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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Writ Petition (PIL) No. 27 of 2020

Suo Moto WP(PIL) **Versus** State of Chhattisgarh & Others

19	
26/04/2021	<p>Shri Prafull N. Bharat, Advocate appears as <i>Amicus Curiae</i>.</p> <p>Shri Satish Chandra Verma, Advocate General with Shri Chandresh Shrivastava, Deputy Advocate General and Shri Vikram Sharma, Deputy Government Advocate for the State/Respondents No. 1 to 3.</p> <p>Shri Ramakant Mishra, Assistant Solicitor General for the Union of India/Respondent No. 4.</p> <p>Shri Abhishek Sinha, Advocate for the Respondent No. 7/Railways.</p> <p>Shri Ashish Shrivastava, Advocate for the Respondent No. 9/SLSA.</p> <p>Shri Sandeep Dubey and Shri Palash Tiwari, Shri Devershi Thakur, Shri Sudiep Shrivastava, Shri Goutam Khetrpal, Shri Shivang Dubey, Advocates for the respective Intervenors.</p> <p>Heard on IA No. 45 of 2021, application for appropriate directions, IA No. 46 of 2021, application for grant of permission to intervene in the writ petition and IA No. 47 of 2021, application for issuance of direction to the South East Central Railway Bilaspur to make available the medical coaches for admission of Covid patients.</p> <p>IA No. 45 of 2021 has been filed by the learned <i>Amicus Curiae</i> referring to the grave situation brought in by virtue of the second wave of the Covid-19 pandemic leading to declaration of lockdown in various Districts, however,</p>



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without taking any such action in the case of Bilaspur where also the graph is going high. After filing the petition as above, the District Collector, Bilaspur has declared lockdown in the entire Bilaspur for 8 days from 14.04.2021 to 21.04.2021; which now stands extended upto 06.05.2021. This being the position, the purpose of the IA has already been served and as such, no further orders are necessary. It stands closed accordingly.

Pursuant to the order passed by this Court on 22.04.2021 with reference to immediate requirement to fill the gap, if at all there was any deficit in the availability of the beds/Oxygen support for treating the Covid-19 patients and the feasibility of procuring the Special Medical Coaches of Railways based on the Guidelines and Standard Operating Procedure (SOP) issued on 07.04.2020 by the Government of India, Ministry of Health & Family Welfare, the learned Advocate General representing the State, the learned Assistant Solicitor General representing the Central Government and Shri Abhishek Sinha, the learned counsel representing the Railways are present with instructions (virtual mode). The learned Counsel appearing for the parties and Shri Prafull N. Bharat, the learned *Amicus Curiae* appointed by this Court are also before us (virtual mode).

With regard to the clarification sought for with reference to the photographs of some patients (appeared in a Daily) being supplied with Oxygen by making them to lie on the floor in the CIMS, Bilaspur, the learned Advocate General submits that the media report is rather mischievous and it does not reflect the correct picture. It is pointed out that effective treatment is being given to all concerned and that arrangements have been made to provide Oxygen supply to the patients who come to the Hospital even in the 'Out Patient Department' itself, if their condition appears to be critical or such assistance is warranted. In some cases, it may become necessary that the patients are given Oxygen support even



when they remain seated on chairs in the OPD, pending completion of the procedure for managing such patients by admitting them in the Hospital (if beds are available) or by way of such other modes. The photographs as aforesaid are only in respect of such patients who were waiting in the OPD and it was considering their condition, that the Oxygen supply was given then and there; either by placing them on the chairs or when they wanted to lie down, pending completion of further procedures; which is an instance of effective tackling of the situation and never an instance of any lapse on the part of the Hospital. Since the said submission is not sought to be rebutted from the part of the Intervenors/Petitioners, we do not find any reason to disbelieve the submission made by the learned Advocate General.

