

**IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION**

WRIT PETITION (CIVIL) NO.863 OF 2020

SACHIN JAIN

... PETITIONER

Versus

UNION OF INDIA

... RESPONDENT

WITH

WRIT PETITION (CIVIL) NO.489 OF 2020

DIARY NO.12051 OF 2020

O R D E R

1. The petitioner, who is an advocate practising in this Court has come up with the above writ petition seeking the issue of an appropriate writ **(i)** directing the Union of India to regulate the cost of treatment of patients infected with COVID-19, at Private/Corporate

hospitals across the country, **(ii)** directing the Union of India to mandate the private hospitals set up on public land, allotted at concessional rates either on the ground that those hospitals are run by charitable institutions or otherwise, to treat COVID-19 patients either free of cost or on non-profit basis, **(iii)** directing the Union of India to bear the cost of treatment of COVID-19 patients at private hospitals, for the poor and vulnerable and who have neither the means nor the insurance cover, by expanding the coverage under Public Health Schemes such as *Ayushman Bharat* and **(iv)** directing the Union of India to combat the commercialisation of health care by private health sector.

2. It is the case of the writ petitioner that WHO declared COVID-19 as a pandemic on 11.03.2020; that in exercise of the power conferred by Section 2(1)(i) read with Section 10 of the Disaster Management Act, 2005, the Ministry of Health, Government of India, issued an order dated 21.03.2020 containing guidelines capping the maximum cost chargeable by private laboratories for testing COVID-19; that the Ministry of Home Affairs issued an order dated 24.03.2020 for implementation of various measures across the country for treatment of COVID-19, while ensuring maintenance of essential services and supplies, including health infrastructure; that thereafter the

mainstream media was abuzz with stories of private hospitals fleecing the patients for treatment; that pursuant to a meeting held on 07.04.2020 between the representatives of 8 major private hospitals in Delhi and the Government of NCT of Delhi, the Government declared some private hospitals as dedicated hospitals for treatment of COVID-19 patients on payment basis; and that thereafter there have been reports of such private hospitals exploiting the patients and the insurance companies objecting to inflated bills raised by the private hospitals. It is with these pleadings of facts that the petitioner has come up with the above writ petition.

3. On 30.04.2020, this Court ordered the issue of notice to the Union of India. Thereafter, 2 individuals and 3 associations of persons came up with applications for intervention in the matter.

4. After allowing 4 intervention applications, this court, by an order dated 14-07-2020, directed all the parties to make representations to the Secretary to the Government of India, Ministry of Health and Family Welfare with a further direction to the Secretary to hear the parties and come up with a solution.

5. Accordingly, the various stakeholders before this court gave representations both in writing and in person, to the Secretary on 16-07-2020. Thereafter, the Government of India filed a report containing

a normative guidance that could be provided to the States for appropriate action, as 'health' is a State subject. The intervenors have filed their responses to these guiding principles evolved by the Government of India.

6. We have perused the pleadings and the report of the Union of India as well as the responses/suggestions provided by the different stakeholders. But as rightly pointed out by the Government of India 'Health and Hospitals' is a subject that falls in Entry 6 of List-II of the Constitution. Neither the writ petitioner has taken care to implead the State Governments as parties nor have any of the respondents/intervenors taken note of the existence or otherwise of the legislative framework within which we could look for better solutions.

7. 'Health' has always been a State subject. "**Public Health**" fell in Entry-3 of Part-II relating to Provincial Subjects under the Government of India Act, 1919. It was included in Entry 14 of Part-II under the Government of India Act, 1935.

8. Taking advantage of the same, the Madras Legislature took the lead by enacting the Madras Public Health Act, 1939. A few States have followed suit. Now we have (1) The Travancore-Cochin Public Health Act, 1955, (2) The Andhra Pradesh (Andhra Area) Public Health

Act, 1939 (3) The Goa, Daman and Diu Public Health Act, 1985 (4) Madhya Pradesh Public Health Act, 1949, (5) The Puducherry Public Health Act, 1973 (6) Gujarat Public Health Act, 2009 and (7) Assam Public Health Act, 2010.

9. Since only a few States took advantage of the subject of “public Health” being a State subject, the Government of India made attempts twice, first in 1955 and then in 1987 to activate the States to pass legislations, on the model prepared by the Government of India under the caption “Model Public Health Act”.

10. But the State Governments did not act. Therefore, following a mandate from the WHO in the form of International Health Regulations (IHR, 2005), to which India is a signatory, another attempt was made by the Government of India by proposing a ***National Health Bill, 2009. The preamble to the Bill as well the provisions contained therein encapsulates the essence of good governance in a welfare State.***

11. ***It is heartening (or at least of interest) to note that the first word to be defined in the National Health Bill, 2009, was “affordable”.*** The words “endemic”, “epidemic”, “health care establishment”, “health care provider”, etc. are all defined in the Bill.

The definition of the expression “health care establishment” included any private institution whether for profit or not, which is operated or designed to provide in-patient and/or out-patient healthcare.

12. Section 3(c) and (d) of the Bill incorporates very high ideals (whether followed in practice or not). These clauses read as follows:

*“(c) Provide free and universal access to health care services and **ensure that there shall not be any denial of health care directly or indirectly, to anyone, by any health care service provider, public or private, including for profit and not for profit service providers,** by laying down minimum standards and appropriate regulatory mechanism; Provided that notwithstanding the above **the Governments have an immediate duty to prioritize the most vulnerable and marginalized persons and groups, who are unable themselves to access means for adequate and appropriate health care services,** and ensuring them at least the minimum conditions of health care;*

*(d) **Ensure comprehensive involvement of civil society, especially vulnerable or marginalized individuals/groups, including by enabling them to effectively articulate their health needs and to participate in all health related decision-making processes,** including in setting health priorities and goals; and in devising, planning, implementing and evaluating the policies and strategies for health and well-being at every level; also integrally incorporating their roles and participation in the contents of such policies, strategies and*

plans; and ensuring demonstrably serious consideration to diverse expert views, in the planning of health care;”

13. Section 6 enlists specific public health obligations of the Central Government and the State Governments. Sections 8 and 9 respectively recognise (i) the right to health, and (ii) the right to access, use and enjoy all facilities necessary for ensuring the right to health. These provisions read as follows:

“8. Right to health: *(1) Every person has the right to a standard of physical and mental health conducive to living a life in dignity.*

9. Right to access, use and enjoy: *Every person has the right to access, use and enjoy all the facilities, goods, services, programmes and conditions necessary for ensuring the right to health, including but not limited to at least the following:*

(a) Right to food;

(b) Right to water;

(c) Right to sanitation;

(d) Right to housing;

(e) Right to appropriate health care, and health care related functional equipment and other infrastructure, trained medical and professional personnel, and essential drugs;

Appropriate health-related IEC, including on sexual and reproductive health, to be able to make more informed health related choices;

Explanation: The information hereunder, where needed for the purposes of fulfillment of this Act, shall not be limited

to, and shall be in addition to, the information receivable under the Right to Information Act, 2005.

(f) Protection from and mitigation during environmental disasters like famines, floods, and earthquakes, disease outbreaks/ epidemics, and other public health emergencies;

(g) Protection from and abatement of hazardous and injurious substances and activities; road and transport safety; industrial hygiene and occupational safety; hygiene and safety in places and situations of large collection of people occasioning mass food production or disposal of biological wastes including at fairs, festivals, cinema, theatres, circuses, markets, shopping places, malls, lodging houses, burial and burning grounds, slaughter houses; and

(h) Health Impact Assessment (HIA) of all new development projects...”

14. Section 10 guarantees a right against discrimination, Section 11 guarantees right to dignity, Section 12 guarantees right to participation and information and Section 13 guarantees right to justice. Section 14 enlists the users’ rights to health care. **Sub-section (4) of Section 14 guarantees to every individual, a right to emergency treatment and care, irrespective of his inability to pay the requisite fee or charges.** This provision makes it clear that **even private players are obliged to honour such right of every individual to emergency treatment and care.** The Bill also contemplates the establishment of a National Public Health Board and

State Public Health Boards for every State.

15. The Bill even provides for the ***establishment of an intensive accountability framework*** through certain methods of monitoring, such as (i) health information systems, (ii) Government monitoring, and (iii) community-based monitoring. There are also provisions for establishing a mechanism for public dialogues and public hearings (*Swasthya Jan Sunwais*).

16. But the National Health Bill, 2009 also did not see the light of the day. The net result is that the States which have the legislative competence, have failed to act. The Centre is unable to act, for want of competence. But fortunately, the Central Government is empowered under section 62 of the Disaster Management Act, 2005, to issue certain directions.

17. In such circumstances, we are of the considered view (i) that the States and Union Territories could be impleaded suo moto as parties and (ii) that for the present, certain limited directions could be issued.

18. Therefore, the Union of India is hereby directed to do the following:—

(i) A meeting of the Health Ministers/Secretaries of all States and Union Territories may be convened within one week from today

(ii) In the said meeting, all the States and Union Territories, may be advised to come up, within 2 weeks of the first meeting, with a master plan, both legislative and executive, taking cue from the already existing Public Health Acts of various States and also taking cue from the National Health Bill, 2009, which focuses on the marginalized sections of society

(iii) Thereafter, a second meeting of the Health Ministers/Secretaries of all States and Union Territories may be convened for the purpose of collating the information received from the States and Union Territories regarding the steps taken by the States

(iv) After receipt of the information from all the States and Union Territories, the Government of India may file a comprehensive report with a compilation of the information received from the States and Union Territories

(v) The States which already have Public Health Acts, may be advised to fine-tune their existing enactments, on the model of the National Health Bill, 2009.

19. In the meantime, all the State Governments and Union

Territories are suo moto impleaded as parties to this writ petition.

Issue notice to the State Governments and Union Territories.

Application for impleadment filed by General Insurance Council is allowed.

List the matter after four weeks.

.....CJI.
(S. A. Bobde)

.....J.
(A. S. Bopanna)

.....J.
(V. Ramasubramanian)

AUGUST 31, 2020
NEW DELHI

ITEM NO.18 Court 1 (Video Conferencing) SECTION PIL-W

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

Writ Petition(s)(Civil) No(s). 863/2020

SACHIN JAIN

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(FOR ADMISSION and IA No.51899/2020-GRANT OF INTERIM RELIEF and IA No.49494/2020-EARLY HEARING APPLICATION and IA No.51677/2020-EARLY HEARING APPLICATION and IA No.51866/2020-INTERVENTION APPLICATION and IA No.51673/2020-INTERVENTION APPLICATION and IA No.51682/2020-INTERVENTION APPLICATION and IA No.70047/2020-INTERVENTION APPLICATION and IA No.48304/2020-APPLICATION FOR HEARING DURING VACATION and IA No.70048/2020-EXEMPTION FROM FILING O.T. and IA No.71992/2020-EXEMPTION FROM FILING AFFIDAVIT and IA No.49495/2020-EXEMPTION FROM FILING AFFIDAVIT and IA No.58200/2020-EXEMPTION FROM FILING AFFIDAVIT and IA No.60658/2020-EXEMPTION FROM FILING AFFIDAVIT and IA No.49491/2020-INTERVENTION/IMPLEADMENT and IA No.77031/2020-INTERVENTION/IMPLEADMENT and IA No.49493/2020-PERMISSION TO APPEAR AND ARGUE IN PERSON and IA No.48305/2020-PERMISSION TO APPEAR AND ARGUE IN PERSON and IA No.59281/2020-APPROPRIATE ORDERS/DIRECTIONS and IA No.62188/2020-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.51868/2020-APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT and IA No.48303/2020-APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT and IA No.51683/2020-APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT IA No. 51868/2020 - APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT IA No. 51683/2020 - APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT IA No. 48303/2020 - APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT IA No. 48304/2020 - APPLICATION FOR HEARING DURING VACATION IA No. 59281/2020 - APPROPRIATE ORDERS/DIRECTIONS IA No. 49494/2020 - EARLY HEARING APPLICATION IA No. 51677/2020 - EARLY HEARING APPLICATION IA No. 49495/2020 - EXEMPTION FROM FILING AFFIDAVIT IA No. 58200/2020 - EXEMPTION FROM FILING AFFIDAVIT IA No. 60658/2020 - EXEMPTION FROM FILING AFFIDAVIT IA No. 70048/2020 - EXEMPTION FROM FILING O.T. IA No. 51899/2020 - GRANT OF INTERIM RELIEF IA No. 51673/2020 - INTERVENTION APPLICATION IA No. 51866/2020 - INTERVENTION APPLICATION IA No. 70047/2020 - INTERVENTION APPLICATION IA No. 51682/2020 - INTERVENTION APPLICATION IA No. 49491/2020 - INTERVENTION/IMPLEADMENT IA No. 49493/2020 - PERMISSION TO APPEAR AND ARGUE IN PERSON IA No. 48305/2020 - PERMISSION TO APPEAR AND ARGUE IN PERSON IA No. 62188/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND I.A. NO. 79186 OF 2020 - APPLICATION FOR IMPLEADMENT, I.A. NO. 79187 OF 2020 - APPLICATION FOR EXEMPTION

FROM FILING O.T. AND I.A. NO. 79188 - APPLICATION FOR EXEMPTION FROM FILING ATTESTED AFFIDAVIT)

WITH

W.P.(C) No. 489/2020 (PIL-W)

(FOR ADMISSION IA No. 55396/2020 - APPLICATION FOR PERMISSION

IA No. 55393/2020 - INTERVENTION APPLICATION

IA No. 55022/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Diary No(s). 12051/2020 (PIL-W)

(FOR APPLICATION FOR PERMISSION ON IA 76856/2020

FOR EXEMPTION FROM FILING AFFIDAVIT ON IA 76857/2020

IA No. 76856/2020 - APPLICATION FOR PERMISSION

IA No. 76857/2020 - EXEMPTION FROM FILING AFFIDAVIT)

Date : 31-08-2020 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) In-person

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For Respondent(s)

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Mr. Rajat Nair, Adv.

Mr. Harish Salve, Sr. Adv.
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Mr. Akash lamba, Adv.

Mr. Aman Lekhi ASG
Mr. Bhaskar Bhardwaj Adv.
Mr. Devashish Bharuka, AOR

Ms. Manisha T. Karia, AOR

Appellant-in-person

Mr. Irshaan Kakkar, Adv
Ms. Nupur Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Application for impleadment filed by General Insurance
Council is allowed.

List the matter after four weeks in terms of the signed
order.

(MADHU BALA)
AR-CUM-PS
(Signed order is placed on the file)

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR