

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

Wednesday, the 7th day of July 2021 / 16th Ashadha, 1943

WP(C) NO. 11742 OF 2021

PETITIONER:

1. KERALA PRIVATE HOSPITALS ASSOCIATION HAVING ITS REGISTERED OFFICE AT KPHA HEAD QUARTERS, ASHIR BHAVAN ROAD, KACHERIPPADY, ERNAKULAM, KOCHI-682018, REPRESENTED BY ITS PRESIDENT, HUSSAIN KOYA THANGAL.
2. WEST FORT HOSPITAL, P.B.NO.803, WEST FORT, THRISSUR-680004, REP. BY ITS MANAGING PARTNER K.M.MOHANDAS.

RESPONDENT:

1. STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. DIRECTOR GENERAL OF HEALTH SERVICES, DIRECTORATE OF HEALTH SERVICES, GENERAL HOSPITAL JUNCTION, THIRUVANANTHAPURAM-695035.
3. THE COMMISSIONER, KERALA STATE DISASTER MANAGEMENT AUTHORITY, VIKAS BHAVAN P.O., OBSERVATORY HILLS, OPPOSITE KANAKAKUNNU PALACE, NANTHANCODU, THIRUVANANTHAPURAM, KERALA - 69503
4. THE KERALA STATE POLICE CHIEF, KERALA STATE POLICE HEADQUARTERS, VAZHUTHACAUD, THIRUVANANTHAPURAM, KERALA-695010.
5. NATIONAL HEALTH MISSION REPRESENTED BY THE EXECUTIVE DIRECTOR, NRHM BUILDING, GENERAL HOSPITAL, DIRECTORATE OF HEALTH SERVICE, JAI VIHAR, KANNUKUZHYY, THIRUVANANTHAPURAM-695035.
6. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY, (DISTRICT COLLECTOR), 2ND FLOOR, CIVIL STATION BUILDING, CIVIL STATION ROAD, THIRUVANANTHAPURAM, KERALA-695043.
7. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT COLLECTOR), CIVIL STATION ROAD, KAANKATHU MUKKU, KOLLAM, KERALA-691013.
8. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY(DISTRICT COLLECTOR), 2ND FLOOR, COLLECTORATE ROAD, CHITTOOR, PATHANAMTHITTA, KERALA-689645.
9. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY(DISTRICT COLLECTOR), IDUKKI DISTRICT, KUYILIMALA, KERALA 68560.
10. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT COLLECTOR),,, KOTTAYAM-KUMILY ROAD, COLLECTORATE, KOTTAYAM, KERALA-686002.
11. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT COLLECTOR), 1ST FLOOR, COLLECTORATE, CIVIL STATION, ALAPPUZHA, KERALA-688001.
12. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT COLLECTOR), COLLECTORATE, KAKKANAD, ERNAKULAM-682030.
13. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT COLLECTOR), DISTRICT COLLECTOR OFFICE, CIVIL STATION, AYYANTHOLE, THRISSUR-680003.
14. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT

- COLLECTOR), CIVIL STATION, PALAKKAD, 678001.
15. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT COLLECTOR), COLLECTORATE, CIVIL STATION, MALAPPURAM-676505.
 16. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT COLLECTOR), KOZHIKODE COLLECTORATE, CIVIL STATION P.O., KOZHIKODE-673020.
 17. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT COLLECTOR), COLLECTORATE, KALPETTA, KERALA-673122.
 18. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT COLLECTOR), CIVIL STATION, COLLECTORATE ROAD, KANNUR-670002.
 19. THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY (DISTRICT COLLECTOR), CIVIL STATION, VIDYANAGAR, KASARAGOD, KERALA-671123.
 20. SOUTHERN AIR PRODUCTS, LIQUID MEDICAL OXYGEN DISTRIBUTOR, MANNA, TALIPARAMBA, KANNUR-670141.
 21. ADDL.R21. INOX AIR PRODUCTS, PETRONET ROAD, WISE PARK, KANJIKODE, PALAKKAD-678621, REPRESENTED BY ITS MANAGER.
 22. ADDL. R22. BALCO AIR PRODUCTS, KANNUR, ANDOOR INDUSTRIAL DEVELOPMENT PLOT PARASSINIKKADAVU, KANNUR-670563, REPRESENTED BY ITS MANAGER.
 23. ADDL. R23. THE SOUTHERN GAS LIMITED, KOZHIKODE-MALAPPURAM-PALAKKAD HWY, MODERN BAZAR, NALLALAM, KOZHIKODE-673027, REPRESENTED BY ITS MANAGER.
 24. ADDL.R24. GOVIND OXYGEN CALICUT, MODERN BAZAR, NALLALAM, KOZHIKODE-673027, REPRESENTED BY ITS MANAGER.
 25. ADDL. R25. SREEKALA OXYGEN COMPANY, MELE CHELARI, THENHIPALAM, MALAPPURAM-673636, REPRESENTED BY ITS MANAGER.
 26. ADDL. R26. PREMIER GASES, OLD IDA, KANJIKODE, PALAKKAD-678621, REPRESENTED BY ITS MANAGER.
 27. ADDL. R27. SRI. VENKATESWARA AIR PRODUCTS P. LIMITED, KANJIKODE ROAD, KANJIKODE, PALAKKAD-678621, REPRESENTED BY ITS MANAGER
 28. ADDL.R28. THRISSUR GAS PRODUCTS PVT. LTD., XV/596, IDP MUNDUR, THRISSUR-680543, REPRESENTED BY ITS MANAGER.
 29. ADDL.R29. SRI. VIGNESWARA GASES, THRISSUR, UNITY BUILDING, MANNADIAR LN., KURUPPAM, THEKKINKADU MAIDAN, THRISSUR-680001, REPRESENTED BY ITS MANAGER.
 30. ADDL.R30 STERLING GASES LIMITED, ERNAKULAM, HINDUSTAN ORGANIC CHEMICALS LIMITED, NEW NO.XVI/134, 135 AND 136 (OLD NO.1/333, COMPLEX), AMBALAMUGAL, KOCHI-682302, REPRESENTED BY ITS MANAGER)
 31. ADDL.R31.MENACHERY INDUSTRIES, MAJOR INDUSTRIAL ESTATE, SOUTH KALAMASSERY, KALAMASSERY, ERNAKULAM-682039, REPRESENTED BY ITS MANAGER.
 32. ADDL.R32.THE SOUTHERN GAS LIMITED, UDYOGAMANDAL, ELOOR HIL ROAD, VERAPOLI, ELOOR, KOCHI-683501, REPRESENTED BY ITS MANAGER.
 33. ADDL.R33. NARAYANA INDUSTRIAL GASES, EDAYAR, KALAMASSERY, EDAYAR, ERNAKULAM-686662, REPRESENTED BY ITS MANAGER.
 34. ADDL.R34. MANORAMA OXYGEN PVT. Ltd, PLOT NO.-59b, MAJOR, INDUSTRIAL ESTATE, SOUTH KALAMASSERY, ERNAKULAM-683104, REPRESENTED BY ITS MANAGER.
 35. ADDL.R35. VIGNESWARA OXYGEN PVT. LIMITED, ATHANI-683589, REPRESENTED BY ITS MANAGER.
 36. ADDL.R36. AJAY OXYGEN PVT. Ltd, DEVELOPMENT PLOT, POOVANTHURUTH,

- KOTTAYAM-686012, REPRESENTED BY ITS MANAGER.
37. ADDL.R37. TRAVANCORE OXYGEN LIMITED, KOLLAKADAVU KUNNAM PYNUMOODU ROAD, KUNNAM, VETTIYAR-690108, REPRESENTED BY ITS MANAGER.
 38. ADDL.R38. OZONE GASES, KINFRA INDUSTRIAL PARK, PATHANAMTHITTA, THIRUVALLA-MALLAPPALLY ROAD, KUNNAMTHANAM-689581, REPRESENTED BY ITS MANAGER.
 39. ADDL.R39.OKAY GASES INDIA PVT. Ltd, DEVELOPMENT PLOT, MUNDAKKAL, KOLLAM-691001, REPRESENTED BY ITS MANAGER.
 40. ADDL.R40.THE SOUTHERN GAS LIMITED, TRIVANDRUM, ST. XAVIER'S COLLEGE, P.O. KINFRA PARKS, MEENAMKULAM, THUMBA, M.G. ROAD, THIRUVANANTHAPURAM-695001, REPRESENTED BY ITS MANAGER.
 41. ADDL.R41. ROOP RESMI PVT. LTD., DEVELOPMENT PLOT, 24-INDUSTRIAL ESTATE, MAVILLA, TRIVANDRUM-695583, REPRESENTED BY ITS MANAGER.
 42. ADDL.R42. DIVINE GASES PVT. LTD., KINFRA INDUSTRIAL PARK, PLOT NO.6, THUMBA, KAZHAKKOOTAM-695586, REPRESENTED BY ITS MANAGER.
 43. ADDL.R43. PEENYA INDUSTRIAL GASES, KOCHUVELI INDUSTRIAL AREA, VELI, THIRUVANANTHAPURAM-695021, REPRESENTED BY ITS MANAGER.
 44. ADDL.R44. AUXILIUM PRODUCTS LLP, 558/1, CHALACKAL HOUSE, ANCHERY AMOOS RUNWAY STREET, KURIACHIRA P.O., THRISSUR-680006, REPRESENTED BY ITS MANAGER. (ADDITIONAL R21 TO R44 ARE IMPEADED AS PER DATED 15/06/2021 IN IA NO.2/2021 IN WPC NO.11742/2021)
 45. ADDL.R45. NATIONAL PHARMACEUTICAL PRICING AUTHORITY, 3RD/5TH FLOOR, YMCA CULTURAL CENTRE BUILDING, 1, JAI SINGH ROAD, NEW DELHI-110001. (ADDITIONAL R45 IS IMPEADED AS PER DATED 15/06/2021 IN IA NO.3/2021 IN WPC NO.11742/2021)

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the respondents 1 to 19 to initiate action as contemplated in Ext.P1 against the Oxygen suppliers (including 20th respondent), supplying oxygen to the members of 1st petitioner association on their increasing the price of Oxygen supply during the ongoing Covid-19 pandemic and also to ensure uninterrupted supply of adequate medical oxygen in all member hospitals of the 1st petitioner association at the already existing rates (as on 31.05.2021), pending disposal of the above Writ Petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S K.ANAND, T.M.MUHAMED HAFEES Advocates for the petitioners, GOVERNMENT PLEADER for R1 TO R4 ,R6 TO R19 ,SRI.P.VIJAYAKUMAR, ASSISTANT SOLICITOR GENERAL for R5, SRI.R.SURENDRAN, Advocate for R20 and R35, SMT.S.MAYUKHA, Advocate for R20, M/S.ASWIN GOPAKUMAR, KANDAMPULLY VIKRAM, NIRANJAN SUDHIR, ANWIN GOPAKUMAR, Advocates for R21, SRI.S.ANANDAKRISHNAN, Advocate for R22,R23,R30,R31,R32,R33,R37,R40, SRI.P.RAMAKRISHNAN, Advocate for R26 and R34, M/S.PREETHI RAMAKRISHNAN, C.ANIL KUMAR, ASHA K.SHENOY, PRATAP ABRAHAM VARGHESE, Advocates for R34, and of SRI.BABY THOMAS, K.ANIL JOSEPH, BIJU GEORGE, MARIAMMA JOSEPH, Advocates for R38, the court passed the following:



Exhibit P5

True copy of the S O No:3322(E)DATED 25.9.2020 of the
Ministry of chemicals and Fertilizers



P.B.SURESH KUMAR, J.

W.P.(C) No.11742 of 2021

Dated this the 7th day of July, 2021.

ORDER

Heard the learned counsel for the parties on either side.

2. The first petitioner is an association of private hospitals in the State and the second petitioner is a member of the first petitioner association. The petitioners seek, among others, directions to respondents 1 to 19 to take necessary steps to prevent the suppliers of oxygen to the hospitals in the State from increasing the price of oxygen during this period of pandemic.

3. It is seen that on 25.9.2020, in exercise of the powers conferred under the Drugs (Prices Control) Order, 2013 and Section 10(2)(l) of the Disaster Management Act, 2005, the

W.P.(C) No.11742 of 2021

2

competent authority in the Ministry of Chemicals and Fertilizers, Government of India, having regard to the extraordinary circumstances prevailing in the country on account of the spread of the pandemic, Covid – 19, prescribed the maximum price (ex-factory) exclusive of Goods and Services Tax as applicable in respect of Liquid Medical Oxygen as Rs.15.22 per cubic meter and Oxygen Inhalation(Medicinal Gas) in cylinder as 25.71 per cubic meter. Ext.P5 is the order issued by the Ministry of Chemicals and Fertilizers in this regard. The petitioners contend, among others, that the respondents are not enforcing in the State even Ext.P5 order, as a result of which, the hospitals as also the patients who need oxygen support for treatment of Covid – 19 are put to irreparable hardship.

4. The learned Government Pleader points out that there is no regulatory mechanism in the State for effective implementation of orders in the nature of Ext.P5. It was also

W.P.(C) No.11742 of 2021

3

pointed out by the learned Government Pleader that without fixing the transportation cost, which can be charged by the manufacturer/supplier of oxygen, Ext.P5 order cannot be effectively implemented. It was further pointed out by the learned Government Pleader that the Government has therefore, constituted a committee consisting of the Drugs Controller, Controller, Legal Metrology Department, a representative of Petroleum and Explosives Safety Organization (PESO) and the General Manager of the Kerala Medical Services Corporation (KMSCL) for deciding the transportation cost which can be charged by the manufacturer/supplier, and for monitoring the effective implementation of the orders issued under the Drugs (Prices Control) Order, 2013.

5. True, the prices of Liquid Medical Oxygen and Oxygen Inhalation (Medicinal Gas) in cylinder could be controlled effectively, only if the transportation cost which can be charged by the manufacturer/supplier is fixed.

W.P.(C) No.11742 of 2021

4

6. In the circumstances, the State Government is directed to expedite the process initiated for fixing the transportation cost of Liquid Medical Oxygen and Oxygen Inhalation (Medicinal Gas) in cylinder. There will also be a direction to the State Government to devise a mechanism in the meanwhile and ensure compliance of Ext.P5 order.

List this matter after two weeks. The official respondents shall file a statement in the meanwhile indicating the steps taken for compliance of the directions aforesaid.

**Sd/-
P.B.SURESH KUMAR, JUDGE**

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