

**Registrar (Judicial), High Court ... vs The State Of Maharashtra And ... on 2 June, 2021**

**Bench: R.V. Ghuge, B. U. Debadwar**

2.21smcrpil

(1)

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. Anil Singh and Shri. Ajay G. Talhar, ASGIs 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;

Shri. G. K. Naik Thigale, Advocate for respondent No.26

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CORAM : RAVINDRA V. GHUGE

AND

B. U. DEBADWAR, JJ.

DATE : 2nd June, 2021 ORAL ORDER [ Per Ravindra V. Ghuge, J. ] :-

## FAULTY VENTILATORS

1. The learned Chief Public Prosecutor has placed before us a compilation of three pages pertaining to the special meeting held on 29/05/2021 in the Government Medical College and Hospital, 2.21smcrpil Aurangabad, for conducting an analysis of installation, commissioning and operation of ventilators provided to the State by the Central Government for COVID-19 management. He submits that this inspection of the ventilators pertains to the defective ventilators at issue, Model name 'Dhaman-III' and the name of the manufacturer and supplier is Jyoti CNC, Rajkot. We have taken the said report on record and have marked it as 'X-21', for identification.

2. Having perused 'X-21', we find as under :-

- a) The ventilators that were commissioned have suffered continuous break down even after repairs;
- b) Desaturation, water drain issue, UI not proper, frequent oxygen sensor failure, water drain failure and defective user interface are some of the defects;
- c) There is a sufficient stock of consumables with the hospitals;
- d) There are 269 trained personnel in the hospital to operate the ventilators;
- e) Training material/User Manuals have been provided to the hospital at the time of the deployment of the ventilators;
- f) The personnel operating the ventilators are found to be aware of the functioning and operations of the said ventilators;

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g) Amongst the 21 persons who participated in the said inspection and analysis, were the representatives of the manufacture, the procurement agency HLL, CDSCO representatives, DGHS/AIIMS Nagpur and two more representatives of the manufacturer.

3. Shri. Anil Singh, the learned ASGI has addressed us from Mumbai and has conveyed to us that two senior Doctors, one each from the Ram Manohar Lohiya Hospital and the Safdarjang Hospital would be visiting GMCH Aurangabad tomorrow with the intention of carrying out extensive inspection of the ventilators at issue. If the ventilators are found to be dysfunctional even after inspection/repairs, the manufacturer would be held liable and the Union of India shall press for replacement of such defective ventilators keeping in view that there exists a one year manufacturer's warranty in relation to each of such ventilator. Shri. Singh has further stated that this Public Interest Litigation is not adversarial litigation and the Union of India has every desire to ensure that patients are treated properly with the aid of ventilators.

4. The learned ASGI hastens to add that no casualty would occur since these ventilators will not be made operational in the treatment of 2.21smcrpil the patients until the team of the doctors visiting GMCH Aurangabad and representatives of the manufacturer ensure that the ventilators are upto desirable operational standards.

5. The learned Chief Public Prosecutor submits that since it is extremely risky to utilize the defective ventilators in the treatment of the patients, the GMCH Aurangabad and Ambajogai

would not use these ventilators until they are fully convinced that the ventilators are perfectly functional and they would deliver the desired results while treating the patients. The GMCH does not want to be blamed for a casualty, if it occurs on account of the use of such ventilators. He further states that the GMCH at Aurangabad or Ambajogai do not have a repairing centre and it would be appropriate that the manufacturer carries these defective ventilators to its own repairing centres or Research and Development centres.

6. Considering the above, we deem it appropriate to post this matter on 7th June, 2021. We make it clear that we expect the Union of India to be firm with the manufacturer in the event of a supply of defective ventilators and if we find it necessary, we would be directing the returning of the defective ventilators. In such a situation, it would be the responsibility of the Union of India to ensure that the defective 2.21smcrpil ventilators are replaced with new functional ventilators. Manufacturing defects call for replacement under the warranty scheme. In short, we would not permit experimentation of the ventilators which have undergone major repairs, in treating the patients, since this would be causing a risk/health hazard to the patients and unfortunately, the use of such ventilators may cause loss of life, which should be averted.

7. We expect a report to be placed before us with regard to the visit of the two Doctors and the exercise that is supposed to be undertaken tomorrow i.e. 3rd June, 2021.

8. We would take up this issue for hearing on 7th June, 2021.

#### AMBULANCE OPERATORS OVER CHARGING FARE

9. The learned Chief Public Prosecutor has placed before us a communication received by him, dated 01/06/2021 from the District Collector and the Chair Person, Disaster Management Committee, Aurangabad (12 pages). We have taken the same on record and have marked it as 'X-22', for identification.

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10. He submits that those ambulances which were found to be overcharging the relatives of the patients, have been taken to task and have been penalized as per the Rules. The rate chart is affixed on every such ambulance by the R.T.O. at the time of its registration. The validity period of the chart is also mentioned. Those ambulances which have violated the conditions imposed as regards the fare to be charged, have been penalized.

11. We are of the view that it would be a continuous process where in the competent committee will have to deal with the offenders on day-to-day basis. It would be appropriate for the R.T.O. to carry out surprise checks of such ambulance vehicles and in the event of noticing any ambulance operator having torn/ripped off the fare chart affixed on the vehicles, such a vehicle can be impounded and heavy penalty may be imposed before granting permission to commission the said vehicle.

12. Stand over to 3rd June, 2021, to take up the issue of Mucormycosis and availability of the drugs for treatment.

(B. U. DEBADWAR, J.)  
J.)

(RAVINDRA V. GHUGE,

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