

[1]

THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH,
AT JABALPUR

(DIVISION BENCH)

W.P. No.8914/2020

(IN REFERENCE (SUO MOTU) Vs UNION OF INDIA AND OTHERS)
(Also on Interlocutory Application Nos.4346/2021, 4347/2021 and 4349/2021)

WITH

W.P. No.8696/2020

(P.C. Sharma vs. Union of India and others)

W.P. No.14805/2020

(Dr. Smt. Rakhee Sharma vs. State of M.P. and others)

W.P. No.20889/2020

(Sushil Kumar Patel vs. Union of India and others)

W.P. No.2513/2021

(Umesh Kumar Bohre vs. State of M.P. and others)

&

W.P. No.8753/2021

(Srijan “Ek Asha” vs. Union of India and others)

Coram:

Hon’ble Mr. Justice Mohammad Rafiq, Chief Justice
Hon’ble Mr. Justice Atul Sreedharan, Judge

Presence :

Mr. Naman Nagrath, Senior Advocate with Mr. Jubin Prasad,
Advocate appeared as *Amicus Curiae* in W.P.No.8914/2020.

[2]

Mr. Shekhar Sharma, Advocate for the petitioner in W.P.No.8696/2020.

Mr. Pawan Dwivedi, Advocate for the petitioner in W.P.No.14805/2020.

Mr. Shashank Shekhar, Advocate for the petitioner in W.P. No.8753/2021.

Mr. Sanjay Kumar Verma, Advocate for the petitioner in W.P. No.20889/2020.

Mr. Jitendra Kumar Jain, Assistant Solicitor General for the Union of India.

Mr. P.K. Kaurav, Advocate General with Mr. R.,K.Verma and Mr. Pushpendra Yadav, Additional Advocate General for the respondents/State along with Ms. Chhavi Bhardwaj, Managing Director, National Health Mission (M.P.).

Mr. Shivendra Pandey, Advocate for the Indian Medical Association (respondent No.5 in WP No.8914/2020).

Mr. Shreyas Pandit, Advocate for the Madhya Pradesh Nursing Home Association (respondent No.8 in WP No.8914/2020).

Mr. Vivek Krishna Tankha, Senior Advocate with Mr. Varun Tankha, Advocate in I.A. No.4346/2021 (W.P. No.8914/2020).

Mr. Shashank Shekhar, Advocate for the intervenor in W.P.No.8914/2020.

Mr. Mohd. Vasif Khan, Advocate for the intervenor in W.P.No.8914/2020

Mr. Subhash Upadhyay, Advocate for the intervenor in I.A.No.4347/2021 (W.P. No.8914/2020).

Mr. Ajay Raizada, Advocate for the intervenor in I.A. No.4349/2021 (W.P.No.8914/2020).

Mr. Santosh Sahu and Mr. Rambachan Sahu, Advocates for the intervenor in W.P.No.8914/2020.

[3]

Mr. Akbar Usmani, Advocate for the intervenor in
W.P.No.8914/2020.

Heard on: **15.04.2021**

ORDER

(Passed on this 19th day of April, 2021)

Per: Mohammad Rafiq, Chief Justice

The present *suo motu* Writ Petition No.8914/2020 was registered on the basis of a letter (dated 08.06.2020) sent by Dr. Ashwani Kumar, Senior Advocate, Supreme Court of India, New Delhi to the Chief Justice of India, which was forwarded to the Registrar General of this Court by the Secretary General of Supreme Court of India (vide his letter dated 11.06.2020) under His Lordship's direction. The said letter dated 08.06.2020 had highlighted a tragic and condemnable sight of an elderly Covid-19 patient, who, as per the story carried out by a media portal with a photograph, was chained to bed in a private hospital at Bhopal, the capital city of the State of Madhya Pradesh, allegedly on his failure to make payment of fees for his treatment. One wonders if the situation has changed much since then when the entire country is struggling to survive the second wave of Covid-19.

This Court has passed number of orders to ensure that the Covid-19 patients in the State are provided timely treatment inasmuch as they are not subjected to harassment and exploitation. When the matter was listed on 07.09.2020, this Court directed the State

[4]

Government to issue necessary directions to every hospital including the private hospitals to display the rates for treatment of Covid-19 patients at their reception counters and also publish the same for information of people by publication thereof in the newspapers so that any incident of overcharging could be brought to the notice of the District Administration and necessary action be taken. On 09.10.2020 when the matter was next listed, the Coronavirus was at its peak during the first wave, this Court was informed that 262 hospitals in the State of Madhya Pradesh have been declared as Covid Care Centre (CCC), 62 hospitals have been declared as Dedicated Covid Health Centre (DCHC) and 16 hospitals have been declared as Dedicated Covid Hospital (DCH), i.e. in all 347 hospitals, which are providing free treatment and testing to the Covid suspects and patients. This Court was also informed that there is no shortage of life saving medicines for Covid-19 treatment; scrupulous measures are being taken to ensure that no private hospitals/clinics charge exorbitant fee for such treatment and that rates are being duly exhibited on the hospital counters across the entire State of Madhya Pradesh. The State Government was directed to ensure strict compliance of the norms laid down by the Central Government in their Notification dated 07.04.2020 with regard to infrastructure and other requirements for CCCs, DCHCs and DCHs. The Commissioner, Health Services was directed to set up a District Level Cell to receive and attend the complaints, which should be made functional 24x7. Efforts should be made by all the stakeholders to educate one and all to scrupulously

[5]

follow the norms of social distancing, use of face masks and washing hands etc.

2. When the matter was listed before the Court on 10.12.2020, the State Government filed its response to I.A. No.6360/2020 thereby placing on record copy of the order dated 04.09.2020 issued by the Commissioner, Health Services, Department of Public Health and Family Welfare, Madhya Pradesh issued under the approval of the Additional Chief Secretary of the State Department, directing that under no circumstances the Private Hospitals/Nursing Homes/Clinical Establishments' charges shall exceed by 40% of the rates communicated on or before 29.02.2020 including all expenses such as PPE kits etc. The aforesaid order was addressed to all the Chief Medical & Health Officers of the State, President of the Indian Medical Association, President of the Nursing Home Association and the Additional Director, IDSP (MP). It was assured that the said order shall be prominently published in daily newspapers having wide circulation in the respective Districts of the State after interval of every 15 days. It was also informed on behalf of the State that approximately 1.5 Crore e-cards covering 56% of the beneficiaries families under Pradhan Mantri Jan Arogya Yojana (which is hereinafter referred to as "Ayushman Bharat Yojana", as is commonly known) have been issued; total number of 652 health care providers have been empanelled in the State; the State Government is providing

[6]

free cashless health facility to all Covid-19 patients at dedicated Covid-19 hospitals and designated Government facilities.

3. Thereafter, the matter was listed before the Court on 07.04.2021 on two Interlocutory Applications filed by the learned *Amicus Curiae*. The first application (IA No.3929/2021) was filed by him on the premise that he has learnt from reliable sources that the District Administration, Jabalpur has orally directed all the private Labs and Hospitals to stop conducting Covid-19 tests from 25.03.2021. The Chief Medical & Health Officer, Jabalpur (CMHO) who was present before the Court along with the Regional Director, Health Services, denied having issued any oral directions and submitted that orders have been issued to regulate the rates of the tests to be charged by the private Labs/Hospitals. IA No.4125/2021 was also filed by learned *Amicus Curiae* that in view of the second wave of Covid-19, all the District Administrations of the State should be directed to ensure strict compliance with the directions of the State Government dated 25.03.2021 and that all hospitals empanelled under Ayushman Bharat Niramayam Yojana should be directed not to deny treatment to Covid-19 suspected/confirmed patients falling under that scheme and should be further required to reserve minimum 20% beds for Covid-19 patients. In response, it was informed on behalf of the State that the Commissioner, Health-cum-Officiating Secretary, Directorate of Health Services, Government of Madhya Pradesh had issued an order on 05.04.2021 thereby prescribing a sum of Rs.700/- as the rate for

[7]

RT-PCR Covid-19 Test and a sum of Rs.300/- for Rapid Antigen Covid-19 Test, with an additional sum of Rs.200/- if the sample is required to be collected from the home of the patient, by all ICMR & NABL approved Private Labs and NABH recognised Private Hospitals. Another order dated 05.04.2021 was placed on record whereby the Secretary, Department of Public Health and Family Welfare, Government of Madhya Pradesh, Bhopal taking note of large number of grievances raised by public complaining about exorbitant charges, directed all Private Hospitals/Nursing Homes/Diagnostic Centres to charge a maximum sum of Rs.3,000/- for Chest CT/HRCT Scan from Covid-19 suspects/patients. The aforesaid order was to remain in operation till 30.04.2021.

4. This Court in the aforesaid order dated 07.04.2021 took note of submissions made by Mr. Shivendra Pandey, learned counsel appearing on behalf of Indian Medical Association (*respondent No.5 in WP No.8914/2020*) and Mr. Shreyas Pandit, learned counsel appearing for M.P. Nursing Home Association (*respondent No.8 in WP No.8914/2020*) that in their joint meeting held on 06.04.2021, they have decided to comply the aforementioned orders of the Government with regard to charges for RT-PCR Test, Rapid Antigen Test and Chest CT/HRCT Scan from Covid-19 suspects/patients. However, they informed the Court that there are in the State, approximately 3000 Private Hospitals, which are registered with Indian Medical Association and approximately 3000 Private Nursing

[8]

Homes having membership with the M.P. Nursing Home Association but only a negligent number of 320 Private Hospitals and Nursing Homes are presently empanelled under Ayushman Bharat Yojana, of which only 81 are approved for treatment of Covid-19. This Court therefore while appreciating the stand taken by both Indian Medical Association and M.P. Nursing Home Association, also observed that their members in the time of current crisis faced by the country following the second wave of Covid-19 should desist from exploiting the situation by overcharging the affected persons. The Court also directed the State Government to give wide publicity to above orders issued by it, in all print and electronic media and by any other means. The State Government was also directed to increase the empanelment of Private Hospitals and Private Nursing Homes in the State in Ayushman Bharat Yojana, which fulfill the relevant criteria prescribed by the Central Government, for treatment of Covid-19 suspects/patients under the scheme.

5. The matters had to be then urgently listed on 15.04.2021 on special mention by number of Advocates, who had filed Interlocutory Applications in the present *suo motu* writ petition inasmuch as **I.A. No.4347/2021** (*regarding passing of directions to all the competent authority to follow the guidelines issued by the State Government regarding Covid-19 with immediate effect*) has been filed by Mr. Subhash Upadhyay, Advocate at Indore; **I.A. No.4349/2021** (*application for permission to intervene in suo motu writ petition*) has

[9]

been filed by one Dr. M.A. Khan through Mr. Ajay Raizada, Advocate; and **I.A. No.4346/2021** (*subject: Uncontrolled upsurge and serious mismanagement issue in Covid Pandemic control*) has been registered on the basis of a letter addressed to this Court by Mr. Vivek Krishna Tankha, Senior Advocate. Besides, a fresh Writ Petition by way of public interest litigation bearing W.P. No.8753/2021 has been filed by an NGO, named, 'Srijan Ek Asha'.

6. Mr. Naman Nagrath, learned *Amicus Curiae* has made his submissions and given written suggestions. Mr. P.K. Kaurav, learned Advocate General appearing along with Mr. R.K. Verma, learned Additional Advocate General, Mr. Pushpendra Yadav, learned Additional Advocate General and Ms. Chhavi Bhardwaj, Managing Director, National Health Mission (Madhya Pradesh), aside of making submissions, filed action plan of the State to manage the situation. Apart from learned *Amicus Curiae*, we have also heard Mr. Shashank Shekhar Dugwekar, Mr. Sanjay Kumar Verma, Mr. Shekhar Sharma and Mr. Pawan Kumar Dwivedi, learned counsel appearing for the petitioners in respective writ petitions as well as heard Mr. Jitendra Kumar Jain, learned Assistant Solicitor General for the respondents- Union of India and Mr. Vivek Krishna Tankha, learned Senior Counsel, Mr. Subhash Upadhyay, Mr. Ajay Raizada, Mr. Shivendra Pandey and Mr. Shreyas Pandit, learned counsel appearing for the respective intervenors/respondents on Interlocutory Applications filed in the *suo motu* writ petition. All of them have, more or less, raised

[10]

similar arguments as to the ongoing crisis faced by the State following the second wave of Covid-19. A gist of what all of them have submitted in the course of hearing can be summarized thus:-

- (i) there is an acute medical crisis in the State of Madhya Pradesh due to sudden spread of Covid-19, which has engulfed not only the urban areas but also reached the villages;
- (ii) many deaths have been reported during the past few days from various hospitals including the private Hospitals/Nursing Homes across the State due to non-availability of Oxygen. There is an acute shortage of Oxygen in the Government Hospitals as well as Private Hospitals/Nursing Homes not only in the major cities like Bhopal, Indore, Gwalior and Jabalpur but also in District Headquarters and Sub Divisions. Large number of newspaper clippings have been filed to bring home the point;
- (iii) there is an acute shortage of Remdesivir– a life saving drug which is quite crucial for saving the life of Covid-19 patients. In most of the Districts of the State including the major cities like Bhopal, Indore, Gwalior and Jabalpur one vial of Remdesivir, which costs approximately Rs.800-1,000, is being sold at an exorbitant price to the extent of Rs.18,000/-. The private hospitals are exploiting

[11]

the situation by charging arbitrary rates for providing Remdesivir injections. The black-marketing of Remdesivir injection is leading to registration of criminal cases in some instances. Many newspaper clippings have been produced to substantiate this;

- (iv) while dedicated Covid-19 Hospitals have been established in the major cities like Bhopal, Indore, Gwalior and Jabalpur but there are hardly any such hospitals in any other District Headquarters of the State, with the result that all critical Covid patients have to be rushed there;
- (v) oral instructions have been issued to all Private Labs/Private Hospitals/Nursing Homes not to conduct any RT-PCR and Rapid Antigen Tests;
- (vi) although the rates have been prescribed by the Government for all private Hospitals/Nursing Homes for being charged from Covid-19 patients but most of them are not abiding by the same;
- (vii) the private Hospitals/Nursing Homes are blankly refusing to have availability of beds for Covid-19 patients inasmuch as the beds are being provided to only those who are either ready to pay higher charges or having some kind of influence. Resultantly, middle class, lower middle class and poor are worst hit;

[12]

- (viii) most of the private hospitals are not providing cashless treatment to the patients having insurance cover, inasmuch as, some private hospitals even though they are approved for CGHS facilities are not accepting the patients under that head. Similarly, the private hospitals empanelled and approved for Covid-19 treatment under Ayushman Bharat Yojana are also not accepting the Covid patients and the patients from Below Poverty Line having BPL cards under Deendayal Antyodaya Upchar Yojana are also not being provided treatment under that scheme by approved Hospitals;
- (ix) there are in the State, 51 District Hospitals; 84 Civil Hospitals and 330 Community Health Centres with 30 beds facility each; 1199 Primary Health Centres having 6 bed facility each but most of them, apart from having acute shortage of Medical and Para-Medical Staff, are ill-equipped to deal with the current crisis. As per the Annual Report of 2019-20, there are 3620 sanctioned posts of specialists, as against which nearly 80% of them (2855 posts) are vacant with only 765 presently working and there are 5097 posts of Health Officers, as against which only 3,589 are working and nearly 30% i.e. 1,508 posts are vacant;
- (x) there is no system in place whereby it could be known as to how many normal beds, ICU beds and Ventilators are

