

# Jerryl Banait vs Union Of India on 8 April, 2020

**Bench: Ashok Bhushan, S. Ravindra Bhat**

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) Diary No(s). 10795/2020

JERRYL BANAIT

VERSUS

UNION OF INDIA & ANR.

WITH

W.P. (CIVIL) Diary No(s). 10830/2020

W.P. (CIVIL) Diary No.10852/2020

O R D E R

IA No.48242/2020 – FOR INTERVENTION/IMPLEADMENT Heard Mr. Jaideep Gupta, learned senior counsel for the intervener. The application for intervention is allowed. WRIT PETITION (CIVIL) Diary No(s). 10795/2020 The Court convened through Video Conferencing. A medical professional has filed this writ petition under Article 32 of the Constitution of India as a Public Interest Litigation praying for various directions in reference to pandemic COVID-19.

The World Health Organisation (WHO) has declared COVID-19 as pandemic on 11.03.2020. According to WHO, Coronaviruses are a large family of viruses which can cause illness in humans, known to cause respiratory infections. People can expose themselves to COVID-19 18:15:34 IST Reason:

from others who carry the virus. The disease can spread from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. The droplets land on surfaces around the person and other people by touching these objects or surfaces can catch COVID-19. People can also catch COVID-19 if they breathe in droplets from a person with COVID-19 who coughs out or exhales droplets.

The Government of India, Ministry of Health and Family Welfare has taken various measures for Infection Prevention and Control in Healthcare facilities. The Coronavirus has already spread in about 200 countries of the World and is gradually

spreading in our country-India.

To combat COVID-19 the first line of defence in battling such a pandemic is the Doctors and the medical staff who are the most vulnerable to fall prey to the virus, while protecting others from it. The World Health Organisation has issued guidelines on 27.02.2020 for rational use of personal protective equipment for coronavirus disease 2019 (COVID-19). The guidelines contained recommendations regarding type of personal protective equipment to be used in the context of COVID-19 for health care workers Doctors and others.

The Ministry of Health and Family Welfare, Directorate General of Health Services has issued guidelines dated 24.03.2020 on "Rational use of Personal Protective Equipment". The petitioner prays for issuing a direction to the respondent to ensure that guidelines issued by WHO and the guidelines dated 24.03.2020 issued by the Ministry of Health and Family Welfare be implemented and respondents be directed to ensure availability of appropriate Personal Protective Equipments, including sterile medical/Nitrile gloves, starch apparels, medical masks, goggles, face shield, respirators (i.e. N-95 Respirator Mask or Triple Layer Medical Mask or equivalent), shoe covers, head covers and coveralls/gowns to all Health Workers including Doctors, Nurses, Ward Boys, other medical and paramedical professionals actively attending to, and treating patients suffering from COVID-19 in India, in Metro cities, Tier-2 and Tier-3 cities. A direction has also sought for providing security to Doctors and other paramedical professionals.

This Court on 01.04.2020 requested the learned Solicitor General to examine the petition and to place before the Court the position of the Union Government in regard to the issues which have been highlighted by the petitioner.

We have heard Mr. Mukul Rohtagi, learned senior counsel appearing for the petitioner as also Mr. Tushar Mehta, learned Solicitor General of India who appears for the respondent(s). He submits that the stand of the Union of India is not adversary to any of the relief claimed in the Writ Petition(s). He further submits that the Government of India is taking all necessary steps regarding providing Personal Protection Equipments (PPEs) and other necessities for the doctors. Steps have also been taken for procuring PPEs from the domestic manufacturers. He further submits that with regard to protection by police, security and police personnel to the hospitals and doctors, the Government will go an extra mile to augment the security as existing today. He further submits that appropriate security will be provided to all the Covid-19 hospitals and doctors. He further submits that the apprehension of Mr. Rohtagi, learned Senior Counsel that the Government is going to deduct certain part of the salary from the Government doctors, to be utilized for procuring protective equipment is incorrect and no part of the salary of the Government doctors will be deducted.

