

CJ & AKJ:
11.05.2021

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

(Through Video Conferencing)

ORDER

FOOD SECURITY

On the issue of food security, written submissions of today's date have been filed by the State Government containing the detailed factual statements from paragraph 34 onwards. Paragraph 34 onwards reiterates that there is a proposal to distribute 10 kgs of food grains free of cost to PHH Card applicants and 10 kgs at Rs.15/- for NPHH Card applicants. The State Government will have to start implementation of the same immediately. It is stated in the written submissions that approval is awaited. We direct the State Government to take immediate decision on the said proposal.

2. In paragraph 37 of the written submissions, it is stated that instructions have been issued by the State Government to all the Urban Local Bodies (ULBs) to continue the functioning of the Indira Canteens by ensuring social distancing and by providing food packets, as far as possible, so as to avoid congregation. In paragraph 38, reliance is placed on the order

dated 7th May 2021 passed by the State Government directing the ULBs to make provision of breakfast, lunch and dinner free of cost in the Indira Canteens of all the ULBs (excluding the Bruhat Bengaluru Mahanagara Palike [BBMP]) till 24th May 2021. The learned Advocate General and the learned Additional Advocate General state that similarly, even at the Indira Canteens within the jurisdiction of BBMP, food (breakfast, lunch and dinner) will be provided free of cost. They also informed the Court that the scheme of providing food through Indira Canteens will be implemented from tomorrow.

3. The submission of some of the learned counsel is based on the order dated 24th April 2020 and in particular, paragraphs 14 and 15 thereof. Our attention is also invited to paragraph 11 of the order dated 11th June 2020. The submission is that as done in the last year, ration kits should be supplied at the doorsteps of the identified individuals. It is submitted that the quantum of food items included in the ration kits should be sufficient for 21 days. The learned Advocate General states that such a decision was taken last year as the lockdown was

extended for a considerably long time. He states that for the present, the lockdown announced is only till 24th of this month.

4. Today, the question is how people belonging to vulnerable sections of the society who need food can approach the Indira Canteens. The learned counsel appearing for BBMP states that for 198 wards in BBMP area, there are 174 permanent Indira Canteens and 18 mobile canteens. The learned Advocate General assured the Court that not only in BBMP limits, but in all the areas of ULBs, with the help of NGOs whose names appear in paragraph 36 of the written submissions as well as other NGOs, an arrangement will be made to ensure that cooked food is supplied in those localities which are far away from the Indira Canteens. The learned Advocate General states that necessary decision/scheme shall be placed on record by 13th May 2021.

5. As a result of the lockdown, citizens belonging to certain sections of the society have stopped receiving income especially, those who were depending upon daily wages or daily income. The object of the aforesaid exercise should be that such class of citizens in the society must get food during this period of lockdown.

6. The decision/scheme evolved by the State Government shall be placed on record by 13th May 2021. If for any reason the lockdown is extended, we are sure that the State Government will consider of implementing the method used last year which is reflected from paragraph 15 of the order dated 24th April 2020.

7. As regards the rural areas, in paragraph 42 of the written submissions, the State Government has stated that the Government of Karnataka, through Gram Panchayats, shall fund the preparation and delivery of 150 packed meals in each Gram Panchayat to the vulnerable households. How the vulnerable households will be identified and how the food will reach them is also set out in the said paragraph. Even as regards this arrangement, the State Government will have to reconsider the entire issue if the lockdown is extended beyond 24th May 2021. In the meanwhile, we direct the State Government to consider of restoring Dasoha helpline which was in existence last year so that the citizens could address the issues regarding non-availability of food. The State Government shall take a decision in this behalf at the earliest.

8. Our attention is invited to paragraph 10 of the order dated 2nd July 2020 which refers to implementation of the scheme known as “Atma Nirbhar Scheme’ of the Central Government. The learned Additional Solicitor General will take instructions and state before the Court whether such a scheme continues to exist. If the scheme continues to exist, necessary documents shall be placed on record by 13th May 2021.

