

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/WRIT PETITION (PIL) NO. 42 of 2020**

**With**

**CIVIL APPLICATION (FOR DIRECTION) NO. 6 of 2020  
In R/WRIT PETITION (PIL) NO. 42 of 2020**

**With**

**CIVIL APPLICATION (FOR DIRECTION) NO. 8 of 2020  
In R/WRIT PETITION (PIL) NO. 42 of 2020**

**With**

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 9 of 2020  
In R/WRIT PETITION (PIL) NO. 42 of 2020**

**With**

**CIVIL APPLICATION (DIRECTION) NO. 10 of 2020  
In R/WRIT PETITION (PIL) NO. 42 of 2020**

**With**

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 11 of 2020  
In R/WRIT PETITION (PIL) NO. 42 of 2020**

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**SUO MOTU**

**Versus**

**STATE OF GUJARAT & 2 other(s)**

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Appearance:

SUO MOTU(25) for the Applicant(s) No. 1

for the Opponent(s) No. 1,2,3

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**CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA  
and  
HONOURABLE MR. JUSTICE ILESH J. VORA**

**Date : 22/05/2020**

**ORAL ORDER**

**(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

1 In response to our order dated 16<sup>th</sup> May 2020, the State Government has filed a detailed report of the steps taken so far as regards the problems of migrants, arrangements made with the private hospitals for the treatment of the COVID - 19 patients, etc. The report

reads as under:

*“Report on behalf of the Respondent State pursuant to the order dated 14.05.2020 of this Hon’ble Court in Suo-Moto PIL 42 of 2020*

*The present Report is being submitted in the captioned proceedings on the basis of the instructions provided by the concerned Departments of the State Government, presenting the arrangements in place as well as important actions taken in the wake of spread of COVID-19, with reference to various aspects indicated in the aforesaid order dated 14.05.2020 of this Hon’ble Court.*

*The Hon’ble Court in its order dated 14.05.2020, has noted some of the submissions made by various applicants and sought a response from the state government with regard to the same. The issues raised by various applicants is as under.:*

- 1. Use of Gujarat State Road Transport Corporation buses to transport the migrant workers (para 6.1)*
  - 2. Use of funds of the Real Estate Regulatory Authority for the benefit of construction workers (para 6.2)*
  - 3. Bearing of costs of travel of migrant workers to their natives (paras 6.3 & 6.5)*
  - 4. Use of community halls, marriage halls for the purpose of providing shelter to migrant workers and for quarantine purposes (para 6.4)*
  - 5. Discharge policy of the COVID-19 patients (para 6.6)*
  - 6. Necessary Arrangements for N-95 masks (para 6.7)*
  - 7. Opening up of hair salons and making services of technicians and electricians available (paras 6.8 & 6.9)*
  - 8. Conducting the Standard 10<sup>th</sup> & 12<sup>th</sup> examination (para 6.10)*
  - 9. Issues at a colony in Asarva (para 6.11)*
  - 10. Exorbitant amount being demanded by the private hospitals for treating the COVID-19 patients and lack of beds at Civil Hospital, Ahmedabad and SVP Hospital (para 6.12 & 6.13)*
- I. Issues relating to the transportation of Migrant workers*
- 1. Before responding to the submissions canvassed by the applicants as noted by this Hon’ble Court in the order dated 14.05.2020, it is imperative to place on record, certain facts and figures, which would enable a better understanding of the efforts being undertaken*

by the State in assisting the migration of the migrant labourers.

2. *As per the estimates collected by the Labour officials and as per the details obtained from various Industrial associations, unions and through workers' representatives there were around 22.5 Lacs inter-state migrant workers across the State, prior to them being allowed to return to their native states. A bifurcation of the said migrant workers can be made as follows:*
  - a. *Total number of inter-state migrant workers from other states, in and around Surat (I.e. South Gujarat) is approximately 11.5 Lacs. This figure is arrived at after a detailed survey carried out by 12 teams constituted by the labour department after visiting various GIDCs, engaging with various employee associations, worker associations and state specific worker associations.*
  - b. *Total number of inter-state migrant workers, in the rest of the State: approximately 11 Lacs.*
3. *It is submitted that the total number of inter-state migrant workers transferred to their native states by 21.05.2020, is 8,08,294. Ahmedabad, Surat, Vadodara, Rajkot, Gandhidham, Bharuch, Bhavnagar, Morbi, Palanpur and Valsad are the main Railway Stations in the State, from where the said migrant workers are being taken to board the trains. A copy of a table containing the details regarding the number of trains, that have departed from the various districts of the State, including the number of people that have travelled on board such trains, is annexed hereto and marked as Annexure-1.*
4. *An application has been filed highlighting the issues faced by 17 Lac migrant workers in the district of Surat, which essentially include Textile and Power loom workers, Sugarcane migrant workers, migrant workers engaged in the construction sector, Hazira-belt migrant workers and workers engaged in the diamond industry . In the context of the figures stated in the said application, it is most humbly submitted that the said facts and figures, as presented in the application do not distinguish between migrant workers from different States and migrant workers from different districts of the State. As stated hereinabove, the figure of 11.5 Lac migrant workers from different states, I.e. inter-state migrant workers, has been arrived at on the basis of the data collected by 12 teams constituted by the labour department after visiting various GIDCs, engaging with various employee associations, worker associations and state specific worker associations and therefore, figures stated in the application may not be accurate. The following figures are particularly relevant in the context of the said application:*
  - a. *The total number of Migrant workers from different states, I.e. inter-state Migrant workers, engaged in sugarcane factories, power looms, diamond industry etc. totals to 11.5 lacs, approximately.*

*The total number of trains that have departed to different States (till 19.05.2020) from Surat alone is 205, with approximately 3,06,131 persons. A copy of a table containing the detailed break-up of the number of trains departing from Surat to different States, from 02.05.2020 to 19.05.2020, is annexed hereto and marked as Annexure-1-A.*

*b. Till 19.05.2020, 2,48,402 inter-state migrant workers have departed from Surat to other States through 27,364 vehicles (cars and buses).*

*c. Therefore, a total of 5,54,533 inter-state migrant workers have departed from Surat to their native states using different modes of transportation, I.e. Railways, bus, private transport, etc. A copy of a table containing the detailed break-up of the movement of workers from Surat to other States (till 19.05.2020) is annexed hereto and marked as Annexure-1-B.*

*d. Between 21.05.2020 and 31.05.2020, approximately 300 more trains would ply with 4,80,000 inter-state migrant workers. This therefore, means that by 31.05.2020, only 1,50,000 migrant workers would be left in Surat, of which 1,15,000 have already resumed work in various factories and industries.*

*e. It is submitted that approximately 3,94,437 migrant workers staying in Surat, who are from other districts of Gujarat, I.e. intra-state migrant workers, have left for their native districts through 30,975 vehicles (buses and private cars). It is pertinent to note that the figure of 11.5 Lac workers, as mentioned hereinabove pertains to workers from other States and does not include the labourers in Surat from other districts of the State. A copy of a table containing the detailed break-up of the movement of workers from Surat to other districts of the State (till 19.05.2020) is annexed hereto and marked as Annexure-1-C.*

*f. It may be noted that the entire exercise of enabling migrants to return to their native states is being undertaken with the help of local administration, details of which have been indicated in the report dated 14.05.2020 filed before this Hon'ble Court.*

#### *A. Movement by Gujarat State Road Transport Corporation*

- 1. With respect to the observations of the Hon'ble Court in the order dated 14.05.2020, pertaining to the movement of migrant labourers, by the Gujarat State Road Transport Corporation (GSRTC), it is pertinent to note that during this period of a pandemic situation, the buses of GSRTC have been in extensive employment for intra state transport, transport to railway stations from meeting points etc. GSRTC started transporting workers immediately on receipt of the directives from the State and has transported stranded migrant workers, pilgrims, tourists, students*

*and other persons, cumulatively to the tune of 4,60,425 engaging more than 6000 buses on a regular basis till 16.05.2020.*

- 2. In order to assist the movement of the migrant workers, pilgrims, tourists, students and other persons who were stranded within or outside the State and reaching them safely to their native places as per the directives and guidelines of Ministry of Home Affairs and Ministry of Health and Family Welfare, Government of India, GSRTC has been supporting the District Administration all over the State in the transportation of labourers by placing buses at the disposal of the District Administration. GSRTC played a vital role and performed its duty diligently for picking and dropping the stranded labourers, pilgrims, students and travellers safely to their native places without issuing any tickets.*
- 3. While transferring the migrants, all the procedure as per the guidelines of Ministry of Home Affairs and Ministry of Health, Family Welfare, Government of India have been followed by the GSRTC in coordination with the local concerned district authorities, such as, all the buses which were used for migration of labourers were sanitized, safety measures was also taken for drivers and conductors, norms for the social distancing were also followed and medical screening of all migrant labourers was done by the concerned District Authority.*
- 4. It submitted that, the migration of labourers in large numbers to other States through buses is not a viable solution due to the long distance involved in such travel. For instance a journey to Bihar may entail 3 days of travel one way, transporting just 30 passengers per bus journey. For a 7 day preoccupation of the bus, only 30 migrant workers would be transported. Trains are the viable solution when it comes to transporting labourers over a long distance. GSRTC in continuous coordination with the local district authorities has provided the special operation as per the guidelines, norms and directives of the Government of India and the Respondent State. During this period, GSRTC has also operated 24x7 Control Rooms at Head Office and at all its Division offices and has made strong efforts for continuous coordination with all Divisions and State Control Rooms.*
- 5. The details of the special relief operations are mentioned below :  
I.As per the directives and guidance of Labour and Employment Department of Government of Gujarat and State Control Room, Gandhinagar, GSRTC had provided 1,017 buses for the migration of 58,757 Stranded Labourers of Gujarat State staying at various shelter homes of the state to drop them at the respective Railway Stations or at their respective state borders (in case of neighbouring States). The details pertaining to the same are annexed hereto in a tabular form and marked herewith as Annexure-2.*

ii. As per the guidelines of the Government of India and the Respondent State, it was decided to assist in the migration of the stranded labourers from various states to their native states through the Shramik Special Train, for this purpose as per the demand of the local district authority, GSRTC has provided 7,547 buses for 2,26,410 passengers who were dropped at the various Railway Stations of the state till date. The details pertaining to the same are annexed hereto in a tabular form and marked herewith as Annexure-2-A.

iii. There were many labourers from different districts of Gujarat who were staying in Surat and wanted to go back to their native districts. A committee was formed for the same, by Respondent State and accordingly, arrangements were made from 06.05.2020 for the migration of labourers from Surat to other districts of the State by GSRTC buses. For this purpose, an arrangement was done to pick up workers from their area of residence so that they do not have to travel to depots and unnecessary crowding can be avoided. Only one side fare has been charged to carry out this operation. Entire transportation is being carried out by following Social Distancing norms set by Ministry of Health, Family Welfare, Government of India. Till 16/05/2020 total 1,66,260 labourers have been transported with the help of 5,542 GSRTC buses. This operation is still going on. The details pertaining to the same are annexed hereto in a tabular form and marked herewith as Annexure-3.

iv. In addition to the aforementioned steps, it would be pertinent to note that GSRTC has provided buses for the 1,809 pilgrims of Gujarat State who were stranded in Uttarakhand. Such pilgrims were brought back to Gujarat and dropped at their native places. GSRTC has also provided buses to bring back 349 Students who were studying at Kota, Rajasthan for bringing them back to Gujarat and such students were also dropped them at their respective districts. The details pertaining to the same are annexed hereto in a tabular form and marked herewith as Annexure-4.

v. GSRTC has provided buses to pick and drop medical staff of civil hospitals of Ahmedabad and Gandhinagar. In total, under this extra ordinary and unexpected pandemic situation, GSRTC has transported 4,60,425 passengers through 14,521 buses till 16/05/2020. The details pertaining to the same are annexed hereto in a tabular form and marked herewith as Annexure-5. A few photographs of the efforts carried out by the GSRTC are annexed hereto and marked as Annexure-6.

vi. From 20.05.2020, GSRTC buses have started regular operations and are plying across the state, in addition to the assisting in the commutation of migrants from the meeting points to the respective railway stations and for other amenities offered. It is pertinent to

*note that the GSRTC buses follow routes in 5 zones of the State, which are, North Zone (Banaskantha, Patan, Mehsana, Sabarkantha, Aravalli and Gandhinagar), Middle Zone (Kheda, Panchmahal, Vadodara, Mahisagar, Dahod, Anand and Chota Udepur), South Zone (Surat, Valsad, Tapi, Dang, Bharuch, Navsari and Narmada), Saurashtra zone (Rajkot, Morbi, Junagadh, Porbandar, Botad, Bhavnagar, Amreli, Jamnagar, Surendranagar, Gir Somnath and Devbhoomi Dwarka) and Kutch Zone (Connectivity from Bhuj to Saurashtra Zone). It is submitted that intra-zone movement of the GSRTC buses has already been started but inter-zone movement has been suspended for the time being. It is also submitted that strict instructions have been issued to ensure that there is no movement of buses through the containment zones in various districts. Furthermore, the services of GSRTC buses have not yet been started in Ahmedabad and have been suspended.*

*B. Funds of the Real Estate Regulatory Authority*

1. *With respect to the observations of the Hon'ble Court in the order dated 14.05.2020, pertaining to the funds of the Real Estate Regulatory Authority (RERA) being utilised for the benefit of the well-being of the construction workers, it is submitted that the RERA is established under the provisions of the Gujarat Real Estate (Regulation and Development) Act of 2020. The attention of this Hon'ble Court is drawn to the provisions as contained in Sec. 75 (1) and 75(2) of the Act. For ready reference of the Hon'ble Court the relevant provisions are being reproduced hereunder:*

*75(1) The appropriate Government shall constitute a fund to be called the 'Real Estate Regulatory Fund' and there shall be credited thereto,*

*(a) all Government grants received by the Authority; (b) the fees received under the Act;*

- (c) the interest accrued on the amounts referred to in clauses (a) to (b).*

*(2) The Fund shall be applied for meeting;*

*(a) the salaries and allowances payable to the Chairperson and other Members, the adjudicating officer and the administrative expenses including the salaries and allowances payable to the officers and other employees of the Authority and the Appellate Tribunal;*

*(b) the other expenses of the Authority in connecting with the discharge of its functions and for the purposes of this Act.*

2. *In this regard it is most respectfully submitted before this Hon'ble Court that as provided hereinabove, the funds under the RERA Act can only be utilized for payment of salaries and other allowances of the Chairperson and other members as well as for other*

*administrative expenses that may be required to be incurred by the authority for discharging its functions and purposes provided under the Act. Therefore, there is a statutory dictum for using the funds under the RERA Act and it is difficult for the RERA authority to go beyond the statute and utilize the funds for the benefits of construction workers. Moreover, the funds that are received by the RERA authority is either through grants or through fees. Therefore, the authority is obligated to utilize the funds that are received in form of grants from the State Government for the purpose for which the same is received.*

3. *However, for the benefit of the construction workers, D.O. No. U-11017/09/2019-RW dated 24.03.2020 of the Ministry of State Labour & Employment, needs to be considered. Para 3 of the said direction states as under:*

*“Under section 60, of the BOCW Act, 1996 the Central Government advice the state governments/UTs to frame a scheme under section 22(1)(h) of the Act for the transfer of adequate funds in the bank accounts of construction workers, through the Direct Benefit Transfer (DBT Mode). The amount to be granted to the construction workers may be decided by the respective state governments/UTs.”*

4. *As per the decision of the high level committee headed by Hon'ble Chief Minister, 65 lakh ration card holders (NFSA) are entitled for Rs.1000/- , one time, through DBT, in which the construction workers who have the ration card are included. Apart from this, the state government took the decision to include each and every registered Building and other construction workers, whether they have ration card or not. So, the 6.38 Lac registered Building and other construction workers have been granted a one-time benefit of Rs.1000/-. It is pertinent to note that the payment of Rs.1000/- is extended equally to the registered female construction workers at par with the male construction workers who are registered in the Building and other Construction Workers' Welfare Board.*
5. *In this regard, it is submitted that the grant of Rs. 250 crores has been given by the Labour and Employment Department to the Food, Civil Supplies and Consumer Affairs Department. The payment, as mentioned hereinabove is being made by the Food, Civil Supplies and Consumer Affairs Department and a Government Resolution in respect of the same, being GR dated 18.04.2020, has also been passed by the State. A copy of the said GR dated 18.04.2020, is annexed hereto and marked as Annexure-6-A. It is submitted that as on 19.05.2020, the said amount of Rs. 1,000/- has been disbursed by the Food, Civil Supplies and Consumer Affairs Department to 3,48,629 construction workers. For the remaining 2,90,057 workers, the data available with the authorities is invalid/incomplete and the same is under process of re-checking*

and verification.

C. Travelling charges of migrant workers

1. The provisions of the Interstate Migrant Workers Act 1979 are applicable to the registered migrant workers under the said Act. There are 7,512 workers registered under the Act. Based on the available data, there are around 22.5 lacs migrant workers across the State. Most of them have come on their own and provisions for payment of travelling allowance and displacement allowance as required by Sections 14 and 15 of the Interstate Migrant Workers Act, 1979 is not applicable to them.
2. However, in addition to provisions of the Interstate Migrant Workers Act, 1979, it is pertinent to note that transportation charges for migrant workers are being collected by the Railways that has issued rate charges for journey between different stations. Travelling arrangements are made at district level where many NGOs and civil society organisations have been involved to facilitate the transportation of migrant workers including the charges notified by the Railways. Further, the States of U.P., Odisha and Tamil Nadu have informed that they will deposit the payment for travelling charges to the Railways directly. No migrant worker has been denied travel to his home town on account of non-payment of travel charges.

D. Additional details as regards Migrant workers in Surat

1. Considering that many migrant workers are involved in the various industries in Surat district, certain steps have been taken by the administration for the workers in the said district.
2. The State Labour Department has set up a help line number 155372 for the complaints regarding non-payment of salary. Office of the Deputy Commissioner of Labour, Surat has sent WhatsApp message regarding helpdesk number for salary/food complains to 8 union representatives that are directly in touch with approximately 2 lakh workforce of the district. The machinery has ensured the disposal of complaints as soon as possible. In Surat district, total 151 complaints have been received and resolved since 23-04- 2020.
3. In Surat district, as a result of immediate intervention and constant follow up of officers of Labour and Employment Department, total 18,314 establishments have paid Rs.5,38,39,34,171/- to approximately 3,98,334 employees against the salary/wages for the period of March 2020 and total 387 establishments have paid Rs.66,57,81,928/- to approximately 29,244 employees against the salary / wages of April 2020. The figures of salary paid for the month of March & April, 2020 are still being collected and reconciled.
4. The office of Deputy Commissioner of Labour, Surat has also setup

a control room for addressing complaints regarding non-payments of salary, food, health and reinstatement of employment, wherein total 484 complaints were received. Considering such complaints received from workers' / union representatives and order dated 22.04.2020 passed by Surat District Collector, designating the Deputy Commissioner of Labour, Surat and other officers to lodge such complaints, the Deputy Commissioner of Labour, Surat has issued a letter dated 07.05.2020, to all owners of establishment and contractor via e-mail and WhatsApp for furnishing details of salary / wages paid to their workers for the month of March and April 2020 in prescribed format. The copy of the order dated 22.04.2020 passed by Surat District Collector is annexed hereto and marked as Annexure-7. The copy of the letter dated 07.05.2020 issued by the Deputy Commissioner of Labour is annexed hereto and marked as Annexure-8.

5. The Labour Officer, Surat has also issued a letter to one employer against the complaint received by the office for the payment of salary / wages to their workers / employees for the lockdown period of March & April 2020. The copy of such letter is attached is annexed hereto and marked as Annexure-9. Since the issue of payment of salary / wages to workers / employees during lockdown period as per MHA guideline is challenged before Hon'ble Apex Court and interim directions have been issued by the Hon'ble Apex Court, no further coercive action has been initiated by the labour officer in the matter.
6. As per Surat district administration record, approximately 1,29,577 persons have moved to their native states through passes issued to buses and other vehicles for movement of interstate migratory labour and their families. Total 1,58,220 intra-state migrant labour and their families have been sent back to their native district I.e. from Surat to different districts of Saurashtra region through around 5,274 GSTRC buses. The District Administration is also planning to send around 325 GSTRC buses for Saurashtra region by 15-05- 2020.
7. It is pertinent to place on record the orders dated 15.05.2020, passed by the Hon'ble Supreme Court in WRIT PETITION (CIVIL) Diary No(s). 11281/2020 and WRIT PETITION (CIVIL) Diary No(s). 11193/2020, granting interim protection to employers from their obligation to make full payments. Copies of the said orders passed by the Hon'ble Apex Court are annexed herewith and marked as Annexure-9-A.

*E. Contract workers working in salt pans in Rann of Kutch*

1. The migrant workers working in salt pans in Rann of Kutch, belong to other districts of Gujarat State I.e. from Surendranagar, Patan & Banaskantha districts. Wages for the month of March and April

2020 has been paid to the workers as per the details given below:

S. No.	Month	No. of establishments	No. of workers	Wages (In Rs.)
1	'March-2020	618	8084	8,08,40,000/-
2	'April-2020	618	5918	6,13,44,750/-

2. Further, no complaint has been received regarding non-payment of wages neither on district help line number, labour commissioner office nor on the number of District Assistant Commissioner office. All the workers are from Gujarat only and therefore, the issue of sending such workers to their native States, does not arise.

F. Migrant workers engaged in the activities of brick manufacturing  
With respect to the migrant workers engaged in the activities of brick manufacturing, it is submitted that the State authorities have been vigilant to ensure that no issues are faced by such workers. As per the data available, during the lockdown period, the State authorities (through the Assistant Labour Commissioners and other such officers) have visited and resolved issues pertaining to 592 such brick kiln establishments and have ensured payment of a sum of Rs. 26,16,74,187/- as wages to 28,075 workers. Any complaint for non-payment of wages for the period of lock down will be inquired and actions will be initiated. As stated hereinabove, the State has also setup a helpline no.155372 to address complaints related to non-payment of wages and any complaint received on the number is addressed expeditiously.

## II. Issues pertaining to the Health and Family Welfare Department

### A. Arrangement of N-95 masks

With respect to the observations of the Hon'ble Court in the order dated 14.05.2020, pertaining to the arrangements for N-95 masks, it is submitted that the Government of India has issued guidelines for use of N-95 masks and other protective equipment by the health functionaries. The state government is following the said guidelines for providing required protective equipment to all the health workers and N-95 masks are not required for them. It is submitted that till date, the State has been able to procure 29,30,870 N-95 masks. It is further submitted that it is not mandatory for the common public to have N-95 masks and any type of mask covering the mouth is enough. However, it may be noted that there is no shortage of N-95 masks as alleged, for utilisation as per the guidelines. Annexed hereto and marked as Annexure-10(Colly) are the guidelines and the additional guidelines on rational use of Personal Protective Equipment issued by the Ministry of Health and

*Family Welfare, Government of India.*

*B. Exorbitant amount being demanded by the private hospitals for treating the COVID-19 patients*

- 1. With regard to the exorbitant amount being demanded by the private hospitals for treating the COVID-19 patients, it is submitted that before giving sanction to the private hospitals for treatment COVID-19 patients, the Government had published a notification on 07.04.2020 to establish COVID-19 specialized hospitals in four Mega cities in Gujarat and in all the said hospitals treatment of COVID-19 is being given totally free including diet. Similar such Government COVID-19 hospitals are established in 25 Districts having totally 2,650 Beds for giving the treatment to COVID-19 patients totally free including diet vide GR dated 30.04.2020. Moreover, the State has designated Model Hospital (ESIC) Bapunagar having 250 Beds As Specialized Hospital for treatment of COVID-19 patients vide GR dated 15.05.2020. The copies of notifications dated 07.04.2020, 30.04.2020 and 15.05.2020, are annexed hereto and marked as Annexure-11 (Colly).*
- 2. It is submitted that initially, vide Government Resolution dated 16.04.2020, the State had resolved to designate some private hospitals for treatment of COVID-19 patients, free of cost. It is further submitted that the cost of such treatment was resolved to be borne by the State, subject to certain terms and conditions and at the rates, as stated in the said Resolution. A copy of the said resolution dated 16.04.2020, is annexed hereto and marked as Annexure-11-A. Subsequently, vide a Government Resolution dated 18.04.2020, the Government designated few more private hospitals to treat the COVID-19 patients, if such patients are willingly decide to obtain the treatment on their own expenses after verification of their capacity and infrastructure to give treatment as COVID-19 hospitals. A copy of the said resolution dated 18.04.2020, is annexed hereto and marked as Annexure-12.*
- 3. However, considering the growing number of cases and the worsening situation of the State and especially, the city of Ahmedabad and in light of the order dated 14.05.2020, passed by this Hon'ble Court in the present proceedings, it was decided to requisition more private hospitals for treatment of COVID-19 patients in a manner that would ensure a level playing field for the private hospitals in Ahmedabad. In this regard, the Municipal Commissioner, Ahmedabad, passed an order dated 16.05.2020 under the Epidemic Diseases Act, 1897, by virtue of the power vested in the Municipal Commissioner, Ahmedabad under Regulation 2(ii) as 'Authorised Person' and Clause 11(vii) read with Regulation 12 of the Gujarat Epidemic Diseases, COVID-19 Regulations, 2020. As per the said order, the hospitals that are requisitioned are directed to provide 50% of the total number of*

beds for patients to be referred by Ahmedabad Municipal Corporation and the rest 50% patients are to be admitted and to be treated privately, subject to the conditions mentioned in the order. Furthermore, as per the said order, all hospitals, whether designated or not, are mandated to charge COVID-19 patients, as per the ceiling rates mentioned in the said order. A copy of the said order dated 16.05.2020, passed by the Municipal Commissioner, Ahmedabad, is annexed hereto and marked as Annexure-13. It is pertinent to note that 42 hospitals have been requisitioned under the said order and the Respondent State shall requisition more hospitals, as and when the need arises. Furthermore, multi-specialty hospitals have been kept out of the purview of the order considering their functions in treating patients suffering from diseases and illnesses, other than COVID-19.

