

CWP No. 2795 of 2021

06.05.2021 Present: Mr. B.N. Misra, Senior Advocate, with Ms. Vandana Misra, Advocate, for the petitioner.

Mr. Ashok Sharma, Advocate General, with Mr. Ajay Vaidya, Sr. Addl. Advocate General, for the respondents/State.

Mr. Balram Sharma, Assistant Solicitor General of India, for respondent No. 4.

(Through Video Conferencing)

On the oral request of learned counsel for the petitioner, Union of India, through its Secretary (Health) being a necessary as well as a proper party is ordered to be arrayed as party-respondent and shall figure as respondent No.4.

2. Notice. Mr. Balram Sharma, learned Assistant Solicitor General of India, appears and waives service of notice on behalf of newly added respondent No.4.

3. This writ petitioner has filed this petition as a *pro bono publico* for grant of the following reliefs:-

"i. That appropriate directions may kindly be issued to respondents No.1 and 2 to ensure that all the Covid patients are provided adequate medical facilities including beds, medicines and ventilators at the Dr. Y.S. Parmar Medical College.

ii That the respondents may kindly be directed to ensure that the Covid patients at Nahar Government Hospital are properly and regularly attended to and treated by the doctors and not be left at the mercy of the medical support staff.

iii). That the respondents may further kindly be directed to ensure immediate installation and functioning of the ventilators already supplied and

available in the Hospital (Respondent No.2).

iv). That Respondent No.2 and every doctor at the hospital may kindly be made personally responsible and liable to ensure that the critical Covid patients requiring oxygen are put on ventilators forthwith in order to prevent further loss of life.

v). That the respondent No.1 may kindly be directed to complete the installation and functioning of the existing oxygen manufacturing plant in the Nahan Medical College premises forthwith from its emergency fund without waiting for the resolution of the dispute with the supplier of the said oxygen plant and machinery.

vi). That appropriate direction may kindly be issued to Respondent No.3 as the nodal agency to execute and monitor the financial obligations of the State under the Disaster Management Act, 2005.

vii). That appropriate directions may kindly be issued to Respondents No.1 and 2 to designate the Nahan Medical College as Covid 19 dedicated hospital for the district.”

4. Due to the unprecedented pandemic, everybody in the World is suffering in one way or the other. In the words of the Hon'ble Supreme Court, it is a world-war against Covid-19 and there has to be a Government-Public partnership to fight world-war against Covid-19.

5. Reference in this regard can be made to the order dated 18.12.2020 passed by Hon'ble Three Judges Bench of the Hon'ble Supreme Court In Re: “**The proper Treatment of Covid 19 Patients and dignified handling of Dead Bodies in the Hospitals etc: Suo Motu Writ Petition (Civil) No.7 of 2020**”, wherein the Hon'ble Supreme Court

further held that right to health is a fundamental right guaranteed under Article 21 of the Constitution of India which includes affordable treatment. It was also held that it was the duty of the State to make provisions for affordable treatment and more and more provisions in the hospitals to be run by the State and/or by the Local Administration are made.

6. It shall be apposite to refer to the relevant observations made by the Hon'ble Supreme Court which read as under:-

"5. Due to unprecedented Pandemic, everybody in the world is suffering, one way or the other. It is a world war against COVID-19. Therefore, there shall be Government Public Partnership to avoid world war against COVID-19.

6. Right to health is a fundamental right guaranteed under Article 21 of the Constitution of India. Right to health includes affordable treatment. Therefore, it is the duty upon the State to make provisions for affordable treatment and more and more provisions in the hospitals to be run by the State and/or local administration are made. It cannot be disputed that for whatever reasons the treatment has become costlier and costlier and it is not affordable to the common people at all. Even if one survives from COVID-19, many times financially and economically he is finished. Therefore, either more and more provisions are to be made by the State Government and the local administration or there shall be cap on the fees charged by the private hospitals, which can be in exercise of the powers under the Disaster Management Act.

7. Despite the Guidelines and SOPs issued, for lack of

implementation the Pandemic has spread like wild fire. A strict and stern action should be taken against those who are violating the Guidelines and SOPs, whoever he may be and whatever position the violator is occupying.

