

CJ & BVNJ:
30.03.2020

W.P.No.6435/2020 c/w
W.P.No.6671/2020

We must note here that the Registrar (Judicial) has received large number of letters and requests for e-filing of public interest litigations concerning the issue of the steps to be taken by various Authorities for dealing with the pandemic of Novel Corona Virus. Some petitions have been received by e-mail. We make it clear that we cannot allow multiplication of litigations and therefore, all issues which are raised in the petitions/letters forwarded to the Registrar (Judicial) are being considered in the writ petitions which are listed on the cause list today. While we say so, we appeal to the members of the Bar and to the citizens not to file more public interest litigations concerning the said issues. They can contact the members of the Bar who are already appearing in these matters which are listed today so that other issues can be effectively raised by them at the time of next hearing.

2. The first issue which we are addressing today is as regards the allegations made against the police that they are indulging in indiscriminate lathi charge against the persons who are found on the streets. Reliance is placed on the video clippings shown on various television channels and circulated in

media. The learned Advocate General as well as the learned Additional Government Advocate who are present here to assist us invited our attention to a direction/guidelines issued by the Commissioner of Police of the City of Bengaluru calling upon the police to show restraint. It will be appropriate if the Director General and Inspector General of Police of the State issues similar guidelines/instructions to the police personnel all over the State. If such guidelines are issued which will apply across the State, we are sure that there may not be an occasion to make allegations regarding police excesses and police indulging in lathi charge. Circulars/guidelines issued by the Director General and Inspector General of Police be placed before the Court on the next date. We may also add here that it is the responsibility of the citizens to cooperate with the administration and the police for effective implementation of the order of the Ministry of Home Affairs of the Central Government dated 24th March 2020 and the orders issued by the Government of Karnataka from time to time.

3. In one of the petitions forwarded through e-mail, a grievance has been made regarding registration of FIR Nos.44/2020 and 45/2020 of Sanjaynagar Police Station in Bengaluru. The learned Advocate General stated that he will respond to the said issue on the next date.

4. We have also heard the learned counsel appearing for various Authorities on the issue of decongestion of jails in the light of the directions issued by the Apex Court in Suo Motu Writ Petition (Civil) No.1/2020 on 23rd March 2020. As per the said directions, for the State of Karnataka, a Committee headed by the Executive Chairman of the Karnataka State Legal Services Authority has been constituted and the minutes of the meetings held on 26th March 2020 and 27th March 2020 by the said Committee are placed on record in which, various directions have been issued for implementation of the directions issued by the Apex Court. Committees have been constituted at the District Level to identify the under-trial prisoners who are charged with offences for which the prescribed punishment is up to seven years or less. The exercise of identification of prisoners who have been convicted for a period of seven years or less for release on parole has also been undertaken.

5. We have invited the attention of the learned Advocate General to the fact that after the release of the prisoners on parole or bail, as the case may be, it is necessary for the State to ensure that the prisoners reach their respective places of residence. The exercise of releasing prisoners on parole or bail will have to be undertaken after obtaining due consent of the concerned prisoner. The State will have to ensure that the prisoners who are released

do not suffer in the sense that they are not required to stay on the streets and they safely reach their respective places of residence.

6. Our attention is invited to the provisions of the Karnataka Prisons Act, 1963 and in particular, Clause (c) of Sub-section (3) of Section 55 thereof. Clause (c) provides that no person shall be released under Sub-section (1) of Section 55 unless twelve months have elapsed from the date of the expiry of the period of his previous release, if any, under this Section. Our attention is also invited to Section 56 which deals with release on parole. Sub-section (1) of Section 55 deals with the power of the State Government to release the prisoners temporarily for a period not exceeding ten days in a year. This provision is applicable to the prisoners who have been sentenced to a term of imprisonment of not less than three years. As far as the provision regarding parole under Section 56 is concerned, no such condition as provided in Clause (c) of Sub-section (3) of Section 55 has been imposed.

7. Perusal of the Order of the Apex Court dated 23rd March 2020 clearly show that the directions have been issued by the said Order for dealing with an extraordinary situation which has arisen due to overcrowding of prisoners in the context of pandemic of Corona Virus. The directions have been issued

considering the rights of the prisoners under Article 21 of the Constitution of India with a view to ensure that spread of Corona Virus within the prisons is controlled. On reading of the Order of the Apex Court, it is apparent that the directions have been issued by the Apex Court for release of certain categories of prisoners either on parole or on bail in exercise of the plenary jurisdiction under Article 142 of the Constitution of India. Therefore, while the State Government exercises the power to grant of parole, the concerned Authorities will have to bear in mind that they are implementing the directions issued by the Apex Court under Article 142 of the Constitution of India.

8. As the Apex Court has expressed a serious concern about overcrowding of prisoners, in our view, it will be appropriate if the State Government ensures that the police strictly follow the guidelines laid down by the Apex Court in the case of **ARNESH KUMAR vs STATE OF BIHAR AND ANOTHER**¹. We expect the State Government or the Director General and Inspector General of Police to issue guidelines to the police for implementation of what is held by the Apex Court in the case of **ARNESH KUMAR** (*supra*). It is necessary for the State to issue such guidelines keeping in mind the directions of the Apex Court in *Suo Motu Writ Petition (Civil) No.1/2020*. The learned Additional Government

¹ (2014) 8 SCC 273

Advocate states that guidelines may have been issued after the judgment in the case of **ARNESH KUMAR** (*supra*) was delivered. However, in the context of the object of the order of the Apex Court of decongestion of prisons, the State will have to issue fresh guidelines in the matter. Compliance in this behalf shall be reported on the next date.

9. We also invited the attention of the learned Advocate General to the situation which has arisen as a result of closure of all Anganwadis in the State. Through the Anganawadis, the supply of hot meal to pregnant women and lactating mothers was being made and even food to the mal-nutritioned children was being provided. Supplementary nutrition was also provided through Anganwadis to adolescent girls. The children who are enrolled in Anganwadis were also provided with food. Now, the food supply may stop. These issues will have to be addressed by the State as the Anganwadis have been ordered to be closed. The State will have to inform the Court in what manner, the supply of food to the aforesaid categories of persons will continue.

10. Our attention is also invited to the fact that all the schools in the State have been ordered to be closed. The issue is of providing food to the children who were entitled to benefit of mid-day meals. The State Government will have to address the

issue immediately and come back before the Court on the next date even on this aspect.

11. Now coming to the issue of supply of food to the poor people, daily wage workers, people residing on the streets, railway platforms etc., several suggestions and submissions have been made on this aspect as well as on the aspect of providing face masks, sanitizers etc., to this category of persons. Our attention is invited to the provisions of the Food Safety and Standards Act, 2006 (for short 'the said Act of 2006') and in particular, Clause (a) of Sub-section (2) of Section 12 and Section 30 thereof. The submission is that to reduce congestion in the ration shops, the State must consider the question of delivery of food grains at the door steps. The learned Additional Government Advocate appearing for the State pointed out that the State Government has agreed to release the quota of ration for April 2020 and May 2020 in the first week of April 2020 to all those who are holding Ration Cards issued by the State of Karnataka as well as the Ration Cards issued by the other States. In this context, our attention is invited to the decision of the Apex Court in the case of **SWARAJ ABHIYAN vs UNION OF INDIA AND OTHERS²** and in particular, the direction contained in paragraph

² (2016) 7 SCC 498

128.4. The said direction contemplates that the State Government will have to provide ration to the citizens on production of identity proof. The said direction is applicable to a situation where there is a drought. However, we are of the view that the State Government must consider of implementing the said direction. The reason is that today, we are facing a national disaster and the provisions of the Disaster Management Act, 2005 (for short 'the said Act of 2005') have been invoked by the Central Government and the State Government. Therefore, the State Government will take a decision on applying the directions contained in paragraph 128.4 of the decision of the Apex Court in the case of **SWARAJ ABHIYAN** (*supra*) to the persons affected by the lockdown declared by the Central Government. The State Government will respond on this aspect on the next date. If the State Government follows the direction issued in paragraph 128.4 of the Apex Court, that will take care of the need of food of those citizens who do not have Ration Cards issued either by the State of Karnataka or any other State. It will be also appropriate, if the State Government directs the Gram Panchayats to take care of food security of the citizens residing within its jurisdiction.

12. The learned Advocate General also pointed out the fact that the facility of Indira Canteens is available. However, it is pointed out across the Bar that there are about 27000 villages in

the State and the facility of Indira Canteens is available only in urban areas and therefore, the presence of Indira Canteens will not resolve the issue as far as 27000 villages are concerned.

13. The other concern which is canvassed is that if the State is going to supply cooked food to the needy sections of the society through Indira Canteens, it will lead to mass gathering of the people in Indira Canteens which may result in community spreading of the disease. Even this aspect needs to be looked into by the State Government. We expect the State Government to respond to this subject before the next date by producing comprehensive plan for supply of food grains/food to the needy people, poor people, daily wage workers, people residing on the streets, railway platforms, bus stands etc. As stated earlier, the State Government will have to consider the provisions of the said Act of 2006 which are referred above and the directions of the Apex Court in the case of **SWARAJ ABHIYAN** (*supra*). After the State Government places on record its response, we will hear the parties on the question of issuing further directions on this subject.

14. Another issue canvassed across the Bar is that in the State, there are large instances of hoarding of essential supplies and goods. We are sure that the State Government will apply the available laws strictly and prevent hoarding of essential supplies,

as such illegal activities directly affect the supply of essential goods to the citizens. The State Government will respond on the next date on this issue.

15. As far as the issue of migrants is concerned, today we are not dealing with the said issue as we are informed that the Apex Court is dealing with the issue.

16. Now we come to the important issue raised regarding pourakarmikas. As far as BBMP is concerned, Sri Sarfaraz Khan, Joint Commissioner of BBMP of Solid Waste Management department is present. He invited our attention to the written submissions placed on record by BBMP and especially what is stated against Sl.No.1 regarding supply of safety equipment. He states that the equipment as stated therein has been supplied to all the pourakarmikas working under BBMP. As the correctness of the said statement is disputed across the Bar, we direct BBMP to ensure that the safety equipment as stated in its response is provided to all the pourakarmikas working under BBMP.

17. There are other issues canvassed. Firstly, regarding food security of pourakarmikas. The second issue is of their long working hours and the third issue is of providing transport facilities to them as all categories of public transport have been stopped. As far as BBMP is concerned, as per the request made by the

Union, allowance of Rs.100/- per day is being provided. There are further issues raised such as provision for changing rooms, washrooms and toilets to this category of workers.

18. In the response filed by the State Government, it is stated that there are 10 Corporations, 38 CMCs, 48 TMCs and 14 TPs (excluding BBMP) in the State. It is pointed out that at present, by direct recruitment and by other methods, posts of 17767 of pourakarmikas have been filled in. There is a statement made that in the entire State, the pourakarmikas will work between 6.30 a.m. to 10.30 a.m. considering the present situation. That takes care of issue of long working hours.

19. Another issue canvassed is regarding collection of waste/garbage from the houses where persons have been subjected to home quarantine. The State Government will have to respond by taking special measures on this aspect as apprehension is that pourakarmikas will be affected by infection.

20. As far as the equipment which is provided in BBMP area is concerned, the State must ensure that every worker gets it and that is replicated in the entire State. Every single pourakarmika must be provided with the safety equipment. The State Government will have to ensure that appropriate transport facilities are made available to them. This is especially in the light

of the fact that in the present day circumstance, pourakarmikas are playing a vital role. It is pointed out that BBMP is providing readymade breakfast to the pourakarmikas at Mustering Centres. The State Government must ensure that all of them working in other areas are provided breakfast at Mustering Centres in the morning which will take care of their need of food as the duty timings are now restricted from 6.30 a.m. to 10.30 a.m. in the present day situation.

21. The State Government has plenary powers under all Municipal Laws to issue directions to all categories of Municipal Authorities. We expect the State Government to exercise such plenary powers and issue directions to all the municipal bodies to extend all the benefits as discussed above and all the benefits which are mentioned in the written submissions filed today by the State Government. The State Government will also have to take a policy decision of introducing special measures for protecting this category of workmen as they are required to collect waste from quarantine homes. We expect the State Government to respond on this aspect before the next date. As stated earlier, making transport arrangement is of vital importance as on failure to do so, this category of workmen will not be in a position to report to duty. The directions which may be issued by the State

Government in this regard shall be placed on record on or before the next date.

22. As regards providing protective equipment to Doctors, Nurses and other staff members of private hospitals and private clinics and also providing them ID-cards, the learned Advocate General has agreed to respond by the next date. The issue raised by one of the Associations of Doctors is that in the present day situation, it is imperative that private hospitals and private clinics continue to function and render service to the citizens. The State Government will also respond on the number of Laboratories available for testing Corona Virus.

23. As regards the public health facilities available at the grass root levels such as, Primary Health Centres etc., the State Government will make a statement whether the facilities are still available. One of the learned counsel pointed out that these grass root level clinics were providing the facility of vaccination to new borns and children. The State will respond on this aspect on the next date.

24. There are other issues raised such as, availability of beds across the State, availability of ventilators etc. There is an issue of contract workers. At this stage, we are not issuing any

direction on this aspect as we hope and trust that the State Government is taking steps in a right direction.

25. Another issue which may arise for consideration is of providing food to stray animals, stray dogs etc. There are Non-Government Organisations (NGOs) which are providing food to stray animals. In one of the letters, it is pointed out that even for pet animals, the owners are finding it difficult to provide food as food shops have been ordered to be closed. The State Government shall look into the aforesaid aspects.

26. In the State of Karnataka, large number of NGOs are working in the field providing relief of various categories to various classes of citizens. Considering the extraordinary situation which we are facing, it will be appropriate if the State Government provides a portal on its website with a request to all NGOs to upload information about the nature of work they are doing and the geographical area of their work. If the said information is centrally available on the portal, the State Government can more effectively take the help of NGOs and in fact, allocate different categories of services in different areas to NGOs. We hope and trust that the Government considers this suggestion so that the services of NGOs can be effectively used.

27. One of the submissions made across the Bar is that Wakf Board be directed to take steps to control large gathering at the time of prayers. However, we may note that in view of Clause-9 of the Order dated 24th March 2020 of the Central Government, all religious congregations are prohibited. The same Order directs the closure of all places of worship to public. Wakf Board must take note of the aforesaid Order of the Central Government and do the needful.

28. Before we close this order, our attention is invited to the order dated 29th March 2020 passed by the Ministry of Home Affairs of the Government of India. This order contains directions issued to the State Governments and Union Territories in exercise of powers under Sub-section (2) of Section 10 of the said Act of 2005. We have perused the said order. We are of the view that if the said order is implemented by the State Government in its true letter and spirit, it will resolve number of issues which are raised before the State Government as well as before the Court. Apart from the fact that there is a power vesting in the National Executive Committee to issue the direction under Section 10, every department of the State is enjoined under Section 39 of the said Act of 2005 to take various measures. We make it clear that the order of the Central Government dated 29th March 2020 will have to be implemented in its true letter and spirit. The learned

Additional Government Advocate pointed out that this order has been passed late in the evening yesterday and now the State Government will take cognizance of the order and will take appropriate steps on the basis of the said order.

29. We direct that these petitions shall be listed on 3rd April 2020 at 11.00 a.m.

Sd/-

**(ABHAY S. OKA)
CHIEF JUSTICE**

Sd/-

**(B.V.NAGARATHNA)
JUDGE**

bkv