

[1]

**THE HIGH COURT OF MADHYA PRADESH**

**W.P. No.8914/2020**

(IN REFERENCE (SUO MOTU) Vs UNION OF INDIA AND OTHERS)

*WITH*

**W.P. No.20889/2020**

(Sushil Kumar Patel vs. Union of India and others)

**W.P. No.8991/2021**

(Ashok Dagliya vs. State of M.P. and others)

**W.P. No. 8481/2021**

(Prasant Gwaliory (Jain) vs. State of M.P. and others)

**W.P. No. 8663/2021**

(Ram Bahadur Verma vs. State of M.P. and others)

**W.P. No. 9069/2021**

(Yash Sharma vs. State of M.P. and others)

**W.P. No. 9141/2021**

(Subhas Chandra vs. Union of India and others)

**W.P. No. 14831/2020**

(Prakas Jain vs. State of M.P. and others)

**W.P. No. 9165/2021**

(Vinod Dwivedi vs. State of M.P. and others)

**W.P. No. 13921/2020**

(Arjun Asoliya vs. State of M.P. and others)

**W.P. No. 8655/2021**

(Shekhar Choudhary vs. State of M.P. and others)

**W.P. No. 9167/2021**

(Daljeet Singh vs. State of M.P. and others)

**W.P. No. 11032/2020**

(Mahesh Garg vs. State of M.P. and others)

25

Jabalpur, Dated: **06.05.2021**

**Per: Mohammad Rafiq, Chief Justice**

**Heard through Video Conferencing.**

Mr. Naman Nagrath, Senior Advocate with Mr. Jubin Prasad, Advocate  
appeared as *Amicus Curiae* in W.P.No.8914/2020.

[2]

Mr. Sanjay Verma, Advocate for petitioner in W.P. No.20889/2020.

Mr. Rohit Jain, Advocate for the petitioner in W.P. No.8991/2021.

Petitioner - Mr. Prasant Gwaliory (Jain) in person in W.P. No.8481/2021.

Petitioner - Mr. Yash Sharma, in person in W.P. No.9069/2021.

Mr. Lucky Jain, Advocate for the petitioner in W.P. No.14831/2020.

Mr. Hitesh Sharma, Advocate for petitioner in W.P. No.9165/2021.

Mr. Nilesh Manore, Advocate for petitioner in W.P. No.13921/2020.

Mr. Anil Ojha, Advocate for petitioner in W.P. No.8655/2021.

Mr. Avinash Khare, Advocate for petitioner in W.P. No.9167/2021.

Mr. Manish Yadav, Advocate for petitioner in W.P. No.11032/2020.

Mr. Purushaindra Kaurav, Advocate General, Mr. Swapnil Ganguly, Deputy Advocate General for the respondents/State along with Mr. Akash Tripathi, Health Commissioner, Directorate of Health Services, Govt. of M.P. and Ms. Chhavi Bhardwaj, Managing Director, National Health Mission, M.P.

Mr. Jitendra Kumar Jain, Assistant Solicitor General and Mr. Vikram Singh, Advocate for the Union of India.

Mr. Shivendra Pandey, Advocate for the Respondent No.5 - Indian Medical Association in WP No.8914/2020 and applicant in I.A. No.4500/2021 filed therein.

[3]

Mr. Shreyas Pandit, Advocate for the Respondent No.8 - Madhya Pradesh Nursing Home Association in WP No.8914/2020 and applicant in I.A. No.4500/2021 filed therein.

Mr. Purushaindra Kaurav, Senior Advocate with Mr. Aditya Khandekar, Advocate for the respondent - M.P. State Pollution Control Board.

Mr. A.M. Mathur, Senior Advocate along with Mr. Abhinav P. Dhanodkar, Advocates for the intervenor/ Shanti Manch Samiti (IA Nos.4353/2021, 4499/2021, 4501/2021 in WP No.8914/2020).

Mr. Manoj Sharma, Advocate – President, High Court Advocates' Bar Association, Jabalpur (IA No.4495/2021 in WP No.8914/2020).

Mr. Shashank Shekhar, Advocate for the intervenor in W.P.No.8914/2020.

Mr. Subhash Upadhyay, Advocate for the intervenor in W.P. No.8914/2020.

Mr. Ajay Raizada, Advocate for the intervenor (IA No.4349/2021 in WP No.8914/2020).

Mr. Girish Patwardhan, Advocate for the intervenor (IA No.4389/2021 in WP No.8914/2020).

Mr. Rajesh Chand, Advocate for the intervenor in W.P.No.8914/2020.

Mr. Nikhil Tiwari, Advocate for the intervenor in W.P.No.8914/2020.

Mr. Zaki Ahmad, Advocate for the intervenor in W.P.No.8914/2020.

Mr. Parvez Ahmad Qazi, Advocate for the intervenor in W.P.No.8914/2020.

[4]

Mr. Prashant Singh, Senior Advocate with Mr. Nikhil Tiwari and Mr. Anvesh Shrivastava, Advocate (I.A. Nos.4504/2021 and 4509/2021 in WP-8914-2020) for intervenor– Galaxy Super Speciality Hospital, Jabalpur.

Mr. Manu Maheshwari, Advocate for the respondent No.5 in W.P. No.14831/2020.

**W.P. No.8914/2020:**

Mr. Naman Nagrath, learned Amicus Curiae submitted that the private hospitals are having a grievance with regard to allocation of Remdesivir. While some such hospitals are being allocated fixed number of vials of Remdesivir by the Government, whereas some others have been allowed to procure the same directly from the manufacturer/stockist. Moreover, some private hospitals are being allotted a huge quantity of Remdesivir, whereas some are getting insignificant number of vials.

Learned Advocate General prays for time to apprise this Court about the stand of the Government on this aspect and if necessary, get clarificatory order issued in this regard for ensuring uniformity.

Learned Amicus Curiae has, in respect of supply of oxygen, submitted that the availability of oxygen may not be an issue now but distribution and transportation of oxygen is certainly a problematic aspect. The Government in making supply of oxygen is giving priority to government hospitals whereas the private hospitals are not timely provided with the oxygen with the result that sometimes the patients face acute difficulty leading to unfortunate deaths.

Learned Advocate General may clarify this position by demonstrating how equitable is distribution of oxygen on the next date of hearing. The State

[5]

Government may in this respect take immediate remedial measures to ensure that no private hospital is deprived of oxygen.

**I.A. No.4499/2021** – Application for providing proper food and proper transportation facility to Covid-19 patients in hospitals at Indore and **I.A. No.4501/2021** for direction to convert Ayurveda, Homeopathic, Unani, Naturopathy and Nursing Schools, Colleges and Hospitals to Covid Care Centers filed on behalf of intervenor-Shanti Manch Samiti.

Learned Advocate General submits that food is being provided to all the corona patients in Government hospitals at Indore. The Government shall again look into this aspect. As regards the facility of Covid Care Centers, learned Advocate General submits that already sufficient Covid Care Centers are available in the State as has been explained in the Action Taken Report filed today, which is, even otherwise, covered by the directions contained in the order of this Court dated 19.04.2021

In view of above statement made by learned Advocate General, both the I.As. No.4499/2021 and 4501/2021 are disposed of .

**I.A. No.4504/2021:**

This application has been filed by Galaxy Super Speciality Hospital, Jabalpur contending that their Hospital has been debarred from admitting Corona patients by order dated 23.04.2021 passed by Chief Medical and Health Officer, Jabalpur on the allegation that five persons died during treatment in the midnight intervening 22<sup>nd</sup> and 23<sup>rd</sup> April, 2021.

Since a period of two weeks has elapsed after the said order was passed by the Chief Medical and Health Officer, Jabalpur requiring the Galaxy Super Speciality Hospital not to admit any Covid patients pending inquiry into the

[6]

above allegations and the inquiry is yet not complete, we hereby direct that the aforesaid restriction henceforth shall not be given effect to. It would however be open for the competent authority of the Government to continue with the enquiry and take appropriate action depending upon the outcome thereof, after providing opportunity of hearing to the applicant-hospital, in accordance with law.

I.A. 4504/2021 stands accordingly **disposed of**.

A joint application bearing **I.A. No.4500/2021** has been filed on behalf of Indian Medical Association and Madhya Pradesh Nursing Home Association and similar application **I.A. No.4495/2021** for the same purpose has been filed by Mr. Manoj Kumar Sharma, President, High Court Advocates' Bar Association, Jabalpur.

In **I.A. No.4500/2021**, various prayers have been made by the applicants but the applicants are mainly aggrieved by the revised policy of vaccination. Mr. Shivendra Pandey and Mr. Shreyas Pandit, learned counsel for the applicants submit that the Private Hospitals and Nursing Homes in the State were provided certain number of vaccination doses against the payment as per the then prevalent policy and accordingly they procured the same for the purpose of vaccination and have undertaken the exercise of giving first dose of vaccine to large number of people. Now suddenly an order has been issued by the Chief Medical and Health Officers on 03.05.2021 requiring them to return the balance doses of vaccine on the ground that the since Private Hospitals and Nursing Homes are not uploading the data on the Portal whereas the reason why they could not upload the information is that the Government itself has closed the Portal. In any case, any change of policy can only be applied prospectively.

[7]

Mr. Purushaindra Kaurav, learned Advocate General and Mr. Vikram Singh, learned counsel appearing for the Central Government, both pray for time to file response to the aforesaid applications.

Till next date of hearing, no coercive action shall be taken against the Private Hospitals and Nursing Homes on the basis of aforesaid order dated 03.05.2021.

Mr. Shivendra Pandey, learned counsel for the Indian Medical Association has invited attention of this Court towards an order dated 2.5.2021 issued by the Controlling & Licensing Authority, Drugs Control Department, Government of NCT of Delhi saying that Delhi Government has developed a portal for proper distribution and supply of Remdesivir injection across all CFAs/stockists/distributors/ hospitals for their needy patients who have been mandated to update their data on the said portal on daily basis with immediate effect. Moreover, learned counsel for the Indian Medical Association submitted that the plasma plays very vital role in recovery of severe Covid-19 patients and the State Government should, in this behalf, take an initiative to create Plasma Banks by issuing an appeal to all those persons who have recovered from Covid-19.

Learned Advocate General shall, on the next date of hearing, inform the Court as to why mechanism similar to the one in Delhi in regard to distribution and supply of Remdesivir to the hospitals may not be adopted in the State of Madhya Pradesh. As regards creation of Plasma Banks, learned Advocate General submitted that the State Government shall take up this issue at the higher level to do the needful, as per the decision taken and apprise this Court.

Learned Advocate General, while inviting attention of this Court towards Para 9-H & I of the action taken report filed today, submitted that the State Government has issued a public advertisement in the prominent newspapers on 1<sup>st</sup> May, 2021, whereby, parties interested in the import and sale of Remdesivir injections have been duly informed that the State Government will proactively facilitate expeditious processing of applications to CDSCO once a specific request is received and will also facilitate the import. It is submitted that two manufacturers of Remdesivir have approached the State Government to recommend their case to Drug Controller General of India so as to allow them to locally sell Remdesivir. These firms are currently unable to sell locally due to DGFT notification No.1/2015-2020, New Delhi dated, 11<sup>th</sup> April, 2020 which allows them authorization to manufacture Remdesivir injection 100mg/vial for export purpose only. The name of these two firms are M/s Nixi Laboratory Pvt. Ltd. and M/s Protech Telelinks who have approached the MPPHSCL and the Managing Director, MPPHSCL has written to DCGI, FDA to allow these firms to locally sell Remdesivir.

The Central Government may consider the request and give response as to why these two manufacturers or any other manufacturers having permission to export, since the export has been banned, may not be permitted to directly supply Remdesivir injection of 100 MG vial for domestic use to the State of Madhya Pradesh and/or any other State for local use.

