

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(DIST: AHMEDABAD)

EXTRAORDINARY ORIGINAL JURISDICTION WRIT

PETITION NO. OF 2020 (P.I.L)

**IN RE: PETITION IN THE LARGER PUBLIC
INTEREST REGARDING THE ISSUE OF
COMPENSATION TO PEOPLE SUFFERED
DUE TO COVID-19**

AND

**PETITION FILED UNDER ARTICLES 21,
227, 226 OF THE CONSTITUTION OF
INDIA READ WITH SECTION 11, 12(II),
12(III), 12(IV), 46, 47, 48, 49 AND 50
OF DISASTER MANAGEMENT ACT, 2005
AND SECTION 12(B) OF THE
PROTECTION OF HUMAN RIGHTS
ACT, 1993**

AND

IN THE MATTER OF,

Neel Piyushbhai Lakhani

...Petitioner

Vs

1. Union of India
Through: Chief Secretary
Government of India, Rashtrapati Bhawan,
New Delhi
2. National Disaster Management Authority
Through: Its Secretary
NDMA Bhawan A-1, Safdarjung Enclave,
New Delhi
3. National Human Rights Commission of India
Through Secretary General and Chief Executive
Officer
Manav Adhikar Bhawan Block-C, GPO Complex,
INA, New Delhi.
4. State of Gujarat
Notice to be served through
Chief Secretary
Govt. of Gujarat, Sachivalaya,
Gandhinagar
(Advance copy served to the Id. GP by E-mail)
5. Gujarat State Disaster Management Authority
Through its Secretary
Block No.11 , 5thFloor, Udyog Bhavan ,
Sector-11, Gandhinagar.
6. Gujarat State Human Rights Commission
Through its acting Chairman
Block No 1, 4/5th Floor,
Karmayogi Bhavan, Sector-10/A,
Gandhinagar

... Respondents

To,
The Hon'ble the Chief Justice &
The companion Hon'ble Judges of
the High Court of Gujarat at
Ahmedabad.

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The petitioner above
named:

MOST RESPECTFULLY SHEWETH THAT:

1. The present petition is filed under Articles 21, 226 and 227 of the Constitution of India, read with Section 11, 12(ii), 12(iii), 12(iv), 19, 23, 46, 47, 48, 49 and 50 of Disaster Management Act, 2005 and section 12(b) of the Preservation of Human Rights Act, being filed by way of a public interest litigation wherein the petitioner has no personal interest vested in the present petition. The petition is being filed in the interest of public at large as they are affected by the non-action/negligence of the respondents.
2. The petitioner is an advocate practicing before Hon'ble High Court of Gujarat, NCLT, DRT, Consumer Forum, District and Sessions Court(s) of Gujarat and before various other judicial establishments in Gujarat and the respondents are state and state authorities. The petitioner has not filed any other PIL till date.
3. That the petitioner is filling the present petition purely in the public interest on its own cost and not at the instance of any other person or

organization. The litigation cost, including the advocate fees and the traveling expenses are being borne by the petitioner himself. The source of income of the petitioner is his legal practice. That, no contempt proceedings are ever initiated or pending against the present petitioner.

4. THE FACTS OF THE CASE IN BRIEF ARE AS BELOW:

4.1 That, the present petition filed is in regards to spread of novel covid-19 or coronavirus and resultant epidemic arisen in the entire nation including State of Gujarat.

4.2 On 25/01/2020 the Union Government of India issued guidelines to all its departments as well as to all the states and its various authorities in view of spread of covid-19 virus and to take appropriate measures for prevention of the same.

4.3 On 31/01/2020 the 1st case of corona virus covid-19 positive reported in India. On 19/02/2020 the Govt. of India declared the novel coronavirus Covid-19 as "Notified disaster". On the very same day, the Govt. of

India issued two pages brief note in which it is mentioned that, the money from each state's Disaster response fund (SDRF) would be used for temporary relief and accommodation of the victims and for supply of food, water and medical care for patients and people in quarantine campus and also for establishment of testing centers and arrangements for protective equipments etc. All the above mentioned expenses were to be drawn only from the state's fund and not from the National Disaster Response Fund (NDRF).

- 4.4 On 11/03/2020, the World Health Organization (WHO) had declared novel coronavirus or covid-19 as a pandemic hence a meeting of group of minister's was held by the Central Government to decide present status and future actions for prevention of spread and management of covid-19 virus in the territory of India. On 13/03/2020 the State Government of Gujarat also issued a notification declaring Coronavirus as an epidemic disease under the Indian Epidemic Disease Act, 1897. The notification is known as "GUJARAT EPIDEMIC DISEASE COVID 19

REGULATIONS, 2020" The said regulation are declared to remain in force for a period of 1 year from date of notification. On 14/03/2020 the Ministry of Health and Family Welfare, department of the Union Government also issued notification notifying the coronavirus or Covid 19 as disaster.

