

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

SUO MOTU PUBLIC INTEREST LITIGATION NO. 4 OF 2020
COURT ON ITS MOTION

Vs.

UNION OF INDIA THROUGH ITS SECRETARY AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.PBhandarkar, Advocate as Amicus Curiae.

Shri U. M. Aurangabadkar, A.S.G.I. for respondent no.1

Shri D.P.Thakare, AGP for Respondent Nos. 2, 5, 6, 8 and 9

Shri S.M.Puranik, Advocate for Respondent NO.4

CORAM :- R. K. DESHPANDE, AND
SMT. PUSHPA V. GANDEDIWALA, JJ.

DATED :- 10.09.2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and video quality was proper.

2. Heard Shri Bhandarkar, Amicus Curiae in this Petition, Shri Puranik, learned counsel for Nagpur Municipal Corporation and Shri Thakare, the learned Assistant Government Pleader. We have also heard Shri Radhakrishnan, the Municipal Commissioner, Shri Ravindra Thakre, the Collector, Nagpur, Shri Sudhir Gupta, In-charge Dean, Government Medical College and Hospital and Shri Kevliya, the Dean, Indira Gandhi Government Medical College and Hospital. We also got the benefit of hearing Dr. Archana Kothari, President, Indian Medical Association and Dr. Anup Marar, Director of Orange City Hospital and Convenor of Hospitals Association.

3. The main issue which requires our immediate attention is of making the ventilators and oxygenated beds available to the patients of moderate and severe conditions so as to reduce the death rate. The people are required to travel from one Hospital to another with serious patients and for want of accommodation, the newspaper report shows that the deaths are occurring. We must note with regret that for want of medical aid, the people are falling pray to Corona Virus. We, therefore, thought that without going into the legal niceties, an immediate arrangement can be worked out to reduce the death rate. Hence, we try to work out the solution.

4. It is not the case of the parties including the Municipal Commissioner, Nagpur; the Collector, Nagpur, the Deans of GMCH and IGGMC, Nagpur that the infrastructural facilities namely, ICU, Ventilator beds or oxygenated beds are not available, of course, this cannot be the reason for the State and it is the duty of the State to make all such infrastructural and medical facilities available to save the life of people who are affected or likely to be affected by Corona Virus.

5. The problem of non-availability of the medical and para-medical staff can also not be a problem to deny the admission in the Hospital to the patients. Even private Doctors are under obligation to provide the treatment. The preservation of human life is of paramount importance. Once the life is lost, it cannot be restored. Every Doctor whether he

is in Government or Semi-Government Hospitals or private professional is under obligation to extend his services with due expertise for protecting the life. Even private Doctors cannot refuse to render their services during pandemic in all such Hospitals where they are called or their services are needed. Similar is the position in respect of para-medical staff. It is the obligation on the State to secure adequate para-medical staff from all such sources as are available and non-availability of it cannot be countenance.

6. Fortunately, Dr. Archana Kothari, the President of Indian Medical Association and Dr. Anup Marar, the Director of Orange City Hospital and Convenor of Hospitals Association have joined us in this matter on their own, showing willingness to tackle the problem. They have, however, expressed the difficulties of the Doctors who are 65 years of age and above or are suffering from co-morbidities to take responsibility of providing treatment by personally attending the patients in various Hospitals or Dedicated Covid Health Centres (DCHCs).

7. We find that there is a classification of patients in different categories – broadly, it is in three categories of mild, moderate and severe. These are further classified as asymptomatic positive patient, symptomatic patient without co-morbidity, symptomatic patient with co-morbidity, symptomatic patient with pneumonia without hypoxia, symptomatic patient with pneumonia with hypoxia and symptomatic patient with pneumonia with hypoxia with

sepsis/shock/organ failure. From the affidavit filed by the Dean, GMC, we find that there is a set treatment which is provided to different categories of patients of Covid-19 with such variations to be made by the consulting Doctors keeping in view the specific issue relating to the patients. The investigations are also by and large fixed.

8. So far as Doctors of 65 years of age and onwards with co-morbidities, it may be possible, keeping in view the experience which they possessed in the profession, to provide guidance in respect of investigation and treatment to be administered to a particular patient through various means of communication like personal contact on cell phone, sending of reports through WhatsApp in pdf or looking the condition of the patient through Video Call and also conducting the conference. We have seen and experienced also that the Doctors who are infected with Covid-19, are managing and administering the patients in the Hospitals while they are in home isolation. It does not seem to be a difficult task to manage the patient by the Doctors.

9. The services of the Ayush Doctors or PG students or students in Super Speciality can be utilized and they can work under the guidance and instructions from the senior Doctors through various communication systems pointed out earlier.

10. We are assured by Dr. Archana Kothari, the President, IMA and Dr. Anup Marar, the Convenor of Private

Hospital Association that within a day they shall provide a list of private Doctors in different age group, who can provide their services either by personally attending the patients or through various communication systems. Such list shall contain addresses and contact numbers of Doctors.

11. We are informed and it is placed on record that the Collector, Nagpur, has in exercise of its statutory powers constituted a Task Force consisting a team of 12 Doctors. Upon receipt of a list from the IMA and Hospitals Association, the Municipal Commissioner shall in consultation with the Task Force assign the duties and responsibilities to the Doctors in various Hospitals and DCHCs to take the responsibility of treating the patients. This shall be done within a period of 24 hours upon receipt of the list by the Municipal Commissioner who shall communicate the duties and responsibilities along with the Centres and Hospitals to the concerned Doctors from the list. Shri Radhakrishnan, the Municipal Commissioner submits that presently if this arrangement is made, the problem can be tackled.

12. We are assured by the Collector to make available the para-medical staff in the concerned Hospitals and DCHCs. The question of payment to these Doctors and para-medical staff can be considered by the appropriate authorities. However, it can be settled subsequently also and this shall not be a condition precedent to render the services by the Doctors or para-medical staff. We expect all the Doctors and para-

medical staff assigned with the duties and the place of work shall discharge their obligation with promptitude and that this Court does not receive any complaint in respect of “no response” from any such member.

13. The judges and the lawyers have made themselves available 24x7 to serve the causes in pandemic situation and there would be nothing wrong to expect the medical and para-medical staff to be available 24x7 in this pandemic situation. We want all the Doctors and para-medical staff to rise on the occasion of severity in recognition of our observations in para 31 and 32 of the decision in the case of **Citizen Forum for Equality in LD-VC-PIL No. 12 of 2020**, decided on 01.06.2020, as under;

31.....Their life is more precious, because they are the warriors and saviours, compromising or putting their own life at stake to save the lives of others, by relentlessly working on a call for duty. We cannot afford to lose them, because our own life depends upon their fitness to work without any stress or tension. There cannot be any compromise in respect of it. If they are infected with the disease, the lives of their family members, dear-ones, friends and neighbourers go in peril. To prevent the spread of disease is the obligation or duty of the State under Article 47 of the Constitution of India.....

32. We have no hesitation to adopt the views expressed in the order dated 18-5-2020 that the medical and police personnel are doing, what the brave hearts of the armed forces do day in and day out, i.e. answering the call of duty at the risk of falling prey to the deadly virus. The Society in general and the State in particular owe it to the frontline warriors to take all possible measures as would minimize if not obliterate the threat of infection, assuming arguendo, that the advisory or

guidelines issued by ICMR do not cover the frontline warriors till the symptoms are manifested. In our view, the State would be duty bound to take additional measures and ensure the minimization of the risk to the medical, police personnel and all frontline workers, to protect the fundamental right to life under Article 21 read with the duty under Article 47 of the Constitution of India.

14. We cannot refrain ourselves from quoting the portion of the observations of the Apex Court in paras 8, 14 and 15 of the decision in the case of ***Pt. Parmanand Katara vrs. Union of India***, reported in 1989 (4) SCC 286 as under;

8. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasized and reiterated with gradually increasing emphasis that position. A doctor at the government hospital positioned to meet this State obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way.

“14. It could not be forgotten that seeing an injured man in a miserable condition the human instinct of every citizen moves him to rush for help and do all that can be done to save the life. It could not be disputed that inspite of development economical, political and cultural still citizens are human beings and all the more when a man in such a miserable state hanging between life and death reaches the medical practitioner either in a hospital (run or managed by the State) public authority or a private persons or a medical professional doing only private practice he is always called upon to rush to help such an injured persons and to do all that is within his power to save life. So far as this duty of a medical professional is

concerned its duty coupled with human instinct, it needs no decision nor any code of ethics nor any rule or law.

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15. Medical profession is a very respectable profession. Doctor is looked upon by common man as the only hope when a person is hanging between life and death but they avoid their duty to help a person when he is facing death when they know that it is a medico-legal case. To know the response of the medical profession the Medical Council of India and also the All India Medical Association were put to notice and were requested to put up their cases.

15. We do not want a situation to occur where the patients are required to travel from one Hospital to another to secure the position in ICU, ventilated beds or oxygenated beds or due to non-availability of the services of medical and para-medical staff. If any patient requires medical assistance and approaches any Hospital or DCHC where such facility is not available for any reason whatsoever, such Hospitals or DCHCs should immediately make necessary enquiry and help the patient to reach to the proper destination. It shall be the duty of the Municipal Commissioner and the Task Force to see that all the Hospitals and DCHCs should provide the information and contact numbers of the Hospitals where such facilities can be easily made available and the patients are not required to travel from pillar to post. We have seen the affidavit of the Municipal Commissioner and we find that such responsibility is shouldered by the Municipal Commissioner. We also expect the Task Force to spring in action to supervise the infrastructural facilities and man power in the Hospitals and DCHCs.

16. We make it clear that there should be no prohibition for the patients of COVID-19 to have consultation with the Doctor of their choice who can visit and examine the patient anywhere in any Hospital or DCHC and advice investigation and medication. This will reduce the responsibilities of others.

17. Put up this matter on **15.09.2020 at 10.30** a.m. for further direction along with W.P. (St.) No. 8050 of 2020.

18. The order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

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Rvjalit