

**THE HIGH COURT OF JUDICATURE FOR MADHYA
PRADESH AT JABALPUR**

(Division Bench)

W.P. No.8914/2020

In Reference (Suo Motu) vs. Union of India and others)

Coram:

**Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice
Hon'ble Mr. Justice Vijay Kumar Shukla, Judge**

Presence :

Mr. Naman Nagrath, Senior Advocate with Mr. Jubin Prasad, Advocate appeared as *Amicus Curiae*.

Mr. Purushaindra Kaurav, Advocate General and Mr. Ashish Anand Barnerd, Deputy Advocate General for the respondents/State.

Mr. Jitendra Kumar Jain, Assistant Solicitor General and Mr. Vikram Singh, Advocate for the Union of India.

Mr. Shivendra Pandey, Advocate for the respondent No.5 - Indian Medical Association.

Mr. Shreyas Pandit, Advocate for the respondent No.8 - Madhya Pradesh Nursing Home Association.

Mr. Abhinav P. Dhanodkar, Advocate for the intervenor/Shanti Manch Samiti.

Mr. Abhishek Arjariya, Mr. Anuj Agrawal, Mr. Praveen Kumar Niwaskar and Mr. Yash Sharma, Advocates appeared for the respective intervenors.

Whether approved for reporting: Yes/No.

Heard through Video Conferencing.

O R D E R (Oral)
(10.08.2021)

Per: Mohammad Rafiq, Chief Justice:

The State Government has filed the 11th Action Taken Report in compliance of the order of this Court dated 19.07.2021, which for the facility of reference is divided into following six headings:-

I. Regarding setting up of Oxygen Generation Plants:-

The State Government in its Action Taken Report has stated that 91 oxygen plants were sanctioned as indicated in the 6th action taken report at (point K). Thereafter, the Central Government has sanctioned certain more plants under P.M.Care Fund. The State of Madhya Pradesh during and after second wave of Covid-19 is in the process of setting up 188 oxygen generation plants (Pressure Swing Absorption) PSE. Out of 188 plants, 61 plants have already been commissioned, equipments for 13 more plants have already been delivered by the concerned agency and are in process of installation, wherefor the preparatory work is at the level of CMHO is in advance stage. As per the estimate of the State Government, these remaining plants will be installed by 30th September, 2021. Although, the efforts are being made to complete the installation of all the planned oxygen plants by 15th September, 2020, but in any case, all such oxygen plants would be positively setup in all District/Civil Hospitals by end of the month of September, 2021.

II. Status of CT Scan Machines in all Districts of the

State:- It is contended that out of 52 district hospitals of the State of Madhya Pradesh, C.T. Scan Machines are already functional in 14 districts. Steps are being taken to install CT Scan Machine in the remaining districts. Referring to the counter affidavit filed in W.P.No.16167/2020 (Divyanshu Mihsra @ Anshu Mishra Vs. State of M.P. & Others), it is submitted that installation of CT Scan Machine, as indicated in the chart enclosed with the affidavit, is subject to timeliness of supply received from the manufacturers as due to Covid-19 situation, demand of CT Scan Machines throughout the country has also been increased. CT Scan Machines are likely to be installed in all districts by 30.09.2021 and/or 4th October, 2021. It is contended that as per the aforesaid chart, M/s Siddharth CT Scan Services, vendoring for 4 districts namely Dhar, Mandla, Ratlam & Shajapur, has been directed to install CT Scan Machines by July 2021, but due to limited number of manufacturers/suppliers of CT Scan machine, it has not been possible. As per the information received, the preparatory work at the level of Civil Surgeon (District Hospital) in respect of the above mentioned four districts is already completed and installation shall be completed immediately on supply of the CT Scan machines by the vendor. Moreover, NIT of CT Scan Machine across the State of Madhya Pradesh has been floated by M.P. Public Health Service Corporation Limited. For remaining districts as indicated in the chart, the machines are expected to be received and installed by 30.09.2021 and 04.10.2021 as per the tender agreement.

III. The position of the Ventilators in all districts:- It has been stated that earlier the State Government has placed data with regard to the ventilators received under Prime Minister Care Fund and has brought on record the utilization of the functional ventilators. As on date, there are in total 13 Medical Colleges functioning in the State of M.P., in which total 1280 ventilators are available for use. Out of them, 23 ventilators are non-functional for which communication has been made to the vendor to repair them. It is stated that out of 52 Districts in the State of M.P, 51 Districts are already having ventilators. District Nirwari has been newly created, wherein as on the date, 10 ICU Beds are proposed to be setup in the Community Health Centre. In remaining 51 districts, total 567 ventilators are available in District Government Hospitals, out of which 8 are not working for which also correspondence has been made with the vendor.

IV. Status of I.C.U./H.D.U (High Dependency Unit) Beds:-

It is submitted that functional Oxygen/ICU/HDU/PICU beds upto June 2021 and the status of beds condition of Oxygen/ICU/HDU/PICU, pediatric oxygen beds upto September, 2021 has been reflected in a tabular form in the produced chart. It is evident from the aforesaid chart that in the month of June 2021, total of 12150 beds were available in the different Government Hospitals. This number in the month of September has increased to 16,977. Similar status of Oxygen/ICU/HDU/PICU has also drawn in a tabular form in above chart showing that while in June 2021 there were total

6060 such beds in the Medical Colleges and now in September 2021 this numbers has increased to 7595.

V. Vaccination status:- The State Government has submitted that total 46 private hospitals and private nursing homes placed indent of 88,160 doses on CoWin Portal. 30 private hospitals and private nursing homes in 7 districts have made payment for procurement of vaccines. 63,880 doses have so far been supplied by the two manufacturers to the private hospitals and private nursing homes. Supply to the remaining 5 private hospitals/nursing homes is in the process of being made by the manufacturers. It is submitted that the Government of India in the month of July, 2021 indicated total allocation of 70.3 lakh doses for the State of M.P. (52.7 lakh doses for direct supply to the State Government and 17.6 lakh doses for supply through the private sector). However, the State of Madhya Pradesh procured a total supply of 121 lakh doses through additional supply from the manufacturers and GMSD stores in the month of July, 2021. The State Government has in this manner made all out efforts to maximize the supply of doses in the State supply channel and has been able to secure stock much in excess of what has been indicated by the Government of India for the month of July, 2021. The effort to maximize the supply was direct result of enhanced consumption of vaccines, due to increased demand following the Vaccination Maha Abhiyan in the State towards the end of June, 2021. Considering the aforesaid two figures, the Government secured additional supply of 68.3 lakh doses over and above its indicated allocation of 52.7 lakh

doses for the month of July, 2021. For the month of August too, the Government of India, has indicated an allocation of 74.1 lakh doses (57.3 lakhs in the state supply channel and 16.8 lakh doses in the private sector channel). The State Government has further stated in the 11th Action Taken Report that as per the supplies of vaccines so far received, it is expected to be in a position to cover the entire 18 plus population by inoculation with the first dose by the end of September, 2021. Further it is stated that due to focused and concentrated efforts by the Government, it is going to provide full immunization cover to the entire 18 plus population by the end of December, 2021.

This Court places on record its appreciation of the work so far undertaken by the State Government with regard to the establishment of oxygen plants, CT Scan Machines and Oxygen/ICU/HDU/PICU beds in all District Government Hospitals of the State. This Court appreciates the all out efforts put in by the officials of the State and applauds its performance with regard to inoculation of the sizeable population of the State that it shall by the end of September, would provide the safety cover of immunization of first dose to entire 18 plus population and has given the hope that all such people shall be provided with full immunization cover by the end of the year 2021.

VI. Capping of hospitals charges for treatment of Covid-19:-

This Court in its earlier order dated 19.07.2021 required the State Government to consider the suggestions given by learned *Amicus Curiae* and for that purpose convene a meeting of all the stake holders sometime in the first week of August, 2021 to revisit the issue

of capping of charges for treatment of Covid-19 by the State Government. In the 11th Action Taken Report filed today, it has been stated that a State level meeting was convened on 5th of August, 2021 in which, apart from learned *Amicus Curiae*, President, M. P. Nursing Home Association, State Secretary M. P. Nursing Home Association, State Advisor to M. P. Nursing Home Association and President M. P. Nursing Home Association, Bhopal Chapter alongwith Joint Secretary, IMA, MP and President IMA, Bhopal Chapter were present. The learned *Amicus Curiae* suggested that a balance should be maintained keeping in view the public interest while also taking into account the interest of owners of the Private Nursing Homes/Hospitals. Intent of the Government should be made curtail profiteering and with that end in view, the Government should reconsider its order dated 30.05.2021 and do necessary city wise bifurcation as has been done in the State of Maharashtra and Bihar. After detailed discussion with all the Stakeholders following issues were identified for being considered by the Government:-

“i) Both MPNHA and IMA are of the opinion that capping of rates for treatment of COVID 19 should not be imposed as it may affect qualitative aspects of health delivery.

ii) That if at all a ceiling of maximum charges is prescribed by the Government, then a percentage hike fixed over and above the prevalent rates of Nursing home shall be a feasible option.

iii) That it was opined by MPNHA and IMA that the previous order of the Government issued vide GO No.81/2020/DD (R), dated 17.9.2020 was pertinent in

present context keeping in mind the experiences gained during the second wave of COVID-19.

iv) That it was submitted by Amicus Curiae that the Government may consider an appropriate percentage hike over and above the rates/tariffs fixed by the owners of Nursing Homes based on self-assessment in view of locality, clientele, staffing patterns and other influencing factors in the city of operation.”

Shri Purushaindra Kaurav, learned Advocate General submits that in the light of the aforementioned issues, he shall revisit the issue of capping and come up with a stand on or before the next date of hearing.

Shri Shivendra Pandey, Advocate for the respondent No.5 - Indian Medical Association & Shri Shreyas Pandit, Advocate for the respondent No.8 - Madhya Pradesh Nursing Home Association has invited attention towards the order of this Court dated 10.06.2021 wherein this Court required the concerned CMHO's to verify the return of the remaining vaccination doses given to them during the earlier vaccination policy of the Central Government and refund the due amount to the private hospitals/nursing homes concerned. He further submits that as per the aforesaid order an amount to the tune of Rs.5,56,000/- was to be refunded to 10 different hospitals.

Shri Purushaindra Kaurav, learned Advocate General submits that he shall take up the matter with the concerned CMHO's and if the amount has not been already refunded to the concerned hospitals ensure the same is done now positively within a period of one month.

I.A.No.5108/2020 has been filed by Yash Sharma – intervenor praying for a direction to the State Government for payment of monetary compensation to the families of those who died due to non-availability of oxygen in different hospitals of the State as it resulted in violation of Article 21 of the Constitution of India.

No specific reply to the IA has been filed by the State, though it has devoted one Para-F on this IA in its 8th Action Taken Report which is highly vague and cryptic.

At this stage, learned Advocate General prays for reasonable time to file specific and detailed para wise reply to the said IA.

Shri Naman Nagarath, learned Senior Advocate appearing as *Amicus Curiae* submitted that in the last week only, family members of more than 50 patients of black fungus, who are still admitted in Government Hospital at Jabalpur, had *gheraoed* the officials of the Government as they were not provided with Amphotericin – B medicine, endangering life of the patients.

We direct the Additional Chief Secretary of the Department of Medical and Health, Government of Madhya Pradesh to place on record the current and exact position with regard to number of patients of black and white fungus or any other kind of similar disease, in the State and ensure that all such patients are timely provided Amphotoericin –B and any other medicine as may be prescribed to them by the treating doctors, not only in Jabalpur but also in Hospitals of the other cities *viz.* Gwalior, Indore, Bhopal and elsewhere in the

State of Madhya Pradesh, so that no patient suffers for lack of medicines.

Let this matter be listed again on 06.09.2021 for evaluating further progress.

(Mohammad Rafiq)
Chief Justice

(Vijay Kumar Shukla)
Judge

Jasleen