

CJ & ASKJ:

15.10.2020

(Through video conferencing)

W.P.No.7708/2020

ORDER

We have perused the compliance reports filed by the State Government and Bruhat Bengaluru Mahanagara Palike (BBMP). Though the same are styled as compliance reports, non-compliance is writ large on the face of it. Firstly, we come to the implementation of the provisions of the Karnataka Epidemic Diseases Regulations, 2020 (for short 'the said Regulations'). In the said Regulations, as it stood earlier, a provision was made for collecting spot fine of Rs.200/- in the Municipal Corporation areas and Rs.100/- in other than Municipal Corporation areas from a person who contravenes Clause (1) of Regulation 2 which provides for compulsory wearing of mask or covering the mouth and nose with a handkerchief or with other loose cloth tied properly around the mouth and nose as well as maintaining social distancing of minimum one meter from other persons. Perhaps, after noticing that the positive cases of COVID-19 are ever increasing in the State and in particular, in Bengaluru City, an

amendment was made to the said Regulations on 1st October 2020 by which, the fine amount was enhanced to Rs.1,000/- and Rs.500/- respectively. Suddenly, within a span of seven days, on 7th October 2020, again the fine amount was reduced from Rs.1,000/- to Rs.250/- and from Rs.500/- to Rs.100/-. We are conscious of the fact that the amendment of the Regulations will be a sort of a legislative function. All that we can say is that the improvement in the number of positive cases of COVID-19 in the State is surely not the reason why the fine amount has been drastically reduced. In fact, during the said period from 1st October, 2020 to 7th October, 2020, the positive cases of COVID-19 in the State have been consistently on the rise.

2. The other issue is of implementation. In BBMP area, about 5,000 positive cases are reported everyday. But, the responsibility of enforcing the rules regarding compulsory wearing of masks and maintaining social distancing has been entrusted to the Marshals who are only 198 in number (one per ward). The Marshals have been entrusted with the other onerous duties as well. Therefore, for a population of more

than 1.3 crores, only 198 Marshals are doing part time job of implementation and enforcement of Clause (1) of Regulation 2 of the said Regulations. Though the memo filed by BBMP records that BBMP has given 110 POS machines to the police to impose fine on the spot, what was done by the police is not placed on record. As per the amendment to the said Regulations made on 6th June 2020, the power to impose fine has been entrusted to the Marshals of BBMP as well as 'any other public servant'. Time has come for the State and BBMP to immediately act and ensure that a very comprehensive drive is conducted in the State and in particular, in the cities like Bengaluru where everyday, large number of positive cases of COVID-19 are being reported. Unless large number of officials are entrusted with the specific task of enforcing Regulation 2, the very object of having the said Regulations and in particular, Clause (1) of Regulation 2 will be frustrated. Therefore, it can be safely concluded that as far as Regulation 2 of the said Regulations is concerned, there is hardly any implementation in the State.

3. In paragraph 10 of our order dated 18th September, 2020, we had observed that there is no inquiry made about the allegation that several persons were not wearing masks in the function of 27th June 2020. In the written statement filed by the State on 8th October 2020, a very shocking statement has been made in Paragraph 9. Two photographs of the said function have been annexed as Annexure-R.38 and it is claimed that social distancing was maintained during the function and the dignitaries were wearing masks while being seated. In the first photograph, at least two dignitaries are seen not wearing masks and one is wearing the mask on the chin and the other is wearing it below his nose. In the second photograph, at least three persons sitting immediately behind the dignitaries are wearing the masks on their chins. We are not even going to the question of following the rule of social distancing. Sub-clause (i) of Regulation 2(1) of the said Regulations requires compulsory wearing masks or covering their nose and mouth with a handkerchief or other loose cloth tied properly around the mouth and nose. Therefore, the said Regulation contemplates masks to be used for covering the mouth and nose. The Regulations do not

provide for wearing the masks only to cover the chin. Thus, to say the least, paragraph 9 of the written statement filed by the State Government on 8th October 2020 contains a false statement. Now, the learned Additional Government Advocate states that a fine of Rs.200/- has been recovered from 12 persons. Those details must be placed on record immediately.

4. There was a direction issued under the earlier order that surprise visits should be made to various important places of religion. There is no compliance reported with the said direction issued way back on 18th September, 2020 and the response of the learned Additional Government Advocate is that the State Government officers are discussing the issue. The places of religion have been thrown open long back and it will be adventurous for anyone to contend that the rules regarding wearing masks and maintaining social distancing are being scrupulously followed in the places of religion. However, the State Government has not shown any inclination to verify the implementation of these rules in the precincts of the places of religion.

5. In Paragraph 5 of the written statement filed by the State Government, it is stated that the Police Inspector of High Grounds Police Station has been tested positive and hence, he could not attend the Court proceedings. The question remains why the in-charge officer did not attend.

6. Paragraph 6 of the said written statement shows that in the city of Kalaburagi, fine has been recovered so far from 2888 offenders. On what basis the statement is made is not clear. To the memo dated 1st October 2020, a copy of the photograph published in the newspaper has been produced which shows that recently, there was a rally and there were large number of people and leaders seen without wearing the masks. The State must immediately point out the steps taken against the people who are responsible for the violations. There are in fact two such photographs annexed to the memo. The learned counsel appearing for the third party applicant states that one of the persons seen in the photographs is a member of the Bar and also a Member of Parliament. The State must respond about the action taken on these aspects.

7. The only finding which we can record today is that Regulation 2 of the said Regulations is not being implemented in its true letter and spirit and in fact, there does not seem to be any effort made to implement the same.

8. While we record that there is no compliance with the said Regulations and in particular, Regulation 2 thereof in true letter and spirit as well as the directions issued under the order dated 18th September 2020, we direct the State Government and BBMP to come out with proper compliance reports dealing with all the aspects. The compliance reports to be filed by 21st October 2020.

9. At this stage, the learned counsel appearing for the petitioner submitted that the State Government must disclose the number of persons who attended the function held on 27th June 2020 as in the letter addressed to the Assistant Commissioner of Police, Devenahalli Sub-division by the Deputy Commissioner of Police, North-East Division, Bengaluru dated 28th June 2020, it is mentioned that the function was by invitation and a limited number of political

leaders and officers were invited to attend the said programme.

The State to make necessary disclosure in this behalf.

10. List the petition on 21st October 2020 in the afternoon session.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

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List No.4, Sl.No.3