

CJ & AKJ:
27.05.2021

(Through Video Conferencing)

W.P.No.6435/2020 &
connected matters

ORDER

VACCINATION

Now we are dealing with the issue of vaccination. It is repeatedly pointed out to the Court that the broad policy of the Government of India is that the State quota of vaccines of each State will be divided into two parts. The first part is of 50% which will be of free supply of vaccines by the Government of India to the State Governments. The State Governments are required to use this quota for free vaccination. As far as the remaining 50% is concerned, 25% quota can be procured by the State Government by directly placing the orders with the manufacturers/suppliers. Even the said quota of 25% is required to be utilized by the State Government for free vaccination. The remaining 25% can be utilized by authorized private hospitals and private agencies by purchasing vaccines directly from the manufacturers/suppliers.

2. In the written submissions filed on 25th May, 2021, in paragraphs 4 and 8, the State Government has set out its requirement of the quantity of vaccines which will be

sufficient to give the second dose to the beneficiaries who have taken the first dose. As regards COVAXIN, the figures given in paragraph 4 indicate that the State is likely to have 4,20,140 doses as on 1st June, 2021. The second dose is due to 3,65,178 beneficiaries as on 28th May, 2021. Thus, it can be broadly said that considering the requirement of the second dose of vaccine as on 1st June, 2021, the quantity which the State may have as on 1st June, 2021 will be barely sufficient to meet the requirement of the second dose.

3. The learned Advocate General was categorical in making a statement that no beneficiary in the State who has taken the first dose of COVAXIN will be denied the second dose of COVAXIN as and when it becomes due. The learned Advocate General also stated that the State Government has stopped giving the first dose of COVAXIN to any person falling in any of the age groups or any of the categories. In fact, the State Government is relying upon the advisory issued by it to the private agencies who are administering vaccines from 25% quota to utilize the available stock of COVAXIN at their respective health care

facilities as a second dose for the age group of 45 plus who are awaiting for the second dose.

4. As regards COVISHIELD vaccine, the figures are set out in paragraph 8 which show that 10,52,720 doses of COVISHIELD were available as on 24th May, 2021 and 7,17,310 doses are likely to be allocated by the Central Government in this month. It is stated that these doses will take care of all those who are due for the second dose as of today and all those who will become due for the second dose by 17th June, 2021.

5. The State Government has made a clear statement in paragraph 9 of the written submissions that so far as the beneficiaries above the age of 45 years are concerned, priority will be given to those individuals for whom the second dose of COVISHIELD has become due and it is only subject to availability of vaccination doses at the respective centres and the State as a whole, that the first dose of COVISHIELD will be administered to persons belonging to the age group of 45 plus category.

6. As regards the age group of 18-44 years, priority will be given only to Frontline Workers for the first dose of COVISHIELD. Annexure-R8 is a Press Note issued by the State Government which clearly records that the first dose of COVAXIN is not available with the State for the category of 18-44 age group. However, for identified Frontline Workers or vulnerable groups and Priority groups, the first dose of COVISHIELD will be administered by informing the concerned through Nodal Officers. The State Government has also placed on record a letter dated 20th May, 2021 addressed by the National Health Mission of the State Government to all the District Deputy Commissioners and the Chief Commissioner of BBMP. The said letter identifies the categories of Frontline Workers and Priority groups. The letter again reiterates that first priority will be given to those beneficiaries under the age group of 18-44 years who fall under the category of State Corona Frontline Workers as specified in Annexure-1 of the said letter. Thereafter, the Priority groups will be vaccinated. The list of beneficiaries falling under Priority groups is at Annexure-2 to the said letter. The same letter appoints

Implementing Officers at various levels and fixes their responsibilities.

7. For the sake of completion, we may also refer to the memo dated 25th May, 2021 filed by the learned standing counsel for the Central Government. It records that allocation of 50% of direct procurement quota to the State Government is of a total 15,98,220 doses out of which 13,54,050 is the quota of COVISHIELD. The State Government has received its full quota of COVISHIELD and out of the quota of 2,44,170 doses of COVAXIN, the State has received 1,44,170 doses. However, it also records that the private agencies have ordered for 16,16,660 doses out of which they have received 5,73,200 doses of COVISHIELD and 85,660 doses of COVAXIN.

8. When we invited the attention of the learned Additional Solicitor General of India to the fact that the private agencies in the State seem to have exceeded the quota of 25%, her submission is that the policy framed by the Central

Government is a broad policy and may be that if in some States, the private parties do not avail of the full quota of 25%, the remaining quota can be made available to the private agencies in the other States. We may record here that as of today, the private agencies have exceeded their quota only by about 18,000 doses. The real issue will arise if the private agencies are going to exceed the quota of 25% by a fairly large amount of doses. If such a situation arises, the Government of India will have to make its stand clear. Today, we are not issuing any direction as the quota has exceeded only by about 18,000 doses.

