

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA***PUBLIC INTEREST LITIGATION WP NOS.1172 OF 2021,
1173 OF 2021 & 1174 OF 2021 (filing)******PUBLIC INTEREST LITIGATION WP NO.1172 OF 2021***SOUTH GOA ADVOCATES
ASSOCIATION, THR. ITS
PRESIDENT, ANTONIO
CLOVIS DA COSTA AND ANR.

.... Petitioners.

Versus

STATE OF GOA, THR. THE
CHIEF SECRETARY, GOVT.
OF GOA AND 4 ORS.,

..... Respondents.

Mr. Nikhil Pai, Advocate for the Petitioners.

Mr. D.J. Pangam, Advocate General with Ms. Ankita Kamat,
Additional Govt. Advocate for Respondents No.1, 4, and 5.Mr. P. Faldessai, Assistant Solicitor General, and Mr. R. Chodankar,
Central Govt. Standing Counsel for Respondent No.2.***PUBLIC INTEREST LITIGATION WP NO.1173 OF 2021***ARMANDO GONSALVES
AND ANR.

..... Petitioners.

Versus

STATE OF GOA, THR. ITS
CHIEF SECRETARY AND 2 ORS.

..... Respondents.

Mr. Akash Rebello with Mr. Rui Gomes Pereira, with Mr. Varun
Bhandanker, Advocates for the Petitioners.

Mr. D.J. Pangam, Advocate General with Ms. Maria Correia,

Additional Govt. Advocate for Respondent No.1.

Mr. P. Faldessai, Assistant Solicitor General, and Mr. R. Chodankar, Central Govt. Standing Counsel for Respondent No.2.

Mr. Ashish Swar, Petitioner in person in Email Letter dated 05.05.2021.

PUBLIC INTEREST LITIGATION WP NO.1174 OF 2021

ROSHAN MATHIAS AND ANR. Petitioners.

Versus

THE STATE OF GOA, THR.
ITS CHIEF SECRETARY AND 4 ORS Respondents.

Mr. Nigel Da Costa Frias, with Mr. Vishal Sawant and Mr. G. Malik, Advocates for the Petitioners.

Mr. D.J. Pangam, Advocate General with Mr. Deep Shirodkar, Additional Govt. Advocate for the Respondents.

***Coram: M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date: 6th May 2021.

P.C. :

The South Goa Advocates' Association (SGAA) and others have instituted these Public Interest Litigations in the context of the unprecedented COVID-19 pandemic in our country and its deleterious effects in the State of Goa.

2. All these petitions raise broadly the following issues :

- (1) Adequate measures for the security and well-being of health care professionals like Doctors, Resident Doctors, Nurses, Ward Staff ambulance staff, etc. during this critical period.
- (2) The position of medical infrastructure *i.e.* hospital beds, ICU facilities, ventilators, ambulance staff, etc. in the State of Goa to provide effective treatment and care to the ever-increasing COVID 19 patients;
- (3) The position of oxygen supply to needy patients in the State of Goa;
- (4) The position of essential medicines like Remdesivir or Favipiravir in the State of Goa;
- (5) Testing facilities in the State of Goa to ensure speedy detection, treatment, and containment of the epidemic;
- (6) Position of vaccination drive in the State of Goa. In particular, the position of vaccination to the marginalized, disabled, and even senior citizens who are unable to access hospitals or vaccine stations. The issue of vaccination drive for persons between 18 and 44 years which was to commence from 1/5/2021;
- (7) The position of measures adopted for preventing the spread of the epidemic. This includes, *inter alia*, SOPS banning mass gatherings, social distancing, entry of persons in the State of Goa, lock-down, etc. In particular the position of implementation of these SOPs if such SOPs are already in place.

3. These proceedings, by their very nature, are not and therefore, may not be treated as adversarial by any of the parties to them. These proceedings are also not some platform to indulge in some blame game or some avoidable hyperbole. All such matters, can await some other day and perhaps some other forum. These proceedings are taken up to facilitate a dialogue between all the relevant stakeholders, in the light of this pressing crisis. The focus, therefore, will have to be essentially on the broad aspects referred to above, as well certain other incidental issues that are bound to arise in matters of this nature.

4. On the first aspect of security measures for the protection of healthcare professionals, the statement issued by the Goa Association of Resident Doctors (GARD) is quite telling. This statement speaks of overcrowding at the hospitals, lack of sufficient oxygen, and other infrastructure necessary to treat and support the COVID-19 patients. This statement also speaks about the disconnect between the facilities projected and the facilities actually available. Above all, this statement speaks about the plight of the healthcare professionals in the particular context of their personal security and the conditions in which they are presently working.

5. The following paragraphs from the GARD's statement dated 1/5/2021 are transcribed below for the convenience of

reference :

“On a daily basis, we read in the news all the higher authorities giving statements that there is no issue of oxygen and beds. The patients then ask the resident doctors on duty in casualty and in wards that if there is no lack of beds, why our patient is kept on trolleys/wheelchairs/floor and why is our patient not getting oxygen. In the middle of the night when oxygen gets over, and patients worsen and sometimes die, It's the junior doctor on duty who has to face angry relatives. And their anger about lack of facilities gets taken out on the duty residents.

We are also sorry to say the demand for enhanced security by GARD hasn't been adequately met by the authorities. We need cctv cameras inside all covid wards and make sure that the ones already installed are working. We need posters and signs to be put all over the hospitals emphasizing that violence against HCWs will be dealt with firmly by the law. There is a need of placing armed guards/police personnel outside covid wards and casualty.

The plan of opening up of new covid facilities is announced every day; however there are no announcements on recruitment of new staff or doctors. Are we supposed to manage these additional facilities too in addition to SGDH, ESI & GMC? Currently one resident doctor is managing up to 30 patients on average and some are doing shifts of up to 24 hours. Is the further plan of the administration to make them work more ?”

6. At this stage, the question is not whether everything stated by GARD is accurate or not. But this much must be acknowledged

that the healthcare professionals which includes the Resident Doctors, whose cause the GARD espouses, are in the frontline, at the hospitals, at the casualty wards, and the Intensive Care Units along with the COVID patients. Therefore, this statement, cannot be lightly brushed aside or completely ignored.

7. Each of us owes a debt of gratitude to the healthcare professionals who have gone beyond the call of their duty and toiled day in and day out relentlessly, without any rest amidst this serious crisis. Therefore, the minimum that we collectively owe to these healthcare professionals is security. As was observed by the Hon'ble Supreme Court in Suo Motu WP 3/2021 “*It is absolutely necessary to take urgent steps for their well-being to ensure that our appreciation for their tremendous efforts is not reduced to rhetoric*”

8. We are quite mindful of the fact that the patients and their relatives are also stressed out and even desperate. Very often, it is this stress and desperation at witnessing their near and dear ones suffer or even pass away that results in verbal and at times, physical violence against healthcare professionals. Nevertheless, a message must go out loud and clear that there will be zero tolerance for any form of physical or verbal violence against healthcare professionals. Such violence against healthcare professionals is simply not acceptable and must be dealt with by a firm hand.

9. Even the learned Advocate General submitted that steps have already been taken and in any case, will be taken to provide adequate protection to healthcare professionals. Accordingly, we direct the State Administration to take all steps necessary and adequate to ensure that there is no such violence against the healthcare professionals and such violence, if any, is dealt with firmly following the law. For this purpose, State Administration must post sufficient police personnel round the clock at hospitals, wards, etc. Sufficient boards or posters must also be put up at such places to make it clear that there will be zero tolerance towards any form of violence against healthcare professionals. At the same time, State Administration must also involve preventive and social medical professionals and paramedical staff to give the patients and their relatives proper information as to the line of treatment or otherwise, counsel them about the health status of the patients. These directions to be complied with forthwith because particularly matters of protection to the healthcare professionals can brook no delay of any sort.

10. On the second aspect of medical infrastructure, we are sure that the State Administration has taken steps and is in the process of taking further steps to augment the same. Faced with such overwhelming numbers, some inadequacies are quite natural. The

populace has to understand this and there is no reason to assume that the populace does not understand this. At the same time, it is necessary to emphasize that there has to be transparency on this aspect. The nature and the extent of facilities available must be put out in the public domain so that there is no scope for unnecessary anxiety or rumor-mongering.

11. Besides, it is necessary to have a hospital admission policy in place, and thereafter, such policy has to be administered fairly and transparently. The Hon'ble Supreme Court in its order made on 30/4/2021 on this very issue had directed the Central Government to formulate a National Policy on admissions to hospitals, which shall be followed by all the State Governments. Further, it was held that till the formulation of the policy of the Central Government, no patient shall be denied hospital admission for want of residential proof of his/her State or even in the absence identify proof. On the next date, the Central Government to place on record if such policy has already been formulated for the State Governments to comply. The State Administration to also indicate if it has formulated any policy in this regard by the next date.

12. In PIL WP NO.18/2020, instituted by two law graduates Mr. Jay Mathew and Mr. Gauravardhan Nadkarni, we were assured by State Administration that the information helpline and mobile

apps are in place for assisting the members of the general public. We were also informed that the task force and war room were being set up and even the State Control room had been established to deal with medical assistance and supply of medicines. Even the names of the officers appointed to these positions in Districts of North Goa and South Goa were set out in the affidavit filed in said PIL. We hope and trust that all these positions continue now that the second wave has returned with vengeance. The State Administration to file an affidavit and indicate the status of all these assurances which were given to us and which were recorded by us in our order dated 30/3/2020 in PIL WP 18/2020.

13. Further, we note that in our aforesaid judgment an order 30/3/2020, we were informed that orders have been placed to procure almost 200 additional Ventilators. We had noted that there was no reason to even doubt that the State will not make all the efforts to procure these additional ventilators at the earliest. This was the assurance given to us in March 2020 when we were persuaded to dispose of the said petition. Now that over a year has passed, we hope that these additional ventilators have already been procured. The affidavit, to give details on this aspect, as well. The affidavit to also indicate the infrastructure presently available and the efforts and timelines for augmentation of the same.

14. On the third aspect of oxygen supply, we note that the State Administration had informed the Hon'ble Supreme Court that the need of the State was about 11 metric tones of oxygen as of 28th April 2021. The Hon'ble Supreme Court was also informed that the State Goa has no bulk manufacturing plant and, therefore, has to rely upon the Central Government or some other sources for procuring this oxygen. The order of the Hon'ble Supreme Court records that the Central Government has put in place an interactive mechanism called “*Virtual Central Control Room*”, consisting of Senior Officers/ Joint secretary rank to monitor and find solutions to any problems that may arise on a real-time basis on the aspect of oxygen supply. The order also records that the daily allocation of the supply of oxygen is sanctioned and uploaded on its virtual room, in which the Chief Secretaries of all States/UTs are members.

15. From the aforesaid, it would be fair to proceed on the basis that even the Chief Secretary of the State of Goa is involved in the daily allocation of supply of oxygen, being, possibly, a component of the Virtual Central Control Room, established by the Central Government. Accordingly, State Administration should file an affidavit as to the need of the State and whether this need is met by the supplies made from the various sources. Affidavit to also indicate whether any steps have been taken by State Administration for having plants for the manufacture of oxygen in the State of Goa itself and

the status thereof.

16. The Hon'ble Supreme Court in its order, has noted the submissions made on behalf of the Central Government that there was no dearth of oxygen supply in the Country and steps were being continuously taken to augment the supply of oxygen. The Hon'ble Supreme Court also took note of the fact of shortage of supply to certain States and directed them to take steps to see that sufficient supply is made. More importantly, the Hon'ble Supreme Court in its order has emphasized that it would be critical that a buffer emergency stock of oxygen is created so that if the supply chain is disrupted to any one or more hospitals in an area for any reason, the buffer or emergency stocks can be used to avoid loss of human lives. The Hon'ble Supreme Court directed that the emergency stock must be so distributed, to be easily accessible without any delay in every local area. Certain directions were also issued for rectifying the deficiencies and for creating buffer stocks and collaborating with the States through the virtual control room on a 24 by 7 basis. Directions were issued to the Central Government to collaborate with the States to prepare a buffer stock of oxygen to be used for emergency purposes to ensure supply lines continue to function even in unforeseen circumstances.

17. We direct the State Administration to indicate whether all

such facilities are in place on the aspect of oxygen supply which is so vital in these critical circumstances.

18. The State Administration should also file an affidavit indicating the position of stocks of essential medicines available in the State of Goa and the steps taken to augment the same, so that, we do not have a situation wherein patients succumb for want of these essential medicines.

19. In so far the testing facilities are concerned, again the State Administration, to file an affidavit indicating the status. At this stage, it is necessary that there are proper testing facilities available and further, the result of such tests are made available at the earliest. The affidavit to also indicate whether these testing faculties at Panaji and Mapusa which were operational for such a long time, continue to be in operation. The affidavit to indicate whether any arrangements have been made to collect samples from home where the patients, for genuine reasons are unable to access testing stations.

20. The State Administration to also file an affidavit indicating the position of vaccination drive in the State of Goa. The affidavit to also indicate whether any facilities have been provided for the marginalized section of the society, the disabled or the senior citizens, who are unable to access the vaccination centers. The affidavit to also

indicate the status of the vaccination drive for the persons between 18 and 44 years, which was to commence from 1/5/2021.

21. Finally, the State Administration must also file an affidavit indicating the measures adopted by it for preventing the spread of the epidemic. The affidavit to indicate the SOPs already issued and report on the efficacy of the same. The affidavit to also indicate whether there is any thought process on the issue of lock-down, now that the situation is spiraling out of control. The Hon'ble Supreme Court, in its order dated 30/4/2021 had in fact seriously urged the Central and State Governments to consider imposing lock-down on mass gatherings and super-spreader events. They were to also consider imposing a lock-down to curb the virus in the second wave in the interest of public welfare. However, Hon'ble Supreme Court added that the States will also have to take into account the socio-economic impact of the lockdown, especially on the marginalized communities. Further, in case a measure of lockdown is imposed, arrangements will have to be made to cater to the needs of these communities.

22. In the aforesaid context, we note that unlike several States, including the neighboring State of Maharashtra, there is no protocol in the State of Goa that requires any person entering into the State to produce a COVID negativity certificate, certifying that such person is

not COVID positive. At this stage, the learned Advocate General intervenes to point out that the State of Maharashtra has imposed restrictions only in respect of travelers from 5 States. He points out that the particulars set out in PIL WP No. 1173/2021 may not be correct. There is no dispute however that Goa is one of the five States to which such restrictions apply.

23. Learned Advocate General pointed out that the decision as to whether a negativity certificate should be insisted upon or not is basically a policy decision. He pointed out that workers are coming from the neighboring states of Maharashtra and Karnataka and any insistence on a negativity certificate will affect the essential works in the State of Goa. He pointed out that the State of Goa has to rely on the neighboring States for most of the essential supplies and the insistence of any such negativity certificate will again impact such supplies. He submitted the even the Central Government does not support sealing borders of any States during these times.

24. From the materiel placed on record by the Petitioners sourced from the website of the State itself, it is apparent that practically each day travelers by road, flight, or train entering into Goa are found to be COVID positive. If this is the status of the tested cases, it is reasonable to estimate a similar or perhaps larger number of positive cases that enter in Goa. The numbers of such

cases are significant in the context of the State of Goa, which has a population of only about 16 lakhs or thereabouts.

25. Besides, the website has only indicated the detected cases. Now that there is no requirement for anybody entering in the State of Goa to have a negativity certificate, it is not possible to assess the actual number of positive cases entering into Goa each day. The State of Maharashtra, which is the neighboring State, admittedly does not allow any persons from the State of Goa to enter into the State of Maharashtra without a negativity certificate. This means the large workforce which allegedly enters Goa each day at least from Maharashtra cannot re-enter Maharashtra without a negativity certificate. The learned Advocate General states that this is not the position in so far as Karnataka is concerned. We have before us no material in support of the submissions made by the learned Advocate General.

26. Be that as it may, we see no justification in the State of Goa not insisting upon a negativity certificate from persons who seek entry into Goa at this crucial juncture when reports indicate that the positivity rate in Goa is as high as 52%. Some suitable mechanisms can always be formulated by the State to ensure that some testing facilities are available at the borders or entry points so the supplies of essentialities or in the ingress of essential personnel are not affected.

But to permit virtually unrestricted entry in such critical times is not justified. Based on this unrestricted entry, Goa is touted as one of the few tourist destinations where all is well. This is neither fair to the populace in Goa already suffering from the overstretched medical infrastructure nor to the unsuspecting tourists who have to very often avail of the overstretched facilities at a great price. This is not a case of sealing the borders. This is only a case where steps are taken to ensure that the persons who are entering into Goa are not already tested as COVID positive so that they do not contribute to the spread of the epidemic and at the same time are cared for better in their own State.

27. No doubt, some difficulties, are bound to arise when it comes to essential supplies as pointed by the learned Advocate General. For this, the State Administration will have to come out with some adequate protocol to ensure that the essential supplies are not disturbed and at the same time, COVID positive persons are not granted easy entry into the State whose medical infrastructure is already overstretched. The essential supplies can as well be made through persons who are tested and found negative. Some passes can as well be issued to such persons waiving the requirement of repeated testing. But citing such instances to justify wholesale waiver of restrictions in such critical times is not justifiable. In any case, this issue will arise mainly to travelers by road. In so far as travelers coming into the state of Goa by train and flight are concerned, it is

too much to suggest that all such travelers are mainly involved in supplying essential services or goods in the state of Goa. The State Government will therefore have to insist upon a negativity certificate before such persons enter into the State of Goa.

28. There is sufficient medical literature about the virulent nature of the new strain and how the same is spreading. The State Government of its own should have imposed these minimum restrictions in the public interest. As observed earlier, the State could have and still can come out with a suitable protocol to mitigate the issue of supplies of essential goods and services. Such minimum restrictions which several states have also adopted are called if the epidemic is to be contained. Therefore, by way of an interim order, we direct the State Administration to ensure that no persons are permitted entry into the State unless they possess a negativity certificate obtained within 72 hours from the time they seek entry into the State. This will not prevent the State Government from formulating a protocol to deal with the issues of essential supplies and the procedure for entry of the persons involved in essential supplies. This Protocol should however provide necessary safeguards to ensure that such persons are not COVID positive at the time of entry into the State.

29. The aforesaid interim diction shall be effective from 10th of

May, 2021 since some time will have to be given to enable the State Administration to publicize such a requirement. The State Government shall immediately notify and publicize this requirement through the usual channels so that travelers are put to effective notice about the same.

30. The State to place on record the necessary protocol regards entry of persons into Goa by the next date. The State Administration is also at liberty to file a detailed affidavit so that this court can consider whether this interim order is required to be varied or modified, having regard to what is set out in the affidavit. Until modified, however, a negativity certificate will be a must for entry into the State of Goa.

31. Both Central as well as State Administration to file their affidavits by 10/5/2021 and serve an advance copy to the learned counsel appearing on behalf of the Petitioners in these matters. The matters are now posted on 11th May 2021 before the learned Vacation Judge.

32. The affidavit to be filed in the context of the broad issues which we have highlighted in this order.

33. Mr. Nigel Costa Frias pointed out that there is a shortage of

home isolation kits and that is causing a lot of inconvenience to the patients who are quarantined or isolated in their homes. He also points out that on account of certain orders issued, there is a difficulty for the petitioners or the other NGOs in supplying food and other essentials to such quarantined patients. The learned Advocate General pointed out that there is no shortage and if the petitioners point out the patients who are yet to receive such kits, the same will be made available to such patients. He also pointed out that there is no difficulty in the Petitioners or other NGOs supplying food or essentials to the needy patients and if such requests are made by such persons or the NGOs to the Authorities the same will be considered. These statements are accepted.

34. Mr. Rebello pointed out that the website of the State Government indicating the availability of beds in various hospitals is not operational since 2nd May 2021. Accordingly, we direct the State Administration to make the website operational forthwith. Further, this website to indicate not only the number of beds available in real-time but also the type of beds, which are available so that the patients have a clear picture as to the hospitals in which they can seek admission. Further, all steps should be taken to update these websites on a real-time basis, so that patients are not required to run from one hospital to the other in such critical times. These directions should also be complied with at the earliest and the status of compliance to

be indicated in the affidavit to be filed on or before 10th May 2021.

35. Issue notice to Respondent No.3 i.e GARD in PIL WP No.1172/2021, returnable on 11th May 2021. In addition to the usual mode of service, private service is also permitted.

36. Stand over to 11th May 2021 before the Hon'ble vacation Judge.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.