

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**WRIT PETITION (PIL) NO. 253 of 2016****With****WRIT PETITION (PIL) NO. 6 of 2017**

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SIDDHARAJ SINH MAHAVIR SINH CHUDASAMA & 1....Applicant(s)

Versus

STATE OF GUJARAT & 11....Opponent(s)

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Appearance:

AMBIKA A SHARMA, ADVOCATE for Applicant No. 2

MAZHARHUSAIN M BEG, ADVOCATE for Applicant No. 2

MR BHUNESH C RUPERA, ADVOCATE for Applicant(s) No. 1

MR NM KAPADIA, ADVOCATE for Applicant

MR PK JANI, ADDITIONAL ADVOCATE GENERAL with MR DM DEVNANI,
ASSISTANT GOVERNMENT PLEADER for the Opponent No. 1

HARSHESH R KAKKAD, ADVOCATE for the Opponents No. 5 - 11

MR RC KAKKAD, ADVOCATE for the Opponent(s) No. 5-11

MR ANSHIN DESAI, SENIOR ADVOCATE with MR VISHWAS K SHAH AND

MR MASOOM K SHAH, ADVOCATES for the Opponent(s) No. 12

NOTICE SERVED BY DS for the Opponent(s) No. 1 - 3

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. R.SUBHASH
REDDY**

and

HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 13/01/2017

COMMON ORAL ORDER**(PER : HONOURABLE THE CHIEF JUSTICE MR. R.SUBHASH REDDY)**

1. These writ-petitions were heard yesterday, i.e. on 12th January 2017 by a Bench of this Court (Coram: Hon'ble the Chief Justice Shri R. Subhash Reddy and Hon'ble Shri Justice Vipul M. Pancholi) and ordered these matters for listing for orders today.

Today, one of us (Vipul M. Pancholi, J), due to personal inconvenience has not attended, as such, this Bench has taken up these matters. With the consent of learned counsel appearing for the parties, we have heard these petitions afresh and passed the following order.

2. As both the writ-petitions are cognate, they are heard together.
3. In the writ-petition being WP(PIL) No. 253 of 2016, which is filed by way of public interest litigation, the petitioner is seeking direction by way of a writ of mandamus by directing the authorities to issue necessary notification/directions to ban the kite flying in the State of Gujarat or in the alternative, to restrict the kite flying on particular days and also seeks directions for complete ban on use of Chinese manza, nylon strings and coating of cotton strings with mixture of crushed glass being used during the kite flying. In the WP (PIL) No. 6 of 2017 which is also filed by way of public interest litigation, the petitioner is seeking directions by way of a writ of mandamus, directing the respondents to take strict and prompt action to stop sale and use of glass-coated threads, Chinese dori, synthetic nylon/plastic thread etc. and has also sought directions for implementation of the directions issued by the National Green Tribunal in O.A. No. 384 of 2016.
4. During the course of hearing, when it is noticed that there is provision under Section 25 of the National Green Tribunals Act,

2010 for execution of order or direction of the Tribunal constituted under the provisions of the National Green Tribunal Act, 2010, the petitioner pleaded that he is not pressing for such relief prayed under paragraph 11(B) of the petition. In view of such statement, the WP(PIL) No 6 of 2017 is to be considered confining to grant of relief as prayed under Section 11(A) of the petition.

5. Heard Shri Bhunesh Rupera and Shri N.M.Kapadia, learned counsel appearing for the petitioners in WP(PIL) No. 253 of 2016 and WP(PIL) No. 6 of 2017 respectively, Shri P.K. Jani, learned Additional Advocate General with Shri D.M. Devnani, Assistant Government Pleader for respondent nos. 1 to 3, Shri Harshesh Kakkad, learned advocate for respondent nos. 5 to 11 and Shri Anshin Desai, learned Senior Advocate with Shri Vishwas Shah and Shri Masoom Shah, learned advocates for respondent no.12.
6. After hearing learned counsel for the parties, as we are of the view of that larger issues which are raised in the writ-petitions by way of public interest and further hearing is required to consider the issues, we admit and expedite the petitions. Liberty is granted to the learned counsel for parties to move application for fixing the date for hearing at later point of time. In view of the urgency for issuing directions expressed by the learned counsel for the parties and further keeping in mind the fact that the festival of Uttarayan is to be celebrated tomorrow,

we deem it appropriate to issue directions by way of interim relief. However, before issuing directions, we refer to the facts in brief.

7. The main grievance of the petitioners in the petition is pertaining to imminent threat to human lives, environment and injuries caused to human beings, birds and animals by using unsafe kite strings, manza etc for kite flying during the festival of Uttarayan. It is needless to mention that using of manza for kite flying is not new concept and the kite flying by using manza is in practice from last several decades and it is not a step which has emerged all of a sudden. But at present, by using nylon strings which are non-biodegradable and do not brake easily appear to be the main cause for injuries during the kite flying festival of Uttarayan. It is also the grievance of the petitioner that lanterns (tukkals) are also used by the revelers for flying at night. Lanterns or Chinese lanterns are small hot air balloons which are launched during the kite flying festival at night and when they are launched or flied at night, they pose danger of fire. It is also stated in the petition that due to use of unsafe manza for the purpose of kite flying which is glass-coated one has become hazard not only to human beings but also to the birds and animals and causing environmental degradation. In the petition, it is stated that in the State of Gujarat, apart from the cotton strings, nylon strings are being used by the kite flyers and unlike cotton strings, nylon strings

are non-biodegradable and they do not break easily and thereby, cause injuries to human beings, birds and animals. The petitioners have placed on record the data with regard to injuries to human beings, birds and animals, but the same is to be considered at the stage of final hearing of the petitions.

8. Affidavit in reply is filed on behalf of the respondent no.1-State of Gujarat. While denying the various allegations made by the petitioners, it is stated that Makar Sankranti (Kite Flying Day) marks the end of a long winter with the return of the sun to the Northern Hemisphere. It is further stated that according to Hindu astronomy the sun enters the zodiac of Makara (Capricorn) and it is believed that the gods who are believed to have slumbered for six long months are now awake and the portals of heaven are thrown open. It is stated that the festival of Uttarayana is regarded as one of the biggest festivals celebrated in Gujarat on a bigger scale. It is further stated that the prayers sought in the petitions to some extent are genuine to the extent of ban of use of nylon threads, popularly known as Chinese Manja as the same is not breakable one prepared with metallic/nylon/yarn and abrasive coat of crushed glass gummed on it which makes it razor sharp. Reference is made to circular instructions issued by the State of Gujarat on 17th December, 2016, directing the Director General and Inspector General of Police and all Commissioners of Police, District Magistrates and Superintendents of Police to put ban on Chinese thread/plastic

thread. It is pleaded that there is a vast difference between the nylon thread and cotton thread. It is also pleaded that pursuant to circular issued by the State Government, in all 38 offices, that is, Commissioners of Police, Superintendents of Police and District Magistrates have issued notification as contemplated under Section 144 of the Code of Criminal Procedure, prohibiting the use of Chinese lanterns, Chinese manza and nylon thread. Reference is also made to the orders passed by the High Court of Uttar Pradesh and the Delhi High Court in similar circumstances.

9. Affidavit in reply is also filed on behalf of private respondent nos. 5 to 11 who are joined as party-respondents in WP (PIL) No. 253 of 2016. It is stated in the affidavit in reply that basically, they are dealers and vendors of cotton thread manza and apart from the same, there are millions of people whose livelihood will be directly or indirectly affected if the prayers sought by the petitioners are granted by imposing ban on kite flying. It is submitted that each and every kite that is sold is hand made and above all, making of kites and cotton thread manza is a continuous process which is carried on round the year and which also serves as a source of livelihood of the workers and labourers. Therefore, if the ban as sought is imposed, it will dampen the spirit of the people to celebrate the festival of Uttarayan and it is one of the few festivals which is celebrated by all communities. It is stated that the people

mainly from lower strata of the society are employed in the manufacture of kites and cotton thread manza. It is stated that majority of accidents occur due to illegal use of Chinese thread manza and nylon thread manja and not because of cotton thread manja as the nylon thread is unbreakable and non-biodegradable whereas cotton thread is easily breakable and biodegradable. It is further stated in the affidavit in reply that manza is prepared by a combination of various harmless components such as water soluble, colour, rice molten, fevicol and finely powdered glass and all these components collectively give stiffness to the thread and more particularly the powdered glass gives the elongation and stretchability to the thread and thereby make it possible for the kite flyers to continuously jerk the kite so as to make it fly. At the same time, it is stated that they support the claim of the petitioners for banning Chinese manza and Chinese lanterns as the same are non-biodegradable and harmful and oppose the ban of glass-coated manza. Thus, they have opposed the prayer for banning the glass-coated manja.

10. During the course of hearing, learned counsel also brought to our notice the order passed by the National Green Tribunal In O.A. 384 of 2016 and 442 of 2016. It is stated that, against the said order appeal is filed before the Hon'ble Supreme Court.

11. From the material placed on record, prima facie we are of

the view that use of the nylon threads which is called Chinese thread or Chinese manza and other synthetic threads coated with glass and other such other harmful substances in the kite flying is dangerous and the same are not to be allowed in public interest. As such, we issue the following directions at present to the respondent nos. 1 to 3 - State of Gujarat and its authorities:

1. Respondent nos.1 to 3 - State of Gujarat and its authorities shall take all possible steps to prohibit the use of Chinese lanterns during the festival of Uttarayana.
2. They are further directed to take all possible steps to prevent manufacture, storage and use of nylon threads (Chinese threads and Chinese manza) and any other synthetic threads coated with glass for the purpose of kite flying.
3. As much as the government has already issued instructions by Circular dated 17th December 2016 and further Commissioners of Police, Superintendents of Police and District Magistrates have issued notifications as contemplated under Section 144 of the Code of Criminal Procedure, respondent nos. 1 to 3-State respondents are directed to take all possible steps to enforce such circular and notifications issued under Section 144 of the Code of Criminal Procedure strictly and scrupulously.
4. State and its authorities are directed by using print and electronic media to create awareness among the citizens

about such notifications issued by the competent authorities prohibiting the use of Chinese manza, plastic threads coated with glass and other dangerous substances and Chinese lanterns during kite flying on the festival of Uttrarayan.

5. Further State authorities are directed to take steps against the manufacturers/storekeepers and those stocking and selling nylon thread which is called as Chinese manza or dori and other synthetic threads coated with glass and harmful substances for the purpose of kite flying.

12. It is needless to observe that these directions are by way of interim measure for the present and the same are subject to further orders to be passed by this Court at the time of final disposal of the petitions.

(R. SUBHASH REDDY, CJ)

**THE HIGH COURT
OF GUJARAT**

(A.G.URAIZEE,J)

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