

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. OF 2020

(STAMP NO.193 OF 2020)

Mohan Ramkisan Joshi ... **Petitioner**

VERSUS

Union of India & Ors. ... Respondents

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A. SYNOPSIS:

Considering the crucial and vital medical protective equipments and resources, being custodia-legis arising out of various seizures and raids by the State’s investigating agencies necessitated to be released for the greater good to deal with the epidemic of novel covid-19 effectively and in a preventive manner, the Petitioner begs to approach this Hon’ble Court by the Public Interest Litigation.

B. DATES AND EVENTS:

Date	Events
30/01/2020	WHO declared the outbreak of Novel COVID-19 to be a Public Health Emergency of International Concern (PHEIC)
11/03/2020	WHO’s Director General characterized outbreak of COVID-19 as a pandemic.

12/03/2020	Taking serious cognizance of the declaration by WHO and on Central Government's advisories, on 12/03/2020, the Government of Maharashtra declared the outbreak to be an epidemic in the cities of Mumbai, Navi Mumbai, Nagpur, Pune and Pimpri-Chinchwad.
March 2020	The outbreak of Novel COVID-19 had since then been declared as an epidemic in almost all states and union territories of India, where provisions of the Epidemic Diseases Act, 1897 have since then been invoked.
24/03/2020	The Hon'ble Prime Minister of India announced the country being put under lockdown for the 21 days to come and have urged people to stay at home as it is the only prevention from contracting COVID-19.
08/04/2020	Despite all the measures, as the spread of COVID-19 went on increasing, Maharashtra Chief Minister, Mr. Uddhav Thackeray urged people to use masks while going out of their homes and appealed to former defence, health services personnel, retired nurses and ward boys to join the 'war' against Coronavirus
14/04/2020	The Hon'ble Prime Minister of India announced the extension of the lockdown for 19 more days till (03/05/2020) to come and have urged people to stay at home as it is the only prevention from contracting COVID-19.

C. POINTS TO BE URGED:

All the grounds and points mentioned in Petition Memo.

D. ACTS TO BE REFERRED:

- i) The Epidemic Diseases Act, 1897.
- ii) Constitution of India.

AUTHORITIES RELIED UPON:

At the time of hearing with the leave of this Hon'ble Court.

Mumbai dated this 17th day of April, 2020.

(Namrata A Agashe/ Harsh Parte)
Advocate for the Petitioner

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. OF 2020

(STAMP NO. OF 2020)

IN THE MATTER OF ARTICLE 226 OF THE
CONSTITUTION OF INDIA.

AND

IN THE MATTER OF ARTICLE 21 OF THE
CONSTITUTION OF INDIA.

AND

IN THE MATTER OF OUTBREAK OF NOVEL
COVID-19 THEREBY LEADING TO
PANDEMIC SITUATION, STATE OF
MAHARASHTRA BEING CONTINUED TO BE
THE MOST AFFECTED BY THE DISEASE IN
INDIA.

AND

IN THE MATTER OF CRISIS OVER THE
SHORTAGE OF FACE MASKS AND HAND
SANITISERS DURING THE CORONAVIRUS

PANDEMIC, ESPECIALLY IN THE LIGHT OF
HAND SANITISERS AND FACE MASKS BEEN
BROUGHT UNDER LISTS OF ESSENTIAL
GOODS AND THEIR HOARDING OR BLACK
MARKETING IS STRICTLY PROHIBITED.

AND

IN THE MATTER OF CRUCIAL AND VITAL
MEDICAL PROTECTIVE EQUIPMENTS AND
RESOURCES, BEING CUSTODIA-LEGIS
ARISING OUT OF VARIOUS SEIZURES AND
RAIDS BY THE STATE INVESTIGATING
AGENCIES NECESSITATED TO BE
RELEASED FOR THE GREATER GOOD TO
DEAL WITH THE EPIDEMIC OF NOVEL
COVID-19 EFFECTIVELY AND IN A
PREVENTIVE MANNER.

