

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO. 25 OF 2020

1. Pratibha Shinde
President Lok Sangharsh Morcha,
33-B, Near Ambedkar Market,
Next to Sai Mandir, Swatantray Chowk,
Jalgaon ...Petitioner No. 1
2. Kamlabai Devidas Birhade,
Sai Gajanan Nagar, Paroda Road,
Amarner, Dist: Jalgaon ...Petitioner No. 2
3. Rafik Tadvi,
At Post Utkheda
Tehsil Raver, Dist Jalgaon ...Petitioner No. 3

Versus

1. Principal Secretary, Public Health
Department, State of Maharashtra,
Room No. 108, Mantralaya,
Mumbai, 400 038
2. State of Maharashtra
Through The District Collector,
Office of the District Collector,
Jalgaon
3. State of Maharashtra
Through the Deputy Collector
Jalgaon, Maharashtra
4. Civil Hospital & Government Medical
College, Jalgaon, Maharashtra.
5. Chief Executive Officer & Administrator
Civil Hospital & Government Medical
College, Zilla Parishad, Jalgaon,
Near Shivaji Nagar Railway Bridge,
Jalgaon
6. District Civil Surgeon,
District Hospital, Jalgaon, Maharashtra

7. Commissioner, (Health Services)
National Rural Health Mission,
Arogya Bhavan, Mumbai
 8. Superintendent of Police, Jalgaon
7, Jilha Peth, MG Road, Jalgaon
Maharashtra 425 001
 9. Jilha Peth Police Station, Jalgaon
Through its Senior Police Inspector,
Bhaskar Market Road, Jalgaon
 10. Maharashtra Disaster Management Authority,
through the Director
The Maharashtra Disaster Management Unit,
Relief and Rehabilitation Department,
Mantralaya, Mumbai – 400 23
 11. Union of India,
Through the Ministry of Health & Family
Welfare, 4th Floor, Aaykar Bhavan,
M.I. Road, Mumbai
- ...Respondents

Ms Gayatri Singh, Senior Counsel i/by
Mr Ankit Kulkarni, Advocate for Petitioners
Mr P.S. Patil, Additional Government Pleader for
Respondent Nos. 1 to 10

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE OF RESERVATION : 28.10.2020

DATE OF PRONOUNCEMENT : 27.01.2021

JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. On March, 11, 2020, the World Health Organization declared COVID-19 a pandemic. In India too, the Government of India has also termed COVID-19 as a pandemic. The on going global Corona virus disease (“COVID”) has affected millions of persons around the world. In

order to save precious lives, a public spirited Non-Government Organization acting in concert with two persons from Jalgaon have filed this PIL raising grievances in the matter of Covid-19 pandemic focusing light on mismanagement, negligence, etc. at Government Medical College and Civil Hospital at Jalgaon endangering lives of Covid-19 positive and suspected patients.

2. The petitioners are seeking following directions :-

A. *That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent authorities to pay compensation to the family of late Malati Mehete to the tune of Rs. 50 lacs and damages due to the negligence and dereliction on the part of the Hospital and District administration leading to the unfortunate demise of late Malati Nehete.*

B. *That this Hon'ble Court be pleased to call for the papers and proceedings pertaining to the demise of late Malati Nehete at Civil Hospital and initiate a high level enquiry under the Chairmanship of the Chief Secretary, State of Maharashtra or any other high level officer as this Hon'ble Court may deem fit, against the erstwhile Dean, Dr. Bhaskar Khaire, the administrative head of the Civil Hospital and Dr. Kiran M. Patil, the head of Operations of the Civil Hospital and all other officers and staff responsible for the unfortunate death of late Malati Nehete including the negligence on the part of the concerned police officers who failed to locate the body of late Malati Nehete even though the same was lying within the toilet of Ward No. 7 itself.*

C. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ order or direction in the nature of mandamus directing the Respondent police authorities to include the erstwhile Dean, Dr. Bhaskar Khaire, the administrative head of the Civil Hospital and Dr. Kiran M. Patil, the head of Operations of the Civil Hospital as accused in FIR No. 228 of 2020 lodged at Jilha Peth Police Station.

D. That this Hon'ble Court be pleased to initiate a high level enquiry into the deaths caused in the Civil Hospital due to negligence of the Civil Hospital Administration as well as harassment caused to suspected patients who were negligently admitted in COVID positive Ward by the hospital administration and provide them with compensation and damages as deemed fit by this Hon'ble Court.

E. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent authorities to set up a task force to guide the hospital administration in treating the COVID 019 patients and follow the several protocols and guidelines issued by ICMR and MOH&FW including the 'Guidelines for Setting up a COVID Facility Ward' annexed to this Petition as Exhibit "" so that proper care is taken for isolation of the COVID wards and patients are admitted in the designated wards (Positive and Suspected) Wards after due diligence and application of mind and with a view to ensure that Entry and Exit to the COVID wards is not unregulated.

F. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent authorities to ensure that nurse patient ratio as prescribed in the Minimum

standards for ICUS (intensive care units) to be adopted throughout the country' prescribed by All India Institute of Medical Sciences is scrupulously adhered to and provided in the COVID wards of the Civil Hospital.

G. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent authorities to ensure sufficient and timely sanitization of the hospital premises and that the toilets, floors and washrooms are well maintained, cleaned and sanitized atleast twice in a day.

H. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent authorities to provide adequate number of wheelchairs, ventilators, portable X-ray machines and set-up a Centralized Oxygen facility for proper treatment and care of the COVID patients admitted in the Civil Hospital.

I. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent authorities to set-up CCTV cameras and make them functional in every ward of the hospital at a feasible place with a view to monitor the movement and development of the patients as well as with a view to maintain a record to increase accountability amongst the medical and para-medical staff.

J. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent authorities to set-up a Centralized Common Counter in a Non-COVID area where all formalities and documentation process for admission

of a patient can be carried out and daily updates or other information can be provided to the relatives or people concerned with a view to dis-incentivize the relatives of the patients to enter the COVID affected areas.

K. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent authorities to display a list of the attending doctors and nurses alongside the wards wherein their duties have been assigned.

L. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent authorities to ensure that the Non COVID patients are not made to pay inflated prices at Ulhas Patil Medical College & General Hospital and same charges are levied as were being levied earlier at the Civil Hospital and all benefits of the Government schemes be extended to such Non-COVID patients undergoing treatment at Ulhas Patil Medical College & General Hospital.

M. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent authorities to take necessary steps by constructing bunds or otherwise so as to prevent any further inundation of Ulhas Hospital.

BB. This Hon'ble Court be pleased to pass such further directions as this Hon'ble Court may deem fit in the interest of justice.

