

GURUSIMRAN SINGH NARULA

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v.

UNION OF INDIA & ANR.

Writ Petition (Civil) No. 560 of 2020

NOVEMBER 05, 2020

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**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M. R. SHAH, JJ.]**

Disaster Management Act, 2005 – Novel Coronavirus disease 2019 (Covid-19) – Pandemic – A writ petition filed in the public interest u/A. 32 of the Constitution of India seeking direction to ban on spraying of all kinds of disinfectants on human beings, supposedly for protecting the human beings from Covid-19 – The petitioner submitted that although the Ministry of Health & Family Welfare, the respondent no. 1 through its advisory dated 18.4.2020 had stated that spraying of disinfectant on human being is not recommended but Union of India has not taken any step to stop use, advertisement and sale of chemical based disinfection tunnels – Held: When respondent no. 1 has issued advisory that use of disinfectant on human body is not recommended and it has been brought into its notice that despite the said advisory, large number of organizations, public authorities are using disinfectants on human body, it was necessary for the respondent no. 1 to issue necessary directions either to prevent such use or regulate such use as per requirement to protect the health of the people – The provisions of Disaster Management Act, Section 10, 36 and other provisions are not only provisions of empowerment but also cast a duty on different authorities to act in the best interest of the people to subserve the objects of the Act – Therefore, the respondent no. 1 may consider and issue necessary directions in exercise of powers vested in it under the Disaster Management Act, 2005, regarding ban/regulation on the usage of disinfection tunnels involving spraying or fumigation of chemical/ organic disinfectants for the human beings – Further, there shall be similar consideration and directions by the respondents with regard to exposure of human beings to artificial ultraviolet rays.

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A **Disposing of the writ petition, the Court**

- HELD :** 1. From the pleadings brought on record on behalf of respondent No.1, it is clear that although by the advisory by respondent No.1, spraying of disinfectant on human body is not recommended but respondent No.1 has not taken any further steps in the above context taking any measure either to prevent or regulate the spraying of disinfectant on the human body. [Para 29][367-D-E]
2. The powers and functions of National Executive Committee under Section 10 of the Disaster Management Act, 2005, which specifically empowers the National Executive Committee to give directions regarding measures to be taken by the concerned ministry and departments of the Government, State Governments and State Authorities in response to the threatening situation or disaster. Section 36 of the Act, 2005, expressly enumerates the responsibilities of Ministries and departments of the Government of India. [Paras 30 and 31][367-F-G]
3. When respondent No.1 has issued advisory that use of disinfectant on human body is not recommended and it has been brought into its notice that despite the said advisory, large number of organizations, public authorities are using disinfectants on human body, it was necessary for the respondent No.1 to issue necessary directions either to prevent such use or regulate such use as per requirement to protect the health of the people. The provisions of Disaster Management Act, Section 10, 36 and other provisions are not only provisions of empowerment but also cast a duty on different authorities to act in the best interest of the people to sub-serve the objects of the Act. [Para 32][369-B-D]
4. This Court has no doubt that the Union and the States are taking all measures to contain the pandemic and all mitigating steps but the facts which have been brought on record in this writ petition indicate that in the present case, something more was required to be done by respondent No.1 apart from issuing advisory that use of disinfectant on human body is not recommended. When public authorities/ organizations were using
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disinfectants both chemical/organic on the human body and there are various studies to the effect that it may be harmful to the health and the body. Some more actions were required to remove the cloud of uncertainty and to regulate the use even if it was to either prevent such use or regulate the use so that health of citizens is amply protected. [Para 35][369-F-H] A

5. This Court is of the view that ends of justice be served in disposing the writ petition by issuing the following directions:- B

i) The respondent No.1 may consider and issue necessary directions in exercise of powers vested in it under the Disaster Management Act, 2005, regarding ban/Regulation on the usage of disinfection tunnels involving spraying or fumigation of chemical/organic disinfectants for the human beings. C

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ii) There shall be similar consideration and directions by the respondents as indicated above with regard to exposure of human being to artificial ultraviolet rays. [Para 42][371-H; 372-A-C] D

Devika Biswas v. Union of India and others, (2016) 10 SCC 726 ; Commissioner of Police versus Gordhandas Bhanji AIR 1952 SC 16 : [1952] SCR 135 ; L. Hirday Narain v. Income Tax Officer, Bareilly, (1970) 2 SCC 355 : [1971] 1 SCR 683 ; Municipal Council, Ratlam v. Shri Vardichan and others (1980) 4 SCC 162: [1981] 1 SCR 97 – relied on.

