



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 24 OF 2022

Association For Protection of Civil
Rights (APCR) & Ors. .. Petitioners

Versus

The Municipal Commissioner,
The Municipal Corporation of the
City of Thane & Ors. .. Respondents

Mr. Yusuf Muchhala, Senior Advocate a/w Mr. A. Karim Pathan,
Rashda Ainapure, Arbaz Shaikh for petitioners.

Mr. Ram Apte, Senior Advocate i/by Mr. Narayan Bubna and
Mr. Saurabh B. Mishra for respondent no.1.

Mr. P. P. Kakade, Govt. Pleader a/w Ms. R. A. Salunkhe, AGP
for State.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 27th SEPTEMBER, 2023

P.C.:

1. There cannot be any denial that Article 21 of the Constitution of India protects every citizen's right to seek good and affordable healthcare. However, the apathy on the part of the Municipal Corporation of the City of Thane (hereafter referred to as "the Corporation") is writ large in this case, where having conceived a 100-bedded hospital at Kausa, Mumbra in the year 2008, till date neither construction of the hospital is complete nor has it become functional. There

cannot be any justification for such unexplained and inordinate delay in completion of a project concerning healthcare of the general public.

2. In the affidavit-in-reply filed by the Corporation it has been admitted that residents of Kausa do not have access to medical facilities and proposed 100-bedded hospital will give them access to proper healthcare facilities. Once this fact has been acknowledged by the Corporation, it is difficult to comprehend as to why construction and making the hospital functional has been pending for so long period.

3. The Corporation, as far back as on 17th September, 2008, had resolved to construct a hospital in an area of 8500 sq. meters and initially an amount of Rs.10 crores was also sanctioned for the said purpose. The affidavit filed by the Corporation further narrates that the tentative cost amounting to Rs.27.83 crores was sanctioned vide resolution of the Corporation, dated 16th July, 2013, however, on appointment of a Project Management Consultant, the cost was estimated at Rs.54.36 crores which was approved by the General Body of the Corporation vide its resolution dated 20th February, 2014. The affidavit further states that the tender process was completed and the work was allotted to the contractor for an amount of Rs.54,38,81,065/-. The work order dated 27th August, 2014 is on record, according to which the construction work of the 100-bedded hospital was to be completed within 24 calendar months, excluding the monsoon.

4. It appears that after the work order was issued on 27th August, 2014, the scope of the work was enhanced to include

certain other constructions such as TB Ward, Kitchen, Canteen, Pathology, Blood Bank, Pediatric Ward, OTPT, C Section OT, Morgue, Kitchen Gas Bank, Medical Gas Bank, Sub-station and underground Tank. Designs were accordingly revised and revised plans were sanctioned on 24th February, 2016. As per the averments made in the affidavit filed by the Corporation, certain work has been completed, however, the General Body of the Corporation again sanctioned additional cost of Rs.67.88 crores on 13th April, 2018. Thus, construction of the hospital, though conceived in the year 2008, has yet not been completed despite revision of cost several times. In the affidavit, the Corporation further states that presently sanction has been granted for recruitment of doctors and other staff and the recruitment is likely to take place and that OPD, Gynecology and Administrative departments have been started by using the existing staff.

5. In the rejoinder affidavit filed by the petitioner, it has been stated that there are no existing staff, rather the Corporation has shifted one of its Primary Health Centres to the hospital building and it has, thus, wrongly been claimed that the Gynecology department has started functioning.

6. From the aforesaid facts, it appears that, (i) the construction of the building, which include the civil and electrical work etc. has yet not been completed, and (ii) the hospital has yet not become operational.

7. To ascertain the actual position on the spot, we are of the opinion that a Court Commission be appointed comprising of a medical professional, a qualified civil engineer and a practicing lawyer of this Court to inspect the building and

submit a report to the Court.

8. We accordingly appoint the Court Commission which will comprise of the following: -

(a) One experienced Doctor to be nominated by the Dean, J.J. Hospital.

(b) One Civil Engineer not below the rank of Executive Engineer to be nominated by the Secretary, Public Works Department, Government of Maharashtra.

(c) Meenaz Kakalia, a practicing lawyer of this Court.

9. The Commission, as observed above, shall pay a visit on the spot, conduct an inspection, interact with the staff available there including the officer who heads the hospital and accordingly prepare a report on the following points: -

(I) Stage of completion of the building giving details.

(II) The infrastructure facilities which are available.

(III) The status of the healthcare services being provided currently by the hospital.

(IV) To what use (in respect of providing healthcare services) the existing structure of the building can be put to use so that new departments may be started forthwith.

(V) The Commission while preparing the report shall also report as to what machines and medical equipments have been procured and as to whether these machines and equipments are being used.

10. We also call upon the Corporation to file an additional reply stating therein as to what steps have been taken by the Corporation for procurement of equipments and recruitment of adequate staff. In the affidavit, the Corporation shall also indicate as to within which minimum possible time the hospital can be made fully functional giving details of phases in which the medical facilities/departments shall commence.

11. The Advocate member of the Court Commission shall be paid Rs.20,000/- as remuneration along with miscellaneous expenses such as to and fro travel expenses by the Corporation.

12. Municipal Commissioner shall extend all cooperation to ensure that the Court Commission is executed appropriately. He shall also coordinate with the members of the Commission.

13. The Commission is expected to furnish its report to the Court by the next date.

14. Stand over to **8th November, 2023.**

15. Registry to apprise all concerned of this order forthwith.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)

Digitally
signed by
PRAVIN
DASHARATH
PANDIT
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