

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL PUBLIC INTEREST LITIGATION. OF 2020

Registrar Judicial,
High Court of Bombay,
Bench at Aurangabad.

....**Petitioner.**

Versus

State of Maharashtra & Ors.

....**Respondents.**

Mr. Rajendra S. Deshmukh, Senior Counsel for petitioner (appointed).

Mr. D.R. Kale, Public Prosecutor for respondent/State.

**CORAM : T.V. NALAWADE AND
SHRIKANT D. KULKARNI, JJ.**

DATED : 26/06/2020.

ORDER :

1. Yesterday we came across one news item in daily newspapers published in Aurangabad. Elected representatives of all the political parties including the ruling party had come together and they expressed dissatisfaction over the work done by the concerned to control and prevent the spread of COVID-19 virus in Aurangabad District. It is a fact that in Aurangabad, the graph of infected persons has ascending trend and within 24 hours more than 200 cases were detected on 24.6.2020 and more than 260 cases were detected on 25.6.2020. There is also news item that more than 1000 teachers who were given the work of survey of the persons during this pandemic did not turn up and they virtually refused to do this work.

There was a news item that the Commissioner Aurangabad Corporation now wants to follow Kerala and Dharvi pattern. It is learnt that the Commissioner is now in home quarantine as his cook was infected due to this virus. If some steps were taken to prevent the spread of the virus then it is necessary to know as to which steps were taken if the pattern like Kerala and Dharvi were not followed in this region. Today, there is one more news in which the Hon'ble Guardian Minister expressed that the power to take steps under relevant laws will be exercised by the Divisional Commissioner in this area. There is also news that the Divisional Revenue Commissioner expressed that there was lack of communication between the District Collector and Commissioner Aurangabad. It is unfortunate that there was lack of communication between these two officers of I.A.S. rank. It can be said that there is the possibility of involvement of ego matter. There is also possibility of non coordination and non cooperation. In such a situation, all of them including the police machinery need to work together, but it appears that there was no such coordination in this region.

2. It is not that early to say that the stories of Kerala pattern, Dharvi pattern and also Malegaon pattern will be written as stories of success of the officers who handled the situation there. We are afraid that the stories of cities like Aurangabad or Jalgaon for that matter may not be pointed out in future as stories of success of the

officers of this region.

3. Due to the provisions made in the Acts like Epidemic Disease Act 1897, Disaster Management Act 2005 and the Ordinance issued by the Hon'ble President to make amendment in Epidemic Disease Act, 1897 and also due to the notifications issued under these Acts by the State Government on 14.3.2020 and 30.4.2020, all powers are vested in the officers like Collectors, Revenue Commissioners and Commissioners of Corporations to take necessary steps and action to prevent the spread of such virus. Those Acts also give necessary protection to these officers in respect of the acts done by them while exercising such powers. Though such powers are vested in the officers and they can act independently, without getting influenced by the politicians and others, it can be said that some officers acted without fear even of the infection of the virus to them, but some virtually failed to act. Though these Acts give all the powers to the officers, we are living in a system which is democratic republic and only the elected representatives are in touch with the people and they know the problems the people are facing. They only can help the officers for effective implementation of the directions given by the officers under the aforesaid Acts. The grievance of the politicians who had gathered to express dissatisfaction show that the officers were not in touch with them. Thus, this can be also a reason for not implementing effectively the

guidelines given by the Center to prevent the spread of the virus. Further, only giving the guidelines or giving directions to subordinate officers is not sufficient in our system. Unfortunately, we have developed such work culture that there is huge negligence and inaction. Considering the danger that virus has created, it is not sufficient to only issue orders, but the authority or the officers created under the Act need to see that the directions given are followed and the guidelines are implemented at the ground root level. It can be said that in our country only poor and middle class persons are sufferers and they suffer when there is such calamity. They have no other alternative than to go to public institutions for treatment, help and protection. This circumstance needs to be kept in mind by these officers.

4. Many doctors and other health workers working in the public health centers are working with devotion, they have virtually sacrificed their family life and most of them continued to work when they got infected. There are few public servants including the health workers who have stopped attending duty by giving lame excuses. There are few public servants who attend the duty for name sake, but they do not show devotion. There are some who are on duty, but who avoid to attend the infected persons. As already observed, the other persons who are directed to do the duty of survey also need to do the work to control and prevent the spread of virus. It appears

that due to some such persons who are not discharging the duty with devotion, the virus has spread to the present extent. In view of these circumstances, some directions need to be issued to enable the officers, authorities mentioned in the aforesaid Acts to act effectively. That can be done by taking action against the persons who are refusing or avoiding to discharge their duties assigned to them.

5. There was news item that in Jalna in Public Health Center, one old infected lady died and her dead body was lying in toilet block of the isolation cell for two days, but the Health Center gave report to outside that the lady was missing. This news creates a probability that the persons who are expected to attend the patients are not actually attending the patients and they are left inside with their own fate and without giving treatment to them. There were instances reported in newspapers that dead bodies were handed over to the relatives of the deceased even when swab was taken and report in respect of swab was awaited. There are news items showing that the persons who were quarantine in institutions were missing. There were also news that the persons who are kept in quarantine in institution and who are receiving the treatment in isolation are not receiving food or proper food in time. This is happening only due to the negligence of the concerned.

6. The statement made by the Commissioner of Municipal

Corporation, Aurangabad that now he wants to follow Kerala and Dharvi pattern shows that there is a probability that contact tracing was not done properly in this region. That is also one reason for having ascending graph of the infected persons.

7. In the aforesaid Acts, there are provisions which say that offences are committed under the Act by the act of commission or omission. Specific instances are mentioned by this Court though they are on the basis of news items. In such a situation, the authority and the State need to be very strict and even harsh and they need to go to the extent of using power given under Article 311 of Constitution of India against the persons who are not discharging the duty, in addition to registering the crimes against them under the aforesaid Acts. This Court is limiting the scope of this proceeding for taking criminal action against such persons so that the persons involved in the work of control of the virus discharge the duty with devotion and they realise that they will loose their jobs if they do not turn up to attend the duty or if they show negligence in discharge of the duty.

8. The aforesaid circumstances need to be made known to the public at large. It can be said that it is a fault of the system that there was apparently no coordination amongst the officers who were involved in implementing the guidelines. This Court wants only to help them to implement the guidelines and to take necessary steps

which need to be taken as per the situation which is prevailing in this region at various places. That can be done by showing to all the concerned that they will not be spared if they do not attend the duty or they show negligence in discharging the duty. Only with this view, this Court is giving some interim directions to the respondents. The respondents are to be the officers appointed under the aforesaid Acts of all the districts police etc. which are covered under jurisdiction of this Court. The State, Home Department and Health Department of State are also to be made respondents. The directions are as under :-

- (i) The respondents are to report to this Court about the employes who stopped attending the duty in public hospitals and also in other public offices when they were expected to work for the prevention of spread of the virus.
- (ii) The respondents are to report to this Court about the action taken against the employees who did not turn up to discharge the duty. The respondents are to see that proper action including action of registration of the crime is taken against such employees and report about it is given to this Court.
- (iii) The respondents are to report to this Court about the action taken against the private laboratories and private hospitals and others who did not report the cases of infections due to this virus and the deaths caused due to

this virus to the concerned.

(iv) The respondents are to report to this Court about the action taken against the private hospitals who have refused the admissions not only to COVID-19 patients, virus affected persons, but also to the other patients by giving lame excuses. The criminal action can be taken against them.

(v) The respondents are to report to this Court about the action taken for negligence shown by the persons involved in this work in discharge of the duty and when the specific instances are reported against them. The respondents are to see that criminal action is taken against them.

(vi) The respondents are to see that the record in respect of contact tracing is now preserved. This Court wants to ascertain as to whether the teams/squads created for contact tracing have honestly worked and they have collected necessary information. They are expected to create the record to show that they did visit to various places to trace the contacts of the infected persons.

(vii) The respondents are expected to create the facilities like CCTV cameras at the institutions where persons are kept in quarantine and also at the centers where the persons are kept in isolation so that it can be ascertained as to whether proper attention is paid to them and proper

treatment is given to them. This record needs to be preserved as this Court would like to use it for taking action against the persons who show negligence.

9. It appears that though containment zones were declared, the movement of the persons from the containment zones or from the sealed building were not restricted and that is also one of the reasons for the present situation created in this region. It can be said that this is one of the offshoots of absence of coordination between the officers appointed under the aforesaid Acts and police machinery. In view of these circumstances, the Police Commissioner and all the District Superintendents of Police of this region are also to be made party respondents in this proceeding.

10. It was pointed out by the learned Senior Counsel Shri. Deshmukh that one website was made available which could have helped the officers to co-ordinate action of each other, but at present there is no updation of the website. The learned Senior Counsel drew the attention of this Court to website by name 'join the war against covid19 register as volunteer' and 'my government meri sarkar'. The public prosecutor is to look into this matter also.

11. The learned Public Prosecutor is present. He has heard the order. He is to communicate this order to all the authorities created

under the aforesaid Acts for compliance. Learned Senior Counsel Shri. Rajendra Deshmukh has kindly consented to work as amicus curie and represent the Registrar Judicial. Copy of the order is to be supplied to him also. He is to prepare the draft of petition as Suo Moto Public Interest Petition in this matter and file it before the next date. We expect that the petition and the prayers are exhaustive and the directions if any which are required to be given, can be implemented to see that the officers appointed under the aforesaid Acts are helped in every way by this Court. Keep the matter on next Friday.

[SHRIKANT D. KULKARNI, J.]

[T.V. NALAWADE, J.]

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