

ITEM NO.35

Court 5 (Video Conferencing)

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s).11622/2021

(Arising out of impugned final judgment and order dated 01-05-2021 in WP(C) No. 3031/2020 and 04-05-2021 in WP(C) No. 3031/2020 passed by the High Court of Delhi at New Delhi)

UNION OF INDIA

Petitioner(s)

VERSUS

RAKESH MALHOTRA & ANR.

Respondent(s)

Date : 06-05-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

Mr. Jaideep Gupta, Sr. Adv. (A.C.)
Ms. Meenakshi Arora, Sr. Adv. (A.C.)
Mr. Mohit D Ram, AOR
Mr. Kunal Chatterji, AOR

For Petitioner(s)

Mr. Tushar Mehta, SG
Ms. Aishwarya Bhati, ASG
Mr. Rajat Nair, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Amit Mahajan, Adv.
Mr. Prashant Singh B, Adv.
Mr. Raj Bahadur Yadav, AOR
Mr. Gurmeet Singh Makkar, AOR
Mr. B. V. Balaram Das, AOR

For Respondent(s)

Mr. Rahul Mehra, Sr. Adv.
Mr. Gautam Narayan, AOR
Mr. Satyakam, Adv.
Ms. Asmita Singh, Adv.
Mr. Adithya Nair, Adv.

Mr. Rakesh Malhotra, In Person
Mr. Tungesh, Adv.

UPON hearing the counsel the Court made the following

O R D E R

- 1 On 5 May 2021, three specific issues were flagged by this Court:
- (i) The methodology adopted by the Union Government for computing the requirement of oxygen of the States and Union Territories¹;
 - (ii) The need to manage available resources of oxygen to optimise their availability for the National Capital Territory of Delhi², which is dependent on:
 - An efficient supply chain;
 - Proper distribution of oxygen from the supply points to hospitals; and
 - Building buffer stocks of oxygen; and
 - (iii) Actual availability of oxygen.

Though the proceedings on 5 May 2021 arose in the context of a notice issued by the High Court of Delhi in its contempt jurisdiction, many of the issues which have been recorded in the order are in continuation of the previous directions issued on 27 April 2021 and 30 April 2021 in **Re: Distribution Of Essential Supplies And Services During Pandemic**³. The issues faced by NCTD do in significant ways raise common areas of concern for the rest of the country.

¹ “UT”

² “NCTD”

³ Suo Motu Writ Petition (Civil) No 3 of 2021

2 To obviate burdening the text of this order with copious references to the previous directions, the effort of the Court would be to build upon the developments which have taken place since the exercise of the jurisdiction by the Court of its own accord at the inception of the proceedings. It will suffice to note that on 30 April 2021, some of the key issues pertaining to the supply of oxygen have been identified. These have been set out in the order and are extracted below:

“(i) Supply of oxygen – The Court should be apprised by the Union of India on

(a) The projected demand for oxygen in the country at the present point of time and in the foreseeable future;

(b) The steps taken and proposed to augment the availability of oxygen, meeting both the current and projected requirements;

(c) The monitoring mechanism for ensuring the supply of oxygen, particularly to critically affected States and Union Territories as well as the other areas;

(d) The basis on which allocation of oxygen is being made from the central pool; and

(e) The methodology adopted for ensuring that the requirements of the States are communicated to the Central Government on a daily basis so as to ensure that the availability of oxygen is commensurate with the need of each State or, as the case may be, Union Territory.”

These excerpts indicate the broad areas of concern towards ensuring:

- (i) Determination of the quantum of oxygen required by each State and UT by the application of a rational and scientific methodology;
- (ii) Allocation of the resources of oxygen to States/UTs on the basis of such a methodology;

- (iii) Ensuring efficiency in the distribution of oxygen from the points of supply through distribution network which reach the ultimate users - institutional and individual, as the case may be;
- (iv) Monitoring the supply and distribution of oxygen;
- (v) Adopting steps for augmenting the available resources, on the basis of the present demand and projected increase of demand, based on the stage of the pandemic;
- (vi) Designing and monitoring an efficient system of transportation and other logistical arrangements which ensure seamless movement across the supply chain; and
- (vii) Creating buffer stocks capable of being accessible in the case of emergencies.

3 Apart from the issues of general concern and applicability which have been noted above, the specific issue pertaining to the allocation and distribution of oxygen to the NCTD has also seized the attention of this Court. In the order dated 30 April 2021, specific directions were issued in regard to the fulfilling its requirement for oxygen. The directions in paragraph 29 of the order are recapitulated below:

- (i) Though the projected daily demand of NCTD as of 20 April 2021 had increased from 300 MT to 700 MT, the existing allocation had remained at 490 MT per day;
- (ii) This situation must “be remedied forthwith”;

- (iii) On the intervention of the Court, the Union Government had stated that the demands for medical oxygen of NCTD would be met and that it would not suffer due to a lack of oxygen;
- (iv) A peremptory direction was issued by the Court in the above terms; and
- (v) The assurance of the Union Government that “henceforth” the deficit of oxygen would be rectified and supplies would be made to NCTD according to their projected demands (which could be revised in the future) on a day to day basis would be complied with by the midnight of 3 May 2021.

4 Following the above order, the High Court of Delhi issued a notice of contempt on 4 May 2021 for alleged non-compliance of its directions and those of this Court, with regard to the supply of 700 MT of oxygen to NCTD by the Union Government. These proceedings were then initiated to challenge the notice of contempt issued by the High Court. This Court, in its order dated 5 May 2021, stayed the invocation of the contempt jurisdiction, but directed that the directions contained in the order dated 30 April 2021 “must be duly implemented”. While staying the contempt proceedings, an opportunity was granted to the Union Government to place a plan indicating the manner in which the 700 MT daily requirement of NCTD would be fulfilled. The Court observed:

“...an opportunity should be granted to the Central Government to place before this Court a plan specifically indicating the manner in which the requirement of the NCT of Delhi of 700 MT in terms of the order of this Court dated 30 April 2021 will be complied with, pending further directions of this Court. In order to furnish an opportunity to the Central Government to place a tabulated statement before this Court, we adjourn the proceedings to 11.00 am tomorrow when this Bench will assemble for its regular assignment of work. We accordingly direct that by 11.00 am tomorrow, the Central Government shall place a comprehensive plan before this

Court indicating the manner in which the direction for the allocation of 700 MT of LMO to Delhi shall be complied with. The plan shall indicate:

- (i) Sources of supply;
- (ii) Provisions for transportation; and
- (iii) All other logistical arrangements necessary to ensure the fulfillment of the requirement of NCT of Delhi in terms of the order of this Court.”

5 In pursuance of the above directions, a proposal has been placed on the record by the Solicitor General. The Union Government has indicated that on 5 May 2021, 730.7 MT of oxygen has been received in the NCTD. The status of the availability of oxygen at hospitals and major re-fillers as tabulated is extracted below:

**“The availability of oxygen at major hospitals and re-fillers
in Delhi: Status:**

Hospitals (56)

Current stock: 280 MT
Average daily consumption: 290 MT
Storage capacity: 478 MT

Re-fillers(11)

Current stock: 73 MT
Average daily consumption: 82 MT
Storage capacity: 187 MT

Total (Hospitals + Re-fillers)

Current stock: 353 MT
Average daily consumption: 372 MT
Storage capacity: 665 MT”

- 6 The Union Government has submitted that:
- (i) There is a need to unload stocks expeditiously so as to obviate a delay in the turnaround of tankers;
 - (ii) 280 MT of oxygen is arriving into NCTD by ‘oxygen express trains’.
 - (iii) The requirement of NCTD, factually, is not 700 MT per day; and

(iv) In order to ensure the delivery of the above quantity to NCTD, allotments to other States may have to be reduced.

