

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(CIVIL APPELLATE JURISDICTION)

[RULE 4 (C) OF THE BOMBAY HIGH COURT
PUBLIC INTEREST LITIGATION RULES, 2010]

PUBLIC INTEREST LITIGATION PETITION OF 2020
DISTRICT : RAIGAD

In the matter of Articles 12, 21, and
226 of the Constitution of India;

AND

In the matter of clause 2.2 of the
National Guidelines for Ethics
Committees Reviewing Biomedical &
Health Research During Covid -19

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Pandemic issued by the Indian Council
of Medical Research

AND

In the matter of declaring the names of
the Corona Patients.

AND

In the matter of Right of Life is more
important than Right to Privacy

1. Miss Vaishnavi d/o Maruti Gholave

2. Shri. Mahesh s/o Bajrang Gadekar,

..PETITIONER

-VERSUS-

1. The Union of India
Ministry of Health and Family
Welfare, Government of India,

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Nirman Bhawan,
New Delhi-110011.
Through its Secretary
ncov2019@gov.in

2. The Union of India
Ministry of Home Affairs
North Block
New Delhi - 110001
Through its Secretary
hshso@nic.in

3. National Disaster Management Authority,
NDMA Bhawan
A-1, Safdarjung Enclave
New Delhi - 110029
Through its Member Secretary
controlroom@ndma.gov.in
secretary@ndma.gov.in

4. Indian Council of Medical Research,
V. Ramalingaswami Bhawan, P.O. Box No. 4911
Ansari Nagar, New Delhi - 110029,
Through its Director General
secy-dg@icmr.gov.in
icmrhqds@sansad.nic.in

5. The State of Maharashtra
Through its Chief Secretary,
Mantralaya, Mumbai - 32
cs@maharashtra.gov.in

6. The State of Maharashtra.
Public Health Department,
Mantralaya, Mumbai-32.
Through it's Principal Secretary.
psec.pubhealth@maharashtra.gov.in

...RESPONDENTS.

HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED.

MOST RESPECTFULLY SHEWETH: -

A) PARTICULARS OF THE CAUSE/ORDER AGAINST WHICH THE PETITION IS MADE.

The Petitioners are filing the present Petition as a Public Interest Litigation for directing the Respondents to declare the names of the Corona patients/Covid-19 positive persons.

B) PARTICULARS OF THE PETITIONER :-

The Petitioners are the citizens of India. The Petitioner No.1 is a final year LL.B./Law Student, studying in the Government Law College at Mumbai. Whereas the Petitioner No. 2 is the educated person. He is an agriculturist and also doing social work under the name of 'My Solapur' which is a Non political organisation.

C) PARTICULARS OF THE RESPONDENTS:-

Respondent No.1 is the Union of India, Ministry of Health and Family Welfare, Government of India, which is the apex body, which is duty bound and responsible for framing and implementing the health policy throughout India so as to protect and safeguard the health related issues of people including awareness campaigns, immunisation campaigns, preventive

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medicine and public health. Respondent No.2 is the Ministry of the Home Affairs, who discharges multifarious responsibilities, the important among them being - internal security, border management, Centre-State relations, disaster management, etc. In pursuance of these obligations, the Ministry of Home Affairs continuously monitors the internal security situation, issues appropriate advisories, shares intelligence inputs, extends manpower and financial support, guidance and expertise to the State Governments for maintenance of security, peace and harmony without encroaching upon the constitutional rights of the States. The Respondent No. 3 is the National Disaster Management Authority, formed as per the Sec. 3(i) of The Disaster Management Act, 2005. which is the apex body and mandated to lay down the policies, plans and guidelines for Disaster Management to ensure timely and effective response to disasters. Respondent No. 4 is the Indian Council of Medical Research, is the apex body in India for the formulation, coordination and promotion of biomedical research, is one of the oldest medical research bodies in the world. The Respondent No. 5 is the State of Maharashtra through its Chief Secretary whereas the Respondent No. 6 is the Public Health Department, which has control

and is responsible for health related issues of all persons in the State of Maharashtra. Thus, all the Respondents are the instrumentalities of the State as defined under Article 12 of the Constitution of India and hence, are amenable to writ jurisdiction of this Hon'ble Court. In short, the present Public Interest Litigation/ Petition is maintainable against all the Respondents.

