

IN THE SUPREME COURT OF INDIA

S.C.R. Order XXI Rule 3 (1) (a)

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) No. OF 2020

(Against the interim order and judgment dated 02/12/2020 passed by the Division Bench of the Hon'ble High Court of Gujarat in R/WRIT PETITION (PIL) NO. 108 of 2020)

WITH PRAYER FOR INTERIM RELIEF**IN THE MATTER OF: -****POSITION OF PARTIES**

			In the High Court	In this Hon'ble Court
1.	State of Gujarat Through the Principal Secretary, health and family department, government of Gujarat, 7 th floor, block 7 Sardar Patel Bhawan. Sachivalaya Gadhinagar Gujarat.		Respondent No.1	Pet. No.1
2.	The Secretary, Home Department, Government Of Gujarat Block No 2, Sardar Bhawan, New Sachivalaya,		Respondent No.2	Pet. No.2

	Sector 10, Gandhinagar		
		VERSUS	
1.	Vishal S Awtani,	Petitioner	Respondent

To,

HON'BLE THE CHIEF JUSTICE OF INDIA.

AND HIS LORDSHIP'S OTHER COMPANION JUDGES
OF THE HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF
THE PETITIONER ABOVE
NAMED.

MOST RESPECTFULLY SHOWETH:

1. The Petitioners are constrained to move this Hon'ble Court under Article 136 of the Constitution of India aggrieved by the impugned interim order and judgment dated 02/12/2020 passed by the division bench of the Hon'ble High Court in R/WRIT PETITION (PIL) NO. 108 of 2020, whereby the honble high court has been pleased to pass certain direction which are firstly judicially unmanageable and secondly without any authority of law.

2. **QUESTION OF LAW:-**

The following substantial questions of law arise for consideration by this Hon'ble Court:-

- A. Whether the impugned direction passed by the honble division bench of the Gujarat high court are judicially manageable and have the authority of law?
- B. Whether such directions can at all be passed by the Honble High Court, which do not have any legislative sanction?
- C. Whether the impugned direction passed by the honble division bench amounts to legislating a criminal offence which has no legislative backing and is impermissible in law?

3. **DECLARATION IN TERMS OF RULE 3(2)**

The Petitioners state that no other Petition seeking leave to appeal has been filed by the Petitioners against the impugned judgment and final order dated 2.12.2020 passed by the Hon'ble High Court of Gujarat at Ahmedabad R/WRIT PETITION (PIL) NO. 108 of 2020.

DECLARATION IN TERMS OF RULE 5:

The ANNEXURE P-1 to P-2 produced along with the Special Leave Petition are true copies of the pleadings / documents which formed part of the records of the case in the Court below against whose Order, the leave to appeal is sought for in this petition.

4. **GROUND:**

Leave to appeal is sought for on the following grounds:-

- A. Because the Hon'ble High Court while passing the impugned order, has failed to take into consideration the practical difficulties that would be faced by the State for implementation of the impugned order. It is pertinent to note that considering the present pandemic situation, each wing of the State machinery is engaged in the battle against COVID-19 and as laudable as the intention of the Hon'ble High Court may be, the practical impossibility of implementation of such order has been ignored by the Hon'ble High Court.
- B. Because the Hon'ble High Court has failed to appreciate that the entire State machinery, at the

moment, is occupied in providing essential services, such as medical and health services to COVID patients, implementation of social distancing norms and all other aspects pertaining to COVID control. Thus, tracking the offenders as mentioned in the order of the Hon'ble High Court, processing their enlistment for community service, monitoring the performance of the community service and regulating such other aspects, pose great logistical difficulties which are multiplied manifold at such a crucial time, when the entire State and its instrumentalities are focused in controlling the spread of the virus.

- C. Because the Hon'ble High Court has failed to consider that in due deference to the earlier orders of the Hon'ble High Court, the State has already increased the fine for not wearing face masks/covers to Rs. 1,000/- across the State. In this regard, it is imperative to bring to the attention of the Hon'ble Court that till 23.11.2020, a total fine of Rs. 83,10,35,100 has been collected from 20,35,075

persons for not wearing face masks or appropriately covering their faces. Furthermore, 1,61,082 offences have been registered for violation of notifications issued under Section 188 of the Indian Penal Code, 1860; 57,699 offences have been registered for violation of the law by quarantined persons and 42,420 offences have been registered for rioting and in connection with the Disaster Management Act, 2005. These figures clearly indicate the efforts that are being put in by the State and further that penal action is being taken by the State for strict implementation of social distancing and other norms pertaining to COVID-19.

- D.* Because the Hon'ble High Court has erred in mandating community service for such offenders as the same has imposed an additional responsibility upon the State, in respect of monitoring the well-being of such offenders. It is pertinent to note that the Hon'ble High Court has ordered that the such offenders be utilised for non-medical services at COVID

centres. However, while passing the impugned order, the Hon'ble High Court has failed to deliberate upon the risk that such offenders will be exposed to while working in such COVID centres.