<u>Case Law Reference</u>			F
(2016) 10 SCC 726	relied on	Para 19	
[1952] SCR 135	relied on	Para 36	
[1971] 1 SCR 683	relied on	Para 37	
[1981] 1 SCR 97	relied on	Para 38	G

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 560 of 2020.

(Under Article 32 of the Constitution of India)

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A Tushar Mehta, SG, Ms. Anitha Shenoy, Sr. Adv., Gurmeet Singh Makker, Rajat Nair, Apoorv Kurup, Raghunatha Sethupathy, T. Mahendran, K. Paari Vendhan, Advs. for the appearing parties.

Petitioner-in-person

B The Judgment of the Court was delivered by
ASHOK BHUSHAN, J.

C 1. This Writ petition filed in the public interest under Article 32 of the Constitution of India seeks direction to forthwith ban on spraying of all kinds of disinfectants on human beings which is being done supposedly for protecting the human beings from the Novel Coronavirus disease 2019 (Covid-19).

D 2. The World Health Organisation (WHO) declared novel coronavirus disease, 2019 (hereinafter referred to as Covid-19) as a Pandemic on 11.03.2020. All countries including India after spread of the pandemic had taken and are still taking different measures to contain the disease and protect its citizens from Covid-19. On 29.03.2020, Ministry of Health and Family Welfare, Government of India, released guidelines on disinfection of common Public places including Offices. The scope as contained in the guidelines is to the following effect: -

E “Scope: This document aims to provide interim guidance about the environmental cleaning/decontamination of common public places including offices in areas reporting COVID-19.

F Coronavirus Disease 2019(COVID-19) is an acute respiratory disease caused by a novel Cornavirus (SARS-CoV-2), transmitted in most instances through respiratory droplets, direct contact with cases and also through contaminated surfaces/objects. Though the virus survives on environmental surfaces for varied period of time, it gets easily inactivated by chemical disinfectants...”

G 3. On 18.04.2020, Director General of Health Services (EMR Division), Ministry of Health and Family Welfare, issued an advisory against spraying of disinfectants on people for Covid-19 arrangements. Even though in the above advisory, spraying of individuals or groups was not recommended, several bodies, organizations started using spraying tunnels to disinfect the human body. The press release dated 23.4.2020 was issued by National Capital Laboratory(Council for Scientific and

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Industrial Research) which was joint press release by CSIR-NCL Pune-ICT Mumbai, stating that the use of mist based sanitization is expected to provide safeguard to front-line health care professionals including paramedical staff, police and employees providing essential services. Other public organizations also started using the walk way spray tunnels, and other measures for disinfecting humans at various public places.

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4. This writ petition under Article 32 has been filed on 05.06.2020 praying for following reliefs:-

“i. Issue a writ in the nature of Mandamus or any other appropriate writ, direction or order a forthwith ban on the usage, installation, production, advertisement of disinfection tunnels involving spraying or fumigation of chemical disinfectants for the purposes disinfecting human being and/or

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ii. Issue a writ in the nature of Mandamus or any other appropriate writ, direction or order a forthwith ban on usage, installation, production, advertisement of disinfection tunnels involving spraying or fumigation of organic disinfectants for the purposes disinfecting human beings and/or

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iii. Issue a writ in the nature of Mandamus or any other appropriate writ, direction or order a forthwith ban on the usage, installation, production, advertisement of disinfection tunnels exposing human beings to ultraviolet rays for the purposes disinfecting them and/or

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iv. To pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case”

5. The petitioner in the writ petition referred to and relied the advisory dated 18.04.2020 and has also referred to press release dated 23.04.2020 issued by CSIR-NCL,Pune-ICT,Mumbai, where tunnels for external body surface sanitization of personal walk was recommended.

