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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.353 of 2021

Shivani Kaushik

... .. Petitioner/s

Versus

Union of India & Ors.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17398 of 2018

Rohit Kumar

... .. Petitioner/s

Versus

The State of Bihar and Ors

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9639 of 2021

Gaurav Kumar Singh

... .. Petitioner/s

Versus

The Union of India & Ors.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 353 of 2021)

For the Petitioner/s : Ms. Shivani Kaushik (In Person)

Mr. Mrigank Mauli

For the UOI : Mr. (Dr.) K.N.Singh (ASG)

For the State : Mr. Ranjit Kumar, Sr. Advocate

Mr. Lalit Kishore, AG

Mr. Anjani Kumar, AAG-4

Mr. S.D. Yadav, AAG-9

For Respondent No. 5 : Mrs. Binita Singh

For Respondent No. 6 : Mr. Shivender Kishore, Sr. Adv.

For PMC : Mr. Prasoon Sinha

For DMCH : Mr. Bindhyachal Rai

For GMC : Mr. Rabindra Kr. Priyadarshi

For the Intervener : Mr. Rajiv Kumar Singh

(In Civil Writ Jurisdiction Case No. 17398 of 2018)

For the Petitioner/s : Mr. Manish Kumar No 13

For the State : Mr. Subhash Prasad Singh, GA-3

For Respondent No. 6 : Mr. Kumar Ravish

Ms. Parul Prasad(Amicus Curiae)

(In Civil Writ Jurisdiction Case No. 9639 of 2021)

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For the Petitioner/s : Mr. Sumeet Kumar Singh
For the UOI : Mr. (Dr.) K.N. Singh (ASG)
For AIIMS, Patna : Mr. Binay Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

10 27-04-2021

Re : IA No. 01 of 2021 & 02 of 2021

in

CWJC No. 353 of 2021 and other analogous matters

We had passed various orders in the present proceeding registered *suo motu* in the nature of Public Interest Litigation on 15.04.2021, 17.04.2021, 19.04.2021, 21.04.2021 and 23.04.2021, which speak for themselves. The matter relates to alarming surge in COVID-19 cases in the State of Bihar in its second wave and reported lack of healthcare system in the State of Bihar.

Mr. Ranjit Kumar, learned Senior Counsel representing the State of Bihar has placed before us certain facts in relation to testing capacity of COVID-19 cases available in the State, procurement of liquid oxygen out of the quota allocated by the Government of India, installation of Pressure Swing Absorption (PSA) plants at various places in the State for generation of oxygen and, making the general public aware, *inter alia*, about test, treatment and vaccination in relation to

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COVID-19 disease.

It is undisputed fact that availability of oxygen is most crucial for treating COVID patients in moderate and severe cases. The Court has been informed in the previous proceedings about availability of beds in various COVID Care Centres (CCCs), Dedicated COVID Health Centres (DCHCs) and Dedicated COVID Hospitals (DCHs). We have noted in our previous orders that a number of beds in CCCs, DCHCs and DCHs have been declared by the State of Bihar to be ICU beds or oxygen beds. In the absence of continuous supply of oxygen these beds cannot be treated to be oxygen or ICU beds.

On the basis of instructions, which Mr. Kumar has received from the State Government, he has submitted that Central Government has allocated 194 MT of oxygen for the State of Bihar as against the request for allocation of 300 MT of oxygen. During the course of last hearing, we had noticed that the State Government was not able to procure even its quota allocated by the Central Government of 194 MT which was substantial less than the demand raised. In the said background, the Court had desired to know from the State Government as to why the quota of oxygen allocated by the Central Government was not being procured by the State Government.

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Referring to certain documents, which have been made available to this Court on behalf of the State of Bihar and have been taken on record, it has been pointed out by Mr. Ranjit Kumar that with the available cryogenic tankers, effort is being made to procure liquid oxygen. It has further been stated that number of oxygen generation plants has also increased in the State of Bihar. This is to be noted that the Government of India has allocated quota of 194 MT per day for the State of Bihar on 22.04.2021. As against the said quota, the State of Bihar could transport 63MT on 23.04.2021, 62MT on 24.04.2021, 156 MT on 25.04.2021 and 90 MT on 26.04.2021. Mr. Kumar has submitted that in addition to the said amount of 90MT of oxygen procured from the places outside the State of Bihar the State has its own capacity to produce oxygen and as on 26.04.2021 the State of Bihar was not deficient in terms of availability of medical oxygen for meeting the challenge arising out of COVID-19 in its second wave. Mr. Kumar has clarified that the figures in relation to requirement of oxygen in the State is dynamic in nature and keeps on changing, depending on its actual requirement on day-to-day basis.

