

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 & 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, Amicus Curiae
For the UOI	:	Dr. K.N.Singh (ASG) Mr. Anshuman Singh, Advocate
For the Respondents	:	Ms. Kanak Verma, CGC Mr. Abhimanyu Singh, Advocate Sri S. N. Pathak, Advocate
For the State	:	Mr. Vikas Singh, Sr. Advocate Mr. Lalit Kishore, AG Mr. Anjani Kumar, AAG-4 Mr. S.D. Yadav, AAG-9 Mr. Alok Kumar Rahi, A.C. to AAG-4 Mr. Anmol Chandan, Advocate
For Respondent No. 5	:	Mrs. Binita Singh, Advocate
For Respondent No. 6	:	Mr. Shivender Kishore, Sr. Advocate
For the Respondents	:	Mr. S.D. Sanjay, Sr. Advocate
For the PMCH	:	Mr. P. K. Shahi, Senior Advocate
For PMC	:	Mr. Prasoon Sinha, Advocate
For DMCH	:	Mr. Bindhyachal Rai, Advocate
For GMC	:	Mr. Rabindra Kr. Priyadarshi,
For the Intervener	:	Mr. Rajiv Kumar Singh, Advocate

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

For the Petitioner/s : Mr. Manish Kumar No 13, Advocate
Mr. Jitendra Kumar Bharti, Advocate
Ms. Kanchan Jha, Advocate
Mr. Rohit Kumar No. 1, Advocate
Ms. Parul Prasad (Amicus Curiae)
Mr. Rohit Kumar (In Person)
For the State : Mr. Subhash Prasad Singh, GA-3For
Respondent No. 6 : Mr. Kumar Ravish, Advocate
For the Respondents : Mr. Shivendra Kishore, Sr. Advocate
Ms. Binita Singh, Advocate
Ms. Parul Prasad, *Amicus Curiae*

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

For the Petitioner/s : Mr. Sumeet Kumar Singh, Advocate
Mr. Nikhil Singh, Advocate
For the UOI : Dr. K.N. Singh (ASG)
Mr. Anshuman Singh, CGC
For AIIMS, Patna : Mr. Binay Kumar Pandey, Advocate
For the State : Mr. Lalit Kishore, Advocate General.

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER**

(Per: HONOURABLE THE CHIEF JUSTICE)

(The Court proceedings are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their homes/offices.)

19 12-05-2021 **CWJC No.353 of 2021 and other analogous cases**

We have heard learned counsel for the parties at length.

2. We need not advert to the settled position of law that the right to health, including access to basic medical

infrastructure, is a facet of Article 21 of the Constitution of India, which the State is duty-bound to provide.

3. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in a violation of his right to life guaranteed under Article 21. [**Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37**]

4. The Hon'ble Apex Court in **Union of India Versus Mool Chand Kharaiti Ram Trust, (2018) 8 SCC 321**, reiterated the constitutional duty to develop "humanism" as envisaged under Article 51-A(h) applicable to the medical profession.

5. The Constitution Bench of the Hon'ble Apex Court in **Common Cause (A Registered Society) Versus Union of India and another, (2018) 5 SCC 1**, reiterated that when it comes to interpretation of fundamental rights, the Court has to adopt a liberal, dynamic, extensive and interpretative approach

and needless to add the right to life has to be with dignity is a settled principles of law.

6. Since the onset of the first wave of current Pandemic Corona Virus Disease-19 (Covid-19), this Court has been monitoring the position within the State of Bihar in several petitions filed in the public interest. With the normalisation of the situation at the ground level and the State taking stand of the subject matter covering all the issues pending consideration before Hon'ble the Supreme Court, desired such proceedings to be closed. Resultantly, six such petitions¹, came up for hearing before this Court on 26.11.2020, when the following common order was passed :-

“Learned counsel brings it to our notice that Hon’ble the Supreme Court is now seized with the matter and on pan India basis, comprehensively dealing with the issues, perhaps subject matter of the present lis, arising out of the current Pandemic [Covid-19].

2. In April 2020, a young Law student approached this Court seeking specific direction, protecting the interest of persons handling Corona (COVID-19) as also ensuring the creation of infrastructure dealing with the crisis. Subsequently, other persons filed petitions which were tagged to be heard together.

3. At this stage, learned Advocate General

1 Shivani Kaushik Versus the Union of India & Ors. (CWJC No.5641 of 2020); Dinesh Kumar Singh Versus The State of Bihar & Ors. (Civil Writ Jurisdiction Case No. 7135 of 2020); Aditi Hansaria versus the State of Bihar & Ors (Civil Writ Jurisdiction Case No. 7207 of 2020); Ashish Sinha versus the State of Bihar Civil Writ Jurisdiction Case No. 7208 of 2020); Kishore Kunal versus the State of Bihar (Civil Writ Jurisdiction Case No. 7209 of 2020); Abhinay Priyadarshi versus the State of Bihar & Ors. (Civil Writ Jurisdiction Case No. 7212 of 2020)

states that he shall ascertain the issues involved in the matters pending before Hon'ble the Supreme Court and apprise the Court, also assist as to whether these petitions should be pursued any further or not.

4. Otherwise learned Advocate General informs that in Bihar, the rate for conducting the tests for the Pandemic Covid-19 has increased substantially. Now on an average, 1.2 lac persons are being tested daily.

5. On the other hand, while seriously not disputing such position, Shri Dinu Kumar, learned counsel appearing for one of the writ-petitioners, informs that the Medical Institutions, specified to deal with Covid-19, are lacking in infrastructure. Illustratively, he mentions that C.T. Scan Machines are either not installed or not fully functional/operational, be it for whatever reason.

6. Well, at this stage, we refrain from dealing with such issues any further, save and except observing that the biggest challenge before the Government is to change the mindset of the people of Bihar and break the myth amongst the local populace that- "Bihar Corona ko Khaa Gaya Hai."

7. Bihar is a highly populated State. Nearly 1/10th (approximately) of India lives here, with the highest population density. As such, various directions issued, policies framed and programmes propagated by the Central Government and the State Government under the provisions of Disaster Management Act, 2005 and Epidemic Diseases Act, 1897, needs to be highlighted, popularised and people sensitised, both in the urban and rural areas.

8. At this stage, learned Advocate General points out that prompted, more so on account of prevailing climatic conditions, the State Government has rather vigorously started a campaign for sensitisation the local populace.

9. We only add that, this the Government must undertake by all modes of communications, including electronic and print media. On a personal level Persons engaged in pursuing social beneficially schemes, can be asked to sensitise the general public in adhering the advisories issued, at least of wearing masks; maintaining

social distancing; avoiding congregation at public places; and taking all precautions in dealing with the problems arising out of current Pandemic Covid-19.

10. As prayed for learned Advocate General, we adjourn the matter to be listed on 8th of December, 2020.”
(Emphasis supplied)

7. On 16.12.2020, as instructed by the State, all matters were closed on the ground that Hon’ble the Apex Court in **Suo Motu Writ Petition (Civil) No. 7 of 2020, titled as In Re The Proper Treatment of Covid 19 Patients and Dignified Handling of Dead Bodies in the Hospitals Etc.**, was dealing with all the issues subject matter of the petitions, in which the State has already filed an affidavit.

8. However, in Shivani Kaushik versus Union of India, the Court passed a separate detailed order framing the following issues of vital public importance:

- “(i) Whether the doctors and the Para Medical Employees can refrain from discharging their duties and function as mandated under the provisions of the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897, by resorting to the mechanism of abstinence and strike?
- (ii) Entitlement of proper equipment and payment of special emoluments/monetary incentives to Corona Warriors, notified under the said statute, whom we have termed as ‘Guardian Angles’;

(iii) Adequate mechanism for disposal of all kinds of equipment used in dealing with the Corona Pandemic Covid-19.”

9. Taking note of the provisions of Disaster Management Act, 2005 (hereinafter referred to as the Management Act) and Epidemic Diseases Act, 1897 (hereinafter referred to the Diseases Act), this Court inter alia observed that :

(a) That Bihar was the first State to set up the State Disaster Response Force, envisaged under Section 44 of the Management Act. Way back in the year 2010, 612 persons were identified and deputed as part of such Force.

(b) Health Department, in its counter affidavit, had indicated taking all pro-active, pre-emptive and possible measures to contain and check the pandemic in the State. Efforts were on to ramp up the testing within the State. The test, track and treat strategy was being proactively implemented, and the aggressive testing has facilitated the early identification of positive COVID cases, which showed marked improvement. In Bihar, recovery rate improved up to 89.72%, above than the

national recovery rate of 77.77 %. The death rate in Bihar was the lowest in the country.

(c) Initiatives to create awareness amongst the general public on hand hygiene, respiratory hygiene and environmental hygiene as a major preventive strategy was taken up through print media, electronic media and social media. One hundred four call centres/ helplines are put to use for guide the community. In the containment zones, extensive contact tracing, house to house survey for identifying symptomatic persons was being carried out by the dedicated teams, with 100% test conducted within these containment zones. Also fines imposed and realised for the non-wearing of masks in public.

(d) The Central Government took up the issue of disposal of equipment. Also, the Central Pollution Control Board issued guidelines dated 14th April, 2020, termed as “Guidelines for Handling, Treatment and Disposal of Waste Generated during Treatment/ Diagnosis/ Quarantine of Covid-19 patents- Rev.2.” which was being followed extensively.

(e) Call given by the Guardian Angles for abstaining from work was illegal and unjustified.

10. However, while closing the petition, the Court cautioned that:-

“46. All said and done, this Court believes that we are still dealing with the COVID-19 pandemic. Since Bihar is a highly populated State wherein nearly 1/10th (approximately) of India lives with the highest population density and various directions issued, policies framed and programmes propagated by the Central Government and the State Government need to be highlighted popularised. People sensitised, both in the urban and rural areas.

47. Service to humanity is service to the Lord Almighty. It is a pious act. Much has been done, and a lot more needs to be done.

48. Before we part with this judgment, we find it necessary to compliment the officials, who have wholeheartedly and dedicatedly devoted themselves to this battle against the corona virus. We expect these officers and all Covid-19 warriors in their respective teams to continue to serve humanity with their devotion and dedication. We also find it appropriate to compliment the Medical and Para-medical staff of various Government Hospitals/Dispensaries in the State. The private medical practitioners and private hospitals, who have devoted their wards for covid-19 treatment, also deserve compliments.

49. We highly appreciate the efforts and assistance of Ms. Shivani Kaushik, a young law student we find very promising, with a request to continue doing the good work by taking up public interest and doing “Pro Bono” Work.”

11. It appears that till March, 2021, everyone believed the Corona Virus Disease (Covid-19) to have vanished, at least within the State of Bihar and accepted all things to have normalised.

12. However, not accepting the same to be a reality, Ms. Shivani Kaushik, a young law student, filed the instant petition² highlighting an equally grave and vital issue of disposal of biomedical wastes generated from equipment used to check Corona Virus.

13. Evidently, in April 2021, Corona Virus returned with a vengeance causing havoc amongst the local populace. Based on the newspaper reports highlighting non-availability of beds in the Government Hospitals, taking suo-motu cognisance, as a separate interlocutory application in this petition filed by Shivani Kaushik, was taken on the judicial side and passed several orders.

14. On 06.05.2021, this Court highlighting nine major issues again passed the following order:

“We have heard at length Mr. Vikas Singh, learned Senior Advocate, appearing for the State of Bihar, along with Sri Lalit Kishore, learned Advocate General, Bihar; Dr. K.N Singh, learned Additional Solicitor General; and other learned Counsel on steps taken to improve the supply of medical Oxygen as also other infrastructural issues for treatment of patients infected with the Corona Virus within the State of Bihar.

2. At the outset, it is pertinent to note the immeasurable importance of a life of every person. Also, a recognition that as representatives of institutions and pillars of a democracy, we collectively hold a responsibility to ensure that the people get the help and

² Shivani Kaushik, Vs. The State of Bihar (CWJC No.353 of 2021)

are provided with the healthcare they need, especially in these times of great crisis. None should lose life only on account of lack of adequate medical care.

3. We would also be amiss if, right at the outset, we do not acknowledge the excellent work carried out by our doctors and other medical staff whom we had in previous litigation termed as our 'Guardian Angels'.

4. We reiterate the previous orders dated 15.04.2021; 17.04.2021; 19.04.2021; 21.04.2021; 23.04.2021; 27.04.2021; 28.04.2021; 29.04.2021; 30.04.2021; 03.05.2021 and 04.05.2021.

5. Highlighting the major issues arising for consideration we crystallise the following as lack of infrastructure and preparation for dealing with the Pandemic Covid-19:-1) Testing; 2) Hospitalisation; 3) Human resources, i.e. Doctor(s) & Paramedics; 4) Requirement, availability and transportation of Oxygen; 5) Medicines (both life saving and otherwise general medication); 6) Dissemination of information to the public, increasing public sensitivity and awareness; 7) Performance of Last Rites of those who have fallen victim to this disease; 8) Disposal of waste generated in testing and treatment; 9) Availability and the administration of the vaccine.

6. We direct the Chief Secretary, Government of Bihar, to file his personal Affidavit, dealing with each one of the issues. We clarify that the Affidavit be short and specific on all material particulars. The information, as discussed, be furnished in a tabular form after verifying the contents thereof to be accurate and correct. We further clarify that information given be true, correct and verified from all sources. Any information found to be false shall be taken seriously, including initiation of proceedings for perjury. Only for such purpose, as prayed for, we are granting three days to file the Affidavit, which can be so done latest by Sunday on the E-Mail of the Court Master of this Court. For such purpose, the matter is directed to be listed on 10.05. 2021.

7. We are informed that the major problem with respect to the availability of medical Oxygen is its transportation from other states to the State of Bihar as the plants are distributed across the country. The demand as it stands today is 300 metric tonnes

(approx.). In contrast, the allocated quota is 210 metric tonnes (approx.) by the Central Government, which in any case stands increased from the previously issued 164 metric tonnes (approx.). Out of this allotted 210 metric tonnes (approx.), 154 metric tonnes (approx.) are currently being brought into the State through a limited number of special transport vehicles available with the State. Further, we are informed that more transport vehicles are to be received by the State, precisely 6 (six) from the State of Jharkhand, and 3 (three) from Indian Oil Corporation. This is in addition to 7 (seven) that have been made available to the State vide communication dated 03.05.2021.

