

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.353 of 2021

Shivani Kaushik

... .. Petitioner/s

Versus

Union of India & Ors.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17398 of 2018

Rohit Kumar

... .. Petitioner/s

Versus

The State of Bihar and Ors

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9639 of 2021

Gaurav Kumar Singh

... .. Petitioner/s

Versus

The Union of India & Ors.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 353 of 2021)

For the Petitioner/s : Ms. Shivani Kaushik (In Person)

Mr. Mrigank Mauli

For the UOI : Mr. (Dr.) K.N.Singh (ASG)

For the State : Mr. Ranjit Kumar, Sr. Advocate

Mr. Lalit Kishore, AG

Mr. Anjani Kumar, AAG-4

Mr. S.D. Yadav, AAG-9

For Respondent No. 5 : Mrs. Binita Singh

For Respondent No. 6 : Mr. Shivender Kishore, Sr. Adv.

For PMC : Mr. Prasoon Sinha

For DMCH : Mr. Bindhyachal Rai

For GMC : Mr. Rabindra Kr. Priyadarshi

For the Intervener : Mr. Rajiv Kumar Singh

(In Civil Writ Jurisdiction Case No. 17398 of 2018)

For the Petitioner/s : Mr. Manish Kumar No 13

For the State : Mr. Subhash Prasad Singh, GA-3

For Respondent No. 6 : Mr. Kumar Ravish

Ms. Parul Prasad(Amicus Curiae)

(In Civil Writ Jurisdiction Case No. 9639 of 2021)



For the Petitioner/s : Mr. Sumeet Kumar Singh
For the UOI : Mr. (Dr.) K.N. Singh (ASG)
For AIIMS, Patna : Mr. Binay Kumar Pandey

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

8 21-04-2021 **Re : I.A. No. 01 of 2021 & 02 of 2021**

CWJC No. 353 of 2021 and other analogous matters

When the matter was taken up on 19.04.2021 online, Mr. P.K. Singh, the Director, All India Institute of Medical Sciences, Patna (for short “AIIMS, Patna”) had also joined the proceeding. In the facts and circumstances emerging during course of hearing on that day, the Court had passed the following order :-

“Considering the aforesaid provisions stipulated under the Act, 1993, we have considered it appropriate, in the facts and circumstances of the situation, and in the interest of justice to direct the BHRC to:-

(i) Get an inspection done of one of the Dedicated COVID Hospitals (DCHs) i.e. NMCH, Patna tomorrow (20.04.2021) in the presence of Director, AIIMS, Patna.

(ii) Learned Chairman of the BHRC is requested that if it is not convenient for him to visit the said DCH, he shall ensure that a senior officer, not below the



rank of the Secretary of the BHRC, shall visit the aforesaid hospital along with the Director, AIIMS, Patna, in light of the aforesaid order. It is clarified here itself that the Director, AIIMS, Patna has already given his consent to visit the said hospital tomorrow (20.04.2021), during the course of online hearing of this matter.

(iii) It can be noticed from our order dated 17.04.2021 that we had incorporated in the said order, the data made available by the Principal Secretary, Health Department, Government of Bihar regarding availability of COVID Care Centers, Dedicated COVID Care Health Centers and Dedicated COVID Hospitals in the State of Bihar. Learned Chairman, BHRC is requested to cause or cause the same to be done, in such manner as may be considered appropriate by him, by himself or any team constituted by him, surprise inspections of the said CCCs, DCHCs and DCHs to find out as to whether adequate facilities are available there or not with the desired standard of sanitization and cleanliness.

(iv) The Secretary, BHRC shall be required to submit his report of inspection of NMCH by Wednesday (21.04.2021). He is further directed to join the Court proceedings on 21.04.2021 at 4.30 p.m., a link of which shall be sent to him by the Registry.”

