



HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

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

alongwith

WP(PIL) No. 46 of 2021

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04/05/2021	<p>Shri Prafull N Bharat, Advocate appears as <i>Amicus Curiae</i>.</p> <p>Shri Satish Chandra Verma, Advocate General with Shri Chandresh Shrivastava, Deputy Advocate General and Shri Vikram Sharma, Deputy Government Advocate for the State/Respondents No. 1 to 3.</p> <p>Shri Ramakant Mishra, Assistant Solicitor General for the Union of India/Respondent No. 4.</p> <p>Shri Abhishek Sinha, Advocate for the Respondent No. 7/Railways.</p> <p>Shri Ashish Shrivastava, Advocate for the Respondent No. 9/SLSA.</p> <p>Shri Kishore Bhaduri, Shri Sandeep Dubey, Shri Palash Tiwari, Shri Devershi Thakur, Shri Shri Goutam Khetrapal, Shri Shivang Dubey, Shri RAJ Bahadur Singh, Shri Rishi Rahul Soni, Shri Shakti Raj Sinha, Shri Sameer Singh, Shri Atul Kesharwani, Shri Rohitashva Singh, Shri Virendra Verma, Shri Nishi Kant Sinha, Shri Curtis Collins, Shri Ansul Tiwari, Shri Soumitra Kesharwani, Shri Anumeh Shrivastava, Advocates for the respective Intervenors, Shri Himanshu Choubey, Intervenor in Person.</p> <p>The above PIL registered <i>suo moto</i> by this Court has been listed today because of various interlocutory applications with different prayers with regard to the conditions in the Jails amidst the Covid-19 pandemic and also in respect of</p>



some Orders/Circulars issued by the Governmental authorities whereby the benefit of the 'third phase' vaccination (for the age group of above 18 years and below 45 years) has been restricted making a sub-classification without any power or competence for the State Government in this regard and contrary to the norms/guidelines issued by the Central Government in terms of the guidelines fixed by the World Health Organisation (WHO).

Writ Petition (PIL) No. 46 of 2021 has also been filed challenging the above Order/Circular dated 30.04.2021 (Annexure P/1) issued by the Additional Chief Secretary, Government of Chhattisgarh, Health and Family Welfare Department, stating that the third phase vaccination will be given firstly to the Antyodaya Card Holders *i.e.* poorest among the poor, secondly to the people belonging to the group 'Below Poverty Line' and thirdly to the people belonging to the 'Above Poverty Line'. Infringement of the various constitutional provisions and encroachment into some provisions of such other relevant statute such as the Disaster Management Act, 2005 are referred to seeking for immediate intervention.

We heard the learned counsel appearing for the Intervenors who have filed the relevant IAs, Shri Verma, the learned Advocate General, Shri Mishra, the learned Assistant Solicitor General and Shri Prafull N Bharat, the learned *Amicus Curiae* appointed by this Court.

IA No. 29, 30, 31, 32, 33, 33-A, 34, 34-A, 35, 36, 37 and 38.

These IAs were preferred way back in the month of September, 2020 upto January, 2021 and the grievance projected is almost similar. It is with reference to the chance of spreading the Covid-19 pandemic in the Jails which are stated as over-crowded and hence, seeking for grant of bail/extension of parole.



This Court, as per the interim order dated 30.03.2020, had ordered release of prisoners on parole or on interim bail, on the recommendation of the High Power Committee constituted by the State Government in terms of the order passed by the Apex Court on 23.03.2020. Later, it was pointed out that 1526 prisoners have been released from 33 Jails/Sub-Jails of the State, decongesting the Jails to a large extent, as taken note of in the order dated 09.04.2020. The said order was being extended from time to time and lastly, as per the order dated 30.09.2020, it was extended by two months till 30.11.2020. At the same time, we had also directed the State to examine whether it would not be appropriate for the Government to set up Covid-19 centers/isolated space in the Jail itself; particularly in the Central Jails and such other Jails where large number of prisoners are accommodated so that if at all anybody in the Jail gets tested positive, they could be shifted to such isolated Covid centers within the Jail itself for providing proper medical and nursing care without any chance for spreading the disease.