8. For those that are to be received from the State of Jharkhand, we are informed that the Director of Transport, Ministry of Road Transport and Highways, Government of India, has already issued directions, and the modalities are being worked out between the Transport Commissioners of the two States, i.e. Bihar and Jharkhand. It appears that the Additional Chief Secretary, Department of Industries is the Nodal Officer authorised by the State to coordinate this movement. Let the process be expedited.

9. Mr. Mrigank Mauli, learned Amicus Curiae, informs us that a total of 19 hospitals within Patna and 145 hospitals within the State have been authorised to treat COVID patients. Nearly 6-7 hospitals have filed complaints indicating non-supply/ shortfall/additional demand of Oxygen.

10. Mr. Vikas Singh, learned Senior Advocate, appearing for the State adds that once these additional vehicles are made available, the State would be able to transport its entire allotted quota, whereafter a request would be made to the Central Government for additional allocation of Oxygen to the State. Perhaps such a need may arise considering the increase of cases in the rural areas. Emphasising, he points out that Oxygen is the first line of treatment on which immediate attention and focus is required. We are in total agreement with him on this issue.

11. He further informs that storage of Oxygen is not an issue, for the State has adequate storage arrangement and its distribution up to the endpoint.

12. Before we pass any further order on the issue of demand, transportation and distribution of Oxygen, we direct the Chief Secretary, Govt. of Bihar, to file his personal Affidavit verifying the correctness of the statements made about the allocation; transportation; distribution etc. Needful be positively done by tomorrow i.e. 07.05.2021.

13. The State can hand over the same through digital mode during Court proceedings.

14. For such purpose, list these case on 07.05.2021 at 10:30 A.M.

15. Dr. K.N Singh, learned Additional Solicitor General points out that the committee set up under directions of this court to inspect the hospitals and other related infrastructure will be submitting its report very shortly.”

15. Pursuant thereto, the Chief Secretary, Government of Bihar, filed his Affidavit dated 09.05.2021. To begin with, we notice that the Affidavit is conspicuously silent on the issue of (i) availability, requirement and distribution of Oxygen; and (ii) disposal of bio-medical waste generated out of all operations concerning Corona Virus.

16. Still, having gone through the same, we wish to engage on each one of the points covered in the Affidavit.

1.) **Testing:** The Affidavit states important information on many aspects with respect to testing. The Affidavit states that 27400 test capacities is for RT-PCR testing, and as orally stated the remaining out of the daily quota of 1.2 lakh, is Rapid Antigen testing. While it takes note of capacity to test, and we are aware of the total number of tests conducted in a day on

average, however it doesn't detail the testing done in rural areas. This court takes note of equitable justice and therefore seeks to ensure that Bihar's villages are also receiving essentials to combat this disease.

- 2.) **Hospitalisation:** On hospitalisation, this Affidavit gives figures of the existing infrastructure. The direction was given to increase bed capacity by 25% at DCHC by the Health Department, Government of Bihar on 07.05.2021 and must be executed at the earliest to ensure that the facility of hospitalisation is available to all those who are in the need for it.
- 3.) **Human Resources, i.e. Doctor (s) & Paramedics:** An order issued under Section 50 of the Disaster Management Act, 1930 is annexed with the Affidavit through which a committee has been constituted at the level of Districts and Medical colleges and Hospitals for assessing the requirement for procurement under this provision including increasing the manpower. Against a total of 5566 sanctioned positions of General Medical Officers, presently 2893 are working. Steps are also taken to recruit General Duty Medical Officers as well as Specialists and lab technicians (increased capacity). The Final year MBBS students have also been asked to continue rendering services on certain pay for coming three months in accordance to the directions issued by the Government of India. Orders regarding engagement of final year GNM or B.Sc (Nursing) students awaiting final exams for full time Covid nursing duties under the supervision of senior faculty has also been issued. The steps taken in this direction must be appreciated as doctors and medical professionals are our guardian angels in these difficult times.

- 4.) **Medicines (both life saving and otherwise general medication):** The essential drug list for management of COVID patients has been notified by the Health Department according to the Affidavit. In total of 149 drugs have been notified (both General Medication & ICU Drugs). Rate Contracts are in place for 101 of these drugs. It is pertinent to note that out of 54 ICU drugs, Rate Contracts are in place for only 31. Annexure - D attached with the Affidavit does not shed light on the demand faced by districts. It is difficult to gauge the adequacy of these numbers as they stand before us at this moment. It is a function of government to ensure that each and every citizen and their needs are addressed.
- 5.) **Dissemination of information to the public, increasing public sensitivity and awareness:** The Affidavit is conspicuously silent in this regard. The Court notes the essential nature of dissemination of correct information to the public about Covid-19 protocols and the general awareness that is required from the people while dealing with adverse situations. The government on its own will be unable to defeat this pandemic, until and unless it secures the support of an awakened people recognising that a large portion of Bihar's population is resident in rural areas, this obligation becomes all the more important. Steps must be initiated and continued for the foreseeable future so that our collective efforts bear fruit.
- 6.) **Performance of Last Rites of those who have fallen victim to this disease:** The Affidavit though produces information on the protocol issued by the Government of India regarding 'dead body management', but it fails to highlight the problems being faced by the general public in regards to the proper

performance of last rites keeping in mind the nature of the death.

7.) Disposal of waste generated in testing and treatment:

Effective disposal of waste generated in testing and treatment in both hospitals and during home isolation is vital in preventing the further spread of this COVID-19 virus. The Affidavit does not detail any instructions/guidelines issued regarding the municipal corporations, hospitals, and other bodies responsible for collecting and disposal of waste. Alongside proper disposal, there are issues such as PPE Kits to be provided to workers engaged in this capacity.

8.) Availability and the administration of the vaccine: Mr.

Vikas Singh, Senior Advocate submitted that in the above 45-year range, there are 2.3 crore people who are to be vaccinated alongside in the 18-44 year age group, the number stands at around 5.5 crores. The number of people vaccinated stands at only 66 lacs (first dose) in the above 45-year range and 12 lacs (second dose / fully vaccinated). We believe that steps must be taken to ramp up vaccination across all age groups and transgress the urban and rural divide.

17. On the issue of Oxygen (LMO), Sri Vikas Singh, learned Senior Counsel, appearing on behalf the State, clarifies that perhaps the omission is bonafide based on the understanding that in view of Chief Secretary's earlier Affidavit dated 06.05.2021, there was no requirement to deal with the issue afresh. Accepting such a statement, and upon examining the same, we find that in the last fortnight, there has been a

phenomenal increase in the quantity of supply of Liquid Medical Oxygen (LMO) within the State of Bihar. Paragraphs 4, 5 and 6 of the Affidavit reveal that from 16 Metric Tonnes (MT), allocation of Oxygen stands enhanced to 214 MT (including 34 MT produced by MSME-ASU within the State of Bihar).

18. Considering the need which may arise, depending upon the prevailing circumstances, State has already forwarded its request [vide letter dated 09.05.2021] to the Central Government, seeking enhancement of the quota of oxygen from 300 MT to 400 MT. However, for want of a sufficient number of special carrier vehicles, the allocated quota of Oxygen could not be transported, which as per the Affidavit, would now be done within a period of one week.

19. Sri Vikas Singh, learned Senior Counsel, has raised another different issue, highlighted perhaps for the first time, about the non-availability of the oxygen cylinder(s), both of D and B-Type, necessarily required for transporting the Oxygen from the storage point/ special carrier vehicles up to the point of the end-user. Shri Anshuman Singh, learned counsel for the Union of India informs the Central Government is doing that allocation and as on 29th of April, 2020, 3688 D-Type and 6400 B-Type of cylinders (Total 10088 Cylinders) stand allotted to

the State of Bihar and by the first week of May, 2021, it would be further enhanced by 2887 D-Type and 13309 B-type cylinders.

20. Sri Vikas Singh, learned Senior Counsel also highlights the issue of inadequacy of oxygen mask and oxygen flow meter.

21. We notice that in this regard, the State Government has already forwarded a formal request [Letter No.103 (H.S.)/2021, Government of Bihar, Health Department, dated 07.05.2021]. We are hopeful that the Central Government, in view of the attending facts and circumstances, would have a favourable consideration on the same.

22. Learned Advocate General informs that Hon'ble the Chief Minister, in consultation with the senior Ministers, is himself monitoring the situation and that vide notification dated 01.05.2021, already elected representative, (Minister/MLA) is made in-charge of each district. The Notification to this effect reads as under:

बिहार सरकार
मंत्रिमंडल सचिवालय विभाग

--: अधिसूचना :-

अधिसूचना संख्या-4/मंसं/काका (गठन)-1379/10 ...2021... पटना-15, दिनांक ...01.05.2021

जिला कार्यक्रम कार्यान्वयन समिति के अध्यक्ष-सह-प्रभारी मंत्री के मनोनयन से संबंधित मंत्रिमंडल सचिवालय विभाग द्वारा पूर्व में निर्गत सभी अधिसूचनाओं को तात्कालिक प्रभाव से विलोपित करते हुए निम्नांकित जिलों के सामने अंकित मंत्रीगण को अगले आदेश तक जिलों का प्रभारी मंत्री-सह-अध्यक्ष जिला कार्यक्रम कार्यान्वयन समिति मनोनीत किया जाता है :-

क्र० सं०	जिला का नाम	नामित प्रभारी मंत्री का नाम
1	2	3
1	पटना, मुंगेर	श्री तारकिशोर प्रसाद, उप मुख्यमंत्री
2	बेगूसराय, बांका	श्रीमती रेणु देवी, उप मुख्यमंत्री
3	नालन्दा, शेखपुरा	श्री विजय कुमार चौधरी
4	पूर्णिमा, किशनगंज	श्री बिजेन्द्र प्रसाद यादव
5	रोहतास, जमुई	श्री अशोक चौधरी
6	लखीसराय	श्रीमती शीला कुमारी
7	जहानाबाद	श्री संतोष कुमार सुमन
8	मुजफ्फरपुर	श्री मुकेश सहनी
9	भोजपुर, बक्सर	श्री मंगल पाण्डे
10	गोपालगंज, अरवल	श्री अमरेन्द्र प्रताप सिंह
11	कैमूर	डा० रामप्रीत पासवान
12	सहरसा	श्री जिवेश कुमार
13	भागलपुर	श्री राम सूरत कुमार
14	गया	सैयद शाहनवाज हुसैन
15	समस्तीपुर	श्री श्रवण कुमार
16	झगड़िया	श्री मदन सहनी
17	कटिहार	श्री प्रमोद कुमार
18	सुपौल, मधेपुरा	श्री संजय कुमार झा
19	मधुबनी	श्रीमती लेशी सिंह
20	दरभंगा	श्री सद्माट चौधरी
21	नवादा	श्री नीरज कुमार सिंह
22	शिवहर	श्री सुबाष सिंह
23	पश्चिम चम्पारण	श्री नितिन नवीन
24	सारण	श्री सुमित कुमार सिंह
25	पूर्वी चम्पारण	श्री सुनील कुमार
26	सीवान	श्री नारायण प्रसाद
27	वैशाली	श्री जयंत राज
28	अररिया	श्री आलोक रंजन
29	सीतामढ़ी	मो० जमा खान
30	औरंगाबाद	श्री जनक राम

बिहार राज्यपाल के आदेश से

01/05/2021

(संजय कुमार)

अपर मुख्य सचिव

23. Well the issue, purely falling within the domain of the political executive, we only hope and expect that such elected representatives, true to their oath of office, discharge

their duties and obligation at the ground level. For they alone can instill confidence in the minds of public.

24. It is also brought to our notice that certain unscrupulous persons are hoarding/black-marketing the medical equipment, including oxygen cylinder, for which necessary action stands taken by the authorities. We refrain from commenting on such human conduct, save and except direct all the functionaries to forthwith, interim release the case property per law. We see no reason why such proceedings are not conducted through virtual mode, considering that the case property is vital for saving human life and is also required to be proven during trial.

25. Today, another affidavit dated 11.05.2021 stands filed by the Chief Secretary, Government of Bihar. It is indicative of- (a) the steps taken by the State of Bihar in increasing the Rapid Antigen Test; (b) decline in the ratio of persons found to be positive; (c) sufficient availability of beds in the hospital; (d) posting of additional staff (Lab Technicians) at different places; (e) engaging the authorities at the grass-root level; (f) disposal of waste generated out of testing and treatment; and (g) constitution of an expert committee.

26. In the other two connected petitions³, the issues raised are similar.

27. The affidavits dated 06.05.2021, 09.05.2021, and 11.05.2021 filed by the Chief Secretary, Government of Bihar, containing specific facts need to be responded to by all the parties. As such, we grant four days time for the same. Additionally, we direct the Chief Secretary, Government of Bihar, to file an affidavit furnishing information in the format prepared with the assistance of all the learned counsel appearing in these matters.

28. On 10th May, 2021 itself, we expressed our desire to shift the focus from the urban to rural areas, requiring the State to furnish correct and complete information. In response to that, the State, through Sri Vikas Singh, learned Senior Counsel, expressed its reservation, submitting that perhaps, we may exceed our jurisdiction to be a matter falling purely within the executive domain. We are afraid it is not so, for as a Constitutional Court collectively, we hold the responsibility to ensure that the State's people, regardless of their geographical location, do get timely aid ensuring no loss of human life purely on account of lack of medical health infrastructure. We clarify

³ Rohit Kumar Vs. The State of Bihar & Ors. (CWJC No.17398 of 2018); Gaurav Kumar Singh Vs. Union of India (CWJC No.9639 of 2021)

that the Court is not venturing into a roving enquiry but seeks information only in the context of peculiar geographical and demographical diversity of the State of Bihar, which has a landmass of 94163 square Kilometre with River Ganga freely passing through with almost seven tributaries, flowing both from north and south, making it a delta of the Gangetic plain. During monsoons, all low lying areas, North of Bihar, especially in the Mithila area, is often inundated.

29. Administratively, Bihar comprises 38 districts; 101 sub-divisions; 534 CD Blocks; 8406 Panchayats; 45103 Revenue villages; 12 Municipal Corporations; 41 Nagar Parishads; and 88 Nagar Panchayats.

30. The Municipal areas are administered under the Bihar Municipal Act, 2007 and the rural regions in terms of the Bihar Panchayat Raj Act, 2006.

31. We extract hereinunder the Data downloaded from the official website of the Census Department, indicating District-wise breakup of the population living in urban and rural areas of the State:-

TABLE-2													
DISTRIBUTION OF POPULATION, DECADAL GROWTH RATE, URBAN POPULATION, SEX-RATIO, DENSITY OF POPULATION AND LITERACY BY DISTRICT-BIHAR, 2011(P)													
Sl. No.	Commissionary/ District	Area in sq.km	Total population					Decadal growth (Percentage)	Density of Population (per. sq.km)	Sex-Ratio (Females/ Thousand males)	Literacy		
			Person	Male	Female	Rural	Urban				Person	Male	Female
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Patna													
1	Patna	3202	5772804	3051117	2721887	3262711	2510093	22.34	1803	892	3527409	2068494	1480915
2	Nalanda	2355	2972523	1495577	1376946	2415034	457489	21.18	1220	921	1574818	952970	821848
3	Bhojpur	2395	2720155	1431722	1288433	2331450	388705	21.27	1136	900	1659049	1010138	648911
4	Buxar	1703	1707843	888356	819287	1543476	164167	21.77	1003	922	1019882	611944	407738
5	Rohitas	3851	2962593	1547856	1414737	2535085	427508	20.22	763	914	1888884	1101703	764981
6	Kaimur	3362	1628900	847784	779116	1561538	65362	24.75	488	919	948105	668187	378906
Manendh													
7	Gaya	4976	4379383	2266865	2112518	3803888	575495	26.08	880	932	2399882	1427447	972235
8	Jehanabad	832	1124176	586202	537974	989816	134360	21.34	1208	918	639022	364670	250352
9	Arwal	637	699593	362945	336648	648094	51469	19.01	1099	927	400439	243183	157276
10	Nawada	2491	2216653	1148123	1071530	2001120	215533	22.49	889	936	1139832	685513	454319
11	Aurangabad	3305	2511243	1310867	1200376	2275761	235482	24.75	760	916	1508899	898834	612762
Saran													
12	Saran	2841	3943068	2022476	1919822	3591053	352045	21.37	1493	949	2552914	1340226	812688
13	Siwan	2219	3318176	1672121	1646055	3135865	182311	22.25	1495	864	1894056	1155972	838064
14	Gopalganj	2033	2558037	1269677	1288360	2396270	161767	18.83	1258	1015	1421666	818991	602875
Tirhut													
15	Muzaffarpur	2172	4778610	2517500	2261110	4308714	469896	27.54	1506	899	2901665	1539154	1082511
16	E. Champaran	3968	5082858	2674037	2408821	4683820	399048	29.01	1281	901	2382346	1467319	915029
17	W. Champaran	5229	3927780	2057689	1865111	3528781	393999	28.89	750	906	1839684	1189138	700848
18	Sitamarhi	2294	3419322	1800441	1619101	3228904	190718	27.47	1491	899	1465880	917879	568017
19	Sheohar	349	656916	347814	309202	628821	28095	27.32	1882	890	297938	180154	117784
20	Vaishali	2036	3495249	1847058	1648191	3262715	232534	28.58	1717	892	1990900	1181754	809055

TABLE-2 contd---													
DISTRIBUTION OF POPULATION, DECADAL GROWTH RATE, URBAN POPULATION, SEX-RATIO, DENSITY OF POPULATION AND LITERACY BY DISTRICT-BIHAR, 2011(P)													
Sl. No.	Commissionary/ District	Area in sq.km	Total population					Decadal growth (Percentage)	Density of Population (per. sq.km)	Sex-Ratio (Females/ Thousand males)	Literacy		
			Person	Male	Female	Rural	Urban				Person	Male	Female
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Darbhanga													
21	Darbhanga	2279	3921971	2053043	1868928	3541846	380125	19.00	1721	910	1876638	1158864	717974
22	Madhubani	3501	4476044	2324984	2151060	4311466	164578	25.18	1279	925	2251107	1393708	857399
23	Samaastipur	2904	4254782	2228432	2026350	4107725	147057	25.33	1465	908	2214496	1333406	881082
Munger													
24	Munger	1419	1359054	723280	635774	974425	384629	19.45	958	879	834182	487096	347066
25	Begusarai	1916	2954367	1580203	1394164	2387311	567056	25.75	1540	894	1804148	953052	651096
26	Shekhpura	889	634927	329593	305334	526132	108795	20.82	922	925	340789	204533	136268
27	Lakhisarai	1228	1000717	526651	474066	857751	142966	24.74	815	900	531633	319208	212425
28	Jamui	3088	1756078	914368	841710	1611431	144647	25.54	587	921	806670	556284	340406
29	Khagaria	1486	1657599	880065	777534	1570470	87129	29.48	1115	883	797784	478545	319239
Bhagalpur													
30	Bhagalpur	2569	3032226	1614014	1418212	2432126	600100	25.13	1180	879	1623909	987924	655985
31	Banka	3020	2029339	1064307	965032	1957988	71351	26.14	672	907	1002089	612053	390016
Koahl													
32	Saharsa	1867	1897102	995502	901600	1741927	155175	25.79	1125	906	829206	521560	307848
33	Supaul	2425	2228397	1157815	1070582	2122869	105528	28.62	919	925	1076133	672845	403188
34	Madhepura	1788	1994818	1042373	952445	1906448	88170	30.65	1116	914	858886	533342	325544
Purnea													
35	Purnea	3229.0	3273127	1695829	1577298	2932527	340600	28.62	1014	930	1380052	834533	545519
36	Kishanganj	1884.0	1690948	898645	822103	1527249	163699	30.44	998	946	789439	458615	313824
37	Araria	2830.0	2806200	1480878	1345322	2637656	168544	30	992	821	1235303	751900	483403
38	Katihar	3057.0	3098149	1601158	1486991	2794765	273384	28.23	1004	916	1321024	789669	532055
Bihar		94163	103804637	54185347	49619290	92075028	11729609	25.07	1102	916	54390254	32711975	21678279
Source:- Primary Census Abstract-2011 (Provisional)													
Total may not be tally due to rounding of figures.													

32. This data, even of the year 2011 gives a perspective, revealing that almost 90% of the population lives in the rural areas. It is not that Corona Virus affects only the urban population. It is also not that it does not affect rich or the poor living in the rural areas. Infrastructure right from testing up to

isolation must exist in the rural areas, more so in view of anticipation of the third wave, as per the experts of the Government of India, which is likely to come soon.

33. As per the information furnished by the State, both (i) the rate of testing and (ii) rate of persons found to be Covid positive had increased up to a particular date. To this effect, the data furnished by the State is reproduced as under:-

COVID -19													
Test done - 16th April'21 to 25th April'21													
Sl No	Date	RTPCR	Positive cases	%	Antigen	Positive cases	%	True Nat	Positive cases	%	Total	Positive cases	%
1	16th April	35672	2681	7.52	62110	5533	8.91	2773	366	13.20	100555	8580	8.53
2	17th April	34917	2547	7.29	62876	6567	10.44	2811	504	17.93	100604	9618	9.56
3	18th April	30068	2289	7.61	51040	5312	10.41	2253	529	23.48	83361	8130	9.75
4	19th April	36943	2477	6.70	66905	7849	11.73	2308	457	19.80	106156	10783	10.16
5	20th April	35415	3564	10.06	67824	7751	11.43	2741	672	24.52	105680	11987	11.31
6	21st April	30169	3494	11.58	68035	7515	11.05	2859	746	26.09	101062	11755	11.63
7	22nd April	32462	3288	10.13	72831	8087	11.10	2854	520	18.22	108147	11895	11.00
8	23rd April	27614	3521	12.75	71218	7937	11.14	2596	727	28.00	101428	12185	12.01
9	24th April	28176	4579	16.25	69560	8910	12.81	2755	741	26.90	100491	14230	14.16
10	25th April	27350	3245	11.86	50501	5444	10.78	2610	644	24.67	80461	9333	11.60

Note :
Based on Data as updated till 11 PM on 26.04.2021

34. Certainly, it does not disclose the geographical location. Equally, whether it pertains to the rural or urban area, the information is not discernible.

35. Further, the information furnished by the Chief Secretary, in a tabular form appended as Annexure-A (our page-12, for the document, is not paginated) reproduced hereinunder does not indicate the number of (a) Covid Care Centres (CCC); (b) Dedicated Covid Health Centres (DCHC); (c) Dedicated Health Centre (DHC) or for that matter the private hospitals in each one of the districts.

Sl	District	Total No. of COVID Beds						Oxygenated Beds						ICU Beds						Ventilators											
		Private Hospitals		CCU		DCHC		Private Hospitals		DCHC		DCH		Private Hospitals		DCHC		DCH		Private Hospitals		DCHC		DCH		Private Hospitals		DCHC		DCH	
		DCH	CCU	DCHC	Private Hospitals	DCH	CCU	DCHC	Private Hospitals	DCH	CCU	DCHC	Private Hospitals	DCH	CCU	DCHC	Private Hospitals	DCH	CCU	DCHC	Private Hospitals	DCH	CCU	DCHC	Private Hospitals	DCH	CCU	DCHC	Private Hospitals	DCH	CCU
1	ARARIA	0	185	210	0	0	85	70	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2	ARWAL	0	100	140	0	0	50	20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
3	AURANGABAD	0	185	225	0	0	181	215	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
4	BANKA	0	50	400	0	0	50	100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
5	BEGUSARAI	0	150	400	305	0	150	75	305	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
6	BHAGALPUR	700	190	500	278	700	50	50	188	36	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
7	BHOJIPUR	0	100	400	0	0	100	120	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
8	BUXAR	0	120	700	65	0	80	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
9	DARBHANGA	127	200	448	407	127	100	149	239	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
10	EAST CHAMPARAN	0	535	192	195	0	202	73	170	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
11	GAYA	462	450	120	173	462	450	25	173	168	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
12	GOPALGANJ	0	230	690	0	0	110	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
13	JAMUI	0	117	230	0	0	117	230	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
14	JEHANABAD	0	45	170	0	0	45	100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
15	KAIMUR	0	111	300	30	0	100	65	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
16	KATIHAR	0	151	390	22	0	151	100	22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
17	KHAGARIA	0	100	396	0	0	100	17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
18	KISHANGANJ	0	120	200	61	0	120	40	17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
19	LAKHISARAI	0	50	606	25	0	50	50	11	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
20	MADHEPURA	102	200	50	0	0	102	60	20	0	19	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
21	MADHUBANI	0	100	963	141	0	60	354	48	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
22	MUNGER	0	399	82	54	0	153	42	44	0	50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
23	MUZAFFARPUR	200	160	0	346	200	160	0	346	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
24	NALANDA	252	195	250	105	252	120	60	156	12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
25	NAWADA	0	210	225	0	0	140	20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
26	PATNA	1481	362	448	2222	1381	144	0	2190	191	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
27	PURNEA	0	160	267	207	0	160	267	207	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
28	ROHTAS	0	180	384	100	0	180	230	100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
29	SAHARSA	0	223	100	0	0	223	20	0	0	61	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
30	SAMASTIPUR	0	370	110	36	0	263	40	36	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
31	SARAN	0	200	275	0	0	200	52	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
32	SHEIKHPURA	0	50	100	0	0	50	30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
33	SHEOHAR	0	10	40	0	0	10	40	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
34	SITAMARHI	0	200	415	43	0	55	135	43	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
35	SIWAN	0	100	500	0	0	100	145	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
36	SUPAUL	0	285	279	42	0	140	53	14	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
37	VAISHALI	0	240	400	110	0	240	83	144	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
38	WEST CHAMPARAN	210	300	400	47	210	218	0	35	12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Grand Total		5534	7133	11955	5014	3434	4867	3090	4494	455	217	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

36. Similar is the position concerning the chart appended as Annexure-M, reproduced hereinunder, indicating the number of integrated pathological labs (our page-49) authorized to conduct RTPCR Tests.

Sn	Name of district	Integrated pathological labs (RT-PCR)				Testing capacity True Nat (At DH)	Total Target/capacity*
		Govt.	Target/capacity	Private	Target/capacity		
1	Samastipur	AIIMS	700	NA	0	200	900
2	Arwal	AIIMS	300	NA	0	50	350
3	Khagaria	AIIMS	500	NA	0	100	600
4	Nawada	AIIMS	500	NA	0	150	650
		IGIMS	400	NA	0		400
5	Gaya	ANMCH	1100	NA	0	125	1225
6	Darbhanga	DMCH	800	NA	0	0	800
7	Sheohar	DMCH	300	NA	0	50	350
8	Sitamarhi	IGIMS	400	NA	0	100	500
9	Patna	IGIMS	900	NSMC, Bihta	500	0	1400
		RMRI	900			0	900
10	Lakhisarai	IGIMS	300	NA	0	50	350
11	Saran	IGIMS	600	NA	0	200	800
12	Supaul	PMCH	400	NA	0	75	475
13	Madhubani	PMCH	300	MMC, Madhubani	300	225	825
14	Munger	PMCH	500	NA	0	75	575
15	Vaishali	NMCH	500	NA	0	175	675
16	Sheikpura	NMCH	300	NA	0	50	350
17	Jamui	NMCH	300	NA	0	75	375
18	Siwan	RMRI	400	NA	0	175	575
19	Gopalganj	RMRI	400	NA	0	150	550
20	Begusarai	RMRI	600	NA	0	125	725
21	Katihar	RMRI	400	KMC, Katihar	300	175	875
22	Muzaffarpur	SKMCH	1000	NA	0	50	1050
23	Madhepura	JNKTMC, Madhepura	700	NA	0	50	750
24	Kishanganj	JNKTMC, Madhepura	300	MGMC, Kishanganj	500	75	875
25	Saharsa	JNKTMC, Madhepura	300	LBKMC, Saharsa	300	75	675
26	Araria	JNKTMC, Madhepura	300	NA	0	175	475
27	Bhagalpur	JLMNCH, Bhagalpur	800	NA	0	50	850
28	Banka	JLMNCH, Bhagalpur	300	NA	0	100	400
29	W. Champaran	GMC, Betiya	1000	NA	0	125	1125
30	Nalanda	VIMS, Pawapuri	1000	NA	0	125	1125
31	Bhojpur	NA	0	NSMC, Bihta	500	175	675
32	Jehanabad	NA	0		500	125	625
33	Buxar	NA	0		400	75	475
34	Rohtas	NMC, Sasaram	500	NA	0	50	550
35	Kaimur	NMC, Sasaram	300	NA	0	75	375
36	Aurangabad	NMC, Sasaram	500	NA	0	50	550
37	Purnia	DH Purnia	700	NA	0	175	875
38	East Champaran	DH East Champaran	600	NA	0	125	725
Total			20100		3300	4000	27400

37. Yesterday, the State further furnished data indicating the number of tests conducted; cases found to be

positive; the recovery rate and the number of persons who died as a result of Corona, which we also reproduce as under:-

Bihar COVID-19 snapshot

Particulars	As on 09.05.2021
Total Tests Done	2,74,11,255
Tests per Million	2,14,654
Total Positive Cases	6,01,650
Total Active Cases	1,05,103
Total Discharge	4,93,189
Recovery Rate	81.97%
Total Death	3,357
Death Rate	0.56%

38. We are concerned with the second wave of Pandemic starting from March 2021, and significantly, even the information is not indicative of the data about such fact. As such, the State must prepare a new chart furnishing data commencing from 1st March 2021.

39. Be that as it may, it is the State's own case that the death rate in Bihar is 0.56%, i.e. the total number of deaths resulting from Covid-19 are 3357, but there is no district-wise breakup.

40. In this backdrop, we are of the view that the Chief Secretary, Government of Bihar shall file a fresh affidavit indicating District-wise breakup of the activities undertaken and the existence of the infrastructure in dealing with the second

wave of Pandemic. Gathering such information is not difficult for everything is in a digital form, be it testing; hospitalization; distribution of life-saving drugs; infrastructure in the shape of oxygen cylinders, beds, ventilators; recovery and deaths of persons affected with the virus etc.

41. There is yet another vital issue we wish to highlight, and that being missing of significant information from the digital platform pertaining to the deaths occurring as a result of the first or second wave of Pandemic. We notice that the Registration of Births and Deaths Act, 1969 (Act No. 18 of 1969) (referred to as the Registration Act), provides for compulsory births and deaths.

42. Section 3 to 7 of the Registration Act provides for the appointment of Civil Registration System functionaries at all levels like:-

- i. National level:-Registrar General, India; section 3;
- ii. State level:-Chief Registrar; section 4;
- iii. District level: - District Registrar/ Additional District Registrar under Section 6;
- iv. Local area level:-Registrar for a village, Panchayat, municipality, municipal corporation or other local bodies; under Section 7(1); and
- v. Sub-Registrar for the specified area within

the area under the jurisdiction of a Registrar under section 7 (5) of the Act.

43. The Central Government under section 3(1) of the Registration Act appoints the Registrar General, India (RGI) at the Central level, empowered to take steps for coordinating and unifying the activities of Chief Registrars of all States/Union territories and issue general directions regarding registration of births and deaths under section 3(3) of the Registration Act.

44. The work relating to Civil Registration in the Registrar General's office, India, is handled in the Vital Statistics Division.

45. The State Governments under section 4 (1) of the Registration Act appoints Chief Registrar for the State/UT.

46. Under section 4 (3), the Chief Registrars are declared as the chief executive authority in the respective States/UTs for implementing the provisions of the Registration Act and the Rules and orders made thereunder. The State Government also appoints District Registrar of births and deaths for each revenue district under section 6. The registration of births and deaths in the field is carried out by the local registrars, who are appointed under section 7.

47. There is a wide variation in the registration machinery across the country. However, details of Civil Registration in the State of Bihar as provided in the annual report (2018) of the Registrar General & Census Commissioner; India reflects the following departments/individuals responsible for the registration of births and deaths in the State of Bihar- Chief Registrar; Director of Statistics & Evaluation; Joint Chief Registrar; Joint Director (VS) Dy. Chief Registrar; Dy. Director (VS); District Registrar; District Magistrate; Addl. Distt. Registrar; Distt. Statistical Officer; Addl. Distt. Registrar; Block Development Officer; Registrar; Panchayat Sevak; MO Incharge of/Civil and District Hospitals; Sub –Registrar; Aaganwadi Sewika.

48. The Bihar Municipal Act, 2007 (hereinafter referred to as the Municipal Act) (Chapter XXXVIII) prescribes the recording of the vital statistics; of appointment of Chief Registrar Registrars; and furnishing vital information of births and deaths occurring in the municipal area. By Section 350, the Registrar is under an obligation to keep himself informed of every birth or death occurring within the area of his jurisdiction. So is the Chief Municipal Officer (virtue of Section 357), who is duty-bound to maintain the register of births and deaths. For

such particulars are required to be furnished within 24 hours of any death taking place.

49. We have already noticed that in Bihar, 119 Municipal areas are falling within the purview of the Bihar Municipal Act.

50. Coming to the rural areas, we notice that Bihar Panchayat Raj Act, 2006 (Referred to as the Panchayat Act) does not explicitly deal with the registration of births and deaths. But however, it does mandate the functionaries and the authorities, i.e., Gram Panchayat, Panchayat Samiti, and Zila Parishad to undertake certain functions. For ready reference, we reproduce the relevant provision of the Statute.

“22.Functions of Gram Panchayat. - Subject to such condition as may be prescribed by the Government from time to time, the Gram Panchayat shall perform the functions specified below:

... ..

(i) General Functions.- (1)

... ..

....(6) Maintenance of essential statistics of village(s).”

“23. Assignment of Functions to Gram Panchayat.- (1) The Government may, by notification and subject to such conditions as may be specified therein –

(d) Entrust such other functions as may be prescribed:”

“47. Functions and power of Panchayat Samiti. -
(1) Subject to such conditions as may be prescribed by the Government from time to time, the Panchayat Samiti shall undertake the following;

(19) Health and Family Welfare –

(i) Promotion of health and family welfare programmes;

(ii) Promotion of immunization and vaccination programmes;.....

...(28) Such other functions as may be entrusted.”

“48. Assignment of functions. - (1) The Government may assign to a Panchayat Samiti functions in relation to any matters to which the executive authority of the Government extends or the functions which have been assigned to State Government by the Central Government.”

“49. General powers of the Panchayat Samiti. - (i) The Panchayat Samiti shall have power to do all acts necessary for or incidental to the carrying out of the functions entrusted or delegated to it and in particular and without prejudice to the foregoing powers to exercise all powers specified under this Act.....”

“73. Functions and powers of Zila Parishad. - (1) Subject to such condition as may be prescribed by the Government from time to time, the Zila Parishad shall perform following functions –

15. Health and Hygiene-

...(ii) Implementation of immunization and vaccination programmes;

(iii) Health education activities;”

51. As per Section 32, we notice that for every Gram Panchayat, there has to be Panchayat Secretary who is also duty-

bound to perform all such duties imposed upon him. Similarly, as per Section 60 for every Panchayat Samitee, one Block Development Officer is appointed by the Government as an Executive Officer and as per Section 87 for every Zila Parishad one Chief Executive Officer of the rank of District Magistrate/Additional Executive Officer of the rank of Additional District Magistrate is required to be appointed by the Government.

52. Willful omission or refusal to perform duties and functions under the Act entails a ground for removal of the Mukhiya or Up-Mukhiya under Section 18(5); removal of Pramukh or Up-Pramukh under Section 44 (4); removal of Adhyakasha or Up-Adhyakasha under Section 70(5) of the Panchayat Act.

53. In the attending circumstances, when the State is in a state of a medical emergency, for the State itself has imposed lockdown from 6th May, 2021, in our considered view, non-reporting of deaths by the functionaries under the Municipal Act and the Panchayat Act would also entail action for their removal on the ground of non-performance/discharge of their duties. The public representatives must engage themselves at the grass-root level, for they are pretty familiar with the geography,

demography and topography of their respective jurisdiction. They are close to the electorate, be it their supporters or voters. Any death taking place in the rural area is immediately made known to all by word of mouth. As such, we direct that it shall be the duty of the Mukhiya/ Up-Mukhiya/ Pramukh/ Up-Pramukh/ Adhayaksha/ Up-Adayaksha to ensure that all deaths taking place within their respective jurisdictions, are immediately reported and certainly not later than 24 hours. This alone would help the authorities ascertain exact information of the cause of death enabling them to take further action in controlling the Pandemic. We clarify that we would not hesitate in issuing directions for the removal of such public representatives who fail to discharge their statutory obligations.

54. According to us, creating health infrastructure dealing with pandemic Covid-19 would also entail collecting and collating information in terms of the Registration Act, for this would indicate the area required immediate attention. It is common knowledge that in the rural areas, especially the illiterate, marginalized and deprived ones are neither aware nor do they have the will to furnish and completing the formalities. At the local level, relatives immediately perform the last rites as per the prevalent practices.

55. It is a matter of record that last year, as per the Government's affidavit filed in Shivani Kaushik (1) during the first wave of Pandemic, more than 40 lakhs residents had returned home. Bihar has got substantial migrant population. How many of those who had again left the State for earning their bread and butter have now returned during the second wave of Pandemic, more so in the rural areas, is not clear. Whether the virus has spread in such regions also resulting in deaths needs to be ascertained by the administration.

56. We are not exceeding our jurisdiction in directing the State to undertake such an exercise. Definitely, it is for ascertaining the cause of death. If the death is a result of Pandemic, then immediate steps are required to make applicable the Covid Guidelines On Dead Body Management as notified by the Government of India and the State of Bihar, evident from the letter dated 29.07.2020. (Annexure-O appended with the affidavit of the Chief Secretary dated 09.05.2021) (page-53).

57. At this juncture, we may also take note of Annexure- M appended with the affidavit of the Chief Secretary dated 09.05.2021 (page-49). Significantly, in Districts Bhojpur (serial no.31), Jehanabad (Serial no.32) and Buxar (serial no.33), there is no integrated pathological laboratory for conducting

RTPCR tests. These districts are attached to a private hospital, namely NCMC, Bihta, having a total capacity of conducting tests of up to 1800 (Approx), contrasting this with a total population of Bhojpur-27,20,155, Jehanabad-11,24,176; Buxar - 17,07,643, in all adding to 55,51,974.

58. It is true that this chart only deals with RTPCR Tests and not Rapid Antigen Test (RAT). However, then we notice that the advisory issued by ICMR (Indian Council of Medical Research) (Annexure-N appended with the affidavit of the Chief Secretary dated 09.05.2021) (page-51) it is mandated for the State to improve the availability of testing, at multiple locations, including Health Care Centres and other available vacant space. It is suggested that “these booths should be operational on a 24x7 basis to improve access and availability of testing.”

59. It is in this backdrop; we find that let a fresh affidavit by the Chief Secretary, Government of Bihar be filed in a tabular form. We may also point out that there is no data to indicate the number of deaths that have taken place in Bihar during the second wave of the Pandemic. Any death, more so, in the rural areas for lack of access to a medical facility, including testing in a violation of fundamental right. Action has to be

taken on a priority basis, and the State must furnish information to the Court with promptitude.

60. We understand that the Executive are busy conducting operations, be it planning or its execution at different levels with dealing with the Pandemic. At this point, we deem it prudent not to interact with them directly. But, failure to furnish information, complete in all respect, may prompt us to do so.

61. In fact, the Court had expressed its desire to have a virtual tour of the government's control room, handled by the technocrats. Learned Advocate General, welcomes such a suggestion.

62. Today, during the hearing, the learned Advocate General informs that the authorities have already initiated action in disposing of the bodies found flowing in the river Ganga at Buxar and Kaimur. He further states that the Commissioner of the said Districts shall file his personal affidavit on this issue. Let needful be done within next two working days.

63. In this backdrop, we issue the following directions:

- (i) The government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life.

Failure on the part of even private hospitals to provide timely medical treatment to a person in need of such treatment results in a violation of his right to life guaranteed under Article 21.

- (ii) The public representatives nominated vide Notification dated 1st of May, 2021 issued by the Additional Chief Secretary, Govt. of Bihar as also the functionaries of the State under the Registration Act, Municipal Act and the Panchayat Act shall take all steps ensuring implementation of the Government policies, including immediate registration of deaths, more so in the rural areas of Bihar.
- (iii) The State Government is hereby directed to take all necessary steps for proper implementation of the CRS, and responsibilities enunciated for units of local government under the Registration Act as also the Panchayat Act. All deaths must be reported within 24 hours. A true picture is essential for taking effective steps in defeating this pandemic Covid-19.
- (iv) We reiterate the importance and significance of shifting the focus to the rural areas so as to ensure that none is deprived of the medical health infrastructure in connection with pandemic Covid-19.
- (v) The Ministry of Health, Government of India/appropriate authority shall, to the extent possible, favourably consider the request forwarded by the State vide communication dated 7th May, 2021 seeking enhancement of the quota of oxygen cylinders. The

needful be positively done within next four working days.

- (vi) Equally, the State's request seeking enhancement of quota of oxygen (LMO) forwarded vide communication dated 10th of May, 2021 be favourably considered within very same period.
- (vii) The affidavit of the Commissioner of the District Buxar and Kaimur with regard to disposal of the bodies found floating in the river Ganga be positively filed within next two working days.
- (viii) All concerned shall expeditiously take appropriate steps and pass orders for interim release of the case property seized in the shape of oxygen cylinders, which are necessarily required for saving human life. The needful be done as per law ensuring its identification during trial.
- (ix) Municipal authorities are directed to take steps for proper collection, treatment and disposal of waste generated from COVID patients in home isolation.
- (x) The process of procuring C.T. Scan equipment is directed to be expedited.
- (xi) The Chief Secretary, Government of Bihar shall file a fresh affidavit, furnishing complete information in a format (tabular chart) prepared by all the learned counsel in terms of our direction. Needful be positively done within next four working days, failing which, we shall be constrained to ask him for joining the proceedings through a digital mode.

- (xii) Fresh data be furnished to this Court, with respect to RTPCR, positivity rate and death etc., making clear the geographical locations, Urban and Rural designations and also, the number of (a) Covid Care Centres (CCC); (b) Dedicated Covid Health Centres (DCHC); (c) Dedicated Health Centre (DHC) or for that matter the private hospitals in each one of the districts. It is to be noted that the information furnished must pertain to the second wave of the pandemic, beginning March 1, 2021.
- (xiii) It is open for the parties to respond to the affidavits dated 06.05.2021; 09.05.2021 and 11.05.2021 filed by the Chief Secretary, Government of Bihar.

64. List this case tomorrow, i.e., 13th of May, 2021 at 10:30 A.M. for limited purpose of perusing the reports of the expert.

(Sanjay Karol, CJ)

(S. Kumar, J)

PKP/Sujit

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