

CJ & AKJ:
29.04.2021

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

(through video conferencing)

ORDER

1. Before we go into the details, it is necessary for the benefit of the State and Central Governments as well as for all the agencies and instrumentalities of the State to remind them of their obligations under the Constitution. In the case of ***DEVIKA BISWAS vs. UNION OF INDIA AND OTHERS***¹, the Apex Court has reiterated that right to life under Article 21 of the Constitution of India encompasses into it the right to live a dignified and meaningful life which will include right to health. The Apex Court has reiterated that right to health is an integral part under Article 21 of the Constitution of India.

2. Way back in the year 1984, in the case of ***BANDHUA MUKTI MORCHA VS UNION OF INDIA & OTHERS***², the Apex Court has held that protection afforded by Article 21 of the Constitution of India is a protection to the health and strength of the workers, men and women. The same principles have been reiterated by

¹ (2016) 10 SCC 726

² (1984) 3 SCC 161

the Apex Court in the case of ***CONSUMER EDUCATION & RESEARCH CENTRE AND OTHERS vs. UNION OF INDIA & OTHERS***³.

RIGHT TO HEALTH UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA

3. Today, we are dealing with the extraordinary situation created by the second wave of COVID-19. Those who are infected with COVID-19 are looking upon the State and its agencies and instrumentalities to provide them the best possible medical treatment and best possible health care. COVID-19 is such a disease which requires specialised treatment. Therefore, it is necessary for us to remind the State Government, the Central Government and all the agencies and instrumentalities of the State that as right to health is an integral part of Article 21 of the Constitution of India, it is the obligation all the authorities to make best possible efforts to provide medical treatment to all those who are infected with COVID-19. Let all the authorities remember that ultimately they are dealing with the fundamental right of the citizens under Article 21 of right to life.

³ (1995) 3 SCC 42

AVAILABILITY OF COVID-19 BEDS

4. Now, we turn to the issue of availability of the beds. The learned counsel appearing for the Bruhat Bengaluru Mahanagara Palike (BBMP) has stated that in the City of Bengaluru, after 27th April 2021, the bed capacity has been increased by adding beds as under:

(i)	General beds	-	329
(ii)	HDU beds	-	425
(iii)	ICU with ventilator	-	21
(iv)	ICU	-	29

This marginal increase in two days may not be of any major relief to the patients. He states that today at 9.30 a.m, the availability of beds in all the categories in the city of Bengaluru was as under:

(i)	HDU beds	-	121
(ii)	ICU with ventilator	-	14
(iii)	ICU	-	30

This is to be considered in the context of the fact that yesterday the figure of COVID-19 positive cases in the City has taken a sudden jump and it has crossed 22,000.

5. The learned Standing Counsel appearing for the Central Government states that the South Western Railways is in

a position to provide approximately 300 beds in Bengaluru, Mysuru and Hubballi. He states that the beds can be made available in railway coaches and these beds have facility of oxygen. As far as the City of Bengaluru is concerned, we direct BBMP and the State Government to take immediate steps to contact the officers of the South Western Railways and take over all the beds which can be made available by the Railways in the City of Bengaluru. Similarly, the State Government or the concerned Authority under the directions of the State Government shall take immediate steps to take over the beds available with Railways at Mysuru and Hubballi.

6. As regards the availability of beds with the Army and Air Force in the City of Bengaluru, the learned Standing Counsel appearing for the Central Government states that the beds which are available in the City are occupied by the families of the Army and Air Force personnel and they are not in a position to provide extra beds. There is already a letter addressed by the Additional Chief Secretary to the Health and Family Welfare Department of the State Government to the Air Vice Marshal requesting him to make available beds for COVID-19 patients.

7. In the situations created by the disasters, the Army, Air Force and Navy have always responded and rendered valuable help to the civic administration. The situation in Bengaluru is very critical. We, therefore, direct the Senior Officers of BBMP including Chief Commissioner and Senior Officers of the State Government to immediately hold a meeting with the officers of the Army and Air Force in the City. We hope and trust that the Army and Air Force will go out of the way to assist the civic administration by creating large number of beds with oxygen.

8. As regards the bed strength in those districts where there are more than 5000 active COVID-19 cases, the State Government has placed the figures on record. The State Government has also stated in the written submissions that within a span of 14 months, the availability of beds in these districts has substantially increased.

9. At this stage, we must note the principles laid down in the Disaster Management Act, 2005 (for short, "the said Act of 2005"). A perusal of Sections 6(2)(i) and 18(2)(h) will show that

all the authorities under the said Act of 2005 are under an obligation to be in the state of preparedness to deal with the disaster situation.

10. In the context of the figures mentioned by the State Government in paragraph 16 of the written submissions filed today, the State Government will have to be in the state of preparedness by making an estimate of beds which may be required in the near future in Bengaluru and in all other major cities of the State. Unless the State Government prepares the estimate of the requirement of the beds in various categories, it may not be possible to provide effective relief to the patients of COVID-19. We, therefore, direct the State Government to place on record on or before the next date, the steps taken to prepare a broad estimation of the number of beds required in near future and the steps taken to enhance the intake capacity of all the COVID-19 hospitals.

11. Dr.Prasanna H.M., the President of Private Hospitals and Nursing Homes Association (PHANA) of Karnataka is present online. He states that within 24 hours, a portal will be launched by the said organisation displaying the data of various categories

of beds available in all the categories including 50% quota reserved for the State Government. He states that instructions will be given to display the availability of the beds at conspicuous places including the entry points of the private hospitals in terms of the directions issued by this Court. He also states that instructions will be issued to all the hospitals to ensure that *Remdesivir* drug is prescribed only to those patients who need the same immediately. We take on record, the aforesaid assurances.

12. We have already issued directions to set up helpdesks outside all the hospitals in the City of Bengaluru which are COVID hospitals. The State Government shall immediately report implementation of all the said directions as stated earlier. The helpdesks will also deal with the grievances of the citizens regarding the non-availability of beds.

AVAILABILITY OF REMDESIVIR

13. Now, coming to the issue of availability of *Remdesivir* drug, firstly, the learned Advocate General and the learned Additional Government Advocate stated that there is a national

quota of allocation of *Remdesivir* vials. The quota for the State of Karnataka is of 1,22,000 vials for the period between 21st April to 30th April 2021. Dr.Prasanna makes a submission that the State Government will need at least 10,000 vials of *Remdesivir* per day in the city of Bengaluru in the present day situation.

14. As regards the supply of *Remdesivir* medicine to the patients admitted on beds reserved for private hospitals, the State Government has stated that the orders for the supply of *Remdesivir* medicine are being enrouted only through the State Government and it is the State Government which decides the quantity of supply for each hospital. The learned Additional Government Advocate states that whenever such requests come from the private hospitals, the State Government is not permitting placing of orders for the entire quantity claimed by the private hospitals. The quantity in the orders is restricted. The State Government must place on record the criteria applied for restricting the demands made by the private hospitals. There has to be a rational criteria for this purpose which will stand the test of Article 14 of the Constitution of India.

15. As regards the supply of *Remdesivir* medicine to patients admitted in public hospitals and the patients admitted in private hospitals in 50% quota of the State Government, factual statements have been made in paragraph 14 of the written submissions. We may add here that Dr.Prasanna stated that as far as the supply of *Remdesivir* medicine to the patients who are admitted on 50% public quota of beds is concerned, 90% of the requirement is being met by the State Government.

16. Paragraph 14 records the details of the orders placed for *Remdesivir* drug. We direct the State Government to make an estimate of the quantum of *Remdesivir* vials required in public hospitals in the State as well as for 50% beds reserved in private hospitals and submit a requisition to the Central Government accordingly. We direct the State Government to submit a representation for increasing the outer limit of the allocation fixed by the Central Government within two days from today. We direct the Central Government to immediately consider the requisition of the State Government for increase in the allocation to the State of Karnataka. Considering the seriousness of the situation in the State of Karnataka, we direct the Central Government to take a

decision on the requisition submitted by the State Government within three days from the date of receipt of the requisition.

17. The learned Advocate General as well as the learned Additional Government Advocate stated that *Remdesivir* medicine is not available in the open market and for Government hospitals and 50% quota of Government beds in private hospitals, the State Government is procuring the same through the Karnataka State Medical Supplies Corporation Limited (for short, "KSMSCL"). The learned Advocate General states that if the private hospitals instruct the patients' relatives to get *Remdesivir* vials, the relatives can contact the Deputy Drugs Controller on the telephone numbers mentioned in paragraph 31 of the written submissions. We direct the State Government and BBMP to ensure that on the helpdesks outside all COVID-19 hospitals, the details of the phone number of the Deputy Drugs Controller and his e-mail address shall be prominently displayed so that the relatives are immediately able to contact the Deputy Drugs Controller for the supply of *Remdesivir* medicine.

