

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 21 of 2021****SUO MOTU****Versus****STATE OF GUJARAT THROUGH CHIEF SECRETARY & 4 other(s)**

Appearance:

SUO MOTU(25) for the Applicant(s) No. 1

MR ANSHIN H DESAI(1020), SENIOR ADVOCATE for the Applicant(s) No. 1
for the Opponent(s) No. 1,2,3,4,5**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM
NATH
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI****Date : 20/01/2021****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH)**

1. The headlines of today's newspapers on the one hand highlight victory of Indian Cricket Team against Australia and on the other hand, disclose a very tragic and disturbing news which happened at Surat where an empty dumper truck ran over migrant workers killing 15 persons on the spot which included 8 women and a one year old little girl in the wee hours of Tuesday, 19th January, 2021 morning.

2. Mr. Anshin H. Desai, learned Senior Advocate made a mention of the said incident and also requested the Court to register the Suo Motu Public Interest Litigation so as to monitor certain important issues

touching the life and liberty of the weaker sections of the Society and also to deal with their valuable right to housing, right to shelter and right to life being the fundamental rights guaranteed under the Constitution of India. Mr. Desai, learned Counsel has also forwarded a letter, the contents of which we are incorporating hereunder:

"We have all read the most disturbing and heart drenching news today morning where 15 migrants sleeping besides the road have been crushed to death as stated in the abovementioned subject.

Following important issues are in my humble submission are required to be considered to avoid further mishaps and to regulate road discipline and migrant labourer housing.

A. The Constitution of India.

- 1. Preamble of the Constitution of India includes dignity of the individual and the preamble is framed with great care and deliberation so that it reflects the high purpose and noble objective of the Constitution makers. Justice, liberty, equality and fraternity includes social, economic and political justice. These are the golden goals set out in the Constitution.*
- 2. Right to Housing, Right to Shelter is recognized as a valuable right under Article 19(1)(g) along with Right to Life under Article 21.*
- 3. State and Municipal Corporations have constitutional and as well as statutory duty to provide residential accommodation to poor and indigent weaker sections by utilizing urban vacant land available under the Urban Land Ceiling Act.*
- 4. Because of large scale development in infrastructural projects carried out by the government and also large scale constructions activities by private developers there is a continuous, consistent and large inflow and outflow of migrant labourers along with their families from neighboring states as well as other states and due to this influx of rural population into urban areas and*

consequent growth of encroachment, local bodies should also prepare plans in accordance with Article 243-G and Article 243-W of the Constitution of India.

5. The Twelfth Schedule (Article 243-W) deals with (3) planning for economic and social development (4) roads and buildings and (10) slum improvement and upgradation.
6. Migrant construction workers and their families are required to be accommodated in temporary accommodations with basic services and social infrastructure nearby the project sites.
7. What is required to be examined is availability and accessibility existing shelters for the homeless and accordingly setting up shelters in the cities.
8. Safety of children on construction site, their well being is required to be looked after by the construction contractors and local bodies.
9. Several initiatives under Jawaharlal Nehru National Urban Renewal Mission (JNURM), Rajiv Awas Yojna (RAY) and Pradhan Mantri Awas Yojna can be taken shelter of for the purpose of temporary shelter to migrant labourers.

B. Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989.

1. Strict compliance of fitness certificate under Rule 62 of Central Motor Vehicle Rules, 1989 and regular surprise checks by flying squads of such transport vehicles including heavy goods vehicle as defined under Section 2(16) of the Motor Vehicle Act.
2. Section 2(14) defines goods carriage; Section 2(35) defines public service vehicle; Section 2(36) defines registered axle weight; Section 2(39) defines semi-trailer; Section 2(40) defines stage carriage; Section 2(43) defines tourist vehicle; Section 2(43) defines tractor; Section 2(46) defines trailer, these are few illustrations for the purpose of maintaining complete, total and impeccable fitness of these vehicles amongst other vehicles.
3. Tractors – trailers like in the present case are always overweight. Trailers have no mechanical independent machinery to apply brakes. Hence, when there is requirement of applying brakes, the vehicle does not

- stop immediately due to the overweight in the trailers, resulting into loss of life and property.
4. Tractors with trailers should not be permitted to enter city limits. Tractors should be covered with mud-guards and trailers must be approved by R.T.O.
 5. All dumpers, small trucks, regular trucks, truck-trailers and tractor-trailers are usually laden with material like Iron TMT Bars, etc. which are always hanging outside the vehicle. These trailers and tractors of all types in most of the cases have no reflectors, the back brake lights are non-functional and the registration number is never visible.
 6. It can be easily checked from the local public that most of the state highways, to avoid driving till a U-Turn is available, huge trucks and tractors and all kinds of vehicles are moving with speed on wrong side of the 4-lane highway. Illustrations of such regular wrong side traffic movement can be found between Rajkot – Kuwadva Road, Porbandar-Kutiyana Road, etc.
 7. There is no service lane discipline in areas before entering the city limits and on such service lanes, tractors, dumpers, small truck trailers, regularly ply with great velocity and there is no one to regulate.
 8. Barriers are kept on highways by police department and sales tax department by posting stone filled barrels and that too on crucial points which are blind spots and dangerous road turns. Therefore, for better safety there should be a huge warning board – sign of any such barrier before atleast 2-3 kilometers so that driver can slow down and avoid accidents.
 9. In cases where labourers are working on highway, on a divider or otherwise there should be warning signs before 2-3 kilometers of the actual work is taking place.
 10. Regular fitness certificates of the drivers of public carriage, trucks, etc. with complete data information and with a dedicated list available with the truck and public carrier owners, of which vehicle is driven by which the driver should be maintained for road discipline.

C. The Gujarat Police Act, 1951

1. Section 33 – Power to make rules for regulation of

traffic and for preservation of order in public place, etc.

- Strict monitoring, implementation of this Section is required to be made, specially – Section 33(b), (c), (d) and (g).
- Section 66 deals with duties of Police Officers towards the public in which clause (g) is required to be implemented in terms of the above suggestions and Section 67 which deals with power of police officers to regulate traffic, etc. in streets is also required to be implemented.
- Section 131 deals with penalty for contravening Rules etc. under Section 33.

D. Over and above the issues raised, the following may also kindly be considered:

1. To create such a system whereby a person can click a picture or pass on the number of the offending vehicle and without disclosing the informant's identity, immediate action should be taken against the heavy vehicle driver and also the owner.
2. Instead of yearly fitness certificate, appropriate remedial measures be incorporated and directions be issued to renew fitness certificate after certain kilometers of running of the vehicle instead of yearly checking.
3. Impose regulation over private and public construction contractors to facilitate migrant labourers working under them for the purpose of housing and basic amenities and health and safety for their children.
4. All vehicles (truck, tractor, heavy vehicles) should mandatorily carry a service book with details of last service, visit book, fitness certificate with legible name and contact details of the person certifying it to be fit.
5. Fixing responsibility of the officer of the highest rank of the R.T.O. in case of vehicle found to be unfit without proper function brakes, lights etc.
6. There are several new District Collectors and therefore responsibility should be fixed on MLA, District Collector, Deputy Collector and Mamlatdar to account for any deficiency found in the vehicle.

These are some suggestions which may kindly be considered in order to avoid any such tragedy leaving families shattered."

3. Mr. Desai has referred to some of the aspects which go to the root of the matter. We feel that this is a fit case for registering it as a **Suo Motu Public Interest Litigation**.

4. Office is directed to register the same under the defined category with a cause title "**TO REGULATE ROAD DISCIPLINE AND TO GIVE SHELTER TO WEAKER SECTION**".

5. Office is directed to implead : (1) State of Gujarat through Chief Secretary, Gandhinagar, (2) Additional Chief Secretary, Department of Home, Gandhinagar, (3) Additional Chief Secretary, Ports and Transport, Gandhinagar (4) The Commissioner, Transport Department, Gandhinagar and (5) Principal Secretary, Labour and Employment Department, Gandhinagar, as opposite parties and notices may be issued to them making it returnable on 8th February, 2021. On the said date, the matter may be listed.

6. At the time when Mr. Desai, learned Senior Advocate was making his submissions, Mrs. Manisha Lavkumar, learned Government Pleader along with Mr. Dharmesh Devnani and Ms. Shruti Pathak, learned Assistant Government Pleaders were present. They were informed that

the Court would be registering the Public Interest Litigation and the State may give its response after receiving a copy of the order.

7. Office may, therefore, serve a copy of this order on the office of learned Government Pleader forthwith.

