

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4840 OF 2020

Shiv Vahatuk Sena, Nashik,
A Society registered as per the provisions
of the Societies Registration Act, 1860
bearing No. 17/11290, Through its President,
Shri Altmesh Tayyab Shaikh,
Aged Adult, Having its office at Pakhal
Road, Opp Ndcc Bank, Dwarka, Nashik .. Petitioner

VERSUS

- 1] The State of Maharashtra,
Through the Principal Secretary,
Revenue and Forest Department,
Having Office at Mantralaya,
Mumbai - 400 032
- 2] The District Collector @ District
Magistrate @ District Disaster
Management Authority, Nandurbar,
Having Its Office at the District
Collector's Office, Nandurbar .. Respondents

WITH
WRIT PETITION NO. 4846 OF 2020

- 1] Shaikh Yusuf Shaikh Rustam,
Age : 49 years, Occu.: Business,
R/o. Sajapur, Tq. and Dist. Aurangabad
- 2] Nawab Ajij Shaikh,
Age : 48 years, Occu.: Business,
R/o. Near Jama Masjid, Limbe Jalgaon,
Tq. Gangapur, Dist. Aurangabad
- 3] Mustak s/o Rahman Shaikh,
Age : 40 years, Occu.: Business,
R/o. Amalner-Kaygaon,
Tq. Gangapur, Dist. Aurangabad

- 4] Javed s/o Chand Pathan,
Age : 35 years, Occu.: Business,
R/o. Tuljapur, Tq. Paithan, Dist. Aurangabad
- 5] Shaikh Ismail Shaikh Musa,
Age : 33 years, Occu.: Business,
R/o. Dukhi Nagar, Old Jalna,
Tq. and Dist. Jalna
- 6] Sagar Sambhaji Salunke,
Age : 28 years, Occu.: Business,
R/o. Old Galli, Tq. and Dist. Osmanabad
- 7] Kishor Thakarsi Maiseri,
Age : 67 years, Occu.: Business,
R/o. Modi Khana, Jalna,
Tq. and Dist. Jalna
- 8] Mirza Yunus Baig,
Age : 40 years, Occu.: Business,
R/o. Gade Jalgaon,
Tq. and Dist. Aurangabad
- 9] Shaikh Nisar Shaikh Bashir Bhai,
Age : 42 years, Occu.: Business,
R/o. Murumkheda, Tq. and Dist. Aurangabad
- 10] Allaabakhash Mohammad Shaikh,
Age : 44 years, Occu.: Business,
R/o. Abrar Colony, Beed bypass,
Satara Parisar, Aurangabad,
Tq. and Dist. Aurangabad
- 11] Shaikh Altaf Shaikh Mohammad,
Age : 48 years, Occu.: Business,
R/o. Abrar Colony, Beed bypass,
Satara Parisar, Aurangabad,
Tq. and Dist. Aurangabad
- 12] Ibraheem Khan Nabi Khan,
Age : 41 years, Occu.: Business,
R/o. Agra Road, Lata Sardar Nagar,
Devpur, near L.M. Sardar School,
Dhule, Tq. and Dist. Dhule

- 13] Aslam Ajij Shaikh,
Age : 40 years, Occu.: Business,
R/o. Murumkheda,
Tq. and Dist. Aurangabad
- 14] Shaikh Pasha Shaikh Chand,
Age : 53 years, Occu.: Business,
R/o. Dahgavhan Bk., Post. Bodakha,
Tq. Ghansavangi, Dist. Jalna
- 15] Afroz Khan Usman Khan,
Age : 50 years, Occu.: Business,
R/o. Galli No. A-12, Salman Masjid,
Sanjay Nagar, Aurangabad,
Tq. and Dist. Aurangabad
- 16] Raybhan Tukaram Sonawane,
Age : 72 years, Occu.: Business,
R/o. Vaijapur Road, Shivaji Nagar,
Gangapur, Tq. Gangapur,
Dist. Aurangabad .. Petitioners

VERSUS

- 1] The State of Maharashtra,
Through the Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai - 400 032
- 2] The District Collector
@ District Magistrate @ District Disaster
Management Authority, Nandurbar,
Having Its Office at the District Collector Office,
Nandurbar, Tq. and Dist. Nandurbar .. Respondents

