CJ & AKJ: **W.P.No.6435/2020**
13.05.2021 **and connected matters**

(Through Video Conferencing)

ORDER

The Registry has brought to our notice that one of the staff members of the High Court Sri S.V.Muniraju, aged 45 years, died yesterday in the night. We are taking on record a printout of the test report. It shows that on 10th May 2021 at 11.06.53 hours, his swab sample was collected by the laboratory of Sir C.V.Raman General Hospital, Bengaluru. The laboratory received the swab sample after a lapse of 22 hours at 09.00.56 hours on 11th May 2021. It appears that the sample was tested on 11th May 2021 at 13.00.56 hours and the positive result was reported at 13.43.04 hours on 11th May 2021. The members of the Registry have learnt that till the time of his death, the test result was not communicated to the deceased. There is a direction issued by this Court that test results should be informed to the concerned individual within 24 hours from the collection of the swab sample. So, this may be a case where though the sample was collected on 10th May 2021 at 11.06.53 hours, but till his death yesterday, Sri S.V.Muniraju was not communicated the test result. Thus, he could not take treatment for COVID-19. We are not taking up the

matter because the person concerned was an employee of this Court. We are worried about the non-implementation of the orders of this Court and the lives of the citizens.

2. We direct the State Government to initiate appropriate action in accordance with law against all concerned who are responsible for this lapse and place on record a report on the action taken on the next date. We direct that the State Government shall again issue a direction to all the Laboratories to ensure that such incidents are not repeated and test reports are made available within 24 hours.

VACCINATION

3. For the sake of continuity, we are reproducing the factual details which are incorporated in paragraphs 12 and 13 of our order dated 11th May 2021;

> *"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."

(underline supplied)

4. Today, the State Government has filed written submissions. The written submissions seem to indicate that after the last order was passed, certain additional doses of vaccine were received. It is stated that on 12th May 2021 at 6.00 a.m., the State had a total stock of 12,32,960 doses of vaccine which included both the Government of India quota and the State procured quota. 50% quota from the Central Government is free of cost and 50% quota from the sources other than the Central Government is to be utilised for vaccinating persons belonging to the age group of 18-44 years. It is stated that 1,08,000 doses were administered on 12th May 2021. However, there is no

categorical statement that all the doses were administered to those whom the second dose was due.

5. Now, today, the stand of the State is that in case of 14,87,262 COVISHIELD beneficiaries, second dose is due and in case of 5,10,467 COVAXIN beneficiaries, second dose is due. Thus, the total figure comes to 19,97,729. Out of the total stock of 12,32,960 doses available at 6.00 a.m on 12th May 2021, a quantity of 1,08,000 has been utilised. Hence, the doses which are available today are 11,24,960. Thus, there will be a shortage of approximately 8,72,000 doses for providing second dose to 19,97,729 persons. We may record here that the figures which are stated today by the State Government are inconsistent with the figures which were placed before the Court on the earlier dates and the figures which have been incorporated in the letter dated 6th May 2021 of the State Government.

6. The stand taken in the memo filed by the Government of India is that as of today, second dose of COVAXIN is recommended to be administered after four to six weeks of the first dose and the second dose of COVISHIELD is recommended to be administered after six to eight weeks of the

first dose. Paragraph 9 of the said memo states that a body of experts is looking into the question of the effect of the failure to abide by the aforesaid timelines while administering the second dose. Ms.Aishwarya Bhati, the learned Additional Solicitor General of India who addressed the Court from Delhi states that the report of the body of experts is expected within few days. There cannot be any distinction between the words 'due' and 'overdue' when it comes to administration of the second dose. Once as per the existing timelines, the second dose is due, it is an obligation of the Governments to ensure that the second dose is provided. If the second dose is not provided, it will be a violation of the fundamental rights of the citizens under Article 21 of the Constitution of India. Thus, as stated above, even in case of persons whose second dose is due as on today, considering the availability of vaccine, more than 8,00,000 persons will not get the second dose. As per the written submissions filed by the learned *Amicus Curiae,* as of 6th May 2021, 5,16,234 HCWs and FLWs were to receive the second dose. The learned *Amicus Curiae* states that as of today, the figure may have crossed 5,20,000. Perhaps, this figure is not accounted for in the written

submissions of the State Government when they have given the figure of 19,97,729.

