

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 1936/2020

(Hospitals' Association, Nagpur and anr vrs. Government of Mah. And anr)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Pradeep Arora, Petitioner No.2 in person.
Shri Subodh Dharmadhikari, Senior Counsel as Amicus Curiae assisted by
Shri C.S.Dharmadhikari
Shri A.M.Deshpande, Addl. G.P for Respondent No. 1
Shri J.B.Kasat, Advocate for Respondent No.2
Shri Anand Parchure, Advocate for intervenors.

CORAM :- R. K. DESHPANDE, AND
SMT. PUSHPA V. GANDEDIWALA, JJ.
DATED :- 25.09.2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and video quality was proper.

2. Heard Dr. Pradeep Arora, the petitioner No.2 appearing in person, Shri Subodh Dharmadhikar, the learned Senior Advocate assisted by Shri C.S.Dharmadhikari, Advocate; Shri A.M.Deshpande, the learned Additional Government Pleader appearing for respondent No.1 - State and Shri J.B.Kasat, the learned counsel appearing for respondent No.2 – Municipal Commissioner. Shri Anand Parchure, the learned counsel appears for intervenors in support of the petitioners.

3. The challenge in this petition is to the notifications dated 30.04.2020 and 21.05.2020 issued by the State Government containing clause (4) in the

notification dated 21.05.2020, which we reproduced below.

(4) For Covid Patients treated at any of the Hospitals/ Nursing homes/Clinics covered under this notification across Maharashtra, rates shall not be more than rates prescribed in Annexure-C. For non-Covid patients rates will be as per Annexure-A read with Annexure-B (if applicable).

4. By issuing order dated 04.06.2020, the Municipal Commissioner has adopted the said notification so far as the Hospitals in the Municipal limits of Nagpur are concerned. The order of the Municipal Commissioner passed on 04.06.2020 operates only till 31.08.2020.

5. Our attention is invited to the notification dated 31.08.2020 issued by the State Government continuing the force of the earlier notifications dated 30.04.2020 and 21.05.2020 upto 31.11.2020 with certain modifications. Undisputedly, Clause (4) of the notification dated 21.05.2020 which we have reproduced continues to operate till 31.11.2020.

6. Initially on 13.08.2020 we issued notice for final disposal of the matter and to have assistance on legal aspects, we requested the Senior Advocate Shri Subodh Dharmadhikari to act as an Amicus Curiae. On 31.08.2020, we passed a detailed speaking order and expressed our anxiety to know the competency of the State Government to incorporate Clause (4) prescribing

the rates for non-covid patients as per Annexure A and B in the private hospitals and adjourned the matter till 15.09.2020, when we again passed an order and para 3 of the said order dated 15.09.2020, being relevant is reproduced below.

3. We wanted the respondents to make a statement regarding the authority to impose rates as per Annexure-A and B. Therefore, we do not find that more time is required to be granted. If the instructions are not received and placed on record, we will be required to stay the portion which requires the petitioner to follow the rates prescribed in Annexure-A and B.

7. On 23.09.2020 a statement was made before us by the learned Additional Government Pleader that a praecipe has been moved before the Hon'ble the Chief Justice for transfer of this matter and to tag it along with some connected matters which are also said to be pending in the Principal Seat challenging the same notifications.

8. Today also, before us, a pursis is filed along with which a copy of praecipe is attached which is moved before the Hon'ble the Chief Justice on 22.09.2020.

9. We just wanted to know the competency of the State Government to incorporate the aforesaid clause in the notification and made it clear in the order dated 15.09.2020 that if the instructions are not received and placed on record, we will be required to stay the portion which requires the petitioner to follow the rates prescribed in Annexure-A and B of the notification dated

21.05.2020.

10. The technical objections are raised that the notification dated 31.08.2020 issued by the State Government has not been challenged in the present petition. It is also urged that if the Municipal Commissioner has passed separate order extending the applicability of the notification, the same is also not under challenge. Shri A.M.Deshpande, learned Additional Government Pleader submits that in the affidavit filed, the circumstances in which such notifications are issued have been explained. He further submits that the matter be kept on 29.09.2020 on which date the matter can be argued on the question of competency of the State Government to issue such notifications.

11. Shri Subodh Dharmadhikari, the learned Senior Advocate acting as Amicus Curiae has urged that if the notification dated 21.05.2020 is extended by another notification dated 31.08.2020, it would merely be a formality to place on record the notification dated 31.08.2020. The challenge in substance to the notification dated 21.05.2020 would survive for consideration by this Court.

12. We are conscious of the propriety of taking up this matter, particularly when the learned Additional Government Pleader has placed before us the praecipe moved on 22.09.2020 before the Hon'ble the Chief Justice. However, what we find is that the order which

we passed earlier on 15.09.2020 assuring the petitioners that the matter will be heard on the question of grant of interim relief to the portion of notification shall loose its sanctity. We do not want the litigants to carry such impression.

13. In view of above, put up this matter on **29.09.2020** so as to enable the State Government to move the praecipe before the Hon'ble the Chief Justice for orders, or to enable the learned Additional Government Pleader to argue the matter on merits opposing the application for stay. However, in the meantime, we stay the effect of operation of Clause (4) of the notification dated 21.05.2020 which we reproduced in our order.

JUDGE

JUDGE

Rvjalit