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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 53 of 2021

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SUO MOTU

Versus

STATE OF GUJARAT

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Appearance:

SUO MOTU(25) for the Applicant(s) No. 1

for the Opponent(s) No. 3,4

MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MS MANISHA LUVKUMAR, GOVERNMENT PLEADER WITH MS SHRUTI PATHAK, AGP AND MR DHARMESH DEVNANI, AGP AND MR CHINTAN DAVE, AGP for the Respondent-STATE OF GUJARAT

MR DEVAN-G VYAS(2794) for the Opponent(s) No. 1,2

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CORAM: HONOURABLE MS. JUSTICE BELA M. TRIVEDI

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 17/05/2021

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE BELA M. TRIVEDI)

1. The Court vide order dated 04.05.2021 had directed the State to provide the details in respect of the various points as mentioned in Paragraph 17 thereof, pursuant to which the Principal Secretary, Department of Health and Family Welfare, Government of Gujarat has filed an Affidavit dated 10.05.2021. The State was also directed to file the replies to the Civil

Application Nos.11, 12 and 13 of 2021 and Special Civil Application No.6797 of 2021 vide the said order and the State has filed the Affidavits of the concerned Collectors in respect of the said Civil Applications and has also filed the reply to the Special Civil Application No.6797 of 2021.

2. On 11.05.2021, when the matters were listed for hearing, at the joint request made by the concerned Advocates, the matters were adjourned to 17.05.2021, i.e. today. Since the Court earlier had given various directions vide the orders dated 15.04.2021, 20.04.2021, 27.04.2021 and 04.05.2021, the learned Senior Advocate Mr. Percy Kavina, at the request of the Court, had undertaken to prepare a chart with regard to the earlier directions given by the Court and their compliance /non-compliance/partial compliance by the State Authorities. Accordingly, today, the learned Senior Advocate

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Mr. Kavina has submitted the analysis of directions in the tabular form with regard to the issues – RT-PCR, 'Remdesivir', Oxygen and Infrastructure; and the analysis of the contentions of the Government of Gujarat.

3. Today, we have heard the learned Senior Advocate Mr. Percy Kavina assisted by the learned Advocate Mr. Rashesh Parikh on behalf of the Gujarat High Court Advocates Association, the learned Senior Advocate Mr. Mihir Thakore, the learned Advocate Mr. Amit Panchal and the learned Advocate Mr. Anand Yagnik for the applicants, and the learned Advocate General Mr. Kamal Trivedi alongwith the learned Government Pleader Ms. Manisha L. Shah for the State, the learned Additional Solicitor General Mr. Devang Vyas for the Union of India and the learned Senior Advocate Mr. Mihir Joshi assisted by the learned Advocate Mr. Satyam Chhaya for the Ahmedabad Municipal

Corporation.

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4. The learned Senior Advocate Mr. Percy Kavina during the course of his submissions has highlighted the lapses which had surfaced from the affidavits filed on behalf of the State. According to him, though the Government has increased the RT-PCR test machines and the laboratories, the average per day testing has decreased. In the rural areas, there is no enough facilities available. Though the Collectors were directed to issue a public advertisement informing the location and availability of RT-PCR Testing Facility Centers, there is no corresponding material produced about the Collectors having issued such public advertisements. He also pointed out the dichotomy in the Affidavit filed on behalf of the Government of Gujarat stating that the RT-PCR machine has started in smaller towns like Chhota Udepur and the Affidavit filed by

the Collector of Chhota Udepur stating that the said District had zero RT-PCR machine. The Learned Senior Advocate Mr. Kavina therefore raised the concern about the credibility of the data furnished by the State Authorities.

5. As regards the issue of 'Remdesivir' injections, Mr. Kavina submitted that the Government had given the reply without furnishing any concrete data. He submitted that if the data about the demand and supply for the period from 01.04.2021 to 05.05.2021 is analysed on a daily basis, the per day supply of 'Remdesivir' by the Center to the State is woefully inadequate.

6. Mr. Kavina fairly submitted that the issue of demand and supply of oxygen does not seem to be very grave in the State. However, he submitted that in the last 10 days, the disease 'Mucormycosis' is spreading very fast in the

patients recovering from Covid-19 as the post Covid-19 infection. Relying upon the newspaper reports, he submitted that the treatment for the disease 'Mucormycosis' is exorbitantly costly and the injections and medicines for the said disease are not available easily. As regards the physical infrastructure, he submitted that though the other Municipal Corporations have displayed the real time data with respect to the availability of beds in the hospitals, the Ahmedabad Municipal Corporation does not provide dissemination of data on real time basis, though specifically directed by the Court to provide the same. Adverting to the issue of vaccination, Mr. Kavina submitted that out of the total population of about 7 Crores in Gujarat, only 1.25 Crores of people are vaccinated. According to him if reliance is placed by the State only on the Central Government, it will take long time for people of Gujarat to be vaccinated. Mr. Kavina also

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cursorily mentioned about the ASHA workers being not treated as the frontline workers and being paid a low salary.

7. The learned Senior Advocate Mr. Mihir Thakore in addition to the submissions made by Mr. Kavina, submitted as regards the disease 'Mucormycosis' that as per the best of his information, there is a rapid increase in such cases and the State has acquired only 5000 injections, which is sufficient for 27 patients only as against 100 patients reportedly admitted for the said disease. He further submitted that there is no transparency on the portal as regards the RT-PCR Test conducted and the test results, as also with regard to the distribution of 'Remdesivir' injections. Mr. Thakore also pointed out that inspite of the decision taken by the Government, the production of Aadhar Card is insisted for availing the 'Remdesivir' injections in the

City of Surat. The learned Advocate Mr. Amit Panchal suggested that the disease of 'Mucormycosis' should be notified as the 'Notifiable Disease' under the provisions of the Gujarat Public Health Act.

8. The learned Advocate General Mr. Kamal Trivedi alongwith learned Government Pleader Ms. Manisha L. Shah in response to the above submissions submitted that the State has made all efforts to comply with all the directions given by the Court from time to time and to consider the suggestions made by the other side, working day and night in this unprecedented time. On the discrepancy pointed out by Mr. Kavina in respect of the functioning of RT-PCR Machine at Chhota Udepur, the learned Advocate General Mr. Kamal Trivedi explained that the RT-PCR Machine was already installed on 08.05.2021 at Chhota Udepur and the same was made operational on 10.05.2021, whereas the

Collector, Chhota Udepur had filed his Affidavit on 09.05.2021.

9. As regards the decrease in the number of RT-PCR Tests, Mr. Trivedi submitted that now the number of Covid-19 cases is showing downward trend, and therefore though the Government has increased the availability of the RT-PCR Test Machines, the Laboratories are receiving less number of samples for testing. Rebutting the contention of Mr. Kavina that the State is at liberty to procure 'Remdesivir' Injections on its own, he submitted that the allocation is done only by the Central Government and that too on a prorata basis, and considering the demand of each State, which would be dynamic.

10. As regards the issue of oxygen, Mr. Trivedi submitted that the State is dependent on the Central Government for the availability

of the medical oxygen, however the State is managing to procure oxygen in liquid form or gaseous form from the PSA/ASU plants in the State. According to him, there has been an easing situation since last two weeks so far as the issue of oxygen is concerned. As regards the infrastructure facilities in the rural areas, he submitted that he would place on record the status of PHCs and CHCs on the next date of hearing.

11. As regards the vaccination, Mr. Trivedi submitted that as per the guidelines issued by the Government of India, the State Government has to depend on the Central Government for procurement of vaccines for people above the age of 45 years, however has started undertaking the exercise for vaccination of persons belonging to 18 years to 45 years age group in 7 Corporation areas and 3 Districts. He further submitted that the State Government

has placed orders for 2 Crore doses of 'Covishield' from the Serum Institute, Pune and 50 Lakh doses of 'Covaxine' from Bharat Biotech, Hyderabad for administering vaccines to the persons belonging to the 18 years to 44 years age group. He also submitted that about 1.32 Crore doses of Covid-19 Vaccine have been administered to the health workers, front line workers and people above the age of 45 years as stated in the Affidavit filed by the Health Department.

12. Mr. Trivedi on the concern shown by the Court about the disease 'Mucormycosis', responded that the State Government is deeply concerned about the rise of 'Mucormycosis' cases in the State and therefore, has placed orders for the purchase of about 1,14,430 vials of Injections Amphotericin-B and Liposomal. According to him, the whole protocol is in place to deal with the said disease and the

treatment of 'Mucormycosis' is free of charge in government hospitals.

13. The learned Additional Solicitor General Mr. Devang Vyas appearing for the Union of India submitted that considering the requirement of 'Remdesivir' in every State and ensuring its adequate availability, the Union Government makes allocation of 'Remdesivir' and has also prepared company wise supply plan of 'Remdesivir' in consultation with the Manufacturers / Marketing Companies with instructions to them to ensure timely supply to all the States as per the supply plan. He also submitted that the Supreme Court has set up a National Task Force with regard to the allotment of medical oxygen to the State and Union Territories as per the order passed in S.L.P. (Civil) No.11622/2021.

14. The learned Senior Advocate Mr. Mihir Joshi

for the Municipal Corporation submitted that the Municipal Corporations are providing real time data in respect of the availability of beds in the hospitals and if there is any lapse found in updating the real time data, necessary instructions shall be given to the erring Corporations, more particularly to the Ahmedabad Municipal Corporation.

15. Now, if the submissions made by the learned Advocates for the parties are appreciated in the light of the affidavits filed on behalf of the State Government and the reports submitted on behalf of the Central Government, it appears that the State Government has put in good amount of efforts to carry out the directions issued by the Court from time to time to improve the health care facilities so far as the COVID-19 Pandemic prevalent in Urban and Semi-Urban areas are concerned, However it seems that the second wave of the COVID-19

Pandemic is spreading fast in the rural areas because of lack of availability of RT-PCR facilities and other infrastructural facilities, leading to the delay in detection of the COVID-19 cases and the delay in giving treatment to such patients.

16. The Court has also found that there is nothing on record to suggest the future course of action to be followed by the State and the Central Government for the procurement of sufficient quota of 'Remdesivir' injections. The Central Government has also not placed on record the policy decision with regard to the allocation of the 'Remdesivir' injections to the States.

17. As per the opinions of the medical experts, an intensive drive for the vaccination could save the life of people or atleast stop them from becoming seriously ill as a result of

COVID-19 infections. The Court therefore is of the opinion that it would be appropriate for the Court to direct the Central Government to place on record for the information of the general public at large, about the vaccination policy adopted by the Central Government.

18. The Court has also taken serious note of the new challenge being faced by the State with regard to the rapid increase in the cases of flesh eating Black Fungal infection called 'Mucormycosis'. The shortage of injections being administered for the said disease and the cost of its treatment are also the issues which deserve to be seriously and immediately considered by the State.

19. In the aforestated premises, we call upon the State Government to provide the details of the following on oath, on the next date of hearing:

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(a) How far the Primary Health Centers (PHCs) and the Community Health Centers (CHCs) which constitute the backbone of the State's rural health infrastructure are equipped with the facilities to treat the COVID-19 patients?

(b) What is the mechanism for providing the RT-PCR test kits, necessary medicines, 'Remdesivir' Injection, Oxygen supply, etc., to such PHCs and CHCs and other healthcare centers in the Districts and the Talukas?

(c) Whether the Doctors and trained nursing staff are available to carry out the RT-PCR tests, administer the 'Remdesivir' injections and the oxygen etc.? If the answer is in negative, what is the course of action planned in that regard?

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(d) How many dedicated COVID hospitals, dedicated COVID Health Centers and COVID Care Centers have been set up at the District and Taluka level? The details of each District and Taluka be specifically provided.

(e) How many persons have been fully vaccinated and how many have been partially vaccinated in each of the categories i.e. above 60 years, between 45-60 years and between 18-44 years? What is the estimated requirement of the vaccines for vaccinating all categories of people fully and what is the road-map for achieving the said estimate?

(f) Whether any special provision has been made for vaccinating the inmates of and the staff members working at the special homes

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like old age homes, mental/lunatic asylums, Nari Samrakshan Gruh, juvenile homes, remand homes, correction homes, orphanages, etc.?

(g) What is the preparedness of the Government in the Health Department to combat the Mucormycosis disease?

(h) The policy, if any, framed with regard to the procurement and the distribution of the injections and the medicines used for the treatment of the Mucormycosis patients in the private hospitals?

20. The learned Additional Solicitor General Mr. Devang Vyas is also directed to place on record the policy decision of the Central Government on the allocation of the 'Remdesivir' injections to the States and the plan for procurement of 'Remdesivir' to meet

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with the projected demands of the States. He may also place on record for the information of the public at large, the vaccination policy of the Central Government.

21. Put up on 26.05.2021 at 11:00 A.M. The State Government and the Central Government shall file their respective affidavit/report on or before 24.05.2021 in the Office, with the copies served to the concerned Advocates.

(BELA M. TRIVEDI, J)

THE HIGH COURT
OF GUJARAT

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(BHARGAV D. KARIA, J)

SINDHU NAIR