4. It is pertinent to note that in light of the same, vide a Government Resolution dated 18.05.2020 passed by the Health and Family Welfare Department, the Respondent State has also resolved to suspend the operation of the aforementioned resolutions dated 16.04.2020 and 18.04.2020 and other resolutions on the issue. A copy of the Government Resolution dated 18.05.2020 passed by the Health and Family Welfare Department, is annexed hereto and marked as Annexure-14.
5. At this juncture, it is imperative to bring to the notice of the Hon'ble Court that despite the order dated 16.05.2020, having been passed by the Municipal Commissioner, Ahmedabad, some hospitals have refused to cooperate with the state authorities and have not complied with the said order. A very serious situation has arisen, where under despite having been served with the notification and the MOU, these private hospitals are turning away patients referred by the corporation. In view of such non-compliance, 19 such hospitals have been issued with a notice dated 19.05.2020, highlighting that their such action tantamount to deliberately and willingly disobeying the said order dated 16.05.2020 and results in causing grave prejudice to the safety and security of the public at large. The said notice also contemplates initiation of proceedings under civil and criminal law, including action under action under the relevant provisions of the Indian Penal Code, 1860, Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005. A copy of one such notice dated 19.05.2020, is annexed hereto and marked as Annexure-15.

C. Testing Guidelines for COVID-19

1. Considering the growing risk of COVID-19, initially, the Respondent State, vide Circular dated 14.03.2020, published detailed guidelines to implement the protocol and actions for the global pandemic, for raising the level of awareness and knowledge of Surveillance Officers/Treating doctors in various areas by following

the aforesaid precautions during the care and treatment of suspected patients. Further guidelines of laboratory testing in accordance with Government of India guidelines, have also been issued on 25.03.2020 by Additional Director (Medical Education). Copies of the said circular dated 14.03.2020 issued by the Health & Family Welfare Department and the guidelines issued by the by Additional Director (Medical Education) on 25.03.2020 are annexed hereto and marked as Annexure-16 (Colly).

2. The Indian Council of Medical Research (ICMR) has over the course time, issued various strategies and revised for COVID-19 testing in India. The authorities of the Respondent State are presently following the said guidelines, for carrying out testing of COVID-19 patients in the State. A copy of the latest guidelines/ strategy issued by the ICMR on 18.05.2020, are annexed hereto and marked as Annexure-16-A.
3. The facilities for testing were set up at the Civil Hospital, Ahmedabad, initially which were further increased at various places across the state. On 19/05/2020 following laboratories are designated for testing of COVID-19:

Government Laboratory	
1	B.J.Medical College, Ahmedabad
2	M.P.Shah Medical College, Jamnagar
3	Government Medical College, Bhavnagar
4	Government Medical College, Vadodara
5	Government Medical College, Surat
6	PDU Medical College, Rajkot
7	SVP Medical College, Ahmedabad (NHL)
8	GMERS-Sola, Ahmedabad
9	NIOH, Ahmedabad
10	Gujarat Biotechnology Research Centre (GBRC), Gandhinagar
11	GCRI -Ahmedabad (Extension of BJMC)
12	IKD Hospital, Laboratory (Extension of BJMC)
113	Smimer Medical College, Surat
14	STDC Ahmedabad (IRL lab) -CBNAAT

15	<i>TB Culture laboratory Surat – CBNAAT</i>
16	<i>GMERS Medical College, Gandhinagar</i>
17	<i>GMERS Medical College, Valsad</i>
18	<i>GMERS Medical College, Dharpur, Patan</i>
19	<i>GAIMS, Bhuj, Kutch</i>
<i>Private Laboratory</i>	
<i>No.</i>	<i>Name of Laboratory</i>
1	<i>Unipath Speciality Laboaratory, Ahmedabad</i>
2	<i>Supratech Micropath Diagnostics &amp; Research laboratory</i>
3	<i>SN Gene lab, Private limited, Surat</i>
4	<i>Pangenomics International Pvt. Ltd, Ahmedabad</i>
5	<i>Zydus Hospital &amp; Healthcare Research Pvt. Ltd.</i>
6	<i>Toprani Advance lab Systems, Vadodara</i>
7	<i>Apollo Hospital, Ahmedabad</i>
8	<i>Divine Lab, Fategunj, Vadodara</i>
9	<i>Green Cross Genetics Lab Pvt Ltd, Ahmedabad</i>
10	<i>Sunflower Laboratory, Memnagar, Ahmedabad</i>
11	<i>Bhailal Amin General Hospital, Gorva, Vadodara</i>
12	<i>Parul Institute of Science -Vadodara</i>

4. However, it has been observed that in many instances unnecessary testing is being done by private laboratories and therefore, the State has decided to do gatekeeping for private lab. It is submitted that at present, the State has enough capacity of lab testing and the said facility is being provided, free of charge. Considering the same, vide letter bearing No.EPC/Corona Virus/Testing/Guideline B-20, dated 18/05/2020, the State has decided to conduct testing in government labs, so that patients can avoid unnecessary expenditure. The private laboratories shall be allowed to perform

the tests, if and when, the capacity of Government labs is exhausted. A copy of the said letter dated 18.05.2020, is annexed hereto and marked as Annexure-17.

*D. Discharge Policy*

5. With respect to the observations of the Hon'ble Court in its order dated 14.05.2020, pertaining to the discharge policy of the COVID-19 patients, it is most humbly submitted that the Respondent State is following the revised discharge policy for COVID-19 cases, issued by Ministry of Health and Family Welfare (MOHFW), Government of India, on 08.05.2020. It is submitted that the said policy was prepared in consultation with ICMR and is in line with the MoHFW's guidelines on the categorization of the patients based on clinical severity and their management in the 3 tier COVID facilities. A copy of the said

*Revised Discharge Policy for COVID-19 along with the FAQs on the said policy as issued by the MOHFW, is annexed hereto and marked as Annexure-18.*

6. As discussed hereinabove, the State Government has been continuously supervising the present situation in the State and in order to prevent the spreading of this disease, all types of efforts are being put in to ensure that no calamity occurs and the affected patients get proper treatment.

*III. Miscellaneous issues*

*A. Issues at Chamanpura Municipal Slum Quarters, Asarwa*

1. In context of the application filed raising certain issues at the Chamanpura Municipal Slum Quarters, Asarwa and with respect to the observations of the Hon'ble Court in its order dated 14.05.2020, regarding the same, it is submitted that the authorities of the State have carried out sanitisation drives earlier as well, and most recently on 20.05.2020 at the said Slum Quarters. The Respondent State undertakes to produce the relevant photographs pertaining to such sanitisation drive carried out on 20.05.2020, if called upon to do so.

*B. Payment to anganwadi workers*

1. The State vide GR dated 21.03.2020, passed by the Women and Child Welfare Department has been pleased to raise the honorarium paid to Anganwadi Worker/Helper of Women and Child Development Department. The details of the same are as under:

<i>Post</i>	<i>Current Honorarium</i>	<i>Revised Honorarium (new)</i>	<i>total</i>

Total number of Anganwadi Workers are 51229 Increase in Honorarium - 600 Rs.	Rs.7200/-	Rs.7800/-
Total number of Mini Anganwadi Workers are 1800 Increase in Honorarium- 300 Rs.	Rs.4100/-	Rs.4400/-
Total number of Anganwadi Helpers are 51229 Increase in Honorarium - 300 Rs.	Rs.3650/-	Rs.3950/-

A copy of the said GR dated 21.03.2020, is annexed hereto and marked as Annexure-19.

2. The anganwadi workers shall be paid the increased honorarium w.e.f. From March, 2020 to be paid in April, 2020. In order to encourage the anganwadi workers, the GR dated 21/03/2020 has been made effective from March, 2019. Therefore, the anganwadi workers shall now also be entitled to the payment of arrears. The arrears of honorarium shall be paid to the anganwadi workers in three instalments in the months of May, 2020, September, 2020 and January, 2021 respectively.
3. The total amount of arrears from March-19 to February-2020 to be paid to the anganwadi workers shall be Rs. 5597.54 lacs. In this regard a proposal has already been made to the Finance Department vide letter dated 24/04/2020 for making appropriate Provision in Budget and for release of grant of Rs. 1865.84 lacs towards the payment of 1<sup>st</sup> installment of arrears.
4. The competent authorities are also taking a continuous follow up and arrangements have been made in all the Districts for payment of honorarium to anganwadi workers between 1<sup>st</sup> to 5<sup>th</sup> date of each month.
5. The authorities have also received the certificates evidencing

payments of honorarium to anganwadi workers working in four zones of the State of Gujarat viz. Ahmedabad, Vadodara, Surat and Rajkot for the month of April, 2020.

5.1 In this regard under the Ahmedabad zone payments have already been made to the anganwadi workers for the month of April, 2020 and the authorities have received certificates from almost all the districts falling under Ahmedabad zone viz. Mehsana, Aravalli, Botad, Surendranagar, Bhavnagar, Bhavnagar Urban, Sabarkantha, Ahmedabad, Banaskantha, Patan and Gandhinagar. The payments of honorarium to the anganwadi workers working in Ahmedabad Urban district was left out on account of closure of banks in containment zones.

However as soon as the banking services resume in the Ahmedabad Urban District, the payments of honorarium to the anganwadi workers for the month of April, 2020 shall be released.

5.2 In the Baroda zone, the payment of increased honorarium for the month of April, 2020 has already been made to anganwadi workers working within the local limits of districts Kheda, Anand, Panchmahal, Chhota Udepur, Dahod, Vadodara, Vadodara Urban and Mahisagar. The payments of honorarium to the anganwadi workers working in Virpur unit of Mahisagar District has not been made as the concerned bank manager and his staff were quarantined. The payments of honorarium shall be made to the said workers as soon as the banking services in Virpur unit resumes.

5.3 In the Surat zone, the payment of increased honorarium for the month of April, 2020 has already been made to anganwadi workers working within the local limits of districts of Bharuch, Narmada, Surat, Navsari, Valsad, Tapi and Dang. In this zone payments have been made to all the anganwadi workers working in respective districts.

5.4 In the Rajkot zone, the payment of increased honorarium for the month of April, 2020 has already been made to anganwadi workers working within the local limits of districts of Porbandar, Junagadh, Kachchh, Rajkot, Jamnagar, Devbhumi Dwarka, Morbi, Somnath and Amreli. In this zone payments have been made to all the anganwadi workers working in respective districts.

C. 10<sup>th</sup> & 12<sup>th</sup> Board examinations

1. With respect to the observations of the Hon'ble Court in its order dated 14.05.2020, pertaining to the organisation of the 10<sup>th</sup> & 12<sup>th</sup> Board examinations, it is submitted before this Hon'ble Court that

*the examination for students studying in Std. 10<sup>th</sup>, the examination was conducted as per the declared schedule between 05/03/2020 to 17/03/2020. The examination for students studying in Std. 12<sup>th</sup> science stream was conducted as per the declared schedule between 05/03/2020 to 16/03/2020. The examination for students studying in Std. 12<sup>th</sup> general stream, post basic stream and vocational stream was conducted as per the declared schedule between 05/03/2020 to 21/03/2020.*

2. *In the board examinations conducted by the state authorities in the month of March, 2020 a total of 10,83,198 students appeared in Std. 10<sup>th</sup>, a total of 1,43,483 students appeared in Std. 12<sup>th</sup> science stream and a total of 5,27,140 students appeared in Std. 12<sup>th</sup> general, post basic stream and vocational stream.*
3. *Moreover, the state authorities have also completed the verification of answer sheets for students who appeared in the examinations for Std. 10<sup>th</sup> and 12<sup>th</sup> conducted in the month of March, 2020. The results of the students who appeared in the examination of Std 12<sup>th</sup> Science Stream are already declared by the state authorities on 17/05/2020. The results for the students who appeared in the examination of Std. 10 and Std. 12<sup>th</sup> general stream, post basic stream and vocational stream are under preparation and the state authorities are expected to declare the same at the earliest.”*

2 The two affidavits have also been filed along with the report. The same reads thus:

*“I, Dr. Raghav Dixit, working as Additional Director Medical Education and Research, State of Gujarat, having my office at Gandhinagar. Do hereby solemnly affirm and state as under. .*

1 *I am competent to me the. Present affidavit and hence, I hereby do so in compliance with the direction contained in Para 15 of the order dated 14. 05. 2020 of this Hon’ ble Court passed in the captioned proceedings, more particularly with reference to the question Nos.(1) and (3) referred to therein.*

2. *As regards the Serum Potassium Level Test, I respectfully say that the same is regularly conducted with reference to COVID-19 patients, more particularly in case of patients with co-morbid condition and high risk in nature. This apart, another test for other electrolytes like Serum Sodium and Serum Chloride Test is also conducted in case of the aforesaid category of COVID-19 patients.*

3. *Anesthesia Resident doctors remain physically present 24 \*\* 7 in the ICU and Senior Anesthetists are taking rounds daily as per duty roster.*

*Private Critical Care Specialists services are being taken for ICU patients and they take rounds of the ICUs. Moreover daily Tele mentoring sessions are conducted What is stated hereinabove is true to the best of my knowledge and information derived from the record and \ believe the same to be true.*

*Solemnly affirmed at Ahmadabad on this 21” day of May. 2020.”*

*“I. Dr. Dinkar Raval, working as General Manager Admin & HR, Gujarat Medical Services Corporation Limited, having my office at Block No.14/1. Dr. Jivraj Mehta Bhavan, Old Sachivalaya. Gandhinagar, do hereby solemnly afflrm and state as under:*

*1. I am competent to file the present affidavit and hence. ! Hereby do so in compliance with the direction contained in para 15 of the order dated 14.05.2020 of this Hon’ble Court passed in the captioned proceedings. More particularly with reference to the question No.(2) referred to therein.*

*2. As regards the conducting of the quality check or fluid penetration test for the PPE supplied to the doctors and nurses, l respectfully say that the procurement of PPE kits and quality test thereof are conducted strictly in accordance with the guidelines for Novel Coronavirus Disease 2019 (COVID19) issued by Director General of Health Services (Emergency Medical Relief), Ministry of Health and Family Welfare.*

*3. I further say that at the depot level an Expert Committee consisting of the following members has been constituted for examination and verification of the PPE kits.*

*(i) District Quality Assurance Medical Officer*

*(ii) Resident Medical Officer*

*(iii) Depot Manger of GMSCL*

*(iv) Senior Pharmacist*

*4. Pertinently, all the procured PPE kits are certified by competent government approved laboratories like ATIRA, SITRA (Sought India Textile Research Association) etc. As far as test of fluid penetration / blood*

penetration for the PPE is concerned, the same is undertaken by the said competent government approved laboratories. The Expert Committee, after due verification and examination of samples of PPE kits as well as test reports and certificates issued by the said government approved laboratories confirming to the standards of ISO 16603 or equivalent standards, approves the said samples of PPE kits and thereafter. The purchase orders are issued to the suppliers. A specimen copy of the test report of fluid penetration test for PPE kit is annexed herewith and marked as Annexure-A.

What is stated hereinabove is true to the best of my knowledge and information derived from the record and I believe the same to be true.

Solemnly affirmed at Ahmedabad on this 20<sup>th</sup> day of May, 2020.”

3 We may summarize the aforesaid exhaustive report filed by the State Government as under:

<b>S. No.</b>	<b>Particulars</b>
1.	<p><b><u>I. Issues relating to the transportation of Migrant workers</u></b></p> <p>→ 22.5 Lacs inter-state migrant workers across the State (11.5 Lacs– South Gujarat and 11 Lac – remaining parts of Gujarat)</p> <p>→ Total number of inter-state migrant workers transferred to their native states by 21.05.2020, is 8,08,294</p>
2.	<p><b><u>Civil Application for Surat migrant workers</u></b></p> <p>Application does not distinguish between migrant workers from different States and migrant workers from different districts of the State.</p> <p><b>IMPORTANT FIGURES (till 19.05.2020)</b></p> <p>i. Trains from Surat 205 - 3,06,131 inter-state migrant workers and 27,364 vehicles - 2,48,402 inter-state migrant workers</p> <p>ii. TOTAL: 5,54,533 inter-state migrant workers already transported</p>

	<p>iii. Between 21.05.2020 and 31.05.2020, approximately 300 more trains would ply with 4,80,000 workers.</p> <p>iv. 30,975 vehicles - 3,94,437 intra-state migrant workers</p>
3.	<p><b><u>A. Movement by Gujarat State Road Transport Corporation</u></b></p> <p>i. State has transported stranded migrant workers, pilgrims, tourists, students and other persons, cumulatively to the tune of <b>4,60,425 engaging more than 6000 buses on a regular basis till 16.05.2020.</b></p> <p>ii. GSRTC has been supporting the District Administration all over the State in the transportation of labourers by placing buses at the disposal of the District Administration. While transferring the migrants, all the procedure as per the guidelines of Ministry of Home Affairs and Ministry of Health, Family Welfare, Government of India have been followed by the GSRTC. Trains are the viable solution when it comes to transporting labourers over a long distance.</p> <p>iii. 58,757 Stranded Labourers staying at various shelter homes using 1,017 buses – <u>dropped at the respective Railway Stations or at their respective state borders</u></p> <p>iv. 7,547 buses for 2,26,410 passengers who were dropped at the various Railway Stations of the state till date.</p> <p>v. 1,66,260 intra-state labourers have been transported with the help of 5,542 GSRTC buses.</p> <p>vi. 1,809 pilgrims of Gujarat State who were stranded in Uttarakhand and 349 Students who were studying at Kota, Rajasthan – brought back to the State</p> <p>vii. intra-zone movement of the GSRTC buses has already been started but inter-zone movement has been suspended for the time being.</p> <p>Services of GSRTC buses have not yet been started in Ahmedabad</p>

	<i>and have been suspended</i>
4.	<p><b><u>B. Funds of the Real Estate Regulatory Authority for construction workers</u></b></p> <p>i. <i>Section 75 of the Gujarat Real Estate (Regulation and Development) Act of 2020 - The funds under the RERA Act can only be utilized for payment of salaries and other allowances of the Chairperson and other members as well as for other administrative expenses that may be required to be incurred by the authority for discharging its functions and purposes provided under the Act. There is a statutory dictum for using the funds.</i></p> <p>ii. <i>6.38 Lac registered Building and other construction workers have been granted a one-time benefit of Rs.1000/-.</i></p> <p>iii. <i>Grant of Rs. 250 crores has been given by the Labour and Employment Department to the Food, Civil Supplies and Consumer Affairs Department.</i></p> <p>iv. <i>As on 19.05.2020, the said amount of Rs. 1,000/- has been disbursed by the Food, Civil Supplies and Consumer Affairs Department to 4,27,957 construction workers.</i></p>

5.	<p><b><u>C. Travelling charges of migrant workers</u></b></p> <p>i. 7,512 workers registered under the Interstate Migrant Workers Act 1979 Act.</p> <p>ii. Total number of workers is 22.5 Lacs.</p> <p>iii. Transportation charges for migrant workers are being collected by the Railways that has issued rate charges for journey between different stations.</p> <p>iv. Travelling arrangements are made at district level where many NGOs and civil society organisations have been involved.</p> <p>v. The States of U.P., Odisha and Tamil Nadu have informed that they will deposit the payment for travelling charges to the Railways directly.</p> <p><b>No migrant worker has been denied travel to his home town on account of non-payment of travel charges.</b></p>
6.	<p><b><u>D. Additional details as regards Migrant workers in Surat</u></b></p> <p>i. State Labour Department has set up a help line number 155372 for the complaints regarding non- payment of salary.</p> <p>ii. Total 151 complaints have been received and resolved since 23-04- 2020.</p> <p>iii. 18,314 establishments - paid Rs.5,38,39,34,171/- to approximately 3,98,334 employees (March 2020)</p> <p>iv. 387 establishments - paid Rs.66,57,81,928/- to approximately 29,244 employees (April 2020)</p> <p>v. Deputy Commissioner of Labour, Surat has also setup a control room - 484 complaints were received</p> <p>vi. Deputy Commissioner of Labour, Surat has issued a letter to all owners of establishment and contractor via e-mail and WhatsApp for furnishing details of salary / wages paid to</p>

	<p><i>their workers</i></p> <p>vii. <i>approximately 1,29,577 persons have moved to their native states through passes issued to buses</i></p> <p>viii. <i>1,58,220 intra-state migrant labour and their families have been sent back to their native district i.e. from Surat to different districts of Saurashtra region through around 5,274 GSTRC buses</i></p> <p>ix. <i>Orders dated 15.05.2020, passed by the Hon'ble Supreme Court in WRIT PETITION (CIVIL) Diary No(s). 11281/2020 and WRIT PETITION (CIVIL) Diary No(s). 11193/2020, granting interim protection to employers from their obligation to make full payments.</i></p>
7.	<p><b><u>E. Contract workers working in salt pans in Rann of Kutch (Intra-state)</u></b></p> <p>i. <i>March-2020 – 618 establishments – 8084 workers – Rs. 8,08,40,000/-</i></p> <p>ii. <i>April-2020 – 618 establishments – 5918 workers – Rs. 6,13,44,750/-</i></p> <p>iii. <i>No complaint has been received regarding non-payment of wages neither on district help line number, labour commissioner office nor on the number of District Assistant Commissioner office</i></p>
8.	<p><b><u>F. Migrant workers engaged in the activities of brick manufacturing</u></b></p> <p><i>During the lockdown period, the State authorities (through the Assistant Labour Commissioners and other such officers) have visited and resolved issues pertaining to 592 such brick kiln establishments and have ensured payment of a sum of Rs. 26,16,74,187/- as wages to 28,075 workers</i></p>
9.	<p><b><u>II. Issues pertaining to the Health and Family Welfare Department</u></b></p>
10.	<p><b><u>A. Arrangement of N-95 masks</u></b></p>

	<ul style="list-style-type: none"> <li>i. Till date, the State has been able to procure 29,30,870 N-95 masks.</li> <li>ii. Guidelines and the additional guidelines on rational use of Personal Protective Equipment issued by the Ministry of Health and Family Welfare, Government of India are being followed.</li> </ul>
11.	<p><b><u>B. Exorbitant amount being demanded by the private hospitals for treating the COVID-19 patients</u></b></p> <ul style="list-style-type: none"> <li>i. Specialized hospitals in four Mega cities in Gujarat – treatment totally free, including diet.</li> <li>ii. Hospitals are established in 25 Districts having totally 2,650 Beds - treatment totally free, including diet.</li> <li>iii. Initially, vide Government Resolution dated 16.04.2020, the State had resolved to designate some private hospitals for treatment of COVID-19 patients, free of cost. vide a Government Resolution dated 18.04.2020, the Government designated few more private hospitals to treat the COVID-19 patients, if such patients are willingly decide to obtain the treatment on their own expenses.</li> <li>iv. It was decided to requisition more private hospitals for treatment of COVID-19 patients in a manner that would ensure a level playing field for the private hospitals in Ahmedabad – order passed by the Municipal Commissioner, Ahmedabad. 42 hospitals requisitioned.</li> <li>v. Government Resolution dated 18.05.2020 passed by the Health and Family Welfare Department, the Respondent State has also resolved to suspend the operation of the aforementioned resolutions</li> <li>vi. Some hospitals have refused to cooperate with the state authorities and have not complied with the said order</li> </ul>

12.	<p><b><u>C. Testing Guidelines for COVID-19</u></b></p> <p>i. The authorities of the Respondent State are presently following the ICMR guidelines. The facilities for testing were set up at the Civil Hospital, Ahmedabad, initially which were further increased at various places across the state.</p> <p>ii. In many instances unnecessary testing was being done by private laboratories. The private laboratories shall be allowed to perform the tests, if and when, the capacity of Government labs is exhausted</p>
	<p><b><u>D. Discharge Policy</u></b></p> <p>Respondent State is following the revised discharge policy for COVID-19 cases, issued by Ministry of Health and Family Welfare (MOHFW), Government of India, on 08.05.2020.</p>
13.	<p><b><u>III. Miscellaneous issues</u></b></p>
14.	<p><b><u>A. Issues at Chamanpura Municipal Slum Quarters, Asarwa</u></b></p> <p>State have carried out sanitisation drives earlier as well, and most recently on 20.05.2020 at the said Slum Quarters</p>
15.	<p><b><u>B. Payment to anganwadi workers</u></b></p> <p>i. Honorarium paid to Anganwadi Worker/Helper of Women and Child Development Department has been rased by Rs. 600/- vide GR dated 21.03.2020. Has been made effective from March 2019.</p> <p>ii. Total amount of arrears from March-19 to February-2020 to be paid to the anganwadi workers shall be Rs. 5597.54 lacs – proposal pending with Finance Department.</p>
16.	<p><b><u>C. 10<sup>th</sup> &amp; 12<sup>th</sup> Board examinations</u></b></p> <p>Exams of 10<sup>th</sup> 12<sup>th</sup> Standard have already been conducted as per schedule:</p> <p>i. 10<sup>th</sup> - 05/03/2020 to 17/03/2020</p>

	<p><i>ii. Std. 12<sup>th</sup> science stream - 05/03/2020 to 16/03/2020</i></p> <p><i>iii. Std. 12<sup>th</sup> general stream, post basic stream and vocational stream - 05/03/2020 to 21/03/2020</i></p> <p><i>iv. Result of 12<sup>th</sup> science stream declared on 17.05.2020</i></p>
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**4 PROGRESS REPORT WITH RESPECT TO THE MEDICAL FACILITIES FROM 6th MAY 2020:**

Ms. Manisha Lavkumar Shah, the learned Government Pleader brought to our notice that :

*“The State Government on 5<sup>th</sup> May 2020 gave charge to Dr. Rajiv Kumar Gupta (IAS), Additional Chief Secretary to Government, Forest and Environment Dept., State of Gujarat & Managing Director, SSNNL to guide, supervise and control the increasing number of positive cases of Covid-19 in Ahmedabad city alongwith appointing Mr. Mukesh Kumar as Municipal Commissioner, Ahmedabad. Under such a situation, immediately a first review meeting dated 06/05/2020 at 12:00 noon was held by Dr. Rajiv Kumar Gupta (IAS) wherein the Ahmedabad Municipal Commissioner, as well as all zonal Dy. Municipal Commissioners including Dy. Municipal Commissioner of Health of Ahmedabad Municipal Corporation participated to decide the strategy for various measures to be taken in the Ahmedabad Municipal Corporation area with respect to providing enough medical aid/treatment to the citizens.*

*In the meeting held on 06.05.2020, it was decided that 9 private hospitals with aggregate capacity of 1000 beds to be designated as COVID-19 hospitals. Further, private hotels of 3 star category having at least 50 AC rooms were identified for establishing COVID care centers in each zone. Private clinics/nursing homes/hospitals were also issued notice to open*

*their clinics within 48 hours to provide treatment to the needy and ailing patients.*

*Further in the review meeting held on 07.05.2020, 8 new private hospitals with an aggregate capacity of 800 beds were designated as COVID-19 hospitals. Notices to 228 private clinics/hospitals had been issued by the AMC. Orders were also issued for designating 60 hotels consisting of 3000 beds as COVID centers where the charges will be borne by AMC.*

*In the meeting held on 08.05.2020, a decision to provide 25 AC buses to facilitate movement of medical and para medical staff of private medical establishment was made. Further a decision to provide treatment at one of the private hospitals as identified by AMA to any doctor or para medical staff of private COVID Hospital affected by Corona and shall also be eligible for incentive/facility extended to AMC/Govt. Hospital employees. Additional financial compensation with retrospective effect shall be given by AMC to health and para medical staff (AMC as well as private) who gets infected by CORONA on duty*

- a. Doctor and equivalent: Rs.25,000/-*
- b. Nursing Staff and equivalent: Rs.15,000/-*
- c. Lab Technicians and other: Rs.10,000/-*

*In furtherance of review meetings held by Dr. Rajiv Kumar Gupta, (IAS), Additional Chief Secretary to Government, Forest and Environment Dept., State of Gujarat & Managing Director, SSNNL and the Municipal Commissioner, Ahmedabad on 09.05.2020 has issued an order for following hospitals to be declared as "Designated Building Containment Unit" for isolation of the cases for COVID-19*

- a. Shrey Hospital, Navrangpura;*
- b. Nidhi Multispecialty Hospital, Navrangpura;*

- c. *Global Hospital, Sindhubhavan Road;*
- d. *AIMS Hospital, Paldi;*
- e. *Solar Hospital, Naranpura;*
- f. *Rudraksh Hospital, Naroda;*
- g. *Karnavati Superspeciality Hospital, Saijpur Tower;* h. *Saraswati Hospital, Bopal;*
- I. *Ratan Hospital, Isanpur;*
- j. *Spandan Hospital, Vastral;*
- k. *Stavya Spine Hospital, Near Gujarat College;*
- l. *Bopal ICU and Trauma Center, Bopal.*

*This Court vide order dated 14<sup>th</sup> May 2020 put forward the following suggestions to be considered by State Authorities when it was pointed out that an exorbitant amount is being demanded by the private hospitals authorized by the State Government to admit and treat the COVID19 patients and that no beds were available as on date at the Civil Hospital, Ahmedabad as well as the SVP Hospital, Ahmedabad:*

- 1. The State Government must see to it that all the private hospitals across the city of Ahmedabad and also situated at the outskirts should not be permitted to demand exorbitant amount for the purpose of treatment of COVID19 patients. These are difficult times and the medical services are the most essential services and in times like the present one, the private hospitals cannot demand lacs of rupees from a patient.*
- 2. The rates of Private Hospitals should be regulated by the State Government for the purpose of COVID19 treatment. It is to be noted that whilst the designated private hospitals under the Epidemic Act are charging the government rates specified under the MA Yojana with*

*some additions, few private hospitals in the city of Ahmedabad are demanding exorbitant fees running in the lacs of rupees for treating the COVID 19 patients. Except for the very rich and affluent class of people, such hospitals remain out of reach for most patients. The treatment for this pandemic in this hard times even if offered by any private hospital must be reasonable and affordable.*

- 3. Further, it has been made clear by the Hon'ble Court that if the private hospitals do not budge and are determined to demand exorbitant amount, then the Hon'ble High Court will have to take appropriate legal action against such hospitals and the consequences may be quite bitter including cancellation of license.*

**SUMMARY OF ORDER DATED 16.05.2020 BY MUNICIPAL COMMISSIONER**

*The Municipal Commissioner has passed the following Requisition Order Under The Epidemic Diseases Act, 1897 acting upon the suggestions of this Court in its above mentioned order:*

- 1. 42 hospitals as per the annexure have been declared as "Designated COVID-19 Hospitals" for isolation of COVID-19cases;*
- 2. 50% of total beds available in the hospital shall be designated for COVID-19 patients refer by AMC and rest 50% shall be admitted and treated privately on their own.*
- 3. The schedule of rates in both cases is prescribed by the AMC as annexed hereto;*
- 4. No private hospital, whether designated or not as COVID-19 shall charge fees above the ceiling rates as prescribed in schedule;*
- 5. All the Nursing staff shall continue working in the same hospitals and no change in work place is permissible without prior permission of AMC;*

6. Agreements with the said hospitals will be executed by Dy.MC (Health);
7. Any person/institute/organization violating the above regulations will be deemed to have committed offence under section 188 of Indian Penal Code.

## Annexure -I

SR. No.	Name of hospital
1	STERLING CANCER HOSPITAL, PAKWAN CHAR RASTA
2	HCG HOSPITAL, MITHAKALIL, NAVRANGPURA
3	NARAYANI MULTI-SPECIALITY HOSPITAL, RAKHIYAL CHAR RASTA
4	SAVIOUR HOSPITAL, NAVRANGPURA
5	SHALBY MULTI-SPECIALITY HOSPITAL, VIJAY CHAR RASTA, NAVRANGPURA
6	SHALBY MULTI-SPECIALITY HOSPITAL, NARODA
7	TAPAN HOSPITAL, ANANDNAGAR CHAR RASTA, SATELLITE
8	SPANDAN HOSPITAL
9	CIMS HOSPITAL
10	GLOBAL HOSPITAL
11	G.S.C. HOSPITAL
12	KOTHIA HOSPITAL
13	NARAYANA HOSPITAL
14	SINDHU HOSPITAL
15	STAR HOSPITAL
16	ANAND SURGICAL HOSPITAL
17	RUDRAKASH HOSPITAL
18	KARNAVATI SUPER SPECIALITY HOSPITAL
19	SARASVATI HOSPITAL
20	BOPAL ICU & TRAUMA CENTER HOSPITAL
21	SARDAR HOSPITAL
22	RATAN HOSPITAL
23	SUSHRUSHAH HOSPITAL
24	BODILINE HOSPITAL
25	JIVRAJ MEHTA HOSPITAL

26	SMS HOSPITAL
27	ARTHAM HOSPITAL
28	SHREY HOSPITAL
29	AIMS HOSPITAL
30	SOLAR HOSPITAL
31	SANJIVANI HOSPITAL – VASTRAPUR
32	MEDILINK HOSPITAL – SHYAMAL CHAR RASTA
33	SAL HOSPITAL -THALTEJ
34	APOLOO CVHF – PAKWAN CHAR RASTA
35	RAJASTHAN HOSPITAL – SHAHIBAUG
36	AMENA KHATUN HOSPITAL – JUHAPURA
37	PUKHRAJ HOSPITAL – SABARMATI
38	CENTRAL UNITED HOSPITAL ODHAV
39	TRISHA HOSPITAL – VADAJ
40	SMV HOSPITAL – CITY PULSE GANDHINAGAR
41	SGVP HOSPITAL – VAISHNAVDEVI CIRCLE S.G. HIGHWAY
42	LIFECARE HOSPITAL – SARDAR PATEL COLONY NR. STADIUM

*Annexure – 2  
Schedule of Rates*

	<i>Rates per day for Government Beds (Referred by AMC) (A)</i>		<i>Ceiling Rates per day for private Beds (B)</i>
<i>Ward</i>	<i>720/-</i>	<i>4500/-</i>	<i>10,000/-</i>
<i>HDU</i>	<i>1080/-</i>	<i>6750/-</i>	<i>14,000/-</i>
<i>Isolation + ICU</i>	<i>1440/-</i>	<i>9000/-</i>	<i>19,000/-</i>
<i>Ventilation + Isolation + ICU</i>	<i>1800/-</i>	<i>11,250/-</i>	<i>23,000/-</i>

- 1) *For rates per day for Government Beds (Referred by AMC)(A), the rate do not include cost of medicine Tocilizumbab and dialysis. The per dialysis rate – Rs.1,650/-.*
- 2) *For ceiling Rates per day for private Beds (B), the rate do not include cost of medicine Tocilizumab, special doctors visit fee,*

*specialized lab test and dialysis*

- 3) *Above rate for both category (A) and (B) includes Two Meals, Breakfast, Evening tea and snacks.*
- 4) *There shall be no difference in the quality of treatment being meted out to either of the category of patients.*

*The A.M.C. tried all means of persuasion and request with these hospitals. However, many refused to either obey the Municipal Commissioner's order or entertain requests from A.M.C.*

*Therefore the Ahmedabad Municipal Corporation issued 15 notices on 19.05.2020 & 3 notices on 20.05.2020 to the following 18 hospitals for non-compliance of requisition order passed by the Municipal Commissioner dated 16.05.2020 under the Epidemic Diseases Act, 1897.*

1. *Sardar Hospital;*
2. *Bodyline Hospital;*
3. *Life Care Hospital;*
4. *Shrey Hospital;*
5. *Bopal ICU and Trauma Center;*
6. *Saraswati Hospital;*
7. *SAL Hospital;*
8. *Rajasthan Hospital;*
9. *Global Hospital;*
10. *Sindhu Hospital;*
11. *Star Hospital;*
12. *Karnavati Hospital;*
13. *Medilink Hospital;*
14. *SGVP Hospital;*
15. *Sanjivani Hospital;*

16. *Sterling Hospital;*
17. *Pukhraj Hospital and*
18. *Trisha Hospital.*

*After these notices, many hospitals swung in to action and signed the MoUs, many started admitting patients and many have agreed to take further patients. The latest position is as follows:*

- a). *MoUs have been executed with 23 hospitals*
- b). *MoUs in process with 04 hospitals*
- c). *Hospitals taking patients even without MoU – 02 hospitals*
- d). *Hospitals not useable due to various administrative, technical and infrastructural and logistic reason – 05 hospitals*

*However still following hospitals have neither agreed to sign MoU nor having taken any request from Ahmedabad Municipal Corporation officials.*

1. *Bodyline Hospital;*
2. *Life Care Hospital;*
3. *Shrey Hospital;*
4. *Saraswati Hospital;*
5. *Rajasthan Hospital;*
6. *Sanjivani Hospital;*
7. *Pukhraj Hospital and*
8. *Trisha Hospital.*

*So far, in last two days, Ahmedabad Municipal Corporation has been able to shift patients to some of private hospitals. The total number of beds that would available to Ahmedabad Municipal Corporation at ceiling rates as per 50-50 formula from the hospitals who have agreed to would be around*

– 1000. And the number of beds that we still required to be taken from aforementioned eight non compliant hospital would be around 604.

It is pertinent to mention here that Ahmedabad Municipal Corporation has agreed even pay for empty beds from its 50% quota. Therefore, these hospitals are also required to make these beds physically available either by way of admitting A.M.C. Immediately patients or by way of keeping beds physically vacant. Only then, this exercise can be deemed to be completed in practical terms. We would request to seek direction in this.

It has been clearly mentioned in the notice that even if the MoU has not been entered into with any private hospital, the said hospitals are bound to admit and treat the Covid-19 patients as the same has also been ordered by this Court in its order dated 14<sup>th</sup> May 2020.

Earlier we had taken a decision in Ahmedabad Municipal Corporation that all the private clinics and hospitals / nursing homes which have been closed by their owners / management during the last two months should be immediately opened in order to make supplementary health facilities available to non corona patients at larger. That would also reduce co morbid Corona deaths. We would like to seek direction from the Hon'ble High Court on this issue as well.

“Date: 19.05.2020

NOTICE

To,  
Medical Superintendent,  
Shrey Hospital  
270/B/5/, Near AMCO Bank  
Stadium Circle, Navranpura,  
Ahmedabad.

Ref: 1. Notification NO.GP/9/NCV/102020/SF-1/G dated 13<sup>th</sup> March 2020 of Health and Family Welfare Department, Government of Gujarat.

2. Requisition order dated 16.05.2020 under the Epidemic Disease Act, 1897 passed by the Municipal Commissioner, Ahmedabad,.

3. Oral Order dated 14.05.2020 passed by the Hon'ble High Court of Gujarat in SUO MOTU WPPIL 42/2020.

*SUBJECT : Non-compliance of the requisition order dated 16.05.2020 under the Epidemic Diseases Act, 1897 passed by the Municipal Commissioner Ahmedabad.*

1. *The COVID-19 virus millions of people across the world, has been declared as pandemic by the World Health Organization.*

2. *In light of such a grave situation, the captioned requisition order was passed by the Municipal Commissioner, Ahmedabad under the Epidemic Diseases Act, 1897 by virtue of the power vested in the Municipal Commissioner, Ahmedabad under clause 2(ii) as 'Authorised person' and clause 11(vii) read with Clause 12 of the Gujarat Epidemic Disease COVID-19 Regulation 2020 (Notification dated 13.03.2020 mentioned in Ref(2)].*

3. *That the said order was served personally upon you along with copy of the agreement / MOU by the Ahmedabad Municipal Corporation.*

4. *That as per the said order dated 16.05.2020, your hospital has been declared as a 'Designated COVID-19 HOSPITAL' and that you are directed to provide 50% of the total number of beds for patients to be referred by Ahmedabad Municipal Corporation and that rest 50% patients are to be admitted and to be treated privately subject to the conditions mentioned in the notification.*

5. *That in pursuance to the captioned order dated 16.05.2020, repeated attempts were made by the Ahmedabad Municipal Corporation to refer patients to your hospital. However, you have categorically declined to accept the said patients and offer treatment to the said patients as mandated by the captioned order dated 16.05.2020.*

6. *That further repeated attempts have been made for signing of the agreement as mentioned in the order dated 16.05.2020, both of which, have been served personally upon you. That the execution of such agreement is not a pre-condition for referring the patients by the Ahmedabad Municipal Corporation to your hospital.*

7. *That your such conduct of not complying with the captioned order dated 16.05.2020 by not accepting patients referred by the Ahmedabad Municipal Corporation is in direct violation of clause 13(i) of the Gujarat Epidemic Diseases, COVID-19 Regulations 2020 which reads as under:*

*“Any person / institution / organisation found violating any provision of these regulation shall be deemed to have committed an offence punishable under Section 188 of Indian Penal Code.”*

8 That your such action of not cooperating despite such order under the Epidemic Diseases act, 1897 in such a critical war like situation when humanity is fighting for survival is absolutely unjustified and in addition to the aforementioned legal provisions. the same amounts 1to violation of other mandatory provisions of the Epidemic Diseases Act. 1897 and the Disaster Management Act. 2005. 9. Further, you are also required to take note of the observations of the Hon'ble High Gujarat Court in para 12 of its oral order dated 14.05.2020, passed in passed in SUO MOTU WPPIL '42/2020:

*“If the private hospitals do not budge and are determined to demand exorbitant amount, then this Court will have to take appropriate legal action against such hospitals and the consequences may be quite bitter including cancellation of licence....”*

10 That by such conduct. You have, despite knowing that, by the said order promulgated by the Municipal Commissioner, who is lawfully empowered to promulgate such order, disobeyed the direction issued by such order and such disobedience has placed the health and safety of the general public, at grave risk. As & hospital serving the needs of the people is the prime object of your establishment.

11. That you are hereby' directed to comply with the order dated 16.05.2020, passed by the Commissioner Ahmedabad Municipal Corporation. This notice is being issued to you as you have deliberately and intentionally not complied with the captioned order dated 16.05.2020. Vide this notice you are hereby called upon to comply with the said captioned order dated 16.05.2020. In case you rail to do so, it shall be considered that you are deliberately and willfully disobeying the same and thereby are causing grave prejudice to the safety and security of the public at large and the same shall also entail action strict consequences under civil and criminal law.”

#### **“MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (hereinafter this 'MoU') is entered into on xx-xx-xxxx by and between

(I) Municipal Commissioner, Ahmedabad Municipal Corporation, having its head officer at Sardar Patel Bhavan, Danapith, Ahmedabad

represented by Deputy Municipal Commissioner, (Health and Hospital) Dr. Om Prakash, AMC hereby referred to as “the Authority” of the One Part

(II) KARNAVATI SUPERSPECIALITY HOSPITAL (Name of the Trust or organization of the hospital) having its place of hospital at Opp. Saijpur (address of the hospital) represented by Dr. Kamal Porwal (name and designation of the authorized signatory), hereby referred to as “the Designated COVID-19 Hospital, on the other Part

Referred to as the 'the party' individually or 'the parties' collectively

**WHEREAS:**

The Covid-19 pandemic has spread to more than 150 countries all over the world and has created a need to make available hospital infrastructure on priority basis within short period of time.

It was under consideration of the Ahmedabad Municipal Corporation to designate COVID-19 Hospitals to take care of patients as per norms of Indian Council of Medical Research (ICMR), New Delhi and other guidelines issued from time to time.

In view of the Covid-19 pandemic situation (under the Epidemic Disease Act, 1897), and as per requisition order dated 16.05.2020 of the Municipal Commissioner, Ahmedabd Municipal Corporation, 42 hospitals have been designated and the rates have been fixed for treating the Covid patients.

Accordingly, this MoU is being signed between the parties to permit the Designated Hopistal to undertake the activities as per the terms and conditions of the order by Municipal Commissioner, Ahmedabad Municipal Corporation, dated 16.05.2020.

NOW THEREFORE, in consideration for the mutual undertaking of the parties, under this MoU, the parties agree as follows:

1. Facilities to be provided by the designated hospital:

(i) The hospital shall be in working conditions with all basic requirement of the hospital being there in place.

(ii) All equipments machines and apparatus in the hospital shall be provided by \_\_ (Hospital name)

(iii) *The hospital shall provide different kinds of beds with the requisite facilities. The details beds are as under:*

(a) *Isolation beds*

(b) *Isolation plus HDU*

(c) *Isolation plus ICU (without ventilators)*

(d) *Isolation plus ICU (with services of ventilators)*

*The number and type of beds may be changed as per the contingency of the situation and the same shall stand changed from the date such change is made.*

(iv) *Cleanliness / fumigation at the hospital at all times.*

(v) *Doctors*

(vi) *Nurses and other support staff*

(vii) *Details of the medical, paramedical employees working at the designated covid-19 hospital shall be given separately by the designated hospital to the MOH, AMC.*

2. *The beneficiaries shall include all the citizens.*

3. *The Designated Hospital shall treat the COVID-2019 patients as per the requisition order by Municipal Commissioner. Ahmedabad Municipal Corporation, dated 16.05,2020*

4. *The private hospitals designated as COVID-19 Hospitals shall provide 50% of the total number of beds in such hospitals for patients to be referred by AMC and rest 50% shall be admitted and treated privately on their own.*

5. *The Designated Hospital shall be paid the charges as specified in the order and subsequent any order from time to time. On the following conditions:*

(I) *The Designated Hospital shall nominate : Coordinator who shall be the point of contact with the Government.*

(ii) *The designated hospital shall maintain a register listing out details of every admitted patient at the hospital for COVID-19 treatment.*

(iii) *Details of the medical. Paramedical employees working at the designated hospital shall be provided separately by the designated hospital. All the staffs including nursing & paramedical staffs will continue to discharge their duties at the same hospital! Work place as before and no*

change in hospital/ work place is allowed without prior permission of AMC.

iV) For treatment of INDOOR COVID 19 patients by the designated hospitals. The rates as in Annexure-Z of the Municipal Commissioner, AMC order dated 16/05/2020 shall apply. The said order with its Annexure 1 and 2, is attached herewith as an integral part of this MOU.

(V) The charges being paid to the designated hospital also includes charges for nursing, medicines, laboratory and radiology charges. Follow up charges and consultation up to 5 days from the date of discharge.

(vi) The suspected admitted patients of COVID-19 shall be tested as per the prevailing protocol approved for COVID-19. The responsibility of sending the samples to such laboratories shall be of the designated COVID-19 hospital.

(vii) For treatment of the patients at the designated COVID-19 hospitals. PPE kits, N 95 masks. Triple layer masks, etc.. shall be procured by the designated COVID-19 hospitals at their own.

(viii) Treatment records and bills for COVID-19 patients shall be invariably submitted to the Medical Officer of Health (Ahmedabad Municipal Corporation) in the prescribed form within 15 days of discharge of the patient.

(ix) In addition to the rates prescribed. No additional invariably shall be paid to the designated hospitals under COVID-19 treatment. Expenses like staff salary , electricity bill. Etc. shall not be paid to the designated COVID-19 hospitals.

(x) In case of any eventuality leading to the death of the staff of the designated hospital due to COVID-19 infection while providing the essential services at the hospital during this time. The dependent family members shall be paid assistance as per the prevailing norms of the Government. The name of deceased person must be in the list. Submitted at the time of MOU as per the above point no. 5 (iii). In case of greater need for trained human resources. That designated hospital may recruit additional staff with an intimation to Ahmedabad Municipal Corporation.

(xi) Advance payment up to Rs. 15 Lakhs shall be paid to the designated hospitals. Advance payment given to the hospital if any will be set-off against the expenditure incurred by the designated hospital in treating COVID-19 Patients.

6 The validity of the MOU shall be for a period of 2 months. Looking to the requirements of COVID 19. the period of agreement can be extended or reduced [terminated by . written notice of 15 days by the AMC.

7 The right to interpret the agreement shall remain with the AMC at all times and such interpretation by the AMC shall be final and shall be binding on all the Designated Covid-19 Hospitals.

8 Any dispute regarding charges and its payment shall be resolved amicably by both the parties. However, the decision of the AMC shall be final in this regard.

9 The Designated Covid-19 Hospital shall follow all guidance and directives given by the authority from time to time during this duration of this MoU.

IN WITNESS WHEREOF this MoU has been executed for and on behalf of the parties on the date first written above by their duty authorized representatives as evidenced below

Name of the first party

Name of the second party

The Deputy Municipal Commissioner  
Hospital

Karnavati Superspeciality

Ahmedabad Municipal Corporation (Name of Hospital)

sd/-

Name:

Name : Dr. KAMAL PORWAL

Title:

Title : Medical Officer

date:

Date: 18.05.2020"

● **DISCUSSION ON PRIVATE / CORPORATE HOSPITALS:**

5 The COVID-19 pandemic is one of the most challenging times encountered by India and Indians alike. The Nation faces grave threats as death toll rises, people are pushed into poverty and forced to starve and unemployment mounts. Nobody had expected an outbreak to evolve into a pandemic so rapidly that it would upend and overpower the healthcare systems of even some of the strongest nations in the world. The State of Gujarat is one of the worst affected States in the country.

The figure has crossed 12,000. 70% of the cases are in the city of Ahmedabad alone. Everyday around 400 persons are tested positive in the State of Gujarat out of which 80% are from Ahmedabad.

6 Medicine is a humanitarian profession. Hospitals and other healthcare facilities play a critical role in national and local responses to emergencies such as the one we are facing today. In the times of national emergencies, the delivery of adequate health care by private and state run medical facilities should be a top priority. In India, the treatment of COVID - 19 patients has been confined largely to the government run hospitals, who to their merit have done a great job. Doctors, nurses and other health care staff at these hospitals treat and care for the patients at the cost of their own lives. The drastically increasing number of cases each day have overwhelmed the government hospitals' capacity to deliver healthcare services. The Government hospitals are now struggling with the increasing number of patients and are burdened with the lack of PPE's (personal protective equipment), shortage of ventilators, ICU's and isolating wards for the COVID - 19 patients. These limitations act as a significant hindrance in delivering adequate treatment to the patients, many times costing them their lives. The shortage of beds may lead to early discharge of a patient which can critically endanger not only his own life, but also the health and well being of his family and community. On leaving the hospital, these still infected individuals may boost transmission in the community and thereby thwart the hospital's overall pandemic response efforts.

7 Bound by a sense of duty, responsibility and empathy, it is now salient that the private hospitals step in to deliver adequate healthcare to their people. For private hospitals, the public health emergencies are

resource-intensive and not commercially attractive. Even in times of a crisis when people are dying, it is disheartening and extremely exasperating to see these multi-speciality hospitals with world class facilities and immense resources wanting to profit off people's perils. If the private hospitals continue to have this indignant and apathetic attitude in this time of crisis then lives which could have been easily saved will be lost. A superpower like the USA has the highest recorded death rate in the world and a primary reason for that is the expensive healthcare. The USA relies on a private healthcare system which is exorbitant. Hence, many people in the US chose not to go to the hospitals for treatment and preferred death over debt. This has compounded the infection rates and stretched the public health system beyond its limits.

8 The private healthcare sector in the country plays a very important role, as it is the dominant provider of health services. The National Sample Survey Office's 71<sup>st</sup> round data shows that the private hospitals, clinics and nursing homes provide over 70% of health care. The data on the nearly 10 million treatments received under the Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB PM-JAY) corroborate this finding. The private hospitals do have the adequate infrastructure and material and financial resources required to help fight this pandemic. Moreover, all hospitals whether private or public are considered moral agents and hence have a moral responsibility. The responsibility to act in certain ways falls upon those who make up this hospital. It is essential that the hospitals, regardless of whether they are owned privately or by the Government, do not forget that they are morally and legally responsible to fulfill the specific goals for which it was established and supported by the community. The foremost reason for their existence is

to treat sick patients and it would be utterly shameful on their part to shy away from this responsibility at this point in time, when the country and its people need them the most. Profiting off a poor man's health can be considered morally criminal.

9 Our question to these private hospitals are, 1. Where will a man with no steady income go when the Government hospitals are full and turn him away? 2. How will he breathe when we eventually run out of ventilators? 3. Where should he turn for treatments when the Government hospitals no longer have the beds and medicines? 4. Lastly, how do you expect him to pay such a large amount of money when he is practically unemployed, has no current source of income and has barely any savings? For many families this man could be the sole breadwinner, who would leave behind orphaned kids, a widowed wife, old parents and an ashamed community as he would die a slow, painful and isolated death. In times of a crisis human lives outweigh everything, especially money.

10 As the situation in Gujarat escalates, it is time for the private hospitals to step into perform their primary function of saving lives. According to a recent Indian Council of Medical Research (ICMR) study, around 5% of those infected will need intensive care and half of those in ICUs will need mechanical ventilation. As the total number of infected persons increases, along with it increases the number of critical patients as well. This could mean hundreds of serious cases concentrated in a small area. The existing capabilities of the public hospitals will be massively overstretched. Therefore, there is an increasing need for the private hospitals to contribute to the disease notification and surveillance system, adopt standard treatment protocols and provide

high quality of care, especially to the most critical patients using their multi-speciality and highly skilled staff and equipment, as well as work in coordination with the public sector. Coordinating with the public sector could involve government hospitals in-sourcing charitable and large private hospitals at standard rates, treating the most critical of patients who need round the clock special care which might be beyond the public hospitals to provide. To achieve the goal of health and life maximization, the private hospitals across the city and on the outskirts were requested with folded hands by the State Government to cooperate and reserve 50% beds for treating the COVID-19 patients. The private hospitals were requested to forgo their policy of profit maximization. After lot of efforts put in by the State Government, the private hospitals referred to above agreed to treat the COVID-19 patients subject to certain terms and conditions. The State Government also fixed the rates with the private hospitals which are almost 150% more than what is being charged at the Civil Hospital and the SVP Hospital. However, unfortunately, some of the private hospitals have once again started to give a torrid time to the State Government. In such circumstances, the State Government had to issue notice to all those private hospitals referred to above.

11 At least in times like these when men and women and children are dying alone, we expect the private hospitals to be the giver of life and not the harbinger of death. We expected to open their doors graciously for the people of their city and provide the best possible treatment at a reasonable price in this time of crisis.

12 However, time has now come for us to take some stern action against all those private / corporate hospitals which are not ready and

willing to adhere to the terms and conditions of the MoU and also those who have declined to enter into an MoU and are hell bent open harassing the people at large. We do not want the Government to now plead before such private / corporate hospitals with folded hands.

13 The first thing we propose to do is to explain the position of law.

[a] With a view to arrest and control the spread of COVID-19, the Central Government and State Governments imposed a 'lockdown' invoking the provisions of Section 10(2)(l) of the Disaster Management Act, 2005 and Section 2(1) of the Epidemic Diseases Act, 1897 respectively.

[b] With the number of cases increasing each day, the Public Healthcare system is completely overwhelmed, strained and is working beyond its capacity. Evidently, the Public Healthcare is unable to manage the patients. Even the administrative over burden is evident.

[c] It is therefore imperative to extend the Public Healthcare system and have Private/Corporate Hospitals to treat the patients suffering from COVID-19. The State Government and the AMC issued notifications whereby,

- i. Few Private/Corporate Hospitals were acquired under the Epidemic Act, 1897 and were designated as the COVID-19 hospitals, with fees/charges being fixed by the Respondents;

- ii. Few Private/Corporate Hospitals were also permitted to treat the patients suffering from COVID-19, albeit without any restriction on fees.

[d] The charges of Private/Corporate Hospitals drastically vary from the Public Hospitals and even amongst the Private/Corporate Hospitals, there is variation more particularly on account of the infrastructure, maintenance, treating staff and doctors.

[e] Consequently,

- i. The hospitals in the category [c](i) did not find it remunerative enough to treat the COVID-19 patients and expressed reluctance to treat the patients.
- ii. The hospitals in the category [c](ii) charged huge amounts (ranging from Rs. 45,000/- per day to Rs. 65,000/- per day per bed), making it unaffordable to most in the city – this effectively resulted in making merry by profiteering out of the compelling circumstances that we are going through today;
- iii. Public Healthcare systems remained overwhelmed and stressed;
- iv. in such circumstances, the Civil Applications, *inter alia*, came to be filed to seek directions in relation to,
  - (a) Standardization of fees/charges across all Private/Corporate Hospitals;
  - (b) Guidelines for fixing the ceiling limit on the per day charges which these Hospitals can charge from the patients.

14 While profiteering and commercialization of the medical facilities would only be a matter of debate, the circumstances as are prevalent today mandate an intervention to ensure affordable COVID-19 treatment to one and all, more particularly, when the finances of most of the citizens are strained and economy is gasping to recover from the aftermath of the Pandemic.

15 Pursuant to the Order dated 14<sup>th</sup> May 2020 passed in the WPPIL No. 42 of 2020, the Respondent authorities (more particularly the AMC) issued a Notification dated 16<sup>th</sup> May 2020 bringing within its ambit about 45 hospitals and fixed the rates/charges which each of these hospitals can levy.

16 It is submitted by the learned counsel appearing in this litigation that the Constitution of India, various other enactments and judicial precedents sufficiently empower this Court and cast a duty upon the Respondent authorities to impose reasonable restrictions (including on fees) on the Private/Corporate Hospitals, more particularly in the circumstances like the present one. It is also submitted that the Doctrine of Proportionality, reasonable restriction has to be imposed, implemented and explained. These issues also need to be seen through the anvil of larger public health and public interest and not from the point of view of those upon whom these restrictions are sought to be imposed.

17 **CONSTITUTION OF INDIA:**

a. Article 19(1)(g)

*“1. Protection of certain rights regarding Freedom of Speech, etc. (1) All citizens shall have the right*

...

*(g) to practice any profession or to carry any occupation, trade or business.*

*Article 19(1)(g) provides for a Fundamental Right to carry on trade and business, However, it is settled law that the Fundamental Rights granted by the Constitution of India are not absolute and are always subject to reasonable restrictions. Therefore, a check on the functioning of the Private/Corporate Hospitals, in these times, is certainly permissible, more so when,*

- i. Even other laws empower these to be regulated;*
- ii. The issue relates to welfare, public health and service;*
- iii. The Public Healthcare systems are overwhelmed and when the entire nation and more particularly the State of Gujarat is going through an unprecedented Pandemic situation, for which no cure is in sight and the only known way of prevention is Social Distancing.*

**b. Article 21**

*“Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to the procedure established by Law.”*

**c. Article 38**

- i. The State will secure a social order for the promotion of welfare of the people.*
- ii. Providing affordable healthcare is one of the ways to promote welfare.*

**d. Article 39(e)**

- i. Calls upon the state to make sure that health and strength of workers, men and women, and the tender age of children are not abused.*

**e. Article 41**

- i. Imposes duty on the State to provide public assistance in cases of unemployment, age, sickness, and disablement, etc.*
- ii. Provides to protect the Health of infants and mothers through maternity benefits.*

**f. Article 47**

*“Duty of the state to raise the level of nutrition and the*

*standard of living and to improve public health: The State shall regard the raising level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavor to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”*

g. Article 48A

i. *State shall endeavour to protect and impose a pollution free environment for good health*

*Therefore, under the Constitution of India, the State is duty bound to provide for standard of living and to ‘improve public health’. Further, Article 14 provides for equality before law and Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. The above referred provisions of the Constitution must be constructively read in these days of National Crisis in matters of health, hygiene and well-being of citizens.*

18 **EPIDEMIC DISEASES ACT, 1897**

a. Section 2

2. *Power to take special measures and prescribe regulations as to dangerous epidemic disease.—(1) When at any time the [State Government] is satisfied that[the State] or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the [State Government], if [it] thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as [it] shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed...”*

19 **THE GUJARAT EPIDEMIC DISEASES, COVID-19 REGULATIONS, 2020.**

a. *The Government of Gujarat, Health and Family Welfare Department has in exercise of the powers conferred under Sections 2,*

3, and 4 of the Epidemic Diseases Act, 1897 framed the aforesaid Regulations.

b. Regulation 3.

*“All Government and Private Hospitals must have Flu corners for screening of suspected cases of COVID-19 (Coronavirus Disease 2019)”*

c. Regulation 4

*“(1) All Government and Private Hospitals during screening of such cases shall record the history of travel of the person if he has travelled to any country or area where COVID-19 has been reported. In addition the history of coming in contact with a suspected or confirmed case of COVID-19 shall be recorded...”*

d. Regulation 11

*“If cases of COVID-19 are reported from a defined geographic area such as village, town, city, ward, colony, settlement, the district administration of the concerned district shall have the right to implement following containment measures, but not limited to these, in order to prevent further spread of the disease... (vii) designating any Government/Private building as containment unit for isolation of the cases,... ix. Any other measure as directed by the Department of the Health and Family Welfare.”*

## 20 DISASTER MANAGEMENT ACT, 2005

a. Section 10 – Powers and Functions of National Executive Committee

“...

(2) without prejudice to the generality of the provisions contained in subsection(1), the National Executive Committee may-

...

(1) lay down guidelines for, or give directions to, the concerned Ministries, or Departments of the Government of India, the State Governments and the State Authorities regarding the

*measures to be taken by them in response to any threatening disaster situation or disaster;...”*

*b. Powers under Section 24 (State Authority) / Section 34 (District Authority)*

*“... ”*

*(d) provide shelter, food, drinking water, essential provisions, healthcare and services in accordance with the standards laid down by the National Authority and State Authority;*

*... ”*

*(f) require any department of the Government of the State or any other body or authority or person in charge of any relevant resources to make available the resources for the purposes of emergency response, rescue and relief;*

*... ”*

*(h) procure exclusive or preferential use of amenities from any authority or person as and when required;*

*... ”*

*(j) ensure that non-governmental organisations carry out their activities in an equitable and non-discriminatory manner;*

*... ”*

*c. Section 30. Powers and functions of District Authority*

*“(1) the district authority should act as the district planning, coordinating and implementing body for disaster management and take all measures for the purposes of disaster management in the district in accordance with the guidelines laid down by the National authority and the State Authority...”*

*Several powers and functions are enumerated, a couple of which are directly relevant like (xxvii) encourage the involvement of Non-Governmental Organizations and voluntary Social-Welfare Institutions working at the Grass Roots Level in the district for disaster management, (xxix) perform such other functions as the State Government or State Authority may assign to it as it deems necessary for Disaster Management in the district.*

d. *Section 31 – District Plan*

“...

(3) *The District Plan shall include- (d) the response plans and procedures in the event of a disaster, providing for-*

i. *Allocation of responsibilities to the Departments of the Government at the district level and the local authorities in the district;*

ii. *prompt response to disaster and relief thereof;*

iii. *Procurement of essential resources;*

iv. *Establishment of communication links; and*

v. *The dissemination of Information to the Public;*

...”

e. *Section 38 – State Government to take measures.*

f. *Section 39 – Responsibilities of the Departments of the State Government-*

“...

(c) *Allocate funds for prevention of disaster, mitigation, capacity building and preparedness*

...

(h) ...

(3) *Providing evacuation, rescue, temporary shelter or immediate relief*

...”

g. *Section 50 – Emergency procurement and accounting Where by reason of any threatening disaster situation or disaster, the national authority or the state authority or the district authority is satisfied that immediate procurement of Provisions or materials or the*

immediate application of resources are necessary for rescue or relief,  
- (a) it may authorize the concerned Department or Authority to make the emergency procurement and in such a case, the standard procedure requiring inviting of tenders shall be deemed to be waved

h. Section 65 – Power of requisition of resources, provisions, vehicles, etc. for rescue operations, etc.

“... ”

(2) Whenever any resource, premises or vehicle is requisitioned under subsection (1), the period of such requisition shall not extend beyond the period for which such resource, premises or vehicle is required for any of the purposes mentioned in that subsection.

3. In this section, -

(a) “resources” includes men and material resources;

(b) “services” includes facilities;

(c) “premises” means any land, building, or part of a building and includes a hut, shed or other structure or any part thereof;

...”

I. Section 72 – This Act has an overriding effect

**21 GUJARAT PROVINCIAL MUNICIPAL CORPORATIONS ACT, 1949:**

a. Section 319

“(1) In the event of the City being at any time visited or threatened with an outbreak of any dangerous disease, or in the event of any infectious disease breaking out... the Commissioner, if he thinks the ordinary provisions of this Act and the rules or of any other law at the time in force are insufficient for the purpose, may, with the sanction of the State Government –

(a) Take such special measures, and

(b) By public notice prescribe such temporary orders to be observed by the public or by any person or class of persons,

*As are specified in the rules and as he shall deem necessary to prevent the outbreak of such disease or the spread thereof.*

*...*

## **22 GOI – MoHFW – Additional guidelines for quarantine of contacts / isolation of suspect or confirmed cases in private facilities**

*“These standard operating procedures are applicable both for facility quarantine/ facility isolation in hotels, service apartments, lodges etc. unless and otherwise stated categorically. The state government opting for this model will ensure that:*

- 1. The quarantine and isolation facility will not co-exist and the facility owner will have a choice to opt for either of the two.*
- 2. These facilities will offer single room on paid basis to contacts/cases with attached washrooms.*
- 3. The price for the accommodation and services shall be fixed by the facility in consultation with the state government and widely publicized.*

*...*

## **23 IMC (PROFESSIONAL CONDUCT, ETIQUETTE AND ETHICS), REGULATIONS 2002**

- i. 1.1.2 – The prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Who-so-ever chooses his profession, assumes the obligation to conduct himself in accordance with its ideals. A physician should be an upright man, instructed in the art of healings. He shall keep himself pure in character and be diligent in caring for the sick; he should be modest, sober, patient, prompt in discharging his duty without anxiety; conducting himself with propriety in his profession and in all the actions of his life.*
- ii. 1.8 – Payment of Professional Services – The physician, engaged in the practice of medicine shall give priority to the interests of patients. The personal financial interests of a*

*physician should not conflict with the medical interests of patients.*

- iii. 1.9 – Evasion of Legal Restrictions – The physician shall observe the laws of the country in regulating the practice of medicine and shall also not assist others to evade such laws. He should be cooperative in observance and enforcement of sanitary laws and regulations in the interest of public health.*
- iv. 5.1 – Physicians as Citizens – Physicians, as good citizens, possessed of special training should disseminate advice on public health issues. They should play their part in enforcing the laws of the community and in sustaining the institutions that advance the interests of humanity. They should particularly co-operate with the authorities in the administration of sanitary/public health laws and regulations.*
- v. 5.2 – Public and Community Health – Physicians, especially those engaged in public health work, should enlighten the public concerning quarantine regulations and measures for the prevention of epidemic and communicable diseases. At all times the physician should notify the constituted public health authorities of every case of communicable disease under his care, in accordance with the laws, rules and regulations of the health authorities. When an epidemic occurs a physician should not abandon his duty for fear of contracting the disease himself.*

24 CLINICAL ESTABLISHMENTS (REGISTRATION AND REGULATION) ACT, 2010

- a. The act primarily deals with registration, inter alia, of hospitals with the concerned authority*
- b. Section 42 and 44 – In case of any wilful disobedience of any order passed under the Act, there is provision of cancellation of the registration, after giving an opportunity of hearing*

*“(1) Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, shall be liable to a monetary penalty which may extend to five lakh rupees.*

*(2) Whoever being required by or under this Act to supply any information wilfully withholds such information or gives information which he knows to be false or which he does not believe to be true, shall be liable to a monetary penalty which may extend to five lakh rupees...”*

- c. This act however appears to be a toothless tiger, inasmuch as there is nothing in the Act to initiate action against the Hospital for violations under any other law in force.*

25 There appears nothing in law (like in case of educational institutions) which mandates an hospital or a healthcare institution to register either as a Society, or as a Public Trust or as a Not-for-Profit Company

- a. Shalby Limited – is a public limited company
- b. CIMS Hospitals Pvt. Ltd. – is a private limited company
- c. SAL Care Pvt. Ltd. – is a private limited company

26 Notifications Issued by the State Government, *inter alia*, under Section 2 of the Epidemic Act, 1897:

*a. All Notifications dated 06.05.2020, 07.05.2020, 09.05.2020, 10.05.2020, 14.05.2020, 15.05.2020 and 16.05.2020 (issued in pursuance of the Order passed by WPPIL 42 of 2020 and in supersession of earlier Notifications, taking into its ambit 42 Hospitals under the AMC and fixing the price structure) have been issued invoking the provisions of the Epidemic Act.*

b. Disobedience of orders promulgated under Section 2 of the Epidemic Act, have ramifications under Section 188 of the Indian Penal Code, which reads as under:-

**“188. Disobedience to order duly promulgated by public servant.**—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**Explanation.**—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

**Illustration**-An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.”

27 We shall now look into few decisions of the Supreme Court explaining the position of law.

28 **Health as a Fundamental Right**

**[a] CESC Limited v. Subhash Chandra Bose & ors reported in AIR 1992 SC 573**

“30. Article 25(2) of Universal Declaration of Human Rights, 1948 assures that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family .... including medical care, sickness, disability..... Article 7(b) of the International Convention on Economic, Social and Cultural Rights, 1966 recognises the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, safe and healthy working conditions. Article 39(e) of the Constitution enjoins the State to direct its policies to secure the health and strength of workers. The right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under Article 21. The health and strength of a worker is an integral facet of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers of the soil, wage earners, labourers, wood cutters, rickshaw pullers, scavengers and hut dwellers, the civil and political rights are ‘mere cosmetic’ rights. Socio-economic and cultural rights are their means and relevant to them to realise the basic aspirations of meaningful right to life. The Universal Declaration of Human Rights, International Conventions of Economic, Social and Cultural Rights recognise their needs which include right to food, clothing, housing, education, right to work, leisure, fair wages, decent working conditions, social security, right to physical or mental health, protection of their families as integral part of the right to life. Our Constitution in the Preamble and Part IV reinforce them compendiously as socioeconomic justice, a bed-rock to an egalitarian social order. The right to social and economic justice is thus fundamental right....”

**[b] Surjit Singh v. State of Punjab reported in 1996 2 SCC 336**

- i. Self-preservation of one’s life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable

**[a] Janet Jeyapaul v. SRM University Limited reported in 2015 16 SCC 530**

- i. *It is clear from reading of the ratio decidendi of judgment in Zee Telefilms Ltd. v. Union of India that firstly, it is held therein that the BCCI discharges public duties and secondly, an aggrieved party can, for this reason, seek a public law remedy against the BCCI under Article 226 of the Constitution of India. Applying the aforesaid principle of law to the facts of the case in hand, the Court was of the considered view that the Division Bench of the High Court erred in holding that Respondent No. 1 is not subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution. In other words, it should have been held that Respondent No. 1 is subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution.*
  
- ii. *This the Court said for the reasons that firstly, Respondent No. 1 is engaged in imparting education in higher studies to students at large. Secondly, it is discharging “public function” by way of imparting education. Thirdly, it is notified as a “Deemed University” by the Central Government under Section 3 of the UGC Act. Fourthly, being a “Deemed University”, all the provisions of the UGC Act are made applicable to Respondent No. 1, which inter alia provides for effective discharge of the public function-namely education for the benefit of public. Fifthly, once Respondent No. 1 is declared as “Deemed University” whose all functions and activities are governed by the UGC Act, alike other universities then it is an “authority” within the meaning of Article 12 of the Constitution. Lastly, once it is held to be an “authority” as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction of High Court under Article 226 of the Constitution.*

**[b] Binny Limited v. V. Sadasivan reported in 2005 6 SCC 657**

I. *Relevant extract (para 9 and 11)*

9. *Superior Court’s supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this jurisdiction High Court can issue to any person or authority, any direction or order or writs for enforcement of any of the rights conferred by Part III or for any other purpose. The jurisdiction conferred on the High Court under Article 226 is very wide. However, it is an accepted principle that this is a public law*

*remedy and it is available against a body or person performing public law function. Before considering the scope and ambit of public law remedy in the light of certain English decisions, it is worthwhile to remember the words of Subha Rao J. expressed in relation to the powers conferred on the High Court under Article 226 of the Constitution in Dwarkanath v. Income Tax Officer MANU/ SC/0166/1965 : [1965]57ITR349(SC) :*

*“This article is couched in comprehensive phraseology and it-ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression “nature”, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution of India with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself...”*

10. *The Writ of Mandamus lies to secure the performance of a public or a statutory duty. The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities. Originally, the writ of mandamus was merely an administrative order from the sovereign to subordinates. In England, in early times, it was made generally available through the Court of King’s Bench, when the Central Government had little administrative machinery of its own. Early decisions show that there was free use of the writ for the enforcement of public duties of all kinds, for instance against inferior tribunals which refused to*

*exercise their jurisdiction or against municipal corporation which did not duly hold elections, meetings, and so forth. In modern times, the mandamus is used to enforce statutory duties of public authorities. The courts always retained the discretion to withhold the remedy where it would not be in the interest of justice to grant it. It is also to be noticed that the statutory duty imposed on the public authorities may not be of discretionary character. A distinction had always been drawn between the public duties enforceable by mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. In the Administrative Law (Ninth Edition) by Sir William Wade and Christopher Forsyth, (Oxford University Press) at page 621, the following opinion is expressed:*

*“A distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus, which in the first place is confined to public duties and secondly is not granted where there are other adequate remedies. This difference is brought out by the relief granted in cases of ultra vires. If for example a minister or a licensing authority acts contrary to the principles of natural justice, certiorari and mandamus are standard remedies. But if a trade union disciplinary committee acts in the same way, these remedies are inapplicable: the rights of its members depend upon their contract of membership, and are to be protected by declaration and injunction, which accordingly are the remedies employed in such cases.”*

- 11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these*

*companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions.*

*It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.*

*In a book on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24, it is stated thus:*

*“A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides “public goods” or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including: rule-making, adjudication (and other forms of dispute resolution); inspection; and licensing.*

*Public functions need not be the exclusive domain of the state. Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd’s of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. Urged, it is important for the courts to “recognize the realities of executive power” and not allow “their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted”. Nongovernmental bodies such as these are just as capable of*

*abusing their powers as is government.”*

- ii. The writ of mandamus would lie against a private individual and the words “any person or authority” used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State and they may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.*
- iii. A writ of mandamus could also be issued against any private body or person, especially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies.*
- iv. A writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.*

30     **PROFITEERING:**

**[a] Islamic Academy of Education and Ors. vs. State of Karnataka and Ors. reported in 2004 13 SCC 3:**

*I. Relevant Extract*

*“57. The exercise which, therefore, to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality I.e. balancing of different interests.*

*58. We may unhesitatingly remark that this Doctrine of Proportionality, explained hereinabove in brief, is enshrined in Article 19 itself when we read Clause (1) along with Clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in plethora of judgments has held that the expression ‘reasonable restriction’ seeks to strike a balance between the freedom guaranteed by any of the sub-clauses of Clause (1) of Article 19 and the social control permitted by any of the Clauses (2) to (6). It is held that the expression ‘reasonable’ connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object {See P.P. Enterprises and Ors. v. Union of India and Ors. MANU/SC/0036/1982 : (1982) 2 SCC 33}. At the same time, reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations {See Hanif Quareshi Mohd. v. State of Bihar MANU/SC/0027/1958 : 1959 SCR 629}. In M.R.F. Ltd. v. Inspector Kerala Govt. MANU/SC/0702/1998 : (1998) 8 SCC 227, this Court held that in examining the reasonableness of a statutory provision one has to keep in mind the following factors:*

- (1) The Directive Principles of State Policy.*
- (2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.*
- (3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.*
- (4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6).*
- (5) Prevailing social values as also social needs which are intended to*

*be satisfied by the restrictions.*

*(6) There must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour the constitutionality of the Act will naturally arise.*

59. *Keeping in mind the aforesaid principles, we have adjudged the issue in our detailed discussion undertaken above. We may summarise the said discussion as follows:*

60. *Undoubtedly, right to establish and administer educational institutions is treated as a fundamental right as it is termed 'occupation', which is one of the freedoms guaranteed Under Article 19(1)(g). It was so recognised for the first time in T.M.A. Pai Foundation. Even while doing so, this right came with certain clutches and shackles. The Court made it clear that it is a noble occupation which would not permit commercialisation or profiteering and, therefore, such educational institutions are to be run on 'no profit no loss basis'. While explaining the scope of this right, right to admit students and right to fix fee was accepted as facets of this right, the Court again added caution thereto by mandating that admissions to the educational institutions imparting higher education, and in particular professional education, have to admit the students based on merit. For judging the merit, the Court indicated that there can be a CET. While doing so, it also specifically stated that in case of admission to professional courses such a CET can be conducted by the State. If such a power is exercised by the State assuming the function of CET, this was so recognised in T.M.A. Pai Foundation itself, as a measure of 'reasonable restriction on the said right'. Islamic Academy of Education further clarified the contour of such function of the State while interpreting T.M.A. Pai Foundation itself wherein it was held that there can be Committees constituted to supervise conducting of such CET. This process of interpretative balancing and constitutional balancing was remarkably achieved in P.A. Inamdar by not only giving its premature to deholding of CET but it went further to hold that agency conducted the CET must be the one which enjoys the utmost credibility and expertise in the matter to achieve fulfillment of twin objectives of transparency and merit and for that purpose it permitted the State to provide a procedure of holding a CET in the interest of securing fair and merit based admissions and preventing maladministration.*

61. *We are of the view that the larger public interest warrants such a measure. Having regard to the malpractices which are noticed in the CET conducted by such private institutions themselves, for which plethora of*

*material is produced, it is, undoubtedly, in the larger interest and welfare of the students community to promote merit, add excellence and curb malpractices. The extent of restriction has to be viewed keeping in view all these factors and, therefore, we feel that the impugned provisions which may amount to 'restrictions' on the right of the Appellants to carry on their 'occupation', are clearly 'reasonable' and satisfied the test of proportionality."*

**[b] Modern Dental College & Research Centre v. State of Madhya Pradesh reported in 2016 7 SCC 353:**

- ii. It is well settled that the right under Article 19(1)(g) is not absolute in terms but is subject to reasonable restrictions under Clause (6). Reasonableness has to be determined having regard to the nature of right alleged to be infringed, purpose of the restriction, extent of restriction and other relevant factors. In applying these factors, one cannot lose sight of the Directive Principles of State Policy. The Court has to try to strike a just balance between the fundamental rights and the larger interest of the society. Court interferes with a statute if it clearly violates the fundamental rights. The Court proceeds on the footing that the Legislature understands the needs of the people. The Constitution is primarily for the common man. Larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices, fee and admissions can certainly be regulated.*
- iii. The High Court in its judgment has analysed the provisions of the Act and found that provisions for merit based admissions and procedure for fee fixation did not violate fundamental right of the private institutions to conduct admissions and to fix fee.*
- iv. Though the fee can be fixed by the educational institutions and it may vary from institution to institution depending upon the quality*

*of education provided by each of such institution, commercialisation is not permissible. In order to see that the educational institutions are not indulging in commercialisation and exploitation, the Government is equipped with necessary powers to take regulatory measures and to ensure that these educational institutions keep playing vital and pivotal role to spread education and not to make money. So much so, the Court was categorical in holding that when it comes to the notice of the Government that a particular institution was charging fee or other charges which are excessive, it has a right to issue directions to such an institution to reduce the same.*

**31 UOI v. Mool Chand Khairati Ram Trust reported in 2018(8) SCC- 321 (Relevant Paragraphs 72, 89, 64, 66):**

- i. It has been observed in Para 72 that, the poor cannot be deprived of the treatment by the best physician due to his economic disability in case he requires it. It is the obligation on the medical professionals, hospitals, the State and all concerned to ensure that such a person is given treatment and not deprived of the same due to poverty. That is what is envisaged in the Constitution also. On the making of a Doctor, the state spends and invests a huge amount of public money and it is the corresponding obligation to serve the needy and the treatment cannot be refused on the grounds of financial inability of the patient to bear it.
- ii. It has been observed in Para 89 that, the hospitals nowadays have five star facilities. The entire concept has been changed to make commercial gains. They are becoming unaffordable. The charges are phenomenally high, and at times, unrealistic to the service

provided. The dark side of such hospitals can be illuminated only by sharing obligation towards economically weaker sections of the society. It would be almost inhuman to deny proper treatment to the poor owing to economic condition...

- iii. Para 64 states that, the Realisation of Human Rights vests responsibilities upon the State. The State has to constantly make an endeavour for realisation of Human Rights Agenda, particularly in relation to economic, social and cultural rights. Right to Health is provided in Article 25 of the Universal Declaration of Human Rights of 10-12-1948(the UDHR). The Article provides that:

*“25.(1) Everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care, and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”*

### 32 Janet Jeyapaul v. SRM University [(2015) 16 SCC 530]:

*A. Para 30 : This we say for the reasons that firstly, Respondent 1 is engaged in imparting education in higher studies to students at large. Secondly, it is discharging “public function” by way of imparting education. Thirdly, it is notified as a “Deemed University” by the Central Government under Section 3 of the UGC Act. **Fourthly, being a “Deemed University”, all the provisions of the UGC Act are made applicable to Respondent 1, which inter alia provides for effective discharge of the public function, namely, education for the benefit of the public.** Fifthly, once Respondent 1 is declared as “Deemed University” whose all functions and activities are governed by the UGC Act, alike other universities then it is an “authority” within the meaning of Article 12 of the Constitution. Lastly, once it is held to be an “authority” as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.*

*B. In the case at hand private hospitals are requisitioned under the*

*epidemics Act, 1897 and hence all functions and activities are governed under the epidemics act, till requisition is in force and hence it is private body/authority required to comply with epidemic act.*

**33 Jasmine Ebenzer Arthur MANU/TN/2577/2019 [Madras High Court]:**

*A. Para 9. Today, in the modern world, there are numerous socioeconomic activities to be performed by the State. This resulted in sharing some of the obligations to the other bodies while retaining a certain level of control over them. This gave an impetus to the public and private bodies to acquire major concerns and started exercising monopoly power over its activities, which are close to State functions. By allowing these governmental functions to the private bodies, the fundamental rights of the citizens are being strained. Therefore, to protect the rights from the clutches of the Legislature, Executive, public and private agencies, the Courts have to extend their power under Article 226 of the Constitution of India.*

*B. Para 10. A reading of Article 226 makes it clear that it can be invoked not only for infringement of fundamental rights, but also for any other purpose. Therefore, as stated above, the question that requires determination is whether the private bodies performing public duties can be brought within the purview of judicial review. If a private body is brought within the purview of Article 12, then it will be subject to constitutional limitations. As happened in this case, lack of effective control has made the private bodies acquire more power similar to public authorities. The public monopoly power is replaced by private monopoly power. Hence, it becomes necessary that the private bodies should be made accountable to judiciary within the judicial review. If any private body has a public duty imposed on it, the Court has jurisdiction to entertain the writ petition.*

**34** We may also refer to and rely upon a Division Bench decision of the Delhi High Court in the case of **Social Jurists, A Lawyers Group vs. Government of NCT of Delhi and others reported in (2007) 140 DLT 698 (DB)**, more particularly, the observations made in paras 81 to 95:

*“81. Except for the patients admitted in the above manner, no hospital would be entitled to claim compliance of this condition in the cases which*

are admitted contrary to the above stated procedure.

82. Every general hospital and private hospital shall open such referral centres within two weeks from the date of pronouncement of this judgment and the Director of the Private Hospitals would be personally liable in the event of default.

83. Creation of such referral centres with samples of record shall be submitted to the Director General of Health Services within one week thereafter.

84. We have already noticed that none of these hospitals have fully complied with the condition of free patient treatment as per percentage provided under the letters of allotment and even otherwise.

85. All the hospitals which were awarded land by DDA and/or L&DO were expected to make hospitals functional within two years from the date they had taken possession of the plots in question. Thus, these hospitals were expected to complete their construction activity within a period of two years of taking possession of plot and immediately start complying with the condition of free patient treatment. The hospitals which have not complied with or have partially complied with the condition in terms of the reports submitted on the record of this file, are at fault and they could not be exempted from complying with the condition in all its strictness. In fact, we must notice that the authorities including DDA and L&DO have failed to perform their public duty and have placed the poor section of the society at great loss. There is no justification whatsoever on the part of the general, specialty or super-specialty hospitals not to comply with the mandate of the condition. Thus, they would be asked to make good of the non-compliance of the condition and they must repay to the authorities and the society at large for the unwarranted profits, at the cost of the poor, made by them for all these years to the extent of the percentage of free patient treatment (in terms of money) proportionate to the number of patients treated by them during the relevant period and they must pay that money to the authorities who shall create a central corpus/pool which shall be utilized for the welfare, health care and treatment of the poorer section of the society in Government hospitals. A Division Bench of this Court in its order dated 7.11.2002 (referred supra) had passed such a direction. Despite orders of this Court from time to time, the hospitals which were in default persisted with the same and showed complete disobedience to the orders of the court. The conduct of these hospitals even during the pendency of the writ petition is not worthy of any appreciation. Rather, it would tilt towards denial of relief on equitable grounds. Thus, we direct that a special committee shall be constituted which shall carry out these directions in its best wisdom and which shall ensure that the directions of the court are neither diluted nor rendered ineffective by such

steps:

86. *The 'Special Committee' shall consist of the Chief Secretary of NCT of Delhi, Finance Secretary, NCT of Delhi, the Director General of Health Services and Medical Superintendent of the general public hospital of that area, the case of which is being considered by the authority.*

87. *The Committee shall be entitled to appoint Chartered Accountants or any other officers from the office of the Comptroller General of Accounts for examination of the records, books of accounts and other material of the concerned private hospital which may have bearing on the matters which are being considered by the 'Special Committee.'*

88. *The officers so appointed by the committee shall submit a report to the Special Committee which after providing hearing to the hospital affected by such report, shall pass orders.*

89. *The order of the Special Committee shall determine the amount which is payable by the private hospital (20 of the hospitals stated in the judgment) and/or such other hospitals which are similarly situated. The amount payable shall be determined in terms of the above observations keeping in view the period commencing from two years after the date when the possession was taken and the hospital was made functional and expenses of 25% OPD and 10% IPD free patient treatment of the total number of patients treated by the hospital during that period.*

90. *This process of determination shall be concluded by the Special Committee within six months from the date of passing of this order.*

91. *Payment of the determined amount shall be made by the hospital concerned within a period of one month from the date on which the order is communicated to them. The order passed by the Committee shall be sent by speed post as well as delivered by the departmental official personally to the in charge of the concerned private hospital. The amount collected shall be deposited in a 'Central Corpus/Pool' to be created by the Director General of Health Services and shall only be utilized for providing of free treatment and upliftment of health standards of the poorer section of the society in Delhi. There shall be annual auditing of the said accounts by the Government Auditors as per rules.*

92. *In addition to the above specific directions issued under each topic, it is necessary for this Court to issue following general directions as well:*

A. All the 20 hospitals stated in this judgment and/or all other hospitals identically situated shall strictly comply with the term of free patient treatment to indigent/poor persons of Delhi as specified above i.e. 25% OPD and 10% IPD patients completely free of charges in all respects.

B. The hospitals who have partially or fully complied with even the condition of higher percentage in the past, would not be entitled to any benefit as they were bound by that condition at the relevant times and would not be entitled to any set off of the expenses or otherwise on that ground.

C. The conditions imposed in this judgment qua those hospitals who have fully or partially complied with the condition, shall be prospective.

D. The hospitals which have not complied with the conditions at all and have persisted with the default despite issuance of even show cause notices by the authorities, for them the condition shall operate from the date their hospitals have become functional.

E. We also constitute an Inspection Committee consisting of Ms. Maninder Acharya, Mr. Ashok Aggarwal and the Medical Superintendent of Dr.RML Hospital. This Committee would be at liberty to inspect any or all the 20 hospitals to examine whether the directions issued by the court are being carried out truly and sincerely. The committee would obviously work pro bono publico. They have already put in lot of work and effort in bringing this petition to an end.

F. The Inspection Committee would be at liberty to revive this petition or apply to the court for issuance of any directions and wherever necessary even for action being taken against the defaulters under the provision of Contempt of Courts Act read with Article 215 of the Constitution of India.

G. In the event, any hospital is found lacking in complying with the directions or conditions stated in this judgment and fails to pay the amounts as demanded by the authorities in terms of this judgment, the Head of the concerned hospital amongst others would be liable to be proceeded against in accordance with law.

H. Without prejudice to the above action, the competent authority or the Government of India would be entitled to take any steps under the terms and conditions of the letters of allotment as well as under the terms and conditions of lease deed and any law for the time being in force for cancellation of lease, re-entry in the premises and including taking possession of the hospital in accordance with law.

93. The general conditions stated by us would mutates mutandi apply with the special directions given under different heads. They shall be supplementary to each other.

94. Where it is the obligation of the State to provide best possible health

*facilities to its citizens, there it equally imposes an unquestionable duty on the ones who take advantage of concessional rates of land from the State for development of hospitals to help the State, in terms of the letters of allotment, in achieving that object.*

*95. No right exists without any obligation and no obligation can be dissected from the duty tagged with it. Right should correlate to a duty. The wider interpretations given to Article 21 read with Article 47 of the Constitution of India are not only meant for the State but they are equally true for all who are placed at an advantageous situation because of the help or allotment of vital assets. Such assets would be impossible to be gathered in a city like Delhi where the land is not available in feet, much less in acres, which the State at the cost of its own projects had provided land at concessional rates to these hospitals. The principle of equality, fairness and equity would command these hospitals to discharge their obligations of free patient treatment to poor strata of Delhi.”*

35 It has been submitted before us that in the city of Ahmedabad, the Municipal Commissioner of the Ahmedabad Municipal Corporation, in exercise of powers vested in him, under Section 2(ii) of the Act, 1897, Section 11(vii) read with Section 12 of the Epidemic Diseases Act, 1897 has issued Notification declaring 42 hospitals and odd as the “Designated COVID-19 Hospitals” for isolation of the cases for COVID-19 on and from 16<sup>th</sup> May 2020.

36 It has been brought to our notice that several states like Chhattisgarh, Rajasthan, and Madhya Pradesh have also acquired Private Hospitals and other states are also in the process of such requisitions and acquisitions.

37 It has also been brought to our notice that countries like Spain, Italy and United Kingdom battling COVID- 19 have also ‘nationalised’ Private Hospitals in national interest.

38 It is brought our notice that the press reports have warned of further massive outbreak/community spread of COVID-19 for which Stadiums are being acquired, playgrounds are also being developed as temporary hospitals and Hotels are also being taken over for admitting the COVID- 19 patients. This is an alarming sign for all of us and therefore all possible efforts are required to be made to involve and include all possible hospitals maybe by reserving separate wings or floors for regular patients other than the COVID-19 patients.

39 It has also been brought to our notice that the rates/charges which have been prescribed vide the Notification dated 16<sup>th</sup> May 2020 are vague inasmuch,

(a) The charges prescribe a certain rate and thereafter also states that certain other services/facilities are not included in the same.

However, there is no specific clarity as to what is included and what is not, and what are the charges for those services that are not included, and which are to be charged additionally.

(b) The rates do not categorize the type of bed. It appears that the same rate is prescribed for the wards, double occupancy rooms. Single occupancy rooms, and other higher category of rooms.

(c) This ambiguity provides room for manipulation and foul play at the hands of the Private/Corporate Hospitals in the name of treatment, despite there being a ceiling already fixed by the State Government.

40 The learned counsel assisting this Court in this litigation invited our attention to the rates prescribed by the State of Maharashtra so far as the private / corporate hospitals is concerned. The learned counsel also invited our attention to the Notification issued by the State of Maharashtra in this regard. We quote as under:

<i>MAXIMUM RATES WHICH CAN BE CHARGED TO COVID PATIENT (APPLICATION THROUGHOUT MAHARASHTRA FOR ALL HEALTH CARE PROVIDERS)</i>			
<i>Package</i>	<i>Rate in INR per day</i>	<i>Inclusions</i>	<i>Exclusions</i>
<i>Charges for routine ward + Isolation</i>	<i>4000</i>	<i>This includes – Monitoring and investigations Drugs Consultations bed charges nursing charges meals procedures like Ryles tube insertion, urinary tract Catheterization</i>	<i>Does not include - 1) PPE 2) Interventional procedure like but not limited to. Central Line insertion. Chemoport Insertion, bronchoscopic procedure, biopsies, ascitic/pleural tapping, etc, which may be charges at the rack rate as on 31<sup>st</sup> Dec 2019.  3) Covid testing – to be done as per actual cost as per direction 10.  (4) High end drugs like Immunoglobulines, Meropenem, Parenteral Nutrition, Tocilizumab, etc. - to be charged at MRP as per direction 10.  5) High end investigations like CT scan, MRI, PET scan – to be charges at rack rates of hospital as on 31<sup>st</sup> Dec. 2019.</i>

## "NOTIFICATION

No. CORONA-2020/C.R.97/Aro-5  
Public Health Department  
G.T. Hospital Compound, 10<sup>th</sup> Floor,  
New Mantralaya, Mumbai 400 001  
Dated 19<sup>th</sup> May, 2020

## References:

1. *The Epidemic Diseases Act, 1897*
2. *The Disaster Management Act, 2005*
3. *The Maharashtra Essential service Maintenance (Amendment) Act, 2011*
4. *The Maharashtra Nursing Home (Amendment) Act 2006*
5. *Bombay Public Trusts Act, 1950 (for short „B.P.T. Act" )*
6. *Public Health Department Notification No. CORONA-2020/C.R.97/Aro-5 Dated 30 April, 2020*

*Whereas the State Government is satisfied that the State of Maharashtra is threatened with the spread of Covid-19 epidemic, already declared as a pandemic by World Health Organization;*

*Whereas the public Charitable Trusts registered under the provisions of the Bombay Public Trusts Act, 1950 (for short „B. P. T. Act") which are running Charitable Hospitals, including nursing homes or maternity homes, dispensaries or any other center for medical relief and whose annual expenditure exceeds Rs. 5 Lacs are "State aided public trust" within the meaning of clause 4 of section 41AA; Whereas The public Charitable Trust covered by aforesaid paragraph are under legal obligation to reserve and earmark 10% of the total number of operational beds for indigent patients and provide medical treatment to the indigent patients free of cost and reserve and earmark 10% of the total number of operational beds at concessional rate to the weaker section patients as per the provisions of section 41AA of the B.P.T. Act; Whereas a large number of persons including those affected by Covid-19 are in need of treatment and various Hospitals, Nursing Homes, Dispensaries (hereinafter referred as Healthcare Providers) registered under Bombay Nursing Home (Amendment) Act, 2006 are treating such patients;*

*Whereas many Healthcare Providers in Mumbai, Thane, Navi Mumbai, Panvel and Pune have specific agreements/ understanding with General*

*Insurance Public Sector Associations (GIPSA) as a member of Preferred Private Network (PPN) regarding rates of various treatment packages and some Healthcare Providers in Mumbai are not part of GIPSA– PPN;*

*Whereas many Healthcare Providers situated in State of Maharashtra are not part of GIPSA– PPN and have their own specific agreements/ understanding with various Third Party Administrators (TPA) regarding rates of various treatment packages and each Healthcare Provider may have different rates for same treatment packages among various TPAs operating in that Healthcare Provider; Whereas some hospitals in the State of Maharashtra are neither part of GIPSA– PPN nor having agreements/ understanding with any TPA; Whereas expenses towards treatment of persons insured for IRDA approved healthcare products treated in GIPSA– PPN or network of hospitals empanelled by various TPAs at specific package rates agreed by them are borne by the insurer. However the persons who are not covered by any health insurance product or who have exhausted their health insurance cover are being charged exorbitantly causing hardship to public in general during the pandemic situation;*

*Whereas large number grievances regarding exorbitant amount of money being charged by the Healthcare Providers registered under Bombay Nursing Home (Amendment) Act, 2006 causing hardship to the public in general during the COVID-19 pandemic are received;*

*Whereas section 2 (a) (iii) of the Maharashtra Essential Services Maintenance Act, 2005 defines any service connected with the maintenance of Public Health and Sanitation including hospitals and Dispensaries as Essential Service; Hence, Now Government of Maharashtra has decided to amend the notification No. CORONA-2020/C.R.97/Aro-5 Dated 30 April, 2020 and issue the addendum and modification to the extent mentioned below:*

*Therefore, in exercise of the powers conferred as per the enabling provisions of all the above referred Acts, to redress the grievances regarding exorbitant amount of money charged by Healthcare Providers from the patients who are not covered by any health insurance product or who have exhausted their health insurance cover, all the Healthcare Providers functioning in the State of Maharashtra are hereby directed that:*

- 1) The Charitable Trusts registered under the provisions of the B.P.T. Act which are running Charitable Hospitals, including nursing home or maternity home, dispensaries or any other center for medical relief shall*

*make all possible efforts to discharge their obligations as per provisions of section 41AA of the B.P.T. Act before applying any charges to any eligible patient.*

- 2) *Healthcare providers shall make all attempts to increase their bed capacity [subject to norms prescribed in The Maharashtra Nursing Home (Amendment) Act 2006] to accommodate maximum number of patients. 80% of total operational bed capacity (excluding beds of PICU, NICU, day care, maintenance hemodialysis) will be regulated by rates prescribed below. This applies to both Isolation and Non Isolation beds. That means 80% of Isolation beds available with any Healthcare provider under this notification should be regulated by State Govt./District Collectors/Municipal Commissioners and so also the 80% of Non Isolation beds.*

*Healthcare Providers may charge their rack rates to the remaining 20% beds.*

- 3) *Patients belonging to both categories (80% and 20%) can take treatment in NICU, PICU, daycare and hemodialysis at the respective applicable rates on first come first serve basis.*
- 4) *For Covid Patients treated at any of the Hospitals/Nursing homes/Clinics covered under this notification across Maharashtra, rates shall not be more than rates prescribed in Annexure-C. For non-Covid patients rates will be as per Annexure-A read with Annexure-B (if applicable).*
- 5) *There shall be no difference in the quality of treatment being meted out to patients treated against 80% beds (regulated beds) or 20% beds.*
- 6) *The Healthcare Providers situated in Mumbai, Pune, Navi Mumbai, Panvel, Thane having agreements/ understanding as member of GIPSA-PPN are prohibited from charging more amount than that applicable to lowest bed category irrespective of availability of bed in the lowest category agreed in their respective GIPSA-PPN agreement/ understanding.*
- 7) *Many Healthcare Providers are not a part of GIPSA-PPN and have agreements/ understandings with various Third Party Administrators (TPAs) pertaining to package rates for different treatments. Such Healthcare Providers having different package rates for similar treatment with different TPAs shall provide the treatment at lowest package rate prevailing among different TPAs in its facility.*
- 8) *Healthcare providers who are not a part of GIPSA-PPN or who do not have any agreement with TPA will not charge more than the rates prescribed in Annexure-A read with Annexure-B as per location and bed strength. These rates shall be different depending upon location of the hospitals (Districts) and number of operational beds. The maximum rates are prescribed as per Annexure-A. The applicable rates for particular hospital depending on its location and bed capacity are as per Annexure-B. Illustration I- For a particular package Hospitals with more than 100 beds in Mumbai, Mumbai Suburban, Thane, Palghar shall not charge more*

than 100% of the rate prescribed in Annexure A. However Hospitals with more than 100 bed capacity in Pune shall not charge more than 85% of the rate prescribed in Annexure A. Illustration II- For a particular package Hospitals in Pune with 99 to 50 bed capacity shall not charge more than 76.5% of the package rate while Hospitals in Pune city with less than 49 bed capacity shall not charge more than 68% of the prescribed package rate as per Annexure-A.

- 9) Items/Services including Intraocular Lenses (IOL), pacemaker, Ortho prosthesis, stents, staplers, Guide-wire Catheter, balloon, medical implants, PPE kit etc. which are not part of GIPSA-PPN or TPA package rates, shall not be charged more than 10 percent markup on Net Procurement cost incurred. If any of the items mentioned here are used for more than one patient then the prescribed cost may be divided among such patients.
- 10) The Healthcare Providers shall display at a prominent place number of permitted beds [permitted as per The Maharashtra Nursing Home (Amendment) Act 2006], operational beds status of availability of beds as per section 41AA of the B.P.T.  
*Act, 80:20 division of beds I.e. numbers of beds regulated under this notification against which patients as referred by respective District Collectors and Municipal Commissioner would be admitted as well as number of unregulated beds and status of occupancy against all beds in regulated (80%) and non-regulated (20%) category.*
- 11) Healthcare Providers shall display at prominent place the details of rates applicable as per this notification. It is the duty of the concerned Healthcare Provider to explain to the patient/ relatives of the patient details of all types of charges. The Healthcare Provider shall provide this information to Competent Authorities (respective Municipal Commissioner/ District Collector) at a frequency prescribed by them. Municipal Commissioners and District Collectors are advised to develop an online digital platform to update and disseminate occupancy position of beds in various categories.
- 12) The package rate fixed in this Notification for charging patients is inclusive of Doctors' fees & the Healthcare Provider concerned has the right to call such of its visiting Doctors to render the required services & pay such amount as it decides for the said services out of the package amount so charged. Any denial by the doctors will attract penal action under various Statutes referred to in this Notification including cancellation of MMC Registration.
- 13) Nursing and other support staff working in the Healthcare Provider shall give full support and extend wholehearted cooperation for the smooth functioning of the Healthcare Provider which comes under Maharashtra Essential Services Maintenance Act, 2005. Any group or union activities against the smooth function of the Healthcare Provider will attract penal provisions under the said Act.

- 14) Healthcare providers may levy additional charges of not more than five percent (5%) on bill excluding items mentioned in direction 9 above.
- 15) The rates prescribed at Annexure A are available for non-Covid patients. For Covid patients rates prescribed as per annexure C shall be applicable. The rates in Annexure-C shall apply to Covid positive or suspected Covid positive patients referred by competent authorities against regulated beds (80% of total Isolation beds) in each of the healthcare provider.

Therefore for implementation of the above provisions, the competent authority at the State level shall be the Chief Executive Officer, State Health Assurance Society, Public Health Department, The competent authority at District Level (for areas excluding Municipal Corporations) shall be District Collector and in Municipal Corporation areas the concerned Municipal Commissioner shall be competent authority to take appropriate action as provided in The Epidemic Diseases Act, 1897, The Disaster Management Act, 2005, The Maharashtra Essential Service Maintenance (Amendment) Act 2011, The Mumbai Nursing Home (Amendment) Act 2006, The Bombay Nursing Home Registration (Amendment) Act, 2006 and The Bombay Public Trusts Act, 1950 for any violation of these directions.

This notification shall come in effect immediately and would remain in operation till 31<sup>st</sup> August, 2020.

By order and in the name of Governor of Maharashtra,

(Dr. Pradeep Vyas)

Principal Secretary to Government

1. Principal Secretary to Hon"ble Governor, Rajbhavan, Mumbai
2. Principal Secretary to Hon"ble Chief Minister, Mantralaya, Mumbai
3. Principal Secretary to Hon"ble Deputy Chief Minister, Mantralaya, Mumbai
4. Hon"ble Minister (Health & Family Welfare), Mantralaya, Mumbai
5. Hon"ble Minister of State (Health & Family Welfare), Mantralaya, Mumbai
6. Chief Secretary, Mantralaya, Mumbai
7. Additional Chief Secretary/ Principal Secretary/ Secretary (All), Mantralaya, Mumbai
8. Secretary, Maharashtra Legislature Secretariat, Vidhan Bhavan, Mumbai
9. Commissioner (Health Services) & Mission Director, NHM, Mumbai

10. *Charity Commissioner, M.S. Mumbai*
11. *Chief Executive Officer, State Health Assurance Society, Worli, Mumbai*
12. *All Divisional Commissioners*
13. *All District Collectors*
14. *All Municipal Commissioners*
15. *All Chief Executive Officers, Zilla Parishad*
16. *Director, Health Services- I/II, Mumbai/Pune*
17. *Additional Director, Health Services (All)*
18. *Joint Director, Health Services (All)*
19. *Deputy Directors, Health Services (All)*
20. *Civil Surgeons (All)*
21. *District Health Officers (All)*
22. *District Malaria Officers (All)*
23. *Deputy Secretary to Chief Secretary, Mantralaya, Mumbai*
24. *All Joint / Deputy Secretary, Public Health Department*
25. *PA to Principal Secretary, Public Health Department*
26. *All Section Officers, Public Health Department*
27. *Select File: Aarogy-5”*

41 It has also been brought to our notice that while the Parekh's Hospital at the Shyamal Cross Roads was enlisted as designated for the COVID treatment, surprisingly, in the Notification dated 16<sup>th</sup> May 2020 (which supersedes the earlier Notifications) its name is missing. It is, therefore, necessary to know the decision making process and the reasons/criteria for such inclusion and/or exclusion to ensure that there is no foul play.

42 It has been submitted that at the SVP and Civil Hospital, all the COVID-19 patients are being treated in a general ward only, and the rooms continue to remain unoccupied leading to an artificial shortage of beds.

43 It has also been submitted that the private hospitals which are COVID designated, are not permitted to treat any other non-COVID patients. As a result, on the pretext of non-COVID patients being admitted, some of the COVID designated hospitals have yet not started admitting and treating COVID patients, despite the Notification dated 16<sup>th</sup> May 2020.

44 It has been submitted that restricting the number of Private/Corporate Hospitals which can treat COVID patients to only those who have been permitted will effectively lead to

- (a) Restriction on the number of beds for treatment and thereby create an artificial surge in demand;
- (b) Lead to monopolistic practices by such designated Hospitals

45 Having regard to the the position of law discussed above, the various submissions made by the learned counsel and other relevant aspects, the following is discernible:

- (a) Public Healthcare system is overwhelmed, strained and functioning beyond its capacity;
- (b) With the rising number of cases, the citizens are finding access to the public health systems extremely difficult;
- (c) Health, as set-out in the various judgements enlisted above, is a Fundamental Right guaranteed to a citizen under Article 21 of the Constitution of India;

(d) Resultantly, the provisions of law as set-out hereinabove, in the circumstances as the present one, provide for the State authorities to take steps so as to make available easy and smooth access to health care to one and all – thereby making it an extension of the public healthcare function;

(e) The Notification dated 16<sup>th</sup> May 2020 (relating to Ahmedabad Municipal Corporation) and other similar notifications issued by the State Government, fixing the rates and fee schedules for the private hospitals to charge for treatment of COVID-19 infected patients, invoking the provisions of law (as set-out hereinabove), is, therefore, an extension of public healthcare function and public duty;

(f) The charges levied by the private hospitals, in eligible cases, are also likely to be reimbursed under the Ayushman Bharat Scheme of the Government of India, and therefore also involves public money.

(g) The law sufficiently empowers unprecedented actions to be taken in unprecedented circumstances like the present one.

(h) The State is obliged to ensure that the Right to Health is respected, protected and fulfilled and is duly provided to all its citizens. According to Salmond, every Right has a corresponding duty to be fulfilled and there can be no Right without a parallel element of duty.

(i) To maintain public health is a Directive Principle of State Policy, enshrined under Article 47 of the Constitution of India.

46 In view of the aforesaid, we issue the following directions to the State respondents:

**[1] We direct the State Government to initiate appropriate legal proceedings against all those private / corporate hospitals who are not ready and willing to honour the understanding arrived at with regard to treating the COVID-19 patients including those who are not agreeable or willing to cooperate and enter into an MoU.**

**[2] We direct the State Government to institute prosecution against all responsible persons of the concerned hospitals for the offence punishable under Section 188 of the Indian Penal Code and Sections 57 and 58 respectively of the Disaster Management Act.**

The State Government has been sufficiently empowered in law to take appropriate action against the private / corporate hospitals and the State Government should not hesitate to exercise such powers, more particularly, in times like the present one.

At this stage, we may clarify that as regards the aforesaid two directions, we leave it to the better discretion of the State Government. If the State Government is of the view that all the hospitals are cooperating and are abiding by the terms and conditions of the Memorandum of Understanding, then it is fine.

**Otherwise, the State Government shall institute appropriate action in accordance with law including institution of prosecution, as directed.**

47 We take notice of the fact that the following hospitals do not figure in the list of the hospitals referred to above:

[i] Apollo Hospital situated at Bhaat, Ahmedabad.

[ii] Apollo Hospital situated at the city Centre near Doctor House, Parimal Railway Crossing, Ahmedabad.

[iii] KD Hospital situated at the Vaisnodevi Circle, Ahmedabad.

[iv] ZyduS Hospital situated at the Hebatpur Road, Ahmedabad.

[v] Asia Colombia Hospital situated at the Hebatpur Road, Ahmedabad.

[vi] Global Hospital situated at the Hebatpur Road, Ahmedabad.

[vii] Anand Surgical Hospital situated at the Naroda, Ahmedabad.

[viii] U.N. Mehta Hospital, Ahmedabad.

**[1] We would like to know from the respondents as to why the above named hospitals are not in the list. We would also like to know whether any talks were initiated in this regard with the management of the above referred hospitals. The hospitals we have referred to above are reputed hospitals and are capable of admitting thousands of patients in all. The management of all these hospitals should have come forward on their own to render treatment to the COVID-19 patients in**

**this critical hour of crisis. We direct the State Government to initiate talks with all the eight hospitals named above and enter into a Memorandum of Understanding in this regard. All the eight hospitals referred to above shall extend their helping hand in this hour of crisis. We are saying so because as days are passing by more and more cases of COVID-19 positive are being reported. It is practically impossible now for the Civil Hospital, Ahmedabad and the SVP Hospital, Ahmedabad to admit all these COVID-19 patients. In such circumstances, all the eight hospitals named above are not only morally responsible, but, are also legally obliged to agree to reserve 60% beds for the treatment of the COVID-19 patients. Dr. Rajeev Gupta, Additional Chief Secretary, Forest and Environment, whom the State Government has appointed as the overall in-charge of the Ahmedabad Municipal Corporation (AMC) to control COVID-19 spread shall at the earliest talk to the management of all the above eight hospitals and enter into a Memorandum of Understanding in this regard. Even otherwise, we have issued directions in this regard.**

[2] We are informed that the KD Hospital situated at Vaisnodevi Circle, Ahmedabad is a charitable hospital. Being a charitable hospital, it was expected to come forward to render help in these difficult times. What is the good reason for the KD Hospital not to be found in the list of the designated hospitals? We are sure that being a charitable hospital, the management must be enjoying all the privileges which a charitable hospital is entitled to in law. If that be so, it is the bounden duty of the management of the KD Hospital to come forward and offer 50% of their beds for the COVID -19 patients. We are sure that the management of the

KD Hospital would on its own agree to reserve 50% of their beds for the COVID-19 patients. We may not be compelled to take any harsh or extreme steps against any of the hospitals referred to above. The Zydus Hospital situated at the Hebatpur Road, Ahmedabad is one of the biggest and well reputed hospitals of the city. The Zydus Hospital has Ten floors. The Zydus Hospital can allot at least two floors for the COVID-19 patients. We expect the management of this corporate hospital to come forward and extend its helping hand in these times of crisis. **Dr. Gupta shall initiate talks with the management of the Zydus Hospital at the earliest.**

**[3] The State Government is directed to issue a Notification making it mandatory for all the multi-speciality private / corporate hospitals in the city of Ahmedabad and on the outskirts to reserve 50% of their beds (or such other capacity, as the State Government may deem fit and proper on the basis of the increase in the number of cases). This should include all categories of beds to treat the COVID-19 patients with specific guidelines and SOPs which the State Government may deem fit.**

[4] There is a project in the name and style of the National Health Protection Mission called "Ayushman Bharat". The same has been launched by the Government. It is claimed that around 50 Crore beneficiaries avail the benefit of the same and are protected upto Rs.5 Lac per family per year for hospitalization. The State Government should explore the possibility to enforce this project and explore the possibility to extend to the private

hospitals after taking care that there is no undue benefit or malpractice.

[5] We would also like to understand in what manner the rates have been worked out with the private / corporate hospitals, more particularly,

(a) as to what is included and what is not, and what are the charges for those services that are not included and which are to be charged additionally;

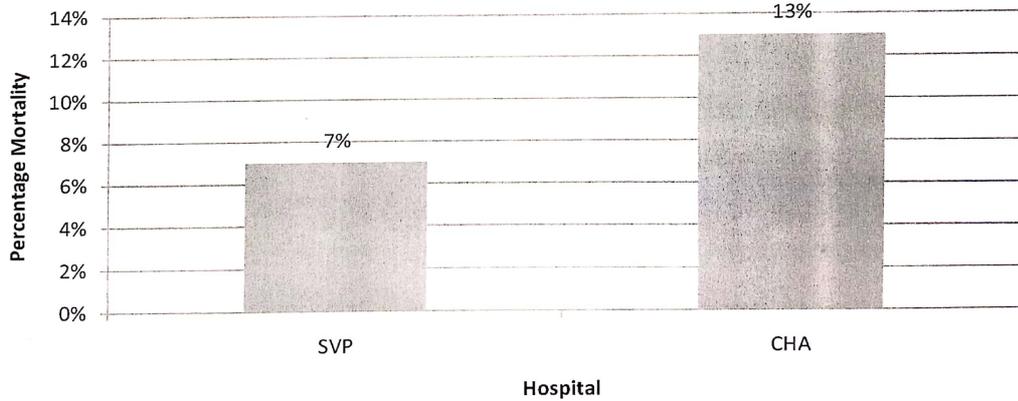
(b) The rates for different categories of rooms and beds (i.e. wards, double occupancy rooms, single occupancy rooms, and other higher category of rooms);

(c) We are of the view that the rates on which the private / corporate hospitals have agreed to admit and treat the COVID-19 patients are on a higher side. The State Government is directed to once again renegotiate with all the private / corporate hospitals in this regard so as to make the rates reasonable and affordable.

48 **CONDITIONS AT THE CIVIL HOSPITAL:**

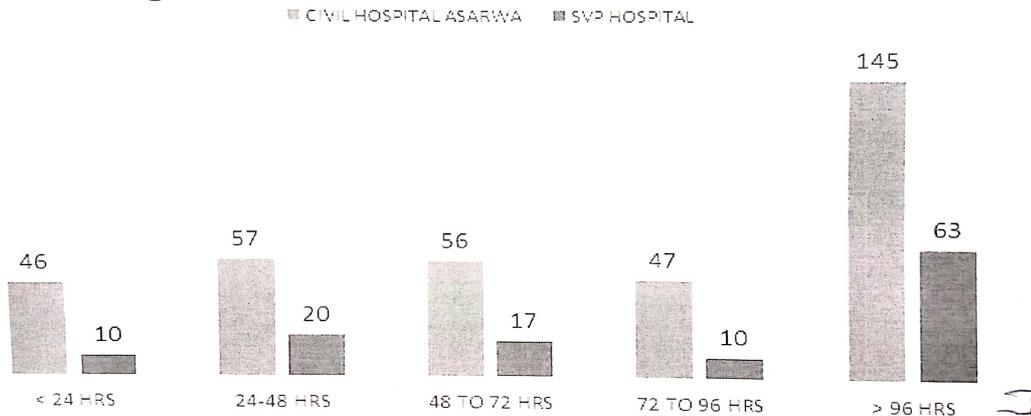
It is very distressing and painful to note that the condition prevailing, as on date, in the Civil Hospital, is pathetic. The patients admitted for the COVID-19 treatment are dying. The figures on record would indicate that out of total 625 deaths in Gujarat, 570 deaths have been recorded in the Ahmedabad City till 20<sup>th</sup> May 2020. Out of total 570 deaths, 351 deaths have been recorded in Ahmedabad. The Civil Hospital contributes to 62% of the total deaths.

**Percentage of Mortality as against Admission from 25/04/2020 to 18/05/2020**



We take notice of the fact that the Civil Hospital, Ahmedabad and the Sola Civil Hospital are run and managed by the Health Department, Government of Gujarat, whereas the SVP Hospital is run and managed by the Ahmedabad Municipal Corporation. We also take notice of the fact that the patients being brought to the Civil Hospital and the SVP Hospital are by and large from the same area, but, still, the mortality rate in the Civil Hospital is 13% as against 7% in the SVP Hospital. If we calculate weekly death, the Civil Hospital still contributes to highest death in most of the week during the last eight weeks.

**DEATHS ACCORDING TO DURATION OF HOSPITALIZATION**



It is very distressing to note that most of the patients in the Civil Hospital are dying after four days or more of the treatment. This indicates complete lack of critical care.

In the course of the discussion, we noted the following reasons of high mortality in the Civil Hospital, Ahmedabad:

- a) There is inadequate patient care in the Civil Hospital.
- b) Senior doctors do not visit the wards and throw the entire burden on the Resident doctors. In such circumstances, the decisions regarding treatment of critical patients get delayed and neglected in the Civil Hospital.
- c) The Senior doctors are unable to control the ward boys and the sanitation staff and therefore, the health and hygiene is not being maintained in the Civil Hospital.
- d) There is no single command and control structure in the Civil hospital.
- e) There are 1200 Resident doctors in the Civil hospital as against 425 in the S.V.P. Hospital, yet the critical care is insufficient.
- f) The patients history record is maintained manually in the Civil hospital. Therefore, change in the shift of doctors leads to discontinuity in the patient care.
- g) The situation has not yet improved in the Civil Hospital past last two months, despite senior IAS officers like Pankaj Kumar, Milind Torwane and Jayanti Ravi have been

appointed for the management of the Civil Hospital, Ahmedabad.

Today, just after we concluded the hearing, we received one anonymous letter from a resident doctor serving at the Ahmedabad Civil Hospital. Ordinarily, we should not take cognizance of such anonymous letters. However, the situation is so grave that we should not ignore the contents of the letter. The letter is very disturbing. It reads thus:

*“Respected sir,*

*I am a resident doctor, working in Civil hospital, Ahmedabad. I'm penning down this letter to inform you about some mismanagement happening here in 1200 bed hospital as well as in civil hospital Ahmedabad (Asia's biggest hospital called so far), treating almost **80% cases of COVID-19 positive patients of Gujarat**. I too was detected **CORONA +ve** on May 2<sup>nd</sup> post which I was isolated in Marriott hotel since last 5 days. My report turned to be negative after 5 days ie on 7th May without any treatment because of my innate immune system and strict isolation. Possibly, despite being corona +ve, I will be forcefully called to treat patients next week, along with other affected residents.*

*Following are the irregularities that have gone unnoticed by the higher administration.*

*\*\*Here in 1200 bed hospital there are wards allotted amongst 60 patients. **These patients are isolated from the world outside but not from each other**. In case of COVID-19 it is possible that each and every patient might be having different viral load, so if no partition is made in between them, then these patients are never going to recover as they will encounter each other's viral load. In a ward of 60 patients only 3-4 patient are turned COVID -ve after 10-12 days isolation and treatment and rest still remain COVID +ve just because they increase their viral load because of patient having bed beside them.*

*-There is no enough space maintained between cots allotted to patients and on the top of that, **table fans are also given at every 2nd consecutive cot**, helping spread of the virus even more.*

*\*\* I got affected with COVID-19 working in non-COVID duty, as there was a time when LG hospital and almost 90% hospitals of Ahmedabad were shut, only CHA was treating the patients. Sir, we were having such a big patient load. Despite that, we were neither given PPE kit nor N 95 masks. Even proper gloves not available to conduct normal delivery. Excuses were given that all indent material is sent in 1200 bed hospital.*

*-8 residents from my department and 5 residents of my Unit were tested positive and we were criticized for getting our tests done.*

*-Since 5 days we almost more than 30 residents are here, isolated in hotel Marriott. No one from hospital management has bothered to at least call us for our condition.*

*-It is difficult to work in Non-COVID duty rather than to work in covid duty(where you have proper PPE kit).On 2nd may when these many residents came positive of same unit and department, the ideal way of approach would have been to test all remaining residents and trace their contacts. Instead, they criticized us gave a strict warning that no residents will be tested even if they had contact history, residents will only be tested if they have temp>103°f, along with breathlessness.*

*-The hospital management is just concerned that if residents will get tested and if they turn out to be positive then who will work? No senior professors are coming for rounds or emergency. All patients are managed by junior residents only. The management is not taking action for residents, instead they are calling us cowards and kamchor. Which is so not the case especially when we are the ones risking the lives and doing all we can despite all the odds.*

*-They are not understanding that being COVID +ve, if we work with patients in Non-COVID duty then patients will get affected by the virus, instead of getting cured. On the day I was tested positive I conducted 3 Normal deliveries and one C- section, and almost came in contact with 20 patient directly and their newborns. There has been no contact tracing done for the same. No authority has inquired about it.*

*-At the age of 25 nothing much will happen to me. I turned out to be negative within 5 days without any treatment but it is not same as for pregnant females and neonates. They are immune-compromised ie. if they will encounter the virus, they can be in big trouble.*

*-It is also happening that normal patients of our wards are tested COVID +ve after 2 days in Non-COVID ward. It has happened in surgery, ortho, uro department as far as I know, that patients are immediately shifted to COVID hospital but what about residents who treated them who were with patients since last 2 days??? **They are not even tested, let alone isolated.***

*-If the condition remains same in CHA , **doctors working here will be super spreaders of COVID-19.** It will not make sense for AMC to go for home to home survey when people will encounter the virus from hospital itself.*

*-Here almost **700 resident doctors** are working, **not even 10% of doctors are tested for covid**, and we all stay in a common hostel, work with each other day and night.*

*We are assuming already that if residents get tested, half of the residents will turn to be positive. Sir, imagine the mayhem that's going to get caused. This is an urgent situation which demands urgent action.*

*-Already different teams of 60 doctors are called from outside Ahmedabad to work in COVID hospital. But there are still resident doctors and other old staff which is working here who may have gotten infected by now.*

*Our sincere request to please test all residents working here, otherwise Ahmedabad will never come out from COVID-19 as doctors themselves are knowingly/unknowingly the super spreaders.*

*-We have tried to make you aware of the ground realities which no doctor will accept on face since they are afraid of their reputation and career. We have tried to voice out in front of our HoDs also, but of no use.*

*With high hopes that you'll take strictest possible actions against this and save Ahmedabad and its people from this grave danger.*

*Thanking you,*

*Resident Doctor, Ahmedabad Civil Hospital."*

We are very sorry to state that the Civil Hospital, Ahmedabad, as on date, appears to be in an extremely bad shape. Ordinarily, the citizens hailing from a poor strata of society are

being treated at the Civil Hospital. This does not mean that human life is not to be protected. Human life is extremely precious and it should not be allowed to be lost at a place like the Civil Hospital at Ahmedabad. **We wonder, how many times the Health Minister of the State has visited the Civil Hospital at Ahmedabad so as to keep a watch or take stock of what is going on at the Civil Hospital. Does the Health Minister of the State of Gujarat has any idea about the problems which the patients, doctors, nursing staff and other employees are facing as on date? How many times the Health Minister has interacted with the Medical Officers and other staff members in person so as to understand their difficulties and problems? We wonder whether the Chief Secretary of the Health Department has any idea as to what is going on in the Civil Hospital? We wonder how many times the Chief Secretary of the Health Department has paid visit to the Civil Hospital? Is the State Government aware of the hard fact that the patients at the Civil Hospital are dying because of lack of adequate number of ventilators? How does the State Government propose to tackle this problem of ventilators?**

As we said earlier that the Civil Hospital is meant to treat the patients. However, it appears that as on date, it is as good as a dungeon. May be even worse than a dungeon. Unfortunately, the poor and helpless patients have no option.

In such circumstances referred to above, we propose to issue the following directions. We are very serious on this particular issue. **We expect the State Government also to take up this issue very seriously and revert to us on the next date**

of hearing with some positive feedback. If we are not convinced with the report of the State Government, then we shall be compelled to have a video conferencing with all the doctors at the Civil Hospital so as to ascertain from them as to what are the difficulties, problems, etc. We issue the following directions:

(i) The doctors, who are not performing in the Civil Hospital, should be immediately transferred to other districts. There are large number of senior and experienced Doctors who are ready and willing to render better services in the Civil Hospitals from the other districts.

(ii) The Class III & IV Union should be dealt with strictly.

(iii) The working conditions of the resident doctors should be improved.

(iv) The accountability of senior officers who have failed to improve the health care in the Civil Hospital leading to massive loss of human lives should be fixed at the earliest.

(v) Number of ventilators and oxygen beds should be increased.

(vi) Punitive action should be taken against the Ward Boys who just leave the patients unattended (One oxygen support patient recently died on a toilet seat and the same was noticed after an hour simply because no ward boy followed him up.)

It is brought to our notice that the problem of lack of adequate number of ventilators at the Civil Hospital can be taken care of by shifting the patients to : (1) **Institute of Kidney Diseases** (2) **U.N. Mehta Institute of Cardiology**. We are informed that there are adequate number of ventilators with both these institutes. Adequate steps shall now be taken to admit the patients at these two institutes so that in case of emergency, the patients can be put on ventilator.

49 We are in receipt of a report purported to have been prepared by a responsible medical officer, Civil Hospital, Ahmedabad. This report is with regard to the grievances voiced at the COVID-19 Hospitals, Ahmedabad. The report talks about the issues, the current practice and has also provided the solution to deal with the issue. The report reads thus:

<i>Serial</i>	<i>Issue</i>	<i>Current practice</i>	<i>Solution</i>
1	<i>Leadership at the level of medicine department (H.O.D.)</i>	<i>He has miserably failed to deliver in the interest of patients' management and departmental Work, Force Management. Multiple complaints by resident doctors regarding a variety of issues have fallen on deaf ear since last 1 month.</i>	<i>A competent and cooperative Leader is required at times of National emergency like Covid-19 specially when Ahmedabad is hotspot.</i>

2	<p>There is very much Shortage of Essential Medications like Insulin, Labetalol, Noradrenaline, Adrenaline, Anti-Hypertensives, Streptokinase, Urobags, Catheter, Ryle Tubes at 1200 bed hospital. All these are essential and lifesaving drugs.</p>	<p>Currently it takes 4-5 hours to get such medicines from main hospital building and by the time medicine arrives, we are losing the patient who actually needs it).</p>	<p>They should be made immediately available in adequate supply so that patient care won't be compromised just due to logistics</p>
3	<p>Most of the deaths occurring in hospitals are due to <b>Non-Covid Comorbidities</b></p>	<p>Mostly due to unavailability of medicines, supporting staff like dialysis technicians, ECG technicians etc.</p>	<p>Immediate availabilities of these facilities and medications and equipment</p>
4	<p>Unit system instead of TEAM Approach.</p>	<p>Currently, medicine department has continued its UNIT system and not working as single dedicated team. This leads to discontinuity of patient management and unnecessary exposure. For E.g. Those who are working in non Covid areas are forced to go to COVID positive ward just to collect information. They are at high risk of infecting non covid patients.</p>	<p>Single team should be made instead of different unit. UNIT system should be abolished with immediate effect</p>

5	Disparity in management of patients due to lack of INSTITUTE SPECIFIC TREATMENT Protocol for COVID-19	Currently, patients are treated as per individual faculties' clinical decision	Concise treatment protocol of the institution is the need of the hour. Disparity can be avoided if SINGLE UNIT/TEAM approach is adopted. It will result in efficient management and improved out come and decreased mortality
6	Accountability for deaths and discharges	Currently respective unit is accountable for deaths and discharges. It results in unnecessary exposure .	Single team approach and accountability of death and discharge should be made on Faculty on call. It will result in better coordination and management
7	Handling of blood samples	Samples taken at COVID-19 hospitals are transported to laboratory facilities available at routine hospital. This results in unnecessary delay in processing ,degradation of samples by the time they reach to laboratory	This basic machines(Which are available in multiple no. in hospital, like RTPCR, CBC, RFT, LFT) should be shifted to 1200 ward. It will result in quick reports,better patient management.
8	Lack of swab coordination and unnecessary clerical work by doctors	Currently it took so much time in this clerical work that actual patient management not happening (800 patients need to decide whose swab will go etc)	Swab co-ordinator should be kept at least on every floor who will maintain a swab calender and liaison with the ENT and MICROBIOLOGY department for sending scheduled swabs

9	Computer and printer	Only 1 computer with printer available in whole Covid-19 hospital amongst 1200 patients to check reports	One computer with printer in operational condition is required in each ward so that Logistic can be minimized and reports can be retrieve asap
10	Blood banking	There is no streamlined procedure for patients requiring emergency blood transfusion. It results in delay in transfusion and loss of lives. (Like patient with 4 Hb not getting timely transfusion due to complex mechanism, resulting in death)	Streamlined procedure for patients requiring emergency blood transfusion. It will result in saving lives
11	ICU management	Currently nursing staff to patient ration is very less, it results in mismanagement of critically ill patient. Mortalities are maximum in ICU where these patient requires better monitoring	Needs trained nursing and other class IV staff. As relatives are not allowed a 3:1 ratio of patients to nursing staff is required. Crittically ill patient require utmost nursing care, which may result in improved out come
12	Files and medical records of expired patients of Covid-19	Files of expired patients of covid-19 are being transferred to main hospital on instructions of faculty because they don't want to go there to see files. It acts as fomite	Need immediate stoppage of this practice as it can infect others including non covid patients. Also single UNIT/Team approach will itself will result in stoppage of this practice.

13	<i>Safety measures for General ward staff (In non Covid area)</i>	<i>General ward patient can turn out to be positive. There are no safety measures currently available for staff including doctors</i>	<i>N95 mask should be made available in general wards as well. (This is in practice at AIIMS)</i>
14	<i>Unsanitised Doffing area</i>	<i>It is seen that area which has highest risk of getting exposure are very badly sanitized and are in unhygienic condition</i>	<i>There is a need for absolute Sanitization of donning and doffing area</i>
15	<i>Transportation in between COVID-19 hospital (Internal transportation)</i>	<i>There is absolutely no coordination while transferring patients inside 1200 bed ward. Many a times it has been noticed that designated WAITING area become housefull creating chaos</i>	<i>Centralized system is needed for the better management of transportation of patients</i>
16	<i>Food and other logistics of patients</i>	<i>Doctors are currently being held responsible for meals, water and other Logistic issues of patients.</i>	<i>Doctors should only be responsible for medical management of patients and dietician and other worker should take care of other things like food and water</i>
17	<i>Training of medical staff</i>	<i>Currently, those who are not of MEDICINE department being trained for things like ventilator etc.</i>	<i>They should be trained for basics like PPE donning and Doffing, SP02 monitoring BP, RBS etc. (Training can be provided by medicine residents who knows better what to be taken care of)</i>

18	<i>Disposition of deceased</i>	<i>Due to lack of class IV staff dead bodies lying for hours in ICU, unnecessarily occupying cots.</i>	<i>Deceased patient need to be transported immediately</i>
19	<i>Regarding backstepping of experienced higher authorities in discharging their duties towards patients admitted at Covid Hospital.</i>	<i>Majorities of faculties in this institute <b>don't</b> perform the minimum expected duty of them i.e. Taking Rounds which ultimately lead to mortality of patients.</i>	<i>Ensure the accountability and increase the workforce (if Required) of on duty facilities at Covid Hospital which will REDUCE the mortality of patients.</i>
20	<i>Unforgivable inhuman attitude evident by indifference and carelessness shown by higher authorities towards resident who turn positive while treating Covid Patients.</i>	<i>COVID positive resident doctors have been kept stranded for long hours in spite of high grade fever owing to the indecisiveness and lack of prior preparation of management regarding treatment of resident doctors.</i>	<i>Demarcation of dedicated wards and faculties and protocol based testing and treatment for resident doctors.</i>
21	<i>Indifference of higher authorities towards the issue of non availability of Food to resident doctors</i>	<i>Almost all resident doctors being dependent on tiffin services and pg canteen for their food , suffer a lot in current days owing to lockdown and withdrawal of all of these service providers</i>	<i>Proper Hygienic food and water supply to be provided</i>

22	<i>Medicine residents, the One who are suppose to be in the front line in the decision making in treatment of critical! patients, are being used for nothing but coordination of nursing staff and class 4 workers .</i>		
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50 At this stage, we may clarify that there is no authenticity of the above referred report. However, at the same time, we take notice of the fact that the report contains very important elements. **In such circumstances, we direct the following three responsible medical officers to look into the various aspects referred to in the aforesaid report and revert to us:**

**[1] Dr. Ami Parikh, Head of the General Medicines, SVP Hospital, Ahmedabad.**

**[2] Dr. Advait Thakore, Head of the Emergency Medicines at the SVP Hospital, Ahmedabad.**

**[3] Dr. Bipin Amin, Professor (Medicines) at the Civil Hospital, Ahmedabad.**

51 Many public and private hospitals have been the major beneficiaries of the 'MAA Yojana (Scheme)'. The Government has paid crores of rupees to such beneficiaries for the medical services. All these

public and private hospitals are indebted to the Government, and in turn, to the people at large. For few hospitals, the major source of revenue is the MAA Yojana. All these hospitals should come forward and render medical treatment to the COVID-19 patients. It is brought to our notice that the ESIC Bapunagar, Nagari Eye Hospital and the Eye Hospital at the Civil Hospital Campus can be utilized for the purpose of providing treatment to the COVID-19 patients.

52 It is also brought to our notice that the old V.S. Hospital, Ahmedabad has approximately seven hundred beds. The Ahmedabad Municipal Corporation may explore the feasibility to revive the seven hundred beds at the earliest. The U.N. Mehta Institute of Cardiology can also be utilized. It is brought to our notice that the U.N. Mehta Institute of Cardiology is fully functional with good medical equipments and adequate manpower. The institute has given one building for the COVID care. But it is brought to our notice that the second building has not been utilized so far. Adequate steps should be taken to utilize the second building also for the COVID care.

53 It is also brought to our notice that the institute of COVID disease is a huge hospital with very good infrastructure and ample staff. It is lying idle. This hospital can isolate 20% beds for the emergency work relating to COVID-19.

54 Every sovereign state has plenary power to do all things which promote the health, peace, morals, education and good order of the people and tend to increase the wealth and prosperity of the State. Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society which

the Constitution makers envisaged. The obligation of the State to ensure the creation and the sustaining of conditions congenial to good health is cast by the Constitutional directives contained in Articles 39(e) & (f), 42 and 47 in part IV of the Constitution of India.

55 The Supreme Court has held that the right to live with human dignity enshrined in Article 21 derives its life and breathe from the directive principles of State policy particularly Article 39(e) & (f), 41 and 42 and would therefore include protection of health as envisaged in the directives. The expanded meaning of right to life is wholly justified, for, without health of a person being protected and his well being looked after, it would be impossible for him to enjoy other fundamental rights such as rights to freedom of speech and expression, to move freely throughout the territory of India, to practice any profession or carrying on any trade, occupation or business, to form associations guaranteed by Article 19 in a positive manner. Without a guarantee of health and well being most of these freedoms cannot be exercised fully. To make other rights meaningful and effective right to a healthy life is the basis underlying the constitutional guarantees. All that the courts have done is to provide redressal by a meaningful and just interpretation to the right to life and commanding enforcement of the duties of a welfare State. The Court itself being an authority and therefore 'State' within the meaning of Article 12 which definition is made applicable by Article 36 to part IV containing the Directive Principles of State Policy, has to bear in mind these directives in its decision making process.

56 Health is a state of complete physical, mental and social well being. The term 'health' implies more than mere absence of sickness as held by the Supreme Court. The Apex Court in India has played a

decisive role in realization of the right to health by recognising the right as a part of the fundamental right to life and issuing suitable directions to the State authorities for the discharge of their duties. The Court has recognised that maintenance of health is a most imperative constitutional goal whose realisation requires interaction of many social and economic factors.

57 In the case of **State of Himachal Pradesh v. A. Parent of a Student of Medical College, Simla, (1985) 3 SCC 169: (AIR 1985 SC 910)**, in para 4 of the judgment, the Court said that where the court finds on being moved by an aggrieved party or by any public spirited individual or social action group, that the executive is remiss in discharging its obligations under the Constitution or the law, so that the poor and the underprivileged continue to be subjected to exploitation and injustice or are deprived of their social and economic entitlements or that social legislation enacted for their benefit is not being implemented thus depriving them of the rights and benefits conferred upon them, the court certainly can and must intervene and compel the executive to carry out its constitutional and legal obligations. No doubt the court said that the court cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the lawmaking activities of the executive and the legislature. A reference may be made to the case of **Veena Sethi v. State of Bihar, AIR 1983 SC 339**, as well as **Sheela Barse v. State of, Maharashtra, AIR 1983 SC 378**. In the famous case of **Bandhu Mukti Morcha v. Vision of India (1984) 3 SCC 161 : (AIR 1984 SC 802)**, an objection was raised on behalf of the State of Haryana as well as one of the minelessees that the letter cannot be treated as writ petition under Art.32 of the Constitution of India because no fundamental right of the petitioner or of the workman on whose behalf

the writ petition has been filed, can be said to have been infringed.

The court said (at p. 811 of AIR):-

*“This contention is, in our opinion, futile and it is indeed surprising that the State Government should have raised it in answer to the writ petition. We can appreciate the anxiety of the mine-lessees to resist the writ petition on any ground available to them, be it hyper-technical or even frivolous but we find it incomprehensible that the State Government should urge such a preliminary objection with a view to stifling at the threshold an enquiry by the court as to whether the workmen are living in bondage and under inhuman conditions. We should have thought that if any citizen brings before the court a complaint that a large number of peasants or workers are bonded serfs or are being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the benefits of social welfare laws, the State Government, which is under our constitutional scheme, charged with mission of bringing about a new socio-economic order where there will be social and economic justice for every one and equality of status and opportunity for all would welcome an enquiry by the court, so that if it is found that there are in fact bonded labourers or even if the workers are not bonded in the strict senses of the term as defined in the Bonded Labour System (Abolition) Act, 1976, but they are made to provide forced labour or are consigned to a life of utter deprivation and degradation, such as a situation can set right by the State Government.”*

58 The Supreme Court also said that the adversarial procedure with evidence let by either party and treated by cross-examination by the other party and the Judge playing a passive role has become a part of our legal system because it is embodied in the Code of Civil Procedure and the Indian Evidence Act. But these statutes obviously have no application where a new jurisdiction is created in the Supreme Court for enforcement of a fundamental right. The Supreme Court in para 14 of the judgment, further said that (AIR 1984 SC 802 at p. 816) :-

*“...The poor and the disadvantaged, cannot possibly produce relevant material before the court in support of their case and equally where an action is brought on their behalf by a citizen acting pro bono publico, it would be almost impossible for him to gather the relevant material and place it before the Court. What is the Supreme Court to do in such a case?*

*Would the Supreme Court not be failing in discharge of its constitutional duty of enforcing a fundamental right if it refuses to intervene because the petitioner belonging to the under privileged segment of society or a public spirited citizen espousing his cause is unable to produce the relevant material before the court.*

*If the Supreme Court were to adopt a passive approach and decline to intervene in such a case because relevant material has not been produced before it by the party seeking its intervention, the fundamental would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned.”*

59 The Supreme Court also observed that it is for this reason that the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of the society. The report of the commissioner would furnish *prima facie* evidence of the facts and data gathered by the commissioner and that is why the Supreme Court is careful to appoint a responsible person as commissioner to make an enquiry or investigation into the facts relating to the complaint. The Court also observed that it is interesting to note that in the past the Supreme Court has appointed sometime a District Magistrate, sometime a District Judge, some time a Professor of Law, sometime a Journalist, sometime an officer in the Court and sometime an Advocate practising in the Court for the purpose of carrying out an enquiry or investigation and making report to the court because the commissioner appointed by it must be a responsible person, who enjoys the confidence of the court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice. Once the report of the commissioner is received, copies of it would be supplied to the parties so that either party if it wants to dispute any of the facts or data stated in the report may do so by filing an affidavit and the court can then consider the report of the commissioner

and the affidavits which may have been filed and proceed to adjudicate upon the issue arising in the writ petition. It would be entirely for the court to consider what weight to attach to the facts and data stated in the report of the commissioner and to what extent to act upon such facts and data. But it would not be correct to say that the report of the commissioner has no evidentiary value at all, since the statements made in it are not tested by cross-examination. To accept this contention would be to introduce the adversarial procedure in a proceeding where in the given situation, it is totally inapposite. It may be said that the jurisdiction of this Court under Art.226 of the Constitution of India is similar as that of the Supreme Court under Art.32 of the Constitution of India. The Supreme Court in para 15 of the judgment in the case of **Bandhu Mukti Morcha (supra)** said that what it had said in regard to the exercise of jurisdiction by the Supreme Court under Art.32 must apply equally in relation to the exercise of jurisdiction by the High Court under Art.226 of the Constitution for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Art.32 and the same powers can and must therefore be exercised by the High Court while exercising jurisdiction under Art.226. The Supreme Court also said that in fact, the jurisdiction of the High Court under Art.226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights. In view of the aforesaid dictum of the Apex Court, it can hardly be disputed that in the exercise of the powers under Art.226 of the Constitution this court in the matter of public interest litigation, like the present one, can appoint commissioner to make investigation and furnish the complete facts before this Court.

60 We also propose to issue the following directions:

[1] One ambulance with all facilities should be parked/ stationed permanently at the Hotel- quarantine centre so that if there is an emergency in the quarantine centre, the patient can immediately be rushed to the nearest hospital.

[2] The expression of interest can be called from such local physicians area wise in the state, and accordingly, a list be prepared. Such physicians can serve in the wards and hospitals and also at the quarantine centres which are overcrowded and falling within the containment zones.

[3] As per the press reports, in the State of Maharashtra, all general physicians have been asked to run their own clinics or serve in the Government COVID hospitals. The same policy should be adopted in the State of Gujarat.

[4] The Private hospitals should not demand fees in advance from the patients and the patients be asked to only give details of their Aadhar card and PAN card and if later found from the PAN card details that the patient was capable of making payments then the amount can be accordingly recovered.

[5] The State Government is directed to immediately procure maximum testing kits so as to enable even the private

laboratories in the private hospitals to carry out the Coronavirus testing at the Government rates.

[6] COVID Care Centre A (CCC A) – This is required to quarantine high risk suspects who cannot maintain social distancing at home. This facility may not be available in the hospital. Once result of the test is available they may be discharged or kept for repeat test if required.

[7] COVID Care Centre B (CCC B) – Here asymptomatic positive cases and cases with mild symptoms should be admitted. Stable patients with history of fever, sore throat, loss of smell etc. fall into this category.

[8] Day and night, regular ambulances and ICU on wheels must be made available in adequate numbers for quick and safe transfer. Same will apply to the dead body vans.

[9] The Government is directed to raise a computerised COVID Control Center at a place convenient to it. It must have complete real – time information of each facility. It should be accessible to everyone including the public. It should be connected to each facility on computers as well as phones. All ambulances too should be connected to it. The Control Centre must be erected on war footing. All complaints and grievances must be directed to the Control Centre.

[10] No patient should be made to run from one hospital to the other begging for admission. Unfortunately this has happened in the past and still continues. He can contact the control center, and procure the necessary information he needs.

[11] A website Control Centre should be created for everyone to know about various actions that may be taken.

[12] CCC A and CCC B may be kept under treatment of required number of medical officers but supervised by a competent Physician. They should work under the guidance of specialists at the DCHC and DCH. Timely and healthy communication will save many lives.

[13] Critical Care Specialists, anesthetists, infectious disease specialists and pulmonologists are the backbone of every DCHC and DCH. Their dedication and efforts will make a difference between life and death.

[14] Treatment protocol, evolved by the local specialists based on the guidelines from the center and ICMR, local conditions and available resources and past experiences must be followed in all facilities. They should be oriented and sent to each unit.

[15] A representative of Government must be available at

each center for coordination. He should be in constant touch with the Control Center. Strict discharge policy must be created and followed to avoid unnecessary stay for wrong reasons.

[16] All the Government hospitals with more than 50 beds and ICU need to be immediately converted into DCHC and DCH. The Government must implement this conversion immediately. They may keep 20% of their beds for emergency work. If any of the 80% beds remain unutilized for the COVID patients, they may use them for routine cases with the permission of the Control Center and the safety of non-COVID patients should not be compromised.

[17] The present Head of each of these Government hospitals will be responsible for his hospital turned into COVID facility. It will be his duty to ensure smooth functioning and liaison with the control centre.

[18] Excess staff from one hospital may be transferred to the other required by the Control Centre.

[19] The Government should provide high quality N95 mask, sanitizer, sterile and non sterile gloves, PPE kits, ventury and high flow oxygen mask, ventilator tubings, filters and similar items to all the COVID facilities at its own expense.

[20] All the healthcare workers must be tested at regular intervals as deemed fit by the experts. The society is safe only if they are safe.

61 **THE INTERACTION WITH PUBLIC:**

[1] One COVID Control Room should be set up in each of the wards across the city and should be kept functional for 24 hours.

[2] One Command Room should be set up for the city link with all the control rooms of COVID facility . We are saying so because no patient should be made to run from one hospital to the other seeking admission. The Command Room should be able to guide him. In other words, the Command Room should explain in which hospital, he can get himself admitted.

62 **WHETHER PRIVATE PATHOLOGY LABORATORIES SHOULD BE PERMITTED TO CONDUCT THE COVID-19 TEST AND THE POLICY RELATING TO DISCHARGE:**

**Discharge policy:**

- According to the ICMR, the asymptomatic persons are also carriers of the covid-19 virus and are potential spreaders
- During the press briefings on the covid-19, it has been categorically stated by the then Municipal Commissioner (AMC) that all the patients who have tested positive for covid-19, 80% are asymptomatic
- As per the latest ICMR Guidelines, the patients with mild or moderate or no symptoms for 3 or more days, should be discharged without being tested with a prescription for home

isolation. In this regard, the following is submitted:-

- a. The ICMR Guideline is absolutely contrary to its earlier Guidelines;
- b. There is no scientific data or research or reasoning explained for the sudden change in the guidelines.
- c. Assuming (without admitting) that the wisdom of ICMR cannot be doubted, even in such circumstance, the following precautions would be required:-
  - i. Testing prior to discharge must be mandatory
  - ii. In the event a covid positive patient is permitted to be discharged, then in such circumstances the place of residence of such person must have a board specifying the isolation period and the such person must be marked on the wrist, in indelible ink, about the last day of isolation
  - iii. The AMC, during the initial period of the lock-down had adopted this practice for all those people returning to India from abroad, and officers from the AMC visited such persons on a daily basis to keep a check on the person so quarantined.

→ Testing:

→ In its Action Taken Report, the Respondent Authorities have inter alia stated that

- a. There are a total of 12 Private Laboratories permitted to conduct the RT-PCR test for Covid patients

- i. Out of these, about 5 Private Laboratories are in Ahmedabad
  - ii. The Supratech Micropathology Laboratory, as stated by the Learned Advocate General, has been blacklisted
- b. There are a total 19 Government Laboratories which are conducting the RT-PCR test for the Covid patients.
- Further, it has been stated that the respondent authorities are not permitting the private laboratories (even the ones which have been permitted) to conduct RT-PCR tests.
- The aforesaid gives rise to the following issues:
- a. Whether the 12 private laboratories and 19 Govt. laboratories are sufficient and good enough in the entire State to conduct the covid test, when the number of cases are constantly rising?
  - b. Whether the private laboratories very much able to comply with the requirements prescribed by the ICMR should not be granted the permission to conduct the covid tests?
  - c. Whether even in case of the laboratories which have been approved by the ICMR and permitted to conduct the tests, the respondent authorities can direct that the covid tests be conducted only at the Govt hospitals, more particularly, when the public health system is overwhelmed?
  - d. In this an action to artificially control the data qua the number of cases in the State of Gujarat?
- The following has been brought to our notice:

(i) There is no dearth of testing kits.

(ii) For every test, the prior approval from the respondent State authorities.

(iii) The doctors are unable to test, even in instances where can see that symptomatically the patient appears to have contracted the infection.

(iv) Many times, the patients who need to undergo other treatment or surgeries, the doctors are insisting for a covid test to rule out covid, so as to avoid any post treatment complexities. Even in such circumstances, the tests are not being permitted to be carried out.

(v) Eventually, it is the patient who suffers

(1) For a covid patient to wait for 3-5 days, sometimes would prove fatal.

(2) For non-covid patient requiring other medical treatments also it leads to inconvenience and sometimes may lead to a lot of problems.

→ It is further pointed out that:

i. The RT-PCR test for covid needs to be approved by National Accreditation Board for Laboratories (NABL). Therefore, only those laboratories which have a certification from the NABL and which have the necessary equipments and machines would possess the wherewithal to conduct these tests.

ii. It would be very difficult to identify, at this stage, the

laboratories which would have the NABL Accreditation and which possess the requisite infrastructure.

- iii. It was therefore suggested by both of the aforesaid doctors that, the ICMR has a prescribed list of requirements which need to be fulfilled by a Laboratory to obtain permission to conduct RT-PCR tests. Any Laboratory which fulfills the aforesaid criteria and which can obtain a NABL Accreditation, must be permitted to conduct these tests.
- iv. The process of approval for conducting the tests must be done away with

→ In such circumstances, the following is further suggested:

- i. All laboratories able to fulfill the prescribed criteria qua the infrastructure must be granted the permission and must be permitted to conduct the RT-PCR tests
- ii. The rates for testing by private laboratories must have a ceiling cap, which in the present case is Rs. 4,500/-.
- iii. Everyone must be permitted to have a covid test done. However, there must be a specific mention of the following categories of persons for whom the covid test must be mandatory
  1. Those persons who have been hospitalized for covid and who want to have a test done post discharge from the hospital;
  2. Family members of those persons who have been tested covid positive or who have been

hospitalized or who have returned after hospitalization or who have died on account of covid

3. Those persons who have a written prescription issued by a doctor.

→ The argument that 'more number of tests which lead to 70% of the population testing positive for covid, thereby leading to fear psychosis' should not be a ground to refuse or restrict the testing. The Respondent Authorities may consider the following:-

- a. Wide publicity must be given by the State in by way of newspaper advertisements declaring that,
  - i. Merely because someone has tested positive, is no reason to panic
  - ii. Home isolation must be adhered to
  - iii. It is only when the symptoms develop (a list of the symptoms may be provided) that a person must approach a Hospital
  - iv. Asymptomatic patients can be cured through home isolation, and other house-hold remedies like steam inhalation, continuous sipping of warm water, consumption of 'kaadhaa', vitamin c, etc.
- b. The Respondent Authorities may keep a tab through the testing centres, of all individuals who have tested positive and may enforce isolation at home (as far as possible) or at a quarantine facility, and only in case of symptoms may be considered for being admission into Hospital.

- The aforesaid will to a large extent reduce the;
- a. Strain on the public health care system
  - b. Save public money which can be utilized for the treatment and testing of the under-privileged.
- It is also pertinent to refer to and rely upon a recent decision of the Telangana High Court, delivered on **21.05.2020** in the case of **Ganta Jai Kumar v. State of Telangana and ors.** The relevant extract of the judgement is as under:-

*“...It is the basic principle of administrative law that every action of the State which affects the rights of citizens must be supported by reasons so that a Court, can, while judicially reviewing it, know that there is application of mind to the issue by the authority concerned.*

...

*the freedom of the citizen of the State to get tested in a laboratory of his choice or get treated in a private hospital of his choice is curtailed by the State without support of any “law”, much less a reasonable, fair and just law. Its action is thus patently arbitrary and unreasonable and violates Art.21 of the Constitution of India and is unsustainable...*

*... that does not mean that the (Government) can, under the guise of taking steps to prevent the spread of the Pandemic, restrict the liberty and freedom of a citizen to choose his own doctor and hospital and force him to take a test for COVID-19 infection or treatment from Government sources, if found to be infected with the said virus.*

...

*After easing of lock down at some point of time, it is widely expected that infections would increase...The State of Telangana has a population of about 3.5 Crores, and the few Government testing centers/ few Government designated hospitals, cannot reasonably be expected to deal with the possible huge surge in infections.*

...

*the State, by allowing people who can afford the private lab testing and treatment/isolation services can preserve its limited facilities for the poorest of the poor by giving them free of cost testing and treatment.*

...

*The Covid-19 pandemic has exposed the poor medical infrastructure in the States where there are too few Hospitals/Primary Health centers, too few Doctors and nurses in Government sector, lack of medicines, and general poor quality medical infrastructure with honourable exceptions... In this scenario to cast aspersions on all Private Sector hospitals/ private testing laboratories, may not be proper, ironically when respondent No.s 1-4 permit the poor to go some of such private corporate hospitals for treatment for other diseases under the "Arogyasri" scheme.*

...

*This fear is baseless because even in private sector laboratories or hospitals, the doctors, nurses and paramedical staff would take adequate care to protect their own lives and others and take steps to stop the spread of infection.*

...

*Just as an infected person cannot hide his infection because he may die and also put others at risk, the respondents cannot also hide the COVID-19 infected/dead persons' statistics as early diagnosis and isolation/quarantine would prevent the spread of infection to others.*

...

*If private laboratories approved by ICMR can test such individuals if they so desire and are willing to pay for it, the State cannot object to it.*

...

*limiting the testing centers arbitrarily jeopardizes the health of such serious non COVID patients as well and exponentially increases the risks of spread of the disease in COVID positive cases that remain undetected for prolonged periods. It is imperative to reduce the burden on the health care system and ensure that COVID-19 cases get detected and treated at a faster rate."*

● **RESILIENT LEADERSHIP AND EMOTIONAL INTELLIGENCE:**

63 As we follow the news on COVID-19, there is an old saying we are reminded of - "Crisis does not build character, it reveals it". We salute and applaud the work done by our frontline workers which include the doctors, nurses and other healthcare staff who are fearlessly fighting the virus inside the hospitals. We also extend our gratitude towards our police officers who have done a commendable job standing in the heat all day, making sure the rules of the lockdowns are adhered to. The altruistic work done by individual volunteers, philanthropist's and good samaritans in this unprecedented calamity is also admirable. The administrative work put by Dr. Rajeev Gupta and his team, which is absolutely critical in fighting this war against COVID-19, is also praiseworthy. Dr. Gupta, you are doing a fabulous work, continue to do the good work you have undertaken till the mission is accomplished. The efforts put in by Mr. Mukesh Kumar, the Ahmedabad Municipal Commissioner and his team, are also praiseworthy. The efforts put in by Mr. Haider, Managing Director of the Gujarat State Road Transport Corporation (GSRTC) to ensure deployment of adequate number of buses for the transportation of migrants, etc is also praiseworthy.

Times like these are not only testing times for the people but also for the leaders that lead them. What we require most in times like these is resilient leadership. We urge the State Government leaders who play one of the most vital roles in guiding and shaping the future of not only today's generation, but also the coming generations to show dynamic leadership.

In times like these, the emotional intelligence is critical. It is essential that the leaders are able to do everything for their people. After

all, it is the people who put them where they are today. As leader of the masses, our State Government must express empathy and compassion for the human side of the upheaval. The COVID-19 crisis is a fundamentally human crisis and hence, human life must be prioritized over everything else. It is essential that the leaders realise that it is only them, who hold a position of authority and have built a place of trust in the hearts of the people. And hence, it is only them who need to come forward and adequately deal with the complex anxieties of people and provide them with a sense of physiological security. Using emotional intelligence strategically, we can skillfully prepare our people for the worse scenarios without having them lose heart. Understanding the unique socio-cultural dynamics in our cities and planning with that understanding can further a sense of security in the most downtrodden and neglected communities. In this mentally disturbing time of isolation and social distancing, it is the encouraging and motivating messages of their leaders that can keep morale high behind closed doors.

This is undoubtedly a challenging and novel situation for the State leaders. Along with being emotionally intelligent, learning intelligence is equally important for the leaders. To adequately fight this pandemic in our State, the leaders will need to cut through the noise to identify and address the most critical issues at each point. This is not an easy task, however, it can be done smoothly, by actively inviting and objectively evaluating information and ideas. For the leaders to make well informed decisions, it is important that they learn from and leverage other's thinking and experiences. In simple words, having a diverse and dynamic team to make important decisions can greatly benefit our fight against COVID-19.

● **THREATS BEING ADMINISTERED TO BOYCOTT WORK RELATED TO PANDEMIC BY THE EMPLOYEES OF THE DIFFERENT DEPARTMENT:**

64 We were disturbed to read a news item published by the “Times of India” dated 18<sup>th</sup> May 2020 as regards the threats administered by the Revenue staff to boycott the work related to the migrant workers. The news item reads thus:

***“Revenue staff to boycott work related to migrant workers”***

*Even as a deputy mamlatdar posted in Ahmedabad succumbed to Covid-19 on Sunday, employees of the state revenue department have decided to boycott work related to return of migrant workers from Monday.*

*“Work related to sending back migrant workers to their respective states is not the primary task of revenue department employees. Yet, only revenue department employees have been engaged in this task round the clock. One employee comes into direct contact with at least 250 migrant workers wanting to leave for their respective states. We will not take part in this task from Monday,” said Viram Desai, president, Mehsuli Karmachari Mahamandal, an umbrella body of around 8,000 revenue department workers in the state.*

*Desai said that the association had written to the state government, asking it to ensure the safety of revenue department employees who have been working around the clock. “We have not received any response from the state government yet,” he said.*

*Over 20 lakh migrant workers across the state have registered*

*themselves to return their respective states. Desai said that whether in cities or rural areas, it is the revenue department staff that is at the forefront of various activities related to movement of migrant workers. “We will continue to do tasks that are meant for employees of the revenue department. Transporting migrant workers is not the task of employees of the revenue department,” Desai said.”*

65 We fail to understand how the Government employees can decline to undertake any work related to COVID-19 pandemic. How can they say so in this hour of crisis. How can the Revenue staff or staff of any other department say that they would only do the work of their respective departments and would not undertake any work related to the migrant workers, etc. This is an hour of crisis. Huge manpower is required to combat with the situation. In such circumstances, it is always open for the state Government to take the services of the employees of other departments and no employee of any department can decline to do the work assigned to him related to the COVID-19 pandemic. If any one declines the same would constitute misconduct. The employees can also be proceeded departmentally. The State Government shall deal with such situation sternly.

66 “The Times of India”, today i.e. 22<sup>nd</sup> May 2020, has reported that the interns at the Civil Hospital, Ahmedabad have threatened to boycott the COVID-19 duty. This was brought to the notice of Mr. Trivedi, the learned Advocate General and also to Ms. Manisha Lavkumar Shah, the learned Government Pleader. Both the learned counsel promptly responded and showed to it that the issue is resolved. It is brought to our notice that the issue, in fact, has been resolved by deploying more interns so as to distribute the workload as well as by resolving the certain personal issues. At this stage, we would like to observe that

everyone is tense, anxious and fearful. We may only say that irrespective of the department, everyone should extend its helping hand. That is the call of duty and as on date. It is not just the problem of interns. Between the doctors and nursing homes too, this is the problem. At times, the doctors in the hospitals get themselves engaged in the unnecessary controversy.

**In such circumstances referred to above, we direct the State Government to ensure that all the private clinics / hospitals / nursing homes, which have been closed by their owners / management past two months, are immediately opened up so as to make the supplement health facilities available to the non-CORONA patients at large. This action would substantially reduce the co-morbid CORONA death. The State Government shall proceed in this direction at the earliest in accordance with law.**

67 **CHARGES LEVIED FROM THE MIGRANT WORKERS TRAVELLING TO THEIR NATIVE STATES:**

The report filed today and taken on record reflects that the travel charges levied for the transportation of the migrant workers, by the Railway authorities is borne by a few host States, NGOs, employers, voluntary associations. This is not done. **We direct the Railway authorities to waive of one way charges of these migrant labourers or in the alternative, for the State Government to bear such charges.**

We may only observe that the work relating to the migrant workers should continue with all its vigour. The State Government shall ensure that the migrant workers do not have to face further difficulties for the purpose of travelling to their native. The work in this regard shall continue in the right direction.

68 **NOTE OF CAUTION:**

The Commissioner of the Ahmedabad Municipal Corporation should keep in mind that the monsoon is fast approaching. According to the Meteorological Department, the monsoon is likely to set in Gujarat by 21<sup>st</sup> June 2020. In such circumstances, the Corporation should not ignore or fail to undertake the pre-monsoon measures very much necessary so that the people at large may not have to suffer on account of other problems like water logging, Dengue, Malaria, etc.

69 Steps to be taken to ease the difficulties experienced by the people residing at Island villages and the tribal belt. In this regard, the learned Government Pleader has assured that adequate steps shall be taken and appropriate reliefs shall be provided to the people residing at the Island villages and also in the tribal belt. Adequate steps shall be taken in this direction at the earliest.

● **EXTENSION OF TEMPORARY BAIL:**

70 Extension of temporary bail of all the undertrial accused ordered to be released upon recommendations of the High Power Committee. The minutes of the meeting of the High Power Committee read as under:

- 1. The present meeting of the High Power Committee is convened in connection with the requests made by one of the Committee members, Mr. K L N Rao, ADG (Prison). Mr. K L N Rao, ADG (Prison) vide letters dated 5<sup>th</sup> May, 2020 and 13<sup>th</sup> May, 2020 has requested that in connection with the guidelines issued by the High Power Committee, till date 1198 inmates have been enlarged on temporary bail for the period of two months. He has stated that in some cases this period of two months is likely to over in a short while from now and in the left out cases it shall expire in coming days of June, 2020 and July, 2020. He has further stated that on the completion of two months period, inmates are supposed to surrender themselves before the jail authority for readmission in jail and as number of inmates are to be admitted in jail again, the transmission of COVID 19*

to number of other inmates can not be ruled out and it is the prime responsibility of jail authority to protect the health of inmates. Mr. K L N Rao in his capacity as ADG (Prison) and being one of the members of the High Power Committee has requested the High Power Committee to extend the period of temporary bail for further period of 30 days for all those inmates who have already been enlarged on temporary bail by the competent criminal courts.

2. In this connection the meeting of the High Power Committee was convened on 15<sup>th</sup> May, 2020 and same was adjourned for today so as to enable Ms. Sangeeta Singh, ACS, Home; Mr. K L N Rao, ADG (Prison) and Mr. Mitesh Amin, Public Prosecutor, High Court of Gujarat to deliberate, consult and take appropriate decision. In today's meeting Justice R M Chhaya, Judge High Court of Gujarat; Ms. Sangeeta Singh, ACS, Home; Mr. K L N Rao, ADG (Prison) and Mr. Mitesh Amin, Public Prosecutor, High Court of Gujarat were present.
3. After the indepth deliberation the High Power Committee is of the view that the panic of coronavirus infection is grappling the world day by day and has left the fellow citizens in imbroglio. The High Power Committee is also of the view that it may not be possible to predict definite date for resumption of normalcy in all the walks of the life and if, inmates who have already been enlarged on temporary bail have been allowed to surrender the transmission of COVID 19 to number of other inmates can not be ruled out.
4. In the aforesaid premises, the High Power Committee resolves that, those inmates who have already been enlarged on temporary bail for the period of two months by the competent criminal courts (based on the guidelines issued by the High Power Committee dated 28<sup>th</sup> March, 2020), the term of temporary bail of such inmates needs to be extended for a further period of 30 days so that further transmission of COVID 19 in jails can be restricted. The High Power Committee further resolves that the extended period of temporary bail of 30 days shall start running from the day on which the tenure of temporary bail of two months gets over.
5. The High Power Committee is of the view that in the present scenario, it may not be feasible for an accused who is already released on temporary bail to move individual bail application before the competent criminal court for extension of temporary bail for the further period of 30 days.
6. The High Power Committee is also of the view that if individual bail applications for extension of period of temporary bail for further period of 30 days are allowed to be preferred before the competent criminal courts, the chances of further transmission of COVID 19 amongst judicial officers, lawyers, court staff and jail staff can not be ruled out. Therefore, in the humble view of the High Power Committee the similar kind of directions which have been issued by the Division Bench of the Hon'ble Delhi High Court in the case of Court on its Own Motion v/s.

*Government of NCT of Delhi, W.P.(C) 3080/2020, dated 9<sup>th</sup> May, 2020, whereby the period of interim bails has been extended for the period of 30 days, may passed by the Hon'ble Gujarat High Court in the pending writ petition being Writ Petition (PIL) No.42 of 2020 or in any other writ petition.*

7. *A conspectus of the above deliberation leads the High Power Committee to requests Mr. K L N Roa, ADG (Prison) to address a request letter to Registrar General, High Court Gujarat to circulate a note before Hon'ble the Chief Justice, High Court of Gujarat so that issue of extension of period of temporary bail for further period of 30 days can be placed before the Hon'ble Gujarat High Court for passing the appropriate order in this connection. The High Power Committee also requests Mr. Mitesh Amin, Public Prosecutor, High Court of Gujarat to work in tandem with Mr. K L N Rao ADG (Prison) so that the needful be done at the earliest.*

*Date:15/05/2020*

*Justice R M Chhaya,  
Judge High Court of Gujarat.*

*Ms. Sangeeta Singh,  
ACS, Home.*

*Mr. K L N Rao,  
ADG (Prison)."*

71 We find reference of the Delhi High Court of the order passed by the Delhi High Court dated 9<sup>th</sup> May 2020 in the above referred minutes of the High Power Committee. The order passed by the Delhi High Court dated 9<sup>th</sup> May 2020 reads as under:

*The present matter has been taken up for hearing by way of Video Conferencing on account of lockdown due to COVID-19.*

*This Suo-Moto Writ Petition has been taken up pursuant to a note dated 07.05.2020 of Registrar General, which was put up before Hon'ble the Chief Justice on 08.05.2020 and as directed, the same has been listed before this Division Bench today.*

*We have perused the file and have heard Mr. Rahul Mehra, Ld. Standing Counsel (Criminal) for Government of NCT of Delhi and Mr. Sandeep Goel, Director General (Prisons).*

*It has been noticed that for effective implementation of the directions issued by Hon'ble Supreme Court of India in Suo Moto Petition (Civil) No.1/2020-In Re: Contagion of COVID-19 Virus in Prisons vide its orders dated 23.03.2020 and 13.04.2020, a High Power Committee (HPC) was constituted by High Court of Delhi to decongest the Jails to prevent the spread of COVID-19 (Novel Corona Virus) and as per the recommendations of this Committee dated 28.03.2020, 07.04.2020 and 18.04.2020 and on the basis of orders in WP (C) No.2945/2020 titled as "Shobha Gupta & Ors. vs. Union of India & Ors.", 2177 Under Trial Prisoners (UTPs) were released on interim bail for a period of 45 days from the date of their respective release.*

*In its meeting dated 05.05.2020, the HPC noted that, the said period of 45 days in respect of some UTPs is going to expire on 09.05.2020 and for others it shall expire in coming days of May, 2020 and in the first week of June, 2020 but situation of the pandemic is still the same and the Central Government has already extended the Lock Down to 17.05.2020 and it may not be possible to predict definite date for resumption of normal functioning of Court system, so HPC was of the opinion that the interim bail so granted to 2177 UTPs by respective CMMs/MMs needs to be extended for a further period of 45 days. It was also noted by the Committee that in the present scenario, it may not be possible to move individual applications before concerned CMMs/MMs by Legal Aid Counsel, so the matter was placed before this Court for considering the extension of interim bails of 2177 UTPs on judicial side.*

*Mr. Sandeep Goel, Director General (Prisons) reiterated the same request for extension of interim bails granted to 2177 UTPs, in view of the prevailing pandemic situation.*

*Mr. Rahul Mehra, Ld. Standing Counsel (Criminal) for Government of NCT of Delhi has no objection to the extension of interim bails granted to 2177 UTPs by another period of 45 days from the date of respective expiry of their interim bail period.*

*Accordingly, it is ordered that the interim bails for a period of 45 days granted to 2177 UTPs, in view of the recommendations of HPC dated 28.03.2020, 07.04.2020 and 18.04.2020 and on the basis of orders in WP (C) No.2945/2020 titled as "Shobha Gupta & Ors. vs. Union of India & Ors." are hereby extended by another period of 45 days from the date of their respective expiry of interim bails on the same terms and conditions.*

*Director General (Prisons) shall ensure that this order is conveyed to all the 2177 UTPs by telephone, as well as, through all other available modes. Ld. Member Secretary, DSLSA shall coordinate with DG (Prisons) in this regard.*

*List on 22.06.2020.*

*A copy of this order be provided to learned counsel appearing on behalf of the parties as well as DG (Prisons) electronically today itself. A copy of this order be uploaded on the website of this Court forthwith.”*

72 We may also refer to two orders passed by the Supreme Court in this regard. It reads as under:

*“UPON hearing the counsel the Court made the following*

*O R D E R*

*SUO MOTU WRIT PETITION (CIVIL) NO.1/2020 By an order dated 16.03.2020, this Court had issued notice to all the States and Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID-19) with regard to Prisons and Remand Homes. Several States and UTs have filed their responses detailing measures and initiatives taken while dealing with Corona virus (COVID-19) in respect of persons detained in Prisons and Remand Homes.*

*States of Gujarat, Manipur, Meghalaya, Odisha and UTs of Dadar & Nagar Haveli, Daman & Diu, National Capital Territory of Delhi and Puducherry have not filed their responses. The State of Andhra Pradesh, Punjab, Tamil Nadu, Madhya Pradesh, Kerala, Himachal Pradesh and UT of Jammu & Kashmir, though have filed their responses with regard to the measures taken for prisons but have not submitted their response in relation to measures taken for juveniles in Remand Homes.*

*An overview of the responses reflects that considerable measures for protection of health and welfare of the prisoners to restrict the transmission of COVID-19 have been taken by the State Governments. These measures generally include creation of isolation wards, quarantine of new prisoners including prisoners of foreign nationality for a specific period, preliminary examination of prisoners for COVID-19, ensuring availability of medical assistance, entry points scanning of staff and other service providers, sanitisation and cleanliness exercise of prison campus and wards, supply of masks, barring or limiting of personal visit of visitors to prisoners, suspension of cultural and other group activities, awareness*

*and training with regard to stoppage of transmission of COVID-19 and court hearings through video conferencing among others. Many states have also initiated the process of installing digital thermometers for the purpose of examination of the prisoners, staff and visitors. Some of the States have taken similar measures for Remand Homes as well.*

*In other significant measures the States of Bihar, Karnataka, Maharashtra, Uttar Pradesh, Tripura, Jharkhand, Goa, Kerala, Telangana and UTs of Jammu & Kashmir and Chandigarh have advised the prison authorities that visitors may be allowed to interact with prisoners only through video calling or telephonic call.*

*States of Goa, Kerala, Telangana, Karnataka and Haryana have adopted screening of prisoners returning from parole to prevent possible transmission.*

*State of Uttar Pradesh has constituted 'COVID-19 Special Task Force' in all 71 prisons comprising of the Superintendent, the Jailor, Circle Officer/Deputy Jailor, Medical Officer and One member of para-medical staff to monitor the prevention of transmission of infection.*

*Importantly, Rajasthan and Jharkhand have taken measures to decongest the prison by transferring prisoners from congested prisons to other prisons where the number of prisoners is low. The State of Punjab has directed to identify places in and around the prison, which can be used as a temporary prison in case if there is an outbreak of the virus.*

*The State of Haryana has directed prisons to prepare blockwise time table relating to food and other services for prevention of overcrowding. Andhra Pradesh, Uttarakhand, Punjab and Maharashtra and UT of Ladakh have identified special groups of prisoners, which are more vulnerable such as old age prisoners with respiratory diseases etc. to infections for special focus and scrutiny.*

*Looking into the possible threat of transmission and fatal consequences, it is necessary that prisons must ensure maximum possible distancing among the prisoners including undertrials.*

*Taking into consideration the possibility of outside transmission, we direct that the physical presence of all the undertrial prisoners before the Courts must be stopped forthwith and recourse to video conferencing must be taken for all purposes.*

*Also, the transfer of prisoners from one prison to another for routine reasons must not be resorted except for decongestion to ensure social distancing and medical assistance to an ill prisoner.*

*Also, there should not be any delay in shifting sick person to a Nodal Medical Institution in case of any possibility of infection is seen.*

*We also direct that prison specific readiness and response plans must be developed in consultation with medical experts.*

*“Interim guidance on Scaling-up COVID-19 Outbreak in Readiness and Response Operations in camps and camp like settings” jointly developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO), published by Inter-Agency Standing Committee of United Nations on 17 March, 2020 may be taken into consideration for similar circumstances. A monitoring team must be set up at the state level to ensure that the directives issued with regard to prison and remand homes are being complied with scrupulously.*

*The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID – 19).*

*Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled.*

*We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (I) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.*

*It is made clear that we leave it open for the High Powered Committee to*

*determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.*

*The Undertrial Review Committee contemplated by this Court In re Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the concerned authority as per the said judgment.*

*The High Powered Committee shall take into account the directions contained in para no.11 in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.*

*Some States/Union Territories who have not filed responses may file the same within three weeks from today.*

*List the matter after three weeks.*

**WRIT PETITION (CIVIL) NOS.450/2020, 445/2020 AND 466/2020**

*Learned counsel appearing for the petitioners prays for withdrawal of the instant writ petitions with liberty to approach the concerned Ministries, Union of India, New Delhi.*

*Prayer is allowed.*

*Copies of these writ petitions shall be served upon Mr. Tushar Mehta, learned Solicitor General appearing for the Union of India and they shall be treated as representations. The concerned Ministries shall dispose of the representations in accordance with law.*

*It is made clear that if the concerned Ministries deem it appropriate, they may hear the petitioners.*

*The Writ Petitions are dismissed as withdrawn with the aforesaid liberty.”*

*“UPON hearing the counsel the Court made the following*

**O R D E R**

*We have heard Mr. Dushyant Dave, learned Amicus Curiae, Mr. K.K.Venugopal, learned Attorney General for India, Mr. Tushar Mehta, learned Solicitor General and learned counsel for other parties.*

**I.A. No.48260 of 2020**

*By order dated 23.03.2020, we directed the States/Union Territories to constitute High Powered Committees which could decide which prisoners may be released on interim bail or parole during the pandemic (COVID 19). The purpose was to prevent the overcrowding of prisons so that in case of an outbreak of coronavirus in the prisons, the spread of the disease is manageable. The operative part of our order reads as follows:*

*“We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (I) Chairman of the State Legal Services Committee, (ii) the Principal Secretary(Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.*

*It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.”*

*We are informed that the State of Bihar has not found it appropriate to release the prisoners for complete absence of any patient suffering from coronavirus within the prisons and also for the reason that the prisons are not overcrowded. Moreover, even in one case the murder of a prisoner who was “accused” of suffering from coronavirus has been reported.*

*We make it clear that we have not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.*

*We make it clear that the aforesaid order is intended to be implemented fully in letter and spirits.*

*The instant application stands disposed of.*

**I.A. No. 48231/2020, I.A. 48232 of 2020, I.A. No. 48233/2020, I.A. NO.48234 OF 2020, I.A. No. 48270/2020 AND I.A. No. 48217/2020**

*Applications for intervention are allowed.*

*As matter stands today, this Court has permitted the release of the prisoners after due recommendations from the High Powered Committee*

constituted by each State/Union Territory. Secondly, there is a direction to permit transportation of prisoners who have been released to make the release effective.

Learned Attorney General submits that pursuant to this Court's orders dated 23.03.2020 and 07.04.2020, certain prisoners have been released on the recommendation of the High Powered Committees except in the States of Delhi and Goa. Insofar as State of Bihar is concerned, no prisoner has been released as the State Government is of the opinion that their jails are not overcrowded and no prisoner is suffering from coronavirus (COVID- 19).

Mr. K.K. Venugopal, learned Attorney General for India vehemently submits that the release and transportation of the prisoners would itself result in transmission of coronavirus from prisons or detention centres to locations where the released prisoners have to reach.

We have considered the rival submissions and we are of the view that in the circumstances, it would be appropriate to issue the following directions:

(a) No prisoner shall be released if he/she has suffered from coronavirus disease in communicable form hereafter. For this purpose, appropriate tests will be carried out.

(b) If it is found that a prisoner who has been released is suffering from coronavirus after the release, necessary steps will be taken by the concerned authority by placing him/her in appropriate quarantine facility.

(c) Transportation shall be done in full compliance of the Rules and Norms of social distancing. For instance, no transportation shall be allowed in excess of half or one fourth capacity of the bus as may be found appropriate to ensure that the passengers who have been found to be free of coronavirus disease are at a distance from each other.

(d) The order dated 23.03.2020 shall be applicable to correctional homes, detention centres and protection homes.

The instant applications stand disposed of.

**I.A. No.48215/2020 AND I.A. No.48216/2020**

Application for intervention is allowed.

It is submitted that about 802 prisoners have been declared as foreigners under the provisions of the Foreigners Act, 1946.

Learned counsel for the applicants rely on the order dated 10.05.2019 in Writ Petition (Civil) No.1045 of 2018 titled as "Supreme Court Legal Services Committee v. Union of India & Others", this Court directed as follows:

"Insofar as the release of detenues who have served long period of detention in the detention centres awaiting their deportation is concerned,

*we are of the view that detenués who have completed more than three years may be released, subject to the following conditions:-*

*(a) Execution of bond with two sureties of Rs.1,00,000/- (Rupees one lakh only) each of Indian citizens;*

*(b) He or she specifies verifiable address of stay after release;*

*(c) Biometric of his/her iris (if possible) and all ten fingerprints and photos shall be captured and stored in a secured database before release from the detention centres.*

*He or she shall report once every week to the Police Station specified by the Foreigners Tribunal;*

*(d) He or she shall notify any change of his or her address to the specified Police Station on the same day, and*

*(e) A quarterly report to be submitted by the*

*Superintendent of Police (Border) to the Foreigners Tribunal regarding appearance of such released declared foreigner to concerned Police Station and in case of violation of condition, the DFN will be apprehended and produced before Foreigners Tribunal.”*

*The only prayer made by the learned counsel is that the period of three years be reduced to one year so that detenués who have completed more than two years may be released, subject to the same conditions laid down by this Court vide order dated 10.05.2019 in Writ Petition (Civil) No.1045 of 2018 except the requirement to furnish a bond in the sum of Rs.1,00,000/- (Rupees one lakh only).*

*Mr. Tushar Mehta, learned Solicitor General submitted that it would be hazardous to release such people since they would again mix with rest of the population and it would be difficult to trace them, in case the Government resorts to certain steps under the law.*

*We find that after the order dated 10.05.2019, no application has been made by any party for modification of the aforesaid order on any ground whatsoever.*

*It is important to be cognizant of the fact that the said order dated 10.05.2019 was passed when there was no danger of any pandemic like the present one.*

*Having regard to the present circumstances prevailing in the country and having regard to the fact that we have already permitted the release of prisoners and people under detention in general, and such detenués who have completed three years upon their declaration as foreigners, we see no reason why the period should not be reduced from three years to two years, that is to say, the prisoners or detenués who have been under detention for two years shall be entitled to be released on the same terms and conditions as those laid down in the aforesaid order dated 10.05.2019, except that they shall not be required to furnish a bond in the*

*sum of Rs.1,00,000/- (Rupees one lakh only). Instead they shall be required to furnish a bond in the sum of Rs.5,000/- (Rupees five thousand only) with two sureties of the like sum of Indian citizens. Rest of the conditions in the said order dated 10.05.2019 reproduced above shall apply.*

*Ordered accordingly.*

*The instant application for directions stands disposed of.*

***I.A. No.48261 OF 2020***

*None appears on behalf of the applicant.*

*We have perused the instant application for direction.*

*No orders need be passed.*

*The instant interlocutory application stand disposed of accordingly.”*

**73 In view of the aforesaid, we direct that all those accused who have been released on temporary bail upon recommendations of the High Power Committee shall continue to remain on bail for a further period of forty five days.**

74 Before we close this order, we would like to share a true life incident. We all know about the giant “TITANIC” that sank in the North Atlantic Ocean in the early morning hours of 15<sup>th</sup> April 1912, after striking an iceberg during her maiden voyage from the Southampton to New York city. When the “TITANIC” sank, there were three more ships in its periphery. It is said that Jack Philips and Harold Bride, the senior and junior wireless officers on the board the RMS Titanic, did not leave the Marconi Room of the ocean liner on the night of the sinking. They remained on board sending out distress signals to the three ships that were nearby.

75 Merely 11 kms away was “The Sampson”. The crew saw the white flares signalling danger and could have easily rushed to the Titanic's aid and saved hundreds of people, but because they were involved in the

illegal hunting of seals and were afraid of being caught, they sailed away in the opposite direction. The Sampson represents egocentric people. People who are so self absorbed that they are unable to see past their own gains and comforts. These are the people who choose to ignore the pain and suffering of the others and work only towards bettering their own lives. Slightly further away from the Titanic was the “SS Californian”. 22 kms away, the “Californian” is said to have been in a tight spot. It was surrounded by ice on all sides and manoeuvring the ship through the ice fields at night would have been challenging. As the weather became colder and colder that night, and skies became clearer, many of the crewmen saw the white flares fired up into the skies, a signal of distress from the Titanic. As the captain was informed in the middle of night he dismissed the urgency of the situation. He felt that the conditions were not favourable and decided that it would be best to take action in the morning. The crew was able to convince themselves that the situation is not that grave and help can wait until the time is 'right'. The “SS Californian is a metaphor for those individuals who say "I can't do anything". These are people who believe that their hands are tied because the time and situation isn't right. Farthest away from the sinking Titanic was “The Carpathia”. Almost 94 kms away, Captain Arthur Rostron heard the distress cries over the radio but was unsure what direction the cries were coming from. Not allowing hopelessness to take over, he prayed to God to guide him. He knew he was taking a chance when he ordered his ship to turn around and sail full steam in the opposite direction through the dangerous ice fields. That fateful night “Carpathia” was the first ship to respond to the distress of the Titanic. This nine year old ship took three and a half hours to reach the Titanic. She managed to sail at 31 kilometres per hour which was way beyond her quoted top speed. Determined to fight against all odds, that night the “Carpathia” managed to save 705 passengers from the freezing

to their deaths. Captain Arthur Ronson was honoured in England and the United States not only for his Valour and Gallantry but also for his unshaken determination to help those in danger. It is paramount that in these unprecedented times of chaos, uncertainty and extreme stress we come together as a community to help the most vulnerable. If we wait like the “Californian” for the “right time’ we will keep waiting all our lives. We can find hundreds and thousands of reasons and excuses to run away from our responsibilities to help our neighbours. But whoever can find it in their hearts to rise above all these frivolous excuses will always be remembered fondly in history. The tragic saga of the Titanic teaches us that our fate is uncertain, governed by the powerful forces of nature. The crashing of the Titanic was inevitable, but what was avoidable was the loss of the human lives. It is believed that if the other two ships had responded in time, all people on board the Titanic could have been saved. We face a similar tragedy today, in the form of a global pandemic caused by a contagious virus we barely have any power over. What we do have power over is ourselves.

76 We all should become the “Carpathia”.

77 We are grateful to Mr. Kamal B. Trivedi, the learned Advocate General, Ms. Manisha Lavkumar Shah, the learned Government Pleader, Mr. Mitesh Amin, the learned Public Prosecutor and Mr. Devang Vyas, the learned Assistant Solicitor General of India for extending their full cooperation in this Public Interest Litigation and for assisting us to achieve better results. We are also grateful to Mr. Anshin Desai, the learned senior counsel, Mr. Parth Contractor, the learned counsel and Mr. Amit Panchal, the learned counsel for very ably assisting us in this Public Interest Litigation, more particularly, on legal issues like the provisions of the Constitution of India, the special enactments and also

for their valuable suggestions. The assistance of all the above referred learned counsel will ultimately go a long long way in combating with the current situation.

78 We request the State Government to continue rendering their best possible help to the migrants, poor and needy, and more particularly, small children. The State Government should concentrate more to ensure that people do not go hungry. In our earlier order, we have observed that the State Government should now start taking help of trustworthy NGOs, volunteers and charitable institutions. The State Government has still to do lot of work and we hope and trust that as each day passes by, the State Government is able to rise to the occasion. We appreciate the efforts which have been put in by the State Government so far as transportation of the migrants to their respective native States is concerned. We are informed that there are still around four lac migrants in the State of Gujarat who are very eager and restless to reach their respective States. All efforts in this direction shall be put in by the State Government and try to see that the problems and difficulties faced by the migrants are taken care of.

**79 Post this matter for further hearing on 29<sup>th</sup> May 2020. We expect the State Government to file an exhaustive report with respect to all the directions and suggestions, as contained in this order. We expect the State Government to file the report one day in advance so that all the learned counsel are able to study the same.**

80 The Civil Application No.6 of 2020 as also the Civil Application No.8 of 2020 stand disposed of.

81 The Civil Application No.9 of 2020 filed by Mr. N. M. Kapadia,

the learned counsel for being joined as a party respondent is allowed. The Civil Application No.9 of 2020 stands disposed of.

82 The Civil Application No.10 of 2020 filed by Mr. Parth Contractor, the learned counsel for appropriate direction is also disposed of in view of the discussion on the issue of testing policy and the policy of discharge.

83 The Civil Application No.11 of 2020 filed by Mr. Parth Contractor, the learned counsel for being joined as a party respondent is allowed. The Civil Application No.11 of 2020 stands disposed of.

84 **Rest of the Civil Applications shall be adjourned to 29<sup>th</sup> May 2020.**

**(J. B. PARDIWALA, J)**

**(ILESH J. VORA, J)**

CHANDRESH