

Court No. - 46**Case :-** HABEAS CORPUS WRIT PETITION No. - 399 of 2021**Petitioner :-** Rahul Yadav**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Pankaj Sharma,Prakash Sharma**Counsel for Respondent :-** G.A.**Hon'ble Surya Prakash Kesarwani,J.****Hon'ble Piyush Agrawal,J.**

1. Heard Shri Pankaj Sharma, learned counsel for the petitioner and Shri M.C. Chaturvedi, learned Additional Advocate General, assisted by Shri Rupak Chaube, learned AGA for the State – respondents.
2. It is admitted case of the State – respondents that the corpus – Shri Ram Lal Yadav, aged about 82 years, was tested Corona positive and was admittedly hospitalized in Tej Bahadur Sapru Hospital, Prayagraj on 04.05.2021. According to respondent no. 3, i.e., Chief Medical Superintendent, T.B. Sapru Hospital, Prayagraj, the said Shri Ram Lal Yadav was shifted to Trauma Centre of the Hospital. Since 08.05.2021, the aforesaid Shri Ram Lal Yadav is not traceable. The petitioner, being the son of the corpus – Shri Ram Lal Yadav, has been approaching the Hospital authorities, district level authorities, Police and higher Officers of the State since 08.05.2021, but none of the authorities have responded. Therefore, the petitioner has filed the present Habeas Corpus Writ Petition praying for the following relief:-

“a) To issue a writ/order/direction in the nature of Habeas Corpus directing the respondents to produce the Detenue (Sh. Ram Lal Yadav) before the Hon'ble Court and/or to hand over the Detenue namely Sh. Ram Lal Yadav, who is the father of the petitioner.

b) To pass any such further order and/or direction for providing adequate compensation for the unlawful harassment of the petitioner and his family members.”

3. A Special Investigation Team (SIT) was constituted by the State

Government on 26.08.2021 to trace out and produce the corpus. SIT has submitted a report dated 05.09.2021, through Senior Superintendent of Police, Prayagraj, to the Additional Chief Secretary, (Home-Police), Anubhag – 11, Government of U.P., Lucknow, in which apprehension of the petitioner has been noted as under:-

“मेरे पिता जी को टी०बी० स्यू (बेली हास्पिटल) के लोगों ने ही कहीं गायब कर दिया है ।”

4. This Court, vide order dated 17.08.2021, directed the respondent nos. 2, 4 & 5 to file counter affidavits, by means of their personal affidavits. However, the said respondents had not filed any counter affidavits and merely, filed personal affidavits without giving para-wise reply to the contents of the writ petition.
5. In his personal affidavit, the Senior Superintendent of Police, Prayagraj has stated that efforts are being made to trace out the corpus. The District Magistrate, Prayagraj, in his personal affidavit, has stated that an inquiry has been set up on 18.08.2021 appointing the City Magistrate, Prayagraj to inquire into the matter and submit a report within a week. Under these circumstances, this Court passed an order dated 19.08.2021 requesting the Principal Secretary (Medical & Health) and Principal Secretary (Home), Uttar Pradesh, both, for immediate action and response.
6. The respondent no. 6, i.e., **the Additional Chief Secretary (Home)**, filed his personal affidavit dated 26.08.2021, in which, in paragraph nos. 3 & 5, he has stated that on 26.08.2021, an SIT has been constituted for tracing out the corpus – Shri Ram Lal Yadav. **The Senior Superintendent of Police, Prayagraj**, in his personal affidavit dated 26.08.2021, has referred to efforts being made **to trace out and produce the corpus** – Shri Ram Lal Yadav before this Court. In paragraph nos. 13 & 14, he has stated

that efforts are being made to trace out Shri Ram Lal Yadav, but searching team could not trace him till date and therefore, **suitable further date be fixed so that further efforts could be made to recover Shri Ram Lal Yadav and to produce him before this Court.**

7. In paragraph no. 6 of his personal affidavit, the respondent no. 1, i.e., **State of U.P. through Principal Secretary (Home), has requested to grant a reasonable time of one week to place the report, so far as tracing out the corpus is concerned.** On the request made by the State – respondents, time, as prayed, was granted and the order dated 27.08.2021 was passed directing the respondents to trace the corpus – Shri Ram Lal Yadav and produce him before this Court, fixing next date as 10.09.2021.
8. For 10.09.2021, holiday was declared and therefore, the matter was placed before this Court on 13.09.2021 and the following order was passed:-

“1. Heard Sri Pankaj Sharma, learned counsel for the petitioner and Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Sri Rishi Chadhdha, learned AGA for State -respondents.