Mr. J. D. Khairnar, Advocate for petitioner in writ petition no. 4840 of 2020

Mr. C. R. Thorat, Advocate for petitioners in writ petition no. 4846 of 2020

Mr. D. R. Kale, Government Pleader for respondents – State

CORAM : SUNIL P. DESHMUKH &
SHRIKANT D. KULKARNI, JJ.
DATE : 17-07-2020

JUDGMENT (PER – SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.
2. The petitions question propriety, legality and validity of order dated 06-06-2020 passed by respondent no. 2 invoking section 2 of the Epidemic Diseases Act, 1897, section 33[1](b)(g) (I) of the Maharashtra Police Act, 1951 and sections 155 and 184 of the Motor Vehicles Act, 1988, restraining sand transport from Nandurbar district border or through the district, directing transport from other routes. Such restraint is to be effective in the territory of Nandurbar district until further orders.
3. Petitioners including members of Shiv Vahtuk Sena, Nasik – a union of truck owners, *inter-alia*, ply their vehicles from adjacent Gujarat state to Maharashtra availing of shortest and convenient route available for transportation passing through Nandurabar district. It is their case that sand is being transported from roads in Nandurbar district for supply to development

activities including government projects without any interruption from a very long time.

4. Petitioners contend that business of petitioners and members of the union had come to a grinding halt during the earlier subsisting lockdowns before 06-06-2020, truncating source of income for the truck owners, drivers, employees and the members of the union, making their life difficult, the source of livelihood having been cut off. Due to the same, not only livelihood is affected but also other aspects of their life had been drastically affected. It has caused a huge set-back in all respects to their life, posing threat and danger to their survival.

5. It is additionally being referred to that as the monsoon is setting in, sand excavation would become difficult further deteriorating the situation.

6. Mr. C.R. Thorat and Mr. J.D. Khairnar, counsel for petitioners, respectively, contend that singling out only sand transport and assuming that spread of COVID-19 is due to sand truck transport and can be checked and controlled only by cutting off of sand truck traffic through Nandurbar district is not at all proper and has been proved to so, as spread of pandemic in Nandurbar district while it was in green zone, after stoppage of the sand truck traffic, could not be checked and contained.

Despite stopping of transportation of sand, epidemic is growing in Nandurbar district. Thus, the basic assumption entertained while issuing impugned order stands razed to the ground.

7. Counsel for petitioners contend that sand is not available and/or its excavation has been banned in the State of Maharashtra and, as such, sand is forced to be procured from outside the State. Only sand transporters are banned in Nandurbar district whereas rest of the goods transport continues to take place through Nandurbar district. The absolute stoppage of sand transport in Nandurbar district, is unreasonable and arbitrary.

8. The counsel submit, it is not proper to consider that sand truck drivers and transporters are not following the instructions issued by the government from time to time about wearing of face mask, keeping social distance and use of sanitizers etc. Many people in other avocations have been in-fact affected by Corona virus while the sand truck business people have not been affected to such an extent. Thus, the assumption is besides the facts and is a figment of imagination. Petitioners are duly following the instructions.

9. Apart from aforesaid, it is submitted that such an absolute embargo has not been placed by other authorities in border districts on sand transport.

10. It is being particularly submitted on behalf of petitioners that the provisions which are sought to be invoked, have no application in the present case, rather are not relatable to the prevailing situation and power pursuant to those, could not have been exercised at all by respondent no. 2.

11. It is contended that respondent no. 2 would not be able to exercise powers under section 33(b)(g)(l) of the Maharashtra Police Act, 1951. It is submitted that sections 155 and 184 of the Motor Vehicles Act, 1988 have no application in the present facts. Provisions have been misread by the authority. The prohibitory impugned order on sand transport is contended to be in digression of the guidelines under the Disaster Management Act, 2005.

12. According to the counsel, the impugned order has been passed perfunctorily without objective application of mind and on assumptions and on surmises.

13. It is contended, the impugned order is absolutely untenable on several grounds, it is bad in law, illegal and outside

the powers of issuing authority. Impugned order, in the circumstances, is grossly arbitrary offending Article 14 of the Constitution of India intercepting right of the petitioners and members of the union to carry on business of transporting sand which is the fundamental right under Article 19 of the Constitution of India.

14. It has been referred to in the reply by respondent no. 2 that whole nation is fighting against COVID-19 pandemic and almost entire country is facing lockdown in order to prevent its spreading. Impugned order does not absolutely shut out petitioners from doing their business, it only restricts transportation of sand from adjacent State to the other districts in Maharashtra directing to avoid passage through Nandurbar district while alternate ways would be available for transportation. It is contended that the order has been passed in the interest of public at large which shall prevail over interest of a few persons or group of persons and/or trade. Routes from Nandurbar district being shortcut and convenient, their user cannot be rightfully claimed by petitioners. It is contended that section 33(1)(I) of the Maharashtra Police Act, 1951 empowers respondent no. 2 to make, alter or rescind rules or orders in cases of existing or apprehended epidemic or infectious disease of men or animals. Order passed is non-violative of Article 21 of the Constitution of

India. There is apprehension that COVID-19 may spread rapidly in rainy season which would pose grave risk to the life of people in Nandurbar district. It is contended that while Nandurbar district had been in green zone and there were very few cases of COVID-19 patients but from June-2020, number of such patients is growing rapidly.

It is contended that Government instructions, issued with a view to prevent spread of COVID-19 about using face mask, sanitizer, maintaining social distance, prohibiting chewing of betel leaf, tobacco, *gutkha*, drinking liquor as well as spitting in public places are not being strictly followed by sand transporters and their negligence poses threat of spread of COVID-19. It is being claimed that sand transporters come from COVID-19 hotspots and, as such, there is greater possibility of them infecting people in Nandurbar district.

Apart from aforesaid, it is contended that sand transporters are speeding their vehicles and are driving rashly and negligently, significantly increasing accidents causing serious injuries to and deaths of civilians. Since rainy season is on, it is important to keep roads in good condition. Action been taken under the Motor Vehicles Act, 1988 against the sand transporters

for over-loading of two trucks and FIR at Nandurbar police station have been referred to.

It has been contended that sand transporters are causing nuisance to traffic and to the public in general on Taloda – Nandurbar road and on 05-06-2020, there had been huge traffic snarl up due to sand trucks and dumpers causing hurdle to other vehicles. It has been submitted that an ambulance carrying a pregnant woman to civil hospital, Nandurbar could not pass quickly due to indisciplined sand truck traffic and unorganized illegal parking by sand truck drivers. Requests by ambulance driver had been ignored delaying the transit of pregnant woman to hospital. Various newspaper cuttings have been referred to. It is contended that there have been complaints by many civilians in respect of damage to roads, accidents and illegal parking of sand transport vehicles and that this may give rise to agitation and question of law and order may arise. Sand truck transporters are using shortest routes with a view to have maximum trips in a day. Many of these are village roads which are not designed to sustain sand traffic (heavy load). In the process village roads are getting damaged causing hardship to public at large. It is referred to that under notification dated 13-03-2020, clauses (2) and (3) of the Epidemic Diseases Act, 1897 have been enforced and district magistrate and chairman, disaster management authority,

Nandurbar has powers to pass order for welfare purpose and to control the epidemic.

15. While, a division bench was constrained to observe that statements in the affidavit are not supported by documents and that the affidavit does not make reference to relevant aspects, deprecating the casual manner in which affidavit had been filed, additional affidavit appears to have been tendered purporting to rely on 2019 FIR documents with respect to over-loading of vehicles and FIRs about three fatal accidents. It is stated that increase in travel distance would be in the region of 50 km *albeit*, contending to be 30-40 km. Thus, there is resistance to entertain the present writ petitions.

