

Presented on 15.09.2020
By P. S. Thakur

(4)

IN THE HIGH COURT OF MADHYA PRADESH

BENCH AT INDORE

(CIVIL EXTRA ORDINARY JURISDICTION)

WRIT PETITION (CIVIL) NO. 13812 OF 2020

IN THE MATTER OF:

PETITIONER: Maharaja Yeshwant Rao Hospital [M.Y. Hospital].

Versus

RESPONDENTS:

1. Union of India Through Ministry of Public Health & Family Welfare Department, Through Secretary, New Delhi.

2. State of Maharashtra Through Principal Secretary, Public Health Department, G.T. Hospital Compound, 10th Floor, New Mantralaya, Mumbai – 400 001.

3. M/s. Inox Air Products Pvt. Ltd., Through Authorized Signatory, 7th Floor, Ceejay House, Dr. Annie Besant Road, Mumbai- 400 018 (Maharashtra).

4. Medical Education Department, Government of MP, Mantralaya, Bhopal [**Formal Respondent**].

5. Public Health & Family Welfare Department, Government of MP, Bhopal [**Formal Respondent**].

Joint Director-C...
Govt. M. Y. Hospital, INDORE

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, BESEECHING THE HON'BLE**

**HIGH COURT TO ISSUE ITS WRIT OF CERTIORARI SETTING
ASIDE THE NOTIFICATION DATED 07.09.2020 ISSUED BY
THE STATE GOVERNMENT OF MAHARASHTRA (PUBLIC
HEALTH DEPARTMENT).**

TO,

**THE HON'BLE CHIEF JUSTICE OF MADHYA PRADESH HIGH
COURT AND HIS COMPANION JUDGES OF THE
HIGH COURT OF MADHYA PRADESH.**

**THE HUMBLE PETITION OF THE PETITIONER ABOVE
NAMED**

MOST RESPECTFULLY SHEWETH:

1 PARTICULARS OF ORDER AGAINST

WHICH PETITION IS MADE: -

- (i) Date of Order/letter: Notification dt. 07/09/2020
- (ii) Passed in Case No.: -
- (iii) Issued by: Govt. of Maharashtra, Deptt. Of Public Health.
- (iv) Subject Matter in brief:- The present writ petition is filed seeking the writ of certiorari to quash that part of the Notification dated 07.09.2020 issued by the State Government of Maharashtra (Public Health Department)/Respondent herein whereby the direction has been issued that 80% of production of oxygen by the manufacturing units in State of Maharashtra to be used for medical oxygen and to be supplied to the hospital in Maharashtra only being contrary to Article 14, Article 21 of the Constitution of India and the judgments of the Hon'ble Supreme Court declaring the right to health and medical services as fundamental right of the citizen to live life with dignity, therefore, the present petition.

2. **A declaration that no proceeding on the same subject matter has been previously instituted in any Court.**

No matter pending regarding same subject matter except this.

3 **Details of remedies exhausted.**

That, there is no alternative efficacious remedy available to the petitioner except to challenge the impugned order, by way of present petition.

4 **Delay, if any, in filing the petition and explanation thereof:**

It is submitted that there is no inordinate delay in filing the present writ petition.

5 **FACTS OF THE CASE:** -

1. The Petitioner herein prefers the instant petition beseeching the extra-ordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India seeking the writ of certiorari to quash that part of the Notification dated 07.09.2020 issued by the State Government of Maharashtra (Public Health Department)/Respondent herein whereby the direction has been issued that 80% of production of oxygen by the manufacturing units in State of Maharashtra to be used for medical oxygen and to be supplied to the hospital in Maharashtra only being contrary to Article 14, Article 21 of the Constitution of India and the judgments of the Hon'ble Supreme Court declaring the right to health and medical services as fundamental right of the citizen to live life with dignity. A true and typed copy of the Notification dated 07.09.2020 issued by the State Government of Maharashtra (Public Health Department) is annexed herewith and marked as **ANNEXURE P - 1.**

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2. The Petitioner is also been constrained to invoke the extraordinary writ jurisdiction of this Hon'ble Court, under Article

226 of the Constitution of India, as the aforesaid notification 07.09.2020 issued by the State Government of Maharashtra (Public Health Department), suffer from patent illegality and material irregularities, which have been expatiated on, in the following paragraphs.

3. The facts and circumstances cuiminating in the filing of the present Petition by the Petitioner herein, are as follows:

- (i) That the Petitioner herein/M.Y. Hospital is a super-specialty government hospital in district Indore, Madhya Pradesh and catering to the medical needs of the Covid-19 virus infected as well as the other patients.
- (ii) That, the Petitioner/M.Y. Hospital, Indore/Buyer has entered in to an agreement for supply of liquid gases with M/s. INOX Air products Private Ltd./Supplier, Mumbai, Maharashtra on 21.05.2018 wherein it was agreed that M/s. INOXAP shall supply Liquid Oxygen/Nitrogen/Argon/Medical Oxygen manufactured by them at the Buyer's site. This agreement is for three/3 years and valid till 20.05.2021. A true and typed copy of the Agreement dated 21.05.2018 is annexed herewith and marked as **Annexure P – 2.**
- (iii) That, in December, 2019 Corona virus disease (Covid-19) caused by SARS-CoV-2, was recognized in Wuhan, China in December, 2019. Genetic sequencing of the virus suggests that it is a betacoronavirus closely linked to the SARS virus. Clinical and virologic studies that have collected repeated biological samples from confirmed patients demonstrate that shedding of SARS-CoV-2 is highest in the upper respiratory tract (URT) (nose and throat) early in the course of disease.

- (iv) That the District Hospital Vidisha, M.P. on 20.03.2020 entered in to an agreement with M/s. Capital Medicare, Bhopal for supply of medical oxygen to the hospital. M/s. Capital Medicare, Bhopal purchases medical oxygen from M/s. INOXAP, Mumbai. The notification dated 07.09.2020 regularizing and mandating 80% of supply of the medical oxygen to the hospitals in State of Maharashtra will adversely affect the supply of medical oxygen to the District Hospital Vidisha, M.P. wherein the Covid-19 patients are also treated. A true and typed copy of the agreement dated 20.03.2020 between District Hospital Vidisha, M.P. with M/s. Capital Medicare, Bhopal is annexed herewith and marked as **Annexure P – 3.**
- (v) That due to outbreak of Covid-19 virus and to stop the further wide spread of the Covid-19 virus, the Government of India imposed lockdown in the entire country and only essential service providers like Hospitals to cater to the health and medical needs of the citizens were allowed to function and operate. The Petitioner/Hospital is providing continuous health and medical services with full dedication to the Covid-19 patients as well as other patients who are visiting or admitted to the Hospital for treatment. A true and typed copy of the notification dated 24.03.2020 issued by the Government of India is annexed herewith and marked as **Annexure P – 4.**
- (vi) That, the cases of Covid-19 patients in State of Madhya Pradesh are increasing every day wherein approximately 15% develop severe disease that requires medical oxygen support. In the group of Petitioner/Hospital and in the Hospitals

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associated with Mahatama Gandhi Memorial Medical University like Manorama Raje T.B. Hospital, Maharaja Tukojirao Holkar Hospital, New Chest Central and Superspeciality Hospital, the patients of Covid-19 are treated. In all these hospitals around 400 patients are admitted daily for treatment wherein around 300 metric ton of oxygen is required every day for treatment of the Covid-19 patients. The strategy adopted by the Hospital for Covid Management in High Growth scenario is annexed herewith and marked as **Annexure P-5.**

(vii) That, the Respondent/State Government of Maharashtra issued notification dated 07.09.2020 making it mandatory and obligatory for the industrial units producing, manufacturing and supplying medical oxygen in the State of Maharashtra to supply 80% of the medical oxygen within the hospitals in State of Maharashtra only. That, because of the Notification dated 07/09/20, the Respondent No.3 is now backing out for the supply as agreed vide Agreement dated 21/05/2018.

(viii) That, the Department of Health and Family Welfare, Government of India vide its O.M. dated 10.09.2020 has issued instructions that since medical oxygen is an essential public health commodity and any impediment in the supplies of Medical Oxygen in the country may critically impact the management of patients suffering from Covid-19 disease in other parts of the country, it is to be ensured by all the State Governments that no restriction is imposed on the movement of medical oxygen between the States. The copy of the O.M. dated 10.09.2020 issued by the Department of Health and Family Welfare, Government of India is annexed herewith and marked as **Annexure P-6.**

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The Petitioner prefers the instant appeal against the Notification dated 07.09.2020, on following, amongst other grounds:

6/ GROUNDS

The present Writ Petition is filed on the following grounds among others:

- (A) **Because**, the impugned notification dated 07.09.2020 is unsustainable in law being contrary to the judgment of the **Hon'ble Supreme Court in Pt.Parmanand Katara V Union Of India & others reported in AIR 1989 SC 2039** wherein the Hon'ble Court ruled that every sector whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protection life. **No law or state action can intervene to avoid or delay the discharge of the paramount obligation cast upon members of the medical profession.** The obligation being total, absolute, and paramount, laws or procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained, and must, therefore give way.
- (B) **Because**, the Department of Health and Family Welfare, Government of India vide its O.M. dated 10.09.2020 has issued instructions that since medical oxygen is an essential public health commodity and any impediment in the supplies of Medical Oxygen in the country may critically impact the management of patients suffering from Covid-19 disease in other parts of the country, it is to be ensured by all the State Government's that no restriction is imposed on the movement of medical oxygen between the States. Hence, the notification dated 07.09.2020 deserves to be set aside.

Because, the Petitioner/Hospital which is a super-specialty government hospital and catering to the medical needs of the Covid-19 virus infected as well as the other patients requires uninterrupted supply of medical oxygen. Approximately 15% of

the patients of Corona Virus develop severe disease that requires oxygen support and 5% have critical diseases with complications such as respiratory failure, acute respiratory distress syndrome (ARDS), kidney injury and cardiac injury. In the group of Petitioner/Hospital and in the Hospitals associated with Mahatama Gandhi Memorial Medical University like Manorama Raje T.B. Hospital, Maharaja Tukojirao Holkar Hospital, New Chest Central and Superspeciality Hospital, the patients of Covid-19 are treated. In all these hospitals around 400 patients are admitted daily for treatment wherein around 300 metric ton of oxygen is required every day for treatment of the Covid-19 patients. In these circumstances, when the entire country is struggling with the Covid-19 pandemic and is need of medical resources, the notification dated 07.09.2020 issued by the State Government of Maharashtra/Respondent herein will seriously prejudice and jeopardize the efforts of the Petitioner/Hospital in providing best medical care to the Covid-19 patients who are suffering from severe diseases that requires medical oxygen support for treatment.

- (D) **Because**, the District Hospital Vidisha, M.P. on 20.03.2020 entered in to an agreement with M/s. Capital Medicare, Bhopal for supply of medical oxygen to the hospital. M/s. Capital Medicare, Bhopal purchases medical oxygen from M/s. INOXAP, Mumbai. The notification dated 07.09.2020 regularizing and mandating 80% of supply of the medical oxygen to the hospitals in State of Maharashtra will adversely affect the supply of medical oxygen to the District Hospital Vidisha, M.P. wherein the Covid-19 patients are also treated.

Govt. M. Y. Hospital, INDOR

- (E) **Because**, the medical colleges of the State of M.P. along with the Petitioner and the Hospitals associated with Mahatama Gandhi Memorial Medical University like Manorama Raje T.B. Hospital, Maharaja Tukojirao Holkar Hospital, New Chest

Central and Superspeciality Hospital are given responsibility to treat 20% of the Covid-19 patients with severe and critical diseases by designating them as Dedicated Covid Hospitals (DCH) wherein the treatment requires oxygen support. The notification dated 07.09.2020 shall severely affect and undermine the efforts of these DCH to provide effective health and medical facilities to the Covid-19 patients.

