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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (PIL) No.1301 of 2020

Court on its own motion

Versus

The State of Jharkhand & Ors. Respondents

With

W.P. (PIL) No.1302 of 2020

The Court on its own motion on the letter of
Arun Kumar Dubey

Versus

The State of Jharkhand Respondent

With

W.P. (PIL) No.1308 of 2020

Court on its own motion

Versus

The State of Jharkhand Respondent

With

W.P. (PIL) No.2328 of 2020

Rajeev Kumar Petitioner

Versus

The State of Jharkhand & Ors. Respondents

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Rajendra Krishna, Advocate

For the State : Mr. Rajiv Ranjan, AG

: Mr. Sachin Kumar, AAG-II

For the U.O.I. : Mr. Rajiv Sinha, A.S.G.I.

ORAL ORDER

31/Dated: 8th May, 2021

Matters have been heard through video conferencing and there is no complaint whatsoever regarding audio and/or visual quality.

2. In pursuance to our direction passed on 6th May, 2021, the matter was fixed for hearing on 13th May, 2021. However, in

the meantime, a mention memo was filed by the office of the learned Advocate General, for hearing of the case today i.e. on 8th May, 2021 on the Interlocutory Application, being I.A. No. 2352 of 2021 filed on 7.05.2021, in which urgency has been shown for listing of the case for passing appropriate order for utilization of Oxygen cylinders which are lying in judicial custody in different districts in connection with various cases for the purpose of using those Oxygen cylinders to the persons who are suffering from Covid-19 pandemic and who are in need of Oxygen.

3. We have considered the reasons shown in the urgent memo and taking into consideration the reason of urgency i.e., acute surge in Covid-19 pandemic from which people are suffering and dire need of Oxygen for them, either admitted in Hospital or in Home Isolation, as also considering the reason that there are less number of Oxygen cylinders in comparison to its demand and as such posted the matter today for hearing on Interlocutory Application being I.A. No. 2352 of 2021 and thereby the matters have been listed today.

I.A. No. 2352 of 2021

4. Mr. Rajiv Ranjan, learned Advocate General appearing for the State, Mr. Rajiv Sinha, learned A.S.G.I and Mr. Rajendra Krishna, learned counsel for the

intervener in-person, have participated in the proceeding through on-line mode.

5. Mr. Rajiv Ranjan, learned Advocate General, at the outset has submitted that he is confining the prayer made in the Interlocutory Application only with respect to Oxygen Cylinders and not for L.P.G Cylinders.

Learned Advocate General has submitted that Additional Chief Secretary, Department of Health, Medical Education and Family Welfare, Govt. of Jharkhand has informed the Director General of Police, Jharkhand about seizure of such Oxygen cylinders which are lying in judicial custody in connection with various cases and has requested to make available those cylinders to the Deputy Commissioner-cum-District Health Committee of each district for its utilization in view of shortage of oxygen cylinders in the State.

It has further been submitted that such Oxygen cylinders are lying idle in judicial custody in connection with various cases and as such the same if allowed to be utilized it will be of great help to the State in facilitating the treatment for sufferer of Covid-19 pandemic, who are in dire need of Oxygen.

It has further been stated that such Oxygen cylinders may be directed to be released in favour of concerned Deputy Commissioner-cum- Chairman,

District Health Committee and once the situation will be normalized or there will no need of such Oxygen cylinders, the same will be returned to the concerned police station.

In the backdrop of these aforesaid contentions, prayer has been made to this Court to allow this Interlocutory Application to the effect by issuing direction upon the concerned Court to pass appropriate order for release of Oxygen cylinders in favour of Deputy Commissioner-cum- Chairman, District Health Committee of various district of the State of Jharkhand with the condition, as this Court may deem fit and proper.

6. Mr. Rajendra Krishna, intervener in-person, has fairly submitted that he is having no objection if such direction would be passed by imposing certain conditions.

7. We have heard learned Advocate General as also the intervener in-person.

8. We, after going across the averments in the Interlocutory Application, wherein prayer has been made to issue appropriate direction upon the concerned court, where cases of seizure of such Oxygen cylinders are pending, for its release in favour of Deputy Commissioner-cum- Chairman, District Health Committee for its utilization in favour of persons suffering

from Covid-19 pandemic, who are either getting treatment in Hospital or in home isolation, are of the view that people across the country are struggling for their life so as also in the State of Jharkhand.