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6. The petitioner’s case in the writ petition is that although the Ministry of Health and Family Welfare, Government of India, has not approved the use of any self claimed organic or ayurvedic disinfectant for spraying or fumigation purposes nor approved any chemical disinfectants on human body but lot of organizations/public authorities are using chemical disinfectants for spraying and fumigation. Several

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- A instances in the writ petition of public authorities installing disinfecting tunnel has been given in the writ petition.
 - 7. Publication from World Health Organization has also been relied where it is clearly stated that spraying and introducing bleach or other disinfectant into body will not protect against Covid-19 and can be
- B dangerous. Quoting World Health Organization, it is pleaded that the Ultraviolet (UV Lamps) should not be used to disinfect the hands and other areas of the skin. Reference has also been made of advanced disinfectant tunnel developed jointly by Indian Institute of Technology, Kanpur and Artificial Limb Manufacturing Corporation of India.
- C 8. Articles questioning against the use of disinfectant tunnels have also been referred to and relied by the petitioner. Certain materials where different experts have recommended use of UV light and disinfectant tunnel has also been referred to. In view of several discordant note expressed by certain experts and organizations, the writ petition prayed for directions as quoted above.
- D 9. This Court issue notice to respondent Nos. 1-3 on 10.08.2020. No notice having been issued to the respondent Nos.4 to 6, they be deleted from the array of the parties. The respondent No.1 has filed a counter affidavit dated 01.09.2020 where advisory dated 18.04.2020 as well as minutes of meeting dated 09.06.2020 held under the chairmanship
- E of Director General Health Services, with regard to review on use of disinfection tunnel using various chemicals and spraying disinfectants have been brought on the record. Taking note of the meeting proceeding dated 09.06.200 where spraying disinfectant was not recommended by the minutes, This Court passed following order on 07.09.2020: -

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“ ORDER

- A counter affidavit has been filed on behalf of Union of India. In the counter affidavit at page 40 copy of meeting - Annexure ‘G’ dated 09.06.2020 has been brought on the record, where it has been decided that spraying disinfectants is not recommended.
- G Shri Tushar Mehta, learned Solicitor General submits that relevant directions and circulars shall be issued to all concerned.

As prayed by Shri Tushar Mehta, learned Solicitor General, list after two weeks.”

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10. After the aforesaid order, another affidavit titled as ‘Compliance affidavit dated 28.09.2020’ by respondent No.1 where O.M. dated 23.09.2020 has been brought on the record reiterating that spraying of individuals or groups with disinfectant using any modality is not recommended and hence, all States/Union Territories are directed to ensure that such practices are not implemented in the States/UTs.

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11. An additional affidavit has also been filed by respondent No.1 with regard to use of Ultraviolet (UV) rays to disinfect/sterilize edible items like fruits and vegetables. Petitioner has also filed consolidated rejoinder affidavit. An intervention application has also been filed by one Ideal Flow Pvt. Ltd. which claims to be a company which has developed and designed pressurized steam disinfectant chamber. The applicant submits that in designed pressurized steam disinfectant chamber, natural oils are mixed in an emulsifier solution. Applicant claims that the product has various health benefits. Applicant further submitted that there is a major difference between disinfectant tunnels spraying chemical disinfectant and pressurized disinfection chamber, any blanket ban as sought in the writ petition may seriously impact the business of the applicant, in light of the major difference of the applicant’s product from that of disinfection tunnel mentioned in the writ petition.

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12. We have heard the petitioner appearing in person, Shri Tushar Mehta, learned Solicitor General for the respondents and Smt. Anita Shenoy, Senior Advocate for the intervenor.

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13. The petitioner submits that although the Ministry of Health & Family Welfare, the respondents No.1 through its advisory dated 18.04.2020 had stated that spraying of disinfectant on human being is not recommended but Union of India has not taken any step to stop use, advertisement and sale of chemical based disinfection tunnels. The petitioner submits that there is no study anywhere in the world by any credible health agency which states that human disinfection tunnels are effective against Covid-19 virus. On the contrary, there are sufficient health advisories by the WHO, respondent No.1 and other international agency that tunnels are counter productive and harmful for human health. There has been no advisory issued by respondent No.1 which recommends usage of any organic solution for spraying on human body against Covid-19 pandemic.

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- A 14. The petitioner submits that in absence of any recommendation of health authorities, there is a trend across the Country where people are producing self-certified so called safe disinfection tunnels with variety of organic solutions. The petitioner submits that the concept of "human disinfection" through walk in tunnel is flawed and misconceived and be not permitted at any cost in light of Right to Health under Article 21 of the Constitution.
- B 15. Shri Tushar Mehta, learned Solicitor General, submits that answering respondent No.1 had not issued any advisory for usage, installation, production, advertisement of disinfection tunnel involving spraying or fumigation of chemicals/organic disinfectants for the purpose of disinfecting human beings. Learned Solicitor General has referred to advisory dated 18.04.2020 issued by respondent No.1. It is further submitted that in the meeting held on 09.06.2020 under the Chairmanship of Director General Health Services, review on use of disinfection tunnel was made and it was reiterated that spraying disinfectant is not recommended in both health care and non-health care settings. Shri Mehta submits that the States/UTs have to implement the guidelines dated 18.04.2020 and the role of the Government of India is limited to providing necessary guidelines and financial support.
- C 16. Learned counsel for the intervenor has submitted that the product which is being designed by the applicant does not use any chemical as human disinfectant rather it uses natural oil which promotes health. The applicant opposes any blanket ban on the use of such products for human disinfection.
- D 17. We have considered the submission of learned counsel for the parties and perused the record.
- E 18. The writ petition raises following three questions:-
- F I) Whether spraying or fumigation of any kind of chemical disinfectants on human beings without the approval of the relevant ministry is violative of Article 21?
- G II) Whether spraying or fumigation of any kind of self-claimed organic disinfectant on human beings without the approval of the relevant Ministry is violative of Article 21?
- H III) Whether exposure of human beings to artificial ultraviolet rays is violative of Article 21?

All the above questions being inter-connected are being taken A together.

19. Article 21 of the Constitution provides for protection of life and personal liberty. The expression ‘life’ used in Article 21 has wide import and connotation. Article 21 encompasses a bundle of rights which have been recognized from time to time by the legislature of this Country and Courts of this Country including this Court. Right to life as recognized under Article 21 is Right to live with dignity. Right to health is also recognized as an important facet of Article 21 of the Constitution. We may refer to pronouncement of this Court in *Devika Biswas versus Union of India and others, (2016) 10 SCC 726*, where this Court held that Right to Health is an integral facet of Right guaranteed under Article 21 of the Constitution. In paragraph 107 of this Court dealing with Right to Health laid down following: -

“**107.** It is well established that the right to life under Article 21 of the Constitution includes the right to lead a dignified and meaningful life and the right to health is an integral facet of this right. In CESC Ltd. v. Subhash Chandra Bose dealing with the right to health of workers, it was noted that the right to health must be considered an aspect of social justice informed by not only Article 21 of the Constitution, but also the Directive Principles of State Policy and international covenants to which India is a party. Similarly, the bare minimum obligations of the State to ensure the preservation of the right to life and health were enunciated in *Paschim banga Khet Mazdoor Samity vs. State of W.B.*”

20. In the present case, Right to Health under consideration is in wake of pandemic Covid-19. The provisions of Disaster Management Act, 2005(hereinafter referred to as Act, 2005) has been invoked to combat Covid-19 by different authorities constituted under Act, 2005. Covid-19 is a notified disaster for the purposes of the Act, 2005 by the Government of India.

21. The Act, 2005, is an act for effective management of disasters and matters connected therewith and incidental thereto. Disaster Management includes prevention of danger/threat of a disaster, mitigation or reduction of risk of a disaster, preparedness to deal with the disaster and prompt response to any threatening disaster situation or disaster

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- A etc.. Under Section 3, National Disaster Management Authority is established for the purposes of the Act. Section 8 provides for the constitution of National Executive Committee. Section 10 deals with powers and function of National Executive Committee. The National Executive Committee is to assist the National Authority in discharge of its functions and have the responsibility for implementing the policies and plans of the National authority and ensure the compliance of the directions issued by the Central Government for the purposes of the Central Government. Sub-Section (2) of Section 10 enumerates various powers and functions of the National Executive Committee. Section 10 which is relevant for this case is as follows: -
- C **“10. Powers and functions of National Executive Committee.—**
 - (1) The National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country.
 - (2) Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may—
 - (a) act as the coordinating and monitoring body for disaster management;
 - (b) prepare the National Plan to be approved by the National Authority;
 - (c) coordinate and monitor the implementation of the National Policy;
 - (d) lay down guidelines for preparing disaster management plans by different Ministries or Departments of the Government of India and the State Authorities;
 - (e) provide necessary technical assistance to the State Governments and the State Authorities for preparing their disaster management plans in accordance with the guidelines laid down by the National Authority;
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- (f) monitor the implementation of the National Plan and the plans prepared by the Ministries or Departments of the Government of India; A
- (g) monitor the implementation of the guidelines laid down by the National Authority for integrating of measures for prevention of disasters and mitigation by the Ministries or Departments in their development plans and projects; B
- (h) monitor, coordinate and give directions regarding the mitigation and preparedness measures to be taken by different Ministries or Departments and agencies of the Government; C
- (i) evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation or disaster and give directions, where necessary, for enhancing such preparedness; D
- (j) plan and coordinate specialised training programme for disaster management for different levels of officers, employees and voluntary rescue workers; E
- (k) coordinate response in the event of any threatening disaster situation or disaster; F
- (l) lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster; G
- (m) require any department or agency of the Government to make available to the National Authority or State Authorities such men or material resources as are available with it for the purposes of emergency response, rescue and relief; H
- (n) advise, assist and coordinate the activities of the Ministries or Departments of the Government of India, State Authorities, statutory bodies, other governmental or non-governmental organisations and others engaged in disaster management;
- (o) provide necessary technical assistance or give advice to the State Authorities and District Authorities for carrying out their functions under this Act;