2. Personal affidavit of Additional Chief Secretary (Medical & Health) and personal affidavit of Director General, Medical & Health, Government of U.P., Lucknow, both dated 10.09.2021 have been filed through E mode in which it has been stated that against the order dated 27.08.2021 the State has filed an SLP before the Hon'ble Supreme Court being SLP Diary No.20905 of 2021 and Registration No. SLP Criminal No.00674 of 2021 and is likely to be heard on 13.09.2021. It has been apprised to this Court that in the SLP primarily two questions have been raised firstly that directions for submission of details/information regarding medical equipments, CCTV cameras in District Hospitals etc. could not be issued in a habeas corpus writ petition and secondly the present habeas corpus is not maintainable inasmuch as the corpus Ram Lal yadav is not a detenu.

3. A personal affidavit of compliance of Chief Medical Superintendent, Prayagraj, dated 09.09.2021 and a personal affidavit of Additional Chief Secretary, Home, dated 10.09.2021

and a personal affidavit of Senior Superintendent of Police, District, Prayagraj, dated 09.09.2021 have also been filed through E - mode.

4. Senior Superintendent of Police, alongwith his aforesaid personal affidavit has filed a copy of report of SIT dated 5.9.2021 addressed to the Additional Chief Secretary, Home Government of U.P. Lucknow.

5. The petitioner has stated in the writ petition that he moved an application dated 17.05.2021 before the SHO Cantt. Prayagraj, with copies thereof to the Chief Medical Officer, Prayagraj, Chief Medical Superintendent T.B. Sapru Hospital, Prayagraj, District Magistrate, Prayagraj, Senior Superintendent of Police, Prayagraj and Chief Secretary Government of U.P. Lucknow.

6. Learned counsel for the petitioner states that the petitioner is running from pillar to post but nothing is being told by the Doctors and Officers of the T.B. Sapru Hospital as well by the police regarding whereabouts of the corpus i.e. father of the petitioner, namely, Ram Lal Yadav who was admitted in T.B. Sapru Hospital, Prayagraj, as COVID-19 patient.

7. Learned counsel for the petitioner states that except the aforesaid application the petitioner has not submitted any application.

8. The report of the SIT dated 05.09.2021 records petitioner's contention, as under :-

" मुझे अशंका है कि मेरे पिताजी को तेजबहादुर स्मृ (बेली अस्पताल) के लोगों ने ही वहाँ गायब कर दिया है। अनुरोध है कि मेरे पिताजी को गायब करने के सम्बन्ध में तेज बहादुर स्मृ अस्पताल (बेली अस्पताल) के लोगों के विरुद्ध अभियोग पंजीकृत करने की कृपा करें।"

9. Perusal of the report of the SIT shows that as per statement of the Beli Police Choki Incharge Indu Verma, Namish Kumar Ward Boy and various patients/their family members, the CCTV Cameras of T.B. Sapru Hospital were not functional including on 7/8.05.2021. The SIT has recorded in its investigation report that the corpus Ram Lal Yadav, aged about 82 years was unable to walk " चलने फिरने में असमर्थ".

10. Dr. Ram Chandra Maurya, Ward Boy Anurag Upadhyay, Staff Nurse Anand Kumar Dueby, Ward Boy Pramod, Contractual employee Kuldeep Kumar and Staff Nurse Surya Kant of T.B. Sapru Hospital, have specifically stated that the corpus Ram Lal Yadav was unable to walk and was on oxygen support and he was seriously ill.

11. In the present habeas corpus writ petition our primary concern is only with respect to the production of the corpus, namely, Ram Lal Yadav, who was undisputedly admitted in T.B.

Sapru Hospital, Prayagraj and no information is available with regard to him since 08.05.2021. So far as certain observations made in the body of the order dated 27.08.2021 regarding available/required medical equipments, CCTV cameras etc. as per standard and norms of the State Government in various hospitals including the hospital in question and uniform SOP for Government Hospitals is concerned, that is not our primary concern in this writ petition. Therefore, we leave it to the State Government either to disclose these figures before this Court or not as it may think appropriate in its wisdom.

12. On these facts the questions as to whether this habeas corpus writ petition is maintainable or not, needs to be addressed by the State Government/the learned Advocate General although the question of maintainability of present habeas corpus writ petition being beyond the scope of habeas corpus was never raised before us till today. We permit the State respondents to raise the question of maintainability of this habeas corpus writ petition.

13. As prayed by learned Additional Advocate General/State respondents put up tomorrow at 10:00 AM for further hearing to enable the State respondents to address on the issue of maintainability of this habeas corpus writ petition.

14. Personal presence of Senior Superintendent of Police Prayagraj and Chief Medical Superintendent TB Sapru Hospital, Prayagraj is exempted until further order.

15. Learned Additional Advocate General may also obtain written instructions from the State Government with regard to the stand being taken that this habeas corpus writ petition is not maintainable ? ”

9. On the next date, i.e., on 14.09.2021, this Court passed the following order:-

“We have clearly observed in our order dated 13.09.2021 that the question of maintainability of the present habeas corpus writ petition was never raised before us by the State - respondents. We are surprised to note that yesterday we permitted the State respondents to raise the question of maintainability and give written instructions in this regard to the learned Additional Advocate General and yet the instructions dated 13.09.2021 given by Joint Secretary Government of U.P. Lucknow, is totally silent on this point.

Today, Sri M.C. Chaturvedi, learned Additional Advocate General wants to argue on the question of maintainability of this habeas corpus writ petition and for this purpose he wants time to obtain fresh instructions from the State Government.

As prayed by the learned Additional Advocate General, put up

tomorrow i.e. 15.09.2021 as a fresh case at 10:00 AM for further hearing to enable the learned Additional Advocate General to obtain specific instructions from the State Government to take specific stand on the question of maintainability of this Habeas Corpus Writ Petition.

It is made clear that in this habeas corpus writ petition we are confining to the issue of production of the corpus, namely, Ram Lal Yadav, before this court.”

10. Today, learned Additional Advocate General stated that he has received three instructions from respondents; **firstly**, from the Secretary, Home Department; **secondly**, from the Director General of Medical Health; and **thirdly**, from the Secretary, Medical & Health Department of the State. He produced the instructions of Special Secretary (Home & Police), Government of U.P., being letter no. 1049 (1)/0- पु०-11-21-37 रिट/ 2021 dated 14.09.2021, which is reproduced below:-

“ई-मेल/ समयबद्ध/ कोर्टकेस
संख्या- 1049 (1)/0- पु०-11-21-37 रिट/ 2021

प्रेषक,

वी० के० सिंह,
विशेष सचिव,
उत्तर प्रदेश शासन।

सेवा में,

एम० सी० चतुर्वेदी,
अपर महाधिवक्ता,
मा० उच्च न्यायालय, इलाहाबाद।

गृह (पुलिस) अनुभाग-11 लखनऊ: दिनांक 14 सितम्बर, 2021

विषय:- हैबिएस कार्पस रिट पिटीशन संख्या-399/2021 राहुल यादव बनाम उत्तर प्रदेश राज्य व अन्य के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अपने पत्र संख्या-766/पीएस/एएजी/एएलडी दिनांक 14.09.2021 का कृपया सन्दर्भ ग्रहण करने का कष्ट करें।

2- इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि प्रकरण की गम्भीरता के दृष्टिगत शासन के आदेश दिनांक 26.08.2021 द्वारा विशेष जांच दल गठित किया गया, जिसकी रिपोर्ट दिनांक 05.09.2021 मा० न्यायालय के समक्ष वरिष्ठ पुलिस

अधीक्षक/पुलिस उप महानिरीक्षक प्रयागराज के शपथ पत्र के माध्यम से प्रस्तुत की जा चुकी है। उक्त जांच रिपोर्ट के क्रम में शासन के पत्र दिनांक 07.09.2021 द्वारा वरिष्ठ पुलिस अधीक्षक/पुलिस उप महानिरीक्षक प्रयागराज को अपने निकट पर्यवेक्षक में गुमशुदा श्री रामलाल यादव की बरामदगी के सम्बन्ध में प्रभावी कार्यवाही किये जाने के निर्देश भी दिये गये हैं। गुमशुदा के तलाश के लगातार प्रयास जारी हैं।

चिकित्सा विभाग द्वारा उ० प्र० सरकार की ओर से मा० उच्चतम न्यायालय में प्रश्नगत प्रकरण में एसएलपी योजित की गयी है, जिसमें अगली सुनवाई की तिथि दिनांक 17.09.2021 नियत है।

भवदीय
(वी० के० सिंह)
विशेष सचिव। ”

11. He also produced the instructions of the **Director General, Medial & Health Services, U.P.**, Lucknow, being letter no. 11 फ/2021-22/7004 dated 14.09.2021, which is also reproduced below:-

“प्रेषक,

महानिदेशक,
चिकित्सा एवं स्वास्थ्य सेवायें,
उत्तर प्रदेश।

सेवा में,

मुख्य स्थायी अधिवक्ता,
मा० उच्च न्यायालय,
इलाहाबाद।

संख्या- 11 फ/2021-22/7004 लखनऊ: दिनांक 14 सितम्बर, 2021

विषय:- हैबिएस कार्पस रिट पिटीशन नं०-399/2021, राहुल यादव बनाम उ० प्र० राज्य एवं अन्य के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अवगत कराना है कि मा० उच्च न्यायालय, इलाहाबाद द्वारा पारित सम्मानित आदेश दिनांक 14.09.2021 के समादर में एवं श्री एम० सी० चतुर्वेदी अपर महाधिवक्ता, उत्तर प्रदेश, मा० उच्च न्यायालय, इलाहाबाद द्वारा प्रेषित पत्र संख्या- 766/ PS/ AGG/ ALD, दिनांक 14.09.2021 के सापेक्ष में प्रतिपक्षी सं०- 08 महानिदेशक, चिकित्सा एवं स्वास्थ्य सेवायें, उ० प्र० के कार्यालय ज्ञाप संख्या- 19 फ / 1370- एन / 2019 / 2630, दिनांक 31.08.2021 (छायाप्रति संलग्न) के द्वारा श्रीमती पूजा, उपचारिका, टी० बी० सप्रू चिकित्सालय, प्रयागराज को अनुशासनात्मक कार्यवाही संस्तुत करते हुये निलम्बित कर दिया गया।

अग्रतर महानिदेशक, चिकित्सा एवं स्वास्थ्य सेवायें, लखनऊ के कार्यालय ज्ञाप संख्या-11 फ / 2021-22 /6998, दिनांक 14.09.2021 (छायाप्रति संलग्न) के द्वारा प्रदेश के नगरीय एवं ग्रामीण क्षेत्र के चिकित्सालयों में "Standard Operating Procedures For Security equipment, Safety and security measure of high standards to be installed with inbuilt provisions of its regular maintenance " के विषय में मा० उच्च न्यायालय, इलाहाबाद के द्वारा प्रश्नगत याचिका में पारित आदेश दिनांक 27.08.2021 के समादर में पूर्व में गठित समिति एवं दिनांक 14.09.2021 को महानिदेशक, चिकित्सा एवं स्वास्थ्य सेवायें, उ० प्र० की अध्यक्षता में आहूत बैठक में मा० उच्च न्यायालय, इलाहाबाद के उक्त आदेश दिनांक 27.08.2021 में उल्लिखित 08 बिन्दुओं पर सहमति व्यक्त करते हुये दिशा- निर्देश पारित किये गये।

अतएव अनुरोध है कि प्रश्नगत हैबियस कार्पस रिट पिटीशन नं०-399 /2021 श्री राहुल यादव बनाम उ० प्र० राज्य एवं अन्य में मा० उच्च न्यायालय को उपरोक्त वर्णित स्थिति से अवगत कराते हुये अभिकथन दाखिल करने का कष्ट करें।

संलग्नक: उपरोक्तानुसार।

भवदीय
(वेद ब्रस सिंह)
महानिदेशक "

12. The learned Additional Advocate General has also produced the third instructions received from the Secretary, Medical & Health Department, being letter no. 1924/पांच-5-2021 dated 14.09.2021, in which it has been stated as under:-

“संख्या- 1924 /पांच-5-2021

प्रेषक,

रविन्द्र,

सचिव, उत्तर प्रदेश शासन।

सेवा में,

श्री एम० सी० चतुर्वेदी

अपर महाधिवक्ता,

मा० उच्च न्यायालय, इलाहाबाद।

चिकित्सा अनुभाग-5

14 सितम्बर, 2021

लखनऊ, दिनांक:

विषय:- हैबियस कार्पस रिट याचिका संख्या-399/2021, राहुल यादव बनाम उ० प्र० राज्य एवं अन्य के सम्बन्ध में।

महोदय,

कृपया उपर्युक्त विषयक अपने पत्र संख्या-766 /पी० एस०

/ए०ए०जी/ ए० एल० डी०, दिनांक 14.09.2021 का संदर्भ ग्रहण करने का कष्ट करें।

2- प्रश्नगत रिट याचिका में मा० उच्च न्यायालय के आदेश दिनांक 14.09.2021 द्वारा विशिष्ट निर्देश दाखिल करने के आदेश पारित किये गये हैं। मा० उच्च न्यायालय के आदेश दिनांक 14.09.2021 के क्रम में अवगत कराना है कि प्रश्नगत रिट याचिका में विधिक परामर्श के आधार पर मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 27.08.2021 के विरुद्ध मा० उच्च न्यायालय में एस० एल० पी० जिन आधारों पर योजित की गयी है, उनमें से एक आधार हैवियस कार्पस रिट की पोषणीयता (**Maintainability**) का है। मा० उच्च न्यायालय के आदेश दिनांक 27.08.2021 के विरुद्ध मा० उच्चतम न्यायालय में विशेष अनुज्ञा याचिका योजित की जा चुकी है तथा जिसमें सुनवाई हेतु दिनांक 17.09.2021 नियत है। उक्त स्थिति में राज्य सरकार द्वारा पोषणीयता के सम्बन्ध में निर्देश / अभिकथन दिया जाना समीचीन नहीं होगा। प्रश्नगत प्रकरण में मामलों के गुण- दोष के आधार पर पोषणीयता का निर्धारण मा० उच्चतम न्यायालय द्वारा ही किया जा सकता है, क्योंकि मामला मा० उच्चतम न्यायालय में विचाराधीन है।

3- अतएव मा० उच्च न्यायालय को उपरोक्त तथ्यों से अवगत कराते हुए शासकीय अधिवक्ताओं के द्वारा उक्त योजित एस० एल० पी० में निर्णय आने तक प्रश्नगत रिट याचिका में मा० उच्च न्यायालय से सुनवाई स्थगित करने का अनुरोध करने का कष्ट करें।

भवदीय
(रविन्द्र)
सचिव।”

