

sng

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
AND
ORDINARY ORIGINAL CIVIL JURISDICTION

APPELLATE SIDE MATTERS

PIL-CJ-LD-VC-21/2020

Jan Swasthya Abhiyan and Anr. .. Petitioners

Vs

State of Maharashtra and Ors. .. Respondents

–

Mr.Mihir Desai, Senior Advocate a/w Mr.Mihir Joshi a/w Ms.Aditi Saxena
for the Petitioners.

Mr.A.A.Kumbhakoni, Advocate General a/w Mr.P.P. Kakade, Government
Pleader a/w Ms.Nisha Mehra, AGP for the State.

Mr.A.Y.Sakhare, Senior Advocate a/w Ms.Madhuri More a/w Mr.Vinod
Mahadik a/w Mr.Rohan Mirpure for MCGM.

Mr.Anil C. Singh, Additional Solicitor General a/w Mr.Aditya Thakkar a/w
Mr.D.P.Singh for Respondent Nos.14 and 15 – UOI.

Reserved for judgment on – June 2, 2020

WITH

PIL-LD-VC-37 OF 2020
(ADHOC- NO.WP-LD-VC-37/2020)

Nilesh Tribhuvann .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

Mr. Nilesh Tribhuvan, Petitioner-in-person, present.
Mr. A. A. Kumbhakoni, Advocate General a/w Mr. P. P. Kakade, GP a/w
Ms. Nisha Mehra, AGP for State.
Mr. A.Y.Sakhare, Senior Adv. a/w Ms. Madhuri More a/w Mr. Vinod
Mahadik a/w Mr. Rohan Mirpure for MCGM.
Mr. Anil C. Singh, Additional Solicitor General a/w Mr. Aditya
Thakkar a/w Mr. D. P. Singh for respondent– UOI.

Reserved for judgment on – June 2, 2020

WITH

PIL-CJ-LD-VC-10-2020

Khalil Ahmad Hasanmiya Wasta .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

Mr. Rakesh R. Bhatkar for petitioner.
Mr. A. A. Kumbhakoni, Advocate General a/w Mr. P. P. Kakade, Govt.
Pleader a/w Mr. M. M. Pabale, AGP for State.

Reserved for judgment on – June 5, 2020

WITH
ORIGINAL SIDE MATTERS

LD-VC-JS-PL NO. 10 OF 2020

Mehrwan Farshed .. Petitioner
Vs.
Union of India & Ors. .. Respondents

Mr. Gaurav Srivastav a/w Ms. Priyanka Gharge i/b S. K. Srivastav and Co. for Petitioner.

Mr. Anil C. Singh, Additional Solicitor General a/w Mr Aditya Thakkar and Mr. D. P. Singh for Union of India -

Shri. A. A. Kumbhakoni, Advocate General with Ms. P. H. Kantharia,GP a/w Ms. Jyoti Chavan,AGP and Manish Upadhdye, AGP for Respondent-State

Shri. A. Y. Sakhare, Sr.Counsel a/w Madhuri More, Vinod Mahadik and Rohan Mirpurey Respondent-MCGM.

Mr. Amit Karkhanis a/w Adv. Aniket Mokashi i/b Kay Legal & Associates LLP for Respondent Nos. 9, 11, 13 & 14.

Reserved for judgment on – June 2, 2020

WITH

PIL-CJ-LD-VC- 6 OF 2020

AND

PIL-CJ-LD-VC-I.A. NO.2 OF 2020

Sarika Singh

.. Petitioner

Vs.

State of Maharashtra & Ors.

.. Respondents

Ms.Varshad Jagdale for the Petitioner

Shri. A. A. Kumbhakoni, Advocate General with Ms. P. H. Kantharia,GP a/w L. T. Satelkar, AGP and Manish Upadhdye, AGP for Respondent-State

Shri. A.Y. Sakhare, Senior Advocate a/w Madhuri More, Vinod Mahadik and Rohan Mirpurey Respondent-MCGM.

Reserved for judgment on - June 2, 2020

WITH
LD-VC-JS-PL-11-2020

Dayanand Stalin

.. Petitioner

Vs.

State of Maharashtra & Ors.

.. Respondents

Mr. Ankit Kulkarni on behalf of the Petitioner.

Mr. Anil C. Singh, Additional Solicitor General a/w Mr Aditya Thakkar and Mr. D. P. Singh for respndent-Union of India.

Mr. A.A.Kumbhkoni, Advocate General with Ms. Purnima Kantharia Govt. Pleader with Ms. Jyoti Chavan, AGP and Manish Upadhye, AGP for Respondent-State.

Shri. A. Y. Sakhare, Sr. Advocate a/w Madhuri More, and Rohan Mirpurey for Respondent-MCGM.

Reserved for judgment on – June 4, 2020

WITH
LD-VC-JS-PL-18-2020

Mutahhar Khan

.. Petitioner

Vs

Union of India & Ors.

.. Respondents

Mr. Sharan Jagtiani, Advocate a/w. Ms. Niyathi Kalra, Ms. Sonu Bhasi and Rujuta Patil i/b. Negandhi, Shah & Himayatullah, Advocates for the Petitioner.

Mr. Anil C. Singh, Additional Solicitor General a/w Mr Aditya Thakkar and Mr. D. P. Singh for Union of India.

Mr. A. A. Kumbhkoni, Advocate General with Ms. Purnima Kantharia Govt. Pleader with AGP Jyoti Chavan with AGP Manish Upadhye for Respondent-State.

Shri. A. Y. Sakhare, Sr.Cl a/w Madhuri More and Rohan Mirpurey for Respondent-MCGM.

Reserved for judgment on – June 4, 2020

WITH
PIL-CJ-LD-VC- 8 OF 2020

Youth Parivartan Organization

.. Petitioner

Vs.

Union of India & Anr.

.. Respondents

Mr. Harish Pandya a/w Dhurutiman Joshi, Aagam Doshi I/b Mukesh Gupta, Pradeep Jain and Sujit Sahoo for the Petitioner.

Mr. Anil C. Singh, Additional Solicitor General a/w Mr. Aditya Thakkar and Mr. Niranjana Shimpi and Mr. D. P. Singh for the Union of India.

Mr. A. A. Kumbhkoni, Advocate General with Ms. Purnima Kantharia Govt. Pleader with M.A.Sayed, AGP for Respondent-State.

Shri. A. Y. Sakhare, Sr.Cl a/w Madhuri More, and Rohan Mirpurey, for Respondent-MCGM.

Reserved for judgment on – June 4, 2020

CORAM: DIPANKAR DATTA, CJ. &
A.A.SAYED J.

DATE OF PRONOUNCING JUDGMENT: JUNE 12, 2020.

JUDGMENT : (PER CHIEF JUSTICE)**THE CORONA EFFECT**

1. The entire human race has been facing the worst crisis of this century, brought about by a tiny creature. It is a virus, which reportedly originated from unknown causes in Wuhan city in Hubei province of China. Called Corona Virus 2019 – better known in present times as COVID-19 – it has brought about a tearful end to thousands of people all over the world. Even the most developed of nations have not been spared by COVID-19.

2. The drastic consequences emerging from the assault of COVID-19 led the World Health Organisation (hereafter “the WHO”) to declare the spread of infection caused by COVID-19 as a pandemic on March 11, 2020.

3. COVID-19 also started wreaking havoc in India. To contain the spread of infection caused by COVID-19, the Government of India initiated several preventive steps by invoking an enactment of ancient vintage, i.e., the Epidemic Diseases Act, 1897 (hereafter “the ED Act”) and an enactment

of fairly recent origin, i.e. the Disaster Management Act, 2005 (hereafter “the DM Act”). Taking a cue from other countries where COVID-19 had already struck fatal blows, the most significant of such steps, which was also unprecedented as COVID-19, had been the announcement of a national lockdown for 21 days from March 24, 2020 restricting the movement of the entire population of India. Such lockdown has been extended from time to time in phases of 19, 14 and 14 days and is presently in force till the end of June 30, 2020 for containment zones, which the District Collectors/Municipal Commissioners have been authorised to identify. Series of regulations in the COVID-19 affected regions have been and are being enforced. The curbs that were imposed did initially result in containment of the pandemic but several other factors contributed to a surge, so much so that as on date India stands fourth in the list of ten most affected nations.

4. The Indian Council of Medical Research (hereafter “the ICMR”), the apex body in India for the formulation, coordination and promotion of biomedical research, quite naturally stepped into the field. It has issued several advisories/guidelines, as part of its strategy, for regulation

of activities to contain the spread of the pandemic and other related matters. Such advisories/guidelines have been of valuable assistance to tread the right path.

5. COVID-19, without doubt, poses a national challenge. It does not discriminate between a man and a woman, the old and the young, the rich and the poor, the privileged and the under-privileged. As the current statistics would reveal, senior citizens and persons with comorbidities form the most vulnerable class.

6. Despite the executive, at the Centre and the States, and the police having put their heart and soul to evolve policies to contain further spread of COVID-19 and the existing medical and para-medical staff with infra-structural support at their disposal tirelessly working 24/7 to attend to patients who have tested positive as well as patients who have been showing symptoms of being infected, apart from those suffering from other diseases, the alarm bells started ringing. The nation was not geared up to face this unprecedented challenge. Complaints of citizens regarding lack of adequate health and medi-care facilities poured in thick and fast. A medical solution

to cure the effects of COVID-19 infection not having seen the light of the day yet, the contagion spread far too wide thereby endangering the lives of innocent people.

7. The situation in Maharashtra in general and Mumbai in particular did not present a very different picture from the rest of the nation. Maharashtra has the dubious distinction of being perched at the top of the list of affected States, accounting for nearly 34% of the total active cases. The mortality rate is not below the national level. The projections for June and July are also quite scary. This has been the situation despite the lockdown and the introduction of social distancing norms being in place for nearly two and half months past and, more or less, strictly enforced till the lockdown restrictions were eased quite recently.

8. Regard being had to the outbreak of COVID-19, the Government of Maharashtra in its Public Health Department decided on implementation of all emergency measures to control the communicable disease in the State of Maharashtra. Accordingly, by a notification dated March 13, 2020, invocation of the powers under sections 2, 3 and 4 of the

ED Act, 1897 was notified. On the very next date, i.e., March 14, 2020, the Maharashtra COVID-19 Regulations 2020 came to be notified.

9. Keeping in mind that a large number of COVID-19 cases were detected and also that the death rate in COVID-19 positive patients in Mumbai and Mumbai Metropolitan Region were higher in the State than the national average, the Chief Secretary to the Government of Maharashtra, by an order dated April 13, 2020, conveyed the decision of the Government to constitute a Task Force of specialist doctors to suggest measures to minimize the death rate as well as for clinical management of COVID-19, particularly critically ill COVID-19 patients in the six specialist designated hospitals mentioned therein. The Task Force, under the Chairmanship of Dr.Sanjay Oka, would consist of a total of 8 specialists and they were required to work on the specified terms of reference and to submit its recommendations to the Chief Minister on urgent basis. By a subsequent order dated April 17, 2020, two other specialist doctors were included in the Task Force.

10. Despite the State initiating measures to contain the spread of COVID-19, the number of casualties have since been on the increase and more than 3000 have become dear to God by now while the number of infected persons is fast approaching the lakh mark.

REACTION OF THE CITIZENRY/NGOs

11. No wonder, individuals, social activists/organisations, advocates, etc., based in Maharashtra, wary of the situation and perceiving that the Centre and the States have been remiss in their pursuit to preserve the lives of people, swung into action by taking recourse to legal remedies. Invoking rule 4(e) of the Bombay High Court Public Interest Litigation Rules, 2010, they presented petitions and raised issues alleging mismanagement of COVID-19 cases by the State. Such issues, pivotal to management of COVID-19, covered a wide range.

PROCEEDINGS BEFORE THE COURT

12. In course of preliminary hearing, this Court considered it appropriate to club all the PIL petitions for analogous hearing. One other petition, though heard separately, was subsequently directed to be tagged with the other petitions.

13. Having regard to the crises that COVID-19 has triggered, reliefs claimed in the PIL petitions were not only multiple but diverse. All such petitions have been considered finally through the virtual mode one after the other in quick succession. We propose to dispose of these petitions by this common judgment and order.

14. At the outset, it needs to be recorded that during pendency of the PIL petitions the State and the Municipal Corporation of Greater Mumbai (hereafter “the MCGM”) took further initiatives to improve the existing facilities by spreading the net of health care wide and high. This resulted in manifold benefits accruing to the people in distress. It was not disputed at the Bar that many of the areas of concern identified by the petitioners in the PIL petitions had been addressed thereby.

15. While hearing the PIL petitions, the parties were duly informed that the focus ought to be to ensure additional facilities being put in place for the benefit of the distressed class and with this in view, the petitioners and other private parties were invited to offer suggestions to the State as well as the MCGM for their consideration. The responses of the State and the

MCGM to such suggestions have been placed on record by Mr. Sakhare, learned senior advocate for the MCGM through a tabular statement. Quite a few of the petitioners, either in person or through their respective learned advocates, upon perusal of such statement as well as the affidavits that were filed, expressed satisfaction with regard to the steps taken by the State and the MCGM to ameliorate the grievances raised and did not press all the prayers made in their PIL petitions.

THE GRIEVANCE

16. The points of grievance voiced by the petitioners, which survive at the stage of final hearing and have been urged, are noted hereunder:

- A. Failure and/or neglect to provide testing facilities for frontline/healthcare workers at non-COVID hospitals/wards;
- B. Absence of Personal Protective Equipments (hereafter “PPEs”) for healthcare workers treating non-COVID patients;
- C. Reluctance of the State to introduce capping of prices/charges for pathological tests;
- D. Omission to reserve beds in private hospitals for the weaker sections in terms of the provisions of the Bombay Public Trusts Act, 1950 (hereafter the “BPT Act”);

- E. Unhealthy conditions in quarantine centres, which carry with it the risk of spread of the contagion among people kept in isolation;
- F. Despite not being registered as a drug to be administered for cure of COVID-19, Hydroxychloroquine (hereafter “HCQ”) is being administered which contravenes the New Drugs and Clinical Trial Rules, 2019 (hereafter “the 2019 Rules”);
- G. There are no helplines in cities other than Mumbai and the State may direct the relevant municipal corporations to follow the MCGM model of helpline (1916);
- H. The MCGM Warroom Dashboard contains incomplete information regarding availability of beds for the weaker sections;
- I. Neglect to provide a grievance redressal cell;
- J. The helpline (1916) of the MCGM is not helpful because the callers are made to wait unnecessarily and even at the end, information that is made available is hardly of any use;
- K. The helpline (1916) ought to work 24/7 by making available more personnel to answer the calls;
- L. The data provided on the Warroom Dashboard is not accurate and, therefore, requires to be attended to with more seriousness;
- M. Efforts to establish proper communication between the MCGM and the State must be pursued for projection of real time availability of beds and other facilities;

- N. Anesthesia machines could be used as ventilators;
- O. A common platform for teleconsultation ought to be introduced;
- P. Primary health care services at the doorsteps of senior citizens and people with comorbidities ought to be provided;
- Q. The helpline (1916) of the MCGM is largely ineffective when it comes to the question of catering to the needs of non-COVID patients;
- R. Those working in private clinics and private medical practitioners ought to be provided with PPEs and gears;
- S. Private hospitals ought to be reined in so that the patients are not required to bear exorbitant charges for treatment and care;
- T. Lack of facilities for emergent care of non-COVID patients;
- U. Inadequate disclosure of requisite information in the Warroom Dashboard for helping non-COVID patients;
- V. Lack of sufficient ambulances to ferry patients;
- W. CISF/CRPF should be deployed for strict enforcement of lockdown norms and CCTV facilities installed for identification of the violators of the lockdown; and
- X. There is no testing laboratory for Ratnagiri district and the samples collected are sent to laboratories miles away.

PIL-CJ-LD-VC-21/2020

POINT - A

17.1. Mr.Desai, learned senior advocate for the petitioners has referred to the testing guidelines issued by the relevant authorities to contend that although the same provide for testing of symptomatic workers, there is no prohibition on testing of asymptomatic health workers as well at non-COVID hospitals/wards. Our attention has been drawn to a decision of the Nagpur Bench of this Court in LD-VC-PIL No.12/2020 (Citizen Forum for Equality Vs. State of Maharashtra & Others) where the need to test asymptomatic health workers has been emphasized by issuing necessary directions.

17.2. Mr.Desai also contended that having regard to the large number of infected people (nearly 41000), including doctors/nurses and other frontline workers, and regard being had to the fact that 17 policemen have passed away owing to infection, it is high time that the State should extend the benefit of testing to even asymptomatic workers.

17.3. Reacting to the aforesaid contention, Mr.Kumbhakoni, learned Advocate General submitted that the Bench decision in Citizen Forum (supra) having directed the ICMR to frame appropriate policy and prescribe the protocol for periodical testing of the frontline workers as per the RT-PCR method, any such policy framed by the ICMR shall be followed by the State. Mr.Kumbhakoni also invited our attention to sub-para (1) of paragraph 35 of the said decision to contend that testing of asymptomatic frontline workers working in the hospitals and containment zones, as declared by the relevant authorities, has been left to the discretion of such frontline workers and there is no mandatory direction for testing of all asymptomatic frontline workers. According to him, it is not necessary to test everyone but the aim should be to test those who actually need tests. However, he hastened to add that he would urge the Court to issue such direction for fine tuning the system so that on the one hand, testing kits are not wasted and on the other, maximum utilization of the kits is achieved through a process of pragmatic decision making.

17.4. Appearing for the MCGM, Mr.Sakhare, learned senior advocate contended that availability of materials being scarce, a rational approach has

to be adopted and the material resources should be used rationally. According to him, daily tests are being conducted in the range of 3500 to 4000 comprising of those who are required to be tested. It was further contended that the MCGM is conscious of the professional hazards of doctors/nurses/other medical staff as well para-medical staff and since extracting the best services from them is the need of the moment, the Court ought to leave the matter relating to testing of front line workers, whether symptomatic or asymptomatic, to the MCGM.

POINT – B

18.1. Referring to an order dated April 27, 2020 passed by the Hon'ble Supreme Court in its decision reported in 2020 SCC OnLine SC 403 (Jerryl Banait Vs. Union of India & Anr.) requiring the Union of India to examine the issue (of providing PPEs to all health workers who are working in non-COVID treatment areas and that COVID-19 infection from asymptomatic patients are reported to be on the rise in the country) and to make suggestions on the rational use of Personnel Protective Equipment Guidelines so that the PPEs are provided to all health workers working in Non-COVID treatment areas, Mr.Desai contended that the Ministry of Health and Family Welfare, Government of India (hereafter MoH&FW) has

updated guidelines on May 15, 2020. According to him, there should be strict compliance with such guidelines and whatever benefits are given to the frontline workers dealing with COVID-19 patients should be extended to the frontline workers dealing with non-COVID-19 patients.

18.2. Mr.Kumbhakoni, while dealing with this point, informed us of what PPEs generally include. According to him, *inter alia*, PPEs in the form of a body suits include a diaper, covered shoes, etc. which are required to be used continuously for 7 hours without there being any opening for the workers wearing it to even drink water. It is troublesome to wear a full PPE since the person wearing it sweats a lot and makes the PPE unmanageable; only those workers working in air-conditioned areas can tolerate it. It is, therefore, not pragmatic to distribute PPEs amongst all front line workers. Such PPEs must be rationally used for those in direct contact with COVID + patients and the idea of the petitioner that the PPE should be given to the workers in non-COVID treatment areas is inherently impossible to act upon. However, if the petitioners perceive PPEs to mean face masks and shields, gloves, goggles and sanitisation materials, the standard protocol laid down in the ICMR guidelines would be strictly followed.

18.3. Mr.Sakhare adopted the submissions of Mr.Kumbhakoni. He too stressed on the need for rational use of PPEs and submitted that the guidelines of the MoH&FW, already in force and to be issued in future, would be duly followed. According to him, no mandamus is necessary to be issued.

POINT - C

19.1. Mr.Desai submitted that initially on April 8, 2020, the Hon'ble Supreme Court had directed testing for COVID-19 by private laboratories free of charge but later on, by an order dated April 13, 2020 it was clarified that the authorities may extend the benefit of cost free testing to the beneficiaries of the Ayushyaman Bharat Scheme. At the same time, the Central Government was left free to take a call whether other weaker sections of the society could be extended the benefit of free testing. No decision has been taken by the Central Government in this behalf but nothing prevented the State Government from applying its mind and taking an independent decision. He urged that the State Government ought to be directed to consider extending the benefit of free testing to the poor and the members of the backward classes.

19.2. Opposing the prayer of Mr.Desai, Mr Kumbhakoni contended that although the State has not yet taken any decision to extend the benefit of free testing to the poor and/or the weaker sections of the society not covered by the Ayushyaman Bharat Scheme, the financial implications have to be examined and worked out upon ascertaining the class deserving such benefit and the exact number of persons comprising such class. This being a policy matter, it was submitted that the State ought to be left free to decide whether the benefit of free testing should be extended without any condition.

19.3. That apart, Mr.Kumbhakoni submitted that out of 79 laboratories which are presently functional in the State, 44 are Government laboratories and testing in such laboratories is available free of charges. According to him, any person not having the capacity to bear the charges for testing at private laboratories is free to avail the services on offer at the Government laboratories.

19.4. Based on the above, it was contended that no mandamus is required to be issued.

19.5. While adopting the submissions of Mr.Kumbhakoni, it was submitted by Mr.Sakhare that testing at the hospitals maintained by the MCGM is free, irrespective of the status and earning capacity of the person intending to undergo testing and that since the charges have to be borne for testing undertaken at private laboratories, it is open to a citizen to choose which facility he would avail.

19.6. It was further submitted by Mr.Sakhare that the MCGM paid Rs.3,500/- to private laboratories when such laboratories were asked to collect and test samples of high risk contacts in home quarantine.

19.7. Mr. Sakhare also submitted that whether or not the net of free testing should be spread is a matter of policy which should be left to the Central and the State Governments to decide bearing in mind the cost factor. Accordingly to him, having been faced with an unprecedented challenge, it took some time for the MCGM to come to terms but gradually, capacity building has been progressing in the right direction together with increase of testing facilities. The contention raised by the petitioner being without any merit, he submitted that the same did not warrant consideration.

POINT - D

20.1. Section 41 AA of the BPT Act was referred to by Mr.Desai. He contended that in terms thereof, it is the duty of the respondents to ensure that 10% of the beds at private/charitable hospitals are reserved for poor patients for their treatment free of charge and that an additional 10% of the beds are reserved for the weaker sections for treatment at subsidized rates. Although the State Government had issued an order dated April 30, 2020 for implementation of the scheme for reservation as above, a large number of people have been deprived of the benefits of treatment by such hospitals on the specious ground of non-availability of beds. A Committee, no doubt, has been set up under the aegis of the Charity Commissioner to look into the issue but there has to be concerted action to ensure that the statutory mandate is not observed in the breach and that the poor and indigent people can avail the benefits of reservation which were conceived in their interest.

20.2. Countering the argument of Mr.Desai, Mr.Kumbhakoni asserted that 20% beds in private/charitable hospitals have been directed to be kept reserved, as would be evident from the notification dated May 21, 2020 issued by the Principal Secretary to the Government of Maharashtra,

Department of Public Health. That apart, the Charity Commissioner has constituted a committee to oversee and monitor that the will of the people, expressed in the relevant statutory provision, is honoured.

20.3. Mr.Kumbhakoni also referred to the notification dated April 30, 2020 issued by the Principal Secretary to the Government of Maharashtra in the Public Health Department, whereby necessary directions were given to the charitable trusts under the provisions of the BPT Act as well as health care providers situated in Mumbai, Pune, Navi Mumbai, Panvel and Thane to ameliorate the plight of those persons in distress who look for medical treatment in private/charitable hospitals. According to Mr.Kumbhakoni, having regard to the steps taken by the State, no mandamus is required to be issued as prayed for by Mr.Desai.

20.4. Mr.Sakhare contended that the Task Force on COVID-19 set up by the Government of Maharashtra under the leadership of Dr.Sanjay Oka had recommended to the Chief Minister to reserve 80% of beds in hospitals for COVID-19 patients and in terms thereof the aforesaid notification dated May 21, 2020 came to be issued, whereby healthcare

providers/charitable hospitals are under an obligation to make such reservation. While efforts are on to persuade such reservation to be maintained, some of the healthcare providers/charitable hospitals have not reserved beds in compliance with the directive issued in this regard and the MCGM has been contemplating appropriate action against them to set things right.

POINT - E

21.1. Insofar as the quarantine centers are concerned, Mr.Desai complained that facilities as required to be provided in terms of the Central Government's guidelines are not made available thereat. Our attention was drawn to pages 34 to 36 of the PIL petition wherein pathetic conditions of quarantine centers have been pleaded. Mr.Desai urged that the conditions of the quarantine facilities should be improved not only to meet the necessary social distancing norms which have been prescribed but also to ensure that the quarantine facilities do not turn into a cesspool for the virus and contribute to the spread of the infection.

21.2. On behalf of the MCGM, Mr.Sakhare referred to the Central Government guidelines with respect to quarantine facilities as well as

amenities to be provided therein and submitted that no stone has been left unturned to abide by the terms thereof. He further submitted that essential services like food, water, beds with linen, electricity, WiFi, etc., have been provided together with keeping an eye on sanitation and cleanliness. In addition, doctors and nurses are provided 24/7 with essential medicines and basic life support equipments. Besides, the quarantine facilities are frequently visited by the officers of the MCGM to ensure that all necessary amenities are made available to the inmates.

21.3. Answering the contention of Mr.Desai, Mr.Sakhare argued that the statements made in the PIL petition are vague and general in nature without reference to the mismanagement or lack of facilities at any specific quarantine centre. He contended that if at all any specific complaint is received in respect of deficiencies in service at any quarantine centre, not only would appropriate steps be taken for curing the deficiencies but also action would be initiated against the erring official(s).

21.4. Mr.Sakhare finally submitted that in all, there are 183 institutional quarantine centres where patients are being lodged for care

without any discrimination. Daily exercises are being undertaken to upgrade and every effort is made to attend to all complaints. Even though the pandemic is unprecedented, the best of medical and health services are being provided on such large scale that the people residing within the municipal area may not have reason to complain about deficiencies in medical treatment and health care.

21.5. Mr.Kumbhakoni adopted the submissions of Mr.Sakhare and supplemented it by submitting that the public health department is open to approach by any citizen in case any noticeable deficiency in maintenance of services is brought to its notice.

POINT – F

22.1. Mr.Desai contended that unregulated use of HCQ and that too in violation of the 2019 Rules is posing great danger to those who have been administered such drug.

22.2. Referring to rules 2(2), 74, 75 and 91 to 95 of the 2019 Rules, it was Mr. Desai's contention that HCQ has not been registered for treatment of patients who have tested positive for COVID-19 and in the

absence of such registration, HCQ should not be used as a prophylactic. A newspaper report (The Hindu) was referred to for bringing to our notice that the WHO has suspended clinical trials of HCQ over safety concerns.

22.3. Referring to the guidelines of the Central Government dated ... (unspecified)... issued in supersession of the previous advisory dated March 23, 2020, it was submitted that even if HCQ is required to be administered in case of an emergency, there is a prohibition for administering it to pregnant and lactating women and children below 15 years of age.

22.4. Mr.Kumbhakoni while referring to a counter affidavit dated May 16, 2020 of the Director of Health Services contended that the guidelines issued by the ICMR on March 22, 2020 have been made applicable in the State of Maharashtra for doctors. He also submitted that the National Task Force for COVID-19 recommended the use of HCQ as prophylactic of SARS-CoV-2 infection for selected individuals. According to him, the ICMR being the expert in the field, the State would prefer to be guided by such guidelines in preference to the guidelines issued by the WHO, which is also yet to rule out HCQ as a prophylactic. Mr.Kumbhakoni

also referred to the guidelines of the State and submitted that the same do not permit administration of HCQ as a prophylactic to one and all and therefore, the said guidelines must be read along with the Central Government's guidelines.

22.5. Mr.Sakhare adopted the submissions of Mr.Kumbhakoni and urged that whether or not HCQ should be permitted to be administered must be left for a decision of the expert bodies.

23. Mr. Anil Singh, learned Additional Solicitor General, appearing for the Union of India contended that each of the Governments, whether it be the Central Government or a State Government, are making earnest efforts to minimise the misery of COVID-19 infected patients and their family members as well as patients suffering from diseases other than COVID-19. He referred to various guidelines that have been issued by the Central Government and the ICMR to ensure that all services continue to remain functional for rendering support to the needy. The doctors, nurses, medical and para-medical staff, police as well as Government officials have been putting in great efforts to fight against COVID-19 and their efforts

need to be appreciated instead of being overly critical. Referring to the decision of the Delhi High Court dated April 17, 2020 in W.P.(C) 2969/2020 (Yash Aggarwal vs. Union of India & ors.), it was submitted that interference by issuing mandamus may be avoided.

24. Replying to the submissions made by learned senior counsel for the respondents, Mr.Desai was fair in submitting that the purpose of the PIL petition is not to undermine the efforts that have been undertaken to combat COVID-19. It is out of a genuine concern that the PIL petition came to be presented based on newspaper reports, when the situation was extremely grim. According to him, although newspaper reports cannot be regarded as evidence by the Courts, the unprecedented situation of a lockdown resulted in the inability of the petitioners to obtain information at the ground level by conducting requisite investigation. It was submitted by him that having regard to the prevailing circumstances, it would not be completely unwise on the part of the Court to redress the grievances of the hapless by activating itself on the basis of newspaper reports particularly when its contents have not been seriously disputed. It has been his submission that the Hon'ble Supreme Court in number of cases has initiated

suo moto proceedings by taking cognizance of the incidents reported by the media and, therefore, the Court may not feel fettered to exercise its jurisdiction only because specific instances of deficiencies in service have not been laid before the Court by the petitioners based on their personal knowledge and instead by placing reliance on newspaper reports.

PIL-LD-VC-37 OF 2020

POINTS - G, H & I

25. The PIL petition is at the instance of a learned advocate enrolled with the State Bar Council. The petitioner's father is a sexagenarian doctor, based in Pune. As a gynecologist, he was engaged in practise for about 40 years. Upon the outbreak of COVID-19, the petitioner's father out of his innate desire to serve the nation joined as a COVID Warrior much against his family's wishes. While treating patients at Malegaon, the petitioner's father got infected and tested positive for COVID-19. The petitioner in the PIL petition has narrated in details the ordeal faced by him to have his father admitted to a hospital for treatment. Based on his personal experience, the petitioner perceived that the COVID situation in Maharashtra in general and Mumbai in particular has been quite serious. With a view to rescue patients, who might have been infected, from

suffering the same ordeal that the petitioner's father faced, this PIL petition was instituted seeking multiple reliefs [prayers (a) to (j)].

26. At the hearing, the petitioner (appearing in person) candidly submitted that most of the issues flagged by him in the PIL petition have been addressed by the State Government and the MCGM and that he is left with three points [noted in Points – G, H and I (supra)] which, according to him, deserve the consideration of this Court.

27. First, the petitioner contended that there should be a command to the State to direct the relevant municipal corporations to follow the MCGM model of providing helpline. According to him, such helpline would provide general guidance of the stepwise procedure to be followed if a person (a) begins to display COVID-19 symptoms; or (b) desires to undertake test for its detection after developing symptoms; or (c) desires to seek admission, after testing positive in any of the COVID-19 treatment facilities. Referring to the dashboard of the MCGM, to the extent available on its website, it was contended by the petitioner that (a) the capacity of the number of beds in each COVID-19 facility; (b) number of beds available

each day; and (c) per day cost/charges for such treatment, should be displayed with special emphasis on availability of facilities for the weaker section of the society having due regard to Section 41AA of the BPT Act. The final submission of the petitioner was in respect of absence of a Grievances Redressal Cell and he urged that such a cell may be directed to be provided by the State as well as the MCGM.

28. Reacting to the contention of the petitioner, Mr.Kumbhakoni submitted that there was no real reason to contest any of his suggestions if indeed the Court were of the opinion that the measures as suggested by the petitioner would serve public interest and accordingly, if the Court directs so, the State Government would comply with such direction. However, it was submitted that a State Control Room has been set up at Pune and anyone in need of services or having reason to complain about services made available may do so by calling on 020-26127394.

29. Appearing for the MCGM, Mr.Sakhare submitted that a senior officer belonging to the cadre of Indian Administrative Service has been appointed as a Nodal Officer to handle public grievances in accordance with

the memo dated March 31, 2020 issued from the Department of Administrative Reforms and Public Grievances, Government of India. That apart, there are dedicated staff who have been monitoring the activities related to making available of facilities for ailing patients. Further, the helpline (1916) is available which may be accessed for any sort of assistance. He also submitted that any suggestion to improve the system would be welcome and if found feasible for implementation, may be implemented.

30. It appears from the affidavit dated April 28, 2020 filed by the Additional Municipal Commissioner (Western Suburbs), MCGM that in accordance with the guidelines and notifications issued by the Central Government and the State Government that there are broadly three types of facilities set up for the suspected/confirmed COVID-19 patients, which are as under:-

- (a) Covid Care Centre-1 (CCC1) have been set up for Covid suspect and high risk contact, and Covid Care Centre-2 (CCC2) for mild symptomatic/asymptomatic Covid positive cases;
- (b) Dedicated COVID Health Centre (DCHC) have been set up for COVID positive cases that are clinically assigned as moderate;

- (c) Dedicated COVID Hospitals (DCH) have been set up for COVID positive cases that are clinically assigned as severe.

31. In this connection, Mr.Sakhare read out from a separate affidavit filed in these proceedings and brought to our notice the facilities that were available as on May 23, 2020 at the COVID Care Centres, Dedicated COVID Health Centres and the Dedicated COVID Hospitals.

The particulars are extracted hereunder:

	Facility Type	No of facilities	Total no of Beds
1.	CCC-1	273	24664
2.	CCC-2	43(45)	4767(5604)
3.	DCHC	18(19)	984(1249)
4.	DCH	36(39)	4756(5447)

The figures preceding the figures in the bracket indicate the position as of May 17, 2020 and those within brackets indicate the position as of May 23, 2020.

32. It is also averred in the affidavit of the Additional Municipal Commissioner as follows:-

- “7. I say that, the above referred Health Department team carries out house to house visits and necessary

sanitation measures through pest control department within the containment zones.

8. I say that, in view of the existing situation the powers under the Disaster Management Act, 2005 as well as the Epidemic Act, 1897 have been exercised by the competent authorities to issue necessary directions to effectively deal with various issues. I crave leave to refer to and rely upon such directions and notifications as and when required and necessary.
9. I say that, the Respondent Corporation has been wary of the fact that the citizens suffering from ailments other than COVID would require medical assistance and therefore, from time to time, various notifications, directions and guidelines have been issued to ensure that sufficient healthcare facilities are available across the city for the aid and benefit of all citizens. Some of the notifications issued are as under.
 - “(i) Direction issued by the Municipal Commissioner dated 31.03.2020 whereby all private hospitals / clinics / path labs and other medical practitioners were called upon to treat all non-COVID patients and keep their clinics /dispensaries/ other establishments open for the said purpose. Hereto annexed and marked as “Exhibit-B” is a copy of the direction of the Hon'ble Commissioner dated 31.3.2020.
 - (ii) The Health Department of the Respondent Corporation has issued guidelines to all Hospitals on 06.04.2020 to ensure that they continue to provide healthcare facilities for the benefit of the citizens. Hereto annexed and marked as

“Exhibit-C” is a copy of the guidelines dated 06.04.2020.

- (iii) The Health Department advisory dated 18.04.2020. It was observed that there were cases of hospital staff testing positive for COVID and the entire hospital was being closed down. In order to prevent such situation the guidelines were issued to ensure that hospitals do not close down completely and at the same time, take necessary measures to ensure safety of the other staff and patients as well. In order to ensure that no patient goes unattended, a specific direction has been given that in case any patient is unstable, irrespective of COVID status, such patient should be admitted in the hospital, stabilise and then transfer to CCC/DCHC/DCH as per status of the patient. Hereto annexed and marked as “Exhibit-D” is a copy of the advisory dated 18.04.2020.
- (iv) In furtherance of the ordinance enacted by the Central Government, to protect healthcare workers, the Health Department of the Respondent Corporation issued guidelines on 23.04.2020 specifically for the benefit of non-COVID patients. Hereto annexed and marked as “Exhibit-E” is a copy of the guidelines issued on 23.04.2020.
- (v) On 28.04.2020 order u/s 2 of Epidemic Disease Act 1897 and Regulations framed thereunder is issued by the Dy. Municipal Commissioner directing the Hospitals,

Nursing Home/Clinic/ Dialysis Centre within the Municipal Corporation of Greater Mumbai to start and continue COVID-19 and non COVID Medical and Paramedical essential services and intimate the health care staffs, Doctors, Nurses, Technicians and other support staff to resume duties in such Hospitals, Nursing Home/Clinic/Dialysis Centre immediately. Failure to start such services will be liable to be punishable under Epidemic Diseases Act and u/s 188 of the Indian Penal Code 1860. Hereto annexed and marked as "Exhibit-F" is a copy of the order dated 28.04.2020 for the record.

10. I say that, as can be seen above, in addition to taking steps to mobilize the healthcare facilities to combat the highly contagious COVID-19, the Respondent Corporation has also issued necessary guidelines and notifications to ensure that healthcare facilities are also made available to non-COVID patients. However, the private medical practitioners, nursing homes and other healthcare establishments also play a pivotal role in the present circumstances.
11. I say that, even the Central Government and State Government has made an appeal to all private medical practitioners to keep their clinics/dispensaries/ other medical establishments open and functional to treat patients suffering from ailments other than COVID. The same is contained in the State Government Notification by way of a public address which was telecasted on various news channels on 26.04.2020 whereby all medical practitioners have been urged to provide medical facilities and treatment to persons suffering from ailments other than COVID. Hereto

annexed and marked as “Exhibit-C” is a copy of the notification issued by the State Government (provision of passes and transport Help to private medical establishments.)

12. I say that, in addition to the above, the Disaster Management Cell of the Respondent Corporation has also set up the helpline number i.e. 1916 to assist the citizens obtain any information and assistance as may be required. This Call facility is upgraded into interactive voice record by selecting options. 1) Medical Officer, 2) Ambulance/Hearse, 3) Bed availability, 4) others. In order to build public awareness about the same wide publicity has been given by way of various advertisements through posters, banners, hoardings, twitter, facebook, print and electronic media have also been circulated.
13. I say that, therefore, any citizens in any difficulty or having any doubts inter alia including any queries regarding available medical facilities in the vicinity can contact the said helpline number and avail necessary information regarding nearest fever clinics, hospitals or COVID facilities which would be made available by the operators.
14. I say that, the Municipal Corporation of Greater Mumbai portal page dedicated to COVID is created which contains detailed information inter alia including available medical facilities and the Frequently Asked Questions by citizens and the answers thereof are also shared on the said portal.
15. I say that, under the aegis of the public health department there are 27 Maternity Homes and 158 dispensaries that are catering to the requirements of non-COVID patients & 28 dispensaries exclusively for

COVID suspects. There are around 1416 private nursing homes registered under the Bombay Nursing Homes Registration Act 1949 in the city which ought to be available for treating persons suffering from ailments other than COVID. I crave leave to refer to and rely upon the list of the said private nursing homes as and when required.

16. I say that, in addition to the above, the Municipal Corporation of Greater Mumbai is conducting screening camps at the periphery of containment zones regularly through 211 Health posts. In accordance with the guidelines of the Central Government, exclusive fever clinics have been set up by the Municipal Corporation of Greater Mumbai in 24 wards of the city of Mumbai for the citizens. 212 such special screening camps have been conducted with daily average of 10 camps till 27th April 2020 & 2974 COVID-19 test done.
17. I say that, in so far as ambulance facilities are concerned, there are dial 108 ambulances services running in the city of Mumbai out of which 60 ambulances are earmarked for Covid patients. Therefore, it is not the case that ambulance facilities are only mobilized for the purpose of COVID patients and such facilities are also made available to non-COVID patients. However, it is for the safety and benefit of the citizens that separate ambulances have been designated for COVID patients to prevent the spread of the virus.
18. I say that, in so far as treatment of the non-COVID patients is concerned, the guidelines issued by the Central Government mandate that Every hospital must create a triage area to screen all patients at entrance of hospital using Non contract temperature and oxygen saturation via pulse oxymeter.

19. I say that, the Petitioner has suggested setting up of Mobile Medical Van and providing various facilities in the same. 5 mobile medical vans are started by the Respondent Corporation with help of NGO. Mobile Medical Van facility is available at G south ward. By this facility the doctor heading mobile medical van can examine the patient for fever and cough and prescribe treatment accordingly. If any covid suspect found, the same will be referred to Hospital.
20. I say that, all the health workers, medical and paramedical staff of Health Posts, Dispensaries as well as the other hospital staff/workers are putting in all efforts to ensure that medical assistance is available to all the citizens whether for COVID or non-COVID ailments. The private medical practitioners and local general practitioners in every locality have to shoulder the responsibility to ensure that medical assistance is available to all the citizens that require it.
21. I say that on MCGM PORTAL information related to Covid-19 is made available and toll free number 1916 is available all citizens for Covid 19 related issue and emergencies and other informations.”
33. Mr. Sakhare, accordingly, submitted that making best use of the available resources, the MCGM has been going out of its way to attend to the needs of the patients.

LD-VC-JS-PIL-10 OF 2020

POINTS – J, K, L & M

34. Mr.Gaurav Shrivastav, learned advocate for the petitioner canvassed Points J to M (supra) while at the same time appreciating the efforts undertaken by the MCGM to reach out to the people in distress.

35. Appearing on behalf of the MCGM, Mr.Sakhare invited our attention to the response forming part of the tabular statement wherein it is stated as follows:

“Due to the dynamic nature of bed availability, the helpline “Dial **1916** Helpline” is activated for COVID/Non Covid medical assistance and has been in operation since 24/4/2020. It is upgraded to interactive voice call facility and has specific information regarding bed availability. There are 48 staff members alongwith about 12 doctors that have been attending calls in 3 shifts. On a daily basis around 4000 calls are handled efficiently by the team, till date around 69,407 calls have been received on the helpline.

The staff attending the calls is having the necessary information regarding bed availability and is able to give the necessary guidance to the patients in that regard.

Therefore, the said suggestion of the Petitioners is already in existence and functioning. However, this is a dynamic process and based on the issues faced during implementation and execution, additional features may be added keeping in mind the need and necessity of the situation.”

36. Insofar as the Warroom Dashboard devised by the MCGM is concerned, Mr.Sakhare submitted that every half an hour information is upgraded upon information being given by the hospitals to the Control Room. Our attention was drawn to the dashboard dated June 1, 2020 and it was submitted that the same with meticulous care provides all relevant information that could be of help and assistance to those in search of health and medicare.

37. Replying to a query of the Court as to whether the Warroom Dashboard could be devised in a manner to include information relevant for non-COVID patients as well as whether the version made available to us in its entirety can be uploaded on the MCGM's website for bringing it in the public domain, Mr.Sakhare expressed his inability to immediately react and sought for time to obtain instructions.

38. Insofar as Point M (supra) is concerned, Mr.Sakhare also submitted that there is no lack of proper co-ordination between the Health Department of the State Government and the MCGM and that the information made available on the Warroom Dashboard is more or less accurate.

39. The contents of the above referred affidavit of the Additional Municipal Commissioner was referred to for the purpose of projecting the manner in which the system has been functional day and night.

POINTS – N and O

40. On behalf of the respondent nos. 9, 11, 13 and 14 in the PIL petition, being institutions/associations of doctors and medical consultants, Mr. Mokashi, learned advocate expressed satisfaction with regard to the response of the State and the MCGM to fight COVID-19. He, however, expressed a sense of discontent with regard to the capacity of the ventilators that are available and accordingly, suggested Point N (supra) and further suggested the step as noted in Point O (supra). He also placed the suggestions of the respondent nos. 9, 11, 13 and 14 and submitted that consideration thereof by the MCGM and giving effect to it, given the fact that they come from experts in the medical field, would be beneficial for the public at large.

41. Mr.Sakhare submitted that the suggestions having come from the institutions/associations engaged with health and medical science need

to be considered at the appropriate level and at the appropriate time. He, however, submitted that since the suggestions had not been placed in the compilation of suggestions in terms of the order of this Court the immediate reaction of the MCGM thereto is not available on record but may be considered in due time. He concluded by submitting that no mandamus is called for at this point of time to implement such suggestions.

LD-VC-JS-PL NO.11 OF 2020

POINTS - P, Q & R

42. Appearing in support of this PIL Petition, Mr. Ankit Kulkarni, learned advocate for the petitioner submitted that the relief claimed by him is largely intended for the benefit of non-COVID patients.

43. Commencing his argument with regard to Point P (supra), Mr. Kulkarni referred to various studies that have been undertaken to comprehend the effects of COVID-19. It is revealed therefrom that senior citizens and patients with comorbidities are most susceptible to COVID-19 infection. Since advisories have been issued requiring senior citizens and patients with comorbidities to stay at home, the MCGM ought to have

introduced mobile clinics to cater to such patients at their doorsteps. Although it was conceded that the MCGM has introduced mobile clinics, Mr. Kulkarni contended that whatever is available presently is not sufficient to cater to the existing medical needs and also no mechanism is presently available to contact the mobile clinics in case of emergency. Mr.Kulkarni contended that providing of primary health care at the doorsteps of senior citizens and patients with comorbidities would serve a salutary purpose : the need to shift the vulnerable class to hospitals can be avoided by such method. Accordingly, he sought for a direction to the MCGM to provide at least one mobile clinic for each of the 24 administrative wards under it.

44. Moving on to develop his argument on Point Q (supra), Mr.Kulkarni referred to various conversations that the callers had with the informers taking the calls on the helpline (1916). It was sought to be shown to us that although the informers were courteous and explained the protocol that is required to be followed, the situation at the ground level belies the information provided with regard to non-COVID patients and that the system ought to be ramped up so that non-COVID patients are not left high and dry.

45. The final submission of Mr.Kulkarni was with regard to Point R (supra). According to him, there is no reason as to why PPEs and gears may not be provided.

46. While dealing with Point P (supra), Mr.Sakhare contended that it was not right to say that elderly people and those with comorbidities are not receiving the care and attention they deserve. According to him, apart from 187 municipal dispensaries, there are 211 health posts in Mumbai. Each health post is comprised of an Assistant Medical Officer, Public Health Nurses, Auxiliary Nurses, Co-ordinators and Community Health Volunteers. Such staff have been assigned duties in particular areas and they have been visiting every house to conduct survey and to ascertain whether any inmate requires medical assistance. More than 54 lakh houses have been visited and a population in excess of 2.18 lakh have been attended to by frequent visits. In addition thereto, 13 mobile medical vans have been deployed in 6 wards, each van having a Doctor, an Auxiliary Nurse and a Community Health Volunteer. Apart from these facilities available at the ward level, patients are being treated in 8 multi-speciality hospitals of the

MCGM as well as at 2 major Government hospitals. Navy Hospitals as well as Railway Hospitals will also be made available in the near future in case there is surge in the number of positive COVID-19 cases.

47. Mr.Sakhare further submitted that all the private doctors based in Mumbai have been asked to render services and the response has been phenomenal. More than 1200 doctors have volunteered to render services and if there is need for additional doctors, such issue will definitely be looked into.

48. According to Mr.Sakhare, the pleadings in the PIL petition are vague; however, the MCGM is open to suggestions and the MCGM would not be averse to any suggestion which is intended to benefit the public at large.

49. While advancing his arguments, Mr.Sakhare relied on a newspaper report to highlight that COVID-19 growth rate in Maharashtra had declined and fell below the national growth level for the first time on June 1, 2020. According to him, the data referred to in the newspaper

report regarding growth rate and the doubling time is sufficient to show that the system in place has been working, and working to show positive results after the initial period of gloom and uncertainty.

50. On point Q (supra), Mr.Sakhare submitted that the MCGM, on its part, had introduced the helpline (1916) for the benefit of the citizenry. It was receiving calls in excess of 4000 per day and some incidents, here and there, may not lead to any presumption that such helpline is not working. The helpline (1916) currently has 4 dial-in IVR options: 1 for Doctors; 2 for Ambulances; 3 for Emergency Beds and 4 for other queries related to COVID-19. The Court had suggested for providing Dial-5 to ensure quicker and better response for non-COVID patients. We record our appreciation for immediate acceptance of our suggestion by Mr.Sakhare who was heard to submit that the MCGM would, in accordance with the suggestion of the Court, take measures to include an additional dial-in option in its existing helpline (1916) for dissemination of information for non-COVID patients.

51. Insofar as the final point raised by the petitioner, Mr.Sakhare once again referred to the order of the Hon'ble Supreme Court in the matter

of Jerryl Banait (supra), as well as additional guidelines issued by the MoH&FW dated May 15, 2020 and submitted that such guidelines would be complied with, without fail.

52. Before concluding, Mr.Sakhare referred to the Warroom Dashboard dated June 3, 2020 to highlight the upgraded information that has been sought to be made available for the benefit of the general public.

53. Mr.Kumbhakoni submitted that the points of grievance raised by the petitioner had already been dealt with by Mr.Sakhare. He supplemented the submission by referring to the Government order whereby the Task Force was constituted for suggesting measures, as noted at an earlier part of this judgment, and contended that the recommendations made by the Task Force from time to time are being implemented which has resulted in gradual increase in the doubling rate as well as decrease in the mortality rate. Mr.Kumbhakoni assured the Court that having regard to the nature of challenge faced by the executive, any suggestion from any quarter would be forwarded to the Task Force for its consideration.

54. Referring to the audio clips which the petitioner had forwarded, Mr.Kumbhakoni submitted that he had personally taken care to hear the conversations recorded in such clips and was of the definite view of the tone and response of the informers being courteous and respectful. He did not forget to mention that Mr.Kulkarni had been nodding his head in agreement while hearing such submission.

55. In so far as providing of PPEs are concerned, Mr.Kumbhakoni reiterated that the Central Government guidelines would be implemented with an eye on rational use. In the light of the current situation when the supply falls short of the demand, exercise of discretion is required in making full use of available materials and even in case of doctors and other people interested in having PPEs, the same can be purchased from the vendors listed by the MCGM.

56. Mr.Anil Singh, in his response, contended that the guidelines dated May 15, 2020 issued in terms of the order dated April 27, 2020 of the Hon'ble Supreme Court are not under challenge in any of these PIL petitions and, therefore, no quarrel ought to be raised on the ground that the PPEs are not readily available.

57. In his reply, Mr.Kulkarni invited our attention to clause (h) of Section 24 of the DM Act and urged that the State Executive Committee may be directed to procure PPEs from any authority or person since it is not in dispute that there is a shortage of PPEs. He also appealed to us for direction on the MCGM to increase the number of mobile clinics.

58. Hearing such submission, Mr.Sakhare intervened and submitted that if any private individual/organization volunteers to offer their vans/vehicles for being used as ambulances to transport patients to the hospitals or to the test centers, the MCGM will accept such offer.

PIL-CJ-LD-VC-6 OF 2020
WITH
PIL-CJ-LD-VC-I.A.NO.2 OF 2020

POINT - S

59. By filing this PIL petition, the petitioner prayed for directions to the respondents (a) to control, regularize and to prevent the private hospitals and other medical practitioners from overcharging fees from patients for treatment of COVID-19; (b) to take prompt and such necessary steps to pass advisory and guidelines to make equal and fare (sic, fair)

treatment available to patients of COVID-19; and (c) to make COVID-19 treatment available for all public servants who are working during COVID-19 and are already covered under the “Aarogya Kutumb Yojana”.

60. This PIL petition refers to the ordeal faced by an Additional Sub-Inspector of Police. Initially, a hospital required a deposit of Rs.2 lakh in advance for admission of such officer but subsequently with the help of a colleague, the officer could secure admission on payment of Rs.20,000/-. Since all police personnel are supposed to be covered under the Aarogya Kutumb Yojana, refusal to admit the concerned police personnel by the private hospital is claimed to be arbitrary.

61. Ms. Jagdale, learned advocate voiced her concern with regard to Point S (supra) and submitted that a proper regime should be put in place by the respondents so that private hospitals and private medical practitioners may not fleece the ordinary people.

62. According to Mr.Kumbhakoni and Mr.Sakhare, a circular has been issued on May 21, 2020 introducing capping of charges for treatment

of COVID-19 at private hospitals as well as for testing at private laboratories and, therefore, this PIL petition has become infructuous by reason of this subsequent development.

LD-VC-JS-PL NO.18 OF 2020

POINTS - T, U & V

63. In this PIL petition, the petitioner prayed for mandamus commanding the respondents (a) to ensure that adequate medical facilities are made available for treatment of patients suffering from ailments and illnesses other than COVID-19; (b) to take necessary steps against the hospitals and medical institutions that deny and/or refuse treatment to patients suffering from ailments and illnesses other than COVID-19; and (c) to ensure that adequate ambulance facilities are in place for ferrying patients suffering from COVID-19 as well as those suffering from ailments other than COVID-19.

64. Mr. Jagtiani, learned advocate appearing for the petitioner, at the outset, acknowledged that the MCGM had put in place adequate measures to take care of the plight of those who have been infected since April 22, 2020 when this proceeding was instituted. He, however, submitted that as a

direct consequence of the pandemic, what has been severely hit is lack of emergent care for non-COVID patients. He, therefore, urged that while there can be no slip to attend to patients suffering from COVID-19 infection, the State and the MCGM must ensure that non-COVID patients are not subjected to any failure of medical treatment for lack of adequate healthcare support system.

65. The other concern expressed by Mr.Jagtiani related to the Warroom Dashboard of the MCGM not disclosing adequate information for non-COVID cases. According to him, patients suffering from diabetes, cardiac problems, etc. must have equal opportunity of health and medi-care in times of need and cannot be left to fend for themselves on the ground that COVID -19 patients are the priority for the State and the MCGM. He submitted that information on facilities for non-COVID patients in the dashboard would result in avoidance of they being driven from pillar to post for receiving treatment.

66. The final point canvassed by Mr.Jagtiani was with regard to lack of sufficient ambulances and as a result whereof, many lives which could otherwise have been saved with prompt treatment are being lost.

67. As has been recorded above, Mr.Sakhare has not been averse to inclusion of an additional option in the helpline (1916) for sharing of information with regard to non-COVID cases.

68. So far as insufficiency of ambulances for patients is concerned, Mr.Sakhare submitted that talks are in progress with Uber for using their platform so that the stationary ambulances could be called to attend to patients. He also submitted that the agreement in this behalf will be signed shortly and hopefully, availability of ambulances in the near future would not be a worrying factor.

69. While concluding his submission, Mr.Sakhare assured the Court that the existing protocol of sanitizing each ambulance after a COVID-19 patient is dropped at the hospital/care center would be continued, without fail, so as to prevent any other non-COVID patient from being infected.

PIL-CJ-LD-VC 8 OF 2020

POINT - W

70. Mr.Pandya, learned advocate for the petitioner referred to the pleadings in the PIL petition that the lockdown norms were not strictly

enforced by the local police and the situation warrants issuance of appropriate writ or order or direction for deployment of CISF/CRPF in the entire State of Maharashtra and particularly in the areas mentioned in paragraph 12 of the PIL petition. He also stressed on the need for installation of CCTV in the aforesaid areas for strict enforcement of the lockdown norms and prayed for relief as claimed in the PIL petition.

71. Mr.Kumbhakoni contended that the local police has enforced the lockdown efficiently and the PIL petition is thoroughly misconceived. That apart, he submitted that this PIL petition has been rendered infructuous owing to the lockdown norms having been eased to a substantial extent.

PIL NO.CJ-LD-VC-10 OF 2020

POINT - X

72. The petitioner in this PIL petition is a fisherman, having his residence in the district of Ratnagiri. The principal grievance voiced in the PIL petition is that although few hospitals have been reserved for treatment of COVID-19 patients and despite the number of such patients is on the rise, there is no laboratory in the district, either Government or private, for

testing of swab samples collected from suspect patients. After the swab samples are collected, they are sent to laboratories at distant places (minimum distance of the nearest laboratory being 178 km). Since it takes much time for the samples to reach the laboratory and the laboratory also takes sufficient time for examination and report, there occasions a delay in starting treatment of the patients which does not speak too well of the measures taken by the State towards public health.

73. While admitting this PIL petition, a Bench of this Court had observed that although the grievance ventilated therein is confined to non-availability of a testing laboratory for COVID-19 cases in Ratnagiri district, the State ought to enlighten the Court as to whether testing facilities for detection of COVID-19 cases are available in each of the districts of Maharashtra.

74. The State has since filed an affidavit-in-reply dated June 2, 2020, and it appears from paragraph 3 of the said reply that a resolution dated May 25, 2020 has been adopted by the Government whereby a testing facility at the Civil Hospital, Ratnagiri has been sanctioned. The said

testing facility would be functional in about 10 days, such time being required for transportation, installation and activation of the requisite machinery/equipment.

75. In paragraph 7 of the said affidavit it is pleaded that the National Institute of Virology, Pune, was the only COVID-19 testing facility in the entire nation before the outbreak of the pandemic. Paragraphs 8, 9 and 10 of the said affidavit are also relevant and hence set out hereunder:

“8. I say that after the present outbreak, the State Government immediately took steps and commissioned 3 laboratories by 15th March 2020 in our State. I say that the number of testing laboratories have been increased at a breakneck speed by the State and presently there are 44 such Government laboratories and 35 Private ones where Rt-PCR testing is possible (Total being 79), as on 29th May 2020. The testing capacity of all these laboratories sums up to testing of about 35,000 (15,000 in Govt Labs + 20,000 in Private Labs) samples per day, in view of the time of about six (6) hours required for each testing batch containing not more than 45 to 50 samples, to complete the testing cycle. There are other types of laboratories which can conduct tests for other diseases alongwith COVID-19. I say that such laboratories are TrueNat and CB-NAAT types. I say that the Central Government has granted 79 such laboratories for Maharashtra State,

out of which 26 have been already delivered. I say that therefore setting up such laboratories will be considered while covering various districts of the State.

9. It may kindly be appreciated that keeping in view not only the safe and secured environment in which such laboratories are to be operated, but also the availability of a highly trained and experienced manpower, it is always advisable as also desirable to increase the testing capacity of a established laboratory instead of setting up completely new laboratories at new places. This is precisely the reason as to why there are more number of such units at one place rather than spreading them over various places in the State e.g. at Nagpur there are six such units in different institutions. At places additional machines in Government labs have been installed to augment capacity in existing labs.
10. In the aforesaid regard it is also pertinent to note that the samples of suspected cases are taken and kept in test-tubes containing 'viral transport medium' in which such a virus, if any, survives for about 5 to 7 days when these tubes are stored in a transportation box with the temperature at 2 to 8 degrees centigrade. Therefore, the distance required to be travelled for bringing such samples for testing really does not matter much, in the light of the aforesaid other vital aspects related to the establishment of such laboratories.”

76. Mr.Bhatkar, learned advocate for the petitioner complained of concentration of laboratories in certain places, without there being testing facilities in at least 12 districts of Maharashtra. While he expressed

satisfaction that a decision had been taken sanctioning a testing facility in the district of Ratnagiri, he sought for direction so that the Government sets up testing facility in each and every district of Maharashtra. According to him, delay in arrival of the reports has twin consequences – the chain of contact tracing could be hampered and late hospitalization of patients who test positive, thereby causing unnecessary worry.

77. Mr.Kumbhakoni assiduously argued against the setting up of testing facilities in each and every district, by referring to the guidelines of the ICMR and submitted that the prayer of the petitioner in the changed circumstances of the scope of the PIL petitioner being expanded pursuant to the order of this Court, does not deserve consideration. Mr.Kumbhakoni, however, added that as and when number of suspected cases in a particular district would increase beyond 100 each day over a period of time and other factors point towards a need for setting up of such testing facility, appropriate action in terms of the ICMR Guidelines would be adopted.

THE DECISION

78. We wish to begin by dealing with an argument of Mr.Desai in course of his reply. It is on the point as to whether the Court can place

reliance on newspaper reports. Conscious of the settled legal principle that newspaper reports are hearsay evidence and such reports cannot be relied upon unless proved by evidence aliunde by the correspondent on being examined and deposing to have perceived the fact reported, Mr.Desai referred to the situation of the lockdown now prevailing because of the pandemic; this, according to him, has disabled the petitioners to collect evidence from the ground level by their own investigative efforts and forms the reason to urge the Court to adopt a liberal approach bearing in mind the absence of relevant pleadings on specific instances of remissness/negligence.

79. The role of the media in present times has been discussed in several decisions of the Supreme Court. It would be useful to note what was observed in Sanjoy Narayan, Editor-in-Chief, Hindustan Times vs. High Court of Allahabad, reported in (2011) 13 SCC 155, albeit in course of a contempt action. The passage relevant for our purpose reads thus:

“3. The media, be it electronic or print media, is generally called the fourth pillar of democracy. The media, in all its forms, whether electronic or print, discharges a very onerous duty of keeping the people knowledgeable and informed. The impact of media is far-reaching as it reaches not only the people physically but also influences them mentally. It creates opinions, broadcasts different

points of view, brings to the fore wrongs and lapses of the Government and all other governing bodies and is an important tool in restraining corruption and other ill-effects of society. The media ensures that the individual actively participates in the decision-making process. The right to information is fundamental in encouraging the individual to be a part of the governing process. The enactment of the Right to Information Act, 2005 is the most empowering step in this direction. The role of people in a democracy and that of active debate is essential for the functioning of a vibrant democracy.

4. With this immense power, comes the burden of responsibility. With the huge amount of information that they process, it is the responsibility of the media to ensure that they are not providing the public with information that is factually wrong, biased or simply unverified information.

6. The unbridled power of the media can become dangerous if checks and balances are not inherent in it. The role of the media is to provide to the readers and the public in general with information and views tested and found as true and correct. This power must be carefully regulated and must reconcile with a person's fundamental right to privacy. Any wrong or biased information that is put forth can potentially damage the otherwise clean and good reputation of the person or institution against whom something adverse is reported. Pre-judging the issues and rushing to conclusions must be avoided.”

(emphasis supplied)

80. Despite the electronic and print media having a pivotal role to play and the caution sounded above notwithstanding, reflection of a proper

balance is often missing. At times, we find media houses to be divided in their loyalties and the reports coloured by partisan spirit and motivation. All loyalties must exclusively centre round the welfare of the State and its people. While opposing views on an issue lay bare the two sides, any conclusion ~ positive or negative ~ must be based on a true and fair account of what is perceived by the correspondent. The responsibility thrust on the media to disseminate correct information is onerous and is not supposed to be taken lightly. Be that as it may.

81. Adverting to the issue at hand it is understandable that with restrictions on movement in place by virtue of the lockdown, the necessary investigations required at the ground level as to how the situation is being taken care of by the State to lay the foundational facts for judicial scrutiny may not have been possible for the petitioners and that precisely has driven them to approach this Court in public interest seeking relief relying on what is reported by the media. There can be little doubt, however, that much of the data relating to COVID-19 is made available by newspapers, news channels and articles doing rounds on social media and people would not have known as much about COVID-19, but for the media.

82. Taking judicial notice, on the basis of reports and photographs printed/displayed by the media, to remedy a perceived wrong or injustice is not what has been abhorred by the Courts in India. Initiation of suo motu proceedings on consideration of media reports for serving public good is not a rare phenomenon. But even in such cases, the decision on the issues at hand have invariably rested on evidence that is admissible and relevant. So long a media report relied on by a party or any part thereof is not disputed by the other, we see no harm in separating the grain from the chaff and putting the same to a party for eliciting his/its response. As would be evident from the recording of arguments of the parties, Mr.Sakhare for the MCGM himself relied on a newspaper report to impress upon us the success achieved by the MCGM in tackling the situation. The said report has not been disputed by any party. However, if a pleading is insufficient and a contentious issue arises for decision based on a media report, the same cannot be decided resting on such report unless evidence aliunde to return a finding is available. We end this discussion by observing that extra-ordinary situations deserve extra-ordinary treatment and in these times of test, inviting the attention of the judiciary to newspaper reports for taking

cognizance of the plight of the unfortunate sufferers and requiring a party to share the details for the Court to suggest corrective measures, in the absence of the report or a part thereof being disputed, is not an impermissible course of action. After all, it is justice that should prevail over technicalities in times such as these and it must be left to each Court, dealing with the PIL petition, to decide in exercise of judicial discretion the weight that ought to be attached to the relevant media report.

83. As we find from articles/reports penned by experts, there have been many factors which have been responsible for the spread of the pandemic in India and a consequent surge in the number of COVID-19 victims and sufferers, viz. lack of vision to deal with COVID-19 when reports started pouring in of its vicious and merciless attack on several foreign nations, lack of preparedness to tackle a problem of such magnitude, which included an initial lack of sufficient testing kits as well as protective gear all over the country and a general lack of adequate health and medi-care facilities, lack of sharing of data which could have been helpful in dissemination of knowledge not only for treating confirmed COVID positive patients but also detecting suspected individuals, lack of proper

balance in Centre/State relations, lack of awareness of a large section of the Indian citizenry as to what COVID-19 is capable of, etc. It is indeed unfortunate that we have by now lost a number of fellow citizens to COVID-19; however, it is not the time now to look back and grieve. The negative concept of “Lockdown 1”, “Lockdown 2” and the like have to be regarded as things of the past and the nation has to look up and proceed with a positive outlook of 'Unlock 1' and 'Mission Begin Again”, which are the slogans of the Central Government and the Maharashtra Government, respectively.

84. Before venturing to embark on our task of dealing with the points raised by the petitioners, we need to remind ourselves that despite nearing seventy-five years of our independence, despite the guarantees that Part III of the Constitution envisions and despite the goals engrafted in Part IV of the Constitution which the State ought to strive to achieve, a society which can provide equal opportunities to all is yet a distant reality. That misery of this degree could be brought about by the pandemic was indeed unimaginable. The pandemic and the resultant lockdown have destabilised the Indian economy, while wrecking the 'haves' and the 'have nots' alike. It

has shown how pitiable the conditions of migrant workers in India are. India, as things stand now, can hardly think of a fair and just society any time in the near future.

85. Is there no hope so that the situation can be salvaged? No doubt, it is the primary duty of the executive to put the nation back on track and the citizenry must repose faith in it. Should the executive fail, the Constitutional Courts in India are there as the protectors of the civil liberties of its citizenry. Such courts have not only power and jurisdiction but it is also their obligation to protect the Fundamental Rights guaranteed by Part III of the Constitution in general and Article 21 in particular. A judiciary, zealous and vigilant in safeguarding the rights of the people, is what the framers of the Constitution dreamt of and it needs no reiteration that by and large, the people of this nation have reposed faith and trust in the judicial institutions to rescue them in even the worst of situations. The situation that the nation is now faced with, i.e., of fighting an invisible enemy, is no doubt unprecedented and tops the list of worst of situations. However, given the enormity of the problems that such invisible virus has triggered and the earnest efforts put in by all the Governments, Central and States, to protect

the people from the grave uncertainties that the pandemic has brought along with it, we cannot proceed in ignorance of the principles regarding judicial review of policy matters pertaining to “public health”.

86. In *Academy of Nutrition Improvement Vs. Union of India*, reported in (2011) 8 SCC 274, the Court was dealing with the contours of 'universal salt iodization', a much debated technical issue relating to medical science. While relying on several decisions including *Directorate of Film Festivals vs. Gaurav Ashwin Jain*, reported in (2007) 4 SCC 737, the Court held as follows:

“34. There is thus some material to support the contention of the petitioners that around 90% of the populace do not need iodised salt and that consumption of excess iodine may have some adverse effects. On the other hand there is also considerable material for the view that compulsory iodisation is also necessary to prevent IDD's in about 10% (or more) of the populace and the consumption of iodised salt by the remaining 90% who do not require it, may not be injurious to their health as excess iodine is easily excreted. The question whether there should be universal salt iodisation is a much debated technical issue relating to medical science. An informed decision in such matters can only be taken by experts after carrying out exhaustive surveys, trials, tests, scientific investigations and research. Courts are neither equipped, nor can be expected to decide about the need or absence of need for such universal salt

iodisation on the basis of some articles and reports placed before it.

35. This Court in a series of decisions has reiterated that courts should not rush in where even scientists and medical experts are careful to tread. The rule of prudence is that courts will be reluctant to interfere with policy decisions taken by the Government, in matters of public health, after collecting and analysing inputs from surveys and research. Nor will courts attempt to substitute their own views as to what is wise, safe, prudent or proper, in relation to technical issues relating to public health in preference of those formulated by persons said to possess technical expertise and rich experience.”

(emphasis supplied)

87. The passage from Gaurav Ashwin Jain (supra) relied upon in Academy of Nutrition Improvement (supra) reads as follows:

“16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review....”

88. Combating COVID-19, as we have perceived from the materials on record, includes tests to detect patients, tracing contacts, isolating positive cases, quarantining the contacts, and an overall management to break the transmission chain.

89. The line of argument pursued by the respondents through Mr.Kumbhakoni and Mr.Sakhare has been that detection of who is symptomatic and arranging facilities for his treatment, keeping the contacts under strict vigil, initiating measures to contain the spread of COVID-19 and its consequent explosion, to guard healthy people against infection and protecting their lives, making provisions for the sustenance of people without food, water and shelter, and to adopt and strictly implement welfare measures for the overall good of the people, and at the same time easing the lockdown norms to allow the economy to stabilise during these trying times, are essentially matters of governance and have to be left to the Governments to prevent COVID-19 from travelling beyond controllable limits.

90. Indeed true, but the grievances raised before us by the petitioners cannot and ought not to be examined oblivious of the settled

principles of law that it is the Constitutional obligation and duty of the State to provide adequate medical services to preserve life.

91. We may profitably refer to the decision of the Supreme Court in *Union of India vs. Moolchand Kharaiti Ram Trust*, reported in (2018) 8 SCC 321, to reach the depth of such settled principles. Noting certain previous decisions on the point, it was observed as follows:-

- “65. The State has to ensure the basic necessities like food, nutrition, medical assistance, hygiene, etc. and contribute to the improvement of health. Right to life includes right to health as observed in *State of Punjab v. Mohinder Singh Chawla* (1997) 2 SCC 83. Right to life and personal liberty under Article 21 of the Constitution also includes right of patients to be treated with dignity as observed by this Court in *Balram Prasad v. Kunal Saha*, (2014) 1 SCC 384. Right to health i.e. right to live in a clean, hygienic and safe environment is a right under Article 21 of the Constitution as observed in *Occupational Health & Safety Assn. v. Union of India*, (2014) 3 SCC 547. The concept of emergency medical aid has been discussed by this Court in *Parmanand Katara v. Union of India*, (1989) 4 SCC 286. In *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37, right to medical treatment has been extended to prisoners also.
66. In *Parmanand Katara* this Court has observed that every doctor whether at a government hospital or otherwise has the professional obligation to extend

his services with due expertise for protecting life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise, which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way, and there is an obligation upon the doctor to treat the injured victim on his appearance before him either by himself or being carried by others. It has also been observed by this Court that the effort to save the person should be the top priority not only of the medical professional but even of the police or any other person who happens to be connected with the matter or who happens to notice such an incident or a situation. Apprehensions that the doctor will have to face police interrogation and stand as a witness in court and face all the harassments, should not prevent them from discharging their duty as medical professionals to save a human life and to do all that is necessary.

67. In *Paschim Banga Khet Mazdoor Samity*, this Court has observed that the Constitution envisages the establishment of a welfare State. In a welfare State, the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Preservation of human life is thus of paramount importance. Government is duty-bound to provide timely care to persons in serious conditions. Medical facilities cannot be denied by the Government on the ground of non-

availability of bed. Denial of medical assistance on unjust ground was held to be in violation of right to life under Article 21 and the State was directed to pay the compensation of Rs 25,000 to the petitioner and requisite directions were issued by this Court. The State cannot avoid its constitutional obligation in that regard on account of financial constraints and was directed to allocate funds for providing adequate medical infrastructure.

68. In our opinion, the State can also impose such obligation when the government land is held by such hospitals and it is the constitutional obligation imposed upon such hospitals. Under Article 47, State has to make constant endeavour to raise the level of nutrition and the standard of living and to improve public health. It is also one of the fundamental duties enshrined in Article 51-A(h) to develop the scientific temper, humanism and the spirit of inquiry and reform. It would be inhuman to deny a person who is not having sufficient means or no means, the life-saving treatment, simply on the ground that he is not having enough money. Due to financial reasons, if treatment is refused, it would be against the very basic tenets of the medical profession and the concept of charity in whatever form we envisage the same, besides being unconstitutional would be violative of basic human rights. In our opinion, when the State largesse is being enjoyed by these hospitals in the form of land beside it is their obligation by the very nature of the medical services to extend the reciprocal obligation to the public by providing free treatment as envisaged in the impugned order. In case they want to wriggle out of it and not to comply with it, they have to surrender the land and orge out the benefit

which they have received by virtue of holding the government land in an aforesaid manner.”

(emphasis supplied)

92. While appreciating that the situation prevalent now is unprecedented and distinguishable from the cases that the Supreme Court had the occasion to consider, and also that insisting the State to dot each and every 'i' and/or to cross all 't' may not be justified on facts and in the circumstances, yet, the duty that the State owes to its citizens cannot be avoided by taking cover under the shield of policy matters. Judicial interference by way of a public interest litigation is available, nay warranted, if there is a clear violation of constitutional or statutory provisions or failure of the State to discharge its constitutional or statutory duties. Indubitably, some of these contingencies do arise in the present PIL petitions but in the wake of the unimaginable severity with which the pandemic has struck throwing everything asunder, a balance ought to be struck in exercise of the powers of judicial review. Instead of adoption of a critical approach of the unintended failures of the executive, the exercise of the extra-ordinary power available under Article 226 of the Constitution has to be tempered by judicial restraint, more particularly in matters concerning domain experts

without, however, sacrificing the need for attainment of the most desired results in the given circumstances. Efforts at all levels have to be made to boost the health and medi-care facilities and to find a solution to bring the nation out of the impasse as well. What follows from the above is that instead of a judicial management of COVID-19, there has to be a nuanced administrative and scientific management hitherto unseen. Although the COVID situation in Maharashtra, as it appears from the data made available to us, is quite alarming but in the present circumstances, the need of the hour is to push forward the efforts undertaken by the Union and the State in fighting COVID-19 in the right direction consistent with the guidelines issued by the WHO and the ICMR, being the experts in the field, to ensure that fair treatment is received by one and all not only in the health sector but in all spheres of life. Also, judicial propriety demands that we tread the path of caution and circumspection having regard to the uncertainties ahead and refrain from substituting our view for those taken by the executive and be susceptible to a guilt of usurpation of power.

93. It is in this background that we are tasked to examine the points emerging for consideration. We, however, ought to restate that many of the concerns indicated by the petitioners in their respective PIL petitions stand addressed by the Government and the MCGM, as would be evident from the responses of their learned advocates noted above. This, we are inclined to the view, is sufficient to validate the claim of the Government and the MCGM that much progress has been achieved in containing the spread of COVID-19 and to take care of the ill.

94. All the points of grievance, noted above, are now dealt with hereafter.

POINT - A

95. The Nagpur Bench of this Court in Citizen Forum for Equality (supra) has dealt with the point extensively in its judgment dated June 1, 2020. It was held therein that even though the extant guidelines do not envisage testing of all frontline/healthcare workers, the State owes to such workers additional steps or measures, even going beyond the guidelines, if such measures ensure minimisation of any risk to them. However, the relief

claimed in the PIL petition vide prayer clause (a) was moulded by the Court and it was ultimately held, as under:

“(1) We hold that all asymptomatic frontline workers, as are described in this Public Interest Litigation, working in the hospitals and the containment zones declared by the District Collectors or the Commissioners, Municipal Corporation or the Chief Officers, Municipal Councils or such other competent authorities in the entire Vidarbha region, shall be entitled to be tested for COVID-19 disease of Coronavirus on RT-PCR method on expressing their willingness, if they are found to be in direct and high risk contact of laboratory confirmed cases.”

96. Directions were also given by the Court to the ICMR to frame appropriate policy and to prescribe for a periodical testing of the frontline workers in the entire Vidarbha region on RT-PCR method and the State and its officers were directed to test frontline workers in accordance with the guidelines and the protocol to be prescribed by the ICMR, subject to such workers expressing their willingness for such tests.

97. We are *ad idem* with the views expressed by Their Lordships and accordingly, direct that if any frontline/healthcare worker at non-COVID hospitals/wards expresses willingness for being tested on RT-PCR

method, the respondents shall proceed in that direction in accordance with the guidelines and protocol prescribed therefor by the ICMR.

POINTS - B & R

98. In these times of crises, we have found the plea of the petitioners that each healthcare worker treating non-COVID patients to be provided with PPEs to be justified only to the extent of face masks and shields, gloves, goggles and sanitisation materials including soaps but not the entire equipment that is worn to minimise exposure i.e., the full-body suit, which resembles a raincoat, and includes a diaper, covered shoes, etc. Use of a full body-suit could create significant hazards such as physical and psychological stress, impaired vision, mobility and communication. Literature on PPEs which we have had the occasion to look into sounds a caution that greater the level of PPE protection, greater would be the associated risk. In that view of the matter, we agree with Mr.Kumbhakoni and Mr.Sakhare that there has to be a rational use of PPEs considering the demand for it and that the State and the MCGM are under no obligation to distribute the same to all and sundry. Distribution of PPEs, without doubt, must be need based. We hope and trust that the State and the MCGM shall

be rational in distribution of PPEs and leave no room for complaint in regard to its distribution and the other kits in keeping with the demands of the situation.

POINTS - C & S

99. It has been brought to our notice that a circular dated May 21, 2020 has been issued whereby charges for treatment at private/charitable hospitals and health service care centers have been capped. In view thereof, we do not consider it appropriate to make any mandatory order but leave the State Government free to spread the net of free testing high and wide to cover maximum number of people in distress and to extend to them the facilities which in terms of Article 47 of the Constitution, the State must try to achieve.

POINT - D

100. The provisions of Section 41AA of the BPT Act notwithstanding, we find that the State has proceeded to reserve 80% of the available beds in private/charitable hospitals for treatment of COVID-19 patients. Although 20% of the beds in the private/charitable hospitals are required to be reserved for the poorest and the poor, the situation arising out of the pandemic has compelled the State to take a proactive stand keeping in

mind the need to reach out to all. Having given our thoughtful consideration to the point canvassed by Mr.Desai, we are not inclined to make any direction which might derail the system in place. However, we grant full liberty to the State to take such punitive action in accordance with law against the erring hospitals, who fail to comply with the directive, as the situation would warrant.

POINT – E

101. Quarantine centers are meant to facilitate keeping in isolation persons who are exposed to the risk of infection. There can be no gainsaying that having regard to the purpose that a quarantine center seeks to serve, such centers should not themselves turn into a cesspool for the virus and contribute the spread of infection.

102. In the absence of specific pleadings as to the nature of deficiencies, it may not be proper for us to give any mandatory direction to the MCGM to implement. We accept the statement of Mr.Sakhare; but at the same time grant liberty for lodging of specific complaint with the MCGM if in case any deficiency in service at any quarantine center maintained by it is noticed and if such complaint is received, the MCGM

shall, subject to the complaint being authentic, take immediate ameliorative steps and may also proceed departmentally against such personnel found to be remiss in proper upkeep of the relevant quarantine center.

POINT – F

103. Administration of HCQ has been attacked by the petitioner based on several provisions of the 2019 Rules as well as relying on the report that the WHO has suspended trials of HCQ as a prophylaxis. The submission of Mr.Desai is weighty but one cannot turn a blind eye to the present situation and wait for the lengthy process laid down in the statute for trials to be completed. Laws create rights, obligations and disabilities. These are intended for the benefit of the society. Now, in a given case, if abiding by the law *stricto sensu* and waiting for a clinical trial of a drug would result in loss of valuable time for saving a patient and the choice is between the devil and the deep sea, i.e, no other drug except an HCQ sort of a drug, though not clinically tried for treating the disease, is the last option left for a doctor to save the life of such patient, should the doctor fold his hands and leave the patient to the mercy of the Almighty on the ground that the relevant drug has not been registered for use as a prophylaxis? The answer, we are

mind to hold, should be in the negative. Besides, the guidelines of the ICMR has not banned the use of HCQ as a prophylaxis to treat COVID positive patients. It has also not been established by reference to articles/reports/surveys that physical harm caused by the administration of HCQ far outweighs its benefits. A Constitutional court is not supposed to give its expert views on a subject over which it has no expertise at all. As has been held in *Academy of Nutrition Improvement (supra)* and the decision in *Vincent Panikurlangara vs. Union of India*, reported in (1987) 2 SCC 165, the Court should be reluctant to interfere with policy decisions taken by the Government in matters of public health and in relation to a question whether a particular drug ought to be banned or not. Even though the petitioners have set up a substantial legal point to be addressed on the basis of the provisions of the 2019 Rules, absence of reference to any specific incident where administration of HCQ has proved fatal, dissuades us from restraining the respondents from administering HCQ as a prophylaxis, till such time the ICMR prescribes something to the contrary. However, it should not be administered to children below the age of 15 years and to pregnant and lactating women.

POINTS - G, J, K & Q

104. While dealing with these points, we notice a divergence of opinion. While some of the petitioners have been critical in regard to functioning of the helpline (1916) of the MCGM, atleast one petitioner has found such helpline to be helpful and has prayed that the same may be replicated by other Municipal Corporations.

105. Those who have been critical must realize the prevailing situation of the pandemic and that assistance of the level that could be expected or available in normal times may not now be on offer. That the MCGM has to respond to more than 4000 calls per day is an indicator of the load taken by the informers receiving the calls. Indeed, there could be scope for improvement and we do appreciate the stand of the MCGM to include an additional dial-in option for dissemination of information helpful for non-COVID patients immediately after a suggestion to that effect was given by us.

106. Since the helpline (1916) has been more or less successful, we see no reason as to why other Municipal Corporations in the State may not introduce similar helplines in respect of services for the people within their

territorial jurisdiction. A responsible Municipal Corporation, being an institution of self-governance and constituted for the purpose of preserving public health, cannot shut its responsibility by pleading infrastructural deficiencies. We, therefore, direct the State to see to it that the other Municipal Corporations emulate the MCGM's helpline (1916) and make available real time information.

POINTS - H, L & U

107. The Warroom Dashboard has been devised by the MCGM consequent to suggestions received from the petitioners. Hard copies of the Warroom Dashboard dated June 1, 2 and 3, 2020 were placed before us. We record our satisfaction at such dashboard providing relevant information regarding the current status of the effects of the pandemic in the State as well as the data forming part of it. The only direction that we wish to make in this behalf is to direct the MCGM to upload on its website the entirety of the contents of the dashboard placed before us so that such data could benefit those in search of the available facilities. We have also no doubt in our mind that the MCGM shall improve the contents of the dashboard by including in it requisite and relevant information to aid non-COVID patients.

POINT – I

108. Although Mr.Sakhare has contended that the Dial-4 option of the helpline (1916) is intended also to receive complaints, we are of the considered view that the MCGM should, without any delay, explore ways and means to set up a grievance redressal cell before which complaints could be lodged online/offline. The IAS officer who has been deputed to monitor and oversee the activities related to COVID-19, or any other officer, shall be appointed as the head of the cell with instructions to act promptly as and when complaints deserving immediate intervention are received.

POINT – M

109. There is no evidence on record for us to hold that there is absence of proper communication between the State and the MCGM; hence, no positive direction in this regard is necessary and we allow it to rest. We may, however, observe that the coordination presently between the State and the MCGM must continue not only in respect of realtime availability of beds and other facilities but also in respect of overall control to contain the spread of COVID-19 during the forthcoming days when the numbers are likely to peak.

POINTS - N & O

110. These two points have been raised by the institutions/associations comprising of doctors and medical consultants who can legitimately claim to be experts in the relevant fields. We have found that a compilation of suggestions from these institutions/associations is on record. Such suggestions may not have exercised the attention of the State and the MCGM probably because such suggestions were not placed together with the suggestions of the petitioners as per a previous direction of this Court.

111. We have perused the suggestions and are of the clear view that not only should Points N and O be considered by the State and the MCGM but the other suggestions offered by such institutions/associations must also be looked into by the Task Force and so much of the suggestions which are beneficial for the society and helpful in preventing the spread of the pandemic must be implemented without any delay.

POINT – P

112. The point, as raised, is no doubt important. The senior citizens and people with comorbidities must not be forgotten in the war against

COVID; in fact, most of the COVID victims, as per the available data, are senior citizens and people with comorbidities. The need to cater to their interests cannot, therefore, be overemphasized. However, the steps taken by the MCGM to attend to senior citizens as well as people with comorbidities are considered to be sufficient by us and we do hope and trust that such steps would be continued in the right earnest to ensure extension of all facilities to the most vulnerable class.

POINT – T

113. There can be no doubt that currently the attention of the State and the MCGM is primarily directed towards containing the spread of COVID-19, to test whether any one has developed the infection and to break the chain of transmission. In the process, it is not quite unusual that non-COVID patients may not have had the attention and care they deserve. Non-COVID patients equally have the right to health and medi-care as any other COVID-19 patient and, therefore, we direct the State and the MCGM to take all such steps at its disposal to ensure that non-COVID patients do not suffer for want of adequate facilities. Any slip could be viewed seriously.

POINT – V

114. Insufficiency and/or inadequacy of ambulance for transporting patients of either category, COVID and non-COVID, seems to have posed a significant challenge during these difficult times. The MCGM has been using ambulances offered by NGOs as well as converting buses of BEST into ambulances for transporting patients. The State and the MCGM may consider requiring private ambulances to be made operational, provided of course requisite human resources are available to operate it. If indeed the platform of Uber can be utilized, as submitted by Mr.Sakhare, that could take care of a part of the problem, i.e., of locating and requisitioning ambulances which are then not engaged. It is always open to the State to requisition certain vehicles and to keep it available for transporting patients to hospitals/care centers, whose physical condition may not require an ambulance. It is ordered accordingly.

POINT – W

115. The current situation does not appear to be such that direction for deployment of CISF/CRPF or for installation of CCTV facilities is warranted. We, accordingly, are not inclined to make any direction in regard to the point raised.

POINT – X

116. The grievance relating to non-availability of testing laboratory in the district of Ratnagiri no longer survives in view of the decision of the Government. However, providing for a testing facility in the district of Ratnagiri does not in any manner lessen the anxiety of the Court that if not a testing laboratory cannot be set up in each district now but adequate number of testing facilities ought to be set up in each district as and when the criteria fixed by the ICMR therefor is fulfilled. We, accordingly, direct the State to act strictly in consonance with the ICMR guidelines and should a facility be required to be set up, no time should be wasted in that behalf.

117. Having dealt with the points of grievance, we wish to also place on record a complaint that we heard, in course of these proceedings, of tall claims being made by the Government and the MCGM that everything is under control and that the facts and figures given on affidavits and presentation of the Warroom Dashboard regarding availability of all facilities/arrangements are nothing more than paper work to suppress the real state of affairs. True it is, the claims of the State and the MCGM appear to be attractive on paper. At the same time, the grievance relating to

sufferings of patients despite what has been claimed by the State and the MCGM as unreal cannot also be completely brushed aside in view of the increasing number of people being infected as well as daily deaths. However, in the absence of specific instances being pleaded, it may not be proper for us to intervene. Any one aggrieved is free to pursue his remedy before us by presenting appropriate application.

118. Nonetheless keeping in view the above complaint and apart from the directions/observations made above, we wish to observe that the respondents may consider/continue with the following endeavours:-

- (1) drive for robust detection of positive cases, intensive contact tracing, aggressive testing, and extensive spread of information and awareness relating to norms to keep one safe for a better future ;
- (2) develop wholesome strategy for dealing with all classes of patients, and balancing health care for COVID-19 patients and patients suffering from other diseases alike;
- (3) display on the website, all information relating to realtime availability of facilities at Government/MCGM run

hospitals/clinics as well as private hospitals for COVID-19 patients and patients suffering from other diseases for minimising harassment and inconvenience to the extent possible;

- (4) based on statistical data as well as inputs, take an informed decision either on continuation of lockdown or revocation of relaxations to the extent necessary or regulation of human activities to keep the nation working and at the same time preventing further risk;
- (5) although unavailability of beds is no excuse for admission of patients, efforts shall be made to first admit those patients who genuinely deserve treatment and care in hospitals in preference to others who out of sheer fear may seek admission but can wait;
- (6) encourage invention of vaccine/drug for treatment of COVID-19 infected patients bearing in mind that it is an epidemiological problem and has to be dealt with the standard protocol available therefor;

- (7) ensure, with a degree of efficiency, that the instructions issued by the ICMR as well as instructions contained in guidelines/advisories issued by the Central and the State Governments as well as by the Municipal Corporations are adhered to by those who are sought to be governed thereby; and
- (8) now that COVID-19 has taught a good lesson, the desirability of increasing the budgetary allocation for public health and care for setting up more modern facilities to cope up with similar such challenges may be given a serious thought.

119. Before parting, we may remind each and every Indian citizen of the speech delivered by Pandit Nehru to the Constituent Assembly on the eve of India attaining independence. Parts of the speech read thus :

“Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially.

The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the

greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long there are tears and suffering, so long our work will not be over.”

These golden words are apt even in the present day situation.

120. In this material world, tears and suffering may not cease to exist. The work to wipe tears and suffering has to go on. If indeed tears and suffering are to be wiped from those who are ailing of COVID-19 and related matters, the nation expects service, i.e. ‘seva’, from each one of its citizens. It does not take much to serve. COVID-19 has, in fair measure, shown us its calamitous affect on human health ~ physical and mental. Not only has it posed a grave threat to human life, it has also made imprisonment for all and sundry intelligible by forcing people to stay indoors and abide by social distancing norms. Although there is no immediate sign of the virus becoming something of the past ~ rather it seems that such virus has come to stay ~ it is time to rethink about each individual’s own lifestyle. While the pandemic has shown the fragility of human life, it is high time to rouse the greater self in all to put up a strong fight shedding fears, and the easiest way to get rid of the situation as well as the fears is to inculcate the desire and habit of helping others. By maintaining proper hygiene, proper protection

and social distancing, each one of the citizens can contribute to fewer people contracting the infection. Social distancing is non-negotiable and has to be practiced, no matter what the inconveniences are. Positive thinking and helping others, as much as one can and as much means permit, could light up lives even during these depressing times. Live and let live with dignity, is what one ought to aim for survival in the days to come. We sincerely wish, the Preambular promise of justice, liberty, equality and fraternal dignity, in the interests of unity and integrity of the country, animates the life and spirit of each Indian and ushers them to have complete faith in the constitutional ethos of “kindness and caring for all”, connoting a mode of life promoting brotherhood and harmony *inter se*, treating everyone with compassion and an uplifting love which sweeps away the pain of discrimination. It would, therefore, not be inappropriate for an appeal being made by the State to the citizens to maintain the social distancing and other norms diligently and to refrain from venturing outdoors unless absolutely necessary on the pretext that the lockdown norms have been eased, and thereby allow the benefits of the long unprecedented lockdown to be washed away by acts of indiscretion.

121. Accordingly, the PIL petitions stand disposed of. I.A.No.2 of 2020 in PIL No.6 of 2020 also stands disposed of. There shall be no order as to costs.

122. This judgment will be digitally signed by the Sr. Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

A.A. SAYED, J

CHIEF JUSTICE