

(2020) 04 CAL CK 0056
In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5328, 5334, 5335, 5336 (W) Of 2020

Dr. Fuad Halim And Others

APPELLANT

Vs

State Of West Bengal & Others

RESPONDENT

Date of Decision : 28-04-2020

Acts Referred:

Citation : (2020) 04 CAL CK 0056

Hon'ble Judges : Thottathil B. Radhakrishnan, C.J;Arijit Banerjee, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharya, Kishore Dutta, Vipul Kundalia, Rajasree Kundalia

Judgement

We have heard learned Advocate General, learned senior counsel for the petitioner, learned counsel for the Union of India.

Making reference to the supplementary affidavit filed by the State, learned Advocate General pointed out that this writ petition is essentially a Publicity Oriented Litigation because the petitioner has, by his conduct demonstrated vividly that he is using this litigation to publicize his political identity and also to encash it for enhancing his popularity in public domain. Learned Advocate General points out that, in its supplementary affidavit, the State has pointed out various quotes from certain discussions through certain Bengali Audio Visual Channels wherein the writ petitioner participated. He, therefore, pleaded that this matter may not be entertained as a genuine Public Interest Litigation at the instance of the petitioner.

Learned senior counsel for the petitioner refuted the aforesaid stand of learned Advocate General and pleaded that the fundamental right of freedom of expression cannot be curtailed in public domain and nothing has been shown which has, in any manner, interfered with the course of justice and due consideration of this writ petition instituted as a Public Interest Litigation.

We would recall that in our earlier orders we had recorded that this matter will

be carried forward as one which is not adversarial in nature and that the State through learned Advocate General will assist the Court in reaching the goals, which may be required to be addressed on further due process of this writ petition. It was in that context that we had deferred the consideration of the question of maintainability and locus standi of the petitioner and addressed issues which are pivotal to proper management of Covid-19.

The pandemic that the world is facing by the outburst of the virus and the manner in which it contagiously spreads beyond all geographical and political domains is a reason good enough for the Union of India and the States in the Union of India to ensure that every requisite step is taken to guard the people and protect their lives and also to ensure that the pandemic is controlled and prevented from extending and spreading its perilous wings even beyond the boundaries of this nation. While many States are seen to have started even trying to contain the intrusion of infected persons into their geographical domain, the fact of the matter remains that unless the Union of India and the Governments of various States work hand in hand, the desired results would be difficult to achieve.

While the petitioner makes repeated complaints about the deficit in the number of sample testing, it is to be noted that there is lack of certainty as whether the rapid testing method as well as other modalities are appropriately utilized. This is essentially a matter of governance and ultimately to be left to the Governments and not for judicial review unless it becomes imminently necessary in a situation. The Indian Council of Medical Research (For short 'ICMR') is concerned with the modulation, formulation and promotion of bio medical research and is funded by the Government of India. Obviously it is reckoned as the platform for regulating the modalities of reaching out at various challenges to health issues. ICMR guidelines are, according to the petitioner, the touch stone on which the regulatory measures as well as other aspects ought to be in place. The testing of samples, test kits, mode of reference for ascertaining reason for death thereby keeping track of mortality rate attributable to Covid-19, are matters relating to scientific management of the pandemic. The Union of India and the States are to respond to the adequate guidelines given by the ICMR and/or other Agency as may be found necessary by the Union of India. This is all the more so, because the pandemic which is being dealt with is not one confined to any particular State and needs to be managed as a national health challenge issue.

Since it is a matter of information and in public domain that West Bengal has lost two(2) doctors, stated to be due to Covid-19, we require learned Advocate General to ascertain the availability of Personal Protection Equipment (PPE) sufficient enough to be provided to all who could be called front line worriers which includes doctors, para medics, ground staff, support staff and those dealing with medical institutions and also other areas where PPE usage ought to be the norm. The Union of India is also require to respond as to its view on the management of Covid-19 in the State of West Bengal.

We, therefore, hereby direct the State to file a further affidavit disclosing the availability and utilization of PPE and also testing facilities in terms of ICMR guidelines in the State of West Bengal. On the same issue, the Union of India, the second respondent, shall also place its response in the form of an affidavit through an officer at the appropriate level.

Let it also be taken note of that the orders issued by the High Court are being uploaded in the official website. This means that a true version of any order can be generated from the website of the Calcutta High Court. We are sure that responsible journalism includes the need to exclude irresponsible reporting by anyone involved in the print or audio visual media. Obviously, therefore, we expect those in need of information about the contents of this Court's orders, to access the High Court website and dissuade themselves from propagating or publicizing the orders to champion the cause of anybody concerned. We may also record that this matter is to be proceeded with ultimately in the interest of the larger public in the collective sense and for a citizen in the individual sense and not intended to be made a platform for publicity either way.

Post this matter on 30.04.2020.