



सत्यमेव जयते

लोक आयुक्त आणि उप लोक आयुक्त

महाराष्ट्र राज्य, यांचे कार्यालय

नवीन प्रशासन भवन

१ ला मजला, मादाम कामा रोड

मंत्रालयासमोर, मुंबई ४०० ०३२

फॅक्स : २२०२ ४५ ४०

लोक आयुक्त विभाग

दूरध्वनी क्र. : २२८३५६००

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उप लोक आयुक्त विभाग

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दिनांक :

17 MAR 2022

क्र. लोआ/कॉम/४१५६/२०१९ (टे-९) 3674 / 2022

प्रति,

श्री. उमेशचंद्र बरकुर

रा,निता अपार्टमेंट १५ ए.

चाफेकर बंधू मार्ग,(पूर्व) मुलुंड,

मुंबई .०८१ ४००

विषय :- आपली तक्रार क्र. लोआ/कॉम/४१५६/ २०१९ (टे-९) बाबत.

महोदय,

विषयांकित तक्रारीच्या संदर्भात मा. लोक आयुक्त यांच्यासमोर दिनांक २२/०२/२०२२ रोजी झालेल्या सुनावणीच्या इतिवृत्ताची प्रत या पत्रासोबत आपल्या माहितीसाठी पाठविण्यात येत असून आपणांस कळविण्यात येते की, सदर सुनावणीच्यावेळी मा. लोक आयुक्त यांनी दिलेल्या आदेशानुसार आपली तक्रार निकाली काढण्यात आली आहे.

सोबत:-वरीलप्रमाणे

आपला विश्वासू

(प्र.प.पाध्ये)

कक्ष अधिकारी

OFFICE OF THE LOKAYUKTA AND UPA-LOKAYUKTA

37/N

Date (1)	Note, Order, Direction or Statement (2)	Next Date & Remarks (3)
	<p>Complaint No.LA/COM/4156/2019 (T-9) Shri Umeshchandra Barkur</p>	
22.02.2022	<p>The complainant has filed a complaint, which was received by this office on 4th November, 2019. The brief facts of the case are that the complainant's wife was admitted in the private hospital and was treated there for 4-5 days and thereafter, shifted to another hospital. Unfortunately, she expired. The complainant, being aggrieved by her death, has approached several authorities. According to him, it is his case that his wife was given a sub-standard drug Rokfos manufactured by Cipla Ltd. and as a result of administration of the said injection, his wife died. This happened sometime in 2014. The complainant initially had filed the complaint against Maruti Nursing Home, Mulund; M/s. Cipla Ltd. and Food & Drugs Administration, Maharashtra State, Mumbai. The written orders were passed by Maharashtra State Commission (Consumer Court). The complainant also approached the competent authority against M/s. Cipla Ltd. and Food & Drugs Administration and certain orders were also passed by the said authority against Cipla Ltd.</p> <p>2. The complainant also has filed a criminal case with the Magistrate Court, Mumbai against the Office of the Food & Drugs Administration, which is pending. The complainant also approached the Lokpal at Delhi, who has pressed to dismiss his application. The complainant, therefore, has filed a SLP in the Apex Court. The contention of the complainant is that though FIR has not been registered against the hospital and Doctors, who have caused medical negligence because of which his wife</p>	

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	<p>died, my predecessor Justice M. L. Tahaliyani had directed the Dean, J.J. Group of Hospitals to constitute an Expert Committee and submit the report. Accordingly, report has now been submitted by Expert Committee constituted by the Dean, Sir J. J. Group of Hospitals, in which it is stated that for want of certain relevant documents, no opinion regarding negligence by the concerned Doctors will be given. The Senior Police Inspector, Navghar Police Station has stated that in absence of the report by J. J. Hospital, FIR cannot be registered against the Doctors. The complainant also filed a complaint against the concerned Doctor, who had administered the injection to his wife, before the Medical Council. The Medical Council, after enquiry, suspended the registration of the said Doctor for a period of three months. Against this order, the complainant has filed an appeal, which is pending before the Appellate Authority of the Medical Council of India.</p>	
	<p>3. After the first hearing was over, the matter was kept for further hearing on 06.01.2022. On the said date, I have asked the complainant, what was the relief, which he was claiming from me. He submitted that he was seeking direction directing Navghar Police Station to file a FIR against the Doctor and others, who are responsible for medical negligence and to direct them to register an offence under Section 304-A of the Indian Penal Code. Secondly, he submitted that I should direct the Metropolitan Magistrate, before whom his case against FDA was pending, to expedite the hearing of the said complaint and decide it. I had given a detailed hearing to the complainant. The complainant appears to be in habit of making allegations against the persons, who are hearing his application, if he finds that</p>	

OFFICE OF THE LOKAYUKTA AND UPA-LOKAYUKTA

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	<p>authority hearing his case doesn't pass any order in his favour. He has made allegations against the Lokpal, Supreme Court of India and other authorities, who have heard his case. It can be seen from his letter dated 12th January, 2022, in which in the first paragraph, he has observed as under</p> <p><i>Latest Position – My last hope for getting FIR registered in police complaint under IPC and follow-up on case filed by Drug Inspector under Drugs & Cosmetics Act, 1940 before Mazgaon Court, Mumbai has been dashed as Lokayukta of Maharashtra refused to take action in both the criminal complaints. Hearing was held on 6th January, 2022. Attached are details of hearings in my reply to the Hon'ble Lokayukta of Maharashtra which will reveal four play here also.</i></p> <p>4. He has reiterated all these allegations in paras 1 to 23. It is not necessary to reproduce those allegations in this order.</p> <p>5. Since the only two reliefs, which were pressed by the complainant viz, firstly the directions should be given to Navghar Police Station to register a FIR and secondly to direct the Metropolitan Magistrate to expedite the hearing of the criminal case filed by him against the FDA and others, I will restrict my order only to that extent. So far as the non-registration of FIR is concerned, I must point out that under the provisions of the Maharashtra Lokayukta and Upa-Lokayuktas Act 1971, Lokayukta doesn't have powers to give direction as given by the Hon'ble High Court under Article 226 of the Constitution of India and under Article 32 and 136 of the</p>	

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	<p>Constitution of India by the Supreme Court of India. Secondly, it is well settled position in law that in view of the judgments of the Hon'ble Supreme Court that the police authorities now cannot directly register a FIR against the Doctor on the ground of medical negligence. The Supreme Court of India has now held that unless the Committee constituted by the Dean of a Government Hospital gives a <i>prima facie</i> opinion that there is medical negligence, FIR cannot be registered. In the present case, my erstwhile Lokayukta Justice M. L. Tahaliyani had directed the Dean, Sir J. J. Group of Hospitals to constitute a Committee of Doctors and to give a report of the said Doctors. The report has been received from the J. J. Hospital and the team of Doctors have categorically held that on account of non-availability of papers particularly the blood reports, they were not in a position to give an opinion that <i>prima facie</i> there was a medical negligence. It must be pointed out that the complainant's wife died in the year 2014. Initially he filed a complaint against Cipla Ltd. and FDA before the competent court and for the first time in 2017, he came out with the case that his wife was died due to medical negligence.</p> <p>6. It is, therefore, not possible for me to give directions to the Police to register FIR of medical negligence against the Doctor, who had treated the complainant's wife. So far as the second grievance is concerned viz., a direction to the Metropolitan Magistrate, who is hearing his criminal case against the FDA and Cipla Ltd., is concerned, I don't have any jurisdiction to give any direction to any court as laid down under the provisions of this Act. Under Section 21 of the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971, Lokayukta has no</p>	

OFFICE OF THE LOKAYUKTA AND UPA-LOKAYUKTA

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	<p>jurisdiction over any court. It is, therefore, not possible to give any direction to the Metropolitan Magistrate to expedite the hearing of the complainant's case.</p> <p>7. Lastly, it must be pointed out that under the provisions of Section 8(1)(b) of the Act, if the complainant has exhausted alternate remedy, which is available to him, by approaching Civil Court, Lokayukta cannot entertain the complaint. In the present case, the complainant has already approached the Hon'ble Apex Court seeking various orders and the said SLP is still pending in the Apex Court. He is also seeking various orders against FDA and Cipla Ltd. before various authorities. It appears from his written statement that he has also approached the Hon'ble High Court. On this ground also, it is not possible to entertain the application of the complainant. The complaint is, therefore, dismissed and disposed of.</p> <p style="text-align: center;"><i>V. M. Kanade</i> (Justice V. M. Kanade) Lokayukta 22.02.2022</p>	
		<i>10/2/22 27/2/22</i>