

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Before :

Hon'ble Thottathil B. Radhakrishnan, the Chief Justice

And

Hon'ble Justice Dipankar Datta

Dated : 1st April, 2020

W.P. No.5324(W) of 2020

Court on its own motion :

In Re : COVID 19 - Relief and services at the Andaman and Nicobar
Islands (Letter dated 27th March, 2020 received from Mr. D. C.
Kabir, Advocate, treated as a petition)

Mr. D. C. Kabir letter petitioner, in person
Mr. A. N. S. Nadkani Additional Solicitor General
Mrs. G. Indira, Advocate, Mr. K.V. Jagadishvaran, Advocate & Mr. Santosh, AdvocateFor the UoI/UT Administration
Mr. S. K. De in person Secretary (Law), UT Administration,

The Court : The invisible virus (COVID – 19) has been wreaking havoc all over the country. It is indeed unfortunate that the virus has spread even to the Andaman Islands, flanked by the Bay of Bengal and the Andaman Sea, at a distance in excess of 1500 kms. from the mainland.

2. Treating a letter dated March 27, 2020 received from Mr. D.C. Kabir, Advocate (expressing deep concern at the possible spread of infection caused by the virus, if urgent measures were not taken at the earliest) as a petition under Article 226 of the Constitution, *suo motu* proceedings were initiated. By an order dated March 28, 2020, we required a response from the Union of India/Union Territory Administration on the contents of such letter petition, in the form of a report. A Monitoring Committee (hereafter 'the MC') was also constituted to make an overall assessment of all relevant factors including supply of essentials and availability of other support mechanisms for the people stationed at the islands, with direction to submit a report. Such reports were directed to be forwarded by email to the Registrar General of this Court by March 30, 2020 and the writ petition made returnable today.

3. Pursuant to the said order, the Chief Secretary, Andaman and Nicobar Administration (hereafter 'the CS') and the MC have forwarded their respective reports. The same are taken on record.

4. We further record having received a report from the letter petitioner dated March 30, 2020. A supplementary report dated March 30, 2020 has also been received from the President, Andaman and Nicobar Islands Bar Association (hereafter 'the BA President'), who is also a member of the MC. These reports are also taken on record.

5. We have perused the reports with the care and attention the same deserve.

6. We have also heard today Mr. Kabir and Mr. Nadkarni, the learned Additional Solicitor General, through video conference.

7. Mr. Kabir has highlighted 6 (six) points of concern which, according to him, require to be immediately addressed by the administration for the benefit of the islanders during the period of the lockdown announced by the Prime Minister of the country, albeit agreeing that things in Port Blair are much more organized than before judicial intervention ensued. We propose to touch upon those points of concern in this order.

8. Appearing for the Union Territory Administration, Mr. Nadkarni submitted that the situation in the islands, much prior to detection of patients infected with the virus, is under close monitoring by the Ministry of Home Affairs of the Central Government as well as the Prime Minister's office and that no stone would be left unturned to ensure that such situation does not go beyond control. Instructions to suit the peculiar needs of the islanders are being constantly issued together with supplies of essentials, medicines and health care equipments and officers at all levels posted in the islands, irrespective of status and position, have been engaged in activities to benefit the people they serve. Because of the unprecedented situation, number of restrictions have been put in place hindering individual interests to certain

extent but such interests, he submitted, must ultimately yield to the larger public interest having regard to the mammoth task that the administration is faced to accomplish. The report of the MC was referred to, which suggested that there were ample stocks to take care of the islanders for the next 3 (three) months. This, not being an adversarial litigation, he appealed that all concerned involved in it as well as the people of the islands have to fight unitedly to combat the dreadful virus.

9. Due to connectivity problems, the points of concern raised by Mr. Kabir reportedly were not completely audible to Mr. Nadkarni. Very fairly, Mr. Nadkarni submitted that Mr. Kabir may feel free to share with Mr. Nadkarni whatever is needed at the islands and all out efforts to bring about just results would be endeavoured at the end of the administration.

