

Diksha Rane

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

**PUBLIC INTEREST LITIGATION NO. 133 OF 2007
WITH
CIVIL APPLICATION NO. 87 OF 2009
WITH
CIVIL APPLICATION NO. 59 OF 2008
WITH
CIVIL APPLICATION NO. 57 OF 2018
WITH
CIVIL APPLICATION NO. 56 OF 2018
WITH
CIVIL APPLICATION NO. 175 OF 2014
WITH
CIVIL APPLICATION (STAMP) NO. 35428 OF 2013**

Dr. Rajendra Sadanand Burma
& Anr.

.. Petitioners

Versus

The State of Maharashtra & Ors.

.. Respondents

Mr. J. T. Gilda, Senior Advocate for the petitioner in
PIL/133/2007 (through VC).

Mr. P. P. Kakade, Government Pleader and Ms. Neha Bhide,
'B' Panel Counsel a/w Ms. Reena Salunkhe, AGP for
respondent nos. 1 to 4 (State).

Dr. Uday Warunjikar with Mr. Siddhesh Pilankar for the
petitioner in WP/3589/2011.

Mr. Y. R. Mishra a/w Mr. Dharmesh Joshi a/w Mr. N. R.
Prajapati for respondent no. 6 (UoI).

Mr. Bandu Sane, applicant-in-person in CAI/87/2009.

Mr. Bhushan P. Malgaonkar, applicant in-person in
CAI/175/2014.

Following are present:

Dr. Ashish Satav, representative of NGO present through VC.
Ms. Manisha Khatri, District Collector, Nandurbar.

Dr. Duryodhan Chavhan, Asstt. Director, Public Health Services, Mumbai.

Dr. Ramchandra Ahankare, Deputy Director, Health Services, Pune.

Dr. Govind Choudhari, District Health Officer, Nandurbar.

Mr. Gokul Deore, Deputy Commissioner, ICDS.

Advocate Pravin Bagude, Law Officer, Public Health Services, Mumbai.

**CORAM: DIPANKAR DATTA, CJ. &
M. S. KARNIK, J.**

DATE : SEPTEMBER 23, 2022

P.C.:

1. In compliance of the directions in the order dated August 17, 2022 passed by us, the District Collector, Nandurbar, has filed an affidavit dated September 20, 2022. For the reasons stated in the affidavit and in view of the oral submissions made by learned AGP, we are satisfied that it was due to inadvertence and a communication gap that the separate affidavit in respect of Nandurbar District was not filed. The District Collector, Nandurbar, is personally present. We dispense with her appearance, now that the compliance affidavit has been filed.

2. The measures being taken in Nandurbar District to reduce the child deaths, are spelt out at Exhibit 'R-1' of the affidavit. At Exhibit 'R-6' is a compliance report on Shri Bandu Sane's (one of the applicants) observations. At Item No.5, it is stated that there are 3 boat ambulances and 1 floating boat dispensary in Nandurbar District. There is a delay in construction of two bridges due to adverse site conditions, failure of the contractor and the Covid pandemic situation, as a result of which the construction could not be

completed within time. The plan is to complete the super structure of the bridge by December 2023. We do hope and trust that every endeavour would be made by the concerned authorities to complete the construction by the due date and even earlier.

3. Learned AGP, on instructions of the District Collector, Nandurbar, assured us that all possible measures are being taken to alleviate the sufferings of the tribal children. We expect the measures stated in the affidavit are taken in letter and spirit.

4. An affidavit on behalf of the respondent no.3-The Secretary, Department of Public Health, Mantralaya, Mumbai, is filed by Dr. Duryodhan Gopaji Chavhan, Assistant Director in the office of Commissioner of Health Services, Mumbai, wherein steps to tackle the malnutrition in Melghat area are spelt out. It is stated that the Public Health Department has taken active steps to implement Dr. Chhering Dorje's report in letter and spirit. Further, as regards the suggestions and recommendations given by Dr. Ashish Satav, Advocate Purnima Upadhyay and Dr. Abhay Bang on prevention of malnutrition and child deaths, the Public Health Department has implemented these suggestions on priority basis and an additional Action Taken Plan has been prepared for Melghat area.

5. Learned counsel for the petitioners invited our attention to page 768-A of the paper-book which are details of approved posts of Group A to D cadre under Health Services Commissionerate and the vacancy position. The

chart indicates that so far as Group A posts in the category of Maharashtra Medical and Health Services are concerned, the approved posts are 1786, the posts filled up are 674 whereas 1112 are lying vacant. There is thus a 62% vacancy indicated. Then, so far as Maharashtra General State Service Group B posts are concerned, the vacancy percentage is shown to be 74%. Even as regards the Group C and D posts, the vacant posts are shown as 30%. Having regard to the large number of posts approved in the 'C' and 'D' category, the percentage of vacancies is unusually high. For Group C (Grades S15 to S6), the approved posts are 31585, of which 22234 are filled in, and the vacant posts are 9351. So far as Group D (pay scale S3 to S1) are concerned, the approved posts are 13112 of which 8197 are filled in and the vacant posts are 17105.

6. From the submissions of the petitioners and even from the affidavits of the respondents, it appears that lack of specialist doctors and medical attendants to assist them is a major cause affecting the tribal women and children. Shri Bandu Sane pointed out that in Maharashtra, there are 11 sensitive tribal areas where the medical facilities are inadequate requiring immediate attention.

7. We called upon the learned AGP the reason for not filling up of the vacancies. The issue directly concerns medical affairs and health. It is pointed out by learned AGP that the selection process is to be carried out by the Maharashtra Public Service Commission (hereafter 'MPSC' for short). In our considered opinion, the presence of an adequate number of pediatricians, nutritionists and

gynecologists may go long way in securing timely medical assistance in the tribal areas. We find it therefore necessary to implead MPSC and the Director of Medical Education and Research (hereafter 'DMER' for short) as party respondents.

8. The petitioners to implead the MPSC and DMER in the PIL petition as party respondents.

9. Learned AGP to represent the DMER and take necessary instructions about the steps taken to fill up the vacancies and the reasons why so many posts are lying vacant as indicated at page 768-A of the paper-book.

10. Issue notice to the newly added respondent-MPSC, returnable on October 13, 2022.

11. List the PIL petition along with Civil Applications on **October 13, 2022, at 2.30 p.m.**

(M. S. KARNIK, J.)

(CHIEF JUSTICE)