

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

- R/WRIT PETITION (PIL) NO. 53 of 2021**
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 3 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (FOR DIRECTION) NO. 4 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (FOR DIRECTION) NO. 5 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (DIRECTION) NO. 6 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 7 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (DIRECTION) NO. 8 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 9 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (FOR ORDERS) NO. 10 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 11 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (DIRECTION) NO. 12 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 13 of 2021
In R/WRIT PETITION (PIL) NO. 53 of 2021
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 14 of 2021

In R/WRIT PETITION (PIL) NO. 53 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 6797 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. 2,3,4

MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MS MANISHA LAVKUMAR,
GOVERNMENT PLEADER WITH MR CHINTAN DAVE AND MS SHRUTI
PATHAK, AGPs(1) for the Opponent(s) No. 1

MR DEVANG VYAS, ADDL. SOLICITOR GENERAL OF INDIA

SHRI PERCY KAVINA, SENIOR ADVOCATE WITH MR RASESH PARIKH,
ADVOCATE for applicant in Civil Application No.2 of 2021

SHRI SHALIN MEHTA, SENIOR ADVOCATE WITH MR PRANJAL BUCH,
Advocate for the applicant in Civil Application no.4 of 2021

SHRI AMIT PANCHAL, party-in-person in Civil Application nos.5 of 2021 and
8 of 2021,

SHRI AJ YAGNIK, Advocate for the applicants in Civil Application nos.1, 6,
11 ,12 and 13 of 2021,

SHRI MIHIR JOHI, SENIOR ADVOCATE WITH SHRI SATYAM CHHAYA,
Advocate for Civil Application no.7 of 2021,

SHRI AUM KOTWAL, Advocate for applicant in Civil Application no.3 of
2021,

SHRI KR KOSHTI, Advocate for applicant in Civil Application no.10 of 2021

SHRI NK MAJMUDAR, Advocate for the petitioners in Special Civil
Application no.6797 of 2021

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM
NATH**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 04/05/2021

COMMON ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH)

1. We have heard Shri Kamal Trivedi, learned Advocate General along with Ms. Manisha Lavkumar, learned Government Pleader assisted by Shri Chintan Dave and Ms. Shruti Pathak, learned Assistant

Government Pleaders on behalf of the State, Mr. Devang Vyas, learned Additional Solicitor General of India, Shri Percy Kavina, learned Senior Advocate assisted by Shri Rasesh Parikh, learned counsel on behalf of the Gujarat High Court Advocates' Association in Civil Application no.2 of 2021, Shri Shalin Mehta, learned Senior Advocate assisted by Pranjal Buch, learned counsel appearing in Civil Application no.4 of 2021, Shri Amit Manilal Panchal party-in- person appearing in Civil Application nos.5 of 2021 and 8 of 2021, Shri A.J. Yagnik, learned counsel appearing for the applicants in Civil Application nos.1, 6, 11 ,12 and 13 of 2021, Shri Mihir Joshi, learned Senior Advocate assisted by Shri Satyam Chhaya, learned counsel appearing in Civil Application no.7 of 2021 for the applicant, Shri Aum Kotwal, learned counsel appearing for the applicant in Civil Application no.3 of 2021, Shri K.R. Koshti, learned counsel for the applicant in Civil Application no.10 of 2021, and Shri N.K. Majmudar, learned counsel for the petitioners in Special Civil Application no. 6797 of 2021.

2. In the order dated 27th April, 2021, after hearing the learned counsels, various major issues highlighted in the previous orders passed by the Court pertaining to (a) RTPCR testing, (b) 108 ambulance service, (c) supply of Remdesivir, (d) supply of oxygen, (e) physical infrastructure, (f) display of data and (g) breaking the chain were considered in detail and various directions were issued calling upon the respondent – State to file an affidavit-in-reply with the latest updated information and progress in respect of each of the issue. It was also directed to the State to take into consideration various suggestions given by the learned counsel appearing in the matter in addition to the observation of directions given by the Court in the affidavit-in-reply. It was also made clear the details of entire State of Gujarat and the status of every district is required by the Court rather than focusing only on Ahmedabad.

3. The direction in respect of each of the issue given in the order dated 27th April, 2021 may be summarized as under:-

{A} Testing:

- (i) The State was called-upon to justify the details and time required for installation of the RTPCR machines to be placed on record;
- (ii) The status with regard to utilization of laboratories for RT-PCR testing with the 26 Universities;
- (iii) Justification for increase in the number of tests conducted per day when the number of laboratories are not increased and new machines not installed for RT-PCR test;
- (iv) To place on record as to how much time is being taken in getting the report of RTPCR test;

[B] 108 Ambulance:

- (v) All Government, Corporation designated and private hospitals were directed to attend all patients irrespective whether such patient is brought in 108 ambulance or not as no patient can be left unattended;

(vi) Details were required with regard to the complaints that 108 ambulances are not picking-up patients from any of the hospital or nursing home for any other facility except residence of the patients. It was made clear that 108 ambulance facility is the scheme of the State of Gujarat and not of the Corporation and guidelines policy of use the facility of 108 ambulances is to be formulated by the State and the Corporation would be bound by it and cannot have the different policy;

(vii) The State was called-upon to answer to provide for creation of triage area in each of the hospital so as to reduce the long queue of 108 ambulances and other private vehicles outside the hospitals and to issue directions to all the hospitals to establish triages where medical team can attend the patient using such triages so as to provide further treatment according to the need of the patient;

[C] Supply of Remdesivir :

(viii) The State was directed to give details with

regard to the distribution through uniform State wise policy with transparency to ensure that critical and needy patients are provided Remdesivir injections rather than being distributed the same on the basis of priority to Government hospitals or Corporation hospitals etc.;

[D] Supply of Oxygen

(ix) Response was sought with regard to suggestions given by Mr. Shalin Mehta ,senior Advocate to augment the supply of Oxygen by other alternatives and Central Government was also called upon to respond with regard to 8 more PSA plants requested by the State.

(x) To place on record as to how the supply of oxygen is being allocated within the State;

[E] Physical Infrastructure:

(xi) Details with regard to provide physical infrastructure of hospital beds with oxygen facility, ICU, ventilators etc., along with

Medical Personnel so that such facilities become fully functional;

[F] Display of Data

(xii) Once again the State was directed to display the real time basis with regard to the data of availability of beds to reduce the harassment of patient running from one hospital to another with regard to all the hospitals in the State providing medical facility to COVID patients;

[G] Breaking the Chain:

(xiii) To consider the suggestions made by the learned advocates appearing in the matter, and to find-out modalities as to how the chain of spread can be broken so as to reduce the rise in the positive COVID cases;

(xiv) It was also directed to the State to ensure that Ahmedabad Municipal Corporation forthwith withdraws the Press Note dated 5th April, 2021

exempting the residence of Ahmedabad from carrying-out RT-PCR test when they enter into Gujarat from outside which is contrary to the Government Notification dated 27th March, 2021;

(xv) Shri Devang Vyas, learned ASG was also permitted to file status report on various issues discussed in the order dated 27th April, 2021.

5. The affidavit-in-reply with regard to the aforesaid directions is filed on behalf of the State. The status report is also filed by Shri Devang Vyas, learned ASG on behalf of the Union of India. The Gujarat High Court Advocates' Association has also placed on record the input received by it from various District Bar Associations of Gujarat with respect to the conditions prevailing in various district places.

6. At the outset, Shri Percy Kavina, learned Senior Advocate appearing on behalf of the Gujarat High Court Advocates' Association made submissions on the basis of the inputs received from citizens, as

well as, the suggestions and WhatsApp messages and the discussion which took place on a virtual call organized on 1st May, 2021 so as to ascertain facts via personal discussion with Office bearers of various District Bar Associations. It was pointed-out by Mr. Kavina, that representatives of Sayla Bar Association, Surendranagar, Godhra Bar Association, Panchmahals, Narmada Bar Association, Narmada, Vyara Bar Association, Tapi, Palanpur Bar Association, Banaskantha, Chhota Udaipur Bar Association, Chhota Udaipur, Sanand Bar Association, Ahmedabad, Ahmedabad City Civil Court Bar Association, Ahmedabad and Deesa Bar Association, Deesa took part in the virtual meeting. Mr. Kavina, referred to such inputs and submitted as under:-

- (a) In rural areas, Ventilators and ICU Beds are not available.
- (b) Even if Ventilators are available, trained Medical Staff is not available to operate the same
- (c) Oxygen and Remdesivir are in short supply in the rural areas.

- (d) Tribal belt is deprived of basic medical facilities.
- (e) RT-PCR Test is not fully available in economically backward Districts and they have to rely on adjoining Districts with economic progress.
- (f) Citizens in Eastern part of Gujarat have to travel upto Vadodara and Surat for treatment.
- (g) The CT Scan is still a luxury as far as treatment of COVID-19 in economically backward districts.
- (h) The price of essential items of daily need viz. Fruits and Vegetables needs to be regularized and exorbitant prices of these items need to be regulated immediately.

6.1 It was also submitted by Mr. Percy Kavina that fake Remdesivir injections are being marketed by unscrupulous elements of the society and there is also black marketing of such injections and suggestion was made to start a helpline where the citizens can complain about such unscrupulous

activities.

