

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION (ST) NO.11681/2020

Rajendra s/o Kewalkrishna Sharma
Aged about – 60 years, Occ- Social Worker,
R/o – Civil Lines, Beside S. P. Office,
Sewagram Road, Wardha.

.... **PETITIONER**

// VERSUS //

- 1) The State of Maharashtra
Through the Collector, Wardha.
- 2) Serva Sewa Sangh
Through its Managing Trustee,
Mahadeobhai Bhavan,
Sarva Sewa Sangh Parisar,
Sewagram, Wardha
Tah and Distt – Wardha.

.... **RESPONDENTS**

Mrs. Ashwini Athalye, Advocate for petitioner.
Shri S. Y. Deopujari, Government Pleader with Shri S. M. Ukey
Addl. P P for the respondent no.1.
Shri A. B. Bhate, Advocate for respondent no.2.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 27/11/2020

ORAL JUDGMENT : (Per : SUNIL B. SHUKRE, J.)

Heard. For the reasons stated in the application, Civil
Application St. No.11851 of 2020 is allowed. Amendment be
carried forthwith.

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. After this Court passed an elaborate order on 25.11.2020, making prima facie observations therein that by the impugned order, the Collector – respondent no.1 committed breach of the orders of the State Government dated 30.09.2020 and 29.10.2020, but deserved to be granted liberty to introspect and revise the impugned order, the respondent no.1 has now revised the order which granted permission to hold a large gathering of 100 persons to the respondent no.2. The revised order now passed on 26.11.2020, grants permission to the respondent no.2 to hold a small gathering of persons not exceeding 50.

3. According to learned counsel for the petitioner, even the revised order does not fulfill the requirements of the Government orders dated 30.09.2020 and 29.10.2020 as large public gatherings/congregations have been altogether prohibited. According to her, as no number has been prescribed in relation to large public gatherings/congregations, it would have to be construed that any public gathering, which does not fall within the exceptions, the exceptions are of the gatherings relating to

marriages where maximum permitted number is 50 and funeral/ last rites where maximum permitted number is 20 is prohibited. The learned Government Pleader disagrees. Same is the opinion of Shri A. B. Bhate, learned Advocate for the respondent no.2.

4. We think that the disagreement of the learned Government Pleader and learned counsel for the respondent no.2 with the submission of learned counsel for the petitioner is right. There is no definition given in the aforesaid Government orders of the expression “large public gatherings/congregations” and the maximum permitted number has been prescribed for only particular kinds of gatherings like marriage related or funeral/last rites related. When specific number defining the ceiling of the marriage related or funeral/last rites related gathering is given, we do not think that such ceiling can also be applied to a public gathering, so as to distinguish between a small and large one. The reason is that when different ceilings are prescribed for at least two kinds of gatherings and no specific number on the upper side is given for another kind of gathering, the ceilings given for two kinds of gatherings would not and could not offer any clue for construing the upper limit of other kind of gathering for which no ceiling is prescribed, as it would be well nigh impossible to choose between the two ceilings. In such a case, the doctrine of *sui*

generis cannot be pressed into service so as to define what could be a small and what could be a large gathering. The ceilings prescribed for marriage or funeral related gatherings do not form a part of the common genus, rather they represent different species and therefore, in our considered view, the principle of *sui generis* would have no application for constructing the meaning of large public gathering, so as to distinguish it from a small gathering. We are therefore, of the view that what could be a small or large public gathering would have to be decided on the basis of facts and circumstances of each case and although, there cannot be any exhaustive illustration of all the facts and circumstances which could be considered as determinative factors in such a case, we can give a few examples. Such factors as the availability of space at the proposed venue, the capacity of the organizers to ensure compliance with the standard operating procedure, the ambience at the proposed venue, situation of the proposed venue, accessibility to the proposed venue, and so on and so forth.

5. In the present case, in the revised order, the respondent no.1 has granted permission to hold a small gathering of persons not exceeding 50 and we are confident that such revised decision must have been taken by the respondent no.1

after considering all the relevant factors as stated by us just now. Besides, generally speaking, if for marriage related gathering an assemblage of persons up to 50 in number is permissible as per the Government orders, any permission granted for general public gathering by the Collector for participation of maximum number of 50 persons cannot be questioned, unless it is shown by the party interested in challenging the same that the relevant facts and circumstances did not justify granting of such a permission. Nothing of this sort has been shown to us by the petitioner.

6. In the circumstances no error is found in the impugned revised order in which the earlier impugned order has already merged and therefore, now the petition cannot be allowed.

7. Before parting with the order, we would like to place it on record that we would have appreciated that the reply filed by the Collector, Wardha i.e. respondent no.1, reflected upon the realization of the mistake committed by him. Far from it, the reply discloses that the Collector resorted to a method for revision of his earlier order, which method was not in good spirit. The Collector, it appears, obtained fresh application from the respondent no.2 for revision of the order or for grant of

permission in respect of smaller gathering and on this application, with the aid of liberty granted to him by this Court, the Collector revised the order. This gives an indication that there is no realization of mistake on the part of the Collector, rather the Collector has fondness for functioning with the same attitude as he has displayed earlier. This may not stand in good stead for him in future and therefore, we would only like to say that for his own good, the respondent no.1 exercises more care and caution in future.

8. In the result, the writ petition is dismissed. Rule stands discharged. No costs.

9. We, however, direct the respondent no.1 to ensure that in the gathering not more than 50 persons take part and in order to avoid any future complications, we also direct to obtain list of persons who would be taking part in the convention, from respondent no.2 and keep it on record of his office.

(AVINASH G. GHAROTE, J)

(SUNIL B. SHUKRE J.)