

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;
Shri S.G. Chapalgaonkar, Advocate for respondent
no.8;
Shri S.R. Patil, Advocate for respondent No.20;
Shri K.N. Lokhande, Advocate for respondent
No.22;
Shri D.M. Shinde, Advocate for respondent No.23;
Shri R.K. Ingole, Advocate for respondent no.25.

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

DATE : 28th MAY, 2021

ORAL ORDER :-

FAULTY VENTILATORS

1. The learned ASGI has tendered before
us an affidavit sworn by Shri G.K. Pillai,

Under Secretary, MoHFW, Government of India, dated 28.05.2021. Since the pagination of the said affidavit (179 to 331) is incorrect, we are marking the said document as X-19, for identification. There is no supporting Affidavit. The deponent is stated to be in Aurangabad today.

2. The Chief Public Prosecutor has placed before us a 'day to day' report prepared by the GMCH as regards the use of the 113 ventilators, from 12.04.2021 onwards. The said report is signed by eight doctors who deal with ICU and the utilization of ventilators. The said report (5 pages) is taken on record and marked as "X-20" for identification.

3. The report indicates that the ventilators developed errors from day one. The Company Engineers installed 25 ventilators in the Medicine Department and 25 ventilators were distributed to the District and private hospitals. All such 25 ventilators were returned by the ICU departments of the concerned hospitals, as they were not functioning properly and patients had started complaining about

breathlessness and associated symptoms within hours of the ventilators having been switched on. Private hospitals also returned the ventilators stating that they were not working properly. On 06.05.2021, the Service Engineers of the Manufacturer were informed and a Team of three technicians visited the GMCH on 12.05.2021. On 14.05.2021, a Company Service Engineer joined the Team and calibrated 'in-put oxygen' regulators of two ventilators. They worked well overnight and next day by afternoon patients complained about poor oxygen and showed signs of restlessness. Several details are set out in said report X-20, which are quite shocking. Patients even from Super Specialty Block, Trauma ICU complained. The Committee noted that several other ventilators manufactured by different companies were being successfully used for more than six months to one year and it was only those ventilators manufactured by Jyoti CNC Rajkot, which were malfunctioning. Even after major repairs, the results set out below clause 10 of X-20 indicate the failure of the ventilators.

4. In the final conclusions of the Committee, comprising of senior eight

doctors, it was opined that these machines are unsafe for patients use and it was decided not to test any of these machines on patients, henceforth.

5. We have perused the said affidavit X-19 and have puts several questions to the learned ASGI. Our interaction with the ASGI led to the following answers :-

(a) These 150 ventilators were never supplied through the P.M. Cares Funds. (As such, there is a complete denial that these ventilators were funded through the P.M. Cares Funds, as was earlier announced).

(b) These ventilators are manufactured by M/s Jyoti CNC Automation Limited, Rajkot.

(c) All the ventilators have been tested by applying world class testing parameters.

(d) Each ventilator is accompanied by an instruction/user manual.

(e) Intensive Digital Training for

installation, operation and maintenance of ventilators is provided to the States by the Central Government for Covid-19 management.

(f) These are modern ventilators, which are highly complex and are sophisticated medical equipments.

(g) Doctors and paramedics are not properly trained to operate such ventilators at Aurangabad.

(h) MoHFW and the Procurement Central Public Sector Enterprise/Agency, namely HLL Lifecare Limited will organize online Intensive Digital Training Course for doctors, Paramedics, Biomedical Engineers etc.,

(i) The complaints of the medical institutions/hospitals will have to be assessed objectively.

(j) Optimum utilization of ventilators will be undertaken to identify further training needs and ensure overall improvement.

showing operating status as `OK', and hence, the present Criminal Suo-moto PIL may be disposed off (The learned ASGI now submits that the submission of the affiant, praying for the disposal of the PIL, is being withdrawn).

6. The learned Amicus curiae submits that even today, not a single hospital/institution which was delivered with such ventilators, has submitted a report that even one ventilator is operating satisfactorily. The learned Chief Public Prosecutor submits on the basis of the instructions received by him today, that the manufacturer had made an effort to rectify some of the ventilators. However, even today, not a single ventilator is operational. Since there is one year warranty on these machines and as entire payment may have been made by the MoHFW through the public exchequer, it would be the duty of the Manufacturer to ensure proper operation of the machines or replace them.

7. We find from the explanation given by the Manufacturer, at Annexure R-7 (page

301 of Ex-19), as under :-

(a) The Government Medical College, Aurangabad was non-cooperative right from the acceptance of the delivery and the local District Collector had to direct the GMCH for unloading and accepting the ventilators.

(b) There is nothing on record to demonstrate that the ventilators are malfunctioning.

(c) The user manual and training videos are not followed by the operators.

(d) The GMCH did not submit any complaint, either on the helpline number or the e-mail address pasted on the instruments.

(e) There is inadequate infrastructure at the GMCH and hence, the ventilators are not being used properly.

(f) 300 ventilators are performing

satisfactorily in other States of India and other regions of Maharashtra and Aurangabad.

(g) There is no fault on the part of the manufacturer and it cannot be held responsible for inadequacies on the part of the GMCH.

8. We find that the subject "Public Health and Hospitals" is at entry-6 in the State list and the legislative powers as well as executive and administrative powers of the State Government pertaining to the said subject are covered by Article 162. Thus, this would be in the domain of the State Government and it would be answerable on this subject. Before accepting or acquiring such medical equipments/instruments, by any medical facility/hospital, the State Government should be making it mandatory for the Manufacturer to undertake fullest cooperation and assistance in the event of the equipment becoming dysfunctional or in the event of break down or the performance of such instrument not being at the optimum level.

