

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) PIL no. 4/2020
(Through Video Conferencing
from Srinagar Wing)

Azra Usmail

.....Petitioner(s)

Through:- Mr. Faisal Qadri, Adv,
Ph. No.9419018022 (on Voice Call from his
residence at Srinagar)

Mr. Shah Faisal, Advocate,
(on Video Conference from residence in
Srinagar)

Mr Shafqat Nazir, Advocate
(on Video Conference from residence in
Srinagar)

Mr. Altaf Naik, Advocate
(on Video Conference from residence in
Srinagar)

Mr. Altaf Haqani, Advocate
(on Video Conference from residence in
Srinagar)

Mr. Ateeb Kanth, Advocate
(on Voice Call from Srinagar)

Mr. Taha Khalil, Advocate
(on Video Conference from residence in
Srinagar)

Mr. Hanan Momin, Advocate
(on Video Conference from residence in
Srinagar)

v/s

Union Territory of Jammu and Kashmir

.... Respondent(s)

Through:- Mr. Shah Amir, AAG,
Ph. No. 7006429903 (on Video
Conference from his residence at
Srinagar).

WP(C) PIL no. 5/2020
(Through Video Conferencing
in Jammu)

Court on its Own Motion

Ms. Monika Kohli, Amicus (on Video
Conference from her office at Jammu)

v/s

Union Territory of Jammu and Kashmir

.... Respondent(s)

Through:- Mr. Amit Gupta, AAG (on Video
Conference from his residence at Jammu)
for Govt. of UT of Jammu & Kashmir

Mr. Vishal Sharma, ASGI (on Video
Conference from his residence at Jammu)
for NIC

Mr. Ravinder Gupta, Advocate.
(on Video Conference from the office of
CGM, BSNL), for BSNL

Mr. Adarsh Sharma, Advocate
M.No. 9419135512 (on Video Conference
from his residence at Jammu), for Shri
Mata Vaishno Devi Shrine Board.

Mr. K. S. Johal, Sr. Advocate
(on Video Conference from his residence),
for Sardar Manjit Singh, Mahant,
Shiromani Dera Nangali Sahib,
Poonch

Mr Abhay Kumar, SIO NIC, J&K

Mr Shahzad Azim, Registrar IT (on
Video Conference from Jammu Wing of
High Court)

Mr Sanjeev Tyagi, Nodal Officer, BSNL
(On Video Conference from Office of CGM, BSNL)

Coram:

HON'BLE THE CHIEF JUSTICE (on Video Conference from residence at Jammu)

HON'BLE MR RAJNESH OSWAL (on Video Conference from residence at Jammu)

ORDER

1 This hearing is convened pursuant to our order dated 03rd April
2020.

2. We have been joined by Ms. Monika Kohli, learned Amicus
Curiae on video conference from her office. Mr. Ravinder Gupta, Adv for

BSNL and Mr Sanjeev Tyagi, Nodal Officer from the office of BSNL Mr. Vishal Sharma, ASGI and Mr. Amit Gupta, AAG have joined on video conferencing from their respective residences in Jammu.

Mr. Adarsh Sharma, Advocate has joined us on phone from his office. Mr. Abhay Kumar, SIO, NIC, J&K is on video conference from his office at Udhampur.

3. Additionally, we have been joined by Mr. Shah Amir, AAG on video conferencing from his residence in Srinagar. Mr. Faisal Qadri, advocate has joined us on voice call from Srinagar. Mr. Shah Faisal, Mr Shafqat Nazir, Mr. Salih Pirzada, Advocates for the petitioner have joined on video conferencing from Srinagar.

4. Pursuant to our last order, reports have been received on the issues which were flagged. We deal with them in seriatim.

I. Joining Stakeholders in decision making

5. Mr. Amit Gupta, learned AAG has placed a status report filed by Mr. Sajad Amin Shah, Additional Secretary, Health and Medical Education Department wherein a reference is made to a letter dated 6th April 2020 addressed to Principals, Government Medical Colleges of the Union Territory of Jammu and Kashmir and Director, Health Services, Kashmir through Jammu with regard to the directions made by this Court.

