

W.P. (C) No. **Of 2020**

 V/s

State of Kerala and others :: Respondents

The Petitioners are practicing Advocates. The 1st Petitioner is a member of Bar Council of Kerala elected under Section 3(2) and continuing as a member of Bar Council of Kerala under Section 8 of the Advocates Act, 1961. The Petitioners are also the President and General Secretary of the organization named Kerala Lawyers Forum.

The Petitioners file this Writ Petition seeking a direction to the Respondents to disburse necessary amounts from Legal Benefit Fund which is allocated under Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959 for social security of the legal profession to address the acute financial crises of the members of the legal fraternity who are affected due lockdown. The Petitioners are also challenging statutory provisions which reserve the amounts collected Legal Benefit Fund for the benefit only few Advocates who are members of the Advocates' Welfare Fund, which are inter alia violative of Article 14 of the Constitution of India.

Sr. No.	Date	Event
1.	25.03.2020	Courts in the State were shut on account of the lockdown due to the pandemic.
2.	25.03.2020	1 st Petitioner filed a representation before the 1 st Respondent seeking disbursal of amounts from the Advocate Welfare Fund for meeting the immediate requirement of most deserving lawyers.
3.	31.03.2020	1 st Petitioner along with 4 other Bar Council members filed a representation before the 1 st Respondent.
4.	04.04.2020	Petitioners filed representation before the 1 st Respondent inter alia requesting to pay an amount of Rs. 10 Crores from the amount due towards legal benefit fund from the State Government to the Bar

		Council of Kerala.
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POINTS TO BE URGED

1. That the Respondents ought to utilize the amounts available under the Legal Benefit Fund for all Advocates who are in acute financial crises due to the lockdown.
2. Provisions restricting the use of Legal Benefit Fund for only the Advocates who are members of the Advocates' Welfare Fund are discriminatory and liable to be struck down.

Dated this the day of April, 2019

Counsel for the Petitioners

**BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM
(Special Original Jurisdiction)**

W.P. (C) No.

Of 2020

PETITIONERS:

1. Mohammed Shah, Advocate,
Aged 47 years, S/O P.H Abdul Salam,
Attorneys Alliance, 2nd Floor,
Chundanal Monarch, K.K Padmanabhan Road,
Near High Court, Ernakulam-682018
2. P Abu Siddik, Advocate, aged 52,
S/O Late Mohammed Kutty,
Puzhakkal House, Pandikkad P.O,
Malappuram District-676521

Vs

RESPONDENTS:

1. State of Kerala Represented by Secretary,
Department of Law, Government of Kerala,
Secretariat, Thiruvananthapuram - 695001
2. Kerala Bar Council, Bar Council Bhavan,
High Court Campus, Ernakulam,
Kochi, Kerala 682031 Represented by its Secretary
3. Kerala Advocate Welfare Fund Trust, Bar Council Bhavan,
High Court Campus, Ernakulam,
Kochi, Kerala 682031 Represented by its Secretary

**MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER
ARTICLE 226 OF THE CONSTITUTION OF INDIA**

*The address for service of notices and processes on the Petitioner is that of his Counsel, C.R. Syamkumar, K. Arjun Venugopal, Aswinkumar M.J., Helan P.A, A K Musthafa, Muhammed Janaise V, Arun Roy & Shahir Showkath Ali, Advocates, M/s. **Attorneys' Alliance (Law Firm)**, 2nd Floor, Chundanal Monarch, K.K Padmanabhan Road, Kochi-18. The address for service of notices and processes on the Respondents are as shown above.*

STATEMENT OF FACTS

1. The Petitioners are practicing lawyers whose names are included in the 'roll of advocates' of 2nd Respondent Bar Council of Kerala prepared

under Section 17 of the Advocates Act, 1961. The 1st Petitioner is a member of Bar Council of Kerala elected under Section 3(2) and continuing as a member of Bar Council of Kerala under Section 8 of the Advocates Act, 1961. The Petitioners are also the President and General Secretary of the organization named Kerala Lawyers Forum.

