

High Court of Sikkim

Record of proceedings

WP(PIL) No.06 of 2020

In Re : Covid 19 Management

Date : **04-06-2021**

CORAM : **THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

For Petitioners

Mr. Jorgay Namka, Advocate as Amicus Curiae.

For Respondents

R-1, R-2 & R-12 Ms. Sangita Pradhan, Assistant Solicitor General of India.

R-3 to R-11

Mr. Sudesh Joshi, Additional Advocate General.

Ms. Yeshi W. Rinchhen, Government Advocate.

Mr. Hissey Gyaltsen, Assistant Government Advocate.

ORDER

Rai, J.

1. At the outset, it is relevant to mention that I.A. No.01 of 2021 has been filed by the Assistant Government Advocate seeking exemption from personal appearance of the Additional Chief Secretary, Health and Family Welfare Department, Government of Sikkim, on account of his wife taking ill in Hyderabad due to the Covid-19 virus. The exemption is granted and I.A. *supra* stands disposed of.

2. Dr. Pempa Tshering Bhutia, Director General-cum-Secretary, Health and Family Welfare Department, Government of Sikkim (for short, DG), is present, in terms of the direction of this Court dated 25-05-2021.

3. Both their presence is dispensed with on the next date.

4. We have perused the reports filed by the Respondents No.3 to 11 and Respondent No.12.

5. Dealing first with dedicated Intensive Care Unit (ICU) facilities for Covid-19;

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(a) It is reported that the ICU has been prepared in the District Hospital, Namchi, South Sikkim and is operational. That, presently 10 (ten) ICU beds for general patients have been converted into Covid-19 Dedicated ICU beds. We are concerned that in such a circumstance ICU beds are not available for general patients. The State-Respondents shall address this issue in terms of the undertaking given by the DG. We reiterate that the Hospital cannot be devoid of ICU beds for general patients.

(b) For the North District, it is reported that 3 (three) ICU beds have been earmarked in the existing facility functioning as a District Hospital. This number is abysmally low considering the number of Covid-19 positive persons in North Sikkim. The Learned Additional Advocate General (AAG) undertakes to ensure that facilities are ramped up in the District Hospitals whereby ICU beds are increased both for general and Covid-19 patients.

(c) Presently, the facilities in the Covid-19 Dedicated Hospital in STNM for the East District are said to be adequate and agreed to by Learned Amicus Curiae. The DG submits that Central Referral Hospital, Manipal, Tadong, Gangtok (CRH) has also given an assurance that should the need arise 100 (One hundred) beds can be increased in their Covid-19 Hospital as well as 10 (ten) ICU beds on short notice. That, similarly the STNM Hospital is also equipped to increase beds as per requirements should there be such a contingency.

6(a). With regard to Viral Research and Diagnostic Laboratory (VRDL) facilities for the purposes of conducting RT-PCR test, this Court had vide Order dated 25-05-2021 expressed the concern that no mention have been made with regard to setting up of such a facility in the North District. The State-Respondents had also submitted that such a facility was going to be established in Jorethang, South Sikkim. The Learned AAG submits that the latter was not found feasible and, therefore, a

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decision has been taken to set up the facility in the District Hospital, Namchi, South Sikkim, itself within 45 (forty-five) days of the approval and release of funds from the Indian Council of Medical Research (ICMR).

(b) We deem it relevant to record that VRDL facility is required in each District of Sikkim, besides, bearing in mind the onset of the monsoon and the related consequence of landslides and inaccessibility of one District from the other, a sample collected from the West District for testing cannot be left to the vagaries of nature should there be road blocks to the South District. Similarly, such dependency should not be created for the North District on the East District for the self-same reasons. This would obviously have the repercussion of delayed treatment.

(c) On this aspect, Learned Assistant Solicitor General of India (ASG) submits that the protocol established by the ICMR in 2013 has to be complied with before such facilities can be set up in a State.

(d) Indeed, it is worthwhile remarking here that such a protocol was established in 2013 way before the pandemic set in, thus this protocol in our considered opinion, was for the situation as it existed then. Consequently, it is but appropriate that the State Government take immediate steps for establishing VRDL facility in every District. Learned AAG assures this Court that necessary steps will be taken by the State-Respondents with the ICMR within 3 (three) days from today.

(e) Learned ASG assures that in the event such steps are taken by the State-Respondents necessary follow up action shall be taken from her end. In this view of the matter, the Learned ASG will inform this Court within 10 (ten) days, of the response of the ICMR. In any event, the State-Respondents and Respondent No.12 shall ensure that all necessary steps are

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taken to establish VRDL facilities in all four Districts within 90 (ninety) days from today.

(f) At the same time, we record our appreciation for the steps taken by the State-Respondents to augment the testing facilities whereby Centres have been set up for Rapid Antigen Test (RAT) and TRUNAAT Tests in all the Districts of the State thereby resulting in early testing and follow up treatment of patients found to have tested positive for the virus.

7. So far as the Oxygen supply is concerned, Learned AAG assures this Court that all steps have been taken for augmentation of Oxygen supply for the patients who require it and presently they are in a position to face any contingency in view of the increased Oxygen generating capacity of the State as also the availability of Oxygen Concentrators. The Affidavit reflects the number of Oxygen Concentrators received by the State and the numbers distributed amongst the Hospitals in Sikkim. LPM PSA Plants are also to be set up for STNM Hospital, Gyalshing District Hospital, Singtam District Hospital and Namchi District Hospital, which will further augment the Oxygen availability.

8. The vaccination programme is a cause of concern for the State. Although the population of the entire State stands at a meagre number of approximately 7 lakhs, we are informed that presently vaccines are not available for the 18-44 age group whose population reportedly stands at 2,90,000 (two lakhs and ninety thousand) only. The total requirement of vaccines for this age group stands at 5,80,000 (five lakhs and eighty thousand) only. Evidently, the State-Respondents expect 15,230 (fifteen thousand, two hundred and thirty) vaccines to be made available by this month to the STNM Hospital, while Learned Counsel Mr. T. R. Barfungpa, who is appearing for Respondent No.7 in WP(PIL) No.08 of 2020, submits that 24,000 (twenty four thousand) vaccines are expected in the CRH by next week.

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Considering the entire population of the State, a meagre amount of 14 lakhs vaccines would be the approximate requirement of the State. Thus, we trust that the State-Respondents shall make untiring and proactive efforts to obtain the entire number of requisite doses so that the population of the State can be vaccinated at the earliest. This becomes imperative in view of the peculiar circumstances of the State inasmuch as the foot-fall of tourists sometimes outnumber the residents of a particular town and the availability of the medical infrastructure or the lack of it has to be thereby taken into consideration making the vaccination of the population an urgent requirement. This becomes even more imperative looking at the present Covid-19 situation in Sikkim and the mortality rate of patients vis-à-vis the population. The State-Respondents require to actively impress upon the Respondents No.1, 2 and 12 about the total population of the State and the miniscule vaccine requirement thereof. We also trust that the Learned ASG will take necessary proactive steps in this direction and work in tandem with the State-Respondents to acquire the vaccines so that the vaccination drive can be taken up on mission mode in the State.

9. As reported by the State-Respondents adequate measures have been taken to contain the Covid-19 positive monks in the Monasteries in Sikkim and testing has also been ramped up.

10. We have considered the submissions of Learned AAG who has assured this Court that efforts are being made to set up provision for ICU facilities in Karfektar, South Sikkim to deal with increased number of Covid-19 patients if and when the need arises.

11. We have also been informed that a request has been made to the Union of India for providing 1 (one) Mobile Testing Laboratory especially for RT-PCR test. Considering that we have four Districts in the State, Learned AAG assures this Court that

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steps shall be taken to requisition/place request for 3 (three) more such Mobile Testing Laboratories. Report in this regard may be submitted to the Court on the next date.

12(a). Learned Amicus Curiae has raised the issue of news pertaining to a third wave of the pandemic and the preparedness of the State-Respondents to deal with such a contingency. Learned AAG reiterates that the State Level Task Force has been constituted in March, 2020, under the Chairmanship of the Chief Secretary, Government of Sikkim to monitor the preparedness besides which meetings are held regularly to review the situation. We do not seek to undermine the working of the State Level Task Force, however, we are concerned that no policy has been envisaged till date for the purpose of dealing with the third wave, God forbid, should there be one.

(b) We are of the considered opinion that the State-Respondents are required to have policies in place to deal with the third wave in order to shield the population of Sikkim from its repercussions and wide advertisement given to such policies that they seek to adopt for the knowledge of the common man. The preparedness should also be in terms of augmented infrastructure medical and otherwise. This, of course, includes human resources.

13. Our concern is also with regard to the awareness generation on the medical protocol to be followed once a person tests positive. Although Learned AAG submits that steps have been taken to make the public at large aware of the steps to prevent contracting the virus, it would be in the best interest of the population of the State if a summary of steps to be taken by a person who has tested positive is prepared by the Health and Family Welfare Department and widely advertised. Along with the summary the cellphone number of a Doctor should also be made available to address and dispel the anxieties of persons who test positive for the virus.

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14. We note here that in the Order dated 15-05-2021 we had raised our concern about the availability of Covid-19 dedicated ambulances attached to the STNM Hospital and District Hospitals. The Affidavit filed on 03-06-2021 does not address this issue. On the next date, Learned AAG shall inform this Court as to how many Covid-19 dedicated ambulances are attached to each Hospital and whether each ambulance is equipped with Oxygen, requisite medical paraphernalia and paramedic support.

15. List on 16-06-2021.

Judge
04-06-2021

Judge
04-06-2021

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