6.2 It was further submitted by Shri Kavina that in the affidavit-in-reply filed on behalf of the respondent – State, true and correct data is not provided with regard to the RT-PCR machines, laboratories and RTPCR tests conducted from 23rd April, 2021 till 2nd May, 2021.

6.3 It was pointed out by learned Senior Counsel Shri Kavina that the Dhanvantari Covid Hospital having 900 beds with oxygen facility established at GMDC, Ahmedabad, does not have basic hygiene facilities. It was submitted that the wash-rooms of the hospitals are in very bad shape without any cleanliness. Shri Kavina submitted that it is not possible for the patients to use the wash-rooms in the hospital as the same are not clean at all. It was pointed out that in view of such situation, the patients are suffering for lack of proper house-keeping in the hospital. The same grievance was also made by other counsels like Shri Shalin Mehta and Shri Amit Panchal appearing in the matter.

7. Shri Shalin Mehta, learned Senior Advocate appearing for the applicant in Civil Application no.4 of 2021 highlighted the shortfall in supply of oxygen by pointing-out that Central Government has allocated 975 MT of oxygen as against the demand of 1190 MT by the State of Gujarat and thus there is a shortfall of about 215 MT and the State has not been able to point-out as to how such shortfall in supply of oxygen is to be augmented.

7.1 Shri Shalin Mehta, further referred to the affidavit-in-reply of the State to point-out that no details are given for distribution of supply of oxygen in the various districts of the State. Shri Mehta, pointed-out that no details are available with regard to the future availability and supply of oxygen to cater the rising demand and the plan for the distribution by the State.

8. Shri Amit Manilal Panchal, learned advocate appearing as party in person in Civil Application nos.5 and 8 of 2021 submitted that after the hearing and the order passed by the Court on 27th April,

2021, the grievances raised by the applicant in Civil Application no.5 of 2021 are redressed in view of the order passed by the Ahmedabad Municipal Corporation for withdrawing the orders of insistence by the hospital for admitting COVID-19 patients only arriving through 108 ambulance. It was therefore, submitted that the Civil Application no.5 of 2021 would not survive and is accordingly required to be disposed of.

8.1 With regard to Civil Application no.8 of 2021, it was submitted by Mr.Panchal that after passing the order dated 28th April, 2021, the Ahmedabad Municipal Corporation introduced token system for admission in Dhanvantri Hospital at GMDC.

However, Shri Kamal Trivedi, learned Advocate General submitted that the token system is introduced temporarily and as on today, such system is also not in operation. He also invited photo of the display board stating this fact at page no.40 of the affidavit-in-reply dated 3rd May, 2021.

Shri Panchal, therefore, submitted that his grievance made in Civil Application no.8 of 2021 is

also redressed and the same may be disposed of.

8.2 Shri Panchal also relied upon the decision of Supreme Court dated 18 th December, 2020 in case of Proper Treatment of COVID-19 Patients & Dignified Handling of Dead Bodies in the Hospitals, reported in (2021) 2 Supreme Court Cases 519 and relied upon the following observations of the Apex Court:

"9. Right to health is a fundamental right guaranteed under Article 21 of the Constitution of India. Right to health includes affordable treatment. Therefore, it is the duty upon the State to make provisions for affordable treatment and more and more provisions in the hospitals to be run by the State and/or local administration are made. It cannot be disputed that for whatever reasons the treatment has become costlier and costlier and it is not affordable to the common people at all. Even if one survives from COVID-19, many times financially and economically he is finished. Therefore, either more and more provisions are to be made by the State Government and the local administration or there shall be cap on the fees charged by the private hospitals, which can be in exercise of the powers under the Disaster Management Act, 2005.

10. Despite the Guidelines and SOPs issued, for lack of implementation the Pandemic has spread like wild fire. A strict and stern action should be taken against those who are violating the Guidelines and SOPs, whoever he may be and whatever position the violator is occupying.

11. Every State must act vigilantly and to work with the Centre harmoniously. It is the time to rise to the occasion. Safety and health of the citizens must be the first priority, rather than any other considerations.

12. People should understand their duty and follow rules very strictly. It is the duty of every citizen to perform their fundamental duties as guaranteed under the Constitution of India. By not following the Guidelines/SOPs issued by the State from time to time, such as, not wearing the masks, not keeping social distances, to participate in the gatherings and the celebrations without maintaining social distances, they are ultimately not damaging themselves but they cause damage to the others also. They cannot be permitted to play with the lives of the others and they cannot be permitted to infringe the rights of other citizens, like right to health guaranteed under Article 21 of the Constitution of India.

13. There is a need to help and guide our people to implement the guidelines and the SOPs issued by the Government, either the Union or the State, such as, wearing of masks, keeping the social distance etc. In many States, despite the huge fine recovered, such as, Rs. 80 to 90 crores in the State of Gujarat alone, people are not following the guidelines and the SOPs. There must be a strict implementation by the authorities so as to ensure that the SOPs and the guidelines issued from time to time are strictly adhered to and followed by the people. Additional Chief Secretary (Home)/Secretary (Home) of the respective States shall ensure the strict implementation of the SOPs and the guidelines with the help of the concerned Superintendent of Police/District Superintendent of Police concerned and the

Police In-charge of the police station concerned.

14. We have already issued various directions with regard to measures to be taken to contain the COVID-19. We once again reiterate the State to issue necessary directions with regard to following measures so as to effectively monitor and supervise the implementation of various SOPs and guidelines.

14.1 More and more police personnel shall be deployed at the places where there is likelihood of gathering by the people, such as, Food Courts, Eateries, Vegetable Markets (Wholesale or Retail), sabzi Mandies, bus stations, railway stations, street vendors, etc.

14.2 As far as possible, unless must, no permission shall be granted by the local administration or the Collector/DSP for celebration/gathering even during the day hours and wherever the permissions are granted, the local administration/DSP/Collector/Police In-charge of the local police station shall ensure the strict compliance of the Guidelines/SOPs. There should be a mechanism to check the number of people attending such function/gathering, such as, the particulars with respect to how many persons are going to attend the celebration/gathering, timings during which the celebration/gathering is to take place etc.

14.3 There shall be more and more testing and to declare the correct facts and figures. One must be transparent in number of testing and declaring the facts and figures of the persons who are Corona Positive. Otherwise, the people will be misled and they will be under impression that everything is all right and they will

become negligent.

14.4 Whenever directions are issued under the Disaster Management Act directing the corporate hospitals/private hospitals to keep 50% or any other percentage free municipal beds, it must be strictly complied with and there shall be constant vigilance and supervision.

14.5 There shall be free helpline numbers to redress the grievances of common man, when there is noncompliance of the directions by the private hospitals/corporate hospitals.

14.6 Curfew on weekends/night be considered by States where it is not in place.

14.7 In a micro containment zone or in an area where number of cases are on higher side, to cut the chain, they should be sealed and there should be complete lockdown so far as such areas are concerned. Such containment areas need to be sealed for few days except essential services. The same is required to break the chain of virus spread.

14.8 Any decision to impose curfew and/or lockdown must be announced long in advance so that the people may know and make provisions for their livelihood, like ration etc.

14.9 Another issue is a fatigue of front row health care officers, such as, Doctors, Nurses as well as workers. They are already exhausted physically and mentally due to tireless work for eight months. Some mechanism may be required to give them intermittent rest."

It was therefore, submitted that the Court may issue such directions to the State considering the present serious situation of second wave of the Covid-19 pandemic.

9. Shri Anand Yagnik, learned advocate appearing for the applicants in Civil Application nos.1,6, 11,12 and 13 of 2021 submitted about six grievances raised in Civil Application no.11 of 2021 pertains to welfare of the destitute children and women in this pandemic situation.

Shri Kamal Trivedi, learned Advocate General submitted that time may be granted to the State to place on record the relevant data by filing an affidavit in reply in response to such grievances raised in the Civil Application no.11 of 2021.

9.1 Shri Yagnik, further submitted that his submissions made on the last date with regard to the reservation of 20% beds to be increased to 50% is not dealt with in the affidavit of the State. It was further submitted that the State has withdrawn the insistence of Adhar Card being compulsory for

admission in the hospital, as well as, the insistence on residence proof for the admission in the hospitals in Ahmedabad. It was therefore, pointed-out that the submissions made by him for such issues would not now survive.

9.2 It was also submitted by Mr. Yagnik that one independent MLA and 65 MLA of Indian National Congress are ready to spent entire amount of MLA fund to the tune of Rs.1.50 Crore per constituency for accounting year 2021-22 available to each MLA for purchase and setting up of health and medical infrastructure, equipments and other medical items stated in para-5 of the application for COVID patents in their respective constituency.

10. Shri K.R. Koshti, learned advocate appearing in Civil Application No.10 of 2021 reiterated the issues which are already under consideration of the Court.

11. Shri Aum Kotwal, learned advocate appearing for the applicant in Civil Application no.3 of 2021

submitted that in spite of the directions issued by this Court in the last order dated 27.04.2021, the State Government has not ensured that the Press Note dated 5th April, 2021 issued by the Ahmedabad Municipal Corporation is withdrawn exempting the citizens of Ahmedabad from having negative RT-PCR report while entering the State of Gujarat which is contrary to the Government Notification dated 27th March, 2021.

12. Shri N.K. Majmudar, learned advocate appearing for the petitioner in Special Civil Application no. 6797 of 2021 submitted that the petitioner is discriminated by the Collector, Patan by directing the petitioner hospital to reserve 50% beds as Government Quota beds for the Government and though the patients are available, the petitioners are unable to provide bed. It was further submitted that the Government Officers are appointed to supervise and interfere in the management of the petitioner hospital.

13. Shri Mihir Joshi, learned Senior Advocate assisted by Shri Satyam Chhaya, learned counsel

appearing in the Civil Application no.7 of 2021 for Ahmedabd Municipal Corporation submitted that the Ahmedabad Municipal Corporation has passed an order dated 28th April, 2021 withdrawing the insistence by the hospitals to admit the patients who come only through 108 ambulance. It was submitted that the admission through 108 ambulance was only to see that the admission to COVID patients is given in municipal hospitals which comprises only 17% of the total patients so as to provide better service through centralized admission system. Shri Mihir Joshi, learned Senior Advocate submitted that there is no conflict with the policy of the State Government and the insistence on admission through 108 ambulance was made so as to facilitate the patients to get admission in the appropriate hospital. However, as of now in view of the order dated 27th April, 2021, the Corporation has already passed an order withdrawing such insistence, it was submitted that Corporation has filed this application to be joined as intervener to clarify the position. Submissions were also made with regard to the testing details and data by the Ahmedabad Municipal Corporation for last 59 weeks

with regard to the distribution of Remdesivir injections, oxygen availability, its supply system, admission through 108 ambulance and its procedure, increase in beds in hospitals, working of 104, Dhanvantri Rath, Sanjivani Rath etc., and managing skilled medical and para-medical manpower, OPD services and vaccination.

13.1 Mr. Joshi, learned Senior Advocate further submitted that the Press Note dated 5th April, 2021 was issued in consultation with the State Government and the same would be withdrawn with a clarification that if the citizen of Ahmedabad returns to Ahmedabad from outside the State within 72 hours is exempt from requirement of negative RT-PCR test, as the Government Notification dated 27th March, 2021 provides for valid negative RT-PCR test done within past 72 hours of entering to the State of Gujarat.

13.2 With regard to the query of the Court for not uploading real time data available on website for availability of beds in the various hospitals of the Corporation in the Ahmedabad city, it was submitted

by Mr. Joshi that the same would be looked into and the needful will be done at the earliest.

14. Shri Kamal Trivedi, learned Advocate General referred to the averments made in the affidavit-in-reply on the various points as per the directions issued by the Court in the order dated 27th April, 2021. Shri Trivedi, learned Advocate General also made submissions with regard to the contentions raised by the various counsels. Referring to the order dated 27th April, 2021, it was submitted that so far as discussion for testing as contained in para 12[A][1] to 12[A][3] of the order dated 27th April, 2021 is concerned, out of the 44 RTPCR testing machines ordered, 35 machines are supplied and 21 machines are already installed and 9 machines are in transit as stated in Annexure-4 at page-33 of the affidavit dated 3rd May, 2021. It was therefore, submitted that all the 21 machines installed are functional as on today.

14.2 With regard to the request made to the 26 Universities for carrying-out COVID test, it was

submitted that out of 26 Universities, 5 Universities have started doing testing and for the rest of the remaining 21 Universities, the Nodal Officer is in touch with the Vice Chancellors in respect of the Universities for expeditious operation of testing machines and for this purpose order under Epidemic Disease Act, 1897 is also issued.

14.3 It was submitted that as on today 72 RTPCR machines are in operation in the Government Laboratories. It was pointed-out that there was inadvertent mistake in the affidavit dated 19th April, 2021 with regard to the correct number of RT-PCR testing machines in operation.

14.4 Shri Kamal Trivedi, learned Advocate General further submitted that the number of tests have increased as the laboratories are working at optimal capacity. Shri Trivedi, further stated that it is not possible for the State to give the time being taken for RT-PCR report, as it is not possible to assimilate the information from the private laboratories in this critical time. However, it was

submitted that subject to emergent and contingent crises, the time taken for the RTPCR report is between 24 to 30 hours.

14.5 With regard to the issue of physical infrastructure as referred to in para 12[E][1] to 12[E][3] of the order of the Court dated 27th April, 2021, it was pointed-out that the number of beds have increased to 1,03,033 and reference was made to the details given in para 4.3 to point-out that as on 1st May, 2021 total oxygen beds available in the State were 57,808 and ICU beds were 13,513 and total number of ventilators available for treatment are 6,452 to take care of the COVID patients.

14.6 Shri Trivedi, learned Advocate General, submitted that so far as Dhanvantri hospital at GMDC is concerned, the same is made operational in the phased manner as per the availability of the oxygen, medicine and manpower. It was submitted that at present out of 900 beds the hospital runs with intake of 558 patients only and the same would be increased as early as possible on availability of requisite

facility of oxygen and manpower. It was also pointed-out that the token system is now removed and the patients are admitted on the basis of the availability of the bed and criticality of the patients. It was submitted that separate triage area having capacity of 28 beds for quick examination and necessary treatment followed by deciding further course of action depending upon the condition of the patient is also created. It was submitted that as on 1st May, 2021, overall occupancy rate of beds in Dedicated COVID Hospitals (DCH) is about 83%, Dedicated COVID Health Centers (DCHC) is 69% and in COVID Care Centers (CCC) is 21%. It was further pointed-out that State Government has permitted all private nursing homes, clinics and hospitals, to treat COVID patients without any specific approval from Collector or Municipal Commissioner and thus, doing away with the requirement of official designation of a COVID facility. The medical facility only has to inform to the State Authority for the same. It was also submitted that the campaign titled "Maru Gam, Corona Mukta Gam" is also launched for creating awareness at village level by

involving entire village community in the battle against the COVID-19 and the Collectors and District Development Officers are directed to start COVID Care Center at each village to take care of the COVID patients who do not have enough facility at home for isolation. Reliance was placed on the detailed order dated 1st May, 2021 passed under the joint signature of Additional Chief Secretary, Panchayat, Rural Housing and Rural Development Department; Principal Secretary, Health & Family Welfare and Secretary, Rural Development Department for starting COVID Care Center at Village level.

14.7 With regard to the increase the engagement of skilled medical personnel to deal with huge surge of the pandemic, it was submitted that the State has passed an order to engage approximately 96,927 students from all medical and paramedical courses in 693 colleges across the State for COVID duties in COVID Care Centers, Sample Collection Centers, Testing Centers etc.

14.8 With regard to creating of triage area in all the hospitals in the State, it was submitted that

all State/District hospitals already have triage area, where patients are provided emergency treatment irrespective of test reports, domicile certificate or Adhar Card and no separate orders are required to be issued as the same are already operational.

14.9 Shri Trivedi, learned Advocate General submitted that the State Government has been allocated 975 MT Liquid Medical Oxygen (LMO) by the Central Government as against the demand of 1190 MT in the State and for the shortfall in supply, continuous request is being made to the Central Government to allocate additional 200 MT of medical oxygen.

14.9.1 It was also submitted that for finding-out alternatives for manufacture of medical oxygen, the State is mobilizing resources available by procuring oxygen in gaseous form, from local small manufactures within the State and additional oxygen is also procured from other sources like Air Separation Unit (ASU), Pressure Swing Adsorption (PSA) plants, Conversion of Nitrogen PSA plants to Oxygen plants, oxygen concentrators and support from various

industries in setting-up additional PSA plants in various hospitals.

14.9.2 It was submitted that 100 MT is being augmented by such alternatives. It was pointed-out that the State has also given additional licences for supply of bottled oxygen of 20 ASU & Bottlers to get approximately 100 MT of bottled oxygen daily and out of 7 PSA plants sanctioned by the Central Government, 5 have already become operational and remaining 2 would be operational by 5th May, 2021.

14.9.3 It was submitted that the State has set-up a control room at State level, which takes care of coordination between Districts and the producers/suppliers of oxygen. Similarly, control rooms at district level have also been set-up to coordinate between hospitals and bottlers at district level and with the help of such control room, supply of oxygen is continuously monitored to provide the uninterrupted supply of oxygen. The Notification dated 27th April, 2021 issued under the provisions of Epidemic Disease Act, 1897 whereby the Commissioner,

Food and Drug Control Administration (FDCA) is designated as designated authority, who can direct even commercial producer/supplier/ bottler to divert his supply to bottler or hospital who is not in his service area and provide bridging supply till regular supply becomes available.

14.9.4 It was further submitted that the State Health Department has taken-up an intensive exercise for oxygen audit in various hospitals for optimization of oxygen use. The State Government has also issued Resolution dated 1st May, 2021 granting benefit of reimbursement/grant in aid and/or upfront payment of applicable integrated tax leviable under the Custom Tariff Act, 1975 subject to the condition that such imported material shall be donated free of cost to the State Government by any NGO or individual by way of procuring medical oxygen from foreign countries.

