

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

Mr. Nirav Marjadi, Mr. Dharmapal Dave, Ms.Parisha Shah, Mr. Pariket Shah,
Mr. Vishal Raman, Ms. Smita Durve, Ms.Drasti Jani for Petitioner

Mr. A. A. Kumbhakoni, Advocate General with Mr. Akshay Shinde, B Panel
Counsel with Ms. Geeta Shastri, Addl. G.P. for State.

Mr.A.Y. Sakhare, Sr. Adv. with Mr. Rohan Mirpuray 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 the Intervenor.

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

Mr.Rajesh Inamdar a/w. Shashwat Anand, Mr. Pankaj Kandhari, Mr.Amit Pai, Mr.Mohd. Kumail Haider, Mr.Saif Alam, Mr.Ankur Azad, Siddhi R. Mundada, Mr.Moinuddin Chowdhari, Mr.Wasim Lalsa Shaikh and Mr.Riyaz Awati for the Petitioner.

Mr.Anil C. Singh, ASG alw Mr.Aditya Thakkar, Mr.D.P. Singh and Mr.YashMomaya i/b. Mr.Gul Asnani for R.No. 1-UOI.

Mr.Shrinivas Bhavé i/b. Bhavé & Co. for R.No. 6-IRDAI.

Mr.Abhijeet P. Kulkarni for Pune Municipal Corporation.

Shri.P. P .Kakade, G.P. with Shri.Akshay Shinde, 'B Panel Counsel' with Shri.M.M.Pable, AGP for State.

AND

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION (L.) NO.10883 OF 2021

Anjali Navle ...Petitioner

vs.

State of Maharashtra & Ors. ...Respondents

Ms.Anjali Navle, Petitioner in Person present.

Mr.A. A. Kumbhakoni, Advocate General with Ms. Geeta Shastri, Addl. G. P. for State.

Mr. A. Y. Sakhare, Senior Advocate with Mr. Rohan Mirpuray and Ms. K. H. Mastakar for MCGM.

Mr. Abhijit Kulkarni for Pune Municipal Corporation

**CORAM :- A.A.SAYED AND
G. S. KULKARNI, JJ.**

DATE :- MAY 27, 2021

PC :

1. We have heard learned Counsel for the parties on this batch of Public Interest Litigations, which raise variety of issues in relation to the COVID pandemic.

2. In the order dated 19 May 2021 passed by a co-ordinate Bench of this Court, State Government and the Union of India were called upon to place on record affidavits, in regard to the issue in regard to availability of the drug “Remdesivir”, its extra legal supply contrary to the official protocol; on supply of Oxygen and on the issue of preparation of a real time dashboard which would provide realistic information not only on various facets in relation to the treatment of those infected by COVID-19, but also to operate as a permanent dash board for different medical needs of the citizens for all times to come.

3. In pursuance of the said orders, today affidavits are tendered on behalf of the State Government, Union of India as also on behalf of the Municipal Corporation of Greater Mumbai (MCGM) dealing with such issues. The learned Counsel for the respondents have

made submissions on issues as dealt in their respective affidavits which we note.

4. Mr.Kumbhakoni, learned Advocate General has addressed us on an issue of immediate concern as expressed by Mr.Inamdar, learned Counsel for the petitioner, namely, in regard to rise in the number of patients affected by what is commonly referred as black fungus or "mucormycosis". He states that mucormycosis is now being treated as a notified disease and that the State Government has made all preparations to deal with the rising number of such cases. He states that an "OnLine" portal has been made available. Mr. Kumbhakoni has stated that as on date there are about 3200 such cases in the State which would require treatment, for which the only drug known as "Amphotericin-B" is required to be administered to the infected patient as the first line treatment. It is stated that such drug is in short supply. He submits that to deal with such situation, immediate initiatives have been taken by the State Government of in-house manufacturing of such drug, at the "Haffkine Bio-Pharma Institute", for which entire raw material has been procured. It is stated that actual production involves a cycle of 20 days and about 40,000 vials would be made available by 6 June 2021. He submits that allocation of this drug has also been taken over by the Central Government and the drug presently is being

manufactured by three manufacturers - Bharat Serums, Mylan and CIPLA. Mr. Anil Singh the learned Additional Solicitor General has stated that the Central Government has taken initiatives to issue fresh licences to such concerns who would intend to manufacture the said drug. Mr. Kumbhakoni submits that the treatment of mucormycosis requires about four to five vials per patient per day for about 3 to 4 weeks, and considering the present number of patients in the State, which are about 3200, the requirement of such drug is about 14000 vials per day, whereas the allocation by the Central Government has been at an average of 4000 to 5000 vials per day. It is thus submitted that the allocation is certainly not commensurate with its actual requirement. It is submitted that the cases of black fungus are maximum in Maharashtra along with the States of Gujarat and Karnataka.

5. In this context Mr.Singh, would submit that between the period 11 May 2021 to 25 May 2021, the total allocation of such drug was 42690 vials for the State of Maharashtra, whereas the total supply in the entire country was about 80,000 vials for the said period. Mr. Singh would state out that an estimated supply in the month of June,2021 would be about 2,50,000 vials.

6. From the submissions as made by the learned counsel on the issue of black fungus, we may observe that the concerns as raised by the petitioners are quite serious, and certainly worrisome. It is pointed out by Mr. Kumbhakoni as also Mr. Singh, that it is not only the persons who are already infected by the Covid-19 virus, who are vulnerable to be infected, but also those who have never suffered COVID, and who have co-morbidities. If this be the position, certainly it is a matter of grave concern for the respective governments to immediately work on the treatment protocols and other essential facets on a war footing, before such infection turns into a bigger pandemic. We are certain that the respective Governments are devoted to such concerns, and adequate measures shall be taken to reach out to those people who are in urgent need of treatment.

7. In regard to the hoarding and black-marketing of the drug “Remdesivir” being made available by private persons, we had raised a serious concerns in an earlier order. On affidavit we are informed by the State Government that show cause notices were issued to the private concerns and replies to these show cause notices are also received. Such private concerns, have claimed to have procured the drug inter alia from certain manufacturers whose names are also set out. There is some paradox on this. The Central Government has filed

an affidavit to place on record information as received by it, from all the manufacturers of the said drug, who have stated that they have not supplied the said drug to any private concerned, and that they have supplied it strictly only to the Government agencies as per the directions of the Central Government. In our opinion, the State Government would certainly look into the replies of the manufacturers as placed on record by the Central Government and make an endeavour to complete the enquiry preferably within a period of three weeks from today. Both the State Government and Central Government, on the basis of such information which be exchanged between the parties shall complete their respective enquiries by following the procedure known to law and after hearing the concerned parties, pass appropriate orders, in accordance with law. Our concern in this regard is that the authorities with open eyes cannot permit an extra legal supply of medicines to take place putting the lives of the patients to peril should the medicine turn out to be spurious.

8. In so far as the situation in Mumbai is concerned Mr.Sakhare, learned Senior Counsel for the MCGM has stated that the total number of COVID positive cases as on 25 May 2021 were 1037. It is stated that sufficient bed capacity is available. He has stated that there existed a vacancy of 7451 oxygen beds, 590 ICU beds and 177

ventilator beds. In regard to the stock-in-hand of “Remdesivir”, it is stated that 18330 vials are presently available and the stock/supply is sufficient to take care of the requirements at Mumbai. A chart showing hospital wise stock as on 25 May 2021 is also placed on record. In regard to oxygen supply and its consumption, Mr. Sakhare has pointed out that as on 25 May 2021 there was a supply of 57.56 metric tons and the actual consumption was about 55.56 metric tons, hence, there was sufficient supply, as also a buffer stock of oxygen being maintained. In regard to the crematorium at Walkeshwar, it is stated that the LPG furnace was made functional on 16 May 2021.

9. As regards the pediatric patients, Mr. Sakhare has stated that sufficient infrastructure is available, inasmuch as out of 15 ICU beds, 13 beds are vacant and out of 29 ICU neonatal beds, 14 beds are vacant. It is also stated that the process of augmenting pediatric beds in the three jumbo facilities at Goregaon, Mulund and at Worli is in progress and is subject to the action plan approved by the State Government, which has been forwarded to the State Task Force. In regard to the updation of the dashboard, Mr.Sakhare submits that although the dashboard is updated once in 24 hours, now every two hours, the COVID war rooms update the position of vacant beds in the different categories in different hospitals in Mumbai. He states that the

bed allocation is immediately made, on the basis of such data as updated every two hours. He has submitted that such course of action has been implemented and is in operation for quite time and has proved to be successful.

10. In regard to the number of black fungus /mucormycosis cases, Mr. Sakhare states that presently in Mumbai there are 335 cases and they are being appropriately treated in the medical facilities made available by the municipal corporation and other hospitals.

11. The gist of Mr. Sakhare's submissions is that the MCGM is attentive to all the contemporary requirements and is taking all necessary steps to meet the different emergent situations which the pandemic may create.

12. We have also heard Mr.Sarode, learned Counsel for the intervener (in Intervention Application in PIL (st) NO.9885 OF 2021) in which his clients principal concern is on the compliance of fire safety measures by hospitals and nursing homes. Mr.Sarode would submit that his client Mr. Nilesh Balwantrao Ukunde is an expert in the field. He is a fire engineer and a certified fire forensic who has made certain suggestions, which are placed on record. He submits that if these

suggestions are taken into consideration, it would help the municipal corporations/councils and different authorities to have an insight on the fire safety measures/norms to be implemented in the hospitals. Having heard learned Counsel for the parties on the issue, we are of the opinion that it would be appropriate that Mr.Ukunde is permitted to address a detailed communication to the Secretary, Urban Development Department as also to the Municipal Commissioners of all the municipal corporations/councils in State of Maharashtra, putting forth his suggestions, so that there can be deliberation on such issues of fire safety, which are certainly for the benefit of the public at large and the innocent indoor patients. If the authorities consider all or any of such suggestions to be appropriate, the suggestions be implemented by adhering to the appropriate procedure, as may be permissible in law. We are also informed by Mr.Kumbhakoni that the State is in the process of amending the Maharashtra Nursing Homes Act to implement the fire safety norms. We permit the State Government to consider the urgency of the situation in the light of recent unfortunate incidents of patients loosing their lives in hospital fires, and consider issuing appropriate notifications and/or ordinance, as may be permissible, to implement such urgent measures, as the Government may think appropriate, in the interest and the safety of the hospitalized patients.

13. Mr.Inamdar, learned Counsel for the petitioner (in PIL (st) No.9885 OF 2021) has raised concerns of non-availability of ventilator beds at Satara, Solapur, Baramati, Kolhapur and Pune. We direct the State Government to immediately look into such concerns of non-availability of ventilator beds and make an endeavour to take urgent remedial steps in case of such deficiency being noticed, as also respond to the petitioners contentions on the adjourned date of hearing. Mr.Inamdar has also raised an issue in regard to short supply of Remdesivir, Tocilizumab, and other drugs which according to him, are in short supply in Pune and the adjoining rural areas. He states that an interim application is being filed in by his client raising such concerns. If such application is filed let the same be served on the respondents, who shall respond to such an application on the adjourned date of hearing.

14. In regard to the observations made by us on the real time dashboard which would supply information on all facets viz. Oxygen beds, ventilator beds, availability of medicines etc., Mr. Kumbhakoni, on instructions has stated that a committee of experts, has already been appointed which would be looking into the setting up of an omnibus dashboard to be made available for the medical requirements of the citizens in the entire State of Maharashtra. He submits that such a

dashboard would be operational by 15 June 2021. We accept such statement made on behalf of the State Government.

15. On the concerns as urged on behalf of the petitioners in regard to the plight of the patients in the rural areas, we have asked Mr. Kumbhakoni, to obtain information from respective District Collectors and ascertain as to whether all requisite facilities for treatment of patients suffering from the COVID and black fungus infections, are available. A tabular statement on the different requirements including the availability of drugs, beds and oxygen be prepared and placed before us on the adjourned date of hearing.

16. Before parting, we may note being told that a Pediatric Task Force has been created by the State Government in the event a third wave hits the State, in which, it is being informed that the virus (Covid-19) is likely to attack children who cannot be vaccinated hitherto. It would also be desirable that the State Government considers creating another Task-Force, to prepare a contingency plan in the event of a third wave, on the basis of experiences and lessons learnt from the first and second wave, so as to combat any such third wave and save lives and mitigate the suffering which the people may undergo.

17. We accordingly adjourn the hearing of these petitions to **2 June 2021**.

(G. S. KULKARNI, J.)

(A.A.SAYED, J.)