

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. OF 2021

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

IN THE MATTER OF:

1.

Versus

1. Hon'ble High Court of Delhi at New Delhi
Through its Registrar General,
Delhi High Court, Sher Shah Road,
New Delhi -110503

Contesting Respondent No.1

2. Health and
Family Welfare Department,
Govt. of NCT Delhi
Through its Secretary
9th Level, A-wing, IP Extension,
Delhi Secretariat, Delhi – 110002
Emails: secy-health@delhi.gov.in

Contesting Respondent No. 2

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

To,

THE HON'BLE THE CHIEF JUSTICE OF
INDIA AND HIS COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. The present petition challenges office order bearing Reference No. 01/RG/DHC.2021 and 35/RG/DHC.2021 both dated 14.01.2021 and office order bearing Reference No. 86/ORG/DHC/2021 dated 15.01.2021, issued by the Respondent No.1 in continuation its earlier Office orders and the roaster dated 14.01.2021, according to which 2 Division Benches, 3 Single Benches (Civil side), 3 Single Benches (criminal side), 3 original jurisdiction (civil) of the Hon'ble High Court of Delhi will be holding physical courts daily. Additionally, all the courts of Joint Registrars (judicial) in the High Court and all the

subordinate courts in 6 District Courts shall hold physical Courts every alternate day w.e.f. 18.01.2021. The Petitioners are deeply aggrieved in as much as there is no provision made in impugned office orders to ensure that those litigants who cannot be represented in physical courts by their advocates could either request for virtual hearing or participate in physical court using video-conferencing. The impugned orders therefore amounts to forcing the advocates to appear in person and poses serious risk to their health, safety and infringes upon the fundamental rights guaranteed under Articles 14, 19 & 21 of the Constitution of India.

True copy of the impugned office order dated 14.01.2021 bearing reference No. 01/RG/DHC.2021 has been annexed hereto and marked as **ANNEXURE P-1 (Pg. 41 to 42)**. True copy of the impugned office order dated 14.01.2021 bearing reference no. 35/RG/DHC.2021 has been annexed hereto and marked as **ANNEXURE P-2 (Pg. 43 to 44)**. The Copy of the Roaster of Sitting of Hon'ble judges for taking physical court dated 14.01.2021 is annexed hereto and marked as **ANNEXURE-P-3 (Pg. 45 to 49)**. True copy of the office order dated 15.01.2021 bearing reference No.

86/ORG/DHC/2021 with roaster is annexed hereto and marked as **ANNEXURE-P-4 (Pg.50 to54)**.

2. The Petitioners are women advocates actively practicing before the Hon'ble High Court of Delhi and its subordinate courts in the Union Territory of Delhi.

3. Respondent No.1 is the Hon'ble High Court of Delhi, exercising jurisdiction over the Union Territory of Delhi and has issued the Impugned office order dated

14.01.2021.

4. Respondent No.2 is Health and Family Welfare Department of Govt. of NCT of Delhi.

5. **BRIEF FACTS:**

- i. That the Petitioners are practicing advocates and esteemed members of the Bar, who have been appearing before the Hon'ble High Court of

Delhi and District Courts of Delhi through virtual mode of hearing, on daily basis, due to the ongoing unprecedented pandemic. These members of the Bar have had the additional responsibility of managing the schooling of their children from home given the restricted functioning of schools in view of the ongoing circumstances and the directions issued by the Ministry of Health, to keep the educational institutions closed except for students in the Xth and Xth Standard. As such, the impugned orders unfairly compels the said persons to choose between the health, well-being, life and liberty of the lawyers, clerks, court staff, support staff, the judges, litigants and the families of all such persons on the one part and the right to

carry on their respective professions / trade on the other, by compelling them to attend the court hearings in person. have the direct consequence of infringing the fundamental rights guaranteed under Articles 14, 19 & 21 of the Constitution of India.

- ii. The country was under a nationwide lockdown from 25.03.2020 to 31.05.2020 with restrictions easing out from 01.06.2020 onwards, however, the education institutions except for classes Xth and XIIth have continued to remain closed for physical functioning and students have been resorting to online classes, coaching and homeschooling in the present circumstances. Owing to the various roles that women have to naturally and most often, voluntarily play, such as being a mother and a primary caregiver in a family, tend to add more pressure and strain on women lawyers, particularly since legal profession by itself is extremely demanding and challenging. This has got further accentuated in the present extraordinary times when the world is facing a pandemic and the dependence of school going children and the

elderly have further increased. While the system of virtual hearings had helped to overcome the great hardships women lawyers have faced during the current pandemic and allowed for them to continue and pursue their profession, doing away with the system and compelling them to come to court physically, while the situation has not completely eased out and remains uncertain, will perpetuate inequality and be detrimental to the cause of women lawyers who will be pushed to either pull out of the workforce or risk the health and safety of their family.

- iii. The courts were closed for physical hearing since 16.03.2020 and the Delhi High Court had eventually shifted to virtual hearing mode for urgent hearing matters with a SOP notified on 23.03.2020 in order to protect the rights and interests of litigants. Shortly thereafter, the Delhi high Court resumed functioning through Video Conferencing amidst the pandemic. The Hon'ble Court suggested to begin with, on experimental basis, to try out 1/4th of the courts to resume physical functioning on rotational basis while the

rest were to take up hearing through videoconferencing and had accordingly, directed the District & Sessions Judges, to submit a comprehensive plan called “Committee for preparation of Graded Action Plan” for the consideration of physical hearing, vide notification dated 15.08.2020, bearing reference no. 322/RG/DHC/2020. True copy of the notification dated 15.08.2020, bearing reference no. 322/RG/DHC/2020 is annexed hereto and marked as **ANNEXURE-P-5. (Pg. No.55 -56)**

- iv. That in consonance with the afore-mentioned notification, the Hon’ble High Court of Delhi issued SOP for resumption of physical functioning in the High Court w.e.f. 01.09.2020, in a phased manner, vide a notification dated 27.08.2020, and allotted five benches of the Hon’ble Court to resume physical courts on rotational basis, while the remaining benches were directed to continue taking up matters through virtual mode, vide notification dated 27.08.2020, bearing reference no. 418/RG/DHC/2020.

A copy of the SOP dated 27.08.2020 is annexed hereto

and marked as **ANNEXURE-P-6. (Pg. No. 57 to 62)**.

A copy of the notification dated 27.08.2020 bearing reference no. 418/RG/DHC/2020 is annexed hereto and marked as **ANNEXURE-P-7 (Pg. No. 63 to 64)**

- v. The District Courts in Delhi continued to provide a hybrid system of permitting lawyers to appear through virtual mode even on physical sitting days ensuring smooth functioning of courts and avoiding overcrowding of courtrooms.
- vi. That the hearings through virtual mode and physical mode, as per preference of the advocates and litigants were going smoothly both before the Hon'ble High Court of Delhi and the Delhi District Courts w.e.f. 01.09.2020 till date, and accordingly the Hon'ble High Court and Delhi District Courts kept issuing rosters of the physically sitting courts respectively.
- vii. That there were also provisions made through the Office Order dated 29.08.2020, bearing no. 863, which allowed the advocates to move an application in advance alternatively to change the mode of hearing adjourn from a physical date to a

virtual one, owing to the prevailing pandemic and the circumstances of the advocates and litigants in general for moving an application for changing the mode of hearing and consequently contributed to smooth functioning of the courts all over Delhi.

A copy of Office Order dated 29.08.2020 is annexed hereto and marked as **ANNEXURE-P-8__**. (Pg. No. **65 -66**).

- viii. The Virtual Hearing system of Delhi High Court came to be recognized as best in class and received appreciation from the Apex Court of the Country in various statements issued by the Hon'ble Chief Justice of India and various judges of the Hon'ble Supreme Court. On 05.01.2021, the Hon'ble Supreme Court in SLP(Crl.) No. 6626/2020 noted the following observations regarding the functioning of Virtual Court system in the High Court of Delhi:

“We at the inception must note our exasperation at the inability of the virtual court system to work satisfactorily in the Supreme Court while there is no such problems in the Delhi High Court next door!”

True copy of the order dated 05.01.2021 passed in SLP(Crl.) No. 6626/2020 has been annexed herewith and marked as **ANNEXURE P-9(Pg. No.67 -69)**.

- ix. That the afore-mentioned system was continuing till date seamlessly without any hiccups and the advocates were pleased to choose the mode of hearing as per their convenience in accordance with the respective situation amidst the ongoing pandemic. However, to much shock and dismay of the advocates and the legal fraternity, the Impugned office order along with the latest roster of physical sitting of courts was released on 14.01.2021& 15.01.2021, which mandates that a total of 11 benches, inclusive of 2 Divisional Benches, 3 Single Benches (Civil), 3 Single/benches (Criminal) and 3 Original Benches (Civil), to sit daily and take up matters physically. Thereby, compelling the advocates to appear in person without having any regard to the life, health, and well-being of the advocates and their families. It is pertinent to mention herein that vide the said Roster dated 14.01.2021, it has been

specifically provided that the matters which are listed before the physical benches, would not entertain any requests for change of mode of hearing. The operative part of the said Impugned office order is extracted hereinbelow:

“NOTE:

1. Matters will be taken up through physical mode as per the above roster of Sitting of the Hon’ble Judges of this Court. For the matters which have been listed before physical courts, ordinarily no request for taking those cases through virtual mode shall be entertained.”

- x. The Respondent No. 2 issued a Department Order bearing No. T-22020/14/2020-Imm dated 14.01.2021 giving out a detailed note on contraindications and special precautions for the dissemination of the COVID-19 vaccine. True copy of the Notification issued by the Respondent No.2 bearing No. T-22020/14/2020-Imm dated 14.01.2021 has been annexed herewith and marked as **ANNEXURE P-10 (Pg.70 to73)**
- xi. The 3 dated 14.01.2021 issued by the Hon’ble High Court of Delhi, expanding the scope of physical hearings, both before the Hon’ble High Court as well as the District Courts in Delhi, without an option of virtual hearings on

physical hearing days and further without the option of seeking that the matters be placed on a virtual hearing day, is in violation of the fundamental rights of the advocates, court staff, litigants and other persons appearing before the Courts. The said notification unfairly compels the said persons to choose between the health, well-being, life and liberty of the lawyers, clerks, court staff, support staff, the judges, litigants and the families of all such persons on the one part and the right to carry on their respective professions / trade on the other, by compelling them to attend the court hearings in person. As such, the Impugned office order have the direct consequence of infringing the fundamental rights guaranteed under Articles 14, 19 & 21 of the Constitution of India.

As a matter of fact educational institutions continue to remain close making it imperative for the Petitioner No. 1 to 3 along with many other advocates/ para-legal staff to work from home to be able to help their kids with their online classes.

True copy of the guidelines issued by the Ministry of Home Affairs dated 25.11.2020 for containment of Covid-

19 has been annexed herewith and marked as

ANNEXURE P-11 (Pg.74 to84)

True copy of the guidelines issued by the Ministry of Home Affairs dated 28.12.2020 for containment of Covid-

19 has been annexed herewith and marked as

ANNEXURE P-12 (Pg. 85 to 85)

- xii. Several female members of the Bar have extended their support and voted in favour of continued functioning of Virtual Court System in order to preserve the safety of their children and the elderly members of their families and for protecting their careers which have been built over years of hardwork. A copy of the list of names of lawyers is annexed hereto and marked as **ANNEXURE-P- 13 (Pg. No.86 to 89)**.
- xiii. That the Petitioners are left with no other remedy but to approach this Hon'ble Court by way of the present Writ Petition in the interest of the welfare of advocates, our legal fraternity and public at large.
- xiv. The present Writ Petition has been preferred,

interalia, on the following grounds which are being taken without prejudice to each other:

GROUNDS

- A) .Because right to Livelihood and Right to Health are recognised as fundamental right. As recently as 18.12.2020, in Suo Motu Writ Petition Civil No.7/ 2020, the Hon'ble Supreme Court has observed Right to Health being a fundamental right. As a natural corollary, right to livelihood, without compromising one's (or one's family members') health is also an equal fundamental right. The Impugned office order deserve to be quashed in view of the fact they compel the advocates, court staff, litigants and other persons appearing before the Courts to put at risk their own, as well as their family members' health in order to earn livelihood.
- B) Because the Impugned office order dated 14.01.2021 issued by the Hon'ble High Court of Delhi, expanding the scope of physical hearings, both before the Hon'ble High Court as well as the District Courts in Delhi, without an option of virtual hearings on physical hearing days and further without the option of seeking that the matters be placed on a virtual hearing day, is in violation of the fundamental rights of the

advocates, court staff, litigants and other persons appearing before the Courts. The said notification unfairly compels the said persons to choose between the health, well-being, life and liberty of the lawyers, clerks, court staff, support staff, the judges, litigants and the families of all such persons on the one part and the right to carry on their respective professions / trade on the other, by compelling them to attend the court hearings in person. As such, the Impugned office order have the direct consequence of infringing the fundamental rights guaranteed under Articles 14, 19 & 21 of the Constitution of India.

C) Because the Hon'ble High Court while issuing the Impugned office order dated 14.01.2021 failed to take into account the expert medical advice which continues to remain poised against any form of congregation of a large number of people in closed and air-conditioned spaces. It is submitted that the view taken by the Hon'ble High Court while issuing the Impugned office order and expanding the scope of physical hearings appears to be at direct variance with the medical advice, as has also been highlighted by Hon'ble Chief Justice of India, advising against any such congregation of persons in closed spaces. It is humbly submitted that on empirical

medical advice, there cannot be variation in the advice received by the Hon'ble Supreme Court as regards continuing of virtual hearings on the one hand, and the Hon'ble High Court situated in the same vicinity seeking to commence physical hearings and making attendance towards the same mandatory.

D) Because the Impugned office order are particularly riddled with unintended arbitrary consequences some of which are illustratively highlighted hereinbelow to emphasize the arbitrary outcomes that shall result from giving effect to the said notifications:

- a. Till such time as the schools continue to operate virtually and online classes continue to be the only mode of education for children, it is inconceivable that lawyers, clerks, court staff, support staff, litigants etc. who have young school going children shall be able to attend physical court along side ensuring that their children are able to attend online schooling, for which their presence is essential at home.
- b. As a consequence and as a corollary, it may be considered by this Hon'ble Court that in more cases than not, the

burden to stay at home shall fall on the female lawyers, clerks, court staff, support staff etc., thereby leading to comparatively greater loss of livelihood, income and opportunities for the practicing women in the profession. It is humbly submitted that the said inevitable consequence clearly evidences the discriminatory nature of the Impugned office order which are as such in violation of the salutary guarantee of equality under Article 14 of the Constitution of India.

- c. The Impugned office order are further arbitrary and discriminatory as it shall constrain lawyers, clerks, court staff, support staff etc. to subject themselves to undue exposure, while also risking the health and lives of the members of their family, which in a majority of cases includes infants, toddlers, school going children, elderly parents etc. It is humbly submitted that the said direct adverse consequence of expansion of physical hearing without the option of virtual hearings on physical hearing days establishes that the Impugned office order are in violation of Article 14, 19 and 21 of the Constitution of India.

- d. The Impugned office order are further discriminatory as regards individuals such as pregnant women, nursing mothers, mothers of young children, persons with comorbidities etc. most of whom fall within the categories of persons excepted from the vaccination drive. As such, the undue direct exposure that may be caused to the said category of persons on account of increasing physical hearing, and the further indirect exposure to members of their families, particularly young children and elderlies shall be in violation of Articles 14, 19 and 21 of the Constitution of India.
- e. The Impugned office order further fail to take into account that any spike in the number of Covid cases on account of expansion in the scope of physical functioning of the Courts, shall directly result into lesser efficacy of the vaccination drive which is now underway in the entire country. It is humbly submitted that under the guidelines and advisory issued by the health ministry in the event that any person who gets the first shot of the vaccine contracts Covid thereafter, the said person shall become ineligible to be administered the second shot for a period of eight weeks after recovering therefrom. It is humbly

submitted that the said consequence shall result into such persons being put through extreme hardship, uncertainty and danger, all of which is easily avoidable through a virtual court system until the pandemic subsides and the vaccination drive takes full effect.

