

ITEM NO.302

Court 5 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SMW (C) No.3/2021

I N R E : D I S T R I B U T I O N O F E S S E N T I A L S U P P L I E S A N D
S E R V I C E S D U R I N G P A N D E M I C

(WITH IA No. 57404/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 57405/2021 - EARLY HEARING APPLICATION, IA No. 57396/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 57400/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 57399/2021 - INTERVENTION APPLICATION, IA No. 57403/2021 - INTERVENTION APPLICATION, IA No. 57395/2021 - INTERVENTION/IMPLEADMENT, IA No. 57406/2021 - PERMISSION TO APPEAR AND ARGUE IN PERSON)

Date : 27-04-2021 This matter was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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Ms. Manya Hasija, Adv.

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Applicant-in-person

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 By the order of this Court dated 22 April 2021, notice was issued to the Union government and to all the States and Union Territories. The Union government was directed to place on the record a national plan for finding solutions to the human hardship caused by the outbreak of Covid-19 since March 2020. The invocation, suo motu, of the jurisdiction under Article 32 is necessitated by the critical situation which has emerged in the country. Among the issues which were highlighted in the order of this Court, are :

- (i) Ensuring an adequate supply of oxygen;

- (ii) Ensuring the availability of essential drugs; and
 - (iii) Streamlining the modalities for vaccination.
- 2 The Court appointed an *amicus curiae* to assist the Court. Subsequently, on 23 April 2021, the *amicus curiae* requested to be relieved of the nomination by the Court. An order has been passed acceding to the request.
- 3 An affidavit has been filed by the Union government this morning which could not be circulated in advance to the members of the Bench or to the counsel appearing on behalf of the contesting parties. Before proceeding further, it is necessary at this stage to :
- (i) Appoint a fresh set of *amicus curiae* to assist the Court; and
 - (ii) Issue house-keeping directions for circulating the affidavit of the Union of India to all the States and Union Territories and to other parties who are represented in these proceedings.
- 4 The purpose of this Court assuming jurisdiction under Article 32 of the Constitution is not to supplant or to substitute the judicial process which is being conducted in several High Courts across the country under Article 226 of the Constitution. The High Courts have a robust understanding of ground realities and are grappling with the practical issues and problems which have arisen in their jurisdictions as a result of the outbreak of the pandemic. The jurisdiction under Article 226 of the Constitution is a valuable safeguard for the protection of fundamental and legal rights. The jurisdiction of this Court under Article 32 extends to the protection of the fundamental rights. The High Courts are well

suites to make an assessment of the ground realities which prevail in each State and to find flexible solutions to deal with practical concerns of and the serious hardships faced by the citizens. Hence, there is no reason or justification to interdict the exercise of the jurisdiction of the High Courts in responding to the human problems faced by the citizens in the States and Union Territories and to find solutions with the cooperation of the authorities. The reason for the intervention of this Court must, however, be understood in a proper perspective. In a time of national crisis, such as the one which is confronting the nation today as a consequence of the pandemic, the Supreme Court cannot stand silent as a mute spectator. This court has a constitutional duty to protect the fundamental rights traceable to Part III of the Constitution. The role of this Court in the present situation is complementary to the role and functions being performed by the High Courts. Neither is intended to substitute the other. Indeed, there may be certain national issues or issues of a systemic nature which have their origin beyond boundaries of a particular State. These issues which travel beyond state boundaries will require a comprehensive national approach if we are to alleviate the immense suffering caused by the pandemic. It is with the consciousness of this duty that this Court has assumed jurisdiction under Article 32 of the Constitution. Thus, we clarify that the High Courts shall not be restrained by the pendency of these proceedings in passing appropriate orders to deal with the emerging situation in each State or Union Territory concerned, as and when necessary to do so.

- 5 During the course of the hearing, we have heard submissions on behalf of the Union government by Mr Tushar Mehta, the learned Solicitor General. Several states have appeared before this Court : Mr Vikas Singh, Senior Counsel for the

State of West Bengal; Dr A M Singhvi, Senior Counsel for the State of Rajasthan,; Mr Niranjan Reddy, Senior Counsel for the State of Andhra Pradesh; Mr Ranjit Kumar, Senior Counsel for the State of Bihar and Mr Rahul Mehra, Senior Counsel for the NCT of Delhi. Mr Arvind P Datar and Mr Yatin Oza, Senior Counsel appeared on behalf of the Bar Association of India and the Gujarat High Court Bar Association, respectively. The Court also has the presence of Standing Counsel including Mr Rahul Chitnis and Mr Sachin Patil appearing on behalf of the State of Maharashtra.

- 6 In order to enable the Union of India and the diverse States who are appearing before this Court to have some indication of the further line of enquiry, we tentatively highlight the following issues which would be considered during the course of the proceedings :
- (i) Supply of oxygen – The Court should be apprised by the Union of India on
- (a) The projected demand for oxygen in the country at the present point of time and in the foreseeable future;
 - (b) The steps taken and proposed to augment the availability of oxygen, meeting both the current and projected requirements;
 - (c) The monitoring mechanism for ensuring the supply of oxygen, particularly to critically affected States and Union Territories as well as the other areas;
 - (d) The basis on which allocation of oxygen is being made from the central pool; and

- (e) The methodology adopted for ensuring that the requirements of the States are communicated to the Central Government on a daily basis so as to ensure that the availability of oxygen is commensurate with the need of each State or, as the case may be, Union Territory.

- (ii) Enhancement of critical medical infrastructure, including the availability of beds, Covid treatment centres with duly equipped medical personnel on the basis of the projected requirement of healthcare professionals and anticipated requirements. The Union government will consider framing a policy specifying the standards and norms to be observed for admitting patients to hospitals and covid centres and the modalities for admission;

- (iii) The steps taken to ensure due availability of essential drugs, including Remdesivir and Favipiravir among other prescribed drugs and the modalities which have been set up for controlling prices of essential drugs, for preventing hoarding and for ensuring proper communication of the requirements at the level of each District by the District health authorities or Collectors to the Health Departments of the States and thereafter by the states to the Union Ministry of Health and Family Welfare so that the projected requirements are duly met and effectively monitored on a daily basis.

- (iv) Vaccination
 - (a) Presently two vaccinations have been made available in the country, namely, Covishield and Covaxin;

- (b) As of date, the vaccination programme has extended to all citizens of the age of 45 years and above;
- (c) From 1 May 2021, the vaccination programme is to be opened up also to persons between the age groups of 18 to 45, in addition to the existing age group categories. The Union of India shall clarify (i) the projected requirement of vaccines as a result of the enhancement of coverage; (ii) the modalities proposed for ensuring that the deficit in the availability of vaccines is met; (iii) steps proposed for enhancement of vaccine availability by sourcing stocks from within and outside the country; (iv) modalities for administering the vaccines to meet the requirements of those in the older age group (forty five and above) who have already received the first dose; (v) modalities fixed for administering the vaccine to meet the additional demand of the 18-45 population; (vi) how the supplies of vaccines will be allocated between various states if each state is to negotiate with vaccine producers; and (vii) steps taken and proposed for ensuring the procurement of other vaccines apart from Covishield and Covaxin and the time frame for implementation; and
- (d) The basis and rationale which has been adopted by the Union government in regard to the pricing of vaccines. The government shall explain the rationale for differential pricing in regard to vaccines sourced by the Union government on one hand and the states on the other hand when both sources lead to the distribution of vaccines to citizens.

- 7 In order to allay the concerns of citizens, it is necessary that a panel of medical experts is nominated by the Central government to disseminate authentic information on all aspects including in regard to the steps which have to be taken for combating the pandemic. The Union of India may consider formulating modalities for ensuring due communication of advisories on a daily basis by the panel of nominated experts. This model may be replicated at the level of each State. This will ensure the dissemination of authentic information.
- 8 In the event that the affidavit which has already been filed by the Union of India has not dealt with the issues which have been highlighted above, an additional affidavit be filed before the next date of listing.
- 9 Mr Jaideep Gupta and Ms Meenakshi Arora, Senior Counsel are appointed as *amicus curiae*. Copies of all affidavits shall be made available to them.
- 10 The Chief Secretaries of the State Governments and Union Territories shall also file their responses by 6 pm on 29 April 2021 clarifying the infrastructural facilities which are available in the States/Union Territories in respect of each of the issues which have been highlighted above. The States and Union territories shall clarify the steps taken in regard to each of the above issues in so far as their roles are involved. Once the State Governments have done so, that will enable the Court to better understand the shortfall, if any, which needs to be attended to by the Union government. Copies of the affidavits shall be exchanged between the counsel appearing on behalf of the diverse parties.
- 11 Dr A M Singhvi, learned Senior Counsel appearing on behalf of the State of Rajasthan has sought to highlight certain aspects which emerged as a result of

an order passed by the High Court of Delhi yesterday in regard to the detention of oxygen tankers. Since the High Court of Delhi is seized of the proceedings, we are not entering into that area, but leave it open to the State of Rajasthan to move the High Court for appropriate directions.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER