

Update on litigation in Delhi High Court regarding treatment of XDR TB with Bedaquiline through the Conditional Access Programme

On 17 December 2016, a writ petition was filed before the Delhi High Court on behalf of a young girl, living with XDR-TB who urgently needs access to Bedaquiline. At the time of filing of the petition she was wrongly refused treatment by LRS Hospital, New Delhi, one of the six sites for the RNTCP's Conditional Access Programme for Bedaquiline, stating that she was not eligible, not being resident of Delhi. The petition was filed through the young girl's father and they were represented in Court by Lawyers Collective.

The young girl was first diagnosed with MDR-TB in 2013. Having failed treatment for MDR-TB she was diagnosed with XDR-TB in 2014 and was informed by her treating doctor at LRS Hospital that she did not could be treated further. Upon further tests conducted at the end of 2016, her doctor at LRS noted that she should be reviewed for Bedaquiline which was also recommended, thereafter by Dr. Zarir Udwadia, a Consultant Chest Physician at Hinduja Hospital and a leading TB expert in the country. However, the LRS hospital refused to give her the medicines based on place of residence.

At the initial hearing, Anand Grover, Senior Advocate and Director, Lawyers Collective argued that the young girl had a constitutional right to treatment with Bedaquiline without which she could lose her life, and that LRS hospital being a public hospital had a constitutional obligation to ensure access on a non-discriminatory basis. LRS hospital responded they could not give her Bedaquiline unless a fresh MGIT Culture Drug Susceptibility Test (DST test) was done, which could take up to 6-8 weeks. A DST test performed a month before the petition was filed at LRS hospital could not be used as the sample was contaminated. The court requested the hospital to consult with Dr. Udwadia to take into account his medical opinion in arriving at a decision.

In a medical certificate furnished to the Court on 29 December 2016, Dr. Udwadia recommended the HAIN second LPA test, a 5 day test, over the MGIT Culture DST while recommending that a regimen with Bedaquiline and Delamanid in sequence in addition to second-line drugs he had prescribed would be the best course of treatment for the young girl. Following a meeting, the LRS Hospital Committee concluded that the LPA test cannot be employed for technical reasons and that Bedaquiline cannot be administered due to the lack of an optimized backbone regimen.

At the next hearing on 2 January 2017, Anand Grover furnished an expert opinion from Dr. Jennifer Furin, an infectious disease specialist from the Harvard Medical School, with clinical experience of

over 20 years in treating MDR-TB patients, which categorically ruled out the requirement for a fresh DST since the patient's medical history clearly showed that she had XDR TB rendering the need for a further DST a 'bureaucratic requirement'. Further, Dr. Furin's certificate stated that the optimized backbone regimen (in line with Dr. Udwadia's prescription) was adequate provided bedaquiline is started urgently.

Dr. Furin's opinion was placed on record during the hearing on 4 January 2017. Anand Grover, put forth to the Court that the government's own RNTCP treatment Guidelines on Bedaquiline do not require a DST test, let alone a fresh DST to be conducted. The only eligibility criteria are that the patient must have MDR-TB and be above the age of 18. LRS Hospital's insistence that a fresh DST, especially one that takes almost 6-8 weeks for a result, he argued, is not only not a part of the RNTCP Guidelines but also amounts to a clear abdication of the hospital's constitutional duty to provide the young girl Bedaquiline.

The lawyers for the other side sought time until Monday, 9 January 2017, to furnish a response to this opinion. Further, the Learned Judge directed the Respondents' lawyers to seek instructions on whether they would be willing to provide the Bedaquiline to the girl or allow it to be administered under the care of another qualified medical practitioner. The matter is now listed for Monday, 9 January, 2017.