8. Every State must act vigilantly and to work with the Centre harmoniously. It is the time to rise to the occasion. Safety and health of the citizens must be the first priority, rather than any other considerations.

9. People should understand their duty and follow rules very strictly. It is the duty of every citizen to perform their fundamental duties as guaranteed under the Constitution of India. By not following the Guidelines/SOPs issued by the State from time to time, such as, not wearing the masks, not keeping social distances, to participate in the gatherings and the celebrations without maintaining social distances, they are ultimately not damaging themselves but they cause damage to the others also. They cannot be permitted to play with the lives of the others and they cannot be permitted to infringe the rights of other citizens, like right to health guaranteed under Article 21 of the Constitution of India.

10. There is a need to help and guide our people to implement the guidelines and the SOPs issued by the Government, either the Union or the State, such as, wearing of masks, keeping the social distance etc. In many States, despite the huge fine recovered, such as, Rs. 80 to 90 crores in the State of Gujarat alone, people are not following the guidelines and the SOPs. There must be a strict implementation by the authorities so as to ensure that the SOPs and the guidelines issued from time to time are strictly adhered to and followed by the people. Additional Chief Secretary (Home)/Secretary (Home) of respective States shall ensure the strict

implementation of the SOPs and the guidelines with the help of the concerned Superintendent of Police/ District Superintendent of Police and the Police In-charge of the concerned police station.

11. We have already issued various directions with regard to measures to be taken to contain the Covid-19. We once again reiterate the State to issue necessary directions with regard to following measures so as to effectively monitor and supervise the implementation of various SOPs and guidelines.

i) More and more police personnel shall be deployed at the places where there is likelihood of gathering by the people, such as, Food Courts, Eateries, Vegetable Markets (Wholesale or Retail), sabzi Mandies, bus stations, railway stations, street vendors, etc.

ii) As far as possible, unless must, no permission shall be granted by the local administration or the Collector/DSP for celebration/gathering even during the day hours and wherever the permissions are granted, the local administration/ DSP/Collector/Police In-charge of the local police station shall ensure the strict compliance of the Guidelines/SOPs. There should be a mechanism to check the number of people attending such function/gathering, such as, the particulars with respect to how many persons are going to attend the celebration/gathering, timings during which the celebration/gathering is to take place etc.

iii) There shall be more and more testing and to declare the correct facts and figures. One must be transparent in number of testing and declaring the facts and figures of the persons who are Corona Positive. Otherwise, the people will be misled and they will be under impression that everything is all right and they will become negligent.

iv) Whenever directions are issued under the Disaster Management Act directing the corporate hospitals/private hospitals to keep 50% or any other percentage free municipal beds, it must be strictly complied with and there shall be constant vigilance and supervision.

v) There shall be free helpline numbers to redress the grievances of common man, when there is noncompliance of the directions by the private hospitals/corporate hospitals.

vi) Curfew on weekends/night be considered by States where it is not in place.

vii) In a micro containment zone or in an area where number of cases are on higher side, to cut the chain, they should be sealed and there should be complete lockdown so far as such areas are concerned. Such containment areas need to be sealed for few days except essential services. The same is required to break the chain of virus spread.

viii) Any decision to impose curfew and/or lockdown must be announced long in advance so that the people may know and make provisions for their livelihood, like ration etc.

ix) Another issue is a fatigue of front row health care officers, such as, Doctors, Nurses as well as workers. They are already exhausted physically and mentally due to tireless work for eight months. Some mechanism may be required to give them intermittent rest."

7. In a fairly recent decision rendered by Hon'ble Three Judges Bench of the Hon'ble Supreme Court in **Dipika Jagat Ram Sahani vs. Union of India and others (2021) 2 SCC 740** it has categorically been held that the Constitution of India with the object of securing to all its citizens social and economic justice contains various Articles which empower making of special law in favour of women and children. Article 47 of the Constitution which forms the part of the Directive Principles of State Policy provides that the State shall regard the raising of level of nutrition and the standard of living of its people and the improvement of

public health as amongst its primary duties. It was held that the Government has a constitutional obligation to preserve human life. Good health of its citizens is its primary duty. International covenants also aim at highest attainable standards of physical and mental health. This is in the interest of social justice. Inadequate supply of nutritious food to the citizens, more particularly, to the children and the women shall affect their health. Therefore, the same shall be in violation of their fundamental right to health/right to live with dignity guaranteed under Article 21 of the Constitution. Lastly, it was held that it is for the State to secure health of its citizens as its primary duty.

8. Somewhat identical matter regarding the rapid spread of Covid-19 during the 1st Pandemic had earlier come up before the Court in **CWPIL No. 11/2020** titled '**Court on its own motion vs. State of H.P. and others**' along with connected matter, decided on 03.12.2020 wherein after hearing the parties, the following directions came to be passed:-

"i. The State shall ensure that senior doctors in all the notified COVID hospitals visit the ward on regular basis in accordance with the instructions issued by the Government.

ii. The State is directed to consider the feasibility of having liquid oxygen tankers stationed at all the notified COVID hospitals.

iii. Respondents to ensure that the manpower hired temporarily on outsource basis through authorised

service providers be appointed as expeditiously as possible and in no event later than 5th December, 2020.

iv. The State is directed to ramp up the testing by adopting the approved measures by associating private Labs or their technicians, or both.

v. It shall be mandatory for the sample collecting authority to obtain contact number, e-mail id, if any, apart from other details like age, address etc. at the time of taking samples, so that the result of the test can be communicated on e-mail, whatsapp etc. Such report be supplied in a time bound manner and in no event beyond 48 hours, bearing in mind the necessary protocols.

vi. Wide publicity be given in the news, print and social media regarding testing that are to be conducted in walk-in kiosk in all the towns like Shimla, Mandi, Dharamshala, Kullu, Solan, Una, Hamirpur, Bilaspur etc. for the collection of samples during the pre-fixed time everyday.

vii. A dedicated helpline in all the COVID Hospitals be notified so that the family members, near and dear ones of the COVID patients can get in touch with such patients to know about his/her well being etc.

viii. Such patients, who are willing to afford, be permitted to have trained nursing attendant at their own costs as this would be a long way to reduce the burden on the hospital staff.

ix. It be ensured that wrapping up of the dead body(ies) of those COVID patients, who unfortunately succumb to the disease, under no circumstances is/are carried out/done in the Ward and the body is removed immediately from the Ward.

x. It be ensured that the toilets are kept in clean and hygienic condition round a clock and a dedicated helpline be provided to the patients, in case, they have

any complaint regarding not only the toilets but other facilities.

xi. Provisions for hot water and steamer(s) be made by providing those in adequate quantities alongwith electricity extension boxes.

xii. The State may also consider making COVID test mandatory for the people entering the State from the outside.

xiii. The rules regarding the wearing of mask, social distancing and quarantine be strictly enforced by associating not only the local police but also by engaging the employees of the Municipal Corporation, Home Department and local volunteers.

xiv. It be ensured that no person or family is ostracised by the Society only because the family is COVID positive.

xv. No social or public gathering shall be permitted henceforth without the prior approval of the Magistrate with intimation to the local police station who shall then be duty bound to ensure that such gathering does not exceed the prescribed limit. In addition thereto, it shall also be the duty and responsibility of the office bearers of the Panchayati Raj Institutions and local urban bodies, as the case may be, to ensure that the protocols and procedures including wearing of mask, social distancing, home isolation, public gathering etc. are strictly adhered to.

xvi. It be ensured that every person, more particularly, who are engaged in delivery of essential services observe SoPs strictly and their test be conducted on priority basis.

xvii. The State would consider providing additional incentives to those deployed in COVID-19 duties including the outsourced workers, more particularly, Class-III and IV, who are working in the COVID wards.

xviii. The patients undergoing treatment at home will be contacted by dedicated medical personnel at least twice

a day over his/her telephone so as to monitor the treatment at home.

xix. The State will ensure that the medicine kits being provided to patients undergoing treatment at home are of good and standard quality so as to remove any kind of doubt regarding its efficacy.

xx. The State would also consider having flexi or staggered office time from 9:30 a.m. for the first shift and 10:00 a.m. for the second shift which shall finish at 4:30 p.m. and 5:00 p.m., respectively This will help in reducing over-crowding in buses.

xxi. The general public be educated about COVID-19 by hoardings, messages through Radio, T.V., booklets etc. by convincing them that it is a collective fight by the society and no one should violate the regulations, procedures and protocols. The people should also be educated about the infection of the Corona, its prevention and treatment.

xxii. Similar exercise shall be taken by all the Secretaries, State Legal Services Authority at their own level and through the PLV's etc.

xxiii. The Director General of Police is directed to depute extra police personnel(s) from the battalion and other places so as to ensure that no one unnecessarily leaves or enter the containment zones.

xxiv. All those involved in COVID duties irrespective of their rank and files, are restrained from going on strike/dharna and, in case, any one of them have any difficulty, then they are at liberty to approach this Court individually or through the learned Amicus Curiae for redressal thereof, but under no circumstances they would resort to arm twisting by resorting to strike or dharna. In case, any one of them resort(s) to such mis-adventure, then in addition to any other action, which respondents-State may take including blacklisting the

firm(s), terminating the services of such employees, he/they shall be liable to be prosecuted and punished for contempt under the Contempt of Courts Act, for deliberately disobeying the directions of the Court.

xxv. Ambulances, six in number, which are fitted with ventilator(s) and other equipments and are stated to be idle, shall be put to use forthwith.

xxvi. Adequate provisions be made for diet, rest etc. for those who have been deputed in connection with COVID-19 duties and if found necessary, assistance of NGOs, Charitable Institutions may be taken.”

9. Reverting back to the facts of the present case, the main grievance of the petitioner as set-forth in the petition is lack of oxygen facilities at Dr. Y. S. Parmar Government Medical College, Nahan and non-functioning of 25 ventilators which have been given to the Medical College under the HIM Care Scheme in July, 2020.

10. Learned Senior Additional Advocate General has placed on record the instructions received from the Principal of the College, which reads as under:

“1. The PSA oxygen plant building sight is ready alongwith the equipment waiting for commissioning the authorized technicians of the certified company as tendered by the govt. have yet to installed and commission the plant. The PSA plant is of 675 LPM capacity.

2. Total number of ventilators in the medical college = 26 and functional = five (Non-Invasive).

3. Covid isolation ward oxygen supply 024 x 7 manifold plant oxygen supply is available to 20 Covid

ICU beds and additional 10 beds are being maintained through D type oxygen cylinders at present no shortage of oxygen supply in the covid isolation ward.

4. The oxygen cylinders are filled on daily basis through authorized vendors on priority basis from the following sources:

1. M/s Himachal Oxygen limited Paonta Sahib Distt. Sirmaur, H.P.

2. M/s Bala Sundari Gases (O) Ltd., Trilokpur Road, Kala Amb, Distt. Sirmaur.

Apart from this, with respect to reply of page numbers 6 and 7, following submissions are made:

1. Adequate medical facilities, medicines & five ventilators are available.

2. Duty Roster of Anesthesia & Medicine Deptt. Are strictly adhered to under the supervision of Senior Medical Superintendent and dedicated Covid Nodal Officer Dr. Vinay Kaushik.

3. Five ventilators are functional (Non Invasive) under the supervision of HOD Anesthesia.

4. Responsibility has been fixed under the supervision of Dr. Vinay Kaushik, HOD, Medical.

5. PSA plant has been given by GOI installation has not yet done. Repeated request for installation has not yielded any positive result. Now, they have given date of 10th May, for installation.”

11. After going through the aforesaid instructions, it is vehemently contended by learned Senior Additional Advocate General that it is in exceptional circumstances that the ventilators are being put to use for the treatment of Covid-19 patients and as per the latest protocols, it is only High flow oxygen that is primarily required and there is no dearth of supply of the same for the present.

12. The learned Senior Additional Advocate General has provided us the details of the Covid patients, who are currently put on ventilators which reveal that 48 patients are currently on the ventilators, out of which 19 are at Dr. RPGMC & Hospital Kangra at Tanda, 11 are at Govt. Medical College and Hospital, Shimla, 12 at Shri Lal Bahadur Shastri Govt. Medical College, Ner Chowk, Mandi, and 6 at Pandit Jawahar Lal Nehru Government Medical College and Hospital, Chamba. No patient in Nahan thus far was required to put on ventilator.

