

CJ & AKJ:

20.05.2021

(Through Video Conferencing)

**W.P.No.6435/2020 &
connected matters**

ORDER

VACCINATION

Looking to the written submissions filed on record by the State Government as well as by the Government of India, the situation regarding vaccination in the State continues to be critical. Our attention is invited to the memo filed by the Government of India on 19th May 2021. To the said memo, a letter dated 13th May 2021 addressed by the Government of India to the Chief Secretaries of all the States and Union Territories has been annexed. The said letter records the recommendations made by a body of experts. The said letter records that the recommendations have been accepted by the Government of India. The gist of the recommendations is as under:

- (a) The second dose of COVISHIELD can be administered after interval of 12 to 16 weeks from the date of the first dose instead of the interval of 6 to 8 weeks; and
- (b) The interval between the two doses of COVAXIN of 4 to 6 weeks remains unchanged.

2. We are not going to the question of consequence of administering the second dose after expiry of the aforesaid time intervals prescribed by the body of experts. For vaccination to become effective which is one of the important measures to stop the spread of COVID-19, it is imperative for all concerned to ensure that the recommendations of the body of experts which are accepted by the Government of India are followed in its true letter and spirit. It is in this context that we are examining the material placed on record by the State Government as well as the Central Government.

3. In paragraph 2 of the written submissions dated 20th May 2021 of the State Government, it is stated that the Mission Director, National Health Mission has addressed letters to the Deputy Commissioners of all Districts and Special Commissioner of the Bruhat Bengaluru Mahanagara Palike (BBMP) to utilise 100% of the allocated vaccines for the second dose. All Health Care Workers and Frontline Workers in the age group of 18 to 44 years can also avail the second dose of vaccine. Paragraph 3 reiterates that 70% of the allocated doses of COVISHIELD and 100% of the

allocated doses of COVAXIN have been ordered to be kept reserved for the second dose. The learned Advocate General, on instructions, states that considering the issue of shortage of vaccines, the State Government, as of today, has completely stopped administering the first dose of COVAXIN. He further stated that the first dose of COVISHIELD is being administered only to the Health Care Workers and the Frontline Workers.

4. In paragraph 6 of the written submissions of the State Government, it is stated that as of 16th May 2021 at 11.00 a.m., total 80,42,371 beneficiaries have received their first dose of COVISHIELD and 22,08,320 beneficiaries have received their second dose of COVISHIELD. Therefore, going by paragraph 6 of the written submissions, 58,34,051 beneficiaries will require the second dose of COVISHIELD in future. Anneuxre-R4 gives the figures as of 17th May 2021 of those who have completed 12 weeks to more than 16 weeks after taking the first dose of COVISHIELD. Thus, broadly, it can be said that out of 58,34,050 beneficiaries who need to take second dose, as on 17th May 2021, 1,53,571 beneficiaries had completed minimum 12 weeks

from the date of the first dose. So, the remaining 56,80,479 beneficiaries will require the second dose in near future. The learned Advocate General states that as of today, the total stock of COVISHIELD is 7,14,140. The memo filed by the Central Government on 19th May 2021 records that in the second fortnight of May 2021, 9,17,310 free doses will be supplied by the Central Government to Karnataka and 7,04,050 doses can be directly procured by the State. At this stage, Ms. Aishwarya Bhati, the learned Additional Solicitor General of India who is addressing the Court from Delhi, states that this entire quantity of 7,04,050 will be available for use of the State and this figure does not include the doses which will be available for private agencies.

5. Thus, as far as COVISHIELD is concerned, looking at the larger picture, by taking the aforesaid figures as correct, there is going to be a huge shortage. The State Government will place on record what efforts it has made to procure 7,04,050 doses.

6. Now, we come to COVAXIN. The learned Advocate General stated that based on the figures which are

available on record, as on 18th May 2021, 4,55,084 beneficiaries who have taken the first dose of COVAXIN have completed four weeks. As on that day, 39,457 beneficiaries have completed three weeks, 22,780 beneficiaries have completed two weeks and 16,000 beneficiaries have completed one week. As of today, we will have to go by the recommendations of the body of experts accepted by the Central Government which require that the second dose of COVAXIN has to be administered four to six weeks after the first dose. The letter at Annexure-R.5 to the written submissions of the State Government records that as on 18th August, 2021, total 2,95,795 beneficiaries have completed 6 weeks from the date of the first dose. The learned Advocate General stated that as of today, only 97,440 doses of COVAXIN are available in the State. Thus, only one-third of the beneficiaries who have completed six weeks will get the second dose and the remaining two-third will not get it. This is a very sorry state of affairs.

7. Going by the stand taken in the memo dated 19th May 2021 by the Government of India, for the second fortnight of May 2021, 1,64,840 free doses of COVAXIN will

be allocated to the State Government and that the State Government can purchase 2,44,170 doses by direct procurement. We direct the State Government to place on record what steps it has taken to procure 2,44,170 doses of COVAXIN.

8. One issue which is canvassed across the bar is whether a person who does not get the second dose of vaccine within the timeline fixed by the body of experts will have to take the first dose all over again. We are not going to this question for the simple reason that we are examining the issue of vaccination in the light of the right to health which is an integral part of Article 21 of the Constitution of India. If the body of experts recommends timelines which are accepted by the Central Government, to ensure that there is an effective vaccination, it is the duty and obligation of both the Governments to ensure that those timelines are abided by. Both the Governments are under an obligation to see that everyone who has taken the first dose must get the second dose within the time interval fixed by the experts. The learned Additional Solicitor General, at this stage, states that as far as the serious issue of non-availability of

COVAXIN is concerned, the State Government and the Central Government will have to jointly address the issue. We, therefore, direct both the State Government and the Central Government to place on record necessary material to show what immediate steps are being taken to ensure that no beneficiary who has completed six weeks after taking the first dose of COVAXIN is denied the second dose. Necessary material shall be placed on record by both the Governments by next Tuesday (25th May 2021) when this group of petitions will be heard.

9. Another serious issue which arises for consideration is about the manner in which the State Government is going to administer the second dose of both the vaccine. There are two aspects. Firstly, whether the State Government is going to give a priority for the second dose for the age group of 60 years and above. The State Government cannot create a situation in which those who are above 60 years do not get the second dose, but those who are in the age group of 44 to 60 years get the second dose. The second aspect is about administration of the first and second dose of vaccines by the private agencies. Now

that the State Government has taken a stand that except for the Frontline Workers and Health Workers, no one will get the first dose, the question is whether private agencies can be permitted to administer the first dose. Through the State Government, even those who are above 60 years are not getting the second dose easily. Now the question is whether private agencies can be permitted to administer the second dose to those who are in the age group of 44 to 60 years. The learned Additional Solicitor General submitted that the State Government is not powerless to issue directions to the private agencies in this behalf. When we are dealing with the aforesaid two aspects, we are directly dealing with not only the issue of violation of the right to health, but also violation of Article 14 of the Constitution of India. Therefore, the State Government shall consider of issuing appropriate directions to the private agencies. When there is an acute shortage of second dose, the State Government will have to come out with an appropriate policy for administration of the second dose which should be a rational and fair policy. The response of the State Government on the policy as well as

on the question of issuing directions to the private agencies shall be filed on record on 25th May 2021.

10. We also make it clear that even the Central Government will have to take a stand on this issue whether in the context of the situation prevailing in the State of Karnataka, the private agencies can be permitted to administer the first dose of vaccine. Even the said stand shall be taken by the Central Government by the next date.

11. At this stage, our attention is invited by the learned Additional Solicitor General to the letter dated 19th May 2021 addressed by the Government of India, Ministry of Health and Family Welfare to the Chief Secretaries of all the States. An important protocol is recorded in the said letter that the second dose of vaccine to those who have been infected with COVID-19 shall be deferred by three months after recovery.

12. In the context of what is argued today, we may note here that the State Government will have to meticulously re-work the requirement of second dose of the beneficiaries who have taken the first dose. The State

Government will have to work out the date-wise figures of the number of beneficiaries who will be completing 16 weeks in case of COVISHIELD and six weeks in case of COVAXIN. While doing so, the State Government will have to exclude those whose dose has been deferred by three months as stated in the letter dated 19th May 2021. Unless the State Government generates a precise data of the requirement of second doses on everyday, it may not be possible to effectively administer the second dose to all those beneficiaries who have taken the first dose. The State Government will have to respond on this aspect on the next date. A copy of the said letter shall be filed on record by the learned Standing Counsel appearing for the Union of India.

OXYGEN

13. Going by the written submissions filed by the State Government, still, the supply of oxygen does not meet the requirement of the State. The figures of 17th and 18th of May 2021 indicate that the State Government has not procured the entire quota allotted to it. Though the order of the Apex Court dated 30th April 2021 directs creation of buffer stock in each district, still there is no compliance with

the same. We, therefore, direct the State Government to file on record the actual requirement of oxygen in the State from 17th May 2021 to 24th May 2021 (both days inclusive) and the actual quantity of oxygen procured by the State Government. District-wise break-up of buffer stock, if any, created in each district shall be also placed on record. This data shall be placed on record on 25th May 2021.