Mr. Vikram Singh, learned counsel for the Union of India, on the next date of hearing, shall also inform the Court as to why the quota of Remdesivir, which was earlier 95,000 vials for a block of 10 days from 21<sup>st</sup> to 30<sup>th</sup> April, 2021, may not be increased by 20%, as already directed earlier,

[9]

because according to him, the total quota is now 1,89,700 vials for the period of 19 days from 21<sup>st</sup> April 2021 to 9<sup>th</sup> May, 2021, which does not make the required increase of 20%, as per the order of this Court passed on 30.04.2021.

On the next date of hearing, learned Advocate General shall file response to the application and also inform as to what is the total availability of vaccines and within what period the residents in the State of Madhya Pradesh, in two age groups, first of 18 to 45 years and second of those above 45 years, may be administered both the doses of vaccines. The State Government shall, if it has already not done, apprise the Central Government of the number of doses needed for both the age groups in the State. The Central Government should ensure supply of required number of vaccination doses to the State of M.P. at the earliest in view of apprehended third wave of Covid so that timely vaccination of people falling in both age groups can be ensured. The State Government on or before the next date of hearing file a complete Action Plan for vaccination of both the above groups.

As regards treatment of the families covered by Ayushman Bharat Niramayam Scheme, learned Advocate General submitted that the State Government has now rationalized the payment method for reimbursement of the bills to the Private Hospitals in the State. Families covered by Ayushman Bharat Niramayam Scheme shall not now face any difficulty in treatment.

As regards disposal of bio-medical waste, learned Advocate General submitted that in terms of order passed by this Court on 30.04.2021, the M.P. State Pollution Control Board has carried out inspection of at least 83 places in the State and has found the breach of the Bio-Medical Waste (Management & Handling) Rules, 1998 and has issued notices to the concerned

Hospitals/Nursing Homes and shall in future also carry out such inspections in faithful compliance of the order passed by this Court. The M.P. State Pollution Control Board will take appropriate penal action against hospitals repeatedly indulging such practice.

**I.A. No.4464/2021** has been filed on behalf of Mr. Aarif Masood and **I.A. No.4469/2021** has been filed by Mr. Zaki Ahmad for intervention in the matter. Since already suo motu PIL is being heard by this Court with sufficient number of Interveners, in which all the important issues raised in these applications are being dealt with, no fresh intervention is required. Accordingly, **I.A. No.4464/2021 and I.A. No.4469/2021 are disposed of.**

**I.A. No.4515/2021:**

This application has been filed by intervenor – SRIJAN ‘EK ASHA’ *inter alia* with the prayer that the respondent No.2 be directed to disclose the true facts and figures on day-to-day basis on affidavit in respect of people who have lost their life due to Covid-19 from the month of March, 2019 till now.

Learned Advocate General prays for time to file reply to the said application on or before the next date of hearing.

**I.A. No.4514/2021:**

This application has been filed by the intervenor for quashing the order dated 03.05.2021.

Since the Indian Medical Association and M.P. Nursing Home Association have already separately filed an I.A. on this issue and appropriate orders have been passed, therefore, I.A. No.4514/2021 should be treated as **disposed of.**

[11]

All the learned counsel appearing for the intervenors have submitted that there is rampant black-marketing of the Remdesivir and other life saving drugs is prevalent in the major cities of the State like Bhopal, Indore, Gwalior and even in Jabalpur. In this regard, we direct the Director General of Police to constitute special teams in these cities and other major places to trace out all such black marketeers and take stern action so as to book, not only them but also those persons from whom they acquire the same, under the appropriate provisions of the law.

As regards the complaint in respect to overcharging and exploitation, learned Advocate General submitted that if any citizen has any complaint with regard to working of any hospital or exploitation or overcharging by any private hospital/diagnostic centres, he/she can make a complaint to the District Collector concerned, who shall have the same examined in the District Level Committee constituted vide order of the Government dated 04.05.2021 for appropriate action.

**List on 17.05.2021** to see the further progress.

In the meanwhile, the respondents shall continue to implement and act upon the directions earlier issued by this Court vide order dated 19/04/2021 and 30/04/2021.

**(Mohammad Rafiq)**  
**Chief Justice**

**(Atul Sreedharan)**  
**Judge**

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