(2021) 06 BOM CK 0043

In the Bombay High Court

Case No : Public Interest Litigation (L.) No.10276 Of 2021, Public Interest Litigation (ST.) No.9885 Of 2021, Interim Application No.1113 Of 2021, Interim Application (ST.) No. 10386, 10934, 10983 Of 2021

Sneha Nirav Marjadi And Others — APPELLANT

Vs

State Of Maharashtra & Ors — RESPONDENT

Date of Decision : 11-06-2021

Acts Referred:

Citation : (2021) 06 BOM CK 0043

Hon'ble Judges : Dipankar Datta, CJ;G. S. Kulkarni, J

Bench : Division Bench

Advocate : Rajesh Inamdar, Shashwat Anand, Pankaj Kandhari, Amit Pai, Mohd. Kumail Haider, Saif Alam, Ankur Azad, Siddhi R. Mundada, Moinuddin Chowdhari, Wasim Lalsa Shaikh, Riyaz Awati, Pankaj Kandhari, Asim Sarode, Ajinkya Udane, Anil C.Singh, Aditya Thakkar, D.P.Singh, Yash Momaya, Shrinivas Bhave, Rahul Sanklecha, Abhijeet P.Kulkarni, A.A.Kumbhkoni, P.P .Kakade, Akshay Shinde, M.M.Pable, G.P.Sonawane

Judgement

1. On the conspectus of what we had observed in our earlier orders, the following issues are discussed at the hearing of these petitions yesterday and

today:

(i) Paediatric treatment

(ii) Mucormycosis

(iii) Shortage of Toculizumab in treatment of Covid-19;

2. On behalf of the State Government, Mr. Kumbhakoni, learned Advocate General has filed affidavit of Dr. Sadhana M. Tayde dated June 10, 2021.

Mr. Anil Singh, learned Additional Solicitor General has also filed an additional compilation of documents. We take up the above issues:

(i) Pediatric On behalf of the State Government, it is pointed out that a pediatric

task force is appointed by the Government Resolution dated May 25,

2021. It is stated that the task force has conducted meetings of private practice health staff in rural areas and Asha workers. Also specific protocols

are being prepared by the Task Force for the pediatric age group. In the meantime, the protocol prepared by the Central Government in this regard is

being followed. Dr. Sadhana Tayade in her affidavit has stated that on 7th June, 2021, the Hon'ble Chief Minister had organized a video conference

program of which there was a live telecast on Facebook/You Tube, in which members of Pediatric Task Force gave information and guidance about

the treatment to be administered to children in the wake of the proposed ""third wave"". It is stated that such program was attended by about 65,000

Asha workers, 3000 Block facilitators and about 2000 medical officers including District Health officers and Taluka Health Officers. The role of all

such workers and their responsibilities were discussed and appraised. A power point presentation was prepared for the said program, the copy of

which is placed on record. We have perused the power point presentation. It appears to be an exhaustive presentation, providing all necessary

information as regards the steps to be taken to prevent children from getting infected by Covid-19 and those who are affected. We are, however, of

the opinion that wide publicity ought to be given to a concise version of the power point presentation in the print and electronic media. We would urge

the TV channels as a part of their social obligation to consider providing adequate time slots for its telecast, when such information can be noticed, by

the parents and the children and the family members. An endeavour in this regard be made to telecast such information at least 4 to 5 times a day, till

the dark clouds of children getting infected vanishes.

3. Dr. Sadhana Tayade has also stated that in regard to the availability of children's beds in pediatric wards in rural areas, the pediatric task force has

informed that there shall be no separate pediatric hospital in the State, however, beds for pediatric patients would be reserved for all Covid treatment

facilities in the following proportion:

a) Covid Care Centre - 15% of the existing beds

b) Dedicated Covid Health Centre - 10% of existing beds

c) Dedicated Covid Hospital - 5% (Expandable to 10%) of the existing beds.

Mucormycosis

4. In regard to mucormycosis, the State has pointed out that admittedly it is serious but rare fungal infection caused by group of molds called

Mucormycetes. It is informed that a person gets such disease by coming in contact with fungal spores in the environment. It is stated that the

observance reveals that incidence of Mucormycosis is increasing in Covid-19 patients called as Covid Associated Mucormycosis (CAM). It is stated

that Mucormycosis is found in Covid- 19 patients having high blood sugar, use of steroids in high doses for longer duration, prolonged ICU stay and

pre-existing morbidities such as cancers, organ transplant etc. The treatment of mucormycosis involves combination of surgical debridement followed

by antifungal medicine such as Inj. Amphotericin B. Debridement is procedure involving thoroughly cleaning the infected surface and removing callus,

necrotic and dead tissue, foreign debris etc. As on June 7, 2021, total diagnosed patients of mucormycosis are 6287 out of which 518 deaths, 1695

discharged and 4033 under treatment. Total 41 patients left the hospital during treatment against medical advise. It is stated that after the increase in

the incidence of Covid Associated mucormycosis, following precautionary measures were taken:

a) All the doctors treating the Covid-19 patients are informed to keep watch on blood sugar of Covid-19 patients during treatment and atleast 3 weeks

after discharge.

b) Steroids are being used judiciously and lowest possible does and for minimum duration considering clinical condition of the patient.

c) Increase in availability of Debridement Facility in Government and Private Sector. As of now, facility for debridement is available in 592 hospitals in

State. Out of these, 76 private hospitals are covered under Mahatma Jyotiba Phule Jana Arogya Yojna which provides free treatment to MJPJAY

beneficiaries.

d) Increase in availability of Inj. Amphotericin B in all districts of State.

5. As observed in our earlier orders, the only drug administered for the treatment of mucormycosis is Inj. Amphotericin B of which there is severe

short supply. It is stated that considering the acute shortage of this drug, following measures are taken to streamline the supply:

i) Considering shortage of Inj. Amphotericin B in all states, Government of India

has

given quota of Amphotericin B to each State, which includes the name of manufacture and number of vials allotted.

ii) Once the GoI communication is received, manufacturers are contacted, purchase orders are issued and they are requested to supply the medicines

at the earliest.

iii) Distribution of Amphotericin B through private medical stores is completely stopped.

iv) All the Amphotericin B made available to State is purchased by Public Health Department and supplied to all Government and Private Hospitals

except in MCGM areas.

v) In MCGM area, Amphotericin B is directly purchased by MCGM.

vi) As on today, purchase order of 3677000 vials of Amphotericin B, 50 mg is issued to various manufactures. Out of these, 92898 are received and

distributed to districts.

6. Learned counsel for the petitioner has also raised serious concern in regard to the consequence of the non-availability of this drug for patients in its

dire requirement. On the earlier occasions, we were informed that Haffkine Bio-Pharmaceuticals was to manufacture and make available by today

40000 vials, however, such availability, as informed by Mr. Kumbhakoni is now postponed. We wonder as to why an aggressive approach to import

such medication from various countries on the globe, was not adopted and more particularly from such countries in which there is a possibility of a

high production and demand for such drug is not such, as in our country.

7. Be that as it may, we would urge the Central Government to have a re-look at the allocation of such drug as far as the State of Maharashtra is

concerned and make it available to its maximum, so that the needy patients who are in large number, do not suffer for want of such medication. We

also note from the statement as placed on record by Mr. Anil singh titled 'Allocation of Amphotericin B Inj. on 9th June', that such allocation is totally

insufficient to meet the demand of such drug for the 6287 patients, suffering mucormycosis. We may note that in a short period of last 4 days, about

82 persons suffering from mucormycosis have expired, which in our opinion, is an alarming figure requiring urgent supply of such drug. We are

informed by learned counsel for the petitioner that the maximum number of cases of mucormycosis in the State are in Mumbai, Thane, Pune, Solapur,

Kolhapur and Nashik. This situation, in our opinion, requires an immediate and an emergent attention requiring a concentrated supply of such drug at

places where it is so required.

8. We may also observe that there has to be some flexibility or free play in the joints in the rigid allocation of the quotas of drugs. It has to be a

dynamic mechanism, which is absolutely need based and which would cater to a situation of easy and immediate availability of the drug at the

hospitals where such drug is in urgent need for the ailing patients. We accordingly direct that in present situation, the State Government as also the

Central Government consider adopting a dynamic mechanism. This be undertaken for the State of Maharashtra on/or before the adjourned date of

hearing. We are also seriously concerned with the adequate and rational distribution of this drug within the State. Hence, we direct the State

Government to evolve a mechanism by appointing nodal officers who can manage procuring of such drug from either the Central system or the State

supplies. Such nodal officer be appointed in each of the districts/places in which there are large number of patients suffering from mucormycosis.

9. Our deepest intention in making such observations and issuing such directions is considering the helplessness of the patients who are left wandering

in search of this drug and with an intention that no patient should suffer from want of medication. We, accordingly, leave it to the wisdom of the

authorities to bring out the best possible mechanism, which would cater to the present needs and meet the urgent situation in regard to availability of

such medication. Tocilizumab

10. In regard to the drug Tocilizumab, learned counsel for the petitioners have stated that the situation in regard to the supply of this drug is also not

different from that of 'Amphotericin B'. Dr. Joshi, on behalf of the Indian Medical Association, has informed that this drug is administered to the

Covid-19 patients as a second line of treatment, when a sustained treatment of Dexamethasone would not work. In this situation, according to him, the

only drug which would be required to be administered would be Tocilizumab. In regard to the availabiltiy of this drug, the current mechanism, in our

opinion, is far from satisfactory. It is clear that the requirement of this drug

would continue till the Covid-19 pandemic continues. It is high time that the

Central Government and State Government consider taking a decision to have buffer stock and secure such drug from all possible sources globally.

11. Dr. Sadhana Tayade on behalf of the State Government has stated in her affidavit that orders were placed on Cipla as referred to in a statement

annexed to her affidavit as Exhibit-AR4 (Page 468). We find that these orders are dated May 01, 2021 and May 05, 2021, the quantity of the order

was also too meager, i.e. 200 and 210 respectively. Such orders relate to a position as existed a month back. We would require the State Government

to place on record data for the last one month and the latest position in this regard and also appraise us as to the quantity of this received and what is

currently the exact demand for such drug, in the State of Maharashtra. The directions as issued by us above in regard to Amphotericin B shall also

equally apply in regard to supply of this drug so that it is made available to the needy patients.

12. We, accordingly adjourn the hearing of these petitions to June 16, 2021 to enable the UOI and State Government to respond on the issues as noted

by us in the present order.