AVAILABILITY OF BEDS

14. As regards the availability of beds in the city of Bengaluru, the learned counsel appearing for BBMP states that as of now, 272 HDU beds are available. However, only 12 ICU beds and 7 ICU beds with ventilators are available. The learned counsel Sri Sridhar Prabhu has made a suggestion. He stated that though the website of BBMP showing the data of the beds available has considerably improved, the data of private COVID-19 beds available in the private hospitals is not being displayed. BBMP shall consider of displaying the said data on its website. Today's press cuttings tendered on record shows that 48 Triage Centres across Bengaluru have been set up by BBMP with the sole object of reducing the pressure on the hospitals having

Covid beds. On the next date, BBMP will place on record the details of the number of beneficiaries who have taken advantage of 48 Triage Centres.

AVAILABILITY OF CREMATORIUMS

15. About the availability of crematoriums in the city, the learned Additional Advocate General states that the capacity of Electric Crematoriums available in the city is 240 and the capacity of open ground crematoriums is 180. It is pointed out across the bar that the website of BBMP shows that no slots in the crematoriums are available in any of the four zones. This aspect needs to be immediately addressed by BBMP.

16. A letter dated 13th May 2021 addressed to the Chief Justice by one Dr. Karthik Munichoodappa has been placed on record. The State Government and BBMP will take instructions on the grievances made in the said letter.

CHAMARAJANAGAR INCIDENT

17. At this stage, the learned Advocate General stated that the State Government has decided to pay *ex gratia* compensation of Rs.2,00,000/- to the families of 24

persons who have died in the Chamarajanagar District Hospital. We hope and trust that the said assurance is acted upon immediately. However, the issue whether there were only 24 deaths due to lack of oxygen and the question of adequacy of compensation will have to be gone into on the next date.

**DELAY IN COMMUNICATION OF THE RESULT OF
RTPCR TEST**

18. The learned Additional Advocate General produced on record in a sealed envelope a note on the delay in communicating the test result to late S.V.Muniraju. The report does not record the causes of delay in not communicating the positive report to him. It only records that there was a delay of two hours in uploading the result on ICMR portal. The State owes an explanation why till the death of late S.V. Muniraju, the positive report was not communicated to him. The report submitted to the Court is completely silent on this. What is important is that the person whose swab sample is collected must get the intimation of the result within 24 hours. In this unfortunate case, the person did not get the intimation of the result of the test till

he succumbed to COVID-19. The State Government must file on record what action has been initiated against those who are responsible for the default in communicating the test result within 24 hours.

In W.P.No.8720/2021

19. The learned counsel appearing for the petitioner has filed a memo. Paragraph 3 of the said memo reads thus:

"Unfortunately, the police have resumed lathi charging from evening of yesterday 19.05.2021 with further order televised in TV channels that any person stepping out of the house after 10.00 from today will be charged."

The allegation is very vague and does not call for any action. The affidavit filed along with the memo refers to an order passed yesterday by a Co-ordinate Bench dealing with similar grievances. The Court will have to look into the said order before this petition is considered on merits.

OTHER ASPECTS

20. Our attention is invited to the letter dated 18th May 2021 addressed by Advocates for Covid Aid to the Chief Justice. The last part of the said letter suggests that

Army is best equipped to handle the situation in terms of manpower and administrative planning. It is not necessary for us to deal with such a suggestion. All that we record is that when we are dealing with very serious issues concerning COVID-19 in this group of petitions, a restraint will have to be shown by everyone. We may note here that as can be seen from the orders passed by this Court from time to time from March 2020, we are dealing with violation of constitutional and legal rights of the citizens in the context of COVID-19. We cannot decide in what manner the state administration should be run.

21. The State Government has tendered a report signed by the Joint Commissioner of Police (Crime), Bengaluru City on the investigation of the two crimes concerning the bed allotment scam. We have noted the steps so far taken in the investigation. The report shall be re-sealed and kept on record. Further report shall be filed after one week.

22. The learned Additional Advocate General has also tendered a report in a sealed cover in response to a

grievance made by Sri Sridhar Prabhu, the learned counsel by filing a document. We direct the learned Additional Advocate General to supply a copy of the said report in a sealed cover to the learned counsel Sri Sridhar Prabhu so that we can hear him on this aspect. The report shall be re-sealed and kept on record.

23. The memo filed by the learned counsel Sri G.R.Mohan in W.P.No.6435/2020 on 19th May 2021 will have to be considered in W.P.No.7708/2020. We permit Sri G.R.Mohan, the learned counsel to file a copy of the said memo in W.P.No.7708/2020.

24. This group of petitions shall be listed on 25th May 2021 at 4.15 p.m.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

bkv/SN