14.9.5 It was submitted that the State has also decided to set-up 32 PSA plants in 22 State-run hospitals to tide over the present shortage of

oxygen. However, it was submitted that in the prevailing situation, the State is trying its level best to overcome the difficulty of non-availability of one of the main raw materials in India, which is used in the PSA plant involving the process of absorption of nitrogen from air, leaving purified oxygen mainly Molecular Sieve, called "Zeolite" or "Zeochem", which is required to be imported from manufacturing companies located in Germany, France, U.S. and China and according to the present situation, the supply time would be about 2 to 3 months.

14.10 With regard to the supply of Remdesivir injections, it was submitted by Mr. Trivedi, learned Advocate General that the distribution of Remdesivir injections is made by Gujarat Medical Services Corporation Limited on pro-rata basis considering the severity and criticality of the patients, as well as, the demand thereof by the hospitals. It was submitted that the daily allocation of Remdesivir supply to the State Government by the Central Government is distributed on day to day basis and no

stock is left-out at the end of the day. Reference was made to the percentage of vials distributed to the Ahmedabad district and rest of the districts of the State.

Let the State provide details with regard to the distribution of Remdesivir injections district wise for the last 30 days in its next affidavit.

14.11 It was submitted that the data has been displayed by various districts and Municipal Corporations on the web portal of the State Government, but real time updation is made possible in very few Municipal Corporations and the efforts are being made to see that all the Municipal Corporations and all the hospitals of the State are linked to the web portal of the State Government and start updating the display of beds on dashboard on real time basis.

14.12 With regard to the vaccination, details are provided with the availability of the vaccination centers and capacity to store the doses. It was

submitted that till 2nd May, 2021, first dose is given to 98.84 lacs persons and second dose is administered to 25.68 lacs persons. Further as on 27th April, 2021, total 4,72,450 doses of Covishield received and 3,23,020 doses of Covaxin are available in the State. With regard to the vaccination for age group of 18 to 44 years from 1st May, 2021 is concerned, it was mentioned that the same would be done in a phased manner. It was also revealed that the order of 2 Crores doses of Covishield from Serum Institute of India, Pune and 30 Lacs doses of Covaxin from Bharat Biotech, Hyderabad are placed on 25th April, 2021 by the State Government.

Let the State place on record the information as to when such doses would be received from the manufacturers and the plan for vaccination of all the citizens above 18 years.

14.3 Shri Trivedi, learned Advocate General also pointed-out that in order to break the chain of spread of virus, the State Government has passed a Notification dated 27th April, 2021 whereby night

curfew has been imposed everyday from 20:00 hours to 06:00 hours in 29 cities of the State from 28th April, 2021 to 5th May, 2021 and further restrictions have been imposed with regard to the closure of all economic – commercial activities such as shops, commercial establishment, restaurants etc. except essential commodities and grocery stores, all marketing yards and markets to remain close, maximum of 50 persons to be allowed in an open or closed phases of marriage during this period, 20 persons to be allowed for funeral/burial and all offices of the Government or private to be permitted to operate with 50% employees, to prohibit all political, social, religious, cultural, educational programmes and gatherings, all places of worship to be closed. It was submitted that such restrictions may be extended by the State Government after considering the present situation. It was also pointed-out that various steps are being taken to make the public at large aware about the precautions to be taken.

15. Mr. Devang Vyas, learned ASG submitted that the Central Government is monitoring the supply of

oxygen and is in constant touch with the State authority and as against the demand of 1190 MT of oxygen, 975 MT is provided. It was further pointed-out that projections as on 5th May, 2021 is also considered by the Central Government and need for the State with regard to Remdesivir injections to the State is also under consideration. It was submitted that in view of the increase in manufacturing by the seven companies, located in India, more allocation would be made in future and in addition another 4,50,000 vials are ordered to be imported out of which first consignment of 75,000 vials would be reaching within a day or two. It was submitted that Nodal Officer of the State Government is in constant coordination with the Central coordinate facility of the Central Government and the needful would be done to provide adequate supply of oxygen and Remdesivir to the State Government.

16. Ms. Manisha Lavkumar, learned Government Pleader submitted that reply would be filed on the next date of hearing with regard to the various issues raised by Mr. Kavina, learned Senior Advocate

with respect to lack of various facilities at the District level.

17. Having heard the learned counsels for the respective parties and having gone through the materials on record, the response of the State is lacking in various points and directions given in the earlier order dated 27th April, 2021 and therefore, it is expected from the State to provide following details in the next affidavit:-

(a) With regard to the testing, the State is required to place on record the details of functioning of the RT-PCR machines in the various laboratories and the data of increase of RT-PCR facility in each of the District placed together with the steps taken for starting testing facilities at remaining 21 Universities referred to in the affidavit to whom request has been made to use the laboratories for RTPCR testing.

(b) State is also expected to provide clear and transparent data with regard to the availability of

RT-PCR test, as well as, facility at the district level as submitted by Shri Percy Kavina, learned Senior Advocate referring to the inputs received by him from various districts.

(c) We reiterate that the State should also disclose the true and correct data through public media with regard to the testing facility available in each of the town and primary health center so as to enable the public at large to avail the facility of RT-PCR test at the earliest.

(d) Let details be provided with regard to the distribution of Remdesivir injections received from Central Government to various Districts, as against the demand received from each of the district/hospitals for the last 15 days and the basis of such distribution to justify the pro-rata allocation as highlighted in the affidavit.

(e) In the next affidavit, State should also provide details and data with regard to the distribution of supply of oxygen and further details as to augment the supply of oxygen from other

alternative sources with data and also to give date wise demand and supply of oxygen for the past two weeks, as well as the future projected demand and the measures for meeting out such demand in the next two weeks.

(f) With regard to the grievances raised by the various counsels for lack of medical and housekeeping facilities at Dhanvantri Hospital at GMDC, the details be made available for steps taken for redressal of the complaints made during the course of the hearing.

(g) The State should also come-out with data and details with regard to the plan of making the 900 beds Dhanvantri hospital operational.

(h) The State should place on record the details with regard to the details of upload real time updation of the availability of the beds in each hospital of the State for Covid -19 patients on the web portal and the efforts made for the same by the State to co-ordinate between all the hospitals of the

State for the same.

(i) During the course of hearing, various counsels submitted that in the hospital and more particularly in the Dhanvantari Hospital the wash-rooms are not kept clean and the patients are suffering because of such unhygienic conditions prevailing in the hospitals. State is therefore directed to place on record the steps taken to resolve such basic issues of cleaning wash-rooms in the hospitals in the State.

(j) During the course of hearing on 27th April, 2021, two issues were highlighted by the Court viz.

(i) extension of time for registration of death by the Registrar of Birth and Death and (ii) second issue with regard to the flashing the mobile numbers of Higher officials of Ahmedabad Municipal Corporation by a news channel instigating the public at large to contact such Higher Officials in case of need of bed or other facility.

So far as the issue of extension of period of limitation of 30 days for registration of death is

concerned, the order is passed by the Chief Registrar, Birth and Death, State of Gujarat on 28th April, 2021 to extend the limitation of the Registration of death till 30th July, 2021 and the entire procedure has been made online by removal of physical presence of the applicant.

However, with regard to the second issue, with regard to taking action against the news channel which had flashed the number of Higher Officials of the Ahmedabad Municipal Corporation, there is no reference in the affidavit of the State to that aspect. The State should provide details with regard to the action taken for such serious matter in the affidavit to be filed before the next date of hearing.

(k) With regard to the breaking of chain of spread of virus, it is true that steps have been taken by the State Government by issuing Notification dated 27th April, 2021, but the same is not enough in the present situation and further steps to break the chain is also required to make the public at large aware about the pandemic and its grave effect on the

society by imposing further restrictions as may be thought fit in the present situation. We refrain from giving any direction or suggestion in this regard, as it is for the State to take appropriate steps keeping in mind the welfare of the public at large. If such actions are not taken, preventing the people to get together or from moving from one place to another unless and until it is inevitable, the chain would not be broken and the public at large would be the sufferer.

17. Let the present matters be listed again on 11th May, 2021 to be taken-up at 11:00 a.m. by this Bench or any other Bench, which may be nominated by the Chief Justice.

18. The Civil Application nos.3 of 2021, 5 of 2021 and 8 of 2021 are hereby disposed of. So far as Civil Application nos.11, 12 and 13 of 2021 and Special Civil Application no.6797 of 2021 are concerned, the State is given time of one week to file reply. The State may also file affidavit on or before the evening of 10th May, 2021 with latest

updated information and progress made by the State in respect of the aforesaid issues taking into consideration the various suggestions given by the counsels appearing in the matter in addition to the directions and observations given by the Court in Para no.16 (a) to (k).

19. Shri Devang Vyas, learned ASG may also file status report on the various issues, which are highlighted having bearing with the Central Government and such report may also be filed within the same time as allowed to the State.

सत्यमेव जयते

(VIKRAM NATH, CJ)

THE HIGH COURT
OF GUJARAT

(BHARGAV D. KARIA, J)

GAURAV J THAKER / AMAR RATHOD

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