

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.
Mr. S.S. Sanyal, Advocate for Maharashtra Pollution Control
Board.

CORAM : SUNIL B. SHUKRE &
AVINASH G. GHAROTE, JJ.

DATE : 27.4.2021.

CIVIL APPLICATION (CAO) NO.316/2021.

Heard.

2. The cause being taken up before this Court by the applicant could also be taken on his behalf by the learned *Amicus Curiae* and, therefore, we would request the learned *Amicus Curiae* to bring the necessary facts before this Court. The application is **disposed of** accordingly.

Suo-Motu P.I.L. No.4 of 2020, P.I.L. No.10 of 2020 & P.I.L. No. 25 of 2020

3. Heard.

4. There has been a positive development which has taken place after specific directions were issued by this Court on 23rd April, 2021. One of the important directions related to the State reviewing its requirement regarding Remdesivir injections and placing a request with Central Government Committee for increasing the allocation of Remdesivir injections for the period of 10 days from 21st April to 31st April, 2021 and making that request actually if after the review, the State Government was satisfied about it. It appears that such a request has been made by the State Government and thereafter a revised allocation order has been issued by the Central Level Committee, which has been signed on 24th April, 2021 by the Director, Ministry of Health and Family Welfare. As per the revised allocation made by the Central Government for the period of 10 days for the State of Maharashtra, the State of Maharashtra would be receiving 4,35,000 of

Remdesivir injections.

5. The order dated 24th April, 2021 requires the State Government to take certain steps. It requires that State would place its supply order with concerned manufacturer, if not already done, within the above-stated allocation of 435000 Remdesivir vials based upon manufacturer-wise mapping. It is pertinent to note that the order dated 21st April, 2021 also indicates the quota allocated to each of the 7 manufacturers to be supplied to the States mentioned against their names. So, the State of Maharashtra is required to place supply order based upon the revised allocation order dated 24th April, 2021 within the limitation of total allocation with the individual manufacturers again within the limitation of the quota allotted to the individual manufacturer for supply to the State of Maharashtra.

6. This order further requires the State to immediately appoint State Nodal Officer for Remdesivir drug and it notes that the State Nodal Officer would be responsible for unrestricted and timely movement of Remdesivir drug within the State of Maharashtra.

7. The order dated 24th April, 2021 further mentions that the Control Room set up by the National Pharmaceutical Pricing Authority shall be responsible for monitoring the operations as per the

allocations made by the order. It further prescribes that there would be a Whats-app Group comprising the Nodal Officers of the State to control unrestricted and unhindered supply of Remdesivir drug and that Remdesivir manufacturing companies should also be members of this Whats-app Group. This machinery has been set up in order to ensure that there remains no gap between the Remdesivir injections booked for supply and vials actually supplied.

8. Thus, the Central Government's order is specific and it ought to be followed in its letter and spirit by all the States, in particular the State of Maharashtra. It is in this regard that we would like to have specific information from the State of Maharashtra, which for the present, is not forthcoming. While it was informed by the learned Government Pleader that the Nodal Officer in the State of Maharashtra has been appointed, he is Mr. Ganesh Rokde, who is coordinating with all the other Nodal Officers and also concerned officers of the company for ensuring unrestricted and unhindered movement of the Remdesivir drug till the drug reaches the State of Maharashtra, it is not known as to whether or not any Whats-app Group has been created and it is also not known as to what efforts have been taken by the Nodal Officer for ensuring that each of the pharmaceutical company complies with the supply quota earmarked for it as per the order dated 24th April, 2021 and makes available to

the State of Maharashtra the Remdesivir vials everyday in the numbers as per the quota fixed for them for supply of these vials to the State. Therefore, the State Government, through its Nodal Officer, would be required to place on record a detailed affidavit as to the steps taken by it in pursuance of the directions given by the Central Government in its communication dated 21st April, 2021. Then, we are also not aware as to whether or not any revised allocation order based upon 24th April, 2021 has been issued by the Nodal Officer or the Commissioner, FDA, State of Maharashtra. Unless and until such a revised district-wise allocation order is issued by the State Government, it would not be possible for any of the districts to ascertain as to whether or not it is being supplied Remdesivir vials in numbers matching with the drug quota allocated to that district. Therefore, we direct the State Government to also place on record information in this regard alongwith copy of the latest district-wise allocation of Remdesivir drug. In case such revised order has not been issued, we would direct the State Government to do so forthwith and without taking any further time.

9. During the course of hearing, it transpired that the State Government is still following three methods for procuring the Remdesivir drug, namely, private procurement, procurement through Haffkine Institute by floating tenders and placing supply orders

by the State with the 7 manufacturing companies, as per order dated 24.4.2021.

