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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 17<sup>th</sup> February, 2021*

*Date of decision: 7<sup>th</sup> April, 2021*

+ **W.P.(C) 6595/2020 & CM APPL.23013/2020**

SAURABH SHARMA ..... Petitioner

Through: Mr.K.C. Mittal, Mr. Joby P. Varghese  
& Mr.Saurabh Sharma, Advs.

versus

SUB-DIVISIONAL MAGISTRATE

(EAST) & ORS.

..... Respondents

Through: Mr. Devesh Singh, ASC, GNCTD  
with Ms. Sukriti Ghai and Mr. Manas  
Bhatnagar, Advocates for R-1 to 4.  
Mr. Farman Ali Magray, Sr. Panel  
Counsel for R-5. (M:9469448888)

WITH

+ **W.P.(C) 8455/2020 & CM APPL.27312/2020**

ADITYA KAUSHIK ..... Petitioner

Through: Petitioner in person.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY  
OF DELHI & ORS.

..... Respondents

Through: Ms. Shobhana Takiar, ASC, GNCTD  
for R-1-3.

Mr. Bhagavan Swarup Shukla, CGSC  
with Mr. Sarvan Kumar, Advocate for  
R-5/UOI.

WITH

+ **W.P.(C) 8588/2020**

DEEPAK AGARWAL ..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. T.P. Singh, Sr. Central Govt.  
Counsel for R-1/UOI.  
(M:9971529687)  
Mr. Sanjoy Ghose, ASC with Mr.  
Rhishabh Jetly, Advocate for  
GNCTD.

AND

+

**W.P.(C) 9408/2020**

SUDESH KUMAR

..... Petitioner

Through: Mr. R.P.S. Bhatti, Advocate  
(M:9810568180) with Petitioner in  
person.

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Devesh Singh, ASC, GNCTD  
with Ms. Sukriti Ghai and Mr. Manas  
Bhatnagar, Advocates for R-1 to 3.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUDGMENT**

**Prathiba M. Singh, J.**

1. These are four writ petitions filed challenging the imposition of fine of Rs.500/-, on the Petitioners, for non – wearing of face masks while travelling alone in a private car. The brief facts of each of the cases are captured below.

2. In W.P.(C) 6595/2020, the Petitioner's case is that he is a practicing advocate for the last 20 years. On 9<sup>th</sup> September, 2020, at about 11.00 A.M., he was driving a Honda City DL 13CC 1479, and was stopped by the police near Geeta Colony, New Delhi. It is not disputed that he was travelling alone in his car. After the car was stopped, an Executive Magistrate, along with a Police Constable and a Delhi Police Inspector, informed the Petitioner that a

fine of Rs. 500/- is being imposed on him for not wearing a mask in a public place. The Petitioner challenged such imposition of fine before the officials, on the ground that since he was travelling alone in his car, the said car does not constitute a public place and would be a private zone. Accordingly, it is prayed that the challan bearing challan no. 2993, dated 9<sup>th</sup> September, 2020, be quashed and the amount of Rs. 500/- be refunded. In addition, compensation of Rs.10,00,000/- is sought on the ground of alleged mental harassment publicly caused to the Petitioner.

3. In W.P.(C) 8455/2020, the facts are that the Petitioner is a lawyer who was stated to be on his way to his chambers at Tis Hazari Courts, around 12.00 noon on 9<sup>th</sup> August, 2020. He was driving his privately owned car, a Maruti Suzuki Swift and was stopped near Aruna Asaf Ali Hospital, Rajpur Road, Civil Lines by the Police. The Petitioner was in his car travelling alone, with his mask hanging on his face, from one of his ears. The case of the Petitioner is that since he was in his car alone, he had not put the face mask on and that he had intended to wear the mask as soon as he stepped out of the car. It is highlighted that the four windows of the Petitioner's car were closed. When the police official stopped his car, he was informed that the non-wearing of mask by him is in violation of the Delhi Epidemic Diseases (Management of COVID-19) Regulations, 2020 (*hereinafter referred to as 'the Regulations of 2020'*) and a sum of Rs. 500/- was imposed on him as fine. In this petition, apart from quashing of challan bearing challan no. A-22062, dated 9<sup>th</sup> August, 2020, a declaration is sought to the effect that privately owned cars are private places for the purpose of the Regulations of 2020. Apart from refund of the amount of Rs. 500/- paid by the Petitioner as fine, a compensation of Rs. 5,00,000/- is sought in the present petition for

mental harassment.

4. The Petitioner in W.P.(C) 8588/2020 is also a practicing advocate who states that he was crossing Vikas Marg area near Laxmi Nagar Metro Station on 20<sup>th</sup> August, 2020 in his privately owned car, with all windows of the car closed. However, officials of the Delhi Police stopped his car on the ground that he was not wearing a face mask in his car. Similarly, an amount of Rs. 500/- was imposed on him as fine for violations of the Regulations of 2020. In this case, a direction is sought that the Respondent-Authorities ought not to fine people for not wearing a face mask while in their own car. Refund of Rs. 500/- is sought, along with compensation of an unascertained sum.

