

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).
Mr.T.D.Mandlekar wit Mr. Tushar 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).

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

DATE : 21.4.2021.

Heard at this late hour of the night. The reason for keeping this special hearing at this hour of the night is to provide immediate succour to the Covid patients who are suffering no end in the present situation of scarcity and non-availability of almost every essential service, insofar as their medical management is concerned.

2. In this hearing, we have been profitably assisted by learned amicus curiae, learned Assistant Solicitor General of India, learned Government Pleader, learned Counsel for the respective parties, Dr.Sanjeev Kumar, learned Divisional Commissioner, Mr.Ravindra Thakre, Collector, Nagpur, Dr.Sudhir Gupta, Dean, G.M.C., Nagpur, Mr.Radhakrishnan, Commissioner, Nagpur Municipal Corporation Mr.Kose, Joint Director, F.D.I., Nagpur, Dr.Anil Laddad, Dr.Anup Marar and many eminent personalities in the field of medicine and administration.

3. By remaining present in this August House of Justice, the learned Counsel and these eminent personalities have only sub-served and enhanced the cause of justice and we place on record our appreciation for their extraordinary effort in this joint fight of ours against the dreaded virus.

4. The hearing was primarily confined to two fundamental issues, the issue of adequate supply of what is considered to be a life saving drug, Remdesivir and what is considered to be a lifeline of the Covid patients, oxygen supply.

5. On 19.4.2021, we had directed the authorities at the helm of affairs to release and provide to Nagpur not less than 10000 vials of Remdesivir and that was directed to be done without wasting any time and almost within a few hours of

passing of the order. However, the order was not complied with fully, but the brighter side of non-compliance, if we may say, is that some vials indeed have been released and allocated for being used for the treatment of serious Covid patients. Specific data in this regard was submitted across the bar by Dr.Sanjeev Kumar and we have taken it's due note.

6. According to the information supplied by the Divisional Commissioner, Nagpur, between 19.4.2021 and 21.4.2021, 5245 vials of Remdesivir drug have been distributed in Nagpur and this amounts to half compliance with the directions given by this Court on 19.4.2021. The information so supplied further shows that 6752 vials of Remdesivir drug would be received in Nagpur tonight or latest by tomorrow and as soon as they are received, they would be fairly and equitably distributed amongst the government and private hospitals by nodal agency. The information given to us further discloses that there are seven pharmaceutical companies actively involved in supply of this drug and all these companies except for Jubilant, based in Ghaziabad have assured supply of specific quantity of these vials tonight or latest by tomorrow. The break up of the quantities assured to be supplied, as submitted by the Divisional Commissioner is as follows :

Sr. No.	Name of Company	Vials assured
1)	Hetero	3000
2)	Cipla	1500

- | | | |
|----|---|------|
| 3) | Sun Pharma | 320 |
| 4) | Mylan | 500 |
| 5) | Dr. Reddy's Laboratory | 1000 |
| 6) | Zydus | 432 |
| 7) | Jubilant - General assurance of supply of unknown quantity within 3-4 days. | |

7. In view of above, we direct the nodal authority to distribute all these vials equitably amongst all private and government hospitals latest by tomorrow evening.

8. As regards the supply to be made by Jubilant Company, on being inquired by us with it's C & F Agent, we were told that no information was available with him regarding the quantity of the drug that would be sent by Jubilant. However, the Agent assured the Court that specific details in this regard would be obtained by him from the Sales and Marketing Division of Company and it will be supplied to this Court through the Joint Commissioner, Food and Drugs Administration, Nagpur. We accept this statement and we direct the Joint Commissioner, Food and Drugs Administration, Nagpur to ensure that specific information is supplied by Jubilant Company to this Court on the next date of hearing.

9. Shri Aurangabadkar, learned A.S.G.I. submitted before us that as per the information supplied to him by respondent no.3, Central Drug

Controller, total production capacity of Remdesivir drug of all the seven manufacturing companies is of 8800000 vials per month. It has been generally expressed by the experts in the field of medicine who are personally present before this Court that this much of production capacity is quite sufficient to cater to the needs of serious Covid patients in Nagpur and also in the country for the present and, therefore, if these Companies are directed to streamline their supply process to all the States in India there would be no shortage of Remdesivir drug and it will eventually eliminate the malpractice of sale of these drugs in the black-market. We respect the opinion expressed by the experts and therefore, accept it. We request the learned A.S.G.I. to obtain instructions from respondent no.3 regarding the steps taken by him by exercising his powers under the Drugs Control Act and also other relevant laws in ensuring fair and equal supply of these drugs by these seven companies not only to Maharashtra or Vidarbha Region of Maharashtra, but to the entire nation. We direct him to remain personally present before this Court either physically or virtually on the next date of hearing and apprise this Court of the steps taken by him by issuing various orders in exercise of his powers under the Drugs Control Act, 1950 and other relevant laws for ensuring proper and continuous supply of this drug to all the areas across the nation and also to prevent hoarding, undue stocking and black-marketing of this drug.

10. The directions that we have issued just now would start bringing some relief to the distressed patients of Nagpur and Vidarbha Region by tomorrow and these directions would certainly not provide any immediate relief to these patients and, therefore, something for the present is required to be done, if we have to perform our duty of preservation of precious human life arising from Article 21 of the Constitution of India.

