

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO.32 OF 2006

Mumbai Midwaste Action Group .. Petitioner
Vs

Union of India and others ..Respondents

ALONGWITH

PUBLIC INTEREST LITIGATION NO.41 OF 2006

Consumer Welfare Association .. Petitioner
Vs

Union of India and others ..Respondents

Mr. Mihir Desai for the petitioner.

Mr. Shiraz Rustomjee with Mr. U.P. Warunjikar and Ms. Saumya Srikrishna for Bombay Hospital.

Ms. S.S. Mahashabde with Mr. R.V. Govilkar for MPCB.

Mr. Rajiv Chavan with Ms. Rutuja Ambekar i/by Ms. Amita Marathe for the petitioner in PIL No.41 of 2006.

Ms. P.A. Purandare for BMC.

Mr. S.P. Salkar for the respondent No.6.

Mr. Shekhar Ingavle, Assistant Government Pleader for the State.

Ms. S.V. Bharucha with Mr. D.A. Dube and Mr. Afroz Shah for the Union of India.

CORAM: SWATANTER KUMAR, C.J., &
J.P. DEVADHAR, J.

DATE : 31ST JANUARY, 2008

P.C.:

The Court Commissioners appointed by the court to inspect the various hospitals in Mumbai have submitted their reports. The Court Commissioners were expected to inspect the hospitals to examine the performance of Bio-Medical Waste Management in view of the scheme provided by Maharashtra Pollution Control Board. The bare reading of the reports shows that some of the hospitals have taken no steps to ensure the disposal of bio-medical waste in accordance with the guidelines and the scheme framed while others who have taken some steps are categorised as High, Good, Reasonable, Unsatisfactory and extremely poor. However, there are some hospitals whose performance of bio-medical waste management has been found to be poor by the Court Commissioners. It needs to be noticed that the learned Court Commissioners were accompanied by the officer appointed by the Pollution Control Board

and one doctor nominated by the Directorate of Health Services of the State of Maharashtra. The said report was prepared by the Court Commissioners and filed after it was duly endorsed by the Government officers. The committee has made certain recommendations after discussion on various shortcomings and consequences of non-performance of the bio-medical waste management system.

2. Having perused the record as well as hearing the the counsel appearing for the parties, we issue the following directions:

- (i) The two hospitals viz. M.A. Poddar Hospital and Bai Sakarbai Dinshaw Petit Hospital for Animals are neither registered with MPCB nor have taken any steps towards implementing the formulated scheme. Needless to mention that it is the utmost duty of every hospital to ensure strict compliance of the scheme in the public interest. Non-compliance thereof would result in serious consequences to the health of the public at large. It is strange that both these hospitals have not even attempted to take corrective measures

to do the needful despite the pendency of the present petition.

- (ii) The learned counsel appearing for the Pollution Control Board states that neither of the above hospitals were inspected. It is expected of the Board that inspite of limitations, it must adhere to its public responsibility and not to meet the hospital to avoid the loss at the cost of the public health. Be that as it may, we direct that the MPCB shall issue notice to both these hospitals within two days from today calling upon them to take the remedial measures within four weeks, failing which the said hospitals should be closed and the hospitals would not be permitted to function. We make it clear that before injuncting the hospitals from functioning, the same shall be inspected by the officers of the MPCB alongwith the Court Commissioners appointed by the Court. It shall be the exclusive responsibility of the hospitals to ensure compliance of this order. If the hospitals

comply within the prescribed period the requirements of law in relation to Bio-Medical Waste Disposal Management Scheme, in that event, it is obvious that the court would not take any further action.

- (iii) The counsel appearing for the petitioner in connected petition also submit that according to the statistics furnished by the MPCB itself, there are about 1800 hospitals in the State of Maharashtra which are neither registered with the Board nor have any permission to carry on the hospital activities. We do hope that the Board will take some effective steps in the interest of the public at large and ensure that such hospitals do not function without proper consent and comply with the guidelines of the Pollution Control Board.
- (iv) Dr. Bacha's Nursing Home, Motiben Dalvi, Chembur
Sushrut, Maa Diwaliben Mohanlal Mehta Hospital,
Sarvodaya Hospital, M.T. Agarwal Municipal Hospital,
Savitribai Phule Hospital, Eye Hospital, Kamathipura,
M.A. Poddar Hospital, Shree Hari Lal Bhagwati

Municipal Hospital, Oshiwara Maternity Home, Parwatibai Chauhan Charitable Trust's Yeshwant Chawan Hospital, J.J. Hospital, K.E.M. Hospital, Mahatma Gandhi Memorial Hospital are the hospitals which have been categorised in the report as poor and/or unsatisfactory. These hospitals certainly require effective steps to be taken to meet the prescribed standard. They should ensure proper collection of medical waste and/or bio-medical waste, its disposal in terms of the scheme and all public authorities are expected to fully cooperate so as to achieve the basic object of prevention of spreading of disease. The MPCB as well as State Government shall serve notices on all these hospitals within one week from today calling upon them to remove the shortcomings and improve their performance in regard to the Medical and Bio-medical Waste disposal Management System. They shall be given period of six to eight weeks depending upon the requirement as

may be deemed fit by the expert body of the Board in consultation with the Court Commissioners and the other authorities. In the event if these hospitals do not comply with those requirements, the Board shall take appropriate action including initiation of prosecution against the officers in-charge of the hospitals as well as the concerned secretary of the Government of Maharashtra. Before taking any action, the Board and the Court Commissioners shall collectively see as to whether these hospitals have complied with the prescribed scheme or not.

- (v) The learned counsel appearing for other hospitals whose performance has been credited as reasonable or even good but certain shortcomings have been pointed out, assured the court that they would take proper steps to comply with the requirements of the prescribed scheme and would leave no stone unturned to ensure satisfactory result. We grant six weeks time to all these hospitals for compliance of this

order.

(vi) In addition to the above directions, we make it clear that notices issued by the Board shall be delivered personally upon the Officer-incharge of the hospitals i.e. the Medical Superintendent in cases of Government or Corporation hospitals and the Director/Executive Officers in the cases of private hospitals and such other senior person who is responsible for running or managing the day-to-day affairs of the respective hospitals. Due acknowledgement of the service of the notices should be obtained. However, in addition thereto, the notice would be dispatched through courier and proof thereof would be put on record of the Board. Whatever recommendations made by the Committee shall be considered by the Board and due consideration given by the Government. The authorities concerned are expected to have the progressive approach to fully implement the scheme to ensure that no infection

travels to the healthy persons and even the employees who are dealing with the disposal of medical/bio-medical waste as a result of default either by the hospitals, Board or the Government.

- (vii) The Corporation and/or the connecting authorities shall ensure that the collected portion of medical and bio-medical waste are not placed within the premises of the hospital unless and until it is bagged. Every hospital shall ensure that the medical and bio-medical waste, particularly stored in the yellow bags and blue bags will not be put in the garbage collection boxes and it shall be disposed of as per the scheme and rules formulated by the Board. We make it clear that none of the hospital shall disobey this order and the Board is free to take action against any of the hospitals who violates the Board's directions.
- (viii) The State Government is hereby directed to provide all assistance and help to the Board and other implementing authorities including staff and

infrastructure, so that the entire efforts from all concerned are not wasted for lack of infrastructure and protect the very object of the scheme. The counsel appearing for the Board submits that the authorities have submitted their report to the Government for providing infrastructure, staff and facilities etc. for proper implementation. The learned counsel appearing for the State assures the court that the same shall be considered expeditiously by the concerned authorities in the State Government and proper sanctions shall be given within the limitations of the State. Let this be done within four weeks from today.

- (ix) The Court Commissioners appointed by the court submits that so far they have incurred expenses to the tune of Rs.20,000/- for the documentation purpose. We direct that the bill of all the expenses incurred by the Commissioners shall be submitted to the State/Board, through the learned Government Pleader

appearing for the State in the present case and the same be cleared by the State within one week of its receipt by the State/Board. We further direct that the necessary T.A./D.A. shall also be paid to the Court Commissioners applicable to the IAS officers while on duty for their visits.

List the matter on 27th March, 2008 for further directions.

CHIEF JUSTICE

J.P. DEVADHAR, J.