

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No.3427 OF 2000

(C.H. Sharma and others vs. State of Maharashtra and others)

AND

PUBLIC INTEREST LITIGATION No.10 OF 2020

(Subhash Jainarayan Zanwar Vs. Union of India, through its Secretary and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Anup Gilda, Advocate/Amicus Curiae for petitioners.
Shri Jugalkishor Gilda, Sr. Advocate and Shri Bhanudas
Kulkarni, Advocate assisting the Court.
Shri D.P. Thakare, Addl. GP for Respondent Nos.1 to 3
Shri S.M. Puranik, Advocate for Respondent No.4.
Shri U.M. Aurangabadkar, ASGI for Respondent No.6.
Shri Ram Heda, Advocate for Petitioner in PIL No.10/2020.
Shri P.D. Sharma, Advocate for intervenor.

CORAM : Sunil B. Shukre &
Avinash G. Gharote, JJ.

DATE : 23rd March, 2020.

We have heard Shri Anup Gilda, learned amicus curiae for petitioners, Shri D.P. Thakare, learned Additional Government Pleader for respondent Nos.1 to 3/ State, Shri U.M. Aurangabadkar, learned A.S.G.I. for respondent No.6/Union of India, Shri S.M. Puranik, learned counsel for respondent No.4/NMC, Shri Ram Heda, learned counsel for petitioner in PIL No.10/2020. We have also heard Shri Jugalkishor Gilda, learned Senior Advocate, Shri Bhanudas Kulkarni, learned Advocate and Shri P.D. Sharma, learned Advocate who have voluntarily given their assistance to this Court in the present matters.

We have gone through the reply filed on

behalf of the Collector, Nagpur and Municipal Corporation.

On going through the reply of these authorities we feel satisfied that as of now proper steps are being taken to prevent the spread of COVID-19 and also effectively treat confirmed cases of the disease. However, some concerns still remain there and we are of the view that they need to be addressed effectively and as quickly as possible.

Now it has become common knowledge that COVID-19 is a disease that spreads very fast after the disease crosses its second stage of the affliction and at this stage utmost care regarding the treatment and prevention is required to be taken not only by the authorities but also the members of the community. At this point of time it is the prevention apart from the treatment of the disease that really works in containing the disease. Therefore, it is necessary for the authorities to take all steps required for preventing the spread of the disease. One of the steps could be of enforcing what is now a days called as “social distancing” which is actually physical distancing. The Commissioner of Police has already issued an order under Section 144 of the Cr.P.C. This order prohibits assembly or movement of five or more persons at any public place within Nagpur city. Similar order has been issued by District Magistrate, Nagpur for rural areas. However, such an order issued under Section 144 of Cr.P.C. would not be enough to restrict the movement of individual persons on roads and confine the members of the community to their

respective homes. For that matter, the Police Commissioner and the District Magistrate would also have to consider if the order be issued under this very Section in a manner as to prohibit movement of even a single person on public roads and public places including in the vehicles on public roads and public places. We are of the view that if such an order is issued by these authorities, it would go a long way in preventing the spread of COVID-19.

Shri Heda, learned counsel produced before us a newspaper clipping, raising another concern regarding spread of disease. This newspaper clipping is taken on record and it is marked 'X' for identification. It's copy has been furnished to the learned Additional Government Pleader and learned counsel for the N.M.C. The clipping contains a report regarding turning a way of a lady patient residing in Hindustan Colony from the facility at the GMC, Nagpur where the Corona virus testing was being done. It is her claim that she was suffering from cough, cold and was running high fever and on the advice of her family doctor that she went to Medical College and Hospital for getting her tested for Corona virus. But, she was turned away from there on the ground that she had no foreign travel history. At this stage, we cannot make any comment about the genuineness of the report. But, we can certainly say that this report raises a serious concern over the safety of all those persons who have happened to come in contact with any of such patients since last five days and who were likely to come in contact with such patients in days to come and, therefore, *it would be*

necessary for the Collector, Nagpur as well as Municipal Commissioner, Nagpur to get this report verified for its correctness or otherwise. If it is found upon the verification that report is correct, the authorities would have to take necessary steps in the matter. Needless to say, verification report shall be placed before this Court on the next day.

Shri Anup Gilda, learned amicus curiae referred to absence of VRDL facilities for testing of COVID-19 at places like Yavatmal, Gadchiroli and Chandrapur where also confirmed cases of COVID-19 have been reportedly found. Reply filed on behalf of the Collector and NMC would show that Government has approved setting up VRDL facility at Akola and also at GMC, Nagpur. But these replies are silent on setting up of similar facilities at the aforesaid places. Considering the statistical report available as of now, we find that such facilities must also be set up at Yavatmal, Gadchiroli and Chandrapur and, therefore, *we direct the State to take necessary steps for creation of these facilities at these places and ensure that these facilities are provided and made functional within a period of two weeks from the date of order.*

Shri Gilda, learned amicus curiae has further pointed out that there is paucity of prevention and protection equipment (PPE) or Hazmet Kit which is meant for providing protection to the doctors, nursing staff and sanitation workers who are attending to COVID-19 cases. *We would direct the State Government to look into this deficiency and ensure that such kits are provided at all*

places in adequate numbers as early as possible preferably within a week's time from the date of order. We also direct the State Government to provide these kits in adequate numbers within a week's time to all the Doctors and staff members at the isolation ward set-up at MLA's hostel, Nagpur.

Shri Gilda, learned amicus curie has pointed out that there is no isolation ward at Central Jail, Nagpur and that no thermal screening of all the passengers arriving by domestic flights is being carried out at Dr. Babasaheb Ambedkar International Airport, Nagpur. If no isolation ward has been created at Central Jail, Nagpur and if no isolation wards are created at other jails in Vidarbha, *we direct the State to make necessary arrangements for setting up of the isolation wards at the Central Jails across the Vidarbha region, within a week's time from the date of order. Similarly, we direct the State to ensure that thermal screening of all the passengers arriving from domestic flights is carried out at Nagpur Airport until the situation improves.*

Shri Jugarkishor Gilda, learned Senior Advocate has pointed out that there is a paucity of testing kits used for testing COVID-19. According to his information, there are not adequate number of kits for COVID-19 testing and although these kits are sufficient for testing presently suspected patients, considering the possibility of rise of patients, these kits may not be adequate. He informs the Court that in his telephonic discussion with Dr. Varsha Apte, Director of National

Institute of Virology, Pune it has been revealed that if coordinated efforts are made by the State Government, Union of India and National Institute of Virology, there could be more testing kits which could be procured and made available to various laboratories functioning in the State of Maharashtra.

We direct the Union of India, State of Maharashtra and local authorities to coordinate with each other and also coordinate with NIV, Pune for procuring adequate number of additional testing kits. We also direct Union of India to take necessary steps for introducing duly approved Indian kits in the field so that more kits could be made available for testing purpose.

Shri Jugalkishor Gilda, learned Senior Advocate states that so far, in Vidarbha region, Union of India has not given approval to any private laboratory equipped with COVID-19 testing facility for conducting necessary tests validly. He submits that there is one laboratory in Nagpur which is run by Dr. Shailesh Mundhada under the name and style of “Dhruv Laboratory” which is equipped with COVID-19 testing kit. This laboratory, he submits, has not been registered by the State Government for validly conducting COVID-19 tests. He submits that the tests conducted by private laboratories are some what costly owing to high cost of the gadgets, equipments and various inputs, but those patients who can afford the costs, which is presently around Rs.9,000/- per test, can be sent to such private laboratories if the necessary approvals are granted and that would only lead

to reducing the burden upon the State run facilities. He also submits that the Central and State Government can consider reduction of the costs of testing by private laboratories by reducing the taxes and/or by providing subsidies on the equipments.

We direct the Union of India and the State of Maharashtra to consider grant of approval and registration to private laboratories across the State of Maharashtra which are already equipped with COVID-19 testing facility including Dhruv laboratory, Nagpur and grant approval to such of the private laboratories as are found to be fulfilling the applicable norms within a period of one week from the date of order.

Shri Sharma, learned counsel submits that he came across a newspaper report which said that IIT Delhi had developed a new COVID testing kit which is much cheaper than the one available as of now and that this kit has been sent by IIT Delhi to National Institute of Virology, Pune for its feasibility. We request the Union of India to verify this information for its correctness and if it is found to be correct, *we would request Union of India to seek feasibility report from NIV, Pune as early as possible, preferably within two weeks from the date of order and then do the needful in the matter.*

Shri Sharma, points out that it is necessary that all the staff members working at the Airport, Railways and Bus stations are provided with appropriate safety gears. We appreciate the concern shown by him and leave it to the authorities like Collector, Nagpur and NMC

Nagpur to create necessary awareness and also issue directions, if required, to the concerned authorities for providing appropriate safety gears to their respective staff members. This would also apply to other public sector undertakings, State or Central.

At the GMC and IGMC, doctors and staff members are rendering their services tirelessly and with full dedication. They have treated them and are treating them with all necessary care and concern. We appreciate their sincerity, valiance and commitment. However, we are also concerned about their safety and security as well as safety of members of their families. If no adequate safety gears are provided to these doctors and the staff members working at these hospitals, it is quite likely that some of them may get adversely affected and even the health of their family members would be jeopardized. There could be a situation where these doctors and the staff members, though not directly affected, on their returning home after finishing their duty at the hospital, may unwittingly place the health of their family members at stake because of the presence of the virus on their fabric or hair or some other body parts and they acting as contagions. The authorities will have to give their thoughtful consideration to such a contingency and would have to come out with some solution which is acceptable to all concerned. One of the solutions could be to advice the doctors and all staff members attending to the COVID-19 patients to stay at the respective hospitals and not to return home for certain period of time. But, if any

direction in this regard is to be given, it would be for the concerned medical authority to do so and in that case also, residential facility would have to be created at the concerned hospital.

We have already expressed our satisfaction over the steps taken and the steps being taken by all authorities. It has also been brought to our notice that the internet facility now has been provided to all the inmates at the isolation ward created at the MLA's Hostel, Nagpur. This is a welcome step taken by the authorities. We place on record our appreciation for the same.

Authenticated copy of this order be furnished to the learned Addl. G.P., learned Senior Advocate and learned counsel appearing for the parties.

Stand over to 7.4.2020.

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