

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5692 of 2020

Mr. ABC, (Male), aged about 46 years, Resident of Patna, Bihar-800004.

... .. Petitioner/s

Versus

1. Executive Director (Health) cum Project Director Bihar State Aids Control Society, Bihar.
2. Union of India, through its Secretary, National Aids Control Organisation, 9th Floor, Chandralok Building, Janpath, New Delhi.
3. Principal Secretary, Department of Health, Government of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Deepak Kumar Singh, Advocate
For the State	:	Mr. S. D. Yadav, AAG 9
For the UoI	:	Mr. Ratnesh Kumar, CGC

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 01-07-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Deepak Kumar Singh, learned counsel for the petitioner; Mr. S D Yadav, learned Additional Advocate General 9 (hereinafter referred to as 'AAG-9') for the State of Bihar as well as the Bihar State AIDS Control Society (hereinafter referred to as the 'BSACS') and Mr. Ratnesh Kumar, learned Central Government Counsel (hereinafter referred to as 'CGC'), for the Union of India, who also appears on behalf of the National AIDS Control Organization (hereinafter referred to as 'NACO').



3. The petitioner has moved the Court for the following
reliefs:

“I. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Government of Bihar to make available the prescribed medicines/ARV drugs to the petitioner and similar other patients undergoing treatment of Third-line Antiretroviral Therapy (ART) for the treatment of HIV AIDS in the State of Bihar;

II. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), the Secretary, National AIDS Control Organization (NACO), the principal Secretary, Department of Health, Government of Bihar and the Government of Bihar to take immediate steps to ensure the home delivery of medicines/ARV drugs to the petitioner and similar other patients undergoing Antiretroviral Therapy (ART) including Thrid-line Antiretroviral Therapy (ART) as per the notification by the Additional Project Director, Bihar State AIDS Control Society (BSACS) issued a letter bearing Letter No.1483 dated 27.03.2020 in the State of Bihar;

III. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), Government of Bihar to ensure that there is sufficient stock of the essential medicines/ARV drugs especially for the Third-line Antiretroviral Therapy (ART) which is currently not



available to the petitioner and similar other patients in the state of Bihar at least upto continuation of the restriction on public transportation due to lock down but not less than of 3 months;

IV. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), Government of Bihar to devise a mechanism to make availability of medicines/ARV drugs for the treatment of patients undergoing Third-line Antiretroviral Therapy (ART) for HIV AIDS in the State itself so as to avoid frequent visits (as the PLHIV undergoing Third-line of ART are more vulnerable to opportunistic infections) by a patient to the Centre of Excellence at BHU, Varansi, to get the required medicines/ARV drugs;

V. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), Government of Bihar to take immediate steps for the establishment of the 'Centre of Excellence' (COE) to facilitate the treatment of the Persons Living with HIV AIDS (PLHIV) and also particularly for those undergoing Third-Line Antiretroviral Therapy (ART) in the State of Bihar.

AND/OR

VI. To pass any other order or direction which seems fit in the interest of justice, equity and good conscience."

4. On 27.05.2020 the Court had passed the following
order:



“4. It was submitted that on account of the national and state lockdown, the petitioner, who requires Third-line Anti-retroviral Therapy (hereinafter referred to as ‘ART’) had represented to the Bihar State AIDS Control Society (hereinafter referred to as the ‘BSACS’) and, resultantly, he was able to get supply of the medicine on 8th May, 2020, from the Rajendra Memorial Research Institute, Patna (hereinafter referred to as the ‘RMRI’), which is a Central Institute, though only for a period of one month. He submitted that Persons Living with HIV/AIDS (hereinafter referred to as ‘PLHIV’) are susceptible to even minor infection, which can be life-threatening. It was contended that otherwise also, the State was obliged to provide healthcare to its citizens and cannot shirk such responsibility.

4. Mr. S. D. Sanjay, learned ASG, submitted that though he appears for the Union of India, but the National AIDS Control Organisation (hereinafter referred to as ‘NACO’) being an autonomous body, and the designated nodal agency for such matters, its stand has to be ascertained. At this juncture, the Court requested learned ASG to take instructions and assist on behalf of NACO also, to which he readily agreed.

5. Mr. Yadav, learned AAG 9 submitted that he is representing the respondent no. 3 and the BSACS/respondent no.1 is an autonomous body. However, at the Court’s request, he agreed to take instructions and assist on behalf of BSACS also.

6. The Court records its appreciation of the positive attitude of both learned counsel for the respondents.

7. Both learned ASG and AAG 9 requested for a short adjournment to enable them to file detailed counter affidavit.

8. Having regard to the fact that the case has been filed on 20th May, 2020 and the Eid holidays/weekend intervening, and learned counsel for the respondents obviously requiring reasonable time to obtain instructions for filing their respective response, the Court is inclined to grant time.

9. Accordingly, as prayed for by learned ASG and learned AAG 9, for filing detailed counter affidavit, the matter be listed on 17th June, 2020, retaining its position,



after obtaining necessary permission of Hon'ble the Chief Justice.

10. However, in the meantime, the respondents are directed to ensure that the petitioner is given supply of medicine for at least one more month, through RMRI, as was done earlier. Learned ASG and learned AAG 9 shall communicate this order to the Director, RMRI, for compliance.

11. The Union of India/NACO as well as the State Government/BSACS shall file detailed affidavits which shall disclose, inter alia, steps taken qua:

(i) ensuring availability of Third-Line ART to all PLHIVs in the State of Bihar;

(ii) providing requisite testing facility for them; and

(iii) making available the necessary drugs in the State of Bihar, preferably, at RMRI, which is a Central Institute and is capable of handling such responsibility.

12. The aforesaid response should also bear particulars of actions initiated/proposed pertaining to the suggestion(s) by BSACS for providing the needed drugs/medicines directly to the patients at their doorstep. In this context, it is expected that the concerned authorities, especially in the present scenario, would not treat the present case as an adversarial litigation, and accordingly, upon appropriate certification that a person is in requirement of such treatment, should ensure that he/she is not subjected to unnecessary harassment by having to physically appear before the authority. However, it is clarified that for the periodic medical check-up of such patients residing in Bihar, their testing centre should also be within the state, which, as earlier indicated, can be RMRI.

13. The Court deems it apt to observe that the respondents are obliged to provide necessary treatment to such patients, all the more, in light of the current COVID-19 pandemic, which has long-term ramifications for all segments of society, especially a highly vulnerable segment, to which the petitioner belongs.

14. In this regard, it is appropriate to advert to certain pronouncements of the Hon'ble Supreme Court with regard to the duty of the State for ensuring proper health facility to its citizens wherein it has been held that lack of



resources or even unfavourable circumstances cannot be a ground to deny appropriate healthcare.

15. In ***Paschim Banga Khet Mazdoor Samity v State of West Bengal***, (1996) 4 SCC 37, the Hon'ble Supreme Court held:

'9. The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21 ...

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17. The Union of India is a party to these proceedings. Since it is the joint obligation of the Centre as well as the States to provide medical services it is expected that the Union of India would render the necessary assistance in the improvement of the medical services in the country on these lines.'

(emphasis supplied)

16. In ***Union of India v Moolchand Khairati Ram Trust***, (2018) 8 SCC 321, it was stated:

'57. In the wake of globalisation, we are in a regime of Intellectual Property Rights. Even these rights have to give way to the human rights.



It is an obligation of the Government to provide life-saving drugs to have-nots at affordable prices so as to save their lives, which is part of Article 21 of the Constitution of India. It is equally an obligation of the State to devise such measures that have-nots are not deprived of the very treatment itself. Administering medicines is also a part of medical therapy....

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64. The realisation of human rights vests responsibilities upon the State. The State has to constantly make an endeavour for realisation of human rights agenda, particularly in relation to economic, social and cultural rights. Right to health is provided in Article 25 of the Universal Declaration of Human Rights of 10-12-1948 (the UDHR). The article provides that:

“25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

65. The State has to ensure the basic necessities like food, nutrition, medical assistance, hygiene, etc. and contribute to the improvement of health. Right to life includes right to health as observed in State of Punjab v. Mohinder Singh Chawla [State of Punjab v. Mohinder Singh Chawla, (1997) 2 SCC 83: 1997 SCC (L&S) 294]. Right to life and personal liberty under Article 21 of the Constitution also includes right of patients to be treated with dignity as observed by this Court in Balram Prasad v. Kunal Saha [Balram Prasad v. Kunal Saha, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327]...

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67. In Paschim Banga Khet Mazdoor Samity [Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37], this



Court has observed that the Constitution envisages the establishment of a welfare State. In a welfare State, the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Preservation of human life is thus of paramount importance. Government is duty-bound to provide timely care to persons in serious conditions...'

(emphasis supplied)

17. Suffice it would, for the Court to revisit **Chapter VI of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017:**

'13. Central Government and State Government to take measures.— The Central Government and every State Government, as the case may be, shall take all such measures as it deems necessary and expedient for the prevention of spread of HIV or AIDS, in accordance with the guidelines.

14. Anti-retroviral Therapy and Opportunistic Infection Management by Central Government and State Government.— (1) The measures to be taken by the Central Government or the State Government under Section 13 shall include the measures for providing, as far as possible, diagnostic facilities relating to HIV or AIDS, Anti-retroviral Therapy and Opportunistic Infection Management to people living with HIV or AIDS.

(2) The Central Government shall issue necessary guidelines in respect of protocols for HIV and AIDS relating to diagnostic facilities, Anti-retroviral Therapy and Opportunistic Infection Management



which shall be applicable to all persons and shall ensure their wide dissemination.'

18. The respondents are required to be mindful of the mandate of various judicial pronouncements, and the provisions of the relevant statute(s), especially those referred to above."

