

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7896 of 2020

Tamilnadu Muslim Munnetra Kazhagam (TMMK)
Rep. by its Chairman
Prof. M.H.Jawahirullah
S/o.A.M.Hidayatullah
having office at 7, Vada Maraicoir Street
Chennai - 600 001. ...Petitioner

vs.

1. The State of Tamil Nadu
rep. by its Chief Secretary
Fort St. George
Chennai - 600 009.
2. The Health and Family Welfare Department
Government of Tamil Nadu
rep. by the Office of Director of Family Welfare
Directorate of Family Welfare
5th and 6th Floor, DMS Building
Anna Salai, Teynampet
Chennai, Tamil Nadu - 600 006. ...Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents to issue a Notification requisitioning at least 50% of the beds in all the multi-specialty private/corporate hospitals in the State of Tamil Nadu to reserve at least 50% of their beds (or such other capacity, as the State Government may deem fit and proper on the basis of the increase in the number of cases) towards treatment of COVID-19 patients in multi-specialty private/corporate hospitals operating within State of Tamil Nadu by issuing a notification with the rates prescribed in detail, chargeable under various heads and mandating the multi-specialty private/corporate hospitals to not charge more than such rates

as prescribed while setting out a minimum standard of treatment at all hospitals and clinical centres as per the Clinical Laboratories Act & Regulations applicable within the State.

For Petitioner : Mr.P.V.Balasubramaniam for
M/s.BPS Legal

For Respondents : Mr.S.R.Rajagopal
Additional Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
State Government Pleader

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

This public interest litigation has been filed seeking a direction to the respondents to (i) regulate the price of COVID-19 treatment in private hospitals operating within the State of Tamil Nadu; (ii) requisitioning portion of the private hospitals for the treatment of COVID-19 patients in order to ensure extensive participation of private health care sector considering resource constraints on the public health sector; and (iii) setting of minimum standard of treatment at all recognized government hospitals and clinical centres as per the Clinical Laboratories Act and Regulations applicable within the State.

2. The petitioner claims itself to be a trust engaged in social and other public related activities and, therefore, was bringing up a public cause, as the petitioner had seen various reports from national and vernacular newspapers and media organizations highlighting the exorbitant realization of money for treatment in various hospitals, particularly with regard to COVID-19 treatment and testing across the country. The petitioner has referred to certain news as occurring in national dailies and has alleged that private hospitals are charging exorbitant amount in the name of treatment of COVID-19 patients, when as a matter of fact there is no known treatment for the said disease. The grievance is that in the absence of any such regulatory procedure for the pricing charged by the private sector hospitals, the private hospitals are being occupied by patients who pay the highest and those unable to pay, and being worst affected, are being turned away on account of them not being able to pay the treatment expenses. This exploitative tendency in the private sector is, therefore, being complained of and a direction has been sought that the Government may regulate the same by issuing necessary directions.

3. A miscellaneous petition, being W.M.P.No.9328 of 2020,

for an interim monitoring mechanism being set up has also been made for submitting periodical reports in this regard.

4. The petitioner himself has come out with the case that the State Government has issued a Government Order being G.O. (Ms).No.174, Health and Family Welfare (Pl) Department, dated 3.4.2020 in respect of the treatments being obtained from private hospitals in respect of COVID infection, but there are no guidelines issued to regulate the tariff charged by such private hospitals. The variation between the public hospitals and the private hospitals are absolutely disproportionate and, therefore, this is also not in conformity with either the provisions of the Disaster Management Act, 2005 or in tune with the rights guaranteed under Article 21 of the Constitution of India.

5. It is urged that health being the primary duty of the State to be taken care of, judicial notice should be taken of these facts in order to control any such exploitation which directly affects the fundamental rights of a citizen to seek appropriate health remedies, including private hospitals. This has to be viewed more in the light of the pandemic situation, where this Court should come to the aid of its citizens for preserving the life of a citizen, which is a fundamental right guaranteed under Article 21 of the Constitution of India.

6. At the very outset, learned counsel has also invited the attention of the Court to the order passed by the Gujarat High Court dated 22.5.2020 [Suo Motu v. State of Gujarat and others] to contend that such issues have been taken note of and, therefore, this Court should also interfere and issue necessary directions in this regard.

7. We find from the order passed by the Gujarat High Court that it was a public interest litigation in respect of the steps taken for the problems of migrants, arrangements made with private hospitals, etc. In the present case, the main thrust of the argument is with regard to the exorbitant charges being realized for treatment facilities by private hospitals in general. We find from the order of the Gujarat High Court that various issues were undertaken and the writ petition was posted on 29.5.2020.

8. On 29.5.2020, the Gujarat High Court again passed an order after taking notice of the orders passed by the Supreme Court in relation to a writ petition moved under Article 32 of the Constitution of India that was also filed as a public interest litigation for ensuring free of cost testing facilities by all testing labs - whether private or government. The relevant portion of the order from paragraph (33) to paragraph

(57) is extracted herein under:

"33 In the aforesaid context, we may invite the attention of the learned Advocate General and also the Government Pleader to the two orders passed by the Supreme Court on the subject of the COVID19 Test. The orders are as under:

"IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) Diary No(s) .
10816/2020 SHASHANK DEO SUDHI Petitioner(s)
VERSUS
UNION OF INDIA & ORS. Respondent(s)

O R D E R

The Court convened through Video Conferencing.

This Court by order dated 03.04.2020 had directed the petitioner to serve a copy of the petition to learned Solicitor General of India.

Notice.

Two weeks time is allowed to respondents to file an affidavit in reply.

This writ petition under Article 32 of the Constitution of India filed as Public Interest Litigation seeks a direction to the respondents for ensuring to provide free of cost testing facility of COVID19 (Coronavirus) by all testing Labs whether private or Government. The petitioner has also challenged the Advisory dated 17.03.2020 issued by Indian Council of Medical Research Department of Health Research, insofar as it fixed Rs.4500 for screening and confirming COVID19. The petitioner also prays that a direction be issued that all the tests relating to COVID19 must be carried out under NABL accredited Labs or any agencies approved by WHO or ICMR.

Even before the COVID19 was declared a pandemic by WHO on 11.03.2020, it had spread in several countries. As of now, more than 200 countries are suffering from this

pandemic. The number of patients suffering from COVID19 is rapidly increasing Worldwide with death toll rising rapidly. In our country, in spite of various measures taken by the Government of India and different State Government/Union Territory the number of patients and death caused by it is increasing day by day. Our country has a very large population.

The Indian Council of Medical Research Department of Health Research has notified the details of operative Government Laboratories and Private Laboratories to test COVID19.

We find prima facie substance in the submission of petitioner that at this time of national calamity permitting private Labs to charge Rs.4500 for screening and confirmation test of COVID19 may not be within means of a large part of population of this country and no person be deprived to undergo the COVID19 test due to nonpayment of capped amount of Rs.4500. It is submitted before us that insofar as Government Laboratories are concerned the COVID19 test is conducted free of cost.

The private Hospitals including Laboratories have an important role to play in containing the scale of pandemic by extending philanthropic services in the hour of national crisis. We thus are satisfied that the petitioner has made out a case for issuing a direction to the respondents to issue necessary direction to accredited private Labs to conduct free of cost COVID19 test. The question as to whether the private Laboratories carrying free of cost COVID19 tests are entitled for any reimbursement of expenses incurred shall be considered later on. We further are of the view that tests relating to COVID19 must be carried out in NABL accredited Labs or any agencies approved by ICMR.

We, thus, issue following interim directions to the respondents:

- (i) The tests relating to COVID19 whether in

approved Government Laboratories or approved private Laboratories shall be free of cost. The respondents shall issue necessary direction in this regard immediately.

(ii) Tests relating to COVID19 must be carried out in NABL accredited Labs or any agencies approved by WHO or ICMR."

"S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) Diary No(s). 10816/2020

SHASHANK DEO SUDHI Petitioner(s)
VERSUS
UNION OF INDIA & ORS. Respondent(s)

Date : 08042020

This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Petitioner in person

For Respondent(s) Mr. Tushar Mehta, SG

UPON hearing the counsel the Court made the following

O R D E R

The Court convened through Video Conferencing.

Issue notice. सत्यमेव जयते

Two weeks time is allowed to respondents to file an affidavit in reply.

The Court issued the following interim directions to the respondents, in terms of the signed order:

(i) The tests relating to COVID19 whether in approved Government Laboratories or approved private Laboratories shall be free of cost. The respondents shall issue necessary direction in this regard immediately.

(ii) Tests relating to COVID19 must be carried out in NABL accredited Labs or any agencies approved by WHO or ICMR."

"IN THE SUPREME COURT OF INDIA CIVIL
EXTRAORDINARY JURISDICTION

WRIT PETITION NO. OF 2020
(D. NO.10816/2020)

Shashank Deo Sudhi ... Petitioner Versus
Union of India and Ors. ... Respondents

O R D E R

I.A. No.48265/2020, Application for
Intervention is allowed.

Heard Mr. Gopal Shankarnarayan, learned
counsel for the intervenor.

By I.A. No.48266/2020, the applicant has
prayed for modification of the order dated
08.04.2020. Another IA has been filed by one
Mr. Bijon Kumar Mishra seeking impleadment
and directions to ensure the treatment of
COVID19 infected patients free of cost in
all hospitals.

Mr. Bijon Kumar Mishra is permitted to
intervene.

Mr. Mukul Rohatgi, learned senior counsel
has appeared on behalf of several
laboratories to put their point of view with
regard to charging of fee as prescribed by
the ICMR and conducting of the free test of
COVID19. Shri Rohatgi submits that the ICMR
has fixed Rs.4,500/- on a moderate side to
cover the expenses of Labs for conducting
the COVID19 test. He submits that insofar as
the persons covered under the Pradhan Mantri
Jan Aarogya Yojana, popularly called as
Ayushman Bharat Yojana, the Labs are
conducting free of cost COVID19 test. He
submits that in the event, the Labs are not
to charge any fee for the tests, it will be
impossible for them to carry on the test in
due to financial constraint and other

relevant factors. He further submits that the kits which are utilized in the test are imported kits involving substantial expenses.

Shri Tushar Mehta, learned Solicitor General of India, referring to the affidavit filed on behalf of the ICMR dated 12.04.2020, submits that the Government is taking all necessary steps for conducting the COVID19 test. It is submitted that as on date, 157 Government Labs and 67 private Labs are conducting COVID19 test.

He submits that all Government hospitals and Government Labs are conducting COVID19 test free of cost. As per the protocol of the ICMR, any affected person on recommendation of a Medical Practitioner can avail the benefit of free test available in Government hospitals and Government Labs. He submits that insofar as the test by private Labs are concerned, the ICMR has fixed the amount of Rs.4,500/- after considering all relevant factors. He submits that under the Ayushman Bharat Yojana, about 10.7 crore poor and vulnerable families which means approximately 50 crores beneficiaries are covered under the scheme and they can avail the benefit of free of cost COVID19 test even in the private labs.

He submits that beneficiaries under the scheme would get cashless COVID19 test in private labs. He further submits that an affidavit would be filed disclosing the number of persons/families actually covered by the scheme. The affidavit may be filed within two weeks from today.

Shri Tushar Mehta further submits that the Ministry of Family Welfare has issued various orders from time to time under which test and treatment for all COVID19 test under the Ayushman Bharat Yojana also covers the COVID19 test in any private Labs.

Mr. Shashank Deo Sudhi, the petitioner who

appears in person, submits that there are large sections of society who at present are unable to afford the payment of Rs.4,500/- for COVID19 test. He submits that the Government has to take responsibility of getting every person tested. In the event one person in a family is tested positive, the entire family requires testing. He submits that Government hospitals are overcrowded, hence, such persons may be permitted testing of COVID19 in private Labs free of cost.

Having heard, learned counsel for the parties, we are satisfied that sufficient cause has been made out to clarify and modify our order dated 8th April, 2020.

The order dated 08.04.2020 intended to make testing in private Labs of COVID19 free for economically weaker sections of the society who were unable to afford the payment of testing fee as fixed by ICMR for COVID19. We further clarify that the order never intended to make testing free for those who can afford the payment of testing fee fixed by the ICMR for COVID19.

In the affidavit filed by ICMR dated 12.04.2020 it has been stated that according to directive issued by the National Health Authority under the Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana, the testing fee for COVID19 will be free of cost under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana in all private Laboratories. Thus, free testing with regard to one category of people I.e. those covered under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana was already in place when we passed order dated 08.04.2020. We make it clear that the benefit of free testing by a person can be availed only when he or she is covered under any scheme like Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana.

We are also of the view that looking to the plight of persons belonging to economically weaker sections of the society, the

Government may consider as to whether any other categories of persons belonging to economically weaker sections of the society can be extended benefit of free testing of COVID19. We are conscious that framing of the scheme and its implementation are in the Government domain, who are the best experts in such matters. In view of the foregoing discussion, the order dated 08.04.2020 is clarified and modified in the following manner:

- (i) Free testing for COVID19 shall be available to persons eligible under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana as already implemented by the Government of India, and any other category of economically weaker sections of the society as notified by the Government for free testing for COVID19, hereinafter.
- (ii) The Government of India, Ministry of Health and Family Welfare may consider as to whether any other categories of the weaker sections of the society e.g. workers belonging to low income groups in the informal sectors, beneficiaries of Direct Benefit Transfer, etc. apart from those covered under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana are also eligible for the benefit of free testing and issue appropriate guidelines in the above regard also within a period of one week.
- (iii) The private Labs can continue to charge the payment for testing of COVID19 from persons who are able to make payment of testing fee as fixed by ICMR.
- (iv) The Government of India, Ministry of Health and Family Welfare may issue necessary guidelines for reimbursement of cost of free testing of COVID19 undertaken by private Labs and necessary mechanism to defray expenses and reimbursement to the private Labs.
- (v) Central Government to give appropriate publicity to the above, and its guidelines to ensure coverage to all those eligible.

Application for modification is,

accordingly, allowed."

"S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL)

Diary No(s). 10816/2020
SHASHANK DEO SUDHI ... Petitioner(s)
VERSUS
UNION OF INDIA & ORS. ... Respondent(s)

(I.A. NO. 48265/2020 - APPLICATION FOR INTERVENTION/IMPLEADMENT AND I.A. 48266/2020 - APPLICATION FOR MODIFICATION FILED BY POOJA DHAR, ADVOCATE][I.A. FOR IMPLEADMENT / DIRECTION FILED BY BEJON KUMAR MISRA.] [LETTER RECEIVED FROM SOLICITOR GENERAL OF INDIA][AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 3 - ICMR)

Date : 13042020

This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Petitioner-in-person
For Respondent(s) Mr.Tushar Mheta, SG
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Gopal Shankarnarayan, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The Court is convened through Video Conferencing.

I.A. No.48265/2020, Application for Intervention is allowed.

By I.A. No.48266/2020, the applicant has prayed for modification of the order dated 08.04.2020. Another IA has been filed by one Mr. Bijon Kumar Mishra seeking impleadment

and directions to ensure the treatment of COVID19 infected patients free of cost in all hospitals. Mr.Bijon Kumar Mishra is permitted In view of the foregoing discussion, the order dated 08.04.2020 is clarified and modified in the following manner:

- (i) Free testing for COVID19 shall be available to persons eligible under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana as already implemented by the Government of India, and any other category of economically weaker sections of the society as notified by the Government for free testing for COVID19, hereinafter.
- (ii) The Government of India, Ministry of Health and Family Welfare may consider as to whether any other categories of the weaker sections of the society e.g. workers belonging to low income groups in the informal sectors, beneficiaries of Direct Benefit Transfer, etc. apart from those covered under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana are also eligible for the benefit of free testing and issue appropriate guidelines in the above regard also within a period of one week.
- (iii) The private Labs can continue to charge the payment for testing of COVID19 from persons who are able to make payment of testing fee as fixed by ICMR.
- (iv) The Government of India, Ministry of Health and Family Welfare may issue necessary guidelines for reimbursement of cost of free testing of COVID19 undertaken by private Labs and necessary mechanism to defray expenses and reimbursement to the private Labs.
- (v) Central Government to give appropriate publicity to the above, and its guidelines to ensure coverage to all those eligible.

Application for modification is, accordingly, allowed."

34 Having required the Indian Council of Medical Research and the State Government to respond to the various issues incorporated in the earlier paragraphs, we feel it appropriate to deal with one of the issues which requires urgent attention of this Court and appropriate reliefs in that regard which may otherwise cause irreparable and irretrievable loss to the patients of certain categories. The issue is as to whether or not to wait for the approval of the Superintendent of the GMERS, Ahmedabad and the District Health Officers in other districts before testing for COVID19, is undertaken.

35 The submission advanced by the learned counsel is that certain categories of patients requiring urgent surgeries undergoing critical treatment relating to Hemodialysis, other emergency surgeries including delivery of pregnant women which cannot await the approval of the Superintendent of the GMERS, Ahmedabad or the DHO as it takes two to four days. If the approval is awaited and only then, testing is conducted, it could result into disastrous situation for the patients as also the consulting doctor and paramedical staff.

36 In this respect, we have examined the guidelines of the ICMR regarding testing as also the report of the three members committee of the State Government which we have reproduced above in para 25. According to the said report, certain categories of patients are enumerated where testing should be done. Those categories of patients, as referred to above, in our opinion, and for the reasons recorded above, would not be insisted for an approval from the concerned Superintendent of the GMERS, Ahmedabad or the DHO for other districts, but the COVID19 testing should be done forthwith without any delay and only intimation of such patients may be forwarded to the concerned authorities by the treating consultants. For rest of the patients (not covered by the above specified categories), we direct that the COVID testing by the treating Physician or Surgeon would require an approval to be obtained, but, at the same time, we direct and make it very clear that such approval should be granted at the earliest and in any case, within 24 hours. This time line to be strictly adhered to.

37 Disease is a natural catastrophe that fells its

victims unpredictably. The right to adequate health care flows from the sanctity of human life and the dignity that belongs to all persons. Health is a fundamental human right, which has as its prerequisites social justice and equality. It should be accessible to all.

38 Healthcare access is the ability to obtain healthcare services such as prevention, diagnosis, treatment and management of diseases, illness, disorders, and other health-impacting conditions. For healthcare to be accessible it must be affordable and convenient.

39 We are of the view that core obligations under the right to health are non-derogable. This minimum core is not easy to define, but includes at least the minimum decencies of life consistent with human dignity. No one should be condemned to a life below the basic level of dignified human existence.

40 In the opinion of the Supreme Court, Article 21 of the Constitution clearly imposes a duty on the Government to take whatever steps are necessary to ensure that everyone has access to health facilities, goods and services so that they can enjoy, as soon as possible, the highest attainable standard of physical and mental health. By virtue of Article 21 of the Constitution, the State is under a legal obligation to ensure access to life saving drugs to patients. A reasonable and equitable access to life saving medicines is critical to promoting and protecting the right to health.

? CIVIL HOSPITAL:

41 We call upon the learned Advocate General to give us a fair idea as regards the condition prevailing as on date in the Civil Hospital. Our order dated 25th May 2020 is quite exhaustive in this regard. However, we are happy to note that the administration has geared up and is doing quite well. It is brought to our notice that 47 new ventilators have been brought at the Civil Hospital to take care of the critically ill. It is also brought to our notice that the strength of the medical officers has also been enhanced. It is brought to our notice by the learned Advocate General that all steps are taken to ensure that best of the treatment is given to the COVID19 patients.

42 We would still like to keep a close watch of the functioning of the Civil Hospital and if we are not satisfied with the same, then we may have to take some further steps in accordance with law. We direct the State Government to concentrate on the following issues to maintain the level of administration and functioning of the Civil Hospital in the interest of the patients and the specialists, doctors, paramedical and all others serving at the Civil Hospital.

[1] There should be no shortage of manpower in all categories: specialists, doctors, nurses, servants, technicians, physiotherapists etc;

[2] The patients admitted in the COVID Hospitals are demanding attention and care in terms of the medical care protocols required for proper treatment. There are different medical protocols for different categories of patients. There could be severely symptomatic patients, there could be moderately symptomatic patients and there could be mild symptomatic patients and for each of the categories of such patients, the protocols to be followed are different. It is alleged that the medical protocols required for different categories of patients are not being strictly followed.

[3] There is another circumstance which relates to the COVID patients. No Attendants are allowed to assist and take care of the patients. Normally admitted non-COVID patients are allowed one attendant who takes care of their hygiene, their food, their daily necessities. However, for COVID patients, such care is to be taken by the Nurses, attendants and other staff of the hospitals.

[4] Although not confirmed, but, there are reports both in the print and digital medias that the COVID patients have lost their lives on account of proper care and attention not being provided to them. It has also come to our knowledge on account of dehydration and other negligence, COVID patients have lost their lives.

[5] There are also reports that necessary precaution are not being taken for the attending doctors and staff in terms of providing essential protective gadgets, consumables, PPE kits, etc. They cannot be put to risk under any circumstances.

43 We, thus, direct that all necessary medical protocols, as are laid down, for different categories of patients, should strictly be adhered to so that no life is lost because of any kind of negligence or non-attendant. We further direct that all precautionary measures are also strictly adhered to for the doctors and all other staff as observed above.

44 At this stage, Mr. Trivedi, the learned Advocate General pointed out that inadvertently, in the last report, it has been stated that a private pathological laboratory by name Supratech Micropath Laboratory has been blacklisted. Mr. Trivedi seeks to clarify that the Supratech Micropath Laboratory has not been blacklisted. We take notice of the same. The Health Minister of the State; the Chief Secretary, Health Department and all other authorities to keep a very close watch on the administration and functioning of the Civil Hospital. There should not be any laxity in this regard. As days are passing by, all steps should be taken to improve the quality of medical treatment and other facilities at the Civil Hospital. No citizen of this country should gather a feeling that he is being treated differently than a person with necessary resources. All the citizens of this country are entitled to protection of their fundamental rights.

45 Before we close today's discussion on the topic of the hospital, we would like to make a note of something very disturbing, as pointed out by Shri Brijesh Trivedi, the learned counsel. It is brought to our notice that the Health Department is unable to withstand the pressure and in such circumstances, they may start restricting the admission of the COVID19 patients in the Civil Hospital. We are sure that the State Government will never do this. We want the Civil Hospital to function at its full strength. Not a single bed should be kept vacant. If the Health Department is not able to withstand the pressure, then it should immediately make necessary arrangements to increase the strength of the doctors, nursing staff, etc. We sound a note of caution in this regard, more particularly, to the Principal Secretary of the Health Department that in future, if we come to know that deliberately, the admission in the Civil

Hospital is restricted with a view to cope up with the pressure of work, then we may have to take appropriate action in this regard.

46 The further report of the Civil Hospital shall be placed on record by the next date of hearing.

47 We also heard Mr. HIRAK GANGULI, the learned counsel appearing in the Civil Application No.7 of 2020. We have been assured by the learned Advocate General as well as by the learned Government Pleader that all issues raised in the Civil Application No.7 of 2020 shall also be looked into. In such circumstances, the Civil Application No.7 of 2020 stands disposed of.

48 We have heard Mr. N.M. KAPADIA, the learned counsel who is appearing in Civil Application No.09 of 2020 for the inhabitants of the Municipal Slums Quarters situated at Asarva. Mr. Kapadia has expressed satisfaction with the work undertaken by the AMC as regards sanitization, etc. However, Mr. Kapadia has requested that the authorities should continue to distribute the Ayurvedic medicines in the locality. According to Mr. Kapadia, persons from a very poor strata of the society are residing in the locality and they are not in a position to purchase costly medicines in the form of multivitamins, etc. The State Government shall look into this aspect and see to it that the Ayurvedic preparation are distributed in this locality. Although the Civil Application No.09 of 2020 is not shown in the list, but as we have heard Shri Kapadia and his grievance having been already redressed, we are disposing off the same.

49 Mr. VIJAY NANGESH, the learned counsel appearing in the Civil Application No.13 of 2020 very fairly submitted that his Civil Application has become infructuous in view of the issue which we have discussed today. In such circumstances, the Civil Application No.13 of 2020 stands disposed of.

50 The Civil Applications Nos.15 of 2020 and 17 of 2020 also stand disposed of in view of the issue which we have discussed today.

51 We also took up the Writ Petition (PIL) No.67 of 2020 filed by the learned counsel Mr. SIKANDER SAIED. Mr. Saied fairly submitted that his PIL

has also become infructuous. In the same manner, Mr. Neel Lakhani, the learned counsel appearing in the Writ Petition (PIL) No.74 of 2020 also fairly submitted that his writ petition has also become infructuous. The Writ Petitions (PIL) Nos.67 of 2020 and 74 of 2020 thus stand disposed of.

52 Ordinarily, the High Court would not interfere with the functioning of the State Government. The Court steps in by mandamus when the State fails to perform its duty. The true test of an efficient Government can be determined from its performance in times like the present one. In difficult times, it is expected of any Government to rise to the occasion and protect its citizens. This litigation is in Public Interest. Whatever we are doing as on date is for the welfare of the people at large. All that we are doing is to remind the State Government of its constitutional obligations and the directive policies of the State. In such circumstances, we expect the State Government to accept our orders passed in the Public Interest in the right spirit bearing in mind the paramount consideration of the health and well being of the people as imperatively implicit in the right to life guaranteed under Article 21 of the Constitution of India. All good work that the Government would do will surely be appreciated and hailed. If we find any remiss, negligence or carelessness, we shall come down heavily. In the first place, why should the State Government invite any criticism from the Court. The Government knows its obligations towards its citizens very well and should be efficient in discharging its duties. We would like to observe that the State Government has taken up this litigation in Public Interest very seriously. All that is now required is to remain vigilant, careful and active.

53 Before we close this order, we would like to express our anguish over the unnecessary debates and comments that are going on as on date on the social media and other platforms. We have gathered an impression that our orders passed time to time in the larger interest of the public are being misused for some oblique motive. In our opinion, the Public Interest Litigation is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the Court. We also say

that the PILs are not meant to advance the political gain and also to seek any political mileage. The Public Interest Litigation should never be made a political battle.

54 In times of crisis, we need to bind, not bicker. The COVID 19 crisis is a humanitarian crisis, not a political crisis. Hence, it is imperative that no one politicise this issue. The uncertainty about COVID19 and its impact on our economy makes it even more important that the government does the right thing in terms of its policies. In these extraordinary circumstances, the role of the opposition is equally important. There is no denying that the role of the opposition is to hold the government to account, but in times like this a helping hand would be more beneficial than a critical tongue.

55 Merely criticising the government in power is not going to magically cure people of COVID 19, nor is it going to make the dead come back to life. This pandemic is only threatening in terms of health, safety and well being and nobody is benefitting from this crisis. By politicising this issue one would in fact be downplaying the widespread suffering it has caused and further would be placing politics and political intent before the aim of helping and saving lives.

56 While adversarial criticism may do no good, constructive criticism can help. Simply highlighting the flaws and gaps in the State's handling about political ideologies and rivalries when their lives are at stake. There is a common threat and it is scary and people want to see collaboration. They want to see their leader come together and fight this together. By far most democratic countries that have been successful in dealing with this pandemic have one big thing in common a spirit of cooperation between political parties to fight a common unknown enemy, the virus. A similar sense of cooperation, understanding and constructive criticism can be powerful weapons for the Gujarat State to fight this pandemic.

57 We request one and all to be very careful from now onwards before commenting or entering into any debate with regard to Court orders that are being passed from time to time in Public Interest. Our

message is loud and clear. We need not further elaborate on this issue. All those who cannot extend their helping hand in this difficult times and do anything good for the people at large have no right to criticize the functioning of the State Government. If the State Government would not have been doing anything, as alleged, then probably, by now, we all would have been dead. All that we are doing in this litigation is to keep the State Government conscious and active by reminding its constitutional and statutory obligations."

9. A perusal of the orders passed by the Apex Court, as extracted in the order above, would demonstrate that the Apex Court had passed the orders in relation to the benefits that were admissible to the weaker sections of the society in the light of the scheme floated by the Central Government and had clarified its earlier order passed in respect of the fees being charged for clinical tests by private labs.

10. The question of regulating the functioning of private hospitals or any private clinical establishment has been noticed by the Government and G.O. (Ms.) No.181, Health and Family Welfare (Pl) Department, dated 8.4.2020 had been issued.

11. In the instant case, the allegation is of billing variations and overcharging as well as exorbitant treatment charges being collected by private hospitals.

12. We have gone through the entire petition and the documents filed on record and we do not find any averment specifically about any private hospital either naming it or the organization running it to have either overcharged or charged exorbitantly. There are no averments of any specific hospital or any specific patient or person coming out with any such allegations for us to issue any direction to the State for prescribing any minimum standards or rates either at the private hospitals or the private clinical centers. The directions sought are, therefore, bereft of any such facts having been pleaded or even brought on record by any material attached along with the writ petition, except for newspaper reports and opinions, which do not contain any such details. Even otherwise, no private hospital or any organization representing private hospitals or such clinics have been arrayed as respondents making any specific allegations in this regard.

13. The petitioner, therefore, has placed before us a petition to start an enquiry without any positive material except his knowledge of newspaper reports and opinions, which do not contain any such specified instances, as are sought to be

alleged and for which measures are sought to be undertaken to rectify the same. The challenge should be not merely theoretical or expressing anxious concerns on some views expressed in the media without there being any factual matrix or any tangible material. A mere suspect or a doubt or an unconfirmed news, the source whereof is not known, nor does the news give any specifics, should not be made the basis for raising a challenge about any exorbitant rates being charged by any private hospital.

14. Even the representation filed by the petitioner is stated to be of 26.5.2020, which is said to have been despatched to the State Government by email, followed by another representation dated 27.5.2020.

15. Thus, in order to issue a mandamus at this stage, without there being any such facts brought forth before the Court, may not be appropriate and we are, therefore, not inclined to entertain the petition at this stage in the absence of any such details as pointed out herein above, without prejudice to the rights of the petitioner or any other person taking up such a cause to pursue it before the State Government.

16. We, therefore, consign this petition to records leaving it open to the State Government to address itself to the issues raised in accordance with law as and when any such instance or incident is brought to its notice for an immediate redressal in the background of the COVID-19 situation in the State. No costs. Consequently, W.M.P.No.9328 of 2020 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

sasi

To:

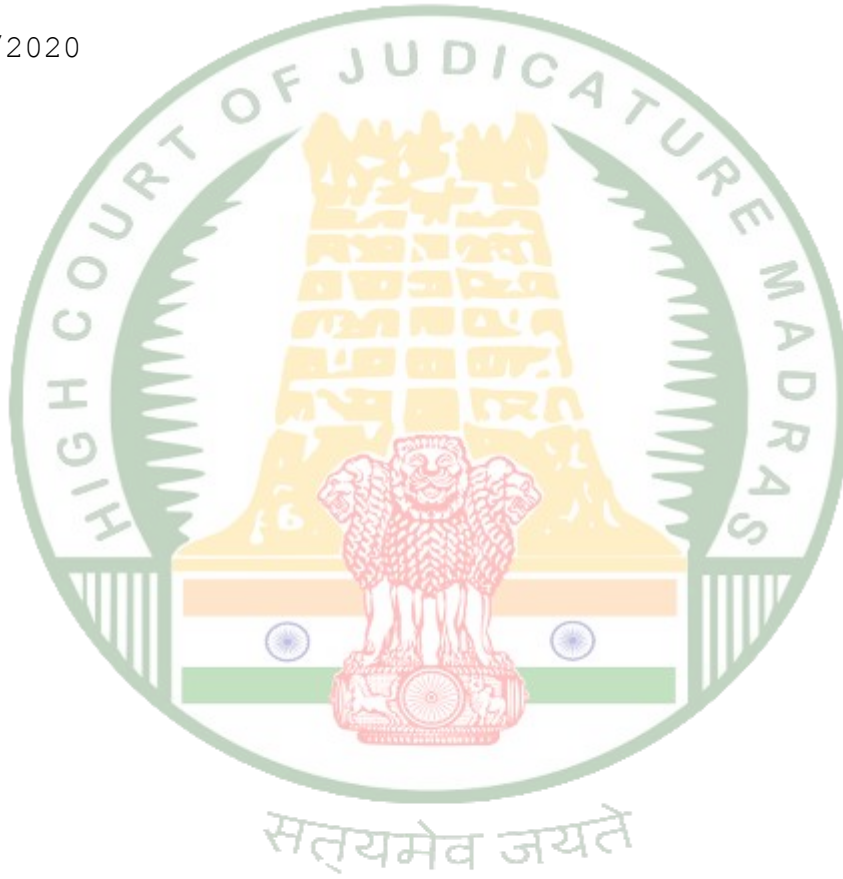
1. The Chief Secretary
State of Tamil Nadu
Fort St. George
Chennai - 600 009.

WEB COPY

2. The Office of Director of Family Welfare
The Health and Family Welfare Department
Government of Tamil Nadu
Directorate of Family Welfare
5th and 6th Floor, DMS Building
Anna Salai, Teynampet
Chennai, Tamil Nadu - 600 006.

W.P.No.7896 of 2020

KS (CO)
KKV/20/07/2020



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