Based on the subsequent steps taken by the Government including the order dated 25.11.2020 and the submission that the number of Covid-19 patients in the Jails was only of 'single digit' and further that proper arrangements had already been made to have them dealt with in isolated portion of the Jail premises itself, we held on 01.12.2020 that it was not necessary to continue the extension of the interim order any more; but for giving breathing time of one month to facilitate all the parties concerned to move the appropriate Court/forum by way of appropriate proceedings. The non-extension of the interim order was subjected to challenge by some of the aggrieved parties before the Apex Court, where no interference was made but for granting a short extension of time to surrender till 06.01.2021.



With regard to the necessity to conduct RTPCR tests of the prisoners who were surrendering after completion of the parole, appropriate directions were given and the relevant IAs filed in this regard were disposed of as per order dated 11.01.2021. It was with reference to this order, that IA No. 44 filed by the learned *Amicus Curiae* to direct the State/Jail authorities to conduct the RTPCR tests on all the prisoners who had surrendered prior to 11.01.2021 was also disposed of on 09.02.2021.

The learned Advocate General submits that the position in the Jails in the State is very much under control. Shri Ashish Shrivastava, the learned counsel appearing for the SLSA submits that as on 23.04.2021, only 107 active Covid-19 cases are remaining in the 33 Jails in the State (47 in the Central Jail, Durg, 18 in the Sub-Jail Mungeli, 11 in the Sub-Jail Sarangarh, 9 in the Sub-Jail Khairagarh, 6 in the Sub-Jail Bemetara, 3 in the Central Jail, Ambikapur, 1 in the Central Jail, Bilaspur, 1 in the District Jail, Dantewada, and 6 in the Sub-Jail Gariyaband). It is also pointed out that specific Covid-19 centers have already been set up by the State for dealing with the prisoners who get infected of Covid-19. In the above facts and circumstances, we are of the view that the prayer sought for in the above IAs is not liable to be entertained. The said IAs stand dismissed accordingly.

In **IA No. 39**, the prayer is mainly to have a look at the condition of Covid-19 norms followed in the Jails and to direct the State either to release all the prisoners like the applicant who have surrendered or to have them kept in isolation or in quarantine, if the parole is not extended. This is virtually with reference to the apprehension as to the chance of spreading the Covid-19 pandemic once the persons who are granted parole are coming back to the Jails leading to spreading of the pandemic if they are already infected. As mentioned



already, appropriate directions have already been issued on 11.01.2021 to conduct the RTPCR tests in respect of the prisoners concerned and it was also taking note of the subsequent development with the passage of time that IA No. 44 filed by the *Amicus Curiae* for causing RTPCR test for all the prisoners was closed as per the order dated 09.02.2021. As such, nothing remains to be considered or adjudicated in this IA and it stands closed.

IA No. 46, 47, 49, and 50.

These IAs have been filed by the persons seeking to intervene and for a direction to be given to the South East Central Railway (for short 'the SECR') Bilaspur, to make available Special Medical Coaches for admission of the Covid-19 patients. The issue was dealt with elaborately by this Court as noted in the proceedings dated 22.04.2021, whereby appropriate directions were given to the State and the Railways to look into the matter after notifying a Nodal Officer by the State and by convening a meeting in this regard. The course and events pursuant to the said order were taken note of and based on the facts and figures brought on record, it was specifically ordered by this Court on 26.04.2021 that in view of the reasons mentioned therein, it was not at all necessary to give any direction to the State or the Railways to make available the Special Medical Coaches of the Railways; simultaneously recording the preparedness of the State/Railways to have the same procured/made available, if at all any future necessity arises, to be deployed strictly in terms of the Guidelines and Standard Operating Procedure (SOP) issued on 07.04.2020 by the Government of India, Ministry of Health & Family Welfare. In the said circumstances, nothing further survives in these IAs and they stand closed.

