



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 24 OF 2022

1. Association for Protection of Civil Rights (APCR)
District Thane, a chapter of the (APCR), a Society registered Under the provisions of the Societies Registration Act, 1860
Having its address at
C/o Shop No.5, Bhagyashree Villa, Ground Floor, Nr. Dudhnaka, Kalyan (W), 421 301 Dist. Thane
Through it's District President Niyaz Ahmed Shaikh, Advocate.
2. Abuzaid Javed Iraqi
Age about 36 years, Occu: Advocate
Having address at Dost Apartment, B-Bldg., C-Wing, Flat No.29/30, Kausa-Mumbra, Thane 400 612.
3. Abdul Jabbar Momin
Age about 29 years, Occ: Advocate
Having address at Shop No.5, Panna Apt. Hira Panna CHS Ltd., Mumbra Market, Mumbra, Thane 400 612.
4. Mr. Hanif Dawood Kamdar
Age about 55 years, Occu: Business
2nd Floor, R.No.205, Mazhar Mansion, Behind Ameenabad Chawl, Chandnagar, Kausa-Mumbra, Dist. Thane 400 612. .. Petitioners

Versus

1. The Municipal Commissioner
The Municipal Corporation of the City of Thane, Panchpakhadi, Thane (West) 400 601.

2. The State of Maharashtra
Through Deputy Secretary,
Ministry of Urban Development
Department, Mantralaya,
Mumbai 400 032.
3. M/s. Shayona Corporation
3/14 Ruchi Apartment,
Simpoli Road, Chikoowadi,
Borivali (W), Mumbai 400 092.
4. The City Engineer
(Civil Works Department),
The Municipal Corporation
of the City of Thane,
Panchpakhadi,
Thane (West) 400 601.
5. The Chief Accounts Officer
The Municipal Corporation of the
City of Thane, Panchpakhadi,
Thane (West) 400 601. ..Respondents

Mr. Yusuf Mucchala, Senior Advocate with Mr. Karim Pathan, Ms. Rashda Ainapore, Mr. Arbaaz Shaikh, Fazal Shaikh and Mr. Shane I. for the Petitioners.

Mr. Ram Apte, Senior Advocate i/by Mr. N. R. Bubna for Respondent No.1 (Thane Municipal Corporation).

Mr. P. P. Kakade, Government Pleader with Mr. O. A. Chandurkar, Additional Govt. Pleader and Mrs. R. A. Salunkhe, AGP for Respondent No.2.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

**RESERVED ON : 16th JANUARY, 2024
PRONOUNCED ON : 29th JANUARY, 2024**

JUDGMENT [PER CHIEF JUSTICE]:

1. Heard learned Counsel representing the parties and perused the records available before us on this Public Interest Litigation Petition (PIL Petition).

2. This PIL Petition seeks interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India with a prayer to issue appropriate directions to the Respondents to ensure completion of a hospital in Kausa-Mumbra locality falling within the municipal limits of the Municipal Corporation of Thane (hereinafter referred to as the Corporation). A prayer has also been made to issue a direction to institute an inquiry into the causes of delay in completing the said hospital project and further into the alleged excess expenditure incurred by the Corporation in the said project and to take requisite action against the Officers responsible for such excess expenditure, which according to the Petitioners, appears to have been incurred without the sanction of law.

3. Having regard to the causes sought to be espoused in this PIL Petition, we shall, first take up the issue surrounding non-completion of the hospital project and the steps which

are required to be taken by the Respondents to make it functional so as to cater the public health care needs of the population living in the Kausa-Mumbra locality.

4. A study conducted by the Tata Institute of Social Sciences (hereinafter referred to as the TISS) in the year 2014 into the health conditions of the citizen living in Kausa-Mumbra highlights the urban paradox wherein on one hand, it has areas that reflect economic prosperity while, on the other, it has areas that are characterized by sub-standard housing and non-availability of amenities to serve basic human needs which is detrimental to the well-being of the inhabitants. The study further highlights that urban slum residents of the area exhibit poorer health characteristics which indicates presence of structural conditions that shape inequalities in health and illness affecting the poorer, especially the vulnerable sections of the society such as infants, young children, elderly and women.

5. The study also reveals that the four pillars of health, which include promotive, preventive, curative and rehabilitative services delivered by Health Personnel and their support structures are weak in Kausa-Mumbra. The study concludes as under:

"Health of people in Mumbra-Kausa reflects an impact of variable intensities of joblessness, homelessness, marginalization, morbidity, food insecurity and social disarticulation. All of these are along with lack of access to basic public services. This has led to families having to bear economic burden of accessing private health-care facilities. It is evident that health risks faced by people of Mumbra-Kausa is associated with economic hardship which lead to further disruption of social fabric and a feeling of uprooting, alienation and psychological trauma."

