

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 42 of 2020

With

CIVIL APPLICATION (FOR DIRECTION) NO. 7 of 2020

In

R/WRIT PETITION (PIL) NO. 42 of 2020

With

CIVIL APPLICATION (FOR JOINING PARTY) NO. 9 of 2020

In

R/WRIT PETITION (PIL) NO. 42 of 2020

With

CIVIL APPLICATION (FOR DIRECTION) NO. 13 of 2020

In

R/WRIT PETITION (PIL) NO. 42 of 2020

With

CIVIL APPLICATION (FOR JOINING PARTY) NO. 15 of 2020

In

R/WRIT PETITION (PIL) NO. 42 of 2020

With

CIVIL APPLICATION (FOR JOINING PARTY) NO. 16 of 2020

In

R/WRIT PETITION (PIL) NO. 42 of 2020

With

CIVIL APPLICATION (FOR JOINING PARTY) NO. 17 of 2020

In

R/WRIT PETITION (PIL) NO. 42 of 2020

With

R/WRIT PETITION (PIL) NO. 67 of 2020

With

R/WRIT PETITION (PIL) NO. 74 of 2020

SUO MOTU

Versus

STATE OF GUJARAT & 2 other(s)

Appearance:

SUO MOTU(25) for the Applicant(s) No. 1

for the Opponent(s) No. 1,2,3,5

MR NM KAPADIA(394) for the Opponent(s) No. 4

CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH
and
HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 29/05/2020

COMMON ORAL ORDER

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1 We started today's proceedings by taking cognizance of the report filed by the State Government on various issues that this Court has been discussing in this Public Interest Litigation. The report reads thus:

"Report on behalf of the Respondent State pursuant to the orders dated 22.05.2020 & 25.05.2020 of this Hon'ble Court in Suo-Moto WP (PIL) No.42 of 2020

The present Report is being submitted in the captioned proceedings on the basis of the instructions provided by the concerned Departments of the State Government, presenting the important actions taken in compliance with the directions issued in the aforesaid orders dated 22.05.2020 and 25.05.2020 of this Hon'ble Court with reference to various aspects referred to hereunder:

I. Re: Aspect relating to coverage of the private hospitals for being designated for treating the patients for COVID-19.

1. It was in the wake of 8 hospitals viz. (i) Bodyline Hospital, (ii) Life Care hospital, (iii) Shrey Hospital, (iv) Saraswati Hospital, (v) Rajasthan Hospital, (vi) Sanjivani Hospital, (vii) Pukhraj Hospital, and (viii) Trisha Hospital, having not agreed to extend the treatment to COVID patients, this Hon'ble Court has, vide order dated 22.05.2020 issued following **two directions in para 46** thereof:

"[1] We direct the State Government to initiate appropriate legal proceedings against all those private / corporate hospitals who are not ready and willing to honour the understanding arrived at with regard to treating the COVID-19 patients including those who are not agreeable or willing to cooperate and enter into an MoU.

[2] We direct the State Government to institute prosecution against all responsible persons of the concerned hospitals for the offence punishable under Section 188 of the Indian Penal Code and Sections 57 and 58 respectively of the Disaster Management Act.”

2. In the above connection, it is heartening to note that after the passing of the above order dated 22.05.2020 by this Hon'ble Court, all the aforesaid 8 Hospitals have provided their consent by showing their readiness to treat COVID-19 patients while honoring the understanding arrived at in that behalf. A detailed report regarding the progress of the implementation of the order dated 16.05.2020, passed by the Municipal Commissioner, Ahmedabad requisitioning 42 hospitals under the Epidemic Diseases Act, 1897, is as under:

- (a) As on date, from total 42 designated private hospitals, 36 hospitals have executed MOU with AMC to provide COVID-19 facilities to patients including availability of 50% beds to AMC referred patients and 50% beds for other private COVID-19 patients accepting the ceiling rates as prescribed by AMC.
- (b) Two hospitals viz., SMS Hospital at Chandkheda and Kothiya Hospital at Nikol have started admitting COVID patients even without the formality of prior execution of MOU.
- (c) As regards 4 designated private hospitals out of the 42 designated hospitals, it is submitted that they are - (i) SMV Hospital at City Pulse, Gandhinagar; (ii) Rudraksh Hospital; (iii) Narayan Hospital, Vastral; and (iv) Sardar Hospital, which have not been considered for execution of MoU owing to the varied reasons, like the hospital is closed for a significant time in recent past or the same is not technically capable of taking care of COVID patients, etc. The State craves leave to refer to and rely upon the said reasons in detail, hospital wise, in case of need.
- (d) Life care Hospital, Navrangpura from where only 9 beds were available to AMC as per 50% quota, has given 100% beds at Life care Hospital, Khanpur which falls in the containment area, and has executed MOU and thereby providing 32 beds to AMC.
- (e) In the list of the hospitals requisitioned, Apollo CVHF is also mentioned. However, the same being a facility dedicated to heart ailments, it was decided not to requisition the same. In place of Apollo CVHF, the state authorities have been able to refer COVID-19 patients to Apollo City Centre, near Doctor House. Therefore, Apollo City Centre, near Doctor House is to be considered in place

of Apollo CVHF.

3. In **para 47** of the aforesaid order, the Hon'ble Court has referred to following 8 Hospitals, which were not figuring in the initial list of 42 Hospitals and therefore, the Hon'ble Court has directed to give explanation as to why the said hospitals were not in the list.

- (a) Apollo Hospital situated at Bhaat, Ahmedabad;
- (b) Apollo Hospital situated at the City Centre near Doctor House, Parimal Railway Crossing, Ahmedabad;
- (c) KD Hospital situated at the Vaisnodevi Circle, Ahmedabad;
- (d) Zydu Hospital situated at the Hebatpur Road, Ahmedabad;
- (e) Asia Colombia Hospital situated at the Hebatpur Road, Ahmedabad;
- (f) Global Hospital situated at the Hebatpur Road, Ahmedabad;
- (g) Anand Surgical Hospital situated at the Naroda, Ahmedabad;
- (h) U.N. Mehta Hospital, Ahmedabad.

In this behalf, it is submitted that the list of 42 Hospitals initially prepared is not the exhaustive list, but is an open-ended list, and the same can be expanded as the exigency of the situation demands. In fact, at the initial point of time when negotiations were held in this behalf with the representatives of All India Medical Association as well as the representatives of all the hospitals, as these 42 hospitals had forthwith shown their willingness to treat COVID patients, the same were accommodated in the list and that was how, the above referred hospitals which did not show their willingness to fall in line, were not included in the list.

4. Pertinently, amongst 8 hospitals referred to in sub-para 3 of para 1 above, arrangement to cover one of the hospitals, i.e. **U.N. Mehta Hospital**, Ahmedabad, began even prior to the passing of the order dated 22.05.2020 by this Hon'ble Court, and the decision in that behalf came to be taken by the State Government on 13.05.2020 to have further 228 beds in addition to 41 covid beds, which were earlier made available for the treatment of covid patients. Furthermore, it is submitted that out of these

8 hospitals, 3 hospitals, viz. Anand Surgical Hospital, Apollo Hospital situated at the City Centre (in place of Apollo CVHF) were already requisitioned vide the order dated 16.05.2020, passed by the Municipal Commissioner, Ahmedabad and a MoU has already been executed with the said hospitals. The following needs to be noted regarding the remaining 5 hospitals:

- i. Zydus Hospital Thaltej, Asia Colombia Hospital (now Zydus) and KD Hospital have given their consent letter to make available beds for treatment of COVID-19 patients.
- ii. Apollo Hospital situated at Bhaat, falls within the limits of Gandhinagar and a requisition order for the same has already been passed under the Epidemic Diseases Act, 1897 by Collector, Gandhinagar.
- iii. UN Mehta Hospital is not a private hospital but is a State Government Hospital.

5. It is submitted that in addition to the abovementioned hospitals, **Parekh Hospital** at Shyamal crossroads, **Nidhi Super speciality hospital**, **Siddhi Vinayak hospital** and **Stavya Spine Hospital** have also given their consent letter to make beds available for treatment of COVID-19 patients.

6. It is submitted that the total number of functional beds in the 38 hospitals is 2672 and the total number of beds available for AMC is 1731 beds. The total number of functional beds available at Zydus Hospital Thaltej, Asia Colombia Hospital (now Zydus) and KD Hospital is 425, out of which if 50% beds are considered for AMC, then 213 beds will be reserved for AMC. Furthermore, the total number of functional beds at Parekh Hospital at Shyamal crossroads, Nidhi Super Specialty hospital, Siddhi Vinayak hospital and Stavya Spine Hospital is 206, out of which 104 have been reserved for AMC. Therefore, the total number of functional beds in the 45 hospitals, as mentioned hereinabove is **3,303, out of which 2,048 beds have been reserved for AMC.**

7. Even though the order dated 16.05.2020, mentions about requisitioning 50% beds in the private hospitals, yet if the figures are perused, the total number of beds reserved for AMC is higher than 50%, rather it is approximately 62%. This is because in many hospitals, the municipal corporation authorities have been able to take over 100% beds, such as SMS Hospital Chandkheda, Kothiya Hospital, GCS Hospital, Dr. Jivraj Mehta, Vasna, Iqra Hospital, Sarkhej, Sterling Cancer Hospital and Apollo City Centre, Paldi. It is submitted that number of beds at Apollo hospital, Bhat and UN Mehta have not been considered for the purpose of this calculation. As on 26.05.2020, around 415 AMC referred patients have already been admitted to these 38 designated private hospitals. These 2048 beds would be in addition to **2964 beds** of Civil Hospital and other AMC and Government Hospitals in Ahmedabad.

8. It is also important to highlight before the Hon'ble Court, the process of payment to these private hospitals. The designated hospitals will be paid upon putting bills to Medical Officer, Health (AMC) within 15 days of discharge of the patient, for the charges which includes charges for nursing, medicines, laboratory & radiology charges, follow-up charges and consultation up to 5 days from the date of discharge of the patient.

9. AMC has also started 32 AC Buses from 12.05.2020 on 9 routes for the transportation of Doctors, paramedical staff of such private hospitals in the morning at 7.00 am, 8.00 am, 9.00 am, in the afternoon at 3.00 pm, 4pm and in the evening at 6.00 pm, 7.00 pm, 8.00 pm.

10. In addition to the aforementioned steps being taken by the AMC, the state authorities would also like to bring to notice of the Hon'ble Court, the details regarding the COVID care-centres in the city of Ahmedabad:

A. **Samaras COVID Care Center:**

- (i) Till date, a total of 2234 patients have been treated at the Samaras COVID Care Center. Total patients that have been discharged are 1818, out of which 703 are from Civil Hospital, 1161 from SVP hospital, 363 from outside, 04 from other COVID care centers and 02 patients from other hospitals at Samaras COVID care center are treated.
- (ii) 76 Patients are transferred to Paid COVID Care Centers such as Hotel Fern and Lemon Tree. 199 patients have been transferred to other hospitals and 44 patients to Haj House.
- (iii) At present 97 patients are undergoing treatments at Samaras COVID Care Center. There are 3 Medical Consultants, 7 Medical Officers and 9 members of the Paramedical Staff who are providing round-the-clock treatment for patients at the Samaras COVID Care Center. As the number of patients increase, so does the number of medical and paramedical staff would also be increase.
- (iv) The patients are provided with a regular two-time meal, two-time tea and one-time breakfast in the morning. In addition to ayurvedic decoctions, ayurvedic medicines are also given. Coolers and water bottles are provided with RO plant for drinking water and hot water is also being provided, if a patient needs it.
- (v) Help desk facility has been made available for immediate disposal of patient's complaints on the numbers 72279-311220 and 72229-31296. Apart from that, patients can also submit their complaints on Dy. Muni. Commissioner, Shri Dilip Rana's mobile phone.

- (vi) *With the helpdesk the total number of complaints received is 431 and all the complaints have been disposed of.*
- (vii) *In addition to the aforementioned facilities, air conditioners are being provided to all the patients at Samaras Hostel. Regular arrangements for cleaning and disposal of waste and monitoring are also arranged.*

B. COVID Care Centers In Hotels (Rented by AMC):

- (i) *Ahmedabad Municipal Corporation has declared 24 hotels in different areas with a capacity of 1171 Beds as COVID Care Centers.*
- (ii) *A total of 152 patients have been treated in these hotels out of which 23 patients are shifted to hospital due to requirement of more treatment and 82 patients have been discharged after treatment, 47 patients are under treatment.*
- (iii) *All these 24 hotels are functioning as COVID Care Centers and arrangement of Doctors, para medical staff and necessary medicines, masks, sanitizer ambulances, etc. is made. In addition to the same, Tea-breakfast for all patients, two meals a day, drinking water, ayurvedic medicines and ayurvedic decoction is provided.*

C. COVID Care Center In Private Hotels:

- (i) *AMC has also engaged 4 hotels as COVID Care centers for patients to receive treatment at their own expense.*
- (ii) *Till date, 312 patients have been treated in these hotels out of which 238 patients were discharged at the end of the treatment, 30 patients shifted to other places and 44 Patients are currently undergoing treatment.*

D. Use of Existing Government Hospitals as COVID Care Center:

- (i) *Presently, there are 500 beds available in VS Hospital but as renovation is going on at VS Hospital, it is not viable to treat COVID-19 patients there. However, SVP Hospital is located in the premises of VS Hospital where more than 800 beds are made available for COVID-19.*
- (ii) *Nagri Hospital is an exclusive hospital for ailment related to eyes and therefore, facilities necessary for treatment of COVID-19 such as Physician, Intensive and Specialist ICU, Isolation Ward, ICU, Central Oxygen Line, Ventilator, ICU trained staff are not available*

at Nagri Hospital. Also the same being an exclusive Eye Hospital in Ahmedabad, patients from surrounding districts also come to this hospital and in case if this hospital is used to treat COVID-19 patients, there will be a lot of difficulty faced by many patients of eye diseases.

- (iii) AMC is also running an Infectious Disease Hospital, which has approximately 60 beds and that is already being transformed into COVID-19 hospital.

11. The State authorities would also like to apprise the Hon'ble Court of some additional steps being taken by the Municipal Corporation authorities for the treatment of COVID-19 patients, in the city of Ahmedabad:

A. **Use of Ambulance for transferring Patients:**

- (i) Presently, approximately twenty-five 108 ambulances are being utilized 24x7 to carry COVID-19 patients from their home/quarantine facility to Hospital or COVID care centers and vice-versa. Everyday approximately 200-250 patients are being transferred in these ambulances. Therefore, if a particular ambulance is being parked at only a particular quarantine hotel/center, the same will be underutilized.
- (ii) Doctors and para medical staff are available at COVID care centers who continuously check on health of patients there and in case any patients needs first aid of screening or any other hospital related treatment, the said COVID care center staff calls 108 ambulance to shift such patient to hospital.
- (iii) The organization running 108 Ambulance Services has all the data in a computerized form and in case of urgent need, they provide the ambulance on call too. The said ambulances are regularly sanitized as well.
- (iv) It is pertinent to note that the respondent authorities had started the system of running 40 Dhanvantri Aarogya Raths (ambulances consisting of 1 Doctor, 1 Nursing Staff, 1 Pharmacist and 1 Para Medical Staff providing Homeopathic, Ayurvedic and Allopathic medicines) in the four zones of Ahmedabad. Such Raths/ambulances are available at a pre-decided spot for 2 hours daily with one ambulance covering 4 different spots, in one day. Citizens coming at such ambulances are checked for diabetes along with blood pressure check-up and are also given medicines for the same. Homeopathic and Ayurvedic medicines are also being given to persons for prevention of COVID-19. In respect of such

ambulances, it is submitted that between 17.05.2020 to 25.05.2020, they have dealt with 58,785 persons, out of which 250 persons have been referred to the hospital for treatment, whereas the rest have been diagnosed with fever, cough, cold & coryza and other such illnesses.