3. **The PIL on hand deals with following subjects -**

- Mismanagement, negligence and dereliction of duties while treating Covid-19 patients -

- The mismanagement, negligence, dereliction of duties and non-provision of necessary health care at civil hospital and Government Medical College, which is the only Government covid dedicated hospital at Jalgaon. There was shocking increase in mortality rate of covid-19 patients in the above said dedicated hospital. Even though Ganpati Hospital and Ulhas Medical College, Godavari Hospital declared as covid hospitals, maximum number of covid-19 patients are admitted in civil hospital.

Non-implementation of ICMR Guidelines -

- ICMR has issued guidelines to treat covid-19 patients. The protocols were not adhered to. Minimum standard is not maintained while treating covid-19 patients in the ICU.

Guidelines for quarantine facilities -

- The guidelines were issued by the ICMR to provide quarantine facilities which mainly deals with isolation and segregation of covid suspects from the confirmed cases at entry and exit points at the hospital.

4. We have heard Ms Gayatri Singh, learned senior counsel instructed by Mr Ankit Kulkarni, learned Counsel for the petitioners and Mr P.S. Patil, the learned Additional Government Pleader for the State/Respondent at length.

Argument of Petitioners Advocate -

5. Ms Gayatri Singh, learned senior counsel for the petitioners invited our attention to a news item published in the Times of India.

Central team asks Jalgaon admin to lower death rate

TNN|Jun 21, 2020, 04.16 AM IST

Nashik: A two-member team of the Union ministry of health and family welfare (MoHFW) has directed the Jalgaon administration to conduct more tests and work overtime to bring down the high Covid-19 mortality rate in the district. BJP MP Raksha Khadse had requested the ministry to send the team to handhold the local administration to deal with Covid-19 issues. Subsequently, the ministry had sent the team to Jalgaon to ascertain the reasons for the constant spike in Covid-19 cases as well as high death rate.

The team, led by the ministry's senior regional director Dr. Arvind Alone, held a meeting with the district administration officials, elected representatives and Indian Medical Association (MA) functionaries at the district collectorate office on Saturday.

The team visited some containment zones in Jalgaon city and also inspected the Jalgaon medical college and hospital where an elderly woman infected with Covid-19 had allegedly died in the toilet block and body was recovered five days later.

Khadse, who attended the deliberations, told TOI that the district administration has been told to ensure that lab reports of the swab tests should be made available at the earliest so that treatment can start without any delay.

“I have observed that in several cases in the past, lab reports came after 36 hours,” Khadse said, adding that the patients must get proper facilities at Covid hospitals.

According to Khadse, the administration has been directed to undertake micro-level planning to prevent the spread of the infection.

Jalgaon has emerged as one of the major coronavirus hotspots in the state and has one of the highest Covid-related mortality rate.

At present, the total number of Covid-19 patients in the district stands at 2,149 with over 159 deaths. A total of over 1,250 patients have recovered from the illness.

(emphasis supplied)

6. Ms Gayatri Singh, learned senior counsel for the petitioners also invited our attention to the guidelines issued by the ICMR. It is submitted that Jalgaon Civil Hospital was declared as a covid-19 dedicated hospital. There were guidelines and protocols which were required to adhere while treating covid-19 patients. There was mismanagement, negligence and dereliction of duties while providing medical treatment to covid-19 patients at the civil hospital and Government Medical College, Jalgaon. It resulted into increase in mortality rate. Even though two private hospitals namely, Ganpati Hospital and Ulhas Medical College Godavari Hospital are declared as covid hospitals, maximum number of patients are admitted to

the civil hospital by virtue of it being the only Government covid-19 hospital. At the time of filing petition, there were 1540 covid-19 patients whereas at present i.e. while making submissions, there are more than 35511 confirmed cases.

7. According to ICMR guidelines, a building for covid-19 dedicated health facility sets out pre-requisites with regard to setting up of isolated facilities, cleaning facilities, adequate floor space for beds, protective environment measures, adequate ventilation. According to Ms Gayatri Singh, learned senior counsel, the guidelines and protocol were not adhered to while treating covid-19 patients and covid-19 suspects. It is submitted that the authorities at the hospital have turned a complete blind eye towards the guidelines and protocols issued by ICMR. Even though advertisement for recruitment of doctors is issued, no adequate doctors and staff is provided. No sufficient health workers are on duty simply stating that ICMR guidelines have been complied with by the officials at covid-19 civil hospital not any way help to the State authorities. Ms Gayatri Singh, learned senior counsel invited our attention to specific instances regarding malfastening of civil hospital particularly protocols of toilet at civil hospital, Jalgaon, patients lying in the wards flooded with waters at Ulhas Hospital at Jalgaon. The son of petitioner No. 2 feeding his father, a covid-19 positive patient in the ward which is required to be in isolation. Wife of petitioner No. 3 is covered under Surakshit Maitrithva Yojna under the scheme of Adavasi of Talvi community was charged Rs.33,600/- towards her delivery at Ulhas Hospital. Bhimrao Sonawane, belongs to Scheduled Caste and eligible under the Antyodaya Govt. Health Scheme not

extended benefits. Similar is the case of Jyoti Pralahad Gehi, who covered under the scheme charged with exorbitant medical bill by Ulhas Hospital.

8. There was lack of wheel chairs, portable x-ray machines. No sanitization and cleaning of toilets, no regular monitoring of patients, no rounds of doctors, no waiting room for covid-19 patients, covid-19 suspects and confirmed covid-19 patients are being mixed-up for want of isolation wards and restriction of entry, at entry and exit point.

9. Ms Gayatri Singh, learned senior counsel further invited our attention to gross negligence while treating covid-19 patient Malati Nehete. She was 82 years old and shifted from Railway Hospital, Bhusawal to covid-19 civil hospital Jalgaon on 01.06.2020. Her oxygen level was below 70% at the time of admission. At the time of shifting from Bhusawal, her medical reports were sent along with letter which shows she was covid-19 positive patient. Being a serious case of covid-19, she was required to be admitted in ICU ward, but she was admitted in general ward No. 7 though beds in the ICU were available. No emergency services were provided in the general ward. She went missing on 2nd June, 2020, and there were conflicting and misleading information given by the senior officers to the relatives of late Malati Nehete. Missing report was filed without conducting any search. Her dead body was found in decompose state after 8 days i.e. on 10th June, 2020 in a toilet of the same general ward No. 7.

10. There was public outcry because of such unfortunate death of a old aged lady suffering from covid-19. The Committee was set up under

erstwhile Dean Dr. Bhaskar Khaire only on 6th June, 2020 after public outrage. The FIR came to be lodged vide C.R. No.228/2020 on 10.06.2020. Instead of making senior doctors and high level officers responsible and accountable, the junior doctors and health workers were made a scapegoat. At the relevant time, erstwhile Dean Dr. Bhaskar Khaire and Dr. Kiran M. Patil were administrative head of the operations. Their names do not find place in the FIR, even though District Civil Surgeon has given report to that effect dated 11.06.2020 holding them to be *prima facie* guilty of negligence and dereliction of duties. No attempt was made to conduct inquest on the dead body of Malati Nehete. No enquiry was conducted under section 176(1) and section 174(1) and (4) of Cr.P.C.