[13]

available in Government and Private Hospitals and that the Covid Portal of the State, namely, "Sarthak" (<https://sarthak.nhmmp.gov.in>) is mostly not updated and therefore, does not provide the correct information;

- (xi) every second and third home in cities, namely, Bhopal, Indore, Ujjain, Jabalpur and Gwalior has a Covid-19 patient but the correct number of patients are being suppressed inasmuch as the newspapers are widely reporting much higher number of deaths in the Districts of the State due to Coronavirus than what is officially declared by the District Administration which is corroborated by number of funerals taking place in the Cremation grounds as per the Corona Protocol;
- (xii) the test report of RT-PCR samples is being received with delay of three to five days in most of the instances. If the patient in the meantime dies, dead body is handed over to the family members and the cremation in such cases is not being conducted as per the Corona Protocol. In some instances, even after the death of declared Covid-19 patients, the dead bodies are being allowed to be taken to home rather than being cremated/buried as per the standard Corona protocol, thus giving rise to spread of Coronavirus amongst the family members and others;
- (xiii) as per the data given in W.P. No.8753/2021, ever since the onset of second wave of Covid-19 since February,

[14]

2021 till 13th April, 2021, almost 1,38,70,731 Covid-19 cases were detected in India out of which 3,53,632 cases have till date been traced in State of Madhya Pradesh, of which total 8,998 Covid-19 positive cases along with 14 deaths were reported in Madhya Pradesh on 13th April, 2021;

- (xiv) not many effective steps are being taken by the State Government to check the citizens who are not wearing face masks and not maintaining social distance, which could be easily witnessed at the market places;
- (xv) neither any containment zones are being declared nor any kind of barricading is being done and even the banners or posters are also not being affixed to warn people about the severity of the disease, as was a regular feature in first wave of Covid-19. There are no regular mobile sanitization units to spray the sanitizer in vulnerable places of townships and colonies as was a regular feature in the first wave of Covid-19;
- (xvi) there is a crisis of availability of wood in all the funeral grounds and the electric crematoriums wherever they are situated, are mostly out of order;
- (xvii) there are no beds available in Government as well as Private Hospitals in cities like Bhopal, Indore, Jabalpur and other places. ICU beds and ventilators are nowhere to be found. The private hospitals are taking exorbitant

[15]

charges for ICU beds and Ventilators thereby exploiting the situation.

7. Learned *Amicus Curiae* and the learned counsel appearing for the petitioners and the intervenors have submitted that all the newspapers in the State of past ten days are replete with stories pointing out acute medical crisis and total lack of medical facilities and non-availability of Oxygen and Remdesivir injections throughout the State of Madhya Pradesh. The patients are being asked to bring their own Oxygen cylinders with them and manage the vials of Remdesivir on their own. It is submitted that there is demand of advance deposit of huge amount by the private Hospital/Nursing Homes. It is the duty of the Government to ensure that common man is not made to suffer due to non-availability of Oxygen and life saving drug like Remdesivir. The Government has miserably failed to ensure the availability of treatment to poor and needy, especially in semi-urban and rural areas thereby violating the right to life of the citizens enshrined in Article 21 of the Constitution of India. There is state of panic and fear amongst the people who are with every passing day becoming restless. All these circumstances are pointer towards disorganized health infrastructure of the State Government, which has miserably failed to manage this medical emergency despite the advance warning by World Health Organization (WHO) of approaching second wave. The State Government has utterly failed to cope up with the ongoing medical emergency inasmuch as there is

[16]

huge communication gap and lack of coordination amongst various government functionaries. In fact, the entire State machinery has been caught off-guard and has been found lacking in its efforts to provide basic health care to the citizens.

8. Mr. Naman Nagrath, learned Senior Counsel appearing as *Amicus Curiae* has submitted that already this Court on 07.09.2020 directed the State Government to issue directions to every private Hospitals and Nursing Homes to display the rates for treatment of Covid-19 suspects/patients at their reception counters and give due publicity to the same. In fact, in the order dated 10.12.2020 it was clearly noted that the Commissioner, Health Services, Department of Public Health and Family Welfare has issued an order on 04.09.2020 that under no circumstances the charges of private Hospitals/Nursing Homes/Clinical establishments shall exceed by 40% of the rates communicated by them on or before 29.02.2020 including all expenses such as PPE Kits etc. The direction was also issued that this information should also be brought in the public domain by getting it repeatedly published in the daily newspapers having circulation in the respective districts after interval of every 15 days. Similar direction was issued by this Court on 07.04.2021. The State Government should therefore be required to mandate all the private Hospitals/Nursing Homes/Clinics and Labs to charge only the notified rates, not only for RT-PCR, Rapid Antigen Tests, Chest CT/HRCT Scan but also all other hospital charges in that regard. All these directions earlier issued

[17]

by this Court in the *suo motu* writ petition have regained significance in view of the current second wave of Covid-19 and therefore, the State Government should ensure strict compliance of all such directions including about the treatment of poor patients under Ayushman Bharat Yojana reserving 20% beds for Ayushman Bharat Yojana beneficiaries and increase the empanelment of more private hospitals under the said scheme. The State Government should ensure regular and continuous supply of Oxygen not only to the Government Hospitals but also to private hospitals, which are generally denying treatment to Covid-19 patients due to non-availability of Oxygen. Since the State is wholly dependent on supply of Liquid Oxygen from other States for its refueling plants employed for supply of Oxygen cylinders to the hospitals, it should initiate the process of setting up Liquid Oxygen Plant in the State of Madhya Pradesh. In the meantime, the State should maximise its efforts to procure Liquid Oxygen or filled Oxygen cylinders from other States by all means. The State Government must come forward to assist private hospitals in setting up their Oxygen-Concentration Units by providing them soft loan by involving leading Banks and Financial Institutions so that they become self-reliant.

9. Learned *Amicus Curiae* submitted that it has been informed on behalf of the State Government that the price of Remdesivir injection has been capped at Rs.3,500/- but such drug is being sold in the market at an exorbitant price inasmuch as many of the private

[18]

hospitals are found charging Rs.5,400/- per vial for Remdesivir injection. The State Government should ensure the availability of Remdesivir injection and regulate its supply but such supply should be approved as per the prescription of the treating doctors of Covid-19 patients admitted in the hospitals and should not be denied at the discretion of the Patwari, Tehsildar or any other Administrative Officers. The State Government should be required to restore the facilities of number of Covid Care Centres (CCC), Dedicated Covid Health Centres (DCHC) and Dedicated Covid Hospitals (DCH), which it informed to this Court on 09.10.2020.

10. Mr. P.K. Kaurav, learned Advocate General, Mr. Pushpendra Yadav and Ms. Chhavi Bhardwaj, Managing Director of National Health Mission (MP) have presented the case of the State Government before this Court, which has been supplemented by a written note of submissions and future action plan on its behalf. The relevant extract of the said written note is reproduced as under:-

1. Current Status of Covid in India and Madhya Pradesh and Trends for the last month:

On 14th April, with the total cases 3.63 lacs, which is about 2.5% of national case load, recovered cases 3.09 lacs, the present active cases are 49,551 which constitutes about 13.6 % of total cases in MP and 3.2% of national active case load. The cumulative positivity rate is 5.3%, recovery rate is 85.2% and fatality rate is 1.2% while that for India is 5.3%, 88.9% and 1.2%, respectively. However, the weekly fatality rate for MP is only 0.5% while that for India is 1.3%.

[19]

The surge in cases were observed during the month of March and April' 2021. During the 1st, 2nd, 3rd and 4th week of March the average cases per day were 411, 564, 1019 and 1851, respectively. Similarly, Nationally, the cases were 18711, 25557, 43846, 62714. And during the current week the average per day cases in MP were 6477 and nationally 1,84,372. The positivity rate during the same period was 2.6%, 3.6%, 5.3% and 7.1%, respectively and nationally the positivity rate was 2.5%, 3.0%, 3.9% and 5.3%. During the current week the positivity rate is 16.4% and nationally 13%.

2. **Testing Capacity**

The testing capacity has been increased from 20,000 per day during the month of February' 2021 to 40,000 per day during April' 2021. Average per day testing during February was 15,228 which has increased to 39,563 during April' 2021. Rates for testing have been capped for private laboratories. Rs 700/- for RTPCR and Rs. 300/- for RAT.

3. **Price Control and Regulating package rates for COVID treatment**

- 3.1 All nursing homes and clinical establishments have been directed that treatment charges of COVID 19 patients availing treatments at their facilities, shall be as per the rate list (Schedule II and III of the Madhya Pradesh Upcharyagriha Tatha Rujopchar Sambandhi Sthapnaye (Registrikan Tatha Anugyapan) Rules, 1997) communicated to the Chief Medical and Health Officer of the respective district in or on before 29th of February 2020. Under no circumstances the nursing home or clinical establishment's charges exceed by 40% of the rates communicated in or before 29th of February, 2020 including all expenses such as PPE Kits etc.
- 3.2 The testing charges for COVID-19 or pneumonia suspects/patients at all private hospital/nursing

[20]

homes/diagnostic centers shall be limited to a maximum of Rs 3,000/- for Chest CT/HRCT scan.

3.3 The testing charges for COVID-19 or pneumonia suspects/patients testing at all private hospital/nursing homes/diagnostic centers shall be limited to a maximum as detailed below:-

S.No.	Test	Maximum Rate (INR)
1	ABG	600/-
2	D-Dimer	500/-
3	Procalcitonin	1000/-
4	CRP	200/-
5	Serum Ferritin	180/-
6	IL 6	1000/-

3.4 The Government has mandated the display of rate list of treatment, including treatment for COVID-19, at registration counter by Nursing Homes and Clinical Establishments in the state. Additionally, all private clinical establishments treating COVID patients are required to make available their package rates for treatment for upload at the state COVID portal - www.sarthak.nhmmp.gov.in. The information pertaining to the contact numbers and package rates of COVID treatment are available in public domain on the state COVID portal.

4. Availability of Oxygen

The current status of supply of medicinal oxygen is as below:

(In Metric Ton)

Supply of Medicinal Oxygen					
Date	INOX Bhopal	INOX Indore	PRAX/ Inheart	ASU	TOTAL
8/4/2021	75.47	65.53	75	48	264
9/4/2021	79	65	30	44	218
10/4/2021	56.64	52.75	55	55	219.39
11/4/2021	87.36	72.05	21.06	59.63	240.1
12/4/2021	85.92	79.91	37.689	66.24	269.759
13/4/2021	76	60	73.4	66.24	275.64
TOTAL	460.39	395.24	292.149	339.11	1486.889

Madhya Pradesh is largely dependent for its oxygen supply on sources located outside of the state. With an in-house production capacity of 66 MT (Metric Ton) by way of Air Separation Units (ASUs), MP sources a large part of its daily oxygen required from steel plants located outside of the state and suppliers who source it from diverse sources across the country. With an overall surge in demand and limited supply, the state is making all efforts to be able to meet its daily oxygen requirement. The State is expected to have a demand of 651 MT (Metric Ton) by 30th April, 2021 and is continuously in talks with GoI regarding our future requirements of LMO (Liquid Medical Oxygen). The GoI has proposed Madhya Pradesh to procure around 747 MT from various sources of LMO (Liquid Medical Oxygen) per the table below –

S. No.	Name of the Supplier	Capacity MT (in Metric Ton)
01	LINDE SAIL BHILAI	72 MT
02	SAIL BHILAI	40 MT
03	GUJARAT HAZIRA	40 MT
04	GUJARAT KARJAN	40 MT
05	GUJARAT DAHEJ	40 MT
06	INOX MODINAGAR	40 MT
07	INOX BHIWADI	40 MT
08	INOX BOKARA	86 MT
09	LINDE JAMSHEDPUR	40 MT
10	JINDALSTEEL ODISHA	20 MT
11	LINDE ROURKELA	40 MT
12	LINDE KALIMNAGAR	40 MT
13	SAIL ROURKELA	21 MT
14	LINDE HALDIA	38 MT
15	LINDE SAIL DURGAPUR	30 MT
16	SAIL BUNPUR	20 MT
17	GUJARAT JAMNAGAR	100 MT

[22]

	TOTAL	747 MT
--	--------------	---------------

Additionally, the State has installed 5 PSA (Pressure Swing Absorption) oxygen generation plants and 3 more will be installed within a week in 8 different districts. The total capacity of these 8 PSA (Pressure Swing Absorption) plants amounts to 8 MT (Metric Ton). Furthermore, Public Works Department has also floated a tender for 13 more PSA (Pressure Swing Absorption) Oxygen plants of 600 LPM capacity each for 13 districts and another tender for 10 other districts will be floated shortly.

5. Availability of Remdesivir –

In accordance with AIIMS' guideline dated April 7, 2021 pertaining to the use of Remdesivir for COVID treatment, the state has initiated for supply of Remdesivir for COVID treatment across medical colleges and district hospitals in the state. Approximately 42000 injections have been supplied in the government sector as on April 14th.

In view of the shortage of Remdesivir in the private sector, state government has also facilitated the private sector by tying up with various suppliers for supply of approximately more than 39000 Remdesivir injections to private health institutions. The state government is also supporting private hospitals by making available part of the government supply from the stores of the district Chief Medical and Health Officer (CMHO) to private hospitals.

Of the total government supply being sourced by the state, approximately 50% is being made available to Government Medical Colleges and the remaining is being made available to the Chief Medical and Health Officer (CMHO) of every district. To support private health institutions, supply available to CMHO is being allotted to government and private facilities under the supervision and control of the

[23]

District Collector. While the 7 private contracted facilities in Indore, Bhopal, Ujjain and Dewas are being issued Remdesivir free of cost along with the public facilities, other private facilities are being supported with Remdesivir at the purchase cost of Rs 1548 per injection from government supply.

6. Current bed availability and planning for bed capacity:

While Madhya Pradesh has a total of 19948 beds currently available at public health facilities and another 16756 beds are currently available at various private hospitals, going by the current surge in covid cases, the state has planned for expansion of isolation beds, oxygen supported beds and HDU/ICU beds at the 13 medical colleges, 51 District Hospitals, 84 Civil hospitals and 313 CHCs.

It is pertinent to mention here that as on 31st March 2020, 23 district hospitals in the state did not have a single ICU unit. In light of the Covid pandemic, the state government set up **585** ICU beds across 50 district hospitals in the state and **3700** Oxygen supported beds were also put in place by way of medical gas pipeline last year. In wake of the current surge the state plans to further extend the oxygen supported beds infrastructure at the District Hospitals, Civil Hospitals, and CHCs thereby increasing the numbers of oxygen supported beds from 7880 beds to 14770 in the public hospitals next one month. Similarly ICU/HDU beds at Government Medical Colleges are planned to be increased from 3258 beds at present to 4356 beds in the next one month. District administration is also actively engaging with the private hospitals to increase the bed capacity for covid patients at private hospitals.

Below is the current and planned status of beds - isolation beds, oxygen supported beds and ICU/HDU beds across public and private health facilities in the state. Planned bed

[24]

capacity is basis a projected case load of one lakh active cases on 30th April, where 50 % of the active cases continue to be in home isolation and the remaining occupy beds in public and private facilities.

Government	Status As on, 14-Apr-2021, 12:00 PM	
Bed Type	Current	Planned (30-40 days)
Isolation Beds	8810	25000
O2 Beds	7880	14770
HDU/ICU Beds	3258	4356
Total Govt Beds	19948	44126
Private		
Isolation Beds	3938	4435
O2 Beds	8965	9767
HDU/ICU Beds	3853	4091
Total Pvt Beds	16756	18293
Total Beds	36704	62419

3225 beds have been reserved for free of cost treatment of patients in private facilities by way of a service provider agreement between State government and the private facility. Government of Madhya Pradesh has setup Dedicated COVID Command and Control Centers in each of the 52 districts. The toll free number for this Covid Command and Control center is - (STD code of the District) – 1075. Citizens can directly call at this number to avail of information about bed availability in government and private health facilities. All Government and private health facilities are currently updating their bed occupancy twice a day on the SARTHAK portal (sarthak.nhmmp.gov.in) and this bed availability information is being provided to citizens from the District Covid Command and Control Centre. Further the contact details of nodal persons in all public and private hospitals as well as package rates for covid treatment in private facilities have been made available in the public domain on sarthak.nhmmp.gov.in

7. Additional Human Resource Capacity

In light of the COVID-19 pandemic, 472 MBBS doctors who had completed internship from different medical colleges of Madhya Pradesh as on 31st March 2021 have been posted to District Hospitals and other public health facilities of the State. National Health Mission has additionally given sanctions to the District Health Societies to recruit and deploy additional human resource locally as follows:

Cadre	Additional Temporary HR Sanctioned
PGMO	93
MO	276
Ayush MO	1544
Staff Nurse	3007
Support staff/ Ward Boy	1024
Other Health Care Worker	538
Lab Technician	1741
ECG Technician	9
X-Ray Technician	7
Scientist	32
OT Technician	1
Radiographer	18
Lab attendant	13
ICU/Ventilator Technician	9
Pharmacist	127
Oxygen Technician	5
Data Entry Operator	399
Total	8843

8. Ayushman Bharat “Niramayam”

Ayushman Bharat Niramayam empanelled healthcare providers under the General Medicine (M2) specialty and having bed capacity of 50 or more have been directed that COVID 19 suspected and confirmed patients falling under Ayushman Bharat Niramayam beneficiary category shall not be denied COVID -19 treatment at healthcare provider's

[26]

facility at prescribed rates. A minimum of 20% beds are to be reserved at all times for COVID-19 patients. The denial/diverting of COVID 19 patients is being treated as a violation inter alia Memorandum of Understanding, the Disaster Management Act, 2005, the Madhya Pradesh Public Health Act, 1949, the Madhya Pradesh Upcharyagriha Tatha Rujopchar Sambandhi Sthapnaye (Registrikaran Tatha Anugyapan) Adhinyam, 1973, the Madhya Pradesh Atyavashyak Seva Sandharan Tatha Vichchinnata Nivaran Adhinyam, 1979, the Madhya Pradesh Upcharyagriha Tatha Rujopchar Sambandhi Sthapnaye (Registrikaran Tatha Anugyapan) Rules, 1997 and the Madhya Pradesh Epidemic Diseases, COVID-19.

Currently, 770 Health Facilities across the State are empanelled under Ayushman Bharat 'Niramayam'. Out of the 770 Health Facilities, 320 are Private Hospitals. Every Ayushman Bharat empaneled hospital is required to reserve 20% of its available beds for treatment of COVID patients.

Last year, Government of Madhya Pradesh had temporarily relaxed the empanelment criteria for Ayushman Bharat in order to broad base the availability of Private Facilities for COVID-19 treatment. Consequently, 111 facilities were empanelled after the relaxation of empanelment norms. Presently, 16834 COVID-19 patients are being treated across Ayushman Bharat empanelled hospitals.

9. COVID Vaccination Status till 15th April' 2021:

	1st Dose	2nd Dose	TOTAL
Health Care Worker	4,27,498	3,11,417	7,38,915
Front line Worker	3,88,660	2,38,874	6,27,534
Citizens- 45-59 Years	27,78,561	40,418	28,18,979
Citizens - 60+ Years	28,14,863	1,29,587	29,44,450

TOTALDOSES ADMINISTERED	64,09,582	7,20,296	71,29,878
------------------------------------	------------------	-----------------	------------------

11. Mr. Shivendra Pandey, learned counsel appearing for Indian Medical Association and Mr. Shreyas Pandit, learned counsel appearing for the M.P. Nursing Home Association, submitted that howsoever the Government may assert that it is continuously making the Oxygen cylinders available to all the private hospitals in the State but the fact is that many private hospitals are struggling with the acute shortage of Oxygen throughout the State. Some of them may not be in a position to admit the patients infected with Coronavirus for reason of non-availability of Oxygen but when the attendants or family members of the patients are so informed, it results in law and order situation. Apart from Oxygen, there is acute shortage of availability of Remdesivir injection. Many of the private Hospitals/Nursing Homes are in negotiation with the Government authorities to increase their bed capacity by using casualty wards and even the labour rooms for treatment of Covid-19 patients. Even when the beds are not available, they do not refuse admission even if the patients have to be accommodated in the corridors. Learned counsel submitted that the State Government ought to consider either by itself or through the leading Banks/Financial Institutions for providing interest free loan or at the reasonable rate of interest, to major private hospitals, for setting up their own Air Separation Units, which may cost hardly between Rs.50.00 Lac to Rs.1.00 Crore but which takes only 5-7 days to set up

[28]

such units. The State Government may also make an endeavour to engage the medical students who have recently passed out and have completed their clinical training. The private hospitals can also consider engaging such medical graduates even in their set up. It is contended that a joint meeting of the members of the Indian Medical Association and M.P. Nursing Home Association was convened on 14th April, 2021 and they have decided to honour the rates for treatment of Covid-19 patients fixed by the Government in terms of the order of the Government dated 04.09.2020, which provided that their charges should not exceed 40% of the rates communicated on or before 29.02.2020. The rates of treatment so prescribed by the State Government are being adhered to by the private Hospitals/Nursing Homes and they are displaying such rates on their reception counters prominently. Learned counsel further argued that the gravity of illness of Covid-19 patients may vary from patient to patient. All Covid patients need not be prescribed same medicines inasmuch as they cannot be subjected to same kind of treatment. Therefore, the charges for critical patients may differ from those who may be having mild symptoms. Thus, there cannot be any uniformity with regard to charges/expenses of the treatment.

12. Mr. Jitendra Kumar Jain, learned Assistant Solicitor General for the respondent-Union of India submitted that the ICMR Laboratories in the State are conducting more than 13,000 RT-PCR tests per day. The Central Government has recently issued licences to five new

[29]

pharmaceutical companies for manufacturing of Remdesivir and they are likely to commence the production shortly. Thus, there will be no shortage of Remdesivir.

13. We have given our thoughtful consideration to the submissions made by the learned counsel for the parties at the Bar.

14. Article 38, Article 39(e), Article 41 and Article 47 in Part-IV of the Constitution of India as well as the fundamental right guaranteed vide Article 21 of the Constitution of India deal with potent and substantive contents of the right to life which in its broad sweep also includes right to good health. The Supreme Court of India in catena of judgments has given dynamic interpretation to Article 21 of the Constitution of India thereby expanding the meaning of right to life to also include the right to health. Thus, the right to health forms an integral component of right to life enshrined under Article 21 of the Constitution of India. The right to health can be secured to the citizens only if the State provides adequate measures for their treatment, healthcare and takes their care by protecting them from calamities like Coronavirus. A reference in support of this proposition can be made to the judgments of Supreme Court in **Pt. Parmanand Katara vs. Union of India (1989) 4 SCC 286; Consumer Education and Research Centre vs. Union of India (1995) 3 SCC 42; Paschim Banga Khet Mazdoor Samity vs. State of West Bengal (1996) 4 SCC 37; M.C. Mittal vs. Union of India (1999) 6 SCC 9 and Murli S. Devda vs. Union of India (2000) 8 SCC 765**. The Supreme Court

[30]

in all these cases has held that preservation of one's life is the necessary concomitant of the right to life enshrined under Article 21, fundamental in nature, secured, precious and inviolable.

15. Article 25 of the Universal Declaration of Human Rights, ratified by India, which is considered as having the force of customary international law declares that "*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control*". Similarly, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which also has been ratified by India, details out the different facets of the right to health and provides that "*(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*" and that "*(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a).....; (b).....; (c) **the prevention, treatment and control of epidemic, endemic, occupational and other diseases***" and "*(d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness*". The Protection of Human Rights Act, 1993 recognizes all the above conventions as part of human rights law,

[31]

therefore above referred to international human rights norms, as contained in the Conventions, which have been ratified by India, are binding on India to the extent they are not inconsistent with the domestic law norms. Section 2(d) of the Act of 1993 (supra) defines “human rights” to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. In view of above, it must be held that right to health and medical care is one of the facets enshrined under Article 21 of the Constitution of India.

16. The Supreme Court in **Association of Medical Superspeciality Aspirants and Residents and others v. Union of India and others**, (2019) 8 SCC 607 with regard to effect of ratification of the aforementioned declaration/covenants by the country, made the following observations in para-32 of the judgment:-

“32. The Universal Declaration of Human Rights (UDHR) recorded in the Preamble its recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace. The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of every person to the enjoyment of the highest attainable standard of physical and mental health. ICESCR mandates the States Parties to achieve full realization of the aforementioned right through the creation of conditions which would assure to all, medical service and medical attention in the event of sickness, inter alia.”

17. The Supreme Court in **Pt. Parmanand Katara vs. Union of India**, (1989) 4 SCC 286 has recognised the obligation of the

[32]

Government to preserve life. In the said case, the victim of a scooter accident was denied treatment as the hospital did not attend him and told that he be taken to another hospital, which was authorised to handle medico-legal cases. The failure to receive treatment, eventually led to victim's death. While interpreting the ambit of the right to life under Article 21 of the Constitution, the Supreme held that "*Article 21 of the Constitution casts the obligation on the State to preserve life..... The obligation being total, absolute and paramount, laws of procedure whether in statute or otherwise, which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way.*"

18. The Supreme Court in **Paschim Banga Khet Mazdoor Samiti vs. State of West Bengal**, (1996) 4 SCC 37 dealing with a case of member of the petitioner Samiti, who suffered a brain injury after falling from train and was denied treatment at several hospitals due to lack of expertise and non-availability of bed was forced to avail treatment at a private hospital. The Supreme Court way back in the year 1996 made certain observations which continue to be relevant even for the present purpose. While dealing with a claim of compensation and the expenses incurred, the Supreme Court in that case further observed that the obligation to provide medical care was an obligation of welfare State and in para 9 of the report held that "*The Constitution envisages the establishment of a welfare State at the federal level as well as State level. In a welfare State the primary*

[33]

duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligation undertaken by the Government in a welfare State. The government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail these facilities. 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 violation of his right to life guaranteed under Article 21.”.....Their Lordships then in para 16 of the report further held that “It is no doubt true that financial resources are needed for the providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints....”

19. The Supreme Court in **Devika Vishwas vs. Union of India**, (2016) 10 SCC 726 while reiterating the settled law held that “right to

[34]

health” is a facet of the “right to life” guaranteed vide Article 21 of the Constitution. The Court in paras 107, 108 and 109 held as under:-

“107. It is well established that the right to life under Article 21 of the Constitution includes the right to lead a dignified and meaningful life and the right to health is an integral facet of this right. In **CESC Ltd. V. Subhash Chandra Bose, (1992) 1 SCC 441** dealing with the right to health of workers, it was noted that the right to health must be considered an aspect of social justice informed by not only Article 21 of the Constitution, but also the Directive Principles of State Policy and international covenants to which India is a party. Similarly, the bare minimum obligations of the State to ensure the preservation of the right to life and health were enunciated in *Paschim Banga Khet Mazdoor Samity v. State of W.B.*

108. In **Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161** this Court underlined the obligation of the State to ensure that the fundamental rights of weaker sections of society are not exploited owing to their position in society.

109. That the right to health is an integral part of the right to life does not need any repetition.”

20. The Supreme Court in the case of **Union of India Vs. Moolchand Kharaiti Ram Trust (2018) 8 SCC 321** held as under:-

“65. The State has to ensure the basic necessities like food, nutrition, medical assistance, hygiene etc. and contribute to the improvement of health. Right to life includes right to health as observed In **State of Punjab v. Mohinder Singh Chawla (1997) 2 SCC 83**. Right to life and personal liberty under Article 21 of the Constitution also includes right of patients to be treated with dignity as observed by this Court in **Balram Prasad v. Kunal Saha (2014) 1 SCC 384**. Right to health i.e.right to live in a clean, hygienic and safe environment is a right under Article 21 of the Constitution as observed in **Occupational Health and Safety Association v. Union of India (2014) 3 SCC 547=AIR 2014 SC 1469**. The concept of emergency medical aid has been discussed

[35]

by this Court in **Pt. Parmanand Katara v. Union of India** (1989) 4 SCC 286. In **Paschim Banga Khet Mazdoor Samity and others v. State of W.B.** (1996) 4 SCC 37, right to medical treatment has been extended to prisoners also.”

21. The Constitution Bench of the Supreme Court in **Navtej Singh Johar and others Vs. Union of India** (2018) 10 SCC 1, upon survey of previous case law held that right to health and health care is one of the facets of right to life under Article 21 of the Constitution of India. It was held that *“the right to life is meaningless unless accompanied by the guarantee of certain concomitant rights including, but not limited to, the right of health. The right of health is understood to be indispensable to a life of dignity and well-being, and includes, for instance, the right of emergency medical care and the right to the maintenance and improvement of public health”*. (See para 483 of the report).

22. The Supreme Court in **Association of Medical Superspeciality Aspirants and Residents (supra)** held that the primary duty of the State is to “provide all facilities to make right of a citizen to secure his health meaningful.” The relevant discussion is to be found in paras 25 and 26 of the judgment, which are reproduced hereunder:-

“25. It is for the State to secure health to its citizens as its primary duty. No doubt the Government is rendering this obligation by opening Government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities to employ best of talents and tone

[36]

up its administration to give effective contribution, which is also the duty of the Government.

26. Right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities 21. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and the restriction would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.”

23. The action plan produced by the State Government before this Court clearly indicates that apart from having an in-house production capacity of 66 Metric Ton by way of Air Separation Units, it has now swung into action to utilize all the resources at its command for arranging the Oxygen to procure 747 Metric Ton of Liquid Medical Oxygen from Steel Plants located in different parts of the country with the assistance from the Government of India to meet the expected demand of 651 Metric Ton by 30th April, 2021. It has installed 5 Pressure Swing Absorption (PSA) Oxygen Generation Plants and is likely to install three more, thus catering to the need of eight different

[37]

districts to the extent of 5 Metric Ton. The State Government has also floated tenders for 13 more Pressure Swing Absorption Oxygen Plants of 600 LPM capacity for 13 districts and has decided to float another tender for 10 other districts shortly. According to the submission made on behalf of the State, 42,000 injections of Remdesivir have been supplied in government sector as on 14.04.2021 and that it is in negotiation with different manufacturers for supply of more than 39,000 Remdesivir injections to the private Health Care Institutions. Apart from this, the State Government has promised to ensure supply of Remdesivir injections to the private hospitals from the stores of the district Chief Medical & Health Officers. Of the total supply sourced by the State Government, approximately 50% is being made available to the Government Medical Colleges and remaining 50% is being given to the Chief Medical & Health Officer of every district out of which supply of Remdesivir is also made to the private hospitals under the supervision and control of the District Collector. According to the State, there is availability of 19,948 beds in the Government Hospitals (which includes 7880 Oxygen beds and 3258 ICU beds) and 16,756 beds in various private hospitals (which includes 8965 Oxygen beds and 3853 ICU beds), thus totaling to 36,704 beds whereas it is planning to increase 44,126 beds in Government Hospitals (which would include 14,770 Oxygen beds and 4356 ICU beds) and 18,293 beds in private hospitals (which would include 9767 Oxygen beds and 4091 ICU beds) by next 30-40 days. Apart from this, the State Government has set up Covid Command and Control Centres in each

[38]

of the 52 districts with 1075 as the toll free number and has submitted that it keeps updating bed occupancy and non-availability twice every day on the Sarthak portal. It has engaged 8843 additional human resource locally, which includes 472 MBBS doctors, who have completed their internships as on 31.03.2021, 93 PGMOs and 276 MOs. It is trying to increase the coverage of Ayushman Bharat Niramayam Yojana to bring many more private hospitals under its umbrella. It has so far administered first dose of Covid vaccine to 64,09,582 and second dose to 7,20,296 citizens. The work undertaken in the State Government within the past month or so is commendable and its preparation for the future is also quite impressive, however, efforts that it is making should also reflect on ground and benefit thereof should reach the common man. It therefore needs to work hard towards that aim and goal.

24. Although it is true that in the past few days there has been a spate of new reports putting all kind of blames on the Private Hospitals and Private Nursing Homes, but at the same time, one should not lose sight of the fact that there are more than 6000 Private Hospitals and Private Nursing Homes in the State and therefore it is of utmost importance and necessity that support and cooperation of the private sector to combat the menace of Covid-19 is enlisted which is why the Ministry of Health and Family Welfare, Government of India recognized the need and importance of seeking their support and for that purpose has issued the “Guidelines for notifying Covid-19

[39]

affected persons by Private Institutions” which can be found on the website of the Ministry. The Indian Council of Medical Research has also approved hundreds of the private laboratories to test the suspects/patients of Covid-19. Need of the hour in this time of crisis therefore is to have best of cooperation and coordination with the Hospitals and Nursing Homes in the private sector and seek their support for timely treatment of the Covid-19 patients so as to save their lives. The State Government can in that behalf even invoke the Epidemic Disease Act, 1897 and Disaster Management Act, 2005 to the extent necessary.

25. Coronavirus, if not treated timely, may in certain cases prove a deadly disease, especially for those citizens who suffer from different kind of morbidities and are elderly in age. This has had catastrophic effect on the citizens of the country. It has befallen on the countrymen unpredictably more than a year ago. The right of the citizen to adequate healthcare emanates from the dignity and sanctity of the human life which belongs to all of them. Health, besides being a fundamental right, is a basic human right, which no popular government can afford to negate. Health has its own prerequisites of social justice and equality and that it should be accessible to all. It includes the ability to obtain all kind of healthcare services including prevention, diagnosis, treatment and management of diseases, management of health disorders, diseases and illness as also the management of other health impacting conditions. Such health care

[40]

should not only be accessible but also be conveniently affordable to all the citizens. The core obligation of the State in securing the right to life to all its citizens is non-negotiable. Article 21 of the Constitution of India in this regard clearly casts a duty on the State to take whatever steps are necessary in securing such rights to access to health facilities to the citizens. It also includes an obligation on the State in ensuring access to all the citizens inflicted with disease of Coronavirus with life saving means and drugs such as Oxygen and Remdesivir in this case.

26. Even though we may make it clear that we are not experts in the field of Medicine but at the same time we are also cognizant of the fact that the State of Madhya Pradesh in past few days has faced a crisis like situation never seen before where a lot of hue and cry by the people in different forms is being witnessed when their near and dear ones are infected with Coronavirus and some of them lose their life. The newspapers of the State during last week or so, are replete with the reports of incidents where either the patients are allegedly not being admitted or are being allegedly exploited by exorbitant charges by the private hospitals. The Remdesivir injection is being sold in the black-market and certain arrests have also been made. The attendants and the family members of the Covid patients are being found complaining about non-availability of Oxygen, Remdesivir and beds in the hospitals. Non-availability of ICU beds and Ventilators is also a common complaint. We are inclined to believe that these news items

[41]

may have reported only part truth and part emotions of those who have gone through such agony. But even if only part of it is true, the situation is really very grim. This is a scenario which is emerging from major cities like Bhopal, Indore, Gwalior and Jabalpur. One can easily imagine the situation of district headquarters, sub-divisions and rural areas where the disease of Coronavirus is said to have made inroads. Ordinarily these matters lie in the domain of the Executive, who has the responsibility to resolve all the identified problematic issues. However, despite being cognizant of its jurisdictional limitations, this Court, in an extraordinary situation like the present one, when they are brought to its notice, cannot just play a silent spectator. In this scenario, the Court has the responsibility to see that the faith of the people in the system is not eroded and if erosion to some extent has taken place, is restored. Towards that end, the Court can play the role of a catalyst by reminding the State of its duties, for reassuring the people to continue to have faith in the system so as to revive their confidence.

27. In view of the above discussion, we deem it appropriate to issue the following directions to the State Government:-

- (i) The State Government shall ensure continuous and regular supply of Oxygen and Remdesivir not only to all the Government Hospitals, City Hospitals, District Hospitals but also to the Private Hospitals/Nursing Homes, which may give Indent of their requirement of

[42]

Oxygen as well as Remdesivir in advance, depending on the load of the patients and their condition, as per the modalities decided by the State, to the Collector/Chief Medical & Health Officer concerned and/or Officer nominated by the State;

- (ii) the State Government shall, if it has already not done so, consider immediately reactivating 262 hospitals Covid Care Centres (CCC), 62 Dedicated Covid Health Centre (DCHC) and 16 Dedicated Covid Hospital (DCH) as per the details furnished to this Court in its order dated 09.10.2020;
- (iii) the State Government shall consider strengthening/augmenting all the District Hospitals and City Hospitals, which generally cater to the medical needs of middle class/lower middle class and poor/below poverty line families, by providing them necessary equipments and the required quantity of Oxygen, Remdesivir injections and other requisite medicines so that considering the spread of Coronavirus, focus of the Covid-19 patients does not entirely remains on major cities like Bhopal, Indore, Jabalpur and Gwalior where due to huge population, the medical facilities are already under immense pressure and rush of the Covid patients to these cities is dissuaded;

