

W.P.Nos.10486 of 2021 and 12184 of 2020

THE HON'BLE CHIEF JUSTICE
and
SENTHILKUMAR RAMAMOORTHY,J.

(Order of the Court was made by *the Hon'ble Chief Justice*)

These two matters pertain to the state of preparedness in the wake of the pandemic in the State of Tamil Nadu and in the Union Territory of Puducherry.

2. A status report has been filed by the Principal Secretary in the Health Department of the State. The Secretary is also present with learned Advocate-General on the virtual mode and has not only addressed this Court, but has fielded some of the questions raised by the several participants at today's hearing. It is heartening to see busy corporate practitioners taking time off from lucrative practice to attend this hearing in larger public interest and ensuring that all heads are put together to try and create the best facilities and think ahead of the worst that may be still to come.

3. The status report indicates that there are testing centres and screening centres set up in Tamil Nadu and, based on the extent of the infection suffered by a person, such person is recommended home treatment and quarantine in most cases or hospitalisation without being immediately admitted to the ICU or allotted a bed supported by an oxygen cylinder, oxygen beds, ICU and the like.

4. A serious apprehension is expressed on behalf of the State that in most cases the panic created by the relatives of a person afflicted by the virus creates the problem, in the sense that without undertaking the screening, patients are directly brought into government hospitals or private nursing homes and beds are sought when, in several cases, the patient may not require admission at all. The other apprehension expressed is in patient parties scrambling to obtain drug Remdesivir which is, admittedly, in short supply. It is submitted on behalf of the State that in most cases even admission

may not be necessary and the State and public interest would be better served if an element of discretion were exercised and the protocol that is being announced by the State, over and over again, followed. As to supplies of oxygen, drug Remdesivir and related drugs, ventilators, beds, doses of vaccine, the status report paints quite an acceptable picture; though the State cautions that if the upward trend continues, in the sense that more people get infected today than yesterday and yesterday was more than the day before, further measures have to be adopted. The State is quick to add that the rate of increase may be falling, but the number of persons affected has already crossed 1.15 lakh against a figure in the early 80 thousands when the matter was first taken up on April 22, 2021.

5. The State says that though there is adequate supply and storage of oxygen at the moment, the State is not inclined to have oxygen diverted to anywhere else since the daily use of oxygen has been on the rise and, in a worst case scenario, all of the available oxygen in the State may be necessary. In such regard, learned Additional Solicitor-General has taken note of learned Advocate-

General's submission and the fact that the Chief Minister has written to the Prime Minister to ensure that there is no further diversion of oxygen from the State to anywhere else.

6. Though another aspect of the matter is being exclusively dealt with by the Supreme Court, the State informs this Court that following an all-party meeting convened by the Chief Minister this morning, a tentative decision has been taken to allow the Thoothukudi unit of Sterlite Industries to manufacture oxygen. The State, however, says that only limited supply of liquefied oxygen may be initially available, but the owners have assured the State that immediate measures would be taken to put in place a system by which gaseous oxygen will be converted into liquefied oxygen for medical use with the appropriate content in excess of 99% oxygen.

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7. On the availability of Remdesivir 100mg, the State says that such drug is not meant for everyday use by every person, nor is it a cure for Covid-19, though it reduces the incidence of the person

administered the drug in transmitting the virus to others. The State says that drugs Tocilizumab 400mg and Enoxaparian 40mg are also used in the treatment of Covid-19 and, there is sufficient supply of such drugs in the State, at least with government hospitals and government centres.

8. The State says that it has sufficient supply of oxygen for the moment, even to cater to the increased number of cases and steps are being taken to immediately augment the supply. According to the Health Secretary, additional beds are being added not only in Chennai, but also in the major urban centres like Coimbatore, Madurai, Tiruchirappalli and Tirunelveli. According to the Health Secretary, only 25% of the persons struck by the virus may need hospital admission and 15% of them may need oxygen beds.

9. The State has indicated the number of medical personnel and paramedics deployed and says that an order of this Court injuncts certain nurses from being engaged. It will be for the State to apply immediately for vacating such injunction.

10. The State also refers to its website, www.stopcorona.tn.gov.in, which gives real-time information as to the number of beds available and where they are available. The State says that it has augmented the number of beds at government hospitals and centres, and private hospitals have dedicated more beds apart from requisitioning hotels to be turned into Covid centres.

11. Serious concerns, however, have been expressed by many on the black-marketing of the drugs, on the number of beds being far too few and on the lack of information or knowledge regarding the availability of beds, drugs and doses of vaccine. It is submitted that while it is the State's assertion that most cases would not require hospitalisation, the patient party may not have the expertise to decide which patient needs hospitalisation and who does not, and which patient needs Remdesivir and who does not; and, in the panic that follows the discovery of a near relative infected with the virus, confused steps are taken that hinder the functioning at the

designated hospitals and other centres.

12. The Health Secretary says that certain norms have been indicated to private hospitals to prioritise admission based thereon and also in how Remdesivir is to be administered or oxygen treatment is to be given. Greater details have been indicated, which may not be relevant to be referred to.

13. At the suggestion of the Court, the State has agreed to widely publicise the do's and don'ts and the other steps that may be taken or not taken. This will be done by issuing advertisements in the print and electronic media for dissemination of information to the public at large. Relevant information is already available, according to the State, on the State website, www.stopcorona.tn.gov.in. The Health Secretary has promised that real-time information would be available, indicating the availability of beds in the locality and the like.

14. It appears from both the figures furnished by the State and submission made on behalf of several persons that though the number of beds and other facilities may be just about adequate at the moment, considering the number of cases that may be added even at the present rate, the figures would double in less than ten days and more beds, more oxygen and more ventilators would be necessary along with a greater supply of medicines to treat the symptoms.

15. The Union says that it has taken note of Tamil Nadu's reluctance at the moment to oxygen being diverted from this State to any other. Learned Additional Solicitor says that the State's views have been communicated to the highest authorities at the Centre and immediate action may follow in course of a day.

16. The State says that contrary to the earlier submission that Remdesivir was being sold at Rs.783/- per vial, Remdesivir is now being sold at Rs.1,400/- plus GST per vial and is already available from a counter specifically started for such purpose at Kilpauk in

Chennai. However, not everyone seeking the drug will be given it. Only upon production of appropriate documents, including the screening report, a positive test report and the scan of the lungs, would the drug be released. The State has apparently been allotted 59,000 vials of Remdesivir by the Centre till April 30, 2021 against pending orders of the State totalling 2.5 lakh.

17. Both Tamil Nadu and Puducherry have to be particularly aware of the fact that counting of votes will be undertaken from the early hours of May 2, 2021 and the counting activities must be held in complete Covid protocol, without any compromise at all. The votes are slated to be counted on May 2, 2021 and the Election Commission in consultation with the State Government authorities in Tamil Nadu and the Union Territory of Puducherry should put appropriate measures in place that ensure that there is no further spurt in cases. Public health, after all, is more important than counting votes. The process may be delayed or even deferred, but public health must not be compromised.

18. Suggestions have been made for augmenting the production of oxygen in the State and for revival or restarting of the vaccine-manufacturing units at Chengalpattu, Coonoor and Ooty, so that if the situation gets any worse within the next eight or ten days, there will be sufficient supply of oxygen and vaccine to take both urgent remedial and preventive measures.

19. A further suggestion has been made of restricting vehicular and other movement, reducing trade and commerce and requiring testing to be mandatorily introduced at airports and at entry points into the State. It is submitted on behalf of some interested persons that no restrictions have yet been placed for persons travelling into Tamil Nadu and a protocol in such regard must immediately be put in place. It has also been suggested that vaccines are in short supply and the incidence of wastage of vaccine may be arrested by making the remainder of a vial available to any one above the age of 18 so that there is no wastage of the vaccine. It appears that the State has demanded additional supplies of drugs and vaccine from the Centre and there is no doubt that such aspect

of the matter would receive active consideration by the Centre. Awareness needs to be spread to encourage the rural community to be inoculated and disabuse persons of the reservations harboured in such regard. Almost all Judges of this Court have been vaccinated without any major side-effects.

20. The prices of the drugs, the bed-rates charged for admission into private hospitals and the prices of oxygen and vaccination should be monitored and controlled by the State Government. The Health Secretary has spoken of the Drugs Controllers under the State and the Union and their officers being activated for keeping a strict vigil against any black-marketing of any drug during this period. At least one senior lawyer has intervened to suggest that Remdesivir has been sold at a price in excess of Rs.35,000/-, though the State says that it is selling Remdesivir at Rs.1,400/- plus GST, which is considerably more than the Rs.700-odd previously charged for a vial of Remdesivir.

21. Suggestions have also been made regarding strict restrictions being imposed and Covid protocol being strictly followed during the counting of votes, both in Tamil Nadu and Puducherry, slated on May 2, 2021. If necessary, the State may consider imposing a lockdown on May 1, which was traditionally a holiday, and again on May 2, which is a Sunday, and only allow movement of vehicles needed for the purpose of counting and related purposes, apart from emergency vehicles. If an appropriate announcement in such regard is made well in advance, say by April 28, 2021, the ordinary citizen may have sufficient notice and may complete the weekend purchases by Friday and abide by the restricted movement norms as was evident in course of the lockdown observed on Sunday, April 25, 2021. As of now, the situation does not appear to be completely out of control, though there are some horror-stories which are available in the media and some other anecdotal on the social media. However, continued vigil must be maintained and the matter dealt with sternly with appropriate personnel being empowered to take on-the-spot decisions which are critical.

22. In respect of Puducherry, a status report has been filed indicating adequate steps having been taken almost on similar lines as in Tamil Nadu, but on a reduced scale.

23. The Union has filed certain documents indicating, inter alia, the daily reports on the status of medical supplies and the State-wise allocation of Remdesivir vials from April 21 to April 30, 2021. It appears that 59,000 vials have been allocated to the State and 3,000 vials to the Union Territory.

24. The State says that there is a central help-line and a three digit number, 104, has been allocated for any complaint on account of black-marketing or excessive charges by private hospitals. However, it is understandable that citizens are cynical since such numbers are rarely accessible or real action is not forthcoming. The State, however, says that some element of evidence and verification may be indispensable before any action can be taken against perceived black-marketing.

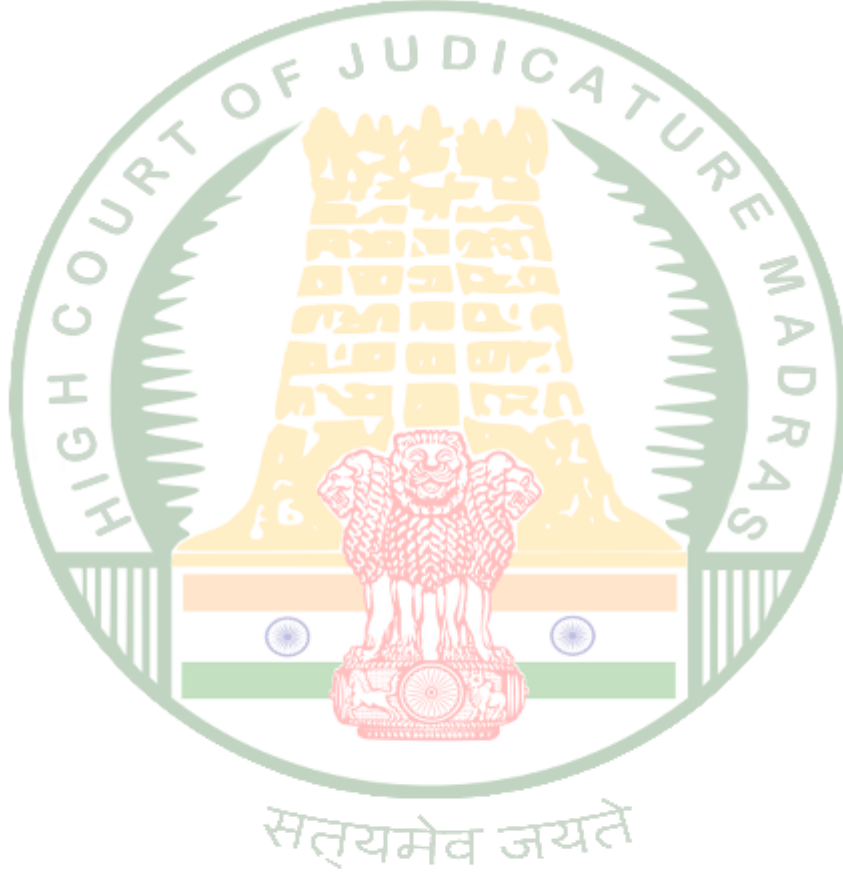
25. In the light of the above, it is hoped that both the State and the Union Territory take measures to indicate basic norms not exceeding eight or ten bullet points that may be circulated over the electronic media or published by the print media seeking to guide citizens, instead of citizens panicking and rushing to hospitals. It would also do well for the State and the Union Territory to completely eschew the VIP-culture and ensure that facilities are available to citizens without consideration of status or the like of the patient or her relatives.

26. The matter will next appear on April 29, 2021, if not necessary to be taken up earlier on any urgent basis.

The situation in both the State and the Union Territory will continue to be monitored by this Bench during the next several weeks, irrespective of the Court going into vacation, and the dates will be announced in advance or State advocates may be intimated personally in such regard.

(S.B., CJ.) (S.K.R., J.)
26.04.2021

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