

Prajakta/Vidya

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

PUBLIC INTEREST LITIGATION (L.) NO.10276 OF 2021

Sneha Nirav Marjadi ..Petitioner
vs.
State of Maharashtra & Ors. ...Respondents

**AND
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION (ST.) NO.9885 OF 2021**

Shri.Nilesh Navalakha ..Petitioner
vs.
Union of India & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO.1113 OF 2021**

Nilesh Balwantrao Ukunde ..Petitioner
vs.
Union of India & Ors. ...Respondents

**WITH
INTERIM APPLICATION (ST.) NO.10386 OF 2021**

Shri.Nilesh Navalakha ..Petitioner
vs.
Union of India & Ors. ...Respondents

**AND
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION (L.) NO.9228 OF 2021**

Dhruvi Kapadia & Anr. ...Petitioners
vs.
Union of India & Ors. ...Respondents

.....

Mr.Simil Purohit a/w Mr.Arshil Shah, Mr. Nirav Marjadi, Mr. Dharmapal Dave, Ms.Parisha Shah, Mr. Pariket Shah, Mr. Vishal Raman, Ms.Smita Durve, Ms. Drasti Jani for Petitioner.

Ms.Geeta Shastri, Addl. G. P. with Mr. Akshay Shinde, B Panel Council for State.

Mr.A.Y. Sakhare, Sr.Adv. with Mr.Rohan Mirpury and Ms.K.H. Mastakar for MCGM.

Mr.Anil C. Singh, ASG a/w Mr. Aditya Thakkar with Mr.D.P. Singh, Mr.Yash Momaya i/b Mr. Gul Asnani for UOI.

Mr.Abhijit Kulkarni for Pune Municipal Corporation.

Mr.Nitin P. Deshpande for Intervenor.

Ms.Dhruti Kapadia Petitioner in Person in PIL(L.) No.9228/21.

Ms.K.H. Mastakar for MCGM in PIL(L.) No.9228/21.

Smt.Purnima Kantharia, G. P. with Ms.Geeta Shastri, Addl. G.P for State in PIL(L.) No.9228/21.

Mr.Anil C. Singh, ASG with Mr.Advait Sethna i/b Ms.Anusha P. Amin for R. No.1/UOI in PIL(L.) No.9228/21.

.....

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- MAY 12 and 13, 2021.

PC :

1. This batch of public interest litigations raise several vital issues concerning the agony of the citizens arising from the present pandemic caused by Covid-19. Human life all over the globe stands shattered. The anxiety and the attempt everywhere is to minimise and save human suffering. It is more than a year, that the human race continues to suffer the attack of this monster virus. As it is, in the modern times, there is lot of suffering on different counts, added to this, is the pandemic. Considering such difficult times, as to what is in store for the human race is certainly our destiny. The sunshine in such darkness, is that the entire human race and the “citizens of the globe” stand

united to encounter the pandemic. The need today, is of a collective responsibility of the citizens, to help each other, wherever they are and whatever they do and to take every possible step so that human pain, agony and suffering is reduced and the pandemic controlled. On such opening note, we record some antecedents, and how the issues have gathered as the time progressed.

2. On April 22, 2021, we had passed an extensive order issuing interim directions in regard to the availability of medicines, RT-PCR tests and Rapid Antigen Tests, the Covid-19 patients who were addicted to smoking, availability of different categories of beds in Government and private hospitals, on regulation and supply of oxygen etc.

3. By our further order dated April 27, 2021, we expanded the scope of these PIL petitions by including issues in relation to the plight of crematoriums and their insufficiency.

4. After reply affidavits were received from the State as also from the Municipal Corporation of Greater Mumbai (MCGM), we had again heard the parties on April 29, 2021. As affidavits were yet to be served on some petitioners, we adjourned the proceedings, however, by taking a note of a serious incident of recent origin namely of a fire which broke out in a hospital at Thane, in which four patients were charred to death.

We also noted similar incidents having occurred at Bhandup and Virar respectively. We expanded the scope of these PIL petitions to include such issues. We also issued directions in regard to adequate fire safety measures to be provided by all the hospitals in the State.

5. Thereafter, on May 06, 2021 the parties were again extensively heard. Considering the submissions advanced at the bar, we issued further directions in regard to the supply of drug 'Remdesivir', requirement of oxygen, bed management, RT-PCR tests, fire audit and on crematoriums.

6. Today, on the above backdrop and more particularly on the issues as recorded in our order dated May 06, 2021, we have heard Mr.Purohit, Mr.Inamdar, learned counsel for the petitioner and Advocate Ms.Dhruti Kapadia, petitioner in person, Mr.Anil Singh, the learned ASG for the Union of India, Mr.Sakhare, learned Senior Counsel for Municipal Corporation of Greater Mumbai (MCGM), Mr.Kulkarni, learned counsel for Pune Municipal Corporation (PMC), Mr.Shinde, Special Counsel and Mr.Kakade, in-charge Government Pleader for the State.

7. On behalf of the State Government, a note titled as "Brief Note-III" dated May 11, 2021 is submitted inter-alia to address concerns on

issues noted by us in our earlier order and which would fall for our consideration in the present proceedings.

8. At the outset, having noted the contents of paragraphs 1 and 2 of such 'brief note' tendered by Mr.Shinde, we find them to be quite objectionable and a complete misreading of the observations of this Court as made in paragraphs 5 and 11 of the order dated May 06, 2021. We would not expect the Court to be questioned on our observations more particularly considering the contents of paragraphs 1 and 2 in the manner they are paraphrased. We have pointed out to Mr.Shinde, the context in which such observations were made and the concerns as expressed by the Court. Mr.Shinde fairly accepts that there is an apparent misreading of such observations while preparing the brief note. Mr.Shinde, accordingly, has tendered an unconditional apology while submitting that paragraphs 1 and 2 of the 'Brief Note-III' are in no manner an attempt on the part of the State to question the observations as made by the Court and are a result of a misreading of such order. We accept such apology and rest the matter at this.

9. In so far as the current position in respect of availability of the drug "Remdesivir" is concerned, it appears from the submissions as made on behalf of the petitioners, that although claims are made on behalf of the MCGM and the PMC that supply of the said drug is

adequate, however the figures as set out before us, clearly indicate that there is a short supply. This for the reason, that as informed by Mr.Shinde, although total allocation between the period April 21, 2021 to May 09, 2021 was at 08,09,000 vials the actual receipt was of 6,85,062 vials. We have also heard the petitioners say that the drug is not being supplied by the Nodal Officers when it is required at the hospitals.

10. Mr.Inamdar has also drawn our attention to an interim application filed on behalf of his client, whereby a prayer is made that the authorities be directed to inquire into the matter of procurement and supply of drugs, like Remdesivir and Tocilizumab or any other essential medicines by any individual person and file a report before the Hon'ble Court for appropriate action.

11. Mr.Inamdar in support of such prayer has drawn our attention to large number of posts as made on social media which indicate that some political and film personalities have indulged in supply of Remdesivir to the citizens. Such material is in the nature of very recent messages appearing on the social media, clearly indicating supply of such medicine by political and film personalities. Such messages also record the gratitude expressed by those who have received the drug from such personalities.

12. We are quite disturbed to note from such material, that the drug “Remdesivir” when is being allocated by the Central Government and under the orders passed by the Supreme Court as also of the various High Courts, as to how the same can be privately available for distribution at the hands of such political and film personalities. In our opinion, this would certainly amount to hoarding/illegal stocking of such drug thereby introducing a system of its indiscriminate availability, which would cause a serious prejudice to patients who are in urgent need of such medicines in most deserving cases. It cannot be conceived, that only bonafide and genuine persons would approach such personalities to secure such medicine, unscrupulous persons for profiteering may avail such benefit. Also, such personalities making the drug available privately, raises a grave question as to its equitable distribution in a system/regime which is set into motion for its allocation, as per requirement of each State. Although in some cases such political and film personalities may purport to help the needy patients, however, in our opinion, the drug being available with such personalities who are not part of the official machinery are serious concerns, which are immediately required to be looked into by the Central Government as also by the State Government. We accordingly direct the State as also the Union of India to place on record a report as

to how such drug, which is so scarce in its availability, can be parallelly distributed by such political and film personalities. Report to this effect be placed on record before the returnable date.

13. In regard to the availability of the said drug, there are certain other concerns namely in what manner the distribution/allocation within the State is made after the stocks are received from the Central Government and as to how the demand and supply for the different areas/districts is adjusted. We would require the State Government to file an affidavit to explain such allocation.

