HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL SUO-MOTO PUBLIC INTEREST LITIGATION NO. 02 OF 2021

The Registrar (Judicial),
High Court of Judicature of Bombay,
Bench at Aurangabad .. PETITIONER

Versus

The Union of India & Ors. .. RESPONDENTS

.....

Shri. Satyajit S. Bora, Advocate appointed as Amicus Curiae;
Shri. D. R. Kale, Chief Public Prosecutor for respondents/State;
Shri. Ajay G. Talhar, ASGI for respondent No.1;
Mr S. G. Chapalgaonkar, Advocate for respondent No.8;
Shri. K. N. Lokhande, Advocate for respondent no. 22;
Shri. R. K. Ingole, Advocate for respondent no. 25

.....

CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.

DATE : 25th May, 2021

ORAL ORDER [Per Ravindra V. Ghuge, J.] : -

MUCORMYCOSIS TREATMENT

1. The learned Chief Public Prosecutor draws our attention to the statement ‘X-15’ that was filed before this Court by Shri. Phaneendra Chanda and tenders an apology since certain numbers with regard to empanelled hospitals were inappropriately stated therein. It is clarified

::: Uploaded on - 25/05/2021 ::: Downloaded on - 25/05/2021 21:42:26 :::

HIGH COURT OF JUDICATURE AT BOMBAY

that 1000 hospitals are already empanelled in the State of Maharashtra for treating patients covered by the 'MJPJAY' and 'PMJAY'. Out of these 1000 hospitals, 131 are specifically identified as being appropriate facilities for treating Mucormycosis treatment, free of cost. It is then pointed out that, non-governmental hospitals which are amongst these 131 hospitals, would be prohibited from charging as per their normal rates while treating patients for Mucormycosis considering the decision of the State Government to extend free treatment in such facilities to all the residents of Maharashtra. Those private hospitals which are not empanelled under the MJPJAY and PMJAY, would not be covered by the Government Resolution dated 18.05.2021, 'X-14'. In short, if any Mucormycosis patient desires to approach a hospital which is not empanelled with the State of Maharashtra under the said two schemes, he will have to pay the charges as per the bills that may be raised by such private hospitals.

2. The list of empanelled 131 hospitals is taken on record and is marked as 'X-17', for identification.

P. M. CARES FUND VENTILATORS

3. Insofar as the 150 ventilators received by the Government Medical College and Hospital, Aurangabad through the PM Cares

::: Uploaded on - 25/05/2021 ::: Downloaded on - 25/05/2021 21:42:26 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Fund are concerned, the Dean of the Medical College and Hospital is present in the Court hall. The learned Chief Public Prosecutor, on instructions, has placed before us a compilation of documents (55 pages), which are taken on record and collectively marked as 'X-18', for identification. He refers to a ready reference chart at page Nos.2 and 3 of the said compilation to indicate that 150 ventilators were supplied by the Union of India. A company, by name, Jyoti CNC has manufactured the said 150 ventilators with the model name 'Dhaman III'. A specific statement through 'X-18' is made before the Court that the GMCH has deployed 17 ventilators which developed 6 flaws set out in the column below "reasons for not working". Each of them would impact the treatment process of the patients. Two appear to be extremely serious flaws pertaining to 'no in-let O2 pressure' display and 'patient becoming hypoxic' when on ventilator. The last reason could be life threatening.

4. It is further demonstrated that 55 ventilators were distributed to Hingoli, Osmanabad, Beed and Parbhani districts. 41 ventilators were allotted to 5 private hospitals with the rider that they would not claim ventilators charges from the patients who used these 41 ventilators. 37 ventilators available with the GMCH have yet not been un-boxed.

::: Uploaded on - 25/05/2021 ::: Downloaded on - 25/05/2021 21:42:26 :::

HIGH COURT OF JUDICATURE AT BOMBAY

5. We find a serious issue before us as regards the defective functioning of the ventilators. Except the 37 ventilators which are yet to be un-boxed, 113 ventilators put to use are found to be defective. As such, the Dean of the GMCH justifies her decision of not un-boxing the remaining 37 ventilators as all those 113 ventilators which have been put to use, suffer from malfunctioning .

6. The learned prosecutor draws our attention to the letters received by the authorities from the private hospitals who were distributed 41 ventilators, which indicate that not a single ventilator is functional and these private hospitals have therefore declined to utilise them as a serious threat to the life of the patients, exists. They have written to the authorities to take back these ventilators. It is further pointed out from 'X-18' compilation that the Dean of the SRTR GMCH, Ambajogai has also informed in writing that none of the ventilators supplied to the said Medical College and Hospital, are worthy of being put to use.

7. It is clarified that all the 64 ventilators supplied by several Industrial Establishments like Good Year Tyres, Cosmo Films, Bajaj Auto limited, Garware Polyester limited, Hindalco limited, Endress + Hauser (India) Automation Instrumentation Private Limited, Taiyo

::: Uploaded on - 25/05/2021 ::: Downloaded on - 25/05/2021 21:42:26 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Kagaku India Private Limited and Chamber of Marathwada Industries, are perfectly operational and are flawlessly working.

8. We find the above situation as regards the dysfunctional ventilators supplied through the PM Cares Fund, to be quite serious. We, therefore, call upon the learned ASGI to state, as to what action would the Union of India initiate in these circumstances. He submits that he would take instructions. As such, we would be taking up this issue on 28th May, 2021 and we expect the ASGI to be prepared to address this issue as well as the remedial steps to be taken.

9. The learned Amicus Curiae has placed before us newspaper cuttings pertaining to the news items regarding the faulty ventilators supplied through the PM Cares Fund, having been published by 'Dainik Lokmat', ' Dainik Divya Marathi', etc. The same are from page Nos. 298 to 315 and are added to the petition paper-book.

10. He points out through the newspaper reports placed before us today, that some of the peoples representatives have jumped into the issue of non-functional ventilators having been supplied through the PM Cares Fund. Some of the politicians have started visiting the Government Medical College and Hospital to find out whether the

::: Uploaded on - 25/05/2021 ::: Downloaded on - 25/05/2021 21:42:26 :::

HIGH COURT OF JUDICATURE AT BOMBAY

ventilators are functioning properly or not. Some of the politicians have declared that all the ventilators are in good working conditions and some have stated that as the ventilators were lying idle, they have become dysfunctional. Photographs have been published by these newspapers which indicate that a local MLA, having no connection with the medical faculty, is inspecting the ventilators in the GMCH.

11. We express our displeasure as regards such indulgence by the peoples representatives. This is likely to cause more botheration to the medical faculty than render any assistance. Contrary statements are being issued by the politicians which we find distasteful as some politicians have visited the hospital, posing as if they have the knowledge and the expertise to inspect the ventilators and recommend correctional steps. We would appreciate if political colour is not attached to this issue of dysfunctional ventilators.

12. Stand over to 28th May, 2021, for a further hearing. The learned ASGI would be prepared to address us on this issue.

(B. U. DEBADWAR, J.) **(RAVINDRA V. GHUGE, J.)**

sjk

::: Uploaded on - 25/05/2021 ::: Downloaded on - 25/05/2021 21:42:26 :::