

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Suo-Motu P.I.L. No.4 of 2020

(Court on its own motion vs. Union of India and Ors.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Mr.S.PBhandarkar, Amicus Curiae for petitioner.
 Mr.U.M.Aurangabadkar, ASGI for respondent no.1.
 Mr.M.G.Bhangde, Sr. Cl. Assisted by Mr.D.P.Thakare, Addl.
 G.P along with Mrs.Ketki Joshi, I/c. G.P for respondent
 nos. 2, 5, 6, 8 & 9.
 Mr.S.M.Puranik, Advocate for respondent no.4.
 Mr.B.G.Kulkarni, Advocate for respondent no.10.
 Mr. C.S. Samundre, Advocate for MADC.
 Mr.M. Anilkumar, Advocate for Intervenor/applicant.
 Mr. T.D. Mandlekar, Advocate for Intervenor/applicant.
 Dr.PK.Arora, in-person in CAO No.723 of 2021.

CORAM : SUNIL B. SHUKRE &
 S.M. MODAK, JJ.

DATE : 19.4.2021.

CIVIL APPLICATION (CAO) STAMP NO.5730/2021,
CIVIL APPLICATION (CAO) 723/2020 AND
527/2021.

Heard.

2. Considering the public spirit shown by these intervenors and the interest that they have displayed in taking up the cause in the interest of citizens of Nagpur, we are of the view that these intervenors are in a position to provide effective assistance to this Court in issuing appropriate directions for alleviating the worst situation of pandemic that Nagpur has ever faced in its entire history and, therefore, we allow these applications. These intervenors are directed to be joined as party respondents by amending the cause title on or before

the next date. The applications are disposed of accordingly.

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3. Upon hearing Shri Bhandarkar, learned Amicus Curiae, Shri Bhangde, learned senior counsel for the State, Shri Kulkarni, learned counsel for the IMA, Shri Puranik, learned counsel for NMC, Shri Anil Kumar, learned counsel for the intervenor, Shri Mandlekar, learned counsel for the intervenor, Dr. Arora, intervenor in person, learned Government Pleader for the State, what has come to the fore and all the stake holders also agree, that covid scenario in Nagpur has turned to it's worst ever and the situation is of the gravest order so much so that there are no beds available, that there are no life saving drugs available in sufficient quantity, that there is not available sufficient supply of oxygen and there is also dearth of medical and paramedical staff. The spike in covid 19 cases which is being witnessed by Nagpur at present is of steepest kind, not seen even during the first phase of pandemic last year. Therefore, all agree that urgent steps are required to be taken. In this direction, some of the suggestions have been given by the learned amicus curiae, learned senior counsel, learned government pleader and learned counsel for the respective parties.

4. It has been pointed out by Shri Bhandarkar that on 16.4.2021, Thane Collector allocated 5328 vials of Remdesivir drug as against

the covid beds numbering 2664. He has further pointed out that against Thane allocation, Nagpur allocation was very poor and on 16.4.2021 for covid beds numbering 8250, only 3326 vials were released by Nagpur Collector.

5. Today, we also had a meeting with top functionaries managing covid 19 pandemic Nagpur in our chamber. During the course of the meeting, it was informed that the allocation of Remdesivir drug is being done district-wise by a state level committee and, therefore, the vials that are being distributed to different districts on different dates vary in number. It was also informed that on a given day, say about 2000 vials would be released for Nagpur and on a different day the number would be quite less or quite more. This information leads us to believe that some arbitrariness is taking place in district-wise distribution of Remdesivir vials and this requires to be corrected forthwith. We do not understand the logic behind supply of 5328 vials of Remdesivir as against 2664 covid beds in Thane district and in respect of release of 3326 vials of this drugs as against 8250 covid beds in Nagpur. This disparity in allocation of vials, it is obvious, has occurred only because there has been not so rational a distribution of Remdesivir vials among various districts by the state level committee. It has also been brought to our notice by the learned amicus curiae and learned counsel for the intervenors that there were at least two dates on which not a single vial of Remdesivir was allocated to

any of the covid hospitals in Nagpur and these dates were 13.4.2021 and 18.4.2021. It is also informed across the bar that on 17.4.2021 just about 500 vials were allocated to only three hospitals by Nagpur Collector and rest of the 117 covid hospitals were left high and dry. It has also been further informed that such denial of Remdesivir drug to so many patients in 117 hospitals has severely affected the management of covid patients and in some cases, the possibility could not be ruled out that mortality has also occurred due to non-availability of Remdesivir drug.

