

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

Friday, the 7th day of May 2021/17th Vaisakha, 1943

WP(C) No.10845/2021(S)

PETITIONER

MATHEW NEVIN THOMAS, 38/777 (34/1319),
MTRA-18, ST.GEORGE LPS ROAD, ERNAKULAM-682 024.

RESPONDENTS

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF HEALTH & FAMILY WELFARE, ROOM NOS.514-B/A,
NIRMAN BHAWAN, NEW DELHI-110 011.
2. MINISTRY OF HOME AFFAIRS,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
NORTH BLOCK, NEW DELHI-110 001.
3. INDIAN COUNCIL OF MEDICAL RESEARCH,
REPRESENTED BY ITS DIRECTOR GENERAL,
ANSARI NAGAR, NEW DELHI-110 029.
4. DRUG CONTROLLER GENERAL OF INDIA,
CENTRAL DRUGS STANDARD CONTROL ORGANIZATION,
DIRECTORATE GENERAL OF HEALTH SERVICES,
MINISTRY OF HEALTH & FAMILY WELFARE, GOVERNMENT OF INDIA,
FDA BHAWAN, KOTLA ROAD, NEW DELHI-110 002.
5. CONTROLLER GENERAL OF PATENTS,
BOUDHIK Sampada Bhavan, Antop Hill,
S.M. ROAD, MUMBAI-400 037.
6. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
7. SERUM INSTITUTE OF INDIA PRIVATE LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR, 212/2, HADAPSAR,
OFF SOLI POONAWALLA ROAD, PUNE, MAHARASHTRA-411 028.
8. BHARAT BIOTECH INTERNATIONAL LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
GENOME VALLEY SHAMEERPET, HYDERABAD, TELANGANA-500 078.
9. DEPARTMENT OF PHARMACEUTICALS,
REPRESENTED BY ITS SECRETARY, SHASTRI BHAWAN,
NEW DELHI-110 001.
10. NATIONAL PHARMACEUTICAL PRICING AUTHORITY,
3RD/5TH FLOOR, YMCA CULTURAL CENTER BUILDING 1,
JAI SINGH ROAD, NEW DELHI, INDIA-110 001.

P.T.O.

11. NATIONAL DISASTER MANAGEMENT AUTHORITY,
NMDA BHAVAN, SAFDARJUNG ENCLAVE, NEW DELHI-110 029,
REPRESENTED BY ITS MEMBER SECRETARY.
12. KERALA STATE DISASTER MANAGEMENT AUTHORITY,
VIKAS BHAVAN P.O, OBSERVATORY HILLS,
OPPOSITE KANAKAKKUNNU PALACE, THIRUVANANTHAPURAM-695 033, REPRESENTED
BY ITS MEMBER SECRETARY.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to:

1. Direct the 1st respondent to produce the records relating to the decision made to follow the pricing policy indicated in Exhibit P1;
2. Direct the 7th and 8th respondents to produce the details of the calculation of costs, profits etc. based on which they have notified prices for vaccinations pursuant to Ext. P1, if required in a sealed cover, in the event of any confidentiality clauses being in existence for revealing such information in the public domain;
3. Direct the 1st Respondent to continue with its current policy of central procurement of all vaccines and free supply to the states with respect to COVID-19 vaccines;
4. Direct the 1st Respondent to ensure that the rates at which COVID-19 vaccines are administered continue to be no more than Rs. 250 per dose in private hospitals as was being done from the date of commencement of the vaccination drive;
5. Direct the 1st Respondent to ensure that persons who are eligible as on the date of this petition to receive free COVID-19 vaccination continue to remain eligible for the same despite the issuance of Ext. P1;
6. Direct the 1st Respondent to ensure that persons who have already received the first dose of COVID-19 vaccines will continue to be able to receive the second dose free of cost or at the same rate they received the first dose;
7. Direct the 1st Respondent to ensure that it provides adequate guarantee facility to states so that states are not stopped from obtaining adequate number of vaccines under Ext. P1 even if they do not have the capability to make upfront/ advance payments;

P.T.O.

8. Direct the State Government to furnish the following details:

(1) status report on the availability of vaccines in the state; (2) the number of persons who have taken first dose for free and are awaiting the second dose; (3) the number of persons who have taken first dose @250 per dose and are awaiting the second dose; (4) the number of persons above the age of 18 who are yet to vaccinated in the State of Kerala who will have to be compulsorily vaccinated; (5) the funds required for procuring the vaccines from the central government as per the revised pricing; (6) the funds presently available in the State Exchequer at its disposal which can be earmarked for the procurement of the vaccines; (7) steps taken by the State Government for procuring the vaccines and the present status regarding the same; pending disposal of this Writ Petition.

