

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 90 of 2020

With

R/WRIT PETITION (PIL) NO. 91 of 2020

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HITESHKUMAR VITTALBHAI CHAVDA

Versus

SHRI JAGANNATHJI MANDIR TRUST

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Appearance:

MR. AUM M KOTWAL(7320) for Applicant No. 1 in Writ Petition (PIL) No.90 of 2020
MR ANSHIN DESAI, SENIOR ADVOCATE ASSISTED BY MR NANDISH THAKKAR
WITH MR SANAT PANDYA for the Applicant in Writ Petition (PIL) No.91 of 2020
MR KAMAL TRIVEDI, ADVOCATE GENERAL for the Respondent State and
Ahmedabad Municipal Corporation
MS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER WITH MR DM
DEVNANI, ASSISTANT GOVERNMENT PLEADER for the State respondents
MR MITESH AMIN, PUBLIC PROSECUTOR for the Respondent State
for the Opponent(s) No. 1,2,4,5,6,7,8,9

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CORAM:HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 20/06/2020

COMMON ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1. We have heard Shri Aum Kotwal, learned counsel appearing for the petitioner in Writ Petition (PIL) No.90 of 2020, Shri Anshin Desai, learned Senior Counsel assisted by Shri Nandish Thakkar and Shri Sanat Pandya, learned counsel for the petitioner in Writ Petition (PIL) No.91 of 2020, Shri Kamal Trivedi, learned Advocate General along with Ms.Manisha Lavkumar Shah, learned Government Pleader, Shri D.M.Devnani, learned Assistant Government Pleader and Shri Mitesh Amin, learned Public Prosecutor for the State respondents. Shri Trivedi states that he has instructions to appear for the Ahmedabad Municipal Corporation also.

2. By means of these two petitions, apart from the main relief sought, the interim relief sought is for a direction restraining the carrying out of the Rath Yatra organized by Shri Jagannath Mandir Trust impleaded as respondent No.1 in Writ Petition (PIL) No.90 of 2020 and respondent No.5 in Writ Petition (PIL) No.91 of 2020 in the wake of the present pandemic situation of COVID-19 and in particular in relation to city of Ahmedabad which has huge number of infected cases of more than 15,000 and the mortality rate being the highest in the country and the figures having crossed more than 1000. It is also submitted that the Rath Yatra has total passage of 8 to 9 Kilometers one way i.e. total of 16 to 18 Kilometers and it passes through three Containment Zones and one Buffer Containment Zone. Once the procession starts, it would be very difficult to stop the public at large from joining the Rath Yatra. According to the learned counsels, it is estimated that about 6,00,000 to 8,00,000 is the regular gathering of this procession based upon previous years. This would be disastrous if it happens.

3. Shri Desai has further submitted that as per the newspaper reports, the Jagannath Mandir Trust, the organizer of the Rath Yatra had applied on 18.05.2020 to the Ahmedabad Municipal Corporation and to the Police Commissioner, Ahmedabad for granting appropriate permission and for making necessary arrangements so that smooth and safe passage is provided to the Rath Yatra, but till date no decision has been taken on the said request of the Trust either accepting or rejecting the same.

4. Shri Desai has further referred to an order passed by the Supreme Court on 18.06.2020 in Writ Petition (Civil) No.571 of

2020, Odisha Vikash Parishad vs. Union of India and others, whereby the Supreme Court has directed that there shall be no Rath Yatra anywhere in the temple town of Odisha or in any other part of the State this year. It is further directed that there shall be no activities secular or religious associated with the Rath Yatra during this period. The above order is reproduced below :

“Issue notice returnable four weeks.

It is not disputed that the number of people that are likely to gather for the annual Rath Yatra scheduled to be held from 23rd June, 2020, is going to be about 10 to 12 lakhs. The festivities normally continue for a period of 10 to 12 days. Having regard to the danger presented by such a large gathering of people for the Rath Yatra, we consider it appropriate in the interests of public health and safety of citizens who are devotees to restrain the respondents from holding the Rath Yatra this year. Article 25 of the Constitution of India itself confers the right to freely profess and propagate religion subject to health.

“25. Freedom of conscience and free profession, practice and propagation of religion :- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.- In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a

reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

We accordingly direct that there shall be no Rath Yatra anywhere in the temple town of Odisha or in any other part of the State this year.

We further direct that there shall be no activities secular or religious associated with the Rath Yatra during this period.

Order accordingly."

5. Normally this matter would have come up on Monday i.e. 22.06.2020 as per the Board published but upon an urgent note being placed by the learned counsel for the petitioners, the matter has been taken up today at 7:15 p.m. considering the urgency of the matter. According to the learned counsel, in case appropriate orders are not passed today, it would be difficult to control the situation as thousands of people gather from other States to participate in this Rath Yatra. It is also the case of the petitioners that enormous amount is spent in organizing the Rath Yatra and in which thousands of people get involved for the preparation.

6. Shri Kamal Trivedi, learned Advocate General upon instructions stated that it is true that on the application dated 18.05.2020, no decision has been taken either by the Ahmedabad Municipal Corporation or by the Police Commissioner, Ahmedabad. We are astonished on this inaction of the Municipal Commissioner, Ahmedabad Municipal Corporation as also the Police Commissioner, Ahmedabad, as to why no decision was taken and communicated to the organizer well within time, rather than keeping the matter pending till the last date when the Rath Yatra is to be carried

out on 23.06.2020 i.e. just two days away. Maintenance of law and order in the State is in the domain of the Department of Home.

7. We accordingly require the Commissioner, Ahmedabad Municipal Corporation, the Police Commissioner, Ahmedabad as also the Additional Chief Secretary, Department of Home, Government of Gujarat, to file their respective affidavits explaining the reasons and circumstances why the application was not disposed of well within time and keeping the matter looming at large till the end and then compelling the parties to rush to the Court for urgent circulation.

8. The unserved respondents be issued Notice fixing 06.07.2020. All the parties may file their response before the next date fixed in addition to the affidavits required above.

9. In view of the facts and circumstances recorded above as also the order of the Supreme Court, we direct that there shall be no Rath Yatra carried out for this year at Ahmedabad and at any other district in the State of Gujarat. We have extended the relief claimed so that no emergent situation arise in the State of Gujarat. We further direct that there shall be no activities secular or religious associated with the Rath Yatra during this period.

10. Let this matter be listed on 06.07.2020.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

A. B. VAGHELA