2. The 1st Respondent is the State of Kerala represented by Secretary, Law Department. The 2nd Respondent is a body corporate constituted under Section 3, doing all the functions as provided under Section 6 of the Advocates Act, 1961. The 3rd Respondent is a Trust constituted under Section 4 of the Kerala Advocates Welfare Funds Act, 1980.

3. The Petitioners file this Writ Petition seeking a direction to the Respondents to disburse necessary amount from legal benefit fund which is allocated under Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959 for social security of the legal profession, implying the inevitability of utilization of funds earmarked exclusively for the welfare of advocates and to redress the grievances of the members of the legal fraternity who are affected due to the staggering circumstance of Covid 19 and consequent lockdown. It is pertinent that this is an unusual time during which the statutory welfare committees of various professions/classes, are required to act upon and address the grievances of their respective classes, for whom the statutory schemes are formulated and to provide financial assistance without causing any financial burden on the Governments in such an acute disaster situation.

4. The Legal Benefit Fund is a reserve fund articulated and collected under Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959 by levying an additional court fee in respect of appeals or revisions to Tribunals or Appellate Authorities, other than civil and criminal courts at a rate not exceeding one percent of the amount involved in the dispute in cases where it is capable of valuation and in other cases at the rate of Rs. 100 for each Appeal or Revision. The Legal Benefit Fund includes the above additional court fees and 50 percent of the court fees levied for Muktharnama and Vakalathnama under Article 16 of Schedule II of the Kerala Court Fees and Suit Valuation Act, 1959. As per section 76(4) of the Kerala Court Fees and Suit Valuation Act, 1959 the fund shall be applied and utilized for the purpose of providing efficient legal service for the

people of the State and to provide **social security measures for the legal profession**. As per sub section 4 of Section 76, the mode and manner in which the fund shall be applied and utilized for the purpose of providing an efficient legal service for the people of the State and to provide social security measures for the legal profession shall be prescribed by the rules made by the Government. In November 2016, the Kerala Court Fees and Suit Valuation Act, 1959 was amended by substituting Section 3 with the amended provision, by which, 63 percent of legal benefit fund was earmarked to the Advocates' Welfare Fund, 27 percent to Clerks Welfare Fund and 10 percent for providing infrastructure to litigants. A true copy of the Kerala Court Fees and Suits Valuation (Amendment) Bill, 2016, which was passed by the state assembly, is produced herewith as **Exhibit P-1**.

5. A total amount of around 50 Crores is due from the State Government under the head of Legal Benefit Fund, out of which 11.97 Crores was disbursed by the State Government to Advocate Welfare Fund recently and the said amount is lying in the account of the 3rd Respondent Trust. A balance of around Rs. 38 Crores is still due from State Government.

6. The above amount is earmarked and deposited as Advocates' Welfare Fund under Section 3(2)(e) of the Kerala Advocates Welfare Fund act, 1980. As a matter of fact the entire legal fraternity is eligible for the social security measures contemplated in Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959. But when it is deposited in the account of Welfare Trust it will go only to the lawyers who have membership in the Welfare Trust, excluding others who do not have membership in the Welfare Trust. Therefore the amendment to Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959 done during the year 2016 and Section 3(2)(e) of the Kerala Advocates Welfare Fund act, 1980 do not fulfill the interest of the entire legal fraternity and therefore are not sustainable.

7. The Section 3(2)(e) of the Kerala Advocates Welfare Fund Act, 1980 reads as follows:

Section 3-Advocates Welfare Fund.—

(1) The Government shall constitute a fund called the Advocates' Welfare Fund.

(2) There shall be credited to the Fund –

(a).....

(b).....

(c).....

(d).....