The learned Advocate General submits that, pursuant to the order passed by this Court on 22.04.2021, a notification was issued by the Government on that date itself notifying Dr. Priyanka Shukla, IAS, Joint Secretary, Health & Family Welfare Department and Director, National Health Mission, as the Nodal Officer of the State to interact with the Nodal Officer of the Railways and that a meeting was held between the Officers of the State and the Railways on 22.04.2021 itself. A copy of the Notification appointing the Nodal Officer and the Minutes of the meeting have been produced as Annexure D/1 and Annexure D/2 alongwith the covering memo dated 23.04.2021, filed on behalf of the State.

With reference to the contents of the Minutes of the meeting, both the learned Advocate General and Shri Abhishek Sinha, the learned counsel for the Railways submit that the meeting was held in a very cordial atmosphere paying mutual respect and full co-operation in dealing with the issue in hand. It is pointed out by both the learned counsel that there are certain practical difficulties in making use of the Special Medical Coaches of the Railways, though the same are



very much available as already taken note of in the order passed on 22.04.2021. In fact, the coaches were arranged in tune with the Guidelines and the SOP issued by the Ministry (Central Government) only to function as “Isolation Centers” for suspected/very mild/mild symptoms of Covid-19 cases. The Railways have in fact converted 111 non-air conditioned coaches, which are to be provided with two Oxygen cylinders in each coach for emergency use, but there is no provision for continuous Oxygen supply in all the beds (Oxygenated beds) in these coaches. In the course of isolation, in case of any change in symptoms from suspect/very mild/mild to moderate and critical, suitable reference has to be made to the designated Centers/Hospitals for further management; which facility is not available in the converted Railway coaches. It is also pointed out that as on date, these coaches do not have emergency use Oxygen cylinders (2 cylinders per coach) as they have been utilised to supplement the Railway Hospital facilities at Bhilai, Raipur and Bilaspur because of the unprecedented increase in patients requiring Oxygen support in the said Hospitals.

Shri Abhishek Sinha, the learned counsel for the Railways points out that the submission made by the learned counsel for the Intervenor/Petitioner that there are 15 Railway Hospitals in the particular zone and that all such Hospitals might be directed to be converted to Covid-19 Hospitals is far from the track of truth. The learned counsel submits that only 05 Railway Hospitals are situated in the particular zone; among which only 03 are situated in the area coming within the State of Chhattisgarh. The said Hospitals at Raipur, Bilaspur and Durg/Bhilai have already been converted as Covid Hospitals and maximum support is being extended from the part of the Railways to meet the need of the hour.

However, it is pointed out that the Railways would undertake priority procurement of Oxygen cylinders to provide 2 Oxygen cylinders per coach as per



the Guidelines and that refilling of Oxygen cylinder would require support of the State Government. It is also pointed out that the Railways, in addition to the existing bed capacity, has increased 20 beds in the Sub Divisional Hospital, Bhilai, whereas, in case of Raipur Railway Hospital, 78 Covid -19 beds are available (increased from 25) and in Bilaspur, the number has been increased from 75 to 105. It is further pointed out that the Railways are having acute shortage of Medical staff and that no such supporting staff for Covid-19 care Coaches at Bilaspur and Raipur are readily available with the Railways. It is also recorded in the Minutes that the Nodal Officer of the State highlighted that the Special Medical Coaches would be useful in the State only if there are Oxygenated beds, support Medical staff and a System to ensure adequate temperature control. Both the State and the Railways are of the same opinion that management of 'moderate to critical' patients requiring special care will not be possible in these coaches, as Oxygen support alone will not be sufficient and hence not in the best interest of the patients. It is further added that, if and when any requirement is felt and request is made by the State through the Nodal Officer for making available these coaches for the stipulated use and management of the Covid-19 patients as per the Guidelines and the SOP issued by the Ministry, it would readily be offered, taking prompt action, so as to be managed jointly by developing joint local SOPs (for the smooth management).

The learned Advocate General submits that, existing facilities have been beefed up and adequate extent of bed capacity/Oxygenated bed capacity has been facilitated in the State (with the involvement of both Government and Private Hospitals) and that the situation could be tackled even without the necessity for any Special Medical Coaches of the Railways, more so since beds (both Oxygenated and Non-Oxygenated) are lying vacant in many Hospitals at different



places. The learned Advocate General submits that taking stock of the situation, with reference to the infrastructure available in both the Government and private Hospitals in the State, a total of 27,195 beds are available for treating Covid-19 patients, out of which 8,659 are beds with Oxygen support. Out of the said Oxygen support beds, 2140 are lying vacant. In respect of the total 14,361 non-Oxygen support beds, 8,614 are lying vacant. Among the 1421 Isolation beds (apart from Hospitals), 172 are vacant; while 72 beds are vacant in the ICU segment having a total of 2,718 beds. It is also pointed out that, out of the 981 Ventilator facilities, 242 are lying vacant. With regard to the split up figures in respect of the most affected Districts like Durg, Raipur and Bilaspur, the data as to the bed position is stated as follows:

		Durg	Raipur	Bilaspur
Total Number of Beds		2461	7277	1851
Oxygenated Beds	Available	1329	3357	368
	Vacant	45	700	18
Without Oxygen Support beds	Available	675	2277	567
	Vacant	114	1316	403
High Dependency Unit	Available	91	557	-
	Vacant	All occupied	63	-
Intensive Care Unit	Available	366	1054	593
	Vacant	1	28	8
Ventilators	Available	117	474	115
	Vacant	All occupied	112	4

With reference to the above facts and figures, it is pointed out by the learned Advocate General that steps on war footing are being taken and availability of infrastructure has been boosted up many fold from the situation which existed in March 2020. The position as on date in April, 2021, as disclosed from the data given in a tabulated form, is as given below:



कोविड मरीजों हेतु शासकीय अस्पतालों में अधोसंरचना की स्थिति				
स.क.	विवरण	मार्च - 20	अप्रैल - 21	रिमार्क
1.	डेडिकेटेड कोविड अस्पताल	01	36	प्रत्येक जिले में डेडिकेटेड कोविड अस्पताल (5170 बिस्तर)
2.	कोविड केयर सेंटर	0	123	
3.	कुल बिस्तर	500	21565	
4.	आईसीयू	53	554	
5.	एचडीयू	20	504	
6.	आक्सीजन युक्त बिस्तर (आईसीयू तथा एचडीयू अतिरिक्त)	0	5252	
7.	वेंटिलेटर	35	536	
8.	आक्सीजन जेनरेटर प्लांट	02	15	इसके अतिरिक्त 9 प्रक्रियाधीन (6 राज्य शासन + 3 केंद्र सरकार)

The learned Advocate General submits that the officers and staff of the State are working round the clock and they are ready to meet any situation for extending all the available measures to the patients who need not go panic in any manner. There are cases where even the people either having no symptoms or mild symptoms are trying to get admitted in Hospitals on their own, creating unnecessary crowd and unwarranted occupation of the beds, which will defeat the chance of the genuine/needy public/patients. It shall be for the Doctors, after considering the condition of the patient, to decide whether hospitalisation is necessary or not and that the patients who are in such situation/critical condition would be admitted in the Hospitals.

After hearing both the sides and considering the facts and figures and the assurances and undertakings as above, we are of the view that no direction is warranted to be issued to the Railways or the State to provide/take over Special Medical Coaches of the Railways, for the time being, for treatment of the Covid-19 patients; but for recording that as and when necessary, it shall be for the Nodal Officer of the State to make requisition to the Nodal Officer of the Railways, who shall act upon the same and make necessary arrangements for allocation and placement of the Special Medical Coaches; in terms of the



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Guidelines and SOP issued by the Ministry.

With regard to the alleged lack of centers for 'RTPCR' testing, it is pointed out that there are 7 testing centers in the Government sector and 5 in the private sector; with a daily testing capacity of 9000 and 5000 respectively. Regarding TruNat testing, there are 31 testing laboratories in the Government segment, while '4' are available in the private segment with a daily testing capacity of 5500 and 500, respectively. In the case of 'Rapid Antigen Test', the facilities are available in all the Districts (Medical Colleges/DH/CHC/UPHC and most of PHCs) with a testing capacity of 20000 per day; while 19 testing centers are available in the private sector. It is further pointed out that 4 new RTPCR labs will be functional by 30.04.2021 (at Kanker, Korba, Mahasmund and Korlia). It is also brought to the notice of this Court that the Government is taking urgent steps to establish 5 more RTPCR labs at Durg, Janjgir-Champa, Jashpur, Dantewada and Baloda-Bazar, and thus, the existing capacity of nearly 40,000 RTPCR tests per day will be enhanced to 55000 per day. In the said circumstances, the Respondent-State Government is directed to increase the RTPCR tests to the optimum level, so that it can effectively contain the Covid-19 and break the chain.

Shri Prafull N Bharat, the learned *Amicus Curiae* submitted that no RTPCR tests have reportedly taken place in Bilaspur for the past three days. There is inordinate delay in furnishing the RTPCR test reports as well; as put forth by both Shri Prafull N Bharat and Shri Ashish Shrivastava, the learned counsel appearing for the SLSA.

The learned counsel submit that the very purpose of the RTPCR test is to confirm the symptom or doubt felt in the case of the person concerned and unless the test report is made available forthwith, there is a chance for meddling with the family and friends which will contaminate more and more people. This is a serious



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aspect to be taken note of and timely conducting of maximum number of RTPCR tests and supply of test reports without any delay is very much essential to curb the spreading of the disease as repeatedly being insisted by the experts. It is brought to our notice by Shri Prafull N Bharat that the Respondent-State/Health Department are supplying the RTPCR Test result to the person concerned only after uploading the result in the server of the ICMR; which takes much time and delay because of the allegedly low capacity level of the server when compared with the heavy turnout. Once the result is made known to the person concerned, either by Mobile/Whatsapp or such other mode, at the earliest, further heavy rush can be avoided and the chance to get more people infected (if positive) can be minimised. We find considerable force in the said submission. In the said circumstance, we find it appropriate to direct the State Government to procure and provide maximum infrastructure and more centers for conducting the RTPCR tests and to make available the test reports immediately, without getting it delayed or accumulated, deploying sufficient/ adequate staff and equipments at all centers. The Respondent-State/authorities/Test Centers shall not wait for the test result to get uploaded to the server of the ICMR before making it available to the person concerned. Test result shall be informed to the person concerned forthwith, through appropriate modes like Whatsapp, E-mail etc. It shall be ensured to be uploaded to the server of the ICMR without fail.

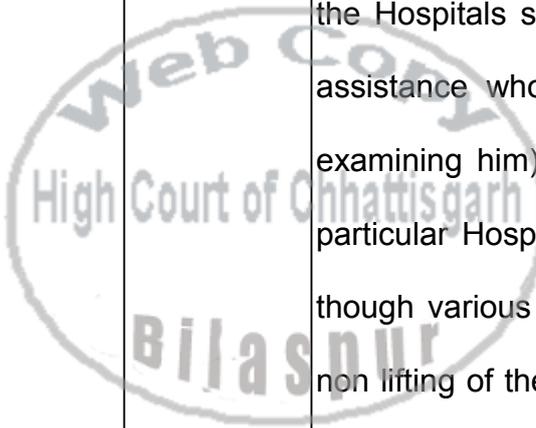
Shri Ramakant Mishra, the learned Assistant Solicitor General representing the Union of India submits that the Central Government is regularly contacting the State Government and adequate facilities/medicines/Oxygen and such other infrastructure are being extended without fail. It is assured and undertaken that all necessary steps will be pursued from the part of the Central Government to provide assistance by way of medicine/infrastructure/Oxygen



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supply/testing kits etc. to meet the requirement of the State. The Central Government is directed accordingly.