6. With the insertion of Part IX-A in the Constitution of India w.e.f. 1st June 1993, the Municipalities or the Urban Local Governance bodies in the country have acquired a constitutional status. Part IX-A not only strengthens the municipalities by raising them to a constitutional status but it also bestows certain responsibilities upon them. Article 243-W mandates the Legislature of a State to vest in the Municipalities, by making law, certain powers, authority and responsibilities which include performance of functions and implementation of schemes as may be entrusted to the Municipalities including those in relation to the matters listed in Twelfth Schedule. One of the functions enlisted in Twelfth Schedule is "Public Health, sanitization conservancy and solid waste management". Thus, it becomes a constitutional function and duty of every Municipality to implement the schemes entrusted to it including the schemes in relation to

the public health as well.

7. It appears that realizing the statutory and constitutional functions entrusted to the Corporation, a decision was taken in the year 2008 to sanction construction of a 100 bedded hospital in Kausa-Mumbra with an estimated budget of Rs.10 Crores, however, though long period of 15 years has elapsed, the hospital has yet not become fully functional.

8. It has been averred in the PIL Petition that a fresh proposal to set-up the hospital was approved at an estimated revised cost of Rs.37 Crores and further that a plot comprising of an area of 4.18 Hecter was also earmarked/reserved for the said purpose. Further assertion made in the PIL Petition is that no action could be taken for construction of the hospital, and the estimated cost of the hospital was increased to Rs.54.36 Crores and accordingly a resolution to the said effect was passed by the General Body of the Corporation on 20th February 2014.

9. Pointing out certain alleged irregularities in the process of allotment of work relating to the construction of the hospital, it has been stated by the Petitioners that as against the budget estimate of Rs.54.36 Crores, the work order dated 27th August 2014 was issued for Rs.139.04 crores which has

resulted in substantial increase in expenditure, however, the hospital has yet not become functional.

10. Taking note of the delay in construction of the hospital, this Court passed an order in this PIL Petition on 27th September 2023, and with a view to ascertain the actual position on the site, both in terms of the infrastructure and the man power, appointed a Court Commission comprising of an expert Doctor to be nominated by the Dean, J.J. Hospital, one Civil Engineer to be nominated by the Secretary, Public Works Department, Government of Maharashtra and Ms. Meenaz Kakalia, a practicing lawyer of this Court. The Commission was entrusted to conduct an inspection, interact with the staff available in the hospital and prepare a report on (i) stage of completion of the building giving details (ii) the infrastructure facilities which are available (iii) the status of the health-care services being provided currently by the hospital (iv) to what use the existing structure of the building can be put to so that new departments may be started forthwith, and (v) the Commission while preparing the report was also required to report as to what machines and medical equipments have been procured and as to whether these machines and equipments are being used.

11. The Court appointed Commission submitted its report stating therein that Swatantriay Sainik Hakim Ajmal Khan Hospital (hereinafter referred to as the Hakim Ajmal Khan Hospital) constructed by the Corporation is located over a total area of approximately 1,00,000 sq.ft. As per the said report, the construction of the hospital is complete and the Full Occupancy Certificate was issued by the Corporation on 5th December 2022. The Commissioner's report further states that the Corporation plans to establish a Multi-Specialty Health-care Centre however, the hospital has not started functioning yet and further that the Corporation has floated tender to develop the Health-care Centre on "Finance, Procure, Install, Commission and Operation" basis through "Public Private Partnership" (PPP) model. The report further states that this health center shall function under the supervision of the Chhatrapati Shivaji Maharaj Hospital, run by the Respondent Corporation.

12. The Court Commission's report also mentions that as per the tender document, the private contractor will be required to provide the following services (a) facilities which are mandatory to perform cardiac, super specialty, multi-specialty procedures (b) day-to-day clinical services i.e. out-patient, in-

patient, operative, post operative, intensive care and diagnostic facilities (c) emergency care for cardiac patients and (d) treatment available under the State / Central Government run schemes to every below poverty line (BPL) patient from Maharashtra and (e) free OPD services.

