

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2020
In R/WRIT PETITION (PIL) NO. 90 of 2020**

With

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 3 of 2020
In R/WRIT PETITION (PIL) NO. 90 of 2020**

With

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 4 of 2020
In R/WRIT PETITION (PIL) NO. 90 of 2020**

With

**CIVIL APPLICATION (FOR RECALL) NO. 5 of 2020
In R/WRIT PETITION (PIL) NO. 90 of 2020**

With

**CIVIL APPLICATION (FOR MODIFICATION OF ORDER) NO. 6 of 2020
In R/WRIT PETITION (PIL) NO. 90 of 2020**

With

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 7 of 2020
In R/WRIT PETITION (PIL) NO. 90 of 2020**

With

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 5 of 2020
In R/WRIT PETITION (PIL) NO. 91 of 2020**

With

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2020
In R/WRIT PETITION (PIL) NO. 91 of 2020**

With

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 3 of 2020
In R/WRIT PETITION (PIL) NO. 91 of 2020**

With

**CIVIL APPLICATION (FOR RECALL) NO. 4 of 2020
In R/WRIT PETITION (PIL) NO. 91 of 2020**

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MAHANT AKHILESHWARDASJI RAMLAKHANDASJI

Versus

STATE OF GUJARAT

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Appearance:

MR ROMIL L KODEKAR for the PETITIONER(s) No.

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the
RESPONDENT(s) No.

MR. AUM M KOTWAL for the RESPONDENT(s) No.

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

Date : 23/06/2020 (2 a.m.)

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

1 We have heard Shri Kamal Trivedi, learned Advocate General and Ms. Manisha L. Shah, learned Government Pleader assisted by Shri Dharmesh Devnani and Ms. Aishvarya Gupta, learned Assistant Government Pleaders, Shri Mitesh Amin, learned Public Prosecutor, learned Shri Anshin Desai, learned Senior Advocate assisted by Shri Nandish Thakkar and Shri Sanat Pandya, and learned advocates Shri Vijay Patel, Shri Nilay Patel, Shri Maunish Pathak, Shri Romil Kodekar, Shri Aum Kotwal,, Shri Hardik Brahmhatt, Shri Vivek Bhamre, Ms. Shivani Rajpurohit and Shri N.K.Paneri.

2 On 20.06.2020 we had passed the following order:

“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.”

Thereafter upon two applications being filed by Hindu Yuva Vahina the same were rejected by an order dated 22.06.2020 around 04 p.m. The order dated 22.06.2020 is reproduced below:

“1. We have heard Shri Vivek Bhamare, learned counsel for the applicant, Shri Anshin Desai, learned Senior Advocate along with learned counsels Shri Aum Kotwal, Shri Nandish Thakkar and Shri Sanat Pandya for the respondents – original petitioners in the respective Civil Applications, 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.

2. These applications have been filed by an NGO, Hindu Yuva Vahini, seeking permission to the applicants to be joined as third party intervener and further to modify the order dated 20.06.2020 to the extent that the authorities allow the Rath Yatra to come out. The relief claimed by these applications being identical the same is reproduced below as stated in one of the applications :

“(A) Your Lordships may kindly be pleased to admit and allow;

(B) Your Lordships may kindly be pleased to permit the applicant to be joined as Third Party Intervener in original Writ Petition (PIL) No.91 of 2020 in the interest of justice;

(C) Your Lordships may kindly be pleased to modify the common order dated 20.06.2020 passed by this Hon’ble Court in Writ Petition (PIL) No.91 of 2020 by directing the authorities to allows Rath Yatra to come out

of the gates of temple by just taking out only 3 holy chariots out of temple campus and have a symbolic yatra with shortest possible route without involvement of anyone from general public;

(D) Any other relief deemed just and proper may please be granted in the interest of justice;”

3. We may record here that the Mahant Dilipdasji of Shri Jagannath Mandir Trust (Jagannath Temple, Ahmedabad) has given a statement before the Press yesterday evening that there will be no traditional Yatra this year and that Mangala Aarti and Pahind ritual would be performed and the Rath (Chariot) will move around the precinct/premises/campus of the Temple as a token of the Yatra (ritualistic) so that the full compliance of the lockdown conditions are complied with and no threat is created to any life or property. The above has been reported in the national daily newspaper “The Times of India”, published from Ahmedabad today i.e. 22.06.2020. The said report is reproduced below :

“Rath Yatra on the temple premises: Mahant

AHMEDABAD: Putting a full stop to ongoing speculations, the Mahant of Jagannathji Temple in Ahmedabad on Sunday announced that there will be no traditional city-wide procession on Ashadhi Bij – June 23.

Mahant Dilipdasji told reporters that the three chariots will make a ritualistic round in the temple premises after which they would be kept in the premises the whole day for devotees. This will be the first time in its history of 143 years that the annual procession of about 18km will not take place in the city. The procession is the second-biggest in India after Puri.

“The decision has been taken keeping in mind the epidemic and people’s safety – the spread has reduced recently but if we can’t control the crowd, the scenario could aggravate,” said the Mahant. The decision came after a high-level meeting with MoS (home) Pradipsinh Jadeja, DGP Shivanand Jha, city police commissioner Ashish Bhatia and city mayor Bijal Patel at the temple premises on Sunday evening.

Earlier, sources had indicated that the temple could take the option of approaching the Supreme Court (SC) against the ruling of the Gujarat high court (HC), staying the procession.

Upon questioning whether Union home minister Amit Shah – who regularly participates in the Mangala Aarti, the first prayers on the day of Rath Yatra – along with Gujarat CM Vijay Rupani and deputy CM Nitin Patel, who perform Pahind ritual of cleaning the chariots’ path, will be part of the events this year, the Mahant said that the invites have been extended. “We are hopeful that they would participate,” he said.

“Mangala aarti and Pahind ritual will take place as usual on Tuesday. Thereafter, the chariots will be brought in and they will make a round in the temple premises,” said Dilipdasji. “We appeal to the citizens not to visit the temple as far as possible to maintain social distancing.”

Meanwhile, the traditional Netrotsav ritual took place at the temple on Sunday where a new flag was fixed atop the temple signifying the return of the deities to the temple, and blindfolds were applied to their eyes. The blindfolds are opened on the day of Rath Yatra. Hundreds participated in the event amid a few complaints of non-maintenance of social distancing.”

4. *It may also be relevant to note that the Trust or the Temple management has not approached this Court which clearly indicates that the order dated 20.06.2020 of this Court has been accepted by them.*

5. *In that view of the matter, these applications by an NGO are wholly untenable and are accordingly rejected.”*

3 In the evening of 22.06.2020 first two applications were received - one filed by Shri Romil Kodekar, learned advocate on behalf of Mahant Akhileshwardasji Ramlakhandasji, the representative of Gopal Lalji Ramji Mandir Moti Salavivad Saraspur Mosad (uncle) of Lord Jagannath and another filed by Shri Nilay Patel on behalf of Krutesh Samir Patel praying for being impleaded as party respondent and permitting the Rath Yatra with shortest possible route. The Office put up a note at about 6:30 p.m. for urgent circulation of the same. Before any orders could be passed on these applications, further applications were received, two filed by Shri Maunish Pathak on behalf of Dwaitin Adwait Dave received by email at 6:50 p.m. and 6:52 p.m., respectively, two applications by Shri Vivek Bhamre on behalf of Hindu Yuva Vahina were received at 7:15 p.m. and 7:17 p.m., respectively in the Registry by email. Another civil application by the State Government was received at 9:35 p.m. in the Registry through email. One application by Shri Hardik G. Brahmhatt on behalf of Shri Jagannath Mandir

Trust, Patan was received at 11:00 p.m. and another application filed by Ms. Shivani Rajpurohit on behalf of Kishansinh Ramsinh Solanki was received at 11:30 p.m. substantially in these applications the relief claimed is for modification of the order passed on 20.06.2020 and to permit the Rath Yatra being carried out as usual or may be with certain conditions to be imposed. The main ground was the order passed by the Supreme Court on 22.06.2020 which was uploaded sometime in the evening relating to the Jagannath Mandir at Puri of Orissa State.

4 This Bench is constituted to hear the aforesaid applications at 00:45 hours on 23.06.2020. The hearing commenced accordingly and concluded at around 02:00 hours.

5 In our order dated 20.06.2020 we had mentioned two grounds for staying the carrying out of the procession of the Rath Yatra. First the condition of Ahmedabad on account of crisis of pandemic of COVID-19 and second was the order passed by the Supreme Court on 18.06.2020 restraining the Rath Yatra at Puri and in the entire State of Orissa.

6 There may not be denial about the order passed by the Supreme Court today, but the situation in Ahmedabad on account of pandemic of COVID-19 cannot be compared with the situation in Puri or in the State of

Orissa. Despite the fact that assurance being given by the State and all other applicants we still do not find any good ground to recall or modify our order dated 20.06.2020. All the Civil Applications are accordingly rejected. We make it clear that on account of paucity of time and the urgency of the order being made available to the parties, we have not dealt with the reasons in detail. We had put this question to the learned counsels for the parties also, but all the learned counsels including the learned Advocate General stated that detailed reasons may not be provided.

7 This order, having been passed after 2 am today, cannot be made available on website of the High Court immediately owing to technical glitch at NIC Delhi level. Hence this order is directed to be sent to each of the participating learned advocates through WhatsApp also in addition to the regular email being sent.

8 This order is also directed to be sent to the print, digital and electronic media through email and WhatsApp.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

P.B.TALREJA