

(2021) 05 JH CK 0003

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

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 06-05-2021

Acts Referred:

Citation : (2021) 05 JH CK 0003

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

Bench : Division Bench

Advocate : Rajendra Krishna, Rajiv Kumar, Rajiv Ranjan, Piyush Chitresh, Sachin Kumar

Judgement

1. The matter has been taken up through video conferencing.
2. Reference may be made to the order dated 29.04.2021. In pursuance thereto, affidavits have been filed, the same be taken on record.
3. This Court has perused the progress report pertaining to Kotwali P.S. Case No.107 of 2021 as also the case instituted against the black marketeer. This Court is very much surprised by looking into the charge containing the list of cases wherefrom it would be evident from the reference of cases made at serial nos.5 and 6 which pertains to Sadar P.S. Case No.210 of 2021 and Nagri PS S.D. No.13 of 2021 dated 02.05.2021, the accused person although has been apprehended but in one case the accused has been granted bail by the police itself and in other case, the matter has been referred before the Drug Control Department. The District Police of Ranchi as also the Criminal Investigation Department upon whom we have handed over the matter to look into the matter to keep vigil on the black

marketing, as to why the different parameters have been applied in instituting cases against the black marketer at serial Nos.5 & 6 whereas in other cases, the case has been instituted under provision which is non-bailable in nature.

We have already handed over the matter to the Criminal Investigation Department to look into the black-marketing of medicines and selling of beds in government as well as in private hospitals at higher rate, which does not merely suggest that the District Police will only communicate the institution of

FIR to the Criminal Investigation Department and the Criminal Investigation Department will sit over the matter instead of looking into the matter as to

whether the district police is proceeding in the right direction or not and as such, we hereby further direct the Criminal Investigation Department to

look into the matter and take further necessary action to deal with such issue.

4. In pursuance to the aforesaid order, progress report with respect to the investigation of P.S. Kotwali Case No.107 of 2021 dated 29.04.2021 has been brought on record.

5. We have perused the aforesaid report. It has been brought to our notice through the said progress report that the investigation of P.S. Kotwali Case

No.107 of 2021 has been taken over by the Criminal Investigation Department wherein the accused, namely, Rajeev Kumar Singh, has been

apprehended and his confessional statement has been recorded.

It requires to refer herein that we have directed the Criminal Investigation Department to take up the matter in order to keep strict vigil on black

marketing of life saving drugs like Remdesivir Injection, etc., as also selling of beds in private as well as government hospitals at exaggerated rate.

We have passed such direction in the backdrop of the fact that the Director (Drug) Control has apprised this Court through an affidavit that the

injection Remdesivir is not for sale in open market rather it is to be supplied directly to the concerned hospitals on the basis of online requisition, if

made by the concerned hospitals where the patients are being treated. Then the question arose that when the Remdesivir Injection is not being sold

out in open market rather it is to be supplied through the department of the Drug Control to the hospitals directly or through the National Health

Mission to the government hospitals then how the Remdesivir Injection came in the possession of the black-marketeer, i.e., the accused, namely,

Rajeev Kumar Singh.

This Court has also considered the sting operation conducted by the news channel, News 11, wherein it has been confessed by the accused, namely,

Rajeev Kumar Singh that the drug inspectors as also the authorities of the National Health Mission are being paid in lieu of procurement of Remdesivir

Injection for selling in open market.

We, after going across the progress report, more particularly the confessional statement of the accused, have found therefrom that the confession

which was made before the News 11 about making payment of Rs.3,000/- to the Drug Inspector and Rs.10,000/- to the officers of the National

Health Mission likewise, is lacking in the confessional statement of the accused recorded before the investigating agency. Therefore, the investigating

agency is required to investigate the fact that from where the Injection like Remdesivir came in the possession of the accused, namely, Rajeev Kumar

Singh, however, in his confessional statement before the investigating agency he has disclosed that he has procured this from a medical store situated

in Argora area in the district of Ranchi but as yet the question which is required to be investigated by the investigating agency is that from where such

medical store has got the possession of the Remdesivir Injection when its sale in open market is totally prohibited under the policy rather to be supplied

through the government functionary either by the Drug Control Department or through the National Health Mission.

We have found from the progress of the investigation report that investigation is not being conducted in direction. We are not satisfied with the way by

which the investigating agency is investigating the matter. The prime concern of the investigating agency would be to look into the source of

procurement of the Remdesivir Injection for its sale in open market through black marketing, and also make emphasis upon the confession on TV

channel by the accused regarding drug inspector and other officials. The subsequent confessional statement recorded by the police is departure from

the confession on television. It appears to us prima facie that already the process is on to save certain persons. Since the police has already seized the

video from the TV channel, there is no question why the investigating agency will not take cognizance of that. We are taking very serious note of the

situation. There should not be any effort to save influential persons otherwise we

will be compelled to take action against the erring persons. This is required mainly for the reason that when the Government has channelized the supply of Remdesivir Injection through its own source then the investigation is required to be conducted in order to look into the involvement of the concerned department because when the fact about supply of the aforesaid Injection is strictly to be made through the Government channel to be supplied to the hospitals where the patients are admitted and treated unless there is involvement of concerned working in the channel there is no question of coming out of the aforesaid Injection for its sale in open market through black marketing.

We, require to refer herein that the Director (Drug) has stated before this Court that from the batch number and manufacturing number of the seized Remdesivir Injection it is apparent that the same was supplied to the State of Jharkhand then the question again would be more serious as to how the same has come in the possession either of the medical store or in the possession of the accused, namely, Rajeev Kumar Singh.

Accordingly, we direct the investigating agency to submit further progress report on the next date of hearing.

Keeping that fact into consideration, we reiterate that we are not satisfied with the investigation conducted up till now by the investigating agency,

therefore, we, hereby, direct the investigating agency to investigate into the issue of conspiracy/involvement of others.

6. Two affidavits have been filed, one by the Health Department and another by the Drug Control Department. Both affidavits have been taken on record.

7. We have gone through the aforesaid affidavits and found therefrom that the efforts are being made by the State Government to procure the

medicines in order to make balance between the demand and supply of such medicines as also to provide adequate oxygen facilities and to make

balance between the supply of the cylinders, however, learned Advocate General has submitted that the use of Remdesivir Injection is very much

required and as such in order to meet out the supply with demand, 26159 vials of Redesivir injection has been supplied till 03.05.2021 against the

allotment of 46900 by the Department of Pharmaceuticals, Government of India by its D.O. No.X.11035/110/2021-PRS(PT) dated 01.05.2021 and as

such due to shortfall in supply on account of non-compliance of allotment order by Jubilant and Cipla companies, the State Government is making all efforts to ensure supply from the Government of India and therefore, it has been prayed before this Court by the learned Advocate General that appropriate direction may be issued upon the Central Government to ensure supply as per the allotment made by the Department of Pharmaceuticals, Government of India dated 01.05.2021 as of now subject to further demand of such medicines.

8. Mr. Rajendra Krishna, learned counsel appearing in-person, has made a suggestion taking into consideration the policy decision of the State

Government to the effect that the Deputy Commissioner has been made co-ordinating authority in between the Civil Surgeon for distribution of the

medicines and to take care of the persons suffering from COVID-19 and in order to make such arrangement, more transparent measures are required

to be adopted and to draw the attention of the people at large it would be better if the Government will think to take help of the District Legal Services

Authority as also different committees constituted at the bar level of the respective districts. If such arrangement would be made it will be easier for

the people/sufferer of COVID-19 pandemic, to reach to the appropriate person/authority for getting the aforesaid medical aid in order to achieve the

policy of the State Government.

Further suggestion has been made that in order to create oxygen supported beds, even the bar building can be made available so that the same may be used for the public in general.

9. It has been disclosed in the affidavit with respect to the vaccination to the people in the age group of 18 to 44 years that, due to shortfall of vaccine,

order has been placed and it is expected that the vaccination to the people in the age group of 18 to 44 years would be started from the second week

of May, 2021.

10. It has been informed by the learned counsel for the petitioner/intervener that even the basic medicines like Doxycycline, Vitamins, Zincovit, etc.,

are not being sold out in absence of prescription of doctors but the question is that when the Government has issued guidelines on the basis of ICMR

guidelines prescribing certain medicines to be used at the preliminary stage without waiting for the reports then non-selling of such medicines in

absence of prescriptions will make such policy of the Government meaningless because the purpose of notifying the names of medicines is to enable

the sufferers from COVID-19 to purchase medicines from the medicine shops without wasting any time in order to avoid the position of patients

getting more serious.

11. We, after taking into consideration the aforesaid submissions, are hereby passing the following directions:

(i) So far as non-supply of Redmesivir injection as per the allotment made by Pharmaceutical Department, Government of India vide its letter dated

01.05.2021 is concerned, the competent authority of the Pharmaceutical Department, Government of India is directed to look into the matter and

ensure the compliance of its own allotment order by issuing appropriate direction to the Jubilant and Cipla companies so that the requirement of

Redmesivir injection be meted out.

(ii) So far as the suggestion made by Mr. Rajendra Krishna appearing in-person pertaining to the co-ordinating team is concerned, the State of

Jharkhand is directed to look out the feasibility to achieve the policy decision of the State Government of supply of pre-medical kit for treatment of

COVID-19 sufferers.

(iii) So far as the suggestion for utilizing the bar building is concerned, let the State Government consider the same.

(iv) The State Government has to come up with the strategy as to how it is going to combat the situation when the Government policy regarding use of

certain medicine in mild COVID infection is already there, and Government is also providing them free kit, those persons who are not getting doctors

who can prescribe medicine as nobody is easily coming forward to examine the COVID patients, thus, they are not able to procure it from medical

shops in the absence of prescription and further if they could not get free kit from the authority, what is to be done for them? There would be large

number of such persons.

(v) The State is also directed to reply as to what is the standard of protocol for disposal of bodies of the persons who have died in home isolation due

to COVID-19 infection?

12. Let the required affidavits be filed on or before the next date of hearing. Let these matters be posted on 13.05.2021.