

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU**

**CM No. 3022/2020 in  
WP(C) PIL no. 5/2020**  
(Through Video Conferencing  
in Jammu)

**Court on its Own Motion**

Ms. Monika Kohli, Amicus  
(on Video Conference from her office at  
Jammu)

Mr. Sachin Sharma, Advocate in CM No.  
3022/2020 (seeking intervention)  
(on Video Conference from his office at  
Jammu)

v/s

**Union Territory of Jammu and Kashmir**

.... Respondent(s)

Through:- Mr. D. C. Raina, Advocate General  
with Mr. Aseem Sawhney, AAG (on  
Video Conference from office at Jammu)  
for Govt. of UT of Jammu & Kashmir

**HON'BLE THE CHIEF JUSTICE**

(on Video Conference from residence at Srinagar)

**Coram:**

**HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

(on Video Conference from residence at Srinagar)

**ORDER**  
**14.07.2020**

**CM No. 3022/2020 (filed by Mr. Sachin Sharma, Advocate seeking  
intervention) in WP(C)PIL No. 5/2020**

1. This application has been filed by Mr. Sachin Sharma, Advocate practicing regularly in the Jammu Wing of the High Court of Jammu and Kashmir expressing deep reservation and anxiety about the health and well

being of the yatris and the citizens of Jammu and Kashmir in case Shri Amarnathji Yatra was permitted to be held this year account of current COVID-19 pandemic.

**Contentions of the applicant**

2. The applicant, who has appeared before us in person, has reported that the Shri Amarnathji Yatra for the year 2020 was scheduled to begin on the 23<sup>rd</sup> June 2020 (Skandshasthi) and to continue till 3<sup>rd</sup> August 2020 (Shravan Purnima).

3. The applicant has informed that on account of the current Corona Virus Pandemic, the authorities have taken a decision to commence the Yatra from 21<sup>st</sup> July for the shorter period of 14 days.

4. The applicant has expressed grave concern about the commencement of the Yatra pointing out that on account of the COVID-19 pandemic, no labour is available to facilitate or assist the administration for removal of snow or for making the necessary arrangements. The applicant has cited figures of the COVID-19 infected and those relating to its spread; the mortalities in different countries. On account of lack of preparedness and the apprehended inability of the authorities to deal with the requirements of COVID-19 infection on the Yatra, especially the quarantine and treatment facilities which would be required, a prayer has been made by the applicant that the Yatra be prohibited

**Few words with regard to Yatra – an Annual Hindu Pilgrimage**

5. The Amarnath Temple is one of the 51 Shakti Peethas in India and deeply revered in the Hindu Religion. The applicant has urged that the temple is located in a cave at an altitude of 3888 meters (i.e. 12756 ft) in District

Anantnag in the Union Territory of Jammu and Kashmir at a distance of 141 kms from Srinagar and 361 kms from Jammu. The Shrine is accessed through the town of Pahalgam in District Anantnag. The cave is largely snow covered for greater part of the year except for a short period of the few months in the summer when it is open for pilgrimage.

6. As per the Hindu religious belief, the ice stalagmite in the Shri Amarnathji Cave, which reaches a height of over 130 ft, is worshipped as Shiva Lingam.

7. We are told that the worshippers believe that that Lord Shiva left Nandi, the bull, at Pahalgam (Bail Gaon); at Chandanwari, the Lord released the Moon from his hair (Jata); released his snakes on the banks of Lake Sheshnag and left his son Lord Ganesha at the Mahagunas Parvat (Mahagnesh Mountain). The belief is that at Panjtarni, Lord Shiva left behind the five elements - earth, water, air, fire and the sky. Lord Shiva is said to have performed the Tandava Dance as a symbol of sacrificing the earthly world. It is believed that Lord Shiva entered the Holy Amarnath Cave along with Ma Parvati and explained the secret of life and eternity to her therein.

**Number of pilgrims visiting the shrine**

8. We are informed that the pilgrimage to the Shrine normally commences from 1<sup>st</sup> July and ends on 15<sup>th</sup> August. The reverence accorded to the shrine is manifested from the steep increase in pilgrims from about a mere 12989 in 1989 to over 4 lakh in the year 2007. In 2011, the number of pilgrims who visited the shrine peaked about to 6,34,000.

9. Mr Aseem Sawhney, learned AAG, has placed before us the following details of the last five years with regard to the number of yatris who undertook the yatra as also the length of yatra.

"S.No.	Yatra statistics	2015	2016	2017	2018	2019
1.	Total number of Yatris who had Darshan during entire Yatra.	3,52,771	2,20,490	2,60,003	2,85,006	3,43,587
2.	Number of Yatris who perform Pooja during first 20 days of Yatra.	2,62,358	1,93,472	2,16,555	2,01,582	2,59,889
3.	Number of Yatra days	59	48	40	60	46 (reduced to 33 days in view of Security Advisory issued by Home Deptt.)
4.	Average Darshan per day	5,979	4,594	6,500	4,750	10,412"

The figures of the pilgrims undertaking the Yatra manifest the pressure which must be put on the infrastructure as well as authorities who have to make arrangements for security, medi-care and other related facilities.

**The route of the Yatra and elevation at different points**

10. It is submitted that the Yatra is organized by the Government in collaboration with the Shri Amarnath Shrine Board. Various agencies take up the responsibility of ensuring facilities along the Yatra.

11. There are two routes for reaching the shrine, the northern shorter route which starts from Baltal, passes through Domel, Barari, Sangam is about 16 km long, more difficult to climb on account of the steep gradient and narrowness of the track and is along the river Amravati and the Amarnath Valley.

12. The other route/journey which commences from Pahalgam, involves trekking over a distance of 23 kms and takes the pilgrims through Pahalgam, Chandanwari, Lake Sheshnag, Mahaguna Parbat and Panjtarni. Though longer, this route is perceived as a little easier because the climb is not as steep or rough as the other route, and the track wider.

13. The respondents inform us that the following arrangements are required for the Yatra:

“4. Arrangements for Yatra :-

- i. *Advance Registration of Yatris is made through Banks, SASB and on-line mode. In addition ON-spot facility of registration is also provided.*
- ii. *Duly permitted Langar, shops, tents, pre-fabricated huts, ponies, palkis are made available to Yatris. In addition baths, toilets, Cloak rooms, parking are also made available. Helicopter services are also provided. At every two Kms medical facilities are established by the H&ME Deptt. of UT and Union Govt. MRT/ SDRF/NDRF are deployed for rescuing and helping the Yatris en-route. SASB ensures telicom connectivity in the Yatra area through BSNL. Other departments of UT like PDD, Jal Shakti, Food and Supply, Tourism, Fir and emergency services and other concerned Departments make arrangements for the Yatra.*
- iii. *SASB provides accident insurance to service providers, Yatris and Ponies.”*

14. The applicant contends that these arrangements have not been made this year.

15. The applicant before us has detailed that keeping in view the arduous nature of the pilgrimage route and that pilgrims are allowed to the yatra route

only after compulsory health check-up and are required to bring a medical certificate.

16. We have also been provided the following **elevations of the various points en-route Holy cave from the Base Camps**. This elevation gives an indication of what is entailed in not only the Yatra but the effort which is required in making the arrangements for it in difficult terrain at high altitudes.

***“Baltal Axis***

- i. Baltal – 9,400 Feet***
- ii. Domel- 9,748 Feet***
- iii. Railpathri – 10,700 Feet***
- iv. Brarimarg – 13, 100 Feet***
- v. Sangam – 11,800 Feet***
- vi. Panjtarni – 12,000 Feet***
- vii. Holy Cave – 13,500 Feet***

***Pahalgam Axis:***

- i/ Nunwan – 7,052 – Feet***
- ii/ Chandanwari – 9,500 Feet***
- iii/ Sheshnag – 12,200 Feet***
- iv/ Mahagunas Top – 14,800 Feet”***

17. It is submitted by Mr Aseem Sawhney, that the Yatra 2020 has been proposed from Baltal route only as the arrangements on Pahalgam route could not be completed because of Covid-19 pandemic.