13. At this stage, Mr. B.N. Misra, learned Senior Advocate assisted by Ms. Vandana Misra, learned counsel for the petitioner complains that in view of the surge of Covid cases, the hospital at Nahan is far too small to handle Covid cases as it has only 20 Covid ICU beds and additional 10 beds which are being maintained through 'D' type oxygen cylinders to deal with the Covid patients. Whereas, taking into consideration the sudden surge in the Covid positive patients, the facility for atleast 500 persons should be made available by the Government.

14. Mr. Vaidya, learned Senior Additional Advocate General, on instructions, states that the State is already alive to the situation and currently only 23 patients are admitted in the hospital at Nahan and shortly the State Government would be making the facility for hiring private

hospitals. One hospital in fact by the name of 'Sai Hospital' at Nahan having the bed capacity of 80 has already been taken up for the aforesaid purpose and talks are at the advance stage for taking over the Juneja Hospital at Paonta Sahib. In this way, there would be the facility of about 110 additional beds available within 15 to 20 days.

15. Mr. B.N. Misra, learned Senior Counsel for the petitioner has pointed out that the private hospitals are reluctant to provide covid test facilities and has invited our attention to the news report titled "Pvt. Hospitals reluctant to provide Covid test facility" published in the Tribune in its edition dated 5th May, 2021.

16. We may observe that the war against the Covid is not to be fought by the Government alone, but is collective efforts by all citizens, social service organisations, NGOs and, more importantly, the private hospitals. Therefore, the private hospitals should not shirk from their duties and responsibilities in these testing times.

17. Since the Covid pandemic has struck the entire State, therefore, we feel that it is absolutely necessary to expand the scope of this petition to the entire State, more particularly, keeping in view the two articles that have recently appeared in the English daily i.e. Hindustan Times

dated 5th May, 2021, which reads as under:

“71% beds in Himachal Pradesh hospitals occupied, shows data

Situation in the dedicated Covid care centres across the 12 districts is slightly better; of the total 1,387 beds in these centres, only 286 (20%) are currently occupied; government says there is no need to panic as enough beds and oxygen are available.

About 71% beds in the dedicated Covid health centres (DCHCs) and hospitals in Himachal are occupied and the remaining ones would be filled up soon if the cases continue to spiral, suggest the data obtained from the health department.

Two hospitals in Shimla — Indira Gandhi Medical College (IGMC) and Deen Dayal Upadhyay Hospital (DDU) — are full to capacity. At Deen Dayal Upadhyay, there are 127 patients against its 90-bed capacity. “Right now, we have adequate stock of oxygen,” said medical superintendent Dr Ravinder Mokhta.

Patients in critical care from Rohru, Chopal, Theog, and Rampur are also referred to DDU. “We are trying to accommodate every patient requiring treatment,” said IGMC senior medical superintendent Dr Janakraj Pakhretia. “More beds are being added to the new OPD block. We have also taken over the wards in medicine department,” he added. As per the data, the state has a total capacity of 1,967 beds in DCHCs of which, 1,397 were occupied as of May 4.

Himachal has 28 DCHCs and dedicated Covid hospitals of which, IGMC, Shimla; Dr Rajendra Prasad Government Medical College (RPGMC), Tanda; and Lal Bahadur Shastri Government Medical College in Mandi are tertiary centres.

Among the patients admitted in the centres, 1,183 are on oxygen support and 43 on ventilator support.

Meanwhile, the situation in the dedicated Covid care centres across the 12 districts is slightly better. Of the total 1,387 beds in these centres, only 286 (20%) are currently occupied. A government spokesperson said more than 90% of the people infected with Covid were in home isolation in the state and there was no need to panic as enough beds and oxygen were available.

Rakesh Kumar Prajapati, deputy commissioner of Kangra, which is the worst-hit district, said the situation was bit grim there with 95% beds in Covid facilities occupied.

“All 40 ICU beds at RPGMC, Tanda, are occupied and we are trying to add 25 more beds. Also, another 25-bed facility has

been created at Rajiv Gandhi Government Ayurvedic College, Paprola," he added.

Twenty-five beds will be added to the facility every day, he said, adding that 40 beds will also be set up at Fortis Hospital on April 7.