VACCINATION

9. Now, we come to the issue of availability of vaccine in the State of Karnataka. At the outset, we must record that it is a well accepted fact that aggressive vaccination campaign is a major step which is required to be taken to prevent the spread of COVID-19. However, the facts and figures which are brought on record show that the situation regarding availability of vaccine in the State of Karnataka is very disturbing.

10. Our last order dated 6th May 2021 notes the following details based on the written submissions and the documents filed by the State Government ;

(a) Till 5th May 2021, 1,08,49,470 doses of both the categories of vaccines were procured by the State;

(b) Till 5th May 2021, 1,00,72,795 doses have been already administered;

(c) Thus, the available quantity of doses as on that date was only 7,76,675 doses;

(d) 83,28,241 beneficiaries were vaccinated for the first dose and 17,44,554 beneficiaries were vaccinated for the second dose;

(e) Hence, 65,83,687 beneficiaries needed the second dose. However, what was available on that date was total quantity of 7,76,675 doses.

11. That is how we issued the following directions in paragraphs 9 and 10 which read thus:

"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."

(underlines supplied)

As far as the Central Government is concerned, compliance with the aforesaid directions has not been reported.

12. After having perused the written submissions filed by the State Government today and the written submissions filed by Sri Vikram Huilgol, the learned *Amicus Curiae*, the following factual situation emerges;

(a) On 22nd April 2021 and 29th April 2021, an indent was placed by the State Government with the Central Government for two crore doses of COVISHIELD. An indent was placed on 3rd May 2021 for one crore doses of COVAXIN for vaccinating the beneficiaries belonging to the category of 18 to 44 years;

(b) However, only 6,50,000/- doses of COVISHIELD vaccine have been received;

(c) Thus, the total doses available as of today are 9,37,780. But, as of 5th May 2021, 65,83,687 beneficiaries needed the second dose;

(d) Thus, the situation which prevails today clearly shows that if all the available 9,37,780 doses are to be used for administering the second dose, a substantial number of beneficiaries who have taken the first dose will not get the second dose.

13. The situation is very serious as can be seen from the representation dated 6th May 2021 submitted by the State Government to the Central Government as per the directions issued in paragraph 9 of the order dated 6th May 2021 which we have quoted earlier. The said letter contains the following details;

(a) As per the target of providing vaccine to 1.71 crore eligible beneficiaries aged about 45 years, the State of Karnataka has covered 72,25,064 beneficiaries in the first dose and 11,71,008 beneficiaries in the second dose. The figures regarding those who have taken COVISHIELD as a first dose and have completed minimum six weeks from the date of taking the first dose have been also stated;

(b) 9,92,629 beneficiaries who have taken the first dose of COVISHIELD have completed six weeks from the date of their first dose, 5,30,540 beneficiaries have completed seven weeks from the date of their first dose and 1,60,279 beneficiaries have completed eight weeks after receiving the first dose. Thus, approximately, 16,83,448 beneficiaries who have taken the first dose of COVISHIELD will immediately require the second dose as per the prevailing guidelines of the Central Government which require second dose to be administered six to eight weeks after the first dose;

(c) 3,97,894 beneficiaries who have taken COVAXIN as the first dose have completed four weeks, 3,10,022 beneficiaries have completed five weeks and 2,17,543 beneficiaries have

completed six weeks. As per the present guidelines, those who have taken COVAXIN as a first dose will have to take the second dose within 28 days from the date of first dose. So, the scenario which emerges is that 9,25,459 beneficiaries who have taken the first dose of COVAXIN more than four weeks back have not been given the second dose;

(d) Broadly, it can be said that about 26,00,000 beneficiaries in the State who have taken the first dose of COVISHIELD or COVAXIN have not received the second dose though it is overdue as per the prevailing norms of the Central Government. More importantly, the total stock of vaccines available in the State is only 9,37,780 of doses. Hence, there is no possibility of majority of 26,00,000 beneficiaries getting the second dose which is already overdue. We may hasten to add here that the aforesaid figure of 26,00,000 does not include the other 39,00,000 beneficiaries who have taken only first dose.

