

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. OF 2020

Sucheta Dalal & Anr.

... Petitioners

versus

State of Maharashtra & Ors.

..Respondents

INDEX

S. No.	Particulars	Page No.
1.	Proforma	A-B
2.	Synopsis	I-III
3.	Writ Petition	1-39
4.	Vakalatnama	40-46
5.	Memorandum of Registered Address	47
6.	List of Documents	48
7.	Exhibit A	49

	Copy of Ministry of Commerce & Industry's Notification No.44/2015-2020 dated 31.01.2020	
8.	Exhibit B Copy of the Ministry of Commerce & Industry's Notification No.47/2015-2020 dated 08.02.2020	50
9.	Exhibit C A copy of the order dated 13.03.2020 under the provisions of the sub-section (2) of section 2A, of the Essential Commodities Act, 1955	51-52
10.	Exhibit D A Copy of the Ministry of Chemical and Fertilizers' order dated 13.03.2020	53
11.	Exhibit E A Copy of the invoice from Respondent No.10 Company addressed to Petitioner No.1's organization for their purchase of 5000 N95 masks	54

12.	Exhibit F A Copy of the invoice from Respondent No.10 Company addressed to Petitioner No.2's organization for their purchase of 3200 N95 masks	55-56
13.	Exhibit G A Copy of the representation to the Principal Secretary of State of Maharashtra by 9 Non-governmental organizations	57-59
14.	Exhibit H Copies of WhatsApp messages received by the Petitioners from dealers	60-67
15.	Exhibit I A Copy of the invoice dated 05.05.2020 generated by Glance Production	68
16.	Exhibit J A Copy of the purchase order dated 28.01.2020 for disposable N95 masks placed by Haffkine Corporation	69-72
17.	Affidavit in Support	73-74
18.	Affidavit in Support of Public Interest Litigation	75-77

19.	Advocate's Certificate	78-79
	Last Page	

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PROFORMA

Office Notes, Office Memorandum of Coram, Court's orders or direction and Prothonotary's Orders	Court's or Judge's Orders

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State of Maharashtra & Ors.

..Respondents

Synopsis

The present petition seeks relief qua the black marketeering, hoarding and profiteering of N95 masks in the State of Maharashtra despite N95 masks being declared as essential commodity under the Essential Commodities Act, 1955 and the failure of the State of Maharashtra to take adequate measures to ensure that sufficient availability of surgical masks and other masks at fair prices.

List of dates and events

S. No.	Date	Event
1.	31.01.2020 & 08.02.2020	Ministry of Commerce & Industry prohibited the export of Personal Protective Equipment

		including clothing and masks (which included Coveralls and N95 masks)
2.	13.03.2020	Ministry of Consumer Affairs, Food and Public Distribution promulgated an order dated 13.03.2020 under the Essential Commodities Act, 1955. The said order included masks (2ply & 3ply surgical masks, N95 masks) and hand sanitizers in the Schedule to the Essential Commodities Act, 1955
		There is a severe shortage in Personal Protective Equipment and N95 masks for frontline healthcare workers
		Petitioners through their organizations and other Non-profit organizations stepped forward to he gaps in personal protection and safety equipment
		Respondent No.10 Company provided 5000 and 3200 N95 masks to Petitioner No.1 and Petitioner No.2 respectively
		Respondent No.10 Company refused to accept further purchase orders from the Petitioners' organizations claiming production restraints.
		Petitioners were approached by insidious dealers

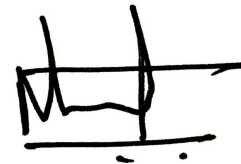
		selling N95 masks produced by Respondent No.10 Company are freely available on the black market at a mark of more than 150%
		Despite order being passed under the Essential Commodities Act, 1955 the Respondents have failed to ensure sufficient supply of N95 masks and have further failed to curb hoarding and profiteering on the said essential commodity.
		Hence the Petition

Acts and Laws relied upon:

1. The Constitution of India, 1950
2. Epidemic Diseases Act, 1897
3. Disaster Management Act, 2005
4. Essential Commodities Act, 1955

Authorities/Case Laws cited:

1. At the time of arguments



Advocate for the Petitioner

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO. OF 2020

In the matter of Articles 14, 19, 21 and 226 of
the Constitution of India, 1950;

AND

In the matter of Epidemic Diseases Act, 1897;

AND

In the matter of The Disaster Management
Act, 2005;

AND

In the matter of the Essential Commodities
Act, 1955;

AND

In the matter of the order dated 13.03.2020 passed by the Ministry of Consumer Affairs, Food and Public Distribution under the provisions of the sub-section (2) of section 2A, of the Essential Commodities Act, 1955 to include masks (2ply & 3ply surgical masks, N95 masks) and hand sanitizers in the Schedule to the Essential Commodities Act, 1955;

AND

In the matter of failure of the State of Maharashtra to take adequate measure to ensure sufficient availability of surgical masks and other masks, hand sanitizers and gloves at prices not exceeding the maximum retail prices;

AND

In the matter rampant hoarding, black
marketing and profiteering on N95 masks;

1. Sucheta Dalal)
Residing at 301, Emca Sadan,)
Appasaheb Marathe Marg,)
Prabhadevi, Mumbai 400025)
PAN: ADYPD7081P)
2. Anjali Damania)
Residing at 502, Vijayashree Durga CHS,)
6th Road, Santacruz East,)
Near V.N Desai Municipal Hospital,)
Mumbai - 400 055)
PAN: AARPD5456E)... Petitioners

