

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

AD-HOC NO. PIL-LD-VC-33 OF 2020

Chirag Chanani & Ors.

...Petitioners

V/s.

Union of India & Ors.

... Respondents

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: Affidavit In Reply:

(On behalf of Respondent No. 2)

I, Kishor Raje Nimbalkar, do hereby solemnly affirm and state as under:-

1. I am presently working as Secretary, Disaster Management, Relief and Rehabilitation. I am duly authorized to file this Affidavit on behalf of Respondent No. 2. I say that, I have read and understood the Petition. I am filing this reply pursuant to the order dated 7<sup>th</sup> July, 2020 passed by this Hon'ble Court in the present petition. I am filing the present affidavit on the basis of record maintained by my office. I say that this Respondent reserves its rights to file further affidavit, if required in future.

2. At the threshold itself, I stoutly deny the alleged claims and contentions raised by the Petitioners as not at all true and correct and that the Petitioners are not entitled to any relief as sought for in the present Petition. I say that the present Petition contains repeated statements and therefore the statements, once denied by me at one place, may be treated to have been denied by me permanently and no inference of whatsoever nature may be drawn against the Respondent unless the contention is specifically admitted by me in the writing. The Petitioners may be put to the strict proof of all the alleged contentions.

3. I say that the present petition Public Interest Litigation is not at all maintainable and tenable in law. The Petitioners have miserably failed to demonstrate as to which fundamental and/or legal right of the Petitioners has been infringed giving rise to filing of the present litigation. I say that in so far as Mumbai and MMR region is concerned, at least w.e.f. 4<sup>th</sup> June 2020, there are no travel restrictions in

place, preventing travelling by private vehicle, save and except the number of passengers travelling in a single vehicle and following precautionary measures such as wearing masks etc. Resultantly, I say that the Advocates can travel by private vehicle if they either want to visit their offices or visit any court premises for attending the hearing, or for the purpose of filing of matters, physical or otherwise.

4. I therefore say that, thus, all the Advocates can carry on their profession and there is no restriction on it, much less unreasonable restrictions and certainly not a total ban or prohibition. I say that the State Government has not imposed any hindrance in carrying on the legal profession by the Advocates. I thus say that neither any fundamental right nor any legal right of the Petitioners is being infringed so as to give rise to filing of the present petition. On this ground alone, the present Petition deserves to be dismissed.

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5. Without prejudice to the aforesaid preliminary objection, I must, at the outset, hasten to state that the entire nation is facing the worst crisis in the form of Corona-Virus 2019, commonly known as COVID-19. The World Health Organization has already declared the spread of infection caused by COVID-19 as a Pandemic in March, 2020. I must also quickly hasten to state that very little is known about the said infection i.e. the manner in which the said virus infects, reacts, affects etc. few aspects of the said virus that are by now very well-known and established are that, it is highly infectious, contagious and life-threatening.

6. The State of Maharashtra is amongst the most affected states in India and more particularly within the State of Maharashtra, Mumbai and the Mumbai Metropolitan Region (MMR) is the worst affected due to the COVID-19 pandemic. The entire nation including the State was under complete lockdown as a measure adopted by the Central Government as also the State Governments to curb the spread of the

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pandemic. I say that the said lockdown was extended from time to time in phases and presently is in force till the end of 31<sup>st</sup> July, 2020 for containment zones.

7. I say that the State of Maharashtra has been adopting and emphasizing various precautionary measures to contain the spread of infection based on the suggestions given by the experts such as use of masks, sanitizers, maintaining social distancing as also the focus has always been on avoiding the over-crowding at any given place, be it streets, halls or transport facilities such as cars, buses and trains.

8. In furtherance of the measure of maintaining social distancing as also to avoid over-crowding, the State Government has regulated the public transport system. I say that in so far as public transport in the form of city buses within the City of Mumbai and in the MMR region is concerned, limited number of passengers are permitted to board the bus so as to maintain the norms of social

over-crowding. I say that initially the said facility was available only to the staff providing essential services. However, now the said facility is made available to larger section of public, subject to the aforesaid precautionary measures being strictly followed.

9. I say that inso far as availability of travel facility by local train is concerned, it needs to be emphasized that the local trains in normal situation are not only crowded and over-crowded but literally passengers are hanging on the foot-board risking their lives to Railway Accident. Therefore, taking into consideration the then prevailing situation and resultant threat of COVID-19 pandemic, in Mumbai and MMR area, the local train service was initially completely stopped, not allowing any member of public, including those serving in essential services sector, to travel by local trains.