B. Private Medical Clinics and Physicians:

- (i) Along with AMC run Hospitals, 74 urban health centers and 7 community health centers have also started their operations. Out of all the clinics, nursing homes and private hospitals that were shut due to COVID-19, approximately 220 of such units have been given notices by AMC and thereafter, approximately 1000 such units have started operating. Further, after organizing meetings with various medical associations in Ahmedabad, with their support, basic medical facilities are being provided to the citizens of Ahmedabad city on public private partnership (PPP) basis.
- (ii) A meeting was held with stakeholders of Ahmedabad Medical Association to see it that the said association takes necessary steps to open all private hospitals/clinics. Moreover, free AMTS bus service is being provided to the staff of private hospitals to help them reach their workplace. Further, to open private clinic and hospitals in the city area of Ahmedabad, meeting was held with the doctors of private hospitals and they were also provided with PPE kits, medicines etc. As on today, almost all private hospitals/clinics are operational except for the doctors who have been quarantined.
- (iii) The **direction** of this Hon'ble Court as contained in **para 47(3)** of the order reads as under:

“[3] The State Government is directed to issue a Notification making it mandatory for all the multispecialty private / corporate hospitals in the city of Ahmedabad and on the outskirts to reserve 50% of their beds (or such other capacity, as the State Government may deem fit and proper on the basis of the increase in the number of cases). This should include all categories of beds to treat the COVID-19 patients with specific guidelines and SOPs which the State Government may deem fit.”

It is submitted that the aforesaid direction has been complied with and the requisite notification dated 27.05.2020 has already been issued and a copy of the same is annexed herewith and marked **Annexure-1**.

- (iv) The **direction** of this Hon'ble Court as contained in **para 47(4)** of the order reads as under:

“[4] There is a project in the name and style of the National Health Protection Mission called “Ayushman Bharat”. The same has been launched by the Government. It is claimed that around 50 Crore beneficiaries avail the benefit of the same and are protected upto Rs.5 Lac per family per year of hospitalization. The State Government should explore the possibility to enforce this project and explore the possibility to extend to the private hospitals after taking care that there is no undue benefit or malpractice.”

- (v) In addition to the above, this Hon'ble Court has also referred to “MA Yojna” in **para 51** of the order dated 22.05.2020 with a suggestion that since many public and private hospitals have been the major beneficiaries of the said scheme, they should come forward and render medical treatment to Covid-19 patients.
- (vi) In the above connection, it needs to be noted that both the aforesaid schemes, i.e. “Ayushman Bharat” and “MA Yojna” have been merged so as to seamlessly provide medical treatment covering a wide spectrum of ailments to a large number of beneficiaries. Further, now the State Government vide its Notification dated 16.04.2020, has included Covid-19 as one of the ailment packages under the abovenamed two schemes, so as to see that treatment of Covid-19 can also be extended by all the hospitals empaneled under the said schemes. It may further be noted that since Covid-19 is a very infectious disease, the guidelines of Ministry of Health and Family Welfare, Government of India, prefer that the hospital treating Covid-19 patients is a dedicated COVID hospital. In the event of the hospitals also treating non-COVID patients, the guidelines mandate that there should be a separate entry and exit for the COVID patients so as not to infect non-COVID patients. Thus, the aforesaid two schemes are in place with reference to all the appropriately empaneled hospitals.

12. The **direction** of this Hon'ble Court as contained in **para 47(5)** of the order reads as under:

“[5] We would also like to understand in what manner the rates have been worked out with the private / corporate hospitals, more particular,

- (a) as to what is included and what is not, and what are

the charges for those services that are not included and which are to be charged additionally;

(b) The rates for different categories of rooms and beds (i.e. wards, double occupancy rooms, single occupancy rooms, and other higher category rooms);

(c) We are of the view that the rates on which the private / corporate hospitals have agreed to admit and treat the Covid19 patients are on a higher side. The State Government is directed to once again renegotiate with all the private / corporate hospitals in this regard so as to make the rates reasonable and affordable.”

It is submitted that the matter of re-negotiation of the ceiling rates, as per the directions of the Hon'ble High Court was taken up multiple times with office-bearers of the Ahmedabad Medical Association. They anyhow expressed their inability to come to any conclusion in this regard. Therefore, considering the fact that large scales admission have already started in private hospitals and patients referred to by the Ahmedabad Municipal Corporation and also the fact that substantial number of patients are already under treatment by these hospitals on private basis, it has been decided to effect a reduction of 10% in ceiling rates per day for private beds (B category) for Ward & HDU and 5% for 2 categories (1) Isolation + ICU and (2) Ventilation + Isolation + ICU. The reduced rates are as follows:

S. No.	Particulars	Old Ceiling rates (Rs.)	New ceiling rates (Rs.)
1.	Ward	10000/-	9000/-
2.	HDU	14000/-	12600/-
3.	Isolation + ICU	19000/-	18150/-
4.	Ventilation + Isolation + ICU	23000/-	21850/-

II. Re: Aspect relating to testing:

1. At the outset, it is imperative to bring to the attention of the Hon'ble Court that the Indian Council of Medical Research (“ICMR” for short), New Delhi, is the Apex body in India for the formulation, coordination and promotion of biomedical research and is one of the oldest medical research bodies in the world. The ICMR is funded by the Government of India through the Ministry of Health & Family Welfare and the Director General of the ICMR (Professor Balram Bhargava), is the Secretary, Department of Health Research, (Ministry of Health & Family Welfare), Government of India. Considering that the stature of the ICMR and the involvement of the Government of India, it is submitted that the

guidelines and strategies published by the ICMR are mandatory and are required to be followed by the State Governments. The ICMR has a Network of 26 institutes, such as ICMR National JALMA Institute for Leprosy & Other Mycobacterial Diseases, Agra, ICMR National Institute of Occupational Health, Ahmedabad, ICMR National Institute for Research in Environmental Health, Bopal, and the National Institute of Epidemiology (NIE), etc. The broad objectives of NIE cover Development of human resources in epidemiology and bio-statistics, Networking of the various ICMR and non-ICMR Institutes at the national level for epidemiological purposes, and Consultancy.

2. The latest version of the testing policy of ICMR in respect of COVID-19 as issued on 18.05.2020, categorically provides for testing of this specified categories, which are as under:

- “1. All symptomatic (ILI symptoms) individuals with history of international travel in the last 14 days.
2. All symptomatic (ILI symptoms) contacts of laboratory confirmed cases.
3. All symptomatic (ILI symptoms) health care workers / frontline workers involved in containment and mitigation of COVID19.
4. All patients of Severe Acute Respiratory Infection (SARI).
5. Asymptomatic direct and high-risk contacts of a confirmed case to be tested once between day 5 and day 10 of coming into contact.
6. All symptomatic ILI within hotspots/containment zones.
7. All hospitalised patients who develop ILI symptoms.
8. All symptomatic ILI among returnees and migrants within 7 days of illness.
9. No emergency procedure (including deliveries) should be delayed for lack of test. However, sample can be sent for testing if indicated as above (1-8), simultaneously.”

3. This Hon'ble Court had suggested the constitution of an expert committee of leading doctors of the state to examine the testing policy for COVID-19. While keeping in view the suggestion of the Hon'ble Court and

in order to put at rest the anxiety prevalent in the general public seeking voluntary testing to satisfy themselves with a COVID negative certification, the State Government, while keeping in mind the above referred guidelines dated 18.05.2020 of ICMR, has constituted an expert committee vide an order dated 25.05.2020, consisting of the following renowned doctors of the City, with a request to provide their valuable inputs on an urgent basis:

- (a) Dr. Pankaj Shah (Medical Oncologist and Vice President of Gujarat Cancer Society, Ex-Director, GCRI, recipient of the Padma Shri in 2018, B.C. Roy award in 2005, Legend in Haematology India, 2013, Living Legend of Oncology induction during ICC Bangalore, 2017, etc.);
- (b) Dr. Tejas Patel (a well-known cardiologist and the Director Chairman and Chief Interventional Cardiologist of Apex Institute of Heart, recipient of Padma Shri Award in 2015, Dr. B.C. Roy Award in 2005 and Dr. K. Sharan Cardiology Excellence Award);
- (c) Dr. Atul Patel (a leading infectious disease specialist, Chief Consultant and Director of the Infectious Diseases Clinic of the Vedanta Institute of Medical Sciences and at the Department of Infectious Diseases of Sterling Hospital, Ahmedabad, conferred with fellowship of the Infectious Diseases Society of America (FIDSA) in 2014).

For ready reference, a copy of the aforesaid order dated 25.05.2020 and the opinion of the Experts, is annexed herewith and marked as **Annexure-2 (Colly)**.

4. In this behalf, this Hon'ble Court has raised the **following 4 issues** in para 62 of the order:

- a. Whether the 12 private laboratories and 19 Govt. laboratories are sufficient and good enough in the entire State to conduct the covid test, when the number of cases are constantly rising?
- b. Whether the private laboratories very much able to comply with the requirements prescribed by the ICMR should not be granted the permission to conduct the covid tests?
- c. Whether even in case of the laboratories which have been approved by the ICMR and permitted to conduct the tests, the respondent authorities can direct that the covid tests be

conducted only at the Govt hospitals, more particularly, when the public health system is overwhelmed?

d. In this an action to artificially control the data qua the number of cases in the State of Gujarat?"

5. Now, response of the State Government in respect of each of the aforesaid issues is as under:

- (a) With reference to issue (a), it is stated that at present, 19 government laboratories are sufficient and good enough to conduct the COVID test, even though the number of cases may rise. 12 private laboratories are also going to be utilized in case optimum capacity of 19 government laboratories is likely to be exhausted, while strictly following the aforesaid guidelines of ICMR.
- (b) With reference to issue (b), it is submitted that there is no question of the qualified private laboratories not being granted permission to conduct COVID test in the circumstances indicated hereinabove.
- (c) Issue (c) referred to above stands dealt with as discussed hereinabove.
- (d) With reference to issue (d), it is stated that the aforesaid stand of the State Government is in tune with the prevalent policy of ICMR and that it has no relevance or connection with the so-called artificial control of data qua the number of cases in the State. However, at the same time, the likelihood of fear psychosis being crept in, cannot be ruled out, if the COVID testing is allowed in all asymptomatic cases, just for acquiring a feeling of safety and security.

6. On the basis of the aforesaid issues, this Hon'ble Court has in **para 62** of the order, **suggested the following:**

- "i. All laboratories able to fulfill the prescribed criteria qua the infrastructure must be granted the permission and must be permitted to conduct the RT-PCR tests.*
- ii. The rates for testing by private laboratories must have a ceiling cap, which in the present case is Rs. 4,500/.*
- iii. Everyone must be permitted to have a covid*

test done. However, there must be a specific mention of the following categories of persons for whom the covid test must be mandatory

1. Those persons who have been hospitalized for covid and who want to have a test done post discharge from the hospital;
2. Family members of those persons who have been tested covid positive or who have been hospitalized or who have returned after hospitalization or who have died on account of covid;
3. Those persons who have a written prescription issued by a doctor.”

In the above connection, it is stated that the State Government is implementing the ICMR Guidelines dated 18.05.2020. The opinion of the Expert committee is in consonance with the same.

7. On the basis of the aforesaid suggestions, in the very **para 62**, this Hon’ble Court has desired that the **State authorities may consider the following:**

“a. Wide publicity must be given by the State in by way of newspaper advertisements declaring that,

- i. Merely because someone has tested positive, is no reason to panic
- ii. Home isolation must be adhered to
- iii. It is only when the symptoms develop (a list of the symptoms may be provided) that a person must approach a Hospital
- iv. Asymptomatic patients can be cured through home isolation, and other household remedies like steam inhalation, continuous sipping of warm water, consumption of ‘kaadhaa’, vitamin c, etc.

b. The Respondent Authorities may keep a tab through the testing centres, of all individuals who have tested positive and may enforce isolation at home (as far as possible) or at a quarantine facility, and only in case of symptoms may be considered for being admission into

Hospital.”

In compliance with the above, the State Government has issued an advertisement declaring all the aforesaid aspects for the knowledge and information of the public at large and by way of specimen, copies of the advertisements published in an English and a Gujarati daily newspapers are annexed herewith and collectively marked **Annexure-3 (colly)**.

8. Before proceeding further, it is required to be clarified that one of the private laboratories in Ahmedabad, i.e. Supratech Micropathology Laboratory was issued a show cause notice for the alleged irregularity and after considering its reply thereto, the said notice has been dropped. However, inadvertently, it was submitted and consequently recorded in para 62 (internal page 117) of the order dated 22.05.2020 of the Hon'ble Court to the effect that 'the Supratech Micropathology Laboratory, as stated by the learned Advocate General, has been blacklisted'. The Hon'ble Court may be kind enough to take on record the aforesaid clarification so that the interest of the aforesaid private laboratory is not harmed because of the above referred observation in the order dated 22.05.2020.

III. Re: Aspect relating to Discharge Policy:

ICMR has also issued the policy relating to discharge of Covid-19 patients vide its policy document dated 08.05.2020, which is set out hereunder:

- “1. Mild/very mild/pre-symptomatic cases:
 - (a) Such cases admitted to a COVID Care Facility will undergo regular temperature and pulse oximetry monitoring. The patient can be discharged after 10 days of symptom onset and no fever for 3 days. **There will be no need for testing prior to discharge.** At the time of discharge, the patient will be advised to follow the home isolation for further 7 days as per guidelines.
 - (b) At any point of time, prior to discharge from CCC, if the oxygen saturation dips below 95%, patient is moved to Dedicated COVID Health Centre (DCHC).
 - (c) After discharge from the facility, if he/she again develops symptoms of fever, cough or breathing difficulty he will contact the COVID Care Centre or State helpline or 1075. His/her health will again be followed up through tele-conference on 14th day.
2. Moderate cases admitted to Dedicated COVID Health

Centre (Oxygen beds):

- (a) Patients whose symptoms resolve within 3 days and maintains saturation above 95% for the next 4 days.

Cases clinically classified as “moderate cases” will undergo monitoring of body temperature and oxygen saturation. If the fever resolve within 3 days and the patient maintains saturation above 95% for the next 4 days (without oxygen support), such patient will be discharged after 10 days of symptom onset in case of:

- (i) Absence of fever without antipyretics;
- (ii) Resolution of breathlessness;
- (iii) No oxygen requirement.

There will be no need for testing prior to discharge. At the time of discharge, the patient will be advised to follow the home isolation for 7 days as per guidelines

- (b) Patient on Oxygenation whose fever does not resolve within 3 days and demand of oxygen therapy continues. Such patients will be discharged only after –

- (i) resolution of clinical symptoms;
- (ii) ability to maintain oxygen saturation for 3 consecutive days

- (c) Severe Cases including immunocompromised (HIV patients, transplant recipients, malignancy). Discharge criteria for severe cases will be based on –

- (i) Clinical recovery;
- (ii) Patient tested negative once by RT-PCR (after resolution of symptoms)

For ready reference, a copy of the ICMR Policy document dated 10.05.2020, is annexed herewith and marked as **Annexure-4**.

It may be noted that the State authorities are strictly adhering to the aforesaid discharge policy dated 08.05.2020 issued by ICMR.

