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- * IN THE HIGH COURT OF DELHI AT NEW DELHI
- + W.P.(C) 3031/2020 & C.M. No. 15227/2021, C.M. No. 15228/2021
C.M. No. 15229/2021, C.M. No. 15358/2021, C.M. No. 15359/2021
C.M. No. 15360/2021, C.M. No. 15361/2021, C.M. No. 15362/2021
C.M. No. 15363/2021, C.M. NO. 15481/2021, C.M. 15482/2021,
C.M NO. 15652/2021, CM NO. 15653/2021, C.M. NO. 15845, CM.
NO. 15869/2021
RAKESH MALHOTRA Petitioner
versus
GOVERNMENT OF NATIONAL CAPITAL
- + TERRITORY OF INDIA AND ORS Respondents
- + W.P.(C) 5126/2021
DELHI MEDICAL ASSOCIATION Petitioner
versus
UNION OF INDIA THROUGH SECRETARY & ANR.
- + W.P.(C) 5142/2021 & CM APPL. 15757/2021
MANISHA GUPTA Petitioner
versus
GOVT, OF N.C.T OF DELHI & ANR. Respondent
- + W.P.(C) 4970/2021 & CM APPL 15223/ 2021, CM APPL
15224/2021, CM APPL 15225/2021, CM APPL 15226/2021, CM
APPL. 15249/2021, CM APPL. 15250/2021/2021, CM APPL.
15251/2021, CM APPL15252/ 2021, CM APPL 15603/2021
BALAJI MEDICAL AND RESEARCH CENTER..... Petitioner
versus
UNION OF INDIA AND ORS Respondents
- + W.P.(C) 4971/2021 & CM APPL. 15236/2021
GANESH DAS CHAWLA CHARITABLE
TRUST (REGD) Petitioner
versus
UNION OF INDIA Respondent
- + W.P.(C) 4984/2021 & CM APPL. 15279/2021, C.M. NO.
15777/2021, CM NO. 15778/2021, CM NO. 15779/2021

M/S. BRAM HEALTH CARE PRIVATE LIMITED..... Petitioner
 versus
 UNION OF INDIA & ANR. Respondent

+ **W.P.(C) 4985/2021 & C.M. No. 15922/2021**
 BATRA HOSPITAL AND MEDICAL
 RESEARCH CENTRE Petitioner
 versus
 UNION OF INDIA & ORS. Respondents

+ **W.P.(C) 5001/2021**
 MAHARAJA AGRASEEN HOSPITAL
 CHARITABLE TRUST Petitioner
 versus
 UNION OF INDIA AND ORS Respondents

+ **W.P.(C) 5002/2021**
 M/S BHAGAT CHANDRA HOSPITAL Petitioner
 versus
 UNION OF INDIA
 THROUGH SECRETARY & ANR. Respondents

+ **W.P.(C) 5003/2021**
 M/S JAIPUR GOLDEN HOSPITAL Petitioner
 versus
 UNION OF INDIA
 THROUGH SECRETARY & ORS. Respondents

+ **W.P.(C) 5024/2021 & CM APPL. 15397/2021**
 SHANTI MUKAND HOSPITAL Petitioner
 versus
 UNION OF INDIA AND ORS. Respondents

+ **W.P.(C) 5026/2021 & CM APPL. 15401/2021**
 VINAY JAIDKA Petitioner
 versus
 CHIEF SECRETARY Respondent

- + **W.P.(C) 5050/2021 & CM APPL. 15464/2021, CM APPL. 15465/2021, CM APPL. 15466/2021, CM APPL 15694/2021**
 BHAVREEN KANDHARI Petitioner
 versus
 GOVT OF NCT OF DELHI & ORS. Respondents
- + **W.P.(C) 5066/2021 & CM APPL. 15511/2021**
 RAMESH KHOSLA Petitioner
 versus
 GOVT. OF N.C.T OF DELHI & ANR. Respondents
- + **W.P.(C) 5073/2021 & CM APPL. 15529/2021**
 VENKATESHWAR HOSPITAL Petitioner
 versus
 GOVERNMENT OF NCT OF DELHI & ORS. Respondents
- + **W.P.(C) 5085/2021 & CM APPL. 15581/2021, CM APPL. 15582/2021**
 EHILARASAN ALIAS SHANKAR Petitioner
 versus
 UNION OF INDIA & ORS. Respondents
- + **W.P.(C) 5100/2021 & CM APPL. 15623/2021**
 MANISHA GUPTA Petitioner
 versus
 GOVT, OF N.C.T OF DELHI & ANR. Respondents
- + **W.P.(C) 5102/2021 and CM Nos. 15635/2021 & 15636/2021**
 ASEEMIT SOCIAL PROJECTS FOUNDATION Petitioner
 versus
 UNION OF INDIA & ANR. Respondents

MEMO OF APPEARANCE

For the petitioners

Mr.Sacchin Puri, Senior Advocate with Mr.Praveen K. Sharma and Mr.Dhananjay Grover, Advocates for the petitioner in W.P.(C) Nos.

5100/2021 & 5066/2021.

Petitioner in person in W.P.(C) No.3031/2020.

Mr.Mahesh Agarwal, Mr.Rishi Agrawala, Mr.Karan Luthra, Mr.Ankit Banati, Advocates in WP(C) No. 4970/2021.

Mr. Himanshu Dagar, Advocate for applicant in C.M. No. 15648/2021 in W.P.(C.) No. 4970/2021.

Mr. Ajay Kohli, Ms. Priyanka Ghorawat, Mr. Raghav Marwaha, Advocates for Delhi Heart and Lung Institute.

Ms. Prabhsahay Kaur, Advocate for in W.P.(C) No. 4971/2021.

Mr. Priyadarshi Manish and Mrs. Anjali J. Manish, Advocates in W.P.(C) No.4984/2021.

Mr. Sidharth Dave, Senior Advocate with Ms. Varuna Bhandari, Ms. Bhakti Vardhan, Mr. Tushar Thareja, Advocates in W.P.(C) No. 4985/2021.

Mr. Alok Kr. Aggarwal, Ms.Anushruti, Ms. Supreet Bimbra and Ms. Simran Arora, Advocates in WP (C) No. 5001/2021.

Mr, Sachin Datta & Mr. G. Tushar Rao, Senior Advocates with Mr. Dinesh Sharma, Ms. Ritika Jhurani, Ms. Jipsa Rawat, Advocates along with Mr.D.K. Baluja, Medical Director, Jaipur Golden Hospital in W.P. C Nos. 5002-5003/2021& 5126/2021.

Mr. Maninder Singh, Senior Advocate with Mr. Aarush Bhatia, Advocate in W.P.(C) No. 5024/2021.

Mr. Satish Aggarwala & Mr. Gagan Vaswani, Advocates in W.P.C No. 5026/2021.

Mr. Krishnan Venugopal, Senior Advocate with Mr. Manan Verma, Mr.Aditya N Prasad, Mr. Kaushik Mishra & Ms. Anmol Srivastava, Advocates in W.P.C No. 5050/2021.

Mr. M.K. Gahlaut, Advocate in W.P.C No. 5081/2021.

Mr. Mohit Chaudhary & Mr. Kunal Sachdeva, Advocates in W.P.(C.) No.5085/2021

Ms. Karuna Nundy, Mr. Sarthak Maggon & Ms. Upasana, Advocates in W.P.(C.) No. 5102/2021.

Mr Sudhir Mishra, Ms.Petal Chandhok, Ms Rupali Gupta and Mr. Raghav Seth, Advocates in W.P.C No. 5073/2021.

Mr. Siddharth Chechani, Advocate in W.P.C No. 5103/2021.

Mr. Abhinav Vashisht, Sr. Adv. with Mr. Sacchin Puri, Sr. Adv., Mr. JS Bakshi, Sr. Adv. with Mr. Praveen K. Sharma, Mr. Dhanjay Grover, Mr. Kamil Khan and Ms. Akshita Sachdeva, Advs. in W.P.(C) No. 5142/ 2021.

For the respondents

Mr. Tushar Mehta, SGI, Mr. Chetan Sharma, ASG, Ms. Aishwarya Bhati, ASG along with Ms. Monika Arora, Mr. Amit Mahajan, Mr. Anil Soni & Mr. Anurag Ahluwalia, CGSCs, Mr. Syed Husain Adil Taqvi, GP, Mr. Jivesh Kr. Tiwari, Ms. Nidhi Parashar, Mr. Kanu Aggarwal, Mr. Kritagya Kumar Kait, Mr. Shriram Tiwary, Mr. Amit Gupta, Mr. Akshay Gadeock, Mr. Sahaj Garg & Mr. Vinay Yadav, Advocates for UNION OF INDIA in all the matters.

Mr. Rahul Mehra, Senior Advocate along with Mr. Satyakam, Mr. Santosh Tripathi, SC Mr. Gautam Narayan, Mr. Anuj Aggarwal & Mr. Anupam Srivastava, ASCs with Mr. Aditya P. Khanna, Ms. Dacchita Sahni, Ms. Ritika Vohra and Mr. Chaitanya Gosain, Advocates for GNCTD in all the matters.

Mr. Rajshekhar Rao, Senior Advocate (Amicus Curiae), Mr. Anandh Venkataramani, Mr. Vinayak Mehrotra, Ms. Mansi Sood, Mr. Karthik Sundar, Ms. Sonal Sarda, Mr. Areeb Y Amanullah, Advocates in all the matters.

Mr. Anil Grover, Senior Additional Advocate General for Haryana along with Ms. Bansuri Swaraj, Additional Advocate General for Haryana and Mr. Siddhesh Kotwal, Ms. Manya Hasija & Ms. Ana Upadhyay, Advocates.

Mr. Aseem Chaturvedi & Mr. Ajay Bhargav, Advocates for M/s INOX.

Mr. Divya Prakash Pande, Advocate for South Delhi Municipal Corporation.

Mr. Abhinav Tyagi, Advocate for M/s Seth Air Products.

Ms. Malvika Trivedi, Senior Advocate with Mr. Tanmay Yadav, Ms. Abhisree Saujanya, Ms. Nihaarika Jauhari, Ms. Eysha Marysha, Ms. Vidhi Jain, Advocates along with Ms. Kritika Gupta, applicant in person. Ms. Garima Prashad, Senior Advocate with Mr. Abhinav Agrawal, Advocate.

Mr. Ankur Mahindro & Ms Sanjoli Mehrotra, Advocates for intervener.

Mr. Om Prakash & Mr. Pradeep Kumar Tripathi, Advocates for the applicant in C.M. No. 15651/2021.

Mr. Rohit Priya Ranjan, Advocate for M/s Goyal Gases.

Mr. Abhishek Nanda, Advocate for IRDAI.

Mr. Anupam S Sharma, SPP-CBI with Mr. Prakash Airan, Ms. Harpreet Kalsi, Advs in W.P(Crl)953/2021.

Mr. Tushar Mehta, SG with Mr. Chetan Sharma, ASG, Mr. Satya Ranjan Swain, CGSC and Mr. Kautilya Birat, Mr. Vedansh Anand, Advocates in

W.P.(C) No. 5126/2021.

Ms. Urvi Mohan, Adv. for DBOCWW Board.

Ms. Himanshi Nailwal with Mr. Ambuj Tiwari, Mr. Ankur Garg, Mr. Akhil Mitta, Advocates in C.M. No. 15922/21 in W.P.(C) No. 4985/2021.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

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ORDER
05.05.2021

1. Mr. Rao, learned amicus has expressed some concerns with regard to the manner in which the distribution of large amounts of foreign aid, received in the form of medical equipment, is being distributed. He points out one instance of Lady Hardinge Medical College, Delhi being provided with 260 oxygen concentrator machines when it has 310 covid beds out of which 45 are ICU beds, and 265 are non-ICU oxygenated beds. He submits that so far as the ICU is concerned, the oxygen concentrators are of no avail and the other non-ICU beds – we take it, would be serviced through the infrastructure already in existence in the said hospital for providing oxygen to those beds. His fear is that such random and arbitrary distribution of the medical equipment may result in the same not being sent to the right quarters for the benefit of the patients. In our view, concern expressed by Mr. Rao merit consideration.