AVAILABILITY OF OXYGEN

18. Now coming to the availability of oxygen, today the State Government has clarified the stand taken on the earlier date. It is pointed out today that there is a cap of 802 metric tonnes per day on the allocation of medical oxygen to the State. The learned Government Advocate stated that in fact, the production of oxygen in the State exceeds the total requirement of the State. But in view of the cap of 802 metric tonnes per day, the State cannot utilize the quantity in excess of 802 metric tonnes. As noted in the last order, estimation of requirement of oxygen in the State of Karnataka as on 30th April 2021 is of 1,471 metric tonnes per day. We direct the State Government to immediately submit a representation to the concerned authority of the Central Government setting out the projected requirement of oxygen per day for at least 7 more days from tomorrow. We direct the Government of India to take an immediate decision on the requisition which may be submitted by the State Government. As stated in the last order, by way of an illustration, on 30th April 2021, the State will have shortage of at least 600 metric tonnes of

oxygen. The Central Government shall take a note of ever rising figure of positive cases in the city.

19. The decision of the Central Government regarding increase in the cap on the quantity of *Remsidivir* and oxygen shall be placed on record by Monday i.e., 3rd May 2021. The soft copies of the decisions shall be supplied to all the learned advocates appearing for the parties.

ISSUE OF FOOD SECURITY AND OTHER ISSUES

20. Due to lockdown and a huge surge in the number of positive COVID cases in the State, the issue of food security of the weaker sections of the society and the issue of relief to the workers will require urgent attention. The learned Advocate General stated that on Saturday, there will be a meeting of the members of the Bar appearing in this group of matters to discuss the issue. The lockdown has started 2 days back. The effect of the lockdown on the weaker sections of the Society such as unorganized labour, transgenders, etc will have to be assessed. Therefore, it will be appropriate if the learned Advocate General

holds a meeting of various NGOs and other stakeholders working in the field so that State Government can assess the situation created by the impact of lockdown on these classes of the society. Some submissions have been made in the written submissions on these aspects. The State Government will come out with the concrete steps, which they propose to take for helping the weaker sections of the society by providing them ration, etc. The response of the State shall be filed on the next date. As stated earlier, the State Government shall consider the views of all the stakeholders.

OTHER ISSUES

21. During the course of hearing, a concern was expressed that even though no hospitalization was advised, there are many COVID-19 patients who are getting admitted into hospitals and therefore, the deserving patients are not getting beds. Therefore, the State Government and BBMP will have to consider of creating more and more COVID Centres for those patients who do not require hospitalization. It is quite possible that proper home isolation facilities are not available at all homes, especially when more than one family member has got infected.

BBMP shall activate its Ward Level offices and ensure that those who do not require hospitalization but do not have proper isolation facilities at their homes, are shifted to the COVID Centres. The response of BBMP shall be placed on record on the next date.

22. A report has been submitted by Karnataka State Legal Services Authority (KSLSA) dated 27th April 2021. The report incorporates the excellent work done by the Committee of which two retired Hon'ble Judges of this Court are a part. The learned Advocate General assures the Court that the Hon'ble retired Judges and other members of the Committee as well as the Secretary of KSLSA will be invited to attend the meetings. We make it clear that when the recommendations made from time to time by the Monitoring Committee set up by KSLSA are forwarded to the learned Advocate General and all other stake holders, the same shall be looked into by all the concerned authorities. In fact, the learned Advocate General stated that some of the suggestions already made are most welcome which will be looked into.

23. Before we part this order, we must record a clarification. We have issued stringent directions from time to time against the State Government and the agencies and the instrumentalities of the State. While we do so, we must clarify that there are several Government officials, the officials attached to various agencies and the instrumentalities of the State including BBMP, the doctors, nurses and paramedical workers, who are rendering valuable services to the society at large which needs to be appreciated by all. While we are passing various directions in the context of Article 21 of Constitution of India, we must record our appreciation to the efforts made by all the stakeholders in the right direction.

24. In our orders, with emphasis, we have referred to the situation in the city of Bengaluru and have issued directions. We make it clear that directions issued by the Court in relation to the city of Bengaluru will have to be implemented in its true letter and spirit even in the other districts where there are large number of COVID positive cases.

25. We direct that these petitions shall be listed on 5th
May 2021 at 11.00 a.m.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

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