

IN THE HIGH COURT OF BOMBAY AT GOA

***PUBLIC INTEREST LITIGATION WP NOS.1172 OF 2021,
1173 OF 2021 & 1174 OF 2021 (filing)***

and

***MISCELLANEOUS CIVIL APPLICATION NO.1196/2021 &
1197/2021 (F)***

IN

PUBLIC INTEREST LITIGATION WP NO.1173 OF 2021(F)

STATE OF GOA, THR. ITS
ADDL. SECRETARY, (HEALTH)

... Applicant/Original
Respondent No.1

IN

ARMANDO GONSALVES
AND ANR.

..... Petitioners.

Versus

STATE OF GOA, THR. ITS
CHIEF SECRETARY AND 2 ORS.

..... Respondents.

Mr. D.J. Pangam, Advocate General with Mr. D. Shirodkar, Additional Govt. Advocate in MCA (F) No.1196/2021 and Ms. M. Correia, Additional Govt. Advocate in MCA (F) No.1197/2021 for Applicant/Original Respondent/State.

and

MISCELLANEOUS CIVIL APPLICATION NO.1198/2021 (F)

IN

PUBLIC INTEREST LITIGATION WP NO.1172 OF 2021(F)

ADV. AMIT PALEKAR
MEMBER OF APPLICANT NO.2.

... Applicant No.1

COVID SERVICE GOA
THROUGH CO-FOUNDERS

MRS. DISHA NAYAK SARDESAI
AND SIDDHARTH S. SARDESAI ... Applicant No.2

Advocate Mr. Amit Palekar, Applicant no.1 in person and for
Applicant No.2.

IN

PUBLIC INTEREST LITIGATION WP NO.1172 OF 2021

SOUTH GOA ADVOCATES
ASSOCIATION, THR. ITS
PRESIDENT, ANTONIO
CLOVIS DA COSTA AND ANR. Petitioners.

Versus

STATE OF GOA, THR. THE
CHIEF SECRETARY, GOVT.
OF GOA AND 4 ORS., Respondents.

Mr. Nikhil Pai, Advocate for the Petitioners.

Mr. D.J. Pangam, Advocate General with Ms. Ankita Kamat,
Additional Govt. Advocate for Respondents No.1, 4, and 5.

Mr. P. Faldessai, Assistant Solicitor General, and Mr. R. Chodankar,
Central Govt. Standing Counsel for Respondent No.2.

Mr. Ryan Menezes with Ms. Gina Almeida, Advocates for Respondent
No.3.

PUBLIC INTEREST LITIGATION WP NO.1173 OF 2021

ARMANDO GONSALVES
AND ANR. Petitioners.

Versus

STATE OF GOA, THR. ITS

CHIEF SECRETARY AND 2 ORS. Respondents.

Mr. Akash Rebello with Mr. Rui Gomes Pereira, with Mr. Varun Bhandanker, Advocates for the Petitioners.

Mr. D.J. Pangam, Advocate General with Ms. Maria Correia, Additional Govt. Advocate for Respondent No.1.

Mr. P. Faldessai, Assistant Solicitor General, and Mr. R. Chodankar, Central Govt. Standing Counsel for Respondent No.2.

Mr. Ashish Swar, Petitioner in person in Email Letter dated 05.05.2021.

Mr. Durgadas Kamat, Petitioner in person in Email Letter dated 05.05.2021.

PUBLIC INTEREST LITIGATION WP NO.1174 OF 2021

ROSHAN MATHIAS AND ANR. Petitioners.

Versus

THE STATE OF GOA, THR.

ITS CHIEF SECRETARY AND 4 ORS Respondents.

Mr. Nigel Da Costa Frias, with Mr. Vishal Sawant and Mr. G. Malik, Advocates for the Petitioners.

Mr. D.J. Pangam, Advocate General with Mr. Deep Shirodkar, Additional Govt. Advocate for the Respondent/State.

Mr. V. Rodrigues, Advocate for M/s. Scoop Industries Pvt. Ltd.

Mr. Puneet Kumar Goel, Principal Secretary (Finance), State of Goa.

Mr. Ravi Dhawan, Secretary (Health), State of Goa.

Dr. Tariq Thomas, Secretary, Urban Development, State of Goa.

Dr. Shivanand Bandekar, Dean, Goa Medical College, Bambolim.

Dr. Viraj Khandeparkar, Nodal Officer, Goa Medical College, Bambolim.

***Coram: M.S. Sonak &
Nitin W. Sambre, JJ.***

Date: 12th May 2021.

P.C. :

Heard learned counsel for the parties.

2. According to us, the situation about the supply of oxygen at the Goa Medical College is quite grim. We have long passed the stage of determining whether patients are suffering from the lack of oxygen or not. The material placed before us establishes that patients are indeed suffering and even in some cases succumbing for want of the supply of oxygen, in the State of Goa.

3. The affidavit filed by Dr. Shivanand Bandekar, Medical Superintendent and the Dean of Goa Medical College will sufficiently bear out this position. Since the Dean is monitoring the patients on day to day basis, his affidavit will deserve greater credence than the affidavit filed by the Under Secretary (Health). The latter's affidavit also acknowledges that the daily requirement of oxygen in the State of Goa is 55MT. The Dean has included the details in his affidavit in the context of oxygen supply in the GMC. Besides, there are other

affidavits filed before us, including affidavits of persons, who claim to have been present at Goa Medical College describing the position at Goa Medical College. These affidavits, to great extent support, what is set out in the Dean's affidavit.

4. The affidavit filed by Mr. Bandekar gives details relating to the deficit of oxygen supply. They are as follows:

“2. I say that the position of oxygen supply for the last three days, viz. 09.5.2021, 10.5.2021 and 11.5.2021 is as follows :

<i>Date</i>	<i>Projected total Oxygen requirement</i>			<i>Total Oxygen consumed on previous day</i>		
	<i>Trolley (Nos.)</i>	<i>1.5 cum cylinders (Nos.)</i>	<i>7 cum cylinders (Nos.)</i>	<i>Trolley (Nos.)</i>	<i>1.5 cum cylinders (Nos.)</i>	<i>7 cum cylinders (Nos.)</i>
<i>09/05/21</i>	<i>50</i>	<i>350</i>	<i>750</i>	<i>52</i>	<i>140</i>	<i>279</i>
<i>10/05/21</i>	<i>58</i>	<i>350</i>	<i>750</i>	<i>52</i>	<i>63</i>	<i>380</i>
<i>11/05/21</i>	<i>60</i>	<i>350</i>	<i>750</i>	<i>51</i>	<i>68</i>	<i>309</i>

3. I say that the figures relating to deficit of oxygen supply for these three days are as under :

<i>Date</i>	<i>Deficit of Oxygen</i>				
	<i>Trolley (Nos.)</i>	<i>1.5 cum cylinders (Nos.)</i>	<i>7 cum cylinders (Nos.)</i>	<i>Deficit in MT</i>	<i>Deficit Equivalent to 7 cum cylinders</i>
<i>09/05/21</i>	<i>0</i>	<i>210</i>	<i>471</i>	<i>3.6</i>	<i>500</i>
<i>10/05/21</i>	<i>06</i>	<i>287</i>	<i>370</i>	<i>5</i>	<i>700</i>
<i>11/05/21</i>	<i>09</i>	<i>282</i>	<i>441</i>	<i>6.5</i>	<i>900</i>

4. *I say that medically, reduced oxygen saturation lasting for a significant duration causes tissue hypoxia and irreversible tissue damage. This is worse in presence of comorbidities and old age. The death following such hypoxemia and organ hypoxia may be immediate, or most of the times after some period of time. Adequate and uninterrupted supply of oxygen is of vital importance in managing COVID pneumonias. We have faced many interruptions in the supply of central oxygen on daily basis, leading to near critical fall in the oxygen saturations of patients en mass in the intensive care units. The supply of cylinder oxygen, that is used for mild/moderate patients has also been deficient, and erratic, leading to the needy patients not getting it continuously. The below chart shows the cylinder requirement and the supply.*

DATE	TOTAL PATIENTS	CENTRAL O2	PATIENTS ON CYLINDER O2	APPROX NO. OF CYLINDERS NEEDED	NO OF CYLINDERS (D+B TYPE) SUPPLIED	No. of Deaths
30/04/21	533	160	231	577	186+46	17
01/05/21	591	160	241	602	191+54	29
02/05/21	625	160	256	640	195+75	31
03/05/21	673	160	286	715	259+56	26
04/05/21	734	160	325	812	264+131	29
05/05/21	754	160	370	925	282+65	42
06/05/21	776	SSB STARTED/30	406	1015	313+56	33
07/05/21	802		462-6=456	1140	500+123	29
08/05/21	891	SSB ENANCED/90	470-14=456	1140	317+53	39

09/05/21	910	SSB ENHANCED/110	400-20=380	950	380+63	33
10/05/21	929	SSB ENHANCED/130	400-31=369	922	364+87	25
11/05/21	953	SSB 150	330	825	309+68	45

5. I say that though there is no problem with the availability and supply of Liquid Medical Oxygen, which is stored in the tank of 20,000 litres at the Super Specialty Block, this LMO cannot be directly used for the main GMC building, which is relying on the supply of oxygen via cylinders which are brought on trolleys and as loose cylinders. I say that these loose cylinders are of 1.5 cubic metres and 7 cubic metres capacity. I say that at times, there has been a problem with the supply of these trolleys and loose cylinders as a result of which there have been instances of a drop in supply of oxygen to the patients, which has resulted in casualties.”

5. We have heard the learned Advocate General as also Mr. Puneet Kumar Goel, Principal Secretary (Finance) Mr. Ravi Dhawan, Secretary (Health) and Dr. Tariq Thomas, Secretary, Urban Development. We appreciate the submissions made by them and also the efforts which they are making to find out the solution to this issue of supply of oxygen.

6. We have also heard Dr. Bandekar, the Dean of Goa Medical College, and Dr. Viraj Khandeparkar, Nodal Officer at Goa Medical

College who are also involved directly in combating the epidemic and providing treatment to its victims. We realize how hard they are working and the circumstances in which they are working.

7. All the Officials have explained to us the issues involved in the supply of oxygen, particularly, at Goa Medical College. Dr. Bandekar and Dr. Khandeparkar have submitted that presently, by 2.00 p.m. each day, they require at least 500 jumbo cylinders of oxygen. Further, by 10.00 p.m. they would require another 250 jumbo cylinders followed by another 250 jumbo cylinders by 6.00 a.m. the next day and so on if they are to realistically tide over the crisis at GMC. In addition, they have submitted that they also require at least 72 trolleys of oxygen, if, the patients admitted at Goa Medical College have to be effectively treated and there are no deaths for want of oxygen supply. They submitted that for want of sufficient oxygen supply, they are unable to use HFNO machines even though several such machines are available and will provide substantial relief to the victims. They pointed out that though the capacity of beds at Goa Medical College is about 700 beds, there are approximately 950 patients admitted at Goa Medical College. They submitted that such excess patients have to be administered oxygen through loose cylinders.

8. At this stage, we can only say that the State Administration, in addition to the efforts which they have already been making, will

have to make further efforts to see that Goa Medical College is supplied with the required amount of oxygen as indicated above. This is vital because the right to life is a fundamental right guaranteed by Article 21 of the Constitution. There is, therefore, a corresponding duty cast on the State to ensure that this life is not extinguished on account of inability on the part of the State to supply oxygen to these unfortunate victims of the pandemic. This duty can neither be avoided by pleading helplessness nor by putting forth logistical difficulties in sourcing and supplying oxygen. The State officials repeatedly assured us that there was sufficient oxygen available but the problem was mainly of logistics of the supply chain. At this stage, we do not wish to go into the projections of oxygen requirement made by the Under Secretary on one hand and the Dean on the other though, prima facie we are inclined to go by the projections of the Dean who is actually functioning from the GMC and each day witnessing the catastrophe unfolding before his eyes. In any case, we feel that such logistical problems must be got over at the earliest so that this tragedy of victims gasping for breath in the presence of their near and dear ones and in several cases even dying for want of necessary oxygen supply is arrested at the earliest. Therefore the State will have to and is hereby directed to take all necessary steps to ensure that such logistical difficulties are overcome at the earliest and there are no casualties for want of a supply of oxygen to the pandemic victims. We order accordingly.

9. Mr. Dhawan and Dr. Tariq offered themselves to visit the Goa Medical College to coordinate the efforts for the supply of oxygen along with Dr. Bandekar, Dean, and Dr. Viraj Khandeparkar, Nodal Officer. Mr. V. Rodrigues, learned counsel appearing on behalf of M/s. Scoop Industries Pvt. Ltd. has appeared in this matter and has stated that by today evening itself about 55 trolleys of oxygen and 600 jumbo cylinders will be made available at the Goa Medical College. This statement is accepted and M/s. Scoop Industries Pvt. Ltd. is directed to act accordingly.

