



CrSMA02.2021

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD.**

**CRIMINAL SUO-MOTO PUBLIC INTEREST LITIGATION NO. 02 OF 2021**

**WITH**

**CRIMINAL APPLICATION NO. 1060 OF 2021**

**IN**

**CRIMINAL SUO-MOTO PUBLIC INTEREST LITIGATION NO. 02 OF 2021**

The Registrar (Judicial),  
High Court of Judicature of Bombay,  
Bench at Aurangabad.

**...Petitioner**

**Versus**

The Union of India & Ors.

**...Respondents**

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Shri. Satyajit S. Bora, Advocate appointed as *Amicus Curiae*

Shri. Yuvraj V. Kakade, Advocate (Intervenor)

Shri. Ajay G. Talhar, ASGI for respondent No. 1

Shri. D. R. Kale, Chief Public Prosecutor for respondent nos. 2 to 7, 9  
to 19 and 31 to 43

Shri. S. G. Chapalgaonkar, Advocate for respondent No. 8

Shri. S. R. Patil, Advocate for respondent no. 20

Shri. K. N. Lokhande, Advocate for respondent no. 22

Shri. D. M. Shinde, Advocate for respondent no. 23

Shri. R. K. Ingole, Advocate for respondent no. 25

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**CORAM : RAVINDRA V. GHUGE  
AND  
B. U. DEBADWAR, JJ.**

**DATE : 12<sup>th</sup> MAY, 2021**

**ORAL ORDER [ Ravindra V. Ghuge, J. ] : -**

1. Today, the learned *Amicus Curiae* has placed before us an additional affidavit from page nos. 224 till 246.

2. Criminal Application No. 1060 of 2021 has been filed by the applicant, seeking action against an Hon'ble Minister – Shri.Sandipan Bhumre (Cabinet Minister for EGS and Horticulture) for holding a public function in violation of the lock-down restrictions.

3. The Assistant Commissioner of Police (Traffic), Aurangabad City, Shri. Suresh Eknath Wankhede, has filed a fresh affidavit, which is collectively marked as “X-7”.

4. Shri. Chapalgaonkar and Shri. Ingole Patil, learned Advocates representing two Municipal Corporations, have put forth two issues. Firstly, as regards the judgments delivered by this Court in two PILs, *AIR 2005 Bom 271* (Free Legal Aid Cell (NGO) v. Government of Maharashtra and others) and *(2003) 6 Bom CR 493* (Ravi Shekhar Bhardwaj and others Versus Director General of Police and others), wherein it has already been declared by this Court that wearing of a helmet by the rider and the pillion rider is compulsory and there can be no exception.

5. Before we deal with the other issues raised before us today, we are required to scrutinise the role of a Police Officer, who has made a valiant attempt to mislead us. On the last date, the said Police Officer - Shri. Wankhede had tendered an affidavit, marked as 'X-4', which we have already rejected since he had not even touched the issue of whether he had flouted our earlier order on the compulsory use of helmets, save and except, making a statement that he obeys the orders of every Court and he has no intention to flout the order of any Court. Since we found that the affidavit did not touch the issue of his flouting of our order, we had rejected the said affidavit.

6. Today, the said officer has tendered another affidavit, 'X-7' (six pages), wherein he has again repeated that he has great respect for the Courts and does not desire to flout any order of the Court. However, the affidavit X-7 indicates in paragraph no. 4 as under : -

"4. The deponent again tenders unconditional apology to the Hon'ble Court and submit that except press note dated 04.05.2021, there is no any other press note issued by the deponent. I say that when press note was given, the deponent received call from number of newspaper reporters and persons that now there is lock down and shops are closed and peoples are not in a position to purchase helmet, therefore, present deponent had told on whatsapp that said

drive will be conducted after lock down, but it does not mean that there is any relaxation from wearing helmet in the city area or it is compulsory after 16.05.2021.”

7. It is, thus, clear that the said officer concedes that he had told on a WhatsApp group that the drive for compulsory use of helmets would be conducted after the lock-down and then has tried to cover-up by stating that it does not mean that there was any relaxation from the use of helmets. The ld. Chief Public Prosecutor is instructed to canvass that the said officer was referring to a special drive and had never stated that there would be relaxation from wearing of helmets.

8. The ld. *Amicus Curiae* points out from page 237, which is a WhatsApp post on a WhatsApp group with the title “Cops and Media”. Several high ranking police officers and social workers/pressmen are it’s members. The message posted by this officer in Marathi is addressed to the pressmen stating that “सर्व पत्रकार बंधुनो, सदर प्रेस नोट मध्ये दि 5.5.21 पासून हेल्मेट सक्ती बाबत नमूद आहे. कृपया 5.5.21 ऐवजी 16.5.21 असे वाचावे. लोकडाउन नन्तर... प्रिंट मिसटेक...”.

9. On the last date, when the affidavit ‘X-4’ was filed, the ld. Chief Public Prosecutor was instructed by the concerned Police Officer present in the Court to state that he had never addressed any

pressmen and had not issued any contrary circular, to the press note dated 04.05.2021. In this backdrop, the WhatsApp message indicates that the concerned Police Officer has, on the one hand, avoided creating a record of issuance of a press note and on the other hand, had shrewdly passed on the message to pressmen on the 'Cops and Media group' that the date mentioned as 5.5.21 in press note dated 04.05.2021 be read as 16.05.21, as there is a printing mistake. The press note was released on 04.05.2021. In the WhatsApp message he has even clarified that the compulsory use of helmets will be after the lock-down.

10. In view of the above, we are convinced that the concerned Police Officer has attempted to take us for a ride and to say the least, has misled us. The ld. Chief Public Prosecutor submits that the concerned Police Officer has one year to go for his superannuation and we should show leniency towards him. We wonder as to whether we should turn a blind eye to the conduct of the Police Officer, who has ignored the court order, merely because he is retiring shortly. Shri. Chapalgaonkar, the learned Advocate has rightly pointed out Section 129 of the Motor Vehicles Act. While referring to Rule 250 of the Maharashtra Motor Vehicles Rules, 1989, he points out that there is no relaxation from the use of helmets.

11. We find that even a child, who has completed four years of age has to wear a helmet and these rules are public safety centric aimed at ensuring that there is no fatality if an accident occurs. His reference to two judgments of our Court in **Ravi Shankar Bharatwaj** (supra) and **Free Legal Aid Cell (NGO)** (supra) is well placed and he is right in submitting that the use of helmets has been compulsory at least for more than one and half decade. We find that these rules are ignored even by the police who initiate action against violators only when a PIL is taken up by a Court. When there is no litigation pending and no PIL pending, the police men do not take the violators to task, as a consequence of which the violators move around with impunity showing scant respect to the law as well as the law enforcing agency.

12. In the light of the above, this Court can initiate Contempt of Court proceedings against this police officer or direct a disciplinary action to be initiated forthwith and to be completed before the said police officer demits the office. We are deferring this issue and we are giving time to the said police officer to think over this aspect. He may make a statement tomorrow.

13. Shri. Chapalgaonkar, the learned Advocate has assisted the Court by pointing out that there is a dearth of transportation facilities for moving patients from the rural areas for treatment to Covid Care Centres. Ambulances are not available. A news report indicates that bullock carts have been used for transportation of the patients from rural areas to the Covid treatment facilities. We are keeping this issue for consideration tomorrow as we find that though our next sitting would be on Wednesday, it would be practically seven days from today and we cannot ignore an important issues of dearth of transportation facilities and ambulances since it might unfortunately cause several deaths in these seven days. We also request the learned Advocates and the learned Chief Public Prosecutor to have discussions with all the respondents as to whether there are government vehicles lying idle in government offices and in State instrumentalities because of the Covid restrictions, so as to be pressed into service for transportation of the patients from rural areas to the nearest Covid treatment centres. Considering the grave urgency in this issue, we request the learned Advocates to apprise us on this count, tomorrow.

14. We are called upon today to face a peculiar and weird situation, regarding people's representative, politicians and Hon'ble  
SG Punde, PA

Ministers flouting lock-down restrictions and conducting public functions physically and that too by making a farce of appeals to the public not to attend such a physical function.

15. The ld. *Amicus Curiae* has placed before us news reports published in Daink Divya Marathi, Dainik Sakal, Dainik Lokmat, etc., wherein we find from the pictures published by these newspapers that there are large crowds in the market in the broad daylight. There are reports of politicians like Hon'ble MLAs and Hon'ble MPs pressurizing police officers to permit shops to be kept open, liquor being sold openly as is indicated by the photographs published by the newspapers, inasmuch as, employees of the Aurangabad Municipal Corporation sitting in Ward "A" office, without masks. We are also pained to note that, an Hon'ble Minister Shri. Sandipan Bhumre (Cabinet Minister for EGS and Horticulture), Government of Maharashtra, has physically held ceremonies in his constituency. The newspaper also states that the Hon'ble Minister has violated diktats of the Hon'ble Chief Minister of Maharashtra, who has pleaded to his own Ministers not to hold ceremonies and functions, physically. There is no restriction for conducting ceremonies through the virtual mode/video conferencing.



16. On this issue, Shri. Yuvraj Kakade, learned Advocate submits through an Intervention Application, which carries colour photographs of the Hon'ble Minister surrounded by a huge crowd. An FIR bearing Crime No. 0134 of 2021 registered on 09.05.2021 at 15:42 pm at the behest of an informant namely Vishal Subhash Wankhede, which indicates that the concerned police officer Shri. Ganesh Shivajirao Surwase has recorded the FIR by excluding the Hon'ble Minister from the list of accused though the FIR is based on the functions in which the Hon'ble Minister participated to inaugurate certain development programmes and perform bhoomipujan. Sections 188 and 269 of the IPC, Section 51(B) of the Disaster Management Act, 2005, Section 2 and 3 of the Epidemic and Diseases Act, 1897, have been invoked. We find from the text of the FIR that Assistant Police Inspector - Ganesh Shivajirao Surwase has shrewdly noted down the FIR, that despite the appeals of the Hon'ble Minister, the villagers had gathered for the ceremony. The FIR is recorded by a Gramsevak, *prima facie*, to give a clean chit to the Hon'ble Minister.

17. The question that arises is, why did the Hon'ble Minister hold several functions by his physical attendance? Is he not duty bound to obey the instructions of the Hon'ble Chief Minister, who, in

the interest of the public at large, has appealed to the common man as well as the people's representatives to refrain from holding ceremonies and functions, physically? Do we not realize that the citizens of our country gather in large numbers when people's representatives make a physical presence for an inauguration ceremony or a bhumi-pujan ceremony?

18. We have repeatedly said in our earlier orders that we all have a common enemy, who is a virus originating from Wuhan, unseen to the naked eye, and having the potential of wiping out a population. Is it that the lock-down restrictions and orders passed by the Court in the interest of public health, bind only the common man and Hon'ble politicians are above the law? Is it that the Hon'ble politicians have the right to neutralise the law and our orders? Covid Appropriate Behaviour (CAB) includes Masking, Social distancing and using Sanitisers.

19. We also find from the FIR that the Gramsevak-Mr.Wankhede appears to have set out his complaint in such a way that the Hon'ble Minister be given a clean chit from the very stage of initiation of investigation. We would refrain from drawing any conclusions on this aspect, though we cannot turn a blind eye to the

fact that the Hon'ble Minister gave his consent for these programmes and has physically attended these programmes. The photographs indicate that most of the time his mask was below the nose or his chin and in some photographs, he had not even worn a mask. The ld. Chief Public Prosecutor, at this stage, submits that he would have to take instructions and we permit him to do so, so as to apprise us tomorrow.

20. The ld. *Amicus Curiae* submits that, time and again this Court has passed orders repeatedly saying that we all need to discipline ourselves and we all should obey the law and the lock-down restrictions. None of these orders and restrictions are being followed by the Hon'ble politicians.

21. The Government of Maharashtra, Department of Revenue and Forest, Disaster Management, Relief and Rehabilitation, Mantralaya, Mumbai, has issued an order dated 13.04.2021 with the title 'Break The Chain'. In clause 10 of the said order, it is held as under (relevant portion reproduced) :-

**10. Religious, Social, Political, Cultural Functions**

- a) No religious, social, cultural or political functions of any kind to be allowed.

22. We are, therefore, compelled by the circumstances created by the Hon'ble people's representatives, to direct that these respected representatives of the citizens should not conduct physical ceremonies and functions like those which are mentioned in clause 10 and published in the newspapers, viz. inauguration of any constituency development program, bhoomipujan, felicitations, etc. If the huge crowd gathering for such functions is uncontrollable despite purported appeals of the Hon'ble politicians, the picture is clear that the law and the law enforcing agencies have failed in their duties. We are surprised that the voters of an Hon'ble Minister in his own Paithan constituency do not listen to him and are not willing to follow the lock-down restrictions.

23. We find that the world is unable to control Covid, only by increasing beds, oxygen, ventilators, ICU wards and medicines. Such are necessary steps and methods to cure patients. The long lasting, inexpensive and quick solution is physical distancing, wearing of masks and maintaining high level of hygiene. In such testing and unprecedented times, it is the behaviour of the people which would decide the growth of the pandemic. When the Hon'ble Chief Minister has been working untiringly and has appealed to the entire State to maintain physical distancing, would his appeal not bind the Hon'ble

Ministers. Would heavens fall if such programs are postponed in the light of clause 10 of the above order? And if the Hon'ble Politicians are refusing to support the lock-down restrictions, the only solution would, therefore, be that, such functions should not be held in any form in the light of clause 10, until the lock-down restriction are eased by the Government of Maharashtra. Even agitations and morchas are prohibited. We order accordingly.

24. Insofar as the use of helmets and masks are concerned, we find it appropriate to direct that every RTO in each district of the State would issue a circular to all two wheeler authorized dealers to refuse sale of a motorcycle/two wheeler until the purchaser has a newly purchased helmet at the time of the purchase of the vehicle, since the registration of the said vehicle is now done by the dealers online through the "RTO portal" and vehicles are no longer required to be taken to the RTO physically for registration. The engine and chassis numbers of the vehicles are noted by an officer of the RTO, who visits the dealers. We are constrained to pass this order since we find that very little is being done by the Law Enforcing Agency.

25. A news report published in Divya Marathi and Dainik Lokmat cites two localities from Aurangabad i.e. Shahganj and City

Chowk, wherein people are refusing to obey the lock-down restrictions.

26. We would, therefore, request the police authorities that they should take the services of the State Reserve Police (SRP) or the Home Guards in such a situation to ensure that the lock-down restrictions are implemented since these localities would turn out to be super-spreaders of the virus, completely ignoring that the virus is our enemy and protecting ourselves from the virus is our priority and shopping in the shopping areas cannot be given precedence over a pandemic situation.

27. Stand over tomorrow i.e. 13.05.2021, at 11:00 am.

**[ B. U. DEBADWAR ]**  
**JUDGE**

**[ RAVINDRA V. GHUGE ]**  
**JUDGE**