

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL SUO-MOTO PUBLIC INTEREST LITIGATION NO. 1 OF 2020

The Registrar (Judicial),
High Court of Judicature of Bombay
Bench at Aurangabad.

....**Petitioner.**

Versus

The Union of India & Ors.

....**Respondents.**

Mr. Rajendra Deshmukh, Senior counsel for petitioner (appointed)
with Mr. Akshay Kulkarni & Mr. Amol Joshi, Advocates.

Mr. Sadanand S. Deve, A.S.G. for Union of India.

Mr. D.R. Kale, Public Prosecutor for State.

Mrs. Anjali Bajpai-Dube, Advocate for respondent No. 41.

Mr. R.K. Ingole, Advocate for respondent No. 46.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 31/07/2020.

ORDER :

1. Not on board. Taken on board.

2. The matter is taken on board in view of the some information which is received and some developments which have taken place. Firstly this Court wants to appreciate the work done by the authorities from Aurangabad District. Everybody knows that lockdown of nine days was declared in July 2020 in this District and due to cooperation of the citizens, it became successful. There was

apparently cooperation amongst the officers of Corporation under the leadership of Municipal Commissioner, officers of revenue department under the leadership of Divisional Commissioner/District Collector and police officers under the leadership of Police Commissioner and D.S.P. (Rural) during the lockdown period. We appreciate that. We also appreciate the initiative taken by the Municipal Commissioner of Aurangabad Municipal Corporation and also the courage shown by him. Thousands of antigen tests were taken and it appears that more than 500 shop keepers who were infected were detected in the tests and many other persons were also found infected during the tests. This Court has no hesitation to observe that it was a good initiative and it had its own impact on the situation. Firstly, the tests detected infected persons and due to that, to that extent the spreading of virus was prevented. The second achievement is the spreading of awareness amongst people about the virus and removing the fear of the tests from the minds of the persons of this area. This is really achievement.

3. It appears that only the authority from the Aurangabad district is feeling that it is bound by the orders made by this Court. This Court had already observed that condition created in Jalgaon district is also alarming. That continues to be alarming and no concrete steps appear to be taken in Jalgaon district. In other districts which are under the jurisdiction of this Court, the figure of

infected persons is on the rise and today there is news item that during last 24 hours more than 117 infected persons were detected in Nanded district. This Court has taken suo-moto cognizance to see that all the authorities from all the districts which are under jurisdiction of this Court become active and they remain active till the virus is active.

4. In one of the orders, this Court had directed the authorities to supply information about the steps taken by them to stop the spread of virus in village area of this region. When on one hand the number of infected persons in city area is coming down on the other hand the number of infected persons from rural area is going up and the trend is still in upward direction. It is unfortunate, but it is a fact that when the virus spread initially in cities like Pune, Mumbai, Mumbai Metropolitan Region (MMR) etc. many persons from this area started returning to their native places. Many of the persons of those areas have purchased properties in smaller cities, though by way of investment or by having resort center in rural area and there they shifted themselves. Even when inter-district travel is prevented and the prevention is continued till 31st August of this year, the persons were able to go to those places even without having passes issued by the authority and due to that there is spread of virus in village area. In view of that situation, this Court has made order to the authorities to show the record in respect of village area.

Due to different culture in our village area which involves close contacts of all the families of the village with each other and which is different from flat culture of the society, the persons of the village protect each other and due to that the information is not given to the authorities. Anybody who knows the village culture ought to have anticipated that and ought to have taken steps in that regard. As there is apparent failure on that front, at present there are more COVID-19 hot spots in rural area than the city area. Recently one of us, Justice T.V. Nalawade had occasion to go to Jalna for court inspection. He went with necessary pass and at the entry point of Jalna, he noticed that there was no strict checking and police force (2-3 constables) posted there were not asking to show pass to anybody. They were making casual inquiry with the travellers and they were allowing the vehicles from Aurangabad side to Jalna side. This approach must have helped in spreading of the virus in the parts of this region. Strict vigil needs to be kept and unless that is done, the authorities will not be in a position to control the things. This Court hopes that proper steps in that regard will be taken. Similarly Justice Shri. Nalawade noticed at 11.00 a.m. when he was crossing boundary of Aurangabad and he was entering Jalna that there were some police constables and some staff of the corporation and revenue department who were intercepting vehicles coming from Jalna and were asking the persons who were entering Aurangabad area to undergo antigen test. When Justice Shri. T.V.

Nalawade was returning from Jalna at 4.00 p.m. such screening was not there and there was laxity and anybody could enter Aurangabad from Jalna area at that time. This Court has already observed that only issuing orders and giving directions by the authority are not sufficient in such a situation due to particular kind of culture of the work developed in our country. The officers who issue orders and directions, need to have follow up, need to see that subordinates are implementing the orders and the orders are actually implemented. There may not be necessity like sting operation, but the authorities may send some persons in disguise to confirm that the officers at such points are doing the duty only. Unless that is done, the things will not improve.

5. By letter dated 3.7.2020 one person from Jalna has informed to this Court that the authority from Jalna changed the officers who were expected to work for controlling the spread of virus and this order was made in favour of those public servants because they have some influence. Copies of orders dated 29.5.2020 and 5.6.2020 are produced to substantiate this allegation. This Court has already observed that in the situation which is created by the virus the public servants need to be tested and the servants who are useless need to be removed from the service by filing complaints against them in police station under the special Enactments like Epidemic Disease Act, 1897, Disaster Management Act, 2005 etc.

This Court has already observed that the authorities need to act freely as sufficient powers are given to the authorities under aforesaid Special Enactments and they can act without getting influenced by anybody. In the situation like present one, a good atmosphere needs to be created amongst the staff, subordinates by showing that superiors are impartial. Unless that happens, there will not be total cooperation from all the staff members. In view of the nature of allegations made in the aforesaid anonymous complaint which must have been made by a public servant, this Court is hereby directing the Public Prosecutor to see that copy of complaint is sent to the authority from Jalna and the reasons for the change of the officers are shown to this Court. It needs to be kept in mind that there are directions from Central Authority and there are directions from State Authority that if there is breach of these directions, then the persons who are responsible can be also held guilty and action can be taken under aforesaid Special Enactments against them. To see that the officers and authority act fairly and impartially this Court is taking such steps. Such correspondence is compelling this Court to take more steps which this Court will mentioned at proper place.

6. Recently more complaints were received in respect of working of private hospitals. This Court has already observed that the aforesaid Enactments have given ample powers to the authorities to pass orders of requisition and take complete control of

the private hospitals if they are required for treatment of the COVID-19 patients. This Court expects that every order made by this Court is communicated to the authorities from all the districts which are under the jurisdiction of this Court. These orders need to be communicated to the private institutions like private hospitals as action can be taken against them under the provisions of Special Enactments.

7. There was a news item on T.V. channel about 15 days back and the channel showed a video clip of infected person. He had a grievance that there was no supply of oxygen, he was complaining about breathlessness, but nobody was there to supply oxygen to him. He died on that night. As yet the reasons of death are not known. Similar incident took place in the last week and that person also died. On the second occasion, the person who circulated the video clip positively complained in video clip that if something happens to him, the concerned should be blamed for it. When there is such kind of grievance, it becomes duty of the concerned authorities to fix the responsibility and give the complaint to police as such conduct is not less offence of than culpable homicide not amounting to murder. Unless and until action is taken against such persons, others will not improve their conduct. The learned Public Prosecutor is to see that information in respect of aforesaid two incidents is supplied in this matter. This Court has already given

directions to see that CCTV systems are fixed in isolation cells. This Court wants affidavit of all the authorities or concerned officers to show that there is installation of CCTV system in isolation centers. CCTV system should be installed in private hospitals also where the treatment is being given to infected persons. This has become more necessary as recently there was a complaint from one district that even when three injections were purchased which were costly injections, they were not used to treat the patients. Ordinarily, the hospitals have their own pharmaceuticals shops and from those shops injections are purchased. If there is complaint that injections were asked by doctors and they were purchased and handed over to the hospitals, but they were not utilized, then it is a serious complaint. Cost of each such injection is more than Rs.35,000/-. Serious note of this incident also needs to be taken and this Court wants to have report from the concerned.

8. Learned Senior Counsel Shri. Deshmukh submitted that recently in Pachora tahsil of Jalgaon district there was one incident of unnatural death of one youngster and the relatives of the youngster feel that it is not suicide, but it is atleast culpable homicide not amounting to murder. He is expected to give complete details in that regard so that the order if any required can be made. The learned Public Prosecutor is to collect the information in that regard.

9. In our society there are many who cannot afford to pay charges of private hospitals. It is learnt that many poor persons and the persons who have no influence are not able to get admissions in hospitals even when they are infected. It will be the subject of research to find out the number of poor persons who died at residential places due to such condition, but they went unnoticed by anybody. It can be said that they spread virus as they remain at residential places, but the blame cannot be put on them as it is fault of our system that we did not either spot them or attend them. Such incidents are more in rural area and so proper attention needs to be paid to the rural area. The persons of rural area hardly get medical treatment as it is a dream for them to come to designated hospital and get admitted there.

10. Due to aforesaid circumstances, this Court is now feeling it necessary to allow all those persons who have grievance with regard to the care and treatment of infected persons and others to approach this Court directly. They may give grievance in writing to this Court either by post or on E-mail or through Advocate. The grievances may be of following nature :-

(i) There was no supply of necessary items in containment zone.

(ii) There was no supply of ration from fair price shops to the card holders and others.

(iii) There was no center created where the relatives of infected persons or infected person can go to get admission in hospital.

(iv) The officers or authority did not help them in getting admission in hospital.

(v) Any hospital did not give admission to them even when authority had directed that hospital to admit the patient.

(vi) They have doubt that necessary treatment was not given and the medicines and injections which are supplied by them or Government were not actually utilized by the doctors.

Care is to be taken by these persons to see that every complaint or grievance is supported by affidavit which can be sworn in before the Superintendent of District Court or Assistant Superintendent of Tahsil Court or even before the notary public. This Court will consider those complaints for taking action against the concerned.

11. Information needs to be supplied in respect of reservation of beds in designated hospitals and use of those beds. Information about the availability of ventilators and the deaths due to non-availability of ventilators also needs to be supplied by the State.

12. Information is to be given to this Court about action taken against negligence shown in treatment if complaints were received in that regard.

13. The learned Public Prosecutor is to see that the part of today's order, particularly the intention of the Court to consider individual complaint is given publicity up to village level. That part of the order is to be used for informing public that they can approach this Court directly for informing their grievances against the concerned public servant and also against the private hospitals and others.

14. Authenticated copy to be given to the learned Senior Counsel of the petitioner Shri. Rajendra Deshmukh, the learned Public Prosecutor and the learned counsel for Aurangabad Corporation Aurangabad. The Public Prosecutor is to see that today's order is communicated to all the respondents. Keep the matter on due date i.e. on 4.8.2020.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/