16. Perusal of recitals in impugned order would show that those are to the effect that,

there is heavy transportation of sand from the border State through Nandurbar district to other parts in Maharashtra and it had been noticed that possibility of COVID-19 spreading in Nandurbar district cannot be ruled out as the districts/States from which sand is being transported have been infected with COVID-19 and the State has declared those to be red-zones;

there is big indisciplined traffic of sand trucks and dumpers on Taloda – Nandurbar road causing hurdle to other vehicles, referring to incident of ambulance carrying a pregnant woman been obstructed as referred to in affidavit;

instructions have been issued with regard to wearing of face mask, keeping social distance, use of sanitizers, prohibiting consumption of betel leaf, tobacco, *gutkha*, liquor and spitting on public places, yet, the sand truck drivers were not following those. As instructions were getting trampled down, increase in spread of COVID-19 could not be ruled out; and

as the monsoon season (rainy season) is setting in, up-keep of roads would be necessary and due to heavy sand truck traffic, road conditions are getting bad from some time, increasing rate of accidents. Sand truck drivers are over-speeding vehicles giving rise to the ire of other vehicles' drivers and Nandurbar district people, as such, law and order situation could not be ruled out.

It is under the circumstances, purportedly invoking powers under section 2 of the Epidemic Diseases Act, 1897, section 33[1](b)(g)(l) of the Maharashtra Police Act, 1951 and sections 155 and 184 of the Motor Vehicles Act, 1988, restraint has been imposed on sand truck transport on border area of and

through Nandurbar district further directing the other authorities to implement the order.

17. While aforesaid is the position, we have tried to ascertain from learned counsel for the appearing parties, as to whether, after issuance of the impugned prohibitory order of sand transportation, there has been decline in number of COVID-19 patients in Nandurbar district. To this, petitioners claim is that COVID-19 patients have grown multi-fold despite prohibitory order, whereas there has been no satisfactory response from the respondents.

To another question raised on behalf of petitioners, as to whether any action is being taken against any of non-sand transport vehicle drivers for not following the instructions issued by the government in respect of not wearing of face mask, keeping social distance, use of sanitizer or for that matter non-consumption of betel leaf etc., and as to whether such negligence/rashness is imputable only to sand truck drivers has not received any response.

18. Regard may have to be given to submission on behalf of petitioners about unavailability of powers with respondent no. 2, under the provisions sought to be invoked.

19. Sections 155 and 184 of the Motor Vehicles Act, 1988, read, thus,

“ **155. Effect of death on certain causes of action** - Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (39 of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of such event against his estate or against the insurer.”

“ **184. Driving dangerously -**

Whoever drives a motor vehicle at a speed of or in a manner which is dangerous to the public or which causes a sense of alarm or distress to the occupants of the vehicle, other road users, and persons near roads, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to one year but shall not be less than six months or with fine which shall not be less than one thousand but may extend to five thousand rupees, or with both, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years or with fine of ten thousand rupees, or with both.”

20. Section 155 of the Motor Vehicles Act, 1988, reproduced hereinabove shows it has no nexus with the prevailing situation. So is the case in respect of section 184 of the Motor Vehicles Act, 1988 which provides for punitive action with imprisonment for driving dangerously. Reference to aforesaid provisions from the Motor Vehicles Act, 1988, in the circumstances, appears to be digressed and otiose.

21. COVID-19 pandemic outbreak has entailed the Central as well as State Government to declare and impose lockdowns invoking provisions of the Disaster Management Act, 2005. The governments have issued guidelines with restrictive conditions and revising those from time to time while continuing the lockdowns.

22. Eventually, the Central as well as the State Governments, looking at the hardship faced and question of living and livelihood of people had been assuming serious proportions, had decided to revise certain instructions, guidelines on restrictions of lockdowns imposed.

23. The Central as well as State Governments had issued communications, orders, guidelines. There is a communication dated 30-04-2020 from Home Secretary, Government of India to administrators of union territories [Exhibit – B of writ petition no. 4846 of 2020]. There appears to be order dated 19-05-2020 of Government of Maharashtra issued by Chief Secretary, extending the lockdown and revising guidelines and measures to be taken for containment of COVID-19 in the State directing the authorities to allow inter-State and intra-State movement of goods/cargo including empty truck referable to clause 13 of said order [Exhibit – C of writ petition no. 4846 of 2020].

24. Section 33(1) of the Maharashtra Police Act, 1951 reads, thus,

“ 33. Power to make rules for regulations of traffic and for preservation of order in public place, etc.

(1) The Commissioner with respect to any of the matters specified in this sub-section, the District Magistrate with respect to any of the said matters (except those falling under clauses (a) (b), (c), (d), (db), (e), (g), (r), (t) and (u) thereof, and the Superintendent of Police with respect to the matters falling under the clauses aforementioned read with clause (y) of this sub-section in areas under their respective charges or any part thereof may make, alter or rescind rules or orders not inconsistent with this Act for –

...

(b) regulating traffic of all kinds in streets and public places, and the use of street and public places by person riding, driving, cycling, walking or leading or accompanying cattle, so as to prevent danger, obstruction or inconvenience to the public.

...

...

(g) regulating and controlling the manner and mode of conveying to, scaffold, poles, ladders, iron girders, zoom beams or bars, boilers or other unwieldy articles through the streets, and the route and hours for such conveyance;

...

(l) in cases of existing or apprehended epidemic or infectious disease of men or animals, the cleanliness and disinfection of premises by the occupier thereof and residents therein and the segregation and management of the persons or animals diseased or supposed to be diseased, as may have been directed or approved by the State Government with a view to prevent the disease or to check the spreading thereof; ”

25. Section 2 of the Epidemic Diseases Act, 1897, reads thus,

“ 2. Power to take special measures and prescribe regulations as to dangerous epidemic disease. –

(1) When at any time the State Government is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the State Government if it thinks that the the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.”

26. From aforesaid, it would emerge that district magistrate may not be able to exercise powers with reference to clauses (b) and (g) of section 33[1] of the Maharashtra Police Act, 1951. Clause (l) thereof also regulates exercise of powers by district magistrate requiring it to be as per directions and approval by the State government with a view to prevent the disease or check spreading thereof.

27. While aforesaid is position in respect of exercise of powers by district magistrate, under the Disaster Management Act, 2005, the Chairperson, State Executive Committee of Maharashtra, in exercise of his powers on 19th May 2020 has issued revised guidelines superseding earlier guidelines for lockdown.

Clause 4 of aforesaid guidelines as appended to petition, makes reference to the prohibition of certain activities referred therein across the State.

Clause 13 gives special directions to ensure movement of persons and goods in certain conditions.

Under clause (ii) thereof, it has been particularly referred to that all authorities shall allow inter-State movement of all types of goods/cargo, including empty trucks.

Clause 15 contains general instructions, clause (b) thereunder, puts embargo on the district/regional/State authorities, to issue any order/ guideline or direction in deviation or contrary to these guidelines, without the approval of Chief Secretary, Maharashtra.

28. Section 2 of the Epidemic Diseases Act, 1987 has also been referred to in the impugned order, its exercise appears to be overlapping and/or at cross roads with the guidelines issued by the State Executive Committee under the Disaster Management Act, 2005.

29. In the circumstances, putting restraint on sand transport under impugned order would emerge to be repugnant to the guidelines issued by State Executive Committee under the Central enactment of 2005.

30. The respondents have not been able to support impugned order by district magistrate and chairman, disaster management authority, Nandurbar. Issuance of impugned order under section 33 of the Maharashtra Police Act, 1951, sections 155, 184 of the Motor Vehicles Act, 1988 and section 2 of the Epidemic Diseases Act, 1897 could not be justified showing it is an act which could withstand test of authority.

31. In the scenario, it would emerge that purported exercise of powers pursuant to the provisions of enactments referred to in impugned order by respondent no. 2 is excessive and non-sustainable for over-reaching edict by the State Authority. Impugned order appears to be untenable on aforesaid counts.

32. Thus, impugned order dated 06-06-2020 passed by respondent no. 2 is set aside.

33. It is made clear that this decision would not preclude respondent no. 2 from taking action and/or passing orders and/or issuing instructions and exercise powers under law, including the

Epidemic Diseases Act, 1897, the Disaster Management Act, 2005, the Maharashtra Police Act, 1951, the Motor Vehicles Act, 1988 and other enactments and to take action against the erring transporters/traffic as deemed fit and proper and as and when occasion arises.

34. Rule is made absolute in aforesaid terms.

35. Writ petitions are disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/