7. We may record here that as noted in the earlier order dated 11th May 2021, 65,83,687 beneficiaries who had taken the first dose as of 5th May 2021 were awaiting the second dose. The figure as of today must be much more than 65,83,687. Therefore, the figure of 19,97,729 beneficiaries to whom second dose is due as of today will not be a static figure and by a simple calculation, everyday, few lakh numbers will be added to the said figure.

8. Now, coming to the memo filed by the Government of India, in the first fortnight of May 2021, 13,36,670 doses were provided to the State Government. These doses are representing 50% quota which the State can procure from the Central Government. The memo records that in addition to that, in the 50% quota of "other than the Central Government", the State of Karnataka has received 8,94,170 vaccines to cover the age group of 18 to 44 years. The figure of 12,32,960 at 6.00 a.m on 12th May 2021 includes the doses of vaccine of both the categories.

9. The learned Additional Solicitor General invited our attention to the letters dated 16th April 2021, 29th April 2021 and

6th May 2021 addressed by the Central Government to the State Governments. In the first letter itself, the Central Government had informed all the State Governments to ensure timely completion of the second dose to the beneficiaries as per the recommended dose interval. The said letter also warns the State Governments that it is important to ensure that the second dose is not delayed or missed so that full protection is conferred on the recipient. In the second letter dated 29th April 2021, there is a clear guideline laid down by the Government of India that those beneficiaries who are due for the second dose of vaccine shall be prioritized so as to provide them full protection against COVID-19. The third letter of 6th May 2021 specifically lays down that the State Governments are advised to utilize the allocation of vaccines supplied through the Government of India channel in the ratio of 70 : 30. Thus, 70% of the doses shall be used for second dose and 30% for the first dose respectively.

10. When we made a query to the learned Additional Solicitor General who is addressing the Court from Delhi, whether at present, the State Government can utilize the quota of vaccine allotted to it for the age group of 18 to 44 years for giving them the first dose, the learned Additional Solicitor General states that

the advisory of the Central Government is very clear that unless those who have taken the first dose get the second dose on due date, first dose shall not be given to the said age group of 18 to 44 years. She, however, states that it is for the State Government to implement the advisory.

11. We have already noted that right to health is an integral part of the right to life guaranteed under Article 21 of the Constitution of India. Considering the corresponding obligation of the State, the Central Government came out with the policy of vaccination. If those who have taken the first dose are not administered the second dose on the respective due dates, apart from violation of the fundamental rights of the said citizens under Article 21 of the Constitution of India, if they are required to take the first dose again, it will be a huge national waste of the first dose already administered to them. Taking the figures which are stated by the State Government as correct, even if the State Government receives more than 40,00,000 doses in the second quarter of May 2021, it may not be able to cater to the need of all those who have taken the first dose so far. Therefore, this may be a fit case to issue a mandatory direction to both the Governments to ensure that sufficient quantity of doses of vaccine is procured

which will ensure that all those persons to whom the second dose is due, get the second dose. In normal course, we had no option but to issue such a direction. However, the learned Additional Solicitor General states that a decision on allocation of vaccine for the second fortnight of May 2021 is likely to be taken tomorrow. She states that if the State Government immediately furnishes on excel sheets, the entire district-wise data of the persons to whom the second dose is due and the persons to whom the second dose is likely to become due, the Central Government will make every endeavour to bridge the gap to ensure that no one is denied the second dose which has become due. It is in the light of this assurance given by the learned Additional Solicitor General that today we are not issuing any mandatory direction. However, we direct the State Government to immediately furnish the aforesaid details to the Central Government.

12. When we pointed out the guidelines contained in the aforesaid three letters of the Central Government to the learned Advocate General and the learned Additional Advocate General and when we questioned them why the State has overlooked the guidelines in the said letters, the learned Advocate General seeks time to respond. While we grant time to the State to respond to

the same, it is absolutely necessary for the State Government to abide by the said guidelines considering the desperate and critical situation created today due to failure to administer second dose to about 20,00,000 citizens.