- A (p) promote general education and awareness in relation to disaster management; and

(q) perform such other functions as the National Authority may require it to perform.”

B 22. The powers under sub-section (2) of Section 10 clauses (i) and (l) of Act, 2005, have been delegated to Secretary, Ministry of Health and Family Welfare, Government of India, by notification dated 11.03.2020. The Notification dated 11.03.2020 is as follows:-

“ORDER

- C In exercise of the powers conferred under Section 69 of the Disaster Management Act, 2005, Union home Secretary being Chairman of the National Executive Committee(NEC) hereby delegates its power under clauses (i) and (l) of sub-section (2) of Section 10 of the Disaster Management Act, 2005 to Secretary, Ministry of Health and Family Welfare, Government of India to enhance the preparedness and containment of novel Coronavirus(COVID-19) and the other ancillary matters connected thereto. This order shall be deemed to have come into effect from 17th January, 2020.

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(Sanjeev Kumar Jindal)
Joint Secretary to the
Government of India”

- F 23. Thus it is the Secretary, Ministry of Health and Family Welfare, who had to lay down the guidelines or give directions to the concerned Ministries or Departments of Government of India, the State Governments and State Authorities regarding measures to be taken by them in response to any disrupting situation or disaster. The Pandemic has threatened the health of entire citizenry of the country and all facets relating to pandemic Covid-19, its prevention, mitigation and cure are to be dealt with and taken care of authorities empowered with different duties and functions under different statutes including Disaster Management Act, 2005.

- G** 24. We may first refer to the advisory dated 18.04.2020 which was issued against spraying of disinfectant on people for Covid-19 management. The advisory dated 18.04.2020 states: -

“Advisory against spraying of disinfectant on people for COVID-19 management

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Ministry of Health & Family Welfare has received many queries regarding the efficacy (if any) of use disinfectants such as Sodium hypochlorite spray used over the individuals to disinfect them. The strategy seems to have gained of lot of media attention and is also being reportedly used at local levels in certain districts/local bodies.

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Purpose of the document

To examine the merit of using disinfectants as spray over human body to disinfect them from COVID-19 and to provide appropriate advisory

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Disinfectants are chemicals that destroy disease causing pathogens or other harmful microorganisms. It refers to substances applied on inanimate objects owing to their strong chemical properties.

Chemical disinfectants are recommended for cleaning and disinfection only of frequently touched areas/surfaces by those who are suspected or confirmed to have COVID-19. Precautionary measures are to be adopted while using disinfectants for cleaning – like wearing gloves during disinfection.

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In view of the above, the following advisory is issued:

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- Spraying of individuals or groups is NOT recommended under any circumstances. Spraying an individual or group with chemical disinfectants is physically and psychologically harmful.

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- Even if a person is potentially exposed with the COVID-19 virus, spraying the external part of the body does not kill the virus that has entered your body. Also there is no scientific evidence to suggest that they are effective even in disinfecting the outer clothing/body in an effective manner.

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- Spraying of chlorine on individuals can lead to irritation of eyes and skin and potentially gastrointestinal effects such as nausea and vomiting. Inhalation of sodium hypochlorite can lead to irritation of mucous membranes to the nose, throat, respiratory tract and may also cause bronchospasm.

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- Additionally use of such measures may in fact lead to a false sense of disinfection & safety and actually hamper public

- A observance to hand washing and social distancing measures.”

25. Even though the above advisory was issued by Directorate General of Health Services not recommending spraying of disinfectant on people for Covid-19 management but several contrary opinion have been expressed by other bodies and organisations. In this context,

B reference has been made to the joint Press Release dated 23.04.2020 by NCL (CSIR). The Press Release dated 23.04.2020 states:-

“Publication and Science Communication Unit

Press release April 23, 2020

- ## **C Safe concentration of disinfectant in walk through spray tunnels and their scientific design**

Joint Press Release: CSIR-NCL Pune and ICT Mumbai

CSIR–National Chemical Laboratory (CSIR-NCL), Pune evaluated various concentrations of sodium hypochlorite to find effective chemical disinfectants for the mist sanitization system.

- The use of mist-based sanitization is expected to provide safeguards to frontline healthcare professionals, including paramedic staff, police, and employees providing essential services. These people are more likely to get the infection and unknowingly spread arising from various sources. A lot of advisories have appeared against the use of such tunnels from various agencies, which does not have any scientific basis.

Efficacy of sodium hypochlorite, also known as hypo or bleach, ranging from 0.02% to 0.5% weight concentration was studied

- F on personnel walking through mist tunnel unit, besides antibacterial activity against standard microorganisms before and after exposure in the walk through. Results indicated that 0.02% to 0.05% weight concentration did not show an adverse effect on normal skin flora and yet destroyed the standard microbes. Thus, we recommend using 0.02% -0.05 wt. % sodium hypochlorite solution (200 to 500 ppm) for external body surface sanitization of personnel walk through the mist tunnel by following standard safety precautions”

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26. The petitioner has also referred to in the writ petition various articles where different experts have recommended for effective

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sanitization amid Covid-19 pandemic by disinfection tunnels, different studies for and against disinfectment of human body has been referred to and relied in the writ petition.

27. After Notice was issued in the petition, the counter affidavit was filed. In the Counter affidavit respondent No.1 has also brought on record the minutes of the meeting dated 09.06.2020 chaired by Director General Health Services where review was made on the use of disinfection tunnels. Observations as recorded in the minutes are as follows:-

“1. Use of disinfection tunnel

The matter of spraying of disinfectant on people for COVID-19 management was discussed in the Joint Monitoring Group and an advisory in this regard has been issued by MOHFW/DGHS, EMR Division which is available on the website of the ministry. It clearly states the following:

“Spraying of individuals or groups is NOT recommended under any circumstances. Spraying an individual or group with chemical disinfectants physically and psychologically harmful.

- Even if a person is potentially exposed with the Covid-19 virus, spraying the external part of the body does not kill the virus that has entered your body. Also there is no scientific evidence to suggest that they are effective even in disinfecting the outer clothing/body in an effective manner.
- Additionally use of such measures may in fact lead to a false sense of disinfection and safety and actually hamper public observance to hand washing and social distancing measures.

It is reiterated that spraying of individuals with disinfectants (such as tunnels, cabinets, chambers, etc.) is **not recommended**. This could be physically and psychologically harmful and would not reduce an infected person’s ability to spread the virus through droplets or contact. Moreover, spraying individuals with chlorine and other toxic chemicals could result in eye and skin irritation, bronchospasm due to inhalation, and gastrointestinal effects such as nausea and vomiting.

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A **2. Use of Chemicals**

As per the advisory by MOHFW/DGHS, EMR Division:

- B Chemical disinfectants are recommended for cleaning and disinfection only of frequently touched areas/surfaces by those who are suspected or confirmed to have COVID-19. Precautionary measures are to be adopted while using disinfectants for cleaning – like wearing gloves during disinfection.
- C Spraying of chlorine on individuals can lead to irritation of eyes and skin and potentially gastrointestinal effects such as nausea and vomiting. Inhalation of sodium hypochlorite can lead to irritation of mucous membranes to the nose, throat, respiratory tract and may also cause bronchospasm.
- D The chemicals such as freshly prepared 1% sodium hypochlorite or 70% ethanol etc., are to be used as indicated, to disinfect inanimate surfaces using mops/wipes for the recommended contact time.

3. Spraying disinfectants:

- E Spraying disinfectants is **not recommended** in both health care and non health care settings.
- F In indoor spaces, routine application of disinfectants to environmental surfaces by spraying or fogging (also known as fumigation or misting) is not recommended for COVID-19 as the disinfectants may not be effective in removing organic material and may miss surfaces shielded by objects, folded fabrics or surfaces with intricate designs. If disinfectants are to be applied, this should be done with a cloth or wipe that has been soaked in disinfectant.
- G Spraying or fumigation of outdoor spaces, such as streets or marketplaces, is also not recommended to kill the COVID-19 virus or other pathogens because disinfectant is inactivated by dirt and debris and it is not feasible to manually clean and remove all organic matter from such spaces. Moreover, spraying porous surfaces, such as sidewalks and unpaved walkways, would be even less effective. Even in the absence of organic matter, chemical spraying is unlikely to adequately cover all surfaces for the duration of the
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required contact time needed to inactivate pathogens. Furthermore, A streets and sidewalks are not considered to be reservoirs of infection for COVID-19. In addition, spraying disinfectants, even outdoors, can be harmful for human health.