This stand taken on behalf of the State of Bihar is

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quite puzzling for the Bench, since it has been pointed out by Mr. Mrigank Mauli, learned counsel representing the Patna High Court that in the light of this Court's previous order dated 23.04.2021, the learned Registrar General has received complaints from various hospitals including Indira Gandhi Institute of Medical Sciences, Patna complaining lack of supply of oxygen for treating COVID patients. The Court, albeit tentatively, finds it difficult to accept this stand of State of Bihar for the reason that spike in number of COVID cases in the State is admittedly exponential and unhindered. This aspect shall be gone into by this Court in detail on the next date of hearing.

Be that as it may, the State Government of Bihar is directed to take all possible measures to procure its quota of oxygen, as allocated by the Government of India, per day so as to ensure continuous supply of oxygen in all Government and private hospitals as also to ensure that the healthcare system in the State is prepared to face the challenges in coming days.

It would transpire from our previous orders that this Court was informed that the State Government had requested installation of PSA plants at nine places other than those where installation is underway. The State Government had, by the same communication, requested the Central Government to

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supply oxygen cylinders also. Mr. K.N. Singh, learned Additional Solicitor General for India is requested to seek instructions in this regard.

Mr. S.D. Sanjay, learned Senior Counsel participating in the present proceeding, has submitted that there are voluntary organizations in the State which help COVID patients who are in home isolation and can be treated at home without hospitalization by supplying them oxygen as and when required. According to him, there is no platform made available by the State Government from where oxygen/ oxygen cylinders can be procured for the said purpose. Dr. Bhadani of the Central team has informed this Court that administration of oxygen at home in certain circumstances can be of much use in treating COVID patients.

Let the State of Bihar examine this aspect of the matter and inform this Court as to what steps are contemplated and can be taken in this regard.

Pursuant to this Court's order regarding putting in place a grievance redressal mechanism, Mr. Kumar has submitted that the State Government has created different Login IDs for the officials under the Health Department to furnish information for updating the requisite data and for the general

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public to retrieve information entered in portal of the Health Department, which is likely to become functional by end of this week. We will take up this aspect again on 03.05.2021 since in our opinion, availability of a robust official information system for general public is imperative in the present extraordinary situation, not only for the sake of effectively facilitating healthcare to public but also for the purpose of maintaining transparency, which is the need of the hour.

Referring to the testing capacity for COVID-19, he has informed that there are 19 RT-PCR laboratories functional in the State of Bihar and in addition, in the district of Motihari a RT-PCR laboratory has been established, validation of which by the ICMR is underway. Further, in the district of Munger, another RT-PCR laboratory is being established, which shall become functional from 15.05.2021. He has also informed that the Government of India has informed about making available 18 RT-PCR machines by the Indian Council of Medical Research(ICMR), which shall be installed in the laboratories already functional at PMCH, Patna, SKMCH, Muzaffarpur; AIIMS, Patna; JLNMCH, Bhagalpur; DMCH, Darbhanga; NMCH, Patna; ANMCH, Gaya; IGIMS, Patna and JKTMCH, Madhepura. Once these machines are installed, number of RT-

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PCR test *per* day will further increase by 8000-10000, he states.

During hearing of the present proceeding, it has emerged that the result of RT-PCR tests are not being made available soon or within a reasonable time, after the samples are taken and normally it takes more than 5-6 days for sending the outcome of such tests. Identification of a person as to whether he is suffering from COVID-19 disease or not as soon as he is infected with it is crucial not only for the individual's treatment but also to ensure that the disease is not spread among others, considering the virulent behaviour of the infection. It has been reported that even in respect of persons who are found positive, test reports are being communicated after much delay and those who are found negative are not at all informed. This situation creates state of quandary, confusion and dilemma. Mr. Ranjit Kumar, learned Senior Counsel, responding to this problem has, however, submitted that there can be instances where the persons who are found negative are not immediately informed about the outcome of the test but those who are found positive are informed about the same as soon as it is possible, considering the limited testing capacity in the State. Certain other discrepancies of serious nature have been pointed out at the bar having the potential of creating serious confusion

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regarding RT-PCR tests, which we shall consider in the next hearing of the matter.

At this juncture, we take note of the fact that Dr. K.N. Singh, learned Additional Solicitor General for India has informed this Court that a technical team has been deputed by the Central Government and is already on the job, to assess the deficiencies in the health care facilities in the State of Bihar and make suggestions, in the light of this court's order dated 23.04.2021. As desired by this Court, Dr. Bhadani, who is heading the team, has joined the present proceeding. Let the team examine the aforesaid aspect of RT-PCR testing and availability of other confirmatory tests for COVID-19 and inform this Court as to how the number of tests *per* day can be optimized and number of days in reporting results of COVID-19 tests can be reduced, for this Court to pass appropriate orders in this regard on the next date.

Further, on the basis of what has been submitted on behalf of the State of Bihar, it is easy to discern that there is no improvement in the status qua number of beds as on 22.04.2021 in different Dedicated COVID Hospitals in Patna except that some of the oxygen beds have been converted into ICU beds.

Considering acute shortage of COVID beds at some

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of the places in the State of Bihar, most importantly Patna, the Court directs the State Government to take all possible measures to increase number of beds with required facilities in Indira Gandhi Institute of Medical Sciences, Patna and Patna Medical College and Hospital, Patna. The technical team deputed by the Central Government shall be required to examine and report to this Court in respect of the facilities available in those two hospitals and the feasibility of enhancing the capacity in these two institutions for COVID-19 treatment.

Mr. Anjani Kumar, learned Additional Advocate General No. 4 has raised the issue of black-marketing of oxygen and other drugs relevant for treating COVID patients. It is true that when humankind is undergoing one of the darkest periods because of unprecedented outbreak of the pandemic, there are crooks and black sheep who attempt to derive gains through illicit means, taking advantage of the human sufferings. If black-marketing of oxygen/ oxygen cylinders/ drugs essential for treating COVID patients is within the knowledge of the officials of the State, the concerned officials are obligated under law to take appropriate action by institution of cases under various statutory provisions which are in place; else they can be blamed for being party to these grave misdeeds in the wake of the

challenges which the society at large is presently facing. The Court desires to know as to whether the State officials have registered any case alleging black-marketing of drugs essential for treating COVID patients.

Our attention has been drawn also to the stray incidents of misbehavior with the doctors and other healthcare personnel who play the most pivotal role in fighting the pandemic and have risked their lives for treating COVID patients. In our opinion, it will be a grave failure on the part of the executive if no strict action is taken against those indulging in such misconducts, having criminal liability.

We may notice, at this stage, that specific provisions have been incorporated in Epidemic Diseases Act, 1897 as amended in 2020, Section 1A of which defines acts of violence against a health care personnel serving during an epidemic. Section 2B of the Act prohibits any person indulging in any act of violence against a health care personnel or cause any loss to any property during an epidemic. Section 3(2) of the Act provides for punishment for commission of offence of violence against health care personnel. Further, the State Legislature of Bihar has also enacted Bihar Medical Service Institution and Person Protection Act, 2011, which also prescribes punishment

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in case a government healthcare personnel is harassed or is made to suffer violence. It is about time for the State officials to take stern action against those found to be committing offences against healthcare personnel.

There are various private hospitals in the State of Bihar and in the city of Patna which have been allowed by the State Government to treat COVID patients. It appears that such private hospitals have permission to admit limited number of COVID patients or maintain limited number of beds for such treatment. The shortage of COVID beds can be to some extent overcome by permitting the private hospitals to enhance number of beds for COVID treatment. Alternatively, applying the provisions of Disaster Management Act, 2005, the State Government may requisition such private hospitals and other establishments for treatment of COVID patients in case of emergency. The Court expects the Government of Bihar to look into this aspect of the matter and take appropriate decision in this regard by Friday (30.04.2021). The Court will, however, consider granting further time in this regard for justifiable reasons.

Considering the grave situation prevailing in the State of Bihar, the Bench has decided to take up this matter on day-to-

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day basis. This matter will again come up on 28.04.2021 to be taken up at 4.30 p.m.

(Chakradhari Sharan Singh, J)

(Mohit Kumar Shah, J)

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