Appended to the note submitted by the Solicitor General, is a plan detailing the transportation of 700 MT to NCTD. The plan, which is proposed for the transportation of 700 MT, indicates three sources of supply for ensuring the allocation to NCTD. These are:

"I. Synopsis

A. Existing Allocation and Supply (Already operationalised) - 490 MT (30 MT not being supplied by India Glycols)

B. Existing Allocation (Being Operationalised) - 100 MT + 40 MT (30 MT to compensate for India Glycols + 10 MT overall)

C. Special Allocation - 100 MT

A+B+C = 460 + 140 + 100 = 700 MT"

The special allocation of 100 MT is from RIL Jamnagar, Gujarat.

7 Having provided a plan for ensuring the supply of 700 MT to NCTD to meet the daily requirement in terms of the previous orders dated 30 April 2021 and 5 May 2021, there is a tabulated statement at the end of the plan which indicates the following position:

"Conclusion

Date of arrival of oxygen in Delhi	A (Existing Allocation already operationalised) (MT)	B (Existing allocation being operationalized) (MT)	C (Special Allocation) (MT)	Total (MT)	Remarks
06.05.2021	460*	-	100	560	*120 MT coming daily from Durgapur is contingent on LINDE getting 6 containers. As on date, capacity to only

					transfer 90 MT with 18 containers available with Linde
07.05.2021	460	-	100	560	
08.05.2021	460	-	100	560	
09.05.2021	460	80 (4 containers from IOCL)	100	640	4 ISO containers being made available by IOCL to transport 80 MT
10.05.2021	460	140 (7 containers from DP World)	100	700	
11.05.2021	460		100	560	
12.05.2021	460		100	560	
13.05.2021	460	80 (4 containers from IOCL)	100	640	4 ISO containers being made available by IOCL to transport 80 MT
14.05.2021	460	140 (7 containers from DP World)	100	700	

Even the above tabulation is contingent, as is indicated in the note and caveat appended to the plan, which are extracted below:

“Total requirement of containers for supplying 700 MT daily to Delhi is contingent upon:

- **Making available 6 additional ISO containers for Durgapur**
- **Making available 24 additional ISO containers for Kalinganagar**

Caveat:

1. The above plan for transportation of 700 MT to Delhi daily successfully is subject to availability of sufficient number of containers for deployment which are being

procured on lease from abroad by various agencies like IOCL, Reliance and Linde.

2. Allocation of containers as per the plan might lead to an inadequate number of containers being made available for transportation of oxygen to other states.”

(emphasis supplied)

- 8 The Solicitor General submits that:
- (i) The formula on the basis of which oxygen is being allocated to the States and UTs is not static but needs to be re-visited;
 - (ii) There is an adequate quantity of oxygen-resources and steps for augmentation are being undertaken at the highest level;
 - (iii) The existing quantity needs to be allocated to the States and UTs; and
 - (iv) A continuous process of importing tankers for transportation is being conducted to resolve bottlenecks.

With the above premises, it has been submitted that:

- (i) Many of the demands by the States and UTs, including Government of NCT of Delhi⁴, for the provision of medical oxygen were ‘unrealistic’;
- (ii) As a result of these projections, it became necessary for the Union Government to make an assessment, for which a formula was devised;
- (iii) The problem of shortage in NCTD is due to a systemic failure to ensure proper distribution of oxygen;
- (iv) In order to resolve the issue, it would be necessary to conduct an audit in regard to the manner in which the available supplies are distributed through the networks and are ultimately utilised;

⁴ “GNCTD”

- (v) In order to facilitate a fresh assessment of the basis for allocation of oxygen, an expert committee may be constituted consisting of persons drawn from public and private healthcare institutions with experience in the field; and
- (vi) In order to ensure that the allocation and distribution of oxygen takes place on a rational and equitable basis, it is necessary to constitute a national task force of experts which would determine the method of allocation and distribution of oxygen across States/UTs. Smaller expert committees or sub-groups may look into issues of auditing the manner in which supplies are to be distributed and utilised in each State/UT.

