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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3031/2020

RAKESH MALHOTRA Petitioner

Through Petitioner in person.

versus

GOVERNMENT OF NATIONAL
CAPITAL TERRITORY OF INDIA AND ORS Respondents

Through Mr. Satyakam, ASC, for the GNCTD/
respondent Nos. 1 & 2.

Mr. Rahul Mehra, Standing Counsel
(Crl.) for GNCTD.

Ms. Monica Arora, Adv. for Mr.
Chetan Sharma, ASG

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **19.04.2021**

CM APPL. 12347/2021 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM APPL. 12346/2021 (interim application, by petitioner)

1. The matter had been disposed of on 14.01.2021 since, by then, the COVID-19 pandemic had, to a great extent, abated. At that time, we did not know that it would raise its ugly head once again with vengeance, as it has

done. The pandemic is presently raging with much greater intensity than prevalent at the time when this petition was initiated in the year 2020. The number of COVID-19 positive patients, as reported on a daily basis, has exceeded 25,000 in the NCT of Delhi. As of 18.04.2021, the country has reported an all-time high of 2.7 lakh cases, with the current doubling rate being around ten days. It is observed that the test positivity rates (TPR) are rising continually, with around 1/3rd of all districts in the country having a positivity rate of more than 10%. The TPR was more than 13% as on 15.04.2021. According to medical estimates, around 15 to 20% of these patients could require hospital admissions, with a quarter of them requiring specialized ICU care. This translates to a requirement of roughly 50,000 beds daily in the country, this has already pushed the limited health care system beyond its limits. It is evident that the health care infrastructure is on the verge of an imminent and complete collapse.

2. Keeping in view the aforesaid position, we have revived this petition, and the same has been directed to be listed today with advance telephonic notice to learned counsels. Today itself, the GNCTD has passed an order, imposing curfew in the GNCTD for a period of six days - beginning from 10 PM today, which would last till 5 AM in the morning on 26.04.2021. Consequently, the NCT of Delhi has been placed in a state of lockdown with certain essential exceptions.

3. The submission of Mr. Malhotra/the petitioner firstly is that, on account of the massive surge in COVID-19 cases, the testing labs are not able to generate the reports within a day. The GNCTD has issued directions to private labs to generate reports within 24 hours, or face action. He states that because of the aforesaid condition, many authorised labs are not even

willing to collect samples, since they are not in a position to deliver reports within 24 hours.

4. If such a step has been taken by the government, the same would only be counterproductive. It appears the GNCTD is being unreasonable, and is unmindful of the limitations of men, infrastructure and equipment available to deal with the massive surge in Covid-19 positive cases. We may observe that such labs, which are entrusted with the job of collecting and analysing samples of COVID-19 through the RTPCR tests, are already hard-pressed because of the very large numbers of samples that they have to deal with on a daily basis. It does not serve the interest of any such lab to delay the reports- deliberately, or negligently. We, therefore, make it clear that any such direction issued shall not be implemented. At the same time, we hope and expect all the labs to continue to work efficiently and diligently, in order to prepare and provide the reports of the tests conducted by them at the earliest humanly possible.

5. Our attention has also been drawn to the order dated 04.05.2020, in particular para 10 thereof, which directed the GNCTD to ensure that samples that are furnished to the accredited labs shall be processed and reports shall be provided within 24 to 48 hours. We hope and expect that the labs would continue to generate and deliver reports within the said period. We also hope and expect that none of the accredited labs would refuse to take samples on account of the rush, if they are otherwise in a position to collect the samples.

6. The next issue raised before us is with regard to the shortage of the supply of medical oxygen, which is a critical requirement for treatment of serious patients of COVID-19. Mr. Mehra points out that the Central

Government has already issued orders that, except to meet the needs of a few industries, the supply of oxygen manufactured in the country should be provided for medical use in the country. He states that the Central Government has issued orders for supply of 300 metric tonnes (MT) of oxygen to the GNCTD hospitals on a daily basis from 20.04.2021. Mr. Mehra states that requirement of GNCTD hospitals is to the tune of 700 MT of oxygen per day, and a communication to this effect has been issued by Chief Minister of Delhi to the Central Power Minister on 18.04.2021, requesting for raising the allocation of oxygen to Delhi. Mr. Mehra further states that shortage of oxygen may result in steep rise in loss of lives.

7. Let the Central Government look into the said aspect on an urgent basis, today itself. We are also informed that one of the largest manufacture of oxygen namely, M/s INOX, which has existing contracts with hospitals in Delhi, is diverting the oxygen produced by it to other states. Mr. Mehra states that 140 MT of oxygen that M/s. INOX used to supply to Delhi, has been stopped suddenly in the last couple of days. We direct M/s. INOX to honour its contracts with the GNCTD and hospitals in Delhi and restore the supply of 140 MT of oxygen immediately - which shall, in turn, be distributed to the needy hospitals of Delhi.

8. The Central Government should examine the availability of oxygen in different states in the country in the context of the spread of the pandemic so that oxygen could be made available to the areas where it is most required, looking at the surge in covid cases.

9. We direct both the GNCTD as well as the Central Government to file their respective affidavits disclosing – in respect of hospitals managed by them, hospital-wise, the number of COVID beds reserved. The affidavit

should also disclose how many of them are ICU beds, with, or without, ventilator, and with, or without oxygen supply.

10. Mr. Malhotra has submitted that there are certain hospitals in Delhi which have their own oxygen generation plants. They should consider increasing allocation of beds for COVID patients, owing to the shortage of oxygen in other Government hospitals. The affidavit to be filed by the Central Government should deal with this aspect as well. The affidavits should also state as to how many COVID beds have been allocated by the Central Government to GNCTD in ICU/non-ICU and with/ without ventilators, and with, or without, oxygen.

11. One of the lessons that none should forget from the lockdown imposed in the year 2020, is the plight that the daily wagers and migrant labour force which reside and work in GNCTD had to suffer. We have been seeing news reports about migrant labours already going back to their origin states, with the surge in the COVID cases in the GNCTD. With the imposition of curfew till 26.04.2021, the daily wagers – who are hand to mouth, and earn their bread everyday to feed themselves and their families, are once again faced with the grim reality of facing shortage of even basic necessities such as food, clothing and medication. On the last occasion, the civil society had come forward and provided food and other necessities to the large sections of such needy people. Though Mr. Mehra states that even the State had taken similar steps in this regard, we may say with our own experience, and that the State failed to do enough. The GNCTD failed to utilize thousands of crores of rupees they are sitting on, which is available with the Board constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996,

and which has been collected as Building cess for construction workers. The registration of lakhs of building workers - which had lapsed on account of non-renewal, were not provided any *ex gratia* payment. Those writ petitions had been dealt with by one of us (*Vipin Sanghi, J*), and have since been transferred are now listed before DB-IV.

12. We direct the GNCTD to ensure that the said Board utilises the monies lying with it, inter alia, to provide food, medicines and other necessities to the needy construction workers at their respective work sites. For the purpose of providing food, the GNCTD should utilise the contractors engaged for providing mid-day meals to school children in Government and MCD Schools, since the schools are not operational currently, and that facility could still be utilized for the aforesaid purpose. The Chief Secretary, Delhi shall ensure the implementation of this direction without any delay. In the affidavit to be filed by the GNCTD, the manner in which this direction is proposed to be implemented should also be indicated.

13. The matter shall be taken up tomorrow in post-lunch session. The affidavits shall be circulated by 2PM.

14. List on 20.04.2021.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 19, 2021

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