

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WP NO.19 OF 2020

Ashutosh Govind Prabhu Dessai. Petitioner.

Versus

State of Goa through Chief
Secretary and others. Respondents.

Mr. L. Raghunandan, Advocate under Legal Aid Scheme for the
Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondents.

Coram : M.S. Sonak &
Smt. Bharati H. Dangre, JJ.

Date : 12th January, 2021.

Oral Order : (Per M.S. Sonak, J.)

Heard Mr. L. Raghunandan, the learned Counsel appointed under the Legal Aid Scheme for the Petitioner and Mr. Salkar, the learned Government Advocate for the Respondents.

2. Though several of the grievances raised in this Petition appear to be personal to the Petitioner, taking into account the balance reliefs, this Petition was directed to be registered as a public interest litigation.

3. The Petitioner, by instituting this Petition, seeks the following reliefs :

- a) *Issue a writ of mandamus or writ in the nature of a mandamus directing the respondents to provide facilities for video conferencing in IPHB OPD, wards and Goa Medical College Quarantine and Isolation wards and if possible in other wards too and in ESI designated Covid hospitals urgently, due the risk to lives of IPHB doctors if they are called to advise on patients there.*
- b) *Issue a writ of mandamus or writ in the nature of a mandamus to the respondents to process the past correspondence of the petitioner specially his orders for financial upgradation as early as possible or atleast within one month and to provide replies within two months or as early as possible to the petitioners other correspondence.*
- c) *Issue a writ of mandamus or writ in the nature of a mandamus to the respondents to direct respondent No.4 and the clerical staff working under respondent No.4 to provide acknowledgment of correspondence which has been returned/declined and future correspondence without delay and without scrutinizing and selectively accepting the correspondence.*
- d) *Issue a writ of mandamus or writ in the nature of a mandamus to the Respondents mainly IPHB to accept and act on emailed representations and also accept any hardcopy correspondence submitted directly to the main entry section of IPHB without having routed through the Professor IPHB or declined/returned by Professor IPHB.*
- e) *Issue a writ of mandamus or writ in the nature of a mandamus to the Respondents to conduct Covid testing of IPHB and Goa Medical College doctors to avoid asymptomatic transmission from them who may be carriers to the petitioner, staff and inmates of IPHB and thus to the society.*

f) Issue a writ of mandamus or writ in the nature of a mandamus to the Respondents to provide training to all IPHB staff specially attendants, in Covid protocols, sterilization/disinfection and provision of disinfectant and sterilisation material, personal protective equipment PPE and facilities for appropriate waste disposal of Covid related waste as required and to post separate staff including resident doctors for such observation/quarantine wards along with prescribed periods of home quarantine as is done by Govt of Goa for doctors in other hospitals quarantine and/or Isolation facilities; who come in contact with and treat Covid suspect patients kept under observation /quarantine even if they are currently negative.

g) Issue a writ of mandamus or writ in the nature of a mandamus to the Respondents to provide a department wise list of Telephone numbers and emails of Goa Medical College doctors and the designated Covid (ESI) hospital, both residents and consultants to the IPHB doctors to facilitate Teleconsultation and reduce risk of direct exposure unless when required.

h) Issue a writ of mandamus or writ in the nature of a mandamus to the Respondents to provide IPHB vehicle and if it is not feasible, a Goa Medical College vehicle to drop recovered IPHB patients home.

[h(a)]: to pass writ of certiorari or writ in the nature of certiorari or any direction of order to quash and set aside the impugned circular dated 17.04.2017 and consequently permit faculty members to address correspondence to Respondent No.3 via email also.

[h(b)]: issue writ of Mandamus or writ in the nature of Mandamus or direction or order directing State

Government to expedite the process of appointment of Director of IPHB within the maximum period of 6 months from date of disposal.

[h(c)]: to direct state government to hand over the charge of Director IPHB to incumbent having sufficient qualification, knowledge and expertise in the field of Psychiatry until regular appointment of post of Director of IPHB.

i) The Hon'ble Court may be pleased to grant any interim reliefs in terms of above prayers if it is required to place additional material on record which may be kindly granted, if any of the petitioners contentions are denied.

j) That this Hon'ble Court be pleased to permit filing this petition electronically, accept the self-verification and dispense with the requirement of filing an affidavit in support etc. due to lack of facilities during lockdown;

k) That this Hon. Court may be pleased to permit the payment of court fees when sale of court fee stamps resumes after the lockdown is relaxed, and,

4. Prayer clause (a) of the Petition seeks certain reliefs, primarily in the context of the COVID-19 pandemic situation. There are SOPs in place and on sketchy pleadings, it is not possible for us to conclude that there is no compliance with the SOPs.

5. If Video Conferencing facilities are found necessary, then, we are sure that the Respondents will take adequate steps to provide the

same. However, at this stage, it will not be possible for us to issue any firm directions because, these are necessary matters which the Respondents will have to address based upon the fact situation.

6. Prayer clause (b) is personal to the Petitioner and, therefore, cannot be entertained in this public interest litigation. However, we grant liberty to the Petitioner to raise this issue before appropriate forum by taking out appropriate proceedings.

7. Prayer clauses (c) and (d), to a great extent, are personal to the Petitioner. It will, therefore, not be appropriate to entertain the same by way of public interest litigation. In any case, the allegations made by the Petitioner involve disputed questions of fact.

8. As regards prayer clause (e), the learned Counsel for the Petitioner points out that there is compliance as of date and, therefore, there is no further reason to consider grant of relief in terms of this prayer clause.

9. Prayer clause (f) also seeks certain general directions. The learned Counsel for the Petitioner points out that though, steps are being taken by the Respondents, such steps are not adequate. Again, based upon sketchy pleadings it will not be possible for us to issue any further direction with regard to this prayer clause. Further, the Petitioner has not placed any material on record to indicate that the

SOPs, which are in place, are not being complied with and, therefore, there is necessity of issuing any specific directions.

10. Prayer clauses (g) and (h) cannot be granted in this public interest litigation. We are sure that if there is any necessary of certain additional vehicle, then, the State Government will take steps to provide the same, so that the functioning of the IPHB is not, in any manner, hampered. However, it is not for us to enter into such administrative issue in exercise of our powers of judicial review.

11. Prayer clause (h(a)) concerns challenge to the Circular dated 17/4/2017, which merely provides that all faculty members are directed that their correspondence, leave applications, etc. to be routed through the Professor and Head of Department in the form of hard copy. This circular states that no emails shall be entertained. Considering the COVID situation where submission of hard copies may pose some problems, we feel that at least and till the situation improves, emails should also be entertained by the Professor and Head of Department. This will be interest of not only the employees, but the also the Professors and Head of Departments themselves. We direct accordingly.

12. As regards prayer clause (h(b)) and (h(c)), though the Petitioner has not made out any case for grant of immediate relief, we feel that since there is a post of Director of the IPHB which is not

filled up on regular basis, the Respondents to take steps to fill up this post on regular basis, as expeditiously as possible. This will be in the interest of IPHB itself. We are sure that the Respondents will take steps to fill up this post on regular basis, as expeditiously as possible.

13. We find that this Petition was instituted by the Petitioner in March, 2020, when the lockdown was clampdown on account of COVID-19 pandemic situation. Since then several SOPs have been issued. The SOPs, to a great extent, take care of the COVID protocol in relation to sterilization, disinfection, transportation of patients, etc. At least, the Petitioner has not placed any material on record to suggest that these SOPs were not complied with or are not being complied with.

14. Accordingly, by issuing the aforesaid directions, we dispose of this Petition. There shall be no order as to costs.

15. All concerned to act on the basis of an authenticated copy of this order.

16. Before we conclude, we thank Mr. Raghunandan for appearing on behalf of the Petitioner in this matter and assisting the Court in disposing of this Petition.

Smt. Bharati H. Dangre, J.

M.S. Sonak, J.