

CRM-W-560 and 564-2021 IN
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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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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. Ankur Mittal, Additional Advocate General, Haryana.

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

Mr. Sardavinder Goyal, Advocate for the applicant in
CRM-W-564-2021.

Mr. Sukhcharan Singh Gill, Advocate.

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

As the case has been taken up, at the outset, Mr. Khosla,
learned Amicus Curiae has pointed out that very serious situation has arisen
in Haryana as its quota of oxygen has been reduced by 20 MT from the
Panipat plant. Besides, the said plant has over heated and is, thus, not
functioning at 100% capacity. The allocation of 70 MT made from
Rourkela plant takes about four days to reach Haryana. He has further

pointed out that he has received e-mail from C.K. Birla Hospital situated in Sector 51, Gurugram stating therein that it has 17 critical patients in the hospital who are totally dependent on oxygen but they have supply left only till 3 PM today. According to him, there must be other hospitals facing the same difficulty.

Mr. Mittal, learned Additional Advocate General, Haryana has made submissions on similar lines. On a query being put to him whether the matter is already being dealt with by the Hon'ble Supreme Court, he has referred to para 2 of the judgment wherein a direction has been given for creation of 'buffer emergency stock' has to be created with the collaboration of State and the Centre to avoid further loss of life. However, in individual States, the High Courts have been given liberty to examine the issues arising out of deficiency of oxygen, medicines, medical equipment etc. within their own jurisdictions. Mr. Khosla and Mr. Mittal are *ad idem* that para 2 of the judgment deals with these aspects.

Mr. Mittal further submits that if timely supply of oxygen is made, the situation is so critical that several lives may be lost in the State in next 24 hours.

Mr. Satya Pal Jain, who is representing the Government of India, Ministry of Health and Ministry of Home Affairs is available on Video Conferencing. We have sought his assistance in the matter. He submits that he may be given about a hour's time to get instructions and do the needful. Since there is a assertion on behalf of State of Haryana that in case it is allowed to get oxygen from even one plant which is situated at Panipat which is geographically well located and can cater to needs of all

Districts, it shall be able to meet its demand. Mr. Jain submits that the issue can be examined. He may seek instructions meanwhile. If any request in this regard has been made by the State of Haryana to the Government of India, a copy thereof may be furnished to Mr. Jain, learned Additional Solicitor General of India forthwith.

Mr. Vikas Mohan Gupta, Additional Advocate General, Punjab has expressed the same difficulty as regards the procurement of oxygen. According to him, they have been allotted quota from a plant in Rourkela which is not easy to transport to Punjab. The vehicles, coming by road, take number of days to reach the State. He has, thus, vehemently prayed that the State be allotted oxygen from the plant(s) situated nearby. Mr. Jain may examine this issue as well and apprise the court.

Another apprehension expressed by the Amicus Curiae is that availability of beds in various Government and private hospitals is limited. As a result, some patients have to stay at home. In the eventuality, they need oxygen support, they have to purchase the same from the open market. However, the availability is not easy. Mr. Pankaj Jain, learned Senior Standing Counsel, UT, Chandigarh has assured that in case of any such problem, the SDM of the concerned zone in every sector shall be asked to step in to help those patients who are on oxygen support at home. He submits that one dedicated zone-wise phone line shall be allocated and widely publicised by way of broadcast on radio, television and assistance of telephone companies. We hereby direct that needful be done by today evening.

In case, it is found that there is hoarding of any sort, concerned

SDM shall be at liberty to seek police help which shall come into action immediately and take action as the circumstances warrant. In case any report of disobedience of these orders is received by this court, it shall consider initiating punitive action. Likewise in the States of Punjab and Haryana, Nodal Committees have already been created. Both the States have assured us that special arrangements on the same lines as UT, Chandigarh shall be made in every District to ensure that oxygen is promptly supplied to the patients who are on oxygen support at home. For this purpose, dedicated telephone numbers shall be publicised by way of broadcast and on TV/Radio as well through the telephone companies.

On 30.4.2021, both the States had agreed to include the Secretary, Legal Services Authority of the concerned District as a Member of the Nodal Agency. This court shall also consider whether the status report regarding the proceedings of the Nodal Agencies need to be sought under the signatures of the Secretary of the concerned Legal Services Authority.

Needless to observe that in case proper oxygen supply is available to those patients who are on oxygen support at home, it would reduce the pressure on the Administration as well as on the Government and Private hospitals. We also believe that advisories have also been issued by various health departments to the patients to stay at home if the condition is mild to moderate. In such circumstances even home delivery of oxygen cylinders can be considered by the State preferably by Municipal Authorities as Health personnel are already overburdened. Apart from providing succor to the inflicted public, it shall prevent hoarding of oxygen

cylinders.

All the three States have been asked whether the suggestion given by this court on the last date of hearing to categorise the patients in three categories, i.e., mild, mild to moderate and critical had been acted upon and some plan drawn up.

Another issue which has been brought to our notice that certain seized medicines and oxygen cylinders may have been retained as case property, same need to be released. Learned State counsel shall ascertain whether such a situation is existing in three States, if so, provisions of law under which same can be released.

CRM-W-560-2021 has been moved by the applicants for impleadment in the array of parties. Mr. Anupam Gupta, learned senior counsel has drawn our attention to the order dated 29.4.2021 passed by the Government of India, Ministry of Home Affairs, wherein certain directions have been given. It has been, *inter alia*, provided that web portal be created by every State/UT to ensure that ready information is available with the people as regards the availability of beds in Government/private hospitals, the vacancy beds as also availability of oxygen, drugs, vaccine and vaccination centres including guidelines related to use of *Remdesivir* and *Tocilizumab* and wide publication thereof. The relevant para of the directions is reproduced below for ready reference:-

- “i. Ensure adequate advance information to community, also highlighting the need for stringent containment actions so as to win their involvement and support.

- ii. Provide enough time for people movement for essential requirements etc. before announcing the large scale containment.
- iii. Take necessary actions to avoid misinformation & panic in the community.
- iv. Involve local level NGOs/CBOs/CSOs, Opinion Makers and subject experts to create a positive environment and for sustained dialogue with the community.
- v. Create wide publicity on early warning signals and self-reporting so as to identify cases early and to prevent avoidable deaths among home isolation patients.
- vi. Give wide publicity on the mechanism whereby people can get themselves tested, details of available health facilities, requisitioning an ambulance etc. (community based organizations should be encouraged to create WhatsApp groups for quick dissemination of information so that the individuals in need of prevention and/or care services do not suffer delay).
- vii. Ensure that details of hospital beds and their vacancy status is made available on-line and also released to media on a daily basis.
- viii. Details of availability of oxygen, drugs, vaccine

and vaccination centres; including the guidelines related with use of Remdesivir/Tocilizumab etc. be also widely publicized so as to create confidence in the community.

- ix. Community should be oriented about the feasibility of managing mild COVID-19 cases at home with appropriate monitoring of vital parameters such as temperature and oxygen saturation with the help of pulse oxymeter.
- x. Need for COVID Appropriate Behaviour including regulatory frame work for enforcement should be widely publicized.
- xi. Build confidence in community duly highlighting the nature of disease, the fact that early identification helps in early recovery and more than 98% people recover to remove fear as well as stigma related with Covid-19. Involvement of civil society organizations to hold such orientations go a long way in this regard.”

According to him, there is nothing to show that these directions have been implemented in letter and spirit by the Chandigarh Administration. A copy of the application is available with Mr. Pankaj Jain. He submits that he shall seek instructions in this regard and apprise the court on the next date of hearing.

CRM-W-564-2021 has been moved by the applicant for

impleadment in the array of parties. Mr. Sardavinder Goyal, learned counsel has submitted that he was able to purchase two vials of *Remdesivir* from Mr. Shanti who sells the same in Gupta Hospital, Hisar. According to him, he has made complaints, Annexures A-2 and A-4 to the authorities.

Mr. Mittal submits that the complaints of the applicant shall be examined forthwith and this court shall be apprised on the next date of hearing. In these circumstances, we do not feel any necessity of impleadment of the applicant in the array of parties. The application is hereby dismissed. However, Mr. Mittal shall apprise the court of the truth, if any, in the allegations and if so, action taken thereon.

Learned amicus curiae has also informed that certain ventilators are lying unused in the Institutes of Medical Sciences, Mohali, Barnala and other places in Punjab. According to him, all such ventilators need to be put in use immediately in the wake of surge in covid wave. Mr. Gupta, learned Additional Advocate General, Punjab submits that instructions in this regard have already been issued. He shall apprise the court of the action taken. It shall also be ensured whether any such unused equipment is available in any other part of State to ensure that it is put to use in this emergent situation.

Mr. Ankur Mittal also submits likewise. The court be apprised accordingly on the next date of hearing.

Both the States of Haryana and UT, Chandigarh have also apprised the court that they have requested the Government of India for supply of more ventilators.

Mr. Satya Pal Jain submits that their request shall be examined at the earliest.

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Before this court rose for the day, Mr. Jain sought intervention to submit that the entire issue as highlighted in the foregoing paras had been brought to the notice of the concerned authorities at the Centre. The matter was being seriously examined. A decision was likely to be taken either by today evening or tomorrow.

Needless to observe that this court expects that the necessary steps are taken at the earliest to ensure that there is no further loss of life due to paucity of oxygen in the State. In case of crisis, however, State is at liberty to draw from the 'buffer stock' of oxygen created under orders of the Hon'ble Supreme Court dated 30.4.2021 in Suo Motu Writ Petition (Civil) No.3 of 2021.

To come up for further hearing on 7.5.2021.

**(RAJAN GUPTA)
JUDGE**

**May 4, 2021
gbs**

**(KARAMJIT SINGH)
JUDGE**