

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2096 OF 2022

1. M/s Waiko drugs and pharma
Through its proprietor,
Sau. Sukhada w/o Umesh Kotalwar,
Age : 31 years, Occu. Business,
having its shop at - House No.1487,
opposite Dr. Shankarrao Chavan
Medical College and Hospital,
Vishnupuri, Nanded - 431 606.
2. M/s Medlife Pharma healthcare pvt. ltd.,
Through its proprietor,
Sau. Aishwarya w/o Satish Kotalwar,
Age : 25 years, Occu. Business,
Having its shop at shop No.1,
House No.968, near Grampanchayat,
Bahal, Tq. Chalisgaon, District Jalgaon,
Pincode - 424 101. **... Petitioners**

Versus

1. The State of Maharashtra,
Through Secretary in the
Department of Public Health,
Mantralaya, Fort, Mumbai - 32.
2. The Director/Commissioner,
Directorate of Medical Education
and Research, Government Dental
College and Hospital Building,
St. George's Hospital Compound,
Near V. T., Mumbai - 400 001.
3. The Dean,
Dr. Shankarrao Chavan Government
Medical College and Hospital,
Vishnupuri, Nanded - 431 606.

4. The Administrative Officer,
Dr. Shankarrao Chavan Government
Medical College and Hospital,
Vishnupuri, Nanded - 431 606.
5. The Store Incharge,
Surgical store,
Dr. Shankarrao Chavan Government
Medical College and Hospital,
Vishnupuri, Nanded - 431 606. ... Respondents

...

Advocate for Petitioners : Mr. A. A. Mukhedkar.
AGP for Respondents-State : Mr. A. R. Kale.

...

**CORAM : R. D. DHANUKA, AND
S. G. MEHARE, JJ.**

DATE : 04.04.2022

ORAL JUDGMENT (PER R. D. DHANUKA, J.) :-

1. Rule. Learned AGP Mr. Kale waives service of notice for all the respondent. Rule is made returnable forthwith and heard finally by the consent of the parties.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a Writ of Mandamus against respondent No.3-Government Hosiptal to release payment of petitioners amounting to Rs.68,55,226/- of 48 outstanding bills, due towards supply of Covid-19 medicines

and surgical equipments supplied from 06.12.2019 to 01.10.2020.

3. This matter was on board before this Court on 14.02.2022, when this Court recorded the preliminary objection raised by the learned AGP about the maintainability of the writ petition on the ground that petitioners have alternate remedy before the Civil Court.

4. This Court also observed that in case, the claim made by the petitioners is not disputed, then such an argument would not be open on behalf of an instrumentality of the State. An instrumentality of the State is expected to act as a model litigant. This court further clarified that if there is a dispute about the claim made, then the Court would not entertain the Writ Petition even for a moment, but if the case is admitted, in such argument may not be open for instrumentality of the State. This Court accordingly directed the learned AGP to take instructions as to the present status of the claim and if the claim is admitted, the period within which the payment would be made.

5. The learned AGP states that since there is no availability

of funds, the State Government is unable to make any payment to the petitioners. As and when funds would be available, payment would be made.

6. The respondents have not disputed the claim amount of Rs.68,55,226/- due to the petitioners in respect of 48 outstanding bills towards supply of Covid-19 medicines and surgical equipments supplied from 06.12.2019 to 01.10.2020. The respondents have admitted the liability of the petitioners for supply of Covid-19 medicines and surgical equipments and cannot refuse to clear such liability on the ground that the State Government does not have funds to clear such liability. The respondents had directed the petitioners to supply such medicines during the Covid-19 period and having utilized the said medicines and surgical equipments cannot refuse to pay the admitted dues on the ground of alleged unavailability of funds.

7. We accordingly direct respondent No.3 to release the said amount to the petitioners within a period of four (4) weeks from today without fail.

8. Writ petition is allowed in the aforesaid terms. Rule is made absolute accordingly.

9. Parties to act upon authenticated copy of this order.

(S. G. MEHARE, J.)

(R. D. DHANUKA, J.)

...

vmk/-