

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT: SURAT

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION NO. OF 2021 [P.I.L]

Pareshkumar Dhirajlal Dhanani

...Petitioner

Vs.

State of Gujarat and Others

...Respondents

INDEX:

<u>Sr.</u> <u>No.</u>	<u>Annex</u>	<u>Particulars</u>	<u>Page No</u>
--	--	Synopsis	A to F
--	--	Memo of the Petition	01 to 28
1.	"A"	Copy of the Direction by the Government of India dated 07/04/2021	
2.	"B"	Copy of the Direction by the Government of India dated 10/04/2021	
3.	"C"	Copy of the order dated 11/04/2021 in Suo Motu [PIL] No. 53 of 2021	
4.	"D"	Copy of the order dated 12/04/2021 in Suo Motu [PIL] No. 53 of 2021	
5.	"E"	Copy of photographs of box of Remdesivir Injections being distributed from Surat office of Bhartiya Janta Party under the instruction of respondent no. 3 and with the help of respondent	



		no. 4 as appeared in newspapers	
6.	“F”	Copy of what is stated by the respondent no. 3 on his twitter account	
7.	“G”	Copy of the CD containing interviews given to the new channels/visual media by respondent no. 3 and 4 on the subject of purchase, stock, distribution of more than 5000 Remdesivir Injection to the needy people of Surat as well as interview of Hon’ble the Chief Minister of Gujarat on the very subject matter	
8.	“H”	Copy of the representation dated 12/04/2021	



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT: SURAT

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION NO. OF 2021 [P.I.L]

Pareshkumar Dhirajlal Dhanani ...Petitioner

Vs.

State of Gujarat and Others ...Respondents

SYNOPSIS:

The petitioner by way of the present petition brings to the notice of this Hon'ble Court about the illegal and unauthorized distribution of "Remdesivir Injection" by respondent no. 3 Mr. Chandrakant R. Patil, Member of Parliament, Navsari Constituency and State President of Bhartiya Janta Party as well as Respondent No. 4 Mr. Harsh R. Sanghavi, Member of Legislative Assembly from Surat:

(i) in violation of sec. 42 of the Pharmacy Act, 1948;

"42. Dispensing by unregistered persons.—(1) On or after such date as the State Government may by notification in the Official Gazette appoint in this behalf, no person other than a registered pharmacist shall compound, prepare, mix, or dispense any medicine on the prescription of a medical practitioner :

Provided that this sub-section shall not apply to the dispensing by a medical practitioner of medicine for his own patients, or with the general or special sanction of the State Government, for the patients of another medical practitioner:

Provided further that where no such date is appointed by the Government of a State, this sub-section shall take effect in that State on the expiry of a period of [eight] years from the commencement of the Pharmacy (Amendment) Act, 1976.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one thousand rupees or with both.



(3) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by order of the State Government or any officer authorised in this behalf by the State Government, or by order of the Executive Committee of the State Council.”

(ii) Direction to all States and Union Territory Drug Controller issued by the Drugs Controller General (I) dated 07/04/2021 representing Government of India, Ministry of Health and Family Welfare, Director General of Health Services, Central Drugs Standard Organization (Enforcement Division) on the subject of monitoring to ensure availability of Remdesivir and prevent its hoarding and black marketing.

(iii) Direction to all States and Union Territory Drug Controller issued by the Drugs Controller General (I) dated 10/04/2021 representing Government of India, Ministry of Health and Family Welfare, Director General of Health Services, Central Drugs Standard Organization (Enforcement Division) on the subject of enforcement of activity to stop, hoarding, black marketing, over charging of Covid management drug Remdesivir.

(iv) In violation of sec. 18, 18A, 18B, 19 and 27 of Drugs and Cosmetic Act 1940, which is reproduced herein under:

18. Prohibition of manufacture and sale of certain drugs and cosmetics. - *From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—*

(a) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute—

[(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

[(ii) any cosmetic which is not of a standard quality or is misbranded, adulterated or spurious;]]

[(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof [the true formula or list of active ingredients contained in it together with the quantities thereof];]

(iv) any drug which by means of any statement design or device accompanying it or by any other means, purports or claims [to



prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;

[(v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;]

(b) [sell or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic] which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

18A. Disclosure of the name of the manufacturer, etc. - Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic.

18B. Maintenance of records and furnishing of information. - Every person holding a licence under clause (c) of section 18 shall keep and maintain such records, registers and other documents as may be prescribed and shall furnish to any officer or authority exercising any power or discharging any function under this Act such information as is required by such officer or authority for carrying out the purposes of this Act.

19. Pleas.—(1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug [or cosmetic] in respect of which the offence has been committed or of the circumstances of its manufacture or import, or that a purchaser, having bought only for the purpose of test or analysis, has not been prejudiced by the sale.



(2) For the purposes of section 18 a drug shall not be deemed to be misbranded or [adulterated or spurious] or to be below standard quality nor shall a cosmetic be deemed to be misbranded or to be below standard quality] only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug [or cosmetic] as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug [or cosmetic] or to conceal its inferior quality or other defects;

or * * * * *

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it: provided that this clause shall not apply in relation to any sale or distribution of the drug [or cosmetic] occurring after the vendor or distributor became aware of such intermixture.

(3) A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves—

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and

(c) that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it.”