10. Thereafter, the State Government in the larger public interest has permitted the staff of Government offices, names

of which is enlisted in the circular annexed at Pg. 44 of the petition and others serving in the essential services sector to travel by train, by starting only limited number of local trains with limited number of stops.

11. In order to contain the spread of infection, only limited types of travellers have been allowed to use the said facility. Bare perusal of the list of offices mentioned in the said circular, the employees of which have been allowed to use the local train services would certainly show that most of them are either directly or indirectly providing various services in relation to COVID-19 pandemic and absolute essential services.

12. In my humble submission in the extraordinary situation that prevails in Mumbai and the MMR area, providing travel facilities to the aforesaid frontline workers/staff has been the topmost priority of the State Government. In so far as staff of other offices such as



employees of nationalized banks, GST, Customs, Department of Post, Mumbai Port Trust, Public Sector Undertakings is concerned they are required since they are helpful to normalize the economy, which has been worst affected by the COVID-19 Pandemic.

13. I say that the services of IT department personnel's in the present virtual world is of utmost use and therefore, the staff of IT department is included in the list. So also the staff of Judiciary, has also been permitted to travel by local train since without their presence and assistance, it would not only be difficult but practically impossible for the High Court to function smoothly.

14. I say that in as much as the staff of Government Pleaders offices are concerned, it needs to be appreciated that basically all of them are the employees of the State Government and are working under the Law and Judiciary Department of the State. Therefore, like most of the other

State Government employees they are also allowed to use the local train services. Their inclusion in the aforesaid list is more clarificatory in nature and their inclusion therein became necessary as some confusion in that regard was found at the grass root level, at the end of security services manning the local railway stations.

15. At this juncture, I must quickly hasten to state that all the aforesaid offices are not functioning with their full capacity. The attendance of the staff of even these offices has been restricted so as to avoid over-crowding at workplaces and all the said offices are functioning with the assistance of limited, rather minimum, work force. I therefore say that, in the current pandemic situation only those service providers whose services are of topmost priority and are indispensable, have been allowed to travel by local trains so as to avoid over-crowding inside the trains, which will ultimately help in curbing the spread of infection under consideration.

16. I say that the Petitioners have alleged discrimination being caused to them since the staff of Government Pleader office, the office of Advocate General as well as the staff of High Court are being permitted to travel by local train. It is alleged that the Respondents are unreasonably classifying between Government Pleaders who themselves are Lawyers/Advocates and Lawyers/Advocates who undertake private practice like the Petitioners. In this regard it is most humbly submitted that the State Government has allowed the staff of the aforesaid three offices, who are not themselves lawyers or advocates. It is not that Government Pleaders, who are advocates or lawyers are themselves allowed to travel by local trains. In my humble submission there cannot be any comparison amongst the staff of the aforesaid three offices on one side and the Lawyers/Advocates on other side, as both the aforesaid classes are completely different and therefore, the Petitioners cannot allege discrimination by making the aforesaid allegations or

even otherwise. In my respectful submission therefore, the entire contentions made in this regard are completely factually incorrect, misdirected and baseless.

17. At this juncture, I must invite attention of this Hon'ble Court to the order passed in Criminal Writ Petition No. ASDB-LD-VC-118 of 2020. Apart from other reliefs, the Petitioner in the said petition had sought issuance of appropriate writ, order or direction, to direct the Respondent No. 2 to categorize advocates, legal service providers into the category of 'Essential Services'. After hearing the parties the Hon'ble Court was pleased to pass an order on 10<sup>th</sup> July, 2020 whereby it was held that such prayer cannot be granted in exercise of writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. Hereto annexed and marked as Exhibit-1 is the copy of the said order dated 10/7/2020.

18. I say that considering the present situation and circumstances at hand it is just not possible to accede to the demand of the petitioner as made in the present petition or even otherwise.

19. I therefore say that the present petition is devoid of any merits and is thus liable to be dismissed and hence may be dismissed.

Solemnly affirmed at Mumbai. )

Dated this 18<sup>th</sup> July, 2020 )

(Kishor Raje Nimbalkar)

Before me,

Drafted by  
Akshay Shinde,  
B Panal Counsel

Settled by  
Advocate General,  
Maharashtra State, Mumbai.

Associate/ Asstt. Master,  
High Court, Bombay.