

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(Original Jurisdiction)

W.P. No. of 2020 (GM-RES)PIL

Between:

.. Petitioner-Party in Person

And:

1.The Chief Secretary
Karnataka State Government
Vidhanasoudha
BANGALORE-560001

2.Department of Parliamentary Affairs
And Legislation
Vidhana Soudha
BANGALORE-560 001

By its Secretary to Government

..Respondents



MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 & 227
OF THE CONSTITUTION OF INDIA.

The petitioner above named begs to submit as follows:
The Petitioner seeks permission to prosecute the Writ Petition as Public Interest Litigation as Party in Person.

1.The petitioner submits that Petitioner is an Advocate practicing before this Hon'ble Court as well as in various High Courts such as Madras High Court, Debts Recovery Appellate Tribunal and Company Law Board at Chennai, Andhrapradesh High Court at Hyderabad, DRT Hyderabad, Bombay High Court, Supreme Court of India at New Delhi. The Petitioner had also filed several Public Interest Petitions before this Hon'ble Court pertaining to carrying of Load/school bags by tender children which was appreciated by this Hon,ble Court and that the State

Government which submitted the guidelines in the said writ petition and there after he had also espoused the cause of the Air Passengers especially Woman, aged and Children who to travel all the way from Bangalore City to Devanahalli to the new Bangalore International Airport in W.P.No.2253 of 2008 (GM PIL), WP 6014 of 2010 regarding frequent loadshedding/power cuts in which various interim directions and final orders were passed by this Hon'ble Court on 24-01-2011 and that in some of the Writ Petitions and also WP No.19862 of 2010 pertaining to Mangalore Air Crash and Several Airports which have no Lincense,based on the Memo filed by the Union of India that all Airports whose licence are expired will obtain the same before 30-06-2011 the said Writ Petition was disposed of by order dated 18-03-2011 The Petitioner had also filed another Writ Petition No.2100 of 2011 wherein the Police have failed in their duty in not executing summons/warrants as and when issued by the Courts in Karnataka and based on the Affidavit file by the State of Karnataka this Hon'ble Court was pleased to dispose of the said Writ Petition on 24-08-2011. The Petitioner had also filed WP No.30450 of 2012BBMP-PIL) for not clearing the garbage in and around the City of Bangalore. The Petitioner has no personal interest in the present writ petition being filed against the respondents for the agony, hardship and inconvenience caused to the citizens of Bangalore and also inaction on the part of the Respondents in not responding to the problems faced by the Citizens of Bangalore during heavy rains and of recent on 25-09-2014.This Petition is filed as Public Interest Litigation Petition.

2. The Petitioner respectfully submits that the Union of India Ministry of Home Affairs had issued guidelines to all the States due to spread of epidemic COVID-19 vide Order No.40-3/2020-DM-I(A) dated 24-03-2020 as per Annexure 'A' by virtue of it the entire country were ordered to be under lock down for 21 daysl with few exceptions as per Cause No.2 (a) Police, home guards, civil defence, fire and emergency services, disaster management and prisons, as per Clause No.3 hospital and related medical establishments. The Petitioner respectfully submits that thereafter in view of the prevailing situation about the more number of patients tested positive the lock down was extended upto 03-05-2020 the Union of India Ministry of Home Affairs had issued revised guidelines to all the States and Union Territories Vide Order No.40-3/2020-DM-

I(A) dated 15-04-2020 as per Annexure 'B' wherein Select permitted activities allowed with effect from 20-05-2020.

3.The Petitioner respectfully submits that during the lock down period when the Health Workers, Doctors and others including police personnel who are trying to identify the persons affected with CARONA VIRUS (FCOVID-19) were attacked for no reasons and several of them have sustained injuries and several properties were also destroyed by the anti social elements. The Petitioner respectfully one such incidence that had happened in Bengaluru BBMP Limit is in Padarayanapura BBMP Ward wherein more than 150 people gathered in groups on the night of 19-04-2020 when the BBMP Health Officials, Health Workers and Police who had gone to the area to take some of the patients to be put under Quarantine were attacked with weapons, sticks etc and also removed the barricades, check posts and pendals. The Petitioner submits that in the absence of any armed police personnel those goonda elements took advantage of the same, however the jurisdictional Police JJ Nagar Police Station have registered cases against those persons under various IPC Offences in Crime No.70 to 64 of 2020 and arrested more than 100 persons and were remanded to Judicial Custody by the Jurisdictional Court. The Petitioner respectfully submits that Union of India through Cabinet Decision have approved the amendment of the Epidemic Diseases Act 1897 thereby making the offence cognizable and non bailable with punishment of imprisonment upto 7 years for attack against Doctors and frontline personnel. The Petitioner produces herewith the then prevailing Epidemic Diseases Act 1897 as per Annexure 'C' and the news paper report about the Ordinance reported in Time of India dated 23-04-2020 as per Annexure 'D'.

4.The Petitioner respectfully submits that when the Ordinance of the Central Government is sent for assent to the President of India, the Karnataka Government passed similar Ordinance called The Karnataka Epidemic Diseases Ordinance, 2020 vide Notification issued by the 2nd Respondent in the Karnataka Gazette dated 22-04-2020 as per Annexure 'E'. The Petitioner respectfully submits that the State of Karnataka contrary to the Ordinance already approved by the Union India by issuing the

above ordinance has diluted the very purpose of the ordinance making the offence Section 9 of the ordinance to be Cognizable and Bailable. The Petitioner respectfully submits that by virtue of the above Ordinance as per Annexure 'E' the accused persons of the offence are entitled to be enlarged on bail for the serious offences being committed by them against the Doctors, Health Workers.

5.The Petitioner therefore respectfully submits that the Ordinance promulgated by the State of Karnataka as per Annexure 'E' in so far as it provides for Bail and lesser sentence of imprisonment is liable to be struck down and that the Ordinance of the Central Government which receives the assent of the President of India should alone be enforced in the entire State of Karnataka.

6.The Petitioner submits that the present writ petition is filed as there is no efficacious and alternate remedy, the Public Interest Litigation Writ Petition is filed under Articles 226 and 227 of the Constitution of India. There is no personal interest involved in the matter.

7.The Petitioner has not filed any other Petition or petitions on the same cause of action and no other Petition/Suits are pending against the same cause of action at the instance of the Petitioner in any other court.

8.The Petitioner seeks leave of this Hon'ble Court for payment of Court Fee of Rs.100/- as per the provisions of the Karnataka Court Fees and Suits Valuation Act on reopening of the normal Court.

GROUND

9.It is respectfully submitted that in the Karnataka State more number of patients are tested positive and as on dated it touched 443 numbers.

10.It is respectfully submitted that Doctors, Health Officers of BBMP, ASHA(The Accredited Social Health Activists) Workers are doing their jobs like warriors to detect the patients who are affected with the Corona Virus-COVID-19.

11.It is respectfully submitted that the above persons are the frontline personnel to assist the Doctors and prone to attack by the anti social elements.

12.It is respectfully submitted that the Ordinance as it is brought out by the State of Karnataka as per Annexure 'E' does not instill confidence among the health workers as the offence is Cognizable and bailable as per Section 9 of the Ordinance.

13.It is respectfully submitted that even the punishment for the offence under Section 5 of the State of Karnataka Ordinance for obstruction of Public Servant is upto 3 years and with a fine upto Rs.50,000/- whereas the proposed Central Government Ordinance is imprisonment upto 7 years and fine upto Rs.7 lakhs.

14.It is respectfully submitted that the Article 73 provides for Extent of executive power of the Union which shall extend to the matters with respect to which Parliament has power to make laws.

15.It is respectfully submitted that as per List III-Concurrent List Sl.No.29 provides for prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants and the present Ordinance under the Epidemic Diseases Act 1897 will be the prerogative of the Central Government and that the State of Karnataka cannot dilute the same by providing lessor punishment and fine amount and making the offence cognizable and bailable as per Annexure 'E'.

16.It is respectfully submitted that as per Article 256 of the Constitution of India provides for –Obligation of States and the Union i.e the Executive Power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply to that State, and the executive power of the Union shall

extend to the giving effect of such directions to a State as may appear to the Government of India to be necessary for that purpose.

17.It is respectfully submitted that the Karnataka State knowing fully well the Union of India a bringing out stringent Ordinance in relation to the acts of violence against Doctors and frontline personnel should have waited for the Central Government Ordinance to be given assent by the President of India.

PRAYER

18.The Petitioner therefore prays that this Hon'ble Court be pleased to:

(a) Issue a Writ of Certiorari or Direction to the 1st and 2nd Respondent to prevail upon the Ordinance being promulgated by the Union of India by way of amendment to Epidemic Diseases Act 1897 and so far in relation to offences as per Section 9 of The Karnataka Epidemic Diseases Ordinance, 2020 dated 22-04-2020 as per Annexure 'E' which is made as cognizable and bailable, being contrary to the Ordinance made by the Union of India ;

(b) Pass such other or orders as this Hon'ble Court may deem fit in the fact and circumstances of the case in the interest of justice and equity.

Bangalore

Date:23-04-2020

Petitioner Party in Person

ADDRESS FOR SERVICE

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

WRIT PETITION NO. OF 2020 (GM-RES)PIL

BETWEEN

Sri G.R.Mohan
AND

Petitioner

State of Karnataka and another

Respondents

SYNOPSIS

LIST OF DATES AND BRIEF FACTS

24-03-2020 The Petitioner respectfully submits that the Union of India Ministry of Home Affairs had issued guidelines to all the States due to spread of epidemic COVID-19 vide Order No.40-3/2020-DM-I(A) dated 24-03-2020 as per Annexure 'A' by virtue of it the entire country were ordered to be under lock down for 21 days with few exceptions as per Cause No.2 (a) Police, home guards, civil defence, fire and emergency services, disaster management and prisons, as per Clause No.3 hospital and related medical establishments.

15-04-2020 The Petitioner respectfully submits that thereafter in view of the prevailing situation about the more number of patients tested positive the lock down was extended upto 03-05-2020 the Union of India Ministry of Home Affairs had issued revised guidelines to all the States and Union Territories Vide Order No.40-3/2020-DM-I(A) dated 15-04-2020 as per Annexure 'B' wherein Select permitted activities allowed with effect from 20-05-2020.

19-04-2020 The Petitioner respectfully submits that during the lock down period when the Health Workers, Doctors and others including police personnel who are trying to identify the persons affected with CARONA VIRUS (FCOVID-19) were attacked for no reasons and several of them have sustained injuries and several properties were also destroyed by the anti social elements. The Petitioner respectfully one such incidence that had happened in Bengaluru BBMP Limit is in Padarayanapura BBMP Ward

wherein more than 150 people gathered in groups on the night of 19-04-2020 when the BBMP Health Officials, Health Workers and Police who had gone to the area to take some of the patients to be put under Quarantine were attacked with weapons, sticks etc and also removed the barricades, check posts and pendals. The Petitioner submits that in the absence of any armed police personnel those goonda elements took advantage of the same, however the jurisdictional Police JJ Nagar Police Station have registered cases against those persons under various IPC Offences in Crime No.70 to 64 of 2020 and arrested more than 100 persons and were remanded to Judicial Custody by the Jurisdictional Court.

22-04-2020 The Petitioner respectfully submits that when the Ordinance of the Central Government is sent for assent to the President of India, the Karnataka Government passed similar Ordinance called The Karnataka Epidemic Diseases Ordinance, 2020 vide Notification issued by the 2nd Respondent in the Karnataka Gazette dated 22-04-2020 as per Annexure 'E'. The Petitioner respectfully submits that the State of Karnataka contrary to the Ordinance already approved by the Union India by issuing the above ordinance has diluted the very purpose of the ordinance making the offence under Section 9 of the ordinance to be Cognizable and Bailable. The Petitioner respectfully submits that by virtue of the above Ordinance as per Annexure 'E' the accused persons of the offence are entitled to be enlarged on bail for the serious offences being committed by them against the Doctors, Health Workers.

23-04-2020 The Petitioner respectfully submits that Union of India through Cabinet Decision have approved the amendment of the Epidemic Diseases Act 1897 thereby making the offence cognizable and non bailable with punishment of imprisonment upto 7 years for attack against Doctors and frontline personnel. The Petitioner produces herewith the then prevailing Epidemic Diseases Act 1897 as per Annexure 'C' and the news paper report about the Ordinance reported in Time of India dated 23-04-2020 as per Annexure 'D'.

Bangalore

Date:23-04-2020

Petitioner Party in Person

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WRIT PETITION NO. OF 2020 (GM-RES)PIL

BETWEEN

Sri G.R.Mohan
AND

Petitioner

State of Karnataka and another

Respondents

VERIFYING AFFIDAVIT

1. I am the Petitioner in the above case and I am well acquainted with the facts of the case. I am Competent to swear to this Affidavit.
2. I state that the statements made in paragraphs 1 to 18 of the Writ Petition accompanying this affidavit are true to the best of my knowledge, information and belief and I believe them to be true.
3. I state that the annexure 'A' and 'E' are true copies of their originals.

Deponent

VERIFICATION

I Sri G.R.Mohan the Petitioner Party in person do hereby verify that what is stated in Paragraphs 1 to 18 of the Writ Petition are true to the best of my knowledge, information and belief and are correct and no material facts are withheld by in the above Petition.

Deponent

Place :Bangalore
Date:
No.of corr:

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

WRIT PETITION NO. OF 2020 (GM-RES)PIL

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Sri G.R.Mohan
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Petitioner

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| 7. | Annexure 'D' Times of India Publication on Central Ordinance | |
| 8. | Annexure 'E' The Karnataka Epidemic Diseases Ordinance 2020 | |
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Bangalore

Date:23-04-2020

Petitioner Party in Persons

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

WRIT PETITION NO. OF 2020 (GM-RES)PIL

BETWEEN

Sri G.R.Mohan
AND

Petitioner

State of Karnataka and another

Respondents

MEMO FOR POSTING

The Petitioner prays that this Hon'ble Court be pleased to post the above matter for Preliminary Hearing on 28-04-2020 in view of the urgency in the matter and as permitted by this Hon'ble Court through email reply.

Bengaluru

Date:23-04-2020

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Petitioner Party in Person