Versus

1. State of Maharashtra, through)

- the Chief Secretary)
- Mantralaya, Mumbai-400023)
2. State of Maharashtra)
- Through its Secretary,)
- Department of Social Justice &)
- Special Assistance)
- 1st Floor, Annex Building,)
- Mantralaya, Madam Cama Road,)
- Hutatma Rajguru Chowk,)
- Nariman Point, Mumbai - 400032)
3. State of Maharashtra)
- Through its Addl. Chief Secretary,)
- Department of Finance,)
- New Customs House,)
- Shoorji Vallabhdas Rd, Ballard Estate,)
- Fort, Mumbai, 400001`)
4. State of Maharashtra,)
- Through Secretary,)
- Ministry of Consumer Affairs,)

- Food and Civil Supply Department)
- Mantralaya, Mumbai- 400032)
5. State of Maharashtra)
- through the Principal)
- Secretary, Health Department)
- having its office at)
- Mantralaya, Mumbai)
6. Municipal Corporation of Greater Mumbai)
- Through its Commissioner,)
- Mahapalika Marg, Mumbai - 400 001)
7. Union of India, through the Secretary,)
- Ministry of Health & Family Welfare)
- ‘A’ Wing, Nirman Bhavan, New Delhi-110011)
8. Union of India, through the Secretary,)
- Ministry of Chemicals & Fertilizers,)
- Having its office at YMCA Cultural Building,)
- 1, Jai Singh Road, New Delhi - 110001)
9. Union of India, through the Secretary,)
- Ministry of Consumer Affairs, Food and)

Public Distribution, having its office at)
 179, Krishi Bhavan, New Delhi - 110011)
 10. Venus Safety and Health Pvt. Ltd.)
 Plot No L-17, Taloja MIDC Industrial Area,)
 Tondare, Panvel, Raigad)
 Thane 410208)...Respondents

TO,

THE HONOURABLE THE CHIEF JUSTICE AND OTHER HONOURABLE
 JUDGES OF THE HIGH COURT OF JUDICATURE AT BOMBAY

THE HUMBLE PETITION OF THE
 PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHEWETH

1. PARTICULARS OF THE CAUSE/ ORDER AGAINST WHICH

THE PETITION IS MADE:

The present Petition is filed seeking following reliefs:

- a. Direct the Respondent State of Maharashtra to enforce the
 directions in the order dated 13.03.2020 passed by the

Ministry of Chemical and Fertilizers and ensure sufficient availability of surgical masks and N95 masks, hand sanitizers and gloves at fair prices as determined by the Respondents;

- b. Direct Respondents to ensure compliance of order dated 13.03.2020 passed by the Ministry of Consumer Affairs, Food and Public Distribution under the provisions of the sub-section (2) of section 2A, of the Essential Commodities Act, 1955 to include masks (2ply & 3ply surgical masks, N95 masks) and hand sanitizers in the Schedule to the Essential Commodities Act, 1955;
- c. Direct the Respondents to exercise powers under the Essential Commodities act to confiscate the N95 masks that are being hoarded by profiteers and further initiate prosecutions against the companies and individuals indulging in hoarding, profiteering and black marketeering;
- d. Direct the Respondent Union of India to exercise powers conferred under section 3 of Essential Commodities Act, 1955 to control the price at which N95 masks and other

Personal Protective Equipment can be sold;

2. PARTICULARS OF THE PETITIONERS

- a. Petitioner No.1 is a Padma Shri recipient for journalism, and co-author of the book “*The Scam: Who won, who lost and who got away*”. Petitioner No.1 had in 1992 exposed the ‘Harshad Mehta Scam’—India’s biggest financial scandal until then—which eventually resulted in the enactment of the Special Court (Trial of Offences relating to Securities) Act, 1992 by the Parliament, hastening of the statutory recognition to the market regulator Securities & Exchange Board of India (SEBI) and establishment of India’s largest stock exchange, National Stock Exchange (NSE). Petitioner No.1 is also a Founding Trustee of Moneylife Foundation an organization that is registered under Niti Ayog's Darpan portal and accordingly has undertaken to do COVID related relief work for 3 months with a focus on focus on meeting the gaps in personal protection and safety equipment required by doctors, primarily in government and municipal hospitals. We has supplied Face Shields, N 95 masks, 3-ply

masks, Oxygen masks, sanitisers to over a dozen hospitals in Mumbai and has built Smart Covid OPDs allowing non-touch examination at Sion Hospital, Nair Hospital, JJ Hospital, Bhabha Hospital Bandra, Cama Hospital and St George Hospital.

- b. Petitioner No.2 is an anti-corruption activist. The Petitioner No.2 has filed detailed Public Interest Litigations before Hon'ble Bombay High Court and appropriate proceedings before the PMLA court against the corrupt politicians and the elected members of the legislature where the Hon'ble Court have taken cognizance of various acts of corruption and substantial action has been taken against the Respondents in these proceedings. Petitioner No.2 is also the Founding Trustee of the Voice of Indian Taxpayers (VIT), a registered, nonpartisan trust which lobbies the Government on behalf of the taxpayer for better utilisation of their taxes. Voice of Indian Taxpayers (VIT) set up a Citizens' Task Force and started a crowdfunding campaign to provide essential protective gear to the frontline workers. Till date Voice of Indian Taxpayers (VIT) has collected Rs. 41lakhs from 621

donors, to battle the COVID-19 pandemic. Voice of Indian Taxpayers (VIT) has provided PPE kits to 29 hospitals in 14 districts across Maharashtra and sent 70,200 3M, 3ply surgical masks and N95 masks to Mumbai and Pune Police.