(e) *the amount set apart from the Legal Benefit Fund constituted under sub- section (2) of section 78 of the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960) , for providing social security measures for the legal profession;*

8. At least 25 percent (more than 10,000) of the lawyers who are totally dependent on the income from the profession are unable to make ends meet on account of the lockdown. The 1st Respondent who is a Bar Council Member along with certain other Bar Council Members have already submitted 2 representations before the 1st Respondent seeking a direction to the Bar Council of Kerala to disburse amounts from the Advocate Welfare Fund for meeting the immediate requirement of most deserving lawyers on war footing basis, in the background of the Pandemic Covid 19. The 1st Petitioner filed a representation before the 1st Respondent on 25.03.2020. Subsequently, the 1st Petitioner along with 4 other Bar Council members filed a representation before the 1st Respondent on 31.03.2020. Certain Members of Bar Council filed representation to Bar Council of Kerala to expend a loan to the deserving lawyers from the funds of Bar Council or Welfare Trust and also requested the Bar Council of Kerala to seek financial support from the State Government. A true copy of the representation submitted by the 1st Petitioner and other Bar Council Members dated 31.03.2020 is produced herewith and marked as **Exhibit P-2**.

9. However, the 2nd Respondent Bar Council of Kerala and the 3rd Respondent are intentionally not disbursing the above fund even in an acute, emergent situation. Instead, they have now decided to give Rs. 50 Lakhs from the funds of Bar Council of Kerala and to collect donation from outside and to distribute Rs. 1 Crore to the lawyers of their choice. This amount is not sufficient to redress the grievance of even 1000 lawyers while more than 10,000 lawyers are facing adversity of the lockdown.

10. Therefore, the Petitioners filed representation before the 1st Respondent requesting to pay an amount of Rs. 10 Crores from the amount due towards legal benefit fund from the State Government to the Bar

Council of Kerala or else to direct the Advocate Welfare Trustee Committee and the Bar Council of Kerala to disburse Rs. 10 Crores from the Advocate Welfare Fund for meeting the immediate requirement of most deserving lawyers, on a war footing basis, in the background of the Pandemic Covid 19 and consequent lockdown. A true copy of the said representation dated 04.04.2020 is produced herewith and marked as **Exhibit-P3**. However, no action has been initiated by the Respondents.

Aggrieved and left with no other remedy the Petitioners approach this Hon'ble Court under Article 226 of the Constitution of India on the following among other:-

GROUND

A) It is submitted that the legal benefit fund is constituted under Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959 by levying an additional court fee in respect of appeals or revisions to Tribunals or Appellate Authorities, other than civil and criminal courts at a rate not exceeding one percent of the amount involved in the dispute in cases where it is capable of valuation and in other cases at the rate of Rs. 100 for each Appeal or Revision and 50 percent of the court fees levied for Muktharnama and Vakalathnama under Article 16 of Schedule II of the Kerala Court Fees and Suit Valuation Act, 1959. As per section 76(4) of the Kerala Court Fees and Suit Valuation Act, 1959 the fund shall be applied and utilized for the purpose of providing an efficient legal service for the people of the State and to provide social security measures for the legal profession. As per sub section 4 of Section 76 the mode and manner in which the fund shall be applied and utilized for the purpose of providing an efficient legal service for the people of the State and to provide social security measures for the legal profession shall be prescribed by the rules made by the Government. Section 3(2)(e) of the Kerala Advocate Welfare Trust Act, 1980 provides that the amount set apart from the Legal Benefit Fund constituted under sub-section (2) of S.76 of the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960), for providing social security measures for legal profession shall be credited to advocate Welfare Fund constituted under Section 3 (1) of the Kerala Advocate Welfare Trust Act, 1980. A total number of 54,000 advocates are in the rolls of the 2nd Respondent while only less than 26,000 advocates are members under the

Kerala Advocate Welfare Trust Act, 1980. The legal benefit fund is intended for the social security of the entire fraternity which cannot be deposited in a head in which all the advocates are not members. The above provision of the Act is discriminatory and therefore violative of Article 14 of the Constitution.

B) Section 3(2)(e) of the Kerala Advocate Welfare Trust Act, 1980 and the amended Section 76(3) of the Kerala Court Fees and Suit Valuation Act, 1959 are discriminatory and violative of Article 14 of the Constitution of India. The two statutory provisions create two classes among Advocates, those who are members of the welfare fund and those who are not. This classification for granting social security, which is part of fundamental right to live a life with dignity, has no nexus with the object sought to be achieved and is unreasonable and arbitrary.

