

No. 40-6/2020-DM-I(A)
Government of India
Ministry of Home Affairs
Disaster Management Division

North Block, New Delhi
Dated 23rd April, 2021

To

The Chief Secretaries / Administrators
(All States / Union Territories)

Sir,

Reference is invited to Ministry of Home Affairs Order No. 40-3/2020-DM-I(A) dated 22.04.2021 issued under Section 10(2)(l) of the Disaster Management Act, 2005, vide which Chairperson, National Executive Committee (NEC) has issued directions for taking various measures to ensure the uninterrupted supply of Medical Oxygen across the country.

2. Reference in this regard is invited to Hon'ble High Court of Delhi Order dated 22.04.2021 passed in a Writ Petition (Civil) No. 3031/2020 (copy enclosed). Hon'ble High Court has directed to ensure that the supplies from all the oxygen producing plants is made, as per the allocation order dated 21.04.2021, and transportation takes place without any hindrance. Hon'ble Court also directed to ensure adequate security to the lorries transporting oxygen and its non-obstruction on the way. Hon'ble High Court has also directed for creation of a special corridor for immediate transportation of oxygen.

3. Hon'ble High Court while taking note of the allocation order dated 21.04.2021 issued by M/o Health & Family Welfare (MoHFW) and the Order dated 22.04.2021 issued by Chairperson, NEC, further directed all the authorities concerned, who are bound by these orders to ensure their strict compliance. Hon'ble High Court has further directed that non-compliance of said orders and Hon'ble Court's order dated 22.04.2021 will invite action for contempt of Court and also invite criminal and penal action under the Disaster Management Act and under the Indian Penal Code.

4. All States / UTs are therefore once again requested to kindly ensure strict compliance of the Order of the Hon'ble High Court of Delhi for ensuring availability of adequate and uninterrupted supply of medical oxygen across the country for management of COVID-19 patients.

Encl: As above

Yours faithfully,

(Sanjeev Kumar Jindal)

Joint Secretary to the Govt. of India

Tel: 011 2309 2722

Copy to
Secretary (MoHFW / DPIIT / MoRTH)
Chairman, Railway Board

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- * IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C)3031/2020

RAKESH MALHOTRA

..... Petitioner

Through: Petitioner in person.
versus

GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF INDIA AND ORS

..... Respondents

Through: Mr. Rahul Mehra, Sr. Advocate with
Mr. Satyakam, ASC, and Mr.
Chaitanya Gosain and, Advocate for
GNCTD.Mr. Tushar Mehta, SGI, Mr.
Chetan Sharma, ASG with Ms.
Monika Arora, CGSC and Mr.
Shriram Tiwary, Advocate for R-3.

- + W.P.(C)4970/2021

BALAJI MEDICAL AND RESEARCH CENTRE..... Petitioner

Through: Mr. Sandeep Sethi Sr, Adv, Mr.
Mahesh Agarwal, Adv, Mr. Rishi
Agrawala, Adv, Mr. Karan Luthra,
Adv, Mr. Ankit Banati, Advs

versus

UNION OF INDIA & ORS.

Through:

..... Respondents

Mr. Tushar Mehta, SGI, Mr. Chetan
Sharma, ASG with Ms. Monika
Arora, CGSC and Mr. Shriram
Tiwary, Advocate for UOI.

Mr. Rahul Mehra, Sr. Advocate with
Mr. Satyakam, ASC, GNCTD

Mr. Rajiv Nayar, Sr. Advocate with
Mr. Ajay Bhargav, Mr. Aseem
Chaturvedi, Mr. Saurab Seth
Advocates with Mr. Siddharth Jain,

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ROHELLA
Signing Date: 22.04.2021 20:18

Whole Time Director for M/s. INOX.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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22.04.2021

1. Last night, we had passed the order in W.P.(C) No. 4970/2021 on the assurance given by the learned Solicitor General, that Delhi would be provided with Medical Oxygen as per its allocation made on 21.04.2021 – with effect from the same date, i.e. to the tune of 480 MT. We had also taken note of the concern expressed by Mr. Mehra, learned Senior Advocate for the GNCTD that supply of Oxygen to Delhi is being obstructed in the States where it is being produced, and while on its way to Delhi. On this concern being expressed, Mr. Mehta had assured that the Central Government shall facilitate the supply of 480 MT of Medical Oxygen to Delhi in terms of the Allocation Order dated 21.04.2021. It appears that the said Allocation has actually not been practically delivered, and the NCT of Delhi has not received Medical Oxygen to the tune of 480 MT till now.
2. When we took up the matter yesterday, we noted that about 200-250 MT of Medical Oxygen only had been received during the day, and till the we passed the order.
3. It appears that 140 MT of Medical Oxygen, which has been allocated to be supplied from the plant of *Air Liquide, Panipat* has been obstructed by the local authorities.
4. The position in the NCT of Delhi has turned precarious with several hospitals reporting either complete exhaustion of Oxygen, or depletion to the level that it may not last even for the next few hours. Mr. Tushar Rao,

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Senior Advocate has pointed out one Mrs. Poonam Kalra, who is admitted at U.K. Nursing Home, Vikas Puri in a serious condition has been asked by the nursing home to take her to some other hospital, since the hospital has run out of oxygen. Similar is the position with regard to Aakash Hospital in Dwarka.

5. Mr. Mehta has submitted that an order has been issued by the Ministry of Home Affairs on 22.04.2021 under the Provisions of Disaster Management Act in the matter of supply and transportation of Medical Oxygen from the place of production to wherever it is to be supplied. The said order reads as follows:

40-3/2020-DM-I(A)
Government of India
Ministry of Home Affairs

North Block, New Delhi
Dated 22nd April, 2021

O R D E R

Whereas, an Order bearing No. 40-3/2020-DM-I(A) dated 23.03.2021, alongwith guidelines for effective control of COVID-19 have been issued under section 10(2)(1) of the Disaster Management Act, 2005 (hereinafter referred to as the DM Act) wherein, inter alia, it is mandated that there shall be no restriction on inter-State and intra-State movement of persons and goods;

And whereas, due to rapid rise in COVID-19 cases and with increasing case positivity rate, various States/UTs have imposed some additional restrictions on certain activities and weekend lockdowns/curfews etc. to break the chain of transmission to contain the spread of Covid-19;

And whereas, the availability of adequate and uninterrupted supply of Medical Oxygen is an important pre-requisite for managing moderate and severe cases of COVID-19 and with the increasing cases, the medical oxygen supply will need to keep pace with the requirements of the

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State/UTs;

And whereas, medical oxygen is an essential public health commodity and any impediment in the supplies of Medical Oxygen in the country may critically impact the management of patients suffering from COVID-19 disease in other parts of the country;

And whereas, Empowered Group-II (EG-II), is mandated for coordinating medical logistics, including medical oxygen. EG-II has reviewed the supply of oxygen for industrial use in order to divert the same to meet the rising demand for medical oxygen in the country and save precious lives. Accordingly, EG-II has recommended to prohibit the supply of Oxygen for industrial purposes by manufacturers and suppliers forthwith from 22.04.2021 till further orders, with the exception of nine specified industries. The recommendations of the EG-II have been accepted by the Central Government and the said decision, alongwith the list of nine exempted industries, have been conveyed by Secretary, Ministry of Health & Family Welfare, vide his DO letter dated 18th April 2021 (Annexure-I).

And whereas, keeping in view the requisitions of Medical oxygen and to ensure smooth supplies of it to the States/UTs are concerned, EG-II, in consultations with the States/UTs and oxygen manufacturers etc., prepares supply plan, which is required to be followed by all States, UTs and all the agencies concerned. The oxygen supply plans, as revised from time to time by EG-II based on the assessment of the situation, are circulated by MoHFW to all the States/UTs concerned, and the last revised plan has been circulated vide MoHFW letter dated 21.04.2021 (Annexure II).

Now, therefore, to ensure the uninterrupted supply of medical oxygen across the country for management of COVID-19 patients, in exercise of powers conferred under section 10(2)(1) of the DM Act, the undersigned, in the capacity as Chairperson, National Executive Committee, hereby directs the State/Union Territory Governments and State/ Union Territory Authorities to ensure the following measures within their areas of jurisdiction;

- (i) *No restriction shall be imposed on the movement of Medical Oxygen between the States and transport authorities shall be instructed to accordingly allow free inter-state movement of oxygen carrying vehicles;*
- (ii) *No restrictions shall be imposed on oxygen manufacturers and suppliers to limit the oxygen supplies only to the hospitals of the State/ UT in which they are located;*

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- (iii) *There shall be free movement of oxygen carrying vehicles into the cities, without any restriction of timings, while also enabling inter-city supply without any restriction;*
- (iv) *No authority shall attach the oxygen carrying vehicles passing through the district or areas for making supplies specific to any particular district(s) or area;*
- (v) *Supply of oxygen for industrial purposes, except those exempted by the Government is prohibited w.e.f. 22nd April, 2021 and till further orders;*
- (vi) *States/UTs shall strictly abide by the supply plan of medical oxygen prepared by EG-II and as revised from time-to-time;*
- (vii) *The District Magistrates/ Deputy Commissioners and Senior Superintendents of Police/ Superintendents of Policy/ Deputy Commissioners of Police will be personally liable for implementation of the above directions.*

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**Union Home Secretary
and, Chairman, National Executive Committee (NEC)**

6. We are informed that the local authorities at Panipat have obstructed the lifting and transportation of oxygen from *Air Liquide, Panipat*. Yesterday as well, the supply of oxygen from the Faridabad border to Delhi was obstructed for several hours by the local authorities.

7. Mr.Piyush Goel, Additional Secretary, Ministry of Home Affairs is also present during the hearing, and he states that the officials in the State of Haryana were persuaded to abide by the Allocation Order and the order dated 22.04.2021 passed under the Disaster Management Act. Thereafter some oxygen has been released from *Air Liquide, Panipat* Plant. However, the position does not appear to be completely satisfactory and obstructions appear to continue.

8. We direct the Central Government to peremptorily ensure strict compliance of the Allocation Order dated 21.04.2021, its own order passed

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on 22.04.2021 under the Disaster Management Act, and our order dated 21.04.2021. We also direct all the authorities concerned, who are bound by the allocation order, and the order passed under the Disaster Management Act, to ensure its strict compliance. We make it clear that non-compliance of the said orders and our order passed today will be dealt with very seriously, since non-compliance of these orders is likely to result in grave loss of life. We put everyone concerned to notice that non-compliance of this order would also invite action for contempt of Court and also invite criminal and penal action under the Disaster Management Act and under the Indian Penal Code. We direct the Central Government to ensure that the supplies from all the oxygen producing plants, as per the allocation order, is made and transportation takes place without any hindrance. Looking to the present emergent situation, we direct the Central Government to ensure that adequate security is provided to the lorries transporting oxygen, and there is no obstruction on the way. For this purpose, a special corridor be created for immediate transportation of the oxygen. Other aspects of the matter, which are listed before us, shall continue to be taken up hereafter.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 22, 2021
N.Khanna/kd/sr

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