

IN THE HIGH COURT OF JUDICATURE, AT BOMBAY

BENCH AT NAGPUR, NAGPUR

WRIT PETITION NO ___ OF 2020

(IN THE MATTER OF CHALLENGE TO THE IMPUGNED

NOTIFICATION No. MC/65/2020 DATED 03.05.2020

ISSUED BY THE RESPONDENT NO.2-MUNICIPAL

COMMISSIONER, NAGPUR)

PETITIONERS - 1. Shri. Prakash S. Jaiswal,

2.

3.

4.

Aged-45 years, Occ-Advocate,

5.

VERSUS

1. Union of India,

Through its Principal Secretary,

Ministry of Home Affairs, New Delhi.

2. STATE OF MAHARASHTRA,

through its Chief Secretary,

Department of Revenue and Forest,

Disaster Management, Relief and

Rehabilitation, Mantralaya, Mumbai.

3. Nagpur Municipal Corporation, Nagpur

through its Municipal Commissioner

Plam Road, Nagpur-411001.

4. Divisional Commissioner, Nagpur

Old Secretary Building, Samaj Kalyan Office Rd,

Civil Lines, Nagpur, Maharashtra 440001

5. District Collector, Nagpur,

RavindraNath Tagore Marg,

Civil Lines, Nagpur-440001

6 Shri. Tukaram Munde, IAS,

Municipal Commissioner, Nagpur,

Civil Lines, Nagpur.

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE
CONSTITUTION OF INDIA

1. The Petitioners herein being aggrieved by the Notification No. MC/65/2020 dated 03.05.2020 in relation to COVID-19 under The Epidemic Diseases Act, 1897 (*hereinafter referred to as the said 'Act of 1897'*), Revised Lockdown, issued by respondent No.3-Nagpur Municipal Corporation through its Municipal Commissioner, Nagpur (*Hereinafter referred to as the said 'Commissioner'*) being illegal, arbitrary, unreasonable and the same falls under usurpation of power and authority and also against the intent and powers accorded under the provisions of the Disaster Management Act, 2005 (*Hereinafter referred to as the said 'Act of 2005'*), thereby breached the provisions of the said Act of 2005, are approaching this Hon'ble Court by way of instant petition invoking the

extraordinary Jurisdiction under Article 226 & 227 of the Constitution of India on the facts elucidate hereinbelow:-

2. The Petitioners are renowned lawyers of the Nagpur city and are permanent citizens of the Nagpur City, Maharashtra.
3. The Respondent No.1 is Union of India through Ministry of Home Affairs, New Delhi, Respondent No.2 is State of Maharashtra through its Chief Secretary, Department of Revenue and Forest, Disaster Management, Relief and Rehabilitation, Mantralaya, Mumbai, Respondent No.3 is the Nagpur Municipal Corporation, through its Municipal Commissioner, Nagpur and the Respondent no.4 is the Divisional Commissioner, Nagpur, Respondent No.5 is the District Collector, Nagpur and Respondent No.6 is the Municipal Commissioner of Nagpur Municipal Corporation, Nagpur. Thus all the respondents herein are the instrumentalities/authorities functioning under the State Government and hence are 'State' within the meaning of Article 12 of the Constitution of India and are amenable to the Writ Jurisdiction of this Hon'ble Court.
4. The petitioners herein most respectfully submits that in January 2020 the World Health Organization (WHO) declared the outbreak of a new coronavirus disease in

Hubei Province, China to be a Public Health Emergency of International Concern. Since then WHO has declared it as a Pandemic affecting more than 115 countries around the globe. India has seen its first COVID-19 case in Kerala on 30th January 2020. With cases rising steadily the Government of Maharashtra through its Principle Secretary on 14th March, 2020 issued a notification in which the Regulation called '*Maharashtra COVID-19 Regulation*' (hereinafter referred to as the said '**COVID-19 Regulation**') was published providing measures to be taken by the authorities concerned for the control of COVID-19 disease. A copy of the said Notification dated 14.03.2020 is annexed herewith and marked as **ANNEXURE- A** for the ready reference and kind perusal of this Hon'ble Court.

5. In the said COVID-19 Regulation under rule 3, the Empowered Officer is defined under the Section 2(1) of the said Act of 1897, which is reproduced herein below as verbatim

*“Empowered officer’ under section 2(1) of the Act, shall be
Commissioner, Health Services, Director of Health
Services (DHS-I & II), Director, Medical Education &
Research (DMER), all Divisional Commissioners of
Revenue Divisions & all Collectors and Municipal*

Commissioners & they are empowered to take such measures as are necessary to prevent the outbreak of COVID-19 or the spread thereof within their respective jurisdictions”

It is apposite to mention here that the Regulation issued by Government of Maharashtra cannot override the Act and on bare perusal of the above definition, it can be garnered that the State Government has included above named officer in the definition of the ‘*Empowered officer*’ who can act under the authority and power deposited on them under the respective Act and in no case empowered all the above named officer to do acts as per their whims and fancies by over reaching the jurisdiction and power of the other concerned officer.

6. Further, the Petitioners most respectfully submits that due to the rise in number of cases of COVID-19 disease, the Government of Maharashtra-Respondent No.2 has imposed a lockdown vide Notification dated 15.04.2020, by exercising the powers and the said Act of 1897 and Act of 2005 as well as in pursuance to the various Notifications issued by Government from time to time. The lockdown was imposed for further 19 days, which was in effect till 03.05.2020. The Office of District Magistrate,

Nagpur-Respondent no.3 by its Order dated 15.04.2020 has issued various directions Ordering for closure of the various establishments, offices, etc in order to implement the Lockdown Orders issued by Government of India as well as Government of Maharashtra. A copy of the said Order dated 15.04.2020 issued by Respondent no.5-District Collector, Nagpur is annexed herewith and marked as **ANNEXURE-B** for the ready reference and kind perusal of this Hon'ble Court.

7. The Petitioners further most respectfully submits that before the expiry of the 'Lock down' on 03.05.2020, the 90 In the said Notification, new guidelines were issued under the directions of National Disaster Management Authority (NDMA), the copies of which were also sent to Secretaries of all Ministries, Department of Government of India as well as Chief Secretaries and administrations of the State and Union Territories. A copy of the said Notification dated 01.05.2020 issued by Government of India through Ministry of Home Affairs is annexed herewith and marked as **ANNEXURE-C** for the ready reference and kind perusal of this Hon'ble Court.
8. In accordance with the said guideline of Government of India dated 01.05.2020, the criteria for dividing the district

of the country in to three zones i.e., red (hotspot), green and orange zone was laid down based on risk profile. Further, as per Clause 3 (i) of the guidelines, the powers were given to the District Administration to fix the boundaries of the Contentment Zone. Clause 4 specified what activities remain prohibited across the Country irrespective of the Zone. Whereas Clause 5 speaks of measures for the well-being and safety of the person, Clause 6 specifies the activities in Contentment Zone, Clause 7 speaks of activities in Red Zone, *Clause 7(ii)(f) specifically provided that Private Offices can operate with upto 33% strength as per requirement with remaining persons working from home* Clause 8 speaks about activities in Orange Zone, clause 9 speaks of activities in Green Zone, Clause 10 gave the power to the State/Union territories to assess the situation with primary object of curbing the spread of COVID 19 in respect of all permitted activities. *Clause 14 of the said guidelines specifically inculcated the States/Union Territories shall not dilute these guidelines issued under Act of 2005 in any manner and shall strictly enforce the same, without any addition or alteration.* Clause 15 provided that all the District Magistrate have to strictly enforce these 'Lock Down' measures and national directives for COVID-19

management for Public and work places as specified therein.

9. In accordance with the abovementioned guidelines issued by Government of India dated 01.05.2020, the Government of Maharashtra issued guidelines on 02.05.2020 revising its earlier guidelines. The said Notification dated 02.05.2020 was issued in consonance with the guidelines of Government of India dated 01.05.2020 and vide clause 15 in the manner as it was provided in the Government of India instructions were issued that no Department of State Government of State Administration or any other Authority shall dilute the said guidelines in any manner and shall enforce the same strictly. Annexures of the said Guidelines provides for the directives for the COVID-19 Management, which amongst other activities permitted opening of shops, selling of liquor etc by ensuring minimum 6 feet distance and not more than 5 persons at one time in the shop and Excise Department was permitted to monitor the same. It is further provided for opening of private offices in the areas excluding the area of all Municipal Corporation within the Mumbai Metropolitan Region (MMR), Malegaon Municipal Corporation, Pune Municipal Corporation and the Pimpri-Chinchwad Municipal Corporation, can operate with upto 33% strength. A copy of the said Notification

dated 02.05.2020 issued by Government of Maharashtra is annexed herewith and marked as **ANNEXURE-D** for the ready reference and kind perusal of this Hon'ble Court.

10. It is apposite to allude here that the District Magistrate Nagpur has issued Order dated 03.05.2020 invoking Section 144 of Criminal Procedure Code, 1973 which was issued in pursuance to the Notification/guidelines dated 01.05.2020 and Notification dated 02.05.2020 issued by Government of Maharashtra, thereby, entailing that Nagpur rural area comes under Orange Zone, except Kanhan Containment area, th.Parsheoni, dist. Nagpur. Even in the said Order dated 03.05.2020, the District Collector in point 4(ii) (f) clearly specified that private offices in the area excluding the area of Municipal Corporation Nagpur can operate with upto 33% strength and shops selling liquor are also allowed to function with a condition to ensure minimum six feet distance from each other and not more than 5 persons are permitted to be present at one time at the shop. A copy of the said Order dated 03.05.2020 issued by Respondent No.3-District Collector, Nagpur is annexed herewith and marked as **ANNEXURE-E** for the ready reference and kind perusal of this Hon'ble Court.

11. However, the Municipal Commission-respondent no.2 by usurping the power of the District Collector, Nagpur accorded by the Act of 2005 and Government of India Notification dated 01.05.2020, issued a impugned Notification dated 03.05.2020, thereby, altered the guidelines provided in Notification dated 01.05.2020 by Government of India under the guise of stating his opinion that as Nagpur falls under Red Zone, it is necessary to implement even more strict measures in Nagpur Municipal Corporation limit during the extended 'Lock down' period upto 17.05.2020 at par with the measures as given for Mumbai Metropolitan Region, Pune Municipal Corporation, Malegaon Municipal Corporation and Pimpri-Chinchwad Municipal Corporation. Further, Municipal Commissioner in the directives in the said Notification conveniently deleted the provisions as contained in the directives of Government of India dated 01.05.2020 and directives of Government of Maharashtra dated 02.05.2020 pertaining to functioning of private offices, shops and liquor shops in the Municipal area of Nagpur City. Not only this, in the press note and interview given by Municipal Commissioner, it was declared that the private offices, which were permitted to be open by the aforesaid Government Notifications with 33% staff will also be not permitted to open in the Nagpur

City till 17.05.2020. A copy of the said impugned Notification dated 03.05.2020 is annexed herewith and marked as **ANNEXURE-F** for the ready reference and kind perusal of this Hon'ble Court.

12. It is also pertinent to mention here that the Government of Maharashtra has issued a revised consolidated guidelines dated 03.05.2020 in continuation of the earlier guidelines dated 02.05.2020 and the same was issued subsequent to the aforesaid impugned Notification of Municipal Commissioner. The Government of Maharashtra amended Para 7 (ii)(d), thereby, specifically permitted all stand alone (single) shops, whether relating to essential or non-essential. The revised guidelines also permitted to open all shops excluding in the area of Mumbai Metropolitan Region (MMR), Malegaon Municipal Corporation, Pune Municipal Corporation and the PimpriChinchwad Municipal Corporation. A copy of the said revised guidelines dated 03.05.2020 issued by Government of Maharashtra is annexed herewith and marked as **ANNEXURE-G** for the ready reference and kind perusal of this Hon'ble Court.
13. The Petitioners most respectfully submits that the Maharashtra Government has announced on 03.05.2020 that shops selling non-essential commodities including

liquor will be allowed to open from 04.05.2020 in the COVID-19-non-containment zones across the state. However, the respondent no.6 -Municipal Commissioner in utter defiance of the said decision of the Government of Maharashtra issued a impugned notification dated 03.05.2020 restricting the opening of private offices, liquor shops etc which is clearly a discriminatory, arbitrary and illegal imposition of the doctorial order and the same cannot stand to the scrutiny of law.