11. By relying upon aforesaid circumstances and specific instances, Ms Gayatri Singh learned senior counsel for the petitioners vehemently submitted that the family members of late Malati Nehete are entitled to get compensation. A separate affidavit has been filed by Harshal Nehete, who happens to be a grand son of late Malati Nehete. Erstwhile Dean Dr. Bhaskar Khaire and Dr. Kiran M. Patil, the Administrative Head of the Operations need to be arraigned as accused in FIR No. 228/2020 to implement and complement recommendations made in the death audit report. It is absolutely necessary to adhere to the guidelines issued by ICMR to make applicable and implement benefits of government schemes to the unprivileged class in the private hospitals acquired by the State Government.

12. While answering to the question of maintainability of this petition, wherein compensation is sought, Ms Gayatri Singh, learned senior counsel for the petitioners invited our attention to -

- (i) ***Paschim Banga Khet Mazdoor Samity and others Vs. State of W.B. and Anr. reported in (1996) 4 SCC 37,***
- (ii) ***Rudal Sah Vs. State of Bihar and Anr. reported in (1983) 4 SCC 141 and,***
- (iii) ***Court on its Own Motion Vs. Govt. of NCT of Delhi and others reported in 2018 SCC online Del 10283.***

13. By taking help of above set of citations, Ms Gayatri Singh, learned senior counsel submitted that there is no legal impediment to entertain this PIL wherein compensation is sought by the heir of late Malati Nehete, a covid-19 patient died because of negligence of the administration of civil hospital at Jalgaon.

14. Ms Gayatri Singh, learned senior counsel also placed her reliance on following citations in support of her argument.

- (i) ***Union of India Vs. Moolchand Kharaiti Ram Trust reported in 2018 (8) SCC 321,***
- (ii) ***Citizen Forum for Equality Vs. The State of Maharashtra and others, order dated 01.06.2020 passed by the Division Bench at Nagpur in LD - VC - Public Interest Litigation No. 12 of 2020.***

Argument of Additional Government Pleader -

15. Mr P.S. Patil, learned Additional Government Pleader for the State/Respondents per contra submitted that present PIL is not at all maintainable. PIL is not in interest for public at large. The family members of late Malati Nehete are well educated and they are very much able to invoke legal remedy for compensation if they desire. The relatives/heirs of late Malati Nehete are not parties just to make this PIL maintainable.

16. Mr Patil, learned Additional Government Pleader further submitted that the State Government has already taken action against the concerned persons in respect of alleged negligence and dereliction in duty. The concerned persons have been suspended and departmental enquiry has been initiated against them. The FIR has been registered. Now, it is for the Police Officer to conduct investigation and add accused if evidence is found during the investigation. As such, the prayer clause (B), (C) and (D) made in the PIL could not be entertained in view of above factual scenario.

17. Mr Patil, learned Additional Government Pleader further invited our attention to the directions given in ***suo moto criminal PIL No. 1/2020 in the case of The Registrar (Judicial), High Court of Judicature of Bombay, Bench at Aurangabad Vs. The Union of India and Citizen Forum for Equality Vs. State of Maharashtra and Ors., Division Bench at Nagpur, the order dated 1st June, 2020*** and judgment delivered by the Division Bench of this Court at Principal Seat in ***PIL-CJ-DC-VC-21/2020 Jan Swasthya Abhiyan and Ors. Vs. State of Maharashtra and others connected matters and Suo Moto PIL No. 4 of 2020 and writ petition***

Stamp No. 8050 of 2020 in the case of Court on its own motion and Ors. Vs. Union of India and Ors. Division Bench at Nagpur, the order dated 28.10.2020.

18. By taking help of above said decisions of this Court, the learned Additional Government Pleader submitted that practically all the grievances have been considered in the above said decisions of this Court and there is no need to issue any more directions. The State is implementing those directions in letter and spirit. The guidelines and protocol prescribed by the ICMR is also followed. Now, the graph of covid-19 patients is coming down in view of the measures taken by the authorities.

19. To buttress the argument, Mr Patil, learned Additional Government Pleader has placed his reliance on following citations :-

- (i) ***Dattaraj Nathuji Thaware Vs. State of Maharashtra reported in (2005) 1 SCC 590***
- (ii) ***Ashok Kumar Pandey Vs. State of West Bengal reported in (2004) 3 SCC 349.***
- (iii) ***Mrinall Shashi Shekhar Vs. Election Commission of India reported in (2020) Mh.L.J. 402.***
- (iv) ***Suo moto criminal PIL No. 1/2020 (The Registrar Judicial, High Court of Judicature at Bombay, Bench at Aurangabad Vs. Union of India and others).***

20. Mr Patil, learned Additional Government Pleader submitted that death of Malati Nehete, a 82 years old patient of covid-19 at Government Medical College and Hospital at Jalgaon is an unfortunate incident.

Mr Patil, gave factual scenario as to how death of Malati Nehete took place. He submitted that Malati Nehete was admitted at Government Hospital at Jalgaon in highly critical condition. Even though medical papers were received from Railway Hospital, Bhusawal, no report of infection of covid-19 was attached. As soon as it is noticed by the hospital that patient's oxygen SPO2 level is reducing, her bed was converted into ICU bed for providing oxygen facility. Necessary medical treatment was provided to the patient. On 02.06.2020 at 2.00 p.m. it is noticed by staff nurse that patient was not on her bed and not even found in the ward after taking search, the concerned employees were under *bona fide* impression believed that patient might have left the ward without intimating any body as such instances occurred in Jalgaon District at that time. The incident was reported to Police Station on the very day. On 10.06.2020, dead body of Malati Nehete was found in the toilet of the ward. The Dean directed to Registrar FIR against the negligent persons and accordingly C.R. No. 228/2020 came to be registered at Zilla Peth Police Station. Three Members Committee was constituted. The Committee has submitted its report. The departmental enquiry has been initiated against the responsible officer and in pursuance to that, two other persons have been suspended and departmental enquiry has been initiated. Devidas Biradhe, a 60 years old patient was admitted in critical condition. He was diabolic and ischemic heart disease patient. The medical treatment was provided to the patient and there was absolutely no negligence in providing medical treatment. There is no substance in the allegations that ventilator was not provided to the patient. The patient was put on ventilator on 28.10.2020 at

2.30 p.m. but unfortunately he succumbed to death.

21. The death of Ayub Khan is also unfortunate. The enquiry has been initiated under the Head of H.O.D. Dr M.P. Pote, who has submitted the report.

22. Mr Patil, learned Additional Government Pleader submitted that necessary steps have been taken by the district administration to fill-up the post of doctors, staff nurse and other para-medical staff and advertisement came to be issued to that effect. One more step has been taken and 16 doctors and 17 nurses/staff came to be transferred to other medical colleges.

23. Mr Patil, learned Additional Government Pleader also invited our attention to the affidavit and additional affidavit sworn in by the Chief Administrative Officer, Government Medical College and Hospital, Jalgaon. The affidavit sworn in by the District Collector, Jalgaon. He submitted that district administration has taken all necessary steps to overcome the lapses. The guidelines and protocol prescribed by ICMR are being followed strictly and that is why graph of covid-19 patient has been reduced.

24. We have considered the submissions of learned senior counsel Ms Gayatri Singh for the petitioners and Mr P.S. Patil, Additional Government Pleader for the State/Respondent. We have also perused the affidavit sworn in by the District Collector, Jalgaon, Chief Administrative Officer, Government Medical College and Hospital, Jalgaon and District

Civil Surgeon, Jalgaon. We have perused the report submitted by the three Members Enquiry Committee as well as other papers relied upon by both the sides.

25. The legal position for entertaining the PIL is no more *res-intergra*. In case of **Dattaraj Vs. The State of Maharashtra** (supra), it is held by Hon'ble Supreme Court that PIL needs to be admitted with great a care considering the factors involved therein. It is duty of Courts to entertain PIL for redressal only of genuine public grounds or injury and shall not entertain the petition for redressal of private, publicity oriented or political dispute or another dispute not genuinely concerned with the public interest. The Court has to be extremely careful that it does not encroach upon sphere reserved by the Constitution for the executive and legislature. A person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus-standi* and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. In case of **Ashok Kumar Pandey Vs. State of West Bengal** (supra), it is held by Hon'ble Supreme Court that Court has to be satisfied about the -

(a) *the credentials of the applicant,*

(b) *the prima facie correctness or nature of information given by him; and*

(c) *the information being not vague and indefinite. The information should show gravity and seriousness involved. It is further held by the Hon'ble Supreme Court that PIL shall not be entertained in service matters.*

26. In case of ***Mrinall Shashi Shekhar Vs. Election Commission of India (supra)***, it is held by the Division Bench of this Court at Nagpur that we cannot entertain the PIL styled as PIL questioning the constitutionality or validity of the statute or statutory rule.

27. At the outset, it would be relevant and important to place on record that the Division Bench of this Court at Principal Seat in case of ***Jan Swasthya Abhiyan and Ors. Vs. State of Maharashtra and other connected matters vide judgment dated 12.06.2020***, the Division Bench of this Court, Bench at Aurangabad in case of ***Registrar, Judicial (High Court of Judicature at Bombay, Bench at Aurangabad) in suo moto Criminal PIL No. 1/2020*** and the Division Bench at Nagpur in the case of ***Citizen Forum for Equality Vs. State of Maharashtra, Division Bench at Nagpur, vide order dated 1st June, 2020*** have issued various directions to the State and competent authorities to take certain emergency measures to prevent the spread of covid-19 virus in view of provisions of the Epidemic Diseases Act, 1897 and Disaster Management Act, 2005. Most of the directions sought in this PIL have been covered by the decisions of Division Benches referred to herein above. It would not be only advantages but helpful while deciding the PIL on hand.

28. First, we shall deal with the question of maintainability of this PIL in view of the serious objection raised by the Additional Government Pleader. We have considered the submissions of both the sides on the point of maintainability of the PIL as well as considered citations relied upon by both the sides. The legal position is now well settled for

entertaining the PIL. The PIL needs to maintain purity and sanctity. *Bonafide* PIL is to be encouraged while PIL filed for extraneous considerations is to be discouraged. The Hon'ble Supreme Court has laid down guidelines in case of ***State of Uttaranchal Vs. Balwant Singh Chaufal and others reported in (2010) 3 SCC 402***, it is held by the Hon'ble Supreme Court that PIL available only where larger public interest is involved and matter is so great and urgent that it must take precedents over other matters. The Court should *prima facie* verify the credentials of the petitioner before entertaining a PIL. The Court should be fully satisfied that substantial public interest is involved before entertaining the petition. The cause in a PIL is aimed at redressal of genuine public harm or public injury.

29. The PIL on hand relates to covid-19 pandemic. Many grievances have been raised in this PIL regarding mismanagement, negligence and shortcomings at Jalgaon Civil Hospital endangering the lives of covid positive and suspected patients. Non-adherence of ICMR guidelines while treating covid-19 patients and suspected patients. On careful scrutiny of the PIL on hand, it appears to be genuine cause for public at large, especially raising concern about medical treatment of covid-19 patients at Jalgaon Civil Hospital. It seems to be a *bona fide* public interest litigation focusing light on the insensitivity of doctors, staff and para medical services at the Jalgaon Civil Hospital.

30. Mr Patil, learned Additional Government Pleader strenuously argued that in the instant PIL, the compensation is sought on account of

death of one covid-19 patient, Malati Nehete. According to Mr Patil, compensation cannot be awarded in a PIL. It is for the legal heirs of late Malati Nehete to prosecute the remedy for compensation and not by taking help of this petition.

31. Right to life is guaranteed under Article 21 of the Constitution of India. Right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from Article 21 of the Constitution as held, the Hon'ble Supreme Court in case of ***Occupational Health and Safety Association Vs. Union of India reported in AIR 2014 SC 1469***. It is the duty of the Government Hospital to provide timely medical treatment to a patient in a need of such treatment.

32. Failure on the part of the Government Medical Hospital to provide immediate medical treatment to a patient amounts to violation of Article 21 of the Constitution which relates to right to life. In case ***of Pt. Permanand Katara Vs. Union of India reported in AIR 1989 SC 2039***, it is held by the Hon'ble Supreme Court that failure on the part of the Government Hospital to provide timely medical treatment to a patient in need of such treatment amounts to violation of right to life.

33. In case of Smt. ***Nilabati Behera alias Lalita Behera Vs. State of Orissa and others reported in AIR 1993 SC 1960***, it is held by the Hon'ble Supreme Court as under :-

A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such

rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Arts. 32 and 226 of the Constitution.

The Supreme Court is not helpless and the wide powers given to it by Art. 32, which itself is a fundamental right, imposes a constitutional obligation on it to forge new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to the Court under Art. 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with

law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the havenots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, were more appropriate.

34. The Hon'ble Supreme Court has referred to various decisions including the case of ***Rudal Sha Vs. State of Bihar reported in AIR 1983 SC 1086***. In the case of ***Smt. Nilabati Behera*** (supra), the Hon'ble Supreme Court was pleased to award compensation quantified at Rs.1,50,000/- to the victim-claimant taking the proceeding.

