

WP NO. 6435/2020

Connected Cases: WP NO. 8671/2020, WP NO. 8619/2020, WP NO. 8622/2020, WP NO. 8668/2020, WP NO. 10586/2020, WP NO. 13395/2020, WP NO. 15309/2020, WP NO. 9214/2020, WP NO. 8773/2021, WP NO. 8720/2021, WP NO. 8715/2021, WP NO. 8475/2021, WP NO. 8868/2021, WP NO. 8969/2021, WP NO. 9140/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[MOHAMMED ARIF JAMEEL AND ANOTHER VS. UNION OF INDIA
AND OTHERS]

CJ & AKJ:
06.07.2021
(through video conferencing)

ORDER

CHAMARAJANAGAR HOSPITAL INCIDENT

It is already brought on record that the State Government has taken a decision to pay *ex gratia* compensation of Rs.2.00 lakhs each to the families of 24 persons who died in Chamarajanagar District Hospital. There is a report submitted by the Commission headed by Hon'ble Shri Justice A.N.Venugopala Gowda, a retired Judge of this Court which came to the conclusion based on the material on record that from 10.30 p.m on 2nd May, 2021 till about 2.00 a.m on 3rd May, 2021, there was no oxygen supply available in Chamarajanagar District Hospital which led to the death of 24 patients. In clause (k) of paragraph 12 of the said report, the Committee recommended for grant of a suitable amount by way of compensation to the families of the said 24 persons.

2. Today, a memo is filed by the State Government placing on record a proposal pending before the State Government on the basis of which a decision is likely to be taken immediately. We have perused the said memo. Clauses (1) and (2) of the said memo are reproduced for the sake of convenience:

"(1) The legal representatives of the following 3 deceased persons who died between 10.30 p.m. on 2.5.2021 to 2.30 a.m. on 3.5.2021.

(a) Shri Mohan Raj Meghavath, s/o of Raja Naiaka

(b) Smt.Manjula, w/o Siddanayaka, Hosuru

(c) Shri Mahadeva Swamy, s/o Mariyappa, Yariyuru

Shall be paid in a sum of Rs.5,00,000/- as ex gratia, compensation, the same will be inclusive of the compensation of rupees two lakhs which was ordered to be paid vide Government Order No.KOE232TNR2021, Bengaluru dated 21.05.2021.

(2) The following legal representatives of the 10 deceased persons who died between 2.21 a.m. to 9.00 a.m. on 3.5.2021 a sum of Rs.4,00,000/- as ex gratia compensation will be paid which will be inclusive of Rs.2,00,000/- vide Government Order No. KOE232TNR2021, Bengaluru dated 21.05.2021.

(1) Smt.Nagamma, w/o Shri Veerabhadra Nayak

(2) Shri Mahadeva Swamy, s/o Gurusiddappa

(3) Doddaiah, s/o Marisiddaiah

(4) Ajaykumar, s/o Nagarajappa

(5) Surendra, s/o Siddaiah

(6) Sarojamma, w/o Mani

(7) Sumesh, s/o Mariswamy

*(8) Yogesh Nayak, s/o Krishna Nayak
(9) Shivaswamy, s/o of Channaiah
(10) Mahadevamma, w/o Somanna*

3. In clause (3) of the memo, it is stated that as regards the families of the remaining 11 patients out of 24 patients, a compensation of Rs.2.00 lakhs has been already paid and a decision for payment of an additional amount will be taken after the Commission headed by Hon'ble Shri Justice B.A.Patil, a retired Judge of this Court, submits a report.

4. Thus, in the proposal before the State Government, a distinction has been made between those who died between 10.30 p.m on 2nd May, 2021 and 2.20 a.m on 3rd May, 2021 and those who died between 2.21 a.m to 9.00 a.m on 3rd May, 2021.

5. An analysis of the report submitted by the Commission headed by the retired Judge of this Court shows that gradually from 1st May, 2021, the supply of oxygen to Chamarajanagar District Hospital went on reducing and in fact, the entire stock of oxygen got exhausted at 10.30 p.m on 2nd May, 2021. It appears that about 12.30 a.m on 3rd May, 2021, four oxygen cylinders containing a quantity of 28,000 litres were received, but the entire quantity got exhausted only within 20 minutes. It appears from the record that 10 persons who died between 2.21 a.m and 9.00 a.m on 3rd May,

2021 were admitted to the said hospital before 10.30 p.m on 2nd May, 2021 and all of them were put on oxygen as they needed the same.

6. The finding recorded by the Committee is that there was no oxygen available in the hospital between 10.30 p.m on 2nd May, 2021 and 2.20 a.m on 3rd May, 2021. Therefore, it goes without saying that even 10 patients mentioned in clause (2) of the memo must have been adversely affected due to lack of oxygen as in the case of 3 patients mentioned in clause (1). We are, therefore, of the view that there cannot be a distinction between those who died between 10.30 p.m on 2nd May, 2021 and 2.20 a.m on 3rd May, 2021 and those who died between 2.21 a.m to 9.00 a.m on 3rd May, 2021. Such distinction, if made, will invite the vice of arbitrariness. In view of this clear position, the relatives of the persons named in clause (2) of the memo will have to be treated on par with the relatives of the persons whose names appear in clause (1) of the memo.

7. In any case, we are of the view that there is no difference between the cases listed in clauses (1) and (2) of the memo and therefore, when the State Government takes a final decision, it is obvious that the State cannot make a distinction

between the cases of the patients enlisted in clauses (1) and (2) and their relatives will have to be provided with *ex gratia* compensation of Rs.5.00 lakhs. We may clarify here that we are not deciding the issue whether the compensation of Rs.5.00 lakhs is adequate.

8. As regards 11 patients listed in clause (3) of the memo, we propose to consider their cases after the recommendations of the Commission headed by Hon'ble Shri Justice B.A.Patil, are placed on record.

9. At this stage, the learned Advocate General states that the decision to pay *ex gratia* compensation is without prejudice to the rights and contentions of the State Government and the State Government will not treat the same as a precedent. We may also note here that what we have held today is based on the material on record and what is stated in the memo filed by the State Government. The Commissioner appointed under the Commissions of Inquiry Act, 1952 can always independently arrive at his own recommendations/conclusions.

BLACK FUNGUS - MUCORMYCOSIS

10. As per the written submissions filed today, as on 2nd July, 2021, the total number of cases has gone up to 3,327 as compared to the figure of 3,086 as on 23rd June, 2021. The deaths have gone up to 278. As regards awareness, the State Government has reported compliance in the form of Annexures-R6 and R7.

11. Further hearing will be continued on Friday (9th July, 2021) at 4.15 p.m.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

vgh*/SN
List No.: 1 Sl No.: 1