[43]

- (iv) the State Government shall ensure that the District Collectors and Chief Medical & Health Officers in every District shall periodically hold meetings with the Superintendents/Directors/Head/Representatives of all Government Hospitals, Private Hospitals/Nursing Homes and Diagnostic Centres/Labs to take stock of the day to day situation of the number of patients, availability of normal beds, ICU beds and Ventilators and also as per the requirement consider enhancing the capacity to cater to the need of a given place;
- (v) the State Government shall, if it has not already notified the rates, fix the rates for being charged by the private Hospitals/Nursing Homes and private Pathological Labs/Diagnostic Centres for treatment/tests in consonance with its earlier order dated 04.09.2020, 25.03.2021 and 05.04.2021 by indicating capping of such charges and should ensure that these rates are adhered to by them. In doing so, the State Government should also take note of the concerns of the private Hospitals/Nursing Homes with regard to differentiation of charges based upon seriousness of illness of patients;
- (vi) the State Government shall in consultation with representatives of Indian Medical Association and M.P. Nursing Home Association require the private

[44]

Hospitals/Nursing Homes to refrain themselves from demanding hefty amount as advance deposit for starting treatment of Covid-19 patients;

- (vii) the State Government shall ensure displaying of data with regard to availability of normal beds, ICU beds and Ventilators on its Sarthak portal (<https://sarthak.nhmmp.gov.in>) in all the Government Hospitals and Private Hospitals/ Nursing Homes on real time basis. The Chief Medical & Health Officers of the districts concerned should keep a regular watch over such availability and randomly cross-check the same to verify its correctness. On the basis of regular vigil about the availability of normal beds, ICU beds and Ventilators, the District Collector, in consultation with the Chief Medical & Health Officers, should take day to day decision for increase in the number of such beds by procuring additional infrastructure/hardware/machines etc. from the State Government to ensure continuous availability of medical health care to the increasing number of Covid patients;
- (viii) the State Government should require all the private Hospitals/Nursing Homes, Chemists/Medical Shops to display the rates of Remdesivir per vial, separately for generic and branded injections, and all of them should be mandated not to charge more than the prescribed rates;

[45]

- (ix) even though the State Government may regulate the supply of Remdesivir injections and other life saving drugs but the process adopted for this purpose should be so hassle free and should not be cumbersome as to ensure the supply of the drug in such a way that time limit from requisition by the treating doctors and supply of medicines does not exceed an hour;
- (x) the State Government, through its representatives, preferably the District Collectors and the Chief Medical & Health Officers shall have regular consultation with the Superintendents/Directors/Heads of the Government Hospitals and leading private Hospitals/Nursing Homes to resolve the day-to-day problems faced not only by the patients but also by such private Hospitals/Nursing Homes, either by physical or virtual mode;
- (xi) the State Government should give due publicity to the **Toll Free Number 1075** (with the STD code number of respective districts) of its Covid Command and Control Centres so that the Covid patients and their family members/attendants having any grievance with any government or private hospital, may immediately lodge their complaint with such Centres. In that event, expeditious remedial action should be taken to redress the grievances by knowing the stand of both the parties;

[46]

- (xii) the State Government should by taking over the buildings of government and private schools/colleges, Training Centres, Marriage Halls, Hotels and Stadiums etc. wherever needed, set up more number of Covid Care Centres (CCC), Dedicated Covid Health Centres (DCHC) and Dedicated Covid Hospitals (DCH), either by itself or by involving the private hospitals or reputed NGOs;
- (xiii) the State Government should take steps to setup more number of Electric Crematoriums, in at-least big cities of the State, and get the Electric Crematoriums repaired, wherever they have gone out of order;
- (xiv) the RT-PCR and Rapid Antigen Tests shall be conducted by the Government Laboratories as well as duly approved private Pathological Labs/Diagnostic Centres. The State should consider increasing per day testing number of Covid infected persons for their early detection so as to prevent further spread of Coronavirus. Test reports should be provided to concerned patients positively within 36 hours from the time of collection of sample;
- (xv) the State Government ought to consider the suggestions made on behalf of Indian Medical Association and M.P. Nursing Home Association for providing them soft loan to set up their own Air Separation Units so that some of

[47]

them may become self-reliant with regard to their requirement of Oxygen;

(xvi) the State Government should work out the modalities for ensuring that patients from Below Poverty Line families having BPL Cards under Deendayal Antyodaya Upchar Yojana and those having Ayushman Cards and CGHS coverage facilities are not dishonoured by the Hospitals/Nursing Homes if they are approved for their treatment;

(xvii) in **W.P. No.8753/2021** purportedly based on the Annual Report 2019-2020 it has been asserted that as against 3620 sanctioned posts of specialists, only 765 are presently working and nearly 2855 are vacant. Moreover, as against 5097 posts of Health Officers, only 3,589 are working and 1,508 posts are vacant. In this respect, the State Government should place on record correct data with regard to number of sanctioned posts and working strength of Senior specialists, Specialists, Medical Officers, Health Officers, PGMOs, Ayush Medical Officers, Staff Nurse, Support Staff/Ward Boy, Other Health Care Workers, Lab Technicians, ECG Technicians, X-ray Technicians, Scientists, OT Technicians, Radiographers, Lab Attendants, ICU/Ventilator Technicians, Pharmacists, and Oxygen

[48]

Technicians etc., within a period of 15 days. If the furnished data are correct, such huge vacancy position in the Government Hospitals, City Hospitals and District Hospitals poorly reflects on the health care system of the State. The State Government ought to therefore consider engaging the Medical Officers on emergent and short term basis on the basis of walk-in interviews by issuing advertisement for short duration so as to cater to the emergent requirements of Districts & City Hospitals and Primary Health Centres (PHCs) and Community Health Centres (CHCs);

(xviii) looking to the scarcity of adequate number of staff in the emergent situation, the State Government should consider reappointing those Medical Officers, Para Medical and Nursing Staff, who have retired during past two to three years, to cope up with the ongoing crisis; and

(xix) all the hospitals whether government or private, shall not refuse to attend the patients suffering from other serious ailments and provide them timely treatment depending on the seriousness of the ailments.

28. Apart from Madhya Pradesh, this Court can also take judicial cognizance of the fact that similar problem with regard to scarcity of Oxygen and Remdesivir is being faced by several other States. This

[49]

being a national calamity and country-wide problem, the Central Government should consider stepping in to arrange the Oxygen firstly, by diverting the available stock of Liquid Medical Oxygen from the Steel Plants and other industries located in different parts of the country and secondly, if that is not sufficient, by importing the Oxygen. The Central Government should also consider to step in to ensure increase in the production of Remdesivir and till such time it is not done, it should consider procuring the Remdesivir by importing it so that by the time the peak of Coronavirus is reached, Oxygen and Remdesivir both remain available to the affected persons in sufficient quantity, to tide over the crisis.

29. In view of the aforesaid, **Interlocutory Application Nos.4346/2021, 4347/2021 and I.A. No.4349/2021** filed in W.P. No.8914/2020 are **disposed of**. Similarly, **W.P. No.8696/2020, W.P. No.14805/2020, W.P. No.2513/2021 & W.P. No.8753/2021** are also **disposed of** in terms indicated hereinabove. No order as to costs.

30. Action taken report/progress report on the basis of the aforesaid directions shall be filed by the respondents-State, on or before the next date of hearing in *Suo Motu Writ Petition No.8914/2020*, which shall come up again for further consideration along with W.P. No.20889/2020, on **10.05.2021**.

(Mohammad Rafiq)
Chief Justice

(Atul Sreedharan)
Judge

S/