Mr. Tushar Mehta also submits the appropriate instructions shall be issued by the Directorate General of Health Services to the private hospitals not to deduct any salary from the doctors working in the private hospitals and para-medical staff. It is the first responsibility of the State to protect its citizens from the pandemic. The Ministry of Health and Family Welfare after coming to know the disease COVID-19 which was reported first in Wuhan City, Hubai province, China on 31.12.2019,

issued guidelines dated 25.01.2020 for Infection Prevention and Control in Healthcare Facilities which, inter alia, prescribe procedures and practices to be adopted for infection prevention and control.

The Doctors and the medical staff who are the first line of defence of the country to combat with this pandemic have to be protected by providing Personal Protective Equipments as recommended by WHO on 27.02.2020. The Ministry of Health and Family Welfare has already issued necessary guidelines on Rational Use of Personal Protective Equipment which have been brought on the record as Annexure P-6 to the petition. As per Clause 5 of the Guidelines the Personal Protective Equipments are to be used based on the designed to safeguard of the healthcare workers. Para 5.1, 5.2, 5.2.1 and 5.2.2 which are relevant for the present purpose are extracted below for ready reference:

5. Rational use of PPE The PPEs are to be used based on the risk profile of the health care worker. The document describes the PPEs to be used in different settings.

Point of  
5.1. Entry

S. No.	Setting	Activity	Risk	Recommended PPE	Remarks
1	Health Desk	Provide information to travellers	Low risk	Triple layer medical Mask Gloves	Minimum distance of one meter needs to be maintained .
2	Immigration counters, customs and airport security	Provide services to the passengers	Low risk	Triple layer medical Mask Gloves	Minimum distance of one meter needs to be maintained .
3	Temperature recording station	Record Temperature with hand held thermal recorder.	Low risk	Triple layer medical Mask Gloves Modera N-95 masks	

4	Holding area/ Isolation facility of APHO/ PHO	Interview & Clinical examination by doctors/ nurses	Moderate Risk	Gloves	
5	Isolation facility of APHO	Clinical management (doctors, nurses)	Moderate Risk	N-95 masks Gloves	
		Attending to severely ill passenger	High risk	Full complement of PPE	When aerosol generating procedures are anticipated
5	Sanitary staff	Cleaning frequently touched surfaces/ Floor/ cleaning linen	Moderate risk	N-95 mask Gloves	
6	Administrative staff	Providing administrative support	No risk	No PPE	No contact with patients of COVID-19. They should not venture into areas where suspect COVID-19 cases are being managed.

## 5.2. Hospital Setting

5.2.1. Out Patient Department (Respiratory Clinic / Separate screening area)#

S. No	Setting	Activity	Risk	Recommended PPE	Remarks
1	Triage area	Triaging patients  Provide triple layer mask to patient.	Moderate risk	N 95 mask Gloves	Patients get masked.
2	Screening area  help desk/ Registration counter	Provide information to patients	Moderate risk	N-95 mask Gloves	
3	Temperature recording station	Record temperature with hand held thermal recorder	Moderate Risk	N 95 mask Gloves	
4	Holding area/ waiting area	Nurses / paramedic interacting with patients	Moderate Risk	N 95 mask Gloves	Minimum distance of one meter needs to be maintained.
5	Doctors chamber	Clinical management (doctors, nurses)	Moderate Risk	N 95 mask Gloves	No aerosol generating procedures should be allowed.
6	Sanitary staff	Cleaning frequently touched surfaces/  Floor/ cleaning linen	Moderate risk	N-95 mask Gloves	
7	Visitors accompanyi	Support in navigating	Low risk	Triple layer medical	No other visitors should be

ng  
young  
children  
and  
elderlies

various  
service  
areas

mask

allowed to  
accompany  
patients  
in OPD  
settings. The  
visitors thus  
allowed  
should  
practice hand  
hygiene

All hospitals should identify a separate triage and holding

area for patients with Influenza like illness. If there is no triage area / holding area for patients due to resource constraints, such hospitals will follow the above guidance for general OPD.