Mohan Ramkisan Joshi	)	
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	)	... Petitioner

VERSUS

1. Public Health Department,)

Maharashtra State, through the Principal)

Secretary having its office at Mantralaya,)

Madam Cama Road, Hutatma Rajguru)

Square, Nariman Point, Mumbai -)

400032.)

2. Home Department, Maharashtra)

State, through the Principal Secretary)

having its office at Mantralaya, Madam)

Cama Road, Hutatma Rajguru Square,)

Nariman Point, Mumbai - 400032.)

3. Union of India)

Being represented through the office of)

Additional Solicitor General, Bombay)

High Court, Mumbai.)

4. State of Maharashtra)

Being represented through the office of)

Government Pleader, Bombay High)

Court, Mumbai.)

... Respondents

TO,

THE HON'BLE CHIEF JUSTICE AND OTHER

PUISNE JUSTICES OF THE HON'BLE

HIGH COURT JUDICATURE AT BOMBAY

THE HUMBLE PETITION OF THE

PETITIONER ABOVE-NAMED:

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is a senior citizen and a resident of state of Maharashtra (Pune) and an ex-Member of Legislative Council of Maharashtra State. The Petitioner is currently the General Secretary of Maharashtra Pradesh Congress Committee.
2. Respondent No. 1 is entrusted with ensuring accessible and affordable healthcare for all the people in the State of Maharashtra by providing basic healthcare facilities to all its citizens. It is also the concerned Department in-charge of various safe-guarding (pre and post-detection of COVID-19) programs initiated by the Union of India in consultation with other various departments of the State. Respondent No. 2 is Statutory Authority in-charge of State Investigating Agencies, including Maharashtra Police, etc. Respondents Nos. 3 and 4 are the Union of India and the State of Maharashtra respectively. The Respondents fall within the ambit of 'state' as defined by Article 12 of the Constitution of India and are amenable to the writ jurisdiction of this Hon'ble Court.
3. As per World Health Organization, Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered Coronavirus. Most people infected with the COVID-19 virus will experience mild to moderate respiratory illness and recover without requiring special treatment. Older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease and cancer, are more likely to develop serious illness. At this time, there are no specific vaccines or treatments for COVID-19 though there are many ongoing clinical trials evaluating potential treatments. Annexed hereto and marked as **Exhibit 'A'** is an excerpt of an article related to an overview of Novel COVID - 19

(Coronavirus) published on World Health Organization's ('WHO') official webpage.

4. The Petitioner states that as per WHO guidelines, while dealing with Novel COVID-19, to protect oneself and others from infection, it was advised to wash one's hands or using an alcohol based rub (or sanitizer) frequently. As COVID-19 virus spreads primarily through droplets of saliva and / or discharge from the nose when an infected person coughs or sneezes, it was also advised to practice respiratory etiquette (for example, by coughing into a flexed elbow) and to use protective face masks to cover one's mouth and nose. Annexed hereto and marked as **Exhibit 'B'** is an excerpt of an article related to prevention suggestions as against the spread of Novel COVID - 19 (Coronavirus) published on WHO's official webpage.
5. On 30/01/2020, WHO declared the outbreak of Novel COVID-19 to be a Public Health Emergency of International Concern (PHEIC).
6. As the alarming levels of spread and severity and by the alarming levels of inaction by many countries all over the world, on 11/03/2020, WHO Director General characterized COVID-19 as a pandemic.
7. Taking serious cognizance of the declaration by WHO and on Central Government's advisories, on 12/03/2020, the Government of Maharashtra declared the outbreak to be an epidemic in the cities of Mumbai, Navi Mumbai, Nagpur, Pune and Pimpri-Chinchwad. It also announced that all malls, cinema halls, swimming pools and gyms in these cities will be closed until 31 March.
8. The outbreak of Novel COVID-19 had since then been declared as an epidemic in almost all states and union territories of India, where provisions of the Epidemic Diseases Act, 1897 have since then been

invoked, and educational institutions and many commercial establishments had been shut down.

