

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3146 OF 2021

(VINODKUMAR RAMESHCHAND GUPTA & ANR...VS..UNION OF INDIA, MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CONTROL & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.P.Bhandarkar, Adv. a/b.Ms Sejal Lakhani, Adv. for Petitioners.
Shri U.M.Aurangabadkar, A.S.G.I. for Respondent Nos.1 & 2.
Shri N.R.Patil, A.G.P. for Respondent No.3.
Shri S.S.Sanyal, Advocate for Respondent No.4.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : AUGUST 25, 2021.

1. Heard Shri S.P.Bhandarkar, learned counsel for the petitioners, Shri U.M.Aurangabadkar, learned A.S.G.I. for the respondent Nos. 1 and 2, Shri N.R.Patil, learned A.G.P. for respondent No.3 and Shri S.S.Sanyal, learned counsel for respondent No.4, all of whom appear by waiving notice.

2. The petitioners have approached this Court with an anguish in their mind that owing to ban on sale of idols of Lord Ganesh and other Hindu Gods/ Goddesses made up of Plaster of Paris ("PoP" for short) during present Ganesh Festival, Durga Festival and other festivals this year, imposed by respondent Nos. 5 and 6 by following the 'Revised Guidelines For Idol Immersion', issued on 12th May 2020, by Central Pollution Control Board ("Guidelines, 2020" for short), that they are unable to sell the PoP made Ganesh and other idols during the ensuing festivals, which is causing huge loss to them.

3. The petitioners submit that about 4.5 lakhs PoP made idols have already been manufactured/ prepared and they are ready for being sold to the devotees during the current season of different festivals. According to them, the ban imposed on sale of PoP made idols has come suddenly and therefore, it has a potential of causing financial loss to the petitioners, if it is implemented. The petitioners also submit that the ban has resulted in violation of their right to carry on their trade in a reasonable manner.

4. This petition, with such prayers, as referred to above, cannot be entertained by us in view of the order dated 11th September 2012 passed in Writ Petition No.4172 of 2012 which was the petition filed by these very petitioners. While passing this order, the Division Bench of this Court had noted the statement made by the petitioners that they would be giving up the challenge to the ban order, which was dated 30th August 2012, then prevailing and would restrict their prayer only to the directions to be issued to the Corporation regarding non-implementation of the order dated 30th August 2012 during the Ganesh festival of 2012. Upon such concession having been given by the petitioners that the order dated 11th September 2012 was passed and it permitted the sale of Ganesh idols on condition that the petitioners would display a board at the time of sale of PoP idols that the idols would be immersed only in the Artificial Immersion Tanks. So, on the basis of the statement made by the petitioners therein this Court in

the year 2012 had permitted sale of PoP idols only for the year of 2012 on the aforestated condition.

5. The ban was not to be implemented, as per the statement made by the Corporation during the year of 2012 and the ban only pertained to the sale of PoP idols during that year. This would mean that the sale of PoP made idols was not permitted after 2012 and therefore, we are not willing to accept the contention that the present ban on PoP idols has come suddenly and it has caught the petitioners unawares and therefore, it has the potential of adversely affecting the financial interest of the petitioners. For this reason, we are not inclined to entertain this petition. However, at the same time, we find it necessary to protect financial interest of the petitioners who have already manufactured multiple PoP idols. Accordingly, we would permit the petitioners to sell these idols only as PoP objects and not as idols on the express condition that while selling these objects, the petitioners would inform the buyers that they are not intended for any kind of worship nor are they intended to be immersed in any water body, natural or artificial. This is also subject to condition that petitioners shall give an undertaking to this Court that they shall not sell these objects during present Ganesh festival or any other festival for this year or in future as well and that they shall sell these objects by mentioning the aforestated express conditions, and that they henceforth would stop making of PoP idols of any deity for the purpose of their worship.

The petition is, therefore, **dismissed**, subject to the above referred observations.

6. All said and done, the petition also raises important questions of public interest. These questions relate to use of such material as PoP for different purposes and the necessity for the Central Pollution Control Board to regulate the use of PoP for preparing different objects not necessarily in the nature of idols or which may be in the nature of statues and other objects of display.

7. So far as statues and other objects are concerned, as we see from 12th May 2020 guidelines, *prima-facie* there appears to be no prohibition on use of PoP material for making them. The ban, as per these Guidelines, 2020 is on making of PoP “idols”. As per dictionary meaning “idol” is a statue that people treat as a God. Merriam-Webster dictionary defines the word “idol” as a “representation or symbol of an object of worship”. So, it is clear that Guidelines 2020, for the present, do not impose any blanket and all pervasive ban on PoP objects and artifacts and the ban is restricted to that PoP object, which is treated as God or which is worshipped after it’s purchase by a consumer or in other words the ban is on PoP idols.

8. The rationale behind prohibition of PoP idols is quite understandable. In India, the PoP idols are

procured from market generally for their limited use during festivals and as the festivals come to their conclusion, the idols are disposed of by immersion in water bodies, which is a major cause for pollution of water bodies, increase in toxicity of major food source like fish and other aquatic beings and damage to environment. This would underline the need for taking Guidelines 2020 seriously and implementing them with greater vigour.

9. As we see from averments made in this petition, dismissed just now, Guidelines 2020 of Central Pollution Control Board have been taken up by Municipal Corporations of Nagpur and Amravati for their sincere implementation but we are not aware of the position obtaining in other Corporations, Municipalities and other local bodies. Then there is also an issue about permitting even the idols made up of biodegradable material like clay and the like to be disposed of by immersion in natural or man-made water bodies, the water of which is used for human and animal consumption, as their immersion in such water-bodies is also not without harmful effects on water and food sources due to use of toxic oil paints for decorating these idols.

10. Therefore, we are of the view that all these issues are required to be taken up for their consideration by this Court, they having their impact on larger public interest. We thus deem it necessary to take up these issues in public interest.

11. At this point of time, we find it necessary to make a reference to the judgment of another Division Bench of this Court to which one of us was a party, delivered in the case of *Dhondiba Irba Namwad ..vs.. State of Maharashtra.*, reported in **2020 ALL MR (Cri.) 2252**, wherein the Division Bench had issued several directions to the Central Government and the State Government for putting in place appropriate prohibition and regulations as regards use of PoP made objects, use of oil paints and synthetic colours for shading and decorating all kinds of idols. The relevant observations have been made in paragraph Nos. 29, 30 and 31 and they are reproduced as below:

“29. Apart from prohibiting the use of PoP made idols in religious festivals, it is also necessary for the appropriate government to prohibit use of oil paints and synthetic colours for painting and decorating all kinds of idols, whether made in clay or PoP or some other material as the oil or synthetic paints cause high level of damage to the environment. They pose serious threat to aquatic life and environment. They contain heavy metals like mercury, cadmium and lead which are neurotoxic and nephrotoxic and have bioaccumulative properties, which means once they enter aquatic life forms like fish, they continue to be in the food chain and end up in the food that we eat. The appropriate government, therefore, may give a serious thought to prohibiting use of oil and synthetic paints for colouring and decorating water immersible idols used in religious festivals by framing suitable rules.

30. All said and done, there can be no satisfactory solution without peoples' participation in keeping the environment safe,

clean and healthy. Under article 51-A(g) of the Constitution of India, a duty has been cast upon every citizen of India to protect and improve natural environment including forests, lakes, rivers and wild life. It would, therefore, be a welcome gesture by citizens of India if they change their mindset and only go for eco-friendly idols made in biodegradable materials like clay, food grains, sandal paste, flour, hay etc., and avoid non-biodegradable idols made in PoP and also avoid those idols which are painted and decorated in toxic oil paints. A large scale awareness is required to be created amongst masses. Central Government can do so by using its power under Section 3 of the Environment (Protection) Act, 1986. Central Government can also take recourse to its powers under the said Act to prohibit and regulate various activities hazardous to environment, which relate to use of non-biodegradable idols decked up in oil and synthetic paints in religious festivals. Awareness campaign can also be launched and regulatory measures taken by the State Governments. We are also of the view that a comprehensive legislation to prohibit and regulate manufacture and use of immersible idols of various deities in religious festivals is the need of the hour, cry of our pristine water bodies and clarion call of nature.

31. We conclude our discussion on the need for protecting environment by making a formal appeal to the State. We request the Central Government and also the State Government to take necessary steps in the matter for creating suitable awareness amongst the citizenry regarding hazards involved in use of PoP idols and oil painted or synthetically decorated idols of Gods and Goddesses in various religious festivals. We further request appropriate Government to enact a comprehensive legislation putting in place suitable prohibitions and regulations as suggested

earlier in the matter of use of PoP made idols and use of oil paints and synthetic colours in shading and decorating all idols, used temporarily in various religious festivals.”

12. We, therefore, direct the Registry to prepare proper petition and place it before us as Public Interest Litigation on **31st August 2021**.

13. We appoint Shri Shirang S.Bhandarkar, learned Advocate as *Amicus Curiae* in the matter.

(ANIL S.KILOR,J)

(SUNIL B. SHUKRE,J)

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