- f. The Impugned office order have also failed to take into account that by not providing the option of virtual hearing on the same day and without entertaining the request to place the matter on a day of virtual hearing, a situation of chaos is likely to ensue, inasmuch as on any given day if one matter for any lawyer is listed in physical court, while other matters on the same day are listed through virtual hearings in different courts, given the constraints of physical infrastructure, poor network connectivity, limited access to laptops etc., it shall be impossible for the lawyers to attend to their matters, as they are duty bound to do, causing undue hardship to the litigants. Further, the same shall lead to increased stay of lawyers in Courts where they have physical hearings, thereby causing further exposure and increase in the possibility of transmission of Covid.

g. The Impugned office order further fail to take into consideration statistics that clearly indicate that in the present court system, in the event that physical hearings were to be expanded, given the nature of infrastructure and as has been seen from experience especially in the last 8-10 months, it shall be impossible to maintain social distancing in the court premises, failing which there is bound to be a spike in Covid transmissions. In this regard, it may be noted that each court room in the High Court and the District Court, on an average day, has about 50 matters listed before the said Courts. With an average of 2 lawyers per matter, the said number comes to approx.. 100 lawyers per court room per day. With an assumption of about 10 physically functional court rooms in a day in the High Court, and about 25 physically functioning court rooms in the District Courts, the said number of lawyers alone comes to about 1000 lawyers in the High Court per day and about 2500 lawyers in the district courts per day. It is humbly submitted that numbers of court staff, judges, support staff, registry officials, litigants etc. are in addition to the above. As such, by any stretch, it is evident that the said numbers are far higher than the medically suggested number of persons that are being permitted to congregate

at any place under the extant guidelines of the Government of India and the Government of NCT of Delhi. It is humbly submitted that any such congregation is bound to defeat any practical implementation of social distancing and cause an increased rate of transmission.

h. The advocates, support staff, clerks etc. who regularly practice in Delhi and are employed for gains in Delhi, who had been constrained to move back to their hometowns across the country, shall be unduly constrained to expose themselves to physically return to Delhi urgently and immediately amidst rampant chaos on account of expanded physical hearings, thereby causing immense risk of life and health to such persons. Further, the sudden influx of lawyers and staff in Delhi from across the country can further have an impact on the increase of corona virus cases in Delhi NCR, which has brought the same under control after a hard fought battle of over 10 months.

i. The said system as is sought to be adopted and made mandatory by the High Court, both for itself as well as the District Courts shall have the further effect of marginalizing and forcing persons with co-morbidities, or persons who

have members in their family or common household with co-morbidities or pregnant or nursing mothers to leave the profession and/or employment as Advocates, support staff, clerks etc. It is humbly submitted that the said direct and inevitable consequence shall lead to a violation of Article 14, 19 and 21 of the Constitution of India.

- j. Further it is inevitable that those who are waiting for their cases in physical courts would crowd the corridors, lobbies and the Bar rooms, both at the High Court and the District Courts, and it would be extremely difficult to maintain physical distancing norms. As aforementioned, with a huge number of cases being taken up by each court, the procedures of sanitation and cleanliness will become impossible to follow. It is well known that common bathrooms are one of the super-spreaders of the Corona Virus. It is further well known that even during normal times, much less during the ongoing pandemic, there is a massive dearth of clean and hygienic toilet facilities in the High Court, and even lesser in the District Courts. Further, it is equally well known that the said aspect particularly affects the female members of the bar, court staff etc. more and in the event of physical re-opening without available infrastructure and without the possibility of maintenance

of strict hygiene protocols, the same would lead to disastrous consequences, including but not limited to increased transmission, health risks, super-spreader events, consequential fatalities etc.

k. For lawyers and counsels having multiple matters on a daily basis, especially lawyers and counsels representing the State/ statutory bodies/ corporations etc., the possibility of having matters both in physical court as also in virtual court on the same day presents a challenge inasmuch as the possibility of a clash between a matter in physical court and one in virtual court cannot be ruled out or ignored. There is no gainsaying that, it is not practically possible or feasible while awaiting the turn for a matter in the Physical Court, to attend to and prosecute a matter that may be called out in a virtual court at the same time. Furthermore, the network connectivity in the court premises, and in and around the court complex is extremely poor and the same shall prevent / prohibit the lawyers/ counsel from attending to matters in virtual courts on the same day, even if one were to attempt to do so from the physical court premises.

1. Because the struggle of women to achieve equality, *inter alia*, in the legal profession is a continuing process and both, the Bar and the Bench have made positive contributions in trying to create a level playing field. However, various roles that women have to naturally and most often, voluntarily play, such as being a mother and a primary caregiver in a family, tend to add more pressure and strain on women lawyers, particularly since legal profession by itself is extremely demanding and challenging. This has got further accentuated in the present extraordinary times when the world is facing a pandemic. While the system of virtual hearings had helped to a great extent in removing the entry barriers and made it smooth for women lawyers to continue to pursue their profession, doing away with the system, while the situation has not completely eased out and remains uncertain, will perpetuate inequality and be detrimental to the cause of women lawyers.

E) Because it is settled law that any law, notification or order that is bound to result in arbitrary, discriminatory or absurd consequences deserves to be quashed and set aside for being violative of Articles 14, 19 and 21 of the Constitution of India.

F) Because the Impugned office order are in contradiction with the guidelines and directives contained in Ministry of Home Affairs order 25.11.2020, which is in force till 31.01.2020. More specifically, directive 4 of National Directives for Covid-19 Management, which provides that, “*as far as possible work from home should be followed*” and directive 8 which provides that, “*all persons in charge of work places will ensure adequate distance between workers, adequate gaps between shifts, staggering lunch breaks of staff, etc.*”. Further, guideline 16 on protection of vulnerable persons continues to identify persons above 65 years of age, persons with co-morbidities, pregnant women as vulnerable persons and advises them to stay at home as much as possible, except for essential and health purposes.

G) Because the Hon’ble High Court while deciding to increase the scope of physical hearings and making it practically mandatory for lawyers to attend the same on the said dates, without accommodation of hearing through virtual and/or hybrid mode and without the option of making a request for the same to be placed on a virtual hearing day, has not taken into consideration that the evident and overwhelming majority

of practicing lawyers, who are major stakeholders in the justice delivery system, are against the expansion of physical hearings at this stage, with the vaccine being just around the corner, and the number of Covid cases finally having come under control in Delhi NCR after 8 months of humongous efforts. It is humbly submitted that the decision of the Hon'ble High Court as notified through the Impugned office order is further in violation of the Principles of Natural Justice as the decision to reverse the position *qua* virtual hearings appears to have been taken without any meaningful consultation and without the consent of any of the aforementioned stakeholders.

H) Because the Hon'ble High Court failed to appreciate that there is no rational basis as to why the Courts that have been smoothly functioning for the last 10 months, through virtual mode of filings and hearings, cannot continue to do so for another few months, until the pandemic subsides and the vaccination drive takes effect. It is humbly submitted that even otherwise the purported and intended objective of commencing mandatory physical hearings does not appear to be practically met at any point inasmuch as a bare perusal of the orders passed in the matters listed on days of physical

hearings in the High Court and the District Courts reveals that almost 80-90% of the cases stood adjourned for virtual hearing days on request of the lawyers appearing in the said matters, which requests have been graciously considered and allowed by the Hon'ble Courts. However, with the Impugned office order, the discretion to consider such requests has itself been curtailed.

- I) Because while issuing the Impugned office order, the Hon'ble High Court appears to have lost sight of the continuing rise in Covid cases across the country and the aspect of there being several new strains which have been detected in the recent weeks, which have caused havoc in other countries such as the United Kingdom, in part on account of the relaxations in physical meetings and congregations in the said countries. It is further humbly submitted that the Hon'ble High Court has lost sight of the very nature of Covid-19 inasmuch as the same is not limited in its transmission to direct transmission but is transmitted in large part through indirect transmissions i.e. quite apart from the persons who shall be constrained to attend physical courts, all persons who come in contact with them, including members of their families and households shall be at risk in the event of spread of the infection. It is no

gainsaying that the death toll continues to increase unabated with new fatalities being reported on a daily basis.