Deadliest day in HP as Covid claims 48 lives, infects 3,824

Active cases in the state have climbed to 23,572, while the recoveries reached 85,671 after 1,992 people recuperated; senior MBBS will be roped in for Covid duty in Himachal; to get incentive of ₹3,000.

Himachal Pradesh on Tuesday recorded 3,824 fresh Covid-19 infections, taking the state's tally to 1,10,945.

It was also the deadliest day since the outbreak as 48 people succumbed to the contagion, highest number of fatalities in a single-day since the outbreak. The death count has now reached 1,647.

The active cases in the state have climbed to 23,572, while the recoveries have reached 85,671 after 1,992 people recuperated.

Kangra's case tally breaches 20,000 mark

Of the new cases, 877 were reported in Kangra alone. The case count in the most populous district in Himachal has breached 20,000 mark.

Kangra also has the more than 5,000 active cases, highest in the state.

The second most populous district Mandi has recorded 802 fresh cases and is followed by Solan with 411 cases. Hamirpur recorded 340 cases, Shimla 323, Sirmaur 270, Una 258, Bilaspur 227, Chamba 158, Kullu 78, Kinnaur 54 and Lahaul-Spiti 26.

State has recovery rate of 77% and death case fatality ratio of 1.5%.

Highest 15 fatalities occurred in Kangra, 11 in Solan, six in Sirmaur, four each in Hamirpur and Shimla, three in Una, two each in Chamba and Kullu and one in Mandi.

Kangra, the worst-hit district in the second wave, is on the top in terms of total case count with 20,447 followed by Shimla with 15,985 cases and Mandi 15,879.

Solan's case tally has reached 14,129, Sirmaur 8,337,

Una 7,819, Hamirpur 7,340, Bilaspur 6,396, Kullu 6,144, Chamba 4,912, Lahaul-Spiti 2,001 and Kinnaur 1,856.

Six more oxygen plants to come up in Himachal: CM

Chief minister Jai Ram Thakur on Tuesday said the Centre has sanctioned six pressure swing adsorption (PSA) oxygen plants for the state.

He was addressing a meeting of officers of Kangra through videoconferencing.

The plants would come up at civil hospital Palampur; zonal hospital Mandi; civil hospital Rohru; civil hospital Khaneri in Shimla; Dr YS Parmar medical college and hospital in Nahan and regional hospital Solan. He said oxygen production has started in Dharamshala, Mandi and Shimla plants.

A spokesperson said there was no shortage of oxygen supply and beds in the hospitals and efforts were being made to enhance the bed capacity and oxygen supply day by day. As of now, 3,346 beds were available in various health institutes of the state.

The CM said that makeshift arrangements should be made in Paraur to provide additional 250 beds within next 10 days, which would be gradually increased to about 1,000 beds.

Thakur said that private laboratories must be empanelled and requisitioned so that more RT-PCR tests could be conducted.

Thakur said the government has also decided to provide incentives to various categories of doctors and paramedical staff on duty in Covid hospitals. He said that fourth and fifth year MBBS students, contractual doctors and junior/senior residents would be provided an incentive of ₹3,000 per month while nursing, GNM third-year students and contractual lab staffers would get ₹1,500 per month till June 30."

18. It is argued by Shri B. N. Misra, learned Senior Advocate, that:

(i) There is acute medical crisis in the State of Himachal Pradesh due to sudden surge and

spread of COVID-19, which has engulfed not only the urban areas but has also reached the villages.

- (ii) Many deaths have been reported during the past few days from the various parts of the State due to acute shortage of oxygen.
- (iii) There is acute shortage of life saving drugs, more particularly, Remdesiver, Tocilizumav and Favipiravir, which are crucial for saving the lives of the COVID-19 patients.
- (iv) Dedicated COVID hospitals have been established in major towns like Shimla, Dharamshala, Mandi, Nahan and Chamba but there is hardly any such hospital(s) in other District headquarters, leave alone the Tehsil headquarters, resulting in the critical COVID patients being rushed to the aforesaid five hospitals.
- (v) There is no system in place that how many normal beds, ICUs and ventilators are available in the government hospitals and in the private hospitals.
- (vi) The test report of RT-PCR is being received with the delay of 3 to 5 days in most of the cases. In the meanwhile, if a patient dies, the body is handed over to the family members and cremation in such cases is not conducted as per COVID Protocol. In some instances, the dead bodies are allowed to be taken to home rather than being cremated/buried as per standard Corona protocol, thus, giving rise to spread of Corona virus amongst the family members and others.
- (vii) Not many effective steps are being taken by

the State Government to check the citizens who are not wearing face mask and not maintaining social distancing, which could easily be witnessed at the market places.