C) Whereas Section 3(2)(h) of the Kerala Advocates' Clerks Welfare Fund Act, 2003 states that only the amounts transferred from the legal benefit fund will be credited to the Advocates' Clerks Welfare Fund, Section 3(2)(e) of the Kerala Advocate Welfare Trust Act, 1980 states that the entire amount set apart from the legal benefit fund will be available only to the benefit of the members of the welfare fund. Whereas the Kerala Advocates' Clerks Welfare Fund Act, 2003 makes room for using the legal benefit fund for the benefit of clerks who are not members of the welfare fund also, the Kerala Advocate Welfare Trust Act, 1980 does not permit the same.

D) Section 3(2)(e) of the Kerala Advocates Welfare Trust Act, 1980 which provides that the amount set apart from the Legal Benefit Fund shall be credited to Advocates Welfare Fund constituted under Section 3 (1) of the Kerala Advocates Welfare Trust Act, 1980 is violation to sub section 4 of section 76 of the Kerala Court Fees and Suits Valuation Act, 1959 which stipulates that the mode and manner in which the fund shall be applied and utilized for the purpose of providing an efficient legal service for the people of the State and to provide social security measures for the legal profession shall be prescribed by the rules made by the Government. Hence Section 3(2)(e) of the Kerala Advocate Welfare Trust Act, 1980 is in conflict with sub section 4 of section 76 of the Kerala Court Fees and Suits Valuation Act, 1959 and therefore it is not sustainable.

E) The Advocate Welfare fund articulated under Section 3 of the Kerala Advocates Welfare Trust Act, 1980 can be disbursed exclusively to its

members under Section 15 and for the purposes stipulated under Section 16 of the Kerala Advocates Welfare Trust Act, 1980. Legal Benefit Fund is intended for social security measures of the legal fraternity which includes the lawyers who are not members under Section 15 and for purposes other than those stipulated under Section 16 of Kerala Advocate Welfare Trust Act, 1980. Therefore depositing the above amount in the Welfare Fund itself is against the intention of the legislation since the Legal Benefit Fund is exclusively earmarked for the social security measures for Advocates to meet the circumstances like the present lockdown.

F) The 1st respondent issued a direction to various statutory bodies who have the function to provide social security through welfare schemes invoking the authority under the Disaster Management Act and other relevant provisions. Therefore 1st Respondent is duty bound to initiate necessary action to provide social security to the lawyers also.

G) The majority of the Advocates and their families are currently struggling to sustain, without sufficient means to even meet their daily expenses, in view of the complete lockdown of offices and courts. Therefore the Respondents are duty bound to provide financial support to the Advocates in public interest.

For these and other reasons to be submitted at the time of hearing, it is respectfully prayed that this Hon'ble Court be pleased to grant the following:-

RELIEFS

- i) To declare that Section 3(2)(e) of the Kerala Advocate Welfare Trust Act, 1980 and amended Section 76(3) of the of the Kerala Court Fees and Suit Valuation Act, 1959 are arbitrary and unconstitutional;
- ii) To issue a Writ of Mandamus directing the 1st Respondent to pay an amount of Rs. 10 Crores from the dues towards legal benefit fund to the 2nd Respondent Bar Council of Kerala or else direct the 3rd Respondent Advocates Welfare Trustee Committee and the Bar Council of Kerala to disburse Rs. 10 Crores from the Advocate Welfare Fund for meeting the immediate requirement of most deserving lawyers in the background of the Pandemic Covid 19;
- iii) To direct the 2nd and 3rd Respondent to disburse Rs. 10 Crores

from the Advocates Welfare Fund for meeting the immediate requirement of most deserving lawyers in the background of the Pandemic Covid 19 and subsequent lockdown;

- iv) To declare that all the Advocates who are in rolls of the 2nd Respondent are entitled to social benefit using the funds earmarked as legal benefit fund as per Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959;
- v) Issue such other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

INTERIM RELIEF

For the reasons stated in the writ petition and in the accompanying affidavit, it is respectfully prayed that this Hon'ble Court may be pleased to direct the 2nd and 3rd Respondent to disburse Rs. 10 Crores from the Advocates Welfare Fund for meeting the immediate requirement of most deserving lawyers in the background of the Pandemic Covid 19 and subsequent lockdown, provisionally, pending disposal of the above Writ Petition (Civil).

