

IN THE SUPREME COURT OF INDIA**ORIGINAL JURISDICTION****CIVIL WRIT PETITION NO. OF 2020****IN THE MATTER OF**

.....Petitioner

versus

Union of India
rep by Secretary Ministry of Finance
North Block New Delhi Respondent No 1

State of Andhra Pradesh
rep by its Chief Secretary
Amaravathi Respondent No 2

State of Arunachal Pradesh
rep by its Chief Secretary Ita Nagar Respondent No 3

State of Assam
rep by its Chief Secretary Dispur Respondent No 4

State of Bihar
rep by its Chief Secretary Patna Respondent No 5

State of Chattisgarh
rep by its Chief Secretary Raipur Respondent No 6

State of Goa
rep by its Chief Secretary Panaji Respondent No 7

State of Gujarat rep by its Chief Secretary Gandhinagar	Respondent No 8
State of Haryana rep by its Chief Secretary Chandigarh	Respondent No 9
State of Himachal Pradesh rep by its Chief Secretary Shimla	Respondent No 10
State of Jharkhand rep by its Chief Secretary Ranchi	Respondent No 11
State of Karnataka rep by its Chief Secretary Bangalore	Respondent No 12
The Chief Secretary State of Kerala Thiruvanthapuram	Respondent No 13
State of Madhya Pradesh rep by its Chief Secretary Bhopal	Respondent No 14
State of Maharashtra rep by its Chief Secretary Mumbai	Respondent No 15
State of Manipur rep by its Chief Secretary Imphal	Respondent No 16
State of Meghalaya rep by its Chief Secretary Shillong	Respondent No 17
State of Mizoram rep by its Chief Secretary Aizwal	Respondent No 18
State of Nagaland rep by its Chief Secretary Kohima	Respondent No 19
State of Odisha rep by its Chief Secretary Bhubaneswar	Respondent No 20

State of Punjab rep by its Chief Secretary Chandigarh	Respondent No 21
State of Rajasthan rep by its Chief Secretary Jaipur	Respondent No 22
State of Sikkim rep by its Chief Secretary Gangtok	Respondent No 23
State of Tamilnadu rep by its Chief Secretary Chennai	Respondent No 24
State of Telengana rep by its Chief Secretary Hyderabad	Respondent No 25
State of Tripura rep by its Chief Secretary Agartala	Respondent No 26
State of Uttarkhand rep by its Chief Secretary Dehradun	Respondent No 27
State of UttarPradesh rep by its Chief Secretary Lucknow	Respondent No 28
State of West Bengal rep by its Chief Secretary Kolkotta	Respondent No 29
Union Territory of Andaman and Nicobar Islands rep by Chief Secretary Port Blair	Respondent No 30
Union Territory of Chandigarh rep by Chief Secretary Chandigarh	Respondent No 31
Union Territory of Dadra and Nagar Haveli and Daman and Diu rep by Administrator Daman	Respondent No 32
The Government of NCT of Delhi rep by Chief Secretary New Delhi	Respondent No 33

Union Territory of Jammu Kashmir rep by Chief Secretary Jammu	Respondent No 34
Union Territory of Ladakh rep by Chief Secretary Leh	Respondent No 35
Union Territory of Lakshwadeep rep by Chief Secretary Kavaratti	Respondent No 36
Union Territory of Puducherry rep by Chief Secretary Pondicherry	Respondent No 37

...Respondents

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS UNDER ARTICLES 14, 19 AND 21 OF THE CONSTITUTION OF INDIA.

To

Hon'ble The Chief Justice of India and His Lordship's Companion Justices of the Supreme Court of India.

The Humble petition of the Petitioner above named.

MOST RESPECTFULLY SHEWETH :

1. The Petitioner herein is filing the instant Writ Petition in public interest under Article 32 of the Constitution of India for the enforcement of rights under Articles 14, 19 and 21 of the citizens. The Petitioner through this Writ Petition seeks directions to the Union and the State Governments and Union Territories to forthwith formulate a scheme

to recompense to the persons from economically weaker backgrounds who are daily wage earners or self employed or wage earners in the unorganised sector in respect of the complete deprivation of income suffered by them by the lock down and forced cessation of their vocations and trade during the national lock down for Covid-19. The Petitioner further seeks that, given that States and Union Territories are under fiscal stress and revenues are badly impacted due to the near complete halt of economic activity, the Union of India be directed to provide to each of the states and union territories compensation for the loss of revenue caused to them as also the additional expenditure incurred by them due to Covid-19 including in respect of the recompense to the persons deprived of income during the lockdown. The Petitioner through the instant Writ Petition also seeks that the operations of the provisions of Section 4 of the Fiscal Responsibility and Budget Management Act 2003 be stayed in the interim to ensure that the same is not a constraint on the Union is discharging its duty as guardian and protector of its citizens .

2.

The Petitioner has in the capacity of an Advocate been supporting pro bono the activities of a Chennai based NGO India Awake For Transparency which has been active in various matters of public interest. The present petition is filed by the Petitioner personally. The petitioner has no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioner, which has or could have a legal nexus with the issues involved in the PIL.

3. The Petitioner states that the Petition is filed in the background of the ongoing Covid-19 pandemic. As the facts of the pandemic are well known the Petitioner is not setting out anything in detail on the same.
4. The Petitioner states that it is well known that given Covid-19's rapid spread and devastation in various countries and its mode of transmission having made the lockdown unavoidable as possibly the only option available to flatten the curve of infection spread, a national lockdown was enforced from midnight of 24.03.2020 for a period of 3 weeks till 14.04.2020. It is now widely expected that the same may be

further extended for further period and atleast 1 state has already notified extension of lock down even presently

A copy of the orders of the National Disaster Management Authority and the Ministry of Home Affairs Union of India in respect of the lockdown are collectively annexed herewith and marked as **Annexure P1**

5. The Petitioner states that as the exemptions from the lock down have been limited to essential services alone there is complete stop of economic activities across the country except in respect of essential services where also the activities have been allowed on limited scale.

6. The Petitioner states that the sudden imposition of lock down caused serious dislocation and in the initial days of lockdown there was substantial numbers of migrant workers, persons who had earlier migrated from rural areas to urban centres for work opportunities, attempting to return to their native places for reason of loss of employment and lack of food and shelter at the urban centres post lockdown. The same have been addressed subsequently by intervention of this Hon'ble Court and quarantine centres having been created for the migrants in the urban centres itself with provision for food

7. The Petitioner states that certain steps have been taken by the Union of India under the Pradhan Mantri Garib Kalyan Yojana, announced post lock down, for the poor. The same provides some support for farmers by way of advancing cash transfers. The scheme also provides for additional free food grain and pulses to poor persons covered by Antyodaya Anna Yojana and to priority households across the country. Some support is also provided for organised sector workers. There is no provision for support to unorganised sector wage earners and self employed

A copy of the press release in respect of the Pradhan Mantri Garib Kalyan Yojana is annexed herewith and annexed as **Annexure P2**

8. The Petitioner states that large number of persons in the so called informal sectors of the country are dependent on daily income generation. While some of them are wage earners such as construction workers many are persons who are self employed such a auto drivers, taxi drivers and railway porters and coolies and delivery persons working for e commerce companies and food delivery companies or even drivers engaged by Ola and Uber and free lance electricians and plumbers or even rag pickers. Even small road side businesses such as

puncture shops and small electrical and electronic repair shops and others of such kind who populate every part of the country would be part of the category of daily income earners.

9. The Petitioner states that the estimates are that 90% of the total workforce of the country is employed in the unorganised sector. There are innumerable people who are dependent on daily work for earning with no concept of leave or pay when not working. These are not people who are either homeless or in penury but people bravely leading lives by sheer dint of their own effort and earning a livelihood by their work. Such people have not needed to depend on the freebies of the governments as they have proudly till date earned their incomes and met their needs therefrom. Many of them may not even be covered as priority households under the National Food Security Act (NFSA) given the income and other asset ownership criteria fixed thereunder
10. The Petitioner states that in view of the lockdown all such persons are now completely denied their income earning opportunity and left them totally income less. Given the economic profile of most of these persons they are not persons with large savings from which they can meet expenses during such extended periods of forced NIL income.

Even persons employed by owners of small workshops and such other micro businesses employing 3-4 persons would not receive any income as even their “owners” would be in the same position as the self employed persons illustrated above

11. The Petitioner states that the lockdown has been imposed at a time of national crisis to avert an even larger disaster. Almost all citizens of the country are extending their solidarity and following the lock down gritting their teeth despite personal suffering from the lockdown to be with the nation in this war against Covid-19.

12. The Petitioner states that in such facts all such people of poor economic means, at least those below the creamy layer as defined for other purposes, who are in the category of such persons being persons who were having daily incomes till lock down and are now rendered without livelihood are bound to be recompensed for their loss so that they can sustain themselves and their families. Need of such a person cannot only be grains and pulses even if they are covered by NFSA. The Union and the States having imposed a lock down in larger public interest have a responsibility to ensure that the economic loss to the persons who are ill-equipped to afford such loss are compensated at

least partly even if not wholly. The Petitioner states that these persons who are prevented from doing work during the lock down and are in no manner responsible for their loss of livelihood. The Union and State having enforced the lockdown are bound to formulate a scheme to provide succour and atleast partly relieve the economic strain on such persons.

13. The Petitioner states that the Union has been alive to the issues that can arise from the lockdown. There have been notifications and advisories that salaries and wages should not be withheld for period of absence due to lockdown. Even property owners have been told not to enforce rent collection from migrant workers. While well intentioned and even if the same are at all implemented it can only be in the organised sector as the same can and will in no manner be enforced for people in the unorganised sector as even the so called employers of such persons, say a puncture shop owner is not in any better position than his assistant whose wages he would be required to ensure and this would not at all apply to the self employed be he a pakora seller or a auto driver .

14. The Petitioner states that while the 3 week lock down is coming to an end there is need to compensate the affected persons for the period of lockdown and loss of livelihood already suffered whether the same is extended or not.
15. The Petitioner states that the States and the Union Territories are bound to formulate a scheme to compensate the loss of incomes of the economically weaker sections of society who were hitherto self employed or quasi self employed. Some of them would have loans such as for their vehicles or even small homes and while a moratorium is allowed for loan repayment the same does not compensate for loss of income as loan moratorium is only a deferral and is with liability for interest for moratorium period as well .
16. The Petitioner states that even developed countries have offered income transfers given the nature of losses suffered by their citizens due to Covid-19. Given the marginal existence of the self employed and unorganised work force there is thus need to immediately formulate an income recompense scheme aimed at such persons who have lost livelihood due to the lockdown. Needless to say the creamy layer and organised business are not the focus of the Petitioner and the entire

support sought is for those self employed or daily wage earning in the economically weaker sections who have had their livelihoods snatched away by the lockdown .

17. The Petitioner states that states and Union Territories are already having strained finances. The fiscal responsibility acts, enacted by each of them on the lines of the Fiscal Responsibility and Budget Management Act 2003 of the Union of India, sets targets of spending and fiscal deficits to which each of them are bound to will also restrain their spending. States have very little fiscal room to enhance their incomes as with the introduction of Goods and Services Tax (GST) system there are very limited sources available to States to tap for income generation.

18. The Petitioner states that with the current lockdown the states revenue flows from SGST etc would become nil. The states are also meeting increased costs including to battled Covid-19 and costs of meeting the schemes as sought in this Petition will add to the burden.

19. The Petitioner states that borrowing costs of state governments in the April 2020 (first week) bond auctions were in the range of 7.8%-8.3% pa significantly higher than that of the Union's borrowing cost of

around 6.5% pa reflecting concern about the State's fiscal position and also makes it costlier to rely on borrowing by States as a tool for financing. It is impractical for the State Governments to be expected to finance the loss of income as they have themselves lost revenues due to the cessation, practically, of all economic activity due to lock down. Even monies from sin taxes like liquor and tobacco are reduced to nil. The Petitioner states that the Union as the ultimate sovereign is in best position to ensure that states are compensated for both the contraction in their incomes and also for their additional expenses related to the Covid-19 pandemic including compensation for which directions are sought in this Petition

20. The Petitioner states that FRBM mandates that the Union of India not be fiscally profligate and various restrictions are placed for this purpose under Section 4. In simple terms FRBM restricts excess of spending by the Union over its expenditure. While proviso to Section 4(2) of FRBM allows exceptions in case of national calamity Section 4(3) limits the extent of waiver in this regard also. The provisions of Section 4 of FRBM is extracted hereunder for ease of reference

4. Fiscal management principles.—(1) The Central Government shall,—

(a) take appropriate measures to limit the fiscal deficit upto three per cent. of gross domestic product by the 31st March, 2021;

(b) endeavour to ensure that—

(i) the general Government debt does not exceed sixty per cent.;

(ii) the Central Government debt does not exceed forty per cent., of gross domestic product by the end of financial year 2024-2025;

(c) not give additional guarantees with respect to any loan on security of the Consolidated Fund of India in excess of one-half per cent. of gross domestic product, in any financial year;

(d) endeavour to ensure that the fiscal targets specified in clauses (a) and (b) are not exceeded after stipulated target dates.

(2) The Central Government shall prescribe the annual targets for reduction of fiscal deficit for the period beginning from the date of commencement of Part XV of Chapter VIII of the Finance Act, 2018 and ending on the 31st March, 2021:

Provided that exceeding annual fiscal deficit target due to ground or grounds of national security, act of war, national calamity, collapse of agriculture severely affecting farm output and incomes, structural reforms in the economy with unanticipated fiscal implications, decline in real output growth of a quarter by at least three per cent. points below its average of the previous four quarters, may be allowed for the purposes of this section.

(3) Any deviation from fiscal deficit target under sub-section (2) shall not exceed one-half per cent. of the gross domestic product in a year.

(4) The Central Government shall, in case of increase in real output growth of a quarter by at least three per cent. points above its average of the previous four quarters, reduce the fiscal deficit by at least one-quarter per cent. of the gross domestic product in a year.

(5) Where the fiscal deficit is allowed to vary from the target prescribed under the proviso to sub-section (2) or deviation is initiated under sub-section (4), a statement explaining the reasons thereof and the path of return to annual prescribed targets under this section shall be laid, as soon as may be, before both the Houses of Parliament.

21. The Petitioner states that it was necessary given the unprecedented scale of the risks faced from Pandemic a lock down, never done on such scale even in war time, had to be enforced. Even in cases of floods and other disasters the same has been normally only in a small part of the country and for limited time. Lockdown of all business activity on such scale as presently is unprecedented and as such the constraints under Section 4(2) of the FRBM have to be suspended without reference to the limits set out in Section 4(3) of FRBM atleast for fiscal year 2020-21. The fiscal headroom is necessary to enable the Union to do its duty to support the states with necessary funds and not be constrained by FRBM limits especially as Section 4(3) of FRBM restricts the Union absolutely

22. The Petitioner states need for financial support for economically weaker self employed need not be overstressed as even Bar Council and Bar Associations have found it necessary to formulate schemes for Advocates in stress showing the extent of the lock down related economic stress
23. The Petitioner states that the loss of livelihood is ongoing and serious suffering is ensuing. With no savings to bank upon the said self earners and daily wage earners of weaker sections of society should be given support.
24. The Petitioner states that each of Articles 14,19 and 21 of the Constitution are infringed in the matter. The right to carry on trade and profession has been denied by executive fiat and persons who were self sufficient till 24.03.2020 on which day lock down was announced have been left in the lurch endangering the very right to life of such persons . While support is given to farmers, who may really be less affected by lockdown as agricultural operations are exempt and organised sector is supported the complete exclusion of support to the persons for whose benefit this Petition is filed is discriminatory as well . For each of these reasons this Hon'ble Court is required to intervene

25. The Petitioner states that there is emergent need for financial support schemes, to be activated in respect of all persons who are in the unorganised sector and who have been deprived of livelihood by the lockdown. There is urgent need for atleast some ad hoc support is to be provided to the affected persons and such support can be adjusted against the disbursement under the scheme as and when the same is finally decided

26. The petitioner has not filed any other writ petition regarding the matter in dispute in this Hon'ble Court or any High Court throughout the territory of India. The petitioner has no better remedy available

GROUNDS

- A. Because the unorganised work force including self employed are dependent for their sustenance on daily earnings and in the absence of such daily earnings their sustenance itself is at stake
- B. Because the nature of the pandemic being unprecedented and lock down was sudden and unanticipated there was no manner in which such persons could have been better prepared and averted the consequences of the difficulties now faced by them

- C. Because when the livelihood is blocked in national interest and not for any fault of the persons denied livelihood themselves the Union as the ultimate guardian is bound to ensure their protection
- D. Because the schemes already formulated do not cover any compensation for livelihood loss suffered by these segments of workforce
- E. Because any continued deprivation of income would lead to serious and irreversible social consequences for such persons
- F. Because many of these persons have been the engines that keep the nation working whether they are the auto and taxi drivers or the mechanics or the plumbers and electricians supporting the national infrastructure and oiling its wheels
- G. Because the States and Union Territories are not in a position to spend additional monies as their fiscal resources are stretched both due to complete decimation of revenues due to Covid-19 and also by the enhanced expenditure in combating Covid-19
- H. Because the Union of India as the sovereign is bound to support the states and compensate the states for losses arising from such national calamity unprecedented and unanticipated

- I. Because the Union of India should have the flexibility in such situation to breach the targets under the FRBM even beyond the permissible overshoot as fixed under Section 4(3) thereof

PRAYER

In view of the facts and circumstances stated above, it is prayed that this Hon'ble Court, in public interest, may be pleased to:

- a. Issue appropriate writ directing the Union of India to formulate a scheme to provide compensation in the form of solatium or in any other form for loss of income , partly or wholly, caused to persons working in the unorganised sector including as self employed for loss of income caused by the lock down imposed to combat Covid-19 and ensure implementation of the same through the States and Union territories pending the same make ad hoc payment to all affected persons forthwith
- b. Issue an appropriate writ directing Union of India to compensate all States and Union Territories 100% of the loss suffered by the States in their revenues due to lock down as also 100% of the increase in expenditures incurred by them due to Covid-19 including for the scheme as above
- c. Issue an appropriate Writ staying the operation of Section 4 of Fiscal Responsibility and Budget Management Act 2003 for the current year 2020-21

d. Issue any other appropriate writ that this Hon'ble Court may deem fit
and proper in the facts & circumstances of the case.

FOR WHICH ACT OF KINDNESS, THE PETITIONER SHALL AS
INDUTY BOUND, EVER PRAY.

FILED BY

R Subramanian
Petitioner in Person

Drawn by R Subramanian

Drawn and Filed on : 10TH April 2020
Chennai



IN THE SUPREME COURT OF INDIA**ORIGINAL JURISDICTION****CIVIL WRIT PETITION OF 2020**

R Subramanian

...Petitioner

Versus

Union of India & Ors

Respondents

AFFIDAVIT

1. That I am the Petitioner in the above-mentioned Writ Petition. I am fully conversant with the facts of the case. As such, I am competent to swear this affidavit.
2. That the contents stated in the accompanying Synopsis and List of Dates (Page B to Q), Civil Writ Petition. (Para 1 to 26) (Page 1 to 21) and Misc. Applications have been drafted by me and I say that the contents stated therein are true and correct to the best of my

knowledge and belief and nothing material has been concealed thereof.

3. That the Annexures P-1 to P-2 (Page 28 to 46) are true copies of their respective originals.

DEPONENT

VERIFICATION:

I, the above named deponent, do hereby verify that the contents of paras 1 to 3 of the above affidavit are true and correct to the best of my knowledge and belief, no part thereof is false and nothing material has been concealed therefrom.

Verified at Chennai on this the 10th day of April , 2020.

DEPONENT

APPENDIX

Relevant extracts of Articles 14, 19 and 21 of the Constitution and Section 4 of the Fiscal Responsibility and Budget Management Act 2003 are produced herein below:

Articles 14, 19 and 21 of the Constitution of India

14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

19. (1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; 1[and]
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India

or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in 1[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise .

21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

Section 4 of the Fiscal Responsibility and Budget Management Act 2003

- 4. Fiscal management principles.**—(1) The Central Government shall,—
- (a) take appropriate measures to limit the fiscal deficit upto three per cent. of gross domestic product by the 31st March, 2021;
 - (b) endeavour to ensