

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

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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 ALONG WITH MS
MANISHA LAVKUMAR, GOVERNMENT PLEADER ASSISTED BY MR DM
DEVNANI AND MR CHINTAN DAVE, AGPs(1) for the Opponent(s) No. 1
SHRI DEVANG VYAS, ADDITIONAL SOLICITOR GENERAL OF INDIA
MR PERCY KAVINA, SENIOR ADVOCATE WITH MR RASESH PARIKH for
Applicant in Civil Application No.2 of 2021
MR AJ YAGNIK, ADVOCATE for Applicant in Civil Application No.1 of
2021
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CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 15/04/2021

ORAL ORDER

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

1. Pursuant to our order dated 12.04.2021, the matter was taken up today. The State has filed an affidavit-in-reply duly sworn by the Principal Secretary, Department of Health and Family Welfare. The affidavit is accompanied by relevant

documents supporting the averments contained therein. The salient aspects mentioned in the affidavit on different aspects are short-listed hereinafter.

(I) Suggestions of the Court made on 12.04.2021 :

- In paragraph 4 of the affidavit, it is stated that the Core Committee headed by the Hon'ble Chief Minister and the Deputy Chief Minister deliberated on the Hon'ble Court's suggestions of 12.04.2021, on the same day. Immediate decisions were taken as contained in Notification dated 12.04.2021 (Annexure-1). The salient features of which are as follows :

"i) On and from the 14th of April, no more than 50 persons to assemble at a wedding function, whether hosted in an enclosed space or an open area . The time duration shall be restricted to curfew timings where applicable.

ii) No more than 50 person for the funeral or last rites ceremonies.

- iii) All religious celebrations and festivities during the month of April and May are prohibited.
- iv) All public gatherings, processions, social events, for any reason whatsoever are strictly prohibited.
- v) In all government offices, semi government offices, boards, corporations, private establishments, the strength of employees coming to work daily to be reduced to 50% or employees be called to work on alternate days, as pre-decided. This shall not apply to essential services.
- vi) All religious places to remain closed. Entry to worshippers and pilgrims shall remain stalled till the 30th of April."

(II) Testing – RTPCR :

- At present 97 Covid testing laboratories are available in the State of Gujarat. 43 are in Government hospitals and 54 are private laboratories. In government laboratories, total 70 RTPCR machines available.
- Additional 40 machines are being purchased to enhance the testing capacity of RTPCR.

- Rapid Antigen testing is available at all Primary Health Centers, Community Health Centers, Health and Wellness Centers, Urban Health Centers and Outdoor Walk-in facility Kiosks.
- Ahmedabad Municipal Corporation has set up a special drive through testing center at the Gujarat Mineral Development Corporation with effect from 14.4.2021.
- Tests per day have been increased from 33271 on 01.03.2021 to 1,45,177 on 11.04.2021.
- Reference has also been made to the efforts being taken in contract tracing, use of Dhanvantari Rath, house to house surveillance, Covid help line, ITIHAS (IT enabled Hotspot Analysis System) helping the Dhanvantari Rath to conduct Antigen Testing and the surveillance by 11914 survey teams working in 19084 micro containment zones in

the State.

(III) Strengthening of health system :

- Total beds available as on 12.04.2021 is 71021 out of which 46447 in Dedicated Covid Hospitals (DCH), 9200 in Dedicated Covid Health Center (DCHC) and 15374 in Covid Care Center (CCC). Additional 10,000 beds to be augmented by 3rd week of April, 2021.
- Further dedicated Covid Care Hospital with 900 beds is being set up at the University Convention Center, GMDC, Ahmedabad within two weeks and a 550 beds two Covid Care Centers are being set up at Morbi within a very short time.
- In Surat, Community Covid Isolation Centers are being created with the help of local communities by the Surat Municipal Corporation which will provide treatment and isolation facilities to asymptomatic and mild

symptomatic Covid positive patients.

- The Association of Hospitals and Nursing Homes at Ahmedabad on their website www.ahna.org.in are providing the requisite data of the availability of beds in the 142 private designated Covid hospitals. Data is being uploaded twice a day.
- Ahmedabad Municipal Corporation has issued order dated 13.04.2021 declaring 20% hospital beds in all the 142 private designated Covid hospitals as the quota for the Corporation and admission to such beds to be given through 108 Ambulance Service only. The chargeable rates would be as determined by the Corporation.
- The State Government has increased the total number of beds from 19668 in the State on 15.03.2021 to 44329 beds as on 13.04.2021. Further enhancement of 7840 beds is also in the pipeline.

- Ayushman Bharat and MA Yojana, two ongoing schemes have been merged to provide medical treatment covering a wide spectrum of ailments including Covid-19 disease also. The Municipal Commissioners and Collectors all over the State have been empowered to take over any hospital if need arises. Further hostels, hotels and community halls have been converted to Covid Care Centers to accommodate Asymptomatic or mild Symptomatic patients.

(IV) Shortage of Remdesivir injections and remedial measures :

- Remdesivir injections are recommended to be given to the patients complaining high grade fever continuously for a longer period with lack of oxygen saturation under emergency use authentication and medical supervision. It is a medicine which reduces the hospitalization

period.

- Remdesivir injections are not covered by the Drug Price Control Order, 1995, as it is not a scheduled drug. The State Government has requested the authority i.e. the National Pharmaceutical Pricing Authority, New Delhi, for fixing a consistent price for all the brands available in the market manufactured by different pharmaceutical companies.
- Shortage of supply of Remdesivir injection is admitted.
- State is making all out efforts to procure sufficient quantity of Remdesivir injection to cater to the enhanced demand in the current times.
- Action is being taken against hoarders and black marketeers and illegal sale of the said injection.

2. According to the figures mentioned in between

01.04.2021 to 12.04.2021, the State Government purchased 1,71,000 injections whereas in the private sector the total sale was of 2,28,597 directly from the whole-sellers / stockists of the manufacturers.

3. Insofar as city of Ahmedabad is concerned, an arrangement has been made that all Covid Designated Private Hospitals as well as Covid Care Centers requiring Remdesivir injections may send their request with complete details to the Sardar Vallabhbhai Patel Hospital and the said hospital would arrange for the injections at the earliest. The same arrangement is being followed by the districts in the entire State through respective District hospitals.

(V) Availability of oxygen :

- Shortage of oxygen supply is admitted. Government is making efforts to increase the supply for hospitals and health care centers

by reducing the share allotted for industrial use.

- Efforts are being made to arrange for more oxygen and making it available freely.
- Under the sanction of 8 PSA (Pressure Swing Absorption) plants by the Central Government against a request of 16 by the State, two PSA plants have already been established at Vadnagar and Himmatnagar. Four other PSAs are coming up at Surat, Valsad, Morbi and Chhota Udepur, where the machinery has arrived and installation is underway. For the remaining two districts namely Navsari and Gandhinagar, the arrangements are in progress.

(VI) Human Resource Management :

- Special guidelines have been issued from time to time for recruitment of Resident Nursing Staff and also for creating of District Level Task Force, patient flow algorithm,

deployment and rotation of human resource. The Collector and the Municipal Commissioner as the case may be have been authorized to fill up these posts.

(VII) Information, Education, Communication Campaign(IEC Campaign) :

- Government is conducting extensive IEC campaign for generating awareness among the people at large. All out efforts are being made through various resources to provide information about Covid-19. Newspaper advertisement and Radio jingles, LCD/LED screen advertisements at public places are also being set up for generating awareness.

(VIII) Leadership and governance :

- Monitoring by the High Level Committee and details of other steps taken by the State for supervision and monitoring are mentioned.

(IX) Enforcement :

- Some of the important key decisions taken regarding control and spread of the pandemic are:

a) Negative RTPCR report is made mandatory for all passengers arriving in Gujarat by any route from 1st April, 2021. This has been implemented for Maharashtra state since 23rd March, 2021.

b) 22 Senior IAS officers have been assigned special duty for monitoring of Corporations and Districts where number of cases are increased.

c) 08 senior IAS officers have been given special responsibility for monitoring of COVID 19 Covid Care Centers in Corporations.

d) Vaccination is made available for all above 45 years without any comorbidity from 1st April, 2021.

e) Night curfew imposed in 20 cities along with 4 Metro cities from 8 pm to 6 am till 30th April.

f) All Educational institutes are closed in the state till 30th April.

g) Public transport is closed in Surat and Ahmedabad Corporation.

h) Intern doctors and students of final year of nursing, MBBS, dental, physiotherapy are involved in containment activities of COVID 19.

i) Strict implementation of Social Distance and mask. Every day more than Rs. 1.2 Cr. fine is collected for not wearing of masks and breaching the rules of curfew and social distancing.

j) Mass gathering for Social, Political or any other activities are prohibited.

k) Restriction is imposed on public gathering.

l) All festivities have been restricted to just symbolic offering safeguarding public sentiments, Chaitri Navratri, Gudi padavo, Ram Navami, Ramazan Eid, etc. have all been restricted.

m) It is most humbly submitted that considering the increase in the number of COVID-19 cases, the State has as an emergency measure issued a notification dated 12.04.2021 whereby the maximum number of persons permitted for wedding and related events, in open and closed spaces, has been reduced to 50, and for funeral and other related activities, the maximum number of persons permitted has been reduced to 50. The notification further states that wedding and other related events will not be permitted during the night in cities where night curfew has been imposed. All the protocols and SOPs prescribed would have to be mandatorily followed.

n) Wide notification dated 12.04.2021 also state has issued direction to all Government/Private/Board Institute and factories to work with 50 percent workforce."

- Suggestions received from members of Gujarat High Court Advocates' Association and Shri Amit Panchal have been duly considered.
- State is making all efforts and is leaving no stone unturned in its battle against pandemic of Covid-19.

4. We have heard Shri Kamal Trivedi, learned Advocate General along with Ms. Manisha Lavkumar, learned Government Pleader assisted by Shri Dharmesh Devnani and Shri Chintan Dave, learned Assistant Government Pleaders for the State, Shri Devang Vyas, learned Additional Solicitor General of India, Shri Percy Kavina, learned Senior Advocate assisted by Shri Rasesh Parikh, Advocate for the Gujarat High Court Advocates' Association in Civil Application No.2 of 2021, Shri A.J. Yagnik, Advocate for the applicant in Civil Application No.1 of 2021, Shri Amit Panchal, Shri K.R. Koshti and Shri Chetan Pandya, learned Advocates in person.

5. Having heard the submission of all the learned advocates and having perused the material placed on record, we flag the following issues for consideration of the State and for appropriate response for being incorporated in its next affidavit.

(i) It has been brought to our notice that RTPCR testing laboratories are not available in all the districts of the State, what to say of the towns / talukas and tribal areas. The State to ensure setting up of such laboratories in all the districts where it is not available, also in the towns / talukas and tribal areas of the State as early as possible. For this, the State may explore public-private partnership mode or any other mode which may encourage setting up of such laboratories throughout the State.

(ii) Existing capacity for RTPCR testing be

increased across the State in order to reduce time for collection of sample and getting the report ready after analyzing the sample. The delay in getting an RTPCR sample being collected and the further delay being caused in getting the report, may be forthwith reduced.

(iii) Accurate reporting of RTPCR testing with correct figures of positive results be made public. The State should not feel shy of publishing the correct data of RTPCR testing results, if such figures are not being correctly reported.

(iv) Remdisivir injection which at present is being looked at as a life saving drug for Covid-19 virus infected patients, when apparently it is not so, should be explained and communicated to the public at large by the experts of the subject in the State through print, digital and electronic media.

Otherwise so long as the myth continues, Remdesivir injection will always be in a deficit and being misused by black-marketeers and hoarders. Such an exercise would also reduce the over prescription and undue prescription of the said injection.

(v) The on-line portal giving details of the availability of vacant beds and occupied beds under different categories for Covid patients for all districts be controlled by the State. Instead of data being uploaded twice a day, the availability of beds should be displayed on a real time basis on the portal i.e. as soon as a bed is occupied in a particular hospital, the number of vacancies should go down and as soon as a bed is made available by discharge of a patient in a particular hospital, the number of vacancies should be immediately displayed as increased. This will save a lot of hardship to the patients as also their attendants and family members in

reaching the right hospital may be of choice for admission and treatment rather than running, waiting and again running to different hospitals.

(vi) As assured by Shri Trivedi, learned Advocate General, the availability of oxygen would be sufficient to cater to the demands within three to four days in view of the efforts to procure the same by the State. The status of availability of oxygen vis-a-vis demand be reported to the Court.

(vii) We know that the State is not responsible for increase in upward swing of Covid patients, but at the same time the State should publish data by making efforts to find out actual number of Covid positive cases so as to remove general conception from the minds of the people that data given by the State is not accurate. Necessary arrangements should be made by issuing

statement by responsible officer of the State with regard to the number of positive Covid patients, number of deaths due to Covid and number of deaths due to Covid with comorbidity so that faith and trust can be restored in the minds of public at large.

(viii) The State must come up publicly in a transparent and fair manner with complete details with regard to availability and modalities of the required amenities, medication and related infrastructure for the treatment of the Covid patients, who require either facility of Covid care center, hospitalization with oxygen, ventilator, medicines, etc.

(ix) Any material or facility or infrastructure, if lacking in required numbers should be accepted by the State publicly and remedial steps should be taken immediately to improve the situation. The

State should take up the onus of declaring the accurate data so as to eliminate the others from propagating the same with spice and causing panic amongst the people.

(x) It is only when the State declares that it has requisite essential infrastructure, medication and treatment facilities available with supporting infrastructure, then only the rush for acquiring medicines, hoarding of medicines, buying medicines at higher price, exploitation by the unscrupulous sector would be stopped. The State should also make endeavour to make public the efforts which are being made and the time which may be taken to provide essential infrastructure, medication and treatment facilities in view of rising number of Covid patients.

(xi) In order to achieve the above objectives the State needs to have honest and transparent dialogue with the public which

should be communicated to one and all through print, electronic and social media. The State has nothing to gain by hiding real picture and hence suppression and concealment of accurate data would generate more serious problems including fear, loss of trust, panic amongst public at large.

(xii) We appreciate the efforts put up by the State and its officers, who are discharging their duties round the clock 24x7 to meet the requirement which has arisen due to second / third wave of pandemic with the best use of the available resources.

(xiii) At the same time, the honest and transparent dialogue by the State would generate trust amongst general public so as to know the grave situation prevailing at the current times which may persuade the public at large to strictly abide by the standard protocol of wearing mask, keeping social

distance, sanitization by frequent hand washing, etc., as prescribed and known to one and all since more than a year.

(vx) In the present situation, it is not expected from the State to provide all essential infrastructure, medication and treatment facilities at once, but if the people are taken into confidence with regard to the efforts being made by the State to take care of the people suffering from the pandemic, the people at large would definitely cooperate and appreciate the efforts being made by the State.

6. All the parties seeking intervention are requested to sit together, deliberate and address the Court through one voice. Gujarat High Court Advocates' Association has sought intervention. It is represented by Advocate Shri Rasesh Parikh led by Senior Advocate Shri Percy Kavina. All the learned counsels appearing today have agreed to

join with Gujarat High Court Advocates Association and address the Court through Shri Kavina. Shri Kavina would be at liberty to address the Court on his own views as also the views as may be expressed to him by his friends at the Bar.

7. We have also received request from the Indian Medical Association, Gujarat State Branch through their President and Honorary State Secretary. The Registry may send a link to both the office-bearers for the next date. If they wish to join, the Court will hear them.

8. Let this matter be now listed before us on Tuesday i.e. 20.04.2021, to be taken up at 11.00 a.m. In the meantime, we expect the State to come up not only to the expectations of the Court but the public of the State at large. Further affidavit on all the issues stated above and any other issues which the State may like to bring to the notice of the Court may be submitted latest

by the evening of 19.04.2021. Copy of the same may be provided to Shri Rasesh Parikh, Advocate also and he may share it with his friends at the Bar showing concern in the matter. The State would not be under obligation to provide copy to all the parties and advocates appearing in the matter.

(VIKRAM NATH, CJ)

(BHARGAV D. KARIA, J)

GAURAV J THAKER/P.SUBRAHMANYAM