The committee referred to the document of the World Health Organisation on ‘Cleaning and disinfection of environmental B surfaces in the context of COVID-19.’

28. It is further relevant to notice that in paragraph 13 of the affidavit dated 01.09.2020, following statement has also been made:

“13. It is most respectfully submitted that as public health and hospitals are State subject, it is for the States/Union Territories to implement the guidelines issued by the Ministry of Health and Family Welfare and the role of Government of India is limited to providing necessary guidance and financial support.

....”

29. From the pleadings brought on record on behalf of respondent No.1, it is clear that although by the advisory by respondent No.1, spraying of disinfectant on human body is not recommended but respondent No.1 has not taken any further steps in the above context taking any measure either to prevent or regulate the spraying of disinfectant on the human body.

30. We have noted above the powers and functions of National Executive Committee under Section 10 of the Act, 2005, which specifically empowers the National Executive Committee to give directions regarding measures to be taken by the concerned ministry and departments of the Government, State Governments and State Authorities in response to the threatening situation or disaster.

31. Section 36 of the Act, 2005, expressly enumerates the responsibilities of Ministries and departments of the Government of India. Section 36 which is relevant for the case is as follows: -

“36. Responsibilities of Ministries or Departments of Government of India.—It shall be the responsibility of every Ministry or Department of the Government of India to—

(a) take measures necessary for prevention of disasters, mitigation, preparedness and capacity building in accordance with the guidelines laid down by the National Authority;

- A (b) integrate into its development plans and projects, the measures for prevention or mitigation of disasters in accordance with the guidelines laid down by the National Authority;
- B (c) respond effectively and promptly to any threatening disaster situation or disaster in accordance with the guidelines of the National Authority or the directions of the National Executive Committee in this behalf;
- C (d) review the enactments administered by it, its policies, rules and regulations, with a view to incorporate therein the provisions necessary for prevention of disasters, mitigation or preparedness;
- C (e) allocate funds for measures for prevention of disaster, mitigation, capacity-building and preparedness;
- C (f) provide assistance to the National Authority and State Governments for—
- D (i) drawing up mitigation, preparedness and response plans, capacity-building, data collection and identification and training of personnel in relation to disaster management;
- D (ii) carrying out rescue and relief operations in the affected area;
- E (iii) assessing the damage from any disaster;
- E (iv) carrying out rehabilitation and reconstruction;
- F (g) make available its resources to the National Executive Committee or a State Executive Committee for the purposes of responding promptly and effectively to any threatening disaster situation or disaster, including measures for—
- G (i) providing emergency communication in a vulnerable or affected area;
- G (ii) transporting personnel and relief goods to and from the affected area;
- G (iii) providing evacuation, rescue, temporary shelter or other immediate relief;
- G (iv) setting up temporary bridges, jetties and landing places;
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(v) providing, drinking water, essential provisions, health care, A and services in an affected area;

(h) take such other actions as it may consider necessary for disaster management.”

32. When respondent No.1 has issued advisory that use of disinfectant on human body is not recommended and it has been brought into its notice that despite the said advisory, large number of organizations, public authorities are using disinfectants on human body, it was necessary for the respondent No.1 to issue necessary directions either to prevent such use or regulate such use as per requirement to protect the health of the people. The provisions of Disaster Management Act, Section 10, 36 and other provisions are not only provisions of empowerment but also cast a duty on different authorities to act in the best interest of the people to sub-serve the objects of the Act.

33. We have extracted paragraph 13 of the Counter Affidavit where it has been stated by the respondent No.1 that public health and hospitals, it is for the States/UTs to implement guidelines by the Ministry of Health and Family Welfare and role of the Central Government is limited to provide necessary guidelines and financial support.

34. No exception can be taken to the above pleading but the provisions of the Act, 2005, confer certain more responsibilities and duties on the respondent No.1 apart from issuance of guidelines and providing financial support. The Act, 2005, is special legislation containing self-contained provisions to deal with a disaster. The Pandemic being a disaster within the meaning of Act, 2005, has to be dealt with **sternly** and effectively.

35. We have no doubt that the Union and the States are taking all measures to contain the pandemic and all mitigating steps but the facts which have been brought on record in this writ petition indicate that in the present case, something more was required to be done by respondent No.1 apart from issuing advisory that use of disinfectant on human body is not recommended. When public authorities/ organizations were using disinfectants both chemical/organic on the human body and there are various studies to the effect that it may be harmful to the health and the body. Some more actions were required to remove the cloud of uncertainty and to regulate the use even if it was to either prevent such use or regulate the use so that health of citizens is amply protected.

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- A 36. When a statute confer power on authority and that power is to be exercised for the benefit of the people in general, the power is coupled with the duty. This Court in ***Commissioner of Police versus Gordhandas Bhanji, AIR 1952 SC 16***, speaking through Vivian Bose,J., had laid down the off-quoted preposition in paragraph 28: -
- B “28. The discretion vested in the Commissioner of Police under R.250 has been conferred upon him for public reasons involving the convenience, safety, morality and welfare of the public at large. An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor it be evaded, performance of it can be compelled under S.45.”
- C 37. This Court again in ***L.Hirday Narain versus Income Tax Officer, Bareilly, (1970) 2 SCC 355***, reiterated the same principle in following words: -
- D “13....if a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist.
- E Even if the words used in the statute are *prima facie* enabling the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right-public or private- of a citizen.”
- F 38. Justice V.R. Krishna Iyer had elaborately dealt the above principle in ***Municipal Council, Ratlam versus Shri Vardichan and others, (1980) 4 SCC 162***. The above case was a case where Municipal Council Ratlam was entrusted with certain duties to the public which was sought to be enforced by the residents through Section 133 Cr.P.C. where Magistrate issued certain directions to the Municipal Corporation which came to be challenged in this Court. **Justice Krishna Iyer quoting Benjamin Bisrailey**, in paragraph 9 of the judgment stated: -
- G “9.”All power is a trust – that we are accountable for its exercise – that, from the people, and for the people, all springs, and all must exist.” Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise.”
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39. With regard to judicial process, important observations were made by this Court in the above case that affirmative action taken in the judicial process is to make remedy effective failing which the right becomes sterile. In paragraph 16 of the judgment, following observations have been made: -

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“16...The nature of the judicial process is not purely adjudicatory nor is it functionally that of an umpire only. Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile...”

40. Justice Krishna Iyer also laid down that improvement of public health is paramount principle of governance. In paragraph 24, following has been observed: -

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“24. ...The State will realise that Article 47 makes it a paramount principle of governance that steps are taken ‘for the improvement of public health as amongst its primary duties’...”

41. An additional affidavit has been filed by the respondent No.1 where details regarding use of Ultraviolet UV rays disinfectant/sterilize edible food items like fruits and vegetables has been quoted. In additional affidavit, rules have been relied namely ‘Atomic Energy (Radiation Processing of Food and Allied Product) Rules,2012’, which rules require that no person shall operate the facility without obtaining a license for radiation processing of food and allied products under the Rules. Facility has been defined as radiation processing facility for food and allied product. There are hosts of regulatory measures of radiation for use of UV rays with regard to food and other articles. We are of the view that for spraying disinfectant on human body, fumigation or use of UV rays against the human body, there has to be regulatory regime when respondent No.1 itself is of the view that such use is not recommended. The respondent No.1 has wide powers and responsibilities under Act, 2005, which could have been utilized to remedy the situation. In event, use of disinfectant on human body is to cause adverse effect on the health of the people, there has to be immediate remedial action and respondent No.1 cannot stop only by saying that such use is not recommended.

42. In view of the foregoing discussion, we are of the view that ends of justice be served in disposing the writ petition by issuing the following directions:-

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- A i) The respondent No.1 may consider and issue necessary directions in exercise of powers vested in it under the Disaster Management Act, 2005, regarding ban/Regulation on the usage of disinfection tunnels involving spraying or fumigation of chemical/ organic disinfectants for the human beings.
- B or
- ii) There shall be similar consideration and directions by the respondents as indicated above with regard to exposure of human being to artificial ultraviolet rays.
- C iii) Looking to the health concern of the people in general, the aforesaid exercise be completed by respondent No.1 within a period of one month.

Ankit Gyan

Writ petition disposed of.