3. DECLARATION AND UNDERTAKING OF PETITIONERS

- a. That the entire litigation costs, including the Advocates fees and other charges are being borne by the Petitioners.
- b. To the best knowledge of the Petitioner/, the issue raised has not been dealt with or decided by the Hon'ble Court and a similar or identical petition has not been/was not filed earlier by the Petitioners.
- c. That the Petitioners have understood that in the course of hearing of this Petition the Court may require any security to be furnished towards costs or any other charges and the Petitioners shall have to comply with such requirements.
- d. That there is/was no litigation or case filed or pending against the Petitioner/s in any civil, criminal, revenue court or any other court in respect of the issue raised in the petition or in respect of the property in respect of which the petition is filed.

4. FACTS IN BRIEF CONSTITUTING THE CASE:

- a. The Respondent No.1 to 5 are the various Offices of the State of Maharashtra that have a coordinated role to play in responding to the COVID Pandemic. Respondent No. 6 is the Municipal Corporation of Greater Mumbai that also runs Medical Facilities in Mumbai. Respondents No 7 to 9 are Ministries / Departments of the Union of India that are also facilitating the response to the COVID Pandemic and issued the orders dated 13.03.2020 under the Essential Commodities Act, 1955. Respondent No.10 is a company that manufactures N95 masks, their manufactured masks are freely available in the black market with prices marked up to 150%.
- b. The Coronavirus disease 2019 commonly known as the COVID-19 is an infectious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Common symptoms include fever, cough, and shortness of breath. Muscle pain, sputum production and sore throat are

less common. The severity of COVID-19 varies. The disease may take a mild course with few or no symptoms, resembling other common upper respiratory diseases such as the common cold. Mild cases typically recover within two weeks, while those with severe or critical disease may take three to six weeks to recover. In severe cases it is also known to cause complications such as Pneumonia, viral sepsis, acute respiratory distress syndrome, kidney failure and cytokine release syndrome.

- c. COVID-19 is primarily spread between people via respiratory droplets from cough, sneezes and talking. The virus can remain viable for up to three days on plastic and stainless steel, and for three hours in aerosols. Presently there are no available vaccines nor specific antiviral treatments for COVID-19 and the said situation it is imperative that special emphasis is laid on prevention. Preventive measure prescribed by the Ministry of Health and Family Welfare include the following:

- i. Washing hands with soap regularly

- ii. Use hand sanitizer with 60% alcohol
 - iii. avoiding crowded places
 - iv. Practice social distancing and
 - v. avoiding touching the eyes, nose, or mouth with unwashed hands
- d. At the time of filing, more than 39.5 lakh cases have been reported across 187 countries and territories, resulting in more than 275,000 deaths. In India, the Ministry of Health and Family Welfare have confirmed a total of 59,662 cases and 1981 deaths in the country. Maharashtra has been the worst hit State in the country with 19,063 confirmed cases of COVID-19 and 731 deaths, while the city of Mumbai has 12142 confirmed cases so far.
- e. The Petitioners state and submit that the first case in India was reported in Kerala on 30.01.2020, which rose to three cases by 03.02.2020; all were students who had returned from Wuhan, China. There were no new reported cases for the entirety of February. On 04.03.2020, 22 new cases came to light, including those of an Italian tourist group with 14

infected members. The transmission escalated during March, after several cases were reported all over the country.

- f. The Petitioners state and submit that immediately after the first case of COVID-19 was reported in India, Government of India through its Ministry of Commerce & Industry vide its Notification No.44/2015-2020 dated 31.01.2020 in exercise of its powers under section 3 of the Foreign Trade (Development & Regulation) Act, 1992 prohibited the export of Personal Protective Equipment including clothing and masks (which included Coveralls and N95 masks). Thereafter, vide its Notification No.47/2015-2020 dated 08.02.2020 Ministry of Commerce & Industry amended its Notification No.44/2015-2020 dated 31.01.2020 to permit the export of surgical masks/disposable masks (2/3 ply) and gloves (except NBR gloves). It is pertinent to note that while allowing the export of surgical masks/disposable masks, the prohibition on the export of N95 masks remained intact. Copies of the Ministry of Commerce & Industry's Notification No.44/2015-2020 dated 31.01.2020 and

Notification No.47/2015-2020 dated 08.02.2020 are annexed hereto and marked as **Exhibit A** and **Exhibit B** respectively.

- g. The Petitioners state and submit that N95 masks or N95 respirators are particulate-filtering facepieces which filter at least 95% of airborne particles. The N95 mask requires a fine mesh of synthetic polymer fibers, also known as nonwoven polypropylene fabric, which is produced through a process called melt blowing that forms the inner filtration layer that filters out hazardous particles. These masks provide protection against particulates but not against gases or vapours. Thus, these mask are ideal for use for frontline workers including healthcare workers who work in close proximity to the COVID-19 patients, as the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) primarily spreads via respiratory droplets/particulates from cough, sneezes and talking.
- h. The Petitioners state and submit that as the number of confirmed cases grew, the demand for hand sanitizers and masks (including N95 masks) grew exponentially. Thus, the

Government of India through the Ministry of Consumer Affairs, Food and Public Distribution promulgated an order dated 13.03.2020 under the provisions of the sub-section (2) of section 2A, of the Essential Commodities Act, 1955. The said order included masks (2ply & 3ply surgical masks, N95 masks) and hand sanitizers in the Schedule to the Essential Commodities Act, 1955 thereby regulating the production, quality, distribution, logistics of masks (2ply & 3ply surgical masks, N95 masks) and hand sanitizers and further prevent hoarding, black marketing and profiteering on these items. The said order is to stay in force till 30.06.2020. A copy of the order dated 13.03.2020 passed under the provisions of the sub-section (2) of section 2A, of the Essential Commodities Act, 1955 is annexed hereto and marked as **Exhibit C**.

