

Dy 11439/2020
IN THE SUPREME COURT OF INDIA

ORIGINAL WRIT JURISDICTION

(Under Article 32 Of The Constitution of India)

WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF:

Gujarat Mazdoor Sabha & Anr.

...PETITIONERS

VERSUS

State of Gujarat

...RESPONDENTS

I.A. NO. WITH OF 2020

APPLICATION SEEKING EXEMPTION FROM FILING DULY
AFFIRMED AFFIDAVIT AND STAMPED VAKALATNAMA, COURT
FEES

I.A. NO. OF 2020
APPLICATION FOR INTERIM DIRECTIONS

PAPER BOOK
[FOR INDEX KINDLY SEE INSIDE]

ADVOCATE FOR THE PETITIONERS: APARNA BHAT

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PROFORMA FOR FIRST LISTING

A

SECTION—X

The case pertains to (Please tick/check the correct box):

- Central Act : (Title)-----NA -----
- Section : ----NA -----
- Central Rule : (Title) -----NA-----
- Rule No(S) : -----NA-----
- State Act : (Title) -----NA-----
- Section :-----NA-----
- State Rule : (Title) -----NA-----
- Rule No (s) : -----NA-----
- Impugned Interim Order : (Date) ----NA-----
- Impugned Final Order/Decree : ~~2018-2019~~ NA
- High Court : NA
- Names of Judges :NA .
- Tribunal/ Authority : (Name) -----NA-----

1. Nature of matter: * CIVIL

2. (A) Petitioner/Appellant No. Gujarat Mazdoor Sabha-

(B) E-mail ID: -----NA-----

(C) Mobile phone Number: -----NA-----

1. 3. (A) Respondent No.1 State of Gujarat

(B) E-mail ID: -----NA-----

(C) Mobile phone Number: -----NA-----

4. (A) Main category classification: -----1800-----

(B) Sub classification: ----- 1807 & ORS -----

5. Not to be Listed before: -----N/A-----

6. a. Similar Disposed Matter: Not any Similar matter Disposed.

b. Similar Pending matter : Not any Similar matter Pending

7. Criminal Matters: NA

A-1

(A) Whether accused/convict has surrendered *Yes * No

(B) FIR No. ----- NA- Date -----NA-----

(C) Police Station -----NA-----

(D) Sentence Awarded: -----NA-----

(E) Sentence Undergone: -----NA-----

8. Land Acquisition Matter:

(A) Date of Section 4 notification: -----NA-----

(B) Date of Section 6 notification: - -----NA-----

(C) Date of Section 17 notification: - -----NA-----

9. Tax Matter: State the tax effect: -----NA-----

10. Special Category (first petitioner/appellant only): NA

* Senior citizen > 65 Years * SC/ST * Woman/child * Disabled * Legal Aid case * In custody NA

11. Vehicle Number (in case of Motor Accident Claim matters):---NA--

12. Decided case with citation -----NA-----

DATED: 20/05/2020

A1OR FOR PETITIONER (S) APPELLANT (S)

APARNA BHAT
Registration No.: 1246

E-MAIL- APARNA.BHAT @GMAIL.COM

SYNOPSIS

The Petitioners are filing this Petition to challenge Notification No. GHR/ 2020/56/FAC/142020/346/M3 dated 17th April 2020 issued by the Gujarat Labour and Employment Department on the grounds that it is patently illegal, violative and unnaturally unjust of various fundamental rights, statutory rights and labour laws. The Petitioner is a registered trade union.

It is submitted that on 17th April 2020, amidst the ongoing lockdown in the country, Gujarat Labour and Employment Department issued Notification No. GHR/ 2020/56/FAC/142020/346/M3 which grants exemptions to all factories in Gujarat from provisions of the Factories Act, 1948 (hereinafter referred to as "the Act"), relating to daily working hours, weekly working hours, intervals for rest and spread-overs of adult workers, and even from the duty to pay overtime wages at double rate as fixed under section 59 of the Act. The impugned Notification has been purported to be issued under the powers conferred by Section 5 of the Act and grants exemption from the aforementioned provisions of the Act for the period from April 20 to July 19, 2020. The impugned Notification exempts factories from sections 51, 54, 55 and 56 of the Act on various conditions which are, that for the period from April 20 to July 19, 2020, workers in Gujarat can be made to work 12 hours in a day, 72

hours in a week with a 30 minutes break after 6 hours. The Factories Act, 1948, otherwise provides that workers can only be made to work 9 hours in a day – but 48 hours in a week, with 1 weekly off – thus coming to 8 hours in a day (sections 51, 52 & 54), with 30 minutes break after 5 hours (section 55). The notification further provides that no women workers will be allowed to work between 7pm & 6am.

Most disturbingly, the impugned Notification prescribes that no overtime at double rate will be paid for the extra four hours worked per day, but rather that overtime work will merely be compensated at the usual hourly rate. The Notification expressly states that wages for the extra hours will be paid "in proportion to the existing wages (e.g., if wages for eight hours are 80 Rupees, then proportionate wages for twelve hours will be 120 Rupees)". This is blatantly against section 59 of the Act which mandates that wages must be paid at double the ordinary rate for hours worked in excess of 9 hours in a day (including 1-hour break) & 48 hours in a week.

It is submitted that vide the Impugned Notification under section 5 of the Factories Act, 1948, the Gujarat Government has acted ultra vires its powers under the said section. Section 5 empowers State Governments "*in a case of public emergency*" to grant exemption to any factory or class or description of factories from all or any of the

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provisions of the Act (except section 67) for such period and subject to such conditions as it may think fit, for a period not exceeding three months at a time. However, the same section provides that "public emergency" means a *grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance*. It is clear that such an "emergency" thus only covers emergencies in the nature of physical and tangible war or conflict. By no stretch of imagination can it be said to include in its ambit the phenomenon of a viral disease, albeit a Pandemic. It is clearly beyond the purview of the section to include a global medical pandemic as an "external aggression or internal disturbance".

Further, section 5 only permits exemption to be granted to "any factory or class or description of factories", whereas the Impugned Notification grants a blanket exemption to all factories in the State. On this ground also the Notification is ultra vires the powers granted under the Act. Therefore, it is amply clear that the Gujarat Government has misused section 5 to suspend key provisions of the Factories Act, 1948, which offer basic and fundamental protections to workers, especially in a time where workers are most vulnerable, economically and socially.

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It is further submitted that the impugned Notification has been passed under section 5 of the Factories Act, 1948 and not under section 65(2) of the Act. Section 65(2) permits a State Government to exempt on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 of the Act on the ground that the exemption is required to "*enable the factory or factories to deal with an exceptional pressure of work*". Any exemption granted under Section 65, sub-section (2) shall be subject to the following conditions, namely:

(i) the total number of hours of work in any day shall not exceed twelve;

(ii) the spreadover, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;

(iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;

(iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five.

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The Petitioners contend that catching up with production lost during the lockdown would not qualify as "*enabling the factory or factories to deal with an exceptional pressure of work*", but even otherwise and presuming that it does, the present impugned Notification is ultra vires section 65 also. Section 65(3) lays down a number of conditions for the granting of an exemption. Section 65(3)(iii) prohibits the total number of hours of work in any week, including overtime, from exceeding 60. Thus a 12-hour day can only be done thrice in a week. The impugned Notification provides for up to 72 working hours in a week – i.e, 12 hours a day, 6 days a week.

Further and most crucially, section 65(2) does not provide for an exemption from section 59 of the Act (which mandates for double pay for overtime worked over and above 8 hours a day / 48 hours in a week). The direction for no payment of overtime rate for overtime worked is a big financial blow to the workers who are quite literally risking their lives to ensure the sustenance of the economy.

Therefore, the impugned Notification is ultra vires the powers conferred under the Factories Act, 1948 and in blatant violation of some of the most fundamental and important provisions of the said Act.

The Petitioners further submit that the shocking extension of working hours is being directed at a time when the most basic medical and

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scientific advice to avoid contracting the deadly COVID-19 is to take rest and stay as healthy as possible. This new regime ensures the complete opposite. It is submitted that the monsoon season, which is soon commencing is when disease and viruses are notoriously rampant, and most alarmingly for COVID-19, bronchial & lung issues abound. As per the notification, these workers will now be overworked, without being compensated for the same as per law, which will only ensure that both their physical and mental health deteriorate. In fact, it would amount to allowing forced labour. In light of the pandemic, if the State claims that this pandemic is in fact a "public emergency" then allowing forced labour will definitely worsen the situation instead of improve it.

The Petitioners respectfully submit that the tragic trio of industrial accidents on 7th May at Vishakapatnam Chattisgarh & Neyveli are reported to have happened in hazardous industries being reopened after the lockdown with a skeletal workforce. Manning industries with tired, exhausted and weak workers will only invite such further tragedies. In light of the hundreds of lives already affected, this Notification is simply inviting disasters rather than mitigating them.

The Petitioners respectfully submit that the said notification quite clearly states that the workers will be not only be grossly overworked, but the fact that the direction for no payment of

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overtime rate for overtime worked is added, just adds a sordid element of cruelty to a blatantly illegal notification, all in respect of the workers who are quite literally risking their lives to ensure the sustenance of the economy;

The present Petition is filed directly before this Hon'ble Court as it involves an important question of law and similar Notifications have been issued by at least 10 other States throughout India, Further the Petitioners have come to know that another matter has been filed before this Hon'ble Court challenging the Notification impugned herein. Hence judicial propriety requires that this matter be filed before this Hon'ble Court.

Hence, the Petitioner has filed this Writ Petition under Article 32 of the Constitution of India for issuing appropriate writ/directions.

LIST OF DATES

24.03.2020 Twenty-one days' nation-wide lockdown announced by the Prime Minister to contain the spread of COVID-19 in the country.

14.04.2020

The Home Secretary, Ministry of Home Affairs issued directions that the Lockdown measures will continue to remain in force up to 03.05.2020.

17.04.2020

Gujarat Labour and Employment Department issued the impugned Notification No. GHR/2020/56/FAC/142020/346/M3 which grants exemptions to all factories in Gujarat from provisions of the Factories Act, 1948, relating to daily working hours, weekly working hours, intervals for rest and spread-overs of adult workers, and even from the duty to pay overtime wages at double rate as fixed under section 59 of the Act. The impugned Notification has been purported to be issued under the powers conferred by Section 5 of the Act and grants exemption from the aforementioned provisions of the Act for the period from April 20 to July 19, 2020.

20.05.2020

Hence the present Writ Petition.

IN THE SUPREME COURT OF INDIA

ORIGINAL WRIT JURISDICTION

(Under Article 32 Of The Constitution of India)

WRIT PETITION (CIVIL) NO. OF 2020

(ORDER XXXVIII OF THE SUPREME COURT RULES 2013)

IN THE MATTER OF:

1. Gujarat Mazdoor Sabha,

104, Maharana Pratap Complex,

Opp. V.S. Hospital, Ellisbridge,

Ahmedabad – 380 006

... PETITIONER NO. 1

2. Trade Union Centre of India,

180-C, J.J. Keni Lane,

Dharavi Koliwada, Dharavi,

Mumbai – 400 017

... PETITIONER NO. 2

-Versus-

State of Gujarat

Through the Secretary,

Labour and Employment Department,

Sachivalay, Gandhinagar. ... CONTESTING RESPONDENT

**A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA**

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF
THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. The present Writ Petition under Article 32 of the Constitution of India is filed challenging the Notification No. GHR/2020/56/FAC/142020/346/M3 dated 17th April 2020 issued by the Gujarat Labour and Employment Department on the grounds that it is patently illegal, violative and unnaturally unjust of various fundamental rights, statutory rights and labour laws.

1A. The Petitioner No.1 is a trade union registered under the Trade Unions Act, 1926, bearing registration number G2118 (dt. 30/12/1980) and represents around 10 000 workmen working in a number of factories and industrial establishments throughout the State of Gujarat. The Petitioner No.2 is a Federation of trade unions registered under the Trade Unions Act, 1926, bearing registration number 10004 (dt. 2004) and represents around 100 000 workmen working in a number of factories and industrial establishments

throughout India. The Petitioner No.1 is affiliated to the Petitioner No.2. The Registration certificates of the Petitioner No. 1 and Petitioner No. 2 have been filed.

1B. The Respondent is the State of Gujarat represented through the Labour and Employment Department, which has passed the Notification impugned in this Petition. The Respondent is "State" within the meaning of Article 12 of the Constitution of India.

BRIEF FACTS OF THE CASE

2. On 17th April 2020, amidst the ongoing lockdown in the country, Gujarat Labour and Employment Department issued Notification No. GHR/ 2020/56/FAC/142020/346/M3 which grants exemptions to all factories in Gujarat from provisions of the Factories Act, 1948, relating to daily working hours, weekly working hours, intervals for rest and spread-overs of adult workers (sections 51, 54, 55 and 56 of the Act), and even from the duty to pay overtime wages at double rate as fixed under section 59 of the Act. The impugned Notification has been purported to be issued under the powers conferred by Section 5 of the Factories Act, 1948 (hereinafter referred to as "the Act") and grants exemption from the afore-mentioned provisions of the Act for the period from April 20 to July 19, 2020. A true copy of the impugned Notification dated 17.04.2020 is marked and annexed herein as **Annexure-P-20**

5. The impugned Notification exempts factories from sections 51, 54, 55 and 56 of the Act on various conditions – i.e., that for the period from April 20 to July 19, 2020, workers in Gujarat can be made to work 12 hours in a day, 72 hours in a week with a 30 minutes break after 6 hours. The Factories Act, 1948, otherwise provides that workers can only be made to work 9 hours in a day – but 48 hours in a week, with 1 weekly off – thus coming to 8 hours in a day (sections 51, 52 & 54), with 30 minutes break after 5 hours (section 55). The notification further provides that no women workers will be allowed to work between 7pm & 6am.

6. Most alarmingly, the impugned Notification prescribes that no overtime at double rate will be paid for the extra four hours worked per day, but rather that overtime work will merely be compensated at the usual hourly rate. The Notification expressly states that wages for the extra hours will be paid "in proportion to the existing wages (e.g., if wages for eight hours are 80 Rupees, then proportionate wages for twelve hours will be 120 Rupees)". This is blatantly against section 59 of the Act which mandates that wages must be paid at double the ordinary rate for hours worked in excess of 9 hours in a day (including 1-hour break) & 48 hours in a week.

7. It is the case of the Petitioners that in purporting to issue the Impugned Notification under section 5 of the Factories Act, 1948, the Gujarat Government has acted ultra vires its powers under the said section. Section 5 empowers State Governments "*in a case of public emergency*" to grant exemption to any factory or class or description of factories from all or any of the provisions of the Act (except section 67) for such period and subject to such conditions as it may think fit, for a period not exceeding three months at a time. However, the same section provides that "public emergency" means *a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance*. It is clear that such an "emergency" thus only covers emergencies in the nature of physical and tangible war or conflict. By no stretch of imagination can it be said to include in its ambit the phenomenon of a viral disease, albeit a Pandemic. It is clearly beyond the purview of the section to include a global medical pandemic as an "external aggression or internal disturbance".

8. Further, section 5 only permits exemption to be granted to "any factory or class or description of factories", whereas the Impugned Notification grants a blanket exemption to all factories in the State. On this ground also the Notification is ultra vires the

powers granted under the Act. Therefore, it is amply clear that the Gujarat Government has misused section 5 to suspend key provisions of the Factories Act, 1948, which offer basic and fundamental protections to workers, especially in a time where workers are most vulnerable, economically and socially.

9. The impugned Notification has been passed under section 5 of the Factories Act, 1948 and not under section 65(2) of the Act. Section 65(2) permits a State Government to exempt on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 of the Act on the ground that the exemption is required to "*enable the factory or factories to deal with an exceptional pressure of work*". Any exemption granted under Section 65, sub-section (2) shall be subject to the following conditions, namely:

- (i) the total number of hours of work in any day shall not exceed twelve;
- (ii) the spreadover, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;
- (iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;

(iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five.

10. The Petitioners contend that catching up with production lost during the lockdown would not qualify as "*enabling the factory or factories to deal with an exceptional pressure of work*", but even otherwise and presuming that it does, the present impugned Notification is ultra vires section 65 also. Section 65(3) lays down a number of conditions for the granting of an exemption. Section 65(3)(iii) prohibits the total number of hours of work in any week, including overtime, from exceeding 60. Thus a 12-hour day can only be done thrice in a week. The impugned Notification provides for up to 72 working hours in a week – i.e, 12 hours a day, 6 days a week.

11. Further and most crucially, section 65(2) does not provide for an exemption from section 59 of the Act (which mandates for double pay for overtime worked over and above 8 hours a day / 48 hours in a week). The direction for no payment of overtime rate for overtime worked is completely taking away the meagre rights available to a worker who is putting additional effort after a long days work. Moreover it takes away the incentives workers have for working overtime and is also a huge financial blow to the workers who are

quite literally risking their lives to ensure the sustenance of the economy.

12. The Petitioners thus contend that the impugned Notification is ultra vires the powers conferred under the Factories Act, 1948 and in blatant violation of some of the most fundamental and important provisions of the said Act.

13. The Petitioners further submit that the shocking extension of working hours is being directed at a time when the most basic medical and scientific advice to avoid contracting the deadly COVID-19 is to take rest and stay as healthy as possible. This new regime ensures the complete opposite. That too as we move into the monsoon season when disease and viruses are notoriously rampant, and most alarmingly for COVID-19, bronchial & lung issues abound. As per the notification, these workers will now be overworked, without being compensated for the same as per law, which will only ensure that both their physical and mental health deteriorate. In fact, it would amount to allowing forced labour. In light of the pandemic, if the State claims that this pandemic is in fact a

"public emergency" then allowing forced labour will definitely worsen the situation instead of improve it.

14. The Petitioners respectfully submit that the tragic trio of industrial accidents on 7th May at Vishakapatnam Chattisgarh & Neyveli are reported to have happened in hazardous industries being reopened after the lockdown with a skeletal workforce. Manning Industries with tired, exhausted and weak workers will only invite such further tragedies. In light of the hundreds of lives already affected, this Notification is simply inviting disasters rather than mitigating them.

15. The Petitioners respectfully submit that the said notification quite clearly states that the workers will be not only be grossly overworked, but the fact that the direction for no payment of overtime rate for overtime worked is added, just adds a sordid element of cruelty to a blatantly illegal notification, all in respect of the workers who are quite literally risking their lives to ensure the sustenance of the economy;

16. The Petitioners respectfully submits that a large number of studies show that not only do increased working hours not lead to increased production, but in fact the complete opposite – that tired, exhausted & weak workers produce less than workers working fewer hours.

17. The Petitioners states that in view of the above facts they are filing this Petition under Article 32 directly before this Hon'ble Court as it involves an important question of law and similar Notifications have been issued by at least 10 other States throughout India, Further the Petitioners have come to know that another matter has been filed before this Hon'ble Court challenging the Notification impugned herein. Hence judicial propriety requires that this matter be filed before this Hon'ble Court.

18. The Petitioner has not filed any other Petition under Article 226 or Article 32 before this court or any High Court claiming reliefs as prayed herein.

19. That this Writ Petition has been filed on the following grounds, amongst others which are set out without prejudice to each other;

GROUNDS

A. It is respectfully submitted that the Notification dated 17.04.2020, is illegal, exploitative, unjust, arbitrary, unreasonable and violative of statutory rights guaranteed under the Factories Act, 1948, Minimum Wages Act, 1948 and various other labour laws as well as the fundamental rights enshrined in the Constitution of India. The said notification deserves to be quashed and set aside on the following grounds:

SECTION 5 OF THE FACTORIES ACT:

a) That the impugned Notification of the Gujarat Labour and Employment Department has been made under Section 5 of the Factories Act which only permits a State Government to grant exemption from provisions of the Factories Act, 1948, *"in a case of public emergency"* and the same section defines "public emergency" to mean *"a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance"*. It is clear that

such an "emergency" thus only covers emergencies in the nature of physical and tangible war or conflict;

- b) It is submitted that the definition of "public emergency" u/s. 5 does include within its ambit the phenomenon of a viral disease, albeit a Pandemic. It is clearly beyond the purview of the section to include a global medical pandemic as an "external aggression or internal disturbance";
- c) Further, section 5 of the Factories Act, 1948, only permits a State Government to grant exemption (except from section 67) "any factory or class or description of factories", whereas the Impugned Notification grants a blanket exemption to all factories throughout the State of Gujarat;
- d) The Petitioners submit that the Impugned Notification is thus for the above-set out reasons ultra vires the powers granted under section 5 of the Act to grant exemptions;

SECTION 65(2) OF THE FACTORIES ACT

- e) That although the impugned Notification has been passed under section 5 of the Factories Act, 1948 and not under

section 65(2), even the latter section would not be applicable in the present scenario, as it only permits exemption to be granted, on such conditions as it may deem expedient, from any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 of the Act on the ground that the exemption is required to "*enable the factory or factories to deal with an exceptional pressure of work*";

- f) It is submitted that the present Covid-19 scenario cannot possibly fall within the requirement of "*enable the factory or factories to deal with an exceptional pressure of work*";
- g) Even otherwise and presuming that it does apply, the present impugned Notification is ultra vires section 65 also;
- h) That section 65(2) of the Factories Act, 1948, only permits a State Government to grant the exemptions referred to therein "from any or all of the adult workers in any factory or group or class or description of factories to "any factory or class or description of factories", whereas the Impugned

Notification grants a blanket exemption to all factories throughout the State of Gujarat;

- i) Further, Section 65(3) lays down a number of conditions for the granting of an exemption. Section 65(3)(iii) prohibits the total number of hours of work in any week, including overtime, from exceeding 60. (Plus the total number of hours of overtime work in any quarter shall not exceed seventy-five). Thus a 12-hour day can only be done thrice in a week. The impugned Notification provides for up to 72 working hours in a week – i.e, 12 hours a day, 6 days a week.

- j) Section 65(2) of the Act does not provide for any exemption being granted from section 59 of the Act (which mandates for double pay for overtime worked over and above 8 hours a day / 48 hours in a week), while the impugned notification blatantly overrides this;

- k) That the Impugned Notification amounts to forced labour which itself is in violation of Article 23 of the Constitution of India;

- l) That a large number of studies show that not only do increased working hours not lead to increased production, but in fact the complete opposite – that tired, exhausted & weak workers produce less than workers working fewer hours;
- m) That the impugned Notification further permits the large extension of working hours at a time when the most basic medical and scientific advice to avoid contracting the deadly COVID-19 virus is to take rest and stay as healthy as possible. This new regime ensures the complete opposite;
- n) It is respectfully submitted, that the tragic trio of industrial accidents on 7th May at Vishakapatnam Chattisgarh & Neyveli are reported to have happened in hazardous industries that were reopened after the lockdown with a skeletal workforce. Manning industries with tired, exhausted and weak workers will only invite such further tragedies;
- o) It is submitted that for all the above reasons, the impugned Notification is thus ultra vires, illegal, exploitative, unjust,

arbitrary, unreasonable and violative of statutory rights guaranteed under the Factories Act, 1948, the Minimum Wages Act, 1948, as well as the fundamental rights enshrined in the Constitution of India under Articles 14, 21 & 23 of the Constitution of India.

B. The Petitioners have filed this Petition for directions to protect and safeguard fundamental rights of the workmen under Articles 14, 21 and 23 of the Constitution, since the Petitioners have no alternate efficacious remedy but to approach this Hon'ble Court under Article 32 of the Constitution of India for the reliefs prayed for herein.

PRAYERS

In view of the aforesaid, it is respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Issue a writ or certiorari and any other writ, order or direction and quash/set aside the Notification No. GHR/2020/56/FAC/142020/346/M3 of the Gujarat Labour and Employment Department dated 17th April 2020 annexed above at Annexure A to be ultra vires the provisions of the Factories Act, 1948 and void *ab initio*;

(b) Pass any such/ other order(s) as this Hon'ble Court may
deem fit and proper in view of the above.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY
BOUND SHALL EVER PRAY.

Drawn and filed by:

APARNA BHAT

Advocate for the Applicants / Petitioners

Place: New Delhi

Filed on:20/05/2020

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IN THE SUPREME COURT OF INDIA

ORIGINAL WRIT JURISDICTION

WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF:

Gujarat Mazdoor Sabha

... PETITIONERS

-Versus-

State of Gujarat

... RESPONDENT

AFFIDAVIT

I, Amrish Narendrabhai Patel, S/o Narendrabhai N. Patel, aged 52 years, residing at A-201, Sharnam - 3, behind Hetvi Tower, Anandnagar Road, Ahmedabad - 380015, do hereby solemnly state and affirm as under:

1. That I am the Secretary of the Petitioner No. 1 Union in the above mentioned case and am conversant with the facts of the case and have been duly authorized by the Petitioner No.1 Union and am competent to swear this affidavit.
2. I have read and understood the contents of the synopsis and List of dates at pages 8 to 9 and the contents of the Writ Petition in paras No. 1 to 15 at pages 1 to 13 and I say that the contents thereof are true and correct to the best of my knowledge and belief. I have also read understood the contents of the accompanying Interlocutory Application(s) and I say that the contents thereof are true and correct to the best of my knowledge and belief.

3. The annexures filed along with this Writ Petition are true copies of their respective originals.


DEPONENT

Verification:

Verified at Gujarat on this 22 day of May 2020, that the contents of the above affidavit are true to my knowledge and best belief. No part of it is false and no material has been concealed therefrom.


DEPONENT

ANNEXURE -P-1

Notification

Labour and Employment Department
Sachivalaya, Gandhinagar
Date: 17th April, 2020.

Factories
Act, 1948:

No. GHR/2020/55/FAC/142020/346/M3: WHEREAS the Government of India has declared Lockdown across India to fight against the world wide pandemic "Coronavirus";

AND WHEREAS the Government of India has decided to provide certain relaxations for industrial and commercial activities from 20th April, 2020;

AND WHEREAS the Government of Gujarat has decided that these relaxations will not be applicable to areas declared as hotspots or containment zones in different cities of the State and the commercial activities and businesses can start functioning from 20th April, 2020 but with due procedures of safety and social-distancing;

NOW, THEREFORE, in exercise of the powers conferred by Section 5 of the Factories Act, 1948 (XXII of 1948), the Government of Gujarat hereby directs that all the factories registered under the Factories Act, 1948 shall be exempted from various provisions relating to weekly hours, daily hours, intervals for rest etc. of adult workers under section 51, section 54, section 55 and section 56 with the following conditions from 20th April till 19th July 2020,-

- (1) No adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and Seventy Two hours in any week.
- (2) The Periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed six hours and that no worker shall work for more than six hours before he has had an interval for rest of at least half an hour.
- (3) No Female workers shall be allowed or required to work in a factory between 7:00 PM to 6:00 AM.
- (4) Wages shall be in a proportion of the existing wages. (e.g. If wages for eight hours are 80 Rupees, then proportionate wages for twelve hours will be 120 Rupees).

By order and in the name of the Governor of Gujarat,


(Jyotsna Chauhan)
Deputy Secretary to Government

To,
The Manager,
Government Central Press,
Gandhinagar.

With a request to publish the notification in the Extra-Ordinary Gujarat Government Gazette Part IV-B and the copies of printed notification may please be distributed as under:

- | | |
|---|-----------|
| (i) The Labour and Employment Department,
Sachivalaya, Gandhinagar | 05 Copies |
| (ii) The Commissioner of Labour,
Gujarat State, Gandhinagar | 05 Copies |
| (iii) The Director Industrial Safety and Health,
Gujarat State, Ahmedabad. | 05 Copies |

(T9)

IN THE SUPREME COURT OF INDIA
ORIGINAL CIVIL WRIT JURISDICTION

I.A. NO. _____ OF 2020

IN

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

Gujarat Mazdoor Sabha & Anr. ...PETITIONERS

VERSUS

State of Gujarat ...RESPONDENTS

AN APPLICATION FOR INTERIM DIRECTIONS

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS LORDSHIP'S COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION
OF THE ABOVE NAMED
APPLICANTS / PETITIONERS

MOST RESPECTFULLY SHOWETH:

1. That the present writ petition under Article 32 of the Constitution of India is being filed by the Petitioner challenging the Notification No. GHR/ 2020/56/FAC/142020/346/M3 dated 17th April 2020 ("impugned notification") issued by the Gujarat Labour and Employment Department on the grounds that it is

patently illegal, violative and unnaturally unjust of various fundamental rights, statutory rights and labour laws.

2. That the Petitioners pray that the averments made in the accompanying writ petition may be read as part and parcel of this application. The Petitioners crave leave of this Hon'ble Court to refer and to rely upon the averments made in the writ petition which are not being repeated herein for the sake of brevity.
3. This application is being filed bona fide in the interest of justice. It is further submitted that no prejudice would be caused to any of the respondents if the present application is allowed as the balance of convenience lies solely in favour of the Petitioners. However, if the present application is not allowed, interest of the Petitioners would be severely prejudiced.
4. The Petitioner has not filed any other proceedings either before this Hon'ble Court or any High Court seeking any other reliefs of a similar nature as prayed for vide the present application.

5. The Petitioners respectfully submit that the impugned notification quite clearly states that the workers will be not only be grossly overworked, but the fact that the direction for no payment of overtime rate for overtime worked is added, just adds a sordid element of cruelty to a blatantly illegal notification, all in respect of the workers who are quite literally risking their lives to ensure the sustenance of the economy
6. That the amount of work being taken will only ensure deterioration of physical and mental health of the workmen.
7. That most of the workmen do not have access to even the most basic medical facilities are literally risking their lives to ensure the sustenance of the economy.
8. That the shocking extension of working hours is being directed at a time when the most basic medical and scientific advice to avoid contracting the deadly COVID-19 is to take rest and stay as healthy as possible.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- (c) Direct that, pending the hearing and final disposal of this Petition, the operation of Notification No. GHR/2020/56/FAC/142020/346/M3 of the Gujarat Labour and Employment Department dated 17th April 2020 annexed as Annexure-A to the Writ Petition be stayed;
- (d) Direct that, pending the hearing and final disposal of this Petition, direct the State Government of Gujarat to ensure that any overtime worked by workmen in Gujarat on and after 17th April 2020 is paid at double rate as per section 59 of the Factories Act, 1948;
- (e) Pass any such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

APARNA BHAT

Advocate for the Applicants / Petitioners

Place: New Delhi

Filed on:20/05/2020

IN THE SUPREME COURT OF INDIA
ORIGINAL CIVIL WRIT JURISDICTION

I.A. NO. _____ OF 2020

IN

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

Gujarat Mazdoor Sabha & Anr.

...PETITIONERS

VERSUS

State of Gujarat

...RESPONDENTS

APPLICATION SEEKING EXEMPTION FROM FILING DULY AFFIRMED

AFFIDAVIT AND STAMPED VAKALATNAMA

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION

OF THE ABOVE NAMED

APPLICANT / PETITIONER

MOST RESPECTFULLY SHOWETH:

1. The Petitioners are filing this Petition to challenge Notification No. GHR/2020/56/FAC/142020/346/M3 dated 17th April 2020 issued by the Gujarat Labour and Employment Department on the grounds that it is patently

illegal, violative and unnaturally unjust of various fundamental rights, statutory rights and labour laws.

2. That the Applicants are fundamentally interested in the present Writ Petition as the issue of overwork without being compensated for the same as per law is one directly affecting the sustenance and livelihood of its members.
3. That due to the prevailing circumstances of COVID-19, the members of Petitioner No. 2, i.e. Trade Union Centre of India, could not reach their office in order to obtain their stamp. The Vakalatnama filed along with the Petition has only been stamped by Petitioner No. 1. Nevertheless, it is submitted that both the Petitioners have filed their Registration certificates.
4. That it is prayed that in the prevailing circumstances, the Petitioner be exempted from filing duly stamped vakalatnama for the time being.
5. That the affidavits could also not be affirmed by the concerned authority. Therefore, it is prayed that in the prevailing circumstances, exemption from filing duly affirmed affidavits be granted for the time being.
6. That it is undertaken that the deficit court fees will be paid subsequently once prevailing circumstances are clear.

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PRAYER

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Grant exemption from filing duly affirmed affidavits in the prevailing circumstances;
- B. Grant exemption from filing duly stamped vakalatnama ^{and court fees} under the prevailing circumstances;
- C. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE APPLICANTS / PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:

APARNA BHAT

Advocate for the Applicants / Petitioners

Place: New Delhi

Filed on: 29/5/2020

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27.05.2020

To,
The Registrar,
Supreme Court of India,
Bhagwan Das Road,
New Delhi.

Re: Dy. No. 11439 of 2020
Gujrat Mazdoor Sabha & Anr. Vs. State of Gujrat

Sub: Letter regarding defects.

Sir,

This is with reference to the aforementioned Petition. The aforementioned Petition was filed before this Hon'ble Court on 20.5.20 and the defects were notified in this matter on 21.05.20.

That one of the defects is to clarify if the matter is a PIL. Regarding the same, it is clarified that the matter is not a PIL.

Rest of the defects in the matter have been cured. Kindly list the present Petition at my risk.

Sincerely,

Aparna Bhat
Advocate for the Petitioner

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27.05.2020

To,
The Registrar,
Supreme Court of India,
Bhagwan Das Road,
New Delhi.

Re: Dy. No. 11439 of 2020
Gujrat Mazdoor Sabha & Anr. Vs. State of Gujrat

Sub: Letter of Urgency

Sir,

This is with reference to the aforementioned Petition. The aforementioned Petition was filed before this Hon'ble Court on 20.5.2020 and was refiled after curing the defects on 21.05.20.

The Application is of grave urgency as the aforementioned Petition is regarding the issue of overwork without being compensated for the same. Due to the increased working hours, the hardships faced by the workmen have also increased which demands that the matter be listed urgently.

Therefore, I request you to kindly register the matter as early as possible so that it can come up for hearing.

Sincerely,

Aparna Bhat
Advocate for the Petitioner