14. On a perusal of today's 'brief note' as submitted on behalf of the State Government in regard to the Remdesivir issue, we note that the Chief Secretary of the State of Maharashtra by his letter dated April 22, 2021, addressed to the Cabinet Secretary, Government of India has sought a permission from the Central Government to import Remdesivir from other countries. In response to the said letter, the Central Government, vide its letter dated April 24, 2021, has informed the Chief Secretary that the Ministry as well as the Central Drugs Standard Control Organization would facilitate expeditious processing of such permissions once a specific request is received. It is stated that in furtherance of such correspondence, on May 7, 2021, the Chief

Secretary, State of Maharashtra has informed the Cabinet Secretary, Government of India, that the Government of Maharashtra has invited global Expression of Interest (EOI) on April 27, 2021 for the supply of the said drug, to which foreign manufacturers, have responded, hence an expeditious facilitation of the required permissions for import of the said drug be processed. It is stated that the said proposal is pending with the Central Government. We have asked Mr. Anil Singh as to the status of such proposal and whether it is decided. Mr. Anil Singh, on instructions, informs us that the concerned Ministry of the Central Government would resolve this issue in consultation with the Officers of the State Government at the earliest. We accept such assurance as given by Mr. Anil Singh, and hope that an immediate decision would be taken by the Central Government, so that, if the drug is available otherwise than with the local suppliers, it can be procured and made available in the treatment of the Covid patients.

15. In regard to our observations as made in our earlier order, on alternative drugs, we had merely quoted as to what the Central Government had placed before the Supreme Court in regard to the availability of the local drugs. We are hence quite surprised to read the submissions as made in paragraph 7 to 9 of the brief note submitted by the State Government. It is, always, for the authorities, expert in the

field to prescribe medications for different treatments and subject to the availability of such drugs. The Court's anxiety is to address concerns and grievances as urged by the petitioners before us, in regard to the availability of essential drugs and to resolve any systemic blockage in reaching of the drugs to the citizens, who are in its urgent requirement. We, therefore, direct the Central and the State Authorities to publicize the correct information in regard to the various drugs of the Indian origin, which are available and its prescription and use, in the treatment of the patients of Covid 19. In this context, we are also shown 'Recommendations for the Management of Covid 19 Patients', prepared by the 'Covid Maharashtra Task Force' dated March 30, 2021. We expect the State Government to give wide publicity to such recommendations, which not only define the protocol for treatment of confirmed Covid 19 patients but also disseminate information on the use of the various drugs, available for such treatment, in different clinical conditions of the infected patients.

16. In regard to the availability of oxygen, we note from the submissions made by Mr.Sakhare that insofar as Mumbai region is concerned, the situation in regard to supply of oxygen is not that unhappy compared to the other parts of the State. We have noted the steps being taken by the Central Government in coordination with the

State Government to note that a mechanism is already made operational. We would, however, urge the State Government to look into issues on short supply of oxygen in various parts of the State and use the present mechanism to its best, so that there is equitable distribution of oxygen which is realistic and need-based. We would request the State Government to identify such areas/places in which oxygen was in short supply. There shall not be any casualty for want of oxygen in any of the hospitals within the State. It is so ordered.

17. In this context, we cannot resist from recording about a report which was recently telecast on a news channel 'India Today' by its reporter Mr.Pankaj Upadhyay, in regard to the non-availability of oxygen at a hospital not too far from Mumbai, namely, at Palghar. The report exhibited the struggle of the citizens, who are poor and hailing from the adjoining areas, which are mostly tribal areas of the Thane district. The plight of the patients in the hospital also appeared to be quite miserable. We direct the District Collector, Thane to look into the need of oxygen at the hospitals in Palghar and in the other remote and backward areas of the district, so as to ensure the availability of adequate infrastructure for hospitalization and availability of medicines for all such citizens in need of such treatment in the rural areas. Such direction would be equally applicable to the Collectors of all the

districts in the State of Maharashtra in relation to the rural areas within their respective jurisdictions.

18. Insofar as the bed management is concerned, we are quite satisfied with the material/the up-to-date dashboard placed on record on behalf of the Municipal Corporation of Greater Mumbai. We would reiterate that such pattern as adopted by the Municipal Corporation of Greater Mumbai, be adopted by the other Corporations and the municipal authorities. The Municipal Commissioner of the Municipal Corporation of Greater Mumbai shall take efforts to arrange for V.C. meetings to share its successful model with his counterparts in the other municipal corporations and municipalities.

19. We have also tested one of such facility as made available by the Pune Municipal Corporation by requesting the learned counsel to dial the helpline numbers as provided by the Pune Municipal Corporation. From the response as received from the persons receiving calls on such helpline numbers, we note that there is a total mismatch or lack of information, with such persons in regard to the real time availability of beds . This for the reason that when the dashboard indicated availability of beds, the persons answering the calls did not have any information in that regard, as they informed the callers of the non availability of beds

in the category of which information was sought for. We, accordingly, direct the Pune Municipal Corporation to look into such discrepancies and bring about a situation that the information provided is realistic and genuine. The rectification on such issues be addressed before us on the adjourned date of hearing.

20. In the course of today's hearing, we were informed that steps are being taken to make available medical facilities for children, who are likely to be infected in the present times called as the 'second wave of the pandemic'. We are informed by Mr.Sakhare that as far as the Mumbai area is concerned as on May 9, 2021 between the age group of 0 to 9 years about 11423 children were infected and that there were 17 deaths, so far. Considering the fear that children in such age group are likely to suffer infection, we direct the State Government and the municipal authorities in the State of Maharashtra to gear up and make available exclusive facilities for admission and treatment of children in the State and Private hospitals. As it would be an imminent requirement that the infected children would require the presence of their parents, such facilities be also provided so that the mother or the father of such children are also accommodated in the hospitals in which the children would receive treatment. Such parents may also require vaccination.

21. Insofar as the need to vaccinate our senior citizens, disabled persons and those who are not in a position to register themselves for vaccination in the absence of any identity documents, namely, persons who are homeless, or those hailing from the rural/remote or tribal areas, we accept the assurance of Mr.Anil Singh and Mr.Shinde that effective measures are in consideration to look towards the vaccination needs of such citizens, so that they are not neglected. We expect that a clarity on such issues be placed before us on the adjourned date of hearing. We are so concerned on this issue, as we carry a belief that if the pace of the vaccination is to be maintained higher than the rate at which infection is spreading (which includes the senior citizens), vaccination would certainly aid in reducing the impact of the virus and the ultimate suffering.

22. In paragraph 9 of our order dated April 22, 2021 in PIL (L.) No.9228 of 2021, we had recorded an assurance of Mr.Anil Singh that a decision of the Central Government not to initiate door-to-door vaccination program shall be given a re-look within two weeks . So far no decision in that regard has been taken. We, accordingly, direct that on the adjourned date of hearing, the Central Government shall place its decision as per its assurance as recorded by us in the said order.

23. While we were finalizing this order which has spilled over for the next day, an eloquent article of Dr.David Shetty, a Cardiac Surgeon, published in the local edition of the Times of India dated May 13, 2021 requires a special mention. Praising the steps being taken by the Maharashtra Government to create a task force to manage the affected children during the third wave, the writer has expressed an urgent need to vaccinate the parents. In our opinion, the above views of Dr.Shetty should be considered by the authorities. We extract the relevant portion from such article:-

“ The Covid virus mutates to attack as many new hosts as possible. During the first wave, Covid attacked mainly the elderly and spared youngsters. The second wave is attacking a large number of young breadwinners. **The third wave is likely to attack children, since most adults are already infected or immunised.**

Unfortunately, children under the age of 18 cannot be vaccinated. As a result, the only host left for the virus to attack will be children, and we have 165 million of them who are less than 12 years old. Even if we assume that just 20% of them get infected and 5% of the infected need critical care, we need 1.65 lakh paediatric ICU beds. Today we are struggling with about 90,000 ICU beds for adults and less than 2,000 beds for children.

I love children, and spent most of my professional life building one of the largest paediatric cardiac surgical ICUs in the world, during which I learnt many lessons.

Children are not miniature adults. Unlike adults, we cannot have a two-month-old baby in the Covid ICU without one of the parents. How do you send a young mother or father of three children to the Covid ICU without vaccination? Unlike adult Covid ICU patients – who are left to be managed entirely by nurses and doctors – infants and small children cannot be left in the ICU without their parents.

Mothers need to breastfeed their babies, and someone should be there to ensure that the baby doesn't throw the oxygen mask. In cardiac ICU, most kids are partially sedated, and when they are fully alert, we send them to the ward. In the Covid ICU we cannot sedate the child; they need to breathe well to maintain oxygenation.

That means we need to quickly vaccinate all the parents of young children with two doses. And this should happen now. We need to vaccinate at least 300 million young parents in the next few months. The good news is that vaccination protects. Our hospital, which always has over 500 Covid patients, has never seen a single ICU patient who had both doses of vaccine.”

24. We adjourn the hearing of these petitions to **May 19, 2021**.

25. The parties are at liberty to place on record reply affidavits/further affidavits in regard to the issues as discussed today and the same be exchanged between the parties well in advance.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)