HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION (PIL).No.118 of 2020

Date:06.07.2020

BETWEEN

Sunitha Krishnan

... PETITIONER

AND

The State of Telangana,
Rep. by its Chief Secretary,
Secretariat, Hyderabad
and others.

...RESPONDENTS

Counsel for the petitioner : Mr. L. Ravichander
Senior Advocate
For Mr. Deepak Misra

Counsel for the respondents : Advocate General

The Court made the following

ORDER: (Per Hon'ble Sri Justice B. Vijaysen Reddy)

The petitioner, who claims to be a Human Rights Activist, has filed this PIL challenging the action of the respondent – authorities in completely removing lockdown from 08.06.2020 and opening of religious places vide G.O.Ms.No.76 General Administration Department 07.06.2020 as being arbitrary, illegal and in violation of Articles 14, 19, 20 and 300-A of the Constitution of India, and has sought consequential reliefs to direct extension of lockdown by engaging the services of paramilitary forces for better implementation, equip the entire public health system, and provide safety precautions for the entire medical fraternity and the paramedic workers, to open religious places after 15.07.2020 after reviewing the situation by an expert committee, and to provide interim cash transfer of Rs.7,500/- for all White Ration card holders for sustaining themselves for this month.

2. The outbreak of COVID-19 pandemic has created unprecedented health crises in the entire world. Anticipating imminent threat to the health of the people on account of rapid spread of the disease, the Union and the State Governments in India have announced various measures to contain the disease. Taking into consideration the various factors, and in the interest of public health and safety, the Government of Telangana issued G.O.Ms.No.45 dated 22.03.2020 imposing lockdown. The relevant portion of the G.O. is extracted here in below:

> "*Whereas the State Government is satisfied that the State of Telangana is threatened with the spread of Covid-19, which has already been declared as a pandemic by World Health Organization, and it is therefore necessary to take certain further emergency measures to prevent and contain the spread of virus. The Government in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897, read with all other enabling provisions of the Disaster Management Act,*

2005, hereby notify lockdown in the entire State of Telangana with immediate effect till 31st March, 2020, prescribing the following regulations and measures during the said period:

1. *All state borders shall be sealed other than for movement of essential and perishable commodities.*
2. *All public transport services including TSRTC buses, SETWIN, Hyderabad Metro, taxis, auto-rickshaws etc. will not be permitted. However, transport of passengers for accessing emergency medical services shall be permitted. Plying of private vehicles shall be restricted only to the extent of procuring essential commodities and activities permitted under this order.*
3. *...*
4. *Every person who is required to observe home quarantine shall strictly observe the same failing which he/she will be liable for penal action and shifted to government quarantine.*
5. *...*
6. *Any congregation of more than 5 persons in public places is prohibited.*
7. *All shops, commercial establishments, offices, factories, workshops, godowns etc. shall close their operations. However, production and manufacturing units which require continuous process such as pharmaceuticals, API etc. may function. Further, manufacturing units engaged in production of essential commodities like dal and rice mills, food and related units, dairy units, feed and fodder units etc. will also be permitted to operate.*
8. *...*
9. *The following shops/establishments providing essential goods and services shall be excluded from the above restrictions:*

   a) Banks/ATMs and related activities.

   ...

   ...

   d) Supply chain and transport of essential commodities.

   ...

f) Sale of food items, groceries, milk, bread, fruits, vegetables, eggs, meat, fish and their transportation and warehousing activities …

h) Hospitals, optical stores, diagnostic centres, pharmaceuticals manufacturing and their transportation

i) Petrol pumps, LPG gas, oil agencies, their godowns and their related transport operations.

…

3. However, the lockdown and restrictions imposed under G.O.Ms.No.45 dated 22.03.2020 were partially relaxed from time to time. For instance, under G. O. Ms. No. 64 General Administration Department, dated 07.05.2020, certain relaxations were made to the lockdown norms. Clauses, 8, 9 and 12 of the said G.O, with partial relaxations are as under:

8. All construction activities are permitted in rural areas, orange and green zones.

However, in red zones (which includes GHMC area) only sites where in-situ workers are available shall be permitted.

9. All industrial activities are permitted in rural areas, orange and green zones more specifically stone crushers, brick kilns, handloom weaving, repair workshops, beedi making, sand and other mining, ceramic tiles and roof tiles, cement factories, ginning mills, iron & steel industry, plastic and sanitary pipes, paper industry, cotton mattresses, plastic and rubber industry, construction work, shops selling other items. However, even in red zones in urban areas, industrial units in only Special Economic Zones (SEZs), Export Oriented Units (EOUs), industrial estates and industrial townships with access control; manufacturing units of essential goods, including drugs, pharmaceuticals, medical devices their raw material and intermediates; production units which require continuous process, and their supply chain; manufacturing of IT hardware; and manufacturing units of packaging material, etc. are permitted <u>with staggered shifts and social distancing</u>.

…

12. Private offices including IT & ITES can operate with up to 33% strength in red zones including GHMC area, with the

remaining persons working from home. However, they can operate fully in orange and green zones.

4. The impugned G.O. has been issued on 07.06.2020 by further relaxing the lockdown norms. Outside the containment zones, the following activities were permitted in the State of Telangana with effect from 08.06.2020:

1. *Religious places/places of worship for public.*
2. *Hotels, Restaurants and other hospitality services.*
3. *Shopping malls (other than gaming centers and cinema halls.)*

The impugned G.O. also contains general SOPs (Standard Operating Procedures) to be observed by the management of the religious places, hotels, restaurants, hospitality services, and shopping malls like provision of hand wash/sanitizer, thermal screening at entrance, staggering of devotees, mandatory usage of face masks, and prohibiting large congregations/gatherings etc. Besides the above SOPs, specific SOPs were also issued to religious places, hotels, restaurants, and shopping malls.

5. Mr. L. Ravichander, the learned Senior Counsel, pleads that the main grievance of the petitioner is that because of easing of the lockdown restrictions from 08.06.2020, there is a drastic increase in the number of COVID-19 cases. Further, it is also alleged that the number of COVID patients who have recovered, the deaths which have occurred etc. are suppressed by the Government. For, there is no transparency regarding media bulletins issued by the respondents regarding the total tally of cases. Referring to various news items in the national dailies, the "The Hindu" and "Times of India", the petitioner pleads that the health system is tottering; in the event of sudden surge in the number of cases, the medical system would collapse totally. Thus, it may cause dearth of beds in hospitals,

and hardship to public, specially the poor strata of society. Hence, the lockdown should be extended, instead of being rolled back.

6. Heard the learned Senior Counsel, Mr. L. Ravichander, and perused the impugned G.O.

7. Relaxation of lockdown by permitting certain activities outside the containment zones vide impugned G.O. is a policy decision of the Government. It is a settled law that while exercising extraordinary jurisdiction under Article 226 of the Constitution of India, the High Court has got limited jurisdiction in interfering with the policy decisions of the State. Various factors prevail upon the State to relax the lockdown imposed, at the earlier point of time, keeping in view several hardships being faced by the citizens, more particularly, economic hardship, movement restrictions, livelihood of worker class etc. While the petitioner may have apprehension that easing down of lockdown may result in disastrous consequences, it cannot be forgotten that there is no compulsion for any particular individual to visit any religious place, hotels, restaurants or shopping malls. Health Bulletins are issued from time to time on daily basis cautioning general public not to move in groups, maintain social distancing, avoid physical contact while greeting another person, avoid touching idols, books, usage of face masks, gloves, hand sanitizer etc.

8. This Court cannot sit as an appellate Court over a policy decision of the State. The State is well within its domain to take decision to relax lockdown norms, and also to review the situation from time to time. Interference of Constitutional Courts in the policy decision is very limited; such interference can be made only when such policy decision violates fundamental rights of the citizens. In catena of cases, the Hon'ble Supreme Court and various High Courts have consistently held

that the interference of the Courts in a policy decision should be in the rarest of the rare cases, and with abundant caution. Undoubtedly, the power of judicial review is a plenary power under Article 226 of the Constitution of India; it is part of the basic structure of the Constitution of India. Hence, there cannot be any absolute limitation in exercise of power of High Court under Article 226 of the Constitution of India in relation to matters concerning public policy. However, the Courts have to keep in mind that policy making is in the exclusive domain of executive authorities. Unless such decision is made with mala fides, or in gross abuse of power, ordinarily, the Courts would not interfere. Moreover, it is not the decision, but the decision making process that will be examined by the Court before arriving at a conclusion that the fundamental rights guaranteed under the Constitution of India are infringed. In **STATE OF UP v. JOHRI MAL**[1] the Hon'ble Supreme Court has observed as under:

> **28**. The Scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done (sic) the robes of omnipresent. The power is not intended either to review governance under the rule of law nor (sic) do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly, put is:
>
> (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies:
>
> (ii) A petition for a judicial review would lie only on certain well-defined grounds.

[1] (2004) 4 SCC 714

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies. (See ***Ira Munn v. State of Ellinois*** [1876 (94) US (SR) 113].

9. Further, in **EKTA SHAKTI FOUNDATION v. GOVT. OF NCT OF DELHI**[2], the Supreme Court held as under:

11. *5.* While exercising the power of judicial review of administrative action, the Court is not the appellate authority and

'the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory powers'. (See ***Asif Hameed v. State of J&K*** [1989 Supp (2) SCC 364] and ***Shri Sitaram Sugar Co. Ltd. v. Union of India*** [(1990) 3 SCC 223].

The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

6. The correctness of the reasons which prompted the Government in decision-making, taking one course of action

[2] (2006) 10 SCC 337

instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone (*sic* decide) can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

... Mere errors of government are not subject to our judicial review. [See: ***State of Orissa and others v. Gopinath Dash and Others*** [(2005) 13 SCC 495].

10. Furthermore, while referring to various decisions relating to policy decision matters, in **PARISONS AGROTECH (P) LTD. v. UNION OF INDIA**[3], the Hon'ble Supreme Court has observed as under:

14. The aforesaid doctrine of separation of power and limited scope of judicial review in policy matters is reiterated in State of Orissa and Ors. v. Gopinath Dash and Ors. [(2005) 13 SCC 495]:

5. While exercising the power of judicial review of administrative action, the Court is not the Appellate Authority and the Constitution does not permit the Court to direct or advise the executive in the matter of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See ***Asif Hameed v. State of J&K*** [1989 Supp (2) SCC 364] and ***Shri Sitaram Sugar Co. Ltd. v. Union of India*** [(1990) 3 SCC 223]. The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is

[3] (2015) 9 SCC 657

opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere.

6. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

.....

16. We would also like to refer to the judgment of this Court in the case of ***Premier Tyres Limited v. Kerala State Road Transport Corporation*** [1993 Supp. 2 SCC 146] wherein this Court held that when a policy decision is taken in the public interest, Courts need not tinker with the same.

....

19. ... The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. There are so many imponderables that would enter into the determination that it would be wise for the Court not to hazard an opinion where even economists may differ. The Court must while examining the constitutional validity of a legislation of this kind, "be resilient, not rigid, forward looking, not static, liberal, not verbal" and the Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in ***Munn v. Illinois*** [94 US 13], namely, "that courts do not substitute their social and economic beliefs for the judgment of legislative bodies". The Court must defer to legislative judgment in

matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary. The Court should constantly remind itself of what the Supreme Court of the United States said in ***Metropolis Theater Co. v. City of Chicago*** [57 L Ed 730] : [228 US 61 (1912)]:

> The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere error of government are not subject to our judicial review. It is true that one or the other of the immunities or exemptions granted under the provisions of the Act may be taken advantage of by resourceful persons by adopting ingenious methods and devices with a view to avoiding or saving tax. But that cannot be helped because human ingenuity is so great when it comes to tax avoidance that it would be almost impossible to frame tax legislation which cannot be abused. Moreover, as already pointed out above, the trial and error method is inherent in every legislative effort to deal with an obstinate social or economic issue and if it is found that any immunity or exemption granted under the Act is being utilised for tax evasion or avoidance not intended by the legislature, the Act can always be amended and the abuse terminated. We are accordingly of the view that none of the provisions of the Act is violative of Article 14 and its constitutional validity must be upheld.

11. In its latest decision in **JANHIT MANCH v. STATE OF MAHARASHTRA**[4], the Hon'ble Supreme Court held as under:

> **13**. We have to keep in mind the principles of separation of powers. The elected government of the day, which has the mandate of the people, is to take care of policy matters. There is a democratic structure at different levels, starting from the level of Village Panchayats, Nagar Palikas, Municipal

[4] (2019) 2 SCC 505

> Authorities, Legislative Assemblies and the elected Parliament; each of them has a role to perform. In aspects, as presented in the instant case, a consultative process is always helpful, and is one which has already been undertaken. The philosophy of Appellant No. 2 cannot be transmitted as a mandatory policy of the government, which is what would happen were a mandamus to be issued on the prayers made. Perspective of individuals may vary, but if the elected bodies which have policy formulation powers, is to be superceded by the ideals of each individual, the situation would be chaotic. The policies formulated and the legislations made, unless they fall foul of the Constitution of India, cannot be interfered with, at the behest of the Appellants. The Appellants have completely missed this point.

12. The strength of democracy, apart from several factors, depends upon each organ of the State respecting the functions and decisions of the other organs. The smooth and effective functioning of the Executive is possible only when there is no unwarranted interference from the judicial system. Courts have to respect decisions of the popular government more so when policy decisions are made. The decisions of the Executive may sometimes appear to be in excess of their power, and may even appear, at the first blush, to be rather unusual. But so long as the policy decision does not infringe the fundamental rights, or a provision of law, the courts would be weary of interfering with such decisions. The executive, in its day to day functioning, is presumed to have knowledge of public necessities; it is also presumed that the policy decision subserve the public interest. For, naturally, the state dispensation takes into consideration social, economic and several other factors before formulating any policy decision. A popular dispensation is expected to have knowledge and expertise in matters relating to health, food, security, law and order, etc. A court cannot be expected to have expertise in all these matters. Merely because another view is possible, the courts would not

ordinarily interfere with a policy decision, unless there is a violation of fundamental rights, or violation of provision of law. Otherwise, it would amount to transgressing into the areas that are specifically earmarked for the Executive authorities; same would run contrary to the theory of separation of powers as enshrined in the constitution of India.

13. In the present case, if the relief sought for by the petitioners were granted, then it would amount to continuing the lockdown which was imposed under G.O.Ms.No.45 dated 22.03.2020. Moreover, if the consequential reliefs sought by the petitioner were to be granted, then it would amount to directing or advising the Executive in the matter of policy. However, the writ court rarely enters the arena which is the exclusive domain of the executive authorities. If such directions were issued, it would amount to the High Court formulating a policy decision under its writ jurisdiction. Needless to say, the writ court cannot usurp and encroach upon the powers of the Executive. For, it would be an anathema both to the doctrine of separation of powers, and to the system of democracy.

Hence, this Court does not find any merit in the writ petition. It is, hereby, dismissed.

As a sequel, the miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

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RAGHVENDRA SINGH CHAUHAN, CJ

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B. VIJAYSEN REDDY, J

July 06th, 2020
DSK