

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4072 OF 2024

Sudhakar S/o. Somsing Soma Pawar

...Petitioner

Vs.

The State of Maharashtra & Ors.

...Respondents

Mr. Ashok Raut for Petitioner.

Ms. Shruti Vyas, Addl. GP with Ms. P. N. Diwan, AGP for State.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

DATE: 17 APRIL, 2024.

P.C.

1. We have heard learned counsel for the parties.
2. This petition is filed by the husband of the deceased Anita Rathod (Pawar) who was working as Assistant Nurse at Sassoon General Hospital, Pune during the Covid period. During the peak of Covid-19 pandemic i.e. on 24 April, 2020, she died in harness. She was then discharging duties in the covid ward.
3. There is a medical report where it is stated that she was fit and healthy. However, the report also indicated that she was under extreme stress and pressure of the inflow of covid patients. She had no time even to have timely food and water. She was part of the team of health staff posted at the said

hospital, and was declared as one of the Corona Warriors who have laid their lives looking after the Covid patients who were brought to the hospital. She has also been declared as one of the Covid martyrs by the Trained Nurses Association of India. She appears to have sacrificed her life working for the patients and suffering prolong hours of duty.

4. It is the case of the petitioner that to provide help to the Government employees who have expired while discharging their duties and who had exposed themselves to the circumstances as created by Covid, the State Government issued a Government Resolution dated 29 May, 2020 under which the health employees who have actively participated, discharging their duties in supporting the health services and who were involved in various categories of services rendered in relation to the Covid patients and who expire in such circumstances are provided an insurance of Rs. 50 Lakhs as per the provisions of the said G.R. We note the said G.R. which reads thus:-

“(Official Translation of a photocopy of a GOVERNMENT RESOLUTION, printed in Marathi).

Regarding making applicable the Insurance Cover / ex-gratia aid to the employees who died on account of CORONA while discharging the COVID-19 related duty.

GOVERNMENT OF MAHARASHTRA
Finance Department.
Government Resolution No. Miscellaneous-2020/M. No.4 /
Expenditure-9
Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai – 400 032.
Date : 29th May, 2020.

Reference: The Orders dated 28.03.2020 issued by the Ministry of Health and Family Welfare of the Central Government.

GOVERNMENT RESOLUTION:

While discharging the duty related to the works viz. carrying out survey, search, trace, prevention, tests, treatment and providing aid during the universal Corona Pandemic, the employees working in various categories in various departments of the Government are coming in close contact of the Corona Virus. The Government is committed to take care of such employees and is determined to provide a firm support to such employees in these insecured circumstances.

2. The Ministry of Health and Family Welfare of the Central Government, under its Order dated 28.03.2020, has made applicable an Insurance Cover Scheme to its health employees.

3. However, besides the employees related to health services, huge number of other employees (of other departments such as District Administration, Police, Home Guards, Anganwadi workers, Accounts and Treasuries, Food and Civil Supplies, Water Supply and Conservancy, employees of other departments appointed for house-to-house survey etc.) are discharging COVID related duties. In order to provide a support to such employees who are actively discharging the duties of fighting against the universal COVID-19 pandemic and to stand by the family members of such employees in an unfortunate event of their death, the Government has taken decisions as follows:

(A) A comprehensive personal accident insurance cover of the amount of Rs.50 Lacs will be provided to all employees discharging their duty related to the works of survey, search, trace, prevention, tests, treatment and providing aid during the universal pandemic of Corona Virus. The procedure in respect thereof is being finalised in consultation with the Insurance Companies.

(B) Till the time, the said Insurance package is finalized and the same is implemented, as and by way of interim relief, an Ex-Gratia aid of Rs.50 lakhs will be paid in all the cases of the death of the employees who were discharging COVID related duty (Survey, Search, to trace, prevention, tests, treatment, aid etc.), subject to the below-mentioned conditions.

1) The employee must have attended his duty within the period of 14 days prior to the date of his admission in the Hospital or prior to the date of his death. This fact shall be got verified and certified from the Collector or any other designated Head of the Department etc..

2) The medical certification of the fact viz. the said death is related to COVID-19, shall be made on the basis of the Reports

received from the I.C.M.R. registered private Hospitals / Laboratories of the Government / Municipality / Municipal Corporation.

3) The Term “Employee” shall include all the employees whose services are availed on contract basis / through outsourcing / on daily wages basis / on Ad-hoc basis / on honorary basis.

4) The Budgetary Account Head for the aforesaid expenditure will be communicated by the concerned Ministerial Departments.

5) All Local Self-governing Bodies and State Government Public Undertakings shall implement the Ex-Gratia Aid Scheme on the line of this Scheme.

(C) The Provisions mentioned hereinabove at Sr.No. “A” and “B” shall not be applicable to the employees to whom the Scheme mentioned in the Order dated 28.03.2020 issued by the Central Government, referred to hereinabove is applicable and also to any of those types of employees who would be included in the Government Scheme after revision therein.

4) This Order shall remain in force till the date 30th September, 2020.

5. Official copy of this Government Resolution in English language, is enclosed herewith.

6. This Government Resolution is made available on the Government of Maharashtra Web-site www.maharashtra.gov.in and the code number thereof is 202005291511413805. This Government Resolution is issued by authenticating the same under digital signature.

By order and in the name of Governor of Maharashtra.

To,

1. Principal Secretary to the Hon’ble Governor,
2. Principal Secretary to the Hon’ble Chief Minister,
3. Leader of Opposition, Legislative Council/Legislative Assembly, Maharashtra Legislature Secretariat, Mumbai.
4. Private Secretaries to all the Hon’ble Ministers and Hon’ble Ministers of State,
5. Additional Chief Secretary/Principal Secretary/Secretary of all Ministerial Department in Mantralaya, Mumbai.-
6. The Chief Secretary, All Additional Chief Secretaries /Principal Secretaries / Secretaries of all Ministerial Departments, Mantralaya, Mumbai.
7. Secretary, Legislative Assembly /Legislative Council, Legislature Secretariat, Mumbai.

8. Special Commissioner, Maharashtra Sadan, Copernicus road, New Delhi 110001.
9. Principal Accountant General-1/2 (Audit), Maharashtra, Mumbai/Nagpur
10. Principal Accountant General-1/2 (Accounts and admissibility), Maharashtra, Mumbai/Nagpur
11. Director, Accounts and Treasuries, Mumbai
12. Pay and Accounts Officer, Mumbai.
13. Resident Accounts Officer, Mumbai.
14. All District Treasury Officers
15. All Joint Secretaries/Deputy Secretaries/Under Secretaries/ Section Officers, Finance Department, Mantralaya, Mumbai.
16. Select File, Expenditure-9, Finance Department, Mantralaya, Mumbai.”

(emphasis supplied)

5. Learned counsel for the petitioner has submitted that the case of the petitioner clearly falls in the paragraphs which we have underscored. It is submitted that the petitioner had earlier approached this Court in a writ petition (being Writ Petition No. 11852 of 2022) which came to be disposed of by an order dated 14 October, 2022 passed by a co-ordinate Bench of this Court whereby respondent no.3 was directed to take decision on the petitioner’s application for grant of compensation of Rs. 50 Lakhs under Government Resolution dated 29 May, 2020. In pursuance of such direction, the impugned order dated 06 November, 2023 has been passed whereby the application of the petitioner has been rejected merely for the following reasons:-

“It does not reveal that Late Anita Govindrao Rathod (Pawar), Assistant Nurse died of infection due to Corona Virus and as the Laboratory Report is negative, the amount of ex-gratia grant (aid) demanded by the heirs of Late Anita Govindrao Rathod will not be applicable to her in

view of the terms and conditions mentioned in the application for the benefits under the Pradhan Mantri Garib Kalyan Package Yojana of the Central Government and the Condition No.2 in the Government Resolution No. Miscellaneous-2020/ M. No.4 / Expenditure – 9, dated 29th May, 2020 issued by the Finance Department.

In this connection, you are hereby informed that, as Late Anita Govindrao Rathod (Pawar), Assistant Nurse has not died of infection due to Corona Virus, the amount of Rs.50 Lakhs towards the insurance cover to be received under the Pradhan Mantri Garib Kalyan Package is not applicable to you.”

6. On perusal of the aforesaid Government Resolution and the benefit which is being claimed by the petitioner thereunder, it *prima facie* appears to be quite clear that the reasons as set out in the impugned communication are not justified and in fact is not the reason / requirement under the said Government Resolution to reject the petitioner’s application. The eligibility under the Government resolution is in fact to the effect that such health workers, who while discharging their duties “related to the Covid works”, namely of carrying out survey, search, trace, prevention, tests, treatment and providing aid during the universal Corona Pandemic, expire in discharging such duties, and not that person should actually contact covid virus, should be the cause of death of such employee.

7. Prima facie the reasons which are attributed in the impugned order to reject the petitioner’s applicaton, are contrary to the requirements of the said Government resolution. It, hence, appears that the impugned order is passed without application of mind.

8. The respondents would be accordingly required to answer the petition as to why the impugned order ought not to be set aside and the petitioner be held entitled for the benefit of compensation under the said G.R. The respondents shall file their reply affidavit within a period of two weeks from today.

9. List this petition on **02 May, 2024 (first on board)**.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)