5. In W.P.(C) 9408/2020, the Petitioner is a lawyer stated to be practicing at Karkardooma Courts, New Delhi. On 25<sup>th</sup> October, 2020, he was travelling in his i-10 Grand bearing no. DL8CAE1725, along with his wife and had reached a spot in front of the of D.C. Office, Nand Nagri at about 1.50 P.M. It is stated that a Civil Defence Personnel forced him to stop his car. After the Petitioner's car was stopped, the Civil Defence Personnel, along with a member of the Enforcement Team of SDM, Shahdara, informed him that since he is not wearing a face mask but only a cotton safa/dupatta/scraf around his mouth and nose, he would be liable to pay a fine of Rs. 500/-. In this petition also, quashing of the challan dated 25<sup>th</sup> October, 2020 is prayed for. Along with the quashing of the challan, a refund of Rs.500/- paid as fine is prayed for, as also compensation of Rs. 10,00,000/- for the harassment and insult allegedly caused to the Petitioner, and for alleged misuse of legal provisions to exhort Rs. 500/- from the Petitioner.

6. From the facts of the above four cases, it is clear that in two of the cases, the Petitioners were not wearing any face masks; in one of the cases case, the Petitioner had a mask which was dangling from one of his ears; and, in the fourth case, the Petitioner was not wearing a mask, but was wearing a safa/dupatta/scraf covering his nose and mouth.

7. The questions which arise in these writ petitions are three-fold. First, whether it is compulsory for persons driving alone in their own private cars to wear face masks and the manner in which such masks ought to be worn. Secondly, if as per the various guidelines, orders and notifications issued, the fine imposed on the Petitioners is valid and legal. Thirdly, if any compensation is liable to be granted.

**Submissions made by Ld. Counsels**

8. On behalf of Petitioner in W.P.(C) 6595/2020, Mr. Mittal, Id. Senior Counsel submits that the challan for Rs.500/- issued to the Petitioner has been signed by the Executive Magistrate, is without any authority of law. He relies upon the Regulations of 2020 and an Order dated 8<sup>th</sup> April, 2020 (*hereinafter referred to as 'the April Order'*) issued by the Delhi Disaster Management Authority (*hereinafter referred to as 'DDMA'*), as also a notification dated 13<sup>th</sup> June, 2020, , issued by the Lt. Governor of Delhi, in exercise of powers under Section 2 of the Epidemic Diseases Act, 1897 (*hereinafter referred to as 'EDA'*), and also in view of the guidelines issued by the DDMA (*hereinafter referred to as 'the June Notification'*).

9. The distinction sought to be made is that while as per the April Order, any person moving around in his own personal vehicle ought to wear a mask compulsorily, the said condition does not exist in the subsequent June Notification. He further submits that, as the phrase '*public place*' is not

defined in the June Notification, the contents of the April Order cannot be read into the said Notification.

10. He seeks to distinguish the present case from the facts and circumstances involved in the judgement of the Supreme Court in ***Satvinder Singh @ Satvinder Singh Saluja & Ors. v. State of Bihar, [(2019) 7 SCC 89, decided on 1<sup>st</sup> July, 2019]*** by submitting that the definition of ‘*public place*’ in the said judgement was clear and the definition was an inclusive one. However, such a definition does not exist in the present April Order or June Notification. Reference is made to paras 21, 22, 23 and 24 of the said judgement.

11. Broadly therefore, Mr. Mittal’s submission is that the private car cannot be considered as a public place. Even the definitions of ‘*public place*’ from any other enactment, such as Section 3(1) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and other Acts cannot be read into those orders passed under the EDA. This EDA ought to have defined ‘*public place*’ specifically.

12. He submits that the date of the incident being 9<sup>th</sup> September 2020, the June Notification would be relevant and not the April Order. He further submits that Regulations of 2020 have been enacted under the EDA which confers no power on the Lieutenant Governor to issue the said Regulations. Moreover, the vesting of power with the Executive Magistrate has been done by an order dated 15<sup>th</sup> July 2020, which was issued by the SDM, Headquarters. He submits that the power of the SDM does not include the power to delegate authority under the applicable orders/notification. He submits that under subordinate legislation, it is impermissible to impose



such fine until and unless the main statute vests the power in the appropriate authority. Since, under Section 3 of the EDA, the offence of disobeying any regulation or order made under the EDA is punishable under Section 188 of the IPC, they have to be read together, with Section 195 of the Cr.P.C which requires a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate for a Court to take cognizance of an offence under Section 188 of the IPC. In the absence of such a complaint, imposition of such a fine cannot be sustainable under the EDA. Thereafter, Mr. Mittal, has taken the Court through the various provisions of the EDA to argue that there is no power vested in the magistrate to impose a fine of this nature.

13. Mr. Farman Ali, Id. counsel appearing for the Ministry of Health and Family Welfare, Union of India submits that '*Public Health and Sanitation*' falls in List 2 of the VII Schedule of the Constitution of India and therefore, the exclusive responsibility is of each State. He submits that insofar as the Ministry of Health and Family Welfare is concerned, it has not issued any guidelines directing people to wear masks while driving alone in a vehicle. Insofar, as the implementation of the guidelines issued in respect of disaster management is concerned, the same is implemented in the local context by the State Executive Committee (*hereinafter referred to as "SEC"*) under Disaster Management Act, 2005 (*hereinafter referred to as 'DMA'*) itself.

14. Mr. Sudesh Kumar, Petitioner appearing in person in W.P.(C) 9408, submits that he was wearing a cotton scarf around his mouth and nose while he was travelling in his car. Despite the same, he has been fined with Rs.500/-. He refers to the challan imposed on him, dated 25<sup>th</sup> October, 2020 which does not mention as to what was the offence for which he was fined.

Moreover, he submits that the person who issued the challan had a booklet of challans, which was signed by District Magistrate without any name, time, vehicle number and place being mentioned. Such issuance of the signed booklet by the District Magistrate is contrary to law, which could lead to harassment.

15. Mr. Devesh Singh, Id. ASC appearing for the GNCTD submits that the April Order and the June Notification have both been issued under the DMA and EDA. Insofar the April Order is concerned, under Section 22(2)(c) of DMA, the SEC has the power to issue guidelines in various forms in order to ensure non-spreading of disease and mitigation of disease. He submits that the guidelines, thus, are issued in exercise of power under Section 22 of the DMA. Thus, they are with authority of law. The guidelines contained in the April Order, are clear to the effect that any person moving round in his personal vehicle must be wearing a mask. Violation of this would be punishable under Section 188 of IPC.

16. According to Mr. Devesh Singh, Id. ASC, the June Notification is in addition to the April Order passed by the DDMA. Such notification, apart from being under EDA and DMA, has been issued by Lieutenant Governor. Under this notification, the power to impose a fine for the violation of the Regulations of 2020 is delegated to the Sub Divisional Magistrate and District Magistrate to ensure that no member of the public flouts the detailed guidelines, which were issued from time to time by the DDMA. The Sub Divisional Magistrate would include the Executive Magistrate, who acts for or/and on behalf of the District Magistrate. He submits that wearing of a face mask is compulsory even as per this notification.



17. Insofar the delegation of powers under the said notification is concerned, the said June Notification does not authorize the Executive Magistrate to act on behalf of the District Magistrate. Authorization is merely to impose the fine and take penal action in accordance with the Regulations, 2020. The Executive Magistrate can exercise the powers of the District Magistrate and the same is in accordance with law.

18. A perusal of the impugned challan shows that the same has been signed by the Executive Magistrate and is, thus, within the powers as delegated under the notification dated 15<sup>th</sup> July, 2020. Finally, it is submitted that the public place would be any place where the public have access. Reliance has been placed upon paragraph 2 of *Satvinder Singh [Supra]*.

19. Ld. counsel also refers to the various other statutes, which have been set out in the rejoinder filed by the Petitioner, to show the definition of 'public place'. Primarily, the statutes have only one common thread i.e., places to which the public have access, would constitute a 'public place'. Reference is made to specific Explanation A to Section 133 of the CrPC, which would also show that wherever the public can travel and have access, which would constitute a 'public place'. Thus, the Executive Magistrate's order deserves to be upheld.

20. Mr. Sanjay Ghose, Id. ASC adopts the arguments of Mr. Devesh Singh and further submits that while interpreting the various orders and notifications issued under the DMA and EDA, the Court would bear in mind the purpose of issuance of the such a notification/order. The purpose is to curb the spreading of disease. The intention behind the April Order and June Notification ought to be given effect to and the same ought not to be interpreted in a narrow manner.

21. Ms. Shobhana Takiar, Id. counsel appearing for the GNCTD places reliance upon Section 2 of the EDA, which empowers the State Government to prescribe temporary regulations to be observed by the public during times threatened by the outbreak of any dangerous epidemic diseases, which is deemed necessary to prevent the outbreak or spread of such disease.

22. Mr. Aditya Kaushik, appearing in person in W.P.(C) 8455/2020 submits that in this case the final challan was issued by the Sub-Inspector and hence, a police official. He relies upon the FAQs downloaded from National Health Mission website to argue that the insofar as wearing of mask is concerned, the FAQs, in fact, state that only if a person is ill, or looking after someone who is showing symptoms of COVID-19, they should wear a mask. Otherwise, the FAQs advice not to waste masks. Finally, he submits that order dated 3rd September, 2020 of the DDMA, states that bars would be allowed to be opened on a trial basis. Mr. Kaushik argues that in case bars are allowed to be opened, people would be consuming alcohol in such bars. Consequently, they would be removing their masks to do so, in a crowded place. Hence, penalty being imposed on a person not wearing a mask while travelling alone in a vehicle stands no logic. At this point, Mr. Devesh submits that, as per the Regulation 3(g) of the Regulations, 2020, a Sub-Inspector is an authorised person to impose fine.

**Analysis and findings**

23. From the submissions made herein above, broadly three issues arise –
- i. What is the ambit of the power to issue guidelines under the provisions of EDA and DMA?
  - ii. Whether under the guidelines which have been issued under the April Order by the DMA and June Notification, wearing of face masks is

compulsory even when an individual is travelling in a privately owned car. If so, in what manner is the face mask to be worn?

iii. Whether the Executive Magistrates who have issued the challans and imposed the fines of Rs. 500/- each were properly authorised in law?

24. The EDA is a statute enacted for the purposes of better prevention of the spread of dangerous epidemic diseases. Though, the said Act had been enacted almost 130 years ago, there have been amendments made to it from time to time. However, with the outbreak of the COVID-19 pandemic, various provisions were introduced by the Epidemic Diseases (Amendment) Ordinance, 2020 and thereafter the amending Act 34 of 2020, which came into effect on 22<sup>nd</sup> April, 2020.

25. Under the EDA, Sections 2 and 2A confer powers on both the State Government and the Central Government, respectively, to prescribe such regulations as may be necessary for both the purposes of the prevention of disease, as well as, the spread of disease. The said regulations once prescribed would have to be observed by the public or any persons or class of persons upon whom the same are imposed. The violation of regulations prescribed either by the State Governments or the Central Government results in penal consequences as given under Section 3 of the EDA. Under Section 2A of the EDA, the Central Government also takes certain measures in respect of vehicles such as buses, trains, goods vehicles, ships, vessels, aircrafts etc. for the purpose of preventing the outbreak of disease or the spread thereof. The relevant provisions of the EDA read as under –

“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 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.

