

IN THE HON'BLE HIGH COURT OF KARNATAKA
AT BENGALURU
(Original Jurisdiction)

Writ Petition No. _____ /2020 (PIL)

Between:

Sri. MARUTHI H

..Petitioner

And:

STATE OF KARNATAKA,

Represented by under Secretary to the Government,
Labour Department
Vidhana Soudha,
Bengaluru – 560001.

..Respondent

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

The Petitioner herein respectfully submits as follows: -

1. The address of the Petitioners for the purpose of service of summons, notice, etc. from this Hon'ble Court is as stated in the cause title and that of their Counsels, Basawa Prasad Kunale and Hemanth Rao having their office at No.14, S.K Prerna, 2nd Floor, Nagappa Road, Sheshadaripuram, Bengaluru-560020 .The addresses of the Respondent for the same purpose is as stated in the cause title.
2. The Petitioner has filed this Writ Petition being aggrieved by the Notification dated 22.05.2020 bearing no. KAE 33 KABANI 2020 ("**impugned Notification**") issued by the Respondent exempting all factories from Section 51 and Section 54 of the

Factories Act, 1948 (“**the Act**”). The true copy of the impugned Notification is produced herewith as **Annexure - A.**

3. The Petitioner is a social and RTI rights activist who has been involved in various issues in the form of submitting representations, negotiation with the Government agencies and publishing books and articles on the status of Dalits in Karnataka, better facilities to the students in Government aided universities, better working conditions for migrant construction workers and powrakarimaks. He has published several books on social issues in Kannada including “ಸ್ವಾಭಿಮಾನಿ ಡಾ.ಬಿ.ಆರ್. ಅಂಬೇಡ್ಕರ್” and “ಸುಸ್ಥಿರ ಭಾರತ ಅಸ್ಥಿರ ಬದುಕು”. The Petitioner is presently perusing Phd doctorate at Bangalore University on the topic “Impact of Social Boyoctt on Dalits in State of Karnataka an analysis from the year 1955-2017”. Further, he has also initiated other public interest litigations including WP No. 6435/2020 regarding procurement of 10,000 ventilators, 5 Lakh Personal Protective Equipments and 10 Lakh masks, pending before this Hon'ble Court.

4. The Petitioner has no personal interest in the litigation and there is no motive other than that of public interest in filing the captioned Writ Petition. Pertinently, it has been filed for the welfare of workers who are affected by the impugned Notification issued by the Respondent and are unable to approach this Hon'ble Court.

Factual Background:

5. On 24.03.2020, the Central Government declared a nationwide lockdown due to the COVID-19 pandemic. In compliance with the Central Government's directive, all factories within the State of Karnataka were abruptly closed, leaving the workers in the lurch. Even though the Ministry of Home Affairs has issued a Notification dated 29.03.2020 directing employers to pay full wages to the workers, the Supreme Court has

passed an interim order¹ directing the Union Government not to take any “coercive action”. The true copy of MHA Notification dated 29.03.2020 is herewith produced as

ANNEXURE - B.

6. Due to the aforementioned reasons, most of the employers/factory owners have failed to pay full wages of the workers till today, putting the workers in precarious position. Thus, the lockdown declared by the Central Government has had a huge impact on the workers, in the formal as well as in informal sector, leading to lay-offs and non-payment of wages. Further, many migrant workers were stranded in Karnataka without any ration, food and wages, forcing them to walk back to their homes in other States across the country including Uttar Pradesh, Bihar, West Bengal etc.

7. While the workers are still suffering from the impact of lockdown, the Respondent State acting on the representation of Industrial bodies which requested for relaxation of labour laws², has issued the impugned Notification. The true copy of the News Report dated 17.04.2020 published in Economic Times is herewith produced at

ANNEXURE - C.

8. The Petitioner has no other alternative or efficacious remedy than approaching this Hon'ble Court. The Petitioner has not initiated any other legal proceedings on the same cause of action. Hence, the Petitioner has preferred this Writ Petition under Article 226 of the Indian Constitution on the following among other grounds:

¹ Order dated 15.05.2020 passed in *Hand Tools Manufacturers Association v. Union Of India & Ors*, WP No (Civil) Diary No(s). 11193/2020, Supreme Court of India

² <https://economictimes.indiatimes.com/news/economy/policy/industry-body-asks-karnataka-government-to-relax-rules-on-layoffs-wages/articleshow/75194544.cms>

GROUND:

9. The impugned Notification is liable to be quashed as it is illegal, arbitrary and in violation of the constitutional and statutory safeguards provided to workers.

10. **The impugned Notification is in violation of Section 5 of the Act:**

10.1. The impugned Notification has been issued in violation of Section 5 of the Act as the said provision only permits relaxation in case of “Public Emergencies”. The explanation to Section 5 stipulates “public emergency” to be instances of grave emergency where:

- a. security of India is threatened
- b. by war or external aggression or internal disturbance.

10.2 The COVID-19 pandemic is a public health emergency and does not come within the ambit of any ‘war/external aggression/internal disturbance’. Both the Central and State Governments have ample power to address such a public health pandemic under the Epidemic Diseases Act, 1897 and Disaster Management Act, 2005 provide for health emergencies.

11. **In the event of ambiguity, an interpretation which is beneficial to the workers has to be adopted:**

11.1 It is a settled position of law that if two interpretations are possible of welfare legislation, an interpretation which is beneficial to the beneficiary has to be adopted as held by the Supreme Court in *Alembic Chemical Works v. Workmen*, AIR 1961 SC 647.³

11.2 In the instant case, the objective of the Act being welfare and for the social benefits of the workers, words “public emergency” in Section 5 have been used to

³ Alembic Chemical Works v. Workmen, AIR 1961 SC 647.

provide for instances where the government has to increase production in times of war requiring workers and does not cover instances of a public health emergency.

12. **In arguendo, there is no rational nexus between the pandemic and the Notification:**

12.1 Even assuming that the COVID-19 pandemic falls within the definition of “public emergencies”. The impugned Notification has been issued in order to mitigate the economic losses suffered by the Factories and not to handle the “public emergency”. On the other hand, by permitting workers to work for a longer time, the COVID-19 pandemic may spread.

12.2 **Emergency powers cannot be used for economic purposes:**

The Respondent has eased the lockdown substantially and there is no “public emergency” as on the date of issuing the Notification. The Notification only intends to deals with the economic repercussions of the Lockdown and not any “*public emergency*”. Thus, the impugned notification has been issued in violation of Section 5 of the Act.

12.3 The Government of Rajasthan had issued a similar Notification dated 11.04.2020 extending working hours from "8 hours per day" to "12 hours per day" in all registered factories. The copy of notification bearing no. (15)/Legal/F&B/2020/188 dated 11-04-2020 issued by Government of Rajasthan is produced herewith as **Annexure D.**

12.4 In view of the nationwide relaxation of lockdown, the State of Rajasthan has revoked the said notification and stating the following reasons:

- a. Maximum factories have been started.
- b. Workers movement has been started and pass for travel is not required.

- c. Public transport has started in most of area such as Green, Orange Zone etc.
- d. The instructions/guidelines issued by the GOI/GOR to the control of COVID-19 like social distancing, wearing masks etc. are being ensured by the factory management and the workers.
- e. Workers are fully aware of the effects of COVID-19 and its control measures.

The true copy of the Notification no. No .F.3 (15) / Legal / F & B / 2020 / 30 dated 24.05.2020 issued by Government of Rajasthan is herewith produced as ANNEXURE E.

12.5 Thus, there is no rational justification for issuing the impugned Notification when the alleged “public emergency” has come to pass in view of the relaxation of lockdown from 31.05.2020.

13. **The impugned Notification is vague and arbitrary:**

13.1 The power to invoke section 5 of the Act is only with specific objectives and therefore the possibility of it being applied for purposes not sanctioned by the legislation should be ruled out and must be held to be wholly void.

13.2. The impugned Notification is vague and arbitrary in so far as it stipulates that overtime wages under Section 59 would continue to apply without clarifying the method of determining the overtime wages as Section 59 provides for paying overtime wages when a worker works for more than 9 hours but there is no clarity as to whether the extra workings hours stipulated under the Notification entitles the worker for overtime wages.

13.3 In a similar context, the State of Gujarat in its notification bearing no. GHR/2020/56/FAC/142020/346/M3 dated 17/04/2020 while extending the working hours to 12 hours in a day and 72 hours in a week, provides that the wages shall be in proportion to the existing wages. The copy of the said notification bearing no. GHR/2020/56/FAC/142020/346/M3 dated 17/04/2020 issued by Government of Gujarat is produced herewith as **Annexure - F.**

13.4 Thus, viewed from any angle, the impugned Notification is vague, arbitrary and is in violation of Article 14 and hence, is liable to be quashed.

14. **A welfare state cannot burden the poorest of its citizens:**

14.1 It is submitted that in **Lala Ram (D) By L.R. & Ors vs Union Of India And Anr⁴**, the Supreme court observed that in a welfare state there must be an attempt to provide all facilities for decent living, particularly to the poor, the weak, the old and the disabled i.e. to all those, who admittedly belong to the weaker sections of society. The Court relied on Articles 38 and 39 of the Constitution of India which provides that the State must strive to promote the welfare of the people of the state by protecting all their economic, social and political rights which may cover, means of livelihood, health and the general well-being of all sections of people in society, specially those of the young, the old, the women and the relatively weaker sections of the society and observed that these groups generally require special protection measures in almost every set up.

14.2 The Respondent, being a welfare state cannot impose the burden of lockdown on the workers. In the instant case, the impugned Notification forces the workers to bear the brunt of the economic losses which have ensued due to the COVID-19 pandemic as

⁴ 2013 SAR (Civil) 347

the workers have to work an extra of 1 hour per day and 12 hours per week without overtime wages.

15. **The issuance of the impugned notification amounts to “forced labour” under Article 23 of the Indian Constitution**

15.1 The fundamental right to live with dignity, free from exploitation is enshrined under Article 21 deriving its ideas from the Directive principles of State Policy and particularly clauses (c) and (e) of Article 39 and Article 41 and 42 which provides for protection of health and strength of workers, just and humane conditions of work and equal distribution of wealth and means of production to the common detriment, in order to enable a person to live with human dignity, therefore any State action violating this protected right under the Constitution is ultra vires and bound to be struck down.

15.2 The Supreme Court in *PUDR v. Union of India* (1982) 3 SCC 235, while interpreting the term “forced labour” in Article 23 of the Constitution observed that any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action is regarded as “force” and if labor or service is compelled as a result of such “force”, then it would amount to “forced labour”. Further, irrespective of circumstances, whether caused by human actions, or “natural factors” that are within the domain of human power to overcome, or factors that are neither caused by human beings, and nor are subject to their control, force the person to render services as labor would be considered as “forced labour” and thereby violation of Article 21.

15.3 The impugned Notification by increasing the daily working hours to 10 hours and weekly working hours to 60 hours, without any rationality and reasonable justification amounts to forced labour and violates constitutional rights against forced labour. Therefore, the impugned Notification is unconstitutional for violating their fundamental rights under Articles 19 and 21.

16. **The impugned Notification violates the Right to Health of Workers:**

16.1 The Supreme Court has held the right to health to be a part of Right to Life in *Sunil Batra v. Delhi Administration*⁵. Prior to the enactment of the Act, the working hours were fixed at 11 hours per day and 60 hours per week. However, the Act reduced the working hours to 8 hours per day and 56 hours per week, keeping the welfare of the workers in mind. Thus, the impugned Notification violates the workers' right to health under Article 21 of the Constitution as by extending the works hour, the chances of contracting COVID-19 also increases.

17. **The impugned Notification violates the "Doctrine of Proportionality":**

17.1 The impugned Notification violates the "*Doctrine of proportionality*" which propounds that the action of the State should be within the objective which it tries to achieve. In *Modern Dental College v. State of Madhya Pradesh*⁶, the Hon'ble Supreme Court laid down four pronged test for proportionality, with respect to limitation of constitutional right protected under Article 19, as follows:

- i. It is designated for proper purpose
- ii. The measures undertaken to effectuate such a limitation are rationally connected to the fulfillment of that purpose

⁵ AIR 1978 SC 1675

⁶ (2016 7 SCC 353),

- iii. The measures undertaken are necessary in that there are no alternative measures that may similarly achieve the same purpose with a lesser degree of limitation
- iv. There needs to be a proper relation between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right

17.2 The Supreme Court extended the Doctrine of Proportionality to the rights protected under Article 21 of the Constitution in *Justice K. Puttuswamy v. Union of India*⁷. Thus, the State is empowered “reasonably” to restrict fundamental rights in the interests of the “general public”, however it bears the burden of showing that these restrictions are reasonable and the test of reasonableness is whether the measure was necessary to achieve the government’s objectives, and whether less risky, less harmful alternatives were available.

17.3 It is submitted that the action of the Respondent by issuing the impugned notification extending the daily working hours to 10 hours and weekly working hours to 60 hours, is not a reasonable restriction on the fundamental rights of the workers, therefore violates Article 21 of the Constitution.

18. Indirect suspension of benefits under section 55 and 56 of the Act

18.1. Section 55 of the Act provides for intervals for rest of the adult workers in a factory wherein as per the provision each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at half an hour.

⁷ [(2017) 10 SCC 1]

18.2 Further, under section 56 of the Act, benefit is provided to the adult worker where the period of work in a factory shall be so arranged that inclusive of his intervals for rest under section 55, it shall not spread over more than ten and a half hours in any day.

18.3 The impugned notification does not taken into consideration the benefits that the workers are entitled to under the said provision and is hence, violative of the said beneficial provisions.

18.4 Even presuming that the intervals are made available to the workers after enforcement of the impugned provision, the said intervals would violate the benefits of spread over provision incorporated in section 56 of the Act, as it would amount to working hours more than 10 hours, which is in contravention of the said provision.

GROUND FOR INTERIM RELIEF:

19. The impugned Notification is in violative of constitutional and statutory safeguards provided to the workers.

20. The workers are already facing huge financial difficulties because of COVID-19 and the impugned Notification seeks to place more financial burden on the Workers exploiting their helplessness.

PRAYER

Wherefore, the Petitioner prays that this Hon'ble Court maybe pleased to:

- I. Issue an appropriate writ, order or direction in the nature of certiorari quashing the Notification dated 22.05.2020 bearing no. KAE 33 KABANI 2020 issued by the Respondent produced at **ANNEXURE - A.**

- II. Grant any other order/orders as may be deemed fit and proper by this Hon'ble Court in the interest of justice and equity.

INTERIM PRAYER

The Petitioners pray that this Hon'ble Court may be pleased to:

Stay the operation of the Notification dated 22.05.2020 bearing no. KAE 33 KABANI 2020 issued by the Respondent produced at **ANNEXURE - A** till the disposal of the Writ Petition.

Place: Bengaluru

Advocate for Petitioner

Date: 25. 05.2020

Address for Service:

Basawa Prasad Kunale and Hemanth Rao,
No.14, S.K Prerna, 2nd Floor,
Nagappa Road, Sheshadaripuram,
Bengaluru-560020