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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of decision: 28<sup>th</sup> April, 2021*  
+ **W.P.(C) 5026/2021 & CM APPL. 15401/2021**  
VINAY JAIDKA ..... Petitioner  
Through: Mr. Satish Aggarwala and Mr. Gagan  
Vaswani, Advocates.

versus

CHIEF SECRETARY ..... Respondent  
Through: Mr. Gautam Narayan & Mr. Anuj  
Aggarwal, ASC with Ms. Ayushi  
Bansal, Advocate for R-1.  
Mr. Amit Mahajan, CGSC with Mr.  
Jivesh Kumar Tiwari, Sr. Panel  
Counsel for R-2 to 5.  
(M:9811612855)  
Dr. Vinod Kotwal, Member Secretary  
NPPA, Mr. Raj Kumar, Special  
Secretary, Department of Health and  
Family Welfare, GNCTD and Mr.  
Ved Prakash Mishra, Director,  
Department of Pharmaceuticals.  
Mr. Abhishek Nanda, Advocate for  
IRDAI.  
Mr. Sachin Dutta, Sr. Advocate with  
Ms. Ruchir Mishra and Mr. Sanjiv  
Kumar Saxena, Advocates.

With  
+ **W.P.(C) 5066/2021 & CM APPL. 15511/2021**  
RAMESH KHOSLA ..... Petitioner  
Through: Mr. Sacchin Puri, Sr. Advocate with  
Mr. Praveen K. Sharma, Ms. Kami  
Khan and Mr. Dhananjay, Grover,  
Advocates.

versus

GOVT. N.C.T OF DELHI & ANR.

..... Respondent

Through: Mr. Gautam Narayan, ASC with Ms. Dacchita Shahi, Advocate for GNCTD.

Dr. Vinod Kotwal, Member Secretary NPPA, Mr. Raj Kumar, Special Secretary, Department of Health and Family Welfare, GNCTD and Mr. Ved Prakash Mishra, Director, Department of Pharmaceuticals.

Mr. Abhishek Nanda, Advocate for IRDAI.

Mr. Sachin Dutta, Sr. Advocate with Ms. Ruchir Mishra and Mr. Sanjiv Kumar Saxena, Advocates.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through video conferencing.
2. These matters relate to COVID-19 patients where various issues have been raised by ld. counsels appearing for the parties. Apart from these two petitions this Court has also received various petitions wherein hospital admissions have been sought by Covid-19 patients. Ld. Counsels appearing in all the Covid-19 matters have been heard. There have been some emotional moments during the hearings as some of the patients are closely associated to the counsels appearing in the matters and the non-availability of hospital beds has led to enormous personal stress and a sense of helplessness, which is the experience of thousands of families with COVID-19 patients and citizens across the country. Some of the petitions have been disposed of as arrangements for admission of the said patients in hospitals as also ambulance arrangements were made during the course of the hearings.

3. In the present two petitions, the first petition deals with the non-availability of the drug Remdesivir. The second petition deals with various issues of the portal maintained by the GNCTD in respect of hospital admissions - [www.delhifightscorona.in](http://www.delhifightscorona.in). While submissions were being heard, certain further issues have also been raised by Id. Counsels relating to hospital admissions and discharge of patients; delay in receipt of approvals from insurance companies leading to delay discharge of patients from hospitals; delay in RTPCR and blood tests, as also shortage of testing kits.

**Shortage of Remdesivir in Delhi:**

4. Remdesivir, is an anti-viral drug which is approved for Covid-19 patients since March 2020, subject to certain conditions. The same has been administered to patients for more than a year now. There are three aspects which need to be considered at this stage in respect of Remdesivir:

- i. The protocol for administration of the drug;
- ii. The allocation of the drug for the State of Delhi; and
- iii. The distribution and sale of the drug.

5. Today's hearing has been attended by Dr. Vinod Kotwal, Member Secretary, National Pharmaceutical Pricing Authority, Mr. Ved Prakash Mishra, Director, Department of Pharmaceuticals and Mr. Jivesh Kr. Tiwari, Id. Counsel appearing for the UOI. On behalf of the GNCTD, Mr. Raj Kumar, Special Secretary, Department of Health and Family Welfare, GNCTD along with Mr. Gautam Narayan, Id. ASC and Mr. Anuj Aggarwal, Id. ASC have attended the hearing.

6. Insofar as the allocation of Remdesivir is concerned, for the State of Delhi, the information given to the Court is that for the period of 21st April, 2021 to 30th April, 2021, out of the total available Remdesivir vials of 16

lakhs, 72,000 vials were allocated. There are a total of seven manufacturers. None is located in Delhi. As per the information given by the Union of India, the total supply made to Delhi was 52,348 vials, as on 28th April, 2021. It is submitted that despite Delhi having 3.77% of the total amount of caseload of Covid-19 patients, only 4.5% of the available vials were allocated to Delhi. However, it is expected that in the next allocation, the number of vials allocated to Delhi would increase considerably.

7. Mr. Raj Kumar, Special Secretary, Department of Health and Family Welfare, GNCTD, however, submits that the number of vials that the GNCTD procured were only 2,500 vials and the remaining vials have been distributed through private channels, directly to patients or to hospitals. He concedes that till yesterday, the total supply was being done through private distribution channels and the same was not centralised, however, as of last night a fresh circular has been issued as per which all the allocation for Delhi is now intended to be taken over by the GNCTD. As per the circular, it is proposed to create a portal for the purpose of distribution of Remdesivir vials and the following steps are being taken:

*“1. Distribution of Remdesivir Injection shall be closely monitored by the Drug Control Department of Delhi. NIC portal has been developed in this regard and made operational to capture the distribution through the Clearing & Forwarding Agent (CFA), Distributors and Hospitals.*

*2. The portal will capture the opening stock, closing stock, new stock received and sales made during the day by Clearing & Forwarding Agent(CFA), Distributor and the Hospitals. The user will also have to provide the detail of supply being received from various sources and detail of each patients to whom the injection was administered and*

*details of the doctors on whose recommendation the injection was administered to the said patients.*

*3. The portal shall generate report on the real time basis which will be posted twice a day on the website of Health & Family Welfare Deptt, GNCT of Delhi.*

*4. Regular monitoring shall be ensured by the Drug Control Department and District Administration.”*

8. The Court has heard the parties and also seen the new circular issued late last night by the GNCTD. Insofar as the distribution of Remdesivir is concerned, the same was substantially distributed through private channels and very little quantities i.e., merely 2500 vials out of the total quantity of 52,348 vials received in Delhi, were being picked up by the GNCTD. Thus, the substantial portion of the drug was only distributed through private channels. It is public knowledge that most government and private hospitals issue prescriptions to the patients and the attendants to the patients are left to arrange the medicine on their own. The situation is so alarming that family members of patients travel across the city repeatedly visiting distributors, chemists, stockists to obtain the medicine. This could also be leading to exposure of so many persons to the virus. As of last night, post the filing of the present writ petition, a circular/order has been issued to closely monitor the distribution of Remdesivir and for creation of a portal on real time basis.

9. After hearing submissions as to the manner in which the portal is being developed, in the opinion of this Court, instead of routing all the drugs through the hospitals or other medical establishments, the patient/family member/attendant of the patient should be allowed to put in a request in the portal for obtaining the Remdesivir, along with the following details:

- i. Name of the patient
- ii. Name of the hospital where the patient is admitted (prescription of the hospital would also be uploaded)
- iii. Covid-19 positive report
- iv. Aadhaar number of the patient (copy of Aadhar card be uploaded)
- v. Name and mobile no. of the patient/family member/attendant who would be making the payment and taking delivery of the drug.

10. If the portal has the above fields, a periodic list can be generated in chronological order along with the payment gateway, by which it can be ensured that the ultimate patient receives the medicine without the same being misused or sold in the black market.

11. While the present order was being dictated, Id. Counsels informed the Court that certain directions in respect of the portal for Remdesivir are being issued by the Id. Division Bench. The directions in paragraphs 12 and 13 shall be subject to the orders passed by the Id. Division Bench, in this regard.

12. In view of the above, the portal which is mentioned in the Circular of the GNCTD issued yesterday i.e., 27<sup>th</sup> April 2021, shall not be activated this evening, as was originally proposed. Let the GNCTD seek instructions for modifying the portal in the above manner and place the test portal, if possible, tomorrow before the Court. It is accordingly directed that the GNCTD would permit distributors to supply Remdesivir directly to the patients/their attendants under supervision of the Drug Inspectors, as was

being done till the issuance of the order late last night, till the online portal is functional.

13. Insofar as patients who are advised at-home administration of Remdesivir, due to non-availability of Oxygen or hospital admissions, are concerned, the said issue is left open at this stage as this Court would intend to hear the views of ICMR and expert/s in order to see whether the guidelines currently in operation in respect of administration of Remdesivir require any modification. This Court would consider whether a Committee needs to review the administrative protocol for administration of Remdesivir, considering the manner in which it has been administered for the last more than one year and the benefits which it may have shown.

14. A senior official of the ICMR/ Ministry of Health who is familiar with the administration protocol of Remdesivir shall remain present in Court.

**Hospital Admissions:**

15. Mr. Sacchin Puri, learned Senior counsel appearing for the Petitioner has drawn the attention of this Court to the website of the GNCTD - [www.delhifightscorona.in](http://www.delhifightscorona.in).

16. His submission is that in so far as ICU beds are concerned, the portal can be misleading for the patients inasmuch as wherever even ICU beds are being shown as available, the patients are unable to obtain admission as there are a large number of persons already in queue in the said hospital for obtaining ICU admissions. Moreover, when certain hospitals which are showing vacant ICU beds on the portal are examined in detail, it is seen that, for example, (i) the Rainbow Hospital in Malviya Nagar is only meant for children and mothers and is not available for general patients; (ii) the Jaipur

Golden Hospital is currently not admitting any patients who require oxygen support and (iii) the AIIMS Trauma Centre, though it shows one ICU Bed as vacant, is not admitting anyone in view of the long list of patients who are already waiting for admission.

