

CJ & AKJ:

04.05.2021

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

(Through Video Conferencing)

ORDER

1. In our last order dated 29th April, 2021, we have already held that as the right to health is an integral part of the right guaranteed under Article 21 of the Constitution of India, it is the obligation of all the authorities to make the best possible efforts to provide medical treatment to all those who are infected with COVID-19. The last order reminds all the authorities that they are dealing with the fundamental rights of the citizens under Article 21 of the Constitution of India.

2. Though this group of petitions were ordered to be listed tomorrow, considering the serious situation regarding the rising number of positive cases in the State of Karnataka and the shortage of oxygen in the State, yesterday we had communicated to the members of the Bar that the petitions will be heard today.

3. In our last order, paragraphs 18 and 19 are relevant which reads thus:

"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."

(underline supplied)

4. There is a memo filed by the standing counsel for the Government of India stating that the oxygen allocation to the State of Karnataka has been marginally increased to 865 Metric Tonnes per day (MT) from 802 MT per day. This has to be considered in the background of the fact specifically noted in paragraph 18 of our last order that the projected requirement of oxygen in the State of Karnataka as on 30th April, 2021 was 1,471 MT. Our attention is invited to the written submissions filed by the State of Karnataka today and in particular, a copy of the letter dated 30th April, 2021 annexed to the said written submissions which is addressed by the Additional Chief Secretary to the Government, Health and Family Welfare Services Department, to the Commerce Secretary, Department of Industrial Policy and Promotion of the Government of India. Based on the figures mentioned therein, the Additional Chief Secretary has stated that the requirement of oxygen in the State is likely to go up to 1,792 MT by 5th May, 2021. It is mentioned in the letter that 17% of the total active cases will require oxygenated beds and 3% will require ICU beds. It is stated in the letter that the minimum requirement of oxygen of the State would be at least 1,162 MT as

on 5th May, 2021. Notwithstanding this letter, we are today told that now the quota is marginally increased only to 862 MT per day and that also with effect from 1st May, 2021. In fact, in the morning session, we had adjourned this matter till the afternoon session to enable the learned counsel representing the Central Government to take instructions whether immediately *ad hoc* increase can be granted in the quota. However, in the afternoon, he states that he is unable to make a statement as a decision can be taken only after the process of consultation, as there is more than one Ministry involved.

5. The aforesaid statement has to be tested on the background of two shocking reports appearing in the media. The first shocking report is from the district of Chamarajanagar wherein it is reported that possibly due to lack of adequate oxygen supply, 24 COVID-19 patients lost their lives in the span of 24 hours. Earlier, in the said district, the number of COVID-19 deaths per day were always in single digit. The other similar report pertains to Kalaburagi District, where it is reported that there are 8 to 9 such deaths. Even in the background of these

reports and the projected requirement already submitted by the State of Karnataka on 30th April, 2021, the learned counsel representing the Union of India is unable to make a statement even about the grant of *ad hoc* increase in the quota of oxygen supply. The members of the Bar who are present today relying upon the figures of active cases in other States and the number of positive cases which are being reported in other states, submitted that the allocation of the quota of oxygen is discriminatory in the sense that some States which do not have so many cases have been allocated the quota which exceeds the quota allocated to the State of Karnataka. We direct the members of the Bar to place on record the entire data about the total positive cases reported in all the States, the total active cases and the quota of oxygen supply allocated to each State. We are putting the Central Government to notice that we will have to consider the prayer for issuing directions to the Central Government to immediately increase the quota on *ad hoc* basis, especially as it is pointed out across the Bar that in ten hospitals in the city of Bengaluru, the stock of oxygen has almost come to an end. It is pointed out across the Bar that even Kolar District

does not have the supply of oxygen. Therefore, we are putting the Central Government to notice that the prayer for issuing a direction for increase in the quota on *ad hoc* basis will be considered tomorrow at 10.30 a.m. The learned Advocate General assures the Court that the senior officials of the State Government will interact with the senior officials of the Government of India in this regard.

6. We direct the State Government to place on record the existing guidelines/Standard Operating Procedure for allocation of oxygen to various Cities/Districts/Hospitals. The State Government will have to also clarify whether any mechanism is available under which a hospital which has run out of stock of oxygen can immediately get supply of oxygen. The State Government will have to also clarify the mechanism available to the districts like Chamarajanagar where there are no bottling plants and therefore, filled oxygen cylinders are required to be brought from the adjacent districts. The State Government will have to also take a call whether in such districts where filled oxygen cylinders are required to be physically secured from the

adjacent districts, a buffer or reserve quota can be maintained at the district headquarters which may be used in case of emergencies.

7. As regards the incident at Chamarajanagar District, the learned Advocate General states that a senior civil servant has been appointed to hold an enquiry. He states that all efforts are being made to make the report available by tomorrow. *Prima facie*, we are of the view that considering the seriousness of the incident, this is a fit case where an enquiry will have to be held by appointing a retired Judge of this Court. This is especially because the incident is not confined to Chamarajanagar District. There are reports that similar incidents are happening in other districts as well. We propose to hear the learned Advocate General on this issue.

8. Under our last order, a direction was issued to the Central Government to increase the cap on *Remdesivir* drug. As regards supply of *Remdesivir* medicine, the annexures to the written submissions filed today show that for the period between 21st April, 2021 to 9th May, 2021, the allocation to the State of

Karnataka is of 3,01,300 vials. As against this, in the letter dated 30th April, 2021 of the Additional Chief Secretary referred to above, he has mentioned that as on 30th April, 2021, the requirement of the State of Karnataka was of 35,000 vials per day. However, considering the aforesaid quota, what the State Government is getting only about 15,800 vials per day which is less than one half of the requirement stated in the letter dated 30th April, 2021.

9. Notwithstanding the direction issued on the last date, there is no specific decision taken based on the requirement of the State of Karnataka. It is merely stated that in the memo filed by the Government of India that the quota made available to the State is 3,01,300 vials for a period from 21st April, 2021 to 9th May, 2021. This indicates that the State is not getting *Remdesivir* drug to the extent of even 50% of its requirement. Even on this aspect, we propose to issue necessary directions against the Central Government tomorrow i.e., 5th May 2021.

10. We may note here that Shri.Vikram Huilgol was appearing on behalf of the State in these petitions from day one. Though he

is no longer appearing for the State of Karnataka, we request him to appear and assist the Court as *Amicus Curiae*.

11. Post these petitions on 5th May, 2021 at 10.30 a.m. for further hearing.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

vgh*/ DR