

Ingale

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

**PIL-CJ-LD-VC-14 OF 2020**

Naresh Kapoor

.. Petitioner

V/s.

Union of India and ors.

.. Respondents

Mr. Prerak Choudhary a/w Jigar Kamdar for Petitioner.

Mr. Anil C. Singh, ASG, a/w Mr. Aditya Thakkar and Mr. D. P. Singh  
for the Union of India.

Mr. A. A. Kumbhkoni, Advocate General with Ms. P.H.Kantharia,  
Government Pleader with R.J.Mane, AGP for Respondent-State.

Shri. A. Y. Sakhare, Sr.Cl a/w Ms.Yamuna Parekh and Rohan  
Mirpurey for Respondent-MCGM.

Mr. Sandip V. Marne for Respondent No.10.

**CORAM : DIPANKAR DATTA, CJ. &  
M.S.KARNIK, J.**

**DATE : JUNE 23, 2020**

**P.C.:-**

1. Mr.Kumbhkoni, learned Advocate General for the State of Maharashtra has placed before us a circular dated June 22, 2020 issued by the State in pursuance of an advisory of the Indian Council of Medical Research (hereafter "the ICMR") on the use of rapid antigen detection test for Covid-19 dated June 14,

2020. The said circular has been shared with Mr. Chaudhary, learned Counsel appearing for the PIL petitioner. Mr. Chaudhary agrees that the circular issued by the State addresses one of several concerns expressed by the petitioner in this PIL petition. In that view of the matter, we allow the said issue to rest.

2. The concern expressed by the PIL petitioner with regard to making availability of bed status for patients infected with Covid as well as infected with other diseases is covered by the decision of the coordinate Bench of this Court dated June 12, 2020 in the matter of Jan Swasthya Abhiyan and Anr. V/s. State of Maharashtra and Ors.; thus, we are of the opinion that it need not be addressed by us separately.

3. The PIL petitioner has raised three other concerns: (i) all hospitals, nursing homes and dispensaries, which are presently closed either due to departmental orders or judicial orders, should be re-opened to meet the needs of patients who have tested positive for Covid as well as patients suffering from other ailments; (ii) private practitioners ought to be permitted to prescribe Covid test; and (iii) railway coaches should be converted into make-shift ICUs for effective treatment of patients.

4. Insofar as the prayer of the petitioner for reopening of closed hospitals, nursing homes and dispensaries is concerned, we find no reason to grant the same. It has been noticed in the decision in Jan Swasthya Abhiyan and Anr. (supra) that facilities for treating Covid as well as non-Covid patients presently at the disposal of the State as well as the Municipal Corporation of Greater Mumbai (hereafter "the Corporation") are not that insufficient so as to call for an order to reopen closed hospitals,

nursing homes and dispensaries. Further, granting the prayer would amount to tinkering with administrative/judicial orders. Such course is plainly impermissible. That apart, in our view, instead of the judiciary entering into the domain of the executive, opening up more facilities should be left to the latter's judgment considering the need, if at all, therefor. If the situation so demands, the State/Corporation keeping in mind the medical protocol required at the moment may explore ways and means to make more facilities available at its disposal other than reopening such closed facilities. Accordingly, we reject this prayer.

5. Regarding the second and third concerns noted in paragraph 3 (supra), we propose to deal with the same on the next date when this PIL petition would be listed for consideration as a 'part-heard' matter.

6. On the issue of private practitioners being permitted to prescribe Covid tests, we have been informed by Mr.Kumbhkoni that a circular issued by the Corporation pursuant to guidelines of the ICMR is in force stipulating certain conditions on the fulfilment whereof a test can be prescribed. The said circular may be shared with the PIL petitioner and a copy thereof be forwarded to the Court by tomorrow (June 24, 2020).

7. The Union of India shall file an affidavit indicating therein the steps taken by the Western Railway as well as the Central Railway to convert coaches into isolation/ quarantine centres, and why ICU facilities in coaches is not considered necessary. Let such affidavit be filed by seven days; rejoinder thereto, if any, may be filed by a day thereafter.

8. Stand over to July 2, 2020.

9. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**(M.S.KARNIK, J.)**

**(CHIEF JUSTICE)**