- i. The Petitioners state and submit that the Ministry of Chemical and Fertilizers also passed an order dated 13.03.2020 directed all State Governments, Union Territories and concerned State Authorities to take necessary steps to ensure sufficient availability of surgical masks and other

masks, hand sanitizers and gloves at prices not exceeding the maximum retail prices printed on the pack size. Further, the said order also refers to and directs adherence to order dated 13.03.2020 passed under the provisions of the sub-section (2) of section 2A, of the Essential Commodities Act, 1955. A Copy of the Ministry of Chemical and Fertilizers' order dated 13.03.2020 is annexed hereto and marked as **Exhibit D**.

- j. The Petitioners state and submit that in the meanwhile taking into consideration the growing number of confirmed COVID-19 cases the Cabinet Secretary announced that all States and Union Territories should envoke invoke provisions of Section 2 of the Epidemic Diseases Act, 1897 by means of which all advisories issued by the Ministry of Health and Family Welfare and state governments from time to time would enforceable. Subsequently, the Government of India on 14.03.2020 declared the pandemic as a "notified disaster" under the Disaster Management Act, 2005, enabling states to spend a larger part of funds from the State Disaster Response Fund to fight the virus.

- k. The Petitioners state and submit that despite the aforesaid directive from the Government of India (Exhibit D) the State of Maharashtra has failed to take any measures to ensure sufficient availability of surgical masks and other masks, hand sanitizers and gloves at prices not exceeding the maximum retail prices.
- l. The Petitioners state and submit that during the course of the pandemic a major issue that has come to the fore and has been reported widely in the media is the rising number of frontline workers including doctors, nurses, ward boys, police personnel and sanitation workers who have tested positive for COVID-19. According to the latest media reports more than 800 frontline health workers working in government and private hospitals in Mumbai have been infected with the virus.
- m. The Petitioner states and submits that the highly infectious nature of the virus leaves everyone with prolonged human contact susceptible to the infection. Moreover, it is found that the virus can remain viable for up to three days on plastic and

stainless steel, and for three hours in aerosols. Thus, apart from the medical health workers there are other essential services which are also at high risk of being infected if they are not protected with the necessary Personal Protection Equipment (PPE) and the major reason for the spread of the virus amongst the frontline workers is non-availability adequate Personal Protective Equipment including N95 masks. It is submitted that the State has failed to provide adequate protective gear to all the healthcare workers and other essential service providers leaving them susceptible to contracting COVID-19.

- n. The Petitioners state and submit that these healthcare personnel who were forced to work without adequate protection i.e. Personal Protection Equipment (PPE) proceeded to seek help from Non-Governmental Organizations and social workers as the State seemed incapable of providing them the required number of Personal Protection Equipment (PPE) including N95 masks. These medical personnel sought donations of Personal Protection

Equipment and N95 masks from the general public in order to allay the shortage that the Government was not able to fulfill.

- o. The Petitioners state that moved by these calls for help, the Petitioners' Organizations sought to acquire these Personal Protective Equipment and N95 masks so that the same could be provided to the frontline workers. It is during the Petitioners' endeavour to acquire these protective kits and N95 masks for our frontline workers that the Petitioners were shocked to witness rampant black marketeering and profiteering in N95 masks and the abject failure of the State machinery to implement the order dated 13.03.2020 passed under the Essential Commodities Act, 1955. The details of the same are expounded hereinafter.
- p. The Petitioners state and submit that when the Petitioners' organizations sought to acquire the N95 masks so that the same could be supplied largely to government, municipal and charitable hospitals or those designated for COVID-19 treatment, they realised that there are two companies

producing N95 or equivalent masks around Mumbai: Venus Safety and Health Pvt. Ltd. (at Taloja Industrial Area) i.e. Respondent No.10 Company and Magnum Health and Safety Pvt. Ltd. (near Palghar). When the Petitioners' organizations approached these manufacturers to acquire N95 masks, they were informed that the entire production of the said masks was being acquired by the Government and hence there was no stock left for dissemination to the consumers and refused to accept the Petitioners' organizations' purchase requests. In the meanwhile, the State of Maharashtra brought in the requirement that sellers as well as purchasers for N95 masks needed to be approved by the state government's Haffkine Institute. Respondent No.10 Company eventually agreed to provide 5,000 and 3,200 N95 masks to Petitioner No.1's organization and Petitioner No.2's organization at the rate of Rs.40/- + GST and Rs.60/- + GST per mask respectively. A copy of the invoices from Respondent No.10 Company addressed to Petitioner No.1's organization and Petitioner No.2's organization for their purchase of 5000 and 3200 N95

masks are annexed hereto and marked as **Exhibit E** and **Exhibit F** respectively.

- q. Petitioners state and submit that with the spread of COVID-19 the need for Personal Protective Equipment and N95 masks increased and the State's supply remained inadequate to meet the needs of all the frontline and healthcare workers. Thus, the Petitioners along with other public spirited persons and organizations were beseeched by pleas for more N95 masks and protective gear. In the meantime, Respondent No.6 MCGM made protective masks mandatory in Mumbai by an order dated 08.04.2020. Thus, the demand for protective masks including N95 masks soared in Mumbai.
- r. The Petitioners state and submit that when they approached Respondent No.10 Company for more N95 masks so that they could in turn be provided to the frontline workers, the Petitioners were informed that no orders would be accepted as all of their production was booked. They claimed that their entire production had been taken over by the Government

and refused to accept the Petitioners' organizations' purchase orders. The Petitioners state and submit that 9 Non-governmental organizations wrote to the Chief Secretary of the State of Maharashtra to bring to their notice the non-availability of N95 masks. A copy of the representation to the Chief Secretary of State of Maharashtra by 9 Non-governmental organizations is annexed hereto and marked as **Exhibit G**.

