
(2022) 11 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Petition No. 7374 Of 2020, Civil Miscellaneous Application No. 24719 Of 2020, 39304, 39305, 39341, 39342 Of 2021

Dr Ravi M Nair & Anr.

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 01-11-2022

Acts Referred:

Citation : (2022) 11 DEL CK 0004

Hon'ble Judges : Satish Chandra Sharma, CJ;Subramonium Prasad, J

Bench : Division Bench

Advocate : Suvidutt M.S., Somlagna Biswas, Chandy Oommen, Anurag Ahluwalia, Danish Faraz Khan, Isha Thkur, Sunil Narula

Final Decision : Disposed Of

Judgement

Satish Chandra Sharma, CJ

1. The Petitioners before this Court have filed this present Writ Petition by way of a Public Interest Litigation (PIL) for issuance of appropriate writ, order or direction directing the Respondent Union of India and its functionaries to notify Homoeopathic medicines of Arsenicum album – Phosphorus – Tuberculinum (APT) in series intervention protocol to prevent COVID-19 infections, and to allow Homoeopathic treatment of COVID-19 mild cases with Homoeopathic medicines standalone and added therapy in severe to critical cases.

2. The Petitioners in short are praying for issuance of writ of Mandamus to Government of India for including Homoeopathic medicines for treatment of COVID-19 infections. The Petitioners have prayed for the following reliefs:

"9.1 Issue direction to the Ministry of AYUSH to notify Arsenicum album – Phosphorus – Tuberculinum (APT) in series intervention protocol as second advisory supplementing the first advisory Arsenicum album 30 C as preventive for COVID – 19 on urgent basis;

9.2 Issue direction to the Government of India to allow homoeopathic practitioners to treat mild cases of COVID- 19 by homoeopathic medicines, and for severe cases to critical cases as add-on therapy with allopathic medicine in hospitals if desired by the patient and/ or the party;

9.3 Issue direction to the CCRH, the Ministry of AYUSH, Government of India to undertake the clinical trial on Arsenicum album– Phosphorus – Tuberculinum (APT) in series intervention protocol to prevent COVID-19 immediately and to complete it within a fixed time frame and also to concerned six State Governments for allowing and supporting to conduct the same as approved by the Task Force and CCRH;

9.4 Issue directions to CCRH to prepare homoeopathic nosode from SARS-CoV2 on urgent basis in collaboration with other scientific organizations;

9.5 Issue directions to the Government of India to publish advisory in this regard to be followed by all the State Governments and Union Territories of India;

9.6 Pass any such other order(s) as may be deemed appropriate and fit in the circumstances of the present case.”

3. The Respondents have filed a reply in the matter and various status reports have also been filed from time to time. The Respondent No.2 Central Counsel for Research in Homoeopathy (hereinafter referred to as “CCRH”) has filed a counter-affidavit, and it has been stated that the Writ Petition is a blatantly dishonest attempt on the part of the Petitioners to over reach the law.

4. It has been stated that the Respondent No.2 CCRH is an autonomous body under the Ministry of Ayush, Government of India, and during the COVID-19 Pandemic, the Respondent No.1 Ministry of Ayush invited proposals/ suggestions for identifying potential preventive and therapeutic approaches from Ayush Systems for different stages of treatment of COVID-19 as standalone and/or add-on interventions to conventional care. It has also been stated that large number of proposals were received, and they were scanned by respective Central Research Councils for their validation and recommendation and for further action.

5. It has been further stated that the Ministry of Ayush has issued a notification dated 21.04.2020 which facilitates undertaking research by scientists/ researchers/ clinicians or any recognized system of medicine under the Indian Medicine Central Council Act, 1970, the Homoeopathy Central Council Act, 1973 and the National Medical Commission Act, 2019.

6. It has been stated that the Petitioners were well aware of the notification issued on 21.04.2022 which certainly permitted the Petitioners and other persons to undertake the research for COVID-19 through Homoeopathy system including prophylactic measures.

