



of Bhandara Organizations” engaged in rendering services to pilgrims who undertake the annual Shri Amarnath Yatra. The relief sought in these proceedings is a writ of mandamus directing the respondents to restrict access of the general public, devotees and pilgrims to the annual pilgrimage for 2020 in view of the outbreak of Covid-19. The petitioners seek a direction that arrangements be made for “live darshan” at the shrine through the internet and electronic media.

2 Mr Devadatt Kamat, learned senior counsel appearing on behalf of the petitioners, relies on the guidelines issued on 29 June 2020 under the Disaster Management Act 2005 by the Union Home Ministry. He submits that in clause 1(v) of the guidelines, religious functions and other large congregations have been excepted from the range of activities permissible outside containment zones. The submission is that holding the Amarnath Yatra would breach the guidelines and, hence, an order of restraint of this Court is warranted. Mr Kamat urged that the representations submitted by the petitioners to the authorities have not resulted in an outcome of the nature that is sought by them.

3 The petitioners advert to the directions that were issued by this Court in the context of the Jagannath Yatra initially on 18 June 2020, which were modified on 22 June 2020 in **Odisha Vikash Parishad v Union of India & Ors**<sup>1</sup>.

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4 The parameters of judicial review must be borne in mind while addressing ourselves to the issues raised before this court. The decision as to whether a pilgrimage should be permitted and, if it is permitted, the safeguards which should be observed, are matters which fall within the domain of the executive arm of the State. In arriving at a decision, the administrative authorities must bear in mind statutory provisions governing the field and policies and administrative circulars issued in pursuance of statutory provisions. An assessment of the situation will be based on ground realities. This assessment lies in the domain of the administrative functions of the state. The duty of the court is to step in where (i) the decision making process is flawed by a failure to observe statutory or constitutional requirements; or (ii) where a decision is contrary to law; or (iii) the failure to take a decision results in a breach of a statutory duty or a fundamental right. Once a decision is taken, its validity can be tested on procedural and substantive grounds including proportionality and manifest arbitrariness. The power to take a decision on whether a pilgrimage should take place in a given situation lies with the executive arm of the state.

5 The precedent that was relied upon by Mr Kamat needs to be considered. The order of this Court dated 22 June 2020 records that initially, an order was passed on 18 June 2020 restraining the respondent - authorities from holding the Jagannath Rath Yatra at Puri. By its order dated 22 June

2020, the Court clarified the circumstances in which the initial order of injunction was issued:

"Before we passed our earlier Order we had suggested to the parties that the procession of chariots, i.e., the Rath Yatra itself, could be allowed to proceed, however, without the general congregation which participates in this Yatra. **We were informed that it would be well nigh impossible to ensure that there is no congregation.** This Court was, therefore, left with no option but to grant an injunction restraining the Rath Yatra itself."(emphasis supplied)

6 The above extract indicates that the order of restraint was premised on the information furnished to the court by the authorities that it was **"well nigh impossible to ensure that there is no congregation."** The earlier order was modified to allow the holding of the Rath Yatra at Puri by the subsequent order dated 22 June 2020. While doing so, the Court noted that:

**"...an affidavit filed on behalf of the State of Orissa stating that it might be possible to conduct the Rath Yatra at Puri "in a limited way without public attendance". This has been proposed by Gajapati Maharaj of Puri, who is the Chairman of the Puri Jagannath Temple Administration.** Indeed, if it is possible to ensure that there is no public attendance, we see no reason why the Rath Yatra cannot be conducted safely along its usual route from temple to temple."(emphasis supplied)

7 It was on the basis of the affidavit that was filed by the State of Odisha and on the proposal of the Chairman of the Puri Jagannath Temple Administration that the modification was issued, subject to conditions. This is clearly indicative of

the fact that what weighed with the Court, in the first instance, was the information furnished to it that it was impossible to ensure that there is no congregation if the Rath Yatra was held. Subsequently, the State of Odisha stated before the Court that it might be possible to conduct the Rath Yatra at Puri "in a limited way without public attendance". This only goes to emphasise that the decision turned upon the view which was taken by the administration of the exigencies of the situation and on whether the religious congregation arising out of the procession at Puri could proceed in a safe and orderly manner.

8 In the present case, the recourse which has been taken to the jurisdiction under Article 32 of the Constitution is inappropriate. The issue as to whether the Amarnath Yatra 2020 should or should not be held is a matter must be left to the competence of the local administration. Any decision that is arrived at has to be based on law and on relevant statutory provisions holding the field. Entertaining a writ petition under Article 32 at this stage would necessarily involve this Court taking over an executive function of oversight over the local administration. We decline to exercise the jurisdiction under Article 32 to take over these powers under the rubric of judicial review. The principle of separation of powers requires that administrative decisions must be taken where they are entrusted, namely by the executive arm of the state. The court will step in where the parameters for judicial

review, as explained earlier, arise. The petitioners are at liberty to provide such inputs as they may be advised to furnish having regard to their experience of assisting in the pilgrimage in the past.

9 For the reasons set out above, we decline to entertain the petition under Article 32 of the Constitution. The Petition stands dismissed.

10 All pending applications are disposed of.

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**AR-CUM-PS**

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