- (F) **Because**, patients with severe form of Covid-19 disease are being diagnosed with severe pneumonia showing signs of severe respiratory distress. The critical patients are being diagnosed with acute respiratory distress syndrome (ARDS) showing signs of pulmonary infiltrates (respiratory failure), oxygenation impairment, Sepsis (fast breathing, low oxygen saturation), acute pulmonary embolism, acute coronary syndrome, acute stroke and delirium and requires oxygen support for treatment. The notification dated 07.09.2020 which tends to completely restrict the supply of oxygen outside the State of Maharashtra shall adversely affect the treatment of serious Covid-19 patients in the hospitals admitted in the State of M.P.
- (G) **Because**, the Respondent/State Government of Maharashtra has not provided any scientific data to show that the hospitals in State of Maharashtra are facing shortage of the medical oxygen to such an extent that 80% of medical oxygen produced and manufactured in Maharashtra has to be supplied to the hospitals in Maharashtra only and not to the hospitals in neighboring States or hospitals in other States. It shows that the notification dated 07.09.2020 was issued in haste without analyzing the situation and without consulting the stake holders specially the medical oxygen producers, manufacturers and the suppliers who have the contractual obligations with other entities/hospitals to provide/supply the medical oxygen.

- (H) **Because**, the notification dated 07.09.2020 is against law being discriminatory in nature as it tends to discriminate between the patients based on their region or domicile or on the basis of the State where they live or getting the treatment. The notification dated 07.09.2020 is violative of Article 14 of the Constitution of India which ensure equality of law of every citizen of this country. The needs of the patients for medical oxygen in the State of Madhya Pradesh are no less important than the needs of patients in the State of Maharashtra. The medical assistance in the form of medical oxygen can not be denied to a citizen of this country merely on the basis of this region or place of getting treatment. This will amount to worst form of discrimination especially in these unprecedented times due to Covid-19 pandemic.
- (I) **Because**, the effect of the notification dated 07.09.2020 issued by the Respondent/State Government of Maharashtra will be that the Petitioner/Hospital which has a subsisting agreement with the Supplier/M/s. INOXAP/Respondent herein for supply of medical oxygen shall not be provided with the agreed supply of medical oxygen thereby adversely affecting the medical and health care services of Covid-19 patients as Oxygen supply is vital for management of severe and critical Covid-19 patients. On the basis of the recommendations of the Indian Council of Medical Research (ICMR) and World Health Organization (WHO), all DCH with severe and critical Covid-19 patients are being equipped with functioning oxygen systems, oxygen-delivering interfaces (nasal cannula, Venturi mask), administration of supplemental oxygen therapy, advances oxygen/ventilator support.
- (J) **Because**, with the increasing cases of Covid-19 patients in State of Madhya Pradesh every day wherein approximately

15% develop severe disease that requires medical oxygen support, the notification dated 07.09.2020 issued by the State of Maharashtra/Respondent directing and regulating the supply of the 80% of the medical oxygen produced/manufactured in State of Maharashtra to the hospitals in Maharashtra by completely ignoring the hardships to be faced by the buyers including the Petitioner herein of the medical oxygen from the suppliers/manufacturers/Respondent herein based in State of Maharashtra shall severely and adversely affect the efforts of the Petitioner/Government Hospital to provide health and medical care facilities to the patients due to scarcity or insufficient supply of the medical oxygen.

(K) **Because**, the notification dated 07.09.2020 amounts to denying the right of proper health facility to the patient on the basis on the region of his treatment by mandating 80% supply and use of medical oxygen in the hospitals in the State of Maharashtra only at the cost of putting the life of the patients getting treatment outside the State of Maharashtra which is completely contrary to the fundamental right of life and health services enshrined in Article 21 of the Constitution of India. The expression 'life in this article means a life with human dignity & not mere survival or animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic condition in workplace & leisure and the right to health is inherent to a life with dignity.

(L) **Because**, the Hon'ble Supreme Court of India in its judgments in *Bandhua Mukti Morcha v Union of India & Ors.* AIR 1984 SC 802 interpreted the right to health under Article 21 which guarantees the right to life. In *State of Punjab & Ors v Mohinder Singh Chawla (1997) 2 SCC 83* the Apex court/Hon'ble Supreme Court reaffirmed that the right to health is fundamental to the

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right to life and should be put on record that the government had a constitutional obligation to provide health services. In ***State of Punjab & Ors v Ram Lubhaya Bagga***, AIR 1988 SC 117, the court went on to endorse the State's responsibility to maintain health services. In light of the judgments of the Hon'ble Supreme Court declaring right to health as a fundamental right of the citizen of this Country, the notification dated 07.09.2020 issued by the State Government of Maharashtra/Respondent herein which in effect deprives the citizen of proper health services by regulating it 80% of the supply of medical oxygen within the hospitals of State of Maharashtra ignoring the contract and arrangements of the hospitals outside the State of Maharashtra and without following the due procedure established by law is unsustainable in the eyes of law and deserves to be quashed and set aside.

- (M) **Because**, Article 21 deals with "no person shall be deprived of his life or personal liberty except according to procedure established by law". The right to live means something more, than mere animal existence & includes the right to life consistently with human dignity & decency. The Supreme Court has directed the government to implement the fundamental right to life and liberty and executed protection measures in the public interest. The Hon'ble Supreme Court also pointed out that fundamental rights are intended to foster the ideal of political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. The Hon'ble Supreme Court, while widening the scope of Article 21 of the Constitution in ***Paschim Bangal Khet Mazdoor Samity & Others V State of West Bengal & Others*** reported in AIR1996SC2426 held that in a welfare state, primary duty of the government is to secure

the welfare of the people and more over it is the obligation of the government to provide adequate medical facilities for its people. The government discharges this obligation by providing medical care to the persons seeking to avail those facilities. Article 21 impose an obligation on the state to safeguard the right to life of every person preservation of human life is thus of paramount importance. The government hospitals run by the state are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed under Article 21 of the Constitution of India.

4. That the Petitioner most respectfully submits that no other Writ Petition impugning the validity of the Notification dated 07.09.2020 issued by the State Government of Maharashtra (Public Health Department)/Respondent herein has been filed either before this Hon'ble Court, Hon'ble Supreme Court or any other Court.

Para No. 7: Relief Sought: -

In the light of the foregoing averments, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- a) Issue the writ of Certiorari and quash that part of the Notification dated 07.09.2020 issued by the State Government of Maharashtra (Public Health Department)/Respondent herein whereby the direction has been issued that 80% of production of oxygen by the manufacturing units in State of Maharashtra to be used for medical oxygen and to be supplied to the hospital in Maharashtra only and;
- b) Pass such further and other orders as this Hon'ble Court deems fit, in the facts and circumstances of the instant case.

8 **Interim relief:** That from the aforesaid facts, the petitioner has demonstrate a prima facie case in its favour by highlighting that the act of State of Maharashtra in issuing the impugned notification is violative of Art. 21 and therefore, it is humbly prayed that the operation and effect of Notification dated 07/09/20 (**Annexure P/1**), particularly on Respondent No. 3, restricting the supply of Oxygen to the petitioner hospital and associate hospitals may kindly be stayed till the final disposal of the petition.

9 **Caveat:** -

No notice of Caveat so far received by the petitioner.

10 **LIST OF ANNEXURES:** As per INDEX.

Submitted by,

[Dr. P.S. Inakur]
Superintendent, M.Y. Hospital, Indore
FOR & ON BEHALF OF PETITIONER.
Joint Director-Cum-Supdt
Govt. M. Y. Hospital, INDORE

ADVOCATE FOR THE PETITIONER

INDORE:

DATED: 14.09.2020