

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

965 WRIT PETITION NO.6780 OF 2020

MAHARASHTRA STATE BRANCH OF INDIA RADIOLOGICAL AND
IMAGING ASSOCIATION MSBIRIA ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA & ORS. ..RESPONDENTS

...
Mr. S. G. Chapalgaonkar, Advocate for the
Petitioner.

Mr. S. G. Karlekar, AGP for Respondent-State.

...
**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 06th NOVEMBER, 2020.

PER COURT:-

1. The matter was adjourned from time to time since 05.10.2020. On 28.10.2020 and 04.11.2020 we had heard Mr. Chapalgaonkar, learned counsel for the petitioner and Mr. Karlekar, learned A.G.P. to the extent of interim relief claimed by the petitioner qua the rates as may applicable for non Covid-19 patients. On 04.11.2020, we had adjourned the matter at the request of Mr. Karlekar, learned A.G.P. to take further instruction as some documents/literature filed by the petitioner. The matter was kept on 06.11.2020.

2. Today, after the matter was called out Mr. Karlekar, learned A.G.P. submits that the praecipe is moved by the State before the Hon'ble the Chief

Justice to club and/or consolidate all the matters for being heard and disposed of by the same Bench. The grounds of challenge to the Government Resolution issued during the pandemic vis-a-vis the rates to be charged, involved similar questions of law and petitions are pending before the Bench at Nagpur, Aurangabad and also at the Principal Seat at Bombay. The said praecipe appears to have been filed on 28.10.2020. No orders are passed on the said praecipe.

3. We have heard to the extent of interim relief claimed by the petitioner vis-a-vis non Covid patients only on earlier dates. The challenge to the entire notification as applicable to the Covid patients is not considered by us.

4. The petitioner heavily relied on the judgment of the Division Bench of this Court at Nagpur in a case of **Hospitals' Association, Nagpur & Anr. Vs. Government of Maharashtra & Anr.** in Writ Petition No.1936/2020 dated 23.10.2020. In the said judgment the court set aside the Notification dated 30.04.2020 and 21.05.2020 to the extent issuing the directions in Clauses 4, 8, 9, 11, 12, 13, 14 and 15 as applicable to non Covid patients in the private hospitals/health care providers and nursing homes. The said directions were regarding capping the rates to be charged by the hospitals for non-Covid patients.

5. Mr. Chapalgaonkar, learned counsel submits

that the Notification impugned in the present writ petition dated 24.09.2020 imposing cap on the rates to be charged by the hospital for HRCT chest is ultra vires. According to the learned counsel, the judgment of the Nagpur Bench as referred to above, squarely applies to the facts of the present case also. The HRCT chest test is not test for diagnosis of Covid-19. To substantiate his contentions, the learned counsel relies upon the literature produced viz the Article from Journal of Clinical Imaging Science. The advisory issued by the Indian Medical Council of Medical Research (ICMR) dated 04.09.2020 to contend that the tests to diagnose Covid-19 are Rapid Antigen Test and RT-PCR. The learned counsel referring to the advisory dated 23.06.2020 issued by the ICMR to suggest that RT-PCR is the gold standard test and the another test is Antigen test. HRCT chest test is not meant for diagnosis of Covid-19.

6. Mr. Karlekar, learned A.G.P. submits that the Journal of Clinical Imaging Science relied by the petitioner also concludes that one must be careful during the period of global pandemic, though patients are coming to the emergency centre with a typical signs of Covid-19 they should be considered for the possibilities of Chest CT. According to the learned A.G.P. even the literature issued by the Radiologist and having the appraisals only from the AIMS concludes that the Chest CT may be considered as primary tool for the current

Covid-19 detection in pandemic and that the result support the use of Chest CT scan for screening of Covid-19 patients in appropriate clinical/epidemiological setting, particularly when RT-PCR is negative. The learned A.G.P. submits that the judgment of the Nagpur Bench in a case of **Hospitals' Association, Nagpur & Anr. Vs. Government of Maharashtra & Anr.** (supra) relied by the petitioner would not assist the petitioner in as much as the same is in respect of non-Covid patients. In the present case, HRCT chest scan is advised for detecting possibilities of Covid virus infection itself and therefore there cannot be classification of Covid or non-Covid patients for carrying out HRCT chest scan. The Nagpur bench in a case of **Hospitals' Association, Nagpur & Anr. Vs. Government of Maharashtra & Anr.** (supra) was considering the fees to be charged while admitting the patients to the hospitals. In that case, it is possible to differentiate between the Covid and non-Covid patients, whereas, there cannot be any differentiation or classification of patients as Covid and non-Covid for carrying out HRCT chest scan. According to the learned A.G.P. HRCT chest scan is largely practiced investigation method because of its sensitivity and specificity which is better than RT-PCR test.

7. Under the impugned Notification the State Government has fixed the rates for HRCT depending upon the slices as under:

Specification of CT machine	Less than 16 slice CT	Multi detector CT (MD CT) 16-64 slices	Multi detector Ct (MD CT) More than 64 slice
Proposed rate Inclusive of all taxes (in INR)	2000/-	2500/-	3000/-

8. It has been held by the Nagpur Bench in the case of **Hospitals' Association, Nagpur & Anr. Vs. Government of Maharashtra & Anr.** (supra) that the State Government does not have authority to issue Notification in respect of the non-Covid patients either under the Pandemic Act or the various other Acts relied by the State Government. The same Acts are relied while issuing the impugned Resolution. The Nagpur Bench by its detailed judgment has held that the Government could not have issued Notification restructuring rates of the hospitals to charge fees for non-Covid-19 patients.

9. If HRCT chest scan is used for diagnosis of Covid-19 patients, then certainly the petitioner is bound by the impugned Notification and would not be entitled to charge the fees more than fixed under the Notification dated 24.09.2020.

10. After the impugned Notification is issued the petitioner had made representation purportedly to the Chairman HRCT rate capping committee not to cap the rates of HRCT and if the Government has decided to cap the charges, then the same shall be

around Rs.4000/- to Rs.5000/- for HRCT patients. It was further represented that the restriction on price should be applicable only to those patients who have tested positive for Covid-19 infection by RT-PCR test.

11. We are only considering the case prima facie at present and that too the rates capped for non-Covid patients vis-a-vis the impugned Notification. The final judgment of Nagpur Bench in a case of **Hospitals' Association, Nagpur & Anr. Vs. Government of Maharashtra & Anr.** (supra) today holds the field. If the patient comes to the hospital of the petitioners' member and request for HRCT chest for Covid-19 diagnosis or is referred for HRCT chest for Covid diagnosis, then the petitioner would be bound by the impugned Notification. However, if the HRCT chest is to be done on other patients, then the petitioners' member can be allowed to charge at a rate of Rs.4000/- and not beyond that, as suggested in the representation.

12. The petitioner shall ask their members to notify at the conspicuous place of the hospital, the rates to be charged for HRCT chest as diagnosis for Covid-19 patients and for non-Covid patients. The rates specified in the impugned Notification dated 24.09.2020 shall be charged for diagnosis of Covid-19 patients and for patients other than Covid-19 at Rs.4000/-. However, if the patient

insists that HRCT chest scan is to be done for diagnosis of Covid-19 or if a patient comes with a positive report of Covid-19 or if is referred for HRCT Scan by the Medical Practitioners/Doctors for Covid-19 diagnosis and HRCT test is to be done, then the rates to be charged by the petitioner and its members would be as capped by the state under Notification dated 24.09.2020.

13. We make it clear that this is by way of interim arrangement, more particularly, in view of the final judgment of the Nagpur Bench in Writ Petition No.1936/2020 dated 23.10.2020. We would endeavour to decide the matter finally at the stage of admission.

14. Place the matter on 04.12.2020.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/November-2020