

SUPREME COURT COMES OUT WITH A UNIQUE SOLUTION RELATING TO PUBLIC HEALTH.

The Supreme Court in its recent Order¹, while hearing a Writ Petition dealing with commercialization of healthcare, has reprimanded the incompetence and lethargic attitude of the State Governments and Union Territories in enacting legislations pertaining to Public Health for the benefit of citizens.

The Petition filed by Sachin Jain, sought for an appropriate writ to be issued, directing the Union of India to **(i)** regulate the cost of treatment of patients infected with COVID19, at Private/Corporate hospitals across the country, **(ii)** mandate the private hospitals that are set up on public land, allotted at concessional rates either on the ground that those hospitals are run by charitable institutions or otherwise, to treat COVID19 patients either free of cost or on non-profit basis, **(iii)** bear the cost of treatment of COVID19 patients at private hospitals, for the poor and vulnerable and who have neither the means nor the insurance cover, by expanding the coverage under Public Health Schemes such as *Ayushman Bharat* and; **(iv)** combat the commercialisation of healthcare by private health sector.

'Health' has always been a State subject. "*Public Health and sanitation; hospitals and dispensaries*" falls in Entry 6 of List - II in the Seventh Schedule of the Constitution. However, only a few States took advantage of this and enacted laws.

Following a mandate from the WHO in the form of International Health Regulations, 2005, to which India is a signatory, the Government of India proposed a National Health Bill, 2009 ("**Bill**") under its powers envisaged in Entry 14 of List I wherein the Centre is empowered to legislate, to implement its international obligations under international treaties and declarations. The Supreme Court observed how it was heartening to note that the first word to be defined in the Bill was "affordable". Unfortunately, it was never enacted.

Currently, the States which have the legislative competence failed to act and the Centre is unable to act for want of competence, leaving the citizens of the country adversely affected during this pandemic. Since the petition addressed issues needing immediate intervention, the Apex Court, *suo moto*, impleaded all the State Governments and Union Territories as parties and issued notice to them.

Given that the Disaster Management Act, 2005 is currently in force and under Section 62 of the Act, the State Governments and Union Territories are bound to

¹ Writ Petition (Civil) No.863 of 2020

comply with the directions of the Central Government, the Three Bench Judge directed the Union of India to do the following:-

- (i) Convene a meeting of the Health Ministers/Secretaries of all States and Union Territories may be convened within one week from 31.08.2020;
- (ii) In the said meeting, all the States and Union Territories, may be advised to come up, within 2 weeks of the first meeting, with a master plan, both legislative and executive, taking cue from the already existing Public Health Acts of various States and also taking cue from the National Health Bill, 2009, which focuses on the marginalized sections of society;
- (iii) Thereafter, a second meeting of the Health Ministers/ Secretaries of all States and Union Territories may be convened for the purpose of collating the information received from the States and Union Territories regarding the steps taken by the States;
- (iv) After receipt of the information from all the States and Union Territories, the Government of India may file a comprehensive report with a compilation of the information received from the States and Union Territories;
- (v) The States which already have Public Health Acts, may be advised to finetune their existing enactments, on the model of the National Health Bill, 2009.

In this way, the Supreme Court has come up with a unique solution using the provisions under the Disaster Management Act to issue directions in such a way that the State Governments and Union Territories are now unable to shirk away from their duties and responsibilities towards Public Health.