

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)



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)

9 23-04-2021 **Re : I.A. No. 01 of 2021 & 02 of 2021**
 in
 CWJC No. 353 of 2021 and other analogous matters

We have heard Mr. Ranjit Kumar, learned Senior Counsel and Mr. Lalit Kishore, learned Advocate General appearing for the State of Bihar. Mr. Anjani Kumar, learned Additional Advocate General No. 4 has also assisted the Court for the State of Bihar. In addition, Mr. S.D. Sanjay, learned Senior Counsel, Mr. Sanjay Singh, learned Counsel and Mr. Mrigank Mauli, learned Counsel for the Patna High Court and other learned Counsels representing different parties have also joined the present *online* proceeding and have contributed to effective hearing of the matter which has been registered upon *suo motu* cognizance of reported deficient healthcare facilities in the State to meet the challenges posed by the second wave of COVID-19 pandemic.

In our previous orders we had repeatedly indicated that the State Government of Bihar must prepare and come out with a



comprehensive action plan for effectively dealing with the situation which was noticed to be worsening every day. On 21.04.2021, we had orally observed that in the subsequent hearing, we would be taking up and focusing on the issues relating to dearth of medical oxygen in various COVID Care Centre (CCCs), Dedicated COVID Health Centers (DCHCs) and Dedicated COVID Hospitals (DCHs) in the State of Bihar, noticing its acute shortage. It had emerged that on the one hand because of insufficient supply of oxygen, the COVID patients were being denied admission and treatment in DCHCs and DCHs, Government claimed on the other that huge number of beds with such facilities in DCHCs were unoccupied. It has further transpired that many of such centers and hospitals, which were being shown by the Government of Bihar to be equipped with oxygen beds/ICU beds, were in fact not duly equipped with adequate oxygen, on account of unavailability.

In the aforesaid background, the Court had desired to know as to whether such oxygenated beds are, in fact, equipped with oxygen.

Mr. Ranjit Kumar, learned Senior Counsel has presented before us an action plan prepared by the State Government regarding supply of oxygen for treatment of COVID-19 patients.



The action plan of the State Government runs in three pages and contains certain enclosures by way of annexures attached to it. Annexure-6 of the said action plan gives the figure of ‘**oxygen requirement as per bed occupancy**’ as on 22.04.2021 and ‘**oxygen requirement as per bed availability**’ as on 22.04.2021. The figures disclose that based on **actual bed occupancy** the requirement of oxygen as on 22.04.2021 was 56.88 MT for oxygenated beds and 11.22 MT for ICU beds, i.e. a total of 68.10 MT. The said Annexure-6 further shows that **as per bed availability** as on 22.04.2021, the State required 157.67 MT of oxygen for oxygenated beds and 12.42 MT of oxygen for ICU beds, i.e a total of 170.09 MT. The chart annexed as Annexure-6 to the action plan is being reproduced herein below for ready reference:-

OXYGEN REQUIREMENT AS PER BED OCCUPANCY (on 22.04.2021)				
Type of Facility	BED OCCUPANCY		OXYGEN REQUIREMENT (in MT)	
	Oxygenated Beds	ICU Beds	Oxygenated Beds (@ 10.5 cubic meter)	ICU Bed (@ 14 cubic meter)
CCC	665	0	9.31	0.00
DCHC	632	0	8.85	0.00
DCH	1,364	229	19.1	2.4
Private	1,402	840	19.63	8.82
TOTAL	4,063	1,069	56.88	11.22

OXYGEN REQUIREMENT AS PER BED AVAILABILITY (on 22.04.2021)



Type of Facility	BED AVAILABILITY		OXYGEN REQUIREMENT (in MT)	
	Oxygenated Beds	ICU Bed	Oxygenated Beds (@ 10.5 cubic meter)	ICU Bed (@ 14 cubic meter)
CCC	3,455	0	48.37	0.00
DCHC	3,986	0	55.8	0.00
DCH	2,399	337	33.59	3.54
Private	1,422	846	19.91	8.88
TOTAL	11,262	1,183	157.67	12.42

As required by this Court, as regards actual availability of medicinal oxygen, Mr. Ranjit Kumar, learned Senior Counsel has taken us to Annexure-1 of the action plan to demonstrate that the State of Bihar was receiving 69.65 MT of liquid medical oxygen (LMO) from outside the State of Bihar, for being supplied as medical oxygen and 33.81 MT of medical oxygen is being generated in the State of Bihar. The chart annexed as Annexure-1 to the action plan is being reproduced herein below:-

Medical Oxygen IP Manufacturer Details and there Production Capacity											Date:- 22.04.2021		
Sl. No.	Name of Medic al Oxyge n IP Manuf acture r	Locat ion	Address	Name	Mob. No.	Source of Supply	Name & Mob. No. of Magistrate	Production					
								NO. of "D" Type Cylinders (7.0 Cubic Meter)			Cubic Meter		
								LMO	Oxy Gener ation	Total Produ ction	LMO	Oxy Gene ratio n	Total Production
1	M/S Banshi Air Gases Pvt. Ltd.	Patna	Fatuha Industrial Area	Kumar Gaurav	92045 50801	Innox	1. Akhilesh Kumar-9905746172, 2. Suresh Prasad-7992366739/7050346730	800	1200	2000	5600	8400	14000
2	M/s Usha Air Product	Patna	Dasrattha, Near Sipara Bridge,	Sarendra Kumar	91100 24477	Innox	1. Surendra Kr. Mehta-9110024477, 2. Devendra	1600	800	2400	11200	5600	16800



	s Ltd.		New Bypass Road				Pd. Sinha-9801702494						
3	M/s Patliputra Industrial Gases Ltd.	Patna	Sabalpur, Patna City	Sandee p Kumar Gupta	7903029067	Innox	1. Dilip Kumar-8210815051, 2. Md. Sahzad-9905273280	1000	800	1800	7000	5600	12600
4	M/s Gaurav Air Products (p) Ltd.	Patna	Gaurav Air Products (P) Ltd. Patna	Sudhir Kumar Singh	9334706552	Innox	Dr. Manoj Kumar-9471904825	1000	800	1800	7000	5600	12600
5	M/s New Patliputra Gas Manufacturers	Bhagalpur	Plot NO.D-5 Large Industrial State Brari, 821003	O.P.Singh	9334352086	Innox	Sri Anjani Kr. Srivastawa-9973584016	700		700	4900	0	4900
6	M/s S.B.G. Gas	Bhagalpur	Akbar Nagar, At PO Hari o, Near Indian Oil Petrol Pump	Manoj Jee	6206087961	Innox	Sri Anjani Kr. Srivastawa-9973584016	550		550	3850	0	3850
7	M/s S.B.G. Gas	Muzaffarpur	Industrial Area, Bela PHase2	Aadars h	9431239264	Innox	Nominated By District Magistrate	1000	500	1500	7000	3500	10500
8	M/s Gupta Air Products	Darbhanga	Madhopatti, Darbhanga	Deepak Gupta	7061075777	Innox/Li nde	Sri Satyam Sahay-8766259934	800		800	5600	0	5600
9	M/s Capital Oxygen Company	Gaya	Capital Oxygen Gaya	Naiyyar Khan	8936819584	Innox	1. Avinash Bharadwaj-7991156023, 2. Chitranjan Prasad-8541830686, 3. Ranjit Kumar-6200064113	700		700	4900	0	4900
10	M/s Gayatri Medical and Industrial Gases	East Champaran	Harsiddhi, East Champaran, 845422	Bankey Bihari Singh	9661254903	Innox	Nominated By District Magistrate	350		350	2450	0	2450
11	M/s Life Line Gas Plant	Purnia	NH31 By Pass, Purnia	Sanjay Kumar/ D.K. Yadav	7549911151 / 7979061211	Self-Plant	Sri Yashwan Kr. Jha-99505201065		250	250	0	1750	1750
12	M/S Sony Air Gases Pvt. Ltd.	Begusarai	Plot No. 66P Industry Area Barauni, Begusarai-851122	Neeraj Kumar	7870886250	Satyam Gas Kolkata	1. S.D.O Begusarai-9473191414, 2. Sri Dharendra Kumar Mishra-9934140480	450	480	930	3150	3360	6510
13	M/s Nalanda Air Products	Biharsharif, Nalanda	Chora Bageech, Tulgi Road, Biharsharif, Near Sudha Factory,	Rajeev Ranjan	9304082790	Innox	1. Amrendra Bhushan-9142194505, 2. Satendra Choudhary-7320923248	600		600	4200	0	4200
14	M/s Viswak	Aurangabad	Khemda Barun,	Hari Om	9304906644	Innox	Nominated By District	400		400	2800	0	2800



arma Enterpr ises		Aurangaba d				Magistrate						
Grand Total							995 0	483 0	1478 0	6965 0	3381 0	103460
										69.65	33.81	103.46

He has further informed us that the Ministry of Health & Family Welfare, Government of India through a communication dated 22.04.2021 has communicated allocation of a quota of 194 MT *per* day of medical oxygen for the State of Bihar and with the said quota allocated by the Central Government, the State Government can easily overcome the problem of dearth of medical oxygen in the State. He has further informed that consequent upon the decision of the Central Government to allocate 194 MT of oxygen, 72 MT was supplied on 22.04.2021 and 60MT on 23.04.2021. On instructions he has submitted that on 24.04.2021, the State will receive 90MT of medical oxygen out of the quota of 194 MT, from various places outside the State of Bihar.

In addition, our attention has been drawn towards a chart showing that generation of medical oxygen has already started in six out of nine Government Medical Colleges and Hospitals in the State. The chart annexed as Annexure-2 to the action plan is being reproduced herein below:-



Sl. No.	Name of Medical College	Capacity	Timeline
1.	PMCH, Patna	300 LPM	Generation started
2.	NMCH, Patna	300 LPM	Generation started
3.	DMCH, Darbhanga	280 LPM	Generation started
4.	SKMCH, Muzaffarpur	280 LPM	Generation started
5.	JNKTMCH, Madhepura	280 LPM	Generation started
6.	MJK Hospital, Bettiah	280 LPM	Generation started
7.	VIMS, Pawapuri	300 LPM	Generation to start by 01.5.2021
8.	JLNMCH, Bhagalpur	300 LPM	Plant in transit Expected to start by 21.05.2021
9.	ANMMCH, Gaya	300 LPM	Plant in transit Expected to start by 21.05.2021
	Total	2620 LPM	

Note- LPM -Litre per minute

Referring to Annexure-3 of the said action plan, it has further been informed that Pressure Swing Adsorption (PSA) plants are being installed at five places by the Government of India. The status as on 22.04.2021, in respect of the process of installation of said plants, is as under:-



Pressure Swing Absorption (PSA) by Government of India**Status as on 22.04.2021**

Sl. No.	Name of Govt. Health Institutions	Timeline
1	Sadar Hospital, Araria	Civil work completed, installation of Medical Gas Pipeline for 90 beds is to be done.
2	Sadar Hospital, Aurangabad	Civil work completed, machine not yet delivered by GOI.
3	Sadar Hospital, Katihar	Civil work completed, machine delivered by GOI will be made functional within one week.
4	Sadar Hospital, Muzaffarpur	Installation completed will start on 24.04.2021
5	Sadar Hospital, Sitamarhi	Civil work completed, machine not yet delivered by GOI

He has further informed that the process of installation of PSA plant at Sadar Hospital, Muzaffarpur is complete and the same will start functioning from tomorrow (24.04.2021).

Be that as it may, the figures clearly go to suggest that there is still deficiency in supply of medical oxygen for treating COVID-19 patients in the State of Bihar for the reason that admittedly the State Government has not so far received the full quota of oxygen allocated per day by the Central Government and in fact it has received less than half of the allocated quota to the State. Needless to say that there is requirement of



continuous supply of oxygen for treatment of COVID patients and failure to procure the amount allocated by the Government of India is a serious lapse having perilous consequences of grave nature hugely affecting the healthcare system to meet the challenge.

We for the said reason direct that let a report be submitted by the Health Department, Government of Bihar by Monday (26.04.2021) stating the circumstance in which the State Government has failed to receive/obtain full quota of oxygen, as allocated by the Central Government. The Health Department will further be required to furnish to this Court up-to-date report in respect of installation of PSA plants by the Government of India.