2. We direct the Union of India to look into the instance pointed out by Mr. Rao, and also to look at the allocations made till now to the various hospitals and other institutions. The distribution of such assets should also

be considered to be made to voluntary organizations which are rendering COVID support and treatment public services, such as, Gurudwaras and other NGOs. The equipment has been received as an aid for the people of India and, therefore, the same should be made available and installed for use by the people. It serves no purpose if it remains stocked in one institution, and is not available for use when most required.

3. At this stage, Mr. Tiwari, who appears for the Union of India states that a Standing Operating Procedure (SOP) has been evolved for the purpose of distribution of foreign aid being received from several countries. The same has been communicated to learned Amicus, who may incorporate the same in the note, and place the same before this Court tomorrow.

4. Mr. Rao has further pointed out that on the drug controller's portal which shows availability of Remdesvir, some of the requisitions as placed by the hospitals have not been actioned for non-supply of RTPCR test reports of patients. We may note that this court (DB-I) has already taken note of the fact that in several instances, the RTPCR test reports may produce false negative reports, and reliance on such a report cannot be resorted to, deny treatment to the patients who may otherwise symptomatically appear to be COVID-19 positive. Mr. Rao has suggested that the respondent should amend its requirements on the portal to allow flexibility of accepting other documents, such as positive Rapid Antigen test report, or even the Doctor's prescription issued by the hospital duly stamped, and it should be possible to upload the RTPCR test reports, if and, as and when, available. Let this aspect be considered both by the Government of NCT of Delhi (GNCTD) as well as ICMR and their response be placed before the Court on 06.05.2021.

5. Ms. Trivedi submits that the portal developed for providing transparency in the matter of provision of medication required for treatment of Covid-19 has left much to be desired. There are dark areas and the fields are not being updated and filled by various distributors/suppliers/retailers etc. and full information is not available on record in the portal. Moreover, the portal only deals with one medicine i.e. Remdesivir, whereas the order passed by this court on 27.04.2021 related to all medications used in treatment of Covid-19 patients. In this regard, she has drawn the attention of the Court to paragraph 5 of Order 2 dated 27.04.2021. The Court Master shall communicate with Mr. Sanjay Dheer, from IIT Delhi as well as Mr. Iqbal Hassan and Mr. Ravi Omar from NIC, and request them to remain present during the hearing tomorrow to address the aforesaid concern.

6. Learned amicus has next pointed out that the GNCTD should ramp up its storage capacity, to build up buffer stocks and also to streamline the process of distribution of liquid medical oxygen to the NCT of Delhi. However, it appears that the GNCTD has not taken steps in this regard till now. He submits that large storage tanks are available, which should be installed to create a depot, and small cryogenic tanks should be used to supply liquid medical oxygen to smaller hospitals and nursing homes who have the facility of storing liquid medical oxygen. Mr. Prasad has suggested that for the purpose of installing the large liquid medical oxygen static tanks, the work could be undertaken with the help of three wings of Army i.e. Army Service Corps (ASC), Corps of Electronics and Mechanical Engineers (EME) and the Corps of Engineers (COE) who have the capability to efficiently, without delay, and competently undertake the process of installation of cryogenic storage tanks. Mr. Sharma states, on instructions,

that the Armed Forces would provide the aforesaid services, if called upon to do so.

7. It has been brought to our notice that INOX is one of the manufacturers of static cryogenic tanks, and there may be others as well. It is for the GNCTD to explore these possibilities and to create storage facilities in the NCT of Delhi. This obligation has been cast jointly on the Union of India and the GNCTD even in terms of the order passed by the Supreme Court on 30.04.2021 in suo-moto proceedings.

8. The GNCTD should consider taking the help of Indian Institute of Technology, Delhi, or the Delhi Technological University (DTU) to prepare a blue print of the supply and distribution infrastructure in the NCT of Delhi for supply and distribution of liquid medical oxygen, as well as oxygen cylinders. The estimations should be prepared on the basis of the plans that are worked out by the consultants/ experts in consultation with the other wings of the GNCTD, such as DGHS and various hospitals and nursing homes. The GNCTD would need to provide the necessary land where the tanks could be installed, and also create infrastructure for the purpose of distribution of both – liquid medical oxygen, as well as oxygen cylinders within the NCT of Delhi. Let this aspect be examined and response be placed before this Court on 07.05.2021.