After hearing the learned Advocate General and other learned counsel as mentioned above, we find that a 'Centralised Network' is essential to ascertain the vacancy position of beds in various Hospitals, including private Hospitals, situated in different Districts in the State for proper management and admission of the patients, whenever needed. It is stated that the Chief Medical & Health Officer (*for short 'the CMHO'*) is at the helm of the affairs in a particular District, who is having all the requisite data as to the particulars of the beds, vacancies etc. in all the Hospitals situated in that District. If a patient comes for immediate medical assistance who may require admission (as to be decided by the Doctor on examining him) there may be a situation that bed may not be available in the particular Hospital but may be available elsewhere. Under such circumstances, though various call centers are stated as available, there may be a chance for non lifting of the phone of the panic patient; more so during the odd hours in the night. A system has to be evolved whereby the different CMHOs of the different Districts are connected together and brought under a common umbrella, to be monitored by the Nodal Officer/Director/Secretary of Health Department at Raipur. The CMHO should be in a position to tell the patient who may require admission (but when no vacant bed or Oxygen support is available there), that it is available in such other Hospital and thus to redirect the patient to the said place after giving intimation to the counter-part in that place/District; taking necessary steps for extending medical help to such patient. A 'Help Desk' has to be maintained in the District Hospital, and the data as to the bed position/Oxygen support (wherever it is available) shall be made known on the click of a 'mouse', instead of driving away the patients to go elsewhere without telling the destination





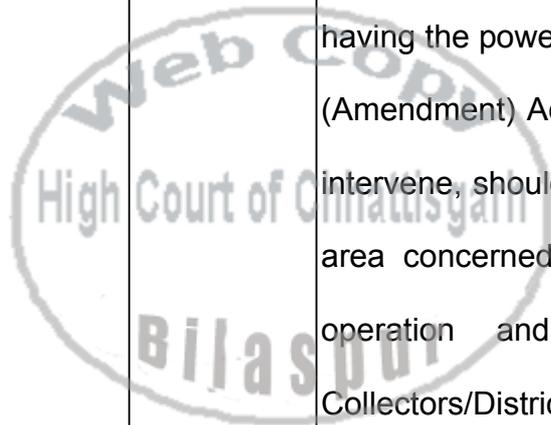
and as to the availability of the bed/infrastructure there.

In the said circumstance, we direct the State Government to give shape to and implement a 'Centralised Network' as above, with the Headquarter at Raipur and connect the same to all the CMHOs of the various Districts in the State; if not done already. Once such a system is introduced, it may be made known to the general public, so that the anxiety of the public/patients can be managed quite effectively and necessary help can be extended to all those who are in need of the timely help. It is ordered accordingly.

The District Collector/District Magistrate of each District, being the authority having the power under the Epidemic Diseases Act, 1987, the Epidemic Diseases (Amendment) Act, 2020 and the Disaster Management Act, 2005, shall definitely intervene, should there be any such occasion for getting the desired result in the area concerned, coming within their jurisdiction. There shall be effective co-operation and co-ordination between the CMHO and the District Collectors/District Magistrates in giving effect to the networking as above and to provide necessary assistance in all respects.

Incidentally, it is to be noted that the Hospital expense in the private sector, particularly for a Covid-19 patient requiring Oxygen support/Ventilator is reportedly much on the higher side. The State Government has reportedly fixed the maximum charges for conducting the Rapid Antigen Test, RTPCR, TruNat etc; conducted in private labs. As such, it is for the State to consider fixation of ceiling of rates with regard to the Covid treatment in private Hospitals, to be sorted out and notified, so as to avoid exploitation if any. This shall be considered and finalised forthwith, if not already done.

The State Government is directed to convene a meeting of all concerned to take stock of the situation as to the Oxygen supply/availability as on date and





the imminent future requirement. Prudent steps shall be taken forthwith to ensure that no patient loses life in this State, for cessation of supply of Oxygen. If it is felt that there is any chance for shortage, immediate arrangements shall be made to stall or reduce the industrial supply for a short while, to the appropriate extent and divert it to have the supply of Medical Oxygen streamlined, fixing appropriate terms, so that nobody will be a loser. Unstinted support is necessary, to be extended from the part of the Industrial Sector in this regard, taking it as part of their 'Mission' in discharging the CSR (Corporate Social Responsibility).

A status report shall be filed from the part of the State within a period of two weeks from today.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge