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Suo Motu W.P.No.10486 of 2021

THE HON'BLE CHIEF JUSTICE
and
SENTHILKUMAR RAMAMOORTHY, J.

(Order of the Court was made by The Hon'ble Chief Justice)

This suo motu public interest litigation has been taken up upon notice in the morning to both learned Advocate-General and learned Additional Solicitor-General of India.

2. The suo motu cognizance of the present situation arising in the wake of the pandemic has been necessitated pursuant to certain articles published, inter alia, in The Hindu and The Times of India newspapers or the online editions thereof, among others. In one of the newspaper articles there is an indication of severe shortage of the drug Remdesivir in the State and it is implied that the drug may have been diverted to private outlets leaving a lot of the less-privileged in the lurch and not being able to procure the drug. There are also reports in the electronic media of, particularly, private hospitals requiring patients to obtain supply of oxygen or the drug from outside even after allotting a bed in the private hospital to the patient.

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3. At the outset, it must be indicated that it is not the Court's intention to interfere in what ought to be regarded as an exclusive executive domain. However, the alarming increase in the number of persons infected all over the country, the reports in the media of shortage of beds and other facilities have prompted a kind of bookkeeping exercise to be undertaken without interfering with the policy decisions taken by the executive or with the measures put into place as may be deemed appropriate; since the executive has the better feel of the situation and inputs as to what requires to be done.

4. There are four major areas of concern: the availability of Remdesivir; the availability of oxygen; the availability of ventilators; and the availability of sufficient quantity of vaccine to vaccinate the remainder of the population and undertake the massive exercise of inoculating the large population between the ages of 18 and 45 from May 1, 2021. At the same time, it has to be kept in mind that the counting of the votes following the Assembly elections in this State and in Puducherry is scheduled to take place on May 2, 2021, for which special measures need to be adopted so that it does not act as a catalyst for the further spread of the virus. Also, this is the month of

Ramzan and the feelings and sensibilities of a large section need to be catered to, if only to ensure that the religious observance remains unimpeded without any risk to health.

5. On the issue of Remdesivir, the State says that there are 30,000 vials available in Government hospitals and centres all over the State. The State admits that some private hospitals and nursing homes may be facing a shortage. However, the State represents that upon any private hospital or nursing home making a request to the Government for the supply of Remdesivir, such supply is effected by the Government at a reduced price of Rs.783/- per vial against the maximum retail price of Rs.4,800/- per vial, upon ascertaining the number of Covid patients admitted to the relevant private hospital.

6. As to the supply of oxygen, learned Advocate-General says that this State may never see a shortage of supply even if there were to be an unforeseen peak. The Court is informed that the storage capacity in the State as of now is 1167 metric ton and the daily manufacturing capacity in the State is 400 metric ton, while in Puducherry it is 6150 metric ton per day. According to the State, the current usage of oxygen is to the extent of 250 ton per day and, in

such circumstances, when 65 ton of oxygen was diverted to Andhra Pradesh and Telangana, as reported in some sections of the media, there was no burden faced by the State or any shortage on such account. Indeed, the State has represented that as an oxygen surplus State, it would make every endeavour to come to the aid of other States which may require immediate supplies. Learned Advocate-General submits that a contingency plan is on the drawing-board should there be an unforeseen spike in the number of cases.

7. As on date, the State has 84,361 active Covid cases, as reported by learned Advocate-General. However, most of the active cases do not require any intervention or, at any rate, any invasive or aggressive treatment or procedure. The State also assures the Court that there are sufficient beds available in Government hospitals and many more in private hospitals for the exigencies to be met.

8. The State Government hospitals and like centres apparently have a stock of 9600 functioning ventilators of which 5887 have been earmarked for Covid patients. In addition, there are C-PAP machines which may be pressed into service apart from 2440 High-Flow Nasal Oxygen (HFNO) cannulas that the Government possesses. According

to the State, private hospitals across the State have a further 6,000 functional ventilators of which approximately 3,000 have been earmarked for Covid cases. The State says that further particulars as to the number of beds available, the vials of vaccine that may be available by the end of the month and the rate of vaccination will be indicated to the Court when the matter appears next. It has been the most earnest endeavour on the part of the State to allay the misgivings of the Court as to the State's preparedness and as to the availability of beds, facilities and amenities to deal with persons infected with the virus, even if a further spurt were to take place. The State also points out that pursuant to measures put into place by the State, including restrictions on congregations and gatherings and other norms, the further spurt of the virus is not expected.

9. The Union says that the Secretary to the Department of Health issued a letter on April 15, 2021 to all Chief Secretaries indicating an oxygen supply plan and that particulars of contact persons have been indicated so that States may get in touch with such persons in case of any emergency. The Union also says that further measures are in the offing both to deal with those affected by the virus and to arrest the further spread thereof.

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10. It is put on record that the Court has reminded the Union regarding the huge drive to inoculate the large population between the ages of 18 and 45 to be commenced on May 1, 2021. In particular, the cost of the vaccine at Rs.400/- per shot from Government counters and at Rs.600/- per shot from private counters may be beyond the reach of a large section of the population, particularly considering the usual family structure in this country. The Court has made an appeal to the Union to consider how the less-privileged and, particularly those who have been rendered without basic resources or jobs in the wake of the lockdown of last year, may be able to afford vaccination at such high cost. It is hoped that appropriate steps would be taken to take care of the lowest denominations.

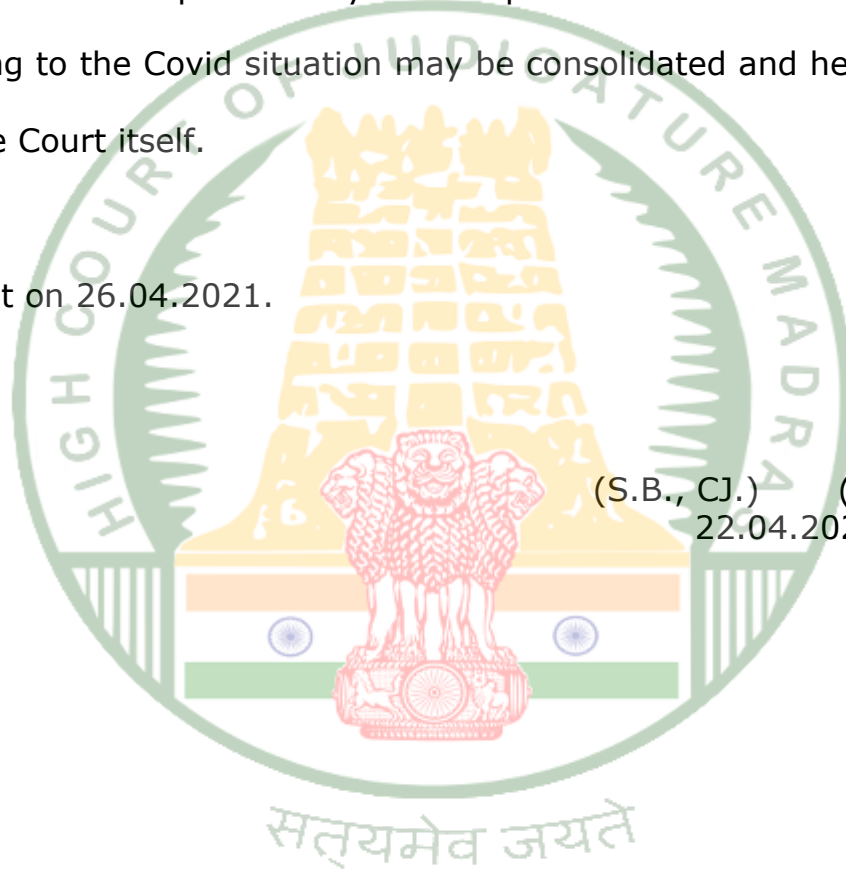
11. It is repeated that the object of the present exercise is not to interfere with the executive functioning or to add to any confusion that may already exist; but only to ascertain whether measures are in place for a worst-case scenario. It is hoped that empowered groups of bureaucrats would be put in place to take immediate decisions in case of exigencies.

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12. The matter will next appear on April 26, 2021, if it survives at all since it is the submission of learned Advocate-General that a view has been expressed by the Supreme Court that all matters pertaining to the Covid situation may be consolidated and heard by the Supreme Court itself.

List on 26.04.2021.

sra



(S.B., CJ.) (S.K.R., J.)
22.04.2021

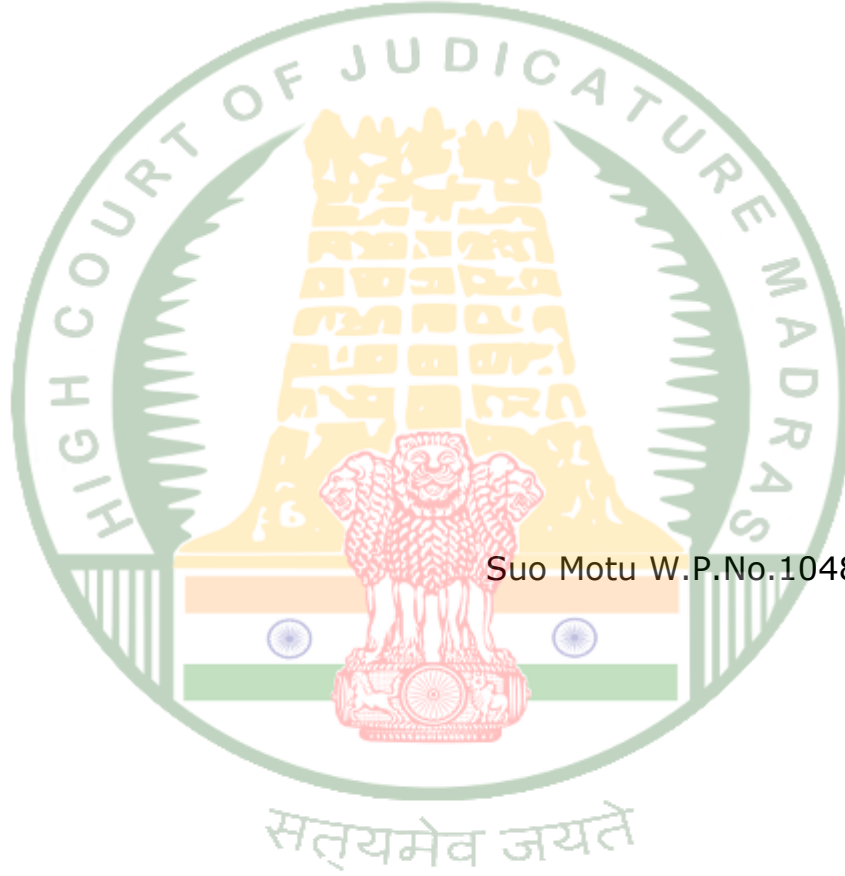
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