

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (PIL) No.1303 of 2020

Ram Subhag Singh Petitioner

Versus

The State of Jharkhand and others Respondents

W.P. (PIL) No.1306 of 2020

Roushan Kumar Petitioner

Versus

The Union of India and others Respondents

W.P. (PIL) No.1309 of 2020

Vikash Kumar Dubey Petitioner

Versus

The State of Jharkhand and others Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioners: M/s. Petitioners In Person, Sumeet
Gadodia, Sonal Tiwary, Advocates

For the Respondents: M/s. Rajiv Ranjan (A.G.), Rajiv Sinha
(A.S.G.I.), Rajesh Krishna, Prashant
Kumar Sinha, Advocates

Oral Order

Per Dr. Ravi Ranjan, C.J.

03/Dated: 27.04.2020

The writ petitions are for issuance of a direction upon the State Government to disburse a fund of Rs.50.00 Crores forthwith to meet the financial aid to the practicing Advocates within the territorial jurisdiction of this Court as also to the registered Advocates' Clerks of various Courts in the State of Jharkhand.

On the very first day of hearing, i.e., on 27.04.2020, this Court has put a question upon the petitioner in person as to what is the legal vested right to seek a command upon the State Government to provide a fund of Rs.50.00 Crores by way of

financial aid to the members of the Bar and their Advocates' Clerks. Mr. Ram Subhag Singh, the petitioner in person, failed to answer the said question, rather he has submitted that there is no legal vested right for seeking a command from this Court in exercise of powers conferred under Section 226 of the Constitution of India directing the State Government to provide a fund of Rs.50.00 Crores by way of financial aid to the members of the Bar and their Clerks.

This Court, after hearing the parties on 22.04.2020, had passed an order directing the stakeholders, namely, the Bar Council of India, the State Bar Council, the Chairman of the Advocates' Welfare Fund Trust Committee as also the learned Advocate General appearing for the State of Jharkhand to file its response to the averments made in the writ petitions.

Further, for one of the issues raised in another writ petition being W.P. (PIL) No.1309 of 2020 pertaining to the aid to be provided to the Advocates' Clerks it has been informed by learned counsel for the petitioners that in pursuance of the order passed by Division Bench of this Court in W.P. (PIL) No.3347 of 2020 dated 10.05.2020, the Jharkhand Advocates' Clerks Welfare Fund Act has been notified.

In pursuance of the aforesaid order, affidavits have been filed by the respective parties which have been exchanged in between the parties.

The Bar Council of India has taken a stand in its affidavit that letters have been written to the Hon'ble Prime Minister of India and all the Hon'ble Chief Ministers of the country to

consider the seriousness of the matter and to extend appropriate assistance to the Advocates through the local Bar Associations and the State Bar Councils, but no Government has responded to the letters. The Bar Council of India has given details of its sources of revenue from which Rs.45.00 Lacs out of the total corpus of Advocates' Welfare Fund of the Bar Council of India for the State of Jharkhand to the needy Advocates of the Jharkhand State Bar Council and the Council has been decided to be transferred and the Council will take further decision if needed in future.

The Jharkhand State Bar Council has also filed affidavit expressing their limited mean, however, it has been stated that Rs.50.00 Lacs have been earmarked to meet out the exigencies during the period of COVID-19. It has been stated that an Advocate Welfare Fund Trustee Committee has been enacted known as 'The Jharkhand Advocates' Welfare Fund Act, 2012' which has been notified on 4th February, 2013. The total income received during financial year 2019-20 (till March, 2020) is Rs.4.6 Crores (approx) and against the total expense of Rs.5.30 Crores (approx) and as such, according to the affidavit filed on behalf of the Advocates' Welfare Fund Trustee Committee, there is a difference of Rs.70.00 Lacs, but as would appear from the stand taken at paragraph 9 of the affidavit that the Trustee Committee in view of current emergent situation is taking steps for payment of sale of welfare stamp and has written letters to the Treasury Officers of all the districts for transferring the amount at the earliest.

It is further evident from the statement made at paragraph 6 to the affidavit filed on behalf of the Advocates' Welfare Fund Trustee Committee that the Advocate General-cum-Chairman of the Trustee Committee has directed to call upon an emergent meeting of the Trustee Committee to work out a possible suitable method/scheme/modalities in view of the prevalent condition of national lockdown causing great hardships to the needy Advocates without adversely affecting any of the welfare schemes as the issue being a policy decision, can only be decided in the meeting of the Trustee Committee.

So far as the Advocates' Clerks Fund Act is concerned, it has been apprised to this Court by way of an affidavit filed on behalf of the learned Advocate General that 'The Jharkhand Advocates' Clerks Fund Act, 2018' was enacted on 7th December, 2018 in the entire State. The said Act has been notified to be effective from 24th April, 2020.

This Court, on deliberation of the issues, has gathered from the argument advanced on behalf of learned counsel for the stakeholders more particularly the fair stand taken by learned Advocate General-cum-Chairman of the Trustee Committee at paragraph 6 to the affidavit filed on behalf of Advocates Welfare Fund Trustee Committee, referring therein for calling upon an emergent meeting of Trustee Committee within a week. The meeting of Trustee Committee would be convened and a decision would be taken considering the interest of the members of the Bar.

So far as enactment of the Jharkhand Advocates' Clerks

Fund Act, 2018 is concerned, Mr. Rajendra Krishna, learned Chairman, Jharkhand State Bar Council has submitted that although the Act has been notified to be effective from 24th April, 2020 but in order to implement the various provisions of the Act, a Rule/Regulation is to be formulated for nomination of the members of Advocates' Clerks and the Secretary. He submits that as per the provisions made in the Jharkhand Advocates' Clerks Fund Act, 2018, the members from amongst the Advocates' Clerks are to be nominated by the authority prescribed under law. He further submits that the word "prescribed" has been defined under Section 2(m) of the Act which suggests that the authority is to be given power under the Rule framed under the Act and specific provision has been made under Section 25(1) conferring power upon the Government to come out with a notification framing a Rule subject to its approval by the Assembly in the Sessions as provided under sub-section (2) of Section 25 of the Act. His submission, therefore, is that so long as the State Government does not come out with a Rule in terms of the provision of Section 25(1) of the Act, the provision of Jharkhand Advocates' Clerks Fund Act, 2018 would not be implemented.

Upon this, learned Advocate General has submitted that he will take sincere efforts for coming out with a notification containing a Rule for implementation of the Jharkhand Advocates' Clerks Fund Act, 2018 so that at this emergent situation, the Advocates' Clerks may also be given financial aid for their subsistence.

This Court after considering the aforesaid submissions as also the stand of the learned Advocate General for calling upon an emergent meeting of the Trustee Committee and the assurance to come out with a notification containing the Rule for proper implementation of Jharkhand Advocates' Clerks Fund Act, 2018, deem it fit and proper to adjourn the matter.

Accordingly, let this matter be listed on 7th May, 2020.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Manoj/