18. So far as the details of the en-route stoppages on Baltal Axis where night stay facilities are available are concerned, the respondents inform as follows:

- “i) Baltal Base Camp***
- ii) Panjtarni***
- iii) Lower Holy Cave***
- iii) Holy cave***

***(In addition to above, helipads is situated at Neelgrath, Lower Holy Cave and Panjtarni for Yatris and free Langar facilities are available***

*at aforesaid camps and at Domel, Railpathri, Brarimarg and Sangam.)”*

19. The pilgrimage from either side is not easy and requires extensive facilitation by both the State and Non-State Organizations. While the State is engaged in ensuring proper passage, security, medical facilities, setting up of points of stay, lodging, toilets etc, it is also responsible for ensuring continuous supply of power and telecommunication facilities at or near the Shrine.

20. It is submitted that in the past, it is the Non-State Organizations which have been taking up the responsibility of making the extensive arrangements for the food supply, resting tents, etc for the yatris. Mr Sharma submits that without the contribution of these NGOs, the Yatra would be extremely difficult to organise.

**Security Concerns**

21. The Yatra unfortunately has also been at the receiving end of terrorist threats in the 1990s and pilgrims have suffered violence on 2<sup>nd</sup> August 2000, 20<sup>th</sup> July 2001, 30<sup>th</sup> July 2002, 6<sup>th</sup> August 2002, 10<sup>th</sup> July 2017 at the hands of the militant organizations. In August 2019, the Yatra was suspended by the authorities on account of apprehension of violence.

22. In the recent past as well, the District Anantnag, where the Yatra is located, has been in the news on account of encounters involved killing of terrorists.

23. As a result of the threat perception, the Government agencies are compelled to make extensive arrangements to ensure the safety and security of the yatris.



24. The arrangements thus include extensive and elaborate security by the Indian Army, the Paramilitary Forces-Central Armed Police Forces including the Border Security Force as well as the Jammu and Kashmir Police, not only along the Yatra route, but provision of security to the yatris from the moment they enter the Union Territory of Jammu and Kashmir by any mode.

25. It would appear that thousands of Army and BSF officers and jawans as well as Jammu & Kashmir police personal are deputed on Yatra duties.

**Transportation**

26. In the application, the applicant has informed that the State Road Transportation Corporation as well as private operators provide bus services from Jammu to Pahalgam and Baltal.

27. So far as undertaking the pilgrimage is concerned, apart from pilgrims making the journey on foot, facilities in the nature of palkis, horses and mules are also available to enable pilgrims to complete the pilgrimage.

28. Additionally, private helicopters (private operators) services are available from the base camp at Baltal to Panjtarni which is a distance of 6 kms from the cave. The health department of the Govt is responsible for setting up medical camp all along the route at the Yatra.

**The Yatra is the only source of livelihood for a section of the population**

29. It is reported that the Yatra is a very important livelihood option for the Bakkerwal-Gujjar community which provides porters/pithus, palkis, horses and mules for carrying the pilgrims, their food and belongings.

30. Annexure R1 to the Status Report dated 1<sup>0th</sup> July, 2020 filed by the respondents refers to **1200 ponies/ponywallas registered** by the Department of



*Animal and Sheep Husbandry and that the Labour Department has registered 550 Palkiwallas/Dandiwallas, Pithoos. It is reported that the members of this community serve the Yatris and the Yatra is their only source of annual income.*

**Status report dated 10<sup>th</sup> July 2020 filed by respondents**

31. We had issued notice to the respondents who have filed a Status Report dated 10<sup>th</sup> July 2020. For expediency, we extract the relevant submissions in the status report:

*“4. That in the UT of Jammu and Kashmir, **Government** has issued various orders to curb Covid 19 including **restrictive movements in red zones** and other incidental measures. **The temples, other religious places, spiritual centres and all places where there is possibility of large congregations are still not allowed to open. Even the Holy Shrine of Shri Mata Vaishno Devi at Katra is also not open for the pilgrims at present.***

5. That however in view of the prevailing situation due to Covid 19, **Shri Amarnathji Yatra** can be permitted in a restrictive manner and the same is **under consideration of the Government** for which a meeting of the Sub Committee constituted by the Hon’ble Supreme Court in Writ Petition (Civil) 284/2012 was held under the chairmanship of the Chief Secretary Jammu and Kashmir to assess the preparation for the Yatra for the year 2020. The minutes of the meeting dated 3.7.2020 are attached as ANNEXURE R1 for the kind perusal of the Hon’ble Court.

6. That while reviewing the preparations for Shri Amarnathji Yatra 2020, it was observed that in view of the COVID-19 pandemic, the **State Executive Committee** constituted under the **Disaster Management Act** has issued **SOPs** which, inter alia, prescribe **100% RTPCR test for all persons travelling into**

J&K. All entrants into J&K will have to be sampled, tested and quarantined till they are reported to be negative. The camping facilities earlier utilized for Yatris, especially at entry points are currently being utilized as quarantine centres. It was emphasised in the meeting that SoPs for testing of persons entering J&K shall apply to Yatris as well. However, it was observed that social distancing norms would further strain these holding capacities. It was deliberated that keeping in view these circumstances, the Yatra this year, would have to be undertaken in a restricted manner, so that the SoPs for COVID-19 are strictly adhered to during the conduct of the Yatra.

32. It is noteworthy that no details have been provided as to how the above **quarantine** and **social distancing** would be maintained on the Yatra.

33. So far as provision of **healthcare** is concerned, the respondents state thus:

7. That during the meeting health care issues and requirement of additional arrangements to be made during yatra were also deliberated, keeping in view the present Coronavirus pandemic situation. It was informed that adequate stock of drugs, consumable items, sleeping bags, besides PPE kits and masks are being made available to the doctors and paramedical staff being deployed for Yatra duty. It was apprised that two base Hospitals are also being established along Baltal route. However, a serious concern was expressed about the stress in the medical system because of the Yatra as 9 out of 10 Kashmir districts are Red and the entire medical system is fully stretched in handling the challenge. No doctors would be available from outside J&K for the Yatra this year due to pandemic . Isolation facilities will have to be created to ensure any COVID-19 challenges are addressed on emergent basis at the Holy Cave and the Base Camp itself, which is very

**challenging. Also, COVID and high altitude sickness symptoms are quite similar and all cases will have to be treated as deemed COVID positive in case of an emergency. Further, special arrangements will have to be made for handling dead bodies.”**

34. The respondents are clearly unable to provide the requisite health care, no means to isolate suspected/ infected Covid-19 cases along the yatra or at the cave; certainly have no means of evacuation from the yatra and no method of removal of a dead body i.e., a COVID mortality in a controlled environment from the Yatra route.

35. Our attention is drawn to the seriousness of the situation on account of the pandemic in the UT of J&K by the following disclosure in the Status Report:

“8. That it is equally pertinent to place on record, the data and statistical record of the UT of J&K with regard to positive cases of COVID 19 and the **entire administrative machinery with its health care personnel are involved in the fight against the deadly COVID 19 infection.** KASHMIR

*The district wise data of the positive cases from 1.6.2020 to 6.7.2020 is attached herewith as ANNEXURE R2 for the kind perusal of the Hon’ble Court.”*

36. An extremely grim state of affairs and the adverse impact on the available healthcare system if part of the limited infrastructure was diverted for the purposes of the Yatra when it is stated as follows:

“12. That it is not denied that the **situation in the UT is grim and the entire manpower, healthcare, professionals, security force personnel are at the moment dedicatedly fighting the COVID 19 situation and the annual yatra, therefore is to curtailed both duration wise and pilgrim wise, however the**

*Hon'ble Court may pass orders in the interest of justice, safety of human lives and healthcare of the people at large."*

**Performance of rituals and participation of devotees**

37. Certain significant steps taken by the authorities to ensure performance of all rituals and enabling darshans and participation of the devotees, though virtually, stand taken. The respondents have informed as follows:

*"9. That it is needless to submit, that for the healthcare as well for meeting the challenge posed by COVID 19 the answering respondents are utilizing the health care facilities the limited infrastructure as well as health care professionals including the doctors, paramedics etc. But any diversion of resources to the Yatra will adversely affect the medical work in COVID affected areas.*

*10. That the Shree Amarnath Shrine Board has made adequate arrangements for carrying on the regular religious rituals at the Shrine and provision has been made for ensuring that supplies reach the priests. Their security has also been provided for.*

*11. That to tackle the situation and to facilitate the "darshan" of the pilgrims this year the Government has started a live telecast of the Baba Amarnathji Arti on DD National and live streaming on YOUTUBE channel due to the COVID 19 pandemic, so that the devotees can have the darshan of their beloved Lord Shiva without having to personally come and avoid the yatra. The telecast has provided solace to the yearning of the faith of the devotees who are not getting to quench this desire to have darshan of Bhole Baba by streaming on the internet and the TV."*

*(Emphasis by us)*

38. The respondents have also placed before us minutes of the meeting held under the Chairmanship of the Chief Secretary held on 3<sup>rd</sup> of July 2020 of the Sub Committee appointed by Hon'ble Supreme Court in Writ Petition (Civil) No.284/2012. A perusal of these minutes would show that the arrangements are yet to be put in place and these include essentials as repairs of roads, set up of transit camps; establishment/repair of shelter sheds at various locations along the Yatra tracks.

**Submissions of the applicant and Amicus Curiae**

39. Ms Monica Kohli, Id Amicus Curiae urges that efforts of the authorities to make arrangements for the Yatra must have been impeded on account of the COVID-19 containment and the movement of the labour out of the Union Territory.

40. Both Ms. Kohli and Mr. Sachin Sharma express grave apprehension that preparations for the Yatra cannot have been completed. It is submitted that permitting the same, given the pandemic situation, the physical condition of the route and in the circumstances brought out in the Status Report as well as the enclosed minutes, would lead to devastating consequences.

41. Counsels submit that the overburdened fragile state of the healthcare facilities in the Union Territory would not be able to cope with the additional pressures on account of the Yatris coming into Jammu & Kashmir.

**Discussion and observations**

42. Our attention has been drawn to order dated 22<sup>nd</sup> June 2020 passed by the Supreme Court of India in *Writ Petition(s) (Civil) No. 571/2020 titled Odisha Vikash Parishad v. Union of India* with regard to the Annual Yatra conducted in Odisha. We must be cognizant of the stark difference in the two

Yatras. Whereas the Yatra at Puri is in the heart of a main city, the Shri Amarnathji Yatra is over extremely difficult terrain, undertaken on a rough and narrow hilly track at extremely high altitudes. The orders of the Supreme Court manifest that though the Lord Jagannath Yatra was permitted, however members of the public were not allowed to participate and declaration of strict curfew in the town was directed. This Yatra was a single day event. As against this, the Shri Amarnathji Yatra envisages continuous visits by yatris from all over the country to the Anantnag District over a period of time. The other pressures on account of security, fragility of the facilities, vulnerabilities on account of geographical and topography features did not arise in Odisha.

43. The Government of Union Territory of Jammu and Kashmir has itself elaborately explained the several limitations on the existing medical system to cope with the pressure which the conduct of the Yatra would impose on the available facilities.

44. Even if adequate facilities could be created, the Government has expressed the huge challenge posed for isolation of the suspected COVID-19 patients as well as those found infected on the route of Yatra. Not only isolation facilities but also diagnostic facilities would be required to be set up all along the route.

45. Movement on the Yatra track even without the pandemic situation is a challenge at any point of time. It challenges even the able bodied and the healthy. It appears that it would be impossible to deal with infection on the track. The respondents have themselves explained the difficulties which the mortalities on the route would provide.



46. Our attention is drawn to the threat to the health and lives of the defence forces, security personnel and police on account of exposure to the reasonable possibility of COVID-19 infected persons who may join the Yatra, perhaps unaware that they are infected as they remain asymptomatic.

47. The status report on record shows that no significant medical facilities are available in District Anantnag at any point of time. Certainly, the District does not have the capacity to deal with the added pressures on account of the deluge of yatris from different parts of the country.

48. The status report dated 10<sup>th</sup> July, 2020, has clearly stated in para 12 that the situation in the Union Territory is grim and the annual Yatra requires to be curtailed both in number and duration in the interest of justice, safety of human lives and healthcare of the human life at large.

49. The Supreme Court had an occasion to consider the importance of right to the health, an essential part of the right to life under Article 21, in the context of the right to religion guaranteed under Article 25 of the Constitution of India while considering a prohibition on fire crackers in the judgment reported at *(2019) 13 SCC 523, Arjun Gopal v. Union of India* and had held as follows:

*35) It may be stressed that in Vellore Citizens' Welfare Forum case, this Court had banned the tanneries when it was found that they were causing immense damage to the environment. Thus, environment protection, which is a facet of Article 21, was given supremacy over the right to carry on business enshrined in Article 19(1)(g). We state at the cost of repetition that right of health, which is recognised as a facet of Article 21 of the Constitution and, therefore, is a fundamental right, assumes greater importance. It is not only the petitioners and other applicants who have intervened in support of the petitioners but the issue involves millions of persons living in Delhi and NCR, whose right to health is at stake. However, for the time being, without going into this debate in greater details, our endeavour is to strive at balancing of two rights,*



namely, right of the petitioners under [Article 21](#) and right of the manufacturers and traders under [Article 19\(1\)\(g\)](#) of the Constitution.

36) Almost for the same reasons, argument predicated on [Article 25](#) of the Constitution need not detain us. We proceed on the assumption that burning of crackers during Diwali is a part of religious practice. The question is as to whether it should be allowed to be continued in the present form without any regulatory measures, as a part of religious practice, even if it is proving to be a serious health hazard. We feel that [Article 25](#) is subject to [Article 21](#) and if a particular religious practice is threatening the health and lives of people, such practice is not entitled to protection under [Article 25](#). In any case, balancing can be done here as well by allowing the practice subject to those conditions which ensure nil or negligible effect on health.

(Emphasis added)

50. In **para-6** of the status report, the respondents have disclosed that the **camping facilities**, which were being used for accommodating the yatris earlier especially at the entry point, **are being used as quarantine centres**. So clearly, the respondents do not have any residential facilities for the yatris and certainly no facilities for quarantining the yatris who have mandatorily to be quarantined in terms of disclosure made in para-6 of the status report.

51. Mr Sachin Sharma, has informed us that various yatras in different parts of India on account of Covid-19 have been suspended which *inter alia* including the following:

- (i) Kaweriya Mela/Yatra.
- (ii) Kinar Kailash Yatra
- (iii) Lal Bogcha Mahav Utsav.
- (iv) Sh. Jagar Nath Puri Yatra held once in 12 years was curtailed and held under curfew in the city.

52. We have been informed in para 4 of the status report dated 10<sup>th</sup> July, 2020, that the Government of the Union Territory of Jammu & Kashmir has

issued orders restricting movements in the red zones; that temples, other religious places and spiritual centers are still not allowed to open. Even the Shri Mata Vaishno Devi Shrine at Katra is not open to the pilgrims.

53. It is important to note that while this application was pending before us, a writ petition under Article 32 of the Constitution of India being ***Writ Petition (Civil) No.623/2020 tilted Shri Amarnath Barfani Langars Organisation (Regd.) & anr. v. Union of India & Ors***, was filed before the **Supreme Court of India** praying for issuance of a “*writ of mandamus directing the respondents to restrict access to the general public, devotees and pilgrims to the annual pilgrimage for 2020 in view of the outbreak of Covid-19. The petitioners seeks a direction that arrangements be made for “live darshan” at the shrine through the internet and electronic media.*”

54. By its order dated **13<sup>th</sup> July, 2020**, the **Supreme Court of India** has refused to entertain the petition or to exercise jurisdiction holding that the power to take a decision as to whether the pilgrimage should take place or not lay with the executive arm of the State observing as under:

***“4.xxxxxxxxxxThe duty of the court is to step in where (i) the decision making process is flawed by a failure to observe statutory or constitutional requirements; or (ii) where a decision is contrary to law; or (iii) the failure to take a decision results in a breach of a statutory duty or a fundamental right. Once a decision is taken, its validity can be tested on procedural and substantive grounds including proportionality and manifest arbitrariness. The power to take a decision on whether a pilgrimage should take place in a given situation lies with the executive arm of the State.”***

***(Emphasis by us)***

55. It was also pointed out by the Supreme Court that the precedent relied upon by the petitioners being the order dated 22<sup>nd</sup> June, 2020 in *Odisha Vikash Parishad v. Union of India and others, Writ Petition (Civil) No.5/2020* had “turned upon the view which was taken by the administration of the exigencies of the situation and on whether the religious congregation arising out of the procession at Puri could proceed in a safe and orderly manner.”

56. In this view of the matter, the court in para-8 held that the recourse which had been taken to Article 32 of the Constitution, was inappropriate and that the issue as to whether the Amarnathji Yatra 2020 should or should not be held must be left within the competence of the local administration. The writ petition was dismissed by the Supreme Court holding as follows:

*“8. In the present case, the recourse which has been taken to the jurisdiction under Article 32 of the Constitution is inappropriate. The issue as to whether the Amarnath Yatra 2020 should or should not be held is a matter must be left to the competence of the local administration. Any decision that is arrived at has to be based on law and on relevant statutory provisions holding the field. Entertaining a writ petition under Article 32 at this stage would necessarily involve this Court taking over an executive function of oversight over the local administration. We decline to exercise the jurisdiction under Article 32 to take over these powers under the rubric of judicial review. The principle of separation of powers requires that administrative decisions must be taken where they are entrusted, namely by the executive arm of the state. The court will step in where the parameters for judicial review, as explained*

*earlier, arise. The petitioners are at liberty to provide such inputs as they may be advised to furnish having regard to their experience of assisting in the pilgrimage in the past.”*

*(Emphasis by us)*

57. We are bound by the parameters of the jurisdiction laid down by the Supreme Court.

58. We find that in para 5 of the Status Report dated 10<sup>th</sup> July, 2020, the respondents have stated that conduct of the Shri Amarnath Yatra is under consideration of the Government.

59. As noted above, the official respondents have clearly placed before this Court the lack of preparedness and the drastic consequences which would result to the efforts of the respondents to address the Covid-19 healthcare issues in the Union Territory.

60. Ms Monika Kohli, has submitted before us an order dated 22<sup>nd</sup> April, 2020 passed by the Shri Amarnath Shrine Board cancelling the Yatra which was subsequently recalled. It appears that the Yatra was cancelled because there were 77 hot spots/ red zones in Kashmir along with the route through which the yatra passes. Ms Monika submits that as per the newspaper reports, langars, camp establishments; medical facilities had not been set up and even snow clearance not complete.

61. We find that as per the status report dated 10<sup>th</sup> July, 2020 also, the matter of making arrangements has not moved so much.

62. According to Mr Sachin Sharma, the Covid-19 situation in the Kashmir Valley the “Pratham Pujan” to invoke the blessings of Lord Shiva is

undertaken by the Shri Amarnath Shrine Board every year at Chandanwari, Pahalgam, South Kashmir. However, on account of the pandemic, this year it was performed on the 5<sup>th</sup> June, 2020 at Jammu by the Shri Amarnath Shrine Board. This Pujan marks the commencement of the Yatra. We are informed that keeping in view the difficulties posed this year on account of the pandemic the Pujan was not performed at its usual place and the Yatra has still not commenced.

63. We had called upon the respondents to disclose the rituals which are customarily performed with regard to the Yatra and thereafter. In the Status Report the respondents have informed us as follows:

**“5. Rituals on last day of Yatra: -**

*Shri Amarnathji Shrine Board (SASB) performs last day Pooja at Holy Cave on “Sharavan Purnima” (Raksha Bandhan Day) and the Yatra culminates, with the Pooja.*

*However, after the last Pooja performed by SASB, “Chhari Mubarak Swami Amarnathji” reaches the Holy Cave and the Pooja is performed by them. It is pertinent to mention here that, SASB has nothing to do with “Chhari Mubarak Swami Amarnathji” Pooja as the same is organized by Mahant deependra Giri with the assistance of Divisional/ District Administration from Pahalgam Axis .The activities of , “Chhari Mubarak Swami Amarnathji” start with “Bhoomi Pujan & Dhwajaroohan” from Pahalgam, then leaves for Chandanwari, Sheshnag, Panjtarni. After night stay it leaves for Holy cave on Sharavan Purnima to perform traditional rituals and returns to Panjtarni and next day to Pahalgam. All the arrangement are made by the Divisional/ District Administration.”*

64. The respondents have explained that the daily darshan and arti at the Holy Cave is being broadcast live on the Door Darshan.

65. The above narration indicates that the decisions regarding the conduct of Yatra are being taken by the Shri Amarnath Shrine Board. The Board is chaired by the Lieutenant Governor of the Union Territory of J&K. Its officials are senior Government officers including the following:

- (i) Shri Bipul Pathak, IAS, CEO. (who is also the Principal Secretary to the LG and the Secretary, Information Technology).
- (ii) Shri Anup Kumar Soni, IFS, Addl. CEO.
- (iii) Shri Vikas Verma, KAS, Dy.CEO.
- (iv) Shri Parshotam Kumar Sharma, Dy.CEO.
- (v) Shri Verinder Slathia, Dy.CEO.

As its members, it includes the Advocate General of the Union Territory and other experts.

66. The elevation and lack of space along the Yatra route would compel close contact of those detailed on security duties with Yatris from different parts of the country, exposing all of them to the grave possibility of COVID 19 infection.

67. As noted above, the Yatra provides for a source of livelihood for large number of members of the Bakkerwal community who provide porterage/pithoo/palki services for the Yatris as also mules and horses.

### **Result**

In view of the above, we direct as follows:



I. The respondents shall ensure that copies of this application; the Status Report dated 10<sup>th</sup> July, 2020, this order along with all other relevant material are immediately placed before the Shri Amarnath Shrine Board for its consideration.

II. The Shri Amarnath Shrine Board and the respondents shall urgently take all decisions regarding the Yatra while complying with the order dated 13<sup>th</sup> July, 2020 in WP(C) No.623/2020 of the Supreme Court of India taking into consideration all the relevant issues as also the several concerns pointed out by the applicant, Id. amicus curiae and the respondents before us. Such considered view shall ensure compliance of all healthcare protocols, Standard Operating Protocols notified by the Central Government as well as by the Union Territory of Jammu & Kashmir guided by the principles laid down by the Supreme Court of India that the right to health of every person has to be placed at the highest pedestal; address the concerns of the health of the security personnel, healthcare personnel, priests, the Yatris and of the officials who would be involved in the arrangements and conduct of the Yatra as also the residents of the Union Territory of Jammu & Kashmir.

III. In the decision making, the Board shall ensure consideration of the welfare and support of all persons, especially the members of the communities who provide the portage/ pithoos, palkis; mules and horses and who provide services on the Yatra.

IV. Consideration would also need to be accorded to the welfare of the animals (mules, horses, ponies etc.) involved in the Yatra and measures needed for the same.



V. Copy of the decision taken shall be given to Mr. Sachin Sharma (Mob. 9419663666. E-mail: adv.sachinsharma@rediffmail.com) and Ms. Monica Kohli (Mob.9596643678. E-mail: mona.kohli1@gmail.com) by the authorities.

68. Needless to say, in case the decision taken is contrary to the parameters laid down by the Supreme Court in para 8 of the judgment dated 13<sup>th</sup> July, 2020, it shall be open to the applicant to invoke the appropriate remedy in accordance with law.

69. This application is disposed of in the above terms.

**(SANJAY DHAR)**  
**JUDGE**

**(GITA MITTAL)**  
**CHIEF JUSTICE**

Jammu  
14.07.2020  
Raj kumar

