

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.)

with

P.I.L. No.10 of 2020

(Subhash Jainarayan Zanwar vs. Union of India and Ors.)

with

P.I.L. No. 25 of 2020

(Advocate Kamal s/o. Lakhmichand Satuja .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, 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 MADC.
Mr.M. Anilkumar, Advocate for Intervenor/applicant (C.A.
No.5775 of 2021 & 692 of 2020 in P.I.L. No.4 of 2020).
Dr. Tushar D. Mandlekar with Mr. Rohan Malviya, Advocates
for Intervenor/applicant (C.A. St.No.5806 of 2021 in P.I.L.
No.10 of 2020).
Dr.PK.Arora, in-person in CAO No.723 of 2021.
Mr.Ram Heda, Advocate for Applicants in Civil Applications
C.AO. St. Nos. 4987 of 2021 and 4988 of 2021.
Mr.Nitin Lambat, Advocate for Railways.
(Ms Sushma Advocate for Respondent No.1 & Mr.J.B.Kasat,
Advocate for Respondent No.4 in P.I.L. No.25 of 2020).
Mr. Nitin P Lambat, Advocate for Indian Railway.
Mr. Vaibhav Bhure, Advocate for intervenor.
Mr. Aditya Goyal, Advocate for intervenor.

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

DATE : 23.4.2021.

In the second order dated 21st April 2021,
in paragraph 14, line No.5, date of the order has been
mentioned to be 30th April 2021. This date has been
wrongly mentioned because of an arithmetic error
and, therefore, deserves to be corrected. This date is

corrected and it is directed that it be substituted by the date “13th April, 2021”. Necessary modifications be made in the order dated 21st April, 2021 accordingly.

2. The Divisional Commissioner, Amravati and Joint Commissioner, F.D.A., Amravati be added as party respondents. Necessary amendments be carried out forthwith and thereafter notice be issued to both of them in which case, learned Government Pleader would waive the notice.

3. The newly added respondents - the Divisional Commissioner, Amravati and Joint Commissioner, F.D.A., Amravati are directed to state on affidavit the present position of continuous supply of life saving drugs such as Remdesivir, Tocilizumab, Favipiravir, Ivermectin and other like drugs and also consistent supply of oxygen to all the Covid Care Centres in the division. They are also directed to submit their response on affidavit as regards the vaccination programme undertaken or being undertaken in Amravati Division. Their replies would also include the details about the distribution system as regards the supply of essential drugs and oxygen to all the Covid Care Hospitals.

4. In the present petition, while this Court has received in greater measure data and information about Nagpur District but, no information and no

data as regards the supply of the aforesaid life saving drugs, oxygen distribution system adopted for maintaining continuous supply to Covid Care Centres of drugs and vaccination programme has been received for the entire division so far and, therefore, we would direct the Divisional Commissioner, Nagpur and the Joint Commissioner, F.D.A., Nagpur to submit detailed affidavit in this regard on or before the next date.

5. Mr. Aditya Goyal, Advocate, having an experience in the field of steel, as according to him, he has worked in the capacity as Managing Director of a steel industry earlier, has filed an intervention application bearing Stamp No.5853/2021. In this intervention application, he has given names of four steel plants operating in the State of Maharashtra and according to him, each of these steel plants, has the capacity to produce liquid oxygen in sufficient quantity and he submits that if the plants of these industries are requisitioned for catering to oxygen needs of Covid patients, the whole problem about shortfall of oxygen to Covid patients in respect of Maharashtra would be solved in no time. He has also given details about oxygen generating capacity of each of these plants. These plants are situated at Bhandara, Thane, Pune and Dolvi, District Alibag. Sofaras Bhandara Steel Plant is concerned, which is of Sunflag Iron Steel Company Limited, we are of the view that the Divisional Commissioner, Nagpur can

consider appropriately the suggestion given by Shri Aditya Goyal, Advocate for making use of this plant for Covid-19 management.

6. The office shall supply copy of application of Shri Goyal to the Divisional Commissioner, Nagpur and upon receipt of the same, we request that it be appropriately considered by examining if under Section 37 of the Disaster Management Act, services of this Industry could be requisitioned for augmenting supply of liquid oxygen. In fact, we have full faith in the Directors of this company that even upon receipt of a humble request from the Divisional Commissioner, Nagpur, the Directors would readily agree to submit oxygen plants of their company at the disposal of the Divisional Commissioner, Nagpur and they would not let any situation of compulsory requisitioning of their oxygen plants arise in any manner.

7. As regards supply of liquid oxygen by Bhilai Steel Plant, or to be precise by PRAX AIR, HYPHEN - LINDE, Shri Thakre, the District Collector, Nagpur informed the Court that tankers containing 85 metric tones, 30 metric tones and 50 metric tones of liquid oxygen have been supplied to Nagpur respectively on 21, 22 and 23 of April, 2021. He further informs that by today evening, 3 railway tankers containing liquid oxygen, brought from Vizag, would be arriving and that by tomorrow morning 5

tankers containing liquid oxygen of 20 metric tonnes per tanker would be arriving in Nagpur. The information given by Shri Thakre shows that there is substantial increase in the supply of oxygen to Nagpur, which quantity of oxygen should reasonably be enough to cater to the need of Covid patients in Vidarbha Region including Nagpur. However, inspite of increase in supply of oxygen, the problem appears to continue.