#### 5.2.2. In-patient Services

S. No.	Setting	Activity	Risk	Recommended PPE	Remarks
1	Individual isolation rooms/	Clinical management	Modera te risk	N 95 mask  Gloves	Patient masked. Patients stable. No aerosol generating
2	cohorted isolation rooms ICU/ Critical Care	Critical care  Management	High risk	Full complement of PPE	activity. Aerosol generating activities performed.
3	ICU /critical care	Dead body packing	High risk	Full complement of PPE	
4	ICU /critical care	Dead body transport to mortuary	Low Risk	Triple Layer medical mask  Gloves	

Cleaning

5	Sanitation	frequently touched surfaces/ floor/ changing linen	Moderate Risk	N-95 mask Gloves	
6	Other Non-COVID treatment areas of hospital	Attending to infectious and non-infectious patients	Risk as per assessed profile of patients	PPE as per hospital infection prevention control practices.	No possibility of exposure to COVID patients. They should not venture into COVID-19 treatment areas.
7	Caretaker accompanying the admitted patient	Taking care of the admitted patient	Low Risk	Triple layer medical mask	The caretaker thus allowed should practice hand hygiene, maintain a distance of 1 meter

The Ministry of Health and Family Welfare has already taken a decision with regard to Personal Protective Equipments for Doctors and medical staff. The said guidelines shall be implemented to protect the Doctors and medical staff who are exposed to coronavirus to the maximum, as they are supervising and treating coronavirus patients.

We may notice the aspect regarding security of Doctors and medical staff. An incident which happened on 02.04.2020 in the city of Indore in the locality Tatpatti Bakhhal where medical staff with Doctors had gone to screen certain persons regarding coronavirus, were attacked and stones were pelted by certain miscreants, needs to be specially noticed. Certain other incidents have also been reported from other parts of the country including an incident at Ghaziabad where certain patients misbehaved with medical staff, which was reported to the Police also. The petitioner has brought on record details of such incidents which took place in first week of April, 2020 in different parts of the country by I.A. No. 48249 of 2020.

The pandemic which is engulfing the entire country is a national calamity. In wake of calamity of such nature all citizens of the country have to act in a responsible manner to extend helping hand to the Government and medical staff to perform their duties to contain and combat the COVID-19. The incidents as noted above are bound to instill a sense of insecurity in Doctors and medical staff from

whom it is expected by the society that they looking to the call of their duties will protect citizenry from disease of COVID-19. It is the duty of the State and the Police Administration to provide necessary security at all places where patients who have been diagnosed coronavirus positive or who have been quarantined are housed. The Police security be also provided to Doctors and medical staff when they visit places for screening the people to find out the symptoms of disease.

We, in view of the above, are satisfied that petitioner has made out a case for issuing following interim directions to the respondents in this PIL:

(1) The respondents as per guidelines dated 24.03.2020 of the Ministry of Health and Family Welfare are directed to ensure availability of appropriate Personal Protective Equipments, including sterile medical/Nitrile gloves, starch apparels, medical masks, goggles, face shield, respirators (i.e. N-95 Respirator Mask or Triple Layer Medical Mask or equivalent), shoe covers, head covers and coveralls/gowns to all Health Workers including Doctors, Nurses, Ward Boys, other medical and paramedical professionals actively attending to, and treating patients suffering from COVID-19 in India, in Metro cities, Tier-2 and Tier-3 cities.

(2) The Government of India, respective States/Union Territories and respective Police authorities are directed to provide the necessary Police security to the Doctors and medical staff in Hospitals and places where patients who have been diagnosed COVID-19 or patients suspected of COVID-19 or those quarantined are housed.