IV. Re: Various directions contained in para 60 of the order dated 22.05.2020:

As regards the twenty directions given by this Hon'ble Court in para 60 of the order, it is stated that the same have already stood complied with as demonstrated hereinbelow while dealing with each of the said directions vis-a-vis compliance thereof in seriatim

1. Direction No.1 reads as under:

“[1] One ambulance with all facilities should be parked/stationed permanently at the Hotel quarantine centre so that if there is an emergency in the quarantine centre, the patient can immediately be rushed to the nearest hospital.”

In this behalf it is stated that the State Government has made available two 108 ambulances which are exclusively reserved for attending to the patients in the quarantine centre/hotel to be able to rush any of the said patients therein to the nearest hospital, should there be an escalation in the severity of their medical condition. A copy of the Order issued by Additional Director, Medical Services dated 24th May 2020, is herein annexed and marked as Annexure-5.

2. Direction No.2 reads as under:

“[2] The expression of interest can be called from such local physicians area wise in the state, and accordingly, a list be prepared. Such physicians can serve in the wards and hospitals and also at the quarantine centres which are overcrowded and falling within the containment zones.”

In this behalf, it is stated that as early as 9th April, 2020, a special video conference was held with office bearers of the Indian Medical Association at the State Level, as well as, leading doctors of the medical fraternity across all the Districts of the State, which was chaired by the Hon'ble Chief Minister. The same was attended by the Hon'ble Health Minister and Senior Officers of the Health Department of the State. Consequent to this, on a daily basis, there has been an audio call of about twenty minute duration being held with the Senior Members of the Medical fraternity, which includes (i) Dr. Chandresh Zardos, State President of IMA, Gujarat; (ii) Dr. Ketan Desai; (iii) Dr. Atul Patel (leading infectious disease expert); (iv) Dr. R.K. Patel (Director of U.N. Mehta Institute of Cardiology); (v) Dr. Atul Pandya (Former office bearer of National IMA); (vi) Dr. Anil Nayak (Vice-Chancellor of the North Gujarat University; (vii) Dr. Mona Desai (President of Ahmedabad Medical Association). It is with

the efforts and inputs of the aforesaid individuals that the State Government has been able to enlist over twenty top pulmonologist, critical care specialists, intensivist and such specialist from leading private hospitals of the City to come to the dedicated COVID Hospital at the Civil Hospital campus on a daily basis since 5th May, 2020, and offer their consultation on an average of 2-3 hours taking rounds of the wards and attending to the critical care patients. It is stated that the aforesaid doctors and experts assisted the Hospital in the following manner:

- Setting Up protocol of rounds
- Liaison with Medicine department about treatment lines
- Setting up of Acute Hypoxia in COVID algorithm
- Taking fixed rounds daily with Anesthesia Department in Critical Zone
- All the three ICUs' O3, O4 and O5 managed by one Intensivist each
- Senior specialist from all major Hospitals gave active inputs from vast experience in managing Critical patients
- Assessing the demand and supply issues of all logistics in ICU
- Setting daily management on ventilatory care patients
- Ensuring ICU admission and Discharge protocols
- Ensuring feeding, fluids, analgesia and sugar control in sick patients
- Active management of all the comorbidities in COVID patient
- Setting up Triage, Nursing and patient care assistant needs
- 6 Teams set up to cover Critical Care for 3 weeks
- Did this work as Volunteer and denied any monetary help
- Daily huddle meeting in Control room with Dr J P Modi, Dr Rajesh Solanki and Dr Shailesh Shah Sir
- Proper Handover between shifts
- Guiding residents on regular basis
- Guiding Biomedical for regular supply of ancillary items
- Liaison with nursing heads for Critical Care needs.

A list of the said doctors, their short resume, as well as, their roster is annexed hereto and collectively marked as **Annexure-6 (colly.)**.

3. Direction No.3 reads as under:
 “[3] As per the press reports, in the State of Maharashtra, all general physicians have been asked to run their own clinics or serve in the Government COVID hospitals. The same policy should be adopted in the State of Gujarat.”

In this behalf it is stated that pursuant to the daily phone calls with the representatives of IMA and the senior representatives of the medical fraternity, the State Government has impressed upon the Medical Association and Private practitioners including general physicians to immediately start operating their own clinics/serve in the government

hospitals as well. The State Government has vide its letter dated 28th April, 2020, addressed to the President, IMA, urging all private doctors start their OPD operations forthwith and also engage in medical services at the COVID hospital. In response to the said request, several hospitals and clinics have commenced OPD operations. It is stated that almost several physicians have volunteered to provide medical services across the State. Moreover, in the districts where there is shortage of doctors, the State Government is in the process of invoking the provisions of the Epidemic Diseases Act, 1897, to requisition services of doctors in the said districts. A copy of the letter dated 28th April, 2020, is annexed hereto and marked as **Annexure-7**. A copy of the statement indicating the number of hospitals/clinics that have commenced OPD operations, is annexed hereto and marked as **Annexure-8**.

It is stated that the State Government has also been acted with great alacrity and as early as on 16th April, 2020, issued a Government Resolution bearing No.FPW-102020-1021-B-1 enlisting as many as 28 private/grant-in-aid hospitals across various districts of the State. This was to facilitate free treatment for those patients who contract COVID infection across any of the said districts. A copy of the Government Resolution dated 16th April, 2020, is annexed hereto and marked as **Annexure-9**. A statement indicating the total number of dedicated COVID hospitals in the State is annexed hereto and marked as **Annexure-10**.

4. Direction No.4 reads as under:

“[4] The Private hospitals should not demand fees in advance from the patients and the patients be asked to only give details of their Aadhar card and PAN card and if later found from the PAN card details that the patient was capable of making payments then the amount can be accordingly recovered.”

It is stated that the hospitals listed herein have been directed to provide COVID treatment on a free of cost basis to the patients. The costs towards the treatment is covered by the State Government as provided in the aforesaid Government Resolution dated 16th April, 2020. Additionally, the Ahmedabad Municipal Corporation has requisitioned services of 42 Hospitals and has categorically directed that the said hospitals to charge fees within the ceiling provided by the Corporation in its Requisition Order dated 16th May, 2020, which is herein annexed and marked as **Annexure-11**. Moreover, as many as 50% of the beds of these hospitals would be provided on free of cost basis to those patients who belong to the financially weaker sections.

5. Direction No.5 reads as under:

“[5] The State Government is directed to immediately procure maximum testing kits so as to enable even the

private laboratories in the private hospitals to carry out the Coronavirus testing at the Government rates.”

In this behalf it is stated that the State Government laboratories have sufficient COVID testing apparatus/kits, wherein COVID testing is provided free of cost. Furthermore, as per the prevalent regulations, the private laboratory are at liberty to procure testing kits from the market, in as much as, the same are easily accessible by the laboratories and the State Government is not required to procure and provide the same to private laboratories.

6. Direction No.6 reads as under:

“[6] COVID Care Centre A (CCC A) – This is required to quarantine high risk suspects who cannot maintain social distancing at home. This facility may not be available in the hospital. Once result of the test is available they may be discharged or kept for repeat test if required.”

7. Direction No.7 reads as under:

“[7] COVID Care Centre B (CCC B) – Here asymptomatic positive cases and cases with mild symptoms should be admitted. Stable patients with history of fever, sore throat, loss of smell etc. fall into this category.”

*In this behalf it is stated that there is no categorisation such as “CCC A” and “CCC B”, as provided by the Indian Council of Medical Research regulations and the Guidelines of Ministry of Health and Family Welfare, Government of India, the COVID Care Centre are being provided for those patients which are tested as COVID Positive but are asymptomatic. For the high risk suspects, quarantine facilities are provided by the district/municipal administration. A copy of the guidelines issued by the Ministry of Health & Family Welfare in respect of ‘Setting up the three-tier facility of managing COVID patients’, is annexed hereto and marked as **Annexure-12**. It is humbly stated that the symptoms such as sore throat and loss of smell are not medically recognized symptoms of COVID by the ICMR.*

8. Direction No.8 reads as under:

“[8] Day and night, regular ambulances and ICU on wheels must be made available in adequate numbers for quick and safe transfer. Same will apply to the dead body vans.”

In this behalf it is stated that adequate fleet of ambulances, as well as, hearse vans are available across the State. A fleet of ambulances, i.e. total 632 is there in the State, out of which 82 ambulances are in Ahmedabad.

9. Direction No.9 reads as under:

“[9] The Government is directed to raise a computerised COVID Control Center at a place convenient to it. It must have complete real – time information of each facility. It should be accessible to everyone including the public. It should be connected to each facility on computers as well as phones. All ambulances too should be connected to it. The Control Centre must be erected on war footing. All complaints and grievances must be directed to the Control Centre.”

In this regard, it is stated that the Government has already established COVID Control Centre at Gandhinagar. It is integrated with hospital management information system. Controlled information is shared on real time basis. This centre receives feedback and complaints. A web application for public access is also under development, which will give status of the patients to their relatives on OTP base access.

10. Direction No.10 reads as under:

“[10] No patient should be made to run from one hospital to the other begging for admission. Unfortunately this has happened in the past and still continues. He can contact the control center, and procure the necessary information he needs.”

In this regard, it is stated that position of occupied and vacant beds of government hospitals and agreed private hospitals is shared with the control centre. With this position, the control centre guides ambulances to particular hospital having vacant beds.

11. Direction No.11 reads as under:

“[11] A website Control Centre should be created for everyone to know about various actions that may be taken.”

In this behalf it is stated that the State Government already has a dedicated website for providing all COVID information to its citizens, which is available at www.gujhealth.gujarat.gov.in. Additionally, a portal has been created being <https://gujccovid19.gujarat.gov.in> which provides real time information on various aspects relating to COVID pandemic in the State.

12. Direction No.12 reads as under:

“[12] CCC A and CCC B may be kept under treatment of required number of medical officers but supervised by a competent Physician. They should work under the guidance of specialists at the DCHC and DCH. Timely and healthy

communication will save many lives.”

In this behalf it is stated that the said direction of this Hon’ble Court is already complied with, as stated hereinabove. Moreover, a team of 7 medical officers, 3 consultants and 9 paramedics are available to address any medical needs in the COVID Care Centre’s (CCC) on a round the clock basis.

13. *Direction No.13 reads as under:*

“[13] Critical Care Specialists, anesthetists, infectious disease specialists and pulmonologists are the backbone of every DCHC and DCH. Their dedication and efforts will make a difference between life and death.”

In this behalf it is stated as demonstrated hereinabove, the State Government has invited top experts and specialties of various fields, who have volunteered to provide their services to this humanitarian cause on a free of cost basis.

14. *Direction No.14 reads as under:*

“[14] Treatment protocol, evolved by the local specialists based on the guidelines from the center and ICMR, local conditions and available resources and past experiences must be followed in all facilities. They should be oriented and sent to each unit.”

*In this behalf it is stated that as early as last week of March, 2020, a team of local specialists such as (i) Dr. Atul Patel; (ii) Dr. R.K. Patel; (iii) Dr. Bipin Amin; (iv) Dr. Kamlesh Upadhyaya; and (v) Dr. Kadri under the convenorship of the Additional Director Medical Education Dr. R. Dikshit had prescribed the detailed treatment protocol for Covid-19. It is worth stating that the said protocol had been subsequently approved by All India Institute of Medical Sciences to be followed in the entire country. Furthermore, vide letter dated 6th May, 2020, addressed to the Hon’ble Union Home Minister, experts of national eminence were invited to visit the facilities in the State and to provide their inputs. It is stated that a team of experts comprising of Dr. Randeep Guleria (Director, AIIMS) and Dr. Manish Suneja (Covid-19 specialist, AIIMS) visited the Covid Civil Hospital on 9th May, 2020, and were completely satisfied with the treatment protocols and procedures followed by the Hospital. A copy of the letter dated 6th May, 2020, is annexed hereto and marked as **Annexure-13**.*

15. *Direction No.15 reads as under:*

“[15] A representative of Government must be available at each center for coordination. He should be in constant touch with the Control Center. Strict discharge policy must be

created and followed to avoid unnecessary stay for wrong reasons.”

In this behalf, it is stated that the said direction of this Hon’ble Court is complied with since March, 2020.

16. Direction No.16 reads as under:

“[16] All the Government hospitals with more than 50 beds and ICU need to be immediately converted into DCHC and DCH. The Government must implement this conversion immediately. They may keep 20% of their beds for emergency work. If any of the 80% beds remain unutilized for the COVID patients, they may use them for routine cases with the permission of the Control Center and the safety of non-COVID patients should not be compromised.”

*In this behalf it is stated that adequate number of beds are being created for COVID patients and the State Government, as well as, the private sector has specifically created COVID hospitals. It is stated that for the purpose of attending to non-COVID emergencies such as deliveries, dialysis, heart procedures, etc. the regular hospitals beds and facilities need to be kept available and functioning. The same is apparent from the statements indicating the details of the OPD and IPD numbers of non-COVID patients, which are annexed hereto and collectively marked as **Annexure-14 (colly.)**.*

17. Direction No.17 reads as under:

“[17] The present Head of each of these Government hospitals will be responsible for his hospital turned into COVID facility. It will be his duty to ensure smooth functioning and liasion with the control centre.”

In this behalf, it is stated that the said direction of this Hon’ble Court is already complied with.

18. Direction No.18 reads as under:

“[18] Excess staff from one hospital may be transferred to the other required by the Control Centre.”

In this behalf, it is stated that the said direction of this Hon’ble Court is already complied with.

19. Direction No.19 reads as under:

“[19] The Government should provide high quality N95 mask, senitizer, sterile and non sterile gloves, PPE kits, ventury and high flow oxygen mask, ventilator tubings, filters and similar items to all the COVID facilities at its own

expense.”

In this behalf, it is stated that aforesaid medical equipment is being procured by the State Government from Government e-Market (GeM) and as of date there are sufficient stock of the aforesaid medical equipment available with the State Government. Furthermore, the quality and benchmarks of the same is strictly adhered to.

20. *Direction No.20 reads as under:*

“[20] All the healthcare workers must be tested at regular intervals as deemed fit by the experts. The society is safe only if they are safe.”

In this behalf it is stated that the ICMR has issued guidelines for testing of health care workers and the same is being followed in letter and spirit. A copy of the said testing guidelines for healthcare workers is annexed hereto and marked as Annexure-15.

V. Re: Directions contained in para 61 of the order dated 22.05.2020:

“[1] One COVID Control Room should be set up in each of the wards across the city and should be kept functional for 24 hours.

[2] One Command Room should be set up for the city link with all the control rooms of COVID facility. We are saying so because no patient should be made to run from one hospital to the other seeking admission. The Command Room should be able to guide him. In other words, the Command Room should explain in which hospital, he can get himself admitted.”

By way of compliance with the above directions, it is submitted that the State Government has created a dedicated medical helpline which is now functioning as COVID Fever Helpline on the toll-free number 104. Any citizen who needs any information related to COVID or has symptoms can report on the said number with his/her address and contact number. A team from the local Primary Health Centre or the Urban Health Centre in municipal corporation areas would reach the citizen and undertake a basic health check-up and screening with respect to the reported symptoms. In Ahmedabad Municipal Corporation, this system is being further streamlined and is being supplemented with a fleet of 84 Mobile Medical Units, including “Dhanvantri Raths”. These are covering as many as 90 wards and 632 sites which have covered a cumulative set of 71,115 citizens who have either reported on the 104 number or directly been screened during door to door surveillance.

VI. Re: Directions contained in para 48 of the order dated 22.05.2020 and reiterated in para 27 of the order dated 25.05.2020:

The said directions read as under:

- “(i) The doctors, who are not performing in the Civil Hospital, should be immediately transferred to other districts. There are large number of senior and experienced Doctors who are ready and willing to render better services in the Civil Hospitals from the other districts.*
- (ii) The Class III & IV Union should be dealt with strictly.*
- (iii) The working conditions of the resident doctors should be improved.*
- (iv) The accountability of senior officers who have failed to improve the health care in the Civil Hospital leading to massive loss of human lives should be fixed at the earliest.*
- (v) Number of ventilators and oxygen beds should be increased.*
- (vi) Punitive action should be taken against the Ward Boys who just leave the patients unattended (One oxygen support patient recently died on a toilet seat and the same was noticed after an hour simply because no ward boy followed him up.)”*

1. With regard to the above-mentioned **direction nos.(i) and (ii)**, it is stated that all the doctors of the medicine department at the Civil Hospital have been performing well and consists of very competent individuals which have been tirelessly working since the 20.03.2020, till date (i.e. for almost 70 days) and have attended to more than 6,538 patients. The said individuals are extremely bright doctors, who could have chosen to practice abroad or in the private sector, however, have chosen to work in the Civil Hospital and serve the poor and needy patients who come for treatment. A case in point is that of one Dr. Kartik Parmar, who abandoned his comfortable well-paying job in the United Kingdom, to return back and serve at his alma mater. The said individual has been working relentlessly from 20.03.2020 till date from 8:00 am to 8:00 pm. It is worth appreciating that the team at the Civil Hospital provides treatment to a large number of patients from the most marginalized

section of the society and that too having the most critical conditions. The said is in the face of a lot of odds and criticism from all the corners, on a daily basis, more particularly when in the present situation, the said individuals are in need of moral support and appreciation, to boost their moral, especially considering that they have to be away from their families whilst on duty and are quarantined thereafter. One case in point is that of a doctor who was unable to be present for the delivery of his first born child. The said is the level of commitment and motivation amongst the team at the Civil Hospital. Further, all these doctors are being regularly given counseling sessions by Dr. Minakshi Parikh, Senior Faculty Member in the Psychiatry Department for them to be able to cope with the pressures and stress of the current situation. Pertinently, only two doctors, one who is immune-compromised being a cancer survivor and another who is physically disabled, have been attending to the non-COVID duties, as well as, formulation of protocols, respectively. Whereas, all the remaining doctors are performing their duties to the best of their abilities by taking rounds, attending to the patients, etc. The senior and experienced doctors, at the district level, are in fact required in the respective districts, but at the same time, the said senior and experienced doctors, residents, interns, etc. are being regularly brought on rotation basis to the Civil Hospital, Ahmedabad.

With regard to Class III and Class IV union, it may be noted that majority employees of Class III and IV have been outsourced and that there is no particular union of Class IV employees whereas, there is no issue with regard to the Class III nursing staff union. Nevertheless, administration has been dealing with the said employees very carefully and at the same time the said employees also have been cooperating in the crusade of combating Covid-19.

2. With regard to **direction no.(iii)** above, it is required to be noted that for ensuring the setting up, running and better administration of Covid hospitals in the State, the State Government posted high ranking senior officers in-charge of such hospitals, as early as, in the month of March, 2020, vide order dated 20.03.2020, no sooner the first positive case of Covid-19 was detected on 19.03.2020 in the State. A copy of the said order dated 20.03.2020 is annexed herewith and marked as **Annexure-16**. So far as Civil Hospital, Ahmedabad, is concerned, the team of officers in-charge thereof consist of (i) Mr. Pankaj Kumar, IAS, Additional Chief Secretary; and (ii) Mr. Milind Toravane, IAS; Secretary, Economic Affairs. In addition to the above, Mr. Jai Prakash Shihhare, Commissioner (Health) was also camping at the Civil Hospital from the first week of April, 2020. This apart, Dr. Jayanti Ravi, Principal Secretary (Health), was coordinating and handling all the policy related issues, including implementation of guidelines and protocols related to surveillance, quarantine, treatment and other aspects related to COVID at the State level.

2.1 In the record period of two weeks, the 1,200 bed Civil Hospital was made into a dedicated Covid hospital, was set up in total adherence to the Covid guidelines. The said hospital has all the facilities such as OPD, triage, donning and doffing areas, 221 ICU beds, 180 ventilators, oxygen beds and 96 dialysis beds. It is equipped with the facilities of eco-cardiograph, sonography, CT scan and CR and mobile X-ray systems. Neonatal Intensive Care Unit (NICU), Pediatric Intensive Care Unit (PICU) and Labour Room facility has also been established.

2.2 With regard to the facilities provided to the resident doctors, nursing and para-medical staff by the State Government, it is stated as under:

i. Accommodation facility:

Special attention is given towards their convenience such as providing single occupancy accommodation to the resident doctors, while they are on duty and are given off-duty break for self-quarantine purpose. Accommodation facility is extended for the off-duty self-quarantine period, in case so desired. In all 771 rooms have been acquired from good hotels for the accommodation, the details of which are as follows:

Hotel	Total Rooms	Allotted rooms	Designation
Hotel Fairfield Marriott Inn	80	64	Doctor
Hotel Regenta inn	95	72	Doctor
Hotel Naeeke	32	25	Doctor
Hotel Silver Cloud	70	68	Doctor
Hotel Eulogia Inn	44	31	Doctor
Hotel comfort Inn sunset	57	54	Doctor
Hotel Narayani heights	96	69	Doctor
Hotel Riverview	31	16	Doctor
Hotel pride plaza	240	132	Doctor
E -1 Ward	13	2	Doctor
E -3 Ward	13	8	Doctor
Total	771	541	

ii. Food facility:

Resident doctors are provided full food facility at the place of their stay. Services of the respective hotels are sought in order to provide healthy and hygienic food to the resident doctors engaged in COVID duty.

iii. Other facilities:

Dedicated point to point transportation arrangement has been provided to all resident doctors. Services of free laundry has been extended to the resident doctors staying in the hotel accommodation. Separate administrative staff has been deployed for monitoring the accommodation facilities.

2.3 Pertinently, from the first week of May, 2020, a series of interactions between the aforesaid officers and the Resident Doctors, nursing staff, Class-IV employees, including ward boys, faculty members and senior doctors including medical superintendent was held on numerous occasions. These interactions were aimed at boosting the moral of the team, sorting of issues of coordination, resolving their grievances and overall improving the working conditions of the Resident Doctors. Incidentally when Dr. Randeep Guleria, Director, AIIMS, and Dr. Manish Soneja, Professor AIIMS, visited Civil Hospital, Ahmedabad, on 09.05.2020, they spent, as many as, two hours interacting in a similar manner with the Resident Doctors and other stakeholders and addressing their suggestions and concerns. Furthermore, as suggested by the Director, AIIMS, during his visit, interactions and capacity building sessions with all the stakeholders are now being done regularly, as is the practice in AIIMS, Delhi. Copies of the photographs reflecting the said aspect are herein annexed and collectively marked as Annexure-17 (colly.). Further, the present state of affairs discussed hereinbelow with reference to the prevalent working conditions of the Resident Doctors, is self-explanatory.

2.4 With regular meetings held at the level of Additional Chief Secretary (COVID) and Principal Secretary (Health), issues of coordination and leadership at the level of Medicine Department have been completely addressed. Such meetings are happening on a regular basis to iron out any such issues of coordination that may arise from time to time, so as to make the working coordination of the entire team even more effective and harmonious. As has been witnessed during the visit of the Principal Secretary and Commissioner (Health) to the COVID wards including ICU wards, the patients are expressing their gratitude and clearly articulating that the whole team at the Civil Hospital is working with care and compassion. With these efforts, it is being noticed that the entire team from the senior-most faculty members to the Resident Doctors to Interns, Nurses and Ward Staff are working with commitment and a cheerful disposition even in these very trying times.

The aforesaid discussion takes care of the compliance of direction no.(iii)

referred to above.

3. While issuing the aforesaid directions, what perhaps appeared to have weighed with this Hon'ble Court, was to see that a serious effort is put by the State Government to streamline its administration. However, whilst doing so, what has been observed in **direction no.(iv)**, referred to above, is regarding the alleged lack of accountability of senior officers, having failed to improve the health care in the Civil Hospital leading to the massive loss of human lives. It is respectfully stated that the said direction requires a re-look, in as much as, the occurrence of death of COVID patients in Civil Hospital is discernable from the contents of para V of the Civil Application No.14 of 2020, filed before this Hon'ble Court, which is reproduced hereinbelow:

“V. Re: Number of Death and Mortality Rate:

- (i) Following comparative statement of deaths in Civil Hospital, Ahmedabad clearly suggests that number of deaths due to COVID and other disease in the year 2020, is less than the number of deaths having taken place in the year 2019, when there was no COVID:

Month	Year	
	2019	2020 (Including COVID Deaths)
March	854	725
April	767	573
May	787	459 (upto 20th May)
Total	2408	1757

- (ii) While comparing the State of Gujarat with countries like Italy and France, the population of which is similar and where the available medical facilities are very much superior to that available in the State, yet the rise in number of COVID-19 cases has been substantially slow in the State as compared to the said countries. Similarly, the number of deaths has been substantially less in Gujarat as compared to Italy and France. A copy of graphs depicting the aforesaid trend in the matter of number of COVID-19 cases as well as number of deaths in the State on one hand and in the countries like Italy and France, on the other, is annexed hereto and collectively marked as Annexure-H (colly.).

(iii) *For commenting upon the aforesaid aspect with reference to Civil Hospital, the comparison thereof with SVP Hospital is totally uncalled for owing to the following reasons:*

(a) *On an average in a week, 62% of critical patients are given admission and treated in the Civil Hospital, Ahmedabad, as against 6% being admitted in SVP Hospital, Paldi.*

(b) *Patients to Civil Hospital mainly come from 11 containment zones, majority of which are within the walled city, where the viral load is very high as compared to the patients coming from middle income group residing in the eastern part of the City, i.e. in or around Paldi (outside the walled city).*

The aforesaid distinguishing features between Civil Hospital, Ahmedabad, on one hand and SVP Hospital, Paldi, are very clearly borne out from the statement titled “Cumulative Report-12 MN 16/05/20 to 12 MN of 2222/05/20”, which is annexed hereto and marked as Annexure-I.

(c) *It is interesting to note that in SVP Hospital, there are only 153 critical beds, out of 850 COVID beds, whereas in Civil Hospital, Ahmedabad, there are as many as 496 critical beds, out of, in all, 1,200 COVID beds. This shows that the Civil Hospital, Ahmedabad admits proportionally more number of critical patients, out of total admitted patients, as compared to SVP Hospital, automatically further increasing the fatality.*

(iv) *With reference to prima facie observation of this Hon’ble Court at the top of page 92 of the order that ‘the patients in Civil Hospital are dying after 4 days or more of the treatment’, it is required to be appreciated that this phenomenon can be noticed in the graph in the bottom of page 91 of the order. This is explained by a leading Infectious Diseases Expert of Ahmedabad, Dr. Atul Patel as under:*

“ *The clinical spectrum of COVID-19 varies*

from asymptomatic or pauci symptomatic forms to clinical conditions characterized by respiratory failure that necessitates mechanical ventilation and support in an intensive care unit, to multiorgan and systemic manifestations in terms of sepsis, septic shock, and multiple organ dysfunction syndromes (MODS).

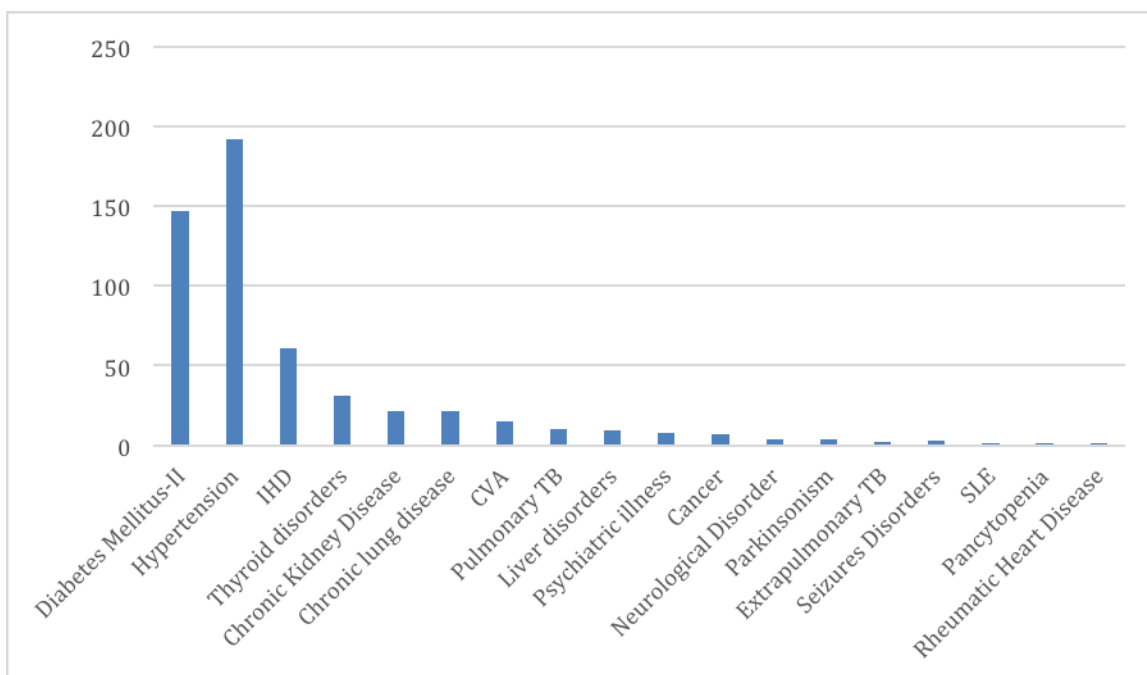
Acute respiratory distress syndrome (ARDS) is the major complication in patients with severe disease and can manifest shortly after the onset of dyspnea. Some patients with severe COVID-19 have laboratory evidence of an exuberant inflammatory response, similar to cytokine release syndrome, with persistent fevers, elevated inflammatory markers and elevated proinflammatory cytokines; these laboratory abnormalities have been associated with critical and fatal illness.

Among patients who developed severe disease, the median time to dyspnea ranged from 5 to 8 days, the median time to acute respiratory distress syndrome (ARDS) ranged from 8 to 12 days, and the median time to ICU admission ranged from 10 to 12 days. These time periods are from the day of symptom to disease progression. Those cases who get admitted late may be already in the second week of their symptoms. Clinicians should be aware of the potential for some patients to rapidly deteriorate one week after illness onset.”