- s. The Petitioners assumed that all the N95 masks that were being produced by the aforesaid manufacturers were being acquired by the Government of India and State of Maharashtra and thus, these companies had no stock to sell to the Petitioners. But, to the Petitioners shock and surprise soon after the Petitioners were stonewalled by Respondent No.10 Company they started receiving unsolicited messages from multiple dealers and traders offering to sell to the Petitioners' organizations the N95 masks at a markup of over 150%. The Petitioners were flooded with WhatsApp messages, along with photographic proof of availability of

stocks of N95 masks being manufactured by Respondent No.10 Company. These messages were accompanied by videos showcasing proof of stock, some of the dealers were ready to provide as many as 1 lakh N95 masks at the price of Rs.210/- + GST. These dealers were selling N95 masks produced by both Respondent No.10 Company and Magnum Health and Safety Pvt. Ltd. Copies of WhatsApp messages received by the Petitioners from these dealers are annexed hereto and marked as **Exhibit H**. The Petitioners also crave leave to refer and rely upon video messages sent to the Petitioners by these dealers as proof of stock.

- t. The Petitioners state and submit that one Pari Enterprises, which is a sole proprietorship firm supposedly a manufacturer and supplier of drinking water bottles and drinking water jars is one of the dealer that communicated with the Petitioners and apart from offering stock that was being hoard also offered to take advance booking of N95 masks manufactured by Respondent No.10. The Petitioners state that not only are these dealers illegally profiteering on

the said N95 masks, but are also issuing invoices to that effect. One, Glance Production sold 16,000 N95 masks at the price of Rs. 225/- per mask. A copy of the invoice dated 05.05.2020 generated by Glance Production is annexed hereto and marked as **Exhibit I**.

- u. The Petitioners state and submit that they were appalled by the blatant and out in the open profiteering on N95 masks especially when the healthcare workers and essential service providers were forced to work without these essential protective equipment. The essential question that came to light is if the entirety of the stock of Respondent No.10 Company was being acquired by the Government as the Petitioners had been informed then where had these dealers acquired their stocks of lakhs of N-95 masks and more troublingly how were they replenishing the said stock?
- v. The Petitioners eventually found that not only were the said masks freely available at a marked up price in the black market, but that the prices at which the Petitioners were sold the N95 masks i.e. Rs.40/- + GST and Rs.60/- + GST by

Respondent No.10 Company were also considerably higher than the price at which the said company had sold the same N95 masks to Haffkine Bio Pharmaceutical Corporation Limited on 28.01.2020. The Petitioner learnt that Respondent No.10 Company had sold 92,500 masks to the Haffkine Bio Pharmaceutical Corporation Limited at just Rs.17.33/- per mask. A copy of the purchase order dated 28.01.2020 for disposable N95 masks placed by Haffkine Corporation is annexed hereto and marked as **Exhibit J**.

- w. The Petitioners state and submit that these acts of hoarding and profiteering has worsened an already dire situation. While our frontline workers are forced to perform their duties without adequate protective gear and mask. A scarcity of protective gear is being compounded further by hoarders and profiteers seeking to make a windfall by jeopardizing the health of crores of people.

GROUND

5. Aggrieved by the acts of omission and commission of the Respondents, the Petitioners seek to approach this Hon'ble Court on the following grounds which are without prejudice to one another:

- a. That COVID-19 is primarily spread between people via respiratory droplets from cough, sneezes and talking. The virus can remain viable for up to three days on plastic and stainless steel, and for three hours in aerosols;
- b. That presently there are no available vaccines nor specific antiviral treatments for COVID-19;
- c. That the preventive measures recommended are washing hands with soap regularly, use hand sanitizer with 60% alcohol, avoiding crowded places, practice social distancing, avoiding touching the eyes, nose, or mouth with unwashed hands;
- d. That according to the Ministry of Health and Family Welfare have confirmed a total of 59,662 cases and 1981 deaths in the country. Maharashtra has been the worst hit State in the country with 19,063 confirmed cases of

COVID-19 and 731 deaths, while the city of Mumbai has 12142 confirmed cases so far;

- e. That N95 masks or N95 respirators are particulate-filtering facepieces which filter at least 95% of airborne particles, hence they are effective protective tool against a virus which primarily spreads via respiratory droplets/particulates from cough, sneezes and talking;
- f. That the Ministry of Commerce & Industry vide its Notification No.44/2015-2020 dated 31.01.2020 and Notification No.47/2015-2020 dated 08.02.2020 has prohibited of Personal Protective Equipment including clothing and N95 masks;
- g. That Government of India through the Ministry of Consumer Affairs, Food and Public Distribution promulgated an order dated 13.03.2020 under the provisions of the sub-section (2) of section 2A, of the Essential Commodities Act, 1955. The said order included masks (2ply & 3ply surgical masks, N95 masks) and hand

sanitizers in the Schedule to the Essential Commodities Act, 1955;

- h. That the Ministry of Chemical and Fertilizers also passed an order dated 13.03.2020 directed all State Governments, Union Territories and concerned State Authorities to take necessary steps to ensure sufficient availability of surgical masks and other masks, hand sanitizers and gloves at prices not exceeding the maximum retail prices;
- i. That the State of Maharashtra has failed to take any measures to ensure sufficient availability of surgical masks and other masks, hand sanitizers and gloves at prices not exceeding the maximum retail prices;
- j. That the State has failed to provide adequate protective gear to all the healthcare workers and other essential service providers leaving them susceptible to contracting COVID-19;

- k. That over 800 frontline healthcare workers have tested positive for COVID-19 in Maharashtra;
- l. That the healthcare personnel who were forced to work without adequate protection i.e. Personal Protection Equipment (PPE) proceeded to seek help from Non-Governmental Organizations and social workers;
- m. That the Petitioners through their organizations sought to acquire these Personal Protective Equipment and N95 masks so that the same could be provided to the frontline workers;
- n. That two companies produce N95 or equivalent masks around Mumbai: Venus Safety and Health Pvt. Ltd. (at Taloja Industrial Area) and Magnum Health and Safety Pvt. Ltd. (near Palghar);
- o. That Petitioner No.1 and Petitioner No.2 bought 5,000 and 3,200 N95 masks at the rate of Rs.40/- + GST and Rs.60/- +

GST per mask respectively from Respondent No.10 Company;

- p. That Respondent No.10 Company had sold 92,500 masks to the Haffkine Bio Pharmaceutical Corporation Limited at just Rs.17.33/- per mask;
- q. That Respondent No.6 MCGM made protective masks mandatory in Mumbai by an order dated 08.04.2020;
- r. That Respondent No.10 Company refused accept Petitioners' further orders for more N95 masks claiming that their entire production had been taken over by the Government;
- s. That 9 Non-governmental organizations wrote to the Principal Secretary of the State of Maharashtra to bring to their notice the non-availability of N95 masks;
- t. That the Petitioners receiving unsolicited messages from multiple dealers and traders offering to sell the Petitioners the N95 masks at a markup of over 150%;

- u. That these dealers backed up their claim by giving photographic proof of their available stocks, which was being replenished regularly;
- v. That these dealers were selling N95 masks produced by both Venus Safety and Health Pvt. Ltd. and Magnum Health and Safety Pvt. Ltd.;
- w. That there are reports from all across the country where quarantined people are running away from the quarantine facility due to the unhygienic conditions or lack of adequate facilities;
- x. That these N95 masks are being sold in the open market at more than 3 times their maximum retail prices in complete violation of the order dated 13.03.2020 passed under the provisions of the sub-section (2) of section 2A, of the Essential Commodities Act, 1955;
- y. That the State of Maharashtra has failed to ensure sufficient availability of surgical masks and other masks, hand

sanitizers and gloves at prices not exceeding the maximum retail prices;

- z. The acts and omissions enumerated hereinabove impinge on the rights of all the citizens of the State of Maharashtra guaranteed under articles 14 and 21 of the Constitution of India;

6. NATURE AND EXTENT OF INJURY CAUSED OR APPREHENDED:

- a. Petitioners seeks relief qua the black marketeering, hoarding and profiteering of N95 masks in the State of Maharashtra despite N95 masks being declared as essential commodity under the Essential Commodities Act, 1955 and the directions to the Respondent to take adequate measures to ensure that sufficient availability of surgical and N95 masks at fair prices as should be laid down by the Union of India in exercise of its power under the Essential Commodities Act, 1955.

7. ANY REPRESENTATION ETC. MADE:-

- a. Petitioner No.2's Organization along with 8 other organizations had addressed a letter dated 02.05.2020 to the Chief Secretary of the State of Maharashtra to bring to their notice the non-availability of N95 masks.;

8. DELAY, IF ANY, IN FILING THE PETITION AND
EXPLANATION THEREFORE:-

- a. There is no delay or laches in filing this Petition.

9. DOCUMENTS RELIED UPON:

- a. The Petitioners rely on documents which are annexed to this Petition.
- b. The Petitioners also crave leave to refer and rely upon any further document at the time of argument as new data and information are being disseminated on a daily basis by the Respondent authorities and news organisations.

10. The Petitioners submit that the Petitioners have no other alternative and/or adequate and/or equal efficacious remedy other than to file the present petition.
11. Respondent Nos. 1 to 6 have their Head offices in Mumbai. Therefore, the cause of action has arisen within the jurisdiction of this Hon'ble Court.
12. The Petitioners have not filed any other Petition in respect of the subject matter in this Hon'ble Court or in any other High Court or in the Supreme Court of India.
13. The Petitioner has paid the required court fee of Rs.500/- to this Petition.
14. That due to the Current Lockdown the Petitioners are unable to affirm the Petitioner and request that they be permitted to do so as soon as the situation permits.
15. The Petitioners therefore pray that;
 - 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 to enforce the directions in the

order dated 13.03.2020 passed by the Ministry of Chemical and Fertilizers and ensure sufficient availability of surgical masks and N95 masks, hand sanitizers and gloves at fair prices as determined by the Respondents under the Essential Commodities Act, 1955;

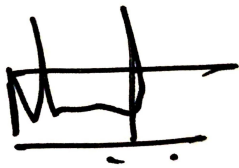
- b. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus directing the Respondent to comply with order dated 13.03.2020 passed by the Ministry of Consumer Affairs, Food and Public Distribution under the provisions of the sub-section (2) of section 2A, of the Essential Commodities Act, 1955 to include masks (2ply & 3ply surgical masks, N95 masks) and hand sanitizers in the Schedule to the Essential Commodities Act, 1955;
- 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 to exercise powers under the Essential Commodities act to confiscate the N95 masks that are being hoarded by profiteers and further initiate prosecutions against the

companies and individuals indulging in hoarding and illegal profiteering;

- d. 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 Union of India to exercise powers conferred under section 3 of Essential Commodities Act, 1955 to control the price at which N95 masks and other Personal Protective Equipment can be sold;
- e. Pending hearing and final disposal of the Petition the Respondents be directed ensure sufficient availability of surgical masks and N95 masks, hand sanitizers and gloves at fair prices fair prices as determined by the Respondents under the Essential Commodities Act, 1955;
- f. Interim and Ad-interim reliefs in terms of prayer clause (e).
- g. For such other and further orders as this Court deems fit in the facts

and circumstances of this case.

h. For costs of this Petition;

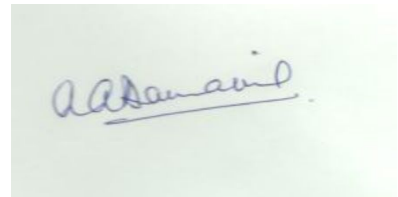
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Advocate for the Petitioners

Mihir Joshi

A handwritten signature in black ink, appearing to be 'Dany' with a flourish.

Petitioner No.1

A handwritten signature in blue ink, appearing to be 'A.A. Samant' with a flourish.

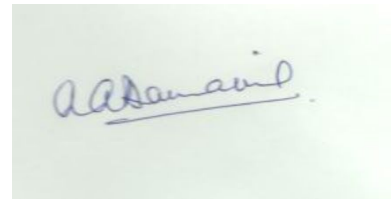
Petitioner No.2

VERIFICATION

I, Anjali Damania, Petitioner No.2 hereinabove, residing at 502, Vijayashree Durga CHS, 6th Road, Santacruz East, Near V.N Desai Municipal Hospital, Mumbai - 400 05 do hereby state and solemnly declare that what is stated in para. No.1 to 4 is true to my own knowledge and what is stated in the remaining paras no.5 to 14 onwards is stated on information and belief and I believe the same to be true.

Solemnly affirmed at Mumbai)

on this 11th day of May, 2020)



Petitioner

Identified by me



Advocate for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. OF 2020

In the matter of Articles 14, 19, 21 and 226 of
the Constitution of India, 1950;

AND

In the matter of Epidemic Diseases Act, 1897;

AND

In the matter of The Disaster Management
Act, 2005;

AND

In the matter of the Essential Commodities
Act, 1955;

AND

In the matter of the order dated 13.03.2020 passed by the Ministry of Consumer Affairs, Food and Public Distribution under the provisions of the sub-section (2) of section 2A, of the Essential Commodities Act, 1955 to include masks (2ply & 3ply surgical masks, N95 masks) and hand sanitizers in the Schedule to the Essential Commodities Act, 1955;

AND

In the matter of failure of the State of Maharashtra to take adequate measure to ensure sufficient availability of surgical masks and other masks, hand sanitizers and gloves at prices not exceeding the maximum retail prices;

AND

In the matter rampant hoarding, black
marketing and profiteering on N95
masks;

1. Sucheta Dalal)
Residing at 301, Emca Sadan,)
Appasaheb Marathe Marg,)
Prabhadevi, Mumbai 400025)
PAN: ADYPD7081P)
2. Anjali Damania)
Residing at 502, Vijayashree Durga CHS,)
6th Road, Santacruz East,)
Near V.N Desai Municipal Hospital,)
Mumbai - 400 055)
PAN: AARPD5456E)... Petitioners

Versus

1. State of Maharashtra, through)

- the Chief Secretary)
- Mantralaya, Mumbai-400023)
2. State of Maharashtra)
- Through its Secretary,)
- Department of Social Justice &)
- Special Assistance)
- 1st Floor, Annex Building,)
- Mantralaya, Madam Cama Road,)
- Hutatma Rajguru Chowk,)
- Nariman Point, Mumbai - 400032)
3. State of Maharashtra)
- Through its Addl. Chief Secretary,)
- Department of Finance,)
- New Customs House,)
- Shoorji Vallabhdas Rd, Ballard Estate,)
- Fort, Mumbai, 400001`)
4. State of Maharashtra,)
- Through Secretary,)
- Ministry of Consumer Affairs,)

- Food and Civil Supply Department)
- Mantralaya, Mumbai- 400032)
5. State of Maharashtra)
- through the Principal)
- Secretary, Health Department)
- having its office at)
- Mantralaya, Mumbai)
6. Municipal Corporation of Greater Mumbai)
- Through its Commissioner,)
- Mahapalika Marg, Mumbai - 400 001)
7. Union of India, through the Secretary,)
- Ministry of Health & Family Welfare)
- ‘A’ Wing, Nirman Bhavan, New Delhi-110011)
8. Union of India, through the Secretary,)
- Ministry of Chemicals & Fertilizers,)
- Having its office at YMCA Cultural Building,)
- 1, Jai Singh Road, New Delhi - 110001)
9. Union of India, through the Secretary,)
- Ministry of Consumer Affairs, Food and)

Public Distribution, having its office at)
 179, Krishi Bhavan, New Delhi - 110011)
 10. Venus Safety and Health Pvt. Ltd.)
 Plot No L-17, Taloja MIDC Industrial Area,)
 Tondare, Panvel, Raigad)
 Thane 410208)...Respondents

VAKALATNAMA

To,

Prothonotary/ Senior Master,

Bombay High Court, O. S.

Mumbai

Dear Sir/Madam,

We, Sucheta Dalal and Anjali Damania, Petitioner No.1 and Petitioner No.2 respectively abovenamed do hereby appoint and authorize MR. MIHIR JOSHI, Advocate, High Court, Bombay, to act, appear and plead for me or on my behalf in the above-mentioned matter, or any Advocate they may

authorize to act, appear and plead for me or on my behalf in the above-mentioned matter.

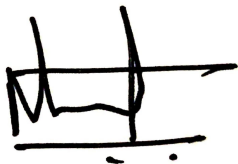
IN WITNESS WHEREOF I set and subscribe my hands to this writing at Mumbai.

At Mumbai, dated this 11th day of May, 2020



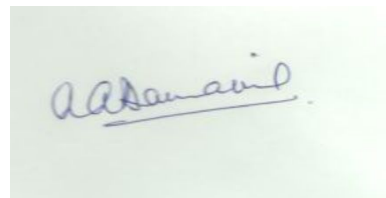
Petitioner No.1

Accepted



Mihir Joshi

Advocate for the Petitioners



Petitioner No.2

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. ____ OF 2020

Sucheta Dalal & Anr.

...Petitioners

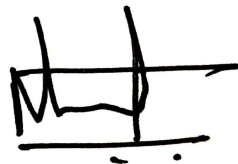
Versus

State of Maharashtra & Ors.

...Respondents

Memorandum of Registered Address

c/o. Mihir Joshi,
7, Hind Rajasthan Building,
4th Floor, 6, Oak Lane, (Allana Lane),
Opposite Burma Burma,
Fort, Mumbai -400 023.



Advocate for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. ____ OF 2020

Sucheta Dalal & Anr.

...Petitioners

Versus

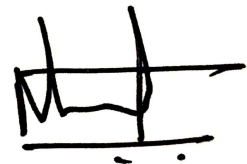
State of Maharashtra & Ors.

...Respondents

List of Documents

All the Documents annexed at Exhibit A to Exhibit J .

Any other documents relevant for the successful prosecution.



Advocate for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. OF 2020

Sucheta Dalal & Anr.

... Petitioners

versus

State of Maharashtra & Ors.

..Respondents

Affidavit in Support

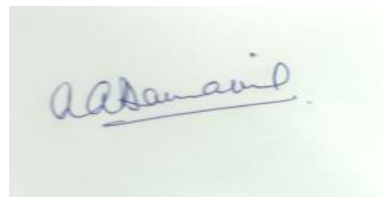
I, Anjali Damania, Petitioner No.2 hereinabove, residing at 502, Vijayashree
Durga CHS, 6th Road, Santacruz East, Near V.N Desai Municipal
Hospital, Mumbai - 400 050 do hereby state on solemn affirmation as
under:

1. I say that I have filed the above Petition for the reliefs more specifically set out in the Petition.
2. I repeat, reiterate and adopt each and every statement in the Petition as if the same were set out herein and form a part of this affidavit. I crave leave to refer and rely upon the Petition.

3. I say that if the ad-interim reliefs are not granted, grave loss, harm, injury and prejudice will be caused to me and if granted, no loss, harm, injury and prejudice will be caused to the Respondents.
4. I, therefore, pray that the Petition be made absolute with costs and ad-interim reliefs may be granted.

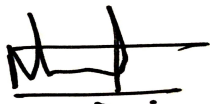
Solemnly affirmed at Mumbai)

Dated this 11th day of May, 2020)



Deponent

Identified by me



Advocate for Petitioner

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. OF 2020

Sucheta Dalal & Anr.

... Petitioners

versus

State of Maharashtra & Ors.

..Respondents

AFFIDAVIT IN SUPPORT OF THE PUBLIC INTEREST LITIGATION

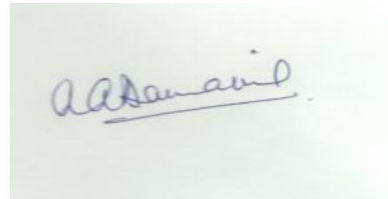
I, Anjali Damania, Petitioner No.2 hereinabove, residing at 502, Vijayashree Durga CHS, 6th Road, Santacruz East, Near V.N Desai Municipal Hospital, Mumbai - 400 050 do hereby state on solemn affirmation as under:

- 1) I say that I have filed the above Petition for the reliefs more specifically set out in the Public Interest Litigation.
- 2) I say that there is no personal gain, private motive or oblique reason on filing this Public Interest Litigation, except for the one disclosed in the Petition.
- 3) I repeat, reiterate and adopt each and every statement in the Petition as if the same were set out herein and form a part of this affidavit. I crave leave to refer and rely upon the Public Interest Litigation.

- 4) I undertake to pay costs as ordered by the Court, if it is ultimately held that, the Petition is frivolous or has been filed for extraneous considerations or that it lacks bona-fide.
- 5) I hereby submits that the entire Litigation cost including the Advocate fee and other charges are being borne by the Petitioners above named and my is PAN NO.- AARPD5456E, the Email: id is anjalidamania1@gmail.com, and the mobile No. is +91 98205 03379.
- 6) I hereby state that a thorough research has been conducted in the matter raised to the Petition, all relevant material in respect of such research is annexed to the Petition.
- 7) I say that I have filed the above Petition for the reliefs more specifically set out in the Petition.
- 8) I say that if the ad interim reliefs are not granted, grave loss, harm, injury and prejudice will be caused to the Petitioner and if granted, no loss, harm, injury and prejudice will be caused to the Respondents.

- 9) I undertake that I will disclose the source of his/its information, leading to the filing of the Public Interest Litigation, if and when called upon by the Court, to do so.
- 10) I. therefore, pray that the Petition be made absolute with cost and ad interim reliefs may be granted.

Solemnly affirmed at Mumbai)



Dated this 11th day of May 2020)

Petitioner No. 2

Identified by me



MIHIR JOSHI

Before me

Advocate for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. ____ OF 2020

Sucheta Dalal & Anr.

...Petitioners

Versus

State of Maharashtra & Ors.

...Respondents

Advocate's Certificate

To,

The Prothonotary & Senior Master

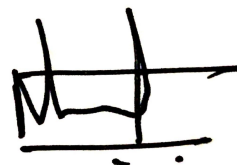
High Court, O.O.C.J.,

Mumbai.

Sir,

I, MIHIR JOSHI, Advocate for the Petitioner do hereby certify that the present Writ Petition is required to be placed before the Division Bench as per the amended Rule 636 (I)(b) of the Bombay High Court, O.S. Rules. Therefore, the Writ Petition is required to be placed before the Division Bench.

Dated this 11th day of May, 2020

A handwritten signature in black ink, appearing to be 'Mihir Joshi', written over a horizontal line.

Advocate for the Petitioner