

(2021) 04 JH CK 0238

In the Jharkhand High Court

Case No : Writ Petition(PIL) No.1302 Of 2011, 1308 Of 2016, 2328 Of 2019,
1301 Of 2020

Court on its own motion And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 29-04-2021

Acts Referred:

Citation : (2021) 04 JH CK 0238

Hon'ble Judges : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : Rajiv Ranjan

Judgement

1. The matter has been taken up through video conferencing.
2. Ms. Ritu Sahay, The Director, Drugs Controller, Jharkhand, Ranchi is present before this Court through video conferencing mode.
3. It has been informed that Mr. Mukesh Kumar, Commissioner, Ranchi Municipal Corporation is suffering from infection of Covid-19, therefore he could not be able to appear and in his behalf another officer of Ranchi Municipal Corporation is present.
4. Mr. Rajiv Ranjan, learned Advocate General is present for the State.
5. However, none appears on behalf of the other parties in view of the call of the State Bar Council as well as the Advocate Association of the High Court of Jharkhand as they have decided not to appear in the matter for this week due to acute surge in Covid-19 virus.
6. Reference may be made to the orders dated 17.04.2021 and 22.04.2021. Affidavits have been filed in pursuance to the aforesaid orders.
7. The Director (Drugs) submits by referring to paragraphs-3 & 4 to the affidavit

filed on her behalf with regard to the query No.1 made by this Court vide order dated 17.04.2021 which pertains to what steps have been taken up to 17th April, 2021 to secure adequate supply of Remdesivir Injection to combat the situation of Covid-19 pandemic, as also what steps have been taken for adequate supply of Favipiravir Tablets, that earlier the State was getting 630/per day (average) Remdivisir Injections between 09.04.2021 and 17.04.2021 which has now increased to 928/ per day (average) Remdesivir Injection. On 26.04.2021, 1100 vials of Remdesivir Injections were distributed among 90 hospitals across the State.

So far as the availability of Favipiravir Tablets is concerned, due to low demand, the availability of the said medicine was lower in the market but due to sudden surge in demand, imbalance has been created between demand and supply, as such, necessary steps are being taken to increase the supply of Favipiravir Tablets.

This medicine is available in prominent pharmacy stores in every district of the State which are better in locality and located at places where general public finds it easier to locate and reach. The said list has been appended as Annexure-B to the affidavit.

It has further been stated that monitoring committee is formed under the Joint Director (Drugs) comprising of three Drug Inspectors for monitoring of the stock availability and smooth distribution of Favipiravir tablets and other commonly used drugs for Covid-19.

It has also been disclosed that sincere efforts have been taken to balance the supply in comparison to the demand of such medicine by pursuing the matter to the manufactures as also CFAs asking them to increase the supply, as well as to expedite the delivery for which sincere correspondences have been made to the State Drug Controller while making communication dated 17.04.2021.

So far as the medical oxygen is concerned, the State Government has formed a Task Force headed by the Director (Industries) where the Director (Drugs) is also made a member secretary for ensuring the increased production, distribution and supply of medical oxygen to all ICU Beds and Oxygen Beds for Covid-19 patients. It has been stated that there are five oxygen manufacturing units in the State where 315 tons of oxygen per day is being manufactured which was prior to the Covid-19 surge but now it has been

scaled up to 643 tons per day. It has been further stated that there were thirteen licensed refillers of medical oxygen in the State with a daily refill capacity of 2214 cylinders. As the demand for medical oxygen grew significantly due to addition of oxygen beds in hospitals, the State Government has focused to convert all Industrial refilling plants in the State to medical oxygen refillers also, as such, seven new licences have been issued to convert additional seven medical oxygen refiller units due to which the daily cylinder refilling capacity has been increased from erstwhile level of 2214 cylinders to 9944 cylinders on daily basis. The State Government is taking all necessary steps to increase the supply of medical oxygen cylinders within the State and an additional demand for 17000 cylinders has been raised with the Central Government, Ministry of Health and Family Welfare on 15.04.2021.

8. So far as the query No.2 is concerned which pertains to disclosure of the fact about rationing of Remdesivir Injection by the Central Government and if any such communication is available with the Durg Controller, the same must be brought on record, as also about any criteria fixed for earmarking such medicine shops/hospitals, the reply has been furnished as under paragraph-5 of the affidavit that the Central Government has allocated a quantity of 15,150 injection vials, further revised to 21,000 injections vials on 24.04.2021.

9. So far as the query No.3 is concerned, which pertains to up-to-date details of supply of Remdesivir Injection and Favipiravir Tablet to the medicine shops/hospitals, supported by relevant documents, it has been disclosed as under paragraph-6 thereof that the department is monitoring supply and allocation of Remdesivir, Favipiravir and other common drugs used for Covid-19 patients. A monitoring cell is formed under the Joint Director (Drugs) to monitor the order and supply status of these drugs.

10. So far as the query No.4 is concerned which pertains to disclosure of the names of the shops where the medicines like Remdesivir Injection and Favipiravir Tablet have been notified, the details have been furnished by appending the list of medicine shops as under Annexure- E thereof.

11. So far as the query No.5 is concerned which pertains to adequate supply of Remdesivir Injection and Favipiravir Tablet and also other medicines like Doxycycline, Fluguard, Vitamin-C and Zinc Tablets, as also adequate supply

of Oxygen forthwith, it has been replied as under paragraph-8

thereof that the department is taking keen steps to ensure the availability of these medicines through constant monitoring of the supplies and increasing

it through the measures as mentioned hereinabove as also for monitoring a committee has been formed headed by the Joint Director (Drugs Control).

12. So far as the steps taken to put a check upon the black marketing of essential medicines for Covid-19 is concerned, it has been disclosed, as under

paragraph-9, that the State is taking necessary steps to put check upon the black marketing of these medicines.

13. So far as earmarking of medical shops to sell out the aforesaid medicines which pertains to query No.7 is concerned, it has been stated as under

paragraph-10 of the said affidavit that the supply of Favipiravir Tablets is made to the prominent pharmacy stores in every district of the State like at

places where the general public finds it easier to locate and reach. The list of stores has been appended as Annexure-L to the affidavit.

14. The Director (Drugs) on the basis of the averment made in the aforesaid affidavit has submitted that the Government is taking keen steps and the

Drug Control Department is also taking all sincere endeavours to maintain the demand and supply of the medicines like Remdesivir Injection and

Favipiravir Tablets and other related medicines of Covid-19.

15. We are very much concerned about the news clip which has been telecast through the electronic media and also published in the print media about

the "sting operation" conducted by the News 11 channel. A clip of such sting operation has been brought on record which has been operated by

the Court Master of this Court apprising about this fact to the Director (Drugs) as also the learned Advocate General.

The Director (Drugs) and the learned Advocate General have not disputed the fact about such "sting operation" wherein a person has got

Rs.1,10,000/- by selling "Remdesivir" Injection through black marketing. The said incident has been informed to the police personnel, thereafter,

the person concerned has been apprehended. The aforesaid black marketeer has disclosed, in course of confession, that he used to give Rs.3,000/- to

the Drug Inspector, Rs.10,000/- to the officers of the National Health Mission and likewise money is being transmitted at other levels to procure the

said injection to sell out in the open market by black marketing.

16. This Court, after taking into consideration the aforesaid news about the sting operation which has not been disputed by the Director (Drugs) as also by the learned Advocate General, has put a query to the Director (Drugs) that when as per the affidavit filed, a system has been evolved to supply Remdesivir Injection strictly to the hospitals on the basis of the on-line requisition and it is the averment of the concerned officer that the Remdesivir Injection is not for sale in open market and only mode is to supply the same to the concerned hospitals where the patients are taking their treatment and are required injections as per the advice of the doctors according to the gravity of the infection, then the question which is of concern is that when a system has been adopted by the department then how the black marketer has got the said injection to sell it in open market and when a committee has been constituted headed by the Joint Director (Drugs Control) consisting of three other officials then the only conclusion to be reached by this Court is that there are serious lapses in the so called process evolved by the Drug Control Department of the State of Jharkhand.

17. This Court after considering the fact that even after the committee having been constituted headed by the Joint Director (Drugs Control) then also the black marketer are selling the Remdesivir Injection in open market through black marketing then the question is what the district administration and police administration is doing if such thing is happening which clearly suggest that the district and police administration have failed to discharge their duties.

18. This Court is being informed that strict steps are being taken but the officers are facing great trouble and on the other hand the district administration as also the police administration, even after knowing this fact through newspaper, nothing has been reported as yet that either the district or the police administration have taken any steps to put check upon the same by getting hold of the progress and even by putting question to the management of the hospitals. The working condition of the district administration as also the police administration is further disclosed that the black marketer has been apprehended that too on the basis of the sting operation conducted by the news channel then the question is what the police and district administrations are doing? Are not that the police and district administration are failing in discharging their duties? When the news channel can

apprehend a black marketer through sting operation then why it cannot be done by the district and police administration?

19. It requires to refer herein that we are not satisfied with the reply of query No.2 because the authorities have failed to bring on record any order of

the Central Government in order to satisfy that the rationing of Remdesivir Injection has been imposed.

20. It has been informed that complaint has been made by the Drugs Control Department basis upon which FIR has been instituted against the person

whose name has been disclosed in the daily newspaper as Rajeev Singh.

21. It has been informed that even the medical shops are having Favipiravir tablets but the same are not being sold out by the medical shops awaiting

the RT-PCR test report even though the doctors are prescribing the same on the basis of the symptoms of the patients.

Further, it has been informed that as of now the RT-PCR tests or any type of tests are being delayed and if the patients will be deprived from such

medicines awaiting for the test report, which is taking at least five daysâ?? time, and if the gravity of the infection gets accelerated, the same may

cause severity and may also lead to death.

22. This Court, therefore, deems it fit and proper to issue following directions:

(i) Senior Superintendent of Police/Investigating Agency is directed to produce the up-to-date progress of the investigation in the sealed cover before

this Court on the next date of hearing alongwith the confessional statement, if any, of the apprehended person(s).

Any negligence in the investigation will be the personal responsibility of the Investigating Agency and if any negligence will be found in course of the

investigation, this Court will take strict view of the matter.

(ii) As has been observed by us that the district and police administration have failed to discharge their duties to put check upon the black marketing of

life saving drugs like Remdesivir Injection, etc., therefore, we are of the view that an appropriate direction is required to be issued upon the State to

take aid of the CID personnel in order to put control upon the black marketing.

Accordingly, we, hereby, direct the Criminal Investigation Department (CID) of the State to take up the matter in order to keep strict vigil in black

marketing of medicines and charging extra rate for Beds in hospitals both in private as well as government and to take appropriate legal action in

accordance with law against those involved in such activities. This direction will not preclude the Deputy Commissioner of the districts and the Senior

Superintendent of Police/Superintendent of Police of the districts to take their own independent action to put vigil in order to put check upon the black

marketing of medicines and charging extra rate for providing beds in the hospitals.

The Deputy Commissioner, Senior Superintendent of Police and Superintendent of Police of different districts are directed to extend full co-operation

and co-ordination to the CID personnel in combating the situation of black marketing.

(iii) As per the requisition made to the Central Government to meet the supply and demand of medicines of Covid-19 as per the requisition made on

15.04.2021 the Central Government is directed to look into the matter and expedite it.

(iv) It also requires to refer herein that the averment has been made that the Management Information System is being developed to capture in a

database (currently maintained in Google sheets) for any cross-checking and verification in future, it would be proper to direct the Secretary, Health to

forthwith make the Management Information System (MIC) operational so that the purpose be achieved to put hold on black marketing of the

Remdesivir Injection.

(v) The concerned authorities like the Director (Industries) and other officers related to managing hospitals like that Deputy Commissioner of the

districts, the Director (Drugs), Joint Director (Drug Controller) and other related officers are directed to work in co-ordination in order to meet out the

situation arising due to surge in Pandemic covid-19.

(vi) The authorities are directed to make all sincere emdeavours to meet out the supply and demand of medicines for the patients in hospitals and in

home isolation in the entire district of the State as also to balance the supply of oxygen both in hospitals as also for the persons getting treatment in

home isolation across the State.

(vii) The Deputy Commissioner of every district are directed to monitor the situation along with the Civil Surgeon of the concerned districts.

(viii) The authorities are directed to apprise this court about the further progress in the matter.

23. Ms. Ritu Sahay, Director (Drugs) has assured this Court that all steps would be taken to allow the medical shops to sell out the medicines like

Favipiravir or Fluguard on the basis of the prescription made by the medical practitioner by taking steps to avoid illegal sale of such medicines in order

to avoid hoarding of these medicines.

24. The Director (Drugs) has assured this Court that all co-operation will be extended in the investigation of the persons involved in the incident.

25. It is made clear that whatever directions we have passed that is applicable across the State of Jharkhand.

26. The Secretary, Health of the State of Jharkhand is directed to apprise this Court with respect to the status of vaccination for the persons above the

age of 18 years which is scheduled from 01st May, 2021.

27. Let these matters be posted on 06.05.2021.

28. Personal appearance of Ms. Ritu Sahay and the Commissioner, Ranchi Municipal Corporation are dispensed with for the present.

29. Let a copy of this order be communicated forthwith to the Chief Secretary of the State; Secretary, Health; Director (Drugs) as also to the learned

A.S.G.I.