

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE SECOND DAY OF JUNE TWO THOUSAND AND TWENTY ONE

**:PRESENT:
THE HONOURABLE SRI JUSTICE K.LAKSHMAN**

IA No. 1 OF 2021

IN

WP NOS: 12485 & 12487 OF 2021

I.A.No.1 of 2021 in W.P.No.12485 of 2021:

Between:

T. Jayant Jaisoorya, S/o. T. Satyanarayana Jaisoorya.

...Petitioner
(Petitioner in WP 12485 OF 2021
on the file of High Court)

AND

1. The State of Telangana, Rep. by its Principal Secretary, Department of Home, Secretariat, Hyderabad.
2. The Director General of Police, State of Telangana, Lakdi-ka-pool, Nampally, Hyderabad.

...Respondents
(Respondents in-do-)

Counsel for the Petitioner : Sri P VISHNUVARDHANA REDDY
Counsel for the Respondents : Sri P. Radhieve Reddy, Spl. Government Pleader

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to exempt the petitioner who is practicing advocate and also Advocates & Advocates Clerks from movement restrictions during Curfew/Lockdown period for attending the courts/tribunals, their offices, police stations and statutory authorities, pending disposal of WP No. 12485 of 2021, on the file of the High Court.

I.A.No.1 of 2021 in W.P.No.12487 of 2021:

Between:

Sri. M. Kishore Babu, S/o. M.M.M. Raja Rao.

...Petitioner
(Petitioner in WP 12487 OF 2021
on the file of High Court)

AND

1. The State of Telangana, Rep. by its Principal Secretary, Department of Home, Secretariat, Hyderabad, T.S.
2. The Director General of Police, Government of Telangana State, Lakdikapool, Hyderabad, T.S.

...Respondents
(Respondents in-do-)

Counsel for the Petitioner : Sri D S N V PRASAD BABU
Counsel for the Respondents : Sri P. Radhieve Reddy, Spl. Government Pleader

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to exempt the Advocates and Advocate Clerks from movement restrictions during Curfew/Lock Down in order to allow them to attend their offices and returning back home after office work from Andhra Pradesh as well with the State of Telangana, pending disposal of WP No. 12487 of 2021, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following.(The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

I.A.Nos.1 of 2021

In

Writ Petition Nos. 12485 and 12487 of 2021

COMMON ORDER:

These two writ petitions are filed by the practicing advocates seeking to declare action of the respondents in not exempting them from movement restrictions during lockdown in order to allow them to attend their offices, Courts/Tribunals, Statutory authorities, Police Stations and to return back to their homes after office works and also from obstructing them while going to their offices and return back home after office hours, as illegal and for consequential directions to the respondents to exempt the petitioners/practicing advocates and their clerks from the movement restrictions during lock down period for the purpose of attending Courts/Tribunals, Police Stations etc.

The above stated writ petitions came up for hearing on 27.05.2021 and on that day, learned Advocate General made a statement that he has advised authorities to ensure that practicing lawyers are not to be put to hardship while traveling to Courts and their offices. Recording the said submission, this Court directed that the matters to be listed on 01.06.2021.

On 01.06.2021, C.Harender Pershad, learned Special Government Pleader, representing learned Advocate General, on instructions, has submitted that the authorities concerned are going

to consider the advise of the learned Advocate General on 01.06.2021 and he sought time to place the same on record. Therefore, this Court has directed the Registry to list these matters today at 10.30A.M.

Sri P.Radhive Reddy, learned Special Government Pleader, representing the learned Advocate General, has placed a memo vide No.2026/GAD/2021 dated 01.06.2021 issued by the Government of Telangana, General Administration Department which is as follows:-

“It is hereby directed that the Advocates appearing in Hon’ble High Court and various other Courts in the State of Telangana are hereby permitted to move from 2.00P.M. from Residence to Office and back on official purpose only, based on the e-Pass to be issued by concerned Commissioner(s)/ Superintendent(s) of Police. For this, an application has to be made by the Advocate concerned to the respective Commissioner(s)/Superintendent of Police, under his jurisdiction, by providing Advocate’s Residential and Office address.

The movement is restricted to plying between Residence and Office during the said hours and shall be valid till 09.06.2021.”

By referring the same, Sri P.Radhive Reddy, learned special Government Pleader would submit that the authorities concerned have considered the grievance of the Advocates and issued the said memo permitting the Advocates appearing in High Court and various other Courts in the State of Telangana to move from 2.00P.M. till 5.00 P.M. from Residences to Offices and back on official purpose only based on e-Pass to be issued by the Commissioner(s)/Superintendent(s) concerned.

Sri P. Vishnu Vardhan Reddy, learned counsel for the petitioner in W.P.No.12485 of 2021 would submit that the job of the Advocates and their clerks is also an essential service and they have to attend offices, Courts/Tribunals/Quasi judicial functionaries and also Police Stations to protect the interest of their clients. The Advocates have to get the petitions/complaints etc., typed with the help of the Typists/Stenographers in their respective offices and they have to file it before the appropriate Courts. The said petitions include bail petitions, writ petitions challenging illegal demolitions and dispossessions etc. There are matters including Public Interest Litigations with regard to Covid-19 issues etc., to be represented by the Advocates and they have to file petitions and counters etc. Therefore, the Advocates have to work round the clock.

G.O.Ms.No.102, dated 11.05.2021 issued by the Government of Telangana, imposing lockdown from 12.05.2021 till 22.05.2021 permitted certain activities including E-commerce (delivery) of goods and merchandise including food, pharmaceutical and medical equipment, to go on.

By referring to the said G.O.Ms.No.102, dated 11.05.2021, Sri P. Vishnu Vardhan Reddy, learned counsel for the petitioner in W.P.No.12485 of 2021 would submit that the government has permitted certain activities including banks, ATMs, insurance services and related activities, securities services including those provided by the private agencies, IT and ITeS, construction of

project activities etc. But the government did not consider professional services of the Advocates and the services of their clerks, stenographers/Typists etc.,

According to him, it amounts to violation of the provisions of the Constitution of India and the Code of Criminal procedure. By referring the memo in RC.No.3472/C4/2021, dated 20.05.2021 issued by the Director General of Police, of Andhra Pradesh State, Amaravathi. Learned counsel for the petitioner would submit that the Director General of Police, AP has requested all the Commissioners of Police & Superintendents of Police in the State to take necessary action in the matter of exempting the Advocates, Advocate clerks from movement restrictions during lockdown in order to allow them to attend their offices, return back home after office work. He has also referred the orders passed by the Delhi High court in W.P.(Crl) No.1024 of 2021, dated 25.05.2021 and the Division Bench of the High Court of Kerala at Ernakulam in WP© No.11056 of 2021(S), dated 07.05.2021 on the same aspect.

Sri P.Vishnu Vardhan Reddy, learned counsel for the petitioner in W.P.No.12485 of 2021 would submit that the restrictions imposed by the Government of Telangana, vide memo dated 01.06.2021 are illegal and in violation of the provisions of the Cr.P.C. He would further submit that the petitioner herein has filed an application seeking to amend the prayer to challenge the said memo vide No.2026/GAD/2021 dated 01.06.2021.

Sri D.S.N.V.Prasad Babu, learned counsel for the petitioner in W.P.No.12487 of 2021 would submit that the petitioner is having office at Amaravathi and also at Malakpet, Hyderabad. He is appearing in several Courts including High Court at Andhra Pradesh at Amaravathi, and also High Court of Telangana at Hyderabad. Like the petitioner, several Advocates are appearing in both the States in several Courts including High Courts. Their movements are being restricted by the respondents authorities while entering into the State of Telangana and the border. He would further submit that the restrictions imposed by the government of Telangana vide memo dated 01.06.2021 are illegal and the Advocates are unable to get E-passes etc., there is lengthy procedure and the Advocates, their clerks are facing so many problems. He has also relied on the memo dated 20.05.2021 issued by the DGP, Andhra Pradesh.

