



(1)

WP-469-2021

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.469 OF 2021

Seth Nandlal Dhoot Hospital
Marathwada Medical Research &
Rural Development Institution
A-1, MIDC, Chikalthana, Jalan Road,
Aurangabad- 431210.

...PETITIONER

VERSUS

1. The State of Maharashtra
Through Public Health Department,
G.T. Hospital Compound, 10th Floor,
New Mantralaya, Mumbai-400 001.

2. District Collector, Aurangabad
Collector Office Campus Aurangabad,
Maharashtra-431003.

...RESPONDENTS

Mr. Rameshwar Totala i/by Mr. R. R. Totala, Advocates for Petitioner.
Mr. P. K. Lakhotiya, AGP for Respondent-State.

CORAM

**: KISHORE C. SANT &
AJIT B. KADETHANKAR, JJ.**

RESERVED ON

: 31st JULY 2026.

PRONOUNCED ON

: 16th SEPTEMBER 2026.

ORDER :- [PER:- KISHORE C. SANT, J.]

1] Heard Mr. Totala, the learned Advocate for the petitioner
and Mr. Lakhotiya, the learned AGP for Respondent/State.

2] A short question involved in this petition is about the power of the District Magistrate to issue a Show Cause Notice dated 25/09/2020 to the petitioner/Hospital for overcharging patients for the health services provided during the COVID period. Notice was issued for charging excess fee than prescribed in Annexure-C to the Notifications dated 21/05/2020 and 31/08/2020. Notification were issued framing policy guidelines regarding the grievances of the people with regard to the exorbitant amount charged and recovered by the Healthcare Providers from COVID patients.

3] The nation faced the COVID-19 pandemic situation from the year 2019 to 2021 and some part of 2022. The sufferance was such that every organ of the Government was put to test. The country witnessed enormous efforts taken by all the organs of the Government to serve the people of this country and help them come out of the COVID situation. At the same time, it was found that the health services providers, in some cases which may be exceptional, were found to have taken undue advantage of the situation and exploited patients. On noticing such few instances, the Government issued notifications from time to time. One

such notification was issued prescribing the rates for health services provided to COVID patients. Certain measures were directed to be taken to curb such practices. The schedule of rates was also prescribed to see that the persons facing COVID-19 situation were not required to pay exorbitant charges for the services they received. The State Government therefore issued notifications dated 30/04/2020, 21/05/2020 and 31/08/2020. The notification dated 30/04/2020 was issued by considering various provisions of the various Acts concerning various health services, epidemic diseases etc. The provisions were invoked by the State Government under the following Acts; (i) The Epidemic Diseases Act, 1897 (for short "***E.D. Act***") (ii) The Disaster Management Act, 2005 (for short "***D.M. Act***", (iii) The Maharashtra Essential Service Maintenance (Amendment) Act, 2011, (for Short "***M.E.S.M. Act***") (iv) The Mumbai Nursing Home Registration (Amendment) Act, 2006 (for short "***M.N.H.R. Act***", and (v) The Maharashtra Public Trusts Act, 1950 (for short "***M.P.T. Act***").

4] The Government by taking cognizance of the spread of

COVID-19 pandemic situation issued circular. In view of this situation, as declared by the World Health Organization (WHO), the Government invoked power even under the M.P.T. Act, since some of the public hospitals were run by Public Charitable Trusts wherein there are legal obligations to reserve and earmark 10% of the total number of operational beds for indigent patients and provide medical treatment to them free of costs. The Government invoked power of Section 2(a)(iii) of the M.E.S.M. Act which defines the services connected with the maintenance of Public Health and Sanitation, including hospitals and dispensaries, as essential service.

5] The notification provided various guidelines through a Competent Authority at the State Level, and the Public Health Department or an appropriate decision-makers at the District Level. The District Disaster Management Authority, designated vide the Disaster Management Act, 2005, was recognized as the Competent Authority to take appropriate action as provided in the Epidemic Diseases Act, 1897. It was recognized as Competent Authority even for the purposes of D.M.

Act, M.E.S.M. Act, M.N.H.R. Act, and the M.P.T. Act. The authority was vested with the power to take action for any violation of the directions in the said notification.

6] By Annexure-A, a schedule of rates was prescribed for hospitals which were not part of the General Insurance Public Sector Association (GIPSA) Preferred Provider Network (PPN) situated in Mumbai. By notification dated 21/05/2020, the Government again under various Acts issued another circular making it applicable even to the Healthcare Providers that were not part of GIPSA and PPN or did not have agreements/understanding with Third Party Administrators (TPAs) pertaining to package rates for different treatments.

7] For the implementation of the guidelines in the said notification, the Competent Authority at the State level was the Chief Executive Officer, State Health Assurance Society, Public Health Department. At the District level, excluding Municipal Corporations, the Competent Authority was declared as the District Collector and in the Municipal Corporation areas, it Municipal Commissioner. These

Competent Authorities were authorized to take appropriate action as provided under the various Acts. This notification was to remain in operation till 31/08/2020.

8] By annexure-A, the rates were fixed for services. By Annexure-B, different rates were made applicable to different districts for hospitals which were not part of GIPSA, PPN or did not have any agreement with any TPAs. Thus, it was applicable to such hospitals and healthcare providers. Annexure-C prescribed the maximum rates which can be charged to COVID patients. This was applicable throughout Maharashtra for all healthcare providers.

9] By another notification dated 31/08/2020, the Government again issued notification under the above-stated Acts. It was for patients without insurance coverage or patients whose insurance coverage was exhausted. For the implementation of this notification, again at the District Level (excluding Municipal Corporations) the District Collector was the Competent Authority. In Municipal Corporation areas, the Municipal Commissioners were the Competent Authority to take

appropriate action under the Acts. Again, this was prescribed in Annexures A, B and C.

10] It is in this view of the matter, the Collectors were appointed as Competent Authorities for their entire districts, and in the Municipal Corporation areas it was the Municipal Commissioner.

11] Now coming to the facts of the present case, the Nodal Officer and Deputy Collector, Aurangabad noticed from the newspaper reports that some of the hospitals were overcharging patients during the COVID period. The Deputy Collector therefore issued notices to three hospitals in Aurangabad including the present petitioner-hospital. A show cause notice called for an explanation as to why no action should be taken under the Epidemic Diseases Prohibition Act, 1897 and the Disaster Management Act. The petitioner/hospital replied this notice on 08/07/2020, giving an explanation stating that the newspaper reports were based on misinformation. The hospital, in fact was charging fees as per the rates given in the chart with the notification.

12] Another show cause notice was again issued to the petitioner/hospital on 25/09/2020, giving particulars like names of the patients and amount charged. A total 393 instances were quoted in the said notice. The petitioner/hospital was called upon to submit an explanation alongwith relevant documentary evidence in support of contention of the petitioner. It was also asked as to why penal action contemplated under the provisions of the Disaster Management Act and the Bombay Nursing Homes Registration Act read with the Bombay Nursing Home Registration (Amendment) Act, should not be initiated against the administration. The explanation was called for within seven days of receipt of the notice.

13] On the same day, an order was issued against the petitioner. Pursuant to show cause notice dated 06/07/2020, this was on the basis report dated 23/07/2020, 10/08/2020 and 20/08/2020 given by the Nodal Officer, Account and Audit Team. Petitioner was directed to pay the overcharged amount of Rs. 29,695/-, 48,740/- and 10,150/-. The total charges of Rs.88,585/- charged from specific patients mentioned in

the notice. Thus, this is the notice which is under challenge before this Court.

14] Mr. Totala, the learned Advocate for the petitioner, vehemently argued that the petitioner/hospital comes within the Municipal Corporation area. In view of notification dated 30/04/2020 for the Municipal Corporation area, the Municipal Commissioner was appointed as the Competent Authority. There was thus no question of the Collector taking action against the petitioner. In the show cause notice dated 25/09/2020, there is no reference to the notification dated 30/04/2020. Only 13 cases were shown where there were allegations of overcharging. Notice dated 25/09/2020 is only on the basis of some newspaper reports which were not confirmed. On one hand, the notice was given on 25/09/2020 and on the other hand, the order was also passed on the same day without giving sufficient opportunity. The names of persons shown in the notice dated 25/09/2020 are the same in respect of whom earlier notice was issued and the order dated 25/09/2020 was passed.

15] He submits that the Collector has no authority to issue show cause notice as the Hospital is within Municipal Corporation area. In view of notification dated 31/08/2020 only Municipal Commissioner had the authority. There was no proper verification done before passing the order. No sufficient opportunity is afforded to the petitioner, as immediately after the notice, on the same day order is passed by the Collector. The action, therefore is without authority and is illegal, and the same deserves to be quashed and set aside. He thus prays for quashing and setting aside of impugned notice and action.

16] Mr. Lakhotiya, the learned AGP appearing for Respondent/State vehemently argued that though by notification, the Municipal Commissioner was appointed as the Competent Authority so far as Municipal Corporation area is concerned, however that would not take away the power of the Collector. The Collector is the authority under the D.M. Act and E.D. Act. He thus submits that on 30/04/2020, the Government had published the notification under the Acts wherein it was made specifically clear that, at the district level the District Disaster

Management Authority designated vide the Disaster Management Act 2005, shall be the Competent Authority to take appropriate action as provided in the Epidemic Diseases Act and other Acts for the Municipal Corporation area. It also provided that the Municipal Commissioner also could act as the Competent Authority. The power of the Collector was thus not taken away by the notifications, as the Collector is already designated as Competent Authority under the Disaster Management Act.

17] Learned AGP further invites attention to circular dated 21/09/2020 where again it was stated that the Competent Authority at the District level shall be the District Collector and in Municipal Corporation areas, the concerned Municipal Commissioner. Though the wording appears that “for areas excluding Municipal Corporations, the District Collector shall be the authority”, it will not divest the power of the Collector. The power given to the Municipal Commissioner will have to be taken as in addition to the powers vested in the Collector.

18] Learned AGP points out Section 2(f) and Section 30 of the Disaster Management Act 2005 to show that the Collector is the

authority in the District under the said Act. This being the position, it cannot be said that the Collector does not have the power in Municipal Corporation area. He also relied upon notification dated 14/03/2020 issued by Public Health Department, Maharashtra State. The said notification states that “Empowered Officers” under Section 2(1) of the Maharashtra COVID-19 Regulations, 2020, shall be the Commissioner, Health Services; Director of Health Services; Director, Medical Education and Research, All Divisional Commissioners of Revenue Divisions; and all Collectors and Municipal Commissioners who are empowered to take such measures as are necessary to prevent the outbreak of COVID-19 or the spread thereof within their respective jurisdictions. By the said notification, various powers are given to the authorities. The Disaster Management Authority had also passed an order on 20/08/2020 appointing auditors for the purpose of auditing and checking the bills issued by the hospitals to the patients. By the said order, one Hemant Jarange, Assistant Audit Officer, Municipal Corporation and Mr. Raju Chitte, Assistant Audit Officer, Senior Treasury Office Aurangabad, were appointed for the petitioner/hospital.

19] By relying upon notification dated 25/09/2020, learned AGP submits that the order was issued by the Collector not in his capacity as Collector, but as an Authority under the District Disaster Management Act. For this purpose, again he relied upon the definitions under Section 2(f) and 25(2) and Section 78(2)(e) and (g) of the Disaster Management Act. He submits that, in fact, in addition to the Collector's powers, the powers were also given to the Municipal Commissioners in the Municipal Corporation area. The powers vested in Municipal Commissioner would not take away the powers of the Collector, but were merely in addition to them. He thus submits that the Collector was well within his powers to issue show cause notice and to pass the order. He relied upon Section 15 (4) of the Disaster Management Act as well.

20] Considering all these submissions, this Court has only to see as to whether the show cause notice and the order passed by the Collector can be said to be without jurisdiction and without lawful authority.

21] It is not disputed that the petitioner/hospital is covered under the notification. The challenge is only to the authority of the Collector to issue notice and to take action against the petitioner. The said challenge is raised only on the ground that the petitioner/hospital happens to be within the Municipal Corporation area, and therefore the it is only Municipal Commissioner of Aurangabad who has the authority to take action. The submission is made based on the wording used in the notifications: “excluding Municipal Corporation areas”. But wording further used is as “and in Municipal Corporation areas, the Municipal Commissioner”. Whether such wording would take away the power of the Collector is the key point.

22] So far as authority with the Collector is concerned, we need to look to the relevant provision of the Act. Under section 2(f) of the Disaster Management Act and the Epidemic Diseases Act, the District Magistrate/Collector is the Authority and there is no dispute. Once the Collector is conferred with the power, there is question of Collector loosing power in view of the notification, does not arise. The

Commissioner is given power in addition to the Collector. In no case it be said that as power is given to the Commissioner would cease to have power. Because of the notification, the authority under the Act would not lose its power.

23] One more thing that needs to be considered is the Government decision dated 01/06/2006 issued by Revenue and Forest Department (Relief, Rehabilitation and Disaster Management), Mantralaya Mumbai. Order was passed under Section 25 of the Disaster Management Act of the Central Government, establishing the Disaster Management Authority wherein the Collector is the ex-officio Chairman. Thus, the Government has already appointed the Collector as the ex-officio Chairman of the Disaster Management Authority at the district level, so he is already an authority under the Act.

24] This Court had taken cognizance and registered Suo Moto PIL No. 01/2020 during the COVID period, looking to the COVID situation and the urgent need to take relief by the people. This Court issued various directions/guidelines by which a task force was

appointed. By clause (A), it was directed to all the District Collectors to establish task force, if not already established. The task force was given various tasks to perform. In view of order passed in PIL, the Collector was designated as the Head of the task force. Thus, in that view also, the Collector has every power. Nodal Officers were also appointed at the rural level and district level. Thus, considering all this, it is clear that the Collector has every power.

25] Coming to the proposition as to whether, by delegating authority to some other authority, the authority thereby loses its own power, the Hon'ble Apex Court in the cases of *Purtabpore Co. Ltd. Vs. Cane Commissioner of Bihar and Ors.*¹, and *Joint Action Committee of Air Line Pilots' Association of India v. Director General of Civil Aviation*² and in the case of *Sidhartha Sarawgi Vs. Board Of Trustees for the Port of Kolkata and Ors.*³ has laid down the law.

26] In the judgment in the case of *Purtabpore Co. Ltd.* (supra), paragraph No.12 reads as under:

1 (1969) 1 SCC 308

2 2011 (5) SCC 935

3 (2014) 16 SCC 248

“12. The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior.

27] It is thus clear that when an officer is entrusted with statutory discretion, they are not absolved from their duty to exercise their personal judgment in individual cases. In the present case, it is seen that under various Acts, the Collector is the authority, being chairperson of the Disaster Management Authority under Section 2(f) of the said Act. Thus, even if the Municipal Commissioner is appointed in addition as a Competent Authority under the Act, that will not take away the power of the Collector to perform his duties and exercise his powers.

28] In the case of *Joint Action Committee* (supra), it is observed that it is settled legal position that the authority which has been conferred with the competence under a statute alone can pass an order. No other person even the superior authority, can interfere with the functions of the statutory authority.

29] In the present case, assuming that the power was delegated to the Municipal Commissioner in the Municipal Corporation area, that cannot be taken as that the Collector lost his power to take action. As already considered, the Collector possessed the power under the Act itself.

30] Considering all above, this Court finds that the Collector was certainly within his powers to issue show cause notice and to take action pursuant to notifications and under the provisions of the Acts.

31] Thus, considering overall case and the facts, this Court finds that there is no illegality committed by the Collector in issuing show cause notice and taking action.

32] It is open to the petitioner/hospital to defend itself before the Collector and put-forth its case. The Collector shall act appropriately.

33] With these, Writ Petition stands disposed off.

34] Pending civil applications, if any, also stand disposed off.

[AJIT B. KADETHANKAR, J.]

[KISHORE C. SANT, J.]

35] At this stage, it is mentioned by learned AGP that pursuant to show cause notice, the petitioner has already deposited the amount, as directed by this Court, in the office of this Court. The said amount be remitted back to the Collector for disbursement to the concerned patients from whom it was collected.

36] Learned Advocate for the petitioner seeks to continue interim arrangement that was made by this Court pending the petition.

37] Considering the same, the amount shall not be remitted to the Collector for a period of three weeks from today.

[AJIT B. KADETHANKAR, J.]

[KISHORE C. SANT, J.]