9. By early to mid March, the Government of India had drawn up plans to deal with a worsening of the pandemic in the country which includes seven ministries working together to set up additional quarantine and treatment facilities across the country.
10. As part of these plans which are in consonance with World Health Organistaion (WHO)'s recommendations, including following social distancing strictly to curtail the spread of the virus, on 24/03/2020, the Hon'ble Prime Minister of India announced the country being put under lockdown for the 21 days to come and have urged people to stay at home as it is the only prevention from contracting COVID-19.
11. Despite all the measures, as the spread of COVID-19 went on increasing, on 08/04/2020, Maharashtra Chief Minister, Mr. Uddhav Thackeray urged people to use masks while going out of their homes and appealed to former defence, health services personnel, retired nurses and ward boys to join the 'war' against Coronavirus. It was in the light of preemptive measures being taken in the adverse eventuality.
12. The Hon'ble Prime Minister of India announced the extension of the lockdown for 19 more days (till 03/05/2020) to come and have urged people to continue to stay at home as it is the only prevention from increasing contraction COVID-19.
13. While navigating through COVID-19 pandemic, the Government declared essential 'critical or key workers' who are needed more than ever to ensure the safety of its citizens, including Doctors, nurses, other medical staff, cleaners and sweepers, Police Officials, essential commodities' suppliers, delivery people etc. Throughout this harrowing and trying time, various Government Officials,

including cleaning staff (Sanitization Department), Public Health Department, Police Department, etc are going out of their houses ensuring the reduction of risks to human health by providing and maintaining clean, sanitized and safe premises and environments so to allow all the citizens to stay at their homes without many worries.

- 14.** It is in these circumstances, that the incidents of black-market sale, jacked up stock of health essentials such as sanitizers, face masks, gloves, etc gravely harm the effects to control and prevent the scourge of this disease. The Petitioner states that he had made enquiries from the officials of Respondent No. 1 and 2 after having learnt of the Police Department having seized many stockpiles of masks, which were being hoarded. The Petitioner states that said such reports were published in various news channels, papers, etc. As reported Times of India -

'In the time of crisis over the shortage of face masks and hand sanitizers, the Mumbai Police on Monday seized 25 lakhs masks which were being smuggled out of India'.

Similarly, throughout the country, including State of Maharashtra, Government Officials, comprising State's Police Department have raided various places and confiscated and / or seized such essential health equipments and materials. Offences are registered by the concerned Investigating Authorities and the seized-up materials are, to the best of Petitioner's knowledge, custodia-legis and / or under police custody, the same being part of various ongoing investigations. Annexed hereto and marked as **Exhibits 'C1 to C3'** are the newspaper articles dealing with various raids and seizures by State's Police Officials throughout the State of Maharashtra.

- 15.** It is important to note that the State of Maharashtra is the worst hit and has succumbed to the pandemic of Novel COVID-19 like no

other State. Therefore, the Petitioner most humbly submits that keeping such crucial and vital health related equipments and materials seized-up and / or confiscated will not serve the interests of the society, especially in today's dire need for the same, in the backdrop of thousands of Government Officials working even in these demanding times. The Petitioner upon making enquiries from officials of Respondent No. 1 and 2 learnt that there are no guidelines for release of such confiscated masks, which were seized by the Police Department to Hospitals/Health Officials/ Care Givers.

- 16.** Though the various criminal investigations may proceed in due course of time while dealing with the accused / offenders arrested in lieu of said such crimes directly and / or indirectly dealing with, selling, storing, trading hand sanitizers, various types of face masks, including N-95 and other protective gears and PPE kits, etc, comprising the illegal activities of the black-market sale of the same, it is necessary to bring such health equipments and materials to put to use, which in the alternative would to wastage of national resources which these health equipment and materials.
- 17.** The Petitioner states that prompt and timely allocation of such masks /PPE to the concerned and needy health officials will be crucial in preventing spread of Covid-19 and at the same time safeguard the health of doctors/first responders and care-givers. The Petitioner states that in the absence of any concrete policy on the seizures made of masks and PPE, in public interest, this Hon'ble Court may be pleased to invoke its extra ordinary jurisdiction to issue directions to the Respondents for the purpose of timely and prompt allocation of such equipment. The Petitioner upon making enquiries has learnt that, at present the seized masks are being released on the basis of

ad-hoc requests made by agencies and there is no concrete plan for release of the seized material to hospitals/agencies.

18. The Petitioner has no personal / pecuniary interests in this cause/matter.
19. The Petitioner has not filed any other application, petition etc, dealing with the similar reliefs either in this Hon'ble Court or in the Hon'ble Supreme Court of India.
20. The Petitioner craves leave to refer to and rely upon various documents and papers, articles, etc, as and when required.
21. The Petitioner craves leave to add and / or alter and / or delete and / or truncate and / or modify the averments and the prayers sought for in the present Petition as and when required.
22. The Petitioner states that this Hon'ble Court has jurisdiction to entertain, try and / or adjudicate the present Petition, as filed and also the same is not barred by law of limitation.
23. It is in these premises, the Petitioners approach this Hon'ble Court to consider the present Public Interest Litigation in the interests of nation as whole and also its various States, including State of Maharashtra and pray that -
 - a) This Hon'ble Court be pleased to exercise its powers to direct the Respondents to furnish the details of the seized up and / or confiscated materials, including Hand Sanitizers, Face Masks of all varieties, PPE Kits, etc and all equipments and materials (Inventory, in general) by various authorities, including State's Police Officials to this Hon'ble Court;
 - b) This Hon'ble Court be pleased to exercise its powers to direct the Respondents to intimate this Hon'ble Court about the action, if any, being proposed to be taken by the Government to deal with said such seized up and / or confiscated materials, including Hand Sanitizers,

Face Masks of all varieties, PPE Kits, etc and all equipments and materials (Inventory, in general) by various authorities, including State's Police Officials;

- c) In the absence of any action being taken by the Government, including the Government of Maharashtra, to effectively and efficaciously deal with said such seized up and / or confiscated materials, including Hand Sanitizers, Face Masks of all varieties, PPE Kits, etc and all equipments and materials (Inventory, in general) by various authorities, including State's Police Officials, this Hon'ble Court be pleased to exercise its powers to direct the Respondents to immediately deal with the same, and if possible, to handover the said such materials and equipments to the concerned government authorities to distribute them to the active working government officials, including all medical staff (Doctors, nurses, etc) Police Officials on duty, cleaners and sweepers, etc and other ancillary 'Corona Warriors' as is required;
- d) Pending the final hearing and disposal of this Petition, this Hon'ble Court may be pleased to direct Respondent No. 3 and 4 to effectively and efficaciously deal with said such seized up and / or confiscated materials, including Hand Sanitizers, Face Masks of all varieties, PPE Kits, etc and all equipments and materials (Inventory, in general) by various authorities, including State's Police Officials, this Hon'ble Court be pleased to exercise its powers to direct the Respondents to immediately deal with the same, and if possible, to handover the said such materials and equipments to the concerned government authorities to distribute them to the active working government officials, including all medical staff (Doctors, nurses, etc) Police Officials on duty, cleaners and sweepers, etc and other ancillary 'Corona Warriors' as is required;

- e) Ad interim relief in terms of prayer clause (d);
- f) Any other relief that this Hon'ble Court deems fit and proper.

FOR THIS ACT OF KINDNESS THE PETITIONER SHALL EVER REMAIN OBLIGED.

Mumbai dated this 17th day of April, 2020.

(Namrata A Agashe/ Harsh Parte)
Joshi)

Advocate for the Petitioner

(Mohan Ramkisan

Petitioner

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

PUBLIC INTEREST LITIGATION NO. OF 2020

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VERSUS

Union of India & Ors. ... Respondents

**AFFIDAVIT-CUM-UNDERTAKING OF
THE PETITIONER ABOVE-NAMED IN
COMPLIANCE OF RELEVANT RULES
STIPULATED UNDER THE BOMBAY
HIGH COURT PUBLIC INTEREST
LITIGATION RULES, 2010:**

do hereby state on solemn affirmation as under:

1. I state that whatever that is stated in the foregoing paragraphs of the present Public Interest Litigation be deemed to have been reproduced herein which is true to the best of my knowledge and which I believe the same to be true.

2. I state that I have no personal / pecuniary interests, private motive and / or oblique reason in filing the Public Interest Litigation in this cause/matter. I further state that the entire litigation costs, including the Advocate's fees and other charges are being borne me.
3. I state that to the best of my knowledge and research, the issue raised in the present Petition was not dealt with and / or decided in any court of law.
4. I undertake to pay costs as and if ordered by this Hon'ble Court if it is finally held that the petition is frivolous and / or has been filed for extraneous considerations and / or that it lacks *bona fides*.
5. I state that I have understood that in the course of hearing of this Petition, this Hon'ble Court may require any security to be furnished towards the costs and / or any other charges and that I undertake to comply with such requirements.
6. I have already disclosed the sources of my information averred in the present petition. However, I further undertake to disclose the sources of my information, leading to the filing of the Public Interest Litigation, if and when called upon by this Hon'ble Court to do so.
7. I undertake to complete the formalities, including the signing of the present Petition before the concerned officer of the Court, which is not possible to do in the current situation.

Solemnly affirmed at Mumbai)

On this date 17th day of April, 2020.)

(Mohan Ramkisan Joshi)
Petitioner

Identified by me:

(Namrata A Agashe/ Harsh Parte)
Advocate for the Petitioner

We are not members of the Advocate's Welfare Fund and, hence, a stamp of Rs. 2/- is not affixed hereto.

(Namrata A Agashe) (Harsha Parte)
Advocates, High Court, Bombay.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

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AGENCIES NECESSITATED TO BE
RELEASED FOR THE GREATER GOOD TO
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COVID-19 EFFECTIVELY AND IN A
PREVENTIVE MANNER.

Mohan Ramkisan Joshi	)	
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	)	... Petitioner

VERSUS

1. Public Health Department,	)
Maharashtra State, through the Principal	)
Secretary having its office at Mantralaya,	)
Madam Cama Road, Hutatma Rajguru	)
Square, Nariman Point, Mumbai -	)
400032.	)

2. Home Department, Maharashtra)

State, through the Principal Secretary)

having its office at Mantralaya, Madam)

Cama Road, Hutatma Rajguru Square,)

Nariman Point, Mumbai - 400032.)

3. Union of India)

Being represented through the office of)

Additional Solicitor General, Bombay)

High Court, Mumbai.)

4. State of Maharashtra)

Being represented through the office of)

Government Pleader, Bombay High)

Court, Mumbai.)

... Respondents

To
The Prothonotary and Senior Master,
Bombay High Court, (O.S.),
Mumbai.

VAKALATNAMA

High Court, Bombay to act, plead and appear for me and on my behalf in
the above matter.

IN WITNESS WHEREOF, I have set and subscribed my hand on this
17th day of April, 2020.

(Mr. Mohan Ramkisan Joshi)
Petitioner

Accepted:

Ms. Namrata Ajit Agashe
Advocates, High Court, Mumbai
Room No. 6, 2nd Floor,
Jeevan Vihar Building,
Bombay Samachar Marg,
Dalal Street, Fort, Mumbai - 400023
Reg. No: MAH/4699/2014
Email: agashe.namrata@gmail.com
OS Code: 14704
Adv Code: I15061

Mr. Harsha Parte
Reg. No: MAH/7050/2015
OS Code: 15392
Adv Code: I17194