

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WP -LD- VC- NO. 380 OF 2020**

Viraf D. Mehta ... Petitioner

V/s.

The Municipal Corporation of Greater Mumbai
and Others ... Respondents

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Mr.Prakash Shah, i/b. Mr.Durgaprasad Poojari for the Petitioner.
Ms. Sheetal Metakari, i/b. Ms.Aruna Savla for the Respondent
no.1 –MCGM.

Mr. A.A.Kumbhakoni, Advocate General, a/w. Ms.PH.Kantharia,
Government Pleader, Ms.Geeta Shastri, Additional Government
Pleader for the State – Respondent no.2.

Mr.Anil Singh, Additional Solicitor General, a/w. Mr.Aditya
Thakkar.

Mr. D. P. Singh for the Respondent no.3.

Mr. Viraf D. Mehta-Petitioner present.

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CORAM : R. D. DHANUKA AND
MADHAV J. JAMDAR, JJ.

DATE: : 2nd SEPTEMBER, 2020.
(THROUGH VIDEO CONFERENCING)

PC:-

1. The Government of Maharashtra has passed an

order pursuant to our order dated 31st August, 2020 rejecting the representation made by the Petitioner by order dated 2nd September, 2020.

2. Leave to amend is granted to the Petitioner. Amendment be carried out within one week from today.

3. Learned counsel appearing for Respondent No.1 waives service. Learned Advocate General waives service for Respondent No.3. Learned ASG waives service for Respondent No.3. By consent of the parties, Petition is heard finally.

4. By this Petition under Article 226 of the Constitution of India, the Petitioner seeks order and direction against the Respondent Nos.1 and 2 to forthwith permit opening of Fire Temples, Doongerwadi and other places of worship and permit the followers of Parsi religion including the members of Parsi community to visit Fire Temples and Doongerwadi and other places of worship and in the alternative allow opening of Doongerwadi during annual prayer day for

offering prayers on 3rd September, 2020 and permit the followers of Parsi religion including the members of the Parsi community to perform rituals at Doongerwadi and issue guidelines in respect thereof.

5. The Writ Petition is filed by the Bombay Parsi Panchayat and not by Shri Viraf D. Mehta in his individual capacity as clarified by the learned counsel for the Petitioner before the Authority as well as by filing additional affidavit on 1st September, 2020.

6. According to the Petitioner, as per the Shehenshahi Calendar, Shehenshahi 10 Muktaf Days started on Sunday August 7th from Ashtad Roj to Aneran Roj, Asfandarmad Mahino followed by 5 Gatha Days- Ahunavad, Ushtavad, Spentomad, Vohukhshathra and Vahishtoisht, from 12th to 16th August, 2020. The last day of Holy Days for Parsis during the first month of Farvardin is the Farvardegaan on Farvardin Maah and Farvardin Roj (19th day). According to the Petitioner, 3rd September, 2020 is the day on which Parsi community pray offer prayers for their

dear departed ones.

7. However, in view of the SOPs and guidelines issued by the World Health Organization, Union Government and State Government, various restrictions are imposed on holding religious ceremonies. Last of such guidelines are issued on 31st August, 2020 by the State Government and by the Union of India on 29th August, 2020.

8. We have heard the learned counsel for the Petitioner and the learned Advocate General for the State and Mr. Singh, ASG for the Union of India. Learned counsel appearing for the parties stated that the reasons are not required to be rendered by this Court in this order. Statement is accepted.

9. During the course of advancing arguments before this Court learned counsel for the Petitioner and the Respondents made various suggestions. We have perused the averments made in the Writ Petition and in the additional affidavit filed by the Petitioner and also various provisions of the SOP and guidelines issued by the Central Government and

State Government respectively. We have also interacted with Mr. Viraf D. Mehta through online to confirm various factual undertakings recorded in the additional affidavit and in view of the issues raised by the learned Senior Counsel for the Respondents.

10. Our attention is also invited to various orders passed by this Court and the Hon'ble Supreme Court in respect of various permissions sought by the various organizations for holding various ceremonies. It is made clear that we are not following any of the orders passed by this Court as well as Hon'ble Supreme Court as precedent for passing this order.

11. We make it clear that although the Petitioner has prayed for larger reliefs in prayer clause (A) of the Writ Petition, during the course of arguments, Mr. Shah learned counsel for the Petitioner made it clear that his client presses reliefs only in respect of Doongerwadi and that also only for offering prayers on 3rd September, 2020. Statement is accepted.

12. In the additional affidavit filed by the Petitioner

affirmed on 1st September, 2020 and across the bar the Petitioner has recorded various undertakings before this Court. The undertakings recorded in the additional affidavit and across the bar are accepted.

13. Perusal of the additional affidavit clearly shows that the Petitioner has made it clear that the Parsis who died due to COVID-19 are not allowed to be brought to Doongerwadi but are cremated at the Worli prayer hall. The property Doongerwadi is spread across over 55 acres and completely isolated and is a gated area. Except the members of Parsi community no one else is allowed to enter upon the Doongerwadi.

14. During the course of arguments Mr. Shah learned counsel for the Petitioner undertook that not more than 6 persons from the community and two Priests at a time in each of 5 pavilions admeasuring about from 600-800 square feet would be permitted for the purpose of Farvardin between 7.00 a.m. and 4.30 p.m.

15. It is clarified in the affidavit that on 3rd September, 2020 there would be no religious function and there would be no large congregations like Ganeshostav or Navratri. Only the restricted members of Parsi community will come to Doongerwadi to pray for their close departed soul, such ceremony would last around 30 minutes by each of the group permitted in those 5 pavilions admeasuring 600-800 square feet. Two of the Priests of the Parsi community would also attend the prayers alongwith maximum 6 members of the Parsi community in each of 5 pavilions at the time of offering prayers during the slot of 30 minutes and not more than that.

16. The Petitioner further undertook that before allowing any person to enter the pavilion, his temperature will be recorded using a contactless temperature gun to ensure maximum safety and proper liquid/gel based sanitizers will also be sprayed/applied on the hand of each of worshiper entering the premises.

17. Learned counsel for the Petitioner and Mr. Viraf D.

Mehta who appeared online made statement before this Court that there is only one entrance for entering Doongerwadi and there would be no congregations either at the time of entering the Doongerwadi area or at the time of exit.

18. Prayers would be not more than 30 minutes for each of the groups of 6 persons with 2 Priests per pavilion.

19. Petitioner undertook that proper sanitization of each of the pavilions would done and will admit the next batch after a gap of 15-20 minutes after sanitization.

20. The Petitioner undertook not only to adhere to the social distancing norms but strictly follow the guidelines of Central and State Government. No person will be allowed without face mask. The members will also offer hand gloves to those who desire to use them.

21. It is made clear that worshipers will have to follow all the social distancing norms prescribed in SOP dated 4th June, 2020 as well as guidelines dated 31st August, 2020 framed by the Central Government and State Government

respectively.

22. It is made clear that the trust shall not allow any person below the age of 10 years and above 65 years of age at the time of prayers or even at entry level.

23. Mr. Viraf D. Mehta who is one of the Trustee of Bombay Parsi Panchayat personally undertakes that the condition imposed by this Court and in the SOPs/guidelines would be implemented under his personal supervision during the period between 7.00 a.m. to 4.30 p.m. or till prayers are over even earlier.

24. Petitioner undertook that there will be not more than 200 persons throughout the day in batches to offer the prayers.

25. We accept the statement made by Mr. Prakash Shah, learned counsel for the Petitioner and also by Mr. Viraf D. Mehta that the worshipers who seek to remain present for the purpose of offering prayers would be allotted slot by an

appointment previously fixed. Mr. Mehta informed this Court that the process of giving appointment would start today itself through social media. Statement is accepted. It is made clear that only those persons who would be given appointment by the Trust would be allowed to offer prayers at Doongerwadi.

26. It is made clear that after prayers offered by the members of the Parsi community who are given such appointment, the entire premises would be sanitized by the Petitioner at its own cost. None of the worshipers who are permitted to offer prayers by this order would remain in the premises of Doongerwadi after such prayers are completed.

27. We accept the assurance made by the Trustees of Bombay Parsi Panchayat that necessary co-operation would be provided to the law enforcing agencies while the ongoing process of worship during the period between 7.00 a.m. to 4.30 p.m. and if required even thereafter. Assurance is accepted.

28. We also accept the assurance given by the Bombay Parsi Panchayat that they will also co-operate with the traffic

department in avoiding the traffic problem to other members of public during the period between 6.30 a.m. to 5.00 p.m. State Government will also make the proper arrangement to avoid any traffic problem during this period by providing suitable number of traffic constables.

29. Since we have passed this order in the peculiar facts and circumstances and considering the over all view of the matter, we make it clear that this order shall not be used as precedent in any other matter.

30. All the assurances, statements made in the additional affidavit dated 1st September, 2020 and the undertakings given by the Bombay Parsi Panchayat are accepted as undertakings given to this Court. In the light of above and on these conditions and restrictions, Petitioner is allowed to perform prayers on 3rd September, 2020 between 7.00 a.m. to 4.30 p.m.

31. Writ Petition is disposed of in the aforesaid terms.

32. This order will be digitally signed by the Personal Assistant of this Court. Associate of this Court is permitted to forward the parties copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

(MADHAV J. JAMDAR, J.)

(R. D. DHANUKA , J.)