14. Hence, it is obvious that if the present scenario continues, the first dose of vaccination cannot be provided to the categories of all the frontline workers, Healthcare workers and those who have completed the age of 45 years. The reason is

that even the demand of those who have already taken the first dose cannot be fulfilled in the near future. Thus, it can be concluded that if the present scenario continues, the entire vaccination drive in the State will be completely ineffective. We may also note that the learned *Amicus Curiae* pointed out the policy of the Central Government as is reflected from the affidavit dated 9th May 2021 filed by the Central Government before the Apex Court. As far as the said policy is concerned, it is for the Apex Court to look into. However, Annexure-R5 indicates that the total doses of vaccines which are allocated to the State of Karnataka by the Central Government for the month of May 2021 for making available the same to the age group of 45 years and above will be 13,36,670. If what is stated in Annexure-R5 is correct, the doses of vaccine to be supplied in the current month to the State will not cater to the need of those 26,00,000 beneficiaries who have already completed the required number of days from the date of the first dose of vaccine. The same Chart indicates that for the month of May 2021, 9,48,220 doses can be acquired by the State Government through 'Other than Government of India Channel' which can be used for the age group of 18 to 44 years.

15. Considering the seriousness of the situation, we extend the time granted to the Government of India to make compliance with the directions contained in paragraph 9 of the last order till 13th May 2021.

16. We also direct the State Government to place on record a Road Map showing how the State Government is firstly going to provide vaccine to the beneficiaries who have taken the first dose and to whom the second dose is overdue. Secondly, the State Government shall place on record how it will achieve the target of vaccinating all those who have completed 45 years of age apart from providing second dose to all those who have been administered first dose. The State Government must come out with the said Road Map by 13th May 2021.

17. We hope and trust that both the Central and State Governments will take a serious note of the desperate situation in the State as regards the availability of vaccine. If urgent steps are not taken to procure sufficient number of doses of vaccine, the very object of vaccination drive is likely to be frustrated which may have cascading effect on the spread of COVID-19. The State

Government will have to also explain how it is going to cover the marginal sections of the society by providing them vaccination.

18. At this stage, our attention is invited to I.A.No.2/2021 filed in W.P.No.8659/2021. Even our earlier order records that a Public Interest Litigation will not be entertained at the instance of a private agency providing vaccination. However, the State Government will have to explain what is averred in paragraph 6 of the said application on the next date where there is an allegation of discrimination.

OXYGEN

19. Now, coming to the supply of oxygen in the State firstly, there is no document placed on record to show that the Central Government has increased the allocation of oxygen to 1200 metric tonnes per day as per the earlier order of this Court, though the learned Additional Solicitor General states that compliance has been made. Secondly, according to the stand taken by the learned Additional Advocate General in a Note tendered across the bar, the allocation to the State Government is now 1015 metric tonnes per day. The State Government must place on record its daily requirement of oxygen from 5th May 2021

till 11th May 2021 and the quantum of oxygen procured. The State Government will have to also place on record what is the projected requirement of oxygen for at least one week from tomorrow (12th May 2021).

20. The learned Additional Solicitor General stated that it will be appropriate if a video conferencing meeting is convened tomorrow by the learned Advocate General in presence of the members of the bar and the officers of the State and the Central Governments so that the figures of requirement of oxygen and the actual quota allotted to the State Government can be reconciled. The said suggestion made by the learned Additional Advocate General merits acceptance. Accordingly, we request the learned Advocate General to convene a meeting tomorrow (12th May 2021) for dealing with the said issue as per the suggestion of the learned Additional Advocate General. Necessary details as aforesaid shall be placed on record by the State Government on 13th May 2021.

W.P.No.8720/2021

21. Our attention is invited to what is observed in paragraph 2 of the order dated 30th March 2020. The learned

Advocate General stated that he will immediately take up the issue with the concerned authorities so that necessary action can be taken. This petition will be heard along with the main matter (W.P.No.6435/2020).

22. The report submitted by the Karnataka State Legal Services Authority in W.P.No.6435/2020 is taken on record which shall be kept in a sealed cover.

23. Further hearing will continue tomorrow (12th May 2021) at 2.30 p.m.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

bkv/SN