9 While responding to the submissions of the Solicitor General, Mr Rahul Mehra, learned Senior Counsel appearing on behalf of the GNCTD, has welcomed the supply of 730.7 MT of oxygen under the auspices of the allocation made by the Union Government. At the same time, he has expressed the apprehension that as of 9 am on 6 May 2021, a total quantity of 189.532 MT has been delivered, and a quantity of 16.32 MT is in transit to the knowledge of GNCTD, resulting in a total availability of only 206 MT (approximately). As opposed to this, Mr Mehra stated that on the previous two days, an average of 300 MT had been received by NCTD by 9 am. Mr Mehra has highlighted during the course of his submissions that:

- (i) A team of officers is deployed by GNCTD to ensure that the distribution networks are monitored and the needs of healthcare institutions and re-fillers are met;

- (ii) The daily requirement of 700 MT for NCTD has been computed on the basis of the formula adopted by the Union Government, without factoring in an additional requirement of 256 MT consequent upon setting up of new facilities (including a facility being set up by DRDO);
- (iii) The additional facilities cannot be put to use for want of oxygen;
- (iv) The plan submitted by the Union Government is not in terms of the order of this Court dated 5 May 2021 but seeks, in substance, a review of the order dated 30 April 2021, which is impermissible as the present hearing was confined to a challenge to the Delhi High Court's exercise of its contempt jurisdiction;
- (v) No attention has been devoted by the Union Government to the need to create a buffer stock, as was directed by this Court in its order dated 30 April 2021;
- (vi) The additional requirement of NCTD (from 490 MT to 700 MT) is only 210 MT, which is a small fraction of the pan-India availability of oxygen, estimated at 8410 MT by the Union Government. Further, the actual oxygen lifted by the respective States/UTs (as on 28 April 2021), out of their allocated quantity, was only 7334.53 MT;
- (vii) No material has been produced to show that any other State would be affected by supplying the additional quantity to NCTD to make up the total requirement of 700 MT;
- (viii) The data placed on the record of the High Court by the Union Government indicates that the Union Government has made full allocations to certain States and excess to others, as against their projected demands. However,

the NCTD was only allocated with 490 MT, as against its demand of 700 MT as on 21 April 2021;

- (ix) There is no need for an audit and, if at all an audit is to be conducted, it should be of the availability of tankers;
- (x) In any event, the exercise of carrying an audit would be meaningless unless the formula pursuant to which the Union Government is allocating oxygen is revisited; and
- (xi) Several steps have been taken by GNCTD to bring about efficiencies in the transportation of oxygen; for instance, the tankers which have been recently acquired are being tracked on a real time basis through GPS.

10 Mr Jaideep Gupta and Ms Meenakshi Arora, learned Senior Counsel appearing as *amicus curiae*, emphasised certain crucial issues. *First*, both the Senior Counsel emphasised the necessity of factoring in the **projected demand for oxygen**, in realistically assessing the demand of oxygen in the foreseeable future. It would be necessary to associate with the work of the Task Force, epidemiologists, virologists and public health experts, who can draw upon their expertise for designing modelling-based estimates for the future. *Second*, contrary to the directions which were issued by this Court on 5 May 2021 that 700 MT of oxygen must be supplied to the NCTD, no concrete plan has been provided by the Union Government. *Third*, it is crucial for this Court to ensure that the daily requirement of NCTD of 700 MT is fulfilled by the Union Government. *Fourth*, there can be absolutely no dispute regarding the existence of oxygen shortages in the NCTD, warranting the need to maintain the existing requirement at 700 MT per day, besides building up buffer stocks.

