

WWW.LIVELAW.IN
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)

WWW.LIVELAW.IN

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

=====
CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

11 28-04-2021

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

in

CWJC No. 353 of 2021 and other analogous matters

Certain disturbing facts have emerged during hearing of the present matter under Public Interest Litigation relating to deficient healthcare infrastructure in the State of Bihar to meet the challenges posed by exponential rise in COVID-19 cases in its second wave. Acute shortage of medical oxygen in the State, particularly in the hospitals treating COVID patients, is an admitted fact. When the matter was taken up on 23.04.2021, the Court was informed by the State of Bihar that as on 22.04.2021, the State of Bihar was receiving 69.65 MT of Liquid Medical Oxygen (LMO) from outside the State of Bihar and 33.81 MT of LMO was being generated in the State. The Court was further informed that the Ministry of Health and Family Welfare, Government of India through letter dated 22.04.2021 had communicated allocation of quota of 194 MT *per* day of Liquefied Medical Oxygen (LMO) for the State of Bihar, as

WWW.LIVELAW.IN

against the demand for 300MT *per* day. It was specific stand taken on behalf of the State of Bihar in this court's proceeding on 23.04.2021 that with the supply of 194 MT of LMO *per* day, the State Government would surely overcome the problem of acute shortage of medical oxygen in the State of Bihar.

From the order dated 27.04.2021, passed in the present case, it can be seen that the State Government in fact could not receive the allocated quota of 194 MT *per* day, on the dates subsequent to allocation by the Central Government. As on 26.04.2021, the State of Bihar had received only 90 MT of oxygen out of its quota of 194 MT. Despite that, it was explicit stand on behalf of the State of Bihar that the said supply coupled with the availability of oxygen generated in the State through various sources was adequate to meet the requirement of medical oxygen for treating patients in the State of Bihar as on 26.04.2021.

On the basis of what has emerged during course of hearing today, we have no hesitation in recording our specific finding that the said stand taken on behalf of the State of Bihar was totally incorrect and is accordingly rejected.

It is evident from an order dated 25.04.2021, issued by

WWW.LIVELAW.IN

the District Magistrate, Patna, a copy of which has been presented before us, that private hospitals in the State of Bihar are not being allowed to admit COVID patients because of limited availability of oxygen. Further, it has emerged from the submission made by Mr. Mrigank Mauli, learned counsel appearing on behalf of Patna High Court that Indira Gandhi Institute of Medical Sciences, Patna had reported to the High Court at one point of time that it was unable to admit further COVID patients in the hospital because of irregular supply of medical oxygen.

The Court, in such circumstances deems it fit and proper to proceed with the assumption, which is evident from the materials available on record, that shortage of medical oxygen in the State is acute and it is obligatory for the respondents to ensure that the State's quota of 194 MT of medical oxygen, as allocated by the Central Government, reaches its destination physically and should not remain merely on paper.

This is to be noted that in our order dated 21.04.2021, we had requested Dr. K.N. Singh, learned Additional Solicitor General for India to seek instructions from the Central Government as to what immediate and effective steps shall be

WWW.LIVELAW.IN
taken to ensure proper supply of oxygen in various hospitals in the State of Bihar. Though we have been informed by the Central Government in respect of installation of PSAs in various hospitals, nothing concrete has come as to what steps have been taken to ensure continuous supply of allocated quota of LMO to the State.

In the aforesaid circumstance, we direct the Central Government, Ministry of Health and Family Welfare, Government of India to take all possible measures to ensure that the quota fixed for the State Government of supply of 194 MT per day is made available to the State of Bihar in fact, and it should not remain on papers only. We reiterate that there is requirement of continuous supply of oxygen and in our opinion, any discontinuity of such supply shall lead to virtual collapse of the healthcare system.

On the basis of previous orders passed by this Court and facts brought on record by and on behalf of the State Government this Court has formed an opinion that the State of Bihar is not in a position to increase the number of COVID beds in government and private hospitals because of shortage of oxygen and is unfortunately determining the requirement of oxygen merely on the basis of minuscule number of beds which

WWW.LIVELAW.IN

have been made available compared to the actual need. The number of beds, particularly in its capital, Patna, are wholly insufficient and not at all in a position to meet the requirement in the background of rising rate of COVID patients.

This is to be noted at this stage that Dr. Bhadani, who heads the technical team of the Central Government constituted under the orders of this Court, during the course of hearing of the present matter has informed this Court about availability of infrastructure in terms of human resource, bed capacity and nature of beds available in four establishments, namely, IGIMS, Patna, PMCH, Patna, Medanta Hospital, Kankarbagh, Patna and Patliputra Sports Complex, Kankarbagh, Patna. He has informed this Court that IGIMS, Patna does have adequate healthcare facilities to enhance the number of COVID beds subject to the condition that regular supply of oxygen in the hospital is ensured. According to him, 1070 beds are there at the IGIMS, Patna out of which 40 ICU beds and 100 general beds have been earmarked for treatment of COVID patients.

In view of the feedback made available to this court by Dr. Bhadani, the Court, during hearing of the present proceeding, had put specific query to the learned Advocate General as to whether IGIMS, Patna can be converted into

exclusive Dedicated COVID Hospital, considering the dire need of the hour in the wake of prevalent situation. After taking instruction in this regard from the state officials he has informed this Court that a decision has been taken by the State of Bihar to convert IGIMS, Patna into an exclusive Dedicated COVID Hospital and issuance of a notification in that regard is in the process.

Considering large number of beds available in IGIMS, Patna and the decision of the State Government to convert the said hospital into exclusive Dedicated COVID Hospital, the Court directs the Respondents-State of Bihar to ensure that continuous supply of oxygen in the hospital is maintained and officials/ doctors of the said hospital are not made to beg for oxygen before the officials of the State Government. Any lapse on the part of the respondents, having consequence of irregular/short supply of oxygen in the hospital, shall be viewed seriously by this Court. It goes without saying that the State-Respondents shall also ensure adequate supply of medicines and other requisite equipments to IGIMS, Patna for treating COVID patients.

As regards Medanta Hospital located at Kankarbagh, Patna, established in Public Private Partnership (PPP) mode, we

WWW.LIVELAW.IN

have been informed by Dr. Bhadani that it has sufficient infrastructure but certain statutory licences have not been issued to the said hospital. He has added that this hospital is ready to start with 50 oxygen beds from 10.05.2021. It has, however, been informed that the said hospital does not have any oxygen cylinder. **In order to augment the healthcare resources, we direct the Principal Secretary, Health Department, Government of Bihar to expedite functioning of the said hospital for the purpose of admitting COVID patients at least with 50 beds with effect from 10.05.2021.**

In relation to Patliputra Sports Complex, it has been informed that infrastructure is ready with 100 oxygen beds and sufficient number of ventilators, which has been established with the help of a non-governmental organisation and if there is sufficient supply of oxygen, the said establishment can start functioning with such number of oxygen beds. **We direct the respondents to take all possible measures to ensure that the facilities available at Patliputra Sports Complex are put to use for treatment of COVID patients as soon as it is possible, preferably within three days from today.**

At this juncture, we briefly take note of the facts which have emerged on the basis of data submitted to this Court

WWW.LIVELAW.IN

on behalf of the State of Bihar on 27.04.2021, containing details of Human Resource *qua* healthcare infrastructure in the State of Bihar. The chart discloses startling facts, inasmuch as, a huge number of posts at various levels are vacant. It is noteworthy that 4149 posts of specialist doctors and 3206 of general doctors are vacant. As against total sanctioned posts of 91921 at various levels, 46,256 posts are vacant. It is high time when the State Government is required to look into this aspect and take remedial measures. We will be taking up this aspect of the matter in future proceedings.

At this juncture, we take notice of a report submitted by Bihar Human Rights Commission (for short BHRC) on the basis of surprise inspections conducted by a team headed by learned Chairman of the BHRC himself. The said report has already been made available to the State officials. BHRC in its report has made certain valuable suggestions which need to be looked into by the State officials. The Court will consider the deficiencies pointed out by the BHRC in the next hearing to be held on 29.04.2021.

This court would further like to know from the State Government as to what is the basis for determination of number of COVID deaths in the State and what are the sources which

WWW.LIVELAW.IN

feed data in relation to such deaths.

List this case on 29.04.2021 to be taken up at 4.30
p.m.

(Chakradhari Sharan Singh, J)

(Mohit Kumar Shah, J)

Rajesh/-

U			
---	--	--	--