

P.B.SURESH KUMAR, J.

W.P.(C) No.11742 of 2021

Dated this the 7th day of July, 2021.

ORDER

Heard the learned counsel for the parties on either side.

2. The first petitioner is an association of private hospitals in the State and the second petitioner is a member of the first petitioner association. The petitioners seek, among others, directions to respondents 1 to 19 to take necessary steps to prevent the suppliers of oxygen to the hospitals in the State from increasing the price of oxygen during this period of pandemic.

3. It is seen that on 25.9.2020, in exercise of the powers conferred under the Drugs (Prices Control) Order, 2013 and Section 10(2)(l) of the Disaster Management Act, 2005, the

competent authority in the Ministry of Chemicals and Fertilizers, Government of India, having regard to the extraordinary circumstances prevailing in the country on account of the spread of the pandemic, Covid – 19, prescribed the maximum price (ex-factory) exclusive of Goods and Services Tax as applicable in respect of Liquid Medical Oxygen as Rs.15.22 per cubic meter and Oxygen Inhalation(Medicinal Gas) in cylinder as 25.71 per cubic meter. Ext.P5 is the order issued by the Ministry of Chemicals and Fertilizers in this regard. The petitioners contend, among others, that the respondents are not enforcing in the State even Ext.P5 order, as a result of which, the hospitals as also the patients who need oxygen support for treatment of Covid – 19 are put to irreparable hardship.

4. The learned Government Pleader points out that there is no regulatory mechanism in the State for effective implementation of orders in the nature of Ext.P5. It was also

pointed out by the learned Government Pleader that without fixing the transportation cost, which can be charged by the manufacturer/supplier of oxygen, Ext.P5 order cannot be effectively implemented. It was further pointed out by the learned Government Pleader that the Government has therefore, constituted a committee consisting of the Drugs Controller, Controller, Legal Metrology Department, a representative of Petroleum and Explosives Safety Organization (PESO) and the General Manager of the Kerala Medical Services Corporation (KMSCL) for deciding the transportation cost which can be charged by the manufacturer/supplier, and for monitoring the effective implementation of the orders issued under the Drugs (Prices Control) Order, 2013.

5. True, the prices of Liquid Medical Oxygen and Oxygen Inhalation (Medicinal Gas) in cylinder could be controlled effectively, only if the transportation cost which can be charged by the manufacturer/supplier is fixed.

6. In the circumstances, the State Government is directed to expedite the process initiated for fixing the transportation cost of Liquid Medical Oxygen and Oxygen Inhalation (Medicinal Gas) in cylinder. There will also be a direction to the State Government to devise a mechanism in the meanwhile and ensure compliance of Ext.P5 order.

List this matter after two weeks. The official respondents shall file a statement in the meanwhile indicating the steps taken for compliance of the directions aforesaid.

P.B.SURESH KUMAR, JUDGE

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