4.5 In the meanwhile, the Union of India approached the World Health Organization (WHO) and World Bank for financial assistance of atleast 1 billion\$ on urgent basis for fight against spread of Covid – 19 virus and for prevention of the same across India since the covid -19 virus had been declared as pandemic.

4.6 On 22/03/2020, the Public of India observed Janta curfew by following appeal of Hon'ble Prime Minister of India, Shri Narendra Modi, with a view to prevent the spread of Covid 19 virus. In the meanwhile the National Disaster Management Authority issued its advisory to the Union Government and on basis of same the Chairman of National Disaster Management Authority, the Prime Minister of India, Shri Narendra Modi, on 24/04/2020,

under section 10 of Disaster Management Act, 2005 declared complete lockdown for 21 days in entire nation to prevent the spread of Global Pandemic coronavirus or Covid 19 virus. A copy of the order dated 24/03/2020 maybe presented at the time of hearing of this petition.

4.7 As per the information of petitioner the WHO and World Bank granted emergency financial aid to the Union Government of India on 14/04/2020, which was demanded by the Union Government as stated above.

4.8 On 14/04/2020, when the 21 days of lockdown were over the Union Government on the recommendation of National Disaster Management Authority, declared further continuation of lockdown upto 03/05/2020. A copy of the said order may be presented at the time of hearing of this petition. Once again the lockdown came to be extended upto 17/05/2020 and thereafter upto 31/05/2020.

4.9 During the lockdown period and thereafter also, though many preventive actions were taken by all the concerned authorities the spread of covid 19 virus could not be

prevented affectively and the cases of covid 19 positive increased day by day and many cases resulted into death also.

4.10 **The stastical details of the increasing cases of covid 19 positive as well as death resulted because of covid 19 disease are produced as below (Figures Are Taken From Official Website Of Government Itself)**

In the present situation of Covid 19 coronavirus spread 9,11,629 people are directly affected by the same in entire nation out of which 42,808 people are from the State of Gujarat itself. From total affected people 23,788 people have died due to coronavirus in Entire nation and out of which 2055 people have died in State of Gujarat as of 14/07/2020. The number of cases and deaths are increasing daily and does not seem to reduce or stop soon.

4.11 Due to imposition of lockdown, all the citizens suffered greatly however, those who were and are directly affected by coronavirus i.e those who are found as positive of coronavirus have taken even a bigger hit than others in many

ways. There are many people who lost their jobs or business due to coronavirus. There are certain group of people who were not having their individual business or profession and were employees in other organizations and they suffered unemployment due to decrease in employee ratio and certain people lost their jobs as the employers were afraid to allow them back on work even after they were treated and were safe however, they were still not allowed on work or removed from their job as they had been affected by coronavirus thus they lost their survival income base. Furthermore, there are several daily wage earners who lost their source of income completely due to lockdown because of coronavirus. In addition to all the above, they had to bear cost of medicines, treatment and period of quarantine after treatment. Moreover, the people who lost their family member due to coronavirus have also suffered a great emotional pain in addition to monetary loss.

4.12 It is to be submitted that, how and in what manner the people at large are affected by

disaster of the spread of coronavirus as well as by various measures (including lockdown) taken by the authorities concerned cannot be described in the words as various aspects are involved for determination of the same and if we try to list down all the issues and ways in which way the people affected by this disaster have suffered it will be a extremely long list however, it is known to everyone how the people are continuously suffering due to the said disaster.

4.13 That, as per section 11 of the Disaster Management Act, a National Plan is to be drawn out mandatorily for the prevention of the disaster as well as for the mitigation of the effects of the same however, no such national plan is available till date.

4.14 That, as per section 12(iii) and 12(iv) of the Disaster Management act, every person who is affected by disaster deserves to receive compensation for the same. However, in the present situation of Covid 19 coronavirus spread 9,11,629 people are directly affected by the same

in entire nation out of which 42,808 people are of State of Gujarat itself. From total affected people 23,788 people have died due to coronavirus in Entire nation and out of which, 2055 people have died in State of Gujarat as on 14/07/2020. However, till date no such compensation is awarded to any person directly affected by this disaster.

4.15 It is to be submitted that, the contributions and donations in cash and kind has been received by the union and state government from various donors and people at large more particularly under the head of "PM CARE FUND" and "CM CARE FUND" etc., as well as the world health organization (WHO) and World Bank have also provided huge financial aid as well as per information of petitioner \$2.9 billion have been declared by USAID to the Union of India with a view to fight with the spread of this disaster and also for providing compensation and relief to the affected people. Moreover, as per information of the petitioner, a Special Drawing Right of \$13 billion has been given to India by

International Monetary Fund (IMF). The government of India and the State government(s) are being trustee of such funds are under obligation to utilize the same for maximum welfare and relief to the affected people. The funds raised and created for the very purpose cannot be utilized for any other purpose, more particularly other than providing relief and compensation to the affected person. The amount received by the government cannot be diverted for any other purpose, since; the donors have given their respective donation only for the specific purpose to be helpful to the large people affected by the said disaster.

4.16 It is to be submitted that, no doubt the Union Government and the State Government of Gujarat have announced many relief packages, but, as per the information of petitioner **neither one of such packages provides payment of compensation to any person who is affected by this disaster or to the family members of the person who lost their life due to effects of this disaster. Moreover, it is to be**

submitted that, various packages announced by the government can never be equated with the mandatory provision of framing scheme of compensation as provided under the provisions of the Disaster Management Act.

4.17 It is to be submitted further that, the people at large for the welfare and help of whom generous donations have been received from around the globe are still in darkness and they are not aware that whether the various packages announced by the government are equivalent to the funds raised by the government by various donations and financial aid from WHO, USAID, IMF etc. or not.

4.18 It is to be submitted further that, the contributions and donations as well as financial aid received by the government in cash and kind are with the government itself and as stated above the same is for the use of victims of covid 19 pandemic. All those donors and contributors as well as the victims are in a representative capacity having enforceable right to seek appropriate direction

upon the government to ensure proper utilization of the fund for relief and rehabilitation operations and most importantly to ensure that the funds reach to them in the hour of need.

4.19 It is to be submitted further that, the various packages announced by the government for victims are also not fully, properly and virtually implemented. The implementation is quite slow, and also discriminatory. Affected people are having very limited understanding about the government schemes, policies and packages. There is no clarity about processing of claims, more so as the schemes and policies are changing frequently and the deadlines to file application to avail benefit of scheme are not widely circulated hence most of the victims are not in position to avail the benefits of such packages. This resulted in a large quantum of population especially from the vulnerable and poor communities being left out of the rehabilitation processes. Therefore, appropriate direction is required in this regard also in order to ensure and make appropriate efforts that the extended hand of

help is accessible by a larger section of the society.

4.20 It is to be submitted that, as per the information of petitioner the National Disaster Management Authority as well as State Disaster Management Authority has yet not framed appropriate scheme as per the mandatory provision of section 19, 23, 46, 47, 48, 49 and 50 of the Disaster Management Act, 2005, for the purpose of mitigation and for relief, rehabilitation and reparation of victims by providing appropriate compensation to them, and in era of vacuum of such scheme this Hon'ble court is prayed to issue appropriate direction upon the concerned authorities for framing of such scheme to create funds and to formulate the scheme under the provision of section 46-50 of Disaster Management Act, for proper utilization of the said fund for purpose of mitigation and for relief, rehabilitation and reparation of victims by providing appropriate compensation to them etc.

4.21 It is to be submitted further that, Disaster Management National Plan and State Plan as

provided under section 46-50 of Disaster Management Act, has yet not been prepared by the authority concerned and such inaction on the part of concern authorities as well as on the part of government is highly depreciable, since the government cannot totally wash its hands off on such issue more particularly when the same pertains to fundamental right of the citizens under the provision of article 21 of the constitution of India and therefore a time bound direction is required to be issued upon the concern authorities to establish the disaster mitigation fund and formulate the national as well as state disaster management plan as provided under section 11 read with section 12(ii), 12(iii), 12(iv), 46, 47, 48, 49 and 50 of the Disaster management Act.

4.22 It is to be submitted that, the state is liable for all type of natural disaster and miseries suffered by victims. The victims must have full and non-discriminatory access to the effective remedies and also access to justice. This is possible only through the process of reparation that may include restitution in

ensuring status quo which existed before the disaster, compensation for the damages suffered, and rehabilitation including medical and psychological care etc.

4.23 It is also to be submitted that, the deaths occurred because of the said disaster amounts an indirect negligence on the part of state authorities who failed to take appropriate measures in accordance to the magnitude of the disaster and therefore also as per the law of tort, the state is vicariously liable to pay compensation to all the victims. The state has an obligation to take all appropriate steps in protecting the "Right to life" as enshrined under article 21 of Constitution of India. The state is always expected to take all the reasonable preventive measures under Disaster risk reduction and therefore in absence of the same the state becomes liable to pay the compensation to all the victims and affected person but more particularly to the family of people who lost their lives due to such disaster.

4.24 It is to be submitted that, an aggrieved party is having absolute right to compensation

under the tort law as well as under the disaster management act. The tort law or civil wrong is not limited to the breach of contract or breach of trust only. Tortuous liabilities arise from the breach of statutory duties and responsibilities primarily fixed by law or system more particularly in the welfare state like India. This duty is towards person(s) generally and its breach is redressible by an action of compensation for the damage suffered by the people.

4.25 It is to be submitted that, the doctrine of "***Parents Patriae***" refers to the obligations of the state to protect the rights and privileges of its citizens for discharging its obligations. The doctrine suggests that, the state means the government has to act just like a parent for the people at large and citizens of country. The government has to take all care just like a parent who takes care of their respective kids and therefore being parents of the people at large the government is under obligation to take all the measures for reparation, rehabilitation and welfare of the people and therefore the government is

duty bound to provide full and complete compensation to the victim and needy people who directly or indirectly suffered any type of losses or damages because of disaster and more particularly to those people who are helpless family members of the deceased person who lost their lives because of such disaster.

4.26 It is to be submitted that, the constitution makes it imperative for the state to protect the basic human right of victim of disaster; when the citizen are unable in asserting the same. The concept of "Welfare state" is enshrined in the Preamble of the Constitution of India read in association with the Directive Principle of State policy in article 38, 39 and 39A enjoys the state to take up this responsibility.

4.27 It is also to be submitted that, even as per the provision of article 21 of the Constitution of India, the government is duty bound and under obligation to protect the fundamental right to life of the citizen and therefore when the citizen loses his life due to any unnatural occurrence the state has to accept its

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responsibilities and liabilities to compensate the affected person.

4.28 It is also to be submitted that, peaceful and unobstructed smooth life is a fundamental right as well as Human right also. Hence, the Human Right commission of the National Level and State level constituted under the provision of Protection of Human Rights act, 1993 are also duty bound and under obligation to take all the necessary actions to ensure the rehabilitation and reparation of Human Rights violated by the disaster and to do all the necessary actions under section 12(b) of the Protection of Human Rights Act, 1993.

4.29 It is also to be submitted that, under article 226 of the Constitution of India this Hon'ble High Court is having all powers authorities and jurisdiction to issue appropriate writ, orders and directions upon the state as under Article 12 and its authorities for affirmative obligation to preserve Human Life and Constitutional Fundamental Right of the people at large.

4.30 It is to be submitted that, there is a fundamental principle that, "***ubi jus ibi remedium***" where there is a right there is a remedy. In other words every person having a grievance must have remedy for redressal of their grievances. The right without remedy does not have much substance and the same is no right. When in the Constitution of India the Fundamental right to life is given under article 21 and when basic human right is also given under the provision of Protection of Human Right Act, 1993 such right can be enjoyed by the people by exercising the remedy available to them by way of approaching Hon'ble High Court(s) and Hon'ble Supreme Court under article 226 and 32 respectively for issuance of appropriate writ, order and direction.

4.31 It is to be submitted that, a separate fund, is required to be created under the provision of Disaster management Act, 2005, hence, the donations and contributions in cash and kind which have been received by the government from various sections of society and people in India and abroad, the same does not form a

part in the recognized revenue or fund of the state or Central Government as envisaged in the Constitution. The contributions and donations constitute a fund raised by the people and organizations across the world with specific aim and purpose to provide help and support to the covid 19 virus affected people. Normally, whatever the monies received by the government goes either to the consolidated or contingency fund of India in accordance with Article 283 of the Constitution of India and the same is always subjected to statutory audit also, but here the cash and kind received by donations, financial aid or contribution from all over the world is to be utilized for specific purpose i.e for the relief and rehabilitation of the covid 19 virus affected people and therefore there must be a separate fund and the same is already provided under the Disaster Management Act also. Hence, this Hon'ble High Court is prayed to issue appropriate directions upon the Central and State Government to create the separate fund for the said purpose and to maintain its separate account which may be

subjected to separate audit on periodical base so the misuse or diversion of the fund may be prevented.

4.32 It is also to be submitted that, for effective implementation of the plan and scheme drawn under the Disaster Management Act and also of various other packages and schemes including cash compensation etc. which are already announced or to be announced by the Union and State Government there must be participation of people as well as of expert person(s) and more prominently there must be easy access for needy and affected people of the said relief schemes and therefore with a view to provide proper assistance to the government machineries and for proper implementation of various schemes this Hon'ble Court may appoint "**ombudsmen**" so that, the fund raised may be utilized in right direction and proper time.

Hence, the present petitioner deemed it proper to raise this issue before this Hon'ble High Court by way of filing present PIL in the larger interest of the

people at large.

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5. The source of information of the facts pleaded is from newspaper reports, social media and through various official websites of various government departments. The petitioner has, personally verified the correctness of information by confirming the same by various means and also confirming with victims of this disaster and people at large.
6. That, the petitioner has not made a representation in this regard to any authorities.
7. The petitioner has not filed any other appeal or application either before this Court or before any other Court on the same subject matter of this petition. However, the petitioner has heard about a suo moto petition being Writ Petition (PIL) no. 42 of 2020, which is pending before this Hon'ble High Court which is related to agenda of this petition.
8. That, the facts and submission narrated above may kindly be considered as ground for the present

petition.

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9. That, the petitioner is not seeking any interim relief.

10. The petitioner has not filed any other appeal or application either before this Court or Supreme Court of India or before any other courts on the same subject matter of this petition.

11. The petitioner has no other alternative or equally efficacious remedy but to approach this Hon'ble Court by way of this petition.

12. In view of the above petition, the petitioner most respectfully prays that:

A. YOUR LORDSHIP BE PLEASED TO
admit this petition;

B. YOUR LORDSHIP BE PLEASED TO
issue any writ, order or direction to issue appropriate direction upon the concerned authorities for framing of such scheme to construct funds and to formulate the scheme under the provision of section 11, 12(ii), 12(iii), 12(iv), 19, 23, 46, 47,

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48, 49 and 50 of Disaster Management Act for proper utilization of the said fund for purpose of mitigation of effects of the disaster and for relief, rehabilitation and reparation of victims by providing appropriate compensation to them etc.

C. YOUR LORDSHIP BE PLEASED TO

issue appropriate order or directions upon the Central and State Government to create the separate fund for the said purpose and to maintain its separate account which may be subjected to separate audit on periodical base so the misuse or diversion of the fund may be prevented;

D. YOUR LORDSHIP BE PLEASED to issue

appropriate order or direction upon the respondent authority to give appropriate compensation to people or their family members who have directly suffered or are affected from coronavirus disaster;

E. YOUR LORDSHIP BE PLEASED TO

issue appropriate writ, order or direction for appointment of "ombudsmen" who may supervise the implementation of

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various schemes and plans drawn by Disaster Management Authorities and various packages announced by the Central and State Government and may take, all appropriate steps in this regard with periodical reporting to this Hon'ble High Court;

F. YOUR LORDSHIP BE PLEASED TO

pass any other appropriate and just order(s) in the larger interest of Justice;

G. YOUR LORDSHIP BE PLEASED TO

dispense with the affidavit of the petitioner, since, the present petition is filed online by e-filing system. However, petitioner undertakes to file necessary affidavit as and when the situation become normal and Hon'ble Court starts its normal functioning;

H. YOUR LORDSHIP BE PLEASED TO

dispense with the office objections (if any) raised by the registry, since, the present petition is filed online by e-filing system and the same is requires urgent consideration by this Hon'ble High Court. However, petitioner hereby under takes

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to remove all the office objections (if any) and when the situation become normal and Hon'ble Court starts its normal functioning;

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE PETITIONER SHALL AS IN DUTY BOUND FOR EVER PRAY.

Ahmedabad

14-07-2020

(DHWANI LAKHANI)

(Advocate for Petitioner)

DIST: Ahmedabad

Writ Petition (PIL) NO _____ OF 2020

Neel Piyushbhai Lakhani.

... APPLICANT/PETITIONER

VERSUS

Union of India
J. vs.

...RESPONDENT/OPPONENT

1. I/WE Petitioner above named, do hereby retains, the lawyers of TRIO LEGAL CONSULTANTS AS my/our Advocates, to appear, Plead and contest the above case in my/our behalf.
2. We further empower them to appear, plead, file petitions, enter into compromise and do all necessary acts in the above case; to execute any decree or order that may be passed In my/our behalf, to prefer an appeal from any order, judgment, decree etc, and to receive from court all documents, refunds, all sums of money that I/we may emitted to get and grant receipt thereof and effect compromise or settlement.
3. I/we also undertake to confirm all acts done by the said advocate or by any other Advocates or pleaders on his behalf in doing so.

Date: 14/7/20 Dhumi
(Dhumi Lakhani)
Adv C: 8222

Dhruv Thakkar

AdvCode: 9261

Enrollment: G/454/2017

(M) 8141118888

Neel
C Neel Piyushbhai Lakhani

M R
(milan R. maruti)
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code: 7338.
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