Dated this the 6th day of April, 2020.

Petitioners:

Mohammed Shah

P.Abu Siddik

Counsel for the Petitioners

W.P. (C) No. **Of** **2020**

 V/s

AFFIDAVIT

1. I am the 1st Petitioner in the above W.P. (C) and I am conversant with the facts of the case.
2. The above W.P. (C) was prepared under my instructions.
3. I have no personal gain other than the one described in relation to the subject matter involved in this Writ Petition. The matter involved in the above case is one involving substantial and larger public interest as this affects member of legal profession across Kerala. There is no authoritative pronouncement on the subject matter by this Honourable Court or the Honourable Supreme Court of India.
4. The averments of law are made on the advice of my counsel and I believe them to be true, sustainable and sufficient to grant the relief's prayed for in the above W.P.(C).
5. The documents produced in the above W.P. (C) are the true copies of the originals they represent
6. I have not filed earlier petitions seeking similar and identical relief in the same subject.

Dated this the 6th day of April, 2020

C.R. Syamkumar, Advocate

Fourteenth Kerala Legislative Assembly
Bill No. 24

THE KERALA COURT FEES AND SUITS VALUATION
(AMENDMENT) BILL, 2016

A

BILL

further to amend the Kerala Court Fees and Suits Valuation Act, 1959.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960), for the purposes hereinafter appearing;

BE it enacted in the Sixty-seventh Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Court Fees and Suits Valuation (Amendment) Act, 2016.

(2) It shall come into force at once.

2. *Amendment of section 76.*—In the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960), in section 76, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Notwithstanding anything contained in any other law for the time being in force, an amount equal to seventy per cent of the Legal Benefit Fund collected under sub-section (2) shall be set apart every year towards the Fund constituted under section 3 of the Kerala Advocates’ Welfare Fund Act, 1980 and an amount equal to thirty per cent of the Legal Benefit Fund collected shall be set apart towards the Fund constituted under section 3 of the Kerala Advocates’ Clerks Welfare Fund Act, 2003:

Provided that the amount so set apart shall be transferred to such Funds after retaining an amount equal to ten per cent each from the amount set apart to the Funds specified in sub-section (3) for providing infrastructure to the litigants.”.

1008/2016.

2

STATEMENT OF OBJECTS AND REASONS

The Government have decided to set apart an amount equal to 70 per cent of the Kerala Legal Benefit Fund to the Kerala Advocates' Welfare Fund and 30 per cent to the Advocates' Clerks Welfare Fund and to transfer such amount to the said Funds after retaining 10 per cent each from the above amount for providing infrastructure to the litigants. Accordingly the Government have decided to amend the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960).

The Bill seeks to achieve the above object.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation would not involve any additional expenditure from the Consolidated Fund of the State.

A. K. BALAN

EXHIBIT P-2

From,

1. C.K Ratnakaran
2. Rajesh Vijayan
3. S. Sudarsanakumar
4. P. Sajeevbabu
5. Mohammed Shah

Advocates & Members, Kerala Bar Council
Ernakulam , Ph: 04842393600, Mob: 9447081280
Email: advocateshah@yahoo.co.in

To,

Chief Minister, Government of Kerala,
Secretariat, Thiruvananthapuram
Sir,

Sub: Providing financial support to Lawyers who are affected due to the Pandemic-Covid 19 and the consequent lockdown situation.

We are elected member of Kerala Bar Council and practicing lawyers at various Courts in Kerala.

This is for the kind consideration of your esteemed authority, implying the inevitability of utilization of funds earmarked for welfare of advocates to meet the grievances of the members of the legal fraternity who are affected due to the alarming condition of Covid 19. This is the time during which the statutory welfare committees of various sects, to act upon and to address the grievances of the respective classes, for whom the schemes are formulated and to provide financial assistance without incurring any financial burden to the Governments in this acute disaster situation.

The legal benefit fund is a fund formulated and collected under Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959 by levying an additional court fee at the rate of 1 percent of the valuation of the disputes from the litigants. As per section 76(3) of the Kerala Court Fees and Suit Valuation Act, 1959 the fund shall be applied and utilized for the purpose of providing an efficient legal service for the people of the State and to provide **social security measures for the legal profession**. During November 2016 it was decided to earmark 63 percent of such amount to Advocates' Welfare Fund, 27 percent to Clerks Welfare Fund and 10 percent for providing infrastructure to litigants.

A total amount of around 49 Crores was due from the State Government from the head of legal benefit fund and out of which 11 Crores was disbursed by the State Government to Advocate Welfare Fund recently and the said amount is there in the account of the Trust. A balance of 38 Crores is with the State itself.

Now the situation is alarming and the necessity of utilization of the above fund is utmost necessary. The above amount is earmarked and deposited as an Advocates' Welfare Fund under Section 3(e) of the Kerala Advocates Welfare Fund act, 1980.

As a matter of fact the entire legal fraternity is eligible for the social security measures contemplated in Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959. But when it is depositing in the account of Welfare

Trust it will go only to the lawyers who are having membership in the Welfare Trust excluding others who are not having membership in the Welfare Trust. This is absolutely illegal.

Now at least 25 percent (more than 10000) of the lawyers who are totally depending on the income from this profession are not able to survive during the emergent lockdown period. We already submitted a representation before you seeking the a direction to the Kerala Bar Council to disburse amounts from the Advocate Welfare Fund for meeting the immediate requirement of most deserving lawyers on war footing basis in the background of the Pandemic Covid 19. We already filed a representation to Bar Council of Kerala to expend a loan to the deserving lawyers from the funds of Bar Council or Welfare Trust and also requested the Kerala Bar Council to seek financial support from the State Government.

But the Bar Council of Kerala intentionally not disbursing the above fund in an acute emergent situation and trying to bear a ploy by giving Rs. 50 Lakhs from the funds of Bar Council of Kerala and to collect donation from outside and to distribute Rs. 1 Crore to the lawyers of their choice. This amount is not sufficient to redress the grievance of even 1000 lawyers while more than 10000 lawyers are in the adversity of the lockdown.

Therefore your esteemed authority may kind enough to pay an amount of Rs. 10 Crores from the dues towards legal benefit fund from the part of State Government to the Bar Council of Kerala or else direct the Advocate Welfare Trustee Committee and the Kerala Bar Council to disburse Rs. 10 Crores from the Advocate Welfare Fund for meeting the immediate requirement of most deserving lawyers on war footing basis in the background of the Pandemic Covid 19.

Dated this the 31st day of March, 2020

Thanking You

Yours Truly,

- | | |
|----------------------|-----|
| 1. C.K Ratnakaran | Sd/ |
| 2. Rajesh Vijayan | Sd/ |
| 3. S. Sudarsanakumar | Sd/ |
| 4. P. Sajeeybabu | Sd/ |
| 5. Mohammed Shah | Sd/ |

Members, Kerala Bar Council

EXHIBIT P-3

KERALA LAWYERS FORUM

League House, R C Road, Kozhikode-32

Phone: 0495-2365969

Adv Mohammed Shah

President

94470 81280

Email: advocateshah@yahoo.co.in

Adv P. Abu Siddik

General Secretary

94473 40489

To,
Chief Minister, Government of Kerala,
Secretariat, Thiruvananthapuram

Sir,

Sub: Providing financial support to Lawyers who are affected due to the Pandemic- Covid 19 and the consequent lockdown situation.

Kerala Lawyers Forum is an organization representing the Lawyers in the State.

This is for the kind consideration of your esteemed authority, implying the inevitability of utilization of funds earmarked for welfare of advocates to meet the grievances of the members of the legal fraternity who are affected due to the alarming condition of Covid 19. This is the time during which the statutory welfare committees of various sects, to act upon and to address the grievances of the respective classes, for whom the schemes are formulated and to provide financial assistance without incurring any financial burden to the Governments in this acute disaster situation.

The legal benefit fund is a fund formulated and collected under Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959 by levying an additional court fee at the rate of 1 percent of the valuation of the disputes from the litigants. As per section 76(3) of the Kerala Court Fees and Suit Valuation Act, 1959 the fund shall be applied and utilized for the purpose of providing an efficient legal service for the people of the State and to provide **social security measures for the legal profession**. During November 2016 it was decided to earmark 63 percent of such amount to Advocates' Welfare Fund, 27 percent to Clerks Welfare Fund and 10 percent for providing infrastructure to litigants.

A total amount of around 49 Crores was due from the State Government from the head of legal benefit fund and out of which 11 Crores was disbursed by the State Government to Advocate Welfare Fund recently and the said amount is there in the account of the Trust. A balance of 38 Crores is with the State itself.

Now the situation is alarming and the necessity of utilization of the above fund is utmost necessary. The above amount is earmarked and deposited as an Advocates' Welfare Fund under Section 3(e) of the Kerala Advocates Welfare Fund act, 1980.

As a matter of fact the entire legal fraternity is eligible for the social security measures contemplated in Section 76 of the Kerala Court Fees and Suit Valuation Act, 1959. But when it is depositing in the account of Welfare Trust it will go only to the lawyers who are having membership in the Welfare Trust excluding others who are not having membership in the

Welfare Trust. This is absolutely illegal.

Now at least 25 percent (more than 10000) of the lawyers who are totally depending on the income from this profession are not able to survive during the emergent lockdown period. The President who is a Bar Council Member along with certain other Bar Council Members already submitted 2 representations before you seeking the a direction to the Kerala Bar Council to disburse amounts from the Advocate Welfare Fund for meeting the immediate requirement of most deserving lawyers on war footing basis in the background of the Pandemic Covid 19. Certain Bar Council members already filed a representation to Bar Council of Kerala to expend a loan to the deserving lawyers from the funds of Bar Council or Welfare Trust and also requested the Kerala Bar Council to seek financial support from the State Government.

But the Bar Council of Kerala intentionally not disbursing the above fund in an acute emergent situation and trying to bear a ploy by giving Rs. 50 Lakhs from the funds of Bar Council of Kerala and to collect donation from outside and to distribute Rs. 1 Crore to the lawyers of their choice. This amount is not sufficient to redress the grievance of even 1000 lawyers while at least more than 10000 lawyers are in the adversity of the lockdown.

Therefore your esteemed authority may kind enough to pay an amount of Rs. 10 Crores from the dues towards legal benefit fund from the part of State Government to the Bar Council of Kerala or else direct the Advocate Welfare Trustee Committee and the Kerala Bar Council to disburse Rs. 10 Crores from the Advocate Welfare Fund for meeting the immediate requirement of most deserving lawyers on war footing basis in the background of the Pandemic Covid 19.

Dated this the 4th day of April, 2020

Thanking You

Yours Truly,

Mohammed Shah

Sd/

P. Abu Siddik

Sd/

Subject: - Public Interest Litigation – Non disbursal of amount from Legal Benefit Funds for the social security measures of Advocates in the background of Covid 19 and consequent Lockdown

**BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM
(Special Original Jurisdiction)**

W.P. (C) No.

Mohammed Shah & another :: Petitioners

 V/s

State of Kerala and others :: Respondents

**MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER
ARTICLE 226 OF THE CONSTITUTION OF INDIA**

M/s. ATTORNEYS' ALLIANCE
Law Firm

C.R. SYAMKUMAR (S-820)
ARJUN VENUGOPAL (A-1685)
MUHAMMED JANAISE V (K-62-D/2009)
ASWIN KUMAR M J (D/4917/2017)
A K MUSTHAFA (K/1099/2018)
HELAN P.A. (K-84/19)
ARUN ROY (K/413/19)
SHAHIR SHOWKATH ALI (K-584/19)

Counsel for the Petitioners

W.P. (C) No.

 V/s

State of Kerala and others :: Respondents

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Dated this the 6th day of April, 2020

Counsel for the Petitioners

APPENDIX

PETITIONERS' EXHIBITS

Exhibit-P1: True copy of the Kerala Court Fees and Suits Valuation (Amendment) Bill, 2016, which was passed by the state assembly.

Exhibit-P2: True copy of representation submitted by the 1st Petitioner and other Bar Council Members dated 31.03.2020

Exhibit-P2: True copy of the representation dated 04.04.2020