In compliance of the said order, a joint report of the inspection conducted by the Director, AIIMS, Patna and the



Secretary, Bihar Human Rights Commission (for short "BHRC") of Nalanda Medical College and Hospital ("NMCH" in short), Patna has been submitted. The report reads thus:-

“Report on NMCH visit by Prof P K Singh, Director AIIMS Patna and Shri Rajesh Kumar, Secretary Bihar Human rights commission in compliance to directive of Honorable high court Patna passed on 19th April 2021

Date: 20th April 2021

Background: Nalanda medical college hospital was visited in view of assessing the present situation of covid patients and facilities being provided to them. Team also assessed the current infrastructure to increase the number of COVID beds from 160 to 500. Current status, gaps in ensuring this and suggestions to increase the capacity are being provided.

At present following was the status of available and functional facilities

Total number of admitted patients: 175

Total number of patients on oxygen: 119

Total number of patients admitted in ICU: 13

Total number of patients on ventilator: 3

Team visited the hospital areas with potential to convert to dedicated covid hospital. Reception area was under transition and there was no crowd.

COVID-19 testing facility was not functional today reportedly due to many health care workers of this section



are found covid positive. They were asked to restore testing facility as soon as possible.

Team also visited mother and child hospital where covid patients are currently admitted. This area is well equipped and doctors and nurses were found on duty. Cleanliness in the area was sufficient.

We also visited oxygen manifold area where sufficient arrangements of oxygen supply were there. On the way some family members of patient(s) complained of less prompt services in attending the patient on arrival. Duty roster of the doctors and nurses was also checked and found compliant in wards. There was some complaint about irregular visit of doctors and nurses.

Capacity:

Infrastructure: Hospital is well equipped to provide 500 Covid beds as far as infrastructure, wards, beds, oxygen supported beds, ICU are concerned. Hospital has 400 oxygenated beds out of that 60 beds are well equipped to run ICUs. Additional 100 non-oxygenated beds are also available.

Equipment: there are 70 ventilators and more than 200 monitors available with the hospital for immediate use.

Manpower: Number of faculties, senior residents and junior resident (post graduate trainees) are sufficient enough to run the duty roster for planned number of beds. However, number of nurses and hospital attendants are



less to run the covid roster for 500 patients with provision of rest period for HCWs to avoid fatigue.

Oxygen: oxygen supply is well maintained at the moment however continuous supply may be ensured.

Consumables such as PPEs, masks etc. are well in supply.

Gaps

Drugs: Hospital has basic drug supply however following drugs usually needed in care of covid patients should be supplied or procured soon:-

Low Molecular weight heparin: This is important drug in care and presently not available, NMCH administration was confident to procure the drug within a day.

High Flow Nasal Canula: Though oxygen supply and ventilators are there, additional HFNC devices (20) and non-rebreathing masks will be useful if supplied in time.

Finger clip type oximeters: Though there are 200 monitors, additional supply of clip type oximeters will help on monitoring in non-ICU patients.

Remdesivir was not available due to nation-wide poor supply and hospital was planning to get this through the state govt.

Suggestions

- 1.All departments including clinical and non-clinical should be pooled and put under the medical superintendent. Rota to cover all the covid beds should



be managed centrally. Two types of teams should be made

A. Team to cover ICU: Department of anaesthesia, medicine, paediatrics may be merged.

B. Team to cover non ICU beds: All other departments including clinical, and non-clinical should be pooled.

2. COVID-19 Protocol of AIIMS Patna is available on www.aiimspatna.org for easy access of doctors and NMCH administration that has got detailed plan to cover all aspects of a covid dedicated hospital. Hospital is suggested to stay in touch with AIIMS Patna for ongoing updates. If desired by the honorable high court a hard copy may be supplied.
3. Duty roster for doctors and nurses: A well tested duty roster rolled out in AIIMS Patna is being shared for implementation in NMCH on same lines.
4. Training and teaching: Hospital may develop an ongoing covid training program based on COVID Protocol provided with this report.
5. Number of nurses and attendants: At present there are reportedly 470 nurses and 150 attendants. This number is just sufficient to start all the beds but to handle exhaustion and gaps due to potential covid infection in health care workers, it is advised that additional 100 nurses and 150 attendants may be added to current pool



of nurses and attendants by the state govt.”

