IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(Original Jurisdiction)

W.P. ~~ ____/2019

IN THE MATTER OF:

BETWEEN

PETITIONER

AND

1) State of Karnataka
Represented by Home Department,
Vidhan Soudha,
Bangalore- 560001 — RESPONDENT NO. 1

2) Commissioner of Police
Infantry Road,
Bangalore- 560001 — RESPONDENT NO. 2

MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA, 1950

The Petitioner submits:

1. The address of the Petitioner for service of court notices, summons and other process is stated in the cause title. The Petitioner may also be served in these proceedings at the offices of his advocate, Vishwajith Sadananda, Arista Chambers, 512, 5th Floor, Prestige Tower, Residency Road, Bangalore - 560025. The Respondents' address for the above purpose is also stated in the cause title.

2. This Writ Petition, filed under Article 226 of the Constitution of India, seeks the quashing of the Order Number S.B./Gu.Wa/Prohibition/50/2019 dt. 18.12.2019 **("the impugned order")** issued under Section 144 of the Code of Criminal Procedure, 1973 to enable the people of Bengaluru, Karnataka to exercise their rights to freedom of expression, peaceful protest and the freedom of peaceful assembly under Article 19(1), the right to a just, fair and reasonable procedure for deprivation of the personal liberties under Articles 14 and 21 of the Constitution of India. A copy of the Order Number S.B./Gu.Wa/Prohibition/50/2019 dt. 18.12.2019 is annexed as **ANNEXURE A**.

3. The background facts against which this petition has been filed for the consideration of this Hon'ble Court are set out below.

BACKGROUND FACTS

4. The Petitioner is a Member of Parliament representing the State of Karnataka in the Rajya Sabha. He is also a teacher and social worker, who completed his Ph.D. in Public Policy and Management from the Wharton School, University of Pennsylvania. He has been Professor and Chairperson of the Centre for Public Policy at the Indian Institute of Management Bangalore. Prior to that, he has been an Associate Professor at the University of Oklahoma, USA and a Post-doctoral Fellow at the Law School, University of California, Berkeley. He has served as a Director on the Central Board of the Reserve Bank of India.

5. The Petitioner is involved in numerous social causes. Apart from carrying out his responsibilities as a member of the Rajya Sabha (where he is part of the Panel of Vice Chairmen), he has been involved in activities relating to the upliftment of the poor, strengthening of transgender rights, and anti-discrimination in housing. He led peaceful, city-wide protests against attacks on women in 2009 and was honoured as Super Citizen by a newspaper. He launched the India Women in Leadership programme to empower women political leaders. He founded the Bengaluru Needs You! citizen movement to constructively involve citizens in engaging with civic authorities to bring about positive transformation in Bengaluru. He has mentored numerous youth and social impact organisations and actively engages with public issues in the media and with colleges and civil society organisations.

6. Respondent No.1 is the State of Karnataka, through the Home Department, being the concerned authority for maintenance of law and order in the territory of the State Karnataka.

7. Respondent No.2 is the Chief Commissioner of Police, being the appropriate authority authorized to exercise pp,wers under Section 144 of the Code of Criminal Procedure, 1973 for the purposes of the districts of Bangalore Rural and Bangalore Urban, Karnataka.

8. On 12 December 2019, the Citizenship Amendment Act, 2019 Act no. 47 OF 2019 was assented to by the President and published for general information in the Official Gazette. The Petitioner, on 15 December 2019, addressed a peaceful protest called "India Against CAA" organized by "We the People of India" a collective of organisations. A copy of the news reports of the said event are annexed at **ANNEXURE B.**

9. On 18 December 2019, the Chief Commissioner of Police issued prohibitory orders under Section 144 of the Code of Criminal Procedure, 1973. The impugned order was issued in the wake of peaceful protests conducted in the city of Bangalore, after the passage of the Citizenship Amendment Act, 2019.

10. The impugned order eviscerates the constitutionally protected freedoms of expression and peaceful assembly of the citizens of Bengaluru, in violation of Articles 19(1)(a) and (b) by banning the .following:

1) Gatherings of groups of S or more persons

2) Any manner of protest, demonstration, strike, procession, dharna, stoppage of traffic, public gathering, ceremony

3) Carrying weapons, sticks, knives, spears, maces, rocks, bricks, poles, guns, lathis and other instruments which cause bodily harm or are deadly

4) Burning any explosive device and carrying or storing any device through which stones or missiles may be launched

S) Displaying people, their images,their corpses, or their figures

6) Prepare, display, broadcast, ocrnake declarations, sing songs, play music, give hateful speeches, give instructions, employ narratives, draw pictures or symbols or

or affect public well-being or, reduce or ignore state security, or inspire the commission of offences,

Considering the above prohibitions, all permission previously obtained with respect to any protest have also been cancelled by the impugned order.