13. At this point, it would be appropriate to mention, at the cost of repetition, that in this Habeas Corpus Writ Petition, our main concern is that the corpus – Shri Ram Lal Yadav be traced and be produced before this Court. This fact was also made clear by us in our orders dated 13.09.2021 and 14.09.2021.
14. The aforesaid three instructions have been received by the learned Additional Advocate General pursuant to our orders dated 13.09.2021 and 14.09.2021, solely on the point of maintainability of the present writ petition.
15. Perusal of the afore-quoted three instructions would reveal that the **Home Department of the State of Uttar Pradesh**, which is the concerned Department for tracing out and to produce the corpus, **has not raised any objection as to the maintainability**

of this Habeas Corpus Writ Petition and instead, has stated that the instructions have been issued to the Senior Superintendent of Police/DIG, Prayagraj to take steps to trace out the corpus – Shri Ram Lal Yadav and efforts are being regularly made in this regard. It has also been clarified that the Medical Department has filed Special Leave Petition (SLP) before the Hon'ble Supreme Court. **The Director General of Medical & Health has also not objected to the maintainability of the present Habeas Corpus Writ Petition**, as is evident from the instructions afore-quoted. **The Secretary, Medical & Health Department of the State has not said even a word on the maintainability of the present Habeas Corpus Writ Petition.** He merely stated, in his instructions, that the SLP has been filed, in which question of maintainability of the Habeas Corpus Writ Petition may be decided by the Supreme Court.

16. It would not be out of place to mention that before 13.09.2021, none of the respondents, either orally or on affidavit, have raised any objection before this Court as to the maintainability of the present writ petition.
17. On 13.09.2021, the learned Additional Advocate General apprised us that the Medical Department has filed SLP before the Hon'ble Supreme Court and therefore, the matter be adjourned. In these circumstances, we permitted the respondents, including the respondent no. 7, i.e., the Additional Chief Secretary, Medical & Health, U.P., Lucknow, to raise before this Court objections as to the maintainability of the present Habeas Corpus Writ Petition, but objections have not been raised before us.
18. On 14.09.2021, we again granted time to the learned Additional Advocate General to obtain specific instructions from the State Government to take specific stand on the question of maintainability of this Habeas Corpus Writ Petition. Today,

while the **main concerned Department of the State Government, i.e., the Home Department, has impliedly admitted that the present Habeas Corpus Writ Petition is maintainable by stating that efforts are being regularly made to trace out and to produce the corpus before this Court** and SLP has been filed by the Medical Department of the State, **the Director General of Medical & Health Services has also not opposed the maintainability of the present Habeas Corpus Writ Petition.** None of the State – respondents have opposed before us the maintainability of the present Habeas Corpus Writ Petition. However, the Secretary (Medical) has stated, in his afore-quoted instructions, that SLP has been filed before the Hon'ble Supreme Court, in which question of maintainability of the present Habeas Corpus Writ Petition may be decided and therefore, no instructions, on the question of maintainability of the petition, may be given.

19. The Secretary (Medical) has no concern with the tracing of the corpus – Ram Lal Yadav and to produce him before this Court in the present Habeas Corpus Writ Petition, except that the T.B. Sapru Hospital comes under his Department, where the corpus – Shri Ram Lal Yadav was hospitalized (who was even unable to walk as is evident from the report of the SIT) and is not traceable since 08.05.2021 and despite continuous persuasions by the petitioner, the Hospital authorities and other higher authorities have not responded, until the present Habeas Corpus Writ Petition was filed by the petitioner and entertained by this Court.
20. Considering the facts and circumstances, the personal affidavits filed by the respondents on earlier occasions and the instructions of the Home Department, we again direct the respondents, namely, the Additional Chief Secretary (Home) and the Senior Superintendent of Police, Prayagraj, to trace out and produce the corpus – Shri Ram Lal Yadav before this Court or submit a

progress report in this regard on the next date fixed.

21. Put up as a fresh case on 21.09.2021 before this Bench for further hearing.
22. Let a copy of this order be sent by the Registrar General of this Court to the Chief Secretary of the State of Uttar Pradesh, Lucknow within 24 hours. The learned Additional Advocate General shall also inform this order, along with a copy of this order in writing, to the Chief Secretary, the Additional Chief Secretary (Home) and all other respondents, including the respondent no. 7, within 24 hours.

Order Date :- 15.09.2021

Amit Mishra