IN THE HIGH COURT OF KARNATAKA AT BANGALORE

WP No. 6435 of 2020 & connected matters

BETWEEN:

Mohammed Arif Jameel **..PETITIONER**

A N D:

Union of India & Ors ..**RESPONDENTS**

WRITTEN SUBMISSIONS FILED BY STATE OF KARNATAKA ON MAY 21, 2020

1. The State is making its submissions with respect to its decision (policy as it is) which is to pay for the travel of migrants who are returning to the State of Karnataka. The State is collecting the travel fare fixed by the Railways for those persons who are travelling out of Karnataka to other States and remitting the same to the Railways as instructed by the Circular dated 02.05.2020 issued by the Government of India, Ministry of Railways. The contentions that are urged by the various parties is that the State is acting in a discriminatory manner and that the action violates Articles 14, 15, 19(1) (d), and 21 of the Constitution of India. This Hon'ble Court has also expressed its prima facie views in this matter in two orders that have now been passed. This Hon'ble Court was also pleased to allow time for the State to make its submissions in the matter.

Memo of Central Government dated 16.05.2020.

2. It is respectfully submitted that the submissions of the Central Government, as contained in the Memo dated 16.05.2020, requires to be examined. The Memo is a mere paraphrasing of the Circular of

the Railways, which provides for the mechanism that is followed by all States throughout India. The payment is no doubt to be made by the originating State Government, as is stated in the Memo. That does not mean that the State Government has to make payment out of its own funds. The fare is collected from the migrants and then paid to the Railways. This is only a mechanism to ensure that the Railways does not have to take the trouble of collecting the fare from each migrant. In none of the circulars or in the instructions received from the Central Government is there any indication that the State Government must first make payment and after making payment has to then collect it from the other State which receives the migrants. This is incorrect on its own showing as the Karnataka Government has been making payment for migrants returning to Karnataka to the Railways without the aid of other originating State Governments. The additional fact which militates against this submission of the Central Government is that several other State Governments have been making payment for migrants returning to their States from Karnataka and not for migrants moving away from their States. This shows that the stand of the Central Government is not that the originating State must first pay and then collect it from the other State Government.

3. The following are the legal submissions on this issue:

4. In the respectful submission of the State of Karnataka, there is nothing erroneous or illegal in the State limiting the expenditure only to those migrants who are returning to the State of Karnataka. There is no violation of any right to equality or the right to life. Article 19(1)(d) is a freedom guaranteed to citizens to move freely throughout

the territory of India. No restriction is imposed on this freedom, other than that which has been imposed by the MHA Guidelines.

5. There is no constitutional or statutory obligation on the State to provide free transport or to bear cost of transport to all persons within the State. Article 19(1)(d) only requires the State to ensure that a citizen has the freedom to "move freely throughout the territory of India". This right is not an absolute right, and is subject to restrictions that may be imposed in public interest. Those restrictions are contained in the guidelines of the Ministry of Home Affairs with respect to migrant and stranded persons' travel.

6. Every travel plan for a migrant is subject to the recipient state consenting and there being availability of trains. The State of Karnataka, as has been pointed out in earlier submissions has taken every step possible to ensure that the maximum number of persons can travel. The State has interacted with nodal officers of various States to ensure that the travel is seamless. The Police has, in conjunction with the Nodal Officer and various departments of the Government, taken every step to ensure that the migrants can travel to their respective State.

7. Several States have come forward, just as the State of Karnataka, to provide the cost of travel to migrants returning to their respective States. This is a decision which has been uniformly taken by all States. Such a decision taken by States uniformly ensures that there is proper distribution of cost amongst all States so that each State can then assess and pay for persons who wish to return to their respective families who live in such State. There is nothing incongruous with such a decision. If all States take a decision that the cost of travel of people returning to their respective States will be

borne by such State, the incongruity, if at all will be completely eliminated. However, this is a decision that has to be taken by each State taking into consideration various factors, including the cost that may be incurred in that regard. Each State treats migrants who are returning to their States as a class of migrant population. There is intelligible differentia in those who have migrated into the State and those who have migrated out of the State.

8. The suggestion that Article 15 is violated is also not correct given the fact that there is no discrimination on the basis of "place of birth". The simple principle adopted is of those who wish to return to Karnataka and those who wish to go out of Karnataka. For that matter, if a Kannadiga/person born in Karnataka wishes to go out of Karnataka to any other State being a resident of that State, he is not paid the train fare. However, if a person born in Punjab, who is a resident of Karnataka, wishes to come back to Karnataka, his fare is paid to enable him to return to Karnataka. There is, therefore, no regional discrimination, as is sought to be argued. There is no issue of "place of birth" either. Nobody is questioning or determining anybody's place of birth and, therefore, there is no violation of Article 15 of the Constitution of India.

9. The contention of the applicant that the State of Karnataka must bear the cost of travel of all migrants leaving Karnataka is without any basis. To state that simply because the State has agreed to bear the cost of migrants who are coming into Karnataka, the State must also bear the cost of those migrants leaving Karnataka and that such action would be discriminatory or would be violative of Article 14, 15, 19, or 21 is not correct. The act of making payment towards the cost of travel for migrants returning to Karnataka is a gratuitous act and

is made ex-gratia. There is no right vested in any person to claim that such payment should be made to all migrants. If such a gratuitous act is subsequently withdrawn, no complaint can be made even by migrants returning to Karnataka that some others have received the benefit. To, therefore claim, as has been done by the applicant that there is discrimination is without any foundation.

No legal right to payment for travel / for free travel.

10. To espouse an argument on discrimination, it is necessary that every such citizen must have a legal right - a legal right to receive payment for travel even during these trying times. In the absence of any legal right, the question of there being an unequal protection of laws or there being any discrimination is without any foundation.

11. In the case of State of Rajasthan v. Sanyam Lodha, (2011) 13 SCC 262, the Supreme Court was considering certain discretionary payments made from the Chief Ministers Relief Fund to rape victims. There was a huge disparity in payments and the High Court of Rajasthan had directed that there should be parity in making payment given the fact that all those persons are rape victims and therefore one class of people. The finding of the High Court was that disbursement of funds should be equitable, non-discriminatory and non-arbitrary. This was challenged before the Supreme Court. One of the questions framed by the Supreme Court was as follows:

> *"Whether the Court was justified in holding that all victims should be treated equally while granting relief under the Chief Minister's relief fund?"*

12. The Supreme Court held as follows:

15. The Relief Fund Rules do not create any right in any victim to demand or claim monetary relief under the fund. Nor do the Rules provide any scheme for grant of compensation to victims of rape or other unfortunate circumstances. Having regard to the nature and scheme of the Relief Fund and the purposes for which the Relief Fund is intended, it may not be possible to provide relief from the Relief Fund, for all the affected persons of a particular category. Monetary relief under the Relief Fund Rules may be granted or restricted in exceptional cases where the victims of offences, have been subjected to shocking trauma and cruelty. Naturally any public outcry or media focus may lead to identifying or choosing the victim, for the purpose of grant of relief. Other victims who are not chosen will have to take recourse to the ordinary remedies available in law. It is not possible to hold that if one victim of a particular category is given a particular monetary relief under the Relief Fund Rules, every victim in that category should be granted relief or that all victims should be granted identical relief.

16. The need to treat equally and the need to avoid discrimination arise where the claimants/beneficiaries have a legal right to claim relief and the government or authority has a corresponding legal obligation. But that is also subject to the principles relating to reasonable classification. But where the payment is ex-gratia, by way of discretionary relief, grant of relief may depend upon several circumstances. The authority vested with the discretion may take note of any of the several relevant factors, including the age of the victim, the shocking or gruesome nature of the incident or accident or calamity, the serious nature of the injury or resultant trauma, the need for immediate relief, the precarious financial condition of the family, the expenditure for any treatment and rehabilitation, for the

purpose of extension of monetary relief. The availability of sufficient funds, the need to allocate the fund for other purposes may also play a relevant role. The authority at his discretion, may or may not grant any relief at all under Relief Fund Rules, depending upon the facts and circumstance of the case.

…

19. A Constitution Bench of this Court in B.P. Singhal v. Union of India (2010) 6 SCC 331 while explaining the nature of judicial review of discretionary functions of persons holding high offices held that such authority entrusted with the discretion need not disclose or inform the cause for exercise of the discretion, but it is imperative that some cause must exist, as otherwise the authority entrusted with the discretion may act arbitrarily, whimsically or mala fide. Elucidating the said principle this Court observed:

"The extent and depth of judicial review will depend upon and vary with reference to the matter under review. As observed by Lord Steyn in ex parte Daly [2001 (3) All ER 433], in law, context is everything, and intensity of review will depend on the subject-matter of review. For example, judicial review is permissible in regard to administrative action, legislations and constitutional amendments. But the extent or scope of judicial review for one will be different from the scope of judicial review for other. Mala fides may be a ground for judicial review of administrative action but is not a ground for judicial review of legislations or constitutional amendments."

20. Whenever the discretion is exercised for making a payment from out of the Relief Fund, the Court will assume that it was done in public interest and for public good, for just and proper reasons. Consequently, where anyone challenges the exercise of the

discretion, he should establish prima facie that the exercise of discretion was arbitrary, mala fide or by way of nepotism to favour undeserving candidates with ulterior motives. Where such a prima facie case is made out, the Court may require the authority to produce material to satisfy itself that the discretion has been used for good and valid reasons, depending upon the facts and circumstances of the case. But in general, the discretion will not be open to question."

13. In matters involving discretion and in the absence of a legal or constitutional right to demand payment for travel to their native State, the question of the Court exercising its jurisdiction under Article 226 to direct State to make payment towards migrants may not be, in the humble submission of the State, entirely appropriate. This discretion is exercised by the Government and this is with respect to a finite set of persons who originate from the State of Karnataka and intend to return to the State from various parts to their families. The cause which receives such support is also just and fair. It helps persons to return to their families in the State. The mere fact that the State has decided to give some support to those persons does not axiomatically result in discrimination if certain persons differently placed are not provided the same benefit. The freedom to travel and the failure on the part of any particular State to refuse to bear the cost of travel does not result in there being a violation of the right to life or personal liberty under Article 21 of the Constitution of India. If there exists such a fundamental right to travel during times of disaster, then there has to be a uniform policy throughout the country, which entitles persons to free travel at the cost of the State, be it the Centre or the State Government. In the respectful submission of the State, there is no such right guaranteed under the

Constitution. There being no such right, there is no corresponding obligation of the State in this regard.

14. It is further submitted that the right to food, as a principle and the right of the migrants to food and shelter within the State, is a matter which is very different from the right of the migrants to be paid for travel outside the State. So long as they are within the State, in a federal structure, the State is duty bound to take care of their food and shelter in times of crisis. However, if they do leave the State and move to any other State, the obligation is then of that particular State to take care of the said persons. Given this situation, in the respectful submission of the State, it has catered to the food and other needs of the migrant population almost entirely and cannot now be saddled with the additional cost of having to pay for the travel of such migrants. So long as the migrants are within the State and the present crisis continues, the State will continue to take care of the interests of the migrants, and every effort will be made to ensure that they find vocation within the State. If the migrants wish to leave the State, the State will also not impose any restrictions for such travel. It is submitted that the State at this point of time cannot bear the cost of travel of the migrants.

Supreme Court has rejected such identical prayers twice.

15. The Supreme recently considered a similar request at an all India level. In Alakh Alok Srivastava v. Union of India, WP (C) No. 468/2020, the Supreme Court rejected an application seeking free travel for migrants throughout the country. It is clear from the order itself that the dismissal is on merits, although not by a speaking order. The Petitioner was heard, and the application was dismissed. A copy of the application filed before the Supreme Court is produced

herewith as **Annexure R-107** and the order of the Supreme Court dated 15.05.2020 is produced herewith as **Annexure R-108**.

16. It is submitted that a dismissal of such an application would necessarily act as a bar on other Courts throughout the country considering a similar application or petition. When the Supreme Court has found it fit to dismiss an application of this nature, it would be in the order of things that the High Courts also not entertain such an application.

17. In addition, the Supreme Court in an earlier order in Jagdeep S. Chhokar v. Union of India, WP (C) Diary No. 10947/2020, a copy of which is produced herewith as **Annexure R-109** (this order is extracted in the earlier order of this Hon'ble Court), it is clearly held as follows:

> *"…. Necessary modalities for such transportation has to be implemented by the concerned State / Union territories in collaboration with the Railways. Insofar as charging of 15% of Railway Tickets amount from workers, it is not for this Court to issue any order Article 32 regarding the same, it is the concerned State /Railways to take necessary steps under the relevant guidelines".*

18. It is clear from this order that the question of how much fare and who should bear the fare was also central to the consideration by the Supreme Court. However, the Supreme Court refused to pass any direction and left it to the States to take an appropriate decision. The Supreme Court having refused to interfere with the issue of fare and who should bear the fare, it is respectfully submitted that this Hon'ble Court may not go into examination of this question. This

order of the Supreme Court, in the submission of the State, would bar, by the principle of res judicata, this Hon'ble Court from examining the same issue.

19. On the issue of whether such an order/s would amount to res judicata, the Supreme Court has considered this issue in various judgments.

20. In Daryao v. State of Uttar Pradesh, AIR 1961 SC 1457, the Constitution Bench of the Supreme Court considered the question as to whether dismissal of a petition by a High Court would bar a writ petition before the Supreme Court. The Court also considered the issue as to what happens if there is a dismissal *in limine* on merits and not on any technical grounds. The Supreme Court held as follows:

> *"19. We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Art. 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Art. 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Art. 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art. 32 except in cases where and if*

the facts thus found by the High Court may themselves be relevant even under Art. 32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Art. 32." (Emphasis supplied)

21. It is submitted that both the judgments of the Supreme Court as referred to above were on merits of the matter and the hearings as has been reported in various online websites were on merits. The matters were heard and an order passed rejecting the request. Given the fact that the Supreme Court has specifically held that it is for the States to decide and a subsequent prayer to provide for free travel was specifically rejected by the Supreme Court by dismissal of the application, it is not open for the Applicants to make a similar prayer in this regard before this Hon'ble Court.

22. In Bar Council of India v. Union of India, (2012) 8 SCC 243, on this issue, the Supreme Court held as follows:

> *"In B. Prabhakar Rao, O. Chinnappa Reddy ,J. did observe in para 22 that the dismissal in limine of a writ petition cannot possibly bar the subsequent writ petitions but at the same time he also observed that such a dismissal in limine may inhibit the discretion of the Court. V. Khalid, J. in his supplementing judgment in para 27(6) exposited the position that normally this Court would be disinclined to entertain or to hear petitions raising identical points again where on an earlier occasion, the matter was heard and dismissed. Not that this Court had no jurisdiction to entertain such matters but would normally exercise its discretion against it. We are in complete agreement with the above view of V. Khalid, J. It is against public policy and well-defined principles of judicial discretion to entertain or hear petitions relating to same subject matter where the matter was heard and dismissed on an earlier occasion."*

23. It is, therefore, submitted that given the two orders of the Supreme Court, one where the Supreme Court left it to the discretion of the States to determine the manner in which the fare should be paid, and second the rejection of a subsequent application with respect to the issue of free travel to migrants, the same issue being determined by this Court de novo may be barred.

24. It is further submitted that it is well settled that any order passed in a public interest litigation is an order in rem and binds non-parties as well.

25. Viewed from any angle, it is submitted that there is no merit in the prayers made by the Applicants that the cost of train /travel fare

of the migrants must be borne by the State Government, and it is prayed that the same may accordingly be rejected.

Transport by Buses and Trains.

26. It is submitted that 670 buses have been plied on an interstate basis from the State of Karnataka, and 18,156 migrant workers have been transported to various States. A breakup of the number of buses and the State to which persons have been transported is filed herewith and marked as **Annexure R-110**.

27. In addition, till 20.05.2020, 100 shramik special trains, carrying about 1,40,473 migrants have departed from various stations in the State of Karnataka. A breakup of the number of trains, the originating stations, and the destinations is filed herewith and marked as **Annexure R-111**.

28. It is further submitted that the Ministry of Home Affairs, Government of India, has, on 19.05.2020, issued a revised Standard Operating Procedure for movement of stranded workers by trains, in supersession of its earlier order dated 01.05.2020. A copy of the Revised SOP dated 19.05.2020 is filed herewith and marked as **Annexure R-112**. It is submitted that the revised SOP is marked shift from the earlier SOP, and it states, inter alia, that the scheduling of trains and the arrangements with States for booking of tickets shall be finalized by the Ministry of Railways, Therefore, the onus of scheduling trains and booking of tickets that was earlier cast on the States has now been taken over by the Ministry of Railways, UOI.

Number of Persons Registered to Depart the State.

29. It is submitted that, till date, around 4.88 lakh persons have registered on the portal to go to their home states via trains. As submitted earlier, around 1.4 lakh persons have already been transported by trains, and the remaining 3.48 lakh persons will be transported in due course, as per the scheduling of trains to be drawn up by the Ministry of Railways.

BANGALORE
DATED: 21.05.2020

Sd/-
(VIKRAM HUILGOL)
ADDL.GOVT.ADVOCATE