8. Learned Amicus Curiae Shri Bhandarkar, Shri Tushar Mandlekar, Dr. Anoop Marar and the respective learned counsel who are present in the Court all together submitted that the problem lies in non-availability of empty cylinders for refilling of the oxygen in sufficient quantity. Shri Thakre, learned District Collector informs the Court that as per the information received from 11 oxygen distributors in Nagpur, there are 20000 oxygen cylinders in circulation, out of which 9000 cylinders at a time remain with the hospitals and 9000 cylinders remain at a time in the process of being refilled at respective refilling stations of the oxygen. This number of empty cylinders, though in the first blush, appears to be adequate, actually it may not be so, if we consider the complaints being received about the non-availability / non-supply of oxygen to various Covid Care Centres / hospitals. Had the oxygen supply being in completely order, no complaint of non-availability or non-supply of oxygen would have

been received by this Court and also by the authorities. Therefore, there appears to be substance in the submissions made across the bar by learned Advocates for the respective parties and also by Dr. Anoop Marar. Whatever be the number of cylinders, whether in circulation or whether with hospitals, it is not in sufficient quantity and it is required to be increased and augmented.

9. In this regard, a valuable suggestion has been given by Dr. Anoop Marar and also learned counsel for the respective parties. According to them, oxygen is extensively used in different industries, in particular, steel industry and, therefore, oxygen cylinders are available with various steel industries, industrial units, fabrication units and welders shops. According to their information, there are about 4300 such oxygen cylinders available with different industrial units, fabrication units and welders shops. In addition to this, Shri Aditya Goyal, Advocate submits that as per the information received by him, there are also about 30 such cylinders available with Railways at Nagpur and, they are lying idle. We are of the opinion that these cylinders must be used by authorities by exercising powers under the Disaster Management and Epidemic Act, and if this is done, it will bring order, discipline and punctuality in the chain of supply of oxygen to Covid hospitals in Nagpur and in the Vidarbha Region. We would therefore request Shri Ravindra Thakre, the District

Collector, Nagpur to take immediate steps in this regard and see that such cylinders as are available with various industrial units, industrial houses, welders shops and Railways are requisitioned and put to use for fulfilling the needs of Covid patients in this part of Maharashtra. If required, the District Collector may form a team of officers who would be personally visiting these units/shops and Railways and following appropriate procedure would be taking these cylinders in their custody. If required, the assistance of Police Stations/S.R.PF, Nagpur can be taken by the District Collector, Nagpur in this regard. Needless to say that appropriate rent would have to be paid to the owners of such cylinders being requisitioned in the public interest.

10. In addition to above, a review meeting would also have to be held by the Collector, Nagpur with the controlling officers, they are 11 in numbers as per the chart submitted to this Court by the District Collector, and would have to take stock of the whole situation about the demand and supply in adequate quantity of oxygen to Covid hospitals. If the officers have any difficulties in regulating the supply, they be addressed appropriately and if required, District Collector shall issue such orders/circulars as would suit the purpose. Shri Thakre, the District Collector has also informed that a proposal has been sent to Western Coalfields Limited, Nagpur for setting up, at it's cost, oxygen plants based upon air separation

technology at G.M.C, I.G.M.C. A.I.I.M.S. and the capacity of these plants to generate oxygen at each of the hospitals would vary, depending upon the requirement. He submits that very shortly, a positive response is expected to be received from Western Coalfields and as soon as the approval is received, the District Administration would start the work which would be hopefully completed in six to eight weeks after receipt of the acceptance of the proposal.

11. As regards the proposal mooted by the Divisional Commissioner, Nagpur regarding setting up of 1000 to 1500 bedded capacity Covid hospital near Lloyds Steel Plant, Wardha, it is submitted by learned Government Pleader, on instructions, that further instructions on this subject are not available as the Divisional Commissioner, Nagpur is busy in a meeting on some important issues since morning and that the officer who was entrusted with the task of instructing the office of the Government Pleader has got infected with Covid yesterday only. On the next date of hearing, we would expect the Divisional Commissioner, Nagpur to place on record information about the further progress in the matter.

12. Shri M.G. Bhangde, learned Senior Advocate has invited our attention to the order passed by the Principal Bench at Mumbai in Public Interest Litigation (L) No.10276/2021 on 22nd April, 2021. Inviting our further attention to a direction

passed in paragraph 27(5), he submits that now that the State Government has to begin with its job to devise and notify a mechanism for increasing and regulating the supply of oxygen to all the Government and private hospitals in the State and at the earliest, there would not be any need for passing of any other order in the matter. We understand the concern expressed by the learned Senior Advocate and this is the reason why we have not passed any order which would be inconsistent with the direction already given in the matter at principal seat. In fact, the direction given by the principal bench at Mumbai, in our view, helps us in issuing further directions to the local authorities so that at the local level the supply chain of oxygen could be made effective and beneficial for the Covid patients in Vidarbha Region of the State.