11 These submissions can be analysed further in the context of the ground covered by the earlier orders.

12 The directions contained in the order of this Court dated 30 April 2021 leave no manner of doubt that the Union Government is under an obligation to ensure a daily supply of 700 MT to meet the existing requirements of the NCTD. This direction has been based on the assurance of the Union Government to the Court. The High Court of Delhi, finding that there was a breach of this direction, invoked the contempt jurisdiction. While the invocation of the coercive process has been stayed, this Court in its order dated 5 May 2021 has reiterated the direction for maintaining the supplies to NCTD at 700 MT per day. The Union Government was required to place on the record, a plan to achieve the fulfilment of this direction. The plan which has been placed before this Court is subject to caveats and conditions which cannot be accepted. What is sought to be assured in the first part of the plan is diluted with the next segment. 700 MT was not intended to be a requirement to be fulfilled for one day or sporadically, but on a daily basis. Daily basis means for every day. We accordingly direct, that there shall be no reduction in the allocation and availability of medical oxygen to NCTD and the direction in regard to the provision of 700 MT per day shall continue to be observed.

13 On 30 April 2021, the order of this Court recorded the submission of the Union Government that there is “**no dearth of oxygen**”. The shortage of oxygen in the States/ UTs was attributed to deficiencies in distribution and the inability to

lift the entire quantity of oxygen supplied. For convenience of reference, the relevant part is extracted below:

“26 Based on the above facts and figures, the Solicitor General has stated that there is no dearth of oxygen supply in the country as on date and steps are being taken continuously to augment the supply of oxygen. Having said that, the Solicitor General has also admitted that there has been a shortage of supply to certain States and has attributed this shortage to various factors including the failure of State Governments to lift the allocated quantity of oxygen from the supply point; transportation bottlenecks caused by inter-State movement of tankers; and technical failure of certain plants leading to reassessment of allocation on a real time basis.”

(emphasis supplied)

14 The Union Government has also on record stated that, as on 21 April 2021, a quantity of 16,000 MT of LMO is available in the country. The relevant extract is reproduced below for convenience of reference:

“These actions have already been taken by the steel manufactures both in private and public sector which has resulted in immediate enhancement of LMO production/ capacity by 293 MT. Apart from the current generation of LMO, the steel sector has made available the liquid oxygen available in its storage tanks for medical use (approximately 16,000 MT LMO is available as on 21st April 2021). Further, the safety stocks in the storage tanks of liquid oxygen at all locations has been brought down to 0.5 days in order to make available additional LMO. Till date the steel industry has supplied 143,000 MT of LMO since September 2020. As such, in the month of April 2021, supplies of LMO by the steel sector have increased from 1000 MT per day in the first week of April 2021 to around 2600 MT on 21st April 2021.”

(emphasis supplied)

15 Except for a bare assertion that an increase of 210 MT to NCTD would result in a corresponding reduction to other States, no material has been produced on the record by the Union of India. On the contrary, the data produced before this court in regard to the allocation and supply of oxygen to NCTD indicates the following position:

Details of Oxygen Received in Delhi at 09 AM FROM 28.04.2021 to 06.05.2021											
NAME OF MANUFACTURER	LOCATION	ALLOCATED	28.04.2021	29.04.2021	30.04.2021	01.05.2021	02.05.2021	03.05.2021	04.05.2021	05.05.2021	06.05.2021
			RECEIVED	RECEIVED	RECEIVED	RECEIVED	RECEIVED	RECEIVED	RECEIVED	RECEIVED	RECEIVED
AIR LIQUID	PANIPAT	170	74.61	63.78	37.05	64.04	47.94	39.69	66.77	15.44	24.95
	ROORKEE	20	0	0	0	0	20	12	0	0	0
LINDE	JAMSHEDPUR-30	255	0	0	14.06	20.99	33.74	23.55	150.76	23.54	42.86
	ROURKELA-40										
	SELAQUI (FARIDABAD) DURGAPUR-30										
	SURAJPUR	35	10.7	9.69	4.72	10.06	6.04	4.39	9.96	11.46	4.42
INOX	MODI NAGAR	30	3.23	29.52	17.61	25.38	0	0	0	7.25	15.3
	BARTIWALA	20	0	0	0	0.99	0	0	0	0	0
GOYAL GLASSES	GHAZIABAD	30	17.9	0	0	0	0	0	0	0	0
INDIA GLYCOLS	KASHIPUR	30	0	0	0	0	0	0	0	0	0
JINDAL STEEL POWER	RAIPUR		0	0	0	0	0	0	0	0	0
ADDITIONAL SYUPPLY OF 103MT FROM RELIANCE, JAMNAGAR			0	0	0	0	0	0	80	103	102
ADDITIONAL SYUPPLY OF 140 MT FROM M/S DP World, Mundra			0	0	0	0	0	0	0	140	0
SETH TRADERS THROUGH LINDE	FARIDABAD		0	0	0	0	0	0	0	0	0
TOTAL		590	106.44	102.99	73.44	121.46	107.72	79.63	307.49	300.69	189.53

PRIOR ALLOCATION TO DELHI AS ON 01.05.2021 WAS 490 MT

16 GNCTD has stated that it has computed the requirement of oxygen on the basis of the formula which has been adopted by the Union Government. The Union Government has not disputed the correctness of the computation on the basis of the formula. At this stage, no contrary material has been placed on the record by the Union Government. The attention of the Court has not been drawn to any error in the methodology of computation which has been adopted by GNCTD. GNCTD has drawn the attention of the Court to the serious deficiency in the availability of oxygen. This indicates that on 6 May 2021, the total quantity of oxygen delivered to NCTD was 577 MT, resulting in a shortfall of 123 MT. As of 9

am on 7 May 2021, the total quantity which has been received at NCTD border is 87.97 MT, while 9.64 MT is under transit. We direct the Union of India to remedy the situation forthwith and to ensure that the direction issued by this Court for the availability of 700 MT is strictly observed on a daily basis, pending further orders.

National Task Force

17 During the course of the hearing, a consensus has emerged that there is a need to ensure that the allotments of medical oxygen to the States and UTs is made on a scientific, rational and equitable basis. At the same time, it must allow for flexibility to meet unforeseen demands due to emergencies which may arise within the allocated territories. The formula which has been adopted by the Union Government has been adverted to in the earlier order dated 5 May 2021. Some of the deficiencies in regard to the basis and methodology have been flagged earlier. The Court suggested that an expert body drawn of *inter alia* renowned national experts with diverse experience in health institutions can be considered for being set up as a National Task Force, which will provide a public health response to the pandemic on the basis of a scientific approach. The Solicitor General informed the Court that the Union Government has responded favourably to the suggestion and in fact, his submissions, which have been adverted to earlier, record this specifically. It is necessary that an effective and transparent mechanism is set up within the Union Government for the purpose of allocating medical oxygen to all States and UTs for being used during the COVID-19 pandemic. The Union Government has agreed to set up a National

Task Force⁵ to streamline the process. This Task Force would be tasked *inter alia* with formulating a methodology for the scientific allocation of oxygen to the States and UTs. The Union Government has made its suggestions on the possible names for inclusion in the composition of the Task Force, while leaving its final composition to the Court. The National Task Force which is being constituted in pursuance of the above suggestion shall consist of the following members (names being set out in alphabetical order).

- (i) Dr Bhabatosh Biswas, Former Vice Chancellor, West Bengal University of Health Sciences, Kolkata;
- (ii) Dr Devender Singh Rana, Chairperson, Board of Management, Sir Ganga Ram Hospital, Delhi;
- (iii) Dr Devi Prasad Shetty, Chairperson and Executive Director, Narayana Healthcare, Bengaluru;
- (iv) Dr Gagandeep Kang, Professor, Christian Medical College, Vellore, Tamil Nadu;
- (v) Dr JV Peter, Director, Christian Medical College, Vellore, Tamil Nadu;
- (vi) Dr Naresh Trehan, Chairperson and Managing Director, Medanta Hospital and Heart Institute, Gurugram;
- (vii) Dr Rahul Pandit, Director, Critical Care Medicine and ICU, Fortis Hospital, Mulund (Mumbai, Maharashtra) and Kalyan (Maharashtra);
- (viii) Dr Saumitra Rawat, Chairman & Head, Department of Surgical Gastroenterology and Liver Transplant, Sir Ganga Ram Hospital, Delhi;