11. The impugned order has been issued out of a concern for inconvenience to the daily life of citizens, commutation and movement of public, and thus violates Artlcle 19(2) of the Constitution of India - as such considerations are not within the permitted grounds for enacting restrictions on the freedom of expression under Article 19(2). Further, the impugned order states the possibility that *some* protestors might take law into tlm'ir own hands and bring about chaos, and thus suspends the fundamental right to peaceful protest of *all* citizens in Bengaluru. Fundamental rights however cannot be arbitrarily suspended on grounds of expedience as the Supreme Court has consistently held, lest they become a plaything of the majority.

12. In the above circumstances, the Petitioner is constrained to approach this Hon'ble Court, in the interest of the general public, towards upholding the constitutionally protected freedoms of the citizens of Bengaluru.

B. This petition is filed on the following grounds, among others which may be urged at the time of hearing, each of which are taken without prejudice to one another:

GROUNDS

The Impugned order violates Article 19(1)(a)-(c), and cannot be justified as a reasonable restriction under Articles 19(2)-(4) of the Constitution of India

14. The impugned order deprives the citizens of Bengaluru their right to peacefully protest, which is an integral part nf the freedom of speech and expression under Articles 19(1)(a) and 19(1)(b) of the Constitution of India.

15. The impugned order is blanket in character, sweeping in scope, and indiscriminate in application. It bans peaceful protests in all of Bengaluru, a city of 84 lakh people. In effect, therefore, it does not merely restrict, but *erases* the fundamental right to peaceful protest, guaranteed by Articles 19{**l**)(a) and 19(1)(b) of the

Constitution, to the citizens of Bengaluru. It is well accepted that in cases where "the restriction reaches the stage of prohibition special care has to be taken by the Court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the Court." *(Narendra Kumar v Union of India, 1960 SCR (2} 375).* In the present case, it is respectfully submitted that the stated reasons for the prohibition do not justify this blanket curtailing of fundamental rights.

16. The impugned order is an unreasonable restriction upon Articles 19(1)(a) 19(1)(b), as It bans all form of expression, including "discussion, "advocacy" and "incitement". This distinction was recognised by the Supreme Court in *Shreya Singha/ vs Union of India, (2015) 5 SCC 1,* para 13, in these terms:

> *This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reqch of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart oTArticle 19(1}{a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. ... a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, etc. Why* it *is important to have these three concepts in mind is because most of the arguments of both petitioners and respondents tended to veer around the expression "public order".*

17. This distinction was recognised afearly as in 1962 by a Constitution Bench of the Hon'ble Supreme Court in *Kameshwar Prasad v State of Bihar,* 1962 SCR Supl. (3) 369, para 16 which held that "the vice of the rule ... consists in this that it lays a ban on every type of demonstration--be the same however innocent and however incapable of causing a breach of public tranquility and does not confine itself to those forms of demonstrations which might lead to that result." The impugned order violates the settled principle of law laid down by the Supreme Court that the State cannot impose overbroad restrictions on speech that is not harmful or does not lead to incitement of violence. This principle was affirmed in *Superintendent.*

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Central Prison, Fatehgarh & Anr. v. *Dr. Ram Manohar Lohia,* (1960) 2 SCR 821; *Ramesh Thapar v. State of Madras,* 1950 SCR 594.

18. The impugned order does not qualify as a reasonable restriction under Articles 19{2) - {4) as it is not issued in the interest of a legitimate state interest (enumerated in Articles 19(2)-(4). The impugned order states concerns of "commutation of the public" and the "inconvenience to daily work". These are not legitimate interests under Article 19(2). The Supreme Court has held in the specific context of Section 144 powers that the order must be imposed in the interests of the enumerated grounds in Article 19(2). *Madhu LImaye v. Sub Divisional Magistrate, (1970) 3 SeC 746, para* 24; *In Re Ram Lila Maidan Incident, {2012) 5 SeC* 1, *para* 30).

19. Additionally, issues of "commutation of the public", "smooth movement of the public" and "inconvenience to dally work" are reasons - at best - to regulate the "time, place, and manner" of protests, i.e., to designate specific zones and times so that the right to peaceful protest can harmoniously co-exist with the right of citizens to movement. The impugned Order, however, places a substantive prohibition upon the right to protest, and is not a mere "time/place/manner regulation." The distinction between the two is well-recognised: in In Re Ramlila Maidan, the Hon'ble Supreme Court held that *"a system of licensing as regards the time and manner of holding public meeting on public streets has not been regarded as an infringement of a fundamental right of public assembly or free speech."* In *Clark v Community for Creative Alon-Violence,* 468 U.S. 22 (1984), the Supreme Court of the United States observed that time/place/manner regulations on speech were justified only if they were "narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information."

20. Furthermore, the impugned order does not identify any imminent threat to public order and tranquility. The Supreme Court has held that Section 144 can be invoked only when the threat to public order is *imminent* and *genuine* and not merely *likely. Babula/Parate v. State of Mahar11shtra, (1961} 3 SCR 423, para* 25; *In Re Ramlila Maidan Incident, para 58-59*, 221; *Madhu Limaye v. Sub Divisional Magistrate, para* 24). The impugned order purports to be issued in the interest of public order, because of an apprehension that protests are "likely to take a more acute form".

However, no materials or m t rlal focts ar shown tablishing that such a throat l Immtn nt. Thus, the Impugned ord r Is unconstitutional for being Issu don the ground of *Ilkellhood* as opposed */Mm dlacy* and *Imminence*. *(Babula/ Porate*, para 25).

21. It Is respectfully submitted that the standard for a restriction under Section 144 must be read In light of the evolution of free speech Jurisprudence of the Indian Supreme Court. Therefore, It Is not sufficient that there be an Imminent threat to public order alone. In addition, such Imminent threat to public order must be of the variety that tends to Incitement of violence In light of the Supreme Court's holding In *Shreya Singha/* (supra). It Is only when speech certainly leads to Incitement to violence or offence" can restrictions be Imposed. *(Superintendent. Central Prison, Fatehgarh & Anr. v. Dr. Ram Manohar Loh/a,* (1960) 2 SCR 821; *Shreya Singha/* v. *Union of India,* (2015) 5 SCC 1, para 13; *Kameshwar Prasad & Ors.* v. *State of Bihar,* 1962 Supp (3) SCR 369). The Impugned order does not even contemplate the possibility of Imminent Incitement to violent and is in flagrant violation of the Supreme Court's consistently affirmed position of law.

22. The impugned order is not the least restrictive or the least invasive measure available. The Supreme Court has held in the specific context of Section 144 powers In Re Ramllla Maidan Incident (1012) 5 SCC 1 *para 28, 179* that the restriction must be no more intrusive than necessary to achieving that state Interest. Any restriction on freedom of speech and expression must be "narrowly tailored *narrowly interpreted so as to abridge or restrict only what is absolutely necessary"* as held in Shreya Singhal *v,* Union of India (2015) 5 SCC 1. The Hon'ble Supreme Court has clarified KS Puttaswamy v. Union of India (2019) 1 SCC 1 that a restriction on fundamental rights cannot be considered necessary if there are less restrictive alternatives available. In the present case, the Respondent authorities have altogether prohibited all protests as opposed to adopt less restrictive measures such as regulating the tfme, manner and location of protests.

23. The impugned order is a disproportionate restriction on the rights of innocent civilians who are not even likely to cause an imminent threat to public order. The order purports to prevent antisocial elements from taking the law into its own hands and causing chaos in the name of protest. However, the Supreme Court has held that Section 144 orders as a must be issued against the wrongdoer and not

against innocent civilians merely on grounds of convenience and expediency *(Gu/am Abbas v. State of UP, {1982) 1 SCC 71, para 27; Madhu Limaye (supra}, para 24).* It is important for this Court to note the Supreme Court's dicta in *Rangarajan v. P. Jagjivan Ram, (1989} 2 SCC 574 at page 599:*

> *Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvll of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself (emphasis supplied)*

Indeed, to completely restrict the right to protest of 86 lakh citizens of Bengaluru on the basisthat "some miscreants" may cause disorder is nothing more than giving in to the "heckler's veto." It is respectfully submitted that all the protests in the city of Bengaluru have been peaceful.

24. The Impugned order violates the duty of the State to protect the freedom of speech and expression, recognised by the Supreme Court in *S Rangarajan v. P. Jagjlvan, {1989) 2 SCC 574; /ndlblly Creative Pvt. Ltd. & Ors. v. Government of West Bengal, 2019 SCC Online SC 520.* The Respondents thus may not state, with the benefit of all its state machinery and infrastructure, that they cannot protect the freedoms under Articles 19(1)(a)-(c).

25. It is respectfully submitted that the extent of the State's powers in curtailing the rights of protesters was considered most recently by the High Court of Hong Kong *Kwok Wing Hang v Chief Executive In Council, {2019) HKCFI 2820,* which struck down a ban on face masks in protests. Similar arguments were made by the State in that case - that is was unable to "distinguish" between peaceful protesters and miscreants. However, these arguments were rejected on the grounds of proportionality. The Court held: "the effect of s 3(1}(b), (c) or (d) is to impose a near-blanket prohibition against the wearing of facial covering by the participants,

without any mechanism for a case-by-case evaluation or assessment of the risk of any specific gathering developing or turning into a violent one such as would make It desirable or necessary to Impose the prohibition In relation to that gathering only." And, further: "It Is not clearly stated whether, to be caught by the prohibition, the person must be a participant in the relevant gathering, or whether It suffices for that person to be merely present at the gathering, eg a person who goes to the scene for the purpose of taking photographs, or giving first-aid to persons in need of help, or even a mere passer-by who has stopped to observe the gathering." For this reason, the prohibition was struck down.

The Impugned order Is in Is in excess of the powers granted under Section 144 of the Cr.P.C, Is overbroad, manifestly arbitrary, and thus violates Article 14

26. The impugned order, as submitted earlier, fails to distinguish between discussion, *advocacy and incitement,* as laid down in *Shreya Singha/.* To this extent, it suffers from the vice of "over-breadth", recognized by the Supreme Court in Chintaman Rao v State of MP, *1950 SCR 759l*

> *The law ... cannot be held valid because the language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the right. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly void.*

The Impugned order fails to state any material facts on the basis of which an imminent threat to public order and tranquility was apprehended. This Hon'ble Court has also consistently held that orders under Section 144 must satisfy the statutory requirement of stating the material facts which demonstrate the urgency and imminence of the threat which necessitate such action in the order itself. *{In Re Ramllla Moldan Incident,* supra, para 221; *PT Chandra, Editor, Tribune v. The Crown,* ILR 1942 23 Lah 510 at pg 514; *Babula/ Parate, para 22; Madhu Limaye, para 28; Acharya Jagdishwaranand Avadhuta & Ors. v. Commissioner of Police & Anr. {1983) 4 SeC 522, para 16).*

27. It is submitted that the Respondent authorities have not put forth any material facts in the order issued u/s 144 of the CrPC that demonstrate the change in circumstances that necessitated the *revocation* of permissions already granted to organise protests. The Hon'ble Supreme Court in *In Re Ramlila Maidan*

Incident, **(2012) S SCC 1** has opined that orders revoking permission that had perviously granted which do not state material facts that establish the Imminence of the threat would fall foul of the requirements u/s.144 CrPC:

> *"225..... Existence of sufficient ground Is the sine qua non for Invoking the power vested in the executive under Section 144 CrPC. It Is a very onerous duty that is cast upon the empowered officer by the legislature. The perception of threat should be real and not imaginary or a mere 1/kely possibility. The test laid down in this section is not that of "merely /lkeI/hood or tendency". The legislature, in its wisdom, has empowered an officerof the executive to discharge this duty with great caution, as the power extends to placing a restriction ancftn certain situations, even a prohibition, on the exercise of the fundamental right to freedom of speech and expression. Thus, in case of a mere apprehension, without any material facts to Indicate that the apprehension is imminent and genuine, It may not be proper for the authorities to place such a restriction upon the rights of the citizen.*
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> *226. At the cost of repetition, I may notice that all the grounds stated were considered at various levels of the Government and the police and they had considered it appropriate not to withdraw the permissions or impose the restriction of Section 144 (JPC even ti/13-6-2011. Thus, it was expected of the authorities to show before the Court that some very material information, fact or event had occurred between 3-6-2011 and 4-6-2011, which could be described as the determinative factor for the authorities to change their mind and pass these orders. I am unable to accept the contention of the police that a situation had arisen In which there was Imminent need to Intervene Instantly having regard to the sensitivity and perniciously perilous consequences that may result, if not prevented forthwith."*

28. The impugned order suffers from non-application of mind, as it states as Its basis for imposition that the Central Government has enforced the Citizenship Amendment Act and the National Register of Citizens. It is respectfully submitted that the Citizenship Amendment Act, 2019 is yet to enter into force, a fact that even the Supreme Court has taken judicial notice of on 18 December 2019 when petitions challenging the Act were admitted for hearing. It is also submitted that

the Central Government has not imposed a National Register of Citizens as of 18 December 2019 either. Furthermore, it is respectfully submitted that a single order under Section 144 has been made in respect of both Bangalore Urban and Bangalore Rural districts. No material facts or materials have been indicated, to support the apprehension of imminent threat to public order in either of the specified districts. In Shayara Bano *v.* Union of India (2017) 9 SCC 1, the Hon'ble Supreme Court held that state action is manifestly arbitrary if it is done capriciously, irrationally or without adequate determining principle .

The Impugned order violates Article 21 of the Constitution of India.

29. In Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981) 1 SCC 608, the Hon'ble Supreme Court held that:

"The expression "personal liberty" occurring in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also Includes rights which "have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19." Therefore, personal liberty would include the right to socialise with members of the family and friends subject, of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends ls arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of Articles 14 and 21."

30. The impugned order violating the fundamental freedoms of citizens of Bengaluru is neither just, fair nor reasonable. It has been well established since the Hon'ble Supreme Court's decision in Maneka Gandhi v. Union of India (1978) 1 SCC 248 that any restriction on the right to life and personal liberty under Article 21 must be just, fair and reasonable. However, in the present case, the impugned order is imposed without application of mind, in a manifestly arbitrary manner, by resorting to extraneous considerations.

GROUNDS FOR INTERIM RELIEF

31. The Petitioner has a strong prima facie case in his favour and is likely to succeed before this Hon'ble Court. As submitted above, the Respondents have sought to suspend the right of protest of all citizens in the name of impermissible grounds

such as inconvenience to daily life and traffic, on a mere apprehension public disorder, because some protestors may take the law into their own hands. fundamental rights. It Is submitted that protests in Bengaluru have been without incident- and have been entirely peaceful and orderly.

32. If the interim relief is not granted.Jrreparable harm and undue hardship would be caused to the fundamental rights of the general public to express their views on a crucial matter concerning the polity in India - which is a fundamental prerequisite for democratic politics in the Indian republic. Moreover, in the absence of interim relief, the petition will become infructuous as the Impugned order is applicable only till 21.12.2019.

33. On the other hand, no irreparable harm would be caused to the Respondents if the interim relief Is granted, as the legitimate state interests of ensuring no imminent threat to public order were alread'ybeirig achieved, as is evident from the conduct of the peaceful protests in Bengaluru in the past few days. The balance of convenience, therefore, lies in favour of the Petitioner.

MISCELLANEOUS

34. The Petitioner has not filed any other writ petition or initiated any other legal proceedings before this Hon'ble Court or any other forum pertaining to the resolution of disputes that form the subject matter of this petition.

35. The Petitioner has no other alternative or efficacious remedy to seek the reliefs sought in this case, and is therefore constrained to invoke the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India, 1950 for relief.

36. The Petitioner craves leave to rely on additional documents and arguments at the time of the hearing.

JURISDICTION

37. This Hon'ble Court has jurisdiction to hear this writ petition under Articles 226 of the Constitution of India, 1950. ...,

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PRAYER

In light of the facts and circumstances detailed in the present writ petition as well as the legal grounds relied upon therein, it is prayed that this Hon'ble Court may be pleased to:

A. Issue an appropriate writ in the nature of certiorari or any other appropriate writ, order or direction setting aside or quashing the Order Number S.B./Gu.Wa/Prohibition/50/2019 Date: 18/12/2019 (ANNEXURE A}.

B. Issue any other writ, order or direction that this Hon'ble Court deems appropriate in the interests of justice.

INTERIM PRAYER

The Petitioner most humbly prays that pending final disposal of this Writ Petition, this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, for a stay on the impugned Order Number S.B./Gu.Wa/Prohibition/50/2019 Date: 18/12/2019 issued by the second Respondents herein.

Bangalore

Dated: tcf(11-ll'f

Advocate for the Petitioner

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