(viii) Only the rich and powerful are being admitted to hospitals where there is availability of oxygen and also the some of the life saving drugs, while those belonging to the middle class or lower middle class, poor and below poverty line families are left without treatment.

(ix) The State Government is being discriminated by the Central Government with regard to supply of life saving drugs like Remdesivir, Favipiravir and Tocilizumab. Recently, only 3000 vials have been allocated to the State Government, whereas, those States having lesser population and far lesser Covid-19 cases have been supplied far greater number of vials. No allocation was made by the Union of India of Tocilizumab in the recent allocation made on 27.04.2021, whereas this drug was made available to 19 States and Union Territory.

19. Let the State and the Central Government through the learned Senior Additional Advocate General and learned Assistant Solicitor General of India respond to these allegations point-wise on the next date of hearing.

20 Given the fact that the State has witnessed drastic surge in the Covid-19 positive cases and the fatality in the State are highest in the Country. We at this stage, deem it

proper to pass the following directions against the respondents, which shall be in addition to the directions as have already been passed in CWPII No. 11 of 2020 (as quoted above):

(i) *Increase the number of authorized laboratories/clinics/hospitals which can carry on the testing for a larger percentage of population.*

(ii) *Increase the number of testing being done in the bigger towns of the State. The State Government should consider the use of other kits, besides the Rapid Antigen Kit, or the RT PCR tests, for increasing the tests being carried out on daily basis.*

(iii) *In order to increase the testing facilities in the hill districts of the State, the State Government should consider sending of 'mobile vans' which are fully equipped for carrying out the testing of COVID-19 virus.*

(iv) *The State should increase the number of dedicated COVID-19 Hospitals. For, merely having few dedicated COVID-19 hospitals, is too little to tackle the menace, especially when the pandemic is likely to spread and increase throughout the State in the coming months.*

(v) *The State is also directed to consider the feasibility of establishing temporary hospitals with the help of any other Central agency.*

(vi) *The State is directed to increase the number of beds available in the hospitals. It shall ensure that the majority of the beds are equipped with Oxygen tank and sufficient numbers of bed are equipped with ventilators. If necessary, the number of ICUs in the hospitals should be*

increased. This is essential as it is claimed that the second strain directly affects the lungs of the patient. Therefore, the patient needs to be given intensive care, and may require to be put on ventilator immediately.

(vii) The State Government is directed to ensure that the PPE kits and other protective gears, such as gloves, masks, and sanitizer are provided to all the medical staff, especially to the Doctors, Nurses, Ward Boys to look after the COVID-19 patients. Until and unless our front line worriers are protected from COVID-19 virus, it will be impossible for us to win the battle against the COVID-19 virus.

(viii) The State Government is directed to publish the names and locations of the testing centres, and the names and locations of Hospitals/Dedicated COVID-19 Health Care Centres in the media bulletin on a daily basis. The media bulletin should clearly indicate the total number of beds available in each hospital/Dedicated COVID-19 Health Care Centres, and the number of vacant beds available in each hospital. It should also indicate the class of the beds i.e. the number of beds attached with ventilators, number of beds attached with Oxygen cylinders and the number of beds without any Oxygen tank/ Cylinder.

ix) We make it absolutely clear that in case the private hospitals refuse to cooperate or reluctant to provide Covid test and covid facilities, then the State Government shall forthwith resort to coercive steps as provided under the Disaster Management Act and also Essential Services Maintenance Act. In addition thereto, wherever private hospitals have been granted incentives like plots on concessional rates etc. etc. The State

Government shall be free to withdraw the incentive/ recover the amounts etc. Lastly, the State may proceed to take any other coercive or punitive step as may be warranted and otherwise permissible under the law.

x) The State should also consider the purchasing of additional CT Scan Machines in the State as it is learnt that this machine is essential to detect the presence of the second strain of Covid-19 virus.