10. The affidavits placed on record today by the Divisional Commissioner, Nagpur it has become clear that there are some districts where the private pharmacies are directly placing the orders with the pharmaceutical companies for supply of Remdesivir drug. We do not understand the reason for this when the procurement and supply of Remdesivir has been centralized now, as is evident from the order dated 24th April, 2021. There is no reason why in some of the districts at their individual levels some of the private pharmacies have been permitted to place their orders directly to pharmaceutical companies. State would have to consider stopping this practice in order to bring it's action in accord with order dated 24th April, 2021.

11. The learned Government Pleader, however, strikes a different note. On instructions, received from the Joint Commissioner, FDA she states that in the State of Maharashtra no private pharmacy is permitted to directly place any order with any individual pharmaceutical company. If this is true, this must be placed on record by the responsible officer of the State. However, today there is an affidavit sworn by the Divisional Commissioner, Nagpur which throws some light on this aspect. We reproduce the statements made in paragraph 5a of

this affidavit dated 27th April, 2021, which reads thus:-

“5a. In respect of supply and distribution as regards life saving drugs remdesivir and other important drugs in District Bhandara :- In Bhandara District daily around 275 vials of remdesivir injections (private purchase) get available and from 14-04-2021 to 24-04-2021 total 3025 remdesivir injections are received. Apart from that, for government hospital, 112 (private purchase) and from Government 500 in total 612 remdesivir injections are available. In total 3637 remdesivir injections are received by District Bhandara.”

12. In this paragraph as one would notice, on the point of supply and distribution of life saving drugs, Remdesivir and other important drugs in district of Bhandara, it has been mentioned at two places that certain number of vials of Remdesivir injections are available and same has been qualified by words *“private purchases”*. These statements, according to us, indicate that vials of these injections are permitted to be obtained through private purchases although the learned Government Pleader, as per the instructions received by her, submits that there is no such method permitted in the State of Maharashtra. As stated earlier, an affidavit in this regard be placed on record, so that the issue is resolved. Even otherwise, as per the order dated 24th April, 2021, the purchase of Remdesivir drug

according to the quota allocated to the State of Maharashtra for a period of 10 days has to be and must be done by the State through its Central Agency. If State Government does it, we are sure that much of the problem arising from uneven and unfair distribution of the drug and also black-marketing of the drug would be solved. A detailed affidavit in this regard shall be filed on or before the next date.

13. During the course of the hearing, it is also brought to the notice of this Court that even in respect of the supply of other life saving drugs such as Ivermectin and Favipiravir, in all the other districts of Vidarbha Region, there is acute shortage. Shri Kose, the Joint Director, FDA, Nagpur submits that presently there is available sufficient stock of these drugs. However, he is not aware about his assessment of requirement of each of the districts of Vidarbha Region for the further period up to 31st May, 2021 and whether present stock which is already with the Stockists would last till 31st May, 2021 as per the estimated requirement. We would request the Joint Commissioner, FDA, Nagpur to place on record his assessment for all drugs, including drug Tocilizumab, estimated requirement of these drugs in each of the districts of Vidarbha Region up-till 31st May, 2021 the stock available for the present, whether or not this stock is sufficient to meet the requirement of these three drugs up-to 31st May, 2021 and the plan made

by him for procuring these drugs. A detailed affidavit in this regard shall be filed on or before next date.

14. As regards second method of procuring Remdesivir vials through Haffkine Institute, we would recall here our order passed on 21st April, 2021. This Court then noted what was informed by the Divisional Commissioner, Nagpur to the Court. It was informed that in response to its tender notice bids had been received from different bidders and Cipla being the lowest bidder, was likely to be considered for being issued the order for supply of 200000 vials of Remdesivir. Till date, no further information has been furnished to this Court. We would expect the State to also include specific information in this regard in the affidavit which would be filed on or before next date.

15. The third method of procurement of this drug is of placing of the orders by the State directly with the manufacturing companies. We have already requested the State Government to enlighten the Court on this aspect of the matter by filing an affidavit in this regard.

16. In order to boost the supply of Remdesivir drug within the State of Maharashtra as informed by the learned Government Pleader, the State is also planning to import this drug from other countries such as Bangladesh, Hong Kong, Singapore and so

on and so forth. Learned Government Pleader informs that permission from the Central Government for importing this drug has been sought by the State of Maharashtra. In support, she places on record a D.O. letter sent to the Cabinet Secretary, Government of India, New Delhi by the Chief Secretary of State of Maharashtra dated 22nd April, 2021. This is taken on record and marked "A1" for identification. According to the learned Government Pleader, response of the Central Government is awaited by the State of Maharashtra. We would request Mr. U.M. Aurangabadkar, learned A.S.G.I. to seek instructions from the Central Government on this subject and inform this Court as to whether or not the Central Government has granted permission to the State of Maharashtra for importing this drug.

