

The High Court of Madhya Pradesh

WP.13544.2020

[Ashish Pratap Singh Vs. State of M.P. and others]

Gwalior dated 03.10.2020

Shri Veer Singh Sisodiya & Shri Suresh Agrawal, learned counsel for the petitioner.

Shri Purushaindra Kaurav, learned Advocate General with Shri Ankur Mody, learned Additional Advocate General for respondent/State.

Shri Sanjay Dwivedi, Shri Raju Sharma, and Shri V.D.Sharma, Advocates as *Amicus Curiae*.

Learned counsel for the rival parties are heard through video conferencing.

1. This Public Interest Litigation has been filed raising apprehension of further spread of Covid-19 infection due to congregations held frequently by various political parties due to bi-elections to the State Legislative Assembly in and around the district of Gwalior (M.P.) by citing various instances including photographs which give impression to this Court that Covid-19 protocol/restrictions/guidelines issued by the Central Government, State Government and the District Magistrates at the district level are being flouted with impunity.
2. These congregations have been alleged to be either political or social in nature.

3. This Court on 18.09.2020, as an interim measure, directed the political and as well as State functionaries to strictly abide by the Covid-19 protocol. The Court also appointed three advocates, namely, Shri Sanjay Dwivedi, Shri Raju Sharma, and Shri V.D.Sharma as *Amicus Curiae* to assist this Court and to point out any instances of breach of Covid-19 protocol and the interim order.

4. All the *Amicus Curiae* jointly filed two reports, both *prima facie* revealing widespread breach of Covid-19 protocol based on various congregations of large number of persons which had taken place in the recent past.

5. After dwelling upon the first joint report of the *Amicus Curiae*, this case was taken up on 25.09.2020 when this Court after taking note of the said report and the submissions of the rival parties directed the State to file response to the joint report of the *Amicus Curiae*.

6. Thereafter, this case was taken up on 29.09.2020 when another joint report of the *Amicus Curiae* was on record citing further instances of breach of Covid-19 protocol because of various congregations that have taken place of political and social nature where large number of political functionaries were either present or had presided over the said congregations comprising of numbers of people far exceeding the maximum limit prescribed.

7. This Court, thus, realized that either the functionaries of the State, in particular the law enforcing personnel are unable to prevent blatant and widespread breach of Covid-19 protocol or are turning a nelsons eye towards the said breach to avoid offending their political bosses.

8. This Court, therefore, decided to hold in-camera hearing of District Magistrates and SPs of five districts, namely, Morena, Bhind, Gwalior, Datia and Shivpuri where M.P. Legislative Assembly bi-elections are to be held shortly.

9. Looking to the importance of the matter where every passing minute was crucial, this bench heard the District Magistrates and SPs of said five districts from 09:30 am to 11:30 am through video conferencing.

10. After hearing said executive authorities of the five districts, the common thread visible from their revelation made to this Court was that though all out efforts are being made by them to ensure compliance of Covid-19 protocol but on account of ignorance and lack of civic sense among the public at large, breach happens. The practical problem pointed out by these executive authorities was that in the given circumstances it is not advisable to employ force against large number of persons since such step would cause greater damage than resolving the issue.

11. This Court is of the considered view that in the present scenario

when the bi-elections have recently been announced by the Election Commission of India for different seats in the said five districts, the congregations which are taking place time and again are predominantly political in nature, where particular political functionaries who may be part of State/Government or not are invariably present to either preside over the congregation or to be the cause of the said congregation.

12. The political functionary whether be a member of political party or part of the government or the State is recognized by common men/voters as their representative/leader. The leader is supposed to lead by example which can best be demonstrated by following the rule of law and preventing the breach of law. The voters look up to their representatives in the political field and more often than not these voters attempt to emulate the conduct, behaviour and deeds of their representatives/leaders. This attitude of following the leader is predominant in our society because of rampant ignorance, illiteracy and poverty. The political functionaries and functionaries of the government and the State are duty bound to set such examples of conduct, behaviour and deeds which can enable their followers/voters/citizens to follow the path of rectitude and obedience of law and lawfully passed orders and instructions.

13. This conduct, behaviour and attitude of uprightness towards law

by political functionaries is all the more necessary and deserves stringent adherence when in the given situation of Covid-19 pandemic, the slightest of breach of the protocol can lead to disastrous results of further spread of infection leading to more deaths.

14. The political functionaries who are either members of any political party or functionaries of the State/Government need not be reminded that not only our Nation but the World is facing unprecedented crises of Covid-19 pandemic since the last seven months.

15. The law enforcing personnel is doing its best to control the disastrous aftermath of the said infection which is presently spreading like wild fire with no sign of abating in the near future.

15.1 It is a time of international crises where existence of human race is at risk and thus the least that is required of the political functionaries and the functionaries in the government and State, is that they should rise to the occasion and render national service to defend the Nation from invisible enemy called Covid-19.

15.2 The members of the political parties, functionaries of the government and the State can at least set an example for their followers and voters and the members of general public, by adhering to the Covid-19 protocol issued by the Central Government, State Government and the District Magistrates from time to time.

15.3 It seems from the material placed on record that the political, State and government functionaries are indulging in activities which are leading to congregations of large number of people. Such congregations, it is scientifically proved, can invariably lead to further spread of Covid-19 infection.

15.4 Thus, what is required and expected of the political functionaries is to abide by the Covid-19 protocol, the restrictions and prohibitions imposed thereunder from time to time and refrain from indulging in any activity, conduct or behaviour which can lead to collection of large number of people.

16. After hearing learned counsel for rival parties and considering the gravity of the situation and taking into account the practical problem being faced by the law enforcing personnel in implementing Covid-19 protocol and also looking to the various instances brought on record of widespread violation of Covid-19 protocol predominantly caused by congregations of large number of persons for and on behalf of political leaders, it would be appropriate that this Court in public interest passes the following interim order:

- A. The prevailing Covid-19 protocol with all its restrictions and prohibitions issued from time to time by the Central Government, State Government and the District Magistrates of

the five districts, namely, Morena, Bhind, Gwalior, Datia and Shivpuri shall be complied with by all the members of all the political parties in fray in the forthcoming bi-elections of the M.P. State Legislative Assembly in the said five districts.

B. The prevailing Covid-19 protocol with all its restrictions and prohibitions issued from time to time by the Central Government, State Government and the District Magistrates of the five districts, namely, Morena, Bhind, Gwalior, Datia and Shivpuri shall be complied with by all the political functionaries who are occupying any public office by way of appointment or election during ongoing process of elections to the M.P. State Legislative Assembly in the said five districts.

C. The Covid-19 restrictions and prohibitions imposed by the Election Commission of India in their Code of Conduct shall be strictly adhered to by all concerned including the Government/Political/State functionaries.

D. The members of the political parties are advised not to physically conduct the election campaigns and instead adopt electronic means for the purpose.

E. In case, any of the prohibitions, restrictions & precautions in Covid-19 protocols issued from time to time by the Central

Government/State Government/District Magistrates are found to be breached by a congregation which is of political or social nature then the District Magistrates of the nine districts falling within the territorial jurisdiction of this Bench i.e. Gwalior, Guna, Morena, Bhind, Vidisha, Ashok Nagar, Datia, Shivpuri and Sheopur are directed by writ of mandamus to register offences by invoking penal provisions of Disaster Management Act and the Indian Penal Code not only against the defaulting members of the congregation but also against political/governmental/State or social functionaries in whose name or on whose behest and behalf the said congregation takes place, failing which the District Magistrates of the concerned nine districts shall be liable for contempt of this Court and shall also be exposed to the rigors of penal provisions of relevant laws.

17. Three learned advocates who had been appointed as *Amicus Curiae* are requested to point out any breach of this interim order or of the prevailing Covid-19 protocol.

18. In case, any such breach is pointed out by the *Amicus Curiae* or any citizen, then the Principal Registrar is directed to immediately place this matter before the appropriate Bench for adjudication even at the cost

of preponement.

19. The Principal Registrar of this Court is directed to:

A. communicate this order by electronic means and telephonically to the District Magistrates of all nine districts falling within the territorial jurisdiction of this Bench i.e. Gwalior, Guna, Morena, Bhind, Vidisha, Ashok Nagar, Datia, Shivpuri and Sheopur and preserve note of compliance in the docket of this file.

B. communicate a copy of this order to three *Amicus Curiae* Shri Sanjay Dwivedi, Shri Raju Sharma and Shri V.D.Sharma, Advocates.

20. Let the case be taken up on **15th October, 2020**.

(Sheel Nagu)
Judge

(Rajeev Kumar Shriavastava)
Judge

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