J) Because the Hon'ble High Court, while issuing the Impugned office order and seeking to increase the scope of physical hearings before the High Court and the District Courts amid a still raging and ongoing pandemic, completely failed to take into account the complete absence of any support infrastructure in the form of creches, medical support infrastructure, chamber infrastructure, network issues, lack of information technology devices etc. in the High Court as well as the District Courts of Delhi. The absence of the same, amidst the ongoing pandemic, makes it impossible for a huge majority of lawyers to attend physical courts for some part and simultaneously attend virtual courts on the same days in other courts while being present at any of these court premises.

K) Because the Hon'ble High Court, by way of the Impugned office order failed to take into account and understand the practical difficulties being faced by advocates, court staff, support staff, clerks, litigants etc. travelling from outside of Delhi for physical hearings, amidst the ongoing pandemic, be

it by way of private or public conveyances, thereby increasing the chances of transmission of the infection and unnecessary exposure to the risk of Covid-19, both inside and outside the Court premises and its ramifications on the entire legal community and general public at large.

L) Because the Hon'ble High Court failed to appreciate that the risk of transmission of coronavirus in courts to judges, lawyers, court staff, members of registry and clerks is a real threat that increases multi-fold on account of physical hearings resulting in the congregation of a large number of persons within the Court premises.

M) Because the Hon'ble High Court failed to appreciate that an overwhelming majority of judges, advocates and senior court staff were above the age of 50 with varying co-morbidities, and fall in the category of vulnerable patients at fatal risk should they contract Covid. It is humbly submitted that the Impugned office order are likely to directly result into an increase risk of exposure and transmission, especially for persons above the age of 50 years and people with co-morbidities. It is submitted at the cost of repetition that younger lawyers, support staff, clerks and court staff, who may not be at high risk themselves, but live with elderly

parents and relatives, are at risk of transmitting the disease to someone in the family and common household who could be fatally affected.

N) Because the Hon'ble High Court while issuing the Impugned office order further failed to take into account that the video-conferencing facility has been in use since March, and its continuation will cause no hardship or prejudice to anybody. However, its suspension, shall have the direct effect and consequence of forcing lawyers to either give up their practice or risk coming to court against their will. It is humbly submitted that the same shall be in violation of Articles 14, 19 and 21 of the Constitution of India, apart from being opposed to the principles of equity, fairness and good conscience.

O) Because the Hon'ble High Court failed to appreciate that in the present Court system, with its extraordinary limitation of infrastructure and physical space, both at the High Court as well as the District Courts, the interaction of persons in courts is difficult to regulate, and with hundreds of matters listed on a daily basis, physical hearings, even in a limited manner, will exponentially increase human interaction and consequently, the transmission of virus, thereby leading to extreme hardship and fatal consequences.

P) Because the Hon'ble High Court while seeking to expand the scope of physical hearings and further seeking to foreclose the option of virtual hearings on physical hearing days failed to take into account the experience of other High Courts across the country, most of which have had to repeatedly close the Courts for extended periods of time after commencing physical hearings for short periods, only to switch to the safer and smoother option of virtual court hearings. In this regard, the Hon'ble High Court ought to have taken into consideration the negative experience of the High Courts of Karnataka, Madras, Rajasthan, Patna, Allahabad, Jharkhand, Meghalaya and others who had reopened and had shortly thereafter been forced to shut down due to detection and spike in the number of positive cases. It is humbly submitted that in these testing times of uncertainty, the Impugned office order if acted upon are likely to cause more uncertainty, anxiety and chaos, in an otherwise smoothly functioning Virtual Court system.

Q) Because without prejudice to the above, it is humbly submitted that at the very least, during the ongoing Pandemic, the Courts, particularly the High Court and the District Courts that see a huge number of cases everyday, are required to consider that at least a hybrid system of court hearings

needs to be put in place, which apart from providing a choice to otherwise vulnerable lawyers, litigants, clerks, support staff etc., is also effective, swift and cost efficient. It is humbly submitted that in a hybrid system, if a matter is to be listed in physical court, arrangements may be put in place to accommodate lawyers and litigants who may not wish to appear in physical court and prefer to conduct the hearing through the online system. It is humbly submitted that as was recently observed, such a system has been successfully functioning in several High Courts including the High Court of Karnataka. In such a case, the same would ensure that the lawyers and litigants who wish to appear through virtual court are permitted to do so while others who wish to appear in physical court may also be permitted to do so.

R) Because the Hon'ble High Court failed to take into account the categorical observations made by the Hon'ble Chief Justice of India based on sound medical and expert advice that it is dangerous for people to congregate at this time and if physical courts are started, the number of fatalities will increase. It is humbly submitted that the Hon'ble High Court further failed to appreciate that any decision to resume physical hearings in courts on an expanded scale ought to have been taken only and only after receiving expert medical advice. It is

incomprehensible that within the same city, different and completely variant medical advice is being received by the Hon'ble Supreme Court and the Hon'ble Delhi High Court. It is humbly submitted that a different yardstick cannot be applied to resumption and expansion of physical hearings in the Delhi High Court and the District Courts on the one hand, and the Hon'ble Supreme Court on the other hand, particularly when the two are located in the same city and are faced with the same medical circumstances.

- S) Because the Hon'ble High Court also failed to appreciate the intent and purpose of judicial orders and observations of the Delhi High Court *inter alia* holding that during the ongoing pandemic, lawyers cannot be constrained and compelled to appear physically and that the option of virtual hearings on account of the ongoing health crises in the form of the Covid – 19 pandemic must be made available to the lawyers to enable them to effectively discharge their duties and functions.
- T) Because the Hon'ble High Court failed to appreciate that even on a previous occasion when the scope of physical hearings was sought to be increased, both at the Delhi High Court as well as before this Hon'ble Court, the same had met with an overwhelmingly negative response with more than 90%

lawyers not being comfortable with the physical court hearings and therefore having declined to consent towards the same. It is no gainsaying that the Hon'ble High Court before issuing the Impugned office order should have taken the views of the larger bar into account and not acted merely on a purported representation on behalf of a small section of the bar. It is humbly submitted that it is in the interest of all stakeholders that matters be continued to be taken up through virtual hearing, as they have been thus far, in thousands of cases over the past few months. Further, in the event of physical hearings, the same should be considered as an option only for cases where consent of all parties appearing in the said matter is duly obtained well in advance for participation in physical hearing. It is humbly submitted that the said system had been followed by the Hon'ble Supreme Court as well.

PRAYER

In view of the above, this Hon'ble Court may be pleased to issue appropriate declarations, writ, orders and directions as set out below:

- a. Issue an appropriate writ, order or direction in the nature of Certiorari to direct the Hon'ble High Court of Delhi to set aside the office orders dated 14.01.2021, bearing reference no. 01/RG/DHC/2021 and all actions taken pursuant thereto.
- b. Issue an appropriate writ, order or direction in the nature of Certiorari to direct the Hon'ble High Court of Delhi to set aside the office order dated 14.01.2021, bearing reference no. 35/RG/DHC/2021 and all actions taken pursuant thereto.
- c. Issue an appropriate writ, order or direction in the nature of Certiorari to direct the Hon'ble High Court of Delhi to set aside the office order dated 15.01.2021, bearing reference no. 86/ORG/DHC/2021 and all actions taken pursuant thereto.
- d. Issue an appropriate writ, order or direction in the nature of mandamus to direct the Hon'ble High Court to issue fresh notification allowing the Advocates the option to choose and accordingly opt for a virtual mode of joining court proceedings.
- e. Issue an appropriate writ, order or direction in the nature of mandamus as this Hon'ble Court may deem fit and appropriate in facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS SHALL
FOREVER BE GRATEFUL

DRAWN BY:

FILED BY:

SUNIETA OJHA

FILED ON:

18.01.2021