(2) In particular and without prejudice to the generality of the foregoing provisions, the (State Government) may take measures and prescribe regulations for-

(b) the inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

#### 2A. Powers of Central Government. -

When the Central Government is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in force are insufficient to prevent the outbreak of such disease or the spread thereof, (the Central Government may take such measures, as it deems fit and prescribe regulations for the inspection of any bus or train or goods vehicle or ship or vessel or aircraft leaving or arriving at any land port or aerodrome, as the case may be, in the territories to which this Act extends and for such detention thereof, or of any person intending to travel therein, or arriving thereby, as may be necessary.)”

26. The DMA contemplates the establishment of the National Disaster Management Authority, the State Disaster Management Authority as also, the State Executive Committee and the District Management Authority. These bodies are vested with various powers under the Act for the management of disasters. Under Section 24 of the DMA, the State Executive Committees have various powers and functions that can be taken for preventing or combating disruptions or dealing with effects of any threatening disaster situation.

27. Under Section 35 of the DMA, the Central Government is empowered to take all such measures as it deems necessary for the purpose of disaster management. Similarly, powers have also been vested with every Ministry or Department of Government of under Sections 36 and 37 of the DMA.

28. Under Section 38 of the DMA, the State Government shall take measures as may be required for the purpose of disaster management. Similarly, all Departments and Ministries of the State are also vested with various powers and functions.

29. In the background of the outbreak of COVID-19 pandemic, the DDMA issued April Order dated 8<sup>th</sup> April 2020. In the said order, the following measures were directed for being observed by the members of the public.

*“Whereas, Delhi Disaster Management Authority (DDMA) is satisfied that the NCT of Delhi Is threatened with the spread of COVID-19 epidemic, which has already been declared as a pandemic by the World Health Organisation and has considered it necessary to take effective measures to prevent its spread in NOT of Delhi;  
And whereas, Govt. of India has notified lockdown all*



over India, including the territory of NCT of Delhi, w.e.f. 25<sup>th</sup> March, 2020 till midnight of 14<sup>th</sup> April, 2020 to curb the menace of "COVID-19";

And whereas, Delhi Disaster Management Authority has issued various orders/ instructions from time to time to all concerned authorities to take all required measures to appropriately deal with the situation;

And Whereas, it is imperative to strictly observe the lockdown and isolation measures to contain the spread of COVID-19 in NCT of Delhi.

And whereas it has been observed in some studies that wearing of facial masks can reduce the spread of corona virus substantially, from and to persons coming in contact with each other, apart from compulsory social distancing measures.

And whereas it has become imperative that in the larger public interest, wearing of mask by any person who is moving in any public place is essential.

Now, therefore, in exercise of powers conferred under Section 22 of the Disaster Management Act, 2005, the undersigned, in his capacity as Chairperson, State Executive Committee. GNGTD, hereby directs the following measures:

1. All persons moving for whatsoever purpose and under whatever reason/authority in public places, like street, hospital, office, markets must wear 3-ply mask or cloth mask compulsorily.

2. Any person moving around in his personal and official vehicle must be wearing there masks compulsorily.

3. Any person working at any site/office/workplace must wear the masks as mentioned above.

4. No person/officer will attend any meeting/gathering without wearing these masks as mentioned above.

5. These masks may be standard mask available with the chemist or even homemade washable masks and can be reused after proper washing and disinfecting them.



*It shall be the responsibility of the employer to ensure that his/her employees wear the 3-ply mask or cloth mask without fail.*

*Anybody violating these instructions will be punishable under the section 188 of Indian Penal Code (48 of 1860) and will be strictly penalised. These instructions must be followed very scrupulously.”*

30. Thereafter vide the June Notification dated 13<sup>th</sup> June, 2020, the Regulations of 2020 were notified. As per the said Regulations, ‘*Authorised Persons*’ under the EDA included the District Magistrate and wearing of face masks/cover was made compulsory in all public place/work places. The operative portion of the said notification are set out below: -

*Whereas, the COVID-19 outbreak has been notified as a “Disaster” being a critical medical condition and pandemic situation under the “Disaster Management Act, 2005.”*

*And whereas the Delhi Disaster Management Authority has issued detailed guidelines from time to time to contain the spread of COVID-19,*

*And whereas, instances have come to notice that above guidelines are not being followed in their letter and spirit,*

*And whereas, rising numbers of **COVID-19** cases in NCT of Delhi warrant stricter compliance with the Various directives issued by the Central Government and the Government of NCT of Delhi from time to time, pursuant to guidelines of National Disaster Management Authority and the Delhi Disaster Management Authority;*

*And whereas, to enforce these directives, it has now become imperative to impose penalties by way of fines for a deterrent effect;*

*Now, therefore, in exercise of the powers conferred under **Section 2 of The Epidemic Disease Act, 1897** and also in view of the guidelines issued by **Delhi***

*Disaster Management Authority, Hon'ble Lt. Governor, Delhi is pleased to issue the following regulations;*

*1. These regulations shall be called **The Delhi Epidemic Diseases, (Management of COVID-19) Regulations, 2020.***

*2. "Epidemic Disease" in these regulations shall mean **COVID-19 (Corona Virus Disease 2019)***

*3. "Authorized Persons" under this Act shall and include*

*a. Secretary (Health & FW), GNCTD;*

*b. Director General Health Services (DGHS), GNCTD;*

*c. District Magistrate,*

*d. Chief District Medical Officer (CDMO),*

*e. Sub Divisional Magistrate (SDM) and District Surveillance Officer (DSO);*

*f. And such officers as may be authorized by Department of Health & Family Welfare, Government. Of NCT of Delhi, District Magistrates and Zonal Deputy Commissioners of respective Municipal Corporations of Delhi;*

*g. And the officers of the rank of Sub Inspector and above of Delhi Police.*

*h. The above Authorized Persons shall be empowered to impose a fine of **Rs. 500/-** for the first time and a further fine of **Rs. 1000/-** for the repeated offence, respectively for violating the directives/guidelines pertaining to the following: -*

*a. Observation of quarantine rules.*

*b. Maintaining of social distancing,*

*c. Wearing of **Face mask/cover** in all public places /workplaces.*

*d. Prohibition of spitting in public places.*

*e. Prohibition on consumption of **paan, gutka, tobacco etc in public places.***

*5. In case any person fails to pay the penalty on the spot, action under Section 188 IPG shall be taken against him by the authorised police officer on receipt*

*of a complaint from any Authorised Persons or on his own.*

**6. Protection to Authorized Persons under the Act:** *No legal suit or proceedings shall lie against the Authorized Persons for anything done or intended to be done in good faith for ensuring the stricter compliance under these regulations unless proved malafide/otherwise.*

*7. These regulations shall come into force immediately and shall remain valid for a period of one year from the date of publication of this notification.*

31. After the issuance of the April Order, as also the Regulations of 2020, various SDMs/DMs, in exercise of their powers under Regulation 3(f) of the Regulation of 2020, delegated powers to Executive Magistrates, empowering such Executive Magistrates to impose fines, under Regulation 3(h) of the Regulations of 2020. One such order dated 15<sup>th</sup> July, 2020 issued by the SDM, East, empowering the Executive Magistrates of the East District, New Delhi to impose fine is set out below: -

*“In exercise of powers conferred under Regulation 3 (f) of “The Delhi Epidemic Diseases (Management of COVID-19) Regulations, 2020” issued vide Notification No.F.51/DGHS/PH-IV/COVID-19/prescribe/13087-336 dated 13.06.2020, all the Executives Magistrates of East District are hereby authorized to impose fine and take penal action as envisaged under the aforesaid Regulations.*

*This has the approval of District Magistrate (East).”*

32. The three questions that have arisen are to be, accordingly, determined in the background of the above Orders and Notifications passed by the appropriate authorities.

33. A perusal of the provisions of EDA and DMA shows that the central and state governments are vested with broad powers as under:

- To take all necessary steps for the purpose of ensuring prevention of the outbreak of any pandemic or further spreading of such pandemic.
- To take any steps for mitigation of the effects of any pandemic or disaster.
- To take all necessary measures to prevent disaster from taking place.
- To take all steps necessary for the effective response during the impending disaster.
- To work in close corporation with each other right from the various administrative levels at the Central Government, State Governments, District Authorities and Local Authorities.
- To allocate funds required for taking such necessary steps.
- To consistently maintain a state of preparedness for dealing with outbreak of any pandemic or disaster.
- To provide for necessary relief measures in case of a outbreak of any pandemic or disaster.

34. The roles and functions of different authorities are enumerated under the various provisions of the DMA. The consequences of non-compliance under both the statutes, i.e., EDA and DMA, are also provided for. Both the statutes empower the enactment of regulations for the purpose of giving effect to the provisions of these two Acts.

35. In the present case, this Court is concerned with the April Order issued by the DDMA and the Regulations of 2020, as extracted above. The April Order specifically records that the spread of the Coronavirus can be reduced substantially by wearing of face masks. In view of this, it stipulates

that wearing of face masks/covers is mandatory for any person moving in a public place. The April Order also specifically directs that any person moving around in a personal or official vehicle has to compulsorily wear a face mask. The Regulations of 2020 record that wearing of face masks or covers is compulsory in all public places and work places. Submission of the Petitioners is that in the April Order, a specific direction existed for compulsorily wearing a face mask while in a personal or official vehicle and the same is conspicuously absent in the Regulations of 2020.

36. The wearing of a mask is in the nature of a measure which is necessary for controlling the spread of the Coronavirus and the directions in respect of wearing of face masks can clearly be issued under the provisions of the EDA and the DMA. The April Order thereafter, followed by Regulations of 2020 emphasised this fact very clearly. The distinction sought to be made by the Petitioners between the language of the said Order and Regulations is a narrow one. The April Order and the Regulations of 2020 have to be interpreted in the context and background of the pandemic, and not in isolation thereof.

37. Immediately upon the outbreak of the pandemic, globally as well as nationally, scientists, researchers, international organizations and governments emphasised the importance of wearing facial masks to control the spread of the disease. In the absence of a complete definitive cure, the world continues to wrestle with the pandemic. The challenge of the pandemic was enormous at the outbreak of the same and even with the introduction of a few vaccines, the emphasis continues to be laid on wearing of face masks. The wearing of masks is necessary irrespective of whether a person is vaccinated or not. The following material establishes the



uniformity with which face masks were being prescribed as preventive/mitigating measures against the spread of the pandemic.

