

THE HIGH COURT OF MADHYA PRADESH

W.P. No.8914/2020

[In Reference (Suo Motu) vs. Union of India and others)

with

W.P. No.20889/2020

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

&

W.P. No. 8991/2021

(Ashok Dagliya vs. State of M.P. and others)

24

Jabalpur, Dated: 30.04.2021

Heard through Video Conferencing.

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

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

Mr. Rohit Jain, Advocate for the petitioner in W.P. No.8991/2021.

Mr. Purushaindra Kaurav, Advocate General, Mr. Pushpendra Yadav, Additional Advocate General and Mr. Swapnil Ganguly, Deputy Advocate General for the respondents/State along with Mr. Mohammad Suleman, Additional Chief Secretary, Directorate of Health Services, Govt. of M.P. and Ms. Chhavi Bhardwaj, Managing Director, National Health Mission, M.P.

Mr. Jitendra Kumar Jain, Assistant Solicitor General and Mr. Vikram Singh, Advocate for the Union of India.

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. A.M. Mathur, Senior Advocate along with Mr. Sanjay Agarwal and Mr. Abhinav P. Dhanodkar, Advocates for the intervenor/ Shanti Manch Samiti (IA No.4353/2021 in WP No.8914/2020).

Mr. Manoj Sharma, Advocate – President, High Court Advocates' Bar Association, Jabalpur (IA No.4396/2021 in WP No.8914/2020).

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

Mr. Subhash Upadhyay, Advocate for the intervenor in W.P. No.8914/2020.

Mr. Ajay Raizada, Advocate for the intervenor (IA No.4349/2021 in WP No.8914/2020).

Mr. Girish Patwardhan, Advocate for the intervenor (IA No.4389/2021 in WP No.8914/2020).

Mr. Rajesh Chand, Advocate for the intervenor in W.P.No.8914/2020.

Mr. Nikhil Tiwari, Advocate for the intervenor in W.P.No.8914/2020.

Mr. Zaki Ahmad, Advocate for the intervenor in W.P.No.8914/2020.

Present *suo motu* petition was registered as Public Interest Litigation for benefit of residents of the State suffering from Coronavirus, who are aggrieved by inaction on the part of the various State Authorities in not providing them timely and proper treatment. This Court vide order dated 19.04.2021 had issued as many as 19 directions aimed at redressing their grievances. An action taken report was filed by the State on 26.04.2021. When the matter was listed on 26.04.2021, Mr. Naman Nagrath, learned *Amicus Curiae* filed an

application to call for further action taken report on certain points. A supplementary action taken report was filed by the State on 28.04.2021.

2. Mr. Naman Nagrath, learned *Amicus Curiae* has argued that despite exhaustive directions issued by this Court to ensure continuous and regular supply of Oxygen and Remdesivir to all the Government Hospitals as well as private Hospitals/Nursing Homes, the State Government has failed to manage the state of affairs inasmuch as more than 60 deaths have so far taken place in the State owing to lack of oxygen. The portrayal regarding availability of oxygen in the action plan submitted by the State before this Court, is far from reality. Out of eight PSA (Pressure Swing Adsorption) Oxygen Plants approved by the Central Government under the **PM CARES** (*Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund*) Fund, so far only five Plants have been installed and they too are also functional with less than half capacity. It is submitted that one PSA Oxygen Plant costs approximately Rupees One Crore. The State of Madhya Pradesh has got 52 districts in which District Hospitals are situated. There is no reason why it cannot invest an amount of Rs.50 Crore so as to set up one PSA Oxygen Plants in each of them. There is no liquid oxygen manufacturing plant in the entire State. Since there is possibility of third wave of Covid-19 in the coming months, it is the duty of the State to take steps to ensure that such plants are set up in the State.

3. Learned *Amicus Curiae* submitted that availability of Remdesivir still remains major cause of concern. This medicine is being openly black-marketed and sold at exorbitant price in the State. Most of the private hospitals are requiring the Covid-19 patients to obtain this medicine on their own. The patients requiring admission are being made to shuttle from one hospital to another in view of ambiguity regarding availability of beds. The State Government has to pay urgent attention to strengthen the healthcare facilities in the rural areas, so that citizens do not suffer adverse consequence. Despite direction by this Court for not charging more than the rates prescribed for treatment, the private hospitals are taking exorbitant charges. The Government has so far taken no steps to curb such malpractice. It is submitted that as per experts, second wave of Covid-19 is likely to reach peak in the mid of May, 2021. Despite direction by this Court, the State Government has not increased number of testing and has not complied direction to ensure that report of RT-PCR is provided to the suspects/patients within 36 hours of the collection of the sample, which generally takes 3 to 4 days. Even though statement was made on behalf of the Government before this Court on 07.04.2021 that no oral instruction has been issued to private labs to stop conduct of Covid-19 test, the private pathology labs/diagnostics centres are refusing to conduct the Covid-19 test. The patients having BPL cards under Deendayal Antyodaya Upchar Yojana, Cards under Ayushman Bharat Yojana and those covered under the CGHS are neither being given admission nor provided treatment by the Private

Hospitals/Nursing Homes approved therefor. The State Government is not taking any effective steps for disposal of the medical waste, which is being dumped at open place in all the major cities of the State.

4. Mr. Shashank Shekhar, learned counsel for the intervenor also submitted that the State Government has instructed all the private pathological labs and diagnostics centres not to conduct the RT-PCR test of the Coronavirus. The private hospitals are not honouring the rates prescribed by the State Government for treatment of the patients suffering from Coronavirus. The State Government is not taking steps to fill up the huge number of vacancies of medical and paramedical staff in the State. The posts of Specialists to the extent of 80% are lying unfilled and the posts of Medical Officers to the extent of 40% are lying vacant. The helpline number provided by the Government is hardly helpful to the people seeking to know the position of availability of beds in the private hospitals. The private hospitals are refusing to admit the ordinary patients and honouring only those patients who pay the hefty amount in advance. The State Government should regulate admission of the Coronavirus patients in Government hospitals as well as private hospitals as per modal developed by the Government of NCR Delhi.

5. Mr. Anand Mohan Mathur, learned Senior Counsel appearing for the intervenor - Shanti Manch Samiti submitted that various directions issued by this Court on 19.04.2021 have not been complied by the State Government. People are dying in many hospitals only because of non-availability of oxygen. Reference in this connection is

made to various news items in different newspapers. All private hospitals should be mandated to set up their own Air Separation Units. It is contended that Indore city alone is getting more than 1500 Corona positive cases every day. There is no dedicated website or helpline number with details about availability of beds either in Government or private hospitals. Many people are losing their lives in absence of medical treatment. The State Government and the local administration are not revealing actual figure of death owing to Covid-19 and hiding data only in order to cover up their failure. Reference in this connection is also made to various newspaper reports. It is argued that Indore city is facing the huge problem of oxygen. The patients of Indore and other cities of the State are also facing acute scarcity of Remdesivir injection and Fabiflu. Learned Senior Counsel has invited attention of this Court towards the fact that Chacha Nehru Children Hospital, Indore which was catering to medical needs of large number of children of Indore and adjoining districts, has been converted into Coronavirus care centre. This ill-advised action of the State would deprive thousands of children of the treatment.

6. Mr. Shivendra Pandey, learned counsel appearing for Indian Medical Association and Mr. Shreyas Pandit, learned counsel appearing for M.P. Nursing Home Association have denied the suggestion that approved private hospitals are not treating the Coronavirus patients holding cards under the Ayushman Bharat Yojana, BPL card holders under the Deendayal Antyodaya Upchar

Yojana and CGHS approved cards. They also denied that the Private Hospitals/Nursing Homes are overcharging the patients inasmuch as demanding hefty amount in advance for starting treatment. It is submitted that despite directions of this Court in the order dated 19.04.2021 to hold periodical meetings with representatives of the private hospitals, no such steps are being taken by the concerned authorities in this behalf. In spite of specific direction, the State Government has failed to consider providing soft loan to the Private Hospitals/Nursing Homes through Banks for setting up their own Air Separation Units.

7. Having taken note of the submissions made by the learned *Amicus Curiae*, learned counsel for the intervenors and also learned Advocate General, we are constrained to observe that the situation on ground is totally different than what was portrayed by the State Government in the action taken report about its efforts to continuously procure and provide oxygen to Government Hospitals as well as Private Hospitals. There have been several incidents in past two weeks, in which numbers of people have lost their lives only because of sudden disruption or low-pressure in supply of oxygen or due to non-availability of oxygen. As per several newspaper reports, which have been placed on record reporting such incidents, two persons lost their lives on 02.04.2021 in J.P. Hospital, Bhopal. Four persons lost their lives on 08.04.2021 at Bundelkhand Medical College, Sagar. One patient died on 08.04.2021 in District Hospital, Khargone. Ten persons died for this reason on 09.04.2021 at Bundelkhand Medical

College, Sagar. Five persons died on 09.04.2021 in Madhav Nagar Government Hospital, Ujjain. One person died on 13.04.2021 at P.G.B.M, Bhopal. One person died in Life Medicity Hospital, Jabalpur. Four persons died in Sukhsagar Medical College, Jabalpur on 16.04.2021. Two persons died in JP Hospital, Bhopal. Similarly in the incident which took place in ICU of Medical College, Shahdol, sixteen Covid patients are said to have died because of non-supply of oxygen. Ten persons lost their lives on 20.04.2021 in Peoples' Medical College, Bhopal. Five persons died on 24.04.2021 in Galaxy Hospital, Jabalpur. Eleven persons died on 25.04.2021 at Gwalior in different hospitals. Six persons died on 25.04.2021 in District Hospital at Chhatarpur. Two persons lost their lives on 27.04.2021 in District Hospital, Katni. Two persons lost their lives on 27.04.2021 at District Hospital, Morena and five persons died on 28.04.2021 in Jayarogya Hospital, Gwalior. We do not know how far these data are correct, which may be a matter of enquiry, but such reports have been appearing in all the leading newspapers of the State, almost regularly, during the month of April, 2021. Even the State has not made any serious effort to dispute the veracity of the alleged deaths of several persons in the hospitals due to non-availability of oxygen. Death of citizens, so large in number, is really heart-rending. It is a pity that people are dying in the hospitals due to lack of oxygen.

8. This Court in its earlier order dated 19.04.2021 has discussed the law in detail to hold that the right to health forms an integral component of right to life enshrined under Article 21 of the

Constitution of India. Right to life is meaningless unless accompanied by the guarantee of certain concomitant rights including, but not limited to, the right of health. This Court referred to catena of judgments, in which the Supreme Court 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. In our view, the right to health can be secured to the citizens only if the State provides adequate measures for their well being, treatment, healthcare and takes their care by protecting them from calamities like Coronavirus. 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 health disorders, diseases, illness and other health impacting conditions. What is significance of oxygen for the right to life need not be overemphasized. Human life and oxygen always go together. About 21% of Earth's atmosphere consists of oxygen, which plays a critical role in the respiratory system of the human and many other living creatures. One cannot imagine existence of life without the oxygen. We need oxygen in the air we breathe to stay alive. Right to life cannot be accomplished without the availability of oxygen. The right to life, apart from other things, also means right to breathe, which, in the present context, is possible only on availability of oxygen. There has always been emphasis by the Constitutional Courts on maintenance of hygiene and pollution free environment as one of the

facets of right to life so that citizens can breathe unpolluted air. We inhale oxygen into our body and exhale carbon dioxide out. In the ongoing pandemic, if one gets infected, his lungs may get overpowered by the deadly virus of Corona. In this condition, their function to constantly purify the blood with the use of oxygen which they inhale from the atmosphere around and send it back to the heart, gets impaired. How important is continuous availability of oxygen to humans thus needs no elaboration. At such crucial stage, survival of citizen can be ensured by supply of oxygen from external source till the time his lungs with the use of approved medication can be made to regain their normal functioning. The right to life enshrined under Article 21 of the Constitution of India would be meaningless in the present situation without the continuous availability of oxygen. Here comes the role of State as a Constitutional obligation to provide for not only the life saving drugs but also the oxygen.

9. We are constrained to record that most of the significant directions issued by this Court in its order dated 19.04.2021, mainly in respect of continuous and regular supply of Oxygen and Remdesivir to the Government as well as the private Hospitals/Nursing Homes, have not been fully complied. What has been contended before us is that most of the private hospitals are refusing to admit Corona patients for the reason of non-availability of the oxygen and now with every passing day, it is becoming difficult for Covid patients to get admission either in the Government Hospitals or the Private Hospitals.

Evidently, the Oxygen and Remdesivir continue to be two major problems which the State Government is trying to grapple with.

10. Learned Advocate General submitted that as far as the oxygen is concerned, the Central Government has allocated the quota of 649 MT (Metric Ton) Liquid Medical Oxygen (LMO) but this includes 60 MT of oxygen generated by the Government Medical Colleges of the State by their own Air Separation Unit Plants and 6 MT of LMO allocated from Air Liquide Panipat, which the State surrendered because it cannot spare any cryogenic tanker of 20 MT capacity to go that far away for this purpose. Thus, actual supply as per allocation by the Central Government to the State is only 583 MT of LMO. Further, out of eight districts where PSA Oxygen Generation Plants were sanctioned under **PM CARES** Fund, six have already become functional and remaining two will start functioning by 30.04.2021. The State Government has issued work order for installation of PSA Plants in 37 districts out of which 13 will be commissioned by 16th May, 2021, 9 by 23rd May, 2021 and remaining 15 by 20th July, 2021. The work order has also been issued to CSIR authorized vendor for installation of 650 LPM PSA plants in 5 districts i.e. Bhopal, Indore, Gwalior, Rewa and Shahdol and these will be installed by 20th May, 2021 The Directorate of Health Services has also issued work order for setting up of 570 LPM onsite Oxygen Generation Plant, each in eight district hospitals, at a cost of Rs.5.87 Crore. Thus in all new PSA Oxygen Generation Plants worth Rs.56.2 Crore have already been sanctioned covering on 51 district hospitals in the State along with 15

civil hospitals. As on 26.04.2021, the installed LMO capacity in Government Medical Colleges stands at 310 MT as compared to 89 MT of LMO in June, 2020, which means that the State Government has improved its installed LMO capacity in Government Medical Colleges. But continuous availability of oxygen for the patients admitted in the hospitals attached to these Government Medical Colleges can be ensured only if constant and regular supply of the LMO is received. The State Government has procured 2150 (5 LPM) Oxygen Concentrators and orders have been placed for another 6000 (10 LPM) Oxygen Concentrators and 3000 (5 LPM) Oxygen Concentrators. In addition, the Government of India has been requested to provide 2000 Concentrators to the State.

11. Learned Advocate General however submitted that since the State Government is not having the sufficient number of cryogenic tankers, therefore, the transportation of oxygen from the place where it has to be lifted from, is a major stumbling block in making timely supply to different hospitals located in the State. As of now, the State Government is having 61 such tankers at its disposal and through them, it is able to transport roughly about 550 MT Liquid Medical Oxygen to the State. A total number of five liquid Nitrogen tankers and three liquid Argon tankers, with a total capacity of 167 MT, have already been converted into LMO tankers, which are included in the above number of 61 tankers. The Government of India has assigned two such tankers (each with the capacity of 20 MT) to the State of Madhya Pradesh, which it has imported from Singapore and has

promised to allocate four more tankers to improve the movement of oxygen from eastern part of the country. It is contended that the State Government with the help from the Central Government has arranged for transportation of filled tankers by special trains through green corridor especially created for the purpose from different locations. Six tankers carrying 63.78 MT LMO have been dispatched via train from Bokaro of which three tankers are for Sagar, two tankers for Bhopal and one for Jabalpur. Six more are expected to reach shortly. It is submitted that the State Government has been airlifting empty tankers from Bhopal to Bokaro and from Indore to Jamnagar with the help of Indian Air Force in their Jumbo Air Crafts in order to reduce the transit time, at least at one end. It is submitted that the Central Government has set up the Oxygen Crisis Management Task Force which takes stock of the day to day situation about the oxygen in different States. The State of M.P. is constantly apprising the Union Government of its requirements of oxygen. The Chief Minister of the State wrote a letter to the Hon'ble Prime Minister on 09.04.2021, that since bed capacity of hospitals in the State in the month of May, 2021 would be increased to one lakh, requirement of oxygen would rise to 840 MT. The Additional Chief Secretary, Department of Public Health & Family Welfare, Government of Madhya Pradesh has now therefore on 27.04.2021 written a letter to the Additional Secretary, DPIIT, Oxygen Nodal Officer, Government of India requesting for allocation of 100 MT LMO more. However, the learned Advocate General submitted that the State Government still requires more number of

Cryogenic tankers to transport the allocated oxygen and has, in this connection, taken up the matter with the Central Government.

12. On a query by the Court, Mr. J.K. Jain, learned Assistant Solicitor General and Mr. Vikram Singh, learned counsel for the Union of India sought time to seek instructions from the Government of India as to why the quota of Liquid Medical Oxygen for the State of Madhya Pradesh may not be increased at least by 100 MT, in addition to the allocation already made and also in addition to two tankers already allocated and four more, which are promised to be given, six more cryogenic tankers may not be made available to the State of Madhya Pradesh for timely transportation of the oxygen to different locations considering the geographical width and length of the State.

13. There can be no doubt that the State Government and its functionaries are making all out efforts to continuously procure the oxygen and supply it to the Government Hospitals as well as the Private Hospitals in the State. But procurement of oxygen should be so regular and punctual, that all hospitals, be it Government or Private, continue to have such quantity of oxygen, as may be necessary to maintain the required pressure of oxygen supply to all the patients under their treatment so that no patient loses his life due to shortage or non-supply of oxygen. We therefore, reiterate our earlier directions which required the State Government to ensure regular and continuous supply of oxygen to all the citizens admitted anywhere either in Government or Private facilities.

14. Coming now to Remdesivir, the medicine with regard to which lot of complaints are being made by the people at large, Corona patients and their kith and kin. We may at the outset observe that it should be for the doctor treating the patient to decide as to which patient has to be administered Remdesivir injection and which not, but once when it is prescribed by a treating doctor to any patient, the State should ensure that such injection becomes available at the earliest, which is why this Court in its earlier order set the time line of one hour from the time the treating doctor prescribes such medicine. Moreover, this Court also directed that the State Government should ensure that the patients/attendants are not exploited by exorbitantly charging. This Court had required the State Government to regulate and ensure continuous supply of Remdesivir, not only to the Government Hospitals but also to the Private Hospitals/Nursing Homes with regard to which there are lots of complaints, which we notice on regular basis in local Media, print and electronic both. Several newspaper clippings about this have been placed on record. In the action taken report and supplementary action taken report it has been stated on behalf of the State Government that the Remdesivir is approved for restricted emergency use only. This drug is sold on authorised permission from the Drug Controller General of India as investigational therapy only in moderate to severe cases of Covid-19 with due exclusion of clinical conditions as mandated by the Ministry of Health and Family Welfare. In view of the sudden surge in demand for this medicine, the Government of India has ramped up the

manufacturing capacity of domestic manufacturers and has further taken up the task of judicious distribution and seamless inter-State supply of the drug to address the shortages.

15. Learned Advocate General submitted that interim allocation of Remdesivir for the period of 10 days from 21st to 30th April, 2021, has been ensured, with supplies from seven domestic manufacturers. The State of Madhya Pradesh has been allocated 95000 vials of Remdesivir for consumption before 30.04.2021, out of which, the State has retained only 45,000 vials for utilization in the Government Hospitals and allotted 50,000 to be supplied to the private hospitals through C&F/Stockists, however, with a rider that they shall ensure equitable sale/ availability of drug for treatment of admitted Covid-19 patients in private hospitals based on the number of Covid-19 in-patients admitted in Covid ICU/HDU/Oxygen supported beds. Mr. Mohammad Suleman, Additional Chief Secretary, Directorate of Health Services, Government of Madhya Pradesh has however submitted that while in Government Hospitals only 5 to 6% Covid-19 patients are being prescribed Remdesivir injection but the private hospitals are advising this injection indiscriminately to large number of patients, which is why a lot of demand of the said medicine has arisen. It is contended that the State Government has taken punitive action against the persons, who were found indulging in black-marketing of Remdesivir inasmuch as nine persons from Indore and two persons from Ujjain, in total 11 persons, have been detained for illegally selling the Remdesivir.

16. Mr. Shreyas Pandit, learned counsel for the M.P. Nursing Home Association and Mr. Shailendra Pandey, learned counsel for the Indian Medical Association submitted that despite the demand by the private Hospitals and Nursing Homes for supply of Remdesivir injunction, the sufficient number of vials are not being provided to them because the Government in its policy has put a rider on C&F stockist to distribute this medicine on the basis of number of Covid-19 in-patients admitted in the Covid-ICU/HDU/Oxygen supported beds whereas the doctors may, at times, prescribe this medicine to the patients having CT-score, anywhere between 5 and 10 which is the best time when it can give positive results, even though the patients may not be on oxygen support. Mr. Shivendra Pandey, learned counsel for the Indian Medical Association has therefore disputed the aforesaid contention of the Additional Chief Secretary and submitted that only when there is involvement of lungs that the doctors in the private hospitals prescribe the Remdesivir injection.

17. Whether or not a particular Covid-19 patient is required to be administered Remdesivir as medicine, should be left to the discretion of the treating doctors and ought not to be decided by the executive fiat. We see no justification on the insistence of providing Remdesivir to only such patients who are on oxygen support, particularly when oxygen, as a commodity, itself has become so scarce. There appears to be no logic behind this policy. Considering the submission of learned *Amicus Curiae* and learned counsel appearing for the Indian Medical Association and M.P. Nursing Home Association and the respective

intervenors, we find that there is tremendous amount of dissatisfaction not only amongst the Private Hospitals and Nursing Homes with regard to justness of policy of distribution of this drug but also there is lot of hue and cry amongst the patients and their attendants/family members with regard to the policy of distribution of Remdesivir injections. Resultantly black-marketeers are flourishing. This sometimes results into very chaotic conditions in such hospitals giving rise to law and order situation. We do not want to go into the details of all these issues but considering serious question marks put on the efficacy of the policy adopted in this behalf, the State Government ought to have re-look at its distribution policy so as to rationalize the same in consultation with all the stakeholders, in such a way that the medicine becomes available to common man at reasonable price.

18. At this stage, learned Advocate General submitted that this is largely happening because of the scarcity of Remdesivir due to short supply. The State Government is taking up this issue with the Central Government for getting allocation of Remdesivir increased. We require Mr. J.K. Jain, learned Assistant Solicitor General as well as Mr. Vikram Singh, learned counsel appearing for the Union of India to seek instructions from the Central Government as to why the quota of 95,000 vials of Remdesivir, for a block of 10 days, may not be increased by atleast 20% more, so as to make it more just, equitable and reasonable to cater to the everyday increasing demand, considering the huge surge in the number of Covid positive cases in the State. This Court also requires the Central Government to consider

allowing the State Government to directly procure all kind of essential drugs, be it Remdesivir, Tocilizumab, Itolizumab, Fabiflu or any other drug, from the manufacturers, within or outside the country, so as to ensure its easy availability to the patients. At this stage, we also want to impress upon all the private Hospitals and Nursing Homes as well as the Government Hospitals to educate the patients, their attendants/family members and the people at large as to in what kind of cases the prescription of Remdesivir as a medicine is advisable.

19. This Court in para 27(xv) of its order dated 19.04.2021, on the suggestions made by the learned counsel appearing for the Indian Medical Association and M.P. Nursing Home Association, had required the State Government to consider providing soft loan to all the private Hospitals and Nursing Homes to set up their own Air Separation Units so that they may become self-reliant with regard to their oxygen requirement. An argument has been advanced before us that all the private hospitals should be mandated to set up their own Air Separation Units. In this regard, we direct the State Government to take up this issue with the Nationalised Banks and other Financial institutions, by involving the major Private Hospitals, to provide them soft loan on priority basis, for setting up their own Air Separation Units and come out with the progress on this aspect. The State Government, at its own level, should also consider providing subsidy and incentive to such private hospitals.

20. This Court time and again impressed upon the State Government to ensure that the number of RT-PCR tests conducted by

different Government Labs as well as Private Labs and Diagnostic Centres should be increased inasmuch as their reports should become available within 36 hours from the time of collection of samples. In this respect, learned Advocate General submitted that unless the ICMR is directed to approve more number of BSL certified Labs in the State, this target may be difficult to be achieved. The State Government, in this connection, may approach the ICMR with its proposal but in this connection we also record the submission made by learned *Amicus Curiae* and Mr. Shashank Shekhar, learned counsel for the intervenor that the State Government has by an oral direction required all the private Labs to either refuse or discourage conducting the RT-PCR tests and despite the submission made before this Court on 07.04.2021 that no such direction has been issued to the private Labs/Diagnostic Centres, the fact is that the private Labs are still not willing to conduct the RT-PCR tests. Considering that number of private BSL certified Labs even as per the State Government is 37, it is very important to have their continuous support and involvement in conducting more and more number of RT-PCR tests and screen the patients so that timely detection of Covid-19 positive cases may prevent such disease from spreading further. We, therefore, direct the State Government to consider increasing the sample collection from twice a day, to four-times a day, and also for that purpose, increasing the number of Technicians, Scientists and Lab Attendants etc. involved in the process to positively achieve the above target of 36 hours and submit the further progress report in this regard.

21. Learned *Amicus Curiae* and other learned counsel appearing for the intervenors have further submitted that despite specific direction by this Court, the private hospitals are refusing to admit and treat those patients who are entitled to cashless treatment facility in terms of Ayushman Card (*under Ayushman Bharat Yojana*) and BPL cards (*under Deendayal Antyodaya Upchar Yojana*) and CGHS Cards and the State Government has not ensured the compliance in that behalf. We further reiterate our earlier directions given in the order dated 19.04.2021 that those hospitals, which are approved for treatment of the patients covered by those cashless schemes of the Government, shall not refuse to provide treatment to concerned patients and if any complaint in that behalf is received, the State Government shall take appropriate action against such private Hospitals/Nursing Homes.

22. Learned *Amicus Curiae* has invited attention of this Court towards accumulation of medical waste consisting of PPE kits, masks and other items in all the major cities of the State including Bhopal, Indore, Gwalior and Jabalpur. He has produced certain newspaper clippings to bring home the point. This Court, in this connection, directs the State Government as well as the M.P. State Pollution Control Board to undertake a special drive for disposal of such bio-medical waste, wherever found, in accordance with the provisions of the Bio-Medical Waste (Management & Handling) Rules, 1998 and submit a compliance report thereabout.

23. Mr. J.K. Jain, learned Assistant Solicitor General and Mr. Vikram Singh, learned counsel for the Union of India, in response to

the query made by this Court on **I.A. No.4396/2021**, have submitted that the Government of India has taken a serious note of the incident in which an oxygen tanker carrying the oxygen allocated to the State of Madhya Pradesh was intercepted by police officers of Uttar Pradesh to be diverted to Jhansi. Learned counsel submitted that the Government of India shall in future ensure that no such incident recurs and in this regard, a direction has again been issued to all the State Governments to ensure free movement of the tankers carrying the oxygen to the respective destinations to which they have to deliver the same. This Court impresses upon all the State Governments and through them, their Police Authorities and the Transport Authorities, to provide green corridors to the Tankers carrying Liquid Medical Oxygen involving inter-state movement, at par with ambulances, so that the oxygen can be timely delivered at the respective destinations, to save the precious human lives in this crucial period. Accordingly, the **I.A. No.4396/2021** is **disposed of**.

24. The State Government and its various authorities shall in the meantime make all the endeavours to carry out various directions issued by this Court in its order dated 19.04.2021.

25. Let the matter to come up again on **06.05.2021 on top of the list** to see the further progress.

(Mohammad Rafiq)
Chief Justice

(Atul Sreedharan)
Judge