13. As per the report, the tender for running the hospital on PPP model has been awarded and the Corporation is in the process of finalizing the terms of the agreement. It is also reported that two Health-care facilities are being run in the building of Hakim Ajmal Khan Hospital which were pre-existing and have been moved from other locations in Thane viz. M.M. Valley Urban Primary Health Centre and Mumbra Maternity Home. Apart from this, a dialysis unit, sonography center and integrated counselling and testing center are also operated from the said building. The Court Commission further reports that the construction of the hospital is completed in all respects which is a ground floor plus one-story structure and the Occupation Certificate by the competent authority has also been issued. The report further states that the building has been handed over to the Health Department on 28th October 2022 by the Executive Engineer of the Corporation and thereafter to the Manager, Estate

Department of the Corporation on 8th February 2023. As per the report, various basic infrastructure facilities are available, however, the facilities required to run the hospital are yet not installed, as the same would be the obligation of the operator.

14. As observed above, M.M. Valley Urban Primary Health Center and Mumbra Maternity Home were pre-existing and have been moved from other locations to Hakim Ajmal Khan Hospital along with staff. As per the report, the Mumbra Maternity Home in the hospital building started functioning from 10th April 2022, however, the operation theatre, pre-operative ward, post-operative ward and neo-natal intensive care unit (NICU) are not functional. The Court Commission also found that though the NICU designated area has pediatric ventilators, warmers and monitors, they are not in use. The report also mentions that though labour room is functional and though it is said that certain investigations are being carried out, however, no pathologist or micro-biologist were found working. The report also states that the operation of dialysis center has been outsourced to a private company known as Apex Kidney Care which has 10 beds with 10 dialysis machines. The Court Commission's report prepared on the basis of inspection carried out on the spot and

deliberations held with various Officers and Corporation and the Personnel in the hospital also contains photographs which depict unused boxes of equipments and other unutilized equipments and spaces available.

15. The Court Commission, thus, concludes that 100 bedded hospital has yet not become operational and that Mumbra Maternity Home and M.M. Valley Urban Primary Health Centre were pre existing and have been moved to this hospital from other locations and also that certain other Health-care facilities are being provided, however, said facilities are not part of 100 bedded hospital. The report also states that the facilities available presently in the hospital utilize only about 25-30% area of the building while remaining area is yet to be utilized. The Court Commission also reports that as per the tender document it will be the obligation of the private operator to provide trained staff and establish departments such as surgery, OBGY, pediatrics, orthopedic, dentistry, cardiology etc. The report further states that procurement of medical equipments is also required to run the hospital, all of which shall be the duty of the private operator. One of the findings of the Court Commission in the report is that large number of OPD patients serviced by the Urban Primary Health

Center indicates that the residents of the area are in need of proper Health-care facilities and will be accordingly benefited from the hospital proposed to be set-up.

16. In response to the Court Commissioners' Report an affidavit dated 25th November 2023 has been filed by the Petitioner taking exception to the proposal to run the hospital on PPP model. It has been stated that the actual intent of the Respondent – Corporation is ultimately to privatize the hospital and that it does not appeal to reason that after spending huge amount of money the hospital would be privatized. In the affidavit, it has further been averred by the Petitioners that the Chhatrapati Shivaji Maharaj Hospital at Kalwa, Thane, under whose supervision the subject hospital is proposed to be run, provides free of charge facilities to all the patients right from basic treatments to providing facilities of testing and operations etc. It is the submission of the Petitioners that for the benefit of public at large, the 100 bedded hospital should function on the lines of which the Chhatrapati Shivaji Maharaj Hospital, Kalwa is running, that is to say, the medical care facility should be provided free of cost. It has been stated by the Petitioners pointing out to the Court Commission's report where they have stated that the

residents of the area are in need of proper health-care facilities and that they shall be accordingly benefited from hospital proposed to be set-up. The submission is that such object of providing proper health-care services to the residents of the area cannot be achieved unless the health-care services are provided free of charge considering the socio-economic status of the population at large living in the vicinity of the hospital.

17. An additional affidavit dated 6th December 2023 has been filed by the Dean, Chhatrapati Shivaji Maharaj Hospital, Kalwa, Thane wherein it has been stated that vide Resolution No.750, dated 3rd March 2022 of the General Body of the Respondent Corporation it has been decided to run Freedom Fighter Hakim Ajmal Khan Hospital on PPP model for want of adequate funds and staff.

