

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 90 of 2020****With****CIVIL APPLICATION (FOR MODIFICATION OF ORDER) NO. 8 of 2020****In****R/WRIT PETITION (PIL) NO. 90 of 2020****With****R/WRIT PETITION (PIL) NO. 91 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH****and****HONOURABLE MR. JUSTICE J.B.PARDIWALA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

HITESHKUMAR VITTALBHAI CHAVDA**Versus****SHRI JAGANNATHJI MANDIR TRUST****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

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

Date : 07/07/2020

COMMON ORAL JUDGMENT

(PER : COURT)

1 Since the issues raised in both the captioned writ applications are the same, those were taken up for hearing analogously and are being disposed of by this common judgement and order.

2 For the sake of convenience, the Writ Petition (PIL) No.91 of 2020 is treated as the lead matter.

“No man is above the law and no man is below it; nor we ask any man's permission when we ask him to obey it. Obedience to the law is demanded as a right; not asked as a favor.

- Theodore Roosevelt”

3 We are tempted to preface our judgement with the above referred quote of “Theodore Roosevelt”, the 26th President of the United States of America, as we expect the State Government to follow the same having regard to the critical times the country is undergoing on account of the COVID-19 pandemic.

4 By this writ application under Article 226 of the Constitution of India filed in public interest, the writ applicant, a resident of Ahmedabad, has prayed for the following reliefs:

“(A) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction to the respondents to file a report before this Hon'ble Court placing on record the Standard Operating Procedure proposed to be adopted for conducting the “Jagannath Rathyatra” which is to be organized on 23.06.2020, in the Interest of Justice,

(B) This Hon'ble Court may be pleased to direct the respondents to restrain the large number of people from gathering during the procession including the devotees as well as the people carrying out the procession and to ensure that the “social distancing norms” are strictly followed;

(C) This Hon'ble Court be pleased to direct the respondents to ensure that the “Rathyatra”, if carried out, be completed in the shortest duration preferably in 2 hours and covering the minimum distance possible so as to reduce the risk of infection;

(D) This Hon'ble Court be pleased to direct the respondents to restrain from deploying a large number of security personnel including the local police and further be pleased to restrain the devotees and Sadhus travelling from outside the city to participate in the procession, in the interest of the safety of the public at large;

(E) This Hon'ble Court may be pleased to pass such other and further order in the interest of justice that may be deemed fit in the facts and circumstances of the case.”

5 We need not delve much into the facts of this litigation as our order dated 20th June 2020 is quite eloquent and speaks for itself. The common order passed by this Court in the captioned writ applications dated 20th June 2020 reads thus:

“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 23 rd 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.”*

6 Thus, we called upon 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, which lead to delay in taking an appropriate decision as regards the Rath Yatra.

7 In due deference to our aforesaid directions, two affidavits-in-

reply have been filed and placed on record. One affidavit has been filed by Ms. Sangeeta Singh, Additional Chief Secretary (Home), Government of Gujarat, on behalf of the respondent No.1 and the second affidavit has been filed by Shri Ashish Bhatia, Police Commissioner, Ahmedabad city, on behalf of the respondent No.4. The affidavit-in-reply filed on behalf of the respondent No.1 reads thus:

“3 I further states that during the course of hearing of the captioned writ petition, along with the cognate matters, on 20.06.2020, it was submitted on behalf of the petitioners that as per the newspaper reports, the Jagannath Mandir Trust, i.e. the respondent No.5 Trust, had applied on 18.05.2020 to the respondent No.1 State and others, for seeking appropriate permissions 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 Respondent No.5 Trust, either accepting or rejecting the same. It was under the aforesaid circumstances, that this Hon’ble Court vide its order dated 20.06.2020, in para - 7 thereof, inter alia, directed as under:

“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.”

4. I am filing the present affidavit in compliance with the afore-quoted directions of this Hon’ble Court. In this regard, it is stated that the application dated 18.05.2020, referred to hereinabove, was, in fact, an application made by the Respondent No.5 Trust to the Respondent No.4, the Police Commissioner, Ahmedabad City, inter alia, seeking permission for carrying out Rath Yatra on 23.06.2020. Pertinently, no such application was ever made by the Respondent No.5 Trust to the Respondent No.] State. Even otherwise, it is stated that such an application has to be made only to the Respondent No.4, Police Commissioner, who is then supposed to take a final call, while keeping in mind the prevalent situation.

5. I further respectfully state that as a matter of fact, due to the wide

spread of the pandemic COVID-19, the Government of India, Ministry of Home Affairs, vide its order dated 30.05.2020, extended the lock down till 30.06.2020. However, on 04.06.2020, in phase-I of Unlock-I, the Government of India issued Standard Operating Procedure ('SOP' for short) for religious places and consequently, on 07.06.2020, the Respondent No.1 State issued an order permitting partial opening of the religious places, with effect from 08.06.2020, under the SOP issued by the Government of India.

6. As aforesaid, the Commissioners of Police, the District Magistrates and Superintendents of Police are authorized to grant or refuse permission for such events based on assessment of local situation. In view of this, the Gujarat Police had started the exercise of collecting threat assessment, demand for additional forces, mobilization of resources etc., for the 143rd Shri Jagannath Rath Yatra, in Ahmedabad City and at 75 other places, as per the standard security protocol. That apart, around 16.06.2020, I was informally given to understand by Shri Shivanand Jha, Director General of Police of the State of Gujarat, that before expressly declining the permission to the Respondent No.5 Trust, the Commissioners of Police, Heads of Range and the Superintendents of Police are coordinating with the temple authorities, organizers, religious leaders connected with Shri Jagannath Rath Yatra to arrive at a consensus regarding cancellation or symbolic celebration in view of the COVID-19 pandemic. In view of this, it appears that a series of meetings with temple authorities, organizers, Religious leaders connected with Shri Jagannath Rath Yatra in Ahmedabad City and other places were held. In Surat City the police authority had five meetings with Iskon Temple management. The temple authorities in Surat agreed to cancel the Jagannath Rath Yatra on 23/06/2020 in view of the COVID-19 pandemic.

7. Considering the SOP issued by the Government of India and the Respondent No.1 State, it was not at all possible to grant the permission to allow the Respondent No.5 Trust to conduct the Rath Yatra on 23.06.2020, in traditional format, in view of the restrictions imposed on religious congregations, as indicated by the Police Commissioner, Ahmedabad City. In other words, looking to the gravity of the prevailing situation and the larger public interest, it was very much clear not to allow the conduct of the Rath Yatra in its traditional manner on 23.06.2020 and understandably, so was conveyed by the office of the Director General of Police to the Respondent No.4, the Police Commissioner, Ahmedabad City.

8. I further state that, as aforesaid, the application was submitted to the competent authority, i.e. Commissioner of Police, Ahmedabad City by

the management of the Jagannath Temple Trust. All efforts were made by the local police and the civil administration of Ahmedabad to arrive at a consensus without hurting the religious sentiment of the people and not compromising on the public health in view of the COVID-19 pandemic. ! Respectfully say that, therefore, the delay in taking decision regarding Rath Yatra may not be seen as an inaction, more particularly, in the context of special efforts made at several levels to arrive at amicable decision in the larger public interest.

9. In view of the above, on behalf of the Respondent No.1 State, I sincerely regret to state that owing to the aforesaid circumstances, all the parties hereto were compelled to rush to this Hon'ble Court seeking urgent circulation of the captioned matter, as well as, other cognate matters, causing inconvenience to this Hon'ble Court.

What is stated hereinabove is true and correct to the best of my knowledge and belief, which I believe to be true and correct.

Solemnly affirmed at Gandhinagar on 03rd day of July, 2020."

8 The affidavit-in-reply filed on behalf of the respondent No.4 reads thus:

"5. I submit that my office received application dated 18.05.2020 from Shri Jagannathji Mandir Trust, Ahmedabad seeking permission for carrying out Rath Yatra on 23.06.2020, giving details of different routes of Rath Yatra as also participation of elephants, motor trucks, motor vehicles, auto rickshaw, approximate number of persons etc. stating therein. A copy of application dated 18.05.2020 is annexed herewith and marked as Annexure R-1.

6. As per the aforesaid application given by Shri Jagannathji Mandir Trust, signed by Mahant Shri Dilip Dasji, Guru Rameshwar Dasji on behalf of trust, referred to various areas/places through which Rath Yatra was proposed to be carried out on 23.06.2020. As per the stated areas/places etc; it passes through eight different police stations namely, Gaekwad Haveli Police Station, Karanj Police Station, Khadia Police Station, Kalupur Police Station, Shehar Kotda Police Station, Dariyapur Police Station, Shahpur Police Station and Madhavpura Police Station. These police stations spread through five divisions of Assistant Commissioner of Police namely ACP Division-C, ACP Division-D, ACP

Division-E, ACP Division-L, ACP Division-F, and also spread through three different zones namely DCP Zone-Z, DCP Zone-3 and DCP Zone-4. These areas/places also cover both the sectors of Joint Commissioners of Police, namely JCP Sector-1 and JCP Sector-2. So far as responsibility of traffic is concerned, the said areas/places come under Joint Commissioner of Police (Traffic).

7. Above referred different agencies of Police were directly concerned with the maintaining of law and order, public order, preventing breach of peace etc. during entire procession of Rath Yatra. As per settled practice, opinions of all these police agencies, regarding their views with response to the application of Shri Jagannathji Mandir Trust seeking permission for carrying out Rath Yatra, were sought by my office and all these police agencies were also provided with the application dated 18.05.2020 received from Shri Jagannathji Mandir Trust.

8. Pursuant to my office communication to above referred police agencies/branches, my office received their responses in writing, in form of their opinion, indicating and specifying in it that in view of existing, persistent and continuous situation in city of Ahmedabad arising out of Corona Virus pandemic and more particularly when many parts of the Rath Yatra routes are already designated as containment zones, they opined for not permitting Rath Yatra. Further, DCP Zone-2 in his opinion also stated that in his area, there are about 1378 infected persons suffering from COVID-19 and 118 persons have lost their lives because of they having been infected of COVID-19. Similarly, DCP Zone-3 also stated in his opinion that in his zone, there are 682 infected persons of COVID-19 and 53 persons have lost their lives as they were infected of COVID-19. Contents of opinions received by my office Indicated that in Rath Yatra, large number of persons gather and as per practice running since years, ail throughout the process, large number of persons would continue to remain in procession and large number of persons as per their respective areas would join Rath Yatra for some time along with others and they would discontinue from it after some time, thus making it impossible to take care of the settled protocol of social distancing etc. All these opinions were received by my office between 0.306.2020 to 16.06.2020. They are all eighteen in numbers and all are annexed herewith and marked as Annexures R-2 to R-19, respectively.

9. I also submitted my assessment report regarding ensuing Rath Yatra to ADGP (Intelligence), State of Gujarat dated 04.06.2020 and the same is annexed herewith and marked as Annexure R-20.

10. I state that I also communicated, through my letter dated 05.06.2020

with Special Police Commissioner, Crime Branch, Ahmedabad City, about representation received from Shri Jagannathji Mandir Trust that they are prepared and willing to carry out Rath Yatra with reduced strength. I Stated in this letter that then even considering the fact that most of the routes of Rath Yatra pass through Micro Containment Zones and that there is prohibition placed on gathering at all religious places, there would be absolutely no possibility of adhering to most required and necessary protocol of maintaining social distancing. Even then, I suggested to him that he should discuss with trustees of temple and try to resolve amicably and with consensus, the issues relating to Rath Yatra. A copy of my said letter dated 05.06.2020 is annexed herewith and marked as Annexure R-21.

11. Pursuant to the letter produced at Annexure R-21, Special Police Commissioner, Crime Branch, Ahmedabad City, personally met temple trustees Mahant Shri Dilip Dasji as well as Shri Mahendra Jha and had also discussed with them on telephone about resolving the issue of ensuing Rath Yatra. Special Police Commissioner was conveyed by the trustees of 5:47 temple that they will intimate about their decision.

12. Along with the aforesaid exercise of bringing about a decision by way of consensus for not conducting the Rath Yatra in traditional manner this time, and on the basis of above different opinions, I submit that, permitting Rath Yatra would encourage gathering of large number of persons as also different police agencies and there police members which would be around 24315 in number, would be a good reason for further spreading of infection amongst them. Finally, I opined for not permitting Rath Yatra.

13. Considering the situation about Rath Yatra being permitted or otherwise on the basis of discussions with stakeholders etc., my office through its letter dated 16.06.2020 intimated to the office of DGP for sanctioning of expenditure likely to be incurred on ensuing Rath Yatra in the event of it being permitted on any reason whatsoever. A copy of the said letter dated 16.06.2020 is annexed herewith and marked as Annexure R-22.

14. On 18.06.2020, I learnt that the Hon'ble Supreme Court in Writ Petition (Civil) No. 571/2020, in a matter between Odisha Vikash Parishad Vs. Union of India & ors., gave necessary directions for not carrying out Rath Yatra anywhere in the temple town of Odisha or in any other part of the State this year.

15. On 20.06.2020, this Hon'ble Court in Writ Petition (PIL) No. 90/2020 with 91/2020, also passed almost similar order directing that there shall be no Rath Yatra carried out for this year at Ahmedabad and at any other district in the state of Gujarat.

16. Further, I state that during this whole period, following officers have held meetings with temple authorities, discussing about arriving at a consensual decision for not conducting the ensuing Rath Yatra in traditional manner as scheduled on 23.06.2020. Details of the said meetings are as under:

Sr. No.	Date	Persons holding Meeting	Place
1	'01.06.2020	1. Mahendra Jha, Trustee 2. Makarand Chauhan Deputy Police Commissioner, Zone-3, Ahmedabad city 3. Sagar Sambada, Assistant Police Commissioner, E Division, Ahmedabad city 4. N.N. Parmar, Police Inspector, Gaekwad Haveli Police Station, Ahmedabad city	Jagannathji Mandir
2	'03.06.2020	1. Amitkumar Vishvkarma Joint Police Commissioner, Sector -1, Ahmedabad city 2. Prem Vir Singh Addl. Police Commissioner, Special Branch, Ahmedabad city. 3. Mahendra Jha, Trustee 4. Makarand Chauhan Deputy Police Commissioner, Zone-3, Ahmedabad city 5. Sagar Sambada, Assistant Police Commissioner, E Division, Ahmedabad city 6. N.N. Parmar, Police Inspector, Gaekwad Haveli Police Station, Ahmedabad city	Police Commissioner Office, Shahibag, Ahmedabad city
3	'04.06.2020 '13.06.2020	1. Mahendra Jha, Trustee 2. Sagar Sambada, Assistant Police Commissioner, E Division, Ahmedabad city 3. Hitesh Dhandhaliya, Assistant Police Commissioner, D Division, Ahmedabad city	Jagannath Mandir

4	'06.06.2020	1. Ashish Bhatia, Police Commissioner, Ahmedabad city 2. Mahendra Jha, Trustee	Collector office
5	'09.06.2020 '13.06.2020 '20.06.2020	1. Ajay Kumar Tomar, Special Police Commissioner, Crime Branch, Ahmedabad city	Jagannathji Mandir
6	'17.06.2020	1. Mahendra Jha, Trustee 2. Mahant Shri Dilip Dasji 3. Sagar Sambada, Assistant Police Commissioner, E Division, Ahmedabad city 4. N.N. Parmar, Police Inspector, Gaekwad Haveli Police Station, Ahmedabad city 5. R.L. Patel, Police Sub Inspector	Jagannathji Mandir
7	'19.06.2020	1. Mahant Shri Dilip Dasji 2. N.N. Parmar, Senior Police Inspector, Gaekwad Haveli Police Station, Ahmedabad city. 3. R.R. Bansal, Police Inspector 4. V.N. Shingarkhiya, Police Sub Inspector	Jagannathji Mandir

17. In view of above, my office through Assistant Commissioner of Police, Special Branch, Ahmedabad city, intimated and communicated to Applicant – Shri Jagannathji Mandir Trust vide office letter dated 21.06.2020 that permission to carry out Rath Yatra is declined. My said office communication was served upon Mr. Mahendrabhai Jha, being one of the trustees of Shri Jagannath Mandir Trust and the same is countersigned by him. A copy of the said office letter dated 21.06.2020 is annexed herewith and marked as Annexure R-23.”

9 We are a bit disappointed with the stance of the State Government as reflected from the two affidavits incorporated above. In dealing with the COVID-19 pandemic, the High Courts and State Governments across the country have had to take some tough decisions, which included the cancellation of the 143rd Lord Jagannath's Rath Yatra procession in Ahmedabad, Gujarat. There is no doubt that faith, spirituality and religion have played an important role for some individuals during this pandemic. People believe that their faith is one of

the most powerful instruments in their fight against the deadly virus and the enduring lockdowns. However, the problem emerges when they take part in large gatherings despite good intentions. While it is a virtuous right to gather and pray for the well-being, we must not forget our role and duty as responsible citizens. To ensure the safety of ourselves, our family and our neighbours during this pandemic it is mandatory to make the choice of health over religion.

10 By avoiding a large gathering of people on the day of the Rath Yatra, we avoided a major catastrophe that could have completely derailed the State Government's fight against the COVID-19. The emotional, social and economic cost of the loss of lives of the common men, following a major public gathering would have been devastating. The support and understanding shown by the masses was commendable. Despite having their religious sentiments hurt, most people correctly understood the public health concerns behind the cancellation of the age old Rath Yatra.

11 However, what was disappointing was the passive and yielding approach of the State Government. As a secular body heading the fight against COVID -19 in the state, the Government's main focus should be protecting the health and wellbeing of the people at all cost, even if it means hurting the religious sentiments of some religious leaders. With infection rates going up and our resources gradually depleting, it is mandatory to focus on health rather than religion.

12 Instead of taking a firm stance and boldly refusing to allow the Rath Yatra procession citing public health reasons, the government chose to follow a policy of appeasement and coaxing to convince the religious

leaders, Temple authorities and organizers connected with Shri Jagannath Rath Yatra to avoid holding the Rath Yatra processions. During a pandemic we do not have time for blandishment. We need action. Strong, pragmatic and robust action.

13 We are treading on thin ice just now. In the absence of an effective vaccine, social distancing has become the principal policy mechanism for suppressing the spread of the virus. This is certainly not the time to shy away from the truth and our responsibilities. For a Government to function effectively during the pandemic it is paramount to have a clear list of priorities in order to make decisions quickly and effectively. Hard choices need to be made, never more so than during a crisis and it is most important to keep those choices or priorities, hyperclear. Providing unclear and contradictory priorities to the people will in turn lead to more trouble.

14 Gujarat is a State where we have occasions to celebrate every other weekend. While it is emotional to see these cultural festivals not be celebrated, there is nothing more important than the safety and health of our people. The government cannot and should not follow a policy of appeasing the cultural and religious heads. This is not the time to sit, negotiate and persuade. A policy of appeasement sends out a very wrong message to the public. If the government remains nonchalant on the issue of religious gatherings, this will have a serious impact on how seriously the masses take the pandemic. They too may become increasingly relaxed and easy going, while indulging in gatherings that flout the social distancing norms.

15 The Government and its policies have a very important role to

play in guiding the people forward. By strongly emphasizing and boldly sticking to their policies, the government can effectively communicate their intentions to the people. Knowing clearly that whatever the government does is in the best interest of the people's health will instill confidence in the people and cause them to wholeheartedly support the Government decisions. However if the government decides to act feeble and indecisive, this would send a wrong message of Government priorities being ambiguous and unclear.

16 We may refer to the observations made by the Supreme Court in the case of **Vincent Panikurlangara vs. Union of India** reported in **AIR 1987 SC 990**. The same reads thus:

“As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority - perhaps the one at the top.”

17 We may refer to a very interesting article titled **“Forced Closing of Houses of Worship During the Coronavirus: Both Legal and Right”**. Two Professors discuss whether it is legitimate to impose sanctions on the religious activities against the claims of the First Amendment during the time of COVID-19. We quote the relevant observations:

“There can be no doubt, however, that the governmental effort to stop the spread of the coronavirus is a compelling governmental interest. Prohibitions on large gatherings are vital to preventing the virus from spreading to the population at large. (That it also protects those who might otherwise gather is a secondary point.) There are ample legal precedents for the common-sense notion that health and safety laws can be legally applied by the government to religious institutions the same way they apply elsewhere in order to protect people from serious injury.

Reducing the spread of & potentially dangerous virus during a worldwide pandemic is a classic example of a compelling governmental interest.”

● **AN EXAMPLE OF THE CHURCH AND THE SENATE BECOMING A TEAM, WHEREBY THE CHURCH AGREED TO SUPPORT THE DECISIONS OF THE GOVERNMENT:**

“A step in the direction of mutual understanding was taken on the evening of 12 March by the Head of Government who, in a statement to the Greek people broadcast by the media, urged all citizens to take personal responsibility for safeguarding public health and called directly upon the Archbishop Ieronymos to ask for his cooperation in the battle against the virus. Under these circumstances “Our faith is not tested, but our attitudes show our love for others” - the Prime Minister said “Therefore religious duties must also adapt to reality. And they must be performed at home, as far as possible, in order to limit large gatherings of people. I am counting on the support of the heads of the Church. But my institutional role obliges me to clarify the issue

A statement from Bishop H.E. Andrea Turazzi, leading the Diocese between two States 15 - San Marino and Montefeltro: “Such a radical decision is arousing understandable reactions: the claim of free exercise of worship and the possibility of the “open church” as a sign of hope (even if, in fact, one should not go to church because of the limitations of movement already established). Reactions worthy of respect. It is necessary, however, to reflect without emotional impulses and to recognize that the situation that the authorities are called to govern is of a complexity never seen before, of which we can only grasp some evidence. It is not for the Church, but for the State to legislate on public health”.

● **TITLED “HUMAN RIGHTS DIMENSIONS OF COVID-19 RESPONSE”, DESCRIBES THE HUMAN RIGHTS IMPLICATIONS WHICH STATE INACTION COULD DRAW DURING COVID 19 TIMES, AVAILABLE AT: <https://www.hrw.org/new.s/2020/03/19/human-rights-dimensions-covid-19-resonse>]**

“International human rights law guarantees everyone the right to the highest attainable standard of health and obligates governments to take steps to prevent threats to public health and to provide medical care to those who need it. Human rights law also recognizes that in the context of serious public health threats and public emergencies threatening the life of the nation, restrictions on some rights can be justified when they have a legal basis, are strictly necessary, based on scientific evidence and neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, subject to review, and proportionate to achieve the

objective.

All governments have an obligation to ensure that a serious public health crisis does not also become a human rights crisis because people are unable to access adequate medical care. Governments need to take steps to ensure everyone has affordable and accessible medical care and treatment options.”

18 We do not propose to continue with this litigation any further. We only propose to observe that it is the duty of any welfare State to provide legal safeguard to protect individuals' life and to maintain good health of the community.

19 We have still a long long way to go before the battle against the COVID-19 is won and over. In such critical times, there is no need to consult or discuss anything relating to the religious practices with the religious leaders, etc. at the cost of public health. We emphasize upon the need to prioritize protection of public health over religious expression.

20 In fact, this litigation in the first instance should not have reached to this High Court. The decision as to whether the Rath Yatra or any other religious procession should be permitted or not is a matter which predominantly falls within the domain of the executive wing of the State Government. The administrative authorities while considering such a request must keep in mind the relevant statutory provisions and administrative circulars issued by the State. It goes without saying that the assessment of the situation should be based on existing / prevailing facts and circumstances.

21 We close this litigation with a very apt quote of Justice Rose Bird, the Former Chief Justice of the State of California, U.S.A. The same reads thus:

*“THE JUDICIARY MUST NOT TAKE ON THE
COLORATION OF WHATEVER MAY BE POPULAR
AT THE MOMENT. WE ARE GUARDIAN OF
RIGHTS, AND WE HAVE TO TELL PEOPLE THINGS
THEY OFTEN DO NOT LIKE TO HEAR.”*

22 With the above, both the writ applications stand disposed of. Civil Applications if pending any also stand disposed of.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

CHANDRESH