In view of the greater importance of the matters, the request of Sri L.Ravichander, learned Senior Counsel, Sri T.Surya Karan Reddy, learned Senior Counsel, President of Telangana High Court Association and Additional Solicitor General of India, Sri Karamchand Komireddy, Sri M.Govind Reddy and Sri Sairam Murthy, learned counsels, to make their submissions is permitted by this Court.

Sri Karamchand Komireddy, learned counsel, would submit that the restrictions of movements imposed by the Government of Telangana, in the memo No.2026/GAD/2021, dated 20.05.2021 are

in violation of Article 22(1) of the Constitution of India, contrary to Section 41(D) of Cr.P.C. According to him, the said restrictions are contrary to the principle laid down by the Hon'ble Apex Court in **D.K.Basu Vs. State of West Bengal**¹ and **Nandini Satpathy Vs. P.L.Dani**² He would further submit that the Advocate has to attend the grievance of client including appearing before the various quasi judicial authorities, police stations during investigation, subordinate Courts and High Courts and therefore their movements cannot be restricted. According to him, the Advocates are also part of justice delivery system for effective administration of justice. With the said submissions, Sri Karamchand Komireddy, learned counsel, would submit that the restrictions imposed in memo dated 01.06.2021 are illegal.

Sri L.Ravichander, learned Senior counsel would submit that the Advocates are unable to log in into the website provided by the government of Telangana in the memo dated 01.06.2021 and also unable to get E-passes. Timings mentioned in the said memo dated 01.06.2021 are irrational and conditions imposed therein are also illogical and irrational. He would further submit that yesterday one of his colleagues tried to open the said website and to get E-pass 16 times but he could not get it. One of the requests to issue E-pass made by the colleagues is rejected by the officials on flimsy grounds. Therefore, they are getting serious problems with the

¹ (1997) 1 SCC 416

² AIR 1978 SC 102

conditions imposed by the Government of Telangana, dated 01.06.2021.

Sri M.Govind Reddy, learned counsel would submit that this Court is having power under Article 226 of the Constitution of India to issue directions to the respondents to exempt the Advocates, their clerks, stenographers/typists from lockdown restrictions imposed in the G.O.Ms.No.102, dated 11.05.2021 and also memo dated 01.06.2021. With the said submissions he would submit that the movements of Advocates, their clerks and stenographers/typists cannot be restricted.

Sri T.Surya Karan Reddy, learned Additional Solicitor General of India, President of Telangana High Court Advocates Association and Senior counsel would submit that this Court is having power to issue directions to the authorities concerned to exempt the Advocates, clerks, stenographers/typists from the restrictions imposed by virtue of G.O.Ns.No.102, dated 11.05.2021 on the principle that the petitioners are Advocates. Other Advocates, their clerks, stenographers/typists will come under one class of persons. Therefore, it is not a Public Interest Litigation and it is a Personal Interest Litigation of the fraternity i.e. class of people.

Sri Sai Ram Murthy, learned counsel would submit that without typists and stenographers, the Advocates will not be in a position to file petitions etc., and they cannot run their offices and they cannot extend professional services.

With the said submissions, the learned counsel would submit that the restrictions imposed by the Government of Telangana in memo dated 01.06.2021 are illegal, contrary to the provisions of the Constitution of India, Cr.P.C. and also principles laid down by the Hon'ble Apex Court in the judgments cited supra.

On the other hand, Sri P.Radhive Reddy, learned Special Government Pleader representing learned Advocate General has taken a preliminary objection with regard to the maintainability of the present writ petitions by referring to the relief sought by the petitioners in the said writ petitions. According to him, the litigation in the present writ petitions is on adversarial litigation and the said objection will go to the root of the matter. He would further submit that the Government of Telangana has considered the request of the Advocates and also the problems being faced by them for carrying on their professional activities and permitted them to move from 2.00P.M. to 5.00P.M., on certain conditions. The said conditions are imposed keeping in view the health conditions of the Advocates, their clerks and stenographers and typists etc. According to him, there is no error in it. There is every possibility of misusing the same by the clerks of the Advocates.

With the said submissions, he sought to dismiss the writ petitions, granting liberty to the petitioners to file Public Interest Litigation. He has also referred the order passed by the Full Bench of this Court vide suo-moto PIL No.3 of 2021. With the said

submissions, learned Special Government Pleader sought to dismiss the writ petitions.

The contention of the learned Special Government Pleader representing learned Advocate General with regard to the maintainability of the present writ petitions will be decided after filing of the counters by the respondents. Considering the greater importance of the matters and also that the petitioners, other Advocates will fall in the very same class of people and also to avoid filing of several writ petitions by the Advocates on their personal capacity, this Court thought it fit to pass the following order as an interim measure.

The above stated facts would reveal that the Government of Telangana vide G.O.Ms. No.102, dated 11.05.2021 imposed lockdown in the entire state of Telangana from 12.05.2021 till 22.05.2021 by invoking its powers under the provisions of the Disaster Management Act, 2005 considering the spread of Covid-19. It has mentioned regulations and measures to be enforced and also permitted certain activities to carry on. The said lockdown was extended by 09.06.2021. In the said G.O., there is no exemption granted to the Advocates, their clerks and stenographers/typists etc.

Article 22 of the Constitution of India deals with the protection against arrest and detention in certain cases and as per 22(1) of the Constitution of India, no person who is arrested shall be detained in custody without being informed, as soon as may be, of

the grounds for such arrest nor shall be denied the right to consult, and to be defended by a legal practitioner of his choice.

Section 41(D) of the Cr.P.C.deals with the right of an arrested person to meet an advocate of his choice during interrogation and as per which when any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation though not through out interrogation.

The Hon'ble Apex court in **D.K.Basu** supra laid down certain guidelines at paragraph No.36, guideline No.10 which is important is extracted below:-

“The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation”

In **Nandini Satpathy** supra the Hon'ble Apex Court discussed about the right of the accused to engage a lawyer of his choice.

The Delhi High Court vide order dated 25.05.2021 in W.P.(CrI) No.2024 of 2021 referring to the instructions, dated 19.04.2021 directed the officials concerned not to subject any advocate in NCT of Delhi if he or she shall produce Bar identity card showing an advocate, no officer of any authority can humiliate any of the Advocates on production of the identity card or other proof. Failing which , strict action shall be taken against the erring officer as per law.

The Division Bench of the High Court of Kerala at Ernakulam vide order dated 07.05.2021, W.P.(Civil) 51056 of 2021(S) directed the said Police Chief to instruct all the Police Officers to ensure that the

lawyers are given essential access to the Courts, otherwise, it will be the common man who will be the sufferer, particularly in criminal matters. Of course in exceptional circumstances, it is advocate or clerks, requires access to office and also it will be up to the Police officer to verify credentials and take a decision if such access is alone.

The above said facts would reveal that there is no dispute with regard to the imposition of the lockdown by the State of Telangana upto 09.06.2021. in G.O.Ms.No.102, dated 16.05.2021, certain activities were permitted including banks, ATMs, Insurance Services to go on including E-commerce(delivery) of goods and merchandise including food, pharmaceutical and medical equipment. There is no exemption to the movements of the advocates, their clerks and stenographers/typists in the said G.O.

Though this Court in suo-moto PIL No.3 of 2021 directed the said authorities not to proceed with the demolitions, dispossessions and etc., during the lockdown period till 30.06.2021, there are complaints in several writ petitions with regard to the illegal demolitions and dispossessions. All the said authorities are proceeding with the demolitions and dispossessions. The Police officials are registering cases against the accused with regard to several offences. They are also arresting the accused and producing them before the courts concerned. Therefore, the Advocates are filing bail applications and also writ petitions challenging said action of the dispossessions and demolitions etc. In several cases, the advocates are appearing before the quasi judicial authorities

under various enactments. Learned Advocates are social engineers and they have to stand on behalf of the citizens, who challenges the illegal actions or state as defined under Article 12 of the Constitution of India. Thus, according to this Court, the advocates and their clerks and subordinate staff like stenographers/typists are to be exempted to enable the learned Advocates to provide effective professional service to litigants.