9. Mr. Prasad has submitted that on some research being conducted on the internet, he and his team have been able to find out several vendors of static oxygen storage tanks and PSA plants, as well as oxygen generators. He submits that the GNCTD should similarly carry out the exercise and procure the necessary equipment to raise the infrastructure for the purpose of generation, transportation and storage of oxygen in the NCT of Delhi. Let

the research conducted by Mr. Prasad be shared with Mr. Satyakam, as well as learned Amicus. The GNCTD should examine not only the quotation which may have been obtained by Mr. Prasad but also look for other vendors who meet the requirements and place the status in this regard before this Court on 07.05.2021.

10. We have been informed by Mr. Mahajan, on instructions, that four tankers of Inox which were allocated for use of supplying liquid medical oxygen to Delhi are in use in the state of Rajasthan.

11. Ms. Trehan has drawn our attention to the directions issued by us on 22.04.2021 in CM APPL. 15227/2021 dealing with the aspect of providing financial aid for medical treatment of construction workers who suffer from covid-19, and their dependants. Ms. Mohan has placed before the Court, order dated 29.04.2021 issued by the GNCTD, whereby, it has been decided to pay an amount of Rs. 5,000/- to each RTPCR positive live registered construction worker or his/her notified dependent, subject to maximum amount of Rs. 10,000/- per family. The Board has prepared a standard operating procedure (SOP) for providing financial aid, which requires the live registered construction worker and/or his/her notified dependent – who is covid-19 positive, to submit following documents, namely, his request through online e-district portal through Mobile Sahayak (1076), or through *whatsapp* on an advertised number of the District/Deputy Secretary widely publicized. The documents required to be submitted are the positive RTPCR test report, and a copy of the construction worker's identity card. He is also required to provide bank account details. She has also submitted that the list of mobile nos. on which *whatsapp* is to be sent, in terms of this order, has also been circulated and is available on the website of the Board.

12. There are a few aspects that we would like to highlight in relation to the order dated 29.04.2021. Firstly, it appears to us that to cap the amount to Rs. 10,000/- per family may not be justified since covid-19 is a highly contagious disease and invariably, whenever one of the family members is affected with it, others in the family are also affected. The treatment of each member would require provision of the prescribed course of medication. Secondly, we find that the insistence on a positive RTPCR report may also defeat the object of this scheme since, firstly, RTPCR test is something that a construction worker may not be able to afford, and may not get done for himself/herself or for his/her family members and, even if it is done, there is likelihood that the report may be false. This Court (DB-I) has already held that merely because the RTPCR test report is negative, it is no ground to deny treatment of a patient who otherwise shows signs of the disease. It is therefore suggested that a certificate from a qualified medical practitioner or Rapid Antigen Test report may also be entertained as alternate valid documents. The construction worker is also required to provide document with regard to his bank account details. We may note that that construction worker is required to provide bank account details at the time of registration/renewal. Asking for the same once again while making the application for claiming the said benefit, would lead to confusion, in case, the construction worker submits bank account details of another bank. This may also lead to false claims being made by impersonators.

13. Ms. Mohan submits that the bank account details were again called for vide order dated 29.04.2021, since there have been acquisitions and mergers of few banks, and experience shows that some of the payments towards the ex-gratia amounts earlier made failed due to non-updation of the

IFSC Code of the concerned branch of the bank. She submits that she has taken instructions, and the bank account details would be required only in the eventuality the payment under the scheme failing.

14. The order dated 29.04.2021 stipulates the period within which all such applications would be dealt with be disposed of. We are satisfied with the timeline fixed in this order. However, the same should be strictly adhered to by the Board while dealing with the applications.

15. It has been suggested that the said scheme should be duly advertised by the Board, including by sending SMS messages to the construction workers on their registered mobile nos. so that they are able to avail of the benefit under the scheme. These suggestions are accepted and should be implemented. We direct the Board to implement the same forthwith.

16. Ms. Trehan has submitted that there are several construction workers whose renewal applications are still pending. Since the scheme has been notified vide order dated 29.04.2021, it goes without saying, that all such construction workers whose registration may be renewed post 29.04.2021 would also be entitled to be covered under the scheme. The scheme itself, in our view, should be available to claim the benefit by all such construction workers who, or whose notified dependents, may have contracted the disease in the second wave i.e. from 01.04.2021 onwards.

17. Mr. Venugopal submits that with regard to compliance of various directions issued by this court, the situation on ground is unsatisfactory. He submits that though this court has issued directions, but they are not translating into action on ground. He has suggested that this court may consider appointing local Commissioners for each district who would report the aspect of the compliance to the learned Amicus. This would also lessen

the burden on the learned Amicus. Young advocates having registration at the Bar Council of Delhi for up to 10 years may volunteer to act as Local Commissioners in the eleven districts of the NCT of Delhi. Their voluntary services would be utilized preferably in relation to the District in which they reside. Such offer for volunteer services may be registered with the learned Amicus or with the Mr. Lokpal, Court Master.

18. Learned ASG has received instructions with regard to requisition of the Armed Forces, *inter alia*, under Regulation 301 of the Defence Service Regulations for the Army, and similar regulations for the Air Force and Navy. He states that in view of the services already being rendered by the Armed Forces for battling Covid-19 Pandemic – both for the Armed Forces, their relatives, and the Civilian population in several other ways, principally, it has been decided not to set up Field Hospitals and bring in the Army to aid the Civil Administration in these times.

19. Mr. Dutta has drawn our attention to the order dated 30.04.2021 issued by the GNCTD with regard to the compliance of safety norms by Hospitals and Nursing Homes. In this regard, the submission of Mr. Dutta is that amongst members of the Delhi Medical Association, there are several Doctors who are running small Nursing Homes/ Hospitals, and are treating Covid-19 patients. The effect of the order dated 30.04.2021 would be that the said Nursing Homes/ Hospitals would have to return some of the existing patients being treated by them, when there are no other avenues available for them to get treatment, as all Hospitals have exhausted their capacities. Mr. Mehra states that the respondents would consider the situation and will come up with reasonable solution when this aspect is considered.

20. It is submitted by the learned Amicus that the State needs to augment its capacity to deal with SOS calls for Oxygen, particularly during the night hours. Mr. Mehra submits that presently calls are being made primarily to Mr. Udit Raj & Mr. Vijay Bidhuri and they have had sleepless nights due to this reason. Calls are also being made at odd hours to the learned Amicus Mr. Rao, Mr. Satyakam and Mr. Mehra himself as well. Mr. Mehra submits that he has discussed the matter, and the respondent GNCTD is looking to provide a dedicated number with multiple lines for dealing with such SOS Calls, which shall be operationalized soon. In this regard, further detailed instructions be reported on 07.05.2021.

21. At this stage, the learned Amicus informs that he has already received over 300 applications for rendering voluntary service by young Advocates as Local Commissioners in different districts. Since such a large number of applications have already been received, others may not apply at this stage. Whatever applications have already been received, be processed by the learned Amicus and he may identify the lawyers who may be called upon to work as Volunteers in different districts. The names of the lawyers identified be brought to the Court in the next hearing.

22. List on 06.05.2021.

C.M. No. 15777/2021 in W.P.(C) 3031/2020

23. Mr. Mehra submits that though the application is listed tomorrow for hearing, and the GNCTD has sought time to file reply, the reply has not been filed, despite it being ready, in view of the fact that in the meantime this Court has passed further orders and the Supreme Court has also heard the mater order today, on which orders shall follow. He submits that the respondent GNCTD has chosen not to file the reply as the issue does not

survive. However, the respondent GNCTD disputes the various factual averments contained in the application, and reserves the right to deal with the averments, if and when the occasion arises

VIPIN SANGHI, J

REKHA PALLI, J

MAY 05, 2021

B.S./kk/nk