6. At this juncture, we must point out that it is the solemn duty of the state to save and preserve precious life of every citizen under Article 21 of the Constitution of India. We have also noted this several times while passing orders on earlier occasions. In the case of *Pt. Parmanand Katara V/s. Union of India reported in 1989 (4) SCC 286*, in particular, the Apex Court has observed that Article 21 of the Constitution casts an obligation on the State to preserve life. It is further noted that every doctor at the government hospital or positioned at the government hospital is duty-bound to meet this State obligation and give medical assistance for preservation of life and no law or state action can intervene to avoid or delay the discharge of the paramount obligation cast upon the members of the medical profession. It is also observed that the obligation to preserve life being total, absolute, paramount, laws of procedure whether in statute and

or otherwise, which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way to whatever is conducive to saving and preservation of precious human life. So, we would be failing in our duty if we do not remind the state government of this solemn obligation to save and preserve human life by doing whatever is possible for it today in this direction.

7. As we have noted earlier, there has been a disparity in distribution of Remdesivir drug amongst various districts of Maharashtra and the drugs are being released not in proportion to the requirements but perhaps by considering factors which may not be relevant to the whole issue. We are also not aware as to how much is the requirement placed every day by the state committee with the central agency regarding supply of vials of Remdesivir drug. It is informed by the learned counsel for the intervenors that supply is being regulated and controlled by respondent No.3 and the details about the whole procedure shall be placed before this Court latest by next date. Meanwhile, we find it necessary to issue some directions to the state committee with a view to ensure fair and proportionate distribution of Remdesivir drug amongst various districts by following the principle - *Dire the need, surer the supply*. By this principle, we direct the State of Maharashtra, for the time being, to immediately release 10000 vials of Remdesivir drug for being distributed to covid hospitals in Nagpur District,

particularly considering the fact that there was no allocation of this drug on 13.4.2021 and 18.4.2021 and very short supply of this drug on 17.4.2021. These vials shall be released latest by 10 p.m. today. On receipt of these vials, Collector, Nagpur shall make fair and equitable distribution of the vials amongst all the covid hospitals in Nagpur District through their inhouse pharmacies.

8. We also direct the State of Maharashtra and also respondent No.3 to place on record details about regulation of production and supply of Remdesivir drug by the seven companies and its distribution amongst the various States, the parameters followed in this regard by respondent No.3 as well as the state government the daily requirement placed by State Committee and other relevant details.

9. There is another issue of major concern which relates to shortage of oxygen supply. Presently, it appears that the production capacity itself is falling short to meet the demand and, therefore, the long term solution would only lie in increasing the production capacity. That can be done through various ways. For the time being, we direct the State as well as Collector, Nagpur and Commissioner, Municipal Corporation, Nagpur and also Central Government, if required, to grant all necessary permissions to all the private covid hospitals which are interested in setting up their own oxygen generation plants / units. Some of these hospitals

may also require additional space for setting up these units and, therefore, if these hospitals apply for allocation of any adjoining land which belongs to the state government or the corporation, same shall be made available by completing all formalities including grant of exemptions or dereservations, if necessary, by State / Collector, Nagpur / Commissioner, NMC and on payment of the appropriate market value of the land or premium determined as per market value of the land without any delay. If these hospitals are interested in setting up smaller plants utilizing air separation technology and any special permissions are required for that purpose, same shall be given by these authorities without any delay. If any of the hospitals are interested in procurement of smaller oxygen generation units which are called concentrators based upon air separation technology, necessary permissions shall be granted by the state and all the concerned authorities for their import / delivery to these hospitals, without any delay.

10. It has been reported to the Court that there are several covid positive patients who are standing outside GMC, IGMC, AIIMS and other hospitals waiting for their turn to come for being admitted to respective hospitals. It is also informed to this Court that these patients are required to stand outside these hospitals for days to come which results in deterioration of their health condition. In order to take care of these patients, we direct the Collector,

Nagpur and also Municipal Commissioner, Nagpur to set up temporary health care facilities. In our order passed on 8th April, 2021 we have referred to setting up of day care centers. Commissioner, Nagpur Municipal Corporation in the meeting, however, suggested that inspite of “day care centers”, direction should be for setting up “covid care centers” as same would be consistent with ICMR guidelines. The suggestion is accepted and our order dated 8th April, 2021 is modified by substituting the words “day care centers” by “covid care centers”. We direct these authorities to take steps for setting up Dome type Covid Care Centres at GMC, IGMC and also AIIMS immediately and make them functional in 7 days of the order. If any funds are required for setting up these facilities, same shall be provided by District Collector, Nagpur from out of the sources, such as funds available with district planning committee, the funds available in the nature of Mines and Minerals Funds with immediate effect.

