

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 76/2007

INDIAN ASS. OF PALLIATIVE CARE & ORS. Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(With appln. For directions and permission to file rejoinder affidavit and permission to file submission and office report) (For final disposal)

Date : 01/04/2016

This petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE HON'BLE MRS. JUSTICE R. BANUMATHI  
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. Niraj Sharma,Adv.

For Respondent(s) Mr. Abhijit Sengupta,Adv. Mr. Abhinav Mukerji,Adv. Mr. T.N.Singh, Adv. Ms. Pallavi Pratap, Adv. Mr. Abhishth Kumar,Adv. Mr. Ajay Pal,Adv. Mr. Anil K. Jha,Adv. Mr. Balaji Srinivasan,Adv. Mr. B. Krishna Prasad,Adv. Mr. B. S. Banthia,Adv. Ms. Pinky Anand, ASG, Ms. Madhvi Divan, Adv. MR. Rishabh Jain, Adv. Ms. Kanan Gupta, Adv. Ms. Sunita Sharma, Adv. 2 Mr. Shadman Ali, Adv. Mr. Balendu Shekhar, Adv. Mr. Ajay Kumar Singh, Adv. MS. Asha G.Nair, Adv. Mr. Harsh Kinchi, Adv. Mr. Sudhansu Saran, Adv. Mr. Manish Vashistha, Adv. MS. Saudamini Sharma, Adv. Ms. Nivedita Nair, Adv. Mr. D. S. Mahra,Adv. Mr. Gaurav Sharma,Adv. Mr. Prateek Bhatia, Adv. Mr. D.P.Mohan, Adv. Mr. Gopal Singh,Adv. Mr. Chandan Kumar, Adv. MS. Varsha Poddar, Adv. Mr. Himinder Lal,Adv. Mr. Pankaj Bhatia, Adv. Mr. Jatinder Kumar Bhatia,Adv. Mr. Kamal Mohan Gupta,Adv. Mr. Khwairakpam Nobin Singh,Adv. Mr. Milind Kumar,Adv. Mr. Naresh K. Sharma,Adv. Mr. Pragyansh Sharma, Adv. Ms. Shikhar Garg, Adv. Mr. T.Vramachari, Adv. Mr. K.V.L.Ragavan, Adv. Mr. Hitesh Kumar Sharma, Adv. Mr. P. V. Yogeswaran,Adv. Mr. Ranjan Mukherjee,Adv. Mr. B.Balaji, Adv. Mr. Bauthuvel Palani, Adv. Mr. R. Nedumaran,Adv. MS. Mitthu Jain, Adv. MS. Astha Sharma, Adv. Mr. Sunil Fernandes,Adv. Mr. V.S.R.Krishna, Adv. Mr. T. Mahipal,Adv. 3 Mr. Sapam Biswajit Meiti, Adv. Ms. B.Khushbansi, Adv. Mr. I.H.Isaac

Haiding, Adv. Mr. Vijayanand Sharma, Adv. Mr. V. G. Pragasam, Adv. Mr. S. Prabu Ramasubramanian, Adv. Mr. Yash Pal Dhingra, Adv. Ms. A. Subhashini, Adv. Ms. C. K. Sucharita, Adv. MS. Vartika Sahay, Adv. M/s Corporate Law Group, Adv. Mr. K.V. Jagdishvaran, Adv. Ms. G. Indira, Adv. Mr. Suryanaryana Singh, Adv. MS. Pragati Neekhara, Adv. MS. Jesal Wahi, Adv. MS. Puja Singh, Adv. MS. Vinakshi Kadan, Adv. Ms. Hemantika Wahi, Adv. Ms. K. Enatoli Sema, Adv. Mr. Edward Belho, Adv. Mr. Amit Kumar Singh, Adv. Ms. Liz Mathew, Adv. Mr. M.F. Phillip, Adv. Mr. Alok Sangwan, Adv. Mr. Amol N. Suryawanshi, Adv. Mr. Mishra Saurabh, Adv. Mr. S. Udaya Kumar Sagar, Adv. Mr. Krishna Kumar Singh, Adv. Mr. Guntur Prabhakar, Adv. MS. Prerna Singh, Adv. 4 Ms. Sushma Suri, Adv.

UPON hearing the counsel the Court made the following O R D E R

This petition filed in public interest prays for a direction to the respondents to modify their Rules governing availability of morphine and other opioids required for pain control in accordance with Circular (Annexure P-3) issued by the Central Government. It also prays for a Mandamus directing the State Governments to issue appropriate guidelines and standard operating procedures so as to make the Rules for morphine availability workable and to encourage the growth and spread of palliative care services at hospitals and through NGOs on the lines of the model standard operating procedures and MMR adopted by the State of Kerala. It prays for a direction to the Central Government to ensure that pain relief and palliative care are matters of priority under health care in India and liable to be included not only in National Cancer Control Program but also in the programs governing control and treatment of AIDS and other incurable diseases. Several other directions have also been prayed for by the petitioner including a direction to the Central Government for preparation in consultation with experts of a palliative care service, delivery plans that requires pain relief and palliative care to become a priority for patients in cancer centers. A direction to the Medical Council of India, Nursing council of India to include palliative care in routine medical and nursing curricula, emphasizing the importance of palliation, pain management and morphine use in cases of cancer, AIDS and other 5 diseases has also been prayed for.

The Government of India as also some of the States have filed their counter affidavits. It is unnecessary to make a detailed reference to the same in light of the additional affidavit filed as recently as on 31.03.2016 by Ministry of Finance, Department of Revenue. In para 7 of the said affidavit, the Central Government have pointed out that after receiving several representations on the issue of lack of adequate access to morphine and other opioids for palliative care and the urgent need for a uniform licensing system under the NDPS Act which is applicable uniformly through out the country and after consultation with all stake holders

including the State Governments, the Government have amended The Narcotic Drug and Psychotropic Substances (Amendment) Act, 2015 (No. 16 of 2014) which enables the Central Government to notify certain narcotic drugs used for medical purposes including that of pain relief as a new class of drugs under the heading "essential narcotic drugs". The affidavit further states that the Government have pursuant to the amendment aforementioned issued Notification No. S.O. 1181 (E) dated 05.05.2015, in exercise of the powers conferred upon it under Section 9 read with Section 76 of the Act. It has also by notification dated 05.05.2015 simplified provisions relating to possession, transport use etc. of the essential narcotic drugs. The affidavit states that the provision relating to the essential narcotic drugs have been finalized after elaborate consultation with all stake holders including the State Governments, trade and industry and the palliative care community. The affidavit enumerates the important amendments in the following 6 words:

".....Section 2 (viiiia) : "essential narcotic drug" means a narcotic drug notified by the Central Government for medical and scientific use.

Section 9(1)(a)(va): the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of essential narcotic drugs. Copy of the Gazette Notification containing the Narcotic Drug and Psychotropic Substances (Amendment) Act, 2014 (No.16 of 2014) is at Annexure R-1 page (5-9).

Accordingly, in exercise of the powers conferred under Section 2 (viiiia), vide notification No.S.O.1181 (E) dated 05.05.2015, Central Government has notified six (6) narcotic drugs, which are used for pain relief and de-addiction treatment, as essential narcotic drugs. Copy of the Gazette Notification No.S.O. 1181 (E) dated 05.05.2015 is at Annexure R-2 Page (10-11).

It is further submitted that in exercise of the powers conferred under Section 9 read with Section 76 of the Act, Notification No.G.S.R.359 (E) dated the 5th May, 2015, the Narcotic Drugs and Psychotropic Substances Rules, 1985 were further amended to provide for simplified provisions relating to possession, transport, use, etc., of the essential narcotic drugs. Copy of the Gazette Notification No.G.S.R.359(E) dated the 5th May, 2015 is at Annexure R-3 Page (12-26).

It is submitted that the provisions relating to the 'essential narcotic drugs' have been finalized after elaborate consultation with all stake holders, including the State Governments, trade and industry, and the palliative care community. Important amendments incorporated in the Act are following:-

- a. The issue of diverse rules made by the State Government has been addressed by uniform rules applicable throughout the country.
- b. While making provisions for easy availability of the 'essential narcotic drugs', adequate safeguard measures have been provided to prevent non-medical use of the 'essential narcotic drugs'.
- c. Medical use of essential narcotic drugs for palliative care and drug dependence treatment will be primarily implemented through Recognized Medical Institution. Medical institution with appropriate infrastructure will apply to the appropriate authority under the State Governments for Recognized Medical Institution.”

Appearing for the respondent-Government of India, Ms. Pinky Anand, learned ASG submits that since the issue sought to be raised in the writ petition has been comprehensively addressed by the Central Government and since the statutory framework has also been provided by suitable amendments referred to earlier, the apprehension and grievance of the petitioner stands redressed substantially if not fully. She submits that should there be any area of concern, the petitioner can approach the authorities concerned and seek further directions or improvement in the prevailing system of palliative care and matters relating thereto. She submits that this petition could in the light of the above subsequent development be disposed of as no useful purpose will be served by keeping the same pending. We find merit in that submission. The Government appear to have taken the issue regarding the availability of narcotic drugs for palliative care seriously and not only amended the statutory provision to make availability of the drugs easy but also to regulate the use thereof for medical and non-medical purpose. In that view, therefore, the present petition does appear to have served its purpose and led to an improvement in the system that was earlier prevailing. There may still be certain areas of concern which according to the 8 petitioners need to be addressed by the competent authority but the petitioner shall be free to seek such other redress as may be warranted under the law before the authorities. The petition is accordingly disposed of with the above observations leaving the parties to bear their own costs.

(Shashi Sareen)

(Veena Khera)

AR-cum-PS

Court Master