We note here that the aforesaid inspection was directed, by this Court, to have basic inputs regarding availability of infrastructure and healthcare facilities in one of the Dedicated Covid Hospitals(DCH) in the State, illustratively.

It is evident on seeing the report that the inspecting team has identified certain gaps and made certain suggestions *inter alia*, in relation to possibility of making available High Flow Nasal Canulas (HFNC), and it has been mentioned that though the ventilators and supply of oxygen are there, HFNCs and non-rebreathing masks will be useful, if supplied in time. It has also been pointed out that *Finger Clip Type Oximeters* are not available in the hospital. The Court directs the Health Department, Government of Bihar and the State Health Society to look into the gaps pointed out and the suggestions made in the joint report of the Director, AIIMS, Patna and the Secretary, BHRC for providing adequate facilities in the other DCHCs and DCHs as well. Further, on perusal of the joint report we are, *prima facie*, of the view that AIIMS, Patna has developed protocol for treating COVID-19 patients which may be treated as one of the guiding factors for the doctors at the COVID Care Centres (CCCs), Dedicated COVID Health Centres (DCHCs)



and Dedicated COVID Hospitals (DCHs), to follow. It further appears that AIIMS, Patna has developed a 'well-tested' duty roster for the doctors and nurses for treating COVID patients. The Respondents-State of Bihar, in the Court's opinion should consider and follow the same if found effective and practicable.

Mr. Ranjit Kumar, learned Senior Counsel appearing on behalf of the State of Bihar has presented before us a comprehensive action plan of the State of Bihar to meet the challenges arising out of spike of COVID19 cases in its second wave, in light of our direction in the previous orders, which has been taken on record.

Admittedly, acute shortage of oxygen is one of the greatest challenges which the healthcare system in the State of Bihar is presently facing in the wake of sudden upsurge of COVID-19 cases. Mr. Ranjit Kumar, learned Senior Counsel has taken us to paragraph-14 of the said comprehensive action plan to point out the present availability of oxygen in different forms and future plans to increase the supply of Oxygen, including installation of Pressure Swing Absorption (PSA) plant in respect of which a proposal has been sent to the Government of India. He has further informed that taking into account the increasing rate of active COVID-19 patients in the State of Bihar, the State



Government has requested the Central Government to allocate 300 MT oxygen for the State of Bihar.

During the course of hearing of the present case, the Executive Director, Bihar Health Society attempted to address the Bench as to how oxygen is produced / procured from different sources and thereafter distributed for use in various government and private hospitals.

In response to a query as to whether the districts, other than district of Patna, in the State of Bihar are facing the same problem of shortage of oxygen, he has informed that no such requisition has been made by the District Magistrates of other districts. We are unable to comprehend the critical situation of shortage of oxygen only in the district of Patna, particularly in the city of Patna. It may be true though that the city of Patna is most populous in the State of Bihar and being capital of the State, there is normal tendency of persons/ patients to rush towards the capital which has better healthcare facilities than other districts in the State of Bihar.

Be that as it may, the Court intends to have a vivid picture of availability and the mode and manner in which the State-Respondents have planned to supply oxygen to different DCHCs and DCH so as to address one of the core issues relating



to non-availability of oxygen in various hospitals including private hospitals, which has serious consequences qua the treatment of COVID patients.

By way of an example, we had mentioned in our previous order, the case of one Late Gagan Mishra, an officer in the Registry of Patna High Court, who died of COVID infection few days ago, reportedly, because of unavailability of oxygen in various hospitals in the city of Patna.