9. We are unable to appreciate the contention of the ASGI on the basis of the affidavit X-19, that the ventilators are in perfect operating conditions and it is the hospitals, who do not have trained personnel to operate the said ventilators properly. The affidavit before us has a semblance of the affiant virtually defending the manufacturer and declaring that the ventilators are in operating condition. We find that such statements demonstrate insensitivity on the part of Ministry of Health and Family Welfare (MoHFW). Instead of expressing whole hearted support to ensure that such costly instruments are put to optimum utilization in the interest of the lives of the patients, it appears that the affiant found it advantageous to contend that there is no merit in the report of the Dean of the Government Medical College, and that this PIL should be disposed off. The tenor of the affidavit in reply is that the ventilators are in working condition and the deficiencies are with the hospitals and the doctors/paramedics/technicians. We would have appreciated had the affiant avoided entering into a blame game and instead shown sensitivity towards the patients, it being

the paramount object of the welfare State to take care of the health of it's citizens.

10. The learned ASGI hastens to add that the manufacturer has manufactured these instruments after following the prescribed procedure and the Dean of the Medical College is doubting the said machine and there is no material to fault the ventilators. With this statement of the learned ASGI, we find that he is questioning the report of the Dean, who has listed out six reasons as regards the defects in the ventilators, cognizance of which is taken by us on the last day and which reflects in our order passed on the said day. The affidavit X-19 does not even remotely refer to the six reasons as regards the malfunctioning of the ventilators cited by the GMCH in X-18. The ASGI has addressed us as if he is holding the brief for the Manufacturer.

11. In the backdrop of the above, the learned ASGI now submits that the MoHFW would take all remedial steps and ensure that the ventilators would operate normally and all defects, if any, would be removed. We, however, need to be apprised by the MoHFW, as

to whether the manufacturer and procuring agency, which delivered the machines to the Government Medical College at Aurangabad, had ever inquired as to whether the GMCH had the infrastructure to operate the said machines and whether any specific training was imparted to the technicians, who were supposed to operate them. We would also appreciate if the MoHFW refrains from questioning the reports of the Medical Experts and instead respects such reports in the larger interest of the society and concentrates on rectifying the said machines.

12. In view of the above, we would be taking up this issue on 2nd June, 2021. We expect the learned ASGI to seek proper instructions in the light of the report X-20 and apprise us of the remedial steps that would be necessary to be undertaken.

MUCORMYCOSIS

13. The learned Chief Government Pleader has placed before us an order passed by a Coordinate bench at Mumbai on 27.05.2021 in Public Interest Litigation No.10276/2021 along with connected matters. The learned

Bench has noted the submissions of the learned Advocate General that the treatment of Mucormycosis requires about 4-5 vials per patient per day for about 3-4 weeks and the approximate number of Mucormycosis patients in the State are about 3200, who would require 14000 vials per day. The allocation by the Central Government is approximately 4000-5000 vials per day.

14. The learned ASGI Shri Anil Singh has informed the learned Bench that the Central Government has taken initiatives to issue fresh licences to manufacturers, who intend to manufacture the drug. He expects a supply of 2,50,000 vials in the month of June, 2021.

15. The learned Chief Public Prosecutor informs us that there would be a rise in the supply of the drug for 'Amphotericin B' to treat the Mucormycosis patients and he would make the statement on 3rd June, 2021 as regards the supply of number of vials of 'Amphotericin B' to the Marathwada region. There is no dispute that even today, there is an insufficient supply of 'Amphotericin B' for treating patients in the Marathwada region. As such, we would take up this issue

on 3rd June, 2021.

AMBULANCE OPERATORS OVERCHARGING PATIENTS

16. The learned Amicus Curiae has placed before us news reports published in Divya Marathi/D.D. Star dated 26th May, 2021 and the reports published in Dainik Lokmat Today. The reporter of Divya Marathi has resorted to a sting operation and has published the discussions between the reporter and several Ambulance operators, which indicate that the Ambulance operators are openly demanding multi-fold times of the approved rates of Ambulances. It is also stated in Divya City/Divya Marathi dated 28.05.2021, that the State Government has published the rates of fare to be paid to the Ambulances. These fares are suppressed and patients/relatives are compelled to pay multi-fold times the approved rates. The circular bearing the signatures of the Regional Transport Authority is also published in the said news report. The Deputy Regional Transport Officer has expressed a view that he has not received any complaint from any aggrieved patient/relative of a patient.

17. Shri Chapalgaonkar, the learned Advocate points out the powers of the Regional Transport Authority under Rule 62(8) of the Maharashtra Motor Vehicles Rules, vide which, the said Authority can prescribe the fare to be paid to Taxis and Ambulances. He submits that the District Collector is the Chair person of the Regional Transport Authority and he can deal with complaints as regards overcharging of the fare.

18. We are of the view that since the District Collector of every district is the authority under the Disaster Management Act, all aggrieved patients/relatives of patients would be at liberty to complain to the District Collector, if they have suffered such overcharging of Ambulance fare and the District Collector would deal with such complaints in accordance with the procedure as is laid down.

19. Stand over to 2nd June, 2021.

(B.U.DEBADWAR,J.)

(RAVINDRA V. GHUGE,J.)

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