In the memo dated 01.06.2021, only the advocates were permitted to move from 2.00 P.M. till 5.00 P.M., from Residence to Office, for official purpose only based on the E-pass to be issued by the concerned officials/Commissioner(s)/Superintendent(s) of Police. They have to make an application. The movement is restricted from plying between the residence and office in the said hours shall be followed till 09.06.2021.

The Advocates have to draft writ petitions and bail petitions etc, with the help of the stenographers/typists and they have to file the same with the help of clerks. It is also brought to the notice of this Court that the Courts below are accepting bail applications in physical form and the Advocates have to drop the bail applications, anticipatory bail applications and injunction petitions in drop box. The subordinate Courts are taking up the said petitions. Therefore, according to this Court, the restrictions imposed in the memo dated 01.06.2021 are illogical, irrational and without any valid reasons. As stated above both the Delhi High Court and the Division Bench

of High Court of Kerala have directed the Police Officers not to prevent movement of the Advocates and their clerks on production permitted identity card or proof.

At the cost of repetition, it is relevant to note that the Delhi High Court in the order dated 25.05.2021, directed the officers not to humiliate the advocates on production of the Bar identity card or other proof, failing which strict action shall be taken against the erring officers as per law.

In the order dated 07.05.2021, the Division Bench of High Court of Kerala considered the various aspects including the role of a lawyer as a social engineer to address the grievances of their clients and other issues directed the said police Chief, to instruct all the police officers to ensure that the lawyers are come under essential access to the Courts etc.

In view of the above discussion, both the petitions are allowed. The respondent officials are directed not to restrict the movement of the Advocates, their clerks/stenographers/typists in the entire state of Telangana on the following conditions:-

- i) The Advocates shall produce identity card issued by either Bar Council or any Advocates Association registered with the Bar Council.
- ii) The Advocate clerks, Stenographers/Typists of the Advocates shall produce certificate with photograph issued by the concerned Advocates certifying that they are their clerks/ stenographers/ typists.

- iii) The Advocates, their clerks, Stenographers/ Typists shall strictly follow the guidelines issued by both the Central and State Governments with regard to COVID-19 Pandemic situation.
- iv) All the Advocates, their clerks, Stenographers/ Typists shall not misuse the liberty granted to them in this order, keeping in view the present situation in the entire state of Telangana and country due to COVID-19, pandemic.

The respondents are directed to issue necessary instructions to all the Police officers in the entire State. It is made clear that no officer of any authority including Police and Revenue etc., shall humiliate any of the Advocates on production of their identity cards issued by either Bar Council or Advocates Associations registered with the Bar Council, failing which it will be viewed seriously and action will be taken against the erring officers as per law.

SD/- **K. SAILESHI**
ASSISTANT REGISTRAR

//TRUE COPY//

KSK
SECTION OFFICER

To,

1. The Principal Secretary, Department of Home, State of Telangana, Secretariat, Hyderabad.
2. The Director General of Police, State of Telangana, Lakdi-ka-pool, Nampally, Hyderabad.(1 & 2 By RPAD)
3. One CC to SRI P VISHNUVARDHANA REDDY Advocate [OPUC]
4. One CC to Sri D S N V PRASAD BABU, Advocate (OPUC)
5. Two CCs to GP FOR HOME, High Court at Hyderabad. [OUT]
6. One spare copy

mvj

HIGH COURT

KL,J

DATED:02/06/2021

ORDER

I.A.NO.1 OF 2021

IN

WP.Nos.12485 & 12487 of 2021

DIRECTION

