

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PIL-CJ-LD-VC-15 OF 2020

Sagar Shivajirao Jondhale Petitioner

Vs.

State of Maharashtra & Ors. Respondents

Mr.Anand Jondhale a/w Yashoda Jondhale,Jigar Agarwal, Raj Jondhale,Vijay Jondhale, Ajay Jondhale, Sudamrao Jondhale, Rukhsana Khan and Mr. D. T Mirgal I/b Jondhale & Co. for the Petitioner

Mr.A.A.Kumbhkoni Advocate General, with Ms.P.H. Kantharia, Government Pleader with Mr.S.B.Gore, AGP for the respondent-state

**CORAM: DIPANKAR DATTA, C.J. &
K.K.TATED, J.**

DATED : JUNE 16, 2020

P.C.

1. This PIL Petition is at the instance of a member of the citizenry, who claims to be an educationist and a social worker. The challenge laid is to Notification No.Corona-2020/C.R.97/Aro-5 dated 21/05/2020 (hereafter the impugned notification), issued by the Principal Secretary to the Government of Maharashtra, Department of Public Health.

2 The Petitioner has prayed that the impugned notification be declared null and void; and that directions be issued to the State of Maharashtra to provide COVID treatment to all citizens of Maharashtra, totally free of cost in all hospitals, including private hospitals in Maharashtra; to notify uniform rates or charges for the treatment of patients of COVID in all the hospitals in Maharashtra; to provide 100% free treatment to COVID patients; and to charge all the patients other than those suffering from COVID according to the Mahatma Jyotibha Phule Health Insurance Scheme (hereafter “the Scheme”); etc.

3. This PIL Petition was heard on two previous occasions by Benches presided over by one of us (the Chief Justice). On both such occasions, time was granted to Mr. Jondhale, learned advocate for the Petitioner, to enable him satisfy the Bench that the PIL Petition is maintainable in its present form. He now seeks to rely on two sets of compilation of several decisions of the Supreme Court as well as this Court and other high courts to persuade the Bench rule in favour of maintainability of the PIL Petition.

4. According to Mr. Jondhale, it is the duty and obligation of the State to provide for health and medicare services for all the

citizens free of cost and that the State of Maharashtra has utterly failed to live up to the expectations of the people during this period of crises. The impugned notification does not take into consideration the plight of a vast cross-section of people who are not in a position to afford treatment in private hospitals and the State ought to rise to the occasion and make arrangements for their free treatment. It is also submitted by him that the price caps imposed by the State do not in the ultimate analysis benefit the poor.

5. That it is the Constitutional duty and obligation of the State to preserve the lives of its citizens by providing adequate facilities for health and medicare, cannot be in dispute. Mr.Jondhale has not disputed that in State-run hospitals, the patients are being treated without they being made to bear or incur any substantial expense. Mostly, it is free of cost. It is only in private hospitals that the patients are required to bear the costs for treatment.

6. Perusal of the impugned notification makes it clear that it was issued taking note of the situation at the ground level that persons who are not covered by any health insurance product or who have exhausted their health insurance cover, were being charged exorbitantly causing hardship to the public in general

during the pandemic. It is further evident that its terms require hospitals, nursing homes, dispensaries, referred to therein as healthcare providers, to make all attempts to increase their bed capacity [subject to norms prescribed in the Maharashtra Nursing Home (Amendment) Act, 2006] to accommodate maximum number of patients, of which 80% of total operational bed capacity (excluding beds of PICU, NICU, day care, maintenance hemodialysis) would be regulated by rates prescribed in the annexure to the impugned notification. This would also apply to isolation and non-isolation beds, meaning that 80% of isolation beds available with any healthcare provider under such notification should be regulated by State Government/District Collectors/Municipal Commissioners and so also the 80% of non isolation beds. Healthcare providers, however, have been allowed to charge their rack rates to the remaining 20% beds. It is further provided in the impugned notification that patients belonging to both categories (80% and 20%) can take treatment in PICU, NICU, day care and hemodialysis at the respective applicable rates on 'first come first serve' basis. Also, for COVID patients treated at any of the hospitals/nursing homes/clinics covered under the impugned notification across Maharashtra, rates shall not be more than rates prescribed in Annexure-C and for non-COVID patients,

rates will be as per Annexure-A read with Annexure-B, and that too in terms of respect of beds outside the purview of the 80% reservation of beds required by the impugned notification. Several measures, therefore, have been directed by the State to be adopted by private hospitals while treating patients infected by COVID as well as ailing from other diseases. Price caps have also been introduced.

7. It would, thus, appear to this Bench that there is no compulsion on any citizen to take treatment from private facilities. It is entirely left to the option of the patient as to which of the facilities he would prefer, i.e., facilities in private or public hospitals. There is also no discrimination between the rich and the poor. Even a rich and a poor person alike can take admission in the 80% reserved category of beds, and pay at the rate prescribed.

8. It is settled law that the mechanics of price fixation is necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class of persons, the processual basis of price fixation is to be accepted in the generality of cases to be valid. It has not been shown to the Bench by Mr. Jondhale that the price fixation, brought about by the impugned Notification, is either arbitrary or unreasonable.

No submission has also been advanced before this Bench to show that the State has defaulted in complying with the terms of the Scheme.

9. To urge the Bench to direct the State to provide for treatment of a patient free of cost, in these circumstances, appears to us to be preposterous. None of the decisions cited by Mr.Jondhale lays down such a proposition. This Bench has no hesitation to hold that the Petitioner has utterly failed to demonstrate any infringement of any fundamental right or abrogation of any statutory provision by the State so as to adversely affect any class of people, thereby warranting judicial intervention. It is an absolutely frivolous PIL Petition deserving dismissal *in limine* with exemplary costs.

10. For the reasons aforesaid, this PIL Petition stands dismissed at the threshold with costs assessed at Rs.5,00,000/- (Rs. five lakh only), to be paid to the State. The said amount shall be utilized by the State for relief activities to ameliorate the plight of people in these difficult times. If costs, as directed above, are not paid by the Petitioner within a month from date, the State shall be at liberty to recover the same from him as arrears of land revenue.

11. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production, by Fax or E-Mail, of a digitally signed copy of this order.

(K.K.TATED, J.)

(CHIEF JUSTICE)