10. We post the matter tomorrow with the fond hope that at least tonight, and even hereafter, with the joint efforts of the Dean and the State Administration of which he is a part, there are no casualties at the Goa Medical College for want of oxygen.

11. Learned Advocate General, once again points out the difficulties faced by the State Administration on account of our order dated 06.05.2021, in the context of insistence upon Covid negative certificate for persons entering into the State of Goa. He submits that for the present, and until the application for variation of this order is fully heard, the State Administration will be satisfied if at least the goods vehicles are permitted to enter the State without any insistence that its drivers or helpers have a Covid negative certificate. The Learned Advocate General states that the goods vehicles will have a

maximum of two drivers and one helper. He states that before the entry of these persons into the State borders, with the help of thermal guns it will be checked if they have any symptoms indicative of Covid' 19. He submits that such goods vehicles may therefore be permitted to enter the State of Goa.

12. By our order dated 11.05.2021, we had permitted the goods vehicles making essential supplies of oxygen, medical drugs, raw materials to pharmaceutical companies, medical equipment, milk, vegetables, food grains, eggs, meat, and gas cylinders to enter into the State of Goa without the necessity of the drivers or the helpers having any Covid negative certificate. Accepting the conditions proposed by the learned Advocate General and directing the authorities to comply with such conditions, we now waive the requirement of Covid negative certificate to two drivers and one helper per goods vehicle until further orders. We, however, make it clear that at each of the borders, the police or the other authorities will have to scan such persons with the thermal guns to see whether they display any symptoms. If they display the symptoms, then, the police authorities or the other authorities should deny access to such persons within the State of Goa.

13. This limited waiver is not to be construed as a general license for permitting any persons to enter into the State of Goa, without having the Covid negative certificate. Again we clarify that we have not

ordered the sealing of Goa borders but having regard to the unfortunate fact that Goa is one of the worst affected State, we have only directed that a covid negative certificate be insisted from persons entering into Goa. Some waivers have been allowed in case of medical emergencies subject to the production of adequate proof and matters of essential supplies. Therefore, we hope and trust that these waivers are not misused by anyone resulting in the further spread of the epidemic.

14. The statistics suggest that the positivity rate in Goa is still high. The medical infrastructure is severely overstretched. The Doctors and nurses and the paramedical staff at the forefront of this fight against the epidemic are exhausted. Therefore all concerned must realize that there is no unnecessary insistence of waiver in the name of protecting the interests of the economy. No doubt, the importance of the economy can never be undermined, but at this stage at least, the priority and emphasis shall have to be on issues of health and survival. Ultimately, the economy is for the people and not the other way round. Once the position improves, obviously the focus can and perhaps will have to shift on the economy, which the Learned AG points out is so vital. As of now, the State administration will have to focus maximum on improving the position of oxygen supply in the State and in particular at the GMC. As of now, none can afford to remain in a state of denial about this crucial issue which is taking away

the precious lives of our people. This much is our duty to say.

15. The order made on 11.05.2021 is also extended until further orders. Application for variation can as well be taken in the next week because, for the present, priority is the issue of supply of oxygen. The statistics placed before us indicate the alarming number of deaths taking place in the State of Goa practically every day and this issue will have to be given priority over other issues.

16. As we were about to conclude this order, Mr. Dhawan, Health Secretary intervened to point out that while the hearing was on, they have succeeded in organizing four Dura Cylinders from M/s. Scoop Industries Pvt. Ltd. Out of these four Dura Cylinders, two Dura Cylinders are already at the Goa Medical College. He pointed out that these Dura Cylinders have the capacity of storing oxygen equivalent to that which is stored in 28 jumbo cylinders. Mr. Rodrigues, learned counsel appearing for M/s. Scoop Industries Pvt. Ltd. also confirms this position and states that every possible cooperation will be extended to the State Administration and the Goa Medical College. We genuinely appreciate the efforts put in by Mr. Dhawan and his team to see that this oxygen supply is made available at the Goa Medical College at the earliest. We are quite sure that the doctors at the Goa Medical College as well as the State Administration will find out similar solutions on the issue of supply of oxygen and

ensure that at least hereafter, there are no casualties for any deficit in the supply of oxygen.

17. Stand over tomorrow i.e. 13.05.2021.

NITIN W. SAMBRE, J.

M. S. SONAK, J.

SSM/NH/SS