

CJ & AKJ:
27.04.2021

W.P.No.6435/2020
and connected matters

(through video conferencing)

ORDER

1. Today, we are dealing with three main issues;
 - (i) the availability of different categories of beds in the city of Bengaluru and other parts of the State;
 - (ii) the availability of *Remdesivir* drug and
 - (iii) the availability of adequate oxygen.

These are the issues which have direct co-relation with right to life guaranteed under Article 21 of the Constitution of India.

2. Going by the material placed on record by the State Government as well as the Bruhat Bengaluru Mahanagara Palike (for short, "BBMP"), the situation is alarming. Firstly, we deal with the availability of beds in the city of Bengaluru. On the last date of hearing, i.e. 23rd April 2021, the following was the number of total bed capacity in the city of Bengaluru.

(i)	HDU beds	-	3180
(ii)	ICU with ventilator	-	351
(iii)	ICU	-	496

Today, the learned counsel appearing for BBMP states that as of now, the total bed capacity of all these categories in the city of Bengaluru is as under:

(i)	HDU beds	-	3490
(ii)	ICU with ventilator	-	418
(iii)	ICU	-	497

3. We find that there is only a marginal increase in the total strength of the beds in the city. Such marginal increase may not be sufficient to cope up with the ever raising active COVID-19 cases in the city of Bengaluru. We direct the State Government and BBMP to make immediate efforts to make substantial increase in the availability of beds. The reason is that as per the instructions of the learned counsel appearing for BBMP, at 11.15 a.m today, only 74 HDU beds were available in the city. The available ICU beds and ICU beds with ventilator is 20 and 14, respectively. This is a very alarming situation in a city where there are more than 15,000 positive cases reported everyday.

4. In the city of Bengaluru, there is a Command Hospital of the Armed Forces. The learned Standing Counsel for the Central Government will immediately take instructions from the

Commanding Officer about making available the beds in the hospitals of the Armed Forces or Air Force in the city for the benefit of the citizens. The learned Advocate General also assures the Court that he will also talk to the concerned officer in this regard.

5. The State Government will place on record the availability of beds throughout the State and especially, in those districts where there are more than 5000 active COVID-19 cases as of today. Necessary data shall be placed on record by the State Government by day after tomorrow (29th April 2021). Even BBMP will place the latest data on record.

6. The learned Central Government Counsel will report to the Court whether any beds in the hospitals of the armed forces or Air Force can be made available to the citizens of Bengaluru.

7. The second serious issue is about the availability of oxygen in the State. The compliance report filed by the State Government today records that the projected requirement of oxygen in the entire State as of 30th April 2021 is 1471 metric tonnes per day, out of which from the domestic production,

quantity of only 842 metric tonnes per day is available. It is recorded that the Government of India has agreed to allocate 802 metric tonnes of oxygen per day to Karnataka. However, the actual allocation has not been made. We direct the Government of India to take immediate steps to make actual allocation. If the allocation is not made as on 30th April 2021, going by the projected figures of the State Government, shortfall of oxygen in the State will be of more than 600 metric tonnes per day.

8. At this stage, we may note here that as per the directions issued on the earlier date, Dr.Prasanna H.M., the President of Private Hospitals and Nursing Homes Association (PHANA) of Karnataka is present. On instructions, he states that the private hospitals are able to procure the supply of oxygen only to the extent of 50% of its requirements.

9. This situation is quite alarming. Admittedly, going by the figures given by the State Government, there is a shortfall of large quantity of oxygen which is actually required. Dr.Prasanna also states that the private hospitals are submitting requisition for procuring *Remdesivir* medicine to the nodal officers appointed by the State Government. He states that there is a WhatsApp group

created on which requirements are submitted. He states that only 25% of the required quantity of *Remdesivir* drug is being supplied to the private hospitals.

10. We had directed the State Government and BBMP on 22nd April 2021 to ensure that the data of availability of *Remdesivir* medicine in the city of Bengaluru with all the particulars is published on the public domain. Even a direction was issued on 23rd April 2021 to publish similar data of availability of oxygen. Still, the compliance is not made with the said directions. From tomorrow, lockdown will start in the State. Therefore, if relatives of the patients are told by the hospitals to get *Remdesivir* medicine, it will be impossible for them to run from shop to shop or from one stockist to another to get the *Remdesivir* medicine. This is an area where steps must be taken immediately. There is already a direction issued to the State Government to take a call on acquiring sufficient stock of *Remdesivir* medicine from the suppliers and thereafter, to supply the hospitals the said drug in a fair and rational manner. The State Government has not taken any decision in this behalf.

11. These are the three main issues which arise and going by the facts which are put on record by BBMP and State Government, we find that the failure of the State to make available requisite number of beds and providing adequate quantity of oxygen and drug may amount to violation of Article 21 of the Constitution of India. The learned Advocate General assures the Court that he will convene a meeting of the advocates appearing in this group of petitions and will understand from them their grievances not only about the aforesaid three aspects, but about the other aspects including the issue of food security, vaccination, etc. The calculations made by the learned counsel appearing for the applicant regarding the total number of beds required can be discussed in the meeting.

12. We again emphasize that the Central Government will have to take immediate steps to supply quantity of 802 metric tonnes of oxygen per day as assured in the letter dated 24th April 2021 addressed by the Ministry of Health and Family Welfare to the Principal Secretaries of all the States.

13. Dr.Prasanna states that he will submit a detailed memo on the difficulties faced by the private hospitals not only to the Health

Secretary but, he will forward a copy thereof to the learned Advocate General.

14. List these petitions day after tomorrow (29th April 2021) at 11.00 a.m.

15. We make it clear that the President or any office bearer of PHANA will remain present through video conferencing on the next date. A copy of this order be immediately provided to the learned Advocate General.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

AHB/DR