17. There are also complaints about irregularities taking place at the Covid Care Centers. It is alleged that these centres / hospitals despite of having stock of Remdesivir vials, are not making available Remdesivir vials for their administration to some of the needy patients and this is resulting in some kind of pilferage at the level of individual Covid Care Hospitals. We direct the District Collector, Nagpur and also the Commissioner, N.M.C. to carry out individual checks at different hospitals and ensure that the vials of Remdesivir drugs are actually put to use for treating Covid patients to their fullest extent, without tampering with those vials. The

District Collector, Nagpur may also control this by centralizing distribution of the vials based upon requisitions that would be received by his office. This can be achieved by setting up a Central Agency or to be precise a Control Room at District Collectorate, which would be having in it's hand the entire stock of Remdesivir vials and which would be responsible for it's distribution on minute to minute, hour to hour and day to day basis as per the requisitions received by the Control Room. We would request the District Collector, Nagpur to immediately set up a Control Room comprising a team of about 30 to 40 officers and experts who shall be working on rotation on 8 hourly basis. This team of officers and experts may consist of officers of District Administration, officers of the Food and Drugs Administration and experienced doctors from Government Hospitals and Private Hospitals or retired Doctors. The Control Room should also be made responsible for supervising and overseeing such further activities as bed allocation at every Covid hospital, whether private or government and supply of oxygen and other essential drugs for such Covid hospitals. Collector, Nagpur shall place on record his response in the matter on or before next date.

18. We also direct the District Collector, Nagpur and Nagpur Municipal Corporation, Nagpur to file on record affidavits containing details about use of additional beds at different places including

Radha Swami Satsang Centre and Railway hospital and Nagpur Nagrik Rugnalaya.

19. Dr.Sudhir Gupta, Dean, G.M.C., Nagpur has placed before us a copy of communication received by him from Brain Trusters, Hospital Project Management Consultancy Services appointed by P.W.D., Nagpur for providing consultancy service to the G.M.C., Nagpur as regards setting up and up-keep and maintenance of oxygen storage plants at G.M.C., Nagpur. This letter is taken on record and it is marked as "A-2" for identification. A perusal of this letter shows that the Consultant has advised the G.M.C. to earmark by 20 % of it's oxygen beds as contingency beds on the ground that there has been a sudden increase in demand of oxygen and on the another hand, supply of oxygen is erratic and, therefore, a situation may arise that on a given day there is not available sufficient storage of oxygen, which may lead to collapse of entire distribution system leading to endangering of lives of all patients. An apprehension so expressed is reasonable, and, therefore, reduction of oxygen beds by 20 % as advised by the Consultant can be accepted and we do accept it. This would mean that 20% of the total 600 oxygen beds would not be permitted to be occupied by any patient and these beds would exist only to meet any contingency of an unforeseen nature like tripping of oxygen storage plant. In the circumstances, we grant permission to G.M.C., Nagpur to reserve 20 % of total 600 oxygen beds as

contingency beds. Meanwhile, we direct the District Collector, Nagpur to accelerate the process of augmenting oxygen supply capacity in Nagpur district. We also direct him to take immediate steps for setting up individual oxygen generation plants at G.M.C., I.G.M.C. and also AIIMS, Nagpur and if any permissions in this regard are required, same shall be granted by all the concerned Authorities within 48 hours.

20. On the last date of hearing, it was informed by the Divisional Commissioner, Nagpur that the W.C.L. has interest in setting up oxygen generating plants at G.M.C., I.G.M.C. and AIIMS, Nagpur. However, nothing has been heard thereafter although time of about four days has passed. Today situation is of emergency and, therefore, the decisions which must be taken are also of emergent nature and without taking any more time. Hence, we direct the C.M.D. of W.C.L., Nagpur to take a decision regarding setting up of these oxygen generating plants at the said three hospitals at the cost of W.C.L., Nagpur within 24 hours. The W.C.L. is also permitted to utilise the funds under the head of "Corporate Social Responsibility Fund" for the purpose.

21. We are also of the opinion that for same purpose of augmenting oxygen production capacity, we need to take help of another Public Sector giant in Nagpur, the Manganese Ore India Ltd. and so we direct the Chairman and Managing Director,

Manganese Ore India Limited, Nagpur to utilise its “Corporate Social Responsibility Fund” for setting up oxygen generation, storage and distribution plants at the hospitals indicated to him by the District Collector, Nagpur in consultation with Commissioner, NMC. We direct the District Collector, Nagpur to send communication in this regard immediately to C.M.D., MOIL, Nagpur with a list of hospitals, like Nagpur Nagarik Rugnalaya and the like for the purpose of setting up these oxygen generation, storage and distribution plants by utilising “Corporate Social Responsibility Fund” of MOIL, Nagpur. Mr.S.S.Sanyal, learned Counsel for the Maharashtra Pollution Control Board submits that for setting up such plants, no clearance from ECB is required nor any environmental clearance is required. Compliance report in this regard shall be placed on record on or before the next date.

22. In Bhandara district, there is already acute shortage of Remdesivir injection. The Divisional Commissioner, Nagpur discloses that as of now 612 vials of Remdesivir drug are available with the Government hospitals, whereas private hospitals are facing acute shortage. We direct the District Collector, Bhandara to make available Remdesivir vials from amongst the quota already allocated to the Government hospital in Bhandara district to the private hospitals in case a request from any of the private Covid Care Centres is received by him and the request is supported by the requisite data.

23. As regards the supply of oxygen from Bhilai Plant, it appears that there is a problem being faced by the District administration of Akola. It is stated in the affidavit by the Divisional Commissioner, Amravati that for the present, there is disruption in regular supply of the allocated quota of oxygen to Akola district from Bhilai Plant. This quota is of 10 metric tons every alternate day. We may state here that as the supply from Bhilai Plant itself is going to be increased from tomorrow as per the information received by the District Collector, Nagpur, the situation regarding supply of allocated quota of oxygen to Akola district can be reviewed on the next date. We direct the Divisional Commissioner, Amravati to also look for alternate source of supply of oxygen within the district of Akola or from nearby districts and place his suggestion in this regard before this Court so that specific directions can be issued by this Court. If other districts of Amravati are also facing shortage, similar suggestions are expected to be given to this Court by the Divisional Commissioner, Amravati. This shall be done on or before the next date.

24. At this stage, Mrs.Vibha Dutta, Director, AIIMS, Nagpur has brought to our notice the problem of shortage of doctors being faced at present by AIIMS, Nagpur. She makes a request for immediately sending on deputation some MBBS doctors, say about 8 to 10 and if not possible, atleast Ayush, B.A.M.S. and Homeopathy doctors, who could be sufficiently

trained by MBBS doctors available at AIIMS Nagpur. She submits that at present there are 220 beds available at AIIMS Nagpur but they cannot be used in any manner for want of sufficient oxygen supply and availability of doctors in sufficient number. She also submits that AIIMS, Nagpur can also start forthwith 30 ICU beds with ventilators, but it cannot do so for same reasons. As regards the increase in supply of oxygen cylinders to AIIMS, Nagpur, appropriate decision can be taken in a day or two and till that time, we would request the District Collector, Nagpur to increase as far as possible supply of oxygen cylinders to AIIMS, Nagpur by issuing an order in that regard. We direct the Commissioner, N.M.C., Nagpur and also District Collector, Nagpur to consider meeting of the requirement of doctors by selecting in adequate number the doctors having qualifications of Ayush, B.A.M.S. or Homeopathy from amongst the pool of such Doctors and by issuing necessary orders, to place their services at the disposal of the patients at AIIMS, Nagpur which shall be done on or before the next date. We also direct Collector, Nagpur to consider sending on deputation some MBBS Doctors from GMC, Nagpur or fresh MBBS graduates to AIIMS, Nagpur.

25. Mr.B.G.Kulkarni, learned Counsel for the IMA informs the Court that there is also available at Nagpur one hospital of Air Force Maintenance Command which is not so far declared to be a Covid Care Hospital and, therefore, some of the doctors and

nursing staff could be requisitioned from this hospital for serving the Covid patients in Nagpur at various hospitals including AIIMS, Nagpur. We direct N.M.C. Commissioner and Collector, Nagpur to make a request in this regard to Commanding Officer of Maintenance Command of Air Force, and inform the Court accordingly.

26. It may not be out of place to mention that members of Indian Medical Association, Nagpur must also consider the clarion call for their services by AIIMS, Nagpur and therefore, we would request the IMA, Nagpur to request all its members for volunteering their services as specialists to AIIMS, Nagpur. A list of doctors must be placed on record on or before the next date of hearing.

27. We also find that the need of AIIMS, Nagpur can be fulfilled if the DMER of Maharashtra considers allocating bond services of MBBS graduates in pursuance of its notice dated 16.4.2021 in sufficient numbers to AIIMS, Nagpur. We direct the DMER to allocate bond service of MBBS graduates in adequate number ranging from 25 to 40 doctors.

28. In our order dated 21.4.2021, we had made a reference to meeting dated 19.3.2021, the respondent no.3 had taken on the issue of bringing the Remdesivir drug within the sweep of Drugs Price (Control) Order, 2013. We request the learned Assistant Solicitor General of India to seek

instructions in the matter.

29. Today, 4240 vials of Remdesivir drug have been received in Nagpur as informed by the Joint Commissioner, F.D.A., Nagpur. We direct the District Collector, Nagpur to immediately distribute these vials fairly and equitably amongst the Covid Care hospitals, in Nagpur.

30. Stand over to 29th April, 2021 at 2.30 p.m.

JUDGE

JUDGE

SSJaiswal