13. The sum and substance of the guidelines appears to be that the first priority of the State Government should be to provide vaccine to those who have taken the first dose. Needless to add that as and when more and more doses are made available by the Central Government, equitable distribution of second dose will have to be made. By way of an illustration, we may record here that if a person has taken the first dose of COVISHIELD more than eight weeks back, he must get priority over the person who has completed seven weeks from the date of taking the first dose of COVISHIELD. Thus, it is mandatory for the State Government to ensure that a rational and fair formula is adopted for giving second dose of vaccination.

14. The Central Government will place on record the decision taken regarding allocation of quota of vaccine to the State Government for the second fortnight of May 2021 as soon as the same is taken.

15. We also direct the State Government to place on record all the facts and figures (district-wise) regarding the second dose administered throughout the State. The State Government will place the same on record on 19th May 2021.

16. W.P.No.8475/2021 has been filed where the prayer is for giving priority for vaccination to persons with benchmark disabilities who are not able to visit the centres where vaccination is provided. The State Government has produced on record along with a memo, the guidelines issued in this behalf on 10th May 2021. Going by the facts and figures on record and considering the situation which prevails today and the guidelines of the Central Government, though it is very unfortunate, whatever vaccines are available now will have to be used for administering the second dose. Therefore, today, we are not in a position to issue any further directions. However, further steps taken at the district level on the basis of the said guidelines dated 10th May 2021 shall be placed on record by the State Government by 19th May 2021.

FOOD SECURITY

17. Now, coming to the issue of food security, in the written submissions filed yesterday and today, the State Government has referred to implementation of the scheme which is being implemented through Indira Canteens throughout the State. Today, the learned Standing Counsel appearing for the Central Government has placed on record a copy of the Press Information Bureau publication of 23rd April 2021. For the sake of convenience, we are reproducing paragraph 2 of the memo filed today by the Central Government which reads thus:

> *"2. **With regard to distribution of food grains**, Government of India, Ministry of Consumer Affairs, Food and Public Distribution vide Press Information Bureau dated 23/04/2021, notified that Government of India decided to allocate free of cost food grains at 5 Kgs, per person, per month to nearly 80 crore beneficiaries covered under the National Food Security Act, 2013 (NFSA) over and above NFSA Food grains for next two months i.e. May and June 2021 on the same pattern as the earlier "Pradhan Mantri Garib Kalyan Anna Yojana (PM-GKAY)". Under this Special scheme (PM-GKAY) around 80 crore NFSA beneficiaries covered under both the categories of NFSA, namely Antyodaya Anna Yojana (AAY) and Priority Householders (PHH) will be provided with an additional quota of free of cost food grains (Rice/wheat) at a scale of 5 Kgs per person, per month, over and above their regular*

monthly entitlements under NFSA. A copy of the Press Information Bureau publication dated 23/04/2021 is annexed hereto as Annexure-R.2."

(underline supplied)

It goes without saying that now this decision of the Government of India will have to be implemented in the State of Karnataka and therefore, we direct the State Government to take immediate steps to implement the said decision."

18. It is pointed across the bar that in the first wave of pandemic and lockdown, the orders passed by this Court on 11th June 2020 and 2nd July 2020 note that under the Atma Nirbhar Scheme of the Government of India, a person who is not holding a ration card of any State was entitled to get free ration of 5 kg. of rice and 1 kg. of channa per person per month. We direct both the Governments to take a call on the issue whether the benefits of Atma Nirbhara Scheme as applicable last year can be extended to those who are not holding a ration card of any State. Appropriate decision taken by the Governments shall be placed on record within a period of one week from today.

19. The learned Advocate General assures the Court that depending upon the situation, the State Government will consider whether apart from the facility of providing cooked food through Indira Canteens, ration kits can be made available to vulnerable sections of the society. There is already an order passed by this Court directing the State Government to identify the vulnerable sections of the society who have been affected by the partial lockdown. As far as implementation of the scheme through Indira Canteens is concerned, before the next date, the State Government shall place on record the necessary details in terms of number of beneficiaries. The data shall be district-wise.

20. In terms of the direction contained in paragraph 7 of the order dated 11th May 2021, the State Government has not taken any decision on the issue of restoring Dasoha helpline. We direct the State Government to take a decision immediately. The reason is that if such a helpline is created, the State Government will immediately know who are the persons who are deprived of the benefits of the scheme of the State Government of supplying cooked food as well as well as the scheme of the Central Government to which we have made a reference earlier. We are

of the view that it will be in the interests of all concerned that Dasoha helpline is restored.

REPORT OF THE MONITORING COMMITTEE OF THE KARNATAKA STATE LEGAL SERVICES AUTHORITY

21. A very exhaustive report prepared by the State Level Monitoring Committee of the Karnataka State Legal Services Authority (KSLSA) constituted to monitor COVID-19 issues is placed on record and the copies thereof have been supplied to the learned counsel appearing for the parties. Broadly, two main issues arise on the basis of the said report. The first is, in what manner, the State Government is going to compensate the families of those who lost their lives in Chamarajanagar District Hospital due to the failure of the agencies and instrumentalities of the State to procure sufficient oxygen. The State Government will have to take a stand on the issue of compensating the families of the victims. It is needless to add that the decisions of the Apex Court in the case of ***RUDUL SAH vs STATE OF BIHAR AND ANOTHER***[1] followed by the case of ***SMT. NILABATI BEHERA ALIAS LALITA BEHERA vs STATE OF ORISSA AND OTHERS***[2] and various subsequent decisions hold that in a public

[1] 1983 (4) SCC 141
[2] AIR 1993 SC 1960

law remedy in the form of a petition under Article 226 of the Constitution of India, Writ Court can grant compensation for violation of the fundamental rights guaranteed under Article 21 of the Constitution of India. The State will have to respond on this issue. We are putting the State to notice that the question of exercising the power to grant compensation may be considered on the next date.

22. The second issue which arises on the basis of the said report is the responsibility for lapses. The State Government will have to take a call on this aspect. We must note here that the Committee has found instances of tampering with the relevant record. Therefore, our earlier order that the record shall be retained in the custody of the Chief Secretary will continue to operate. Needless to add that if either the Commissioner appointed under the Commission of Inquiry Act, 1952 or any Investigating Agency needs to look into the record, the Chief Secretary will make available the said record.

OXYGEN

23. As regards the supply of oxygen, paragraph 1 of the memo dated 13th May 2021 of the Central Government is very

clear. Now, it is for the State Government to immediately communicate the requirements of the State to the concerned Authority of the Central Government in view of the assurance recorded therein. We may note here that the details of the oxygen procurement are placed on record by the State Government in the written submissions filed today. The learned Additional Solicitor General invited our attention to paragraph 11 of the written submissions filed by the State Government which records the additional quantity of oxygen received by the State.

DIGNIFIED BURIAL OR CREMATION

24. The issue of dignified burial or cremation of those who have died due to COVID-19 has been raised in W.P.No.8715/2021 and in I.A.No.5/2021 in W.P.No.8619/2020. A copy of the objections filed in I.A.No.5/2021 shall be supplied to the petitioner in W.P.No.8715/2021. On the next date, we will hear the learned counsel appearing for the parties on the said issue.

25. The learned counsel appearing for the applicant in I.A.No.5/2021 (W.P.No.8619/2020) has expressed one concern. His submission is that the guidelines issued by the State

Government permit burial of the body of a person who has died due to COVID-19 without obtaining a death certificate. The learned Advocate General and the learned Additional Advocate General state that they will look into this aspect and respond on the next date.

GENERALLY

26. Since various directions have been issued under this order, it will be appropriate that before the next date, either the learned Advocate General or the learned Additional Advocate General convenes a meeting of the learned counsel appearing for the parties so that the issues regarding compliances can be discussed and a proper response is given on the next date.

27. Before we part with today's order, we must record our appreciation for the services rendered by the Committee of KSLSA headed by a retired Hon'ble Judge of this Court of which, another retired Hon'ble Judge of this Court is also a part. There are other equally prominent members of the Committee. We must record our appreciation for the service rendered by all of them by submitting a report within such a short time.

28. We direct that this group of petitions shall be listed on 20th May 2021 at 10.30 a.m for further hearing.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

bkv/SN