

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

PIL-CJ-LD-VC- NO.12 OF 2020

Mr. Ashish Babaji Shelar ..Petitioner Vs.

State of Maharashtra & Ors. ..Respondents

Mr. Rajendra Pai, Senior Advocate a/w Mr. Ameet Mehta, Mr. Omkar Khanvilkar, Mr. Akshay Pai, Mr. Kartik Gantha, Ms. Miloni Sanghvi i/by M/s. Solicis Lex for petitioner.

Mr. Kedar Dighe, AGP for State.

Mr. A. Y. Sakhare, Senior Advocate a/w Ms. K. H. Mastakar for respondent-MCGM.

Mr. Anil C. Singh, Addl. Solicitor General a/w Mr. Aditya Thakkar and Mr. D. P. Singh for UOI.

CORAM: DIPANKAR DATTA, CJ. & N. J. JAMADAR, J.

OCTOBER 05, 2020.

P.C.

1. The larger issue raised in this PIL petition regarding proper management of dead bodies of COVID victims is also pending adjudication before the Supreme Court. We are inclined to keep in abeyance consideration of such issue, awaiting the decision of the Supreme Court.

2. We, however, direct that so long final directions are not being made on this PIL petition, the State may, in addition to the guidelines issued by the Ministry of Health and Family Welfare, Government of India dated 15th March, 2020 on dead body management in the context of COVID, follow the additional guidelines laid down by a Division Bench of the Calcutta High Court in Vineet Ruia Vs. Principal Secretary, Ministry of Health and Family Welfare, Govt. of West Bengal and Ors. reported in **2020 SCC OnLine Cal 1664**.

3. This order will, however, not preclude the petitioner to also suggest additional measures that could be adopted by the State for better

management of dead bodies in the context of COVID. Such suggestions may be shared with Mr. Dighe, learned Addl. Govt. Pleader representing the State. Such of the suggestions which are acceptable to the State could be implemented without waiting for further direction of this Court.

4. It is revealed from the petitioner's additional affidavit dated 10th July, 2020 that he has referred to 11 (eleven) instances of death of patients, either at State run hospitals or hospitals run by various Municipal Corporations, amid the pandemic. According to the petitioner, such instances would suggest culpable negligence on the part of those responsible for running the hospitals. We had pointed out to Mr. Dighe on the last occasion that if the instances referred to by the petitioner were true and the State accepts the allegations of the petitioner that there has been culpable negligence, the unfortunate victim's family members should be entitled to compensation. Hearing was adjourned till today to enable Mr. Dighe to obtain instructions.

5. In course of hearing today, Mr. Dighe has pointed out in respect of the first instance forming part of the petitioner's additional affidavit that a PIL petition is pending before the Aurangabad Bench of the Bombay High Court. It is his submission that in view of such pendency, this Court may exercise restraint.

6. Particulars regarding the PIL petition, said to be pending before the Aurangabad Bench, are not before us. We accordingly call upon the State to file an additional counter affidavit and provide particulars of the prayers made and the status of such proceedings. In addition, the State shall deal with each of the other 10 (ten) instances referred to by the petitioner in the aforesaid additional affidavit.

7. We make it clear that even if all the hospitals where the unfortunate deaths occurred are not run by the State, nothing would prevent the State from accessing information from the authority in charge of administration thereof and placing on record all relevant factual details and particulars.

8. Let such affidavit be filed by 4th November, 2020; reply thereto may be filed by 23rd November, 2020, with an advance copy to Mr. Dighe. Post this PIL petition on **23rd November, 2020** for further consideration.

9. This order will be digitally signed by the Sr. Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

N. J. JAMADAR, J. CHIEF JUSTICE