

CJ & AAJ:
16.07.2020
(through video conferencing)

W.P.No.8619/2020 c/w W.P.Nos.8536/2020, 8622/2020, 8668/2020

We have dealt with the issue of management of persons who have been infected with COVID-19 in relation to the city of Bengaluru. In terms of the last order of this Court, the State Government has filed written submissions. Reliance is placed on a circular dated 13th July 2020 which clarifies that private hospitals are bound to admit the patients infected with COVID-19 on production of any of the three documents mentioned in Clause (2). The first is SMS alert indicating the positive status of COVID-19, the second is any COVID-19 positive alert in Arogya-Setu App and the third is Accredited Lab Report indicating COVID-19 positive status.

2. The learned counsel appearing for the petitioner in W.P.No. 8619/2020 has pressed prayer (b) of his petition. On the basis of the said prayer, he submits that large number of private hospitals are denying to provide beds to COVID-19 patients.

3. The learned Additional Advocate General has invited our attention to a direction issued by the State to all the private hospitals in the form of a Notification dated 15th July 2020 calling upon the private hospitals to display at the reception counter, a bed allocation display board

giving the details such as, the name of the hospital, total number of beds allocated for COVID-19 patients by BBMP and the bed types. The display board will contain information regarding the reserved, occupied or available beds. Our attention is also invited to a Circular dated 4th July 2020 issued by the State Government which lays down that a Bed Allocation Team of BBMP for COVID-19 has been established under the leadership of Mr.Tushar Girinath, IAS, Principal Secretary, Co-operation. This team deals with real-time bed allocation and the requests received on hotline of 108 ambulance service and telephone number 1912 (grievance redressal service). In the written submissions filed by the State Government, it is clarified that only on production of one of the three documents which we have set out above, the hospitals are bound to admit the patients without insisting on generation of BU Code.

4. Considering the large number of grievances which are made regarding the failure of the private hospitals to provide beds and the failure of the authorities to monitor allocation of beds by the private hospitals, it will be appropriate if the State Government modifies the circular dated 15th July 2020 (Annexure-R32) by incorporating a direction to display a specific telephone number of BBMP or State Authorities on which the patient or his relative can lodge a grievance regarding the failure to admit the patient by that particular hospital. There is one more aspect of the matter. It is

necessary for the State to invoke various provisions of the Disaster Management Act, 2005 (for short 'the said Act of 2005') by issuing directions to all the private hospitals so that the directions can be enforced against the private hospitals.

5. We may invite the attention of the State Government to Clause (f) of Section 24 of the said Act of 2005 under which, the State Executive Committee can issue directions to the persons in-charge of the private hospitals dealing with COVID-19 patients considering the definition of 'resources' in Clause (p) of Section 2 of the said Act of 2005. If such directions are issued, action can be taken including penal action against the defaulting hospitals.

6. As regards the availability of ambulances and helplines to procure the ambulances, though the written submissions dated 16th July 2020 set out that there are 700 ambulances in addition to the private ambulances arranged by BBMP, the learned Additional Advocate General states that he will place on record necessary material regarding the availability of helplines for getting the ambulances which are not under 108.

7. It will be appropriate if the State Executive Committee at the earliest exercises the powers under Section 24 of the said Act of 2005 for

issuing directions to the private hospitals. The State Government must also consider of authorising BBMP Bed Allocation Team to deal with the grievances regarding non-allocation of beds by the private hospitals. As regards the display of data of the availability of various kinds of beds on the public domain, the learned Additional Advocate General states that on the website of BBMP, COVID-19 Hospital Bed Management System gives the said data. As observed in the last order, real-time updation of the data deserves to be made and the data must be also made available on the public domain in Kannada language.

8. Before we deal with the specific grievances, we must refer to the directions issued by the Apex Court in *Suo Motu Writ Petition (Civil) No.7/2020* on 19th June 2020. Clause (IV) of paragraph 12 of the order of the Apex Court specifically directs all the States to constitute an expert team of doctors and other experts for inspection, supervision and guidance of the Government and other hospitals dedicated to the patients of COVID-19. The Apex Court recorded that the said team may inspect and supervise the hospitals in the State and issue necessary directions for improvement to the concerned hospitals and submit a report to the Government. The team was directed to be constituted within a period of one week from the date of the said order. We direct the State Government to ensure that this direction of the Apex Court is immediately

implemented. The State Government must ensure that not only that such a team is constituted, but the team starts functioning immediately. The order of the Apex Court also contains a direction that the patient must receive a copy of the report of COVID-19 test. Even this direction needs to be implemented by the State Government by issuing necessary directions to all concerned hospitals and laboratories.

9. There are three areas of concern which are pointed out by the learned counsel appearing for the parties. There are public servants who are on the forefront in the battle against Novel Corona Virus. The said three categories are firstly, pourakarmikas who are doing the job of cleaning the cities, the second category is of police personnel and the third of doctors, nurses, ASHA workers and other para-medical personnel working in the hospitals/clinics. It is pointed out that even BBMP officers who are working in the field will fall in the same category of persons working on the forefront and battling against COVID-19. It will be appropriate if tests results of these warriors are fast tracked.

10. It is pointed out across the Bar that 23 pourakarmikas working only in one ward (Deepanjali Nagar) were tested positive and one pourakarmika working in another ward unfortunately died as she could not get a bed in any hospital. Another aspect which is pointed out is that there are more than 5,000 containment zones in the city and the solid waste

generated by the houses in the containment zones and quarantine homes is required to be treated as bio-medical waste. The submission is that the pourakarmikas have been exposed to a grave danger.

11. In fact, our attention is invited to the earlier orders passed by this Court in W.P.No.6435/2020 and connected matters. Specific directions were issued under the said orders to the State Government to provide various facilities to the pourakarmikas including Special PPE Kits as laid down in the SOP dated 24th April 2020. The said SOP provides for special category of PPE kits to be provided to the pourakarmikas working in the containment zones as they are handling bio-medical waste. We direct BBMP to immediately implement the said directions contained in the orders dated 30th March 2020 and 28th April 2020 and in particular, paragraph 17 of both the orders.

12. The learned counsel appearing for BBMP assured the Court that the issue of providing adequate protective equipments to the pourakarmikas and protecting them will be dealt with with all the sensitivity which it deserve.

13. We hope and trust that without inviting any further orders, BBMP will immediately implement the aforesaid two directions as regards the pourakarmikas.

14. It is pointed out that one Ward Engineer of BBMP lost his life as he could not get the bed. We are of the view that all the stakeholders and in particular, the State Government and BBMP will have to come out with measures for protecting the aforesaid categories of public servants referred in paragraph 9 who are on the forefront in the war against COVID-19. One of the suggestions made across the Bar is that the said public servants may be subjected to random testing. The State Government and its experts will have to take a call on this aspect. All that we emphasize is that all the stakeholders must ensure that a special care is taken of these categories of public servants who are on the forefront.

15. The learned counsel appearing for the Karnataka State Legal Services Authority has pointed out specific instances of the failure to provide beds by the hospitals and the delay in getting the reports of swab test. She submitted that two dead bodies were kept in a narrow corridor of a hospital for almost about 3 hours.

16. As indicated in the earlier orders, the issue of treating the dead bodies with dignity will have to be considered. In fact, one Smt.Mary Akkamma John, Advocate has submitted a petition to this Court on 10th July 2020 making a grievance about the manner in which the dead bodies

are being dealt with. The Registry will supply a copy of the said petition to the learned Additional Advocate General.

17. As can be seen from the official figures published by the State Government, a large number of positive cases are being detected in many Districts. Therefore, the State will have to come out with the measures taken in the said Districts such as making available dedicated beds etc.

18. On the issues which we have indicated above, further hearing of these petitions will continue on 20th July 2020 at 12.45 p.m.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

bkv/SN