temple opposite Jammu Tawi Railway Station at Jammu and not in Katra. The local administration has taken a call and all these persons stand shifted to an Ashram at Bantalab at Jammu. The boarding and lodging of these pilgrims /persons is being taken care of by the District Administration.

70. Mr. Sharma informs us that the Board is making every effort for ensuring assistance also to the local administration/municipal committee in Katra for the well being of pilgrims/staff on emergency duty/public in general etc.

71. Additionally, a 600 bedded facility at the Ashirvad Complex, Trimutri Complex (of the SMVDSB) at Katra has been provided to the District Administration, Reasi on free of cost basis for this purpose.

72. Mr. Adarsh Sharma, Advocate informs us as of now there is not a single Yatri stranded at Bhawan, Katra according to the Shrine Board.

In view thereof, no further action is warranted by this court on this matter.

XIV Availability of Video Conferencing in Courts

73. A report by Mr. Abhay Kumar, SIO, NIC, J&K has been forwarded by Mr. Vishal Sharma.

Let a copy of this report be forwarded to Mr. Shahzad Azeem, Registrar (IT) for examination.

We will take up this matter for consideration on the next date of hearing.

XV Installation of CCTVs in Public Places

74. The difficulties faced by authorities in tracing contacts of infected persons highlights the imperative need of information regarding persons gathering at different places being readily available to the concerned authorities. Such public places would include parks, banquet halls, theatres, religious places, open grounds where functions involving public gatherings etc.

75. The concerned authorities should examine the feasibility of installation of CCTVs with or without online access to monitor such gatherings.

XVI E-mails received in the registry

76. The following e-mails received by the Registrar Judicial have been placed before us:

(i) E-mail dated 31st March 2020 from Azar Usman from Poonch referring to deficiencies in availability of equipments for the protection of the health care workers. The issues referred herein already been dealt with by us. Let a copy of this e-mail be forwarded to the Department of Health and Medical Education for consideration.

(ii) An e-mail dated 31st March 2020 from Mr. Nazir Mirza, Advocate (Rajouri). This e-mail suggests creation of a dedicated radio station for raising awareness about COVID-19.

Let this e-mail be forwarded to the Director, Information for consideration.

EMG-CM No._____ (for exemption)

77. Allowed subject to just exceptions.

Let the deficiencies be made good as per the Circular No. 16 of 2020 dated 29th March 2020 after removal of the current lockdown.

This application is allowed.

EMG-CM No._____ (for intervention)

78. Let this application be registered.

This application has been filed by Mr. Shafqat Nazir, Advocate seeking intervention in the matter.

We have dealt with the subject matter of the application in the main petition and therefore no separate intervention is necessary.

This application is disposed of.

EMG-CM 2 of 2020

79. This application is concerned with the necessary equipments for treatment of COVID-19.

Further time is sought by Mr. Amit Gupta, AAG to file response thereto.

Let the same be filed before the next date.

EMG-CM 3 of 2020

80. This application relates to the situation in jails in J&K. The same is the subject matter of consideration in the main matter. The High Powered Committee is already seized of the issues.

In view thereof, this application is not required to be kept pending as a separate matter.

This application is disposed of.

81. Lastly a word of appreciation on the unstinted efforts of the Governments of the Union Territories of Jammu & Kashmir and Ladakh on the COVID-19 issues.

The lockdown discipline which has been enforced by the district authorities and the police is laudable. We have reports that valuable contribution in supporting the official efforts is being made by the JK State Legal Services Authority led by Mr M.K. Sharma, Member Secretary JKSLSA who has ably motivated his team of Legal Services Secretaries and the army of para legal volunteers in all districts.

We must also record with appreciation the initiative, drive and unstinted hard work of Ms Sushma Chauhan, Deputy Commissioner (Jammu) and Dr Shahid Iqbal Chaudhary, Deputy Commissioner (Srinagar) in the two main densely populated cities of Jammu and Kashmir which has not only efficiently led to detection of the infected, identification of the sources of infection and ensured continuity of all essential services in their districts. This would certainly have a major impact on the response to the COVID-19 infection

in the Union Territory of Jammu and Kashmir. We are positive that similar efforts would be underway in all other districts.

List the matter for consideration on 10th April 2020.

(RAJNESH OSWAL)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Jammu
03.04.2020
Raj Kumar