11. Shri Kulkarni, learned counsel for IMA states across the bar, on being instructed by Shri Anil Laddad, that at present there are three hospitals in Nagpur which are ready but are not being utilized for giving treatment to the covid patients. Shri Anil Kumar, learned counsel for the intervenor submits that same is true with ESIC Hospital having bed capacity of around 50. Three hospitals named by Shri Kulkarni are “Shri Ayurved Hospital”, “Government Ayurved Hospital” and “KDK Ayurved Hospital”

having total bed capacity of 400. The information so supplied is vital from the view point of management of covid 19 pandemic in Nagpur and, therefore, we direct the Collector, Nagpur and also Commissioner, NMC to verify about the readiness of these four hospitals and on being satisfied that these hospitals can be made functional, to start these hospitals as additional covid hospitals for treating covid patients in Nagpur. This shall be done by evening of 20.4.2021 and report in this regard shall be placed before this Court by next date.

12. We further direct Collector, Nagpur and Commissioner, NMC to immediately set up pandals outside GMC, IGMC and AIIMS in their premises where the patients are crowding and provide them drinking water facilities in pandals as a temporary relief measure.

13. It has been informed to us by Collector, Nagpur and Commissioner that even though specific orders have been passed by them in the capacity as nodal authorities under the Epidemic Act and Disaster Management Act, requisitioning the services of medical and paramedical staff and other kind of services and facilities for the purpose of containment of covid 19 pandemic, the orders are not being strictly complied with by some of the medical and paramedical personnel and some of the institutions and organizations thereby affecting the quality of health care being provided by medical fraternity in Nagpur under the supervision of afore-stated nodal

authorities. We must remind such reluctant or disobedient service providers and duty renderers that if they do not comply with the orders passed by these nodal authorities, they would be failing in their constitutional obligation and they would be doing so at their peril inviting coercive action against them. However, considering the present situation and ordinary human difficulties, this Court would be the last one to resort to any coercive measure against any of such reluctant or disrespectful personnel, institutions and organizations and, therefore, at this juncture, we would not be issuing any directions of punitive nature. However, we would, for the present, direct medical and paramedical personnel and also the institutions and organizations bound by the requisitioning order to obey the directions passed by the nodal authorities with immediate effect. We would also like to warn them that if any names of the defiers are supplied to this Court by the nodal authorities, this Court would not hesitate in taking necessary action, including one for contempt of lawful authority and also issuing necessary punitive orders.

14. It has also been brought to our notice that as the situation is of panic, there is a possibility of law and order situation arising at various hot-spots. These hot-spots are hospitals, centers of supply of drugs and oxygen manufacturing units of essential goods, chemicals and drugs, oxygen refilling or distribution centres etc. In order to avoid any

unpleasant situation and any untoward incident, we direct the Commissioner of Police to provide necessary police protection to all these hot-spots. Of course, identification of these hot-spots would be required and we would request the Commissioner of Police, Nagpur to undertake this process with the help of his subordinate officers immediately and after identifying these hot-spots, police protection of such nature as is deemed necessary, be provided.

15. There is also an issue about home delivery of food by various restaurants. There is complaint of some patients that as the entire family has fallen sick due to covid 19, the whole family has to remain dependent upon the outside food, which, however, cannot be procured after 8 p.m. as curfew order becomes operational from 8 p.m every night. This is a genuine difficulty. We direct the Collector, Nagpur, Commissioner, NMC, and Commissioner of Police, Nagpur to sort out this issue and permit the restaurants to supply food to be home delivered, upto such hour of the night as is permissible under the Shops and Establishments Act. This is for the reason that supply of food to covid patients is also an essential service.

16. Director of AIIMS, Nagpur during the course of meeting, has suggested that even the Government Hospitals should be permitted to set up their own oxygen plants / units. We are of the view that such plants / units can also be set up at the government hospitals, for the reason that lot of space

is already available there. Accordingly, we direct the GMC, IGMC and AIIMS, Nagpur to take necessary steps for setting up oxygen generation plants / units with immediate effect.

17. We further direct the Commissioner, NMC to consider requisitioning of the railway hospitals rakes which are already equipped with oxygen beds for being used for giving treatment to covid patients. At this juncture, Shri Lambat, learned counsel for Indian Railways submits that there are in all 29 coaches having oxygenated beds which are lying idle at Ajni Railway Yard and they are ready for being used for treatment of covid 19 patients. We direct that Commissioner, NMC shall do the needful in the matter immediately and submit his report in this regard to this Court by 21.4.2021.

18. Stand over to 21.4.2021 at 2.30 p.m.

JUDGE

JUDGE