9. Thus, the scenario which emerges today is that out of the total 75% quota of vaccine which will be received by the State Government, the first dose of COVAXIN cannot be given to any age group and any category. Secondly, as the position stands, in the age group of 18-44 years, as of today, the first dose of COVISHIELD can be administered only to the Frontline Workers and Priority groups as provided in the State Government's letter dated 20th May 2021.

10. As vaccination is one of the most effective modes of controlling the spread of COVID-19 virus, the State Government will have to come out with an action plan in what manner they are going to provide vaccination to the persons belonging to the age group of 45 plus and to the age group of 18-44 years starting with first dose. As of today, from the figures which are placed on record, it appears to be very difficult for the State Government to give first dose of vaccination to the persons belonging to the age group of 45 plus and to the age group of 18-44 years. By Tuesday, the 1st June, 2021, the State Government must make its stand very clear.

11. In view of this peculiar situation, we had requested Dr. Prasanna, the President of Private Hospitals and Nursing Homes Association (PHANA) to appear and address the Court. Accordingly, yesterday, he appeared and addressed the Court. His stand was that what is stated in the letter dated 24th May 2021 Annexure-R4 to the written submissions dated 25th May 2021 is only an advisory and it is not a direction to the private healthcare facilities who are using 25% quota for providing vaccination at a charge. He

stated that the private health care facilities will have no option but to even administer COVAXIN as the first dose to anyone who approaches these facilities who has been registered. Moreover, he stated that the advisory of the State Government does not even suggest that as far as possible, the available doses of COVISHIELD should be used to give second dose to those who have already taken the first dose.

12. Thus, on one hand, the persons who belong to the age group of 18 years and above who visit the State Government establishments for the first dose of vaccination are not likely to get their first dose as of today unless they fall under any of the two categories, that is, Frontline Workers and Priority groups. But, if such a person approaches private health care facilities, he may get the first dose of COVAXIN or COVISHIELD by paying certain amount. Similarly, those who have taken the first dose of COVISHIELD and COVAXIN from the State Government establishments will have to wait for the second dose till the respective dates on which the second dose will be administered, are communicated to them. Thus, if a

beneficiary who has taken the first dose of COVISHIELD from the State Government free quota has completed 12 weeks, he may not immediately get the second dose from the State Government establishments, but if he goes to the private health care facilities, he may immediately get the second dose of vaccination by paying the necessary amount. It is necessary for both the Central Government and the State Government to take a note of this situation in the context of Article 14 of the Constitution of India. We direct both the Central Government and the State Government to make a statement on this aspect on the question of issuing directions to those private health care facilities which are using 25% quota for administering the first dose. The response shall be filed within one week.

13. In one of our earlier orders, we had observed that it is necessary to ensure that every citizen is made aware of requirement of online registration for vaccination and it should be ensured that he gets assistance for registration. There may be many classes of society who are not able to register themselves for vaccination and unless they register themselves, even if the doses are available, they may not be

able to get it through the State Government agencies/establishments. Moreover, as per the policy of the State Government which is reflected from the letter dated 20th May 2021, even those who belong to the category of Frontline Workers and Priority groups must be made aware of their eligibility to get the vaccination on priority basis. The State Government will come out with its action plan for ensuring that those who are entitled to priority and even those who are not entitled to priority are not prevented from taking vaccination only because they are unable to register themselves. The State Government may consider of directing the implementing officers appointed by the letter dated 20th May 2021 to take necessary steps in this behalf in relation to all age groups.

14. There is already an order issued by this Court to the State Government directing the State Government to come out with a scheme for providing vaccination to the persons with benchmark disability. Now, the State Government has recognized persons with disability including mentally retarded persons and one care taker as Frontline Workers. The State Government will have to come out with an action

plan showing in what manner they are going to administer vaccine to the persons belonging to this category who, due to their disability, will not be in a position to go to the vaccination centres or Government hospitals.

OXYGEN

15. Now, we deal with the availability of oxygen. In the written submissions filed by the State Government on 25th May 2021, it is stated that with effect from 23rd May 2021, the allocation of oxygen for the State of Karnataka has been revised from 1,015 MT to 1,200 MT. Out of the allocation of 1,200 MT, 370 MT is allocated from the places outside the State of Karnataka. From the figures given in paragraph 16, it is apparent that except on 22nd May 2021, the State has not reached the upper limit of quota of 1,015 MT which was prevailing till 23rd May 2021. Even the chart produced along with the memo dated 25th May 2021, by the learned standing counsel appearing for the Government of India indicates that the State is not able to draw its full allocated quota. The chart annexed to the said memo shows that from 10th May 2021 till 24th May 2021, only a quantity of 297.04 MT could be procured by the State from outside the State. We,

therefore, direct the State Government to place on record written submissions/affidavit by 1st June 2021 setting out the difficulties, if any, faced by the State Government while procuring the quota of oxygen from outside the State. If the State Government is facing real difficulty in securing the quota from any particular unit in other States, it must approach the Central Government immediately so that the Central Government can take an appropriate decision on the said grievance.

16. There is already a direction issued by the Apex Court way back on 30th April 2021 to create a buffer stock of adequate quantity of oxygen to each district. Annexure-R14 is a chart giving buffer stock. However, the State has not fixed minimum buffer stock for each district. There appears to be a serious issue in some districts regarding the availability of storage tanks. Therefore, the State Government will have to take a decision of fixing a minimum quantity of buffer stock in each district at least on weekly basis so that even if on a particular day the buffer stock is used for emergency, the same can be immediately replenished to the extent of the minimum quantity fixed. The

State Government will have to take immediate appropriate steps to provide adequate storage capacity in each district. The State Government will respond even on this aspect by 1st June 2021.

17. Another issue canvassed is regarding the distribution of oxygen within the State as in many districts, there is no production of oxygen. The State Government is relying upon the Government Order dated 15th May 2021, under which, in exercise of powers under Section 24 of the Disaster Management Act, 2005, the Chairman of the State Executive Committee has appointed the Regional Commissioners for each Revenue Division as Nodal Officers for the respective of Revenue Divisions. This takes care of major difficulty in allocation of oxygen to the districts. However, if in any particular Revenue Division, there is no production of oxygen at all, the State Government will have to lay down the modalities which will permit the Regional Commissioner of that particular Revenue Division to secure an adequate quantity of oxygen from other Revenue Divisions. The State Government's response on this aspect must be placed on record by 1st June 2021.

FOOD SECURITY

18. Now, we come to the issue of food security. At the outset, we must refer to the order dated 24th May, 2021 passed by the Apex Court in *suo motu* Writ Petition (Civil) No.6/2020 which takes care of the issue of food security of migrant workers. The direction issued by the Apex Court is in paragraph 15. Therefore, as far as this Court is concerned, it will have to deal with the food security of the other vulnerable sections of society. The first section will be of those who have ration cards and those who have applied for ration cards, but have no income. The second section will be of those who have no income and have not even applied for ration cards on various reasons. The third issue will be of mid-day meal. The Central Government will make its stand very clear whether mid-day meal is being supplied even during the school vacations. On all aspects of food security, we will hear the parties on 3rd June 2021 at 3.30 p.m.

OTHER ASPECTS

19. The issue regarding payment of *ad hoc* compensation to the victims of Chamarajanagar incident will be also

considered on that day including the issue regarding number of victims.

20. The learned Additional Advocate General has placed on record an order dated 26th May 2021 by which, earlier orders regarding lockdown have been modified and the movement of advocates, their para-legal personnel, clerks and other support staff will be permitted only during the Court working days on production of ID/Authorization Letters. Secondly, the offices of the advocates/law firms are permitted to function with 50% of staff strength strictly adhering to COVID appropriate behaviour. Therefore, now the members of the Bar may not face any difficulty in reaching their offices.

21. As directed in paragraph.4 of the order dated 16th April, 2021, interim orders passed by various Court were extended. Paragraph.4 of the order dated 16th April, 2021 reads thus:

"4. We issue the following interim directions:

(i) All interim orders passed by the Karnataka High Court (principal seat and Benches at Dharwad and Kalaburagi), all the District Courts,

Civil Courts, Family Courts, Labour Courts, Industrial Tribunals and all other Tribunals in the State over which this Court has the power of superintendence which are due to expire in the period between 17th April, 2021 and 29th May, 2021 will continue to operate till 29th May, 2021.

(ii) If any orders of eviction, dispossession or demolition have been passed by the High Court, District Courts or Civil Courts, the same shall remain in abeyance till 29th May, 2021.

(iii) It is, however, made clear that if any party desires to apply for vacating the interim orders, it will be open for the said party to apply to the concerned Courts/Tribunals praying for vacating the orders. If such applications are made, the Courts/Tribunals are free to consider the same in accordance with law without being influenced by continuation of interim reliefs by this Court".

Paragraph.2 of the order dated 22nd April, 2021 reads thus:

"2. We direct that the interim orders of bail and interim orders of pre-arrest bail passed by various Criminal Courts in Karnataka which are likely to expire between 23rd April, 2021 and 29th May, 2021 shall stand extended to 29th May, 2021. However, if applications are made by the State or prosecuting agency or by any person for cancellation of the bail, the concerned Courts will hear such applications in accordance with law".

22. We direct that the interim directions issued on 16th April, 2021 and 22nd April, 2021 which are quoted above shall continue to operate till 5th July, 2021.

23. Paragraph Nos.21 and 22 above shall be notified on the website of this Court by Registrar (Judicial).

24. List these petitions on 3rd June, 2021 at 3.30 p.m.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

vgh*/SN