

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L)NO.5766 OF 2020
IN
WRIT PETITION (L) NO.2041 OF 2020

Shree Trustee Atma Kamal Labdhisurishwarji Jain
Gyanmandir Trust & Another .. Applicants

In the matter between

Shree Trustee Atma Kamal Labdhisurishwarji Jain
Gyanmandir Trust & Another .. Petitioners.

v/s.

The State of Maharashtra & Others .. Respondents.

Mr. Prafulla Shah with Ms. Gunjan Shah i/b. Kayval P. Shah, for the Applicants/ Petitioners.

Mr. A. A. Kumbhkoni, Advocate General with Ms. P. H. Kantharia, G. P. and Ms. Geeta Shastri, Addl. G. P. for the Respondent-State.

**CORAM: S. J. KATHAWALLA &
ABHAY AHUJA, JJ.**

**DATE : 10th NOVEMBER, 2020.
(THROUGH VIDEO CONFERENCING)**

PC:-

1 By the above Interim Application, the Applicants/ Petitioners are seeking urgent directions of this Court to Respondent Nos. 1 to 3, to allow the Applicants to open their Jain Temples being T. A. K. L. Gyan Mandir Trust, situated at 6th Gyan Mandir Road, Dadar (W), Mumbai 400 028 and Sheth Motisha Religious and Charitable Trust, situated at 180, Sheth Motisha Road, Byculla, Mumbai 400 027, for the Jain devotees, with Standard Operating Procedure ("SOP's") during 5 days of Diwali

Parv commencing from 13th November, 2020 to 17th November, 2020 (both days inclusive) from 6.00 a.m. to 1.00 p.m. and from 6.00 p.m. to 9.00 p.m. The Applicants/ Petitioners are also seeking similar reliefs for temples/ trusts as per list contained in Exh. H and Exh. H-1, to open their respective Jain temples in similar manner.

2 Petitioner No.1 is 'Shree Trustee Atma Kamal Labdhisurishwarji Jain Gyanmandir Trust' and Petitioner No.2 is 'Sheth Mothisha Religious and Charitable Trust'. Both the Petitioner-Trusts are public trusts registered under the provisions of the Maharashtra Public Trust Act, 1950. The Temple known as T.A.K.L. Gyan Mandir Trust is managed by Petitioner No.1 and the Temple known as Sheth Motisha Religious and Charitable Trust is managed by Petitioner No.2.

3 Respondent No.1 is the State of Maharashtra. Respondent No.2 is the Chief Secretary, Department of Revenue and Forests, Disaster Management, Relief and Rehabilitation and is the concerned authority who has been issuing the orders and guidelines with respect to Covid-19 pandemic. Respondent No.3 is the Municipal Commissioner, Municipal Corporation of Greater Mumbai ('MCGM') and is the concerned authority to issue orders and guidelines in respect of and during lockdown within the limits of Municipal Corporation of Greater Mumbai. Respondent No.4 is the Union of India through the Secretary of Ministry of Home Affairs.

4 According to the Applicants/ Petitioners, the occasion of Diwali is a very auspicious occasion for the Hindus and more particularly for the Jain devotees. Each and every day of Diwali has its own importance and during those days, pujas and prayers are performed in a very special way.

5 Mr. Prafulla Shah, Learned Advocate for the Applicants/

Petitioners has drawn our attention to the importance and details of each day of Diwali under the Jain Customs and Religion which can be briefly set out as under:-

- (i) The First Day – Dhan Teras (Dhanya Teras)
- (ii) The Second Day – Kalichaudas
- (iii) The Third Day – Amavasya (Dipavali)
- (iv) The Fourth Day – The New Year
- (v) The Fifth Day – Bahi Beej Parva

6 It is submitted that Jain culture is for upliftment of all living beings and tiny creatures and even the plant kingdom is included as living beings. Hurting any of them for self-interest is considered a sin. The belief of Jainism in the conduct of non-violence is to such an extent that even slightest pain/ harm caused to any living being is considered as a sin. It is submitted that the provisions contained in Article 25 of the Constitution of India regarding public health is very well taken care of in Jainism, as Jainism inspires its followers to live an environment friendly life. The incense, Dashang Dhoop and Gugglu, which purifies the air and sanctifies the surroundings, are used in Jain temples. The ritual of Abhishek with various herbs, having various medicinal and cleansing characteristics, is conducive to the environment which is very auspicious as per Jain belief. It is submitted that the vision of the deity is divine and that brings auspiciousness, happiness, peace and prosperity for the society. The chanting of mantras, ringing of bells and the sounds of conch brings auspiciousness for the entire population. Rituals like Jin Puja of the deity in temple are mandatorily performed by covering the mouth and the nose of a person. To remain physically contactless in the Jain temple is one of the primary code of conduct since ages and in this time because of pandemic, sufficient care will be taken to follow physical distancing

during Diwali. More than 2000 year old Jain Aagamas being the main scriptures, prescribed rules for physical distancing, sanitation, wearing masks during epidemics. The health awareness in Jainism while performing rituals has been practiced traditionally by Jains for thousands of years. The Petitioners' have also proposed special arrangements for decentralized gathering at different places and time to ensure physical distancing to meet the tradition of performing essential rituals during Diwali, as special instructions in this regard are regularly being issued by various leader monks of Shwetamber Murtipujak Jain, as well as other sects of Jain since March, 2020.

7 Learned Counsel for the Petitioners submits that traditionally, the rituals in Jainism are practiced for thousands of years in a health-conscious manner and naturally extra care in this regard will be taken during this period of Diwali. Special arrangements can be made this year for small groups at different times and different places. This will ensure physical distancing and also meet the tradition of performing essential rituals during the said period.

8 It is submitted that the Diwali Parva for Jain community is one of the most important annual religious Parva of Jain religion which lasts for five days. The rituals performed during Diwali are considered as an essential and an integral part of religious worship and in fact denial of the said rituals amounts to depriving worshipers of their fundamental right under Article 25 and 26 of the Indian Constitution.

9 The Learned Counsel for the Applicants/ Petitioners submits that the Government of Maharashtra has allowed the opening of malls, restaurant and bars, gymnasium, metro and monorail and even the BEST buses have been permitted to run to their full capacity. The Government of

Maharashtra had issued the SOP's for entries to these said places, thus, there is no reason as to why the temples could not be allowed to remain open and pujas and prayers not be allowed to be performed at least during the 5 auspicious days of Diwali.

10 The Learned Advocate for the Applicants/Petitioners further submits that restaurants and bars, malls, gymnasium etc. are prone to high risk of public contact and infection and consequently spread of contagious disease. In many of these places there is an unavoidable threat of direct physical contact between people. However, due to the concern regarding economic losses, these places have been unlocked for the masses. He submits that temple economy is known for substantial contribution to the economy as it consumes puja material, and other material and also employs substantial staff. Depriving industries surviving on temple economy from its source of income is also discriminatory.

11 He submits that when the Government of India has allowed the opening of religious place in the non-containment zones, then, restrictions imposed with respect to the religious place in non-containment zones in Mumbai, is directly opposed to the said order issued by the Government of India.

12 It is, therefore, submitted that this Court atleast allow the Petitioners' and other Jain Temples contained in Exh. H and Exh. H-1 to open their respective Jain Temples to perform Parva and prayers as per Jain rituals during the festival of Diwali for five days from 13th November, 2020 to 17th November, 2020 (both days inclusive) at the fixed time from 6.00 a.m. to 1.00 p.m. and from 6.00 p.m. to 9.00 p.m. for a fixed number of devotees i.e. not more than 30 devotees in one hour.

13 Mr. Shah, Learned Advocate for the Petitioner submits that in the past, for the ritual connected with Paryushan when the Hon'ble Supreme Court had granted permission, allowing the opening of three temples – one each in Byculla, Dadar (W) and Chembur in Mumbai on 22nd August, 2020 and 23rd August, 2020 for performance of rituals and when this Court had granted permission to the Petitioners' herein to open dining halls of their temples to perform rituals of Ayanbil Tap from 23rd October, 2020 to 31st October, 2020 between 10.00 a.m. to 3.00 p.m. by allowing 40 Jain devotees per hour, the said rituals were carried out in accordance with the Orders of the respective Courts and without any unfortunate incident or spread of any Covid infection.

14 It is submitted that in order to enable them to open the temple premises for the limited period of 5 days during Diwali parva, the Applicants/ Petitioners had also made a representation to the Government on 1st November, 2020. However, since there was no response from the Government, the Applicants/ Petitioners were constrained to take out this Application.

15 The Learned Advocate General has opposed the prayers of the Petitioners and submits that on the last two occasions, the State did not oppose, in as much as Paryusan and Ayanbil are rituals which are very specific to the Jain community. However, the festival of the Diwali is common to all the Hindus and if the State permits the prayers of the Petitioners, that would be discriminatory not only to the Hindu community but also to the other communities, who have not been allowed to open up their places of worship. He submits that therefore by Order dated 9th November, 2020, the Government of Maharashtra has after taking into consideration the situation and the prevailing circumstances in the State of Maharashtra and more particularly Mumbai City, the Mumbai

Metropolitan Region, ('MMR') rejected the request to permit opening of 102 Jain temples between the period from 13.11.2020 to 17.11.2020. He further submitted that the Petition is not a public interest litigation for opening of temples and places of worship and that in the P. I.L. filed on the issue, this Court was not inclined to pass any orders. He submitted that the Petitioners' grievance is to be restricted only to the two temples managed by the Petitioners' Trust and cannot be extended to 102 temples. He also submitted that the comparison made by the Petitioners between the opening of bars and the opening of temples is unthinkable and incomparable, as the activity in both the places is completely different. He submits that Article 25 of the Constitution of India is subject to public order morality and health and therefore, looking at the ground level position in the State of Maharashtra and particularly in Mumbai and MMR regions, a conscious policy decision is taken to continue with the closure of all places of worship and not permit any religious congregation, without any exception. He also referred to the recent second wave of the spread of the deadly virus in the western countries, which has constrained those Governments to impose much stricter restrictions than earlier.

16 The Learned Advocate General has also relied upon the Order dated 13th July, 2020 of Hon'ble Supreme Court in the case of Shri Amarnath Barfani Langars Organisation (Regd) & anr. Versus Union of India and Ors in Writ Petition No. 623 of 2020 along with I.A. No. 58421/2020 being the Stay Application, in support of his contentions and has taken us through paragraphs 4 and 8 of the said Order which are reproduced hereunder :

"4. The parameters of judicial review must be borne in mind while addressing ourselves to the issues raised before this court. The decision as to whether a pilgrimage should be permitted and, if it is permitted, the safeguards which should be observed, are matters which fall within the domain of the

executive arm of the State. In arriving at a decision, the administrative authorities must bear in mind statutory provisions governing the field and policies and administrative circulars issued in pursuance of statutory provisions. An assessment of the situation will be based on ground realities. This assessment lies in the domain of the administrative functions of the state. The 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.

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.”

17 We have heard Shri Prafulla Shah, Learned Advocate for the Petitioner and Shri Ashutosh Kumbhkoni, Learned Advocate General for the State.

18 While we fully bow down to the principles reiterated by the

Hon'ble Supreme Court, we are unable to appreciate the Learned Advocate General's reliance on the same in as much as the Hon'ble Supreme Court has reiterated the principles quoted above in a Petition under Article 32 of the Constitution of India seeking directions that the Respondents therein restrict the access of the general public/devotees and pilgrims to the annual pilgrimage for 2020, in view of the outbreak of COVID 19, on the ground that holding the Amarnath Yatra would be in breach of the Guidelines issued on 29.6.2020 under the Disaster Management Act, 2005 by the Union Home Ministry. It is while considering these reliefs that the Hon'ble Supreme Court made the observations referred to above by the Learned Advocate General and declined to entertain the Petition under Article 32 of the Constitution of India.

19 We are also conscious of the fact that under Article 25 of the Constitution of India, all persons are equally entitled to freedom of conscience and the right to freely profess practice and propagate religion and that this freedom is subject to public order, morality and health. We also reiterate that the Court has no intention to interfere with the Government policies or to run the Government. We are also aware that the State Government, keeping in view the general interest of the members of the public, has started the process of unlocking/ lifting of the lockdown gradually, and we are sure that the Government will at the appropriate stage also open up the doors of the temples/ places of worship for the members of the public.

20 However, since the Government has now allowed opening of malls, restaurants, bars, gymnasium by following certain SOP's and have also allowed passengers to commute by trains/ monorail and metro service, and since the Petitioner's are not wanting to form any

congregation by way of procession, etc. we are of the view that the performance of the Pujas like Dhup (Incense) Puja, Deepak (Candle) Puja, Akshat (Rice) Puja, Naivedya (Sweet) Puja, Fal (Fruit) Puja, Vandan Kirtan, in the manner proposed by the Petitioner by maintaining norms of social distancing and following the applicable SOP's in the manner suggested by them, will not cause any injury or prejudice to any one. As stated above, the Petitioners' have submitted that the performance of these rituals during the Diwali Parva will be performed by following all the SOPs.

22 It would also not be out of place to state here that on the last two occasions when limited permission has been granted, there has been no case of non-compliance in following the SOPs or the guidelines while performing the rituals permitted by the Courts.

23 At this stage, we would also like to refer to the decision of this Court in the case of *Viraf D. Mehta v/s. The Municipal Corporation of Greater Mumbai and others – WP-LD-VC No. 380 of 2020*, where this Court had allowed the Petitioner to perform prayers on 3rd September, 2020 between 7.00 a.m. and 4.30 p.m. at Doongerwadi so that restricted members of the Parsi community could pray for their close departed souls on the basis of the conditions imposed in the Guidelines issued by the Central and the State Government, as well assurances and undertakings given by the Petitioner to this Court, even though the representation of the Petitioner was rejected by the Order of the State Government.

24 Therefore, keeping in mind the relevant facts outlined above, we are inclined to pass the following Order:-

(a) The Temple viz: T. A. K. L. Gyan Mandir Trust, situated at 6th Gyan

Mandir Road, Dadar (W), Mumbai 400 028, managed by the 1st Petitioner and the Temple viz: Sheth Motisha Religious and Charitable Trust, situated at 180, Sheth Motisha Road, Byculla, Mumbai 400 027 managed by the 2nd Petitioner are allowed to open for the performance of Pujas referred to above, during the 5 days of Diwali Parva from 13th November, 2020 to 17th November, 2020 (both days inclusive) at the fixed time from 6.00 a.m. to 1.00 p.m. and from 6.00 p.m. to 9.00 p.m. for not more than 8 persons at a time for 15 minutes in the temple hall;

- (b) We make it clear that this Order shall be restricted to the two Temples referred to above and cannot be used as a precedent by other persons to seek permission to hold any festivals/ festivities which would involve by their nature, congregation of people.
- (c) The Petitioners and/ or all those in-charge of the respective Temple managements will ensure fulfillment of the above conditions and will take suitable measures to ensure compliance.
- (d) Interim Application is accordingly disposed of with the above directions.
- (e) No order as to costs.

25 This Order will be digitally signed by the Private Secretary of this Court. Sheristedar of this Court is permitted to forward to the Petitioner copy of this Order by e-mail. All concerned to act on a digitally signed copy of this Order.

(ABHAY AHUJA,J.)

(S.J.KATHAWALLA,J.)