

CJ & AAJ:

20.07.2020

(through video conferencing)

W.P.No.8619/2020 c/w

W.P.Nos.8536/2020, 8622/2020

8668/2020 & 8848/2020

1. We have heard the learned counsel appearing for the parties on the basis of the earlier orders and especially, the order dated 16th July 2020. We have perused the written submissions filed by the State Government.

2. We had made it very clear at the time of earlier hearings that this Court, by exercising its powers under Article 226 of the Constitution of India, will not interfere with the day-to-day functioning of the various authorities regarding management of COVID-19 patients. However, we are considering the issues arising in the context of the right of the citizens under Article 21 and Article 14 of the Constitution of India. The right to health is also an integral part of the fundamental rights conferred by Article 21.

3. After having perused the written submissions filed by the State Government from time to time, we find that there is a broad scheme which is evolved by the State Government and Bruhat

Bengaluru Mahanagara Palike (for short 'BBMP') in relation to the management of cases in the City of Bengaluru. The written submissions dated 14th July 2020 indicate that the maximum time for release of COVID-19 test results laid down in the circular dated 2nd May 2020 is different for different categories. In case of Category-A, it is mentioned in paragraph 4 of the written submissions dated 14th July 2020 that the time is 12 hours, in case of Category-B, it is 24 hours and in case of Category-C, it is 24 to 48 hours. The material on record shows that this time limit is not adhered to in several cases. For example, at the time of one of the earlier hearings, we had noted that the results of the samples tested of the judicial officers were not provided for a long period over one week though some of them were in the category of primary contacts. It cannot be disputed that the delay in getting the test results has direct connection with the spread of COVID-19. Perusal of the circular dated 4th July 2020 (Annexure-R12 to the written submissions dated 9th July 2020) lays down that COVID-19 serious suspect cases where swab is given but results are awaited or SARI cases should be shifted to the appropriate

medical facility and it shall be ensured that they are admitted and treated properly.

4. We may refer to Category-B which is of ILI patients in the containment zones or in other areas. The outer time limit for releasing the test reports is 24 hours. Thus, Category-B is of persons having symptoms of COVID-19. Due to the fact that the test results take 24 hours, he will continue at his place of residence and may become a source of spreading COVID-19. The learned Additional Advocate General stated that in such cases, the person can be put in home isolation. However, no machinery is created either by the State Government or BBMP to ensure that the persons who are having the symptoms who subject themselves to the swab tests are instructed to undergo home quarantine. The circular dated 4th July 2020 talks about only the serious COVID suspect cases being hospitalized. The State Government will have to address the said issue.

5. The State Government has come out with a procedure which is followed when a person is tested positive. It is provided in the circular dated 4th July 2020 that BBMP team calls the person who is tested positive to ascertain the correct

address and location. Thereafter, a vehicle is sent to the residence of the patient with paramedics to ascertain the medical condition and to shift the patient to necessary treatment facility (either COVID Care Centre (for short 'CCC') or hospital) or recommend home quarantine/home isolation.

6. As far as the home isolation is concerned, it is covered by the circular dated 4th July 2020 (Annexure-A to the written submissions dated 9th July 2020). It indicates that every place of residence is not suitable for home quarantine or home isolation as several requirements are prescribed in the said circular. For example, it is stated that the home should have pulse oximeter, digital thermometer, personal protective equipment (for short 'PPE'). There is another condition of making available a separate well ventilated room with a separate toilet for a person in isolation. Therefore, in very few cases, ideal isolation facility will be available at the residence of a person who is tested positive. If a person having symptoms of COVID-19 falling in Category-B after submitting a sample continues to stay at his home which has no suitable isolation facility, he may become a source of spreading the infection of corona virus. This grey area has to be immediately addressed

by the State Government and BBMP to ensure that a person who goes to a testing centre and falls in Category-B is immediately advised home quarantine in terms of the circular dated 4th July 2020 and if his home does not qualify for home quarantine or home isolation, he is shifted to a CCC. The minimum which is required is that such a person is put to notice that he must undergo home isolation till the report is received.

7. Considering the large number of positive cases which are reported in the city, it will be appropriate if the State Government takes appropriate steps to curtail the time limit mentioned in the circular dated 2nd July 2020 for getting the test results of COVID-19. At this stage, our attention is invited to the circular dated 13th July 2020 which records that the persons who have provided the swab sample for testing may be infectious and hence, as a matter of abundant caution, all persons shall be advised strict isolation or quarantine at home till the lab results are communicated. Therefore, there is an inconsistency between the circulars dated 13th July 2020 and 4th July 2020. Moreover, nothing is placed on record to show that the fever clinics or labs have been instructed to inform the persons giving swab test and especially, those who fall in

Category-B to undergo home isolation / quarantine till the receipt of the results.

8. The learned Additional Advocate General states that as large number of samples have been collected in the City, it will be impossible to ascertain for any of the authorities whether there is a proper home isolation / quarantine facility at the home of such a person. We are aware that the State and the BBMP machineries are dealing with large number of cases, but surely, there has to be some mechanism available at least for random checkup to find out whether such persons have really gone in home isolation. The reason being the test results are taking a long time. Therefore, it will be appropriate if the State Government issues directions to all the testing centres to keep the persons with symptoms coming for swab tests informed about their obligation to go in home quarantine or home isolation till negative report is received. The State Government will also specify whether any instructions have been given to the fever clinics or labs to ensure that serious COVID-19 suspect cases should be reported so that the persons can be hospitalized. Ideally, the State should take all possible steps to reduce the time required for testing of the cases which are

falling in Categories-A, B and C. This will resolve many issues.

9. Now, coming to the written submissions filed on 20th July 2020, the State Government has relied upon the order dated 19th July 2020 passed under Clause (f) of Section 24 of the Disaster Management Act, 2005 (for short the 'said Act of 2005'). We have perused the said order. The said order does not deal with the issue of denial of admission to COVID-19 patients on the beds which are not reserved for the State or BBMP. The State Government shall consider whether such a direction can be issued to the private hospitals in relation to the beds which are not reserved and which are available to COVID-19 patients subject to payment of charges. The State Government shall consider whether a direction can be issued under the said Act of 2005 to the private hospitals not to deny admission to any COVID-19 patient, if beds are available and if he is willing to pay the charges. In our view, it is also necessary to ensure that a direction under Clause (f) of Section 24 of the said Act of 2005 is issued stating that the private hospitals shall not insist on production of positive report of the laboratory and they will be under an obligation to admit the

patients even on the basis of SMS received by the patient recording positive result or on the basis of *Arogya Setu* app recording the positive status of COVID-19.

10. Clause (5) of the said order dated 19th July 2020 records that there is a circular issued on 18th July 2020 advising the hospitals to admit moderately and severely ill patients and encourage asymptomatic and mildly symptomatic patients to get admitted in CCCs.

11. As observed on the earlier date, there is a time gap between a person getting the intimation of being tested positive and the visit of paramedics or a team of BBMP to his residence. This time gap is very crucial and in case of some patients, the delay can result in the spread of COVID-19. This will be also in case of an asymptomatic patient who may not be in home quarantine after he submits his swab sample for COVID-19 testing. The State Government and BBMP shall ensure that the time lag between the receipt of the test reports and the visit of BBMP team is curtailed to the minimum.

12. After a person receives a report or SMS that he has been tested positive, considering the state of mind of such a

patient, he needs to be informed immediately what action he is supposed to take. He must be informed that in case he is asymptomatic and he does not have proper facility of home isolation, he can go to a private or public CCC. In case his condition requires admission to the hospital, he has the freedom of approaching private hospitals, the list of which is available on the portal of BBMP. He should be also informed that in any event, the team of BBMP will visit his residence to sort out the issue. The State Government will have to consider whether a direction can be issued to the laboratories to ensure that along the positive report, such information is furnished to the patient.

13. The State Government has not reported compliance with the directions contained in paragraph 8 of the order dated 16th July 2020 by constituting a team as per the directions of the Apex Court. The State Government must do it immediately. The object of issuing the said direction by the Apex Court seems to be that if such a team is constituted, it will be able to maintain quality control in the hospitals and CCCs.

14. About the condition of CCCs, the learned counsel appearing for the Karnataka State Legal Services Authority (for short 'KSLSA') has submitted a statement/report which records that out of 70 quarantine centres in Bengaluru Urban district, only 8 are active. The report records certain deficiencies in some of the quarantine centres / CCCs across the State. The learned counsel appearing for the KSLSA states that what is mentioned on pages 10 and 11 of the said report needs immediate attention of the State Government. We direct the State Government to look into the report and take the remedial measures wherever it is necessary.

15. Another issue raised is regarding refusal of the private hospitals to treat a patient who is suffering from an ailment other than COVID-19. It is alleged that the private hospitals are refusing to give treatment to the patients unless they bring the test report of COVID-19 indicating that the patient is tested negative. This will amount to denial of right to health. The State Government shall consider of issuing appropriate direction in this behalf to all the private hospitals.

16. An issue raised by one of the learned Senior Counsel is that after a person is tested positive for COVID-19, a red poster is affixed on the outer door of his house. According to the learned Senior Counsel, it not only infringes the right of privacy of the person under Article 21 of the Constitution of India but the residents of the house are looked upon with suspicion by the persons staying in the locality.

17. *Prima facie*, it appears to us that there has to be some method of identifying the houses where the persons infected with COVID-19 are in home isolation. The State Government can devise a best possible procedure for identification of houses which should not unreasonably affect the right of privacy. The State Government can take a call on this.

18. Another issue which is noted in the earlier order is the issue of *poura karmikas*. Notwithstanding the directions issued way back on 30th March 2020 and 28th April 2020, appropriate equipment is not being provided to the *poura karmikas*. It is pointed out across the Bar that there are about 17,000 *poura karmikas* working within the limits of BBMP out of which, 14,000 are in the regular employment of BBMP. It is stated

that random checking of only 94 *poura karmikas* was done, out of which, 23 were tested positive for COVID-19 as noted in the earlier order.

19. Nothing is placed on record to show that 23 *poura karmikas* who were tested positive have been hospitalized. It is pointed out across the Bar that the erstwhile Municipal Commissioner of BBMP while demitting the office, pointed out that 5 *poura karmikas* have so far died due to COVID-19. It is also pointed out across the Bar that proper equipment is not provided to the *poura karmikas*. There is no provision for disinfecting the equipments and most importantly, at the mustering centres whether *poura karmikas* report, there are no thermal scanners for checking the temperature of the *poura karmikas*. As observed in the earlier order, the *poura karmikas* are on the forefront in the battle against COVID-19.

20. The learned counsel appearing for BBMP urged that as far as *poura karmikas* are concerned, a meeting will be immediately convened by the Joint Commissioner of Solid Waste Management and appropriate decisions will be immediately taken for protecting the interests of *poura*

karmikas. It is necessary for BBMP to ensure that proper random testing of *poura karmikas* is done, they are provided with appropriate PPE kits, appropriate facilities are provided for thermal scanning of *poura karmikas* before they report to duty and arrangements are made for sanitizing the equipments used by them.

21. As noted in the earlier orders, the *poura karmikas* are also handling bio-medical waste as solid waste generated in the containment zones and the houses where home isolation is advised is required to be treated as bio-medical waste. BBMP must respond on the issue of *poura karmikas* as well as the issue of house keeping workers and allied staff working in COVID-19 hospitals in the City. We grant time to BBMP to respond till 23rd July 2020, when these petitions will listed at 2.30 p.m.

22. Another issue which was brought to the notice of the Court is that there are a large number of camps set up by Bengaluru Metropolitan Railway Corporation Limited (for short 'BMRCL') and in one of the camps at Kannur, there are 211 workers out of which, at least 79 were tested positive. It is

pointed out across the Bar that in fact, 140 workers were tested out of which, 87 were tested positive. We are informed across the Bar that there are 59 such camps of workers of BMRCL. Only in one camp, out of 211 workers, even going by what is pleaded by the learned counsel for BMRCL, as many as 79 were tested positive within a short span of time. This is a very alarming situation and therefore, BMRCL must place on record the steps taken by it to protect the remaining workers in the same camp and the workers residing at various other camps. It is the responsibility of BMRCL to ensure that the large number of camps which they have set up for workers do not become instruments of the spread of COVID-19 in the City. BMRCL will also clarify whether those workers who are affected by COVID-19 and those workers who are put in quarantine are being regularly paid wages. BMRCL must come with proper written submissions on these aspects before 23rd July 2020.

23. In the last order, we had invited the attention of the learned Additional Advocate General to the grievance that the test reports of positive cases are not being furnished. Today, a grievance is made that when a person who gives swab is tested negative, he is not furnished a copy of the test report.

The State Government will have to look into this aspect and issue appropriate directions. An allegation is made that even SMS informing the person that he is tested negative is not sent. Even this aspect needs urgent consideration by the State Government.

24. The State Government has not responded to the directions contained in the last order about taking care of those who are on the forefront in the war against COVID-19. The State Government must respond by 23rd July 2020 in that behalf.

25. The orders of this Court including the present order deal with the issues arising in the city of Bengaluru. The State Government must respond by placing on record the facilities available in the five districts of the State apart from Bengaluru Urban District where currently there are maximum number of positive cases of COVID-19. The State Government while responding will have to keep in mind the report submitted by KSLSA, a gist of which has been filed by KSLSA on 17th July 2020. The State Government and BBMP must report

compliance with the other directions issued earlier and in particular, in the order dated 16th July 2020 by the next date.

26. On the next date, along with the above group of petitions, we will also consider W.P.No.8848/2020 in the context of the procedure which is followed in handing over the dead bodies of the victims of COVID-19 to the close relatives.

27. The State must clarify the procedure for identification of the dead bodies and whether the close relatives of the deceased have the freedom to perform last rites in burial ground or crematorium of their choice.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

AHB/RV/bkv