35. Having regard to the legal position made clear by the Hon'ble Supreme Court in the case of ***Smt. Nilabati Behera*** (supra), instant PIL is certainly maintainable wherein compensation is sought on account of death of covid-19 patient Malati Nehete. It was unfortunate death of Malati Nehete in a Civil Hospital at Jalgaon when medical treatment was being provided to her as a confirmed covid-19 patient. In case of the ***Court on its Own Motion Vs. Govt. of NCT of Delhi and others reported in 2018 SCC online Del 10283***, it is held by the Division Bench of the Delhi High Court that it is obligatory on the part of the High Court to award compensation for infringement of fundamental rights in exercising of jurisdiction under Article 226 of the Constitution of India.

36. The High Court being the protector of civil liberties of the citizens, has not only the power and jurisdiction but also an obligation to grant relief in exercising of its jurisdiction vested under Article 226 of the Constitution of India to the victims or the heirs of the victim, whose fundamental rights under Article 226 of the Constitution of India are established to have a flagrantly infringed by calling upon the State to repair damage done by its own officers to the fundamental rights of the citizens irrespective of individual remedy by way of civil suit or criminal case available to them.

37. Certainly, we do not find any defect in maintaining the present PIL. We are not convinced by the argument advanced by the learned Additional Government Pleader on the point of maintainability of this petition.

38. Now, coming to various directions sought by the petitioners to the State/Authorities, prayer clause (A) relates to compensation on account of unfortunate death of Malati Nehete, a covid-19 patient that prayer would be dealt with subsequently.

39. Prayer (B), (C) and (D) relate to initiate high level enquiry under the Chairmanship of Chief Secretary or any other high level officer against the erstwhile Dean Dr. Bhaskar Khaire, Dr. Kiran M. Patil, Administrative Head of the Operations of Civil Hospital, Jalgaon and other officers and staff responsible for the unfortunate death of late Malati Nehete including negligence, FIR against the above said doctors and concerned default officers and action against the hospital administration.

40. Mr Gajendra Govindrao Dighavkar, presently working as Chief Administrative Officer, Government Medical College and Hospital, Jalgaon has sworn affidavit on behalf of respondent Nos. 4 and 5 and para No. 18 of his affidavit throws light on this which reads thus -

*18. I say and submit that, as the New items were published in news papers and cognizance of death of late Malti Nehte had been taken by some news channels also. Therefore, the Principal Secretary of Medical Education and Drugs Department Mantralaya, Mumbai, by Order dated 11.06.2020 initiated departmental enquiry against the then Dean Dr. Khaire, Assistant Professor Dr. Suyog Chaudhari and one Kalpana Dhanakar, who is junior President Doctor. The copy of the Order dated 11.06.2020 is annexed herewith and marked as **EXHIBIT 'R-10'** to the present affidavit in reply. In pursuance to the Order these persons came to be suspended and now departmental enquiry is proposed against them for the alleged incident of negligence and dereliction in the duty.*

41. Mr Abhijit Rajendra Raut, presently working as District Collector at Jalgaon has filed affidavit in the capacity of respondent No. 2. Para Nos. 13, 15 and 16 of affidavit which read thus -

13. I say and submit that, further then Dean of Government Medical College, Jalgaon, Dr. Bhaskar Khaire appointed 3 man enquiry committee of Heads of the various departments to conduct the enquiry and thereafter the then Dean Dr. Khaire directed to file another F.I.R. on 10.06.2020 which is registered as F.I.R. No. 288/2020 at Zilla Peth Police Station.

15. I say and submit that, by taking serious cognizance of the report submitted by then District Collector, Shri. Dr. Avinash

*Dhakane, along with the report of the Civil Surgeon of Jalgaon, the Principal Secretary of Medical Education and Drug Department Mantralaya, Mumbai, by its Order suspended the then Dean Dr. Khaire, Assistant Professor Dr. Suyog Chaudhari and one Kalpana Dhanakar, who is junior Doctor for their negligence and dereliction in the duty. The copy of the suspension order is annexed herewith and marked as **EXHIBIT 'R-9'** with the present affidavit in reply.*

16. I say and submit that, from all the above mentioned fact, it is crystal clear that, all the concerned authorities have taken serious note of the unfortunate death of late Malti Nehte and appropriate action has also been initiated and further the FIR has been registered with the police to investigate the matter.

42. The copy of the FIR is placed on record along with the affidavit sworn by the District Collector, Jalgaon. On perusing the same, it is evident that Dr. Swapnil Chandrakant Kalaskar, Special Medical Officer has filed FIR on 10.06.2020 at Zilla Peth Police Station, Jalgaon against the doctors, staff nurses, health workers, ward boy, ward lady and staff, which were on duty at ward No. 7 of Civil Hospital, Jalgaon at the relevant dates and time under section 304-A of the IPC. Further, para Nos. 21 and 24 of the affidavit of the District Collector read as under :-

21. I say and submit that, all guide lines given by ICMR, central government and state government has been strictly followed. CCTV cameras have already been installed in each and every Ward and these are in working condition, their daily backup are been stored regularly; Map of hospital is also has been displayed at various conspicuous places. Wide publicity and awareness campaign is also being done through various departments. I say and submit that, on admission of every

patient (Covid Suspect as well as Covid Positive patient) they are being treated according to standard protocol laid by the ICMR.

*24. I say and submit that, all protocol given by the ICMR are being strictly is being followed and monitored regularly. It is humbly submitted that, Government of Maharashtra has appointed Zilha Parishad CEO as the administrator over the Government Medical College, Jalgaon and various Incident Commander along with various Nodal Officers has also been appointed to monitor the overall situations of any Covid Care Center, Government hospital as well as Government undertaken hospitals. By my office order I have also appointed a Special officer to manage the bed availability for Covid Patients along with the ambulance service management for Covid Positive as well as Covid Suspect patients too. The orders of appointment of various officers have been annexed herewith and it is marked as **EXHIBIT 'R-11' to 'R-12'** with the present affidavit in reply.*

43. The State has also produced a copy of suspension order dated 11th June, 2020. The departmental enquiry is initiated against the erstwhile Dean Dr. Bhaskar Khaire, Assistant Professor Dr. Suyog Chaudhari, Pharmacology and Dr. Kalpana Dhanakwar, Junior Resident Doctor.

44. Having regard to the affidavit sworn by the District Collector, Jalgaon, it is very much clear that erstwhile Dean Dr. Bhaskar Khaire, Dr. Kiran M. Patil, Administrative Head of Operations of Civil Hospital, Jalgaon, Dr. Suyog Chaudhari, Assistant Professor, Pharmacology and Dr. Kalpana Dhanakwar, Junior Resident Doctor have been suspended. The departmental enquiry is being initiated against them.

45. It is further evident from the affidavit sworn by the District Collector, Jalgaon about enquiry in respect of negligence and dereliction in duty. Three Members Committee who are heads of various departments to conduct the enquiry has been set up by the then Dean of the Government Medical College and Hospital at Jalgaon. The high level enquiry into death caused in the civil hospital has already been set up. No need to issue further directions in this regard.

46. So far as the adherence of ICMR guidelines and protocol are concerned, it is stated in the affidavit sworn by the District Collector, Jalgaon that they are now strictly adhering to the protocol and guidelines issued by the ICMR and MOH & FW including the guidelines for setting up a covid facility ward and non-covid facility ward. The proper care is being taken for isolation of covid-19 wards and patients are admitted in the designated wards (positive and suspected) wards after due diligence and application with a view to restrict the entry and exit to the covid wards. Further it is evident from the affidavit sworn by the District Collector that sufficient ventilators, oxygen cylinders are stocked, CCTV cameras have been installed in the covid-19 wards, the arrangement of ambulance is made.

47. Having regard to the above discussion and in view of the directions issued by the Division Bench of this Court, **vide Suo Moto Criminal PIL No. 1/2020 (Registrar, Judicial, High Court of Judicature at Bombay, Bench at Aurangabad Vs. Union of India and) dated 18th August, 2020**, the Division Bench of this Court at Principal Seat in case of

Jan Swasthya Abhiyan and Ors. Vs. State of Maharashtra and other connected matters vide judgment dated 12.06.2020, and the Division Bench at Nagpur in the case of Citizen Forum for Equality Vs. State of Maharashtra, Division Bench at Nagpur, vide order dated 1st June, 2020, we are of the considered view that no further directions are necessary. In order to avoid repetition, we make it clear that directions in the above PILs shall *ipso facto* applied to all the respondents in this PIL. The important directions given by this Division Bench in Suo Moto Criminal PIL No. 1/2020 are reproduced hereunder for the sake of convenience.

A) TASK FORCE:-

- (a) The District Collectors of all districts shall establish a Task Force, if not already established.
- (b) A helpline be created by the District Task Force so as to be functional 24 hours and enough staff be deployed to respond to the calls made on such helpline.
- (c) Wide publicity be given to the helpline numbers, which would achieve the purpose of creating the helpline.
- (d) Private hospitals, in addition to those already reined in for treating Covid-19 patients, be requisitioned, by the Task Force or the Divisional Commissioner or as may be provided under the policy of the State or any enactment, if the need so arises.
- (e) The task force would endeavour to create parity in the slabs of rates/ charges of private hospitals who are requisitioned for extending the treatment to Covid-19 patients.

- (f) Ambulances be requisitioned and deployed in Covid-19 duty.
- (g) The charges for utilizing the ambulances belonging to the Government hospitals should be fixed and wide publicity should be given so as to prevent instances of overcharging the patients or their relatives.
- (h) Private ambulances shall be requisitioned and the charges for utilizing private ambulances should be fixed. Wide publicity shall be given to such private ambulances with cellphone numbers of those operating such ambulances and the fixed charges to be paid by the patients/ relatives.
- (i) The Task Force or it's Nodal Officers shall deal with the complaints with regard to the excessive billings by the private hospitals.
- (j) Complaints with regard to force exerted by the private hospitals on the patients for purchasing more medicines/ injections than the quantity required in the treatment, shall be dealt with by such task force or the Committee formed for the said purpose.
- (k) Those private hospitals, which are requisitioned for Covid-19 treatment, should be intimated that the director or proprietor or the head of such hospital, would be held liable for civil and criminal action, if such hospital refuses to admit a covid-19 patient despite the availability of beds.
- (l) Surprise visits to covid response centres be carried out by the task force.

- (m) Nodal Officers be appointed and nodal points for prevention of the spread of corona virus and for dissemination of credible information in respect of availability of beds, etc. be created.
- (n) Maximum publicity be given to the list of private hospitals and the number of beds earmarked for the treatment of Covid-19 patients.
- (o) Services of private practitioners, if the need so arises, be requisitioned and they be supplied with PPE kits and adequate protective gear while being deployed.
- (p) The Task Force shall adopt special measures for extending the facilities of medical counseling and accord wide publicity so as to encourage citizens to undergo rapid antigen test and endeavour to eliminate "fear psychosis" in the minds of suspected patients.

(B) PERSONNEL/STAFF:-

- (a) Adequate number of employees should be deployed by the district administration/ Task Force on Covid-19 duty.
- (b) Monthly salary payments of the employees and/or contractual employees deployed on Covid-19 duty, should be made on regular basis.
- (c) Routine medical tests of the doctors and employees deployed on Covid-19 duty, should be carried out so as to safeguard their health in view of they being exposed to the corona virus infection.

- (d) Absenteeism of and/or lame excuses by the doctors or employees for evading Covid-19 duty, be dealt with strictly.
- (e) Strict disciplinary action be initiated against ineffective, non performing officials and work shirkers.

(C) INFRASTRUCTURE:-

- (a) Sanitization of localities at regular intervals, as may be desired by the task force, shall be strictly carried out.
- (b) Lifting of garbage from the localities shall be carried out on daily basis.
- (c) List of private hospitals requisitioned for Covid-19 duty along with their telephone numbers, should be given wide publicity.
- (d) Besides Government laboratories, private laboratories may be earmarked and the kits for carrying out rapid antigen test, RT-PCR test (swab test), etc. shall be made available, as per the policy of the State Government, for such private laboratories.
- (e) Wide publicity shall be given to the list of laboratories where different types of corona virus tests are performed.
- (f) As far as possible, CCTV systems be installed at the quarantine centres, covid care centres and covid hospitals.
- (g) Nodal officers be appointed at rural levels like villages and talukas to monitor the prevention of spread of corona virus.
- (h) Number of beds earmarked in private hospitals and the Government hospitals for Covid-19 patients should be widely publicized and it should be made imperative for

private hospitals to disclose it's daily occupancy of Covid-19 patients and availability of beds, on it's website.

- (i) Wide publicity be given to the websites of the private hospitals which have been requisitioned for treatment of Covid-19 patients.
- (j) Private hospitals shall ensure that one Principal Officer is appointed for dealing with Covid-19 wards and the beds earmarked for treatment.
- (k) Supply of oxygen in all parts of the State, naturally inclusive of the rural areas and villages where public health centres are available, shall be made in abundance and cases of lack of oxygen cylinders should be eliminated.

(D) SUPPLY OF FOOD GRAINS:-

Wherever required, as per the policy of the Government:-

- (a) Public Distribution System on the lines of the Fair Price Shop be established or the Fair Price Shops presently available, may be utilized so as to distribute food grains to the residents of the containment zones and the weaker sections of the society.
- (b) Recording the details of beneficiaries, by such fair price shop licencees shall be made mandatory for distribution of grains in containment zones.

(E) GENERAL :-

- (a) Primary health care services at the doorsteps of senior citizens and people with co-morbidities, ought to be

provided.

- (b) The district administrations should issue press notes for the correspondents of the newspapers on daily basis. Press briefing is optional.
- (c) Data of Covid-19 positive patients be preserved.
- (d) CCTVs be installed at quarantine centres, covid care centres and covid hospitals.
- (e) The fleeing or run-away patients, who have tested corona positive, be apprehended and be admitted for treatment. If necessary, they be penalised with fine by way of a reprimand.
- (f) Wearing of masks in public place, observing physical distancing and complying with lock-down restrictions, shall be mandatory.
- (g) RT-PCR test or any other appropriate test be conducted on the bodies of those patients, who have died of suspected corona virus, so as to alert the relatives and all those persons who had come in contact with such patients, though the identity of the deceased may not be disclosed.
- (h) The Divisional Commissioner shall form committees at district levels, which shall issue a press-note indicating the status of the tests carried out, number of positive patients, number of patients who have tested negative, cured patients, availability of beds in the Government and private hospitals (occupancy status), number of deaths due to Covid-19, etc..

Such press-note may be issued on daily basis, if practicable, and at least three times in a week.

- (i) There shall be no direction to the district administration to conduct a press-conference and it is left to the Divisional Commissioner and the district administration to hold such press conference, if they find it appropriate.
- (j) Since the press-note would indicate the details as directed above, any person, be he of any status, found to have indulged in spreading rumours or painting a false picture of the Covid-19 situation, should be dealt with strictly by the district administration and if permissible in law, offences may be registered against such individuals under the prevalent laws including the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005. If any employee is involved, he should be subjected to disciplinary action as well.
- (k) Since Aurangabad has become a model for conducting of rapid antigen tests on localites and shop/ establishment owners, the stationed/earmarked laboratories shall be utilised to enable the people to voluntarily subject themselves to such a test.
- (l) So also, the mobile laboratories for conducting such tests should be established in order to make it convenient for the public at large and especially the senior citizens or patients with co-morbidities, to undergo tests.

- (m) The State and the Districts' Administration shall legally ensure that doctors, para-medics, employees deployed/ Covid warriors are protected against aggression or oppression or agitation by any individual or a group of persons on the ground that they are involved in combating Covid-19. Private hospitals and private medical practitioners, pressed into such service, shall be adequately protected. Rumour mongers claiming that Corona virus spreads due to doctors/ para-medics or hospitals with Covid-19 wards and hostilities, by any person howsoever high he may be, towards Covid-19 warriors, shall be strictly dealt with and action, permissible in law, shall be initiated.
- (n) Notwithstanding all guidelines/ advisories set out hereinabove, which are not exhaustive, the State/ District Administrations would be at liberty to introduce such measures as would be necessary for combating Covid-19.

48. The earlier directions given by this Court are sufficient enough to take care of apprehensions raised by petitioners. It is also evident from the affidavit sworn by the District Collector that advertisement has been issued to appoint doctors, staff nurses and a para medical staff to fill-up the vacancies and to overcome the shortfalls. All details find place in the affidavit sworn by District Collector, Jalgaon.

49. Now, coming to unfortunate death of Malati Nehete, aged 82 years, she was suspected covid positive and admitted on 23.05.2020 in

Railway Hospital at Bhusawal. Her health condition started deteriorating, and therefore, she was referred to Government Medical College and Hospital at Jalgaon on 01.06.2020. On 01.06.2020, at about 11.10 a.m. she was admitted in Government Medical College and Hospital at Jalgaon. Even though she was tested positive, the swab was collected at Government Medical College and Hospital at Jalgaon and kept her with non-covid patients. On 02.06.2020, at about 4.00 p.m. the swab report of Malati Nehete received and she was confirmed patient of covid-19. At about 3.30 p.m. the nurse on duty informed to C.M.O. Dr. Asif Shaikh that patient Malati Nehete is missing. The missing report came to be lodged with Zilla Peth Police Station. On 10.06.2020, Dr. Kiran Patil informed the then District Collector of Jalgaon on phone at about 9.30 a.m. that one dead body was found in the toilet of ward No. 7. In response to the call, the then District Collector tried to make sure whether the body is of Malati Nehete, but Dr. Kiran Patil informed that it was not of Malati Nehete. Later on, at about 10.30 a.m. Dr. Kiran M. Patil again called the then District Collector, Jalgaon and informed that dead body is of Malati Nehete. The then District Collector Dr Avinash Dhakne set up a enquiry committee and submitted report to the Divisional Commissioner, Nashik Division, Nashik as well as the Chief Secretary, Medical Education and Drugs Department, State of Maharashtra for taking strict departmental and penal action against the persons involved and responsible for the negligence.

50. Dr. Nagorao S/o Shivaji Chavan is working as District Civil Surgeon. He has filed affidavit-in-reply. Relevant part of his affidavit reads thus -

7. *It is further brought to the attention of the Hon'ble High Court that, when the unfortunate incident of Malati Nehate happened, to find out the factual position and enquire in to the matter, my office made enquiry and called the medical papers of the patient Malati Nehate and based on the information and documents supplied by the Dean, Government Medical College, Jalgaon, I gave my medical opinion and submitted the report to the Commissioner and Program Director Health Service Department, Mumbai.*

51. The District Civil Surgeon, Civil Hospital, Jalgaon seems to have conducted the enquiry into the unfortunate death of covid-19 patient Malati Nehete and submitted his report to the District Collector, Jalgaon and District Collector, Jalgaon seems to have forwarded his enquiry report to the Divisional Commissioner, Nashik Division, Nashik.

52. We have also perused the report submitted by the then Collector, Jalgaon addressed to Divisional Commissioner on 11th June, 2020. The relevant part of the report reads thus -

कै. मालती नेहते यांना दाखल केलेल्या वाडांच्या लगत एकूण ०५ शौचालये आहेत. या शौचालयापैकी ०१ शौचालय हे गेल्या ०८ दिवसांपासून स्वच्छ केले गेले नाही व बंद आहे तर का बंद आहे याबाबत कुणीही खात्री केली नाही, ही बाब कुणाच्याही निदर्शनास आली नाही, किंबहुना रूग्णालय प्रशासनाचे याकडे पुर्णतः दुर्लक्ष झालेले आहे. कै. मालती नेहते यांचे वय ८२ वर्षे होते व त्यांची प्रकृती स्थूल होती, त्यांना **walker** शिवाय चालता येत नव्हते. अशा स्थितीत त्यांना चालता येत नव्हते. अशा

स्थितीत त्यांना शौचालयात जाण्यासाठी सहाय्य करणे आवश्यक होते. आज दि. १० जून, २०२० रोजी शौचालयाचा दरवाजा तोडला तेव्हा त्यांचा मृतदेह कुजलेल्या स्थितीत मिळून आला. यावरून कै. मालती नेहते यांचा मृत्यू ०८ दिवसांपूर्वी झाला असल्याचे स्पष्ट होते.

तसेच संदर्भिय पत्र क्रमांक ०३ अन्वये दिनांक १० जून, २०२० रोजी घडलेल्या घटनेच्या अनुषंगाने या प्रकरणातील निष्काळजीपणाबाबत शासकीय वैद्यकीय महाविद्यालयाचे प्रभारी अधिष्ठाता डॉ. भास्कर खैरे, अधीक्षक डॉ. किरण पाटील, तसेच या कक्षाचे प्रभारी डॉक्टर सहा. प्राध्यापक डॉ. सुयोग चौधरी, CMO डॉ. आसिफ शेख, ज्युनियर रेसिडंट डॉ. कल्पना धनकवार यांचेवर तात्काळ कठोर प्रशासकीय कारवाई करणेबाबत मा. सचिव, वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, मंत्रालय, मुंबई यांना अवगत केलेले आहे. तरी सदरचा अहवाल माहितीसाठी सादर करण्यात येत आहे.

53. Having regard to the factual scenario, it is very much clear that Malati Nehete, a 82 years covid-19 patient was admitted in civil hospital, Jalgaon on 01.06.2020. Even though, she was covid-19 positive patient, she was not admitted in the covid ward and she was kept with non-covid patients. It is gross negligence on the part of the doctors and concerned staff which were on duty on 01.06.2020. On 02.06.2020, the swab report was found positive at about 4.00 p.m., by that time at about 3.30 p.m. staff nurse on duty found that patient Malati Nehete is missing. The dead body of Malati Nehete covid-19 patient was found on 10.06.2020 in toilet of

ward No. 7 and that too in decomposed condition. Practically for about 8 days, patient was missing and nobody bothered to take it seriously. Simply filing of missing report was not sufficient on the part of the hospital administration. The doctor on duty, resident doctor on duty and staff nurse were required to take every care of the patient when they had been rendering medical services. They should be diligent. It is evident that neither doctors on duty nor staff nurse were monitoring the patient Malati Nehete covid positive patient. They admitted and kept the patient Malati Nehete with non-covid patients in the same ward. It is a serious negligence and violation of ICMR guidelines.

54. The report submitted by the then Collector Dr. Avinash Dhakne/ Chairman, District Disaster Management Committee has submitted report to the Divisional Commissioner, Nashik Division, Nashik making responsible erstwhile Dean Dr. Bhaskar Khaire, Dr. Kiran Patil, Administrative Head of Operations, Dr. Suyog Chaudhari, Assistant Professor, Pharmacology, Dr. Asif Shaikh, CMO and Dr. Kalpana Dhanakwar, Junior Resident Doctor, in no ambiguous words, the then Collector Dr. Avinash Dhakne has pointed finger towards the above said persons responsible for the unfortunate death of Malati Nehete. It is a case of negligence of the hospital administration. The above said doctors and staff nurses on duty *prima facie* seem to be responsible for the unfortunate death of Malati Nehete.

55. Having regard to the above factual scenario, we have no hesitation to hold that it is because of culpable negligence of doctors, staff

nurses and para medical staff on duty in providing medical treatment, patient Malati Nehate, met with unfortunate death. The doctors, staff nurses and para medical on duty failed in their duties to provide best medical treatment to the patient Malati Nehete and to take care which the hospital administration was required to.

56. It is needless to state that every doctor whether at government hospital or private hospital has professional obligation to extend his medical services with due expertise to protect human life. In a welfare state, it is the primary duty of the Government to secure welfare of the people. Providing adequate medical facilities for the people is an essential part of obligation undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres, which provide medical care to the persons seeking avail of those facilities. The preservation of human life is of paramount importance. The government is duty bound to provide timely care of patients in serious conditions. Medical facilities and treatment cannot circumvent at any cost. The people coming to the Government hospital/civil hospitals are generally from weaker sections of the society as they do not afford expenses of medical treatment in private hospitals/corporate hospitals in the background and by way of social obligation. Shortcomings and lapses in providing medical treatment amounts to violation of right to life guaranteed under Article 21 of the Constitution of India. The State cannot avoid its constitutional obligation in that regard. In the case on hand, patient Malati Nehete met with an unfortunate death because of culpable negligence on the part of the doctors, staff nurses and para medical force

on duty in providing care and best treatment. It is clear case of violation of Article 21 of the Constitution of India and certainly, the heirs of patient Malati Nehete are entitled to get compensation, since the State has failed to provide adequate medical treatment to the patient Malati Nehete in Civil Hospital at Jalgaon. There is no straight jacket formula for awarding compensation. By taking into consideration the circumstances in totality appearing on record, age of the patient and family background, we are of the considered view to award the compensation and same is quantified at Rs. 5.00 lakhs (Rupees Five Lakhs). The State Government is liable to pay compensation of Rs. 5.00 lakhs (Rupees five lakhs) to the legal heirs of Malati Nehete. Right to life being the most sacrosanct right takes precedence over all other rights in a scenario like Covid-19.

57. Three Members Committee as well as the District Collector, Jalgaon have submitted their enquiry report on the subject to the Principal Secretary, Public Health Department, State of Maharashtra, Mantralaya, Mumbai. It would be appropriate to issue certain directions in this regard.

58. With these reasons, we conclude and proceed to pass the following order :-

ORDER

(i) The State of Maharashtra /Respondent No. 2 shall pay the compensation of Rs. 5.00 lakhs (Rupees Five Lakhs) to the legal heirs of patient Malati Nehete on account of violation of Article 21 of the Constitution of India within a period of four months from today.

- (ii) The respondent No.1/Principal Secretary, Public Health Department, State of Maharashtra, Mantralaya, Mumbai shall take appropriate action on the basis of report submitted by Three Members Committee as well as on the report submitted by the District Collector, Jalgaon as expeditiously as possible.
- (iii) The directions given by **the Division Bench of this Court at Principal Seat in case of *Jan Swasthya Abhiyan and Ors. Vs. State of Maharashtra and others with connected matters vide judgment dated 12.06.2020, in the case of Citizen Forum for Equality Vs. The State of Maharashtra and others vide order dated 1st June, 2020, and vide Sua Moto Criminal PIL No. 1/2020 (Registrar, Judicial, High Court of Judicature at Bombay, Bench at Aurangabad Vs. Union of India and) dated 18th August, 2020***, are already in place. The directions sought by the petitioners in prayer clauses B to M in this petition would be taken care of by the above said decisions of this Court. No further directions are necessary. The State/Respondent authorities shall follow the same scrupulously.
- (iv) The Registrar (Judicial) is directed to forward copy of this judgment to the Chief Secretary, Principal Secretary, Public Health Department, Mantralaya, Mumbai, the District Collector, Jalgaon, Chief Executive Officer & Administrator, Civil Hospital and Government Medical College, Jalgaon and District Civil

Surgeon, District Hospital, Jalgaon for information and necessary compliance.

- (v) With these directions, the Public Interest Litigation stands disposed of.
- (vi) No order as to costs.

[SHRIKANT D. KULKARNI, J.]

[S.V. GANGAPURWALA, J.]

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