18. According to the said additional affidavit, citizens holding yellow ration card, Annapurna ration card and orange ration card shall not be charged any amount however, the citizens who do not fall in these categories will be charged as per the Mahatma Jyotiba Phule Jan Arogya Yojna (hereinafter referred to as the "**said Yojana**") and that those who are not covered under the said Yojana will be charged 79% of the Central

Government Health Services scheme rates and the contractor shall offer 21% discount. The affidavit further states that the hospital shall be operational within 90 days from the date of issuance of the work order as per the letter of the Contractor and certain medical equipments shall also be procured. It also states that the electrical ancillaries and medical equipments such as monitors, beds, dialysis machines, CPAP etc. which are lying in the hospital may be utilized once the operation of the said hospital will commence by private operator. As per the tender document the operator shall be liable for the equipments, maintenance and other materials required to run the hospital at full capacity at his cost. It is also stated in the affidavit that the hospital will provide 1659 medical procedures covering almost all types of treatments and surgeries covered by the health-care scheme of the Government of Maharashtra known as Mahatma Jyotiba Phule Jan Arogya Yojna and that all treatments covered under the Central Government Health Scheme, Mahatma Jyotiba Phule Jan Arogya Yojna as well as other treatments will also be provided in the hospital. The affidavit further states that the cash counter of the hospital will be managed by the Respondent-Corporation which will ultimately result in better

services to the patients and that the contractor will not be in a position to discriminate between the patients. As per the said affidavit, the rates to be charged for treatment and surgical procedures are fixed as per the Government policy and will not be left to the discretion of the contractor.

19. In response to the additional affidavit dated 6th December 2023 filed by the Dean of Chhatrapati Shivaji Maharaj Hospital, Kalwa, an affidavit dated 20th December 2023 has been filed by Petitioner No.2 stating therein that a large population of Mumbra-Kausa constitute Lower Income Group (LIG), Middle Income Group (MIG) and Economically Weaker Sections (EWS) which remain uncovered by the State sponsored Mahatma Jyotiba Phule Jan Arogya Yojna. Further submission in the said affidavit is that the tender document for PPP does not make any mention about the Mahatma Jyotiba Phule Jan Arogya Yojna as spelt out in the affidavit filed by the Corporation. According to the said affidavit, free medical facilities are available only to the patients having yellow and orange ration card, Annapurna Card and Antodaya Card whereas, the resolution of Corporation dated 3rd March 2022 was passed with the aim and object that the citizens who do not have any card shall also get free medical services.

Referring to the resolution dated 3rd March 2023 passed by the Respondent Corporation it has been pointed out that the said resolution contains the following:

"It will be mandatory to provide free medical services to the partner for the poor and those who do not have yellow or orange ration cards and other patients in the Thane Municipal Corporation area and the reimbursement will continue to be paid to the partner as per the rates fixed by the Municipal Committee".

20. The affidavit also quotes the following extract from the resolution of the Corporation dated 3rd March 2023:

"And the finance officer also issued issue no.1st to 3rd Chhatrapati Shivaji Maharaj Specialty, super Specialty and General at Freedom Fighter Hakim Ajmal Khan Hospital (Extension Center). (General) of a private medical institution to provide medical service facilities for a period of 30 years on PPP basis proposed strategic decisions on selection and approval of Expression of Interest (EOI) tenders is Also, According to the proposal of the department, it will be mandatory to provide free medical services to the partner for the poor and those who do not have yellow and orange ration cards and other patients in the municipal area and the reimbursement according to the expenses incurred will be paid to the partner as per the rate fixed by the committee of Thane Municipal Corporation at the time of payment. However, since it is necessary to provide the required amount in the municipal budget for the said refund amount, the department has given feedback on submitting the proposal under the following terms and conditions for the strategic decision of this General Assembly, the public health department should take care to resolve the said issues in their report."

21. It has, thus, been submitted on behalf of the Petitioners

that the subject hospital should also be run on the model on which the Chhatrapati Shivaji Maharaj Hospital, Kalwa is running without interference of any private entity and that the Chhatrapati Shivaji Maharaj Hospital is a Multi-Specialty Hospital, free to all categories of patients in all aspects.

22. Mr. Mucchala, learned Senior Advocate representing the Petitioners has laid much emphasize on Article 21 of the Constitution of India as also he asserted Article 47 of the Constitution of India, according to which, it is the duty of the State to improve public health and that the State shall have regard to raising of level of nutrition and the standard of living and the improvement of public health as amongst its primary duties. Reliance in this regard has been placed on the judgments of Hon'ble Supreme Court in the case of ***Tamil Nadu Medical Officers Association Vs. Union of India***¹, ***Union of India Vs. Moolchand Kharati Ram Trust***², ***Paschim Banga Khet Mazdoor Samiti Vs. State of West Bengal***³, ***Sukh Sagar Medical College Vs. State of Madhya Pradesh & Ors.***⁴ and the judgment in the case of ***Proper Treatment of Covid-19 Patients & Dignified***

1 2021 (6) SCC568
2 2018 (8) SCC 321
3 1996 (4) SC 37
4 2021 (13) SCC 587

Handling of Dead Bodies in the Hospitals⁵.

23. Learned Senior Counsel for the Petitioners has also referred to Government Resolution dated 23rd August 2023 issued by the Department of Public Health, Government of Maharashtra. Our attention has been drawn to the following Government decision embodied in the Government Resolution dated 23rd August 2023:

"Government decision :-

01. Examinations, services and treatment from Government patients under the control of the Public Health Department and medical services on public private partnership basis (excluding the service charges levied for supply of blood and blood components as per the National Blood Policy) are approved for free

02. Examination and patient fees, services are free in government hospitals under the auspices of the department as reference no. 01 to ratify the Government decision dated 28.12.2015 is coming

03. Services charged for supply of blood and blood components as per National Blood Policy Charges will be processed separately.

04. As per this Government decision treatment and services have been made free of patient fee a notice to this effect should be displayed on the facade/ board of the hospital. Also the same The Commissioner, Health Services should take action to give wide publicity to the decision.

05. Strict action should be taken against those concerned who are found to be charging patients by misleading/cheating the patients/public after free

⁵ 2021 (3) SCC 519

examination and treatment services. The Commissioner, Health Services should determine the procedure in this regard.

06. The said government decision is effective from August 15, 2023. The said Government decision Hon. State Cabinet meeting held on August 3, 2023 subject no. 9 is being issued pursuant to the approval given u/s.

07. The said Government decision has been made available on the website of Maharashtra Government www.maharashtra.gov.in and its reference number is 202308231324241917. This order is being authenticated with digital signature.

By order and in the name of the Governor of Maharashtra."

24. Emphasizing on point 4 of the afore-quoted Government decision, which provides that treatment and services have to be made free to the patients, it has been thus submitted by Mr. Mucchala, learned Senior Advocate representing the Petitioners that the subject hospital is also governed by the said Government Resolution dated 23rd August 2023 and hence a direction be issued to the Respondent Corporation to extend the facility of free of charge treatment to the patients residing in the municipal limits of the Thane Municipal Corporation.

25. Mr. Ram Apte, learned Senior Advocate representing the Respondent Corporation has submitted that in fulfillment of its duties to provide affordable public health-care, the

Corporation had taken a decision to construct the hospital which is complete so far as the building is concerned and to run the hospital, as per the decision of the Respondent Corporation, tenders were invited to run it on PPP model. He has further stated that the tender process has been completed and the Operator has also been selected, however, on account of pendency of the proceedings of this PIL Petition and in deference to this Court, the work order has not been issued. He has further stated that if the work order is issued, the hospital shall start functioning to its capacity within three months. He has also argued that the facility of free medical services and subsidized medical services will be provided as per the details given in the affidavit dated 6th December 2023 filed by the Dean of the Chhatrapati Shivaji Maharaj Hospital, Kalwa. Submitting further he stated that the citizens holding yellow ration card, Annapurna ration card and orange ration card would not be charged any amount while they are provided health-care benefits and medical aid however, those citizens who do not fall under these categories will be charged as per the Mahatma Jyotiba Phule Jan Arogya Yojana. He has also stated that if the ailment to be treated is not covered under the said Yojana, the patient will be charged 79% of the

rates of the Central Government Health Scheme (CGHS) and nearly 21% discount shall be offered by the Operator who will be entrusted to run the hospital. Mr. Apte, learned Senior Advocate has also submitted that the Government Resolution dated 23rd August 2023 which, in certain cases, provides for making available the treatment and medical services free, is not applicable, as the same has been issued by the Public Health Department of the State Government and not by the Department of Urban Development which is the administrative department so far as the municipalities in the State, including Thane Municipal Corporation, are concerned.

26. According to Mr. Apte, learned Senior Advocate, in terms of the provisions contained in Section 450A of the Maharashtra Municipal Corporations Act, 1949 (hereinafter referred to as the **MMC Act**) the State Government has been vested with the power to issue instructions or directions as to the matters of Policy to be followed by the Corporation in respect of its duties and functions. He has further stated that the State Government also enjoys the power to issue directions in larger public interest and for implementation of the policies of the Central Government or the State Government and the National or the State level programmes

and projects or schemes. Once any such directions or instructions are issued, it shall be the duty of the Corporation to give effect to the same, however, before issuing such directions the Government is to give opportunity to the Corporation to make representation within 15 days, as to why such instructions or directions shall not be issued. He has, thus, stated that any Government instructions or directions to be binding on the Corporation needs to be issued by following the procedure as prescribed in Section 450A of the MMC Act and so far as the Government Resolution dated 23rd August 2023 is concerned, no such procedure was followed. The submission is, thus, that the Government Resolution dated 23rd August 2023 issued by the Public Health Department of the State Government is not referable to Section 450A of the MMC Act and as such, it is not binding on the Corporation.

27. Mr. Apte, learned Senior Advocate has, thus, argued that the hospital to be run at Kalwa-Mausa will be governed by the decision taken by the Corporation itself. He has also argued that it lies well within the authority of the Corporation to decide as to whether a particular activity (in this case running a hospital) is to be undertaken by the Corporation by adopting PPP model or otherwise and such a decision, which relates to

policy making powers of the Corporation, is not liable to be interfered with. He has, thus, prayed that the petition may be dismissed and the hospital may be allowed to be run on the PPP model as decided by the Respondent Corporation.

28. The decision to construct and run the hospital was taken way back in the year 2008 by the Corporation. It has taken a span of one and half decade for the Respondent Corporation to complete its building. However, admittedly, apart from running two units (i) Primary Health Center, and (2) Maternity Home, which were pre-existing and were running outside the subject hospital, the hospital is yet to be made functional. As a result of such a delay, the cost is obviously bound to escalate, burden of which will again have to be borne by the tax payers. This situation cannot be appreciated.

29. As disclosed by the aforementioned study undertaken by the TISS way back in the year 2014, admittedly, most of the population living in Mumbra-Kausa area belongs to disadvantaged and economically weaker sections of the society and adequate and proper health-care system is not available in the area. Non-availability of access to basic health services, as per the TISS report, results in joblessness, homelessness, further marginalization and food insecurity.

The report also evidences that the health risks faced by the people of the Kausa-Mumbra is associated with the economic hardship which lead to further disruption of social fabric and feeling of uprootedness, alienation and psychological trauma. Thus, considering the present socio-economic condition of the large number of population living in Kausa-Mumbra locality, need of appropriate, affordable and adequate public health system is greatly felt.

30. After inclusion of Part IX-A in the Constitution of India, the Urban Local Bodies now bear greater responsibilities in terms of the provisions contained in Article 243-W read with Twelfth Schedule of the Constitution of India which, *inter alia*, casts duty upon such Urban Local Bodies to provide the facilities of public health as well. Article 47 of the Constitution of India, though appears in Part-IV (Directive Principles of State Policy), nonetheless it casts a duty on the State to improve public health. Article 47 of the Constitution of India is extracted hereinbelow:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health – *The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for*

medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

31. As has been laid down by the various pronouncements of the Hon'ble Supreme Court and this Court, the fundamental rights and directive principles constitute the “conscience” of our Constitution. The settled law, by now, is while determining the scope and ambit of fundamental rights forming Part-III of the Constitution of India, the Courts are to be guided by the Directive Principles of State Policy and the Courts should attempt to give effect to both, Part-III and Part-IV as much as possible. The said legal position has been enunciated by the Hon'ble Supreme Court in the case of ***Unnikrishnan Vs. State of Andhra Pradesh***⁶. Though ***Unnikrishnan*** is a judgment rendered prior to insertion of Article 21-A in the Constitution, which makes right to free and compulsory education to all children aged between six to fourteen years as their fundamental right, however, the first declaration that Right to Free and Compulsory Education to these children is a fundamental right was made in ***Unnikrishnan***. As to how Part-III and Part-IV of the Constitution of India interplay, has been enumerated in paragraphs 153 to 165 in ***Unnikrishnan*** which are extracted

6 1993(1) SCC 645

hereinbelow:

Interplay of Parts III and IV:

153. *This Court has also been consistently adopting the approach that the fundamental rights and directive principles are supplementary and complementary to each other and that the provisions in Part III should be interpreted having regard to the Preamble and the Directive Principles of the State Policy. The initial hesitation to recognise the profound significance of Part IV has been given up long ago. We may explain.*

154. *While moving for consideration the interim report on fundamental rights, Sardar Vallabhai Patel described both the rights mentioned in Parts III and IV as 'fundamental rights' — one justiciable and other non-justiciable. In his supplemental report, he stated:*

"There were two parts of the report; one contains fundamental rights which were justiciable and the other part of the report refers to fundamental rights which were not justiciable but were directives."

155. *This statement indicates the significance attached to directive principles by the Founding Fathers. It is true that in State of Madras v. Champakam Dorairajan [1951 SCC 351 : 1951 SCR 525 : AIR 1951 SC 226] fundamental rights were held pre-eminent vis-a-vis directive principles but since then there has been a perceptible shift in this Court's approach to the interplay of fundamental rights and directive principles.*

156. *As far back as in 1958, in the Kerala Education Bill, 1957 [1959 SCR 995 : AIR 1958 SC 956] a Special Bench of this Court speaking through S.R. Das, C.J., while affirming the primacy of fundamental rights, qualified the same with the following observations:*

"Nevertheless, in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore these Directive Principles of State Policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible."

157. *This is also the view taken in Mohd. Hanif Quareshi v. State of Bihar [1959 SCR 995 : AIR 1958 SC 956] .*

158. *In Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225 : 1973 Supp SCR 1] more than one learned Judge adverted to this aspect. In the words of Hegde and Mukherjea, JJ.: (SCC pp. 502-03, paras 712, 713 and 716)*

“The fundamental rights and the directive principles constitute the ‘conscience’ of our Constitution To ignore Part IV is to ignore the sustenance provided for in the Constitution, the hopes held out to the Nation and the very ideals on which our Constitution is built [T]here is no anti-thesis between the fundamental rights and the directive principles. One supplements the other.”

159. *Shelat and Grover, JJ. in their judgment observed: (SCC pp. 427 and 459, paras 533 and 596)*

“Both Parts III and IV ... have to be balanced and harmonised — then alone the dignity of the individual can be achieved They (fundamental rights and directive principles) were meant to supplement each other.”

160. *Mathew, J. while adopting the same approach remarked: (SCC pp. 875-76, para 1700)*

“The object of the people in establishing the Constitution was to promote justice, social and economic, liberty and equality. The modus operandi to achieve these objectives is set out in Parts III and IV of the Constitution. Both Parts III and IV enumerate certain moral rights. Each of these Parts represents in the main the statements in one sense of certain aspirations whose fulfilment was regarded as essential to the kind of society which the Constitution-makers wanted to build. Many of the articles, whether in Part III or Part IV, represents moral rights which they have recognised as inherent in every human being in this country. The task of protecting and realising these rights is imposed upon all the organs of the State, namely, legislative, executive and judicial. What then is the importance to be attached to the fact that the provisions of Part III are enforceable in a court and the provisions in Part IV are not? Is it that the rights reflected in the provisions of Part III are somehow superior to the moral claims and aspirations reflected in the provisions of Part IV? I think not. Free and compulsory education under Article 45 is certainly as important as freedom of religion under Article 25. Freedom from starvation is as important as right to life. Nor are the provisions in Part III absolute in the

sense that the rights represented by them can always be given full implementation”

161. Y.V. Chandrachud, J. (as he then was) put the same idea in the following words: (SCC pp. 999-1000, para 2120)

“As I look at the provisions of Parts III and IV, I feel no doubt, that the basic object of conferring freedoms on individuals is the ultimate achievement of the ideals set out in Part IV [M]ay I say that the Directive Principles of State Policy should not be permitted to become ‘a mere rope of sand’. If the State fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish.”

162. In *State of Karnataka v. Ranganatha Reddy* [(1977) 4 SCC 471] Krishna Iyer, J. stated: (SCC p. 496, para 45)

“Our thesis is that the dialectics of social justice should not be missed if the synthesis of Part III and Part IV is to influence State action and court pronouncements.”

163. In *U.P. State Electricity v. Hari Shankar Jain* [(1978) 4 SCC 16 : 1979 SCC (L&S) 481 : AIR 1979 SC 65] it was observed: (SCC p. 24, para 5)

“Addressed to courts, what the injunction (Article 37) means is that while courts are not free to direct the making of legislation, courts are bound to evolve, affirm and adopt principle of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. This command of the Constitution must be ever present in the minds of the judges while interpreting statutes which concern themselves directly or indirectly with matters set out in the Directive Principles of State Policy.”

This is on the view that the ‘State’ in Article 36 read with Article 12 includes the judiciary as well.

164. In *Minerva Mills Ltd. v. Union of India* [(1980) 3 SCC 625 : AIR 1980 SC 1789] Chandrachud, C.J. quoted with approval the simile of Granville Austin that Parts III and IV are like two wheels of a chariot and observed that “to give absolute primacy to one over the other is to disturb the harmony

of the Constitution". The learned Chief Justice observed further: (SCC p. 654, para 57)

"Those rights (fundamental rights) are not an end in themselves but are the means to an end. The end is specified in Part IV."

165. *It is thus well established by the decisions of this Court that the provisions of Parts III and IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goal indicated in Part IV. It is also held that the fundamental rights must be construed in the light of the directive principles. It is from the above standpoint that Question No. 1 has to be approached.*

32. In ***State of Punjab and Ors. Vs. Ram Lubhaya Bagga and Ors.***⁷ the Apex Court has observed that *"the State can neither urge nor say that it has no obligation to provide medical facility. If that were so, it would be ex facie violative of Article 21.* In ***State of Punjab and Ors. Vs. Mohinder Singh Chawla and Ors.***⁸ Hon'ble Supreme Court has reiterated that *"it is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities.* In ***V. Markendeya Vs. State of A.P.***⁹ the Hon'ble Supreme Court has observed that, *while considering the question of enforcement of fundamental rights of a citizen it is open to the Court to be guided by the Directive Principles to ensure that in doing justice, the principles contained therein are maintained.*

⁷ (1998) 4 SCC 117

⁸ (1997) 2 SCC 83

⁹ (1989) 3 SCC191

33. Thus, it is now well settled that duty of the State as cast by Article 47 of the Constitution of India has to be taken aid of for giving full meaning to right to life enshrined as fundamental right under Article 21 of the Constitution of India. Right to life does not mean mere animal existence, it will encompass in it the right to live with dignity and if any citizen is deprived of affordable public health services, right to life with dignity cannot be ensured, it will rather be compromised.

34. In the light of the above discussion and also considering a large part of the population of Kausa-Mumbra locality belonging to the disadvantaged and economically weaker sections of the society it becomes duty of the Court to ensure that the citizens of Kausa-Mumbra enjoy the facility of affordable public health services so that their right to life with dignity can be ensured. The study conducted by the TISS, as noticed above, leads us to observe that health of the people of Kausa-Mumbra locality is a cause of grave concern for the Court as also the public authorities. The provisions of Article 243-W read with Twelfth Schedule and Article 21 read with Article 47 of the Constitution of India and various other provisions contained in MMC Act, thus, cast a duty on the

municipality i.e. Thane Municipal Corporation to provide public health-care system in a way which is affordable and accessible to all irrespective of their socio-economic condition.

35. At this juncture, we may refer to Resolution No.750, dated 3rd March 2022 passed by the Respondent Corporation which in no uncertain terms reflects the resolve of the Municipal Corporation to in fact discharge the duty cast upon it and provide free medical services for the poor and to those who do not have yellow and orange ration card and also other patients, who are habitants of Thane Municipal Corporation area. The relevant portion (from a translated copy) of the said Resolution has already been referred by us above in paragraph 19 of this judgment. Thus, in view of the aforesaid resolution, it is incumbent upon the Corporation to translate the aforesaid Resolution into action. This would therefore necessarily mean that the Corporation would have to ensure that any medical facility and/or public health-care system which is to be evolved by the Municipal Corporation is to necessarily provide free medical aid/treatment for the poor within the Thane Municipal Corporation limits. The fact that the hospital is to be run on the basis of a PPP model would not make any difference since (a) the same is admittedly a

Municipal Hospital built entirely from public funds and (b) the Resolution itself provides that the Municipal Corporation will reimburse the private partner as per the fixed rate ascertained by the Municipal Committee.

36. However, the exception being taken by the Petitioners to the decision of the Respondent Corporation to run the hospital on PPP model, in our considered opinion, is not tenable. It is a policy matter, decision in respect of which has to be necessarily left to the Corporation and such a decision, since falls in the executive realm, need not be interfered with by this Court.

37. For the discussion made and reasons given above, the instant PIL petition is disposed of with the following directions:

a) The Respondent – Corporation is directed to run the subject hospital ensuring that the decisions taken by it as embodied in its Resolution No.750 dated 3rd March 2022 are complied with in letter and spirit.

b) Any Agreement entered into by the Respondent – Corporation to run the Hospital on a PPP model would therefore necessarily have to be in conformity with

Resolution No. 750 dated 3rd March 2022 to the extent that the same would *inter alia* require free medical services to be given to the poor and those who do not have yellow and orange cards and other patients.

c) The Petitioners are permitted to make an appropriate application / representation to the Principal Secretary of the State Government in the Department concerned in respect of the alleged irregularities said to have been committed in the process of construction of the hospital building which allegedly has resulted in cost escalation and favouritism causing unnecessary burden on the State exchequer, as averred in the PIL Petition, which shall be considered and an appropriate decision which may be warranted under Law, may be taken by the State Government at its discretion.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)