

CJ & AKJ:

06.05.2021

(Through Video Conferencing)

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

ORDER

1. Firstly, we deal with the issue of allocation/distribution of oxygen in various districts and taluks of the State. A draft of the guidelines has been placed on record by the learned Additional Advocate General. He categorically states that as of today, there is no exhaustive written protocol or guidelines for the benefit of the hospitals in the districts and taluks about securing the supply of oxygen. He states that the State Government will immediately issue exhaustive guidelines for the benefit of all the hospitals across the State, whether Government or private, dealing with all the aspects of the supply and utilization of oxygen.

2. The written submissions filed today show that helplines have been created attached to Oxygen Control Room. The telephone numbers of the helplines have been mentioned in paragraph 6 of the written submissions filed today which are referred in the letter dated 5th May, 2021 addressed by the State Nodal Officer, Oxygen Distribution to the Chief Commissioner of

Bruhat Bengaluru Mahanagar Palike (BBMP) and all the Deputy Commissioners of the districts. We direct the State Government to ensure that the information about the helplines is made available to each and every hospital in the State which is admitting COVID-19 patients. The Deputy Commissioners and Assistant Commissioners shall be issued immediate directions to communicate the availability of helplines to all the COVID hospitals within their respective jurisdictions. We direct that this exercise shall be completed immediately as the State can always send the necessary details by e-mail and by the use of social media. Even the guidelines framed for the optimum use of oxygen which are produced along with the written submissions of 4th May, 2021 (annexed to Annexure-R-13) shall be made available across the State to all the hospitals.

3. It appears that a centralized database of the locations of manufacturing plants of oxygen and bottling plants of oxygen in the State, the capacity of such manufacturing/bottling plants and the availability of the quantity of oxygen in those plants has not been created. Even the centralized data of the requirement of oxygen of various districts and taluks is not available. The War

Room created by the State Government for dealing with the requirements of oxygen can work efficiently provided centralized data as aforesaid is made available and real time updation thereof is made. The State Government shall take immediate steps in this behalf.

4. As regards additional quota of 100 MT of oxygen per day made available to the State from 1st May, 2021, the learned Advocate General stated that 60 MT per day is allowed to be lifted from the units at Ballari and 40 MT per day is required to be lifted from Kalinga, Odisha. He states that five empty containers/tankers having a capacity of 74 MT each have been sent to Odisha by air. He states that the filled tankers/containers will be back in the State approximately within 48 hours. He states that the Government of India has allotted to the State a quota of 20 MT of oxygen which has been received from Beharain and 20 MT from Saudi Arabia. As regards Pressure Swing Absorption (PSA) units, the learned Advocate General stated that the Government of India has permitted the State Government to set up 28 such units attached to various hospitals which will manufacture 500 litres of oxygen per minute. Each unit will take

care of the need of about 15-20 patients. He states that the State Government is procuring another 40 PSA units. He stated that by 15th May, 2021, 6-10 PSA units in the State will become functional and by the end of May, the remaining units will become functional.

5. The learned Advocate General further stated that as per the order passed by this Court yesterday, the Hon'ble Minister of the Department of Industries of the State Government has already made a request to the Government of India to allow utilization of the entire production of oxygen within the State itself.

6. Now, we come to the important issue of vaccination. In the written submissions filed today by the State Government, it is stated that through the Central Government and through its own resources, the State Government has till 5th May, 2021 procured 1,08,49,470 doses of vaccine which consists of doses of COVISHIELD and COVAXIN. Paragraph 14 of the written submissions of the State Government records that out of the total of 1,08,49,470 doses, 1,00,72,795 doses have been already administered. Thus, what remains as of today which is available in the State is a quantity of only 7,76,675 doses. We must note

here that 1,00,72,795 doses cover all the categories including the category of the age group of 18-44 years. The figures given in paragraph 14 indicate that as on 5th May, 2021, 83,28,241 beneficiaries were vaccinated for the first dose and about 17,44,554 beneficiaries were vaccinated for the second dose. Thus, 65,83,687 beneficiaries need the second dose. The learned counsel representing the Central Government, Shri Shivakumar stated that the second dose has to be administered within the time span prescribed which is recorded in the FAQs (Frequently Asked Questions) posted by the Health Ministry of the Government of India on its website. Thus, the scenario which emerges as of today is that out of 65,83,687 beneficiaries who have taken the first dose, only 7,76,675 persons can be provided with the second dose.

7. Shri Shivakumar states that as far as the categories of Healthcare Workers, Frontline Workers and citizens who are aged 45 years and above are concerned, free vaccine is made available by the Central Government through the State Governments which can be administered through the public hospitals. He states that as regards vaccination to the age group

of 18-44 years, the State Government can directly place orders with the manufacturers of the vaccine. At this stage, the learned Amicus Curiae, Shri Vikram Huilgol states that from 1st May, 2021, 50% of the vaccines are required to be procured by the State Government from the Central Government and the remaining 50% directly from the manufacturer.