27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.—Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,—

- (a) any drug deemed to be adulterated under Section 17-A or spurious under Section 183[17-B and which] when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of Section 320 of the Indian Penal Code (45 of 1860), solely on account of such drug being adulterated or spurious or not of standard quality, as the case may be, shall be 184[punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more:]

[Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation,

to the person who had used the adulterated or spurious drugs referred to in this clause:

Provided further that where the use of the adulterated or spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

Explanation.—For the purposes of the second proviso, the expression “relative” means—

- (i) spouse of the deceased person; or*
- (ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or*
- (iii) parent of the minor victim; or*
- (iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or*
- (v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death,—*
 - (a) the parent; or*
 - (b) a minor brother or an unmarried sister; or*
 - (c) a widowed daughter-in-law; or*
 - (d) a widowed sister; or*
 - (e) a minor child of a pre-deceased son; or*
 - (f) a minor child of a pre-deceased daughter where no parent of the child is alive; or*
 - (g) the paternal grandparent if no parent of the member is alive;]*
- (b) any drug—*
 - (i) deemed to be adulterated under Section 17-A, but not being a drug referred to in clause (a), or*
 - (ii) without a valid licence as required under clause (c) of Section 18,*
shall be punishable with imprisonment for a term which shall 186[not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more];
Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than three years and of fine of less than one lakh rupees];
- (c) any drug deemed to be spurious under Section 17-B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall [not less than seven years but which may extend to imprisonment for life and with fine which shall*



not be (sic less than) three lakh rupees or three times the value of the drugs confiscated, whichever is more]:

Provided that the Court may, for any adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than seven years but not less than three years and of fine of less than one lakh rupees];

(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years [and with fine which shall not be less than twenty thousand rupees]:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.]”

HENCE PRESENT PETITION.



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT: SURAT

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION NO. OF 2021 [P.I.L]

**In Re: Illegal and unauthorized acquiring, stocking and
distribution of Remdesivir Injection**

In the matter of Articles 14, 19, 21 and 226
of the Constitution of India;

AND

In the matter of Directive Principles of State
Policy;

AND

In the matter of the Epidemic Diseases Act,
1897 and Notifications and Regulations
issued thereunder;

AND

In the matter of the Disaster Management
Act, 2005 and Notifications and Regulations
issued thereunder;

AND

In the matter of the Drugs and Cosmetics
Act, 1940 and Rules framed thereunder;

AND

In the matter under the Pharmacy Act, 1948
and Rules framed thereunder;

AND

In the matter between:

Pareshkumar Dhirajlal Dhanani
MLA, Amreli Constituency
Leader of Opposition, Gujarat Legislative Assembly
Age: 44 years, Male
Address at: Maha Vishnu Krupa Gajerapara,
Near Patelwadi Amreli, District Amreli.

...Petitioner



Versus

1. State of Gujarat
Notice to be served through
The Chief Secretary
Having office at
1st Block, 5th Floor, Sachivalaya,
Gandhinagar.

2. State of Gujarat
Notice through Additional Chief Secretary
Department of Health and Family Welfare,
Food and Drugs Control Administration,
New Sachivalaya, Gandhinagar.

3. Mr. Chandrakant Raghunath Patil
Member of Parliament, Navsari Constituency
and State President of Bhartiya Janta Party
Age 66 years, Male
At: 9, Udhana - Magdalla Rd, Sosyo Circle,
Shivkrupa Society, Ambanagar, Surat - 395002.
Or
At: Surat City Bhartiya Janta Party office
Pandit Deendayal Upadhyay, Udhana Main Road,
Udhana Village, Udhna, Surat.

4. Mr. Harsh Rameshkumar Sanghavi
MLA, Majura Constituency, Surat
Age 37 years, Male
At: G-29, Shub Laxmi Complex,
City Light Road, City Light Town,
Athwa, Surat.
Or
At: Surat City Bhartiya Janta Party office
Pandit Deendayal Upadhyay, Udhana Main Road,
Udhana Village, Udhna, Surat.

5. Collector, Surat
At: Surat Jilla Seva Sadan,
Surat Dumas Road,
Athwalines, Surat.

6. Commissioner of Police
Surat City,



At: Surat Dumas Road,
Athwalines, Surat.

7. Food & Drugs Control Administration
State of Gujarat
To be served through Licensing Authority (Drug)
& Commissioner of Food Safety
Mr. H.G Koshia or his successor
At: Block No-8, 1st floor,
Dr. Jivraj Mehta Bhavan, Gandhinagar.

...Respondents

To,
The Hon'ble the Chief Justice
and other Hon'ble Judges of the
High Court of Gujarat at Ahmedabad

The humble petition of the
Petitioner above named.

MOST RESPECTFULLY SHEWETH:

1. **The declaration, disclosure and statements as per the High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules, 2010.**

The present petition under Article 226 of the Constitution of India is being filed by way of a Public Interest Litigation and the petitioner does not have any personal interest in the present litigation.

As per the High Court of Gujarat [Practice and Procedure for Public Interest Litigation] Rules, 2010 the subject matter of the present petition, inter-alia, falls within Rule 5 (viii) which is reproduced as under:

*“(viii) Petitions pertaining to environmental pollution, disturbance of ecological balance, **drugs and food adulteration**, maintenance of heritage and culture, antiques, forest and wild-life and other matters of public importance relating to grievance made on behalf of a class of persons, for direction to Civil Authorities to perform their duties; e.g.*

(a) Locality deprived of electricity or water supply.

(b) Sanitation.



(c) *Bad roads causing accidents / deaths.*

(d) *Problems relating to health hazards etc.”*

Besides the petition raises the issues pertaining to Covid 19 and flagrant violation of Drugs and Cosmetic Act 1940 and Pharmacy Act 1948 by the private respondents who have put right to life of citizens of Surat at peril by distributing without any licence or registration more than 5000 Remdesivir Injections and in the process right to life guaranteed under Article 21 of the Constitution of India is violated at a time when Epidemic Diseases Act and Disaster Management Act are in force. The petition raises issues about illegal and unauthorized sale, purchase, stocking and distribution of Remdesivir Injections.

The hoarding of injection in the name of charity by a political party is illegal and unconstitutional and strikes at right to health besides the rule of law.

The Subject Matter:

The petitioner by way of the present petition brings to the notice of this Hon'ble Court about the illegal and unauthorized distribution of "Remdesivir Injection" by respondent no. 3 Mr. Chandrakant R. Patil, Member of Parliament, Navsari Constituency and State President of Bhartiya Janta Party as well as Respondent No. 4 Mr. Harsh R. Sanghavi, Member of Legislative Assembly from Surat:

(i) in violation of sec. 42 of the Pharmacy Act, 1948;

*“42. Dispensing by unregistered persons.—(1) On or after such date as the State Government may by notification in the Official Gazette appoint in this behalf, **no person other than a registered pharmacist shall compound, prepare, mix, or dispense any medicine on the prescription of a medical practitioner :***

Provided that this sub-section shall not apply to the dispensing by a medical practitioner of medicine for his own patients, or with the general or special sanction of the State Government, for the patients of another medical practitioner:

Provided further that where no such date is appointed by the Government of a State, this sub-section shall take effect in that State on the expiry of a period of [eight] years from the commencement of the Pharmacy (Amendment) Act, 1976.



(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one thousand rupees or with both.

(3) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by order of the State Government or any officer authorised in this behalf by the State Government, or by order of the Executive Committee of the State Council.”

(ii) Direction to all States and Union Territory Drug Controller issued by the Drugs Controller General (I) dated 07/04/2021 representing Government of India, Ministry of Health and Family Welfare, Director General of Health Services, Central Drugs Standard Organization (Enforcement Division) on the subject of monitoring to ensure availability of Remdesivir and prevent its hoarding and black marketing.

(iii) Direction to all States and Union Territory Drug Controller issued by the Drugs Controller General (I) dated 10/04/2021 representing Government of India, Ministry of Health and Family Welfare, Director General of Health Services, Central Drugs Standard Organization (Enforcement Division) on the subject of enforcement of activity to stop, hoarding, black marketing, over charging of Covid management drug Remdesivir.

(iv) In violation of sec. 18, 18A, 18B, 19 and 27 of Drugs and Cosmetic Act 1940, which is reproduced herein under:

18. Prohibition of manufacture and sale of certain drugs and cosmetics. - *From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—*

(a) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute—

[(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

[(ii) any cosmetic which is not of a standard quality or is misbranded, adulterated or spurious;]]



[(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof [the true formula or list of active ingredients contained in it together with the quantities thereof];]

(iv) any drug which by means of any statement design or device accompanying it or by any other means, purports or claims [to prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;

[(v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;]

(b) [sell or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic] which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

18A. Disclosure of the name of the manufacturer, etc. - *Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic.*

18B. Maintenance of records and furnishing of information. - *Every person holding a licence under clause (c) of section 18 shall keep and maintain such records, registers and other documents as may be prescribed and shall furnish to any officer or authority exercising any power or discharging any function under this Act such information as is required by such officer or authority for carrying out the purposes of this Act.*



19. Pleas.—(1) *Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug [or cosmetic] in respect of which the offence has been committed or of the circumstances of its manufacture or import, or that a purchaser, having bought only for the purpose of test or analysis, has not been prejudiced by the sale.*

(2) *For the purposes of section 18 a drug shall not be deemed to be misbranded or [adulterated or spurious] or to be below standard quality nor shall a cosmetic be deemed to be misbranded or to be below standard quality] only by reason of the fact that—*

(a) *there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug [or cosmetic] as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug [or cosmetic] or to conceal its inferior quality or other defects;*

or * * * * *

(b) *in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it: provided that this clause shall not apply in relation to any sale or distribution of the drug [or cosmetic] occurring after the vendor or distributor became aware of such intermixture.*

(3) *A person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves—*

(a) *that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;*

(b) *that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and*

(c) *that the drug or cosmetic, while in his possession, was properly stored and remained in the same state as when he acquired it.”*

27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.—*Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,—*

(a) *any drug deemed to be adulterated under Section 17-A or spurious under Section 183[17-B and which] when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to*

grievous hurt within the meaning of Section 320 of the Indian Penal Code (45 of 1860), solely on account of such drug being adulterated or spurious or not of standard quality, as the case may be, shall be 184[punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more:]

[Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause:

Provided further that where the use of the adulterated or spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

Explanation.—For the purposes of the second proviso, the expression “relative” means—

- (i) spouse of the deceased person; or*
- (ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or*
- (iii) parent of the minor victim; or*
- (iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or*
- (v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death,—*
 - (a) the parent; or*
 - (b) a minor brother or an unmarried sister; or*
 - (c) a widowed daughter-in-law; or*
 - (d) a widowed sister; or*
 - (e) a minor child of a pre-deceased son; or*
 - (f) a minor child of a pre-deceased daughter where no parent of the child is alive; or*
 - (g) the paternal grandparent if no parent of the member is alive;]*
- (b) any drug—*
 - (i) deemed to be adulterated under Section 17-A, but not being a drug referred to in clause (a), or*
 - (ii) without a valid licence as required under clause (c) of Section 18,*



shall be punishable with imprisonment for a term which shall 186[not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more]:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than three years and of fine of less than one lakh rupees];

- (c) *any drug deemed to be spurious under Section 17-B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall [not less than seven years but which may extend to imprisonment for life and with fine which shall not be (sic less than) three lakh rupees or three times the value of the drugs confiscated, whichever is more]:*

Provided that the Court may, for any adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than seven years but not less than three years and of fine of less than one lakh rupees];

- (d) *any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years [and with fine which shall not be less than twenty thousand rupees]:*

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.]”

2. **About the Petitioners and Respondents:**

The petitioner is a citizen of India and is an elected Member of Legislative Assembly, State of Gujarat representing Amreli Constituency. The petitioner also is the leader of opposition and is therefore Leader of Congress Legislature Party. The petitioner has been relentlessly and tirelessly making efforts in whatever capacity that he can to alleviate the problems and issues of citizens during the time/s of corona. He is a social activist and philanthropist. He is a distinguished citizen besides being respected as a politician across the political spectrum. The petitioner has not faced any contempt of court proceedings.



The respondent No. 1 is the State of Gujarat represented through its Chief Secretary. Respondent No. 2 is the State of Gujarat represented through its Additional Chief Secretary Department of Health and Family Welfare. Respondent No. 3 is a Member of Parliament and State President of Bhartiya Janta Party. Respondent no. 4 is a Member of Legislative Assembly representing Bhartiya Janta Party and who represent a constituency from the Surat city. Respondent no. 3 and 4 are hoarding and distributing Remdesivir even though they are not registered pharmacist nor do they hold any legal capacity to enmass purchase, hoard and distribute Remdesivir. This is illegal but as they hold a very significant position from the party in power in the State of Gujarat, the other respondent are not taking action against them and therefore to prevent such illegal activity, the present petition is filed against them impleading them as respondents. Respondent no. 5 is the Collector of Surat District and Respondent no. 6 is the Commissioner of Police Surat city. Respondent no. 7 is Food & Drugs Control Administration, State of Gujarat represented through Licensing Authority (Drug) & Commissioner of Food Safety. Therefore all the respondents are State within the meaning of Article 12 of the Constitution of India except respondent no. 3 and 4 and hence present writ petition under Article 226 of the Constitution of India for protection and enforcement of the fundamental, statutory and other established rights as well as duties is maintainable against all the respondents.

3. **The petition in public interest and the costs of litigation:**

The present petition is purely Public Interest Litigation and is not all involving any private and/or individual interest of the petitioner as well as the same is not at the instance of any other persons or organizations. The costs of the present litigation including travelling and other miscellaneous expenses are being borne by the petitioner himself. The petitioner is not facing any contempt proceedings either before this Hon'ble Court of any other court of law at the time of filing of the present petition.

On 26/03/2021, Hon'ble the Supreme Court of India in the matter of The State of West Bengal and others vs. Dipak Mishra observed as



under:

(relevant extract)

“ ...

While it is true that the Court is required to examine whether a litigation is really in public interest or to advance some other interest in the garb of public interest, at the same time, a Public Interest Litigation cannot be thrown out only because the petitioner belongs to a rival political party. Persons with political affiliations are, as much entitled to file a public interest litigation as any other person. Whether the litigation is bona fide or not is a different issue which has to be examined by the Court on a case to case basis, having regard to the nature of the complaint before it.”

Hon’ble the Supreme Court of India in the matter between Vishvanath Chaturvedi (3) vs. Union of India and others in the matter reported in 2007 (4) SCC 380, held as under:

“39. The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. In our view, it is wrong in law for the court to judge the petitioner's interest without looking into the subject-matter of his complaint and if the petitioner shows failure of public duty, the court would be in error in dismissing the PIL.”

4. **FACTS:**

- 4.1 The third wave of Covid 19 with dangerous variant/s is going on at present and has engulfed not only the State of Gujarat but the entire country in a very serious manner.

On 12/04/2021, more than 1.65 Lakh people were affected by Covid 19 in India and more than 6000 people were affected in a day in the State of Gujarat. Of course the death ratio is about 1.5% but still on 12/04/2021 Gujarat lost more than 55 citizens on account of Covid 19.

- 4.2 On 07/04/2021, Government of India through Ministry of Health and Family Welfare and particularly from the Enforcement Division of Central Drugs Standard Control Organization under the Directorate General of Health Services addressed a Direction to all the State Government and Union Territories as under:

“ It has been brought to the notice of the Ministry of Health and



Family Welfare that States of Madhya Pradesh (Bopal, Indore, Gwalior), Gujarat (Ahmedabad, Surat, Rajkot) and Maharashtra (Mumbai, Thane, Abernathy) are reporting shortage of Remdesivir Injection. This may lead to its hoarding and black marketing.

In view of above, you are requested to initiate immediate remedial action to ensure supply of Remdesivir Injection to public and private hospitals in the above mentioned states as well as in other states.

You are also requested to instruct your enforcement staff to keep continuous monitoring on the situation and keep strict vigil so that any incidence of black-marketing and over-charging of the drugs is prevented.

Action taken in the matter may please be intimated to this office at the earliest.

Copy of the Direction by the Government of India dated 07/04/2021 is annexed herewith as **ANNEXURE-A.**

- 4.3 On 10/04/2021, Government of India through Ministry of Health and Family Welfare and particularly from the Enforcement Division of Central Drugs Standard Control Organization under the Directorate General of Health Services addressed a Direction to all the State Government and Union Territories as under:

“ It has been brought to the notice of this office that many family members of COVID-19 patients have raised concerns highlighting that Remdesivir is once again being sold above MRP and in some cases as high as over 10 times.

In light of reports of shortages of Remdesivir Ministry of Health and Family Welfare, Government of India have also communicated to the States/UT Governments regarding various steps initiated including direction already given to enforcement staff/Drugs Inspectors to verify stock and check other malpractices and also take other effective action to curb hoarding and black marketing with request to review this with the Drugs Inspectors in the States/UTs.

In view of above, you are requested to instruct your enforcement staff immediately to keep strict vigil especially at sensitive places and to take stringent action against hoarding/black marketing/overcharging for Remdesivir, by conduction the special drive of monitoring and investigation, so that any such incidence for the drug is prevented.



Action taken in the matter may please be intimated to this office at the earliest.”

Copy of the Direction by the Government of India dated 10/04/2021 is annexed herewith as **ANNEXURE-B.**

- 4.4 On 11/04/2021, the Division Bench of this Hon’ble High Court took Suo Motu cognizance of situation like “Health Emergency” in the State of Gujarat and passed an order in Writ Petition [PIL] No. 53 of 2021.

The relevant extract of para. 1 and 2 of the very order is as under:

“1. The newspapers, news channels are flooded with the harrowing tales, unfortunate and unimaginable difficulties, unmanageable conditions of the infrastructure, the shortfall and the deficit of not only testing, availability of beds, ICU, but also supply of Oxygen and the basic medicines like Ramdesivir, etc.

2 Had it been stray news here and there, I could have ignored it but the volume of report in the leading newspapers having nation wide circulation cannot be ignored. It is the time that the Court must intervene. A list of the articles along with xerox copies published in the past three days is a part of this order as ANNEXURE-A. Indian Express and Times of India reports have been attached considering my language barrier.

The aforementioned articles are just a few depicting the picture and a bare perusal of the same would indicate that the State is heading towards a health emergency of sorts.”

Copy of the Order dated 11/04/2021 is annexed herewith as **ANNEXURE- C.**

- 4.5 On 12/04/2021, the Hon’ble Court was pleased to hold hearing of the Suo Motu [PIL] No. 53 of 2021 and after long deliberations, submissions and responses from the State, this Hon’ble Court was pleased to pass an order which is annexed to the present petition as **ANNEXURE- D.**



During the hearing, Ld. Advocate General was pleased to submit on the issue of respondent no. 3 distributing Remdesivir Injections to the citizen of Surat on account of shortage of Remdesivir injections in the market as an additional step to help the people in dire need of Remdesivir injection for their near and dear ones, that same should have been avoided. Having said that Ld. Advocate General went on to defend respondent no. 3 by saying that the action is not malicious but is accompanied with bona fide intentions and therefore there is nothing wrong in such action.

The entire submission of Ld. Advocate General is on the Youtube channel of Gujarat High Court and the same is available for public consumption.

The newspapers reports annexed by the Hon'ble Court along with the order dated 11/04/2021 while taking Suo Motu cognizance involves reports containing details that respondent no. 3 has managed to acquire 5000 Remdesivir injections and is distributing the same from the party office to those in need of the same in such desperate times of Covid 19 particularly when there is extreme shortage of Remdesivir injection. The reporting also contains reply from the respondent no. 3 that few well-wishers and friends have purchased from other States and he is distributing the same without charging a penny to those in desperate needs for their near and dear ones.

Subsequently, it is widely reported in the newspapers that Hon'ble the Chief Minister of Gujarat has in response to the specific question posed by the journalist that when the entire State is facing serious Remdesivir injection and the same is not available in market from where the respondent no. 3 has acquired 5000 Remdesivir injection, replied in a very specific manner that he does not know and journalist should ask respondent no. 3 from where he acquired 5000 Remdesivir injections.

Some of the newspapers have between 10/04/2021 to 12/04/2021 with photograph carried a story that the injections of Remdesivir being



distributed by the respondent no. 3 from the box they are kept in, reveals that they are secured, procured or acquired Remdesivir injection manufactured by Zydus Health Care Limited which is a part of Zydus Cadila Group. From the other details, available in the photograph, it appears, subject to correction, that the Remdesivir injections are manufactured in Gujarat and have not come from other States as sought to be propounded by respondent no. 3 and 4.

Photographs of box of Remdesivir Injection being distributed from Surat office of Bhartiya Janta Party under the instruction of respondent no. 3 and with the help of respondent no. 4 as appeared in newspapers are annexed hereto as **ANNEXURE-E**.

- 4.6 Dr. VK Paul representing Niti Ayog on 13/04/2021 has while briefing media in his official capacity representing the Government of India that Remdesivir is an anti-viral drug of a very serious nature. Remdesivir is required for those individuals who require hospitalization and are on oxygen. It should not be used in home setting where people are asymptomatic or where their condition is mild.

Government of India, Ministry of Health and Family Welfare as well as Niti Ayog have time and again stated that Remdesivir is a drug/medicine and an anti-viral agent which has serious adverse repercussion and side effects and therefore it can be injected and given to the patients suffering from Corona only under constant supervision of doctors and hospital staff.

- 4.7 Respondent no. 3 has on his twitter account acknowledged and accepted that Surat office of Bhartiya Janta Party without charging any amount shall distribute Remdesivir Injections on a condition that who so ever comes demanding Remdesivir Injection would have to come with Corona report and that of Doctors prescription.

Copy of what is stated by the respondent no. 3 on his twitter account is annexed hereto as **ANNEXURE-F**.



4.8 Respondent no. 3 and 4 have given interview to news channels in last two days wherein respondent no. 3 and 4 have accepted that Bhartiya Janta Party under the leadership of respondent no. 3 has secured 5000 Remdesivir injections and are distributing the same from party office at Surat without charging any amount to those in need of the same on a condition that person coming to get the injection must come with corona report and doctor's prescription.

Respondent no. 3 and 4 also have directly and indirectly stated from the Remdesivir Injection have been purchased, who have purchased them and why have they been stocked by Bhartiya Janta Party under the directions of respondent no. 3 and why are they being distributed to those in need of Remdesivir Injection. Respondent no. 3 and 4 in their interview in TV channel have justified the purchase, stock and distribution of Remdesivir Injection enmass through party office under the instruction of respondent no. 3 because of the shortage of Remdesivir injection and as they are not available with the state government as well as from the authorized and licensed pharmacy shop as well as stockist and that people have been dying because of lack of availability of Remdesivir Injection and that in such dire circumstance ruling Bhartiya Janta Party has come forward during such circumstances to help the people in need.

Copy of the CD containing interviews given to the new channels/visual media by respondent no. 3 and 4 on the subject of purchase, stock, distribution of more than 5000 Remdesivir Injection to the needy people of Surat as well as interview of Hon'ble the Chief Minister of Gujarat on the very subject matter is annexed hereto as **ANNEXURE-G.**

4.9 The questions therefore are that when hoarding or stocking of Remdesivir Injection which is in extreme shortage of not only in the State of Gujarat but in the entire country and at a time when its export is prohibited:



- i. Who has sold more than 5000 Remdesivir to respondent no. 3 who represents the ruling Bhartiya Janta Party being its State President ?
- ii. Who has purchased more than 5000 Remdesivir Injections and given it to respondent no. 3 who represents the ruling Bhartiya Janta Party being its State President ?
- iii. From where more than 5000 Remdesivir Injections have been sold and purchased and acquired by respondent no. 3 who represents the ruling Bhartiya Janta Party being its State President ?
- iv. With whose help respondent no. 3 has managed to acquire and procure more than 5000 Remdesivir Injection during such an extreme shortage and at time when pharmacy shops in State of Gujarat and across India are in shortage of same ?

Moreover, if the Remdesivir Injections are not available with the State Government as well as with licensed and registered pharmacists and druggist then the further question is (i) who are the friends and well wishers of Bhartiya Janta Party and that of respondent no. 3 who have purchased Remdesivir injections in such huge quantity (ii) who are the registered druggist and stockist as well as distributors and the licensed pharmacists from whom Remdesivir injections in such huge quantity have been purchased (iii) whether Remdesivir injections have been provided directly by Zydus Health Care Limited voluntarily or under political pressure of respondent no. 3 or the Bhartiya Janta Party that he represents (iv) who are the registered druggist, stockist and distributors as well as licensed pharmacists keeping Remdesivir injection manufactured by Zydus Healthcare Ltd and whether they have followed law in providing Remdesivir injections in huge quantity to respondent no. 3 who represent Bhartiya Janta Party in the State of Gujarat and what were the considerations (v) During the shortage of such a significant and serious anti-viral drug at the time of extreme upsurge of Covid-19 declared as an 'epidemic' can a manufacturer himself or registered druggist, stockist and distributor as



well as licensed pharmacist can en masse in huge quantity provide Remdesivir Injections to a political personalities or his friends and well-wisher or political party in the context of subject matter of present petition and whether law has been followed in the process or has been flagrantly violated in deliberate and willful manner no matter how bona fide the intention could be (vi) whether law permits a political party and its head to purchase, acquire or procure Remdesivir Injections in such a huge quantity and does that constitute illegal hoarding and stocking of a very important anti-viral drug which is in extreme shortage (vii) can a political party even with bona fide intention stock, distribute and disseminate Remdesivir Injections without violating the law/s as applicable in India as a part of charitable activity (viii) if the laws are violated in the process, why actions are not being initiated against respondent no. 3 and 4 and the political party they represent just because respondent no. 3 is a Member of Parliament and head of Bhartiya Janta Party in the state of Gujarat and the respondent no. 4 is an MLA from Bhartiya Janta Party (ix) if the laws are violated in such so called “charitable activity” dealing with anti viral drug, inaction or indecision by Constitutional and statutory authorities is because of the political patronage, because of malafide in law and malafide in fact and because fatal discrimination in applying law while treating respondent no. 3 and 4 differently as against the equality of law and equal protection of law enshrined in Article 14 of the Constitution of India.

4.10 Sec. 42 of the Pharmacy Act, states as under:

“42. Dispensing by unregistered persons.—*(1) On or after such date as the State Government may by notification in the Official Gazette appoint in this behalf, no person other than a registered pharmacist shall compound, prepare, mix, or dispense any medicine on the prescription of a medical practitioner :*

Provided that this sub-section shall not apply to the dispensing by a medical practitioner of medicine for his own patients, or with the general or special sanction of the State Government, for the patients of another medical practitioner:

Provided further that where no such date is appointed by the Government of a State, this sub-section shall take effect in that



State on the expiry of a period of [eight] years from the commencement of the Pharmacy (Amendment) Act, 1976.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one thousand rupees or with both.

(3) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by order of the State Government or any officer authorised in this behalf by the State Government, or by order of the Executive Committee of the State Council.”

In the context of sec. 41, reading of sec. 42 makes it very clear that no person other than the registered pharmacist can dispense any medicine on the prescription of a medical practitioner. Admittedly and undisputedly there was no doctor or a registered pharmacist involved along with the respondent no. 3 and 4 and their political workers. There have been sufficient visual evidence covered by visual media and news channels establishing that BJP politicians and workers have been distributing Remdesivir Injections. Hence, the distribution of Remdesivir Injections in question is in violation of sec. 42 of the Pharmacy Act, 1948 read with relevant Rules and notifications as well as regulations framed thereunder and same is therefore illegal and unlawful. Distribution of Remdesivir as per sec. 42(2) is also a criminal offence and therefore competent authorities are under obligation to file complaint against the respondent no. 3 and 4 and others with them involved in selling, purchasing, hoarding, stocking, and distributing Remdesivir Injection from the BJP office at Surat and prosecute them in accordance with law.

4.11 Sec. 18 and 27 of Drugs and Cosmetic Act :

18. Prohibition of manufacture and sale of certain drugs and cosmetics. - *From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—*

(a) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute—

[(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;



[(ii) any cosmetic which is not of a standard quality or is misbranded, adulterated or spurious;]

[(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof [the true formula or list of active ingredients contained in it together with the quantities thereof];]

(iv) any drug which by means of any statement design or device accompanying it or by any other means, purports or claims [to prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;

[(v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;]

(b) [sell or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic] which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality

27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.—*Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,—*

(a) any drug deemed to be adulterated under Section 17-A or spurious under Section 183[17-B and which] when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of Section 320 of the Indian Penal Code (45 of 1860), solely on account of such drug being



adulterated or spurious or not of standard quality, as the case may be, shall be 184[punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more:]

[Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause:

Provided further that where the use of the adulterated or spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

Explanation.—For the purposes of the second proviso, the expression “relative” means—

- (i) spouse of the deceased person; or*
- (ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or*
- (iii) parent of the minor victim; or*
- (iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or*
- (v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death,—*
 - (a) the parent; or*
 - (b) a minor brother or an unmarried sister; or*
 - (c) a widowed daughter-in-law; or*
 - (d) a widowed sister; or*
 - (e) a minor child of a pre-deceased son; or*
 - (f) a minor child of a pre-deceased daughter where no parent of the child is alive; or*
 - (g) the paternal grandparent if no parent of the member is alive;]*
- (b) any drug—*
 - (i) deemed to be adulterated under Section 17-A, but not being a drug referred to in clause (a), or*
 - (ii) without a valid licence as required under clause (c) of Section 18,*

shall be punishable with imprisonment for a term which shall [not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees

or three times the value of the drugs confiscated, whichever is more]:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than three years and of fine of less than one lakh rupees];

- (c) any drug deemed to be spurious under Section 17-B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall [not less than seven years but which may extend to imprisonment for life and with fine which shall not be (sic less than) three lakh rupees or three times the value of the drugs confiscated, whichever is more]:*

Provided that the Court may, for any adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than seven years but not less than three years and of fine of less than one lakh rupees];

- (d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years [and with fine which shall not be less than twenty thousand rupees]:*

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.]”

In view of above, it is stated and submitted that respondent no. 3 and 4, BJP workers of Surat unit working under them and those who have along with respondent no. 3 and 4 participated in selling, purchasing, hoarding, stocking and distributing Remdesivir Injection more than 5000 in number have violated sec. 18(c) of the Drugs and Cosmetics Act, 1940 and other relevant provisions of the very act and the rule framed thereunder and therefore their action is illegal and unlawful. They also have committed criminal offence punishable u/s. 27 of the Drugs and Cosmetics Act, 1940 and the sec. 32 provides who can take cognizance of the same.

- 4.12 It is stated and submitted that action of respondent no. 3 and 4 and BJP workers of Surat unit working under them and those involved in purchasing, stocking, hoarding and distributing even without consideration Remdesivir Injection have violated the directions of Government of India dated 07/04/2021 and 10/04/2021 and therefore



the impugned action of respondent no. 3 and 4 and those involved with them in action in question are responsible for the same for which all civil and criminal action against all who have committed illegal activities should be initiated.

4.13 The respondents except respondent no. 3 and 4 and particularly respondent no. 7 have failed to take action under the Drugs and Cosmetics Act 1940 and under Pharmacy Act as well as under the Epidemic Diseases Act and Disaster Management Act 2005. The failure of taking action against respondent no. 3 and 4 for distribution of Remdesivir Injection from Surat BJP party office in violation of all statutory norms committing criminal offences by respondents is grossly discriminatory, arbitrary, smacks of extraneous consideration, malafide in every respect and in every term, grossly disproportionate, unfair, unreasonable, colourable non exercise of power and hence violative of Art. 14 of Constitution of India and therefore unconstitutional.

The action of respondent no. 3 and 4 and other involved with them as stated herein above, have put consciously, deliberately and intention the right to life common citizens of Gujarat and Surat in particular under threat and therefore this action of putting life under threat by providing anti-viral injections without following any simultaneous statutory and precautionary actions and in absence of any license or registration under law and in utter violation of due process of law flagrantly violates Art. 21 of the Constitution of India and hence unconstitutional.

Article 19 guarantees six fundamental freedoms, are in the process, also compromised and therefore the same is also violated by respondent no. 3 and 4 and others involved with them.

4.14 It is stated and submitted that the action of respondent no. 3 and 4 and others who are involved with them have also violated provisions of the Disaster Management Act 2005 and that of Epidemic Disease Act 1897 and notification, regulations and guidelines issued thereunder by the Government of India as well as Government of Gujarat. Hence same is illegal and unlawful. Failure on the part of respondents other



than respondent no. 3 and 4 to take action against respondent no. 3 and 4 also is illegal, willful and deliberate and by their inaction they have contributed and connived in such flagrantly and unlawful activities of respondent no. 3 and 4. In the process, the competent and statutory authorities and respondent herein have also violated the very two legislations in so far as the provisions which are attracted to the subject matter at hand.

5. **Source of information:**

All the information as stated in the present petition is either through primary sources or secondary.

6. **Representation:**

The petitioner herein has raised his grievance in person and as well as in writing by way of a representation dated 12/04/2021.

Copy of the representation dated 12/04/2021 is annexed herewith as **ANNEXURE H.**

7. **Other public interest litigations on same/similar subject matter:**

That to the best of the knowledge of the Petitioner, no public interest litigation by way of petition raising similar issue is filed before this Hon'ble Court or before any other Court.

8. That main grounds of the present Writ Petition (PIL), are as under:

GROUND

- A. Paragraphs 1 and 4.1 to 4.14 be treated as grounds.
- B. On such other and further grounds that may be urged at the time of hearing.

9. That the grounds for seeking interim relief are as under:

Grounds for Interim Relief



The respondent State of Gujarat should constitute a committee to look into and inquire into the entire incident of distribution of Remdesivir injections from BJP Surat party office under the leadership of respondent no. 3 and with the help of respondent no. 4 and others who are responsible for selling, purchasing, distributing, stocking and hoarding Remdesivir Injection in violation of law.

The petitioner has a prima-facie case. Balance of convenience is in favour of the petitioner. No irreparable damage will cause to the respondents, if interim relief/s as prayed for are granted. If the interim relief/s as prayed for are not granted, it will frustrate the petition and make it infructuous.

10. **Petitioners have not filed any other petition on the present subject matter:**

That Petitioner has not filed any other petition, appeal or application in Hon'ble the Supreme Court of India or before this Hon'ble Court or in any other Court with regard to the subject matter of the present petition.

11. **No other alternative equally efficacious and adequate remedy:**

The petitioner states that there is no other alternative equally efficacious and adequate remedy available to the petitioner except to approach this Hon'ble Court under Article 226 of the Constitution of India.

The petitioner craves leave liberty of this Hon'ble Court to add, amend, delete or rescind any of the aforementioned paragraphs as and when necessary in the interest of justice. The petitioner also craves leave to place on record any other/further documents for the effective adjudication of the present petition and in the interest of justice.

12. **Prayers:**



The petitioners, therefore, pray that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction and thereby:

- A. Your Lordships be pleased to direct respondents and particularly respondent no. 1, 2 and 7 to constitute expert committee of highly distinguished and neutral persons to inquire into the entire incident and of all those who are directly and indirectly involved in selling, purchasing, hoarding, stocking and distribution of more than 5000 Remdesivir Injections to the people at Surat BJP Party office by respondent no. 3 and 4 and place report before this Hon'ble Court in the context of the Pharmacy Act 1948, Drugs and Cosmetics Act 1940, Disaster Management Act 2005 and Epidemic Diseases Act 1897 within stipulated period of time and be further pleased to direct respondent no. 1, 2 and 7, based on the expert committee report, take action against all those who have contributed and committed in illegal and unlawful activities in question and initiate all the necessary civil and criminal proceedings provided in law as well as department actions in accordance with law and to establish rule of law.
- B. In the alternative, Your Lordships be pleased to direct respondent no. 1, 2, 5 and 7 to inquire into the entire incident of and all those who are directly and indirectly involved in selling, purchasing, hoarding, stocking and distribution of more than 5000 Remdesivir Injections to the people at Surat BJP Party office by respondent no. 3 and 4 and place report before this Hon'ble Court in the context of the Pharmacy Act 1948, Drugs and Cosmetics Act 1940, Disaster Management Act 2005 and Epidemic Diseases Act 1897 within stipulated period of time and be further pleased to direct respondent no. 1, 2, 5 and 7, based on inquiry report, take action against all those who have contributed and committed illegal and unlawful activities in question and initiate necessary civil and criminal proceedings provided in law as well as department actions in accordance with law and to establish rule of law.
- C. Be pleased to direct respondent no. 1, 2, 5, 6 and 7 to ensure that such incident in question of acquiring, stocking and distribution of Remdesivir Injections from the office of a political party or any other



place which does not have registration and license as per the applicable law does not happen in future and that no other drug or medicine is sold from any place other than the registered and licensed pharmacy shop, stockist or distributor holding necessary permission and be further pleased to direct respondents to issue necessary notification, regulation and guidelines in this regard in accordance with law.

- D. During the pendency and/or final disposal of the present petition, Your Lordships be pleased to direct respondent no. 1, 2, 5, 6 and 7 to immediately prevent respondent no. 3 and 4 from distributing Remdesivir Injections or any other registered drug or medicine to the people at large from BJP office at Surat or for that matter from any other place as a part of charitable activity in violation of the Drugs and Cosmetics Act 1940 and the Pharmacy Act 1948 and other applicable law/s in this regard;
- E. During the pendency and/or final disposal of the present petition, Your Lordships be pleased to pass interim relief that is required to prevent such incidents in future of acquiring, stocking and distribution of Remdesivir Injection or any other drug or medicine by any person or institution other than those who hold registration and license in accordance with the Drugs and Cosmetic Act 1940 and the Pharmacy Act 1948.
- F. Ad interim relief in terms of 12(D) and 12(E).
- G. Your Lordships be pleased to dispense with the affidavit of the petitioner.
- H. Any other and further order as may be deemed fit in the interest of justice and equity.

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE APPLICANT SHALL AS IN DUTY BOUND FOR EVER PRAY.





Place: Ahmedabad

Anand Yagnik

Date: 14.04.2021

Advocate for the Petitioner

AFFIDAVIT

I, Pareshkumar Dhirajlal Dhanani, age: 44 years, Male, address at: Maha Vishnu Krupa Gajerapara, Near Patelwadi Amreli, District Amreli, the petitioner herein, do hereby solemnly affirm and state on oath that I am conversant with the facts and circumstances of the case and am competent to depose that what is stated in the foregoing paragraphs nos. 01 to 11 are true to my own knowledge, information and belief and I believe the same to be true. Paragraph 12 contains prayers.

Solemnly affirmed at Ahmedabad on this 14th Day of April, 2021.

sd/-

DEPONENT

Explained, interpreted and
Identified by me:



[Anand Yagnik]

Advocate