10. The members of the MC, in their "first report", have reported on the stock of essentials that are presently available and are expected to be available in the next couple of days. Reference has been made to overcrowding on the streets of Port Blair once shops were opened on March 29, 2020 for people to make purchases therefrom. According to them, such overcrowding would be counter productive in the sense that it might frustrate the attempts made by the administration to contain the spread of infection by insisting on 'social distancing'. Consequently, they have reiterated the need for providing essentials to the members of the public by resorting to home delivery. Regarding supply of medicines to ailing people and availability of doctors, the

report does not indicate anything of an alarm. People with major health issues are being allowed access to the hospital while those having minor illness are receiving medical advice on phone. However, the report seems to be silent on the stock of medicines available at the islands including protective kits like masks, sanitizers, disinfectants, etc. So far as fuel is concerned, certain restrictions have been imposed but all are intended for the larger interests of the masses. Other support mechanisms are also reportedly in place to meet any eventuality and the administration is fully geared up to combat any crisis situation.

11. Till date, there are 10 (ten) positive reports of patients having been infected with the virus. No doubt, it is alarming considering the area and the populace under consideration. The only saving grace is that all but one of them, reportedly, belong to the same family and have been kept in isolation upon identification, thereby reducing the possibility of a community spread. That apart, 1524 (fifteen hundred twenty four) patients are under home-quarantine. It is revealed from the report of the CS that measures, considered appropriate in the circumstances, have been undertaken by the administration to contain the spread of the virus from the infected patients. We hope and trust that such measures, as are warranted, shall be continued as part of the process to avert any crisis.

12. The report of the CS further proceeds to disclose in some details the preventive and preemptive steps that have been taken by the

administration in terms of the guidelines/advisories issued from time to time by the appropriate authorities under statutory provisions to prevent entry of the disease in the islands and its spread by insisting on compliance with 'social distancing' norms. Although the entry could not be avoided for reasons beyond the control of the administration, ensuring public safety has been its prime concern together with making provisions for supply of essential commodities at the doorstep of the islanders through officers across the islands. Insofar as far flung villages and remote islands are concerned, the gram Pradhans and the village Captains have been taken into confidence and supplies organized through them within their respective hamlets, habitation and islands. According to the CS, the local administration has done virtually everything in its capacity to keep the public informed of all the decisions that were and are being taken for their benefit and all out efforts are being made speedily on multiple fronts with a view to achieving the twin objectives of preventing a graver threat to the safety of the entire community through probable community transmission and ensuring maintenance of the supply chain of essential commodities/supplies.

13. The efforts and initiatives of the administration, in these trying times, need to be appreciated instead of picking bits and pieces of faults/remissness, here and there, in working out the relief programmes and highlighting the same for condemnation. A problem of such magnitude, as the present one, was never visualized. The misery is compounded by reason of

what the CS says, and correctly so, a fight against the unseen enemy. While recording our *prima facie* satisfaction with regard to whatever has been attempted and achieved in respect of containment of the disease and its spread as well as maintenance of supplies of essentials, we propose to make necessary directions at the concluding part of this order bearing in mind certain areas of concern highlighted by Mr. Kabir in his report and in course of the submissions made by him before us today as well as the report of the BA President, which the reports of the CS and the MC evidently do not address in full measure, possibly due to lack of time or other genuine reason.

14. Though we are conscious that the officers at the ground level must be performing their functions and discharging their duties overcoming numerous obstacles, which *prima facie* might have been considered insurmountable having regard to the facilities available in the islands or the lack of it, and that they could be severely stressed by reason of what they have encountered during the last few weeks, the report of the CS insofar as it indirectly faulted judicial intervention (page 3) left a bad taste in our mouth. The same was pointed out to Mr. Nadkarni. While being apologetic, he did concede that the language employed by the CS was not in good taste and that the CS ought to have been more careful.

15. We wish to restate and remind all concerned, including the officers of the executive, that the judiciary is one organ of the State, which is regarded the country over for its independent and non-partisan approaches to problems.

As an institution, it is there to supplement and complement the executive in times of dire need and in reality, as in the present case, has intervened to support the system rather than putting a spanner in the works (as we perceive is the mindset of the CS). Citing "*the sudden orders of the Hon'ble Court*" as one of the reasons for allowing the public to come on the streets could well have been avoided, since there was no such direction in our earlier order. We reckon, our efforts have been misconstrued by the CS.

16. Be that as it may, the grim situation that was allegedly prevailing in the islands (highlighted by the letter petitioner) as per his admission, which is now available on record, has changed for the better to a fair extent in and around Port Blair. The supplementary report of the BA President is also to the same effect. Obviously, there are certain areas of concern pointed out by both of them (primarily with regard to North and Middle Andamans, Little Andaman and the Nicobar group of islands) which require to be addressed.

17. In an unprecedented situation such as the present one ~ which though is yet not comparable with the devastation brought about by the tsunami that rattled the islands on a winter morning of December, 2004 ~ each one of us, whether it be the executive, the judiciary or the civil society, have to work hand in hand to avert any further disaster, which might spell doom for the islands. It cannot be over-emphasized that only a united effort can ensure tackling of the myriad problems arising from different quarters because of the spread of the virus. To that end, we must secure our means.

18. We grant liberty to Mr. Kabir to convey his concerns to Mr. Nadkarni for him to look into it and suitably advise the Central Government on what is required to be done in respect thereof.

19. We have little doubt in our minds that the administration shall look into the concerns expressed and take whatever steps that the situation would warrant to ameliorate the difficulties/inconveniences that the islanders are facing because of the unforeseeable but unavoidable lockdown.

20. We direct the registry to forward to the CS via email, by tomorrow, the reports of Mr. Kabir and the BA President, both dated March 30, 2020, for the CS to look into the same and take such steps/measures as are warranted on facts and in the circumstances. At the same time, the reports of the CS, the MC and the BA President shall be made over to Mr. Kabir adopting similar mode.

21. Although the administration seems to be conscious of what is required having regard to the ground realities, we feel inclined to make certain interim directions, for the present and subject to further orders being passed on this writ petition, to ensure containment of the virus to the extent possible and at the same time to minimize the anxiety and agony of the islanders, as follows :

- (a) 'social distancing' is non-negotiable till April 14, 2020 and the administration shall see to it that there is no slip in regard to compliance with such norms;
- (b) the administration shall continue its endeavour to provide home delivery of essentials and medicines to the members of the public wherever possible and in such manner it deems fit and proper;
- (c) in areas where such home delivery is not possible, shops may be allowed to be opened for a few hours for restricted functioning;
- (d) supply of drinking water should be ensured in all localities by the concerned local authority, be it Municipal Corporation or Panchayat or the like;
- (e) access of LPG to households should be ensured commensurate with the supplies at hand;
- (f) transportation of perishables and local produce from the nearby islands [viz., vegetables from Shaheed Dweep (Neil)] should be expedited, lest they rot in hot weather conditions;
- (g) collection of milk and milk produce by employing adequate hands and vehicles from places near to Port Blair ought to be made operational;
- (h) helicopter and shipping services should be utilized only for essential services, which would also include transportation on medical ground;
- (i) personal protective equipment (PPE), masks, alcohol based sanitizers, disinfecting chemicals and all such substances required by the

healthcare professionals, who are at the forefront of battling the outbreak, must be provided as early as possible and for this purpose, the CS shall notify the Central Government immediately of its needs/requirements, if not already notified, and the appropriate department in the Central Government shall leave no stone unturned to meet the requisition without any delay by flying the same to Port Blair;

- (j) proper hygienic conditions in the hospitals, nursing homes, clinics, health centres, etc. have to be ensured at any cost, lest the medical and para-medical staff fall prey to the virus;
- (k) the concern expressed by a member of the staff of the hospital (Annex. 4 to Mr. Kabir's report) must be looked into seriously and remedial action taken, for, if suspects are not appropriately tested to avoid creating panic, the healthcare workers would be exposed to the dangers of the virus which is not at all desirable;
- (l) senior citizens being most vulnerable to the attack of the virus, their other ailments, viz. diabetes, blood pressure, cardiac and renal problems, etc. need to be checked and kept under control to prevent them from being infected and hence, necessary medicines for cure of such ailments must be made available in sufficient quantity at all times, depending on supplies;

- (m) the administration shall take special care to ensure that there is no spread of the virus amongst the vulnerable local indigenous communities, like the Jarawas, the Onges, the Shompens and the like;
- (n) local authorities may not ignore the need to clear waste and garbage, for, as and when they pile up, they have the potential of generating newer problems and, thus, it is imperative to have men and material placed for timely clearance of the same;
- (o) measures to sanitize public areas such as bus terminals, jetties, shops (opened to provide essential supplies) as well as petrol pumps, should be undertaken at such regular intervals as the administration deems appropriate;
- (p) banks and financial institutions may be kept open, albeit with restricted access, to facilitate transactions of emergent nature;
- (q) the concerned authorities shall be directed by the administration to ensure uninterrupted internet connectivity, to the extent possible, keeping in mind that accessibility to internet is a facet of the right to life under Article 21 of the Constitution of India;
- (r) consignments dispatched through ships from any country having history of virus infection shall not be unloaded on any part of the islands unless such unloading has already commenced and in such a case, it is for the administration to decide, in its discretion, whether such unloading should be continued or not;

- (s) the stress and strain of police personnel on duty notwithstanding, we expect a humane approach from them while dealing with members of the public who are compelled to stray out for procuring essentials for dear life despite the lockdown without staying at home at all times but this may not be seen to dampen the spirits of those honest and sincere police personnel who are compelled to use the stick, being left with no other alternative, to maintain law and order in these difficult times;
- (t) the administration shall take due care of the hundreds of migrant workers at Port Blair and elsewhere by accommodating them in temporary shelter homes and by making provisions for their basic needs, to the extent possible, so long normalcy is not restored;
- (u) last, but not the least, the Central Government shall extend its fullest cooperation and assistance to the administration to prevent any loss of life in the islands, either due to the disease or starvation, and also ensure that all essential supplies are made available to the people through logistical support provided to the administration by responding to its calls without wasting much time.

22. Since it is evident from the report of the BA President that logistical constraints faced by the members of the MC disabled them to have an idea of what has been happening in North and Middle Andaman, Little Andaman and the Nicobar group of islands, we deem it appropriate to

constitute monitoring sub-committees to report to us on similar lines as per the requirement of the order dated March 28, 2020 as well as the directions contained in this order. The sub-committees for different regions shall be as under :

- (i) The Additional District and Sessions Judge, North Andamans and the Superintendent of Police, North Andamans for North and Middle Andamans;
- (ii) The administrative head of Little Andaman, by whatever called, and the Station House Officer, Hut Bay Police Station, for Little Andaman; and
- (iii) The Chief Judicial Magistrate, Car Nicobar, the Deputy Commissioner, Car Nicobar, and the Judicial Magistrate, Campbell Bay, if available, for the Nicobar group of islands.

23. We direct that further reports shall be forwarded to us through the Registrar General by the CS and the MC on the status of relief and services extended to the islanders in terms of the guidelines/advisories issued by the appropriate authorities as well as on implementation of the aforesaid directions, by April 7, 2020. Similar such reports shall be forwarded by the monitoring sub-committees constituted by this order.

24. The writ petition is made returnable on April 8, 2020, when it will be heard through video conference.

(Thottathil B. Radhakrishnan, Chief Justice)

(Dipankar Datta, J.)