8. Thus, the present position regarding availability of vaccines in the State, to say the least, is shocking. The available 7,76,675 doses will have to be given firstly to those beneficiaries who have taken the first dose and in whose cases the requisite period for taking the second dose as per the mandate of the Central Government is likely to expire. The second category which deserves priority is Healthcare Workers and Frontline Workers. In short, as the situation prevails today, it is virtually impossible for the citizens to get the first dose of vaccine unless they fall in the category of Healthcare Workers and Frontline Workers. The learned Additional Advocate General states that an indent has been submitted by the State Government to the manufacturer for procuring the supply of vaccines.

9. We direct the State Government to immediately submit an indent/requisition to the concerned authority of the Central Government for supply of the required quantity of free doses of vaccines. All the details shall be provided by the State Government in the requisition. The State Government will also specify the number of beneficiaries who are likely to be deprived of the advantage of the first dose, if the second dose is not administered to them immediately. We direct the State Government to submit the indent/requisition with all particulars to the concerned authority of the Central Government during the course of the day. The concerned authority of the Central Government shall take an appropriate decision thereon immediately and in any event, within three days from the date of receipt of the requisition.

10. We may note here that considering the figures which are set out in the written submissions filed today by the State Government, there is hardly any stock of vaccine available in the State for administering the first dose as well as the second dose. We hope and trust that this critical situation will be considered by the Central Government while dealing with the requisition made

by the State Government. The learned Additional Advocate General states that a requisition has been submitted to a manufacturer on 3rd May, 2021 for vaccines to the age group of 18-44 years. But, so far the doses of vaccine have not been received by the State Government. It is necessary for the Central Government to take up the issue with the manufacturer of the vaccine so that the State Government can immediately procure the quota of vaccines for the age group of 18-44 years.

11. In W.P. No.8651 of 2020, though the petition is filed by one of the Trusts along with certain individuals, *prima facie*, it appears that it is for espousing the cause of private COVID Vaccination Centres. The challenge is essentially to clause (v) of the order dated 21st April, 2021. *Prima facie*, at this stage we find nothing wrong with clause (v) of the said order. However, as we are dealing with the issue of vaccination, we keep the petition pending. It will be heard along with the main petition.

12. In W.P.No.8773/2021, the first substantive prayer is for directing the State Government to pay ex-gratia of compensation to the victims of the incident at Chamarajanagar District. This

prayer will have to be kept pending till the preliminary report of inquiry either by the officer appointed by the State Government or by the Committee appointed by the Legal Services Authority is placed on record. The second prayer seeks conduct of the autopsy on the bodies of the persons who have died due to COVID-19. We do not think that at this stage, we can issue a direction to the State Government to undertake the autopsy of each and every person who has allegedly died due to infection of COVID-19. The third prayer is for holding an enquiry into the incident that occurred at Kalaburagi District. At this stage, we need not consider this prayer. However, as the prayer of compensation is made, the petition shall be kept pending and it shall be heard along with other petitions.

13. I.A.No.4 of 2021 has been filed in W.P.No.8619 of 2020. We direct the respondents to respond to the interlocutory application either by filing a statement of objections or by filing written submissions before the next date.

14. I.A.No.3 of 2021 has been filed in WP No.6435 of 2020. This interlocutory application raises an important issue regarding

those who are residing in slums in the city of Bengaluru. The learned counsel appearing for the applicant states that there are about 1,000 slums in the city of Bengaluru and a large population in the city is occupying the slums. We direct the State Government to file written submissions/statement of objections dealing with this application and come out with a scheme for ensuring that COVID-19 does not spread in the slums in the city. The written submissions/statement of objections shall be filed on or before next date.

15. As regards vaccination, our attention is invited to certain observations made by the Apex Court in its order dated 30th April, 2021 wherein the Apex Court has noted certain issues in paragraph 37. No citizen is entitled to vaccination unless he complies with the mandatory requirement of registration. The State Government will have to evolve a scheme for assisting the citizens for getting themselves registered. Assistance will have to be rendered to the citizens belonging to the vulnerable sections of the society to get themselves registered. Unless people belonging to the vulnerable sections get registered and get vaccinated, the very purpose of vaccination will be frustrated.

The second issue which the State Government will have to be respond on the next date is regarding undertaking targeted vaccination drives of frontline workers such as crematorium workers, Healthcare Workers, etc. The State Government's response is necessary on this issue on the next date.

16. At this stage, the learned counsel appearing for BBMP states that as of now, only 38 HDU beds, 20 ICU beds and 9 ICU with Ventilator beds are vacant in the city of Bengaluru. About 1,933 general beds are available. The situation about the availability of beds in the city continues to be very critical. However, the learned counsel Shri.V.Sreenidhi states that several efforts are being made to provide additional beds. He states the Chief Commissioner of BBMP is also doing the exercise of ascertaining Ward-wise availability of oxygen. He states that all these initiatives will be placed on record on the next date. Compliances made not only with this order but the earlier orders will have to be reported by all the parties by 10th May, 2021.

17. We also direct the State Government to place on record the decision taken on the issue of food security by 10th May, 2021. We have already clarified in the earlier order that after

identification of the vulnerable sections of society by the State Government, the benefits which are ordered to be provided under the orders of the Court passed in these petitions shall be immediately made available to the vulnerable sections. The order passed on the last date refers to specific orders passed by this Court dealing with the issue of food security.

18. Further hearing of this group of matters will be on 11th May, 2021 at 11.00 a.m.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

vgh*/ DR