

Daily Order

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CHIEF JUSTICE AND B.V.NAGARATHNA	WP 6435/2020	16/04/2020	<p>In the earlier order dated 13th April, 2020, this Court has referred to an application filed by Know Your Rights Association (which is now numbered as I.A. No.8/2020 in W.P. No.6435 of 2020). We have already recorded a prima facie finding in paragraph 3 of the said order which reads thus:</p> <p>“3. Prima facie, we are of the opinion that voluntary organizations cannot be prevented from distributing food to the weaker sections of the society so long as they are following the norms of social distancing and taking other precautionary measures. The State Government will consider of issuing necessary directions to the Deputy Commissioner of Kalaburagi District.”</p> <p>2. Notwithstanding the said prima facie finding, there is nothing placed on record to show that the Deputy Commissioner of Kalaburagi District has modified his earlier direction.</p> <p>3. We invited the attention of the learned Additional Advocate General to the email received from the applicant in I.A. No.8/2020 seeking permission to withdraw the application. The circumstances under which the said prayer is made are set out from paragraph 4 onwards of the said email. If what is stated in the email is correct, it is quite disturbing. The State Government must, therefore, file the response of the Deputy Commissioner, Kalaburagi. Considering the grounds mentioned in the email, as of today, we are not permitting the applicant in I.A. No.8/2020 to withdraw the application. The application will be listed on 21st April, 2020.</p>

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			<p data-bbox="762 197 1474 1400">4. As regards the Non-Governmental Organisations (NGOs) who are supplying food and rendering their services, there is a Circular issued by the Principal Secretary, Rural Development and Panchayat Raj, Government of Karnataka, and Member of the Committee directing all the Deputy Commissioners to co-ordinate the activities of NGOs for COVID-19 and also the volunteers at the district level and municipal level by convening meetings by video conference in which the Chairpersons of the District Legal Services Authorities (DLSAs) may be invited to participate. In addition to the said Circular, there is a further Circular issued by the Principal Secretary, Rural Development and Panchayat Raj Department on 15th April, 2020 directing all the Deputy Commissioners to appoint nodal officers at the district level to co-ordinate with the NGOs and to identify a lead NGO to co-ordinate with the other NGOs. In fact, the said Circular contemplates holding of regular meetings and a direction has been issued to furnish information regarding the meetings to the Committee to co-ordinate with the activities of NGOs for COVID-19 related responses. Thus, a specific direction is issued not only to appoint nodal officers in each district, but the nodal officers have been assigned a very important task.</p> <p data-bbox="762 1541 1474 1697">5. All the Deputy Commissioners in the State will act upon the Circulars dated 14th and 15th April, 2020 at the earliest so that the nodal officers start discharging their duties.</p> <p data-bbox="762 1832 1474 2033">6. In addition to this, the State Government has complied with the direction contained in the order dated 30th March, 2020 by making operational an internet portal called SANKALP available at the following website:</p> <p data-bbox="762 2078 1326 2112">https://www.karnatakafightscorona.org</p>

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			<p>The State Government will issue a direction to all the nodal officers to ensure that the NGOs working in the district upload their information on the said portal which will help the Committee at State level to co-ordinate with the NGOs so that their services can be properly utilized. The members of the Bar who are present today who are representing the NGOs will make an endeavour to communicate the other NGOs informing them about the appointment of nodal officers at the district level and a provision made by making available the internet portal called SANKALP. This will ensure that maximum number of NGOs can upload their information on the portal.</p> <p>7. As regards the individuals supplying cooked food to the needy persons, some reservation has been expressed by the learned Additional Advocate General on behalf of the State. The same reservation was expressed on the last date by the learned Additional Solicitor General of India. Individuals who are willing to supply food, either cooked food or in the form of ration kits, are plenty in number in the State. The State Government will create a machinery or mechanism so that the individuals can submit their willingness to provide cooked food and ration kits. Since the individuals will find it difficult to go to various Government offices, the Government must come out with an appropriate mechanism so that maximum advantage can be taken by the Government of those individuals who are willing to provide food. As the State Government has taken steps to channelize the activities of the NGOs at the district level, even the activities of the individuals can be channelized by ensuring that the benefit reaches the marginalized sections of the society. The State Government will respond on this aspect on 21st April, 2020.</p>

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			<p data-bbox="762 237 1474 398">8. At this stage, the learned Additional Advocate General informs us that even individuals can upload information on SANKALP so that their services can be availed by the State.</p> <p data-bbox="762 533 1474 1608">9. The State Government has filed written submissions dealing with the issue of food security in terms of what transpired before the Court on the last date. On the last date, one of the issues considered was of the plight of people belonging to the vulnerable sections of the society and marginalized sections of the society which consists of migrants, homeless persons, destitutes, sex workers, etc. who do not have a shelter, was considered. The State Government has taken a policy decision that unless a person produces a ration card issued by the State Government or any other State, rations will not be provided through the public distribution system. Paragraphs 16 and 17 of the latest written submissions filed by the State Government record that so far as this class of vulnerable citizens having no shelters and no food is concerned, the District Administration will continue to open shelter camps for housing this category of persons and provide them food. The Gram Panchayats and municipal local bodies will also assist in providing shelters and providing food to such persons in their jurisdiction either on their own or with the assistance of the District Administration.</p> <p data-bbox="762 1742 1474 2152">10. The second policy decision is that vulnerable poor households and migrant workers with shelter will be provided dry ration or cooked food, as the case may be. Paragraph 17 of the written submissions records that identification of the people needing food or shelter or both will be done by the Revenue Department with the support of the respective Gram Panchayats or the respective local bodies in the districts. It is specifically stated that in the limits of Bruhat</p>

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			<p>Bengaluru Mahanagara Palike (for short, “BBMP”), the responsibility of identifying such persons and providing the relief in accordance with the instructions issued in the letter dated 11th April, 2020 of the Additional Chief Secretary, Urban Development Department is of BBMP.</p> <p>11. Thus, the latest submissions of the State Government deal with two different categories of people who are in dire need of food. The first category is of those who are on the streets and the second category is of those who are having shelter, but do not have food for the reason that they have no income and they have no ration cards.</p> <p>12. So far as the second category of persons is concerned, as rightly pointed out across the Bar by the learned counsel appearing for People’s Union for Civil Liberties (for short, “PUCL”), the State needs to elaborate on the quantum of dry ration or cooked food. Moreover, on the last date, a submission was made that by providing dry ration, no purpose will be served as Liquefied Petroleum Gas cylinders are not available. Therefore, the State Government will have to co-ordinate with the suppliers of LPG cylinders so that the provision for supply of dry ration becomes really effective.</p> <p>13. On the aspect of providing gas cylinders as also the aspect of quantum of dry ration and cooked food and the mechanism by which dry ration or cooked food will be supplied, the State Government must elaborate on the next date.</p> <p>14. Before we deal with the compliance by BBMP, we must record here that if policy</p>

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			<p>decisions which are set out in paragraphs 16 and 17 are to translate itself into actually providing food or shelter or both to those who badly need it, it is imperative that the task of identification of those people who are in need of food must be undertaken by the State and other authorities/instrumentalities on a war footing. The learned counsel appearing for PUCL pointed out that on 5th April, 2020, PUCL has forwarded data of migrant workers having shelter but who are without food. It is pointed out that emails have been forwarded to the Deputy Commissioners of many districts containing details. Copies of the emails shall be forwarded by the learned counsel for PUCL to the learned Additional Advocate General.</p> <p>15. Another grievance which is made by him as well as by the learned counsel representing the Karnataka State Legal Services Authority (KSLSA) is that Hunger Helpline of the Government is not working and is ineffective. The State Government must immediately respond and make Hunger Helpline effective.</p> <p>16. Now we come to the issue of compliance by BBMP. In order dated 9th April, 2020, we had expressed dissatisfaction about the steps taken by BBMP by specifically recording in paragraph 11 that the report submitted by BBMP indicates that there is no systematic effort made by BBMP to ascertain how many migrants, homeless persons and stranded people are on the streets and/or are squatting on public places such as below the flyovers in the State. In fact, three categories of migrant workers were incorporated in paragraph 11 of the order. In paragraph 12, the mandatory obligations of BBMP under the provisions of the Karnataka Municipal Corporations Act, 1976, have been set out. Even paragraph 13 of the order refers to such statutory obligations. Considering the failure of BBMP to take timely action, we directed the</p>