14. It is also pertinent to allude here that the powers pertaining to the Regulations of Liquor shops exclusively vests with the District Collector under the provisions of Bombay Prohibition Act, 1949. Similar power for imposing any restrictions on the running of Private offices like the office of professionals ie., lawyers, who are not registered under the Shops and Establishment Act also do not vest with the Municipal Commissioner. Thus, it can safely be established that Municipal Commissioner has issued a impugned Notification without any authority and same deserves to be quashed and set aside by this Hon'ble Court on the grounds elaborated herein below:-

GROUND

- I. The Petitioner most respectfully submits that the impugned Notification dated 03.05.2020 issued by the Respondent no.3-Nagpur Municipal

Commissioner is abuse of power, without any authority under law and is illegal, arbitrary and perverse, which at the outset, deserves to be quashed and set aside by this Hon'ble Court.

II. The petitioners most respectfully submits that the under Disaster Management Act, 2005, the District Administration has the authority and power to control and issue direction with respect to disaster situations, some relevant sections are quoted herein below as verbatim:-

34. Powers and functions of District Authority in the event of any threatening disaster situation or disaster.—For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may—

(a) give directions for the release and use of resources available with any Department of the Government and the local authority in the district;

(b) control and restrict vehicular traffic to, from and within, the vulnerable or affected area;

(c) control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area;

(l) ensure that the non-governmental organisations carry out their activities in an equitable and non-discriminatory manner;

....

(m) take such other steps as may be required or warranted to be taken in such a situation.

41. Functions of the local authority.—(1) Subject to the directions of the District Authority, a local authority shall—

(a) ensure that its officers and employees are trained for disaster management;

(b) ensure that resources relating to disaster management are so maintained as to be readily available for use in the event of any threatening disaster situation or disaster;

(c) ensure all construction projects under it or within its jurisdiction conform to the standards and specifications laid down for prevention of disasters and mitigation by the National Authority, State Authority and the District Authority;

(d) carry out relief, rehabilitation and reconstruction activities in the affected area in accordance with the State Plan and the District Plan.

(2) The local authority may take such other measures as may be necessary for the disaster management

Section 2 (d) "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area

In view of the above provision, it is clear that the District Collector is the authorised officer to issue directions to restrict movement and functioning of the essential necessities and not the Municipal Commissioner.

III. The petitioners most respectfully submit that the Municipal Commissioner under the guise of Maharashtra COVID-19 regulation, declared himself as the enforcing authority in the pandemic situation subsisting in Nagpur without applying his mind and issued an impugned notification dated 03.05.2020,

which is clear breach of the Government of India Notification dated 01.05.2020 and Government of Maharashtra Notification dated 02.05.2020 and also the Act of 2005. Hence, the impugned Notification dated 03.05.2020 deserves to be quashed and set aside by this Hon'ble Court.

- IV. The petitioners further most respectfully submits that the State Government by applying its mind has particularly excluded the contentment zones and the areas under the limits of Municipal Corporation of Mumbai, Pimpri-Chinchwad and Malegaon. Whereas, the Municipal Commissioner, Nagpur, who is the implementing authority, without there being any justification, reason and contrary to the decision of the Government of India as well as Government of Maharashtra has made applicable the said exclusion clause to Nagpur City also, which is absolutely discriminatory and arbitrary exercise of the power. Hence, the impugned Order deserves to be quashed and set aside by this Hon'ble Court.
- V. The Petitioners further most respectfully submits that Government of India and Government of Maharashtra has clearly spelled that the guidelines provided by them must be adhered strictly and no dilution, alteration or mending is permitted, still the

Municipal Commissioner in utter breach of the said notifications diluted and deleted the guidelines while issuing the impugned notification dated 03.05.2020 such as closure of private offices and liquor shops will continue in Nagpur City. Hence, the said impugned Notification dated 03.05.2020 deserved to be quashed and set aside by this Hon'ble Court.

VI. The petitioner further most respectfully submits that the District Collector, Nagpur vide his order dated 03.05.2020 has allowed the private offices with 33% strength of staff at office premises and functioning of liquor shops with condition specified therein, which is in adherence to the Government of India and Government of Maharashtra guidelines. However, Municipal Commissioner, usurped the power of District Collector and issued the said impugned Notification dated 03.05.2020 imposing the strict measure, which does not fall under his authority, power and jurisdiction of law. Hence, impugned notification deserves to be quashed and set aside by this Hon'ble Court.

VII. The petitioner most respectfully submits that the District Collector being the chairperson of the District Disaster Management Authority is vest with power of issuing directions with regards to the

functioning of the liquor shops and private offices and not the Municipal Commissioner. It is a sheer breach of the Disaster Management Act, 2005, and hence the impugned Notification deserves to be quashed and set aside by this Hon'ble Court.

VIII. It is also pertinent to mention here that the Government of India and Government of Maharashtra has allowed the functioning of private offices and liquor shops in red zones imposing certain conditions and does not completely debarred it from functioning, which the Municipal Commissioner failed to understand and in any case he is not the authorised or proper officer under the Act of 2005 to issue any such directives. Hence, the impugned Order needs to be quashed and set aside by this Hon'ble Court.

IX. The Petitioners most respectfully submits that the powers pertaining to the Regulations of Liquor shops exclusively vests with the District Collector under the provisions of Bombay Prohibition Act, 1949. Similar power for imposing any restrictions on the running of Private offices like the office of professionals ie., lawyers, who are not registered under the Shops and Establishment Act also do not vest with the Municipal Commissioner.

- X. The petitioners further most respectfully submits that issuance of such directive by Municipal Commissioner will adversely affect the revenue of State Government and the State Government after perusing the situation of COVID-19 must have arrived at the decision of allowing the private offices and liquor shops to be opened, which Municipal Commissioner illegally and capriciously restricted in the name of emergency situation and the people are deprived from their rights of opening shops and offices. Hence such impugned notification needs to be quashed and set aside by this Hon'ble Court.
15. The Petitioner further most respectfully submits that the petitioner has made a prima facie case in his favour by establishing that the fact that the impugned notification dated 03.05.2020, issued by Municipal Commissioner-Respondent No.3 is without any authority, power and is illegal, perverse and capricious and hence it is in the interest of justice, if this Hon'ble Court stay the impugned Communication dated 03.05.2020 and thereafter quash and set aside the said impugned Communication being arbitrary, illegal and against the Government of India Notification dated 01.05.2020 and Government of Maharashtra Notification dated 02.05.2020.

16. The petitioner further most respectfully submits that the petitioner does not have any alternate remedy, much less, an efficacious one than to approach this Hon'ble Court in the instant matter under Articles 226 and 227 of the Constitution of India invoking its extraordinary writ jurisdiction.
17. The petitioner herein further most respectfully submits that the petitioners have not approached this Hon'ble Court or Hon'ble Supreme Court challenging the said impugned Notification.
18. The petitioner further most respectfully submits that the petitioner undertakes to furnish the true translation in English of the documents, which are in vernacular, as and when directed by this Hon'ble Court.
19. The petitioner herein further most respectfully submits that the petitioner herein has not received a caveat notice in the instant matter from any of the respondents till the date of the filing of the instant petition before this Hon'ble Court.

Hence, this petition.

PRAYER : It is most humbly and respectfully prayed that this Hon'ble Court may kindly be pleased to:-

A. By way of appropriate writ, order and direction, hold and declare that the impugned Notification dated 03.05.2020 (Annex-) issued by Respondent No.3-Nagpur Municipal Corporation through its Municipal Commissioner (respondent No.6) is per se illegal, arbitrary and against the Government of India Notification dated 01.05.2020 (Annex-), Government of Maharashtra Notification dated (Annex) and is in breach of The Disaster Management Act, 2005;

B. By way of appropriate writ, order and direction quash and set the impugned Notification dated 03.05.2020 (Annex-) issued by Respondent No.3-Nagpur Municipal Corporation through its Municipal Commissioner (respondent no.6) being illegal, arbitrary and against the Government of India Notification dated 01.05.2020 (Annex-), Government of Maharashtra Notification dated (Annex) and is in breach of The Disaster Management Act, 2005;

C. By way of interim relief, be pleased to stay the effect, operation and implementation of the the impugned Notification dated 03.05.2020 (Annex-) issued by Respondent No.3-Nagpur Municipal Corporation through its Municipal Commissioner (respondent no.6) during the pendency of the instant petition;

D. By way of ex-parte ad-interim relief, be please to stay the impugned Notification dated 03.05.2020 (Annex-) issued by Respondent No.3-Nagpur Municipal Corporation through its Municipal Commissioner during the pendency of the instant petition being the short duration of the said impugned Notification dated 03.05.2020, which otherwise would be futile;

E. Be pleased to grant ex-parte ad-interim relief in terms of prayer clause (C) & (D) above;

F. Grant any other relief as this Hon'ble Court deems fit in the facts and circumstances of the matter;

Nagpur

Dated: 04.05.2020

Counsel for Petitioners.