Necessary Police security be also extended to Doctors and other medical staff who visit places to conduct screening of people to find out symptoms of disease. (3) The State shall also take necessary action against those persons who obstruct and commit any offence in respect to performance of duties by Doctors, medical staff and other Government Officials deputed to contain COVID-19. (4) The Government shall explore all alternatives including enabling and augmenting domestic production of protective clothing and gear to medical professional. This includes the exploring of alternative modes of production of such clothing (masks, suits, caps, gloves etc.) and permitting movement of raw materials. Further, the Government may also restrict export of such materials to augment inventory and domestic stock. W.P. (CIVIL) Diary No(s). 10830/2020 & W.P. (CIVIL) Diary Tag with Diary No.10795/2020.

.....J. [ASHOK BHUSHAN] .....J. [S. RAVINDRA BHAT] NEW DELHI;

APRIL 08, 2020

ITEM NO.5+9+10

VIRTUAL COURT

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Item No.5



WRIT PETITION (CIVIL) Diary No(s). 10795/2020 JERRY BANAIT Petitioner(s) VERSUS UNION OF INDIA & ANR. Respondent(s) IA No. 48243/2020 - CLARIFICATION/DIRECTION IA No. 48242/2020 - INTERVENTION/IMPLEADMENT IA No. 48249/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES) Item No.9 W.P. (CIVIL) Diary No(s). 10830/2020 TO BE TAKEN UP ALONGWITH ITEM NO. 5 I.E. D.NO. 10795/2020 Item No.10 W.P. (CIVIL) Diary No.10852/2020 Date : 08-04-2020 These matters were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN HON'BLE MR. JUSTICE S. RAVINDRA BHAT Counsel for the parties:-

Mr. Tushar Mehta, SG Mr. Mukul Rohtagi, Sr. Adv.

Mr. Jaideep Gupta, Sr. Adv.

Mr. Amit Sahni, Adv/petitioner in person Ms. Astha Sharma, AOR UPON hearing the counsel the Court made the following O R D E R The Court convened through Video Conferencing. IA No.48242/2020 – FOR INTERVENTION/IMPLEADMENT IN WRIT PETITION (CIVIL) Diary No(s). 10795/2020 Heard Mr. Jaideep Gupta, learned senior counsel for the intervener. The application for intervention is allowed.

WRIT PETITION (CIVIL) Diary No(s). 10795/2020 In terms of the signed order, the Court directed as under:

"We, in view of the above, are satisfied that petitioner has made out a case for issuing following interim directions to the respondents in this PIL"

(1) The respondents as per guidelines dated 24.03.2020 of the Ministry of Health and Family Welfare are directed to ensure availability of appropriate Personal Protective Equipments, including sterile medical/Nitrile gloves, starch apparels, medical masks, goggles, face shield, respirators (i.e. N-95 Respirator Mask or Triple Layer Medical Mask or equivalent), shoe covers, head covers and coveralls/gowns to all Health Workers including Doctors, Nurses, Ward Boys, other medical and paramedical professionals actively attending to, and treating patients suffering from COVID-19 in India, in Metro cities, Tier-2 and Tier-3 cities.

(2) The Government of India, respective States/Union Territories and respective Police authorities are directed to provide the necessary Police security to the Doctors and medical staff in Hospitals and places where patients who have been diagnosed COVID-19 or patients suspected of COVID-19 or those quarantined are housed. Necessary Police security be also extended to Doctors and other medical staff who visit places to conduct screening of people to find out symptoms of disease.

(3) The State shall also take necessary action against those persons who obstruct and commit any offence in respect to performance of duties by Doctors, medical staff and other Government Officials deputed to contain COVID-19.

(4) The Government shall explore all alternatives including enabling and augmenting domestic production of protective clothing and gear to medical professional. This includes the exploring of alternative modes of production of such clothing (masks, suits, caps, gloves etc.) and permitting movement of raw materials. Further, the Government may also restrict export of such materials to augment inventory and domestic stock."

W.P. (CIVIL) Diary No(s). 10830/2020 & W.P. (CIVIL) Diary Tag with Diary No.10795/2020.

(ANITA RANI AHUJA) (ASHA SUNDRIYAL) COURT MASTER ASTT. REGISTRAR-cum-PS  
[Signed order is placed on the file]