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			<p data-bbox="762 197 1474 353">Additional Chief Secretary of the Urban Development Department, Government of Karnataka, to issue appropriate directions to BBMP.</p> <p data-bbox="762 495 1474 943">17. Accordingly, on 11th April, 2020, a Circular was issued by the Additional Chief Secretary containing directions to BBMP. The first and most important direction given to BBMP is in clause (1) of the Circular which directs that BBMP shall locate all migrants, homeless and stranded persons within its limits without shelter, migrants without any homes and to accommodate them in shelter homes to be provided by BBMP. It specifically records that action shall be taken forthwith.</p> <p data-bbox="762 1077 1474 1525">18. Now we turn to our order dated 13th April, 2020. In paragraph 9, we have referred to the Circular dated 11th April, 2020. After noting that the compliance with the directions in the Circular dated 11th April, 2020 was not reported in the second report and after noting that nearly 1/3rd of the positive cases of COVID-19 reported in the State are from Bengaluru Urban District, we suggested to the learned counsel for BBMP to hold video conference meetings on 14th April, 2020 with the members of the Bar.</p> <p data-bbox="762 1659 1474 2152">19. We are constrained to note that except the learned counsel for BBMP, all the learned counsel who are present today for video conferencing hearing and who were present in yesterday's meeting convened by BBMP, including the learned standing counsel representing the Central Government, made a categorical statement across the Bar that from the discussion which they had with the Commissioner of BBMP, the impression which all of them got is that the Commissioner of BBMP has no plan ready for identifying the</p>

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			<p>migrants and other vulnerable sections of the society as per the direction contained in clause (1) of the Circular dated 11th April, 2020.</p> <p>20. In view of this categorical submission made across the Bar, we inquired with the learned counsel for BBMP about the mechanism evolved by BBMP to identify such vulnerable sections of the society. The response was that Marshals have been assigned the task of identifying such people in all the 198 Wards. However, he states that there are only 40 Marshals who have been deployed across the 198 Wards of BBMP to identify such vulnerable sections of the society including the migrant workers. He is unable to tell us how many such people have been so far identified. He states that during the last two days, in the East Zone, 499 such persons along with 30 transgenders were identified who belonged to the category of people without a shelter and who are badly in need of food. When we pointed out that at the 13 shelters which, according to BBMP, are available, there is no place to accommodate 529 people, he is unable to tell where these 529 persons have been accommodated. We still wonder how only 40 Marshals can be given the task of identifying vulnerable people including the migrant workers who are on the streets in all the 198 Wards. This supports the contention of the learned members of the Bar that BBMP has no plan or scheme to comply with the directions contained in clause (1) of the Circular dated 11th April, 2020.</p> <p>21. The learned counsel appearing for PUCI pointed out that this default is not confined only to the people on the streets. He pointed out that on 5th April, 2020, it was communicated to the Municipal Commissioner and Joint Commissioners by email by giving particulars that about four thousand people who are having shelters badly need food. But no action seems to have been taken.</p>

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			<p data-bbox="762 322 1476 1570">22. We have perused the Compliance Report submitted by BBMP which is styled as '3rd Report'. In Chapter No.3 of the Report, it is stated that there is no scientific data available regarding number of migrants and BBMP has obtained some data from the Labour Department which indicates that approximate number of migrants is 61000. Firstly, the Labour Department can give data of only the workers on the sites of the public projects. Secondly, while admitting that there is no scientific data available, the BBMP has not stated what efforts it is trying to make to locate the vulnerable sections of the people who are on streets including migrant workers. It is clarified that out of thirteen shelters mentioned in earlier Report, nine were existing prior to Covid-19 crisis and four new shelters have now been established. A tall claim is made that the BBMP has distributed 8,50,658 food packets and 68,166 food grain kits to all the needy persons including migrants. As BBMP has not identified persons with shelter and without shelter who badly need relief, we wonder to whom this benefit has gone. The Report of BBMP is silent on this aspect. The learned counsel representing all other parties stated that the impression which they got in yesterday's meeting is that, BBMP expects the NGOs to supply data of vulnerable sections of people who immediately need relief.</p> <p data-bbox="762 1704 1476 2152">23. In paragraph No.14 of Chapter No.3, BBMP has stated that a public notice has been issued which is published in two Kannada daily newspapers. We are unable to understand how BBMP can reach the people on street as well as people having shelter but no income and no food by publishing newspaper advertisements. Moreover, public notice dated 01st April, 2020 published in Vijayavani Kannada newspaper is regarding availability of free food in 191 Indra Canteens. It is an accepted position that free</p>

