

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/WRIT PETITION (PIL) NO. 140 of 2020

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APURVA RASIKBHAI KAPADIA
Versus
STATE OF GUJARAT

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Appearance:
PARTY IN PERSON(5000) for the Applicant(s) No. 1
for the Opponent(s) No. 1,2,3,4,5

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

Date : 16/09/2020

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

“Fools rush in where angels fear to tread.” People without good sense or judgement will have no hesitation in tackling a situation that even the wisest would avoid. The line for “fools rush in where angels fear to tread” was first written by Alexander Pope in his 1711 poem “An Essay on Criticism”. The phrase alludes to inexperienced or rash people attempting things that more experienced people avoid.”

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1 We are constrained to preface our order with the aforementioned proverb keeping in mind the subject matter of this petition filed in public interest.

2 By this writ petition filed in public interest, the writ applicant, a practicing advocate, has prayed for the following reliefs:

“(A) Your Lordship may be pleased to admit and allow this petition.

(B) Your Lordship may be pleased to direct the respondent no.1 to immediately take action against all the erring officers, who have allowed the procession to take place in the city of Khambhat, more particularly, the respondent nos.4 and 5 herein.

(C) Your Lordship may be pleased to direct the respondent authorities to immediately lodge FIR against all erring officers for allowing the procession to take place in the city of Khambhat in violation of Notifications and guidelines issued by the Central Government.

(D) Your Lordship may be pleased to direct the respondent no.1 to appoint Special Investigating Team to inquire into the role of the Government officers in allowing the procession to take place in the present pandemic and further be pleased to direct the respondent authorities to hold the departmental inquiry against all concerned officers for flouting the Notifications and guidelines issued by the Central Government.

(E) Your Lordship may be pleased to direct the investigation to be transferred to the Superintendent of Police, Anand or any other independent agency apart from the Police Inspector, Khambhat city Police Station to carry out the investigation of the FIR bearing no.11215012200805/2020 registered with Khambhat city Police Station or any other FIR, which has been registered against several persons for taking out the procession on 30.08.2020.

(F) Your Lordship may be pleased to pass such other and order and further orders as may be deemed just and proper in the interest of justice.”

3 The writ applicant has brought to our notice something very shocking, frustrating and disturbing. We quote paras 4.1 to 4.7 of the writ petition as follows:

“4.1 The petitioner states and submits that the petitioner is born and brought up in the city of Khambhat. That, the city : Khambhat is known for his various tradition including the present procession of Muharram, for which this petition is filed. That, the City : Khambhat was earlier know to be a city of Nawabs. The petitioner being born and brought up in the city of Khambhat is aware about the local geography of the town till the time

petitioner has shifted permanently to Ahmedabad in the year 2005. The petitioner still has an occasion to visit his hometown at-least once in a month.

4.2 The petitioner states and submits that with pain and with deep grievance that people of city of Khambhat on 30.08.2020 have taken out a procession of Muharram though there are several Notifications, which have been issued by the Government authorities for not permitting to assemble in large numbers. That, the petitioner had absolutely no idea about such procession being emerged on the earlier point of time.

4.3 The petitioner states and submits that suddenly at about 01:00 p.m. in the afternoon, several videos have been received by the petitioner on his mobile number from his close relatives showing that members of a particular community have gathered in large number without following the social distancing and without wearing mask and taking out procession of Muharram. The petitioner states that copies of video are available with the petitioner and same will be produced before this Hon'ble Court at the time of hearing of this petition. However to show that the people have gathered in large numbers, photographs of the said procession are being annexed hereto and marked as Annexure-A to this petition.

4.4 The petitioner states and submits that the petitioner has tried to inquire from his sources as to how the procession could take place without permission of the authorities; however, the petitioner has reliably learnt to know that no such permission has been granted by any of the authorities for carrying out procession of Muharram.

4.5 The petitioner states and submits that only to hide their inaction, a press note has been issued by the Khambhat Police Station to the effect that FIR bearing no.11215012200805/2020 registered with Khambhat city Police Station pursuant to gathering, however as per the information received by the petitioner, no action has been taken with oblique motive. A copy of Press Note issued by the Khambhat Police Station providing the number of said FIR is annexed hereto and marked as Annexure-B to this petition. The copy of FIR is not available online and hence the petitioner could not procure the same.

4.6 It is submitted that it is the Government authorities, who are responsible for allowing such procession and thereby creating ruckus and allowing the spread of virus in innumerable members and, therefore, the petitioner has no other option but to approach this Hon'ble Court ventilating his grievance to take action against

all the Government authorities, who have permitted this procession in gross defiance of several Notifications issued by the Central Government and State Government, by way of extraordinary jurisdiction in the nature of Public Interest Litigation to punish all the offenders, who have given rise to the possible chances of spreading of Corona Virus by risking lives of thousands of people of city of Khambhat.

4.7 The petitioner states that the procession of Muharram taken out on 30.08.2020 from 08:00 a.m. to 11:00 a.m. has passed through the streets of Khambhat city including the office of Mamlatdar and Khambhat Police Chowky. Hence it is within the knowledge of these authorities that the procession is being taken out without any requisite permission. It is pertinent to note that these authorities have deliberately allowed the procession of Muharram to go on through the streets of Khambhat.”

4 The photographs of the procession of Muharram taken out in the town of Khambhat on 30th August 2020 annexed from pages Nos.23 to 30 in the petition are disturbing to such an extent that we are short of words to express our anguish. We fail to understand why people had to do this at the risk of their own lives. All those who participated in the procession not only put their own lives in danger, but also that of their family members who may be at their respective homes. The result of this rash act on the part of the residents of Khambhat has brought about disastrous consequences in the form of more than 900 cases of COVID-19 positive in the district of Anand out of which 400 cases have been reported in the Khambhat town itself.

5 It is too late for this Court to reprimand all those persons who joined the procession because the Muharram is over. However, if the photographs annexed with the petition reflect the actual happening of the gathering and the procession then it is a serious matter for concern. We propose to take a serious notice of this rash act on the part of the people by putting a straight question to the local administration, more particularly, the police

machinery as to what they were doing on that particular day and date when thousands of people flocked at mosque situated in the town and took out the procession of 3 kilometers. There is not a single individual in the crowd of hundreds of people wearing a mask.

6 Before the Supreme Court in **Writ Petition (Civil) No.924 of 2020** filed by one **Syed Kalbe Jawad vs. Union of India and another** seeking appropriate directions to allow the Muharram procession across the country amid the COVID-19 pandemic, the same was outright declined by the Supreme Court vide its order dated 27th August 2020.

7 The Supreme Court, while hearing the matter referred to above, is reported to have observed that *“if we allow this procession across the country, there will be chaos and one particular community will be targeted for spreading the pandemic COVID-19”*. The Supreme Court further observed that *“we cannot risk the health of all people. If you had asked for one place, we could have assessed the risk”*. The Apex Court maintained that giving blanket permission for the entire country was not viable as the States were not a party to the petition.

8 The authorities concerned were aware of the fact that with a view to controlling the spread of COVID-19, the State Government has imposed a complete prohibition on all religious activities that may involve a large conglomeration of people, across the communities, still the authorities failed to act promptly and restrain the members of the minority community from taking out the procession.

9 Time and again, this Court has reiterated that though right to profess religion is a fundamental right, the same is not an absolute right, as the opening words of the Article 25 of the Constitution itself makes it clear that such right being “subject to public order, morality and health” apart from being subjected to restriction under Article 25(2) of Constitution of India, which includes operation of any law. As the pandemic COVID-19 concerns with health and the Government having invoked the provisions of the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005, and placing restriction on certain activities, which includes processions, to stop the spread of virus, the restriction would have to be considered as by operation of law.

10 Although the complete prohibition of practices which are essential to our religions is an extraordinary measure, yet it is very much in proportion to the unprecedented situation we are faced with, owing to the pandemic. The right to practice and propagate religion has been made subject to public order, morality and health, even under the Constitution of India. The Pandemic is spreading like wild fire, despite harsh lockdowns. We are standing naked at the shore and do not know when the huge wave of Corona may sweep us into the deep sea. We really don't know what tomorrow holds. The adoption of safe practices are needed to win over the health crisis. We need to understand the Art of living with the Corona Virus.

11 We must hope and trust that the God would perceive our restraint in our customary practices, not as a slight, but as an act of compassion for our brothers and sisters and give us the opportunity to celebrate all festivals with greater faith and

fervour in future. It is only together with cooperation, understanding and support, we as 'One Nation', can emerge stronger from these treacherous times and overcome this season of darkness. **[See : Roshan Khan vs. State of U.P. (Public Interest Litigation (PIL) No.840 of 2020) decided on 29.08.2020].**

12 We fail to understand why people are not ready to accept the reality and the reality is that the entire Universe as on date is facing the wrath of nature in the form of a very dreadful pandemic.

13 We have no hesitation in recording that the administration at the level of the office of the Collector and District Magistrate, Anand as well as the Superintendent of Police, Anand failed to rise to the occasion.

14 We dispose of this writ application filed in public interest with the following directions:

[1] The Principal Secretary, Home Department, State of Gujarat is directed to immediately initiate an appropriate inquiry into the matter and file an appropriate report to be placed before this Court.

[2] The Collector and District Magistrate, Anand as well as the Superintendent of Police, Anand are directed to file their individual reports as regards the unfortunate event we are talking about to be placed before this Court.

15 With the aforesaid, this writ application stands disposed of. However, for the purpose of reporting compliance of our directions, the Registry shall notify this matter once again with the two reports referred to above on **27th November 2020** before this Bench.

(VIKRAM NATH, CJ)

NAIR SMITA V. / CHANDRESH

(J. B. PARDIWALA, J)