⁵ "Task Force"

- (ix) Dr Shiv Kumar Sarin, Senior Professor and Head of Department of Hepatology, Director, Institute of Liver and Biliary Science (ILBS), Delhi;
- (x) Dr Zarir F Udwadia, Consultant Chest Physician, Hinduja Hospital, Breach Candy Hospital and Parsee General Hospital, Mumbai;
- (xi) Secretary, Ministry of Health and Family Welfare, Government of India (*ex officio member*); and
- (xii) The Convenor of the National Task Force, who shall also be a member, will be the Cabinet Secretary to the Union Government. The Cabinet Secretary may nominate an officer not below the rank of Additional Secretary to depute for him, when necessary.

18 The Task Force is at liberty to draw upon the human resources of the Union Government for consultation and information, including the following:

- (i) A member of Niti Aayog to be nominated by the Vice-Chairperson;
- (ii) Secretary, Ministry of Home Affairs;
- (iii) Secretary, Department for Promotion of Industry and Internal Trade;
- (iv) Secretary, Ministry of Road Transport and Highways;
- (v) Director, All India Institute of Medical Sciences, New Delhi;
- (vi) Director General, Indian Council of Medical Research, New Delhi;
- (vii) Director General of Health Services; and
- (viii) Director General, National Informatics Centre; and
- (ix) Head, Centre for Development of Advanced Computing (C-DAC).

19 The concerned Secretaries shall be at liberty to nominate officers of the rank of Additional/Joint Secretary to depute for them. The Task Force is at liberty to formulate its modalities and procedure for working.

20 The Task Force may constitute one or more sub-groups on specialised areas or regions for assisting it, before finalising its recommendations. The Task Force may consider it appropriate to co-opt or seek the assistance of other experts within or outside government to facilitate its working, including in the following areas:

- (i) Infectious disease modelling;
- (ii) Critical care;
- (iii) Clinical virology/Immunology; and
- (iv) Epidemiology/Public health.

21 The *amicus curiae* appointed by this Court had tendered a list of experts on each of the above subjects ((i) to (iv) above in paragraph 20). In order to not constrain the discretion of the Task Force, we permit the Task Force to co-opt any one or more of the experts suggested by the *amicus curiae* or any other experts.

22 The Union Government and State Governments, Ministries, agencies and departments shall provide complete and real time data for facilitating the work of the Task Force as and when necessary. All private hospitals and other health care institutions shall co-operate with the Task Force.

23 The rationale for constituting a Task Force at a national level is to facilitate a public health response to the pandemic based on scientific and specialised domain knowledge. We expect that the leading experts in the country shall associate with the work of the Task Force both as members and resource persons. This will facilitate a meeting of minds and the formulation of scientific strategies to deal with an unprecedented human crisis. The establishment of this Task Force will enable the decision makers to have inputs which go beyond finding *ad-hoc* solutions to the present problems. The likely future course of the pandemic must be taken into contemplation at the present time. This will ensure that projected future requirements can be scientifically mapped in the present and may be modulated in the light of experiences gained. Estimating projected needs is crucial to ensure that the country remains prepared to meet future eventualities, which will cause a demand for oxygen, medicines, infrastructure, manpower and logistics. The establishment of the Task Force will provide the Union Government with inputs and strategies for meeting the challenges of the pandemic on a transparent and professional basis, in the present and in future. Bearing this in mind, we presently frame the following terms of reference for the Task Force. These terms can be modulated subsequently, as and when the need arises.

24 The terms of reference of the National Task Force shall be to:

- (i) Assess and make recommendations for the entire country based on the need for, availability and distribution of medical oxygen;
- (ii) Formulate and devise the methodology for the allocation of medical oxygen to the States and UTs on a scientific, rational and equitable basis;

- (iii) Make recommendations on augmenting the available supplies of oxygen based on present and projected demands likely during the pandemic;
- (iv) Make recommendations for the periodical review and revision of allocations based on the stage and impact of the pandemic;
- (v) Facilitate audits by sub-groups within each State and UT *inter alia* for determining:
 - (a) whether the supplies allocated by the Union Government reach the concerned State/UT;
 - (b) the efficacy of the distribution networks in distributing supplies meant for hospitals, health care institutions and others;
 - (c) whether the available stocks are being distributed on the basis of an effective, transparent and professional mechanism; and
 - (d) accountability in regard to the utilisation of the supplies of oxygen allocated to each State/UT;
- (vi) Review and suggest measures necessary for ensuring the availability of essential drugs and medicines;
- (vii) Plan and adopt remedial measures for ensuring preparedness to meet present and future emergencies which may arise during the pandemic;
- (viii) Facilitate the use of technology to ensure that the available manpower is optimised for implementing innovative solutions particularly in order to provide an outreach of expert medical care to rural areas;
- (ix) Suggest measures to augment the availability of trained doctors, nurses and para-medical staff including by the creation of suitable incentives;

- (x) Promote evidence based research to enhance effective responses to the pandemic;
- (xi) Facilitate the sharing of best practices across the nation to promote knowledge about the management of the pandemic and treatment of cases; and
- (xii) Generally, to make recommendations in regard to other issues of pressing national concern to find effective responses to the pandemic.

25 The purpose of conducting audits under item (v) of paragraph 24 is to ensure a measure of accountability for the proper distribution of oxygen supplies made available by the Union Government to the States/UTs. For the purpose of facilitating the audits under item (v) of paragraph 24 above, the Task Force will constitute sub-groups/committees for each State/UT comprising:

- (i) An officer of the State/UT Government not below the rank of Secretary to the State Government;
- (ii) An officer of the Union Government not below the rank of Additional/Joint Secretary;
- (iii) Two medical doctors in the State/UT concerned including at least one with administrative experience of managing the medical facilities of a hospital; and
- (iv) A representative from the Petroleum and Explosives Safety Organisation (PESO).

For carrying out the above audit exercise for NCTD, the audit sub-group shall consist of:

- (i) Dr Randeep Guleria, Professor and Head, Department of Pulmonary Medicine and Sleep, AIIMS;
- (ii) Dr Sandeep Budhiraja, Clinical Director & Director – Internal Medicine, Max Healthcare; and
- (iii) An IAS officer, each from the Union Government and GNCTD, not below the rank of Joint Secretary.

26 We emphasise that the purpose of conducting audits is to ensure accountability in respect of the supplies of oxygen provided to every State/UT. The purpose is to ensure that the supplies which have been allocated are reaching their destination; that they are being made available through the distribution network to the hospitals or, as the case may be, the end users efficiently and on a transparent basis; and to identify bottlenecks or issues in regard to the utilization of oxygen. The purpose of the audit is not to scrutinise the decisions made in good faith by doctors while treating their patients.

27 The Union Government shall continue with the present practice of making allocations of oxygen (as modified by the orders of this Court or the orders of the High Courts as the case may be) until the Task Force has submitted its recommendations in regard to proposed modalities. The Union Government shall on receipt of the recommendations of the Task Force take an appropriate decision in regard to the allocation of oxygen and on all other recommendations. The Task Force shall also submit its recommendations from time to time to this Court. We request the Task Force to commence work immediately, taking up the pressing issue of determining the modalities for oxygen expeditiously within a

week. The tenure of the Task Force shall be six months initially. The Union Government shall provide all necessary assistance to the Task Force and nominate two Nodal Officers to facilitate its work. The Nodal Officers shall also arrange for logistics, including communication with the members and arranging the virtual meetings, of the Task Force.

28 The proceeding shall be listed before this Court on 17 May 2021.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER