

(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE FOURTEENTH DAY OF MAY
TWO THOUSAND AND TWENTY ONE

: PRESENT:

THE HON'BLE THE CHIEF JUSTICE HIMA KOHLI
AND
THE HON'BLE SRI JUSTICE B.VIJAYSEN REDDY

WP(PIL). No. 46 OF 2021

Between:

Garimella Venkata Krishna Rao, S/o Late Garimella Venkateswara Rao

Petitioner

AND

1. State of Telangana, Represented by its Principal Secretary, Home Department, Secretariat, Hyderabad
2. State of Telangana, Represented by its Chief Secretary Secretariat, Hyderabad
3. Union of India, Represented by its Secretary, Ministry of Health and Family Welfare, New Delhi
4. The State of Andhra Pradesh, Represented by its Principal Secretary Home Department, AP Secretariat, Velagapudi, Amaravati, Andhra Pradesh

Respondents

WHEREAS the Petitioner above named through his Advocate Sri Vimal Varma Vasi Reddy presented this petition under Article 226 of Constitution of India, praying that in the circumstances stated in the petition and affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus

- a) Declare the actions of the Respondent No.1 state in prohibiting inter state travel of ambulance and patients as illegal and contrary to law.
- b) Provide safe passage of travel to ambulances and patients to travel from neighbouring states of Telangana to Telangana and vice versa

AND WHEREAS the High Court upon perusing the petition and affidavit filed herein and upon hearing the arguments of Sri Srinivas Dammalapati, learned Senior Counsel representing Sri Vimal Varma Vasi Reddy Advocate for the Petitioner and Sri B.S. Prasad, learned Advocate General accepts notice on behalf of respondent No. 1 and 2 and Sri Surya Karan Reddy, learned Additional Solicitor General of India who accepts notice on behalf of Respondent No. 3 and of Sri S. Sriram, learned Advocate General who accepts notice on behalf of respondent No. 4, directed issue of notice to the Respondents herein to show cause as to why this PUBLIC INTEREST LITIGATION should not be admitted.

You viz:

1. The Principal Secretary, Home Department, State of Telangana, Secretariat, Hyderabad
2. The Chief Secretary, State of Telangana, Secretariat, Hyderabad
3. The Secretary, Ministry of Health and Family Welfare, Union of India, New Delhi
4. The Principal Secretary, Home Department, State of Andhra Pradesh, AP Secretariat, Velagapudi, Amaravati, Andhra Pradesh

are directed to show cause on or before 17.06.2021 to which date the case stands posted as to why in the circumstances set out in the petition and the affidavit filed therewith (copy enclosed) this PUBLIC INTEREST LITIGATION should not be admitted.

IA NO: 2 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents not to interfere/obstruct free passage of movement of individuals/patients to State of Telangana and vice-versa for medical purposes, pending disposal of WP(PIL) No. 46 of 2021, on the file of the High Court.

The Court made the following
ORDER:

1. The present petition has been listed before this Bench on an urgent mentioning that has been allowed.
2. The petitioner has challenged the Guidelines dated 11.05.2021 issued by the Health, Medical and Family Welfare Department, Government of Telangana wherein it has been directed that if patients belonging to other States suffering from COVID-19 infection are seeking admission in hospitals in the State of Telangana, they must apply in a prescribed format to a control room set up by the State Government for the said purpose and till the said control room issues an authorization to travel, they cannot come to the State of Telangana for purposes of hospitalization.
3. Mr. Srinivas Dammalapati, learned Senior Advocate appearing for the petitioner submits that the abovesaid action is nothing but an illegal attempt on the part of the respondent No.1/State to prohibit inter-state travel of ambulances and patients and flies in the face of the fundamental rights guaranteed to every citizen of this country enshrined in Articles 19 and 21 of the Constitution of India. Learned Senior Advocate states that in the face of the order dated 11.05.2021 passed by this Bench in W.P (PIL). Nos.56 and 58 of 2020 directing the Telangana Police not to prevent or impede any ambulance carrying a COVID-19 patient into the State of Telangana, looking for treatment, the State has issued the impugned Guideline dated 11.05.2021, under the garb of invoking the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005.
4. The attention of this court has also been drawn to several reports in the print and electronic media regarding mandatory authorization for entry of

COVID-19 patients from other States into the State of Telangana for hospitalization purposes. It is submitted that despite orders passed by this court, teams of Police Officers along with the staff of the Medical and Revenue Departments are continuing to check the vehicles crossing over from the neighbouring States into the State of Telangana, for admission in hospitals. Further, learned Senior Advocate has alluded to the detailed order passed by the Supreme Court on 30.04.2021, in Suo Motu Writ Petition (Civil) No.3 of 2021 wherein, while examining the aspect of framing the National Policy for Admission in Hospital, the Central Government has been directed to frame such a policy in exercise of its statutory powers under the Disaster Management Act, to be followed nationally.

5. We may note that some of the issues highlighted by the Supreme Court and required to be taken into consideration by the Central Government while framing the National Policy for Admissions in Hospitals have been spelt out in paragraph 23 of the said order. A glance at the said issues includes issues relating to patients being refused services based on arbitrary factors, as for example, refusal by hospitals in a particular city to take in patients who do not arrive in Government run ambulances or refusal to admit individuals who cannot produce a valid Identity Card showing that they belong to a particular city where the hospital is located. Taking judicial notice of the overstretched services and facilities offered by hospitals during the second wave of the COVID-19 pandemic and the deficiencies in the rural health infrastructure, the Supreme Court has observed in clear terms that no hospital should be allowed to deny entry to any person solely based on his/her residential status. Declaring that admissions to hospitals must be based on need, the Central Government has been directed to formulate guidelines in consultation with

the respective State Governments on the stage at which hospitalization is required so as to ensure that scarce hospital beds are not occupied by persons who do not need hospitalization.

6. Mr. Surya Karan Reddy, learned Additional Solicitor General of India appearing for the respondent No.3/Union of India refers to the order dated 08.05.2021 issued by the Ministry of Health and Family Welfare, Government of India on the National Policy for Admissions in Hospital. He submits that compliances have been made of the order of the Supreme Court and it has been directed that no patient will be refused services on any count and nor will any patient be refused admission on the ground that he/she is unable to produce a valid identity card to show that he/she belongs to the city where the hospital is located. The said order has also reiterated that admission to hospitals must be based on need.

7. Supporting the submissions made by learned Senior Counsel appearing for the petitioner, Mr. S. Sriram, learned Advocate General for the State of Andhra Pradesh states that neither the Disaster Management Act nor the Epidemic Diseases Act cited in the impugned Guideline dated 11.05.2021, can be invoked by the respondent No.1/State when the clear intent behind the said Guideline is to exclude residents of other States in the country from seeking medical treatment in the State of Telangana and that too at such a critical juncture when the second wave of the COVID-19 infection has swept across the country and has wreaked havoc with the lives of people.

8. Per contra, Mr. B. S. Prasad, learned Advocate General appearing for the respondent No.1/State along with Mr. Sam Rizvi, Secretary, Government, Health, Medical and Family Welfare Department, defends the Guideline

dated 11.05.2021 and explains that it has been issued for the convenience of patients coming from other States for hospitalization in the State of Telangana for treatment of the COVID-19 infection and that it is not the intention of the State to prevent patients from seeking admission, but only to make the process smooth and avoid wastage of time. It is further submitted that several other States have imposed similar restrictions on residents of other States to contain the spread of COVID-19 infection and the respondent No.1/State cannot be faulted for taking the same route.

9. However, on being requested to cite a Circular/Guideline issued by any other State in the country on the same lines as the one issued by the respondent No.1/State, no specific instance has been given. We are of the view that the impugned Guideline imposes an unreasonable restriction on residents of other States looking for admission in hospitals in the State of Telangana for COVID-19 treatment. The submission made on behalf of the respondents No.1 and 2/State Government to justify issuance of the impugned Guideline by stating that there is a severe scarcity of beds in hospitals for residents of the State, amounts to contravening the laws of the land. The Constitution contemplates establishment of a Welfare State, both at the federal level and the State level where the foremost duty of the Government is to provide adequate facilities for its people. This not only includes establishing and running health care facilities right from the primary healthcare centres to hospitals and referral Institutions of Medicine, but also encompasses the right of a citizen to access and avail of such medical facilities unhindered by any rules, procedures and guidelines that would result in depriving a patient of medical facilities. No State action can be validated that results in avoiding or delaying access to medical assistance when a patient is in a dire need of such a

treatment. This would amount to violating the sacrosanct right to life guaranteed under Article 21 of the Constitution and operate as a fetter on the right of a citizen of this country to move freely throughout the territory of India, as enshrined in Article 19(1)(d) of the Constitution of India. In the current situation, where medical attention and medical services is the need of the hour, the respondents No.1 and 2 are under an obligation to take all necessary steps to preserve life instead of creating impediments to access medical services and health facilities. We are of the *prima facie* view that the impugned Guideline issued by the respondents No.1 and 2/State Government will result in creating obstacles for COVID-19 patients belonging to other States, entering the State of Telangana for hospitalization.

10. Issue notice.

11. Mr. B.S.Prasad, learned Advocate General appearing for the respondents No.1 and 2 accepts notice.

12. Mr. Surya Karan Reddy, learned Additional Solicitor General of India appears for the respondent No.3 and accepts notice.

13. Mr. S.Sriram, learned Advocate General for the State of Andhra Pradesh appears for the respondent No.4 and accepts notice.

14. All the learned counsel state that they have received a complete set of the paper book.

15. Counter affidavits be filed within two weeks with copies to the other side, who may file rejoinders, if any, within one week thereafter.

16. In the meantime, being mindful of the Order dated 30.04.2021 passed by the Supreme Court in the Suo Motu Writ Petition (Civil) No.3 of 2021, more particularly the directions that find mention in paragraph C.2 "*National Policy for Admission in Hospitals*" and the order dated 08.05.2021 issued by the respondent No.3/Union of India in compliance with the aforesaid directions and further, in the light of the recent order dated 11.05.2021 passed by this court in W.P (PIL). Nos.56 and 58 of 2020 directing the Telangana Police not to prevent any ambulances carrying COVID-19 patients into the State of Telangana looking for medical treatment, it is deemed appropriate to stay the operation of the impugned Guidelines dated 11.05.2021 issued by the respondents No.1 and 2/State Government forthwith, till further orders.

17. Respondents No.1 and 2/State Government are also cautioned not to adopt any other circuitous route by issuing any fresh Guideline/Circular/Order that will result in putting fetters on inter-state travel of ambulances carrying COVID-19 patients from the neighbouring States for hospitalization in the State of Telangana or insisting upon persons applying in the prescribed format to the control room set up for tying up with hospitals in Telangana for purposes of COVID admissions. It is however clarified that if any patient and/or his attendant of his own free will and volition and for his own convenience opts to approach the control room set up by the respondents No.1 and 2 so as to tie up with a hospital situated in Telangana for COVID-19 admission, the said control room can render appropriate assistance to the patient/attendant. But no authorization from the control room would be required for any patient and/or attendant to travel

into the State of Telangana looking for hospitalization for treatment of COVID-19 infection.

18. As the learned Advocate General appearing for the respondents No.1 and 2 is present in this virtual hearing along with the Secretary, Government, Health, Medical and Family Welfare Department, this order shall be communicated with immediate effect to all the concerned authorities for making compliances.

19. List on 17.06.2021.

SD/- L LAKSHMI BABU
ASSISTANT REGISTRAR

//TRUE COPY//

V. Hari Prasad
SECTION OFFICER

To,

1. The Principal Secretary, Home Department, State of Telangana, Secretariat, Hyderabad
2. The Chief Secretary, State of Telangana, Secretariat, Hyderabad
(Addressees 1 & 2 by SPL. MESSENGER along with a copy of petition and affidavit)
3. The Secretary, Ministry of Health and Family Welfare, Union of India, New Delhi
4. The Principal Secretary, Home Department, State of Andhra Pradesh, AP Secretariat, Velagapudi, Amaravati, Andhra Pradesh
(Addressees 3 & 4 by RPAD along with a copy of petition and affidavit)
5. One CC to Sri Vimal Varma Vasi Reddy Advocate [OPUC]
6. Two CC to Advocate General, High Court for the State of Telangana, Hyderabad (OUT)
7. Two CC to Advocate General, High Court for the State of A.P. Velagapudi, Guntur District
8. One CC to Sri Surya Karan Reddy, Advocate (OPUC)
9. Two spare copy

HIGH COURT

HCJ
&
BVRJ

DATED:14/05/2021

NOTE: POST ON 17.06.2021

NOTICE BEFORE ADMISSION

WP(PIL).No.46 of 2021



INTERIM STAY