

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

WP No.13812/2020

(Maharaja Yeshwant Rao Hospital (M.Y. Hospital), Indore Vs.
Union of India and others)

INDORE dt. 16-09-2020

Mr Purusheendra Kaurav, Advocate General alongwith Mr Pushyamitra Bhargav, Additional Advocate General for the petitioner.

The petitioner before this court Maharaja Yeshwant Rao Hospital through its Superintendent Dr. P.S. Thakur has filed the present writ petition under article 226 of the Constitution of India being aggrieved by the action of the respondents No.2 and 3 in stopping the uninterpreted supply of liquid medical oxygen to the Hospital in question.

Undisputedly, Maharaja Yeshwant Rao Hospital is the hospital owned and controlled by the State of Madhya Pradesh. It is a super-specialty Hospital and one of the biggest Hospital in the State of Madhya Pradesh. It is catering to the need of down trodden and persons as far from Alirajpur District, Jhabu Districts which are Districts dominated by tribals are totally dependent upon Maharaja Yeshwant Rao Hospital. It is the only Hospital in the entire region of Malwa under the control of the State Government which is providing all kind of advance treatments including treatment to the covid patients.

It has been argued by learned Advocate General that a common man cannot afford to avail treatment in the Hospitals like Bombay Hospital, Apollo Hospital, Vedanta Hospital and other private super-specialty Hospitals and the petitioner Hospital is the only ray of hope for the poor people. He has stated before this court

that the Covid Pandemic has gulfed the entire country and State of Madhya Pradesh is in a very bad shape. The immediate requirement to the Covid patient is **LIQUID MEDICAL OXYGEN** and in the State of Madhya Pradesh we do not have any Oxygen Manufacturing Plant. The State of Madhya Pradesh is importing liquid medical oxygen from the State of Maharashtra, State of Gujarat and State of Chhattisgarh. As on date the total requirement of oxygen in the State is about 100 tones per day and keeping in view the increase in number of Covid patients the Hospitals will be requiring 270 - 280 tonnes of liquid medical oxygen per day as on 31-10-2020. He has also stated that there are 22,000 active cases as on date and number of patients is going to increase every day keeping in view the rate of infection.

Learned Advocate General has drawn the attention of this court towards an Agreement executed by the petitioner Hospital with respondent No.3 M/s Inox Air Products Pvt. Ltd. and twenty tonnes of liquid medical oxygen is being supplied to the State of Madhya Pradesh by M/s Inox Air Products Pvt. Ltd. The agreement between the petitioner and the respondent No.3 is very much in force. The petitioner has categorically stated in the writ petition that they have been informed by the respondent No.3 about the discontinuance in supply of liquid medical oxygen and the sole reason is a circular issued by the State of Maharashtra dated 07-09-2020 (Annexure-P-1). The State of Maharashtra in the aforesaid Circular has observed that liquid medical oxygen supply is very crucial to the management of patients infected with Covid-19 and, therefore, 80% of the production is to be used only for Hospitals in Maharashtra. He has stated that there cannot be a discrimination between covid patients within various States and if a covid patient of State of

Maharashtra is in need of liquid medical oxygen, the covid patient of Madhya Pradesh is also in need of liquid medical oxygen. He cannot be given Nitrogen in place of liquid medical oxygen. He has stated that even the Government of India has shown great concern in respect of the Circular issued by the State of Maharashtra. He has drawn the attention of this court towards the letter dated 10-09-2020 which is addressed by the Secretary Health to all Chief Secretaries all over the country. The Government of India has categorically written to all the State Governments to continue with the existing supply under the various agreements with Hospitals and various States with a legal obligation to fulfill such agreements.

Learned Advocate General Mr Kaurav has argued before this court that it is very unfortunate that even after intervention of Government of India the oxygen supply is being discontinued. He has also informed this court that large number of patients are dying because of Covid-19 and State cannot close its eyes towards the dying persons who are dying on account of non-supply of liquid medical oxygen. A prayer has been made to direct the State of Maharashtra and the respondent No.3 to continue the supply of liquid medical oxygen as per the Agreement executed from time to time.

Learned Advocate General has placed reliance upon a judgment delivered by the Hon'ble Supreme Court in the case of **Nawal Kishore Sharma Vs. Union of India and others** reported in **2014 (9) SCC 329** and he has stated that the substantial cause of action is also under the territorial jurisdiction of this court as the agreement between the petitioner and respondent No.3 has been signed at Indore only. In the considered opinion of this court in the peculiar facts and circumstances of the case, the issue of jurisdiction

is certainly an arguable point and is left open.

This court keeping in view the totality of the facts and circumstances of the case is of the opinion that the learned counsel for the petitioner Maharaja Yeshwant Rao Hospital has been able to make out a prima facie case for grant of interim relief. By way of interim relief, the respondent No.3 M/s Inox Air Products Pvt. Ltd is directed to continue uninterpreted supply of liquid medical oxygen to the State of Madhya Pradesh including the petitioner Hospital, without being influenced by the Circular dated 07-09-2020 specially the Condition No.2 issued by the State of Maharashtra. Meaning thereby, the supply of liquid medical oxygen to the State of Madhya Pradesh be done by the respondent No.3 uninterruptedly, until further orders.

Issue notice to the respondents, on payment of PF within three days.

Mr Pushyamitra Bhargav, who is appearing alongwith the Advocate General shall also serve the respondents by e-mail, fax as well as by other alternative modes.

List the matter on **19-10-2020**.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

(SHAILENDRA SHUKLA)
J U D G E

Rashmi

Digitally signed by Rashmi
Prashant

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