

IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTIONSOU MOTU WRIT PETITION (C) NO. 5 OF 2021IN RE : ALARMING NEWSPAPER REPORT REGARDING  
KANWAR YATRA IN STATE OF U.P.O R D E R

We took up this matter yesterday as an interlocutory application (being I.A.No. 82837 of 2021 in SMW (C) No. 5/2021) was filed on behalf of one Mr. P.K.D.Nambiar, pointing out certain news articles which portray an alarming situation taking place in Kerala as a result of 'Bakrid' celebrations. We heard Sh. Vikas Singh, learned senior counsel, yesterday and were *prima facie* of the view that the matter required urgent consideration. We, therefore, asked the State to file an affidavit in the course of the day and listed this case this morning in view of the urgency. The State of Kerala has since filed an affidavit of one Dr. V.P.Joy, who is the Chief Secretary to the State.

The affidavit states as follows :-

*"9. Bakrid, the holy festival of Muslims is being celebrated on 21<sup>st</sup> July, 2021. The traders were expecting that the Bakrid sales will alleviate their misery to a certain extent. They have stocked up the goods for this purpose much early. The organisation of traders started to agitate against the stringent curbs*

*implemented in the LSGIs and declared that they will open shops all over the state flouting the regulations. The opposition political parties also raised the traders' issue in the public domain and demanded more relaxations in the curbs to give some respite to the traders and to allow some economic activities in the State.*

*10. The Chief Minister held discussion with the organizations and heard their demands on 16.07.2021. The traders assured that the opening of shops will be strictly following COVID protocols and they are ready to follow the additional regulations ordered by the State, if any.*

*11. Their demand was put forth before the Crises Management Group meeting and with the concurrence of the Chairman of the Expert Group, it was decided to give some relaxations for opening shops for three days prior to Bakrid vide G.O. (Rt) No. 532/2021/DMD dated 17.07.2021 (Copy of the same is attached herewith as Annexure 5). Only one day of relaxation is allowed in areas where the TPR is above 15%. It has been specifically ordered that as far as possible, the persons visiting shops and other establishments may belong to those with at least one dose of Covid-19 vaccine and follow strict COVID protocols. The Department of Police has been directed to enforce Covid regulations and ensure effective crowd management during these days. The Chief Minister has also appealed to the people via his press briefing that only those who have take at least one dose of Covid-*

*19 vaccine alone may visit the shops during these days."*

We have gone through the Annexures to the affidavit as well. By a Notification dated 15.06.2021, the State was divided into four zones, being Categories A to D, in which the average TPR was set out as below 8% i.e. areas with low spread, which is Category A; average TPR between 8% and 20%, i.e. areas with Moderate spread, which is Category B; average TPR between 20% and 30%, i.e. areas with high spread, which is Category C; and average TPR above 30%, i.e. areas with critical spread, which is Category D. In Annexures to the Notification dated 15<sup>th</sup> June, 2021, it was pointed out in guidelines generally applicable to the entire State, in sub-para 1 (b) to the Annexure, that "Shops selling essential items will be permitted from 7AM to 7PM every day" - seven essential items were actually set out. Apart from this, certain special guidelines were laid down as being applicable to each category separately. In paragraph 2(b), so far as it applies to the lowest category of infection, i.e. Category A, all shops and establishments were able to function from 7 AM to 7 PM everyday with 50% employees/workers. However, so far as Category B, i.e. areas with moderate spread, para 3(b) specifically stated that shops selling

essential items can function from 7 AM to 7 PM every day. All other shops can function on Mondays, Wednesdays and Fridays from 7 AM to 7 PM with 50% employees/workers. So far as Category C is concerned, which is areas with high spread, shops selling essential items will function from 7AM to 7 PM everyday and shops catering to marriages, textiles etc. can function only on Fridays with upto 50% employees/workers. So far as Category D is concerned, paragraph 5 (a) states that special intensified stringent restrictions imposed across the State on Saturdays and Sundays will be imposed throughout the week.

A Notification dated 06.07.2021 then assessed the current situation and maintained the four categories, as stated hereinabove, with this difference that now Category A referred to as average TPR below 5%, Category B referred to as average TPR between 5% and 10%; Category C referred to as average TPR between 10% and 15%; and Category D as average TPR of above 15%. It was thereafter pointed out that exemptions and restrictions already applicable will continue, and in addition, certain relaxations were made so far as Categories A and B are concerned.

We now come to a Notification dated 17.07.2021. This Notification is specific to Bakrid celebrations and states as follows :-

*"As part of COVID-19 containment activities, the LSGIs in the state were categorized based on the Test Positivity Rate (TPR) and certain relaxations on lockdown were extended to the areas where the TPR is less and special intensified stringent restrictions are being implemented in areas where TPR is high.*

*After assessing the current situation of the spread of COVID-19 pandemic in the State, the undersigned, in this capacity as Chairman of the State Executive Committee of State Disaster Management Authority, in exercise of the powers conferred under Sec 20(3) of the Disaster Management Act - 2005, hereby issues following additional guidelines for strict implementation by the enforcing authorities.*

*i. Bakrid (Eid-ul-Azha) is being celebrated in the State on 21<sup>st</sup> of July, 2021. Therefore, textiles, footwear shops, jewellery, fancy stores, shops selling home appliances and shops selling electronic items, all types of repairing shops and shops selling essential items (already allowed in all category of LSGIs) shall be allowed to open on 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup>, July, 2021 (Sunday, Monday and Tuesday) from 7 AM to 8 PM in 'A', 'B' and 'C' category LSGIs. In 'D' category, these shops can function on 19<sup>th</sup> July (Monday) only.*

*ii. Beauty parlor and barber shops can function for hairstyling only on the days*

*on which other shops are permitted in 'A' and 'B' category areas.*

*iii. Along with the other permitted activities, electronic shops and electronic repair shops can also be open on all days from 7 am to 8 pm in category 'A' and 'B' LSGIs and during permitted days in other categories.*

*iv. Places o worship can be allowed with maximum 40 persons on special occasions of celebration.*

*v. Shooting of Cinema shall be allowed as per the guidelines for serial shooting stipulated in the order read as (2) by strictly adhering to COVID protocols.*

*vi. Public are cautioned that as far as possible, the persons visiting shops and other establishments may belong to those with at least one dose of vaccine/COVID recovered category and follow strict COVID protocols."*

Even a cursory look at this Notification will show that all non-essential shops, which were allowed in only Category A, are now allowed to Category A to C. In Category D, however, all these shops were allowed on 19<sup>th</sup> July, 2021 i.e. Monday only, despite the most severe restrictions being placed in Category D, i.e. throughout the week, the

restrictions placed on Saturdays/Sundays were to operate. Another thing that one gets from the aforesaid Notification is that the public are cautioned *that as far as possible, the persons visiting shops and other establishments may belong to those with at least one dose of vaccine/COVID recovered category and follow strict COVID protocols.*

Paragraphs 9 to 11 of the affidavit read with this Notification disclose that the State Government has given in to Associations of traders who represented before the Government that they have stocked up goods for the purpose of Bakrid very early. The State also blithely records that the opening of shops will strictly follow Covid protocols and they are ready to follow additional regulations ordered by the State, if any.

What is extremely alarming is the fact that in Category D, where infections are the highest i.e. 15%, a full day of relaxation has been granted, which was yesterday. It is then stated that, as far as possible, the persons visiting shops and other establishments may belong to those with at least one dose of vaccine/COVID recovered category and follow strict COVID protocols, echoing paragraph (vi) of the 17<sup>th</sup> July, 2021 Notification, along with the Chief Minister's appeal.

The aforesaid facts disclose an alarming state of affairs. To give in to pressure groups so that the citizenry of India is laid bare to a nationwide pandemic discloses a sorry state of affairs. Even otherwise, homilies such as "as far as possible" and assurances from traders without anything more, do not inspire any confidence in the people of India or this Court. We may only indicate that this affidavit discloses a sorry state of affairs as has been stated hereinabove, and does not in any real manner safeguard the Right to Life and Health guaranteed to all the citizens of India under Article 21 of the Constitution of India. It may also be pointed out that the relaxation for one day to a Category D area was wholly uncalled for.

In these circumstances, we direct the State of Kerala to give heed to Article 21 read with Article 144 of the Constitution of India, and follow the law laid down in our orders in the Uttar Pradesh case i.e. 14.07.2021, 16.07.2021 and 19.07.2021. Also, pressure groups of all kinds, religious or otherwise, cannot in any manner, interfere with this most precious Fundamental Right of all the citizens of India. We may also indicate that if as a result of the Notification dated 17.07.2021, any untoward spread in the Covid-19 disease takes place, any member of the public may bring this to the notice of

this Court, after which this Court will take necessary action against those who are responsible.

In view of above, I.A.No. 82837 of 2021 and the Suo Moto Writ Petition are disposed of.

.....J.  
[ ROHINTON FALI NARIMAN ]

.....J.  
[ B. R. GAVAI ]

New Delhi;  
JULY 20, 2021.

MOST URGENT

ITEM NO.12 Court 2 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Sou Motu Writ Petition (C) No(s). 5/2021

IN RE ALARMING NEWSPAPER REPORT REGARDING  
KANWAR YATRA IN STATE OF U.P.(IA No. 82837/2021 - INTERVENTION APPLICATION  
(IA No. 82625/2021 - INTERVENTION APPLICATION)

Date : 20-07-2021 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) By Courts Motion, AOR

For Respondent(s) Mr. C.S Vaidyanathan, Sr. Adv  
Mr. Garima Prasad, AAG  
Mr. Sharan Dev Singh Thakur, AAG  
Mr. Mahesh Takur, Adv.  
Mr. Pradeep Misra, AOR  
Mr. Suraj Singh, Adv.Mr. Ranjit Kumar, Sr. Adv.  
Mr. G. Prakash, Adv.  
Mr. Jishnu M. L., Adv.  
Ms. Priyanka Prakash, Adv.  
Ms. Beena Prakash, Adv.Dr. Abhishek Atrey, AOR  
Ms. Ambika Atrey, Adv.Mr. Tushar Mehta, SG  
Ms. Aishwarya Bhati, ASG  
Mr. S.P.V. Raju, ASG  
Mr. Rajat Nair, Adv.  
Mr. Zoheb Hussain, Adv.  
Ms. Sairica Raju, Adv.  
Mr. Kanu Agrawal, Adv.  
Mr. Digvijay Dam, Adv.  
Mr. B. V. Balaram Das, AOR  
Mr. M. K. Maroria, Adv.

Mr. K. Radhakrishnan, Sr. Adv.

Mr. Vikas Singh, Sr. Adv.

Ms. Preeti Singh, AOR

Mr. Sunklan Porwal, Adv.

Ms. Saumya Dwivedi, Adv.

Mr. Shubham Kaushik, Adv.

Ms. Deepika Kalia, Adv.

Applicant-in-person, AOR

UPON hearing the counsel the Court made the following  
O R D E R

I.A.No. 82837 of 2021 and the Suo Moto Writ Petition are disposed of in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)  
COURT MASTER

(NISHA TRIPATHI)  
BRANCH OFFICER

(Signed order is placed on the file)