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			<p>food is not being supplied through Indira Canteens. We are of the view that no amount of publication of public notices in the newspapers will help BBMP to implement Clause (1) of the Circular dated 11th April, 2020, under which BBMP was directed to forthwith locate all migrants and other homeless persons who are on the street. In fact, there are elaborate directions issued to BBMP in the same Circular about the migrants and other vulnerable section of people who are having shelter but no food.</p> <p>24. The learned counsel appearing for the Central Government invited our attention to the various provisions of the Disaster Management Act, 2005 dealing with the obligations of local authority and in particular, obligations under Section 41. The obligation is that in case of disaster, the local authorities shall carry out relief, rehabilitation and reconstruction activities in the affected areas in accordance with the State Plan and the District Plan. It is also pointed out that non-compliance with the obligations under the Disaster Management Act, 2005 will have result of attracting Section 56 thereof which provides that an officer not performing his duty can be sentenced to suffer imprisonment as provided therein. This is apart from obligations of Municipal Corporations under the Act of 1976, which we have already adverted to in our earlier order.</p> <p>25. Our attention is invited to order dated 29th March, 2020 under which a direction has been issued by the Central Government to the State Governments to ensure that adequate arrangements of temporary shelters, provision for food, etc. for poor and needy people including migrant labourers stranded due to lockdown measures in their respective areas shall be taken.</p>

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			<p>26. Even after 22 days of lockdown period is over, as of yesterday (15th April, 2020), BBMP has not come out with any plan to identify the vulnerable sections of people. We, therefore, direct the State Government to immediately step in and ensure that BBMP complies with its statutory obligations as well as the obligations under the directions issued which are contained in Circular dated 11th April, 2020. As BBMP is unable to submit proper compliance reports, we direct the State Government to co-ordinate with BBMP officers and submit a detailed report about the compliance made by BBMP with the directions in the Circular dated 11th April, 2020. Apart from submitting a report as directed in the earlier part of this order, the State must submit its report on the steps taken by BBMP before 21st April, 2020. The State Government will take a serious note of the fact that even after completion of 22 or 23 days of lockdown, BBMP has no plan or no scheme in place to identify the vulnerable sections of people to whom the BBMP was under an obligation to extend relief as provided in the Circular dated 11th April, 2020. Even de hors of the said Circular, it was always the statutory obligation of BBMP to do so. Even after State calls for Report from BBMP, it will be appropriate that before submitting it to the Court, the Additional Chief Secretary of the Urban Development Department approves the said Report.</p> <p>27. We are informed that two areas of the BBMP have been sealed. Considering the seriousness of the situation within the city, now the State Government must step in. We are informed that entire area covered by the jurisdiction of BBMP is designated as Red Zone.</p> <p>28. At this stage, learned counsel appearing for the BBMP points out that the 2nd Report contains various compliances. We re-iterate that</p>

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			<p>the 2nd Report does not report compliance of the directions issued under Circular dated 11th April, 2020. Even the 3rd Report submitted does not report compliance with the directions issued in Circular dated 11th April, 2020 and in particular Clause (1) thereof.</p> <p>29. At this stage, learned counsel appearing for BBMP states that on 15th April, 2020, compensation payable to 11 injured Poura Karmikas has been finalized. He states that approximately time of two weeks will be required to make the payments. He states that expenses for medial treatment of these 11 persons have already been paid by BBMP.</p> <p>30. Learned counsel appearing for the PUCL has submitted that a memo stating that directions regarding providing equipments such as masks, hand gloves, etc. to Poura Karmikas have not been complied with. The learned counsel appearing for KSLSA also submits that it is found in many of the cities, that even hand-gloves have not been provided to Poura Karmikas. The State Government will deal with the same and a compliance report be filed on this aspect on the next date.</p> <p>31. We must record here that learned Additional Solicitor General of India, who was present in the Video Conference meeting today, pointed out that within BBMP limits, large number of NGOs have been rendering good services in all the areas where help and assistance is needed. He states that it is due to the contribution made by these NGOs that the capital city has not seen any unpleasant incidents, which were witnessed in other major cities in some other States. In view of the submission made by the learned Additional Solicitor General of India, we must record our appreciation about the work done by</p>

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			<p>large number of NGOs in the city as well as in different parts of the State.</p> <p>32. Before, we close today's hearing, we must refer to the Reports submitted by the Deputy Secretary of the KSLSA which records that today in the morning, the Hon'ble Executive Chairman, KSLSA along with the Principal Judge of the City Civil Court as well as the Principal District and Sessions Judge, Bengaluru Urban District along with other officers of the Legal Services Authority visited two shelter homes established by BBMP, one at All India Institute of Local Self Government, Near Kanishka Hotel, Gandhi Nagar, Bengaluru and the other, at St. Philomena's English School, M.G.Railway Colony, Bengaluru. It is recorded that these shelters have been maintained by the NGOs named in the said Report. It is stated that the shelter home at All India Institute of Local Self Government established by BBMP is managed and maintained by NGO, by the name CURDS and the other at St. Philomena's English School, is being maintained by an NGO named ICDSS.</p> <p>33. In the 3rd Report submitted by the learned counsel for KSLSA across the Bar, it is noted that the Member Secretary, KSLSA, the Principal Judge of the City Civil Court and the Principal District and Sessions Judge of Bengaluru Urban District along with the Office Bearers of the Legal Services Authorities made an attempt to make surprise visit to shelter home at B.K.Nagar, near LIC Colony, Yeshwanthpur, Bengaluru. However, it was found that no shelter home was in existence. On enquiry, it was informed that the shelter home existing in the said place has been shifted. As no BBMP Officials were available, the whereabouts of the inmates who were housed in the said shelter are also not available. We are returning the Reports to the Deputy Secretary of KSLSA, who will take</p>

