

K. Vinod Chandran & M.R. Anitha, JJ.

W.P(Civil) Nos.10845/2021-S, 10661/2021-S,
10888/2021-S & 11211/2021-S

Dated, this the 24th day of May, 2021

ORDER

Vinod Chandran, J.

All the above writ petitions, one of which is *suo motu* registered on the directions of a Division Bench of this Court, are concerned with inoculation of the masses against Covid-19. W.P(C) No.10845 of 2021, filed by a public spirited lawyer practicing in this Court and W.P(C) No.10661 of 2021 filed by a Pathologist and a Public Health Specialist challenge the Liberalized Pricing and Accelerated National Covid-19 Vaccination Strategy devised by the Central Government. They seek a direction to the Union of India to follow the National Vaccine Policy and carry out procurement and distribution of the available vaccines against Covid-19, free of cost to the entire population of the country. The reliefs sought in W.P(C) No.10888 of 2021, filed by a former health department worker, further seek dissemination of information on how the inoculation is planned, to assuage the fears and

apprehensions of the public; which could lead to social chaos and goes to the extent of seeking a direction to the Union of India to prohibit the manufacturers from selling the vaccines in the open market. The *suo motu* proceedings have been initiated to allay the apprehensions of the citizens of the State as regards the availability of vaccines and expediency in inoculating the masses. We deem it fit that the above writ petitions be heard together.

2. A statement has been filed by the Central Government in W.P(C) No.10845 of 2021, which we direct to be furnished to the parties in the other writ petitions also. Sri.Santhosh Mathew, learned Counsel for the petitioner in W.P(C) No.10845 of 2021, points out that the State Government is under a misapprehension that there can be no procurement of the vaccine by private hospitals or the like whereas the statement filed by the Central Government, speaks of 'Liberalised Pricing' under which the manufacturers have been advised to make an advance declaration of the price for procurement by the State Governments and for procurement by other than Government of India channel which is specified at 50% of the supplies. It has also been observed in the statement,

that tight control on fixation of price of vaccine would be detrimental in securing adequate and/or multiple vaccine supply including those from offshore manufacturers. The Central Government hence, is of the opinion that it is advisable to allow vaccines to be made available in the open market in addition to that sourced by the Central and State Governments.

3. We see from the projection of expected production of the vaccines as contained in the statement that, the monthly manufacture of the three specified vaccines (Covishield, Covaxin and Sputnik-V), together would be a around 13.2 crore doses by July 2021. The projection can only mean that the entire population can be expected to be inoculated only in another ten months, which the country or the people can ill-afford. There also is the problem of the disparity between the haves and have-nots being further accentuated for reason of the 50% supplies being sourced in the open market. We are quite conscious of the enormity of the task of inoculating a nation of 137 crores which all the same has to be addressed with alacrity and expediency. While we realize that those who have the wherewithal could be permitted to procure for themselves and save the

Government from financial burden; atleast to that extent, this is not the time to indulge in *coup d'etats* on the economic sphere when debilitating illness and death looms large with the spread of the pandemic. Unless the entire population is inoculated there can be no escape from the pandemic and the expediency should be in completing the above task even if it be under considerable expenditure to the State. In the course of arguments a request was made that the Advocates Association be permitted to procure vaccine for its members as is the measure adopted by many corporates. If each stands for their own; then we cannot but say that, only the State can boast of the entire citizenry being their own.

4. It is in this context we pointed to the media report that the RBI dividend for the financial year 2021 has exceeded the Budget estimate of Rs.45,000 crore, by Rs.54,000 crore. Rs.68,500 crore would be the total cost of inoculating the population of 137 crore at the rate of Rs.250/- per dose, as fixed for supply to State Governments. We have to immediately recall that as of now it is not intended to inoculate children under 18 years of age; which would reduce the expenditure assessed above. We also notice that the media reports specify that

even this generous increase in revenue is negligible; for reason of the Union Government still having to raise 1.75 lakh crore to reach the fiscal deficit target of 6.8% of the GDP in the Financial Year 2022. The enormity of the task by all standards makes the windfall from the RBI negligible. However, the continued lock-downs now imposed as a preventive measure to curb the spread of the pandemic has already impacted actual tax collection and payments. Coupled with this is the loss occasioned in indirect tax revenue due to the reduced demand for commodities for reason of the diminishing purchasing power of the consumers. Eradication or at least prevention by inoculation hence becomes a viable alternative since normalcy would revive economic activities. The expenditure could also be justified on humanitarian considerations, which is a major expenditure for any Welfare State in the best of times and the worst of times. What we have observed is based on simple arithmetic and not on the complex issues of finance and economics; in which we lack expertise and hence we query the Union Government to respond. We are sure the State Governments too could assist in such procurement and after the vaccination is completed; the manufacturers

could be compensated, if need arises and measures could also be brought in to obtain fair reimbursement from the haves. We are aware of our limitations in interfering with policy formulations and hence at this point refrain from issuing any positive directions but request the policy makers to ponder over our observations and come back with a response within a week from today. Post on 02.06.2021.

Sd/-
K.Vinod Chandran,
Judge

Sd/-
M.R.Anitha,
Judge

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