13. About supply of Remdesivir drug, a very valuable information has been shared by Dr.Somani, Central Drug Controller with this Court and we place on record our appreciation for his active participation and the enlightenment provided by him to this Court in the matter. According to him, as of 1st April, 2021, though the installed capacity of seven manufacturers of this drug in India was approximately 38 lacs vials per month, the actual installed capacity was about 21-22 lacs vials per month as the production depends on different factors including consistent supply of raw material, electricity, water and availability of sufficient workers and so on and so forth, which

factors are variable by their very nature. He informs that now the Central Government has made all these manufacturers increase their capacity and in order to help them in this regard, two components which go into production of this drug and which are required to be imported, have been made duty free by the Central Government. Now, at the instance of the Central Government, the production capacity of the seven manufacturers of this drug together has been increased to eighty eight lacs vials per month. He further submits that in order to achieve production capacity at it's optimal level, another period of 20 to 40 days would be required and therefore, as of now, the production is not of the level as is expected optimally. He further submits that whatever vials are being produced per month, are being distributed by the Central Level Committee consisting of different Ministries of the Central Government and such distribution is based upon relevant factors applicable equally to all the States across India.

14. At this stage, Mr.Bhandarkar, learned amicus curiae, Mr.Mandlekar, learned Counsel for Intervenor and learned Counsel Mr.B.G.Kulkarni, learned Counsel for respondent no.10 submit that even within the limitation of capacity of twenty one lacs to twenty two lacs vials per month, the quota allocated to the State of Maharashtra for a period of nine days starting from 21.4.2021 and ending on 30.4.2021 can be increased from present 2,69,200 vials to something substantial. Dr.Somani submits in

response that if a specific request with proper justification is received in this regard from the State of Maharashtra, the Central Committee would certainly consider the same and would take appropriate decision depending upon justification and the vials available in hand. We would, therefore, direct the State of Maharashtra to review the position regarding requirement of Remdesivir vials for the State of Maharashtra and if it is found that more vials are required than those allocated as per the Central Government order, dated 21.4.2021, appropriate request with proper justification be made to the Central Level Committee. We would expect State Government to place on record its response in this regard, which shall be supported by appropriate data and figures.

15. As per the Central Government's order dated 21.4.2021, allocated quota for Maharashtra is of 29,911 vials per day. We would direct the State Government to ensure that these vials are distributed across the State of Maharashtra by adopting the same formula as has been adopted by the Central Government while passing its order dated 21.4.2021.

16. There is also a concern expressed about protocol of treatment of Covid patients. It has been submitted that there has been injudicious use of Remdesivir drug and this has happened because of indiscriminate prescriptions made by some of the doctors which were not consistent with the SOP

prescribed by the Task Force of the State of Maharashtra. Dr.Gosavi submits that all the doctors at the Government hospitals are scrupulously following the SOP and no doctor of these hospitals would prescribe Remdesivir drug without being satisfied that the patient has developed hypoxia. Dr.Anup Marar submits that even in the private hospitals presently there is no doctor who is prescribing this drug in violation of the SOP. But, according to him, there may be a problem as regards the home quarantined patients and there could be cases where some of these patients may have been prescribed Remdesivir by private doctors and even these patients may have succeeded in procuring this drug. Since the treatment of Covid patients is entirely in the hands of experts in the field, there is very little that the State machinery can do in this regard, unless the experts themselves point out any irregularity to the State machinery. As long as no instance of manifest misuse of the drug is brought to the notice of the nodal Officers and unless it is seen to be completely in violation of mandatory SOP, the State machinery would not be in a position to take any action against the concerned medical expert wrongly prescribing the drug. This is an area which remains largely in the discretion of the experts of medical field and as such, we would only request all doctors and medical experts treating the Covid patients to try to scrupulously follow the SOP unless, in their opinion, a departure therefrom is absolutely necessary in order

to save life of a patient. If the medical fraternity follows the SOP, it would go a long way in making our battle against this virus effective. Their proper discretion in the matter would help in reducing the demand of Remdesivir drug, which is very much required as there is already a shortage in production and supply of this drug. Even the World Health Organisation guidelines state that this drug being not a remedy and being only an investigational tool, must not be injudiciously prescribed and must not be indiscriminately used. We hope that the medical fraternity will give respect to the SOP and opinion of W.H.O.

17. As regards supply of remaining vials of Remdesivir drug in Nagpur as per the order passed on 21.4.2021, we find that the same has been complied with. Now there is no need to pass any further order in this regard, for the present.

18. Lastly, we must say that although we welcome receipt of valuable information from any and every source, we would not entertain any intervention application in future unless we are satisfied that the information and assistance intended to be given to the Court is of real use in our effort against Covid-19. We have also noticed that many of the intervenors do not follow the basic procedure of filing intervention application. Now, the time has come for us to regulate receipt of intervention application. Accordingly, we direct the Registry to

not accept and entertain any intervention application unless proper procedure has been followed including supply of copy of the application along with all its annexures to the petitioner and also all the respondents well in advance.

19. Stand over to 27.4.2021 at 2.30 p.m.

JUDGE

JUDGE

SSJaiswal