11. Dr.Sudhir Gupta, Dean, G.M.C., Nagpur makes a submission that for last two days the G.M.C. has not received a single vial of Remdesivir drug and present load of patients is of 900. We have received specific information from different quarters, the source of which at this juncture cannot be revealed by this Court, that there are some stockists in Nagpur and also some depots in Nagpur who and which are holding over substantial quantities of Remdesivir vials and it appears to be in violation of law. For the present, we direct Mr.Kose, the Joint Director of E.D.A. to initiate effective action in this regard and ensure that tonight itself the G.M.C. is supplied with at least 100 vials so that lives of serious Covid patients would be saved. Mr.Kose has assured to take necessary measures in this regard and has assured supply of these vials to G.M.C., Nagpur. We would request the Dean of G.M.C., Nagpur to send message to Registrar (Administration) of this Court regarding compliance of this order by the Joint Commissioner,

F.D.A., Nagpur tonight itself.

12. Coming to the second issue regarding supply of oxygen, the scenario is once again disappointing. As per the figures given to us across the bar by Mr.Thakare, the Collector, Nagpur, total requirement of oxygen of Nagpur is 166.5 metric tons and the total requirement of remaining districts of Vidarbha Region is of about 60 to 100 metric tons. That means total requirement of oxygen of Vidarbha Region is of 266.5 metric tons at it's maximum. We are informed that Nagpur has certain oxygen generating units and their total capacity to generate oxygen is 146 metric tons per day. We have also been told that PRAX AIR, HYPHEN LINDE had been, till recently, supplying 110 metric tons of liquid oxygen every day. But, now this supply has been reduced to 60 metric tons as per the communication dated 18.4.2020 issued by the Ministry of Health and Family Affairs, New Delhi. The figures noted down just now would show that there is a shortfall of about 100 metric tons between the demand and supply of oxygen and on the backdrop of this shortfall, the communication dated 18.4.2020 has hit the State of Maharashtra as a bolt from the blue. Although there was no order fixing the quota of liquid oxygen supply from PRAX AIR - Bhilai for the State of Maharashtra, the practice that was consistently followed was of supplying liquid oxygen in the quantity of 110 metric tons per day by PRAX AIR - Bhilai. In this situation of emergency poignantly enveloping a region which

accounts for almost 40% Covid patients of the entire nation, the communication from the Ministry of Health and Family Affairs should have been to the effect of increasing the supply of liquid oxygen to the State of Maharashtra from the present practice of 110 metric tons per day to somewhere between 200 to 300 metric tons per day. Unfortunately, the things have been turned in a reverse manner and it has affected very severely Covid patients in the State of Maharashtra and in particular the Vidarbha Region. Considering dire need of these patients and also total share of Covid patients of this State in the entire cases in the country, we deem it necessary that the earlier practice of supply of 110 metric tons of oxygen per day by PRAX AIR - Bhilai is restored and accordingly, we direct that notwithstanding the communication dated 18.4.2021 issued by the Ministry of Health and Family Welfare, PRAX AIR - Bhilai shall continue to supply 110 metric tons of liquid oxygen to the State of Maharashtra until further orders.

13. Meanwhile, we request Shri Aurangabadkar, learned A.S.G.I. to seek appropriate instructions from the Ministry of Health and Family Welfare in this regard. In this regard, we direct the Joint Commissioner, F.D.A., Nagpur to see to it that there is no breakdown in the supply of oxygen to all the hospitals in Nagpur. In case, any Covid hospital runs in short supply of oxygen, we would request that hospital to bring this fact immediately to the notice of

the Joint Commissioner, F.D.A., Nagpur and also the Collector, Nagpur. Dr. Sanjeev Kumar, the Divisional Commissioner, Nagpur informs that steps are being taken to provide Covid treatment facilities to the patients near Lloyd Steel Plant at Wardha. He informs that modalities are being worked out and capacity of this hospital could be around 1000 to 1500 beds. He also informs that for about next 20 to 30 days, the administration expects that substantial progress in this regard would have been done. This is a laudable step now being taken by the administration of the Commissionerate. We request the Divisional Commissioner, Nagpur to expedite creation of this hospital and it would be quite advantageous if the said hospital can be made functional in next 15 to 20 days. If there are any difficulties faced by the administration, they should be placed on record, so that they could be dealt with in an appropriate manner.

14. Before we part with the order, we would like to remind the Joint Commissioner, F.D.A., Nagpur and also learned A.S.G.I. that they need to comply with the directions given by this Court in the order dated 30th April, 2021. We request them to file respective affidavits of the respondents they represent, in reply, showing their compliance of directions on or before the next date. We would also request learned A.S.G.I. to file detailed affidavit of respondent No.3 about the steps taken by respondent No.3 in ensuring proper and consistent supply of

Remdesivir drug and other life saving drugs to Vidarbha Region and the State of Maharashtra. We expect that Central Controller of Drugs, respondent No.3, to be ready with all the necessary information and facts and figures on the next date of hearing.

15. At this juncture, it has been brought to our notice that a proposal for bringing Remdesivir drug under the sweep of the Drugs (Price Control Order), 2013 has been moved and a meeting in this regard was also held at Mumbai on 19th March, 2021. We would request learned A.S.G.I. and also learned Government Pleader to seek specific instructions in this regard from the Drug Controller, New-Delhi and Commissioner, F.D.A. Mumbai respectively.

16. Next sitting of this Court would be on 23.4.2021 at 2.30 p.m.

JUDGE

JUDGE

Tambaskar