5. A counter affidavit has been filed on behalf of NACO, wherein, at paragraph no. 9 it has been stated as under:

"9. That in reply to the averments made in paragraph no. 1 of the writ petition, it is humbly submitted that the same is for the consideration of this Hon'ble Court. However, it is humbly submitted that ARV medicines have been provided to the Petitioner along with other patients undergoing treatment of Third-line Art in Bihar as confirmed by Bihar State AIDS control Society (BSACS for short) and the same is evident from the communication dated 02.06.2020 of the Additional Project Director, BSACS to NACO. Further NACO has issued guidelines/advisories in this regard in the current situation with respect COVID-19. Furthermore, it is humbly submitted that those persons Living with HIV and who do not respond to second-line ART have to be shifted on Third-line ART. Currently, RMRI ART centre, Patna is providing First and second-line ART to the patients. NACO is in process of devising mechanism in which RMRI ART Plus Centre would utilize the mechanism of telemedicine or ESACEP for providing Third-line ART to patients in Bihar. In further, NACO will explore the possibilities/feasibility of establishing a Centre of Excellence in Bihar after consultation with the state, if the number of patients on Third-line ART increases."

6. In the affidavit filed on behalf of BSACS, statement has also been made on similar lines, which reads as under:



“8. That those people living with HIV who do not respond to second line ART have to be shifted on third line ART regimen. Currently RMRI ART centre, Patna is providing first and second line ART to the patients. NACO is in process of devising mechanisms which RMRI ART plus centre would utilise mechanism of telemedicine or e-SACEP for providing third line ART to patient in Bihar.

9. That it is humbly submitted that NACO may consider to explore the possibilities/feasibility of establishing a centre of Excellence in Bihar after consultation with State Government.”

7. There is unanimity between learned counsel for the parties that the Third-Line ART patients in Bihar should have the facility of getting the medicine prescribed and made available to them in Bihar itself. The petitioner for the past two months has been provided such medicine from the RMRI, Patna.

8. In view of the fact that for the Third-Line ART patients, a Centre of Excellence has to be established which basically requires that a State AIDS Clinical Expert Panel has to be constituted to consider the condition of such patients and their response to the medicines they are administered, and then a line of treatment is decided. As the existing ground situation indicates that, in Bihar, there are only 23 registered patients requiring Third-Line ART treatment, the setting up of such infrastructure would not be advisable as it would block the services of specialized doctors only for a very limited number of patients at the cost of such doctors providing valuable and much-needed service



elsewhere where the numbers may be or are much higher. Thus, for the present, the Court would not pass any specific direction for setting up a Centre of Excellence in Bihar and would only observe that as per the stand of both NACO and BSACS themselves, the situation would be monitored and when it is felt that the number of patients in Bihar justify setting up a full-fledged Centre of Excellence, the same shall be set up on priority basis.

9. Having said that, this Court is also conscious of its responsibility to ensure that such Third-Line ART patients in Bihar are not put to any harassment and their consultation by a State AIDS Clinical Expert Panel and availability of medicine is done at a centre in Bihar.

10. On this issue, the Court, after detailed interaction with learned counsel for the parties and the consensus arrived, lays down the following procedure to be adopted till such time a Centre of Excellence is not established in the State of Bihar:

(a) The Third-Line ART patients of Bihar would approach the RMRI, Patna which would arrange for consultation by the State AIDS Clinical Expert Panel, either through Telemedicine or through eSACEP, as has been stated in the counter affidavits of both NACO and BSACS, within four working days. Upon doing so, the line of treatment and medicines,



as may be prescribed by the State AIDS Clinical Expert Panel, shall be communicated by RMRI, Patna to BSACS, within the next two working days.

(b) The BSACS, upon receipt of such communication from RMRI, Patna shall take steps for obtaining the medicine from the Centre of Excellence, Varanasi to be given to RMRI, Patna. The exercise should be completed within one week from receipt of the communication by the BSACS from RMRI, Patna.

(c) The concerned patient would thereafter be provided his medicine and prescription by RMRI, Patna after 10 days from him having completed the formality of consultation through Telemedicine or eSACEP at RMRI, Patna.

(d) The concerned patient shall approach the RMRI, Patna at least 15 days prior to the medicines being taken by him/her coming to an end.

11. Learned counsel for the petitioner submitted that he has medicine available only till 5th July, 2020 and, thus, the same should be provided to him prior to that.

12. On a query of the Court, learned counsel for BSACS and NACO readily agreed that the authorities would cooperate and make sure that the medicines reach RMRI, Patna latest by 4th of this month.



13. In view thereof, as a one-time measure, let BSACS authorities get in touch with RMRI, Patna and NACO and ensure that the medicines reach RMRI, Patna latest by 4th July, 2020.

14. The Court would record its appreciation for the assistance rendered by learned counsel for the parties without treating it to be an adversarial litigation with a sense of duty towards the society at large and for agreeing to make available the drugs, at least for the present, at such short notice.

15. The writ petition stands disposed off in the aforementioned terms.

16. Learned AAG 9 and learned CGC shall communicate the order to the authorities concerned for compliance.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

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