



HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Writ Petition (PIL) No. 27 of 2020Suo Moto WP(PIL) **Versus** State of Chhattisgarh & Others

17	
22/04/2021	<p>Shri Prafull N. Bharat, Advocate appears as <i>Amicus Curiae</i>.</p> <p>Shri Satish Chandra Verma, Advocate General with Shri Chandresh Shrivastava, Deputy Advocate General and Shri Vikram Sharma, Deputy Government Advocate for the State/Respondents No. 1 to 3.</p> <p>Shri Ramakant Mishra, Assistant Solicitor General for the Union of India/Respondent No. 4.</p> <p>Shri Abhishek Sinha, Advocate for the Respondent No. 7/Railways.</p> <p>Shri Ashish Shrivastava, Advocate for the Respondent No. 9/SLSA.</p> <p>Shri Sandeep Dubey and Shri Palash Tiwari, Shri Nishikant Sinha, Shri Devershi Thakur, Shri Anish Tiwari Advocates for the respective Intervenors.</p> <p>IA No. 46, 47 and 48 of 2021.</p> <p>The tsunamic second wave of the Covid-19 pandemic has made everybody scary of the situation which is spreading at lightning speed affecting even the young and healthy. When the maximum per day infection in the first wave in the last year was about 97,000, it has crossed 3 lacs yesterday. The only silver lining in the cloud is that the scientists have become successful in formulating vaccine and as on date, a mass vaccination is going on in the country with two vaccines, while introduction of more vaccines is in the pipeline.</p>



The alarming increase in the number of patients with rising casualties and inadequacy in infrastructure, particularly as to the availability of beds and oxygen support in the hospitals, virtually driving the patients with serious conditions to run from pillar to post made the Intervenor to file these applications praying for permission to intervene; to direct the Railway authorities to provide specialised medical coaches with infrastructure to help the Corona patients and also to permit the Intervenor to file the necessary proceedings in accordance with the relevant rules once the lockdown in the place where the High Court is seated, is lifted.

We heard Shri S.C.Verma, the learned Advocate General Shri Ramakant Mishra, the learned Assistant Solicitor General, Shri Abhishek Sinha, the learned counsel for the Railways, Shri Prafull N. Bharat, the learned Amicus Curiae, Shri Ashish Shrivastava, the learned counsel for the SLSA and Shri Palash Tiwari, the learned counsel for the Intervenor.

Even though no proper proceedings have been filed by the Petitioner, considering the extreme urgency of the issue projected, we treat the contents of the IAs as information furnished to the Court in the suo moto proceedings and to have it acted upon, subject to the rider that the Petitioner shall file proper proceedings in all respects, within one week from the date of lifting of the lockdown.

IA No. 48 is ordered accordingly.

With regard to the prayer in the other two IAs, Shri Palash Tiwari, the learned counsel for the Petitioner submits with reference to the facts and figures that in view of the huge number of Covid-19 victims and since almost all the Government and private hospitals are almost full of Covid patients and no beds are available, interference is necessary and direction might be given to the Railways to make available sufficient number of medical coaches for treating the patients.



The learned counsel submits that the South East Central Railway, Bilaspur has arranged as many as 111 special medical coaches, but it is not being put to use and are lying stranded. It is pointed out that though no oxygen facilities are available, it could be facilitated and be put to use. Though Annexure I-1 letter dated 18.04.2021 has been issued by the Chief Medical & Health Officer, Bilaspur to the authorities of the Railways seeking to allot the requisite number of coaches with bed and infrastructure including the staff, it is not being acted upon and hence the petition.

Shri Verma, the learned Advocate General submits that there is absolutely no lapse or dereliction on the part of the authorities of the State in providing necessary infrastructure and treating Covid-19 patients. It is pointed out that as on date, 67,07,690 tests have been conducted (RT-PCR, TruNat and Rapid Antigen Test) in which 1,22,751 is the figure representing the active cases with a total death of 6467, showing the recovery of 4,95,600. However, the test positivity rate which was 1% in the first week of March, 2021 has gone up to 29% in the second week of April, 2021. Apart from six medical colleges belonging to the State, there are 37 dedicated Covid Hospitals and 154 Covid Care Centers. The bed capacity in the various Centers is given in the tabulated form (supplied to the Court for perusal) which is to the following effect:

संस्था	कुल बेड	ICU (1)	HDU (2)	(1) (2) के अलावा ऑक्सीजनयुक्त बिस्तर (3)	कुल ऑक्सीजनयुक्त बिस्तर (1+2+3)
शासकीय डेडिकेटेड कोविड अस्पताल	5170	554	504	2301	3359
शासकीय कोविड केयर सेण्टर	16395	0	0	2951	2951
निजी कोविड अस्पताल	6889	1841	705	2822	5346



The availability of the Ventilator is stated as 1002 (526 in the Government Sector and 467 in the Private Sector). It is also pointed out that to ensure availability of Oxygen, 15 Oxygen Generation Plants have already been installed and setting up of 9 more Oxygen Generation Plants are under way. It is mentioned that the Case Fatality Ratio in the State is 1.1% whereas, the national average is 1.2%.

With regard to the grievance projected in the petition as to the unavailability of the beds/Oxygen support in the Hospitals, the learned Advocate General submits that there are 198 Covid Hospitals in which a total number of 8322 Covid beds are available, out of which 3616 are Oxygenated beds. The learned Advocate General submits that there is no much scarcity of beds or Oxygen support as in many places, the beds are lying vacant. A chart prepared in this regard and made available to us is to the following effect:

District wise Pvt. Covid Hospitals O2 & Non O2, HDU, ICU and Ventilator status as on 21.04.2021 at 10.35 PM																
SN	District Name	No. of Hospital / Facility	Total Number Of covid Beds	Number of Beds with O2 support	Vacant Beds with O2 support	Number of Beds without O2 support	Vacant Beds without O2 support	Number of isolation beds outside hospital	vacant isolation beds outside hospital	Total HDU Beds	HDU Beds Vacant	Total ICU Beds	ICU Beds Vacant	Total Number of Ventilator	Ventilator Vacant	Vacant oxygenated beds (O2+HDU+ICU)
1	Raipur	81	4308	2001	43	865	389	32	32	491	33	919	16	311	0	92
2	Durg	24	896	434	5	128	8	0	0	18	0	316	0	70	0	5
3	Bilaspur	25	1082	201	4	87	12	0	0	315	5	479	0	97	2	9
4	Dhamtari	12	276	169	21	45	25	0	0	0	0	62	6	7	3	27
5	Balodabazar	10	192	83	17	62	26	0	0	13	0	34	8	1	0	25
6	Raigarhi	8	308	184	36	64	9	2	2	20	0	38	0	11	0	36
7	Mahasamund	8	245	85	11	98	51	0	0	18	2	44	2	12	1	15
8	Surguja	5	177	88	16	3	0	0	0	17	0	69	0	19	2	16
9	Korba	4	210	78	0	71	36	0	0	26	0	36	0	9	1	0
10	Mungeli	4	61	35	6	11	4	0	0	10	0	5	0	6	2	6
11	Rajnandgaon	5	233	108	0	77	29	0	0	0	0	48	0	10	0	0
12	Kawardha	5	135	75	0	60	24	0	0	0	0	0	0	0	0	0
13	Jashpur	2	37	7	6	26	23	0	0	0	0	4	1	1	1	7
14	Janjgir Champa	3	87	18	15	36	22	2	2	16	10	15	10	1	1	35
15	Bastar	1	50	30	0	12	8	0	0	0	0	8	3	2	1	3
16	Balod	1	25	20	0	5	1	0	0	0	0	0	0	0	0	0
Total		198	8322	3616	180	1650	667	36	36	944	50	2077	46	557	14	276

The particulars in the above chart are only in respect of the "private" Covid Hospitals; whereas the position with regard to the Government Hospitals/Medical



Centers is not discernible therefrom.

We sought for clarification with reference to the photograph of a patient being admitted in the Government Hospital by making him lie on the floor (reportedly in the CIMS, Bilaspur) and being supplied Oxygen, as appeared in one of the local dailies dated 16.04.2021. Similarly, the plight of another patient who was being administered Oxygen support making her to lie on the floor (reportedly in the very same Hospital as reported in the local daily of yesterday) was also put across the learned Advocate General to explain how the factual position is sought to be reconciled. Breathing time is sought for to get instructions in this regard.

Shri Abhishek Sinha, the learned counsel appearing for the Railways submits that medical coaches have of course been arranged by the Railways on the basis of instructions issued by the Ministry in the Central Government and the allotment and user have to be strictly in terms of the Standard Operating Procedure (for short 'the SOP) and the Guidelines issued by the Ministry. A copy of the said Guidelines/SOP is made available to this Court. It is pointed out that as many as 215 stations have been identified by the Ministry where these facilities are to be extended and that the stations at 'Raipur' and 'Bilaspur' are of course included in the Annexure thereto. With reference to 'clause 4 and 5' of the Guidelines/SOP, the learned counsel submits that, if at all any requirement is felt, it is for the State to submit a requisition through their Nodal Officer to the Nodal Officer of the Railways; upon which allocation of these coaches would be made to the State/UTs. The learned counsel submits that the Railways have no medical staff to be deployed, nor is there any facility to provide the Oxygen Cylinders, simultaneously adding that the Railways are having two Hospitals of its own in Bilaspur and Raipur. As against the bed capacity of 75 in Bilaspur, 84 patients have been accommodated, while 78 patients have been admitted in Raipur as against the bed capacity of 50 and thus, it is over crowded. Annexure I-1 dated 18.04.2021 has not been issued by the Nodal Officer of the



State and has not reached the hands of the Nodal Officer of the Railways. Since the Railways are bound by the SOP, it can be given effect to strictly in terms of the SOP. The learned counsel further submits that no requisition has ever been made by the Nodal Officer of the State so far for allocation of the special medical coaches of the Railways.

We would like to point out at the outset that the attempt of the Court is never to find fault with anybody, be it the Central Government, State Government, Railways or any other Establishment. The need of the hour is to have a concerted action by all the stakeholders, rising to the occasion and in extending hands to the needy general public who fall prey to the pandemic. It may be true that the State has not made any requisition to the Railways through the Nodal Officer for allocation of the special medical coaches so far. It may be due to various reasons including the fact that by the commencement of the new year 2021, the Covid graph in the entire country (but for a very few States) was declining, giving a sigh of relief and there might not have been any need, necessity or occasion to make available more number of beds or isolated coaches/spaces. Admittedly, the test positivity which was only 1% in the first week of March, 2021, has gone up by 29% in the second week of April, 2021. Though, initially lockdowns were declared only in very few Districts, as per the information reported today, it is stated that lockdown has been implemented in almost all the Districts of the State. It is also a fact that because of the mounting increase in the number of patients and the inadequate bed facility with Oxygen support in the Hospitals (Government and Private) because of the non-reconciliation of the demand-supply ratio, it is high time to think about the alternatives.

In the last year, considering the possibility of increase in the Covid-19 cases, a view was taken by the Central Government to utilise the Railway coaches for Covid Care Centers categorising it to "very mild/mild cases", prescribing the



Guidelines and SOP as notified in the website of the Ministry of Health and Family Welfare, on 07.04.2020. This was with an intent to provide imminent help to the patients and in case of any change in the symptoms/clinical conditions, to have them referred to the designated Centers/Hospitals for further management. It is also stipulated that separate coaches for suspect and confirmed cases should be ensured to avoid cross infection, adding that, preferably, individual cabin should be assigned for each case and should the situation warrant, maximum of two confirmed patients could be accommodated in an individual cabin.

In the SOP, it was noted that the Ministry of Railways, as its contribution to national cause has initiated conversion of Railway Coaches into Covid Care Centers to provide additional beds for Covid-19 patients as and when required. Among the 24 clauses of the SOP, 15 clauses (3 to 12, 14, 15, and 17 to 20) are found to be very important and relevant, and hence they are extracted below for easy reference:

"Standard Operating Procedures :

1. xxx xxx
2. xxx xxx
3. A list of 215 stations where the special train coaches can be placed is attached at Annexure I. (as allied facilities to make these coaches operational like watering and electricity may not be available at all stations).
4. Railways will designate state wise nodal officers for allocation of trains and for coordinating with the respective State/UT Government. The Railways will share the list of their nodal officers, with the States/UTs. The States/UTs shall also designate a nodal officer for coordination with Railways.
5. State/UTs would send their requisition through their nodal officer to the nodal officer of Railways following which the Railways will make allocation of these coaches to the State/UTs.
6. After the allocation by the Railways, the train shall be placed, at required station with necessary infrastructure, and handed over to District Collector / District Magistrate or one of their authorized persons.



7. The State Government shall map at least one COVID Dedicated Hospital for each train so that patient can be shifted to the hospital in case of emergency. The State/UT Government shall make suitable ambulance arrangements for shifting the patient. Preferably one Basic Life Support Ambulance with oxygen and ambubag should be stationed at the Railway Station where the train is placed.

8. In the list of stations (Annexure I), as indicated in the list, there are 85 stations where the Railways shall provide necessary health care staff.

9. The respective State/UT government may place a request for placing the coaches at the other 130 stations only if they agree to provide staff and essential medicines at such stations.

10. The Railways would be responsible for provision of all the items as prescribed by the MoHFW for the COVID Care Centers, including arrangements for oxygen cylinders in each coach & other necessary items such as including linen etc.

11. Para-medical staff on train shall do bio medical waste segregation at source. The respective State/District shall do waste disposal arrangements following the mechanism being followed for hospitals in the respective State/District.

12. The staff deployed on the special train coaches would work under the overall supervision of the Chief Medical and Health Officer (CMHO) of the concerned District or the nodal officer identified by the respective District Collector/Magistrate.

13. xxx xxx

14. Wherever the train is stationed, Rolling Stock Department of Railways shall make arrangements for watering of coaches regularly, any repairs required in coaches, and also for replenishment of Chlorine tablets at the bio-toilet discharge.

15. Electrical Department shall make arrangements for provision of proper electricity connections to the coaches and maintenance of electric installations.

16. xxx xxx

17. Wherever required, catering arrangements shall be made by IRCTC/Commercial Department.

18. Railway Protection Force shall ensure suitable security to the coaches, patients and staff working there.

19. Proper signages shall be placed outside railway stations, platforms and near location of coaches to guide authorities and patients to the coaches in a way that they are separate from the general public using the railway facilities.





20. Should the need arise for coach temperature management, arrangement for roof top insulation of the coach or any other suitable arrangement shall be made through local arrangements by Railways."

We find it appropriate to extract the relevant portion of 'Annexure 1' as well i.e. the list of stations where the special train coaches converted to Covid Care Centers can be placed insofar as the State of Chhattisgarh is concerned, which is to the following effect:

Annexure-I

List of Stations where special train coaches converted to COVID Care Centers can be placed

Sr.No	State	Name of STATION	Availability of health care staff from Railways	Nodal Officer for the Station	Mobile Number
xxx	xxx	xxx	xxx	xxx	xxx
38	Chhattisgarh	BILASPUR	Yes	Dr. Biswajit Chakrabarty	9752876501
39	Chhattisgarh	Raipur	Yes	Dr. K.C.Bag	9752877503
xxx	xxx	xxx	xxx	xxx	xxx

From the above, it is explicitly clear that commitment has been made by the Central Government/Railways to make available special medical coaches with the requisite infrastructure, to the extent as covered by the SOP, on proper requisition by the Nodal Officer of the State to the Nodal Officer of the Railways. Among the above clauses, clause 8 stipulates that in the list of Stations i.e. Annexure I, there are 85 stations where the Railways shall provide necessary health care staff and under clause 10, it is categorically stated that the Railways would be responsible for provision of all the items as prescribed by the Ministry of Health and Family Welfare for the Covid Care Centers including arrangement for Oxygen cylinders in each



coach and other necessary items including linen etc.

Coming to Annexure I, the Stations Bilaspur and Raipur in the State of Chhattisgarh have been placed at serial No. 38 and 39 and it has been clearly mentioned that these are the Stations where the health care staff from the Railways would be available.

Shri Prafull N Bharat, the learned *Amicus Curiae* appointed by this Court submits that the Railways are bound by the SOP; with regard to which there is no dispute from the part of the Railways, as submitted by Shri Sinha. It is also stated by the *Amicus Curiae* that a direction is necessary to be issued to the State for identifying and deputing the Nodal Officer and to have a meeting with the Nodal Officer of the Railways forthwith for allocation of sufficient number of Specialised Medical Coaches.

Shri Ashish Shrivastava, the learned counsel for the State Legal Services Authority submits that the two RTPCR laboratories available in Bilaspur are not functioning properly. The learned Advocate General referred to the steps taken by way of remedial measures to clear the backlog, if any. Time is also sought for to make appropriate submission with regard to the query raised by this Court as to the availability of "mobile" RTPCR testing Laboratories.

Shri Mishra, the learned Assistant Solicitor General submits that issuance of the Guidelines and the SOP for making available the special medical coaches by the Railways is taken as a policy decision and it is being implemented in every State when a proper requisition is made by the Nodal Officer in terms of the SOP.

Shri Palash Tiwari, the learned counsel for the Intervenor submits that in various other States including the State of Maharashtra, Karnataka and Uttar Pradesh, Special Medical Coaches are being made available by the Railways with all the necessary infrastructure including the medical staff and Oxygen support and



hence, there is no rhyme or reason for denying the same in equal terms as far as the State of Chhattisgarh is concerned.

The above submission is sought to be rebutted by Shri Sinha, the learned counsel for the Railways. But insofar as there is no dispute that the Guidelines and the SOP have been formulated by the Central Government, equally applicable to all the States in the country, there cannot be any instance of discrimination and as such, it shall be for the Railways to ensure that the same is given effect to strictly in terms of the provisions in the SOP, once a proper request is made from the part of the State.

Shri Sinha, the learned counsel for the Railways submits that all co-operation would be extended from the part of the Railways to make available the Special Medical Coaches, once a proper requisition is made by the Nodal Officer of the State to the Nodal Officer of the Railways.

The learned Advocate General submits that a proper requisition would be put forth by the Nodal Officer of the State today and the Nodal Officer is ready to meet the Nodal Officer of the Railways today itself.

Shri Sinha, the learned counsel for the Railways submits that the deliberations to the above extent as transpired in the Court would be communicated to the Railways forthwith and that they are ready to extend the maximum co-operation in view of the commitment of the Railways to the public cause and to give effect to the policy Guidelines and SOP framed by the Central Government.

In the above circumstances, we direct the Respondent-State to file a proper requisition through the Nodal Officer of the State to the Nodal Officer of the Railways forthwith, for allotment of the Special Medical Coaches based on the SOP as mentioned above. The Nodal Officer of the State and the Nodal Officer of the Railways shall hold a meeting and resolve the issue by taking a decision,



immediately; the outcome of which shall be brought to the notice of this Court by tomorrow.

Post the matter for further consideration at 2:30 pm tomorrow i.e. 23.04.2021.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

