

Daily Order

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CHIEF JUSTICE AND B.V.NAGARATHNA	WP 6435/2020	07/04/2020	<p>We have invited attention of the learned Additional Advocate General to the e-mail received from Dr. Zeenath, Professor and HOD of Department of Pathology in Employees' State Insurance Hospital, Kalaburagi. She has stated that the hospital staff is not even provided with masks. In fact, she has pointed out that some of the staff members were present in the room in the said ESI hospital where COVID-19 positive patient had visited before he was tested positive.</p> <p>2. We have also received one more e-mail from the staff members such as ASHA, ANM, Health workers working in Bidar District check-post pointing out that they have not been provided masks, hand sanitizers, hand gloves and PPE kits.</p> <p>3. We hope and trust that the learned Additional Advocate General will look into the grievances made in these two e-mails received by the Registrar (Judicial).</p> <p>4. We have heard the learned counsel representing the Karnataka State Legal Services Authority who has brought to our notice certain disturbing features of the status of the migrant workers in the city of Bengaluru. She has handed over along with the compilation running two volumes, a report submitted by the Member Secretary of District Legal Services Authority, Bengaluru Urban District. It is recorded in the report that, yesterday, the Secretary, the Chairman of the District Legal Services Authority and Member Secretary, Karnataka State Legal Services Authority visited some parts of Bengaluru city. They found that more than 2000 persons had assembled in and around</p>

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			<p data-bbox="762 197 1476 857">Majestic Railway Station and Balepet Circle. They were not maintaining social distancing. It is pointed out that most of them were migrant workers from North Karnataka, Bihar and Jharkhand. It is pointed out that not only that they are not being provided with any shelter, but also facility of toilets is not made available to them and they are not regularly getting food. It is pointed out that this situation prevails in one part of the city near Majestic. The apprehension is that there may be such migrant workers and homeless people on streets in different parts of the city of Bengaluru. The learned counsel stated that the visits by the officers of District Legal Services Authority in the city of Bengaluru and other cities will continue.</p> <p data-bbox="762 992 1476 1402">5. Our attention is invited to the fact that large number of public projects such as extension of International Airport, Metro Railway, etc., are underway in the city of Bengaluru. Many public projects are underway in many other cities in the State. Therefore, they are bound to be migrant workers working on the said projects. Moreover, large private construction projects are in progress in the city of Bengaluru and other major cities in the State.</p> <p data-bbox="762 1536 1476 1948">6. The issue of migrant workers on the streets in the city of Bengaluru needs to be addressed immediately. The learned counsel appearing for the Karnataka State Legal Services Authority rightly submits that, as nearly 1/3rd of the total number of cases which are tested positive in the State are from the Bengaluru Urban District, if proper facilities are not extended to migrants in the city of Bengaluru, the situation will aggravate.</p> <p data-bbox="762 2083 1476 2152">7. The learned counsel appearing for PUCL pointed out that there are Operational</p>

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			<p data-bbox="762 197 1476 398">Guidelines for Urban Homeless Shelters, a copy of which will be shared with the learned Additional Advocate General. In the said guidelines, the responsibility has been put on the urban local bodies to provide shelters.</p> <p data-bbox="762 533 1476 857">8. It is always possible for the State and local bodies to get the list of labourers working on various public projects so that they can be traced and accommodated in shelters. The local bodies such as municipal authorities will be in a position to get the list of labourers even from private parties, who have undertaken the projects of construction.</p> <p data-bbox="762 992 1476 1653">9. On behalf of the Bruhat Bengaluru Mahanagara Palike (BBMP), Shri Sarfaraz Khan, Joint Commissioner, Solid Waste Management (SWM), is present. We direct him to ensure that BBMP is represented before the Court on the next date through its learned counsel. We direct BBMP to take immediate steps to set up shelters for migrant workers and to ensure that all facilities are made available to them. Merely setting up of shelters for the migrants will not suffice. BBMP with the help of Government Officers will have to locate migrants who are on the streets in different parts of the city and ensure that by setting up adequate number of shelters, all of them are immediately accommodated in the shelters.</p> <p data-bbox="762 1787 1476 2112">10. The learned counsel for the Karnataka State Legal Services Authority made a suggestion that there are municipal schools and municipal community halls which could be converted into shelters for migrant workers. She also suggested that as an immediate solution, the migrant workers may be permitted to use the toilets on the bus stands, railway stations, etc.</p>

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			<p>11. It is the obligation of BBMP to contact all the Associations of entities/Companies which are doing the real estate business in the city, hold meetings with their Associations and ensure that the members of the Association take care of the labourers engaged by them on various construction sites in the city. Immediate response by BBMP is called for which shall be submitted through its counsel on the next date of hearing i.e., on 9th April, 2020.</p> <p>12. The State Government shall consider of issuing directions to all the Municipal Corporations, Municipal Councils and Municipal Bodies in the State in terms of the directions issued to BBMP so that the Municipal Authorities will be made responsible to take care of migrants and construction workers within their respective jurisdictions. We hope and trust that the State Government will issue such orders immediately.</p> <p>13. The Officers of BBMP can always approach the organization known as the Confederation of Real Estate Developers' Association of India (CREDAI) which represents the entities in real estate business.</p> <p>14. The learned counsel appearing for the Karnataka State Legal Services Authority has tendered two volumes containing reports submitted by Secretaries of various District Legal Services Authorities after visiting to various shelters established in the State for migrants. She will provide soft copies of the reports submitted by the District Legal Services Authorities to the learned counsel for the PUCL, who in turn shall forward the same to all other counsel appearing in the matter. The learned</p>

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			<p>counsel has invited our attention to a report submitted by the District Legal Services Authority, Mysuru, in which, it is pointed out that in some of the shelters in Mysuru, there is no facility of toilets. The State will immediately look into this aspect. The report submitted by the District Legal Services Authorities will be considered on the next date.</p> <p>15. In the meanwhile, the Secretaries of District Legal Services Authorities will share soft copies of the reports concerning their respective districts to the concerned Deputy Commissioners to enable them to take action.</p> <p>16. At this stage, the learned counsel for the State Legal Services Authority pointed out that apart from migrants, there are other homeless persons and stranded persons, etc. on the streets in the cities. We, therefore, clarify that the direction issued as above in case of migrants to all the Municipal Corporations and Municipal Authorities, will apply even to this category of persons as well.</p> <p>17. We have perused the consolidated written submissions filed by the State Government reporting compliance with the directions issued on last two dates.</p> <p>18. As regards paragraph 8, we direct the State to place on record, on the next date, up-to-date district-wise break up of the cases which are tested positive for COVID-19. As regard the information in Clause (vii) of paragraph 13, the State must give details of the location of laboratories which are authorized to test and diagnose people for COVID-19. The State must also specify whether any efforts are being made</p>

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			<p>to make available more laboratories.</p> <p>19. As regards Clause (viii) of paragraph 13, the State Government must furnish district-wise break up of Isolation beds and Intensive Care Unit (ICU) beds with 740 ventilators. The State must also disclose whether all the existing ventilators are functioning and whether adequate technical personnel are available to operate the ventilators. The State must also disclose whether any study is made to ascertain how many ventilators are needed in the State and whether any effort is made to procure additional ventilators and to make arrangements for additional isolation beds. The State will also disclose whether any effort is made to ascertain how many isolation beds will be required in the State.</p> <p>20. As regards Primary Health Centers (PHCs) in the State, a submission is made that same are available and functional. The Secretaries of the respective District Legal Services Authorities will make visits to some of the PHCs on random basis in their respective jurisdictions and will submit a report to this Court on the functioning of the PHCs.</p> <p>21. Clause (xii) of paragraph 13 does not answer the earlier directions issued by this Court. As noted earlier, repeated grievances are being made before this Court about the non-availability of masks in rural areas. While the State has given figures of available stock of N-95 Masks, Triple Layer Masks, Personal Protection Equipment (PPE) Kits and Sanitizer bottles, the State has not disclosed what is the existing requirement of these items in the State. In fact, a grievance has been made by one of the employees of an Employees' State Insurance (ESI) Hospital that masks and PPE kits are not</p>

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			<p>available. The State must disclose before the Court whether it has ascertained as a measure of preparedness, the total requirement of masks of various categories and PPE kits and what is the action plan of the State to procure the equipment. The State will have also to clarify whether PPE kits can be made available at cost to private hospitals and private clinics. The State must make a statement whether masks, PPE kits and sanitizers have been made available to all the public hospitals in the State. We expect the State to respond on this aspect on the next date.</p> <p>22. At this stage, learned Additional Advocate General made a statement that the State will convene a video conference meeting in presence of the Secretary of the Health Department and other officers which can be attended by the members of the Bar who are present today. He states that an endeavour will be to convene a meeting tomorrow evening (08th April, 2020). This is a welcome step taken by the State. The Registrar (Judicial) will supply contact cell phone numbers of the members of the Bar and parties who are present today to the learned Additional Advocate General so that all of them can be put to notice about the meeting which will be convened tomorrow. It is obvious that meeting will be through video conference.</p> <p>23. Now, we go to implementation of guidelines issued by the Ministry of Home Affairs on 24th March, 2020 and in particular, Clauses (9) and (10) thereof. For the sake of clarity, we are reproducing Clauses (9) and (10) of the said guidelines which are of great deal of importance. Clauses (9) and (10) read thus:</p> <p>“9. All places of worship shall be closed for public. No religious congregations will be permitted, without any exception.</p>

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			<p data-bbox="762 237 1469 353">10. All Social/political/sports/entertainment/academic/cultural/religious functions/gatherings shall be barred.”</p> <p data-bbox="762 488 1469 604">24. In paragraph 18 of the consolidated written submissions filed by the State Government, the following assurances have been recorded:</p> <p data-bbox="762 739 1469 900">(i) For implementing Clause (9), the Government of Karnataka has directed closure of Muzarai Temples for public even before 24th March, 2020;</p> <p data-bbox="762 1034 1469 1482">(ii) Secondly, there is a circular issued on 23rd March, 2020 by the Minority Welfare and Waqf Department of the State Government, stating that no member of public would be permitted to offer namaz in mosques. Another order has been issued by the Karnataka Board of Auqaf on 31st March, 2020 which stipulates that no member of public shall be allowed to offer Namaz in Mosques and five time congregation prayers including Jumma Namaz which will stand suspended till 14th April, 2020.</p> <p data-bbox="762 1617 1469 2150">25. Our attention was invited to a report published today in the issue of Times of India in which it was reported that the State Government has given permission to hold Bengaluru Karaga Festival on Wednesday night (08th April, 2020) and there will be large congregation of people to celebrate the festival. In fact, one of the learned counsel during the hearing pointed out that few hundred devotees have already come to the City to participate in the Festival. After taking instructions, learned Additional Advocate General states that no such permission has been granted by the State Government or by</p>

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			<p data-bbox="762 197 1476 275">Police Commissioner of City of Bengaluru and that the report in the newspaper is incorrect.</p> <p data-bbox="762 409 1476 1485">26. We must emphasis that Clause (9) imposes a complete ban of all categories of religious congregations without any exception. As per clause (10), all gatherings, whether, social, political, sports, entertainment, academic, cultural or religious are completely banned. The entire object of imposing the lock-down and issuing orders under Section 144 of the Code of Criminal Procedure, 1973 is to avoid mass congregations. It is not out of place to mention here that it is an established fact that mass congregations lead to spread of Corona virus. It is for these reasons we have taken a serious cognizance of the report published in the Times of India newspaper today. We direct the State Government to scrupulously implement and enforce the guidelines contained in Clauses (9) and (10). The State Government shall show zero tolerance to the breach of the said two guidelines and the law enforcing machinery must come down with heavy hands in cases where there is a violation of clauses (9) and (10). We make it clear that Clauses (9) and (10) equally apply to all religions without any exception. We have already noted that Clause (10) prohibits all categories of social gatherings.</p> <p data-bbox="762 1619 1476 1821">27. The learned counsel Shri T.N. Raghupathy, whose writ petition has been numbered as I.A. No.7/2020, specifically states that the medical shops in Vijayanagar area at Bengaluru do not have adequate supply and stock of medicines.</p> <p data-bbox="762 1955 1476 2152">28. The issue of uninterrupted supply of medicines has been referred in the earlier order. But, the State has not responded. The State shall respond on this issue and the issue raised by Shri T.N. Raghupathy on 9th April, 2020 when</p>

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			<p>this petition will be heard.</p> <p>29. Now, coming to the response of the State on comprehensive plan on food security, in paragraph 20 of the submissions, the State has responded by stating that the category of citizens who were getting benefit from Anganawadies are being supplied ration at their door-steps till 14th April, 2020. The learned counsel appearing for PUCL rightly pointed out that to the pregnant women and lactating mothers, supply of egg and milk is contemplated through Anganawadi Centres. The State Government must immediately respond on this aspect. The learned counsel appearing for PUCL to get feedback from its volunteers about the implementation of what is stated in Clauses (i) and (ii) of paragraph 20 of the compliance submission filed by the State Government.</p> <p>30. It is submitted by one of the learned counsel that certain classes of citizens are entitled to free ration under a Scheme started by the Hon'ble Prime Minister. The State Government will clarify this aspect and ascertain whether any category of citizens are entitled to free ration of certain quantity.</p> <p>31. In the last order, we had directed the State Government to respond on the question whether the State will supply ration to those migrants who do not have ration cards issued by the State of Karnataka or any other State, on production of identity proof. On this aspect, there is no response by the State Government. The State Government must respond on this issue on the next date.</p> <p>32. Our attention is invited to the Clause (iv) of</p>

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			<p>paragraph 20 of the submissions of the State. We must state here that the State must need to elaborate on what is stated in clause (iv) which deals with migrant workers and other vulnerable sections without ration cards. It is stated in the compliance report that food packets are distributed by BBMP within its jurisdiction. It is not clear whether this facility is extended to other parts of the State. There are three categories of migrants which are specified in the last order. As regards second and third categories of migrants, the response of the State is not clear. We direct the State to give specific response as regards supply of ration/food to the second and third categories of migrant workers.</p> <p>33. The response of the State refers to the Call Centres and Helplines in BBMP area. The learned counsel appearing for PUCL pointed out that there is Hunger Helpline available which is partially functioning. The State must come with the clear picture regarding the Helplines which are available to the citizens throughout the State and whether adequate publicity has been given to the availability of Helplines. The Government must also state whether the grievances received through the Helplines are being addressed immediately.</p> <p>34. As regards the issue of farmers, though part of the compliance is dealt with in the submissions of the State, we propose to deal with the said issue on 9th April, 2020. The State has not stated anything about the supply of passes to the farmers and labourers to approach their fields. The issue regarding farmers will be considered on the next date.</p> <p>35. While dealing with the issue of care of animals, the State has not come out with any policy decision on two issues. The first issue is</p>

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			<p>whether pet shops are treated as a part of essential services and second issue is, whether the agencies or shops supplying pet foods are permitted to sell the pet foods as a part of essential supplies. The State must respond on these aspects on the next date.</p> <p>36. As regards the issue of health and safety of Pourakarmikas, in paragraph 23, the State must come out with elaborate steps taken for health and safety. In respect of the Pourakarmikas, if the measures which have been set out in paragraph 23 are really implemented at grass-root level, most of the grievances of the Pourakarmikas will be taken care of. The Secretaries of the District Legal Services Authorities can give feedback on this aspect within a period of one week after ascertaining whether there is implementation of the measures set out in paragraph 23. The learned counsel for PUCL has also agreed to submit a report on what is stated in paragraph 23. This issue will be gone into when the petition is heard in the next week.</p> <p>37. As regards creating a portal to enable the NGO to upload information, it is stated in the submissions that a portal is being developed. The State must expedite it.</p> <p>38. As regards release of prisoners, out of the cases identified by the High Power Committee, 636 prisoners have been granted interim bail. So far, 613 prisoners have availed of orders of interim bail. It is pointed out that as of today, out of 1379 prisoners who have been identified for being released on Parole, 121 prisoners have been released so far and as many as 215 prisoners have declined to avail of the order of Parole.</p>

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			<p data-bbox="762 282 1476 775">39. As regards the prisoners who have been granted bail but have not availed of the order of granting bail, the Secretaries of District Legal Services Authorities by visiting the prisons will inform such prisoners about their right to apply for relaxation of conditions of grant of bail and the Secretary and/or para-legal volunteers can render necessary assistance to the prisoners to enable them to apply for modification or relaxation of the conditions of bail. Such applications can be entertained by the Courts by hearing through video conference.</p> <p data-bbox="762 909 1476 1111">40. As regards the other issues and remaining part of the consolidated written submissions of the State and especially paragraph 40, the matters will be heard on 9th April 2020 at 11.00 a.m.</p> <p data-bbox="762 1245 1476 1312">Let the matter be listed on 9th April, 2020 at 11.00 a.m.</p>

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