- E.* Because the Hon'ble High Court while passing the impugned order did not take into consideration that such offenders would be members of the common public and would possess no training, whatsoever, to work in such high risk COVID care centres. Such lack of training would further increase the risk of their exposure to the virus, in turn making them susceptible targets. Moreover, these offenders may end up as super spreaders, given their continuous exposure to an environment where they would be surrounded by infected patients. Thus, the impugned order has the potential of backfiring and may actually result in increase of the number of COVID cases, rather than achieve the object with which it has been passed.
- F.* Because the Hon'ble High Court has mandated such community service to be implemented across the State.

While issuing such a direction, the Hon'ble High Court has ignored the fact that in some districts there are lesser number of COVID care centres and thus, in view of the lesser space, they would not have the capability or capacity to handle and accommodate the number of offenders/violators for rendering of such service.

G. Because the Hon'ble High Court while passing the impugned order has stated that the services of the violators be listed in accordance with the age, qualifications, gender and health status of the violator. Such direction of the Hon'ble Court does not take into consideration the situation that may arise in case the violators are children, young girls, pregnant women, etc. It is submitted that monitoring the safety of such vulnerable groups for community service becomes a humungous task, more so, in light of the present situation of the pandemic.

H. Because the Hon'ble High Court has failed to appreciate that the inter-state, inter-district movement of persons and goods has been permitted by the

Government of India guidelines. In such a scenario, if any person travelling from one place to another, is required to undergo community service, many questions and issues regarding the rendering of such service including the actual residence of such an offender. The logistical obstacles and the basic practicality involved in the implementation of the order have been ignored by the Hon'ble Court.

Because the Hon'ble high court failed to appreciate that apart from the above the impugned order will also entail the following drastic and adverse effects in public health management in the state.

- (i) Chances of Covid infection to comorbid person, pregnant lady and child.
- (ii) Chances of violence by punished person during community service.
- (iii) Issue regarding wage loss to person, who depend on daily base income.
- (iv) Human right issue.
- (v) Issue regarding testing of person before sending for community service.
- (vi) Food, water, safety & health service (Medicine taken for him/ her for exiting disease) provide to punished person.

- (vii) Departmental co-ordination issue for punishing to person and reporting.
- (viii) Post duty Psychological illness may develop in punished person.
- (ix) Social dignity issue of punished person. (in society, Job, Family etc)
- (x) Type of community service given to punished person depend on their age, gender and health related illness.
- (xi) Still not started in other state of India.
- (xii) Chances of death due to Myocardial infection and other illness during community service due to stress.
- (xiii) Vaccination of child and pregnant lady.
- (xiv) Negative approach by Hospital staff or other department staff to punished person.
- (xv) Road traffic accident during attending community service.
- (xvi) Private Job loss due to 5 to 15 days work as community service.
- (xvii) Leave issue in government and private sector job.
- (xviii) Missing online classes of student due to community service.
- (xix) Care taker issue of his/her family member's comorbid person & child.
- (xx) Person can be covid positive, so testing of all people who are eligible for community service can be challenge

- (xxi) Person can be co-morbid or high risk or old age or pregnant or child
- (xxii) Person can be in contact with covid positive and can infect to others
- (xxiii) If someone has assigned duty and they can die due to any region then who is responsible?
- (xxiv) If person is from outsider and has assign community service then what about is lodging and boarding
- (xxv) May create legal issues if developing partial or permanent disability or death

5. **GROUND FOR INTERIM RELIEF:-**

- A. BECAUSE the Petitioner has a good case on merits balance of convenience is also in the favour of the petitioner.
- B. BECAUSE if the impugned order is not stayed, huge prejudice will be caused to the public tranquillity and and public health care system.

6. **MAIN PRAYER**

It is therefore, most respectfully prayed that Your Lordships may graciously be pleased to:

- I. Grant Special Leave to Appeal against the interim order and judgment dated 02/12/2020 passed by

the Division Bench of the Hon'ble High Court of Gujarat in R/WRIT PETITION (PIL) NO. 108 of 2020;

- II. Pass such other order or orders that may be deemed fit and proper.

7. **PRAYER FOR INTERIM RELIEF:-**

- I. Grant stay against the interim order and judgment dated 02/12/2020 passed by the Division Bench of the Hon'ble High Court of Gujarat in R/WRIT PETITION (PIL) NO. 108 of 2020 and/or
- II. Pass such other order or orders that may be deemed fit and proper.

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

FILED BY:

ANIRUDDHA P. MAYEE
ADVOCATE FOR THE
PETITIONERS

Filed on: 3.12.2020

New Delhi.