Let the action taken on this issue be placed before us by the Department of Health and Medical Education before the next date.

II. Needs of healthcare personnel

6. On this issue also, in his report Mr. Sajad Amin Shah, Additional Secretary, Health and Medical Education Department has referred to a letter dated 6th April 2020 addressed as above.

We may note that this is very important matter and needs urgent attention of the authorities.

Let the action taken report be placed before us by Secretary, Health Department positively.

III. Ensuring provision of care to dependants/families of healthcare personnel/government personnel/officials engaged in COVID-19 management

7. On this issue, a status report has been filed by the Principal Secretary of the Social Welfare Department, UT of Jammu and Kashmir. This report again refers to a mere Circular dated 8th April 2020 issued by him. Other than the circular, reference has been made to general measures taken in respect of people at large.

We have drawn the attention of the authorities to a specific issue regarding the welfare of “COVID-19 Warriors” which is required to be addressed on priority. We expect a specific response to the issues flagged by us in the order dated 3rd April, 2020.

The Principal Secretary, Social Welfare Department, UT of Jammu and Kashmir shall place the mechanism put in place and action taken on this issue. We expect to be informed about the implementation of this

mechanism and instances of specific assistance rendered to dependent(s) /family members of the personnel engaged in COVID-19 issues.

IV. Removal of Lockdown-desirable public response-provision of information

8. A report dated 8th April 2020 has been filed by the Director Information of the UT of Jammu and Kashmir through Mr. Rajesh Kumar Thapa, GA. This report refers to the manner in which the information shall be publicized.

9. However, neither the plan nor the information which is to be publicized has been conceptualised. A report in this regard was required to be placed by the Secretary, Department of Health and Medical Education, Jammu.

10. Let the Secretary, Health and Medical Education as also Member Secretary, Jammu and Kashmir State Legal Services Authority examine the concerns flagged by us in our order dated 3rd April 2020 and place a report before us.

11. We may point out that to implement any measure for the assistance, the Department of Social Welfare has to first compile details of the dependants of family members who need assistance. We have doubts that any such steps have been taken.

12. Additionally, Ms. Monika Kohli, learned Amicus Curiae has drawn our attention to the large amount of information including important telephone numbers which have been detailed in the report filed by the

Principal Secretary to the Government, Social Welfare Department. Ms. Kohli has a grievance that these telephone numbers are not in the public domain.

13. The Secretary, Social Welfare Department and the Director, Information shall also ensure that all relevant information especially the telephone numbers are given adequate publicity so that they are known to the public at large.

Let Secretary, Social Welfare Department examine the possibility of putting this information in the public domain by using the messaging facilities on mobile numbers etc.

V. **Availability of Safety Equipment to Healthcare Professionals**

14. The report in this regard has been submitted in his above report by Mr. Sajad Amin Shah, Additional Secretary, Health Department. It is confirmed that adequate personal protective gears, N-95 masks, triple layer masks, hand sensitizers, gloves and other material are available to meet the requirement.

Let the Department of Health place a report regarding procurement of more equipment as also creation of isolation wards, sample collection, processing and screening areas as per established protocols keeping in view anticipated future needs.

15. The Department of Health and Medical Education shall ensure that adequate equipments of every kind is available for the health care personnel and all other personnel involved in any aspect of COVID-19 issues.

VI. **Report of the High Powered Committee (appointed in terms of the order dated 23rd March 2020 of the Supreme Court of India in Suo Motu Writ Petition (C) No. 01 of 2020) with regard to Prisoners**

and

IX. **Status of residents of J&K/Ladakh lodged in prisons in other parts of India**

16. A report dated 8th April 2020 has been received from Mr. V. K. Singh, Director General (Prisons) informing us that the High Powered Committee appointed pursuant to the Supreme Court of India, has conducted proceedings on the 31st March 2020 and has directed all Superintendent Jails to take action in terms thereof. Directions have been issued to District and Sessions Judges, Districts Magistrates, SSPs as well. As per the report dated 8th April 2020, as on 7th April 2020, 22 PSA detainees; 32 Under Trials; 9 Under Trial prisoners falling under Sections 107, 109, 151 CrPC have been released. Additionally, sanction for parole has been granted to 19 prisoners and two prisoners have been released on parole.

17. Mr V.K. Singh has also placed before this Court details of the detainees from Jammu and Kashmir who are lodged in six jails in Uttar Pradesh and two jails of Haryana. Reports obtained from DGs (Prisons), Uttar Pradesh and Haryana regarding steps taken for ensuring the health of the detainees and their protection from COVID-10 infection has been enclosed.

18. As per the reports placed before us, the health of the detainees is being monitored on daily basis and the health report of the detainees placed on record.

Let the further report with regard to the release of prisoners in accordance with the directions of the High Powered Committee be placed before us before the next date of hearing.

VII Addressing issues of Safety, Care, Health and Violence against Healthcare Professionals and Clinical Establishments-Need for a legislative framework

19. On this issue, Mr. Vishal Sharma, learned ASGI has forwarded a report in the form of affidavit filed by Mr. Ashish V Gawai, Deputy Secretary, Ministry of Health and Family Welfare dated 9th April 2020. We extract hereunder the stand of the Central Government on this critical area:

“2. I beg to state that with the broad objective of securing the safety of health care service personnel and health premises, the Ministry of Health and Family Welfare, Government of India, had earlier considered the idea of a separate Act to deal with instances of violence against members of the medical fraternity. After detailed consultations, it was felt that the existing provisions in CrPC and IPC are adequate to deal with such instances. In addition, certain special laws such as National Security Act may also be used. The need of the hour is to implement them strictly.

3. The need to take prompt action in instances of misbehavior with healthcare personnel is being emphasised continually in interaction with State Governments during the ongoing Covid-19 outbreak. This is being done at the highest levels of government. Orders for arresting landlords who try to evict healthcare personnel have recently been issued by several State Governments.

4. Ministry of Health & Family Welfare has also issued an advisory to all States/UTs to consider immediate measures for inculcating an effective sense of security among the doctors on duty (Copy of letter dated 5th July, 2019 attached).

5. ‘Health’ as well as ‘Police’ and ‘Public Order’ are State subjects under Seventh Schedule to the Constitution. The State Governments/UT Administrations are under an obligation to prevent any social behavior that may end up discouraging health workers. Some States have taken strong action like imposition of National Security Act against those who indulge in disgraceful acts towards medical care teams.”

20. We have grave doubt as to whether the above addresses the issues and concerns which have been flagged by us in our order dated 3rd April 2020.

21. Let the above be examined by the learned Amicus, Ms. Monika Kohli and other counsels appearing in this matter.

We shall consider this report on the next date of hearing.

VIII. Issue of impact of pollen from poplar trees

22. In the report received from Mr. Sajad Amin Shah, Additional Secretary, Health and Medical Education Department of the Government of UT, it is informed that a communication dated 6th April 2020 stands addressed to the Principals of the Government Medical Colleges in Jammu and Srinagar and their suggestions have been requested on this issue.

23. We may note an e-mail dated 9th April 2020 has been received from Mr. Habeel Iqbal, Advocate from the District Court, Shopian (Phone No. 7006772245), expressing several important concerns on this matter. This e-mail is taken on record.

24. Mr. Iqbal has flagged several concerns about the felling of these trees. He has referred to views of experts contained in the following two media reports: (i) <https://scroll.in/article/958412/fell-the-tree-which-sheds-dandruff-this-is-how-kashmir-authorities-are-fighting-coronavirus> and (ii) <https://theprint.in/the-print-essential/the-male-female-and-pollen-behind-jk-order-to-chop-covid-19-trees/397820/>.

25. It is contended by Mr Habeel Iqbal that the indiscriminate felling of the trees (reported to be in several thousands) has severe adverse economic and ecological impact, which may be irreversible.

26. We have perused these media reports. Certain very pertinent issues have been pointed out. Significantly a grave error is pointed out which is to the effect that female poplar trees have been directed by the authorities to be felled on account of the “pollen” generated by them. This by itself is a basic mistake. Pollen is generated by the male of the specie and not by the female tree.

Therefore felling of the female of the Species would not have any impact.

27. It is also pointed out that the fluff carries the seed and not pollen. The two reports brought to our notice by Mr. Iqbal refer to views of several experts doubting the correctness of the statement that the fluff generated by the poplars could be effecting respiratory diseases or would impact spread of the COVID-19 infection.

28. In view thereof, it is necessary that the very basis of the issue and desirability of felling of female poplar trees needs to be revisited before these trees are felled. It also cannot be denied that there is grave urgency in the matter.

29. In view thereof, we direct as follows:

- (i) Let the Chief Secretary of the Union Territory of Jammu and Kashmir constitute a Committee headed by the

Principal Chief Conservator of Forests and other experts on trees, medicine, respiratory diseases and other subjects relevant to the issue.

Let the Committee be constituted within four days from today.

(ii) The Committee which is constituted would examine all aspects relating to the matter including the impact of the pollen and fluff from the poplar trees, the desirability of felling poplar trees (also called Russian Poplar) and related issues. The Committee shall suggest all necessary steps, including felling of trees, if necessary.

(iii) The Committee shall complete its deliberations expeditiously within a time frame to be fixed allotted by the Chief Secretary. Its report shall be forwarded to the Secretaries of the Departments of Health and Medical Education as well as Forests.

(iv) The Secretaries, Health and Forest Departments shall thereafter take a considered view on the report of the Committee and place the same before the Chief Secretary for consideration at the earliest.

(v) The final recommendations shall be placed before us at the earliest.

30. We make it clear that in our order dated 3rd April 2020, we had left the decision and action to be taken by the Secretary, Health and Medical Education and had passed no direction regarding felling of the trees.

31. We were informed on 3rd April, 2020 by Mr. Shafqat Nazir, Advocate that there were previous court orders of 2015 with regard to felling of poplars. If this is the position, we today direct that any prior order directing felling of the poplar trees would be kept in abeyance till the above proceedings of the Committee and consideration directed today are completed, placed before us and further orders passed by us.

XIII. Lack of efficient internet facility in the Union Territories of Jammu and Kashmir and Ladakh

32. Ms. Monika Kohli, learned Amicus Curiae has made a vehement submission that on account of non-availability of the 4G services, the students in the Union Territories are unable to access the educational courses being sent by institutions in order to enable the students to cope with the classes which they are missing.

33. It is submitted by Mr. Vishal Sharma, learned ASGI that this issue is under consideration before the Supreme Court in the PIL filed by the 'Foundation for Media Professionals' and notice has been issued thereon by the Court.

Let a status report on this issue be placed by the Secretary, Home Department of the UTs of Jammu and Kashmir as well as Ladakh.

XIV. Issue of the impending Darbar Move

34. Mr. Faisal Qadri, learned counsel for the petitioner in WP(C)PIL No. 4/2020 has expressed deep concern with regard to advisability of the impending Darbar Move which is to take place in the last week of April 2019/1st week of May, 2020. It is pointed out that such Move has the impact of shifting the Capital of the Union Territory of Jammu and Kashmir from Jammu to Srinagar, which entails movement of thousands of Government personnel at all levels and the shifting of complete administrative machinery, records etc. The submission is that any Move of the Government should be postponed till COVID-19 infection issues have been addressed and the matter is under full control with mobility restored after removal of lockdown.

35. Mr. Qadri has submitted that the COVID-19 infection is spreading at an extremely fast pace in the Kashmir Valley, especially in Srinagar town itself and that the current infected tally has reached over 150 persons. The submission is that already three deaths are reported from the Valley. It is pointed out that in Jammu and Kashmir the available medical facilities are woefully inadequate at the best of times even when the Union Territory is not grappling with the COVID-19 infection. These facilities certainly are insufficient and would be grossly deficient to meet needs of the current pandemic.

36. Mr. Qadri submits that serious review is required to be undertaken with regard to advisability of effecting the Darbar Move in the current state of affairs for the reason that it would put an unbearable strain on all facilities in the Valley and therefore could deeply endanger the health and

even lives of the locals as also of the large number of persons who would be required to move from Jammu. Mr Qadri contends that such move would definitely violate the requirement of advised social distancing and the conditions of the lockdown in force all over the country.

37. Mr. Shafqat Nazir, Advocate from the Srinagar submits that funds are needed very badly for looking after patients who are suffering from COVID-19 infections and related issues. As at present large amounts and resources are required for supporting migrant labourers, daily wagers, contractual employees and others who are without livelihoods. It is submitted that there are also thousands of advocates in the Union Territory are also suffering and are in dire need of financial assistance. Mr Nazir points out that thousands of persons employed by these advocates including their clerks, peons etc are also on the road. Learned counsel submits that effecting the Darbar Move at this stage would be at a huge expense which is completely unwarranted and results in unnecessary squandering of financial resources of the Government.

38. Mr Nazir also points out that because of its nature there is possibility of persons moving carrying infection.

39. Mr. Faisal Qadri, learned counsel submits that as of now police personnel are performing yeoman duties in searching for infected persons as also tracing their contacts in order to treat and contain the spread of the COVID-19 infection. The police personnel are also assigned widespread duties in securing the isolation areas as also providing protection in hospitals and health establishments. Mr. Qadri submits that if the administration shifts

from Jammu to Srinagar at this point, the security personnel who are critically needed for COVID-19 functions and deployments, as also transport vehicles, would need to be withdrawn for providing security to the Government personnel, securing VIPs and important persons who would all shift to Srinagar. He submits that the Darbar Move at this stage would critically impact COVID-19 concerns in Srinagar and result in immediate dilution of the already scarce resources of the Union Territory in the Valley.

40. All counsels present join the submissions made by Mr Faisal Qadri and Mr Shafqat Nazir request that a serious view needs to be taken by this Court on these aspects.

41. In order to enable a considered view to be taken, it is necessary to have firm information with regard to the implications of the Darbar Move in these times; its impact on the necessary resources at this stage; on the personnel involved (positions and number); financial implications; arrangements (transport, accommodation, security etc) involved and other relevant matters. Past experience would lend guidance to our consideration.

42. We therefore direct as follows:

- (i) The Secretary, General Administration Department, Union Territory of J&K to provide details of the government officials at all levels (position/category-wise) who were involved in the four Darbar Moves in the year 2018 and 2019. The information be provided in a tabulation with also the total figures.

(ii) The Secretary, Finance Department, Union Territory of J&K to provide in a tabulation, setting out Move-wise categories/ heads, figures of the finances incurred on the four Darbar Moves for the years 2018 and 2019. The various heads on which expenses has been incurred shall be provided in the tabulation.

(iii) The Secretary, Finance Department, Union Territory of J&K, shall provide details of the financial benefits (as Move Allowance; Temporary Move Allowance and any other) admissible to the employees. The Move-wise total financial expenditure on these counts in the four Moves for the years 2018, 2019 be provided. The Move-wise total liability be placed before us.

(iv) The Director General of Police, J&K shall provide the details of the police personnel who were involved in providing security cover to personnel involved in the Darbar Moves in 2018 as well as 2019. This information may be provided category-wise.

(v) The Director General of Police shall also provide the number of police personnel who have been detailed on COVID-19 related issues and duties in Srinagar.

(vi) The Secretary, Estate Department shall provide details of the accommodation belonging to it as well as that which was hired houses, hotels, guest houses etc. for providing

accommodation to personnel involved in the Darbar Moves in 2018 as well as 2019. This information be provided category-wise.

(vii) The Secretary, Estate Department of the Union Territory of J&K shall also provide information of the rate wise and total expenses which were incurred in hiring facilities for making available accommodation to the personnel who had to make the four moves between Jammu and Srinagar (and vice versa) in 2018 and 2019.

(viii) The Secretary, Transport Department/ concerned Department shall provide details of the transportation which was required for effecting the Darbar Moves in the nature of trucks for transporting records etc and the officials as also transportation which is hired for transporting the officials effecting the moves. Details of this transportation as well as the expenditure incurred in the four Darbar Moves in 2018 and 2019 shall be provided.

(ix) The IGP (Traffic) shall provide details of special arrangements (whether blockage of the highway for other traffic) which have been made for the four Darbar Moves in 2018, 2019 on the National Highway-44 (Jammu-Srinagar stretch) and the dates thereof.

(ix) ADG (Security) shall provide details of security arrangements which were effected on the National Highway,

Jammu and Srinagar for the four Darbar Moves in the years 2018, 2019.

(x) The Secretary, Estates Department shall submit a report with regard to the current status of the Hotels/Guest Houses/Residential facilities which are used for housing personnel on the Darbar Move.

43. We also direct the Officiating Registrar General to place a report on relevant aspects of the Darbar Move so far as they concern the court before the next date of hearing.

44. The above reports be filed before the next date.

XV. **Welfare of pregnant women and infants**

45. It is submitted by Mr. Altaf Naik, Advocate and Mr. K. S. Johal, Senior Advocates that the welfare of pregnant women; neonates (new borns) and infants has to be also specially taken care of. Learned Senior Counsel have expressed difficulties being faced by these categories of persons on account of insufficient facilities being available for them as also lack of information as to how they must proceed for medical assistance and vaccinations etc.

Let the Secretary, Health and Medical Education look into this issue and put out a protocol(if the same is not already in place). In any case adequate publicity be given to the manner in which these categories of the population would be looked after.

46. The Director, Information is directed to also facilitate giving wide publicity to all the protocols in these issues.

XVI. Limitation on the messaging quota of the High Courts in Jammu and Kashmir and Ladakh as is imposed by NIC

47. Mr. Shahzad Azeem, Registrar (IT) has drawn our attention to the limitation imposed by the NIC on the messaging facility provided to the Courts which includes the High Court (both wings), as well as the District Courts. Mr. Azeem points out that on account of the restriction in the movement, extensive recourse is being taken to the messaging facility in the Union Territories of Jammu and Kashmir as well as Ladakh. The Courts are circulating not only court and case related information but also information which is of grave public importance as is being made available by various government departments. A request is made by Mr. Azeem that the upper cap on the messaging needs to be urgently removed or in any case, the limit thereof, enhanced.

This request, in our view, is not only justified but certainly is absolutely essential in the current times.

48. Mr. Abhay Kumar, SIO NIC, J&K submits that for this purpose the CPC of the Court has to write a letter to the e-Court Committee of the Supreme Court with a copy thereof to the NIC J&K. The CPC has to make request for enhancement of the SMS quota for the courts including the District Courts in J&K.

49. It is submitted by Mr. Abhay Kumar, that NIC will then follow up the matter with the e-Courts Committee and take steps for enhancement of the quota.

Let Mr Shahzad Azeem, Registrar (IT) take the necessary steps as above at the earliest.

XVII. e-Connectivity of Courts

50. This matter has been considered by us in our order dated 24th March 2020 (paras 8 to 11); followed by the order dated 30th March 2020 (para 24).

51. Pursuant to our orders, a status report has been filed by Mr. Abhay Kumar, SIO NIC, J&K.

52. Mr. Shahzad Azeem, Registrar (IT) points out that in Para 4 and 5 thereof, it is stated that in view of the order dated 29th May 2018, of the Department of Justice, Government of India, BSNL has to provide WAN connectivity at various complexes through out India under e-Courts MMP Phase-II. It is submitted that these include 84 locations in J&K and Ladakh; that the BSNL has implemented the same at various locations and NIC, on its part, has provided facility to such Court users to access the government websites/portals hosted on NIC National Cloud and NIC State Cloud but without internet access.

It is submitted by Mr. Abhay Kumar, that this access can be given only after BSNL provides connectivity and informs NIC that it has done so to enable the access as above.

53. In Para 9 of its report, NIC has informed that it has already asked BSNL authorities at the level of Chief General Manager and General Manager to share the list of problems and issues being faced by the BSNL which are required to be addressed by NIC.

54. In view of the above, we direct Mr. Sanjeev Tyagi, the nodal officer of BSNL to collaborate with Mr. Abhay Kumar, SIO NIC, J&K and address the any issue, court wise, being faced by the BSNL which is required to be addressed by NIC, so that the matter of making available the e-facilities to all courts is addressed with the seriousness with which it is required to be done.

55. The BSNL and NIC shall draw up a joint action taken report minutes and file the same before us before the next date of hearing.

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56. Notice.

57. Mr. Amit Gupta, AAG accepts notice.

58. This application has been filed by Mr. Karman Singh Johal, Advocate on behalf Sardar Mahant Manjit Singh, Mahant of the Shiromani Dera Nangali Sahib, Poonch as the 13th head of the holy Dera. The application is self explanatory and has been necessitated for the reason that the applicant is currently at the Dera Ashram at Jammu. It is stated that he has to reach the Dera Nangali Sahib, Poonch on Baisakhi on the 13th April 2020 to perform the customary ritual of washing of the ashes of the founder of the Dera. As per Mr. Johal, this is a century old tradition.

59. The applicant has stated that keeping in view the lockdown and the current situation, directions have been issued by the applicant to all Dera followers not to assemble at the Dera Nangali Sahib, Poonch on Baishaki day.

60. Mr. Johal has submitted that to enable the applicant to reach Poonch for this important ritual, the applicant had sought permission from the Divisional Commissioner, Jammu to enable him to transit. This request has been denied.

61. We do not have the benefit of knowing the reasons and circumstances in which this request has been denied. It also cannot be denied that the lockdown and the restrictions which are in force, are keeping in view the health of all citizens of the UT of J&K which would include the health of the applicant as well.

62. We are informed by Mr. Johal that the applicant gives an undertaking to this court that there would be no congregation, either in transit or at the Dera, if the permission as prayed for is granted to the applicant.

63. In view thereof, let the matter be examined afresh by the Divisional Commissioner, Jammu and a view taken in keeping in view the above facts and circumstances.

We direct Mr. Amit Gupta, AAG to place a copy of this application and the order which we have recorded today for urgent examination of the Divisional Commissioner, Jammu who would take a considered view in the matter.

64. We make it clear that we have not expressed any opinion on the merits of the request and the Divisional Commissioner, Jammu shall take a view uninfluenced by any observations which we have recorded above.

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65. This application has been filed by Mr. Ateeb Kanth, Advocate pointing to the deficiencies in the availability of the test kits and ventilators in Srinagar. Mr. Kanth points out in the status report filed by the Secretary, Health and Medical Education Department, there is no reference to the sufficiency of availability of test kits and ventilators in the Union Territory of Jammu and Kashmir.

66. We are informed by Mr. Faisal Qadri that 'Athroout' a NGO has offered six ventilators to the GMC, Srinagar which have been refused.

67. Let the Secretary Health and Medical Education Department place a status report with regard to the availability of test kits and ventilators in adequate numbers in the UT of J&K before the next date.

68. Let Secretary, Health and Medical Education ascertain the circumstances in which these ventilators were refused, if the same were offered.

69. On the next date we will consider the above issues also under Heading V above.

This application is disposed of.

EMG-CM ____/2020 in WP(C) PIL No. 4/2020 (filed by Mr. Hanan Momin and Mr. Ateeb, Advocates)

70. Notice. Mr. Shah Amir, AAG accepts notice.

71. Let a copy of this application be e-mailed to Mr. Shah Amir, AAG.

72. This application relates to shortage of essential commodities being faced on account of black-marketing and hoarding done by the shop-

keepers under the garb of current lockdown as also unwarranted sealing of premises selling essential commodities.

Let a reply be filed before the next date of hearing.

73. List the matter for consideration through video conferencing at 11.30 a.m on 16th April 2020.

74. Counsels for the parties shall ensure that all reports are e-mailed to all counsels who are appearing in the matter.

(RAJNESH OSWAL)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Jammu
10.04.2020
Raj Kumar