This petition again coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 30/04/2021 and upon hearing the arguments of M/S ARUN THOMAS, ABI BENNY AREECKAL, KARTHIK RAJAGOPAL, DIVYA SARA GEORGE, JAISY ELZA JOE, KARTHIKA MARIA, LEAH RACHEL NINAN, NANDA SANAL, SANITA SABU VARGHESE, VEENA RAVEENDRAN, ANIL SEBASTIAN PULICKEL, JENNIS STEPHEN, SANTHOSH MATHEW & VIJAY V. PAUL, Advocates for the petitioner, ASSISTANT SOLICITOR GENERAL OF INDIA for R1 to R5 & R9 to R11 and of SRI.K.V.SOHAN, STATE ATTORNEY, the court passed the following:

सत्यमेव जयते

Devan Ramachandran &
Dr.Kauser Edappagath, JJ.

W.P.(C)No.10845 & 11211 of 2021 S

For information purpose only
Dated this the 7th day of May, 2021

ORDER

Devan Ramachandran, J.

With the advent of what is commonly called the 'second wave' of COVID-19 pandemic, we notice a desparate scramble for vaccination by all citizens. This has unfortunately led to crowding and congrration at the vaccination centres, in complete violation of the COVID-19 protocols and as we had said in the earlier order dated 04.05.2021, if this is allowed, what is intended to be a prophylatic exercise would become a super-spreader event.

2. When we interacted with various counsel for the parties in these cases, it is clear that unless availability of vaccines becomes easier, it would require great effort from the police and other law enforcement machinery to ensure that there is gathering at the vaccination centres.

3. The learned counsel for the petitioner, Sri.Santhosh Mathew and the learned State Attorney, Sri.K.V.Sohan, brought to our notice that private hospitals and players have been given liberty to approach the manufacturers of vaccines directly and

that the subsidised rates are available only to the Central Government. They also pointed out that the manufacturers are to release 50% of their supply to the Central Government, while the balance 50% is to be given to the State Governments and to other channels, which is called 'other than Government of India'.

4. There can be little doubt that every citizen would crave for the vaccination because they fear that, without it, their lives would be jeopardised. We cannot, therefore, blame the citizens for rushing to the vaccination centres, but as we have said above, this presents an extremely dangerous situation. As we have also recorded in our earlier order, the learned State Attorney informs this Court that Government of Kerala has placed an order for one crore numbers of vaccines from the Government of India.

5. Today, the learned Assistant Solicitor General submitted that he does not have specific instructions as to the supply of vaccines, as requested by the Government of Kerala, but that doses are being released incrementally as and when it becomes available, following an All India Policy. He added that it will not be possible to supply vaccines exclusively to Kerala or in excess of other States and that a well thought of policy has already been adopted, so that there is a fair distribution, according to the needs and demographic numbers.

6. We have no quarrel with the proposition now placed before us by the learned Assistant Solicitor General, but we think that Government of India should respond at the earliest as to when there would be a meaningful solution to the scarcity of doses of vaccines, which is now being faced. When we say this, it may not be misunderstood to mean that we are asking for any preferential treatment to the State of Kerala, but only that Government of India must inform us how and when the doses, as requested, can be made available to Kerala.

7. In the meanwhile, we cannot allow any crowding and flocking at the vaccination centres and, as we have already ordered above, it is upto the State Police Chief to ensure that this is averted at any cost.

8. We, however, notice that inspite of our orders, there were some isolated events reported in the Mathrubhoomi Newspaper in its Palakkad Edition on 05.05.2021, about the gathering of persons at two places. We understand that this happened because there was a communication gap between the authorities of the vaccination centres and the police authorities.

9. We are, therefore, of the firm opinion that our directions to the Police Authorities to ensure that there is no crowding will have to continue, but we deem it appropriate that the vaccination

centres be also directed to co-ordinate appropriately with the concerned police officials.

10. In the afore circumstances, in supplementation of the earlier order, we direct all the concerned authorities at the vaccination centres to inform the local police station well in advance about the vaccination dates, in which event, sufficient force will be depolyed to avert crowding of citizens in excess of the available doses.

11. Needless to say, the State Police Chief is ordered to direct all the Station House Officers in the State of Kerala, through an appropriate circular to be issued e-mail within twenty four hours, that any request from the vaccination centres for deployment of force will be honoured and crowding in violation of the COVID protocols are stopped, however, without use of unnecessary force, but by emphathetic persuasion.

12. We also exort the citizens of this State to understand that panic and unrestrained behaviour can only lead to worsening of the pandemic situation and that they must also understand the gravity while approaching the vaccination centres and such other health facilities, in their own interest. We hope that Government of Kerala will make our anguish known to the general public through apposite means and thus persuade them not to flock and gather

around at the vaccination centres and other health facilities, in disregard of their own personal safety.

List on 20.05.2021.

Handover.

Sd/-
Devan Ramachandran, Judge

Sd/-
Dr.Kauser Edappagath, Judge

tkv

