

**GOVERNMENT OF MAHARASHTRA**

**No: DMU2020/CR-92/DMU-1  
Management, Relief and  
Rehabilitation, Revenue and  
Forest Department,  
Mantralaya, Mumbai - 400 032  
Dated: 12<sup>th</sup> August, 2020**

**Subject:** Writ Petitions filed in the Hon'ble High Court at Mumbai.

(1) OS-WP-LD-VC-259/2020

(2) OS-WP-LD-VC-271/2020

**Reference:** (1) Opening of Jain Temples as mentioned in the aforesaid 2 Writ Petitions.

(2) Representation received via e-mail by the State of Maharashtra from the Petitioners in the aforesaid 2 Writ Petitions at 11.23 p.m. yesterday.

The representation dated 11<sup>th</sup> August, 2020 was received via e-mail by the State of Maharashtra at 11.23 p.m. for consideration regarding opening of Jain Temples in Mumbai during the period between 15<sup>th</sup> August, 2020 till 23<sup>rd</sup> August, 2020.

At the outset, it ought to be noted that today a local holiday has been declared on account of "Krishna Janmashtami" and therefore all the Government offices including Mantralaya is closed. However, only with a view to comply with the order dated 11<sup>th</sup> August, 2020 passed by the Hon'ble Bombay High Court in

OS-WP-LD-VC-259 of 2020 the present representations are being considered, though in haste and hurry. After considering the same, I am hereby passing the following Order.

### ORDER

1. At the outset, it ought to be appreciated that maintenance and improvement of public health has to rank high, rather highest, for the State, as these are indispensable to the very physical existence of the community. In short, attending to public health is of high priority, perhaps the one at the top, more particularly when not only the entire State but the entire World is facing the worst crisis, in the form of Corona-Virus 2019, commonly known as COVID-19.
2. The State Government in furtherance of the aforesaid avowed object of maintaining public health, in the current difficult times, has taken various decisions, which may appear harsh, by invoking provisions of Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897, in the larger interest of its citizens. The State is alive to the fact that such decisions have caused great inconvenience to various sections of its citizens, like the one voiced in the aforesaid representations. However, when it comes to balancing between maintenance of public health of citizenry of State on one hand and various rights enshrined in the Constitution of India including Right guaranteed under Article 25, on the other hand, it does not require recording of reasons to conclude that, all such rights must pave way to the maintenance of public health of the citizenry.
3. At the threshold itself, it would be worthwhile to note that as on 11<sup>th</sup> August, 2020 total population affected by COVID-19 in the State of Maharashtra is **5,35,601** and total number of deaths registered on account of COVID-19 is **18,306** Out of these, in Mumbai alone the total number of infected cases have been found

to be **1,25,224** and in Mumbai City, Mumbai Suburban District, Thane, Palghar and Raigad District which are the part of Mumbai Metropolitan Region area (“MMR Area”) more particularly Thane Circle of Health Department the number is **2,72,104** while **10,962** total number of deaths have been registered on account of COVID-19. In Pune District, the total number of infected cases have been found to be **1,16,646** while **2,824** total number of deaths have been registered on account of COVID-19. Such is the situation prevailing in the State of Maharashtra, Mumbai, MMR area and Pune region as of 11<sup>th</sup> August, 2020. The aforesaid situation cannot be ignored and has to be considered seriously, in its proper perspective, especially while considering the representation at hand.

4. As aforesaid, the entire nation is facing the worst crisis in the form of Corona-Virus 2019, commonly known as COVID-19. The World Health Organization has already declared the spread of infection caused by COVID-19 as a Pandemic in March, 2020. It is also known fact that very little is known about the said infection i.e. the manner in which the said virus infects, reacts, affects etc. The few aspects of the said virus that are by now very well-known and established are that, it is highly infectious, contagious and life-threatening.

5. Resultantly, the entire nation including our State was under complete lockdown as a measure adopted by the Central Government as also the State Governments to curb the spread of the pandemic. The said lockdown was extended from time to time in phases and presently is in force till the end of 31<sup>st</sup> August, 2020 for containment zones. The said lockdown is being relaxed in a staggered manner.

6. The figures encapsulated herein-above clearly show that the State of Maharashtra is amongst the most affected states in India and more particularly within the State of Maharashtra, Mumbai and the Mumbai Metropolitan Region (MMR) is the worst affected due to the COVID-19 pandemic. The State of

Maharashtra has been adopting and emphasizing various precautionary measures to contain the spread of infection, based on the suggestions given by the experts such as use of masks, sanitizers, maintaining social distancing as also the focus has always been on avoiding the over-crowding at any given place, be it streets, halls or transport facilities such as cars, buses and trains.

7. It ought to be appreciated that apart from various other restrictions, one restriction that formed part of both, the Central and the State guidelines to contain the spread of the virus, was that *“All places of worship shall be closed for public. No religious congregations will be permitted, without any exception”*. As such the restriction regarding activities in religious places / places of worship for public and religious functions were prohibited from the date of announcement of the lockdown.

8. It is a matter of fact and record that the Government of India as well as the State of Maharashtra has issued orders to re-open prohibited activities in a phased manner in areas outside containment zones. The first such order issued by the Government of India is dated 30<sup>th</sup> May, 2020, wherein in Phase-I it is mentioned that, religious places/places of worship for public, will be allowed w.e.f. 8<sup>th</sup> June, 2020 for which a separate Standard Operating Procedure will be issued. Accordingly, on 4<sup>th</sup> June, 2020 the Government of India has also issued SOP in this regard. The latest order i.e. guidelines on Unlock 3 that has been issued by the Government of India is dated 29<sup>th</sup> July, 2020. It is pertinent to note that in all the aforesaid orders the Government of India has consistently and consciously mentioned the following clause:

*“States/UTs, based on their assessment of the situation, may prohibit certain activities outside the containment zones, or impose such restrictions as deemed necessary.”*

**9.** In so far as the State of Maharashtra is concerned, looking at the ground level position that is prevailing, both in urban and rural areas, a conscious policy decision is taken to continue to close all places of worship and not to permit any religious congregations, without any exception. This policy decision is based on assessment of the situation at hand as also the consequence if such activities are permitted.

**10.** It ought to be appreciated here itself that right since the restrictions were imposed and till date, everybody has followed the aforesaid restrictions strictly, be it *Gudhi Padava, Shree Ram Navami, Hanuman Jayanti, Mahaveer Jayanti, Easter Sunday, Buddha Pornima, Akashay Trutiya, Ramadan Eid, Vat Pornima, Various Dindis to Pandharpur, Ashadhi Ekadashi, Guru Pornima, Nag Panchami, Bakari Eid, All Shravan Somwars (Monday), Raksha Bandhan, Goukulashtami and Dahi Handi*. All the afore-mentioned religious festivals have been performed by the citizens by staying at home, so as to contain the spread of the virus. There is absolutely no reason at all, much less just and proper to carve out an exception for the applicants.

**11.** It is at this juncture most pertinent to note that a Writ Petition was filed in the Hon'ble Bombay High Court by Warkari Seva Sangh to allow the members of the Seva Sangh to carry padukas of Sant Dyaneshwar to Pandharpur for performing the rituals of Ashadi Ekadashi by following the conditions that may be imposed by the Respondents. The Hon'ble Bombay High Court vide well-reasoned Judgment dated 30<sup>th</sup> June, 2020 was pleased to dismiss the same.

**12.** The main contention of the Petitioner and which the Hon'ble Court has also directed me to consider is that if malls and market places, barber shops, spas, saloons, beauty parlours, liquor shops etc. can be operated with certain restrictions, why the Jain devotees should not be allowed to visit the places of

worship to offer prayers and/or perform rituals with similar restrictions. In my considered view, the said contention is totally misconceived and misplaced.

**13.** First and foremost, there cannot be any comparison in law in so far as the aforesaid activities on one hand and the activities which the Petitioner has requested to allow, on the other hand. Since the aforesaid activities are not at all at par with the activities which the Petitioner has requested to allow, there is no question of applicability of Article 14 of Constitution of India in present case at hand. All these activities that are permitted are 'commercial' in nature, unlike the activity in respect of which the representation under consideration is submitted, which is 'religious'. Thus, inherently in each and every aspect they are incomparable, unequal and therefore, cannot as of right, be said to be treated equally.

**14.** It further ought to be appreciated in this regard that on account of the imposition of the lockdown in the entire country, the economy of the country had come to a grinding halt. In furtherance of the object to revive the economy gradually, the decisions to re-open malls, market places, barber shops, saloons, liquor shops etc. in a phased manner has been taken, by the Central as well as State Government, of course with stipulated regulations. There cannot be any comparison of the above action of the State Government with the action of not allowing people to visit the places of worship to offer prayers and/or to perform rituals. Even for the purpose of raising contention of discrimination the two groups must be equally placed.

**15.** A very classic and recent example of danger of opening of temples is opening of Tirumala Tirupati Balaji Temple in Andhra Pradesh. The opening of Tirumala Tirupati Balaji Temple has opened floodgates for coronavirus infections. As many as 743 employees of the Tirupati Temple have tested positive for Covid-19.

**16.** As aforesaid very little is known about the said infection i.e. the manner in which the said virus infects, reacts, affects etc. The few aspects of the said virus that are by now very well-known and established are that, it is highly infectious, contagious and life-threatening. If the temples are allowed to be opened for performing religious activities as prayed, there is an eminent danger of spreading the virus, which may be life-threatening and may even result into loss of life of the entire family.

**17.** Allowing the claim of the applicants by imposing conditions is not a practically feasible option. The experience of the State Government and its machinery in the past demonstrates that, such restrictions and conditions are observed only in breach thereof e.g. vegetable markets etc. and secondly, it is impossible to monitor the strict observance of such conditions. It is also worthwhile to note that the only consequence of non-observance and breach thereof is irreversible spread of deadly infection, a situation that is irreversible. In the background of such a most likely, almost certain, event, it must be remembered that prevention is always to be preferred, especially when such events are surely avoidable.

**18.** At this juncture it further ought to be appreciated that the State Government has in the foresight ensuing religious festivals such as Anant Chaturdashi, Navratri etc. In case, if today the prayer made in the representation is granted, certainly there will be similar requests coming for allowing to celebrate the aforesaid and such other numerous religious festivals of various religions, casts and communities, which will ultimately result in spreading of the virus quickly and will open floodgates of corona patients. As a matter of fact, already the State machinery is overburdened with the situation and minimum that the State can expect from responsible citizens is not to make demands such as the one at hand.

Therefore, the State Government cannot allow a situation wherein the condition becomes so critical that it goes out of hand.

**19.** In view of aforesaid discussion and taking into consideration the situation and the prevailing circumstances in the State of Maharashtra and more particularly, Mumbai City, the Mumbai Metropolitan Region (MMR) and Pune City, it is just not possible to accede to the request made in the representations under consideration to permit opening of Jain Temples between the period from 15<sup>th</sup> August, 2020 till 23<sup>rd</sup> August, 2020 and the same is hereby rejected.



(Kishore Raje Nimbalkar)  
Secretary, Disaster Management, Relief  
and Rehabilitation