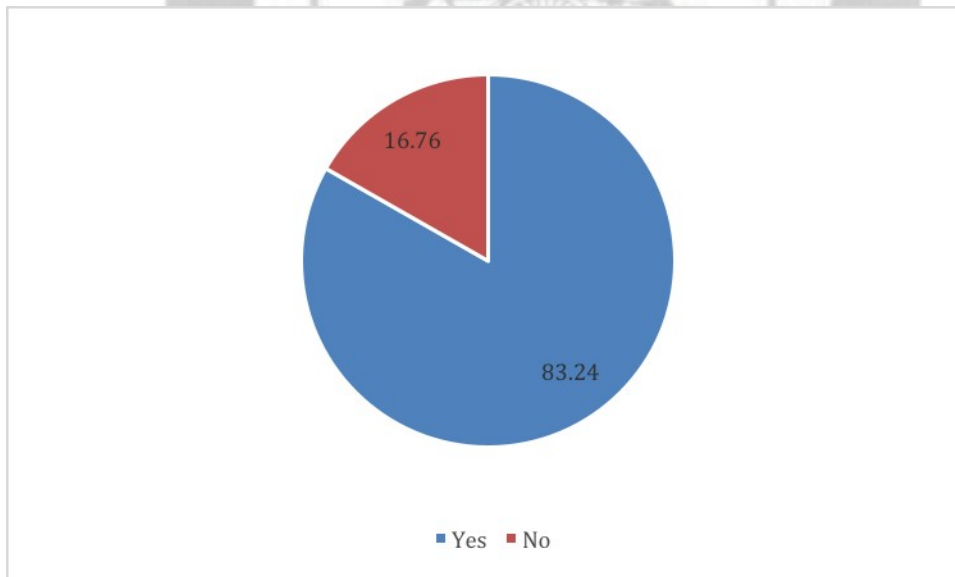
Pertinently, an article from Washington Post and another article from healthline.com, copies whereof are annexed hereto and collectively marked as Annexure-J (colly.), corroborate the factum of sudden worsening of COVID patient's condition after 4 days or more of the treatment.”

In furtherance of the above, reliance is also placed upon the analysis of the deaths due to COVID-19 at Civil Hospital Ahmedabad prepared by the Community Medicine Department, B.J. Medical College, Ahmedabad. According to this analysis, as many as, 83.24% of the deceased patients in Civil Hospital suffered from severe comorbidities. This is shown in the graphs below:

Co morbid conditions



Co-morbidity wise distribution of deaths (N=352)



Therefore, what is being responsible for the death of Covid patients in the Civil Hospital is the status of comorbidity of the patient. This addresses direction no.(iv) referred to above.

4. Similarly, **direction no.(v)** above has already stood complied with, in as much as, there are sufficient number of ventilators and oxygen beds as referred to in the aforesaid Civil Application filed on behalf of the State

Government and therefore, there is no question of effecting any increase thereof.

5. With regard to the above-mentioned **direction no.(vi)**, it is stated that the Civil Hospital, Ahmedabad, has not faced any complaints with regard to the Ward Boys leaving the patients unattended. The incident stated in the order of this Hon'ble Court pertaining to a patient passing away on the toilet seat has never taken place at the Civil Hospital, Ahmedabad.

VII. Re: Direction contained in paras 26 and 32 of the order dated 25.05.2020:

The said para 32 of the order dated 25.05.2020 reads as under:

“32. We expect the State Government to place on record an appropriate report of the committee that may be constituted for the purpose of looking into the contents of the anonymous letter of the resident doctor of the Civil Hospital. ...”

For complying with the aforesaid direction of this Hon'ble Court, the State has already appointed a committee of the following 4 eminent doctors as independent members vide order dated 27.05.2020:

- (i) Dr. Tejas Patel;
- (ii) Dr. Pankaj Shah;
- (iii) Dr. Atul Patel;
- (iv) Dr. Haresh Doshi (Professor Gynaecology, GCS Medical College)

Noticeably, the aforesaid committee has already started functioning and its report is awaited, whereupon consequential measures would be undertaken.

VIII. Re: Preparation for oncoming monsoon:

1. The Hon'ble Court in para 68 of the order dated 22.05.2020, has made the following observations regarding the fast approaching monsoon:

“The Commissioner of the Ahmedabad Municipal Corporation should keep in mind that the monsoon is fast approaching. According to the Meteorological Department, the monsoon is likely to set in Gujarat by 21st June 2020. In such circumstances, the Corporation should not ignore or fail to undertake the premonsoon measures very much necessary so that the people at large may not have to suffer

on account of other problems like water logging, Dengue, Malaria, etc.

69. Steps to be taken to ease the difficulties experienced by the people residing at Island villages and the tribal belt. In this regard, the learned Government Pleader has assured that adequate steps shall be taken and appropriate reliefs shall be provided to the people residing at the Island villages and also in the tribal belt. Adequate steps shall be taken in this direction at the earliest."

2. With respect to the said observations, it is imperative to bring to the attention of the Hon'ble Court that in Ahmedabad city, Zone wise Control Room/Rain Gauge/Wireless facilities have been set up for better monitoring and control of rains during monsoon season-2020, wherein automatic rain gauge system, wireless system, under pass cameras are being setup and connected through internet and to the main Command Control Room.

3. As a part of the pre-monsoon action plan of the Corporation, the engineering department of AMC carries out following activities to ensure the safety of citizens of the city:

- (a) Catch pit and Manhole Cleaning;*
- (b) Storm water drainage line desilting;*
- (c) Maintenance, upgradation of pumps/ panels and building.*

4. Till date, out of total 46501 catch pits in total 7 zones, 100% have been cleaned in the first round. In some areas, second phase of cleaning has also been initiated. The said data is exclusive of hot-spots and quarantine areas.

5. In 7 different zones of AMC, there are 29 storm water pumping stations with 63 pumps in total and parallel to Kharikat Canal, there are 49 water pumping stations with 83 pumps in total.

6. Also, a total of 1290 cameras at 150 different spots have been installed which includes police cameras, Smartcity cameras and underpass cameras which are monitored from Paldi Main control Room.

7. For the purpose of operating any rescue service, AMC has 1 airboat, 5 rescue vehicles and 8 boats.

8. At present the engineering & road department of the corporation, has opened 12 infrared tenders amounting to Rs. 597.66 lacs for repairing of potholes through Mobile Infrared recycle technique and 24 Jet Patcher Tenders amounting to Rs. 2,398.34 lacs for the repairing of potholes

through Cold emulsion Injection technique. Out of these, 5 infrared tenders are under evaluation and 5 Jet Patcher Tenders are under process of being sanctioned while 3 Jet Patcher Tenders have been sanctioned. AMC has purchased 5 new Infrared machines for repairing of potholes and has invited tenders for new 10 Cold Mix emulsion machines for potholes repairing.

9. Under the NUHM (National Urban Health Mission) scheme, through link workers of the Urban Health Centres in different wards, door-to-door treatment and other facilities are to be provided for Malaria disease and thus, to cover the total population of the city:

- (a) Link workers have been increased from 1050 to 1550 by way of recruiting at present.
- (b) Each Multi-purpose Health Worker is given the responsibility of covering 9,000-10,000 persons and through door-to-door visit, information about radical treatment, awareness about Malarial Parasite is to be given by them.
- (c) At present 1400 link workers are working and through them in the allotted areas, after identification of breeding places, work of parasite destroying and fever surveillance would be done on weekly basis.
- (d) It has been decided that All the Urban Health Centres of 48 wards in 7 zones, AMC hospitals OPDs will work irrespective of COVID related functions. All Multi-purpose Health Workers are allotted Rapid Diagnostic test kits for immediate diagnosis and treatment of Malaria within 15 minutes.
- (e) For intensive indoor and outdoor fogging, the Health Malaria Department has purchased 60 hand operated thermal fogging machines last year and for 50 new machines the process is in progress. Apart from that, to adopt new technology, AMC is also in process of purchasing Cold Fogging Machines which destroys adult mosquitoes without any use of chemical solution.
- (f) The slum areas of all the 7 zones and 48 wards in the high-risk areas which are prone to spread of such diseases, Indoor Residual Spray work is to implemented which is in process.
- (g) To make aware and control the possible spread of such diseases, intensive and comprehensive advertisement program is under process.

IX. Re: Charges Levied on Migrant Workers

The Hon'ble Court in para 67 has made the following observation regarding the charges to be levied on migrant workers:

“The report filed today and taken on record reflects that the travel charges levied for the transportation of the migrant workers, by the Railway authorities is borne by a few host States, NGOs, employers, voluntary associations. This is not done. We direct the Railway authorities to waive of one way charges of these migrant labourers or in the alternative, for the State Government to bear such charges.

We may only observe that the work relating to the migrant workers should continue with all its vigour. The State Government shall ensure that the migrant workers do not have to face further difficulties for the purpose of travelling to their native. The work in this regard shall continue in the right direction.”

(i) In this regard, it is submitted that the States of UP, Chhattisgarh, Odisha and Tamil Nadu are paying travelling charges for their workers coming from Gujarat to the Railways directly. On and from the 24th of May 2020, the Government of Gujarat decided to pay the travelling charges for the workers of the rest of the states.

(ii) Furthermore, it is imperative to bring to the attention of the Hon'ble Court that as on 27.05.2020, a total of 13,84,023 inter-state migrant workers have left for their native states from Gujarat in 953 trains. Out of this, 6,21,000 inter-state migrant workers have left from Surat in 423 trains. A copy of the said data, i.e. movement of inter-state migrant workers in trains to different states, district wise, in a tabular form is annexed hereto and marked as Annexure-19.”

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2 The report takes care of the following issues:

[1] The private / corporate hospitals designated for treating the COVID-19 patients.

[2] The testing policy being enforced and adopted as on date.

[3] The discharge policy of the COVID-19 patients.

[4] Compliance of the various directions issued by this Court, as contained in para – 60 of the order dated 22nd May 2020.

[5] Compliance of the directions contained in para – 61 of the order dated 22nd May 2020.

[6] Compliance of the directions contained in para – 48 of the order dated 22nd May 2020 and reiterated in para – 27 of the order dated 25th May 2020.

[7] Compliance of the directions in paras – 26 and 32 respectively of the order dated 25th May 2020.

[8] Preparation for the on coming monsoon.

[9] The issue relating to the migrant workers.

3 We took up the issue of 'migrant workers' first in point of time. We brought to the notice of the learned counsel assisting us in this Public Interest Litigation that the issue relating to the migrant workers has now been taken up by the Supreme Court. The Supreme Court has issued various directions to take care of the problems of the migrant. The Central Government has been called upon by the Supreme Court to file an appropriate report in this regard and appropriate report has also been called for by the Supreme Court from all the respective States across the country. Thus, in the wake of such development, we need not now issue any fresh directions or suggest anything more to the State Government. We take notice of the fact that as on 27th May 2020, a total of 13,84,023 inter-State migrant workers left for their native States from Gujarat. In

all 953 trains were deployed for this operation. Almost 6,21,000 inter-State migrant workers left from Surat in 423 trains. We appreciate the efforts put in by the State Government in this regard. We may only observe that if there are any other migrant workers in the State of Gujarat, who are desirous to go back their native States, then they may come forward so that necessary arrangements can be made for their departure. The State Government shall ensure that necessary arrangements are made for such migrants inclusive of providing food, water and other basic amenities.

● **PRIVATE / CORPORATE HOSPITALS DESIGNATED BY THE STATE GOVERNMENT:**

4 We now proceed to the issue of private / corporate hospitals. In this regard, we take notice of the Civil Application No.16 of 2020 filed by the Ahmedabad Hospitals and Nursing Homes Association, through its President Dr. Bharat Gadhavi, praying for the following reliefs:

“(a) Recall oral orders dated 14.05.2020 & 22.05.2020 passed in Writ Petition (P.I.L.) No.42 of 2020 qua the applicant and its members;

(b) Pending admission, hearing and final disposal of the present civil application, stay the operation, implementation and execution of the oral orders dated 14.05.2020 & 22.05.2020 passed in Writ Petition (P.I.L.) No.42 of 2020 qua the applicant and its members.”

5 Mr. Soparkar, the learned senior counsel assisted by Mr. Amit Panchal, the learned counsel for the Association raised three issues by way of this Civil Application No.16 of 2020. Mr. Soparkar submitted that the Association is duty bound to abide by all the terms and conditions of the Memorandum of Understanding entered into with the State

Government. According to Mr. Soparkar, the Association has extended its full cooperation and shall continue to extend the same till the conditions in the city attain normalcy. However, according to Mr. Soparkar, the Association is bit disturbed with the words “exorbitant fees” used by this Court in its earlier order. According to Mr. Soparkar, the fees charged, as on date, in accordance with the terms and conditions of the MoU, cannot be termed as exorbitant. Mr. Soparkar would submit that although there is a direction from this Court to the State Government to renegotiate with all the hospitals as regards the fees, yet the Association makes a fervent appeal that there may not be any further reduction in the fees levied as on date. Mr. Soparkar, in the last, pointed out that the private hospitals have to bear a lot of expenses for running the hospital and also for the purpose of providing best of the treatment to its patients. It is pointed out by Mr. Soparkar that when any patient is referred to in the private hospital by the Civil Hospital or the S.V.P. Hospital, then not a single penny is being demanded at the time of the admission of such patient. However, when COVID-19 positive patient comes directly to the private hospital, then the hospital may be permitted to ask from such a patient a pre-deposit of a reasonable amount. This submission of Mr. Soparkar came in the wake of a direction issued by this Court that at the time of admission the Hospital should not ask the patient to make any pre-deposit, but, rather should collect the Aadhar card and other relevant documents and decide whether the patient is in a position to pay the fees or not.

6 At this stage, we once again reproduce the relevant portion of the report as regards the fees being levied by the private / corporate hospitals:

“It is submitted that the matter of re-negotiation of the ceiling rates, as per

the directions of the Hon'ble High Court was taken up multiple times with office bearers of the Ahmedabad Medical Association. They anyhow expressed their inability to come to any conclusion in this regard. Therefore, considering the fact that large scales admission have already started in private hospitals and patients referred to by the Ahmedabad Municipal Corporation and also the fact that substantial number of patients are already under treatment by these hospitals on private basis, it has been decided to effect a reduction of 10% in ceiling rates per day for private beds (B category) for Ward & HDU and 5% for 2 categories (1) Isolation + ICU and (2) Ventilation + Isolation + ICU. The reduced rates are as follows:

S. No.	Particulars	Old Ceiling rates (Rs.)	New Ceiling rates (Rs.)
1	Ward	10000/-	9000/-
2	HDU	14000/-	12600/-
3	Isolation + ICU	19000/-	18150/-
4	Ventilation + Isolation + ICU	23000/-	21850/-

7 We take notice of the fact that the private / corporate hospitals agreed to reduce their rates by 30% and now they further agree to reduce by 10% for the private beds (B category) for Ward and HDU and 5% for : (1) isolation + ICU and (2) ventilation + isolation + ICU.

8 Mr. Amit Panchal, the learned counsel brought to our notice that the President of the Association namely Dr. Gadhavi is very much watching the proceedings of the Court. We have been assured by Dr. Gadhavi, the President of the Association that they would not raise any objection with regard to the further reduction of 10% and 5% respectively, as discussed above.

9 It appears from the stance of the State Government that it made an attempt to renegotiate with the private / corporate hospitals as regards further reduction of the fees, but, it did not yield any substantial result. However, in the wake of the fact that the Association has readily accepted to reduce the rates by further 10% and 5% respectively, the State Government now need not renegotiate further in this regard.

10 With regard to the words “exorbitant fees”, we would like to clarify that what the Court wanted to convey is that all the citizens of this city may not be able to afford the fees of the private / corporate hospitals. If the Civil Hospital and the S.V.P. Hospital is not able to accommodate any particular patient, then there is no other option for such patient, but to go a private hospital, and at that point of time, his financial constraints should not come in his way for the purpose of getting himself medically treated. The right to health is a fundamental right and it is for the State to ensure that such right of its citizen is not infringed in any manner. It is, in such circumstances, we had to observe that the private / corporate hospitals cannot charge exorbitant fees from a helpless individual who has no means to get himself treated in a private / corporate hospitals.