17. Further, it is submitted that when the beds under Covid-19 category are seen the same is also misleading inasmuch as a large number of these beds are not oxygenated. Hence, the submission of Mr. Puri is that a proper distinction between the various types of beds which are available in each of the hospitals ought to be made. On the other hand, the counsels appearing for the GNCTD submit that a user ID and password is allocated to each hospital and the hospital modifies the data on the portal.

18. After hearing Id. counsels for the parties and after seeing the portal online through share-screen mode, along with counsels for parties, it is clear that the portal is only providing two separate categories i.e., Covid-19 beds and Covid-19 ICU beds. This distinction could be confusing for the user inasmuch as some of the hospitals do not have oxygenated beds even in the Covid-19 beds category. It is a matter of common knowledge that most patients are isolating in their homes unless they suffer from comorbidities. Patients look for hospitals and like establishments primarily when the oxygen levels dip and therefore, having non-oxygenated beds for Covid-19 patients may not be of much use. Such information on the portal can also be misleading as patients and their families could spend precious time in visiting one hospital after another on the basis of data revealed on the portal. It would thus be useful if against each of the names of the hospitals, it is indicated as to whether the beds vacant are capable of providing oxygen treatment or not.



19. Moreover, the data on the portal also has to be on much more real-time basis. They ought to be updated every one to two hours, at least in these dire circumstances. Further, insofar as the data of the hospitals is concerned, another field would be provided by the hospitals as to whether there is any waiting list of patients in their hospital. For this purpose, the portal would have to be amended to this extent. Instructions shall be sought by the GNCTD by tomorrow.

20. An important fact which has been highlighted by several counsels who have joined the hearing today is that most of the hospitals are not contactable as their telephones are always busy. In view thereof, the GNCTD shall seek instructions as to whether a helpline, which would ring on a rotational basis and can be manned even remotely by Nodal Officers who may be allocated to a hospital, can be made available in each of the hospitals. Counsels to revert with instructions by tomorrow on this aspect as well.

**Approval by Insurance companies during discharge of COVID-19 patients:**

21. One of the issues, which has been raised is in respect of the time being consumed by insurance companies/their agents in issuance of approvals, even though the patients are ready to be discharged from the hospitals.

22. Mr. Sachin Datta, Id. Senior Counsel, who was requested to appear in ***W.P.(C) 5071/2021*** titled ***Gajinder Pal Singh v. GNCTD***, has informed the Court that from his personal knowledge one of the factors delaying hospital admissions is that insurance companies are taking at least 6 to 7 hours to

give approvals for discharge of patients, which is creating a time lag in fresh admission of COVID-19 patients.

23. Mr. Abhishek Nanda, Id. Counsel who appears for the Insurance Regulatory and Development Authority of India (*hereinafter*, "IRDAI") was requested to appear before the Court. He submits that recently, the IRDAI has issued press releases dated 22nd April, 2021 and 23rd April, 2021 as per which it has been clarified that hospitals cannot charge differential rates to policyholders, demand advance deposits or deny cashless treatment to policyholders who have a cashless arrangement with the Insurers. Hospitals have also been requested not to differentiate between patients, in terms of admission or treatment, on the basis of whether they are insured or not and whether they pay cash or not. In the event of denial of a cashless facility at any network hospital, aggrieved policy holders may send a complaint to the Grievance Redressal Officer of the concerned insurance company.

24. Considering the above, the IRDAI is directed to issue immediate instructions to insurance companies/their agents to ensure that whenever requests are received for approval for discharge of patients who were affected by COVID-19 and are covered by insurance policies, no delay occurs in giving the approvals. Insurance companies/their agents be directed to communicate their approvals to the concerned hospitals/establishments within a maximum time period of 30 to 60 minutes, in order to ensure that the discharge of the patients is not delayed in any manner.

25. Moreover, once a patient is ready for discharge and while the attendant of the patient is waiting for the discharge slip to be processed, the hospitals/establishments can, instead of holding up the bed, process the new

admission on that bed so that the bed does not remain unoccupied and needy patients are immediately given admission for their treatment.

26. Mr. Nanda, Id. Counsel, submits that he would seek instructions from the IRDAI and revert by tomorrow.

**Delay in RTPCR tests, blood tests and shortage of testing kits:**

27. It has also been brought to the notice of the Court that after booking of RTPCR tests and blood tests, there has been a huge delay of almost 2 to 3 days before the samples are collected and though test reports were earlier being generated within 24 hours, they are now taking at least 2 to 3 days. It is also reported that there is a shortage of RTPCR Kits. In this regard, Mr. Aggarwal, Id. Counsel may seek instructions from the Government officials, who may interact with the laboratories and understand the difficulties they are facing and if so, what remedial measures can be taken.

28. List on 29<sup>th</sup> April, 2021 at 2.30 p.m.

**APRIL 28, 2021**

*dj/mw/dk/T*

**PRATHIBA M. SINGH  
JUDGE**

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