

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION (L) NO. 93840 OF 2020**

Kiran Bhaskar Surgade,)
Widow of Dr.B.S.Surgade)
Housewife, Age : 47 years, Hindu, residing at Ekta)
Housing Society, Room No. B/12, Card No. 4,)
Sector-9, Navi Mumbai, Kopar Khairne, Thane)...Petitioner

Versus

1. Director,)
Health Department, Government of Maharashtra,)
Central Building, Pune.)

2. Chief Executive Officer,)
State Health Insurance Society,)
Jeevandayee Bhavan, ESIS Hospital Compound,)
Ganpat Jadhav Marg, Mumbai – 400 018)

3. Director,)
Medical Education and Research,)
Government Dental College & Hospital Building,)
4th Floor, Sr. D. Municipal Compound,)
P.D.Demello Marg, Mumbai – 400 001)

4. Commissioner, Navi Mumbai Municipal Corporation.)

5. Secretary,)
Government of India, Ministry of Health & Family Welfare,)
Nariman Bhavan, Navi Delhi – 110001)

- 6. Secretary,**)
The New India Assurance Company Limited,)
Government of India Undertaking, having its registered and)
Head Office at New India Assurance Building, Mahatma)
Gandhi Road, Fort, Mumbai – 400 001)
- 7. Central Council of Indian Medicine,**)
A statutory body under Ministry of Ayush, Government of)
India, having office at 61-65, Institutional Area,)
Janakpuri, B-Block, New Delhi – 110058)
- 8. Maharashtra Council of Indian Medicine,**)
an authority established under the provisions of Maharashtra)
Medical Practitioners Act, having its address at Commercial)
Building, above Eastern Watch Company, 231, Dr. D.N. Road)
Fort, Mumbai – 400 001)
- 9. Government of Maharashtra,**)
Through Government Pleader, High Court, Mumbai)
- 10. Union of India,**)
Through Government Pleader, Ikar Bhavan, Marine Lines,)
Mumbai)...Respondents

Mr.Ajit Karwande a/w. Mr. Niti Ghavare, Mr. Girish Karwande for the Petitioner.

Ms.K.N.Solunke, AGP for Respondent No.1 - State.

Mr.Sandeep Marne for Respondent No. 4 - NMMC.

Mr.Rui Rodriques for Respondent No. 8 - Maharashtra Council of Indian Medicine.

Mr.Anil Singh, ASG a/w. Mr. Sandesh Patil, Mr. D.P. Singh for UOI – Respondent

No. 5 – Secretary, Govt. of India, Ministry of Health & Family Welfare and
Respondent No. 10 – Union of India.

Dr.Jitendra Dolare, Medical Officer, Pune, present.

Dr.Ashutosh Gupta, President of MCIM, present.

CORAM : **S.J.KATHAWALLA, &
RIYAZ I. CHAGLA, JJ.**
RESERVED ON : **18TH JANUARY, 2021**
PRONOUNCED ON : **9TH MARCH, 2021**
(IN CHAMBERS)

JUDGMENT :

1. By the above Writ Petition, the Petitioner prays for the following reliefs :

"a) That this Court be pleased be exercise its jurisdiction under Constitution of India and issue writ or direction calling for the record and proceedings from the office of the respondents Nos.1 and 2 and after examining the validity, legality and propriety and correctness be given order and or direction to the respondent Nos.1 and 4 to quash and set aside the Impugned Order annexed as Exhibit- "O" and allow the claim of the Petitioner that annexed as Exhibit-"J".

b) The Court be pleased to give an order and or direction to the respondent No.6 - The New India Assurance Co. Ltd. to immediately disburse the claim of the Petitioner annexed as Exhibit- "J" in time bound schedule.

c) Pending the hearing and final disposal of the writ petition be pleased to direct the respondents except respondent No.6 to file their respective affidavit in respect of claim of the Petitioner."

2. The Petitioner is the widow of Dr. B.S. Surgade who passed away on 10th

June 2020 being infected by COVID-19.

3. Post Dr. Surgade's unfortunate demise, the Petitioner submitted a Personal Accident Insurance Claim Form dated 2nd August, 2020 with Respondent No.6 - The New India Assurance Company Limited. By this claim, the Petitioner sought for compensation of Rs.50,00,000/- (**"Claim"**) under the Pradhan Mantri Garib Kalyan Package (**"Scheme"**).

4. By an Order dated 7th September, 2020, Respondent No.6 - The New India Assurance Company Limited rejected the Claim *inter alia* on the grounds that Dr. Surgade was carrying out private practice, he was not recognized by the Navi Mumbai Municipal Corporation and that his private dispensary was not recognized as a COVID-19 dispensary.

5. A few facts and correspondence may be necessary as under:

5.1. The Ministry of Health & Family Welfare (**"MoHFW"**) issued an order dated 28th March, 2020 setting out the criteria as to who can be included and would be eligible under the Scheme. The said order reads as under:

"ORDER

As per the announcement made under the Pradhan Mantri Garib Kalyan Package, the competent authority has approved the launch of 'Pradhan Mantri Garib Kalyan Package : Insurance Scheme for Health Workers Fighting COVID-19' with the following conditions:

i. It will be a comprehensive personal accident cover of Rs. 50 lakh for ninety (90) days to a total of around 22.12 lakh public

healthcare providers, including community health workers, who may have to be in direct contact and care of COVID-19 patients and who may be at risk of being impacted by this. It will also include accidental loss of life on account of contracting COVID-19;

ii. On account of the unprecedented situation, private hospital staff/retired/ volunteer/ local urban bodies/contract/daily wage/ ad-hoc/outsourced staff requisitioned by States / Central hospitals/ autonomous hospitals of Central/States/UTs, AIIMS & INIs/ hospitals of Central Ministries can also be drafted for COVID19 related responsibilities. These cases will also be covered subject to numbers indicated by MoHFW;

iii. The scheme will be funded through the NDRF Budget operated by the Health Ministry for this purpose;

iv. Actual payment by the Insurance Company to the beneficiary will be under certification of the authorised Central/ State Government Officials; and

v. The insurance provided under this scheme would be over and above any other insurance cover being availed by the beneficiary.”

5.2. On 31st March, 2020, the Navi Mumbai Municipal Corporation’s (“NMMC”) Commissioner issued a ‘Notice to keep the Hospital/Dispensary open in lock down period’ (“NMMC Notice”). The NMMC Notice reads as under:

“SUB:- Explanation as to why your hospital/dispensary is kept closed in the lock down period

WHEREAS the Government Of Maharashtra, in the exercise

of the power conferred under section 2,3 and 4 of the Epidemic Diseases Act, 1897 has framed Regulation vide Notification dated 14th March 2020, for prevention and containment of Coronavirus Disease - 2019 (COVID-19).

AND WHEREAS under rule 10 of the said Regulations the Municipal Commissioner/ Empowered Officer are authorized to take any measures for prevention, containment measures in order to prevent spread of COVID-19.

I Annasaheb Misal, Municipal Commissioner of Navi Mumbai Municipal Corporation, in exercise of powers conferred upon me, had hereby directed you vide order no 123/2020 to keep your hospital/ dispensary open.

And therefore it has been observed that your hospital/dispensary is kept closed. I hereby order you open your hospital/dispensary in the lock down period immediately after the receipt of the said notice by following the containment measures of social distancing, every persons face covered by mask and keeping hand sanitiser for every patient visiting the hospital/dispensary, failing of which the Navi Mumbai Municipal Corporation will be forced to file an FIR against you under Section 188 of IPC 1860. ”

5.3. The aforesaid NMMC Notice was issued to Dr. Surgade. It is the Petitioner's case that upon receipt of the NMMC Notice and fearing criminal prosecution, Dr. Surgade opened his private dispensary.

5.4. The Directorate of Medical Education and Research had issued letters

dated 8th May, 2020 and 9th May, 2020 to “ALL RMP’s registered in Maharashtra Council of Homeopathy” and “All RMP’s registered in MCIM (only Ayurved faculty)” respectively, whereby the addressees were informed as under :

“your services are required for the prevention and treatment of COVID-19 patient at least for 15 days. You shall therefore convey your willingness and place of choice where you would like to render your services to <https://forms.gle/ucfYQB7s2pwBVDL98> within 3 days. Non-attendance of the duty will be considered as breach of Hippocratic Oath that we administered at the time of obtaining degree and action will be initiated according to the provisions of Epidemic Diseases Act, 1897 and other Acts referred above.”

It was inter alia clarified by a footnote in the said letters that those who have completed 55 years of age and are suffering from co-morbidity are exempted from the duty. **Admittedly, the deceased had not responded to either of the said two letters.**

5.5. As stated hereinabove, Dr. Surgade passed away on 10th June, 2020.

5.6. As stated hereinabove, by an order dated 7th September, 2020, Respondent No.6 – The New India Assurance Company Limited rejected the Claim *inter alia* on the grounds that Dr. Surgade was carrying out private practice, was not recognized by the NMMC and that his private dispensary was not recognized as a COVID-19 dispensary.

5.7. Being aggrieved by the order dated 7th September, 2020, the Petitioner

filed this Writ Petition praying for the reliefs as set out hereinabove.

5.8. On 1st October, 2020, the Principal Secretary, Government of Maharashtra issued a letter to the Secretary, Department of Health and Family Welfare, Government of India seeking extension of benefits of insurance coverage to all private practitioners under the Scheme. In view thereof, at the hearing of this Writ Petition on 17th December, 2020, this Court passed the following order :

“1. The above Writ Petition is filed for the following reliefs by one Ms.Kiran Bhaskar Surgade, wife of Dr. B.S.Surgade, who passed away on 10th June, 2020 being infected by the COVID-19 virus :

“(a).....

(b).....

(c).....”

*2. The Petitioner has submitted the Personal Accident Insurance Claim Form dated 2nd August, 2020, to Respondent No. 6 – The New India Assurance Company Limited seeking compensation of Rs.50 Lacs under the Pradhan Mantri Garib Kalyan Package (**the Scheme**). However, her Claim was rejected by an Order dated 7th September, 2020, on the ground that the deceased Dr. B.S. Surgade, was not serving in any hospital included in the list of hospitals designated to treat only COVID-19 patients, but was a private practitioner.*

3. The Petitioner has therefore impugned the said Order dated 7th September, 2020. She has in support of the reliefs sought by her in the above Writ Petition, relied on the notice dated 31st March, 2020 issued by the Commissioner, Navi Mumbai

Municipal Corporation, wherein an explanation was sought from the doctors carrying out private practice, as to why their hospitals/dispensaries are kept closed by them. The Petitioner submits that pursuant to the said notice, the deceased doctor had to open his dispensary and treat patients including those infected by the COVID-19 virus. He thus consequently himself got infected by the COVID-19 virus and passed away on 10th June, 2020. It is therefore submitted by the Petitioner that the State Government cannot contend that the family of the deceased doctor is not entitled to receive compensation under the said Scheme.

4. The learned Advocate appearing for the State has submitted a letter dated 1st October, 2020, issued by the Principal Secretary, Government of Maharashtra to the Secretary, Department of Health and Family Welfare, Government of India, Nariman Bhawan, New Delhi – 110011 seeking extension of benefits of insurance coverage to all private practitioners (Pps) under the said Scheme in view of the Government of India Order dated 28th March, 2020. The contents of the said letter dated 1st October, 2020 are reproduced hereunder :

“Sir,

As per the above mentioned GOI order PMGKP scheme for healthare workers is being implemented in our state. As of now out of 61 claims approved. 14 proposals are sanctioned from out state and already paid under PMGKP.

The scheme covers private hospital staff requisitioned by state and assigned for COVID-19 related responsibilities. Out of

total COVID-19 patients treated so far around 20 % are being treated by private hospitals. Private practitioners / specialist whose services requisitioned by Government Health services for provision of health care to COVID-19 patients are covered under PMGKP.

In addition to this Government of Maharashtra has mandated opening of all clinical establishment and has regulated rates of treatment by private health care providers in dispensaries, nursing homes and hospitals vide notification dated 30.04.2020. This also makes it compulsory to provide services with reference to MESMA – Maharashtra Essential Services (Amendment) Act, 2011. Especially in Maharashtra considering current scenario of COVID-19 situation. OPD and IPD services, screening, examination, treatment and their followup in field settings / private clinics & hospitals are all associated with professional hazard of contracting COVID 19 & related fatalities. Many such requests and proposals are submitted to us individually and through professional bodies like IMA, IAP, FOGSI etc. with request to include all Private Healthcare providers / workers under Pradhan Mantri Garib Kalyan Package.

So request you to please consider inclusion of all Private Health Care Providers / workers who have continued delivery of health care services during this pandemic, endangering their life & many have died due to COVID-19 while serving humanity and nation.”

5. It appears that the Secretary, Department of Health and Family Welfare, Government of India, has till date not

responded to the said letter dated 1st October, 2020. The Secretary, Department of Health and Family Welfare, Government of India, shall therefore respond to the letter dated 1st October, 2020 written by the Principal Secretary, Government of Maharashtra, within a period of two weeks from today.

6. Stand over to 7th January, 2021, HOB.”

5.9. In response to the aforesaid letter dated 1st October, 2020 and subsequent to the aforesaid Order, a letter dated 15th October, 2020 came to be addressed by the Deputy Secretary, Government of India, Department of Health & Family Welfare which reads as under :

“Sir,

I am directed to refer to your letter No. Corona-2020/CR430/Aa5 dated 01.10.2020 regarding the subject mentioned above and to state the following:-

(i) PMGKP: Insurance Scheme for Health workers fighting COVID-19 was launched w.e.f. 30.03.2020 to provide comprehensive personal accident cover of Rs. 50 lakh to public healthcare providers, including community health workers, who may have to be in direct contact and care of COVID-19 patients and who may be at risk of being impacted by this.

*(ii) On account of the unprecedented situation, **private** hospital staff/ retired/volunteer/ local urban bodies/contract/daily wage/ ad-hoc/outsourced staff **requisitioned** by States/ Central hospitals/autonomous hospitals of Central/States/UTs, AIIMS & INIS/ hospitals of Central Ministries can also **be drafted for***

COVID19 related responsibilities. These cases are also covered under the scheme subject to fulfilment of the following conditions –

(a) They should have been drafted by the States/ Central hospitals/ autonomous hospitals of Central/ States/ UTs, AIIMS & INIS/ hospitals of Central Ministries for COVID 19 related responsibilities.

(b) They should have been working as a front-line health workers, who may have to be in direct contact and care of COVID-19 patients and who may be at risk of being impacted by this.

(c) The loss of life is due to COVID-19 or accidental death on account of COVID-19 related duty.

2. In view of the above, no other group of healthcare workers other than those mentioned under (i) & (ii) above, can be included under PMGKP: Insurance Scheme for Health Workers Fighting COVID-19.” (emphasis supplied)

6. The aforesaid are the brief facts pertaining to the matter.

7. Appearing for the Petitioner, Ld. Advocate Shri Karwande placed reliance on the FAQ's of the Scheme and submitted that the Scheme does not distinguish between Government Doctors and Private Doctors ; that Dr. Surgade's services were in fact requisitioned by NMMC vide the NMMC Notice ; having issued the NMMC Notice, the Respondents are now estopped from contending that Dr. Surgade's services were not requisitioned ; the NMMC Notice mandated and made it

compulsory for Dr. Surgade to open his clinic and if not, he would be guilty of a criminal offence under the Indian Penal Code ; that Dr. Surgade duly completed the “AYUSH” training for COVID-19 preparedness, response and containment ; that by letters / notifications dated 8th May, 2020 and 9th May, 2020, the RMP’s registered in Maharashtra Council of Homeopathy and Ayurved faculty respectively were informed that their services were required for the prevention and treatment of COVID-19 patients atleast for 15 days and the RMP’s shall within three days convey their willingness and place of choice where they would like to render their services failing which action will be initiated against RMP’s under the provisions of the Epidemic Diseases Act, 1897 and the acts referred to in the said letter / notification.

8. Appearing for Respondent No.1 - Director, Health Department, Government of Maharashtra, Ld. Advocate Kavita N. Solunke submitted that Dr. Surgade’s services were not requisitioned / drafted and therefore, the Scheme would not apply to him. In support of her submissions, she relied upon NMMC’s letter dated 1st September, 2020 stating that Dr. Surgade’s services were not requisitioned / drafted. She further submitted that admittedly Dr.Surgade did not respond to the notice dated 8th May, 2020 issued by the Director of Medical Education and Research requesting doctors to convey their willingness / consent and place where they would like to render their services atleast for 15 days. That Respondent No.1 - Director, Health Department, Government of Maharashtra has not only rejected the Petitioner’s claim but also 22 other identical claims. If the Petitioner’s claim is

allowed, it will open the flood gates and result in a huge burden of revenue on the Central Government.

9. Appearing for Respondent No.4 - Commissioner, NMMC, Ld. Advocate Shri Marne inter alia submitted, that Dr. Surgade's services were not requisitioned nor was his clinic requisitioned as a Covid-19 hospital ; that the NMMC Notice does not state that Dr. Surgade's private dispensary should be kept open for COVID-19 treatment ; that NMMC did not requisition even a single private medical practitioner and only recruited 705 healthcare professionals on contract basis for handling COVID-19 related responsibilities.

10. Appearing for Respondent No.5 - Secretary, Government of India, Ministry of Health and Family Welfare and Respondent No. 10 - Union of India, Ld. ASG Shri Anil Singh submitted, that the Scheme is not applicable to private medical practitioners ; the Scheme will apply only if the services of the persons mentioned in the Scheme are requisitioned by the State / Union ; it is not the Petitioner's case that Dr. Surgade responded to the Medical Education & Research, Mumbai's circulars dated 8th May, 2020 and / or 9th May, 2020 and agreed to the requisition ; it is not even the Petitioner's case that Dr. Surgade remained present before the Government authorities for rendering his services ; assuming only for the sake of argument that Dr. Surgade was in fact called upon to open his dispensary, the same was not done under the Scheme ; the provisions of the Epidemic Act are totally different from the Scheme ; the Petitioner has not challenged the Scheme.

11. Appearing for Respondent No. 7 – Central Council of Indian Medicine (CCIM), Advocate Shri Neel Helekar submitted that considering the facts and circumstances of the present pandemic situation, all the doctors (private as well as Government) serviced the society by putting their life in danger and therefore CCIM feels that the Respondent No. 6 – The New India Assurance Company Limited should reconsider its impugned decision and help the practitioners of Indian System of Medicine.

12. Appearing for Respondent No.8 – Maharashtra Council of Indian Medicine, Ld. Advocate Shri Rui Rodrigues placed on record the facts pertaining to the Scheme, the order dated 3rd April, 2020 issued by the Director of Ayush and various representations made to the State Government. Respondent No. 8 – Maharashtra Council of Indian Medicine supported the submissions made on behalf of the Petitioner with regard to the applicability of the Scheme to private doctors.

13. At the outset, we express our utmost sympathy to the Petitioner and her family and enormously respect the duties carried out by Dr. Surgade. However, for the purposes of this Order, we will restrict ourselves to the *lis* before us *viz.* whether or not benefits of the Scheme can be extended to the case of Dr. Surgade.

14. In order to appreciate the controversy as has arisen in this matter, it would be necessary to analyse the Scheme.

15. The Scheme was announced on 30th March, 2020 for a period of 90 days which period was thereafter extended for a further period of 90 days i.e. up to 25th

September, 2020 and now until March, 2021. The Scheme provides for an insurance cover of Rs.50,00,000/- to healthcare providers including private hospital staff etc. who are requisitioned / drafted for COVID-19 related responsibilities. The entire amount of premium for this Scheme is being borne by the Ministry of Health and Family Welfare, Government of India. The benefit/claim under the Scheme is in addition to the amount payable under any other policies. The Ministry of Health and Family welfare has collaborated with the New India Assurance Company Limited for providing the insurance amount based on the guidelines prepared for the Scheme. Till date, under the Scheme, a total of 61 claims have been processed and paid. 156 claims are under examination by New India Assurance Company Limited, and in 67 cases claim forms are yet to be submitted by the States.

16. The Petitioner before us has laid great emphasis to contend that the Scheme does not distinguish between private and government healthcare providers and that therefore, it also extends to private healthcare providers such as Dr. Surgade. We have no difficulty in accepting this submission of the Petitioner. This is the plain interpretation of the Scheme. However, one cannot omit reference to the express inclusion of the words “*drafted*” and “*requisitioned*” for “*COVID-19 related responsibilities*”. As stated hereinabove, on 1st October, 2020, the Government of Maharashtra addressed a letter to the Secretary, Government of India, Department of Health & Family Welfare requesting that all Private Health Care Providers / workers who have continued delivery of health care services during COVID-19 be included in

the Scheme. In response, a letter dated 15th October, 2020 came to be addressed by the Deputy Secretary, Government of India, Department of Health & Family Welfare stating the scope and ambit of the Scheme. The said letter is once again reproduced herein for ready reference :

“Sir,

I am directed to refer to your letter No. Corona-2020/CR430/Aa5 dated 01.10.2020 regarding the subject mentioned above and to state the following:-

(i) PMGKP: Insurance Scheme for Health workers fighting COVID-19 was launched w.e.f. 30.03.2020 to provide comprehensive personal accident cover of Rs. 50 lakh to public healthcare providers, including community health workers, who may have to be in direct contact and care of COVID-19 patients and who may be at risk of being impacted by this.

*(ii) On account of the unprecedented situation, **private hospital staff/retired/volunteer/local urban bodies/contract/daily wage/ad-hoc/outsourced staff requisitioned** by States/ Central hospitals/autonomous hospitals of Central/States/UTs, AIIMS & INIS/ hospitals of Central Ministries can also **be drafted for COVID19 related responsibilities. These cases are also covered under the scheme subject to fulfilment of the following conditions –***

*(a) They should have been drafted by the States/ Central hospitals/ autonomous hospitals of Central/ States/ UTs, AIIMS & INIS/ hospitals of Central Ministries **for COVID 19 related responsibilities.***

(b) They should have been working as a front-line health workers, who may have to be in direct contact and care of COVID-19 patients and who may be at risk of being impacted by this.

(c) The loss of life is due to COVID-19 or accidental death on account of COVID-19 related duty.

2. In view of the above, no other group of healthcare workers other than those mentioned under (i) & (ii) above, can be included under PMGKP: Insurance Scheme for Health Workers Fighting COVID-19.” (emphasis supplied)

17. In addition to the aforesaid letter, we may also bare reference to the FAQ(s) of the Scheme on which the Petitioner has laid great emphasis.

“ Question 3: Who all are covered under the scheme ?

- Public healthcare providers including community health workers, who may have to be in direct contact and care of COVID-19 patients and who may be at risk of being impacted by this.*
- Private hospital staff and retired /volunteer /local urban bodies/ contracted /daily wage /ad-hoc/outsourced staff requisitioned by States/ Central hospitals/ autonomous hospitals of Central/ States/UTs, AIIMS and INIS/ hospital of Central Ministries can also be drafted for COVID 19 related responsibilities.*

Question 5: Who are 'Private persons' under this scheme?

Private persons are those who are engaged by both public & private health care institutions/organization through an agency

and were deployed /drafted for care and may have come in direct contact of the COVID-19 patient (with the proof that the service of the agencies were engaged by the institution/organization). ”

18. As can be seen from the aforesaid answer, only such private practitioners whose services are in fact requisitioned for COVID-19 related duties and responsibilities, would be covered under the Scheme.

19. In our considered opinion, the aforesaid letter is self-explanatory and clearly lays down the four corners within which the Scheme applies. The letter categorically states that for a private healthcare provider to be covered under the Scheme, he or she must be “drafted” by the State / Centre for COVID-19 related responsibilities. Excluding the criteria set-out in the aforesaid letter, the letter categorically records that no other group of healthcare workers can be included under the Scheme.

20. In view of the aforesaid mandate of the Government of India, the mere inclusion of private healthcare workers within the Scheme would not suffice. The Petitioner would be necessarily required to prove that Dr. Surgade’s services were in fact requisitioned / drafted in relation to COVID-19 duties by the State / Centre to seek application of the Scheme.

21. In order to demonstrate that Dr. Surgade’s services were requested, the Petitioner has placed paramount reliance on the NMMC Notice dated 31st March, 2020. Therefore, we propose to analyse the NMMC Notice reproduced hereinabove.

By this notice, the NMMC called upon *inter alia* Dr. Surgade to explain why his private dispensary was kept closed during the lock down. It stated that despite earlier Orders, Dr. Surgade's dispensary was kept closed. Resultantly, the NMMC Notice came to be issued calling upon Dr. Surgade to keep open his dispensary after following the prescribed measures for social distancing etc. In our opinion, a plain reading of this NMMC Notice cannot be construed as a notice requisitioning Dr. Surgade's services for the specific purpose of treating COVID-19 patients and/or working in a COVID-19 centre / hospital. There is a difference between specifically requisitioning / drafting services and directing private practitioners to not keep their clinic closed. In the present case, this distinction is evident from the record. The intent and object of the NMMC Notice was to encourage medical practitioners to keep open their dispensaries which were otherwise closed due to the fear of COVID-19. This notice did not mandate that the said dispensaries are to be kept open for COVID-19. As opposed to this letter, the Medical Education & Research, Mumbai's circular dated 8th May, 2020 specifically stated "*that your services are required for the prevention and treatment of COVID-19 patient atleast for 15 days*". Clearly therefore, the circular dated 8th May, 2020 was a specific requisition within the meaning of the Scheme and not the NMMC Notice dated 31st March, 2020. We do not agree with the Petitioner's reliance on the words "*prevention, containment measures in order to prevent the spread of Covid-19*". The NMMC Notice has to be read as a whole and not in isolation. Resultantly, we hold that the NMMC Notice would not amount to a requisition for the

purposes of the Scheme. Resultantly, the question of estoppel applying would not arise. As stated earlier, Dr.Surgade had not responded to the notification / circular dated 8th May, 2020 by offering / giving his services as requested therein.

22. We now consider the overwhelming evidence produced by the Respondents explicitly demonstrating that Dr. Surgade's services were not requisitioned for the purposes of treating COVID-19 patients and/or working in a COVID-19 centre / hospital :

i. The Respondents have pleaded before us on oath that Dr. Surgade's services were not requisitioned;

ii. The Medical Officer, Primary Health Centre, Turbhe has submitted a report dated 21st August, 2020 stating that the information with respect to Dr. Surgade's services being requisitioned are not available and instead; he was carrying out his private practice;

iii. Following the aforesaid, the report dated 1st September, 2020 issued by the Medical Officer of Health, NMMC categorically stated that Dr. Surgade's services were neither requisitioned by NMMC for COVID-19 related responsibilities nor was his clinic requisitioned as a COVID-19 hospital;

iv. NMMC has addressed a letter dated 1st September, 2020 also stating that Dr. Surgade's services were not requisitioned by NMMC.

23. In view of the aforesaid overwhelming correspondence, we would be required to accept the Respondents' contention and assertion that Dr. Surgade's

services were not requisitioned as mandated under the Scheme and therefore, the Petitioner cannot now avail of the Scheme. As opposed to the aforesaid documentary record produced by the Respondents, the Petitioner has, barring the NMMC Notice, been unable to bring on record any documentary proof to establish that Dr. Surgade's services were availed for the purpose of treating and/or in relation to COVID-19. As a result, we hold that Dr. Surgade's services were not requisitioned as required under the Scheme and therefore, the Scheme would be inapplicable in the present matter.

24. Considering that Dr. Surgade's services were not requisitioned as mandated under the Scheme, we are unable to extend the applicability of the Scheme to persons who fall outside the ambit thereof. Resultantly, no relief can be granted to the Petitioner. This being so, we also find no merit in the contention that Dr. Surgade duly completed the AYUSH training for COVID-19 preparedness, response and containment. The completeness or otherwise of AYUSH training bears no relevance to the applicability of the Scheme.

25. We cannot also lose sight of the fact that in this Writ Petition, the Petitioner has not impugned the constitutionality or otherwise of the Scheme. Instead, she seeks the inclusion of Dr. Surgade within the policy, which, for the reasons stated hereinabove, is impermissible.

26. The Writ Petition is dismissed accordingly.

(RIYAZ I. CHAGLA, J.)

(S.J.KATHAWALLA, J.)