**IA No. 57, 58, 60 and 61.**

These interlocutory applications have been filed by the very same Petitioner and the prayer in the main IA (IA No. 57) is to release the under-trial prisoners in the light of the order passed by the Apex Court in the Suo-Moto Writ Petition (Civil) No. 1 of 2020. The circumstance under which the said IA has been filed is with reference to the over-crowding in the Jails and the chance to have spreading of Covid-19 amongst the prisoners. We have already noted, while disposing of IAs No. 29, 30, 31, 32, 33, 33-A, 34, 34-A, 35, 36, 37 and 38, that the factual data brought to the notice of this Court reveals that as on 23.04.2021, only a total of 107 active cases of Covid-19 are in existence in 33 Jails in the entire State and as such, the apprehension expressed by the Intervenors/Petitioners does not appear to be factually correct. Accordingly, the above IAs stand disposed of in view of the orders passed by this Court on 30.09.2020 and the order already passed today in IAs No. IA No. 29, 30, 31, 32, 33, 33-A, 34, 34-A, 35, 36, 37 and 38.

The prayer sought for in **IA No. 62** is to the following effect:

"It is therefore prayed that this Hon'ble Court be kind enough to allow this application and consider releasing the prisoners, convicted or under trial for offences punishable for imprisonment upto 7 years, on interim/temporary bail, who are entitled and willing for the same, in the interest of justice."

After hearing the submission made by the learned counsel for the Intervenor/Petitioner and also the learned counsel representing the State, we find it appropriate to direct the matter to be caused to be considered by the High Power Committee constituted by the State in terms of the verdict passed by the Apex Court in Suo Moto Writ Petition (Civil) No. 1 of 2020 and finalise the proceedings in accordance with law. Accordingly, this IA stands disposed of.



IA No. 59, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73 and 74 alongwith **WP(PIL) No. 46 of 2021**.

With regard to the above IAs, the main petitions are IA No. 59, 63, 66 and 69, whereas the other IAs are virtually in support of the prayer in the main IAs. The challenge is against the order bearing No. 190/PA/ACS/Health/2021, Raipur dated 30.04.2021 {mentioned as Annexure P/1 in WP(PIL) No. 46 of 2021} issued by the Additional Chief Secretary to the Health & Family Welfare Department, Government of Chhattisgarh. The impugned order has been issued by the State Government fixing priority with regard to the 'third phase' of vaccination *i.e.* for the age group of persons above 18 years and below 45 years. According to the Central Government, as per the vaccination policy, out of the total vaccines manufactured in India by the two manufacturers *i.e.* Serum Institute of India - Covishield and Bharat Biotech - Covaxin, 50% of the same has to be given to the Central Government and 50% has to be made available to the State Government. It is stated that the vaccine is free to the persons coming within the first phase and second phase, whereas in respect of third phase, it will be against payment. It is stated that the Central Government has set the State Government and the private Hospitals at liberty to purchase the vaccines in the third phase directly from the manufacturers against the price fixed by them. It has been given to understand that different prices have been fixed by the manufacturers for their vaccines to be supplied for the Central Government, State Government and private medical institutions. Since the pricing policy and procurement and supply of vaccines is pending consideration before the Apex Court, we do not intend to go into this aspect in the present proceedings, but for confining the scrutiny as to the justifiability of the impugned order/proceeding dated 30.04.2021 and the subsequent circular dated 01.05.2021 whereby it has been stipulated that the



particulars of the vaccination in respect of the disputed class will not be uploaded in the national portal.

There is no doubt or dispute that the vaccination policy has been evolved by the Central Government, which has to be given effect to by all the States, though the States are at liberty to take appropriate steps in conformity to the above norms stipulated at the national level, to the extent they are permitted under such guidelines or the provisions of the relevant statutes. There is a grievance for the State that the vaccine has to be supplied by the Central Government free of cost, to be taken to all the beneficiaries in the State. However, since no helping hand is offered with regard to the third phase vaccination (age group of above 18 and below 45 years) and since time is precious and any delay may defeat the object adversely affecting the lives of the people, the State has decided to purchase vaccine and has made requisition to both the manufacturers. As put forth by the learned Advocate General, when the manufacturer by name Serum Institute of India has not responded so far, Bharat Biotech has made available 1.5 lac doses against payment. This is being distributed now, in terms of the norms issued as per the impugned order dated 30.04.2021.

As per Annexure P/1 circular dated 30.04.2021, as noted already, the vaccine supply in the third phase will be firstly to the 'Antyodaya Group' (poorest among poor) and secondly to the persons belonging to the 'Below Poverty Line' and then alone (thirdly) will it go to the persons belonging to the 'Above Poverty Line'. Legality of the sub-classification as above, merely with reference to the economic status of a citizen is put to challenge by the Intervenors/Petitioners, whereas it is sought to be justified from the part of the State.



The common case of the Intervenors/Petitioners is that the above sub-classification is beyond the constitutional mandate and is patently in violation of the law of equality and the equal opportunity before law, besides discriminating citizens with reference to their right to life. Insofar as the vaccination is the only life saving measure against Covid-19 and since the "right to life" is common to any citizen, denial of vaccine to some groups, fixing a priority with reference to the 'financial status' is absolutely illegal, illogical and violative of the constitutional provisions and also the vaccination policy of the Central Government. Since the policy has been declared in crystal clear terms by the Central Government that the benefit of the third phase vaccination is available to all persons (above 18 years and below 45 years of age), there is no object or nexus in the sub-classification and that there is no *intelligible differentia* to sustain the course of action.

The learned Advocate General points out that there is serious lapse on the part of the Central Government in effecting supply of vaccines to the State and it is lopsided. The learned Assistant Solicitor General submits that the supply is being effected to various States based on the relevant parameters as contained in the policy guidelines, adding that the demand/supply ratio is also having a bearing in this regard; more so being connected with the production/manufacturing capacity of the two manufacturers mentioned above. It is stated that steps are also being caused to import vaccines from abroad and more supply of vaccines to the State will be considered based on the requisition and the availability of vaccines produced and procured.

The learned Advocate General submits that since only limited quantity of vaccines are available for the third phase of vaccination, a sub-classification was felt necessary, particularly since the Antyodaya Group who are residing mostly in



the remote areas and who are rather illiterate or not knowing anything much about the Covid-19 pandemic, symptoms, complications, necessity to register in the portal and as to the infrastructure, are moving around quite freely which spreads the disease much faster. Case is almost similar in the case of Below Poverty Line group as well and hence, there is a rationale in the sub-classification of persons in the age group of 18 to 44.

With regard to the submission made by the learned counsel for the Intervenor/Petitioners that supply of vaccines has to be made on 'first come first served' basis, according to this Court, this as such may not be appropriate to be implemented when it comes to the case of poor/rural sector *i.e.* Antyodaya and Below Poverty Line groups. There are several reasons behind this, such as lack of education, poverty, lack of any smart phones to effect registration in portals, the remoteness of the area where they are living, the lack of access/conveyance, the limited infrastructure available in the place of their living and also the internet connectivity. When the registration can be effected by the other people who can afford to all these aspects by sitting at home, the poor people as above may have to go to the nearest centers provided by the State to avail the facility. But by the time they reach there, the portal may be closed or the bookings/registration may be stopped having obtained saturation, virtually making it detrimental to the right and interest of the children of the lesser God. This being the position, if any steps are taken by the State Government to have the benefit extended to such people as well, the object cannot be doubted. But, such step has necessarily to be in conformity with the constitutional mandate and in tune with the guidelines issued by the Central Government at the national level. *Prima facie*, sub-classification with reference to the 'financial status' alone as now ordered in Annexure P/1 may not be correct or sustainable.



In this context, it is also relevant to have a scrutiny of Annexure P/1. It has been issued by the Additional Chief Secretary to the Health and Family Welfare Department, Government of Chhattisgarh. Absolutely no reference has been made therein to 'policy decision' (if any) taken by the Government. Policy of the Government has to be on the basis of deliberation in the Cabinet. On the face of Annexure P/1, the sub-classification made by the Additional Chief Secretary to the State Government cannot *prima facie* be taken as a policy decision of the Government, in view of the apparent lapses in this regard.

Various questions may arise in the above context as noted below:

1. Has the State Government any power to decide of its own or tinker with the vaccination policy issued by the Central Government?
2. Even if any such power is there, can the impugned order Annexure P/1 be regarded as a 'policy decision' of the Government, having no Cabinet node in this regard declaring the policy?
3. How the sub-classification effected as per the impugned order dated 30.04.2021 (Annexure P/1) merely with reference to the financial status of a citizen, to get his life protected, is sustainable in the eye of law?
4. If any priority is to be given for vaccination by effecting sub-classification, is it not necessary to have it with reference to the areas where maximum spread of the disease is located or with reference to the population or the chance to get infected more or with reference to any particular place or area or group where more vulnerable people work/reside and the chance to get infected?
5. Since the Covid-19 pandemic can be conquered only with "maximum vaccination within the shortest possible time", is it not necessary to provide/procure more vaccines and administer the same at the earliest?
6. Is it not necessary to have a re-look on the vaccination policy in the backdrop of the second wave of Covid-19 pandemic and particularly with reference to the third phase vaccination (for the age group above 18 years and below 45 years)?





It is to be noted that the 'priority' was fixed by the Central Government as per the guidelines/policy already declared. By virtue of the data gathered under the first wave, the 'frontline workers' like the Doctors, Nurses and other 'Corona Warriors' who were having direct contact with the patients have been rightly included in the top priority group. The next phase was for persons above 60 years and for persons with co-morbidities. The cut off age of 60 was subsequently reduced to 45, may be on the basis of subsequent data input. Now, under the third phase stage (for the persons between the age of 18 to 44) no distinction is made and as per the policy all such persons have been treated as a common lot. But, after commencement of the second wave, the disease is spreading like 'wild fire', without any reference to the age factor and quite a lot of 'young and healthy' people have surrendered to the same. In short, the circumstances which were prevailing when the 'vaccination policy' was introduced, based on the data input collected in the first phase, may not be sufficient enough to deal with the case after the second wave, where the situation is totally different. This however is for the experts to consider and hence, we are not intending to enter into the forbidden field, but for observing that no parent, though entitled to get vaccine with reference to his age, will normally be anxious of protecting himself by getting vaccinated and stand safe; without getting his children protected (who are the asset of the Nation).

Coming back to the sustainability of the impugned order and the need to protect the poor, illiterate and less fortunate citizens, a Scheme has to be formulated by the State by earmarking appropriate share of the vaccines to them as well and set up 'Help Desks' providing spot registration and to administer vaccines to them, without compromising the right of the other segments who are entitled to have equal treatment with regard to the right to life.



In the said circumstance, as a viable approach, we are of the view that the State Government shall fix a reasonable ratio of allotment of vaccines to the 'Antyodaya Group', the persons belonging to the 'Below Poverty Line' and the persons belonging to the 'Above Poverty Line', with reference to all the relevant aspects including the vulnerability, chance to spread the disease and the number of eligible persons in the group. Accordingly, we direct the State Government to have a discussion of the Secretaries of the relevant Departments at the higher level and to fix the ratio as above and distribute the vaccines in the third phase of vaccination (for the age group of above 18 and below 45 years) in an equitable manner. Implementation of Annexure P/1 order dated 30.04.2021 issued by the Additional Chief Secretary, Department of Health and Family Welfare, Government of Chhattisgarh, stands modified to the said extent and shall be subject to the ratio of allotment to be made as above. This shall be done and given effect to forthwith.

Post the matter for further consideration alongwith the remaining IAs on Friday *i.e.* 07.04.2021.

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

Sd/-
(Parth Prateem Sahu)
Judge