- The World Health Organisation (*hereinafter referred to as 'WHO'*) recommended the wearing of face masks in its advisories<sup>1</sup> updated from time to time. The relevant portion of the said advisory released by the WHO reads as under:

*“Masks should be used as part of a comprehensive strategy of measures to suppress transmission and save lives; the use of a mask alone is not sufficient to provide an adequate level of protection against COVID-19.*

*If COVID-19 is spreading in your community, stay safe by taking some simple precautions, such as physical distancing, wearing a mask, keeping rooms well ventilated, avoiding crowds, cleaning your hands, and coughing into a bent elbow or tissue. Check local advice where you live and work. Do it all!*

*Make wearing a mask a normal part of being around other people. The appropriate use, storage and cleaning or disposal of masks are essential to make them as effective as possible.”*

- The Government of India has also endorsed the usage of face masks to combat the spread of SARS-CoV-2 Coronavirus. It released a manual on 30<sup>th</sup> March, 2020 on how to use face masks effectively, which also discussed usage of homemade

<sup>1</sup> *All about masks in the context of COVID-19*, Coronavirus disease (COVID-19) advice for the public: When and how to use masks, World Health Organisation, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks?gclid=Cj0KCQiAyoeCBhCTARIsAOfpKxhX7TFYYkoWzOqe8k2GjRnP0eQqK79dNWBKA->



face masks.<sup>2</sup> The relevant portion of the manual released by the Government of India reads as under:

“Masks lower the chances of coronavirus entering the respiratory system through droplets still in the air from an infected person.

...

Reducing the chances of inhaling the virus by wearing a protective mask that is cleaned thoroughly using a combination of approaches that use Heat, UV light, water, soap and alcohol, will be vital to stopping its spread.

...

Proposed guide is meant to provide a simple outline of best practices to make, use and reuse masks to enable NGOs and individuals to self-create such masks and accelerate widespread adoption of masks across India. The key criteria for proposed designs are Ease of Access to Materials, Easy of Making at Home, Ease of Use and Reuse.

...

Wearing of masks is especially recommended for people living in densely populated areas across India.

....

Ensure that the mask fits around your mouth and nose and there is no gap between your face and the mask. When wearing the mask, the side facing you should show pleats facing downwards.”

- Several researches have been undertaken in the wake of the

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<sup>2</sup> *Masks for Curbing the Spread of SARS-CoV-2 Coronavirus Illustration by MoHFW: A manual on homemade masks*, the Office of the Principal Scientific Advisor to the Government of India, 30<sup>th</sup> March, 2020, available at

<https://www.thehindubusinessline.com/resources/article31219835.ece/binary/FINAL%20MASK%20MANUAL.pdf>

pandemic. One such research article<sup>3</sup> published by the New England Journal of Medicine details the benefits of wearing a face mask towards protection against the spread of the disease. The relevant portion of the said research article is as under:

*“As SARS-CoV-2 continues its global spread, it’s possible that one of the pillars of Covid-19 pandemic control — universal facial masking — might help reduce the severity of disease and ensure that a greater proportion of new infections are asymptomatic. If this hypothesis is borne out, universal masking could become a form of “variolation” that would generate immunity and thereby slow the spread of the virus in the United States and elsewhere, as we await a vaccine.*

*One important reason for population-wide facial masking became apparent in March, when reports started to circulate describing the high rates of SARS-CoV-2 viral shedding from the noses and mouths of patients who were presymptomatic or asymptomatic — shedding rates equivalent to those among symptomatic patients. Universal facial masking seemed to be a possible way to prevent transmission from asymptomatic infected people. The Centers for Disease Control and Prevention (CDC) therefore recommended on April 3 that the public wear cloth face coverings in areas with high rates of community transmission — a recommendation that has been unevenly followed across the United States.*

*Past evidence related to other respiratory viruses indicates that facial masking can also protect the wearer from becoming infected, by blocking viral particles from entering the nose and mouth.*

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<sup>3</sup> Monica Gandhi and George W. Rutherford, *Facial Masking for Covid-19 — Potential for “Variolation” as We Await a Vaccine*, N Engl J Med 2020, October, 2020, available at [https://www.nejm.org/doi/full/10.1056/NEJMp2026913?query=featured\\_coronavirus](https://www.nejm.org/doi/full/10.1056/NEJMp2026913?query=featured_coronavirus)

*Epidemiologic investigations conducted around the world — especially in Asian countries that became accustomed to population-wide masking during the 2003 SARS pandemic — have suggested that there is a strong relationship between public masking and pandemic control. Recent data from Boston demonstrate that SARS-CoV-2 infections decreased among health care workers after universal masking was implemented in municipal hospitals in late March.”*

The material that supports the wearing of the mask for effectively tackling the corona virus is thus, well established.

38. While interpreting the April Order, the June Notification and Regulations of 2020, the above background needs to be kept in mind. The April Order 2020 makes it unequivocally clear that any person moving in a personal or official vehicle “**must**” wear masks “**compulsorily**”. This Order does not distinguish between whether the person is travelling alone or with any other occupants in the car. Considering the manner in which the virus can spread, when the car is occupied by more than one person, there can be no doubt that masks ought to be worn by each of the occupants. Since the occupants of a car could be persons who may have been exposed to the virus at any point in time and may be temporarily occupying the car, the fact that they would be sitting in an enclosed space, especially with windows rolled up makes them extremely vulnerable if they do not wear the masks. Thus, multiple occupants in a car, in any personal or official vehicle would have to compulsorily wear the masks.

39. The question raised is as to whether if a person is travelling alone in a car, should he/she wear a mask. According to Id. counsel for the Petitioners, the Regulations of 2020 are in contrast with the April Order. While the

April Order specifically prescribed that wearing of face masks in vehicles is necessary, the Regulations of 2020 generally deals with wearing of face masks or cover in public places. It is sought to be argued that since a car occupied by one person would not be a public place and hence a mask need not be worn.

40. This interpretation given to the April Order and the Regulations of 2020 is not tenable. A perusal of the Regulations of 2020 shows that the State Government issued the said Regulations to ensure stricter compliance of the various directives of the Central Government and State Governments. The said directives were a consequence of the guidelines under the National Disaster Management Act (“NDMA”). The Regulations of 2020 specifically state that they are being issued “**to enforce the directives**” and “**to impose penalties by way of fines for a deterrent effect**”. The June Notification issuing the Regulations of 2020 is not in supersession of the earlier directives, including the April Order. It is merely in continuance and to ensure stricter compliance of the earlier directives. Thus, the Regulations of 2020 ought not to be read in isolation, but rather along with the earlier directives, as also for stricter enforcement of the earlier directives issued by the various authorities including DDMA, NDMA, State Government and Central Government.

41. Under the Regulations of 2020 the epidemic disease was defined as ‘COVID -19 (Corona Virus Diseases 2019)’. Various authorised persons were empowered to impose fines. The definition of ‘Authorised Persons’ was inclusive in nature and included the following:

“3. “**Authorised Persons**” under this Act shall and include

- a. Secretary (Health & FW), GNCTD;
- b. Director General Health Services (DGHS), GNCTD;
- c. District Magistrate,
- d. Chief District Medical Officer (CDMO),
- e. Sub Divisional Magistrate (SDM) and District Surveillance Officer (DSO);
- f. And such officers as may be authorized by Department of Health & Family Welfare, Government. Of NCT of Delhi, District Magistrates and Zonal Deputy Commissioners of respective Municipal Corporations of Delhi;
- g. And the officers of the rank of Sub Inspector and above of Delhi Police.
- h. The above Authorized Persons shall be empowered to impose a fine of **Rs. 500/-** for the first time and a further fine of **Rs. 1000/-** for the repeated offence, respectively for violating the directives/guidelines pertaining to the following: -
  - a. Observation of quarantine rules.
  - b. Maintaining of social distancing,
  - c. Wearing of **Face mask/cover** in all public places /workplaces.
  - d. Prohibition of spitting in public places.
  - e. Prohibition on consumption of **paan, gutka, tobacco etc in public places.**”

42. A perusal of Regulation 3(h) of the Regulations of 2020 extracted above shows that (a) to (e) under Regulation 3(h) merely mention the categories of directions/guidelines and do not explain the manner, in which these guidelines are to be followed. The use of term ‘*quarantine rules*’, ‘*social distancing*’, ‘*spitting in public places*’, ‘*consumption of paan gutka tobacco in public places*’ and above all, ‘*wearing a face mask or cover in public places/workplaces*’ have been listed as guidelines/directives, which are to be enforced by the Authorised Persons recognised therein. The



manner, in which these guidelines/directives are to be adhered to, has not been expanded in the Regulations of 2020. In order to determine whether there is proper adherence to the directives/guidelines, one would have to refer back to relevant guidelines/directives where the said aspects have been elaborated upon.

43. Insofar as wearing of face masks or cover in all public places/work places is concerned, the specific office order dealing with these guidelines/directives is the April Order. This order, clearly, specifies the type of mask that should be worn, i.e., a three-ply mask or cloth mask, standard mask available with the chemist or homemade washable mask, which can be reused after proper washing and dis-infecting. In the case of workplaces, the responsibility to ensure wearing of masks is that of the employer.

44. The April Order also prescribes that wearing of masks by any person, who is moving in any public place is essential. It also provides that all persons, irrespective of the purpose, in a public place, like a street, hospital, office, market, must wear a mask. A person in a personal or official vehicle is to also directed to compulsorily wear a mask.

45. A lot of vehement arguments have been heard that a private car with a single person may not constitute a public place. The question as to what constitutes a public place cannot be universally set in stone. 'Public place' may be defined differently in various enactments, depending on the context. For example, under the Motor Vehicle Act, public place is defined as under:

*“‘public place’ means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by*



*a stage carriage”*

46. Various other enactments also define ‘*public place*’ in different contexts. Some of the definitions of ‘*public place*’ which may be found in different legislations are as under:

- The Immoral Traffic (Prevention) Act, 1956 reads as:

*“2(h) “public place” means any place intended for use by, or accessible to, the public and includes any public conveyance;”*

- The Code of Criminal Procedure, 1973 reads as:

*“133. Conditional order for removal of nuisance.*

*...*

*(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court. Explanation- A “public place” includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.”*

- In the Prohibition of Smoking in Public Places Rules, 2008 the definition of ‘*public place*’ reads as:

*“2. Definitions: In these Rules, unless the context otherwise requires, -*

*...*

*(d) public place defined in section 3(1) of the Act shall also include work places, shopping malls, and cinema halls.”*

- The Narcotic Drugs and Psychotropic Substances Act, 1985 reads as:

*“43. Power of seizure and arrest in public place. – Any officer of any of the departments mentioned in section 42 may –*

*....*

*(b) detain and search any person whom he has reason to believe to have committed an offence punishable under*

*this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company. Explanation – For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public."*

47. A perusal of above definitions shows, itself, shows that the term ‘*public place*’ varies from statute to statute, and context to context.

48. Further, the Supreme Court also has examined the scope of the term ‘*public place*’ in ***Gaurav Jain v. Union of India, [(1997) 8 SCC 114]***. The Supreme Court, while discussing the scope of the term ‘*public place*’ has held that for a place to fall within the purview of this term, it need not be public property and could even be private property which is accessible to the public.

49. The High Court of Kerala has also discussed the scope of the term ‘*public place*’ in the judgment of ***Malathi v. State of Kerala [2002 SCC OnLine Ker 308, decided on 14<sup>th</sup> August, 2002]*** and observed that the term ‘*public place*’ has to be understood in the larger context.

50. Thus, the word ‘*public place*’, has to be interpreted in this case in the context of the COVID pandemic. To determine what constitutes a ‘*public place*’ the manner in which the Coronavirus can spread is the crucial part. It is now settled and accepted universally that the corona virus spreads through droplets either through breathing of a person or from the mouth. The risk of exposure increases multiple times if a person comes into contact with a person who is infected and is not wearing a mask.

51. The moot question to ask is, therefore, whether a person travelling alone in a moving car or vehicle can be exposed to other persons and if the answer to this in an affirmative, then the car or private vehicle would be a public place for the purpose of the present case. A person travelling in a vehicle or car even if he is alone, could be exposed to the virus in various ways. The person may have visited a market, or workplace, or hospital or a busy street, prior to entering the car or vehicle. Such person may be required to keep windows open for the purposes of ventilation. The vehicle may also be required to be stopped at a traffic signal and the person could purchase any product by rolling down the window. The person may thus, be exposed to a street side vendor. If a person is travelling in the car alone, the said status is not a permanent one. It is merely a temporary phase. There could be other occupants in the car prior to the said phase and post the said phase. There could be elderly family members or children who may be picked from the school or even simply friends or colleagues may travel in the car in the immediate future. Such persons can also be exposed to the virus if the occupant was not wearing the mask. The droplets carrying the virus can infect others even after a few hours after the occupant of the car has released the same. There are several possibilities in which while sitting alone in the car one could be exposed to the outside world. Thus, it cannot be said that merely because the person is travelling alone in a car, the car would not be a public place.

52. A mask is a 'Suraksha kavach' for preventing the spread of the corona virus. It protects the person wearing it, as also the persons to whom the person is exposed. Since the inception of the pandemic, wearing of masks has been one measure that has saved millions of lives. In fact, wearing of a

mask even in one's own homes is encouraged if there are elderly persons or persons suffering from co-morbidities. A vehicle which is moving across the city, even if occupied at a given point in time by one person, would be a public place owing to the immediate risk of exposure to other persons under varying circumstances. Thus, a vehicle even if occupied by only one person would constitute a 'public place' and wearing of a mask therein, would be compulsory. The wearing of a mask or a face cover in a vehicle, which may be occupied by either a single person or multiple persons is thus, held to be compulsory in the context of the COVID-19 pandemic.

53. The last question that has been raised is in respect of exercise of powers. A perusal of Regulations of 2020 shows that authorised persons under the Regulations would include a District Magistrate, Sub-Divisional Magistrate, any officer of health department, who may be authorised, or of the State Government. It also includes officials, who hold the position of a Sub-Inspector or above, in the Delhi Police. In the present case, the challans have been issued either by the District Magistrate or by the Executive Magistrate or by the Sub-Inspector concerned. For example, in the East district, the Executive Magistrate has been duly authorised by the District Magistrate to issue challans vide order dated 15<sup>th</sup> July, 2020 issued by the SDM, Headquarters, East. The definition of authorised persons being inclusive and expansive in nature, District Magistrates are also vested with powers to further authorise any officers to issue challans.

54. The above list of officers, who were authorised is broad and in the opinion of this court it has to be interpreted expansively and not restrictively. Further, in so far as delegation of powers is concerned, the Supreme Court in *The Inspector General of Registration, Tamil Nadu and*

*Ors. v. K. Baskaran, [AIR 2020 SC 3194, dated 15<sup>th</sup> June, 2020]* has observed that when practical necessities or exigencies of administration require that the decision-making authority who has been conferred with statutory power, then such authorities be able to delegate tasks when the situation so requires. The relevant portion of the judgment is as under:

*'14. The following principles can thus be culled out from the decisions of this Court:*

*(i) A statutory functionary exercising a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report, as that is the ordinary mode of exercise of any administrative power;*

*(ii) If a statutory authority empowers a delegate to undertake preparatory work, and to take an initial decision in matters entrusted to it, but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own;*

*(iii) Even in cases of sub-delegation, so long as the essential function of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate and it is not necessary that the primary delegate himself should perform the ministerial acts as well; and*

*(iv) Practical necessities or exigencies of administration require that the decision-making authority who has been conferred with statutory power, be able to delegate tasks when the situation so requires.'*

55. In the context of the pandemic and wearing of face masks being



compulsory, all requisite measures have to be taken by the authorities for enforcement of the same. An interpretation that furthers the purpose of prevention of the disease and controlling the spread of the disease will commend with the Court rather than the opposite. The challans have been issued by duly authorised officers. The prayer for quashing of the challans is thus not sustainable.

56. This Court would also like to add that all the four Petitioners in these cases, being advocates/lawyers ought to recognise and assist in implementation of measures to contain the pandemic, rather than questioning the same. Advocates as a class, owing to their legal training have a higher duty to show compliance especially in extenuating circumstances such as the pandemic. Wearing of masks cannot be made an ego issue. Compliance by advocates and lawyers would encourage the general public to show greater inclination to comply. The duty of advocates and lawyers is of a greater magnitude, especially in the context of the pandemic for enforcement of directives, measures and guidelines issued under the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005.

57. In view of the above, this Court does not find any merit in the writ petitions. The petitions are accordingly dismissed.

**PRATHIBA M. SINGH**  
**JUDGE**

**APRIL 7, 2021/MR/dk/Ap**