

CRM-W-587-2021 and
CRM-W-560-2021 IN
CRWP-242-2021

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Rishi v. State of Haryana and others

Present: Mr. Rupinder Khosla, Senior Advocate with
Mr. Sarvesh Malik, Advocate as Amicus Curiae.

Mr. Baldev Raj Mahajan, Additional Advocate General with
Mr. Ankur Mittal, Additional Advocate General, Haryana.

Mr. Atul Nanda, Advocate General, Punjab with
Mr. Vikas Mohan Gupta, Additional Advocate General, Punjab.

Mr. Pankaj Jain, Senior Standing Counsel with
Mr. Jaivir Chandail, Additional Government Pleader for
UT, Chandigarh.

Mr. J.S. Toor, APP for UT, Chandigarh.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Dheeraj Jain, Advocate for Union of India.

Mr. Anupam Gupta, Senior Advocate with
Mr. Karan Bhardwaj, Advocate for the applicant in
CRM-W-560-2021.

Mr. Sumeet Goel, Advocate for the applicant in
CRM-W-587-2021.

Case has been heard through Video Conferencing on account of
COVID-19 Pandemic.

At the outset, Mr. Khosla has pointed out that there is severe
shortfall in supply of oxygen to all the three States within the jurisdiction of
this High Court. The allocated quantity of oxygen is either not being
supplied or has been allotted from very distant places, such as, Rourkela and
Jamnagar etc., timeline for which is not conducive. By the time the
arrangements are made, the States are virtually left starving of oxygen,
resulting in many deaths.

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As regards supply of oxygen in State of Punjab, Mr. Atul Nanda, learned Advocate General, Punjab submits that the State requires 300 MT oxygen whereas the Centre has allocated to it 227 MT oxygen which is also not reaching the State. Sufficient number of containers are not allotted to transport the same. Besides, the State needs 600 doses of Tocilizumab which is considered as life saving drug in critical cases. He has also emphasized on the shortage of vaccination in the State. According to him, the entire vaccination has to be made available by the Centre for the age group of 45 and above. The requisite quantity has not been supplied so far. There is a shortfall of 32 lakhs of doses. In total, 2.64 crores doses are required in the State of Punjab for the age group of 18 to 45 years. The State has been given liberty to secure the same from two suppliers, namely, Serum Institute, Pune and Bharat Biotech on payment basis. This demand has also not been met despite the fact that orders have been placed after following due procedure.

Mr. Baldev Raj Mahajan, learned Advocate General, Haryana has submitted that the State is facing extreme shortage of oxygen despite the fact that it has a plant located at Panipat which is manufacturing 260 MT thereof. Instead of allowing the State of Haryana to get the supply from the plant at Panipat for the facility of transport as well as timely replenishment, it has been allocated far off places like Rourkela and Jamnagar etc. Resultant delay has led to several deaths in Haryana as well.

As per Mr. Pankaj Jain, learned Senior Standing Counsel for UT, Chandigarh, even UT is now facing difficulty in procuring the required quantity of oxygen.

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A question has been put to Mr. Satya Pal Jain, learned Additional Solicitor General of India, representing the Union of India about the aforesaid contentions raised by learned counsel for all the three States. He emphatically submits that the allocation of oxygen is being done equitably to all the States in the country. No discrimination is being done and nobody has been given, out of turn, favoured status. According to him, certain difficulties are being faced in view of the fact that certain States do not have oxygen plants. They have also to be supplied oxygen.

We have carefully considered submissions of Mr. Jain. It is, however, clear that oxygen can be transported only by rail or road. Admittedly the oxygen cannot be lifted by air from the distant places as it is highly flammable. Only the empty containers can be air lifted and sent to various places. Thus, in view of the fact that time is taken for transportation, there is oxygen deficit in all the three States. It appears that all three States, at this stage, are not seeking enhancement in the quantity of oxygen allotted to them, but are aggrieved by delay in supply thereof. As a result of late delivery, allocated quantity of oxygen is not able to reach the States well in time. We, thus, feel it necessary to direct Government of India to consider reorientation of the supply of oxygen from various plants in such a manner that the allocated quantity reaches the respective States before already allotted quota is exhausted to avoid loss of life. Mr. Satya Pal Jain, assures the court that the matter shall be considered immediately and appropriate steps shall be taken. We may add here that at present the situation in the three States falling within the jurisdiction of this court, appears to be critical and deserves immediate attention of the Union.

CRM-W-587-2021 has been moved by Mr. Sumeet Goel,

Advocate. He submits that inspection report has been submitted pursuant to order dated 4.5.2021. The supply of oxygen be made as per the report of the State.

Mr. Mahajan, learned Advocate General, Haryana assures the court that appropriate steps shall be taken depending upon the supply of oxygen received by the State from the allocated quota.

Application stands disposed of accordingly.

In CRM-W-560-2021, Mr. Anupam Gupta, at the outset submits that the order was passed on 4.5.2021 and on 5.5.2021 and 6.5.2021, UT, Administration took steps to publicise number of beds available in Government/Private hospitals. However, the break up of oxygen beds, ICU beds and ICU beds with ventilators has not been given. Besides, Mini Covid Centres by NGOs have been set up for which Administration has given permission. Availability of beds in those Mini Covid Centres is also required to be included in the tabulated form and publicised on daily basis.

Mr. Pankaj Jain, learned Senior Standing Counsel assures the court that needful shall be done today itself and the necessary publication shall be made in this regard.

At this stage, we may point out that all the three States may also consider the setting up of unified command centre for Chandigarh, Panchkula and Mohali as the working and business class have their work place or residence in either of the three cities. In this manner, three cities are now integrated as a tricity. In case a joint strategy is drawn up, it may be easier to tackle the present crisis. In a situation like one created by Covid-19 Pandemic paramount consideration with the Governments should be of helping every human being irrespective of the State to which he belongs.

For better administration and to implement policies, parochial or other considerations should not stand in the way. In case, there is a common platform to deliberate upon the strategies to be adopted, it would be easier to tackle the challenges posed by the Pandemic.

Mr. Khosla has pointed out that in view of order dated 4.5.2021 passed by this court, the supply of drugs through the private chemists to whom franchise had been given, has already been withdrawn.

Mr. Pankaj Jain submits in the same terms. According to him, the control and supply of these drugs such as *Remdesivir* and *Tocilizumab* etc. has been taken over by the Director, Health Service, Chandigarh and the hoarding etc. has been considerably curbed. A query has, however, been put to him whether these drugs can also be provided through a Government controlled drug centre, preferably in GMSH-16, which is centrally located, on payment basis against prescription, he submits that this issue shall also be examined today itself. सत्यमेव जयते

Before parting with the order today, we may add that it would be a mistake to under estimate the virulence of the virus as the Scientist are still bewildered at its unpredictable behaviour and the manner it would manifest itself in a particular individual. It surreptitiously enters the human body and causes damage, lungs being most affected part. In such a situation, the availability of oxygen at the earliest is imperative. In absence thereof, many patients experience breathlessness and other complications and resultant fatalities. People in trauma cannot be made to run here and there in hospitals to get oxygen cylinders. The Governments need to be over sensitive and in a overdrive to reach out to patients in need of medical care and assistance. It is for this reason, we feel that a common strategy needs to be

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drawn up particularly as regards availability of oxygen. There have been certain media reports that some States have activated auto ambulance service fitted with oxygen. States may ascertain veracity of such reports and consider whether such citizen friendly exercise can be undertaken by outsourcing, if necessary.

Lastly, this court would be failing in its duty if the work done by philanthropic organizations is not appreciated who have taken upon daunting task of serving and taking care of Pandemic affected patients by risking their own lives. At the same time, there are others who have acted as predators looking for an opportunity to fleece people even in this crisis. This court gives the liberty to the States to act sternly against such culprits and take strict action.

Adjourned to 12.5.2021.

सत्यमेव जयते

(RAJAN GUPTA)
JUDGE

May 7, 2021
gbs

(KARAMJIT SINGH)
JUDGE