

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 108 of 2020

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VISHAL S AWTANI
Versus
STATE OF GUJARAT

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Appearance:
PARTY IN PERSON(5000) for the Applicant(s) No. 1
MR KAMAL B. TRIVEDI, ADVOCATE GENERAL WITH MS MANISHA
LAVKUMAR, GOVERNMENT PLEADER for the Opponent(s) No. 1,2

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

Date : 02/12/2020

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

1 Concept of **community service** is widely accepted and implemented world over including some States in India. For the first time Community Service programmes began in the United States with female traffic offenders in Alameda County, California in 1966. Gradually it has spread all over and is a useful tool used as a deterrent for petty violations of law.

2 What is community service? Is it a sentence or punishment or reparation or reformation? We may record here that community service is not a punishment in its

true sense but it is a kind of reparation. In a document prepared by Christopher Bright under the program of Prison Fellowship International, the concept of community service is very well explained. We quote hereunder relevant extract from the said document :

"Baker has proposed the following (or a variation of the following) definition for reparation: "action by the offender to make good the loss suffered by the victim". The question becomes whether the community truly ever is a victim, and if so, whether community service actually makes good the community losses. Some have answered in the affirmative, positing that the community is a secondary victim that is indirectly injured by crime. For example, the community suffers psychological injury from the fear of crime, and more tangible injuries, such as rising insurance costs. Others argue that the harms suffered by the community as a result of crime are too intangible to calculate, and consequently the service imposed is arbitrary. Here, a meaningful distinction may help maintain the reparative purposes of both restitution and community service; restitution repairs the harm to the

individual victim; community service repairs the harm to the community. Who the victim is—individual or community--determines the type of reparative sanction. Distinguishing community service from restitution in this way helps prevent community service from being used as a punitive sanction: if it is simply added on to the offender's sentence, it is used as a means of punishment. If instead, community service is used to repair the harm to the community, the risk of it being used as a punishment is reduced."

3 There are certain benefits of community service. The violators turn out to be a great resource for the state government / administration / non governmental organisations. It provides an opportunity to the offender / violator to have a first hand experience of the injuries caused or could be caused by him. It gives a constructive means of repairing the wrong done by him. It also gives an opportunity to the violator to improve and become more responsible.

4 The pandemic of COVID-19 continues to spread its tentacles and the number of people being affected by

it continues to grow each day. Recently, there has been a sudden increase in the number of COVID cases. Such increase in the spread of the virus, can largely be attributed to the negligence and recklessness of the public at large, in not maintaining social distancing norms and not diligently and strictly wearing face masks/coverings. Such conduct is detrimental to the general health and safety of the people. As per various studies on the virus, one COVID positive person can infect upto 200 persons. As a matter of fact, many scientific studies have called the face mask/covering as a "Vaccine" for the virus. In such times, there is a great need to instill a habit amongst the people to wear face masks, in order to protect the health of the people, at large.

5 Considering the irresponsible behaviour of the public at large during the Diwali festival resulting in a sudden spike in the cases of Covid 19 positive cases, on 27.11.2020, we had passed the following order:

"1. We have heard Shri Vishal Awtani, the petitioner in person, Shri Kamal Trivedi, learned Advocate General along with Ms. Manisha Lavkumar Shah, learned Government Pleader for the State respondents.

2. By means of this petition, the petitioner has prayed for appropriate directions to the State to increase the fine for not wearing a face cover (mask) to Rs.2,000/- in the cities of Ahmedabad, Vadodara, Surat and Rajkot and Rs.1,000/- for the rest of the Gujarat. In one of our orders, the fine has been increased to Rs.1,000/- for the entire State of Gujarat which is presently being enforced by the State and recovered from the persons not covering their face with the mask. Today's newspaper carries a news item that out of 100 who were fined for not wearing a face cover (mask), 47 were tested positive with Asymptomatic condition. This is very alarming.

3. Shri Awtani submitted that the fine alone does not appear to be a sufficient deterrent for people to use the mask whenever they are out and therefore he suggests that in addition to the fine that is being imposed, appropriate

directions may be issued that such persons who are caught without wearing a face cover (mask), their services will be utilized for community services at Covid-19 Centers for 10 to 15 days on non-medical services. According to Shri Awtani, this would sufficiently work as a deterrent and will ensure stricter implementation of compulsory wearing a mask.

4. Learned Advocate General and the learned Government Pleader also find this suggestion to be working well as a deterrent, however, they prayed for reasonable time to revert back after obtaining instructions from the State. We also feel that such steps if taken would definitely ensure greater implementation of the compulsory wearing of mask which will definitely help us in containing the spread of the COVID-19.

5. Since this will require an urgent attention at the level of the State and also by us, we direct that for consideration of this aspect, let this petition be listed on Tuesday i.e. 01.12.2020 on top of the Board, to be taken up at 11.00 a.m.

6. *The petitioner may provide a copy of this petition to the office of the learned Advocate General and the learned Government Pleader today itself."*

6 We have heard Shri Vishal S. Awtani, the petitioner in person, Shri Kamal B. Trivedi, learned Advocate General along with Ms. Manisha Lavkumar, learned Government Pleader for the State respondents.

7 Today Shri Kamal B. Trivedi, learned Advocate General made the following submissions:

[i] In the last 3 days, the administration has geared up to ensure that steps are taken to check and control the spread of Covid-19. In that process, strict measures are taken against the violators who are not following the protocol by wearing face cover/mask. This is being done at all Cross Roads, other public places, markets, gatherings etc.

[ii] In the last 3 days, there has been a gradual decline in the numbers of positive Covid-19 cases.

[iii] In the last 3 days there has been a slight reduction in the frequency of calls on the helpline Nos. 104 and 108.

[iv] A week's time be granted to assess the situation and thereafter if the situation is not satisfactory the Court may pass appropriate orders.

[v] The administration although had brainstorming sessions but was unable to find out any viable mechanism or the modalities as to how to utilize the services of the violators for community service at Covid Centres.

8 In effect the submission of Shri Trivedi, learned Advocate General reflecting the stand of the

State is that the State is not inclined to introduce community service for violators of social distancing norms and / or for those not wearing face cover/mask at the Covid Centres on non-medical positions.

9 Pursuant to the hearing on 27.11.2020, we had expected the State to come up with a solution to this problem which is increasing day by day. However, instead of taking a stand on the issue, the State has declined to address this issue. Such stand of the State is unfortunate considering that it is the State which is required to act in the most proactive manner in such times. The stand of the State has left us with no option but to issue certain directions, considering the gravity and enormity of the situation.

10 The gradual decline in figures both in number of positive cases and in terms of phone calls to the helpline numbers is just marginal and not significant. If we grant a week's time it may only further worsen the situation rather than checking it. At this juncture our

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interference is necessary considering the spread of the virus. Every minute, every hour, every day matters. Any lethargy or inaction today may result in putting the lives of millions at risk.

11 A violator not wearing a face cover/mask is not only putting himself to risk but is also putting people near and around him or in close contact with him to risk. Such others could be his acquaintances, relatives, friends or strangers. In effect, he is putting the community at risk and therefore, in line with the concept and in principle of community service, the said violator must extend services to the community which is put at risk.

12 We do not find any good reason why the State cannot draw out a mechanism / modalities or the guiding procedure for such measures. We had observed in one of our previous orders that if we are alive today it is only on account of the efforts of the State and its instrumentalities. One must not forget that the State is

after all a welfare State. The foundation of the existence of the State lies in protecting its people and making the best possible efforts for their well being. We can understand that the State may require some reasonable time to develop the modalities or the mechanism to ensure implementation of such community services by the violators.

13 For all the reasons recorded above, we are of the view that the State must come out with a policy or order directing that all those caught not wearing face cover/mask shall be listed for community service and their services be taken depending upon the nature of service such violators can extend. We accordingly direct the State to forthwith come up with the notification under the relevant statutes providing that in addition to imposition of fine, any person found not wearing face cover / mask to render community service taking the following aspects into consideration :

[a] Any person found to be not wearing or using a face mask/covering in a public place and/or violating the COVID protocol of social distancing, shall be mandated to do community service at any COVID Care centre run by the local authorities.

[b] Such mandate of community service to be implemented for all violators without any discrimination favourable or otherwise.

[c] The duty should be non-medical in nature and can include activities such as, cleaning, housekeeping, help in cooking and serving the food, preparation of record, data feeding, etc. The nature of the duties given shall be appropriately decided by the authorities, considering the age, qualifications, gender and health status of the violator.

[d] Such community service should be for at

least 4-6 hours a day, for a period ranging from 5-15 days as the authorities deem it fit and necessary.

[e] Such instances should be widely publicized in the media, including social, electronic, digital and print media, so as to have a desirable deterrent effect.

14 Draft amendment is allowed.

15 Let this matter be listed on 24.12.2020. By the said date a status report to be filed by the State respondents regarding the compliance.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

A. B. VAGHELA/A.M.PIRZADA/P.SUBRAHMANYAM