Dr. K.N. Singh, learned Additional Solicitor General for India has, on the basis of instructions received from the concerned department, informed this Court in respect of installation of PSA plants at Sadar Hospital, Aurangabad and Sadar Hospital, Sitamarhi, that because of lack of '*site clearance*' by the State of Bihar, the machines have yet not been installed.

Let the Department of Health, Government of Bihar report to this Court in respect of the aforesaid two sites. Dr.



K.N. Singh, learned Additional Solicitor General for India is requested to seek instructions in respect of installation of PSA plant at Sadar Hospital, Araria.

This Court has taken note of the fact that requirement of PSA plants for nine Government medical college and hospitals has been communicated to the Government of India and it has been informed by Dr. K.N. Singh, learned Additional Solicitor General for India that the same is under process. The Court would expect the authorities to ensure that the process is expedited so as to ensure installation of PSA plants at nine medical college and hospitals as quickly as it is possible. The requirement of PSA plants for nine Government medical college and hospitals, is as under:-

Sl. No.	Name of Medical College	Total Bed Capacity of the Health facility	Capacity of Proposed PSA plant in Liters Per Minute (LPM)
1.	PMCH, Patna	1000	500
2.	NMCH, Patna	500	800
3.	SKMCH, Muzaffarpur	800	1000
4.	DMCH, Darbhanga	500	800
5.	JLMNCH, Bhagalpur	500	800
6.	ANMMCH, Gaya	550	800
7.	JKTMCH, Madhepura	500	800
8.	VIMS, Pawapuri	500	1000



9.	MJK Hospital, Be- tiah	150	500
	Total		7000 LPM

The Court has noticed that despite repeated indications given by this Bench the State Government of Bihar has not developed so far any software or other easily accessible information system disclosing all relevant materials useful for persons requiring COVID testing/ treatment/availability of beds (facility wise)/ vaccination etc. or and other related useful information. Further, there is no grievance redressal mechanism in place, in this connection.

We direct the Principal Secretary, Health Department, Government of Bihar to ensure that by Monday (26.04.2021) an effective grievance redressal mechanism in relation to COVID testing/ treatment/ availability of beds (facility wise)/ vaccination is put in place in a manner which is convenient and easily accessible to all.

It appears that some of the private hospitals are refusing admission of COVID patients on the ground of non-availability of oxygen. Refusal of admission of COVID patients by any hospital because of absence of oxygen is a serious matter and is likely to be fatal. This matter needs to be seriously addressed. **For the present, we observe that if any Dedicated COVID**



Hospital (private) has a grievance that it is not getting supply of oxygen because of reasons attributable to the State administration, as per its requirement, such hospital shall be at liberty to inform, through the registered/official email ID of the hospital, the learned Registrar General of this Court on his email ID i.e "*rgphccovidcomplain@gmail.com*", which has been exclusively created for this purpose alone. The said email ID is directed to be duly notified by the State of Bihar in the print media and on the portal of the Health Department, Government of Bihar by 26.04.2021.

In peculiar facts and circumstances of the situation prevailing in the State of Bihar, which we have taken note of in this order and previous orders, we deem it fit and proper, in public interest, to direct the Director-in-Chief, Health Services, Government of India to send to Bihar a technical team headed by an officer not below the rank of Deputy Director General of the directorate by Tuesday (27.04.2021) to assess the deficiencies, if any, in the healthcare facilities in the State of Bihar in fighting with COVID-19 challenges, suggest corrective measures if needed and submit a report to this Court.

List this case on 27.04.2021, to be taken up at 2.30 p.m.



Let a copy of this order be communicated by email to
Mr. Ranjit Kumar, learned Senior Counsel appearing for the
State of Bihar, Mr. Lalit Kishore, learned Advocate General, Mr.
Anjani Kumar, learned Additional Advocate General No. 4 and
Dr. K. N. Singh, the Ld. Additional Solicitor General of India.

(Chakradhari Sharan Singh, J)

(Mohit Kumar Shah, J)

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