D) DECLARATION AND UNDERTAKING OF THE PETITIONER:

- I. Present petition is filed by way of public interest litigation (PIL). The petitioners do not have any personal interest in the subject matter of PIL. The petition is filed for the declaration of the names of the corona patients, which is ultimately in the public interest as would be evident from narration of the facts in this petition.
- II. The petitioners are filing this petition in the capacity of a responsible citizen as they have concern in relation to the increase in the number of corona patients and deaths day by day.
- III. The petitioners have made necessary enquiries and ways done through research in the matter raised through this PIL. The petitioner has obtained several documents including relevant material, through the official website of the various state departments. The

petitioner could not seek information under the Right to Information Act, 2005 because on account of COVID-19 pandemic, several offices are not fully functional.

IV. Since the cause involved in the present Public Interest Litigation is really touching the health of all citizens of India and more directly citizens.

V. The petitioners have made necessary enquiries and in a way done a thorough research in the matter raised through this PIL. The petitioners have obtained several documents, including relevant material, the copies of which are annexed to this PIL.

E) FACTS IN BRIEF, CONSTITUTING THE CAUSE, ARE AS FOLLOWS:-

1. The petitioners state that COVID-19, which is also known as the coronavirus pandemic, is an ongoing pandemic coronavirus disease 2019, caused by Severe Acute Respiratory Syndrome (SARS) coronavirus. The World Health Organisation declared the outbreak of Covid-19 as a Public Health Emergency of international concern on 30th January, 2020, and a pandemic on 11th March, 2020. As on 30th June 2020, more than 1,04,96,151 cases of COVID-19 have been reported in more than 188 countries and territories, resulting in more than 5,10,597 deaths and more than 57,23,866 people have been recovered.

2. The petitioners state that as per the World Health Organisation (W.H.O.), the corona virus is primarily spread amongst the people during close contact, most often via small droplets produced by coughing, sneezing and talking. The droplets usually fall to the ground or onto surfaces rather than travelling through air over long distances. Less commonly, people may become infected by touching a contaminated surface and then touching their face. It is most contagious during the first three days after the onset of symptoms, although spread is possible before symptoms appear, and from people who do not show symptoms.
3. The Petitioners state that the common symptoms include fever, cough, fatigue, shortness of breath, and loss of sense of smell. Complications may include pneumonia and acute respiratory distress syndrome. The time from exposure to onset of symptoms is typically around five days but may range from two to fourteen days. There is no known vaccine or specific antiviral treatment available till date to cure corona vires. Primary treatment is symptomatic and supportive therapy.
4. The Petitioners state that the usual incubation period (the time between infection and symptom onset) ranges from one to 14 days, and is most commonly five days.

Some infected people, who do not show any symptoms, are known as asymptomatic or presymptomatic carriers as the virus can be transmitted from such infected persons. Initially there were 5% corona patients of asymptomatic nature, but as on 6th April, 2020, the ratio of such asymptomatic increased from 5% to 80%.

5. The Petitioners state that symptoms of COVID-19 can be relatively non-specific; the two most common symptoms are fever (88 percent) and dry cough (68 percent). Less common symptoms include fatigue, respiratory sputum production (phlegm), loss of the sense of smell, loss of taste, shortness of breath, muscle and joint pain, sore throat, headache, chills, vomiting, coughing out blood, diarrhea, and rash.
6. The Petitioners state that among those who develop symptoms, approximately one in five may become more seriously ill and have difficulty in breathing. Emergency symptoms include difficulty in breathing, persistent chest pain or pressure, sudden confusion, difficulty in walking, and bluish face or lips; therefore, immediate medical attention is advised if these symptoms are present. Further development of the disease can lead to complications including pneumonia, acute respiratory distress syndrome, sepsis, septic shock, and kidney failure.

7. The petitioners state that strategies for preventing transmission of the disease include maintaining overall good personal hygiene, washing hands, avoiding touching the eyes, nose or mouth with unwashed hands, and coughing or sneezing into a tissue, and putting the tissue directly into a waste container. Those who may already have the infection have been advised to wear a surgical mask in public. Physical distancing measures are also recommended to prevent transmission. Health Care persons including doctors, nurses, medical store staff, etc. who are indulged in taking care of corona patients or suspected corona patients, are recommended to take standard precautions like to use Personal Protective Equipments apart from other precautionary measures.

8. The petitioners state that many Governments across the world including Indian Government and State Governments, have restricted travel or advised against all non-essential travels to and from countries and areas affected by the outbreak. The virus has already spread within communities in a large part of the world, with many not knowing where or how they were infected. Considering the number of corona patients as on 30.06.2020 in India, it seems that the corona virus has started spreading within communities as many

patients did not know from where they are infected.

9. The Petitioners state that misconceptions are circulating about how to prevent infection; for example, rinsing the nose and gargling with mouthwash are not effective. There is no COVID-19 vaccine, though many organisations are working to develop one.
10. The Petitioners state that recommended preventive measures include hand washing, covering one's mouth when coughing, maintaining distance from other people, wearing a face mask in public and monitoring and self-isolation for people who suspect they are infected. Authorities worldwide have responded by implementing travel restrictions, lockdowns, workplace hazard controls and facility closures. Many places have also worked to increase testing capacity and trace contacts of infected persons.
11. The Petitioners state that the old aged adults and those with underlying medical conditions such as diabetes, heart disease, respiratory disease, hypertension and compromised immune systems, face increased risk of serious illness and complications and have been advised by the CDC (Centers for Disease Control and Prevention, which is the United States agency charged with tracking and investigating public health trends.) to stay home as much as possible in

areas of community outbreak.

12. The Petitioners state that in late March 2020, the W.H.O. and other health bodies began to replace the use of the term "social distancing" with "physical distancing", to clarify that the aim is to reduce physical contact while maintaining social connections, either virtually or at a distance. The use of the term "social distancing" had led to implications that people should engage in complete social isolation, rather than encouraging them to stay in contact through alternative means.

13. The Petitioners state that according to the information given there are 4 stages of Coronavirus. They are as follows -

- In the first stage of a pandemic, the disease doesn't spread locally - cases reported are usually people who have had travel history to an already affected country.
- The second stage is of local transmission - when people who have brought the virus into the country transmit it to people they come in contact with, usually friends and family. At this stage, it is easy to trace spread and quarantine people.
- The third stage is when the source of the infection is untraceable; this stage is identified by people

who haven't had travel history getting affected by the virus - once here spread is extremely contagious and difficult to control.

- The fourth stage is where spread is practically uncontrollable and there are many major clusters of infection all over the country.

14. The Petitioners state and submit that the I.C.M.R. has issued National Guidelines for Ethics Committees Reviewing Biomedical & Health Research during Covid-19 Pandemic in the months of April 2020. This Guideline appears for the Research. In this guideline clause 2.2 talks about confidentiality. which is as follows:-

Privacy Confidentiality: Information related to COVID-19 infection may be highly sensitive in nature with a lot of scope for stigmatization, discrimination, violence etc. Maintaining confidentiality of research related data and its publication is important to protect the privacy of individuals and avoid any discrimination against them.

The Petitioners state that apart from that petitioner has not found any express provisioning for confidentiality of the Corona or Covid-19 Patients names. Hereto Annexed and Marked as Exhibit "A" is the copy of the National Guidelines for Ethics Committees Reviewing Biomedical

& Health Research during Covid-19 Pandemic

15. The Petitioners state that still India has not reached the third stage according to the information provided by the State Government. But anytime we can enter into this stage, if the Government fails to declare the name of the corona patients.
16. The Petitioners state that if any person is infected with corona then he is asked about the people who had come in contact with him. Then those people are tested/ diagnosed to see if they have any symptoms of coronavirus. They are then made home-quarantine or admitted to hospitals. The identity of these people who are home-quarantined or hospitalized are not disclosed and it is kept as a secret.
17. The Petitioners state that the areas and places of these patients are disclosed, but the names are kept as a secret. So if the name of such person is disclosed in the locality, newspaper, website or through SMS messages then others may read it and shall themselves disclose whether they have come into the contact of the people infected with corona and would take care of themselves. The petitioners state that if any patient is found infected with coronavirus in any locality, then the local/ neighbouring people around such patient also came to know about such patient and such local/

neighbouring people send the names of such patient to their relatives and friends via. phone calls, whatsapps and other social media communications. As such, in such a widely increased social media world, 100% confidentiality cannot be maintained and during such pandemic situations where the Governments have failed to control the coronavirus spread even after complete lockdown for a long period and taking several steps, the clause of maintaining secrecy needs to be relaxed. If the clause of secrecy is relaxed, then, the people who came into contact with the corona patients may themselves come forward and take appropriate precautionary measures. The most important aspect of the matter is that if any corona patient is cured, then he is discharged from the hospital and when such a cured patient comes to the home, then the neighbouring people give him a grand welcome and post pictures/ photographs of such grand welcome on their social media accounts. Thirdly, the celebrities, ministers and politicians, who are infected with coronavirus, have themselves declared their names on social media or otherwise. Therefore, keeping confidentiality or secrecy of the names of the patient is of no use.

18. The Petitioners state that the people infected with corona are unable to give complete information of the

people who had come into their contact. The infected people cannot recognise everyone who has come into contact and they do not have their contact details nor do have any other details of them.

19. The Petitioners state that for example a meat seller in Murarji Peth in Solapur was found to be infected with corona and it was reported that 1000 people came in contact with him. But, the meat seller did not know the names of the customers. He did not know where they lived. Now the question arises that there are 25 meat sellers in Murarji Peth. Now if the exact name of the patient is not disclosed then people cannot understand which of these mutton-meat vendors has been infected with corona and then, as a result they cannot go to the doctor at the early stage.
20. The Petitioners state that the name and photo of the person infected with corona should be disclosed so that it will be beneficial for the community at large.
21. The Petitioners state that now the main reason for not disclosing the name of the patient is that the word "Humanity" will come into danger. The people who are infected by corona disease will be totally isolated and ignored by the other people. He may be treated like an animal. He may lose his right to live with dignity.
22. The Petitioners state that according to the clause

7.14 of the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 in short Code of Ethics Regulation, 2002 - The registered medical practitioner shall not disclose the secrets of a patient that have been learnt in the exercise of his / her profession except –

- i) in a court of law under orders of the Presiding Judge;
 - ii) in circumstances where there is a serious and identified risk to a specific person and / or community;
- and
- iii) notifiable diseases.

Hereto annexed and marked as Exhibit “B” is the copy of the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002.

23. The Petitioners state that disclosure about the communicable disease can be made in the public interest. Likewise in case of notifiable disease, the doctor is bound to disclose all the required information to the concerned authorities. In such cases, the right of confidentiality enjoyed by the patient must be given away in the interest of public good. This exception has been recognised by the Clause 7.14 of the said Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002.

24. The Petitioners state that if the circumstances show

that there is a serious and identified risk, either to a specific person or to the community at large if the information is not disclosed, in that eventuality, it is necessary to disclose the names of patients so that the people who came in contact with such corona patients be made aware and they can come forward and take appropriate precautions firstly by isolating themselves thereby, preventing further spread of coronavirus and secondly, by immediately taking treatment.

25. The Petitioners state that if the person is suffering from an infectious disease is advised by the doctor not to attend the office, but flouts such instructions, the doctor would be justified communicating this to the employer of the patient, as this would be in the interest of the other employees of that office.

26. The Petitioners state that in the case of Mr. X v. Hospital Z (AIR 1999 SC 495), the Supreme Court held that in special circumstances, public interest would override the duty of confidentiality, as where there is an immediate or future health risk to the community or to a specific person. The court took the view that when there is a clash of two fundamental rights, namely the right of a person to his privacy and the right to lead a healthy life, the court will enforce that right which would advance public morality and public interest.

Hereto annexed and marked as Exhibit "C" is the copy of the Hon'ble Supreme Court Judgement reported in AIR 1999 SC 495

27. The Petitioners state that according to the Code of Ethics Regulation, 2002 it is the duty of the medical practitioner towards the public that they should enlighten the public as regards quarantine regulations and measures for the prevention of epidemic and communicable diseases. And the physician must notify the public health authorities of every case of the communicable diseases.

28. The Petitioners state that the General Medical Council (GMC) is a public body that maintains the official register of medical practitioners within the United Kingdom. And according to the GMC's guidance on Confidentiality (2017) - while confidentiality is very important for the doctor patient relationship, it is not absolute. Patients may be reluctant to tell a doctor something if they feel that the doctor will not keep it confidential, but there are some situations where there can be a public interest in disclosing information to protect individuals from the risk of serious harm or serious crime.

29. The Petitioners state that the Medical Defence Union - if a doctor thought that failure to disclose would leave

individuals exposed to such a serious risk that it outweighed the patient's and society's interest in maintaining confidentiality, the doctor should disclose the information.

30. The Petitioners state that the British Medical Association (BMA) advises doctors to consider the benefits of breaching patient confidentiality against the harmful consequences of damaging the professional relationship and risking public trust in a confidential service.

31. The Petitioners state that medical confidentiality is not absolute in modern medicine. There are occasions when there is a need to breach this idealism. The legitimate exceptions are specified by the GMC's professional code of conduct:

- - disclosures with consent;
- - disclosures required by law;
- - disclosures in the public interest;

32. The petitioners state that considering the above factual aspects and situation, the petitioner thought it fit to do research, study and ventilate the grievance about the failure of the Government in relation to not declaring the names of the patients infected with coronavirus.

33. The petitioners state that after the increase in the

number of the coronavirus infected patients, the petitioner through his advocate had written a letter via email to the authorities for declaration of the names of the corona infected people, so that the authorities would provide support to them by taking some measures and providing some remedies.

34. The petitioners state that by not disclosing the name of the patient had deprived the citizens right to health under Article 21 of the Constitution. By corollary, the judiciary is duty-bound to examine the actions of the State, and hold it up against the constitutional standards.

35. The Petitioners state that the right to health refers to and means the most attainable levels of health that every human being is entitled to. Health has been much regarded as the basic and fundamental human right by the international community under the International Human Rights Law. In contrast to all the other human rights, the right to health creates an obligation upon the States to ensure that the right to health is respected, protected and fulfilled. So the petitioner prays that the names of the infected patients should be disclosed.

36. The Petitioners state that, petitioner has made detailed representation before the State Government thereby requesting to declare the names of the Covid-19

infected person, however, the State Government has not taken any action. Hereto annexed and marked as Exhibit "D" is the copy of the Representation dt. 04.06.2020

37. Being aggrieved by the failure on the part of the Government at State and National level as well as the negligence and ignorance shown by the Respondents towards declaration of the names of corona infected people and also for not taking certain measures and not providing the remedies for well being of the people at large, the petitioner prefers this Public Interest Petition on the following amongst other grounds which are without prejudice to each other:-

:::GROUNDS:::

- I. It ought to be held that there is a complete failure on the part of the State as well as the Central Government to not disclose the name of the corona infected patients.
- II. It ought to be held that the people have a right to protect health.
- III. It ought to be held that the act of the Respondents at various levels violates the rights of public at large under Art 21 of the Constitution of India.
- IV. It ought to be held that if the names of the coronavirus infected patients are declared then it will be beneficial

for the people at large to stay away from such people and go to doctor at the initial stage of the disease.

V. It ought to be held that these infected people cannot remember the name, address and all other details of the people who had come in contact.

VI. It ought to be held that the right of confidentiality is no more accepted if the question is of the welfare of the people at large.

VII. It ought to be held that the doctors can disclose information in the public interest to protect individuals or society from risks of serious harm.

VIII. It ought to be held that the Patient confidentiality is not absolute.

IX. It ought to be held that this system passed by the government is violative of the Directive Principle of State Policy. The object of the Directive Principle is to raise the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular. The petitioner states that nothing better is achieved by this act of the respondent.

X. It ought to be held that all this failure on part of the government infringes the rights of the people as provided by the Constitution of India.

XI. It ought to be held that the illegality, arbitrariness, inaction, ignorance and negligence on the part of the respondents in not taking the measures for the benefit of people at large and also not disclosing the name of the infected people is malafide and violative of Articles 21 of the Constitution of India.

38. In the circumstances aforesaid, the Petitioner is approaching this Hon'ble Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India, as the Petitioner has no other alternative, equally efficacious remedy. Further, the Petitioner states that the balance of convenience is in favour of the Petitioner and no harm or prejudice would be caused to the Respondents if the prayers of this Petition are granted.

39. This petition is being filed as expeditiously as possible and within reasonable time. Thus, there is no delay in filing this petition and if there is any delay, the same may kindly be condoned in the interest of justice. The judgment of the Supreme Court in the matter of Improvement Trust Ludhiana v. Ujagar Singh and Ors. reported in (2010) 6 SCC 786, amongst other judgments of the Supreme Court comes to my aid. The Court had held in that matter that -

"It is pertinent to point out that unless mala fides are writ large on the conduct of the party, generally as a normal

rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities. Justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose of it on such technicalities and that too at the threshold” .

Thus, I request delay if any in approaching this Hon'ble Court may be kindly condoned.

40. The Petitioner has not filed any other Petition or proceedings on the subject matter of this Petition either in this Hon'ble Court or in the Hon'ble Supreme court of India.

41. The Respondents and Petitioner are from Maharashtra. The cause of action arose in Maharashtra and hence, this Hon'ble Court has jurisdiction to entertain, try and dispose of the present petition in exercise of its extraordinary civil Jurisdiction.

42. The Petitioners are paying a fixed court fee of Rs.500/- on this Petition.

43. The Petitioner will rely upon documents a list whereof is annexed hereto.

44. The petitioners have not received a notice of caveat till date from any of the Respondents.

45. The petitioners undertake to supply an English Translation of vernacular documents as and when required.

46. The petitioners crave leave to add, amend, delete and modify any of the grounds/submissions as and when required.

47. The petitioners have a good prima facie case on merits and the petitioners hope to succeed in this petition. The petitioners state that due to the non disclosure of the names of the infected patient of coronavirus the life of the other people at large is at risk. Therefore, during the pendency of this petition, it is necessary to direct the respondents, their officers and subordinates to disclose the names of the people infected with coronavirus. If the interim relief is not granted, then, it would cause irreparable loss and hardship to the public at large.

48. Therefore the Petitioner most respectfully prays that:-

- A. Rule be issued
- B. To allow this Public Interest Litigation.
- C. By way of a writ of mandamus or any other appropriate writ, order or direction in the like nature, this Hon'ble Court may direct the respondents, their officers and subordinates to evolve a special system/ management to declare the names of the suspected and infected people from Corona virus & or COVID-19.
- D. By way of a writ of mandamus or any other appropriate writ, order or direction in the like

nature, this Hon'ble Court may direct the respondents, to decide the Petitioner's Representation Exhibit "D" within a time bound manner.

E. Any further relief may be granted in favour of the Petitioner in the interest of justice.

AND FOR THIS ACT OF KINDNESS, PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Dated this ____th day of July, 2020.

(Vinod P. Sangvikar)

ADVOCATE FOR PETITIONER.