

TL- 06

**4th SURANNA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

**Before
THE HON'BLE HIGH COURT
Of Badlapur**

**IN CIVIL APPEAL NO. _____ OF 2021
[FILED UNDER ARTICLE 226 OF CONSTITUTION OF INDUS]**

MR. CHETRI & Ors.

...PLAINTIFF

VERSUS

**STATE
HEALTHONE**

**...DEFENDANT 1
...DEFENDANT 2**

**MEMORIAL FILED ON BEHALF OF DEFENDANTS
- STATE AND HEALTHONE**

MOST RESPECTFULLY SUBMITTED

COUNSEL FOR THE DEFENDANTS

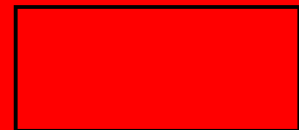


TABLE OF CONTENT

| SR. NO. | PARTICULARS | PAGE NO. |
|---------|--|----------|
| 1. | INDEX OF AUTHORITIES | 3-7 |
| 2. | STATEMENT OF JURISDICTION | 8 |
| 3. | STATEMENT OF FACTS | 9 |
| 4. | STATEMENT OF ISSUES | 10 |
| 5. | SUMMARY OF ARGUMENTS | 11 |
| 6. | ARGUMENTS ADVANCED | 12-21 |
| ISSUE 1 | WHETHER THE PETITION UNDER ARTICLE 226 IS MAINTAINABLE? | 12-13 |
| ISSUE 2 | WHETHER THE STATE WAS PERFORMING A SOVEREIGN FUNCTION? | 14-15 |
| ISSUE 3 | WHETHER THERE WAS NEGLIGENCE ON PART OF HEALTHONE? | 16-19 |
| ISSUE 4 | WHETHER THE STATE WAS LIABLE FOR NEGLIGENCE? | 20-21 |
| 7. | PRAYER | 22 |

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

INDEX OF AUTHORITIES

1. TABLE OF CASES

| SR. NO. | NAME OF THE CASES AND ITS RELEVANT CITATIONS | PAGE NO. |
|--------------------|---|---------------------|
| 1. | <i>Whirlpool Corporation v. Registrar of Trademarks, Mumbai [1998] 8 SCC 1</i> | 12 |
| 2. | <i>Harbanslal Sahnia v. Indian Oil Corpn. Ltd [2003] 2 SCC 107</i> | 13 |
| 3. | <i>Shrikant v. Vasant Rao [2006] 2 SCC 682</i> | 14 |
| 4. | <i>Common Cause v. Union of India [2015] 7 SCC 1</i> | 14 |
| 5. | <i>Peninsular and Oriental Steam Navigation Co. v. Secretary of State for India [1868-69] 5 Bom. H. C. R. 1</i> | 14 |
| 6. | <i>MCD v. Subhagwanti [1966] 3 SCR 649</i> | 16 |
| 7. | <i>State of Maharashtra v. Kanchanmala Vijaysing Shirke [1995] 5 SCC 659</i> | 17 |
| 8. | <i>State of Punjab v. Shiv Ram [2005] 7 SCC 1</i> | 20 |
| 9. | <i>Uma Prasad v. the state of Jharkhand [2014] SCC OnLine Jhar 2835</i> | 20 |

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

2. STATUTES REFERRED

| SR.NO. | STATUTES REFERRED | CITED ON PAGE NO. |
|--------|-------------------------------|-------------------|
| 1. | CODE OF CIVIL PROCEDURE, 1908 | <i>PASSIM</i> |
| 2. | CONSTITUTION OF INDIA, 1950 | <i>PASSIM</i> |
| 3. | DISASTER MANAGEMENT ACT, 2005 | <i>PASSIM</i> |
| 4. | EPIDEMIC DISEASES ACT, 1897 | <i>PASSIM</i> |

3. TREATISES, BOOKS, REPORTS AND DIGESTS

| SR.NO. | NAME OF THE TREATISE, BOOK, REPORT AND DIGESTS WITH THE AUTHOR OR PUBLISHER |
|--------|--|
| 1. | Ratanlal & Dhirajlal, The Law of Torts, Lexis Nexis, Gurgaon 26 th edition 2010 |
| 2. | P.M. Bakshi, The Constitution of India, Twelfth Edition, Universal Law Publishing Co. Pvt. Ltd. 2013, New Delhi |
| 3. | Dr. R.K. Bangia, Law of Torts, Twenty Third Edition, 2010, Allahabad Law Agency, Mathura Road, Faridabad (Haryana) |

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

4. LAW DICTIONARIES/LEXICONS

| SR.NO. | LAW DICTIONARIES/LEXICONS |
|--------|-------------------------------------|
| 1. | <i>Merriam Webster's Dictionary</i> |
| 2. | <i>Black's Law Dictionary</i> |
| 3. | <i>Wex Definitions Team</i> |

5. IMPORTANT DEFINITIONS

1. **“Plaintiff”** for the purpose of this Memorandum shall stand for **“Mr. Chetri & Ors.”**
2. **“Defendant”** for the purpose of this Memorandum shall stand for **“State and HealthONE”**

6. DYNAMIC LINKS

(OFFICIAL WEBSITES APPROVED BY THE APEX COURT OF UNION OF INDIA)

1. www.manupatra.com
2. www.sconline.com
3. www.judis.nic (Official website of the Supreme Court of India: Unreported Judgments)
4. www.westlawindia.com
5. www.heinonline.com
6. www.livelaw.in

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

7. LIST OF ABBREVIATIONS

| SR.NO. | ABBREVIATIONS | FULL FORM |
|---------------|----------------------|---------------------------------|
| 1. | & | AND |
| 2. | AIR | ALL INDIA REPORTER |
| 3. | ALL | ALLAHABAD |
| 4. | ANR. | AND OTHERS |
| 5. | ART. | ARTICLE |
| 6. | BOM | BOMBAY |
| 7. | CAL | CALCUTTA |
| 8. | CBI | CENTRAL BUREAU OF INVESTIGATION |
| 9. | CL | CLAUSE |
| 10. | ETC. | ET CETERA |
| 11. | HC | HIGH COURT |
| 12. | HON'BLE | HONOURABLE |
| 13. | I.E. | THAT IS |
| 14. | IPC | INDIAN PENAL CODE |
| 15. | JOUR | JOURNAL |
| 16. | JHAR | JHARKHAND |
| 17. | L.R. | LAW REVIEW |
| 18. | LTD | LIMITED |
| 19. | MCD | MUNICIPAL CORPORATION OF DELHI |
| 20. | NO. | NUMBER |

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

| | | |
|-----|--------|-------------------------------|
| 21. | ORS. | OTHERS |
| 22. | P. | PAGE |
| 23. | S. | SECTION |
| 24. | SC | SUPREME COURT |
| 25. | SCBA | SUPREME COURT BAR ASSOCIATION |
| 26. | SCC | SUPREME COURT CASES |
| 27. | SCR | SUPREME COURT REPORTERS |
| 28. | SLR | SERVICE LAW REPORT |
| 29. | SR. | SERIAL NUMBER |
| 30. | Ss. | SUB SECTION |
| 31. | U.O.I. | UNION OF INDIA |
| 32. | U.S. | UNITED STATES |
| 33. | U.K. | UNITED KINGDOM |
| 34. | V. | VERSUS |
| 35. | VOL. | VOLUME |

4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022

STATEMENT OF JURISDICTION

The Defendant humbly submits before the Honourable High Court of Badlapur that by powers vested in it by the virtue of Article 226 of the Constitution of Indus, it has the inherent jurisdiction to hear, adjudicate and dispose the instant matter.

Article 226 of the Constitution of Indus provides that:

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

The present memorandum sets forth the facts, contentions and arguments in the present case.

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

STATEMENT OF FACTS

1. The Union of Indus is a Socialist, Secular, Democratic Republic. Indus witnessed an outbreak of the deadly Coronavirus Disease known as Covid-19; following which the Government imposed a nationwide lockdown. Indus has approximately 45,000 private hospitals and 25,000 thousand public hospitals. Constitution of Indus recognized the Right to Health as an integral part of Right to Life under Article 21 of the Constitution.
2. The Government of Indus decided to set up "Covid Recovery Facilities" to provide medical care to those infected with the novel Coronavirus and set up one such Covid Recovery Facility in Badlapur, one of the States under the Union of Indus. the Government engaged a company called HealthONE which was tasked with ensuring an adequate supply of required medical infrastructures and consumables.
3. Mr. Thupden was a 50-year-old male suffering from type-2 diabetes, was infected with the Covid-19 virus and was eventually shifted to Covid Recovery Facility, Badlapur.
4. Unfortunately, the Covid Recovery Facility at Badlapur ran out of oxygen at midnight of July 7th, 2021; Thupden and seven others admitted to the Covid ward lost their lives due to the lack of oxygen supply.
5. He and seven others instituted a suit against the State and HealthONE before the Badlapur High Court seeking compensation of Rs. 10 crores on the grounds of medical negligence and failure to perform statutory duty by the State.
6. HealthONE has filed its written statement asserting that its role at best was that of a service provider and that liability has to be fastened solely on the Government. The State has contended that there was no negligence on the part of the State.
7. The case is posted for final hearing via video conference.

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

STATEMENT OF ISSUES

***THE DEFENDANTS SUBMIT THE FOLLOWING ISSUES FOR CONSIDERATION IN
THE PRESENT CASE***

ISSUE 1: *WHETHER THE PETITION UNDER ARTICLE 226 IS MAINTAINABLE?*

ISSUE 2: *WHETHER THE STATE WAS PERFORMING A SOVEREIGN FUNCTION?*

ISSUE 3: *WHETHER THERE WAS NEGLIGENCE ON PART OF HEALTHONE?*

ISSUE 4: *WHETHER THE STATE WAS LIABLE FOR NEGLIGENCE?*

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

SUMMARY OF ARGUMENTS

ISSUE 1: WHETHER THE PETITION UNDER ARTICLE 226 IS MAINTAINABLE?

It is respectfully submitted before this Hon'ble court that the petition filed by the Plaintiff is not maintainable. There was no infringement of fundamental right and the State have the defence of Sovereign Function and the Hon'ble Court has no jurisdiction to either consider nor grant compensation in this matter.

ISSUE 2: WHETHER THE STATE WAS PERFORMING A SOVEREIGN FUNCTION?

It is humbly submitted before the Hon'ble Court that, the State of in the present matter was performing a Sovereign Function as the act done by the State was in a good faith for the public and the State have the Sovereign Immunity in the present matter.

ISSUE 3: WHETHER THERE WAS NEGLIGENCE ON PART OF HEALTHONE?

It is humbly submitted that the HealthONE was not liable for the negligence as the HealthONE does not owe duty of care towards the Plaintiff as they were working for the State as an Independent Contractor and HealthONE have the immunity mentioned in the Epidemic Disease Act, 2020 and Disaster Management Act, 2005.

ISSUE 4: WHETHER THE STATE WAS LIABLE FOR NEGLIGENCE?

It is humbly submitted that the State is not liable for negligence. The state has a defence of sovereign immunity as they were doing a sovereign function and the state cannot be held vicariously liable for an act of Independent Contractor.

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

ARGUMENTS ADVANCED

It is humbly submitted that,

1. WHETHER THE PETITION UNDER ARTICLE 226 IS MAINTAINABLE?

It is respectfully submitted before this Hon'ble court that the petition filed by the Plaintiff is not maintainable. There was no infringement of fundamental right and the State have the defence of Sovereign Function. The Defendant, being aware of the above, has approached this court seeking relief.

1.1. The Court in the case of *Whirlpool Corporation v. Registrar of Trademarks, Mumbai*¹, held that "Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

¹ Whirlpool Corporation v. Registrar of Trademarks, Mumbai [1998] 8 SCC 1

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

1.2. In the present matter, learned counsel for the petitioners came in ambit of infringement of fundamental rights. Hence the petition must not be entertained by the Hon'ble High Court of Badlapur.

1.3. In the case of *Harbanslal Sahnia v. Indian Oil Corpn. Ltd*², the court held that “In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.” In the present matter, none of the condition is fulfilled. Hence, the petition should not be entertained by the Hon'ble High Court.

Therefore, it is humbly submitted that this petition under Article 226 is not maintainable in the Hon'ble High Court of Badlapur and the Hon'ble Court has no jurisdiction to either consider nor grant compensation in this matter.

² Harbanslal Sahnia v. Indian Oil Corpn. Ltd [2003] 2 SCC 107

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

2. WHETHER THE STATE WAS PERFORMING A SOVEREIGN FUNCTION?

It is humbly submitted before the Hon'ble Court that, the State of in the present matter was performing a Sovereign Function as there was a situation of pandemic and the State did its best to curb it. The act done by the State was in a good faith for the public. The Defendant would like to submit the following arguments for affirming the same.

Article 12³

It defines the term 'state' it says that-Unless the context otherwise requires the term 'state' includes the following – 1) The Government and Parliament of India that is Executive and Legislature of the Union. 2) The Government and Legislature of each state.

2.1 Sovereign Function

2.1.1. In case of *Common Cause v. Union of India*⁴, it was held that “the judiciary, executive and legislature are integral part of the “State” within the meaning of “**Article 12**” of the Constitution and their function come under the Sovereign Function.” Since the function of the State came under the ambit of Sovereign Function, the State was performing the Sovereign Function.

2.1.2. The Court in the case of *Peninsular and Oriental Steam Navigation Co. v. Secretary of State for India*⁵, held that “the Secretary of the State will not be liable for its sovereign functions and would be liable for only the commercial functions.” In the present case, although the plaintiff was paying for the oxygen but the commercial function was not with the state. The State was just fulfilling its duties towards the plaintiff. Hence the function of the State was under the Sovereign Function.

³ Shrikant v. Vasant [2006] 2 SCC 682

⁴ Common Cause v. Union of India [2015] 7 SCC 1

⁵ Peninsular and Oriental Steam Navigation Co. v. Secretary of State for India [1868-69] 5 Bom. H. C. R. 1

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

2.1.3. The situation arises because of the pandemic and these circumstances were unforeseeable.

Therefore, it is humbly submitted that the State was performing a Sovereign Function and the State have the Sovereign Immunity in the present matter.

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

3. WHETHER THERE WAS NEGLIGENCE ON PART OF HEALTHONE?

It is humbly submitted that the HealthONE was not liable for the negligence as the HealthONE does not owe duty of care towards the Plaintiff as they are working for the government as an Independent Contractor. Epidemic Disease Act, 2020 and Disaster Management Act, 2005 provides immunity to HealthONE from any suit.

3.1. HealthONE does not owe duty of care towards the plaintiff.

It is humbly submitted that the HealthONE does not owe any duty of care towards the Plaintiff as they were working for the Government as an Independent Contractor and they were not in direct contact with the Plaintiff.

3.1.1 In the case of *Municipal Corporation of Delhi v. Subhagwanti*⁶, A very old clock tower situated right in the middle of a crowded area of Chandni Chowk suddenly collapsed thereby causing the death of many people. The clock tower was 80 years old although the normal life span of the clock tower should have been 40-45 years. The court held that “The clock tower was under the control of The Municipal Corporation of Delhi and they had a duty of care towards the citizens. By ignoring to repair the clock tower, they had breached their duty of care toward the public and were thereby liable.” In the present matter, as stated in the factsheet HealthONE has approached the government to place the order for the oxygen and the Covid Care Facility was not under their control.

3.1.2. Hence, HealthONE does not have any duty of care towards the Plaintiff.

⁶ MCD v. Subhagwanti [1966] 3 SCR 649

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

3.2. If there was any wrong occurred then the HealthONE cannot be held liable as they are Independent Contractor.

It is humbly submitted that the HealthONE will not be liable for any wrong if occurred since they were working for the State as an Independent Contractor. HealthONE does not have any duty of care towards the Plaintiffs and hence, cannot be liable for any wrong if occurred in the present matter.

3.2.1. In the case of *State of Maharashtra v. Kanchanmala Vijaysing Shirke*⁷, it was held that “It is the rule that an employer, though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. In some case, it can be found that an employee was doing an authorised act in an unauthorised but not a prohibited way.” Similarly in the present matter, if there is some wrong occurred then the employer i.e the State will be liable not the HealthONE.

3.3 Epidemic Disease Act, 2020⁸

3.3.1. **Section 4** of the Act states that-

Protection to persons acting under Act - No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

3.4 Disaster Management Act, 2005⁹

3.4.1. **Section 73** of the Act states that-

Action taken in good faith- No suit or prosecution or other proceeding shall lie in any court against the Central Government or the National Authority or the State Government or the State Authority or the District Authority or local authority or any officer or employee of the Central Government or the National Authority or the State Government or the State Authority or the

⁷ State of Maharashtra v. Kanchanmala Vijaysing Shirke [1995] 5 SCC 659

⁸ Epidemic Disease Act [2020]

⁹ Disaster Management Act [2005]

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

District Authority or local authority or any person working for on behalf of such Government or authority in respect of any work done or purported to have been done or intended to be done in good faith by such authority or Government or such officer or employee or such person under the provisions of this Act or the rules or regulations made thereunder.

3.4.2. **Section 74** of the Act states that-

Immunity from legal process- Officers and employees of the Central Government, National Authority, National Executive Committee, State Government, State Authority, State Executive Committee or District Authority shall be immune from legal process in regard to any warning in respect of any impending disaster communicated or disseminated by them in their official capacity or any action taken or direction issued by them in pursuance of such communication or dissemination.

Therefore, it is humbly submitted that the HealthONE is not liable for the negligence as they were just working for the government alone and HealthONE have the immunity mentioned in the Epidemic Disease Act, 2020 and Disaster Management Act, 2005.

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

4. WHETHER THE STATE WAS LIABLE FOR NEGLIGENCE?

It is humbly submitted that the State is not liable for negligence. The state has a defence of sovereign immunity as they were doing a sovereign function and the state cannot be held vicariously liable for an act of an Independent Contractor. Epidemic Disease Act, 2020 and Disaster Management Act, 2005 provides immunity to the State from any suit or proceedings.

4.1 In the case of *State of Punjab v. Shiv Ram*¹⁰, the court held that “Unless the primary liability is established, vicarious liability on the State cannot be imposed. In the present case, the vicarious liability of the State is not denied if only its employee doctor is found to have performed the surgery negligently.” Similarly in the present matter, no primary liability of the state has been established and without primary liability state cannot be held liable for vicarious liability.

4.2 In the case of *Uma Prasad v. the State of Jharkhand*¹¹, the court held that “The decision can be justified on the basis that the act which gave rise "to the claim for damages had been done by" a public servant who was authorized by a statute to exercise his powers, and the discharge of the said function can be referred to the delegation of the sovereign power of the State, and as such the act which gave rise to the action, could not validly sustain a claim for damages against the State.” In the present matter, HealthONE was authorized by the State to exercise his powers. Hence the act can be referred as the sovereign power of the State.

4.3 According to *Section 4 of Epidemic Disease Act, 2020*, which states that, “No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be

¹⁰ State of Punjab v. Shiv Ram [2005] 7 SCC 1

¹¹ Uma Prasad v. the state of Jharkhand [2014] SCC OnLine Jhar 2835

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

done under this Act.” The act done by the state was done in a good faith. Hence, no suit can be initiated against the State.

Therefore, it is humbly submitted that the State is not liable for negligence as they have a sovereign immunity and there is no primary liability to establish the vicarious liability on the State.

**4th SURANA & SURANA AND RAMAIAH COLLEGE OF LAW NATIONAL TORT
LAW MOOT COURT COMPETITION, 2022**

PRAYER

It is humbly submitted that, in the light of the issues raised, arguments advanced and authorities cited it is most humbly prayed and implored before the Hon'ble Court, that it may be graciously be pleased to adjudge and declare that:

1. The State and HealthONE are not liable for Negligence.
2. The compensation of Rs. 10 crores should not be granted to the Plaintiffs.

And pass any other such order(s) in favour of the Defendants and against the Plaintiff as may be deemed fit and proper by this Hon'ble Court in the interest of Justice and Equity. For this act of kindness, the Defendant shall duty bound forever pray.

Respectfully submitted,

Sd/-

(Counsel for the Defendants)