7. It has also been stated that the Petitioners were certainly at a liberty to undertake trials for the COVID-19 following the guidelines framed on the

subject. The proposal of the Petitioners was accepted in principle and communicated to them vide letter dated 01.06.2020.

8. It has been further stated that the proposed trial of the Petitioner was principally approved by the Ministry of Ayush, and it was the duty of the Petitioners to initiate the trials after getting approvals from the respective State authorities. The Petitioners instead of getting approval from the State authorities/ failing from getting approval from State authorities started approaching the members and the Chairman of the Central Advisory Body of CCRH, and the CCRH does not have the power to direct the State authorities to permit the proposed Study. Therefore, as the Petitioners being the Principal Investigators failed to get written approval from the State Health Authorities, they have not submitted any report to the Respondent No. 2.

9. The Respondent No.2 has further stated that in respect of second issue raised by the Petitioners allowing Homoeopathic treatment of mild/ critical cases of COVID-19 by Homoeopathic physician, the Ministry of Ayush has issued guidelines for Homoeopathic practitioners for COVID-19, and they are certainly available on the website, and the State Authorities were competent authorities to grant necessary permission on the subject in respect of use of Homoeopathic medicines for mild and critical cases of COVID-19.

10. It has been stated that the Petitioners did not carry out the clinical trials and want a blanket order to be issued which is impermissible in law. The Respondents have prayed for dismissal of the present Writ Petition.

11. The Respondent No. 3 has filed a status report (Director Ayush, Government of NCT of Delhi), and it has been stated by Respondent No.3 that the Government of NCT of Delhi has constituted a five member advisory committee to suggest various steps of Homoeopathic system of medicines for prevention of treatment of COVID-19 infection vide order dated 30.05.2020, and based upon recommendations of the Advisory Committee, the Government of NCT of Delhi has started a separate study at large scale for use of certain Homoeopathic medicines, and the study is likely to be completed very soon.

12. Various status reports have been filed from time to time and the fact remains that at the relevant point of time when the Writ Petition was filed, the infection rate of COVID-19 was very high. The Government of India through its various expert bodies like ICMR, when the entire world was struggling with COVID-19 pandemic framed various guidelines, and issued various medical protocols for curbing the infection rate, and as has been brought to the notice of this Court that more than 219 crores doses of vaccines have been administered by Government of India till date.

13. In the considered opinion of this Court, the expert bodies like ICMR and the other statutory bodies are the best judge to decide and to accord approval in respect of medical protocol. It is not for the Courts to comment upon the medical protocols and the guidelines framed on the subject which are, in fact,

issued after great research on the subject.

14. It is true that Homoeopathic medicines are very effective and large number of people throughout the Globe are availing Homeopathic treatment, but in cases of pandemic, which protocol has to be validated by the Government should always be left to the discretion of the Government. Decision of the Government in such scenarios is based upon expert opinions and the experts are certainly the masters of the field.

15. In India, though the infection rate was very high, the Government through its medical protocol was able to control the pandemic, and at present, the Government has been able to vaccinate a very large majority of the Population (more than 219 crores doses of COVID-19 vaccines have been administered), and all kind of specialized treatments have been made available to the last man in the society.

16. This Court at this juncture does not find any reason to grant relief as prayed for by the Petitioners. However, the Petitioners shall certainly be free to conduct a drug trial by following statutory provisions of law specially keeping in view the affidavit filed by Respondent No.2 i.e. CCRH. The Petitioners have not been stopped by any authority to conduct research, and the affidavit filed by the Respondent No.2 makes it very clear that a procedure has been laid down for conducting clinical trials, and nobody has prevented the Petitioners to conduct clinical trials and to obtain necessary permission required under the law.

17. This Court at this juncture, especially when the COVID-19 infections have come almost to an end does not find any reason to allow the relief prayed for by the Petitioners. However, the Petitioner shall certainly be free to go ahead with their research/ drug trials strictly in accordance with law.

18. With the aforesaid, the present Writ Petition stands disposed of.