In the light of this Court's previous order, a report dated 20.04.2021 has been submitted by the Registrar General of Patna High Court, relevant portion whereof is being quoted herein below:-

*“Dr. Rai has stated that Sri Gagan Mishra was admitted on 14th April, 2021 at 10:35 PM and he was suffering from SARS Cov-2, Atypical Pneumonia (RTPCR Covid-19 Positive). He has further stated that he was admitted in Covid Ward, Bed no. 6 and he was also on medication for Hypothyroidism. He has further stated that at the time of admission, he was put on high flow oxygen level 6 to 8 Ltrs. and the doctors opined that during treatment, his condition got deteriorated and high flow Oxygen level went up to 10 Ltrs. **He has further stated that from the night of 16th April, his condition deteriorated and there was acute***



scarcity of Oxygen Cylinders in the hospital. He has further stated that on the request of family members of Sri Gagan Mishra and at the instance of High Court Administration, One Cylinder of Oxygen (Jumbo size) containing 40 Ltrs. Of Oxygen was provided to the hospital for care of Late Sri Gagan Mishra. He has further stated that on that day, in the Covid Ward of the hospital there were 20 patients in critical care unit. He has further stated that on 17th April, 2021 for care of 20 admitted patients in critical care ward, hospital needed 100 cylinders of Jumbo size (40 Ltrs.) but hospital received only 10 cylinders of oxygen.

He has further stated that due to acute paucity of Oxygen and further deterioration in condition of patient, Late Gagan Mishra was advised to visit or got admitted in higher center for further management.

He has further stated that till today, due to the paucity of oxygen cylinder and other life saving drug i.e. Remdesivir or even Oral Tablet Favipiravir, hospital is not admitting new critical patients and directing already admitted patients in need of critical care to go to higher center where sufficient number of Oxygen Cylinder and other critical care medicines are available.”



The facts noted in the aforesaid report of the learned Registrar General of this Court, which is illustrative in nature displays, albeit *prima facie*, the situation to be horrific. The Court takes serious note of the facts mentioned in the report regarding the paucity of oxygen in the State, which is a crucial medical requirement and an essential critical component for treatment of COVID-19 patients. The Court, in that background, requests Mr. Ranjit Kumar, learned Senior Counsel to seek detailed instructions from the State of Bihar in respect of the effective steps which have been taken and are proposed to be taken to tide over the situation arising out of reported acute shortage of medicinal oxygen in the State of Bihar.

Mr. K.N. Singh, learned Additional Solicitor General for India is also requested to seek instructions from the Central Government as to what immediate and effective steps can be taken to ensure proper and effective supply of oxygen to various hospitals in the State of Bihar.

Further, it is an admitted position that the rate of RT-PCR tests in the State is required to be considerably enhanced. Mr. Ranjit Kumar, learned Senior Counsel has pointed out to this Bench that 'TrueNat' machine appears to be a small, chip based, portable and battery operated device for conducting



confirmatory test of COVID-19 infection, which is approved by the Indian Council of Medical Research ("ICMR" in short). If the said equipment is cost effective and can produce results in less time than other tests, the Health Department, Government of Bihar should consider acquiring more such equipments to optimize the number of daily COVID-19 tests.

Let a report be submitted to this Court by the Health Department, Government of Bihar stating clearly the present status of number of beds available for COVID-19 patients in different CCCs, DCHCs and DCHs, showing the number of beds which are equipped with oxygen, ICU beds and number of ventilators available and to what extent the number of such beds, is proposed to be increased, category wise.

We had directed the BHRC in our order dated 19.04.2021 to conduct surprise inspections of the CCCs, DCHCs and DCHs. The said direction is reiterated. The Secretary, BHRC shall ensure that surprise inspections are conducted regularly, with the assistance and in the presence of such experts as may be considered fit and proper by the learned Chairman, BHRC.

Considering the gravity of the situation, the District Magistrate, Patna and the District Magistrate, Muzaffarpur shall



be required to join the proceeding, to be now held on
23.04.2021 at 4:30 p.m.

List this case on 23.04.2021, to be taken up at 4.30
p.m.

(Chakradhari Sharan Singh, J)

(Mohit Kumar Shah, J)

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