We have also found from the record that requisition has been made by the state of Jharkhand for supply of Oxygen cylinder for its utilization of the persons suffering from Covid-19 pandemic in order to maintain balance in between demand and supply of such Oxygen cylinder, as would be evident from the requisition made in this regard vide letter dated 15.04.2021 before the competent authority of the Central Government.

We are further of the view that Oxygen is the basic requirement to deal with the persons suffering from Covid-19 pandemic, who are either taking treatment in hospital or in home isolation and as such Oxygen cylinders are of prime importance in saving life of persons suffering from Covid-19 pandemic.

We have further considered that number of such Oxygen cylinders are lying in judicial custody in connection with various cases and if it would be released after imposing appropriate condition, no prejudice would be caused to the parties to the *lis* rather it will be more beneficial for the people at large, who are suffering from Covid-19 pandemic and further the State Government will

be in better position in facilitating the treatment of persons who are suffering from Covid-19 pandemic and are in dire need of Oxygen.

8. This Court, after taking into consideration the aforesaid aspect of the matter, deem it fit and proper to allow the instant Interlocutory Application to the effect by directing the concerned Court, without prejudicing of the right of the parties, to release the Oxygen cylinder(s) provisionally on following conditions:

(I).The Deputy Commissioner-cum- Chairman, District Health Committee of concerned district will furnish an affidavit with an undertaking along with the copy of this order before the concerned court for release of such Oxygen cylinder(s) mentioning therein the details of the case(s).

(II).The undertaking which would be furnished by Deputy Commissioner-cum- Chairman, District Health Committee will contain all details of cylinder viz. quantity of oxygen or its weight etc. and further with specific undertaking that such cylinder would be returned within a period of three months or even earlier also if it will be required by the Court.

(III).The Court below, where cases are pending, will pass necessary order by recording such undertaking furnished by concerned Deputy

Commissioner-cum- Chairman, District Health Committee.

(IV).The Deputy Commissioner-cum- Chairman, District Health Committee is further directed to ensure identification of such cylinders before it is released and further secure return of such Cylinder on “*as is where is*” basis.

It is made clear that such provisional/condition release would be without prejudice to ownership claimed or to be claimed by any person. That issue will be decided by the competent authority on its own merit without being prejudiced by present order.

Needless to say that after release of such cylinder(s), the concerned Deputy Commissioner-cum- District Health Committee with consultation of Civil Surgeon of the respective district shall also ensure efficacy of such cylinder(s) and only after testing its perfection it may be used in order to avoid any casualty.

9. With the aforesaid directions, the instant Interlocutory Application, being I.A. No. 2352 of 2021 stands disposed of.

W.P. (PIL) No. 1301, 1302, 1308 and 2328 of 2020

10. It has been pointed out by the intervener, by referring to the news article published in daily newspaper ‘Times of India’ dated 8th May, 2021, wherein news has

been published that five died due to lack of O2 flow at Ranchi Sadar Hospital in the early hours of Thursday.

11. It is very unfortunate that in the Sadar Hospital at Ranchi, as reported that five patients, who were suffering from Covid-19, have died due to interruption in supply of oxygen, when time and again, we have been told by learned Advocate General, based upon the instruction of district administration, that arrangement made in the Sadar Hospital Ranchi is going on very smoothly. But, if that is the situation, then question would be how five persons died due to non-supply/interrupted supply of oxygen at Sadar Hospital, Ranchi.

12. We, therefore, direct the Secretary, Department of Health, Medical Education and Family Welfare, Govt. of Jharkhand to conduct a detailed enquiry on the issue and fix accountability upon the erring person(s) and submit its report on or before the next date of hearing.

13. We have further been apprised about the news-clipping of electronic news channels, which has been displayed in national news channel - Aaj Tak and CNN, wherein it has been telecast about precarious condition of Sadar Hospital of the State i.e. Sadar Hospital at Chatra and the Medical College at Dhanbad.

14. This Court, therefore, directs the Advocate General of the State to apprise this Court by filing affidavit with

respect to the arrangement made in the Sadar Hospitals of each and every district of the State as also the arrangement made at Medical College, Dhanbad, containing therein the details of beds supported with Oxygen, number of the doctors and para-medical staffs as also the position of oxygen in the said hospitals.

Such affidavit shall be filed on or before the next date of hearing.

15. Accordingly, as directed vide order 6th May, 2021, let these matters be posted on **13th May, 2021.**

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Alankar/ -
N.A.F.R.