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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 27th April, 2021

+ **W.P.(C) 5026/2021 & CM APPL. 15401/2021**

VINAY JAIDKA Petitioner
Through: Mr. Satish Aggarwala with Mr. Gagan
Vaswani and Mr. Jasneet Jolly, Advocates.
versus
CHIEF SECRETARY Respondent
Through: Mr. Anuj Aggarwal, Advocate for R-1.
Mr. Amit Mahajan, CGSC with Mr. Jivesh
Tiwari, Advocate for UOI.
Mr. K.R. Chawla, Asst. Drug Controller.
PBN Prasad, DCGI
Mr. Ved Prakash Mishra, Director, Deptt. of
Pharmaceuticals.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition is a loud cry by an advocate practising in Delhi who is suffering from COVID-19 for being provided with Remdesivir injection which has been prescribed to him.
3. The Petitioner was detected with COVID-19 on 13th April, 2021. Since the Petitioner's condition was not improving in home isolation, he was admitted to Rescue Hospital, Dwarka, New Delhi. He got his CT scan conducted and was found to also be suffering from pneumonia. On 21st April, 2021, the Petitioner was prescribed Remdesivir injection (100 mg) to be given in six doses. Six valuable days have already passed by. The Petitioner has

been able to arrange three doses from outside market sources and today, Id. Counsel for the Petitioner submits that he requires three more vials for his treatment.

4. It is a matter of which judicial notice can be taken that in the last ten to fourteen days, the citizenry in Delhi has been facing acute frustration and harassment due to the non-availability of Remdesivir, which is a prescribed drug for COVID-19 patients. Thousands of relatives have been racing against time trying to arrange Remdesivir for their near and dear ones.

5. Mr. Anuj Aggarwal, Id. Counsel appears for the GNCTD and submits that an endeavour would be made to make the three vials required by the Petitioner available to him today itself.

6. In the morning, when the matter was listed, on the oral prayer of Id. Counsel for the Petitioner, the Union of India through the Secretary, Department of Pharmaceuticals, as also the Secretary, Ministry of Health and Family Welfare were impleaded as Respondent No.2 and 3. The Drugs Controller General of India was also impleaded as Respondent No.4. Mr. Amit Mahajan, Id. CGSC and Mr. Jivesh Tiwari, Id. Counsel appeared for the Union of India and accepted notice.

7. Mr. K.R. Chawla, Assistant Drug Controller, joined the proceedings and informed the Court that there are seven companies manufacturing Remdesivir in India. During the period from January, 2021 to March, 2021, owing to the low level of patients who required the drug, a large quantity of the drug was not being utilized. However, the sudden second wave in the last week of March-April, 2021 has led to an acute shortage of the drug. Mr. Chawla also submitted that production has been considerably ramped up now and the drug is being allocated to various States and Union Territories for

distribution. Letter dated 24th April, 2021 of the Director, Ministry of Health and Family Welfare and the Joint Secretary, Department of Pharmaceuticals is placed on record to confirm this position. Mr. Aggarwal, Id. Counsel appearing for the GNCTD submits that since Delhi has no production unit, it has to only go by the allocations which have been made for Delhi. Mr. Aggarwal submits that for Delhi, 72,000 units have been allocated on 24th April 2021, to be supplied till 30th April, 2021. The requisition for 72,000 vials is stated to have been placed on 25th April, 2021. Till date only 2,500 vials have been received.

8. In the post-lunch session, Mr. Ved Prakash Mishra, Director, Department of Pharmaceuticals joined the proceedings. On a query from the Court as to whether there has been any change in the direction for administration of Remdesivir, he pleads ignorance and states that the said fact would be within the knowledge of the Ministry of Health and Family Welfare.

9. In the present petition, the Petitioner seeks direction for supply of Remdesivir injections. Considering the thousands of patients who may need the said drug, this Court is of the opinion that the availability of the drug in Delhi ought to be looked at holistically in order to avoid future filing of multiple writ petitions by those who need the same. The statistics mentioned above clearly show that considering the number of cases of COVID-19 in Delhi on a daily basis, the shortage of Remdesivir is acute. Moreover, since obtaining admission in hospitals has become so difficult, most patients are having tele-consultations with the doctors and engaging para-medics/nurses for Intravenous treatment. Thus, Remdesivir may have to be made available not merely for hospitalised patients but even to those who may be in home isolation, subject to the prescription of a doctor being available. This Court is

of the opinion that even the data of hospitalized patients would reveal that even such patients for whom this drug may be prescribed within hospitals, would not be able to obtain the same. Moreover, private hospitals are also facing an acute shortage of Remdesivir and are asking patients' relatives to arrange for the drug from their own sources.

10. Ld. counsels for the parties also point out that there are some orders which have been passed by the ld. Division Bench which may be relevant. Let the said orders be placed on record through email. Considering the overall fact situation and the acute shortage which has been faced *qua* Remdesivir in the city of Delhi, the following directions are issued:

- i) The Indian Council of Medical Research (ICMR) is impleaded as Respondent No.5 in this matter. The National Pharmaceutical Pricing Authority (NPPA) is impleaded as Respondent No.6;
- ii) Respondent Nos.2 to 6 shall instruct their respective counsels so that they can inform the Court as to whether any changes have been made in the manner of administration of Remdesivir since the time the COVID-19 pandemic broke out in March, 2020. The said guidelines, if any, for administration of Remdesivir which were previously in operation and which are currently in operation, shall be emailed to the Court Master by tomorrow morning i.e., 28th April, 2021 by 9:00 a.m.;
- iii) Insofar as allocation of Remdesivir for Delhi is concerned, the manner in which the number of 72,000 vials has been arrived at and allocated to Delhi shall be disclosed by Respondent Nos.2 to 6;
- iv) The GNCTD shall place on record the orders placed for the allocated quantity and inform the Court as to from where the supplies are due. The Nodal Officer of the GNCTD, who is stated to have been

appointed by the Delhi Government, shall inform the Court as to by when the total allocated quantity of Remdesivir is likely to be received in Delhi;

v) The GNCTD shall also inform the Court as to the total number of hospitalized patients for COVID-19 both in private and public hospitals, as the data ought to be readily available in their database, as of 27th April, 2021;

vi) The documents by which the allocations have been made shall be placed on record;

vii) Insofar as the Petitioner is concerned, the remaining three vials which the Petitioner needs urgently, shall be supplied to the Petitioner by 9:00 p.m. today itself.

11. The Nodal Officer of GNCTD, who is dealing with Remdesivir, as also the officers from the remaining authorities who are familiar with the facts, shall join the proceedings on the next date to assist the court.

12. List on 28th April, 2021 at 2:30 p.m.

PRATHIBA M. SINGH
JUDGE

APRIL 27, 2021
Rahul/T