11 We requested Mr. Soparkar, the learned senior counsel that as a very senior officer of this Court, he should impress upon his client to rise to the occasion and serve the people at large who are in trouble. We pointed out to Mr. Soparkar that but for the crisis, we are facing as on date, we would not have interfered with the functioning and administration of any private / corporate hospitals. However, the situation, as on date, is such that the State Government had no other option, but to designate all private / corporate hospitals for the purpose of treating the COVID-19 patients. Mr. Soparkar, as a true officer of the

Court, has assured us that he will definitely speak and impress upon his client to ensure that all the designated hospitals strictly adhere to the terms and conditions of the Memorandum of Understanding and would not create any trouble or hardship in future for any patient who is in need of treatment. Dr. Gadhavi, the President of the Association has also assured us that none of the private / corporate hospitals would give any reason to this Court to complain. We make it once again clear that in future, if it is brought to our notice that a particular private / corporate hospital is exploiting the situation and is not adhering to the terms and conditions of the Memorandum of Understanding or is engaged in the act of profiteering, then we shall come down very heavily on such hospitals and we will not hesitate to ask the State Government to institute appropriate legal proceedings against such hospitals in accordance with law.

12 At this stage, many learned counsel including Mr. Yatin Oza, Mr. Anshin Desai and Mr. Brijesh Trivedi appearing in this litigation raised serious objections that the private / corporate hospitals are just making a show, otherwise, they are, as on date, exploiting the situation and are harassing the patients who come to their hospitals for the purpose of treatment. It is also argued before us very vociferously that even as on date bills of lacs of rupees are being raised and a poor patient and family may find it extremely difficult to raise the necessary funds.

13 In the aforesaid context, we inquired with all the the learned counsel whether they have any particular instance of any particular hospital exploiting the situation or not adhering to the rules and regulations so that we can take action against such hospital here and now. The learned counsel submitted that there are many instances and they would collect the materials in this regard and place it on record of

this case and also hand over one set of such materials to the learned Advocate General so that necessary instructions can be taken in that regard. All the learned counsel appearing in this litigation are permitted to place such materials on record without any hesitation. We may only say that the materials should be cogent, convincing and trustworthy. If we find such materials to be cogent, convincing and trustworthy, then we assure that we would take stern action against such private / corporate hospitals.

14 Before we close the aforesaid issue, we once again record that the Association has agreed to further reduction of the rates by 10% and 5% respectively. The State Government shall now proceed in this direction and enter into further agreement in writing.

15 We direct the State Government to keep a close watch on all the designated private / corporate hospitals who have been directed to reserve 50% beds so that a common man may not have to suffer. We once again reiterate that the State Government should not hesitate in any manner to take appropriate action at the earliest if it comes to its notice that the private / corporate hospitals are exploiting the situation.

16 We would like to modify our earlier condition with regard to pre-deposit to a certain extent. We are inclined to do so in light of the difficulties pointed out by the Association in this regard. We make it clear that if any patient is referred by the Civil Hospital or the S.V.P. Hospital to any private / corporate hospital, then there shall be no pre-deposit, but, if any patient directly comes to the private / corporate hospital for being treated for COVID-19, then in such circumstances, it shall be open for the concerned hospital to demand for a reasonable pre-deposit and thereafter, raise the demand in phases as and when need

arises. It should not happen that because of the financial constraint, the patient remains without any adequate medical treatment. If such a thing occurs, then that would be the worst scenario. As we said the medical fraternity in these times of crisis is expected to rise to the occasion. Medicine is a humanitarian profession. The hospitals and other health care facilities play a critical role in national and legal response to the emergencies such as the one we are facing today. We have observed in our order dated 22nd May 2020 that bound by a sense of duty, responsibility and empathy, it is now salient that the private hospitals step in to deliver adequate health care to their people. In times of crisis when people are dying, the Association should not think of even making profit of one rupee. The private hospitals have the adequate infrastructure and materials and financial resources required to fight this pandemic. All the hospitals whether private or public are considered moral agent and hence have a moral responsibility. The responsibility to act in certain ways falls upon those who may make up these hospitals. We may only say that the Creator is watching us. The good deeds performed today in these critical times will never go unnoticed at the end by the ALMIGHTY.

17 In view of the aforesaid, the Civil Application No.16 of 2020 preferred by the Association stands disposed of.

● **TESTING POLICY:**

18 The issue with regard to the testing policy in operation as on date has been debated at length.

19 As regards the testing policy, we take notice of the Civil Application No.15 of 2020 filed by the Ahmedabad Medical Association through its President Dr. Mona Parimal Desai. In the Civil Application,

the following reliefs have been prayed for:

“A. That this Hon'ble Court may be pleased to admit and allow the present application.

B. That this Hon'ble Court may be pleased to join the applicant Association as a party respondent in the WPPIL No.42 of 2020

C. That this Hon'ble Court may be pleased to issue an appropriate writ, order or direction quashing and setting aside the policy of the respondents which mandates private laboratories to seek prior approval from the Sola Civil Hospital before conducting a RT-PCR test for Covid-19

D. That this Hon'ble Court may be pleased to permit all private laboratories and hospitals which have the requisite infrastructure to conduct the RT-PCR tests for Covid-19, without any interference from the respondents.

E. For interim and and-interim reliefs, in relation to the prayers hereinabove.

F. For such other and further reliefs that this Hon'ble Court may, in the facts of the present case, deem fit.”

20 Mr. Mitul Shelat, the learned counsel appearing for the Ahmedabad Medical Association invited our attention to a letter addressed by the President, AMA to the Chief Secretary, Health Department, Government of Gujarat. The letter reads thus:

*“Dr. Jayanti S. Ravi, IAS
Secretary Health*

Govt. of Gujarat

Respected Madam,

Greetings from Dr. Mona Desai, President-Ahmedabad Medical Association.

Madam there is one very serious problem arising -so after lot of discussion thought that you are the only person to solve this. COVID testing of patients have been stopped directly that is before few days the Doctor Physician, Surgeon or Gynecologist am directly ask for test for their suspective patient but now that has changed and we are supposed to take permission from DHO or CDHO and then after that the test are done bit the problem is we are not getting any response from them for 2-3 days and It becomes very difficult t to treat the patient and in Emergency this would lead to fatal results. Madam you need to look into this matter otherwise opening clinics will not serve the purpose and this system will prove CATASTROPHIC;

My request to you on behalf of my whole Medical fraternity that make testmg possible directly by the treating Doctor m the Private Laboratories. Kindly look into the matter at the earliest and hoping for a POSITIVE response.

With Regards,

Dr. Mona Desai, MD. (PED)

President – AMA.”

21 We also find a similar Civil Application filed by Dr. Malay Devendra Patel i.e. Civil Application No.17 of 2020. In the said Civil Application, the following reliefs have been prayed for:

“A. That this Hon’ble Court may be pleased to admit and allow the present Application;

B. That this Hon’ble Court may be pleased to join the ‘Applicant as & party Respondent in the WPPIL No. 42 of 2020;

C. That this Hon’ble Court may be pleased to set aside the policy of the Respondents which mandates private laboratories to seek prior approval from the Sola Civil Hospital before conducting a RT-PCR test . for Covid19;

D. That this Hon'ble Court may be pleased to permit all private laboratories and hospitals which have been granted approval by the ICMR to conduct the RT-PCR tests for Covid-19, without any interference from the Respondents;

E. That this Hon'ble Court may be pleased to direct the Respondents to set up a committee of experts to advise on the methods to tackle Covid-19, which includes experts in field of preventive and social medicine, expert in the field of infectious disease and micro-biology or in the field of critical care;

F. For interim and ad-interim reliefs, in relation to the prayers hereinabove;

G. For such other and further reliefs that this Hon'ble Court may, in the facts of the present case, deem fit."

22 Applicants of both the Civil Applications Nos.15 of 2020 and 17 of 2020 are allowed to be impleaded as party respondents.

23 It is argued before us that if any patient is to be treated for any other disease or ailment or take a case where any surgery is to be performed, the Doctor would advise to get the COVID-19 test report. It is necessary because the treating doctor needs to be aware of all the conditions, infection which the patient may be suffering. The doctor would not like to take any chance before he performs the surgery. This is exactly what has been stated by the President of the Association in her letter addressed to the Secretary of the Health Department. We fail to understand that in the circumstances highlighted above, why the concerned doctor has to seek the permission of the DHO or CDHO. Once the doctor prescribes the COVID-19 test for the purpose of taking due

care before the surgery is performed or before any particular treatment commences, then why permission is to be obtained from the DHO / CDHO. In this regard, we seriously called upon the learned Advocate General to explain us the rationale behind such a policy. The disturbing feature of this policy is that the DHO or the CDHO hardly finds time to grant the necessary permission. It takes two to four days before the permission is accorded and the test is performed. In a given case, this delay may prove to be fatal. In a given case, if such delay proves to be fatal, then who would be responsible. In this regard, the following has also been pointed out:

[1] The treating doctors need to be aware of all conditions, infections or disease which the patient may be suffering. The further course of action can only be determined thereafter. Sometimes, a particular medication may work counter-productive to a particular infection or condition.

[2] Aerosols are used in operation theatres inter alia for the purposes of disinfecting and sterilising the area. Aerosols can ease the spread of Covid-19 virus in the operation theatre, thereby putting doctors as well as other medical staff at risk;

[3] Admitting a patient suffering from Covid-19, without knowing the same, will put the life of other patients at risk, more particularly when it is known that the condition aggravates with co-morbidities;

[4] Last, but not the least, it is for the benefit of the patient being treated.

[5] The Indian Council of Medical Research is responsible for issuing the guidelines regulating the scope of COVID TESTING across the Country. The guidelines issued by the institute do not provide for sanction from the

State Government Medical Agency for the purpose of conduct of COVID TESTING in private laboratories. The only requirement for conduct of COVID TESTING in private laboratories is that the Laboratory test should be only offered when prescribed by a qualified physician as per ICMR guidance for testing.

[6] In terms of the said guideline the following procedure has to be followed for the purpose of securing a COVID Testing within the State of Gujarat:

- (i) For the private hospitals in Ahmedabad District and/or Corporation area, the permission is to be obtained from the Medical Superintendent, GMRC Medical College, Sola, Ahmedabad*
- (ii) For the private hospitals in other Districts, the permission is to be obtained from the Chief Health Officer of the concerned District Panchayat*
- (iii) For Private Hospitals in other Corporation, the permission is to be obtained from Health Officer of the Municipal Corporation.*

[7] The applicant states that to the best of its knowledge, there is no prohibition on COVID TESTING , across the country and the guidelines issued by the ICMR requiring prescription by Physician is being accepted across all private laboratories. The mandate of the Guideline is unreasonable and adversely affects the treatment of both COVID and NON COVID patients.

24 A lot was argued as regards the guidelines issued by the ICMR for the purpose of testing. The guidelines issued by the ICMR is being seriously criticized. In this regard, the learned counsel made the following submissions:

[1] If a citizen of this country wants to get himself tested / diagnosed for COVID-19, then it is his fundamental right and such a fundamental right cannot be infringed by the State Government.

[2] The ICMR guidelines have no statutory force. They are just guidelines issued by the Ministry of Home Affairs, Union of India. It is always open for the State Government to evolve its own policy with regard to testing.

[3] The testing should not be restricted because, as on date, there is no shortage of the testing kits.

[4] The report of the committee constituted by the State Government as regards the policy of testing is nothing, but an eyewash.

25 The issue with regard to the testing policy has been discussed by the Court in detail in our order dated 22nd May 2020. While discussing the said issue, the Court referred to and relied upon a decision rendered by the Telangana High Court wherein the Telangana High Court held that all the private hospitals should be permitted to conduct the COVID-19 test. It has been held by the Telangana High Court that such tests should not be restricted by the State Government only to be performed by the Government Laboratories or the laboratories which are designated by the State Government. In the aforesaid context, the learned Advocate General submitted that the report of the three experts makes it abundantly clear as regards what should be the testing policy. According to the learned Advocate General, the State Government is bound to comply with the guidelines issued by the ICMR. The learned Advocate General submitted that according to the three experts, the

policy of testing should be as under:

“1. COVID-19 testing (RTPCR) SHOULD NOT BE DONE for :

- a. Asymptomatic individuals
- b. Contacts of a COVID-19 case who remain asymptomatic
- c. Asymptomatic contacts of contacts i.e. family of those following quarantine recs.
- d. Those who were previously diagnosed and want to know if it was C-19
- e. Community survey with COVID-19 RTPCR should not be done. Instead appropriate sero-prevalence studies may be carried out as and when they are available.

2. COVID-19 testing SHOULD BE DONE for :

- a. All the symptomatic patients with clinical suspicion of COVID-19 by a treating consultant.
- b. Every symptomatic health care worker should be tested on recommendation of a consultant.
- c. Pre-operative testing for patients undergoing surgery or any other instrumentations can be done as per the discretion of a treating consultant.
- d. Emergency and life-saving procedures may be carried out without waiting for COVID-19 testing in the best interest of patients.
- e. Patients receiving cancer chemo therapy, radio therapy and planned hemodialysis should undergo testing.
- f. All the pregnant women admitted in the hospitals located in containment area for delivery should be tested in the best interest of new born.”

26 *Prima facie*, it appears that the opinion expressed by the three

learned members of the committee referred to above is based on the guidance for COVID-19 testing in MED DC and Health Units issued by the U.S. Department of State Bureau of medical services. The guidelines are as under:

“Guidance for COVID-19 Testing in MED DC and Health Units

Testing for SARS-CoV-2, the virus that causes COVID-19 (C-19), has been an evolving aspect of the C-19 pandemic. This guidance focuses on nucleic acid (PCR) testing and NOT serologic testing.

C-19 testing with the BioFire FilmArray received Emergency Use Authorization (EUA) from the US Food and Drug Administration (FDA). FilmArray units are now in many Health Units and increased testing is being emphasized both for patient care and to increase health safety in the workplace.

This guidance is derived from COVID-19 testing recommendations from the US Centers for Disease Control and Prevention (CDC). Cough, fever and dyspnea were the initial symptoms described in most patients with confirmed C-19 infection. With over 3 million cases worldwide, other symptoms have been recognized in many patients and added.

- *Symptoms found in most patients: cough, fever and dyspnea – Additional symptoms found in some patients: chills, muscle pain, new loss of taste or smell, vomiting or diarrhea, and/or sore throat*

As testing materials (test kits, swabs and transport media) become readily available, providers should have a lower threshold for testing those who may be infected. However, CDC and MED are currently NOT recommending asymptomatic individuals for screening with PCR testing.

In all instances, it must be emphasized that decisions about C-19 testing are determined by the HU staff and not mission leadership. C-19 testing is a limited resource that should be used when medically indicated.

I. C-19 testing is NOT INDICATED for:

- *Asymptomatic individuals*
- *Contacts of a C-19 case who remain asymptomatic*
- *Asymptomatic contacts of contacts I.e. family of those following quarantine recs*
- *Those who were clinically diagnosed previously and want to know if it was C-19*

II. Considerations for testing

A. C-19 testing should be prioritized for CLINICAL INDICATIONS:

- Health Unit staff with C-19 symptoms. Have a low threshold for testing HU staff because:
 - o They are at higher risk of exposure due to providing patient care
 - o If they are infected, they may expose many others during clinical duties
- Patients with fever/cough (more likely C-19 infected than those with just other symptoms)
- Patients with symptoms who are >65 years old and/or have comorbidities:
 - o Cardiovascular or chronic lung disease, obesity, immunocompromised, diabetes
- Patients with symptoms who have a high-risk individual in their household
- Critical leadership or infrastructure personnel who have symptoms
- Patients who become ill while at work. Confirming an alternate diagnosis may prevent numerous other contacts from needing to stay at home for 14 days.
 - o A rapid C-19 testing in patients like this may stop the closure of an office or section and diminish "COVID anxiety" among other staff.
- Marine Security Guards who have symptoms
 - o MSGs are critical infrastructure personnel and live in group housing, ruling out C-19 prevents the need for quarantine recs for any contacts
- Patient has C-19 symptoms at home but others in the household cannot be social distanced adequately, (determining C-19 positive or negative dictates household need for quarantine)
- Patient confirmed C-19 positive but has rapidly recovered and needs to return to work earlier using the test-based strategy:
 - o Two consecutive negative C-19 tests 24 hours apart after symptoms have resolved
 - Strategy should not be routine as it requires a large supply of C-19 tests.
 - o Most patients should return on the symptom-based strategy: ▪ 10 days since onset of symptoms and 72 hours with no fever while off

antipyretics and improvement in other symptoms B. Administrative Testing on Asymptomatic patients

- *Some host countries require C-19 testing of all travelers either before entry or immediately after entry. Others may require it at entry and then again at the end of 14 days.*
- *Some countries may also require asymptomatic testing of C-19 case contacts.*
- *Missions must decide if there are sufficient testing supplies to support these requirements or whether an outside laboratory can, or should, perform this testing*
 - o Should not be performed if there will not be sufficient tests available for symptomatic patients*
 - o Should only be performed after there is assurance that MED or HU testing will be accepted by the host country to fulfill their requirements.*

C. Testing of Asymptomatic Patients for other purposes

- *MED currently does not recommend testing as part of a return to work strategy nor for asymptomatic contacts of cases. These are discussed in ISO 6692.*
- *CDC considers some high-risk groups for asymptomatic screening but these rarely would include those under COM authority.*
- *When testing supplies become unlimited then consideration for some asymptomatic testing may be reasonable.*
- *This is an active and controversial topic. MED's guidance will generally reflect that of the CDC and/or WHO.*

III. Additional Testing Considerations A. Safety. Performing sampling on patients who are potentially C-19 infected puts the provider at risk of infection and should be carefully performed. See guidance in the references below regarding where testing should be performed and how to properly and safely do so.

B. Other Testing. BioFire Respiratory Panel, Rapid Influenza testing or Rapid Strep testing may all be used in helping to determine a diagnosis. C-19 is now a common diagnosis in most of the world and dual infections with SARS-CoV-2 and other pathogens are quite common.

- *For most of the world it is preferable to perform C-19 testing first to rule out coinfection.*
- *If the C-19 result is negative consider one of other tests to determine a diagnosis.*
- *If all testing is negative, yet there is strong clinical suspicion of C-*

19, consider repeat testing in 24-48 hours

o ~15% of PCR tests may be false negative o False negatives can be associated with poor sampling techniques, nasal or oral samples are inferior to nasopharyngeal samples.

C. Supply of FilmArray COVID-19 test pouches.

- Most posts received an initial 16-30 C-19 pouches. MED has ordered over 40,000 tests and has started receiving large numbers in Washington that will be shipped out.
- BioFire plans to roll the C-19 testing into the Respiratory Panel during the 3rd quarter of 2020 at which point separate C-19 pouches will probably stop being produced.

D. Non-PCR testing for C-19, such as antibody assays, are not recommended at this time. This is another area of considerable controversy. IT is likely that there will be a role defined for serologic assays but that has not yet been determined.

- There are well over 100 serologic assays, including rapid lateral flow diagnostics, that are being sold worldwide.

O There has been significant problems with sensitivity and specificity of these assays.

O Government agencies are currently making comparisons of these tests to determine which are the most reliable

o WHO and CDC recs for serologic testing will lead to modification of MED recommendations.

O No serologic assays are currently approved for use in Health Units.

IV. References:

1. CDC. Discontinuation of Home Isolation for Persons with COVID-19 (Interim Guidance)
2. CDC. Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19)
3. MED. Guidance for Obtaining SARS CoV-2 Samples in Health Units (ISO 6684.5)
4. CDC Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens from Persons for Coronavirus Disease 2019 (COVID-19)
5. CDC Use Personal Protective Equipment when caring for Patients with Confirmed or Suspected COVID
6. How to Obtain a Nasopharyngeal Swab Specimen from the New England Journal of Medicine (Videos)
7. MED. Presumptions vs Realities of Testing Asymptomatic

Individuals for COVID-19 (C-19) Infection (ISO 6692)

27 Having heard the learned counsel appearing for the parties on the question of testing policy, we have reached to the conclusion that we should implead the ICMR as a party respondent in this Public Interest Litigation so that we can understand its policy in operation as on date and reach to an appropriate conclusion. We are conscious of the fact that the High Court, in exercise of its writ jurisdiction, should not enter into the domain of policy matters. However, we are dealing with a very delicate issue and that too, at a point of time when the situation is very critical. In such circumstances, we would like to go further into this issue with the assistance of the ICMR, the State Government and the applicants before us who have raised this issue.

28 In the aforesaid context, we may refer to the observations made by the Supreme Court in the case of **Navtej Singh Johar v. Union of India reported in (2018) 10 SCC 1**. Honourable Justice D.Y. Chandrachud, while expressing his opinion in para 495, observed as under:

*“The jurisprudence of this Court, in recognizing the right to health and access to medical care, demonstrates the crucial distinction between negative and positive obligations. Article 21 does not impose upon the State only negative obligations not to act in such a way as to interfere with the right to health. **This Court also has the power to impose positive obligations upon the State to take measures to provide adequate resources or access to treatment facilities to secure effective enjoyment of the right to health.** [Jayna Kothari, “Social Rights and the Indian Constitution”, Law, Social Justice and Global Development Journal (2004)].”*

29 We implead the Indian Council of Medical Research, Ansari Nagar, New Delhi-110029, through its Director General, as one of the party respondents in this litigation. Mr. Devang Vyas, the learned Assistant Solicitor General of India waives service of notice for and on behalf of the ICMR. Mr. Devang Vyas, the learned Assistant Solicitor General of India is requested to take up this issue very seriously with the ICMR and report to this Court on the next date of hearing.

30 We call upon the ICMR to answer the following questions:

[1] What is the rational behind its testing policy?

[2] In what manner the ICMR wants the private hospitals / laboratories to get accredited? We would like to understand from the ICMR as regards the procedure which the private hospitals / laboratories need to undertake for the purpose of conducting the COVID-19 test.

[3] What are the guidelines of the ICMR with regard to the testing through the private laboratories?

[4] Whether the guidelines issued by the ICMR are statutory in nature?

[5] Whether such ICMR guidelines are binding upon the State Government or they are only recommendatory in nature?

[6] Whether without any prescription from any Physician, an individual can go to designated private hospital / laboratory for the purpose of testing?

31 We direct the ICMR to respond to the aforesaid questions raised by us by an appropriate reply or report. If any reply or report is prepared, then a copy of the same shall be furnished to each of the learned counsel appearing in this litigation well in advance.

32 We also call upon the State Government to furnish the following information:

[1] How many private laboratories are there in the State of Gujarat recognised by the ICMR / or COVID-19 testing?

[2] In what manner a private hospital / laboratory can apply with the ICMR if it intends to carry out the COVID-19 test?

[3] How many pathological laboratories are there in the State of Gujarat, who may not be designated for the purpose of the COVID – 19 test, but, still well-equipped to perform such test?

[4] Whether any pathological test / diagnosis is a fundamental right of the citizens of this country? To put it in other words, whether pathological testing / diagnosis is one of the facets of the right to health as embodied in Article 21 of the Constitution of India?

[5] Whether the State Government can evolve a policy of its own based on the guidance issued by the ICMR contrary to the fundamental right of its citizens with regard to the pathological test / diagnosis?

33 In the aforesaid context, we may invite the attention of the learned Advocate General and also the Government Pleader to the two orders passed by the Supreme Court on the subject of the COVID-19 Test. The orders are as under:

“IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

*WRIT PETITION (CIVIL) Diary No(s). 10816/2020 SHASHANK DEO
SUDHI Petitioner(s)*

VERSUS

UNION OF INDIA & ORS. Respondent(s)

O R D E R

The Court convened through Video Conferencing.

This Court by order dated 03.04.2020 had directed the petitioner to serve a copy of the petition to learned Solicitor General of India.

Notice.

Two weeks time is allowed to respondents to file an affidavit in reply.

This writ petition under Article 32 of the Constitution of India filed as Public Interest Litigation seeks a direction to the respondents for ensuring to provide free of cost testing facility of COVID-19 (Coronavirus) by all testing Labs whether private or Government. The petitioner has also challenged the Advisory dated 17.03.2020 issued by Indian Council of Medical Research Department of Health Research, insofar as it fixed Rs.4500 for screening and confirming COVID-19. The petitioner also prays that a direction be issued that all the tests relating to COVID-19 must be carried out under NABL accredited Labs or any agencies approved by WHO or ICMR.

Even before the COVID-19 was declared a pandemic by WHO on 11.03.2020, it had spread in several countries. As of now, more than 200 countries are suffering from this pandemic. The number of patients suffering from COVID-19 is rapidly increasing Worldwide with death toll rising rapidly. In our country, in spite of various measures taken by the Government of India and different State Government/Union Territory the number of patients and death caused by it is increasing day by day. Our country has a very large population.

The Indian Council of Medical Research Department of Health Research has notified the details of operative Government Laboratories and Private Laboratories to test COVID-19.

We find *prima facie* substance in the submission of petitioner that at this time of national calamity permitting private Labs to charge Rs.4500 for screening and confirmation test of COVID-19 may not be within means of a large part of population of this country and no person be deprived to undergo the COVID-19 test due to nonpayment of capped amount of Rs.4500. It is submitted before us that insofar as Government Laboratories are concerned the COVID-19 test is conducted free of cost.

The private Hospitals including Laboratories have an important role to play in containing the scale of pandemic by extending philanthropic services in the hour of national crisis. We thus are satisfied that the petitioner has made out a case for issuing a direction to the respondents to issue necessary direction to accredited private Labs to conduct free of cost COVID-19 test. The question as to whether the private Laboratories carrying free of cost COVID-19 tests are entitled for any reimbursement of expenses incurred shall be considered later on. We further are of the view that tests relating to COVID-19 must be carried out in NABL accredited Labs or any agencies approved by ICMR.

We, thus, issue following interim directions to the respondents:

- (i) The tests relating to COVID-19 whether in approved Government Laboratories or approved private Laboratories shall be free of cost. The respondents shall issue necessary direction in this regard immediately.
- (ii) Tests relating to COVID-19 must be carried out in NABL accredited Labs or any agencies approved by WHO or ICMR."

“S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) Diary No(s). 10816/2020

SHASHANK DEO SUDHI Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

Date : 08-04-2020

This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Petitioner-in-person

For Respondent(s) Mr. Tushar Mehta, SG

UPON hearing the counsel the Court made the following

O R D E R

The Court convened through Video Conferencing.

Issue notice.

Two weeks time is allowed to respondents to file an affidavit in reply.

The Court issued the following interim directions to the respondents, in terms of the signed order:

- (i) The tests relating to COVID-19 whether in approved Government Laboratories or approved private Laboratories shall be free of cost. The respondents shall issue necessary direction in this regard immediately.
- (ii) Tests relating to COVID-19 must be carried out in NABL accredited Labs or any agencies approved by WHO or ICMR.”

**“IN THE SUPREME COURT OF INDIA CIVIL EXTRAORDINARY
JURISDICTION**

WRIT PETITION NO. OF 2020

(D. NO.10816/2020)

Shashank Deo Sudhi ... Petitioner Versus

Union of India and Ors. ... Respondents

O R D E R

I.A. No.48265/2020, Application for Intervention is allowed.

Heard Mr. Gopal Shankarnarayan, learned counsel for the intervenor.

By I.A. No.48266/2020, the applicant has prayed for modification of the order dated 08.04.2020. Another IA has been filed by one Mr. Bijon Kumar Mishra seeking impleadment and directions to ensure the treatment of COVID-19 infected patients free of cost in all hospitals.

Mr. Bijon Kumar Mishra is permitted to intervene.

Mr. Mukul Rohatgi, learned senior counsel has appeared on behalf of several laboratories to put their point of view with regard to charging of fee as prescribed by the ICMR and conducting of the free test of COVID-19. Shri Rohatgi submits that the ICMR has fixed Rs.4,500/- on a moderate side to cover the expenses of Labs for conducting the COVID-19 test. He submits that insofar as the persons covered under the Pradhan Mantri Jan Aarogya Yojana, popularly called as Ayushman Bharat Yojana, the Labs are conducting free of cost COVID-19 test. He submits that in the event, the Labs are not to charge any fee for the tests, it will be impossible for them to carry on the test in due to financial constraint and other relevant factors. He further submits that the kits which are utilized in the test are

imported kits involving substantial expenses.

Shri Tushar Mehta, learned Solicitor General of India, referring to the affidavit filed on behalf of the ICMR dated 12.04.2020, submits that the Government is taking all necessary steps for conducting the COVID-19 test. It is submitted that as on date, 157 Government Labs and 67 private Labs are conducting COVID-19 test.

He submits that all Government hospitals and Government Labs are conducting COVID-19 test free of cost. As per the protocol of the ICMR, any affected person on recommendation of a Medical Practitioner can avail the benefit of free test available in Government hospitals and Government Labs. He submits that insofar as the test by private Labs are concerned, the ICMR has fixed the amount of Rs.4,500/- after considering all relevant factors. He submits that under the Ayushman Bharat Yojana, about 10.7 crore poor and vulnerable families which means approximately 50 crores beneficiaries are covered under the scheme and they can avail the benefit of free of cost COVID-19 test even in the private labs.

He submits that beneficiaries under the scheme would get cashless COVID-19 test in private labs. He further submits that an affidavit would be filed disclosing the number of persons/families actually covered by the scheme. The affidavit may be filed within two weeks from today.

Shri Tushar Mehta further submits that the Ministry of Family Welfare has issued various orders from time to time under which test and treatment for all COVID-19 test under the Ayushman Bharat Yojana also covers the COVID-19 test in any private Labs.

Mr. Shashank Deo Sudhi, the petitioner who appears in person, submits that there are large sections of society who at present are unable to afford the payment of Rs.4,500/- for COVID-19 test. He submits that the Government has to take responsibility of getting every person tested. In the event one person in a family is tested positive, the entire family requires testing. He submits that Government hospitals are over-crowded, hence, such persons may be permitted testing of COVID-19 in private Labs free of cost.

Having heard, learned counsel for the parties, we are satisfied that sufficient cause has been made out to clarify and modify our order dated 8th April, 2020.

The order dated 08.04.2020 intended to make testing in private Labs of COVID-19 free for economically weaker sections of the society who were unable to afford the payment of testing fee as fixed by ICMR for COVID-19. We further clarify that the order never intended to make testing free for those who can afford the payment of testing fee fixed by the ICMR for COVID-19.

In the affidavit filed by ICMR dated 12.04.2020 it has been stated that according to directive issued by the National Health Authority under the Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana, the testing fee for

COVID-19 will be free of cost under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana in all private Laboratories. Thus, free testing with regard to one category of people I.e. those covered under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana was already in place when we passed order dated 08.04.2020. We make it clear that the benefit of free testing by a person can be availed only when he or she is covered under any scheme like Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana.

We are also of the view that looking to the plight of persons belonging to economically weaker sections of the society, the Government may consider as to whether any other categories of persons belonging to economically weaker sections of the society can be extended benefit of free testing of COVID-19. We are conscious that framing of the scheme and its implementation are in the Government domain, who are the best experts in such matters.

In view of the foregoing discussion, the order dated 08.04.2020 is clarified and modified in the following manner:

- (i) Free testing for COVID-19 shall be available to persons eligible under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana as already implemented by the Government of India, and any other category of economically weaker sections of the society as notified by the Government for free testing for COVID-19, hereinafter.
- (ii) The Government of India, Ministry of Health and Family Welfare may consider as to whether any other categories of the weaker sections of the society e.g. workers belonging to low income groups in the informal sectors, beneficiaries of Direct Benefit Transfer, etc. apart from those covered under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana are also eligible for the benefit of free testing and issue appropriate guidelines in the above regard also within a period of one week.
- (iii) The private Labs can continue to charge the payment for testing of COVID-19 from persons who are able to make payment of testing fee as fixed by ICMR.
- (iv) The Government of India, Ministry of Health and Family Welfare may issue necessary guidelines for reimbursement of cost of free testing of COVID-19 undertaken by private Labs and necessary mechanism to defray expenses and reimbursement to the private Labs.
- (v) Central Government to give appropriate publicity to the above, and its guidelines to ensure coverage to all those eligible.

Application for modification is, accordingly, allowed.”

“S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL)

Diary No(s). 10816/2020 SHASHANK DEO SUDHI ... Petitioner(s)
VERSUS

UNION OF INDIA & ORS. ... Respondent(s)

(I.A. NO. 48265/2020 – APPLICATION FOR INTERVENTION/IMPLEADMENT AND I.A. 48266/2020 – APPLICATION FOR MODIFICATION FILED BY POOJA DHAR, ADVOCATE)[I.A. FOR IMPLEADMENT / DIRECTION FILED BY BEJON KUMAR MISRA.] [LETTER RECEIVED FROM SOLICITOR GENERAL OF INDIA][AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 3 – ICMR)

Date : 13-04-2020

This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Petitioner-in-person

For Respondent(s) Mr. Tushar Mheta, SG Mr. Mukul Rohatgi, Sr. Adv.

Mr. Gopal Shankarnarayan, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The Court is convened through Video Conferencing.

I.A. No.48265/2020, Application for Intervention is allowed.

By I.A. No.48266/2020, the applicant has prayed for modification of the order dated 08.04.2020. Another IA has been filed by one Mr. Bijon Kumar Mishra seeking impleadment and directions to ensure the treatment of COVID-19 infected patients free of cost in all hospitals. Mr. Bijon Kumar Mishra is permitted In view of the foregoing discussion, the order dated 08.04.2020 is clarified and modified in the following manner:

(i) Free testing for COVID-19 shall be available to persons eligible under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana as already implemented by the Government of India, and any other category of economically weaker sections of the society as notified by the Government for free testing for COVID-19, hereinafter.

(ii) The Government of India, Ministry of Health and Family Welfare

may consider as to whether any other categories of the weaker sections of the society e.g. workers belonging to low income groups in the informal sectors, beneficiaries of Direct Benefit Transfer, etc. apart from those covered under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana are also eligible for the benefit of free testing and issue appropriate guidelines in the above regard also within a period of one week.

- (iii) The private Labs can continue to charge the payment for testing of COVID-19 from persons who are able to make payment of testing fee as fixed by ICMR.*
- (iv) The Government of India, Ministry of Health and Family Welfare may issue necessary guidelines for reimbursement of cost of free testing of COVID-19 undertaken by private Labs and necessary mechanism to defray expenses and reimbursement to the private Labs.*
- (iv) Central Government to give appropriate publicity to the above, and its guidelines to ensure coverage to all those eligible.*

Application for modification is, accordingly, allowed.”

34 Having required the Indian Council of Medical Research and the State Government to respond to the various issues incorporated in the earlier paragraphs, we feel it appropriate to deal with one of the issues which requires urgent attention of this Court and appropriate reliefs in that regard which may otherwise cause irreparable and irretrievable loss to the patients of certain categories. The issue is as to whether or not to wait for the approval of the Superintendent of the GMERS, Ahmedabad and the District Health Officers in other districts before testing for COVID-19, is undertaken.

35 The submission advanced by the learned counsel is that certain categories of patients requiring urgent surgeries undergoing critical treatment relating to Hemodialysis, other emergency surgeries including delivery of pregnant women which cannot await the approval of the Superintendent of the GMERS, Ahmedabad or the DHO as it takes two to

four days. If the approval is awaited and only then, testing is conducted, it could result into disastrous situation for the patients as also the consulting doctor and paramedical staff.

36 In this respect, we have examined the guidelines of the ICMR regarding testing as also the report of the three members committee of the State Government which we have reproduced above in para - 25. According to the said report, certain categories of patients are enumerated where testing should be done. Those categories of patients, as referred to above, in our opinion, and for the reasons recorded above, would not be insisted for an approval from the concerned Superintendent of the GMERS, Ahmedabad or the DHO for other districts, but the COVID-19 testing should be done forthwith without any delay and only intimation of such patients may be forwarded to the concerned authorities by the treating consultants. For rest of the patients (not covered by the above specified categories), we direct that the COVID testing by the treating Physician or Surgeon would require an approval to be obtained, but, at the same time, we direct and make it very clear that such approval should be granted at the earliest and in any case, within 24 hours. This time line to be strictly adhered to.

37 Disease is a natural catastrophe that fells its victims unpredictably. The right to adequate health care flows from the sanctity of human life and the dignity that belongs to all persons. Health is a fundamental human right, which has as its prerequisites social justice and equality. It should be accessible to all.

38 Healthcare access is the ability to obtain healthcare services such as prevention, diagnosis, treatment and management of diseases, illness,

disorders, and other health-impacting conditions. For healthcare to be accessible it must be affordable and convenient.

39 We are of the view that core obligations under the right to health are non-derogable. This minimum core is not easy to define, but includes at least the minimum decencies of life consistent with human dignity. No one should be condemned to a life below the basic level of dignified human existence.

40 In the opinion of the Supreme Court, Article 21 of the Constitution clearly imposes a duty on the Government to take whatever steps are necessary to ensure that everyone has access to health facilities, goods and services so that they can enjoy, as soon as possible, the highest attainable standard of physical and mental health. By virtue of Article 21 of the Constitution, the State is under a legal obligation to ensure access to life saving drugs to patients. A reasonable and equitable access to life saving medicines is critical to promoting and protecting the right to health.

● **CIVIL HOSPITAL:**

41 We call upon the learned Advocate General to give us a fair idea as regards the condition prevailing as on date in the Civil Hospital. Our order dated 25th May 2020 is quite exhaustive in this regard. However, we are happy to note that the administration has geared up and is doing quite well. It is brought to our notice that 47 new ventilators have been brought at the Civil Hospital to take care of the critically ill. It is also brought to our notice that the strength of the medical officers has also been enhanced. It is brought to our notice by the learned Advocate General that all steps are taken to ensure that best of the treatment is

given to the COVID-19 patients.

42 We would still like to keep a close watch of the functioning of the Civil Hospital and if we are not satisfied with the same, then we may have to take some further steps in accordance with law. We direct the State Government to concentrate on the following issues to maintain the level of administration and functioning of the Civil Hospital in the interest of the patients and the specialists, doctors, paramedical and all others serving at the Civil Hospital.

[1] There should be no shortage of manpower in all categories: specialists, doctors, nurses, servants, technicians, physiotherapists etc;

[2] The patients admitted in the COVID Hospitals are demanding attention and care in terms of the medical care protocols required for proper treatment. There are different medical protocols for different categories of patients. There could be severely symptomatic patients, there could be moderately symptomatic patients and there could be mild symptomatic patients and for each of the categories of such patients, the protocols to be followed are different. It is alleged that the medical protocols required for different categories of patients are not being strictly followed.

[3] There is another circumstance which relates to the COVID patients. No Attendants are allowed to assist and take care of the patients. Normally admitted non-COVID patients are allowed one attendant who takes care of their hygiene, their food, their daily

necessities. However, for COVID patients, such care is to be taken by the Nurses, attendants and other staff of the hospitals.

[4] Although not confirmed, but, there are reports both in the print and digital medias that the COVID patients have lost their lives on account of proper care and attention not being provided to them. It has also come to our knowledge on account of dehydration and other negligence, COVID patients have lost their lives.

[5] There are also reports that necessary precaution are not being taken for the attending doctors and staff in terms of providing essential protective gadgets, consumables, PPE kits, etc. They cannot be put to risk under any circumstances.

43 We, thus, direct that all necessary medical protocols, as are laid down, for different categories of patients, should strictly be adhered to so that no life is lost because of any kind of negligence or non-attendance. We further direct that all precautionary measures are also strictly adhered to for the doctors and all other staff as observed above.

44 At this stage, Mr. Trivedi, the learned Advocate General pointed out that inadvertently, in the last report, it has been stated that a private pathological laboratory by name Supratech Micropath Laboratory has been blacklisted. Mr. Trivedi seeks to clarify that the Supratech Micropath Laboratory has not been blacklisted. We take notice of the same. The Health Minister of the State; the Chief Secretary, Health Department and all other authorities to keep a very close watch on the administration and functioning of the Civil Hospital. There should not be any laxity in this regard. As days are passing by, all steps should be

taken to improve the quality of medical treatment and other facilities at the Civil Hospital. No citizen of this country should gather a feeling that he is being treated differently than a person with necessary resources. All the citizens of this country are entitled to protection of their fundamental rights.

45 Before we close today's discussion on the topic of the hospital, we would like to make a note of something very disturbing, as pointed out by Shri Brijesh Trivedi, the learned counsel. It is brought to our notice that the Health Department is unable to withstand the pressure and in such circumstances, they may start restricting the admission of the COVID-19 patients in the Civil Hospital. We are sure that the State Government will never do this. We want the Civil Hospital to function at its full strength. Not a single bed should be kept vacant. If the Health Department is not able to withstand the pressure, then it should immediately make necessary arrangements to increase the strength of the doctors, nursing staff, etc. We sound a note of caution in this regard, more particularly, to the Principal Secretary of the Health Department that in future, if we come to know that deliberately, the admission in the Civil Hospital is restricted with a view to cope up with the pressure of work, then we may have to take appropriate action in this regard.

46 The further report of the Civil Hospital shall be placed on record by the next date of hearing.

47 We also heard Mr. Hirak Ganguli, the learned counsel appearing in the Civil Application No.7 of 2020. We have been assured by the learned Advocate General as well as by the learned Government Pleader that all issues raised in the Civil Application No.7 of 2020 shall also be looked into. In such circumstances, the Civil Application No.7 of 2020

stands disposed of.

48 We have heard Mr. N.M. Kapadia, the learned counsel who is appearing in Civil Application No.09 of 2020 for the inhabitants of the Municipal Slums Quarters situated at Asarva. Mr. Kapadia has expressed satisfaction with the work undertaken by the AMC as regards sanitization, etc. However, Mr. Kapadia has requested that the authorities should continue to distribute the Ayurvedic medicines in the locality. According to Mr. Kapadia, persons from a very poor strata of the society are residing in the locality and they are not in a position to purchase costly medicines in the form of multi-vitamins, etc. The State Government shall look into this aspect and see to it that the Ayurvedic preparation are distributed in this locality. Although the Civil Application No.09 of 2020 is not shown in the list, but as we have heard Shri Kapadia and his grievance having been already redressed, we are disposing off the same.

49 Mr. Vijay Nangesh, the learned counsel appearing in the Civil Application No.13 of 2020 very fairly submitted that his Civil Application has become infructuous in view of the issue which we have discussed today. In such circumstances, the Civil Application No.13 of 2020 stands disposed of.

50 The Civil Applications Nos.15 of 2020 and 17 of 2020 also stand disposed of in view of the issue which we have discussed today.

51 We also took up the Writ Petition (PIL) No.67 of 2020 filed by the learned counsel Mr. Sikander Saiyed. Mr. Saiyed fairly submitted that his PIL has also become infructuous. In the same manner, Mr. Neel Lakhani, the learned counsel appearing in the Writ Petition (PIL) No.74

of 2020 also fairly submitted that his writ petition has also become infructuous. The Writ Petitions (PIL) Nos.67 of 2020 and 74 of 2020 thus stand disposed of.

52 Ordinarily, the High Court would not interfere with the functioning of the State Government. The Court steps in by mandamus when the State fails to perform its duty. The true test of an efficient Government can be determined from its performance in times like the present one. In difficult times, it is expected of any Government to rise to the occasion and protect its citizens. This litigation is in Public Interest. Whatever we are doing as on date is for the welfare of the people at large. All that we are doing is to remind the State Government of its constitutional obligations and the directive policies of the State. In such circumstances, we expect the State Government to accept our orders passed in the Public Interest in the right spirit bearing in mind the paramount consideration of the health and well being of the people as imperatively implicit in the right to life guaranteed under Article 21 of the Constitution of India. All good work that the Government would do will surely be appreciated and hailed. If we find any remiss, negligence or carelessness, we shall come down heavily. In the first place, why should the State Government invite any criticism from the Court. The Government knows its obligations towards its citizens very well and should be efficient in discharging its duties. We would like to observe that the State Government has taken up this litigation in Public Interest very seriously. All that is now required is to remain vigilant, careful and active.

53 Before we close this order, we would like to express our anguish over the unnecessary debates and comments that are going on as on date on the social media and other platforms. We have gathered an

impression that our orders passed time to time in the larger interest of the public are being misused for some oblique motive. In our opinion, the Public Interest Litigation is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the Court. We also say that the PILs are not meant to advance the political gain and also to seek any political mileage. The Public Interest Litigation should never be made a political battle.

54 In times of crisis, we need to bind, not bicker. The COVID 19 crisis is a humanitarian crisis, not a political crisis. Hence, it is imperative that no one politicise this issue. The uncertainty about COVID-19 and its impact on our economy makes it even more important that the government does the right thing in terms of its policies. In these extraordinary circumstances, the role of the opposition is equally important. There is no denying that the role of the opposition is to hold the government to account, but in times like this a helping hand would be more beneficial than a critical tongue.

55 Merely criticising the government in power is not going to magically cure people of COVID 19, nor is it going to make the dead come back to life. This pandemic is only threatening in terms of health, safety and well being and nobody is benefitting from this crisis. By politicising this issue one would in fact be downplaying the widespread suffering it has caused and further would be placing politics and political intent before the aim of helping and saving lives.

56 While adversarial criticism may do no good, constructive criticism can help. Simply highlighting the flaws and gaps in the State's handling

of the situation only creates fear in the minds of people. People are least concerned about political ideologies and rivalries when their lives are at stake. There is a common threat and it is scary and people want to see collaboration. They want to see their leader come together and fight this together. By far most democratic countries that have been successful in dealing with this pandemic have one big thing in common a spirit of cooperation between political parties to fight a common unknown enemy, the virus. A similar sense of cooperation, understanding and constructive criticism can be powerful weapons for the Gujarat State to fight this pandemic.

57 We request one and all to be very careful from now onwards before commenting or entering into any debate with regard to Court orders that are being passed from time to time in Public Interest. Our message is loud and clear. We need not further elaborate on this issue. All those who cannot extend their helping hand in this difficult times and do anything good for the people at large have no right to criticize the functioning of the State Government. If the State Government would not have been doing anything, as alleged, then probably, by now, we all would have been dead. All that we are doing in this litigation is to keep the State Government conscious and active by reminding its constitutional and statutory obligations.

58 A couple of learned advocates submitted that they had also filed Public Interest Litigations relating to COVID-19 but the same are not listed today. The Registry is directed to list all such matters on the next date along with the present petition. We also require the State to respond to the said petitions by the next date.

59 The Registry is also directed to connect and list all civil applications and Public Interest Litigations or Writ Petitions relating to COVID-19 along with the present leading petition.

60 Post the matter for further hearing after three weeks on 19th June 2020 before this Bench.