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			<p>a photo copy of the same and place the same on record and supply the copies to the learned members of the Bar.</p> <p>34. The learned Additional Advocate General pointed out that the Director General and Inspector General of Police has issued a direction for providing passes to the Officer Bearers of the KSLSA and Para-legal volunteers. The learned counsel for KSLSA stated that so far there is no implementation of the said direction. However, the Member Secretary of the KSLSA who is present today, states that an assurance has been received from the Deputy Commissioner of Bengaluru Urban District that passes will be issued immediately. As there is a direction of the Director General of Police and Inspector General of Police, we hope and trust that the direction will be implemented across the State.</p> <p>35. Our attention is invited to our Order dated 24th March, 2020 and in particular, the direction regarding extension of interim orders. The directions are contained in clause (i) to (iii). Clause (iv) is regarding agencies and instrumentalities of the State Government taking action of demolition and eviction. The material part of the said order read thus:</p> <p>“ Only with the view to ensure that citizens are not deprived of their right to approach the Courts of law, we propose to exercise our jurisdiction under Articles 226 and 227 of the Constitution of India by issuing certain directions. The directions are required to be issued to ensure that litigants should not suffer on account of their inability to approach the Courts of law. We issue the following directions:</p>

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			<p>(i) All interim orders passed by the Karnataka High Court, all the District Courts, Civil Courts, Family Courts, Labour Courts, Industrial Tribunals and all other Tribunals in the State over which this Court has power of superintendence, which are due to expire within a period of one month from today, will continue to operate for a period of one month from today. We, however, make it clear that those interim orders which are not of a limited duration and are to operate till further orders will remain unaffected;</p> <p>(ii) If the Criminal Courts in the State have granted bail orders or anticipatory bail for a limited period which are likely to expire in one month from today, the said orders will stand extended for a period of one month from today;</p> <p>(iii) If any orders of eviction, dispossession or demolition are already passed by the High Court, District or Civil Courts, the same shall remain in abeyance for a period of one month from today;</p> <p>(iv) Considering the fact that it will be practically impossible for the citizens to approach the Courts for redressal of their grievances for a period of twenty-one days specified in the order of the Ministry of Home Affairs dated 24th March 2020, we sincerely hope that the State Government, Municipal Authorities and the agencies and instrumentalities of the State Government will be slow in taking action of demolition and eviction of persons.</p> <p>This order be published in the official website of this Court. A soft-copy of this order shall be sent</p>

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			<p>to all concerned Courts and Tribunals; the learned Advocate General; the learned Additional Solicitor General of India; the learned Assistant Solicitor General of India; State Public Prosecutor and the Chairman of Karnataka State Bar Council. We request the Chairman of the Bar Council to circulate this order to all the Bar Associations in the State. ”</p> <p>36. We direct that considering the prevailing situation, the period of one month mentioned in clause (i) to (iii) shall stand extended till 05th June, 2020. Even the observations made in Clause (iv) will continue to operate.</p> <p>37. As directed above, even this part of the order (paragraphs 35 to 37) shall be published on the official website of this Court. A soft copy of the same shall be sent to all concerned Courts and Tribunals; the learned Advocate General; the learned Additional Solicitor General of India; the learned Assistant Solicitor General of India; State Public Prosecutor and the Chairman of Karnataka State Bar Council. We request the Chairman of the Bar council to circulate this order to all the Bar Associations in the State.</p> <p>38. The learned counsel appearing for KLSA has placed on record two volumes of the Report submitted by DLSAs, which cover 13 districts. Our attention is invited to the Report of learned Principal District Judge, Mangalore in the form of email dated 10th April, 2020. We request the learned Additional Advocate General to look into the report and respond on the next date.</p> <p>39. Place this group of petitions and other connected petitions along with the petitions</p>

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			ordered to be listed on 21st April, 2020 at 11.00 a.m.

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