21. The State is also directed to furnish the following informations:

i) Available bed capacity exclusively for Covid-19 facilities in the State both in Government and private hospitals alongwith the details of the availability of oxygen (high flow or otherwise).

ii) State shall give the details of the steps taken and proposed to augment the availability of oxygen meeting both the current and projected requirements.

iii) Place on record the plan prepared by the State Government under the Disaster Management Act to tackle the Covid-19 cases.

iv) Steps taken to ensure the availability of essential drugs including Remdesivir, Favipiravir and Tocilizumab amongst other prescribed drugs and the modalities which have been set up for controlling the essential drugs for preventing hoarding and ensuring the proper communication of the requirement at the level of each Districts by the District Health Authorities or the Collectors of the Health Department of the State.

v) The details of the steps taken by the Government to comply with the judgment of the Hon'ble Supreme Court in suo motu Writ Petition (Civil)

No. 3 of 2021 in Re: Distribution of Essential Supplies and Services during pandemic, dated 30.04.2021.

vi) Furnish the details of the staff alongwith their designation who have been deputed in the Covid hospitals, both Government and Private.

vii) Respondent No.4 shall furnish the details with regard to distribution of Remdesivir, Favipiravir and Tocilizumab from the Central Government to the State Government up-to-date and why the State of Himachal Pradesh has been discriminated while making allocations of Tocilizumab vide letter dated 27.04.2021 and why allocation of only 3000 Remdesivir vials was made to the State of Himachal Pradesh in comparison to the States with lesser population and with far lesser Covid- infections.

viii) The State shall provide details along with data with regard to distribution of the oxygen and further the details proposed to augment the supply of oxygen.

ix) The State shall furnish the data and also give the data-wise demand and supply of oxygen for the last two weeks as well as future projected demand and the measures taken for meeting such demand.

x) The State shall ensure the uploading of real time data about the availability of beds in each hospital of the State for Covid-19 patients on its Web Portals and also on the Web Portals of all the Hospitals and also physically display the data outside each hospital on daily basis .

xi) As regards the availability of beds in hospital, the following parameters of information must be placed in the public domain by the State Government for all Covid designated hospitals in the State, both public and private through dedicated website and

physically outside the hospital.

- (a) Name and address of hospital;*
- (b) Total number of designated Covid-19 beds;*
- (c) Total number of available designated Covid-19 beds;*
- (d) Number of beds available in ICUs with ventilators.*
- (e) Number of beds in ICUs without ventilators;*
- (f) Number of general hospital beds available with oxygen;*
- (g) Number of general beds available without oxygen facility.*
- (h) Date and time when this information was last updated;*
- (i) Name and mobile number of the Nodal Officers for admission to the hospital;*
- (j) Link to GPS location of the hospital (only for website).*

Such information must be updated once every eight hours and it must be ensured that the site is not password protected and does not require any login credentials to view this information.

xii) The State shall also furnish the steps taken regarding the availability of oxygen for those all the Covid-19 patients, who though may in home isolation but require oxygen.

xiii) Experts speculate a third wave and, therefore, the State shall disclose its road-map in case third wave strikes.

xiv) The State has not carried out any Vaccination Programme for those aged between 18 to 44 on the pretext of non-availability of vaccine. Therefore, the State Government is directed to disclose clearly as to from which date, it shall commence the vaccination for the age group as aforesaid.

(xv) *The State shall furnish its stand regarding the importance (if any) of the ventilators in treatment of Covid and how it proposes to put to use the ventilators that are lying idle with the State in various hospitals.*

(xvi) *The State is directed to furnish the complete details regarding the availability of essential medicines required for the treatment of Covid-19 patients, more particularly, the availability of Remdesivir, Favipiravir and Tocilizumab and in case of short-fall, the steps taken in this regard.*

(xvii) *In the meanwhile, respondent No.4 is directed to ensure the adequate availability of the essential drugs, more particularly, the life saving drugs to the State of Himachal Pradesh and enumerate in detail the steps taken in this regard on or before the next date of hearing.*

List on **10.05.2021** at 2.00 P.M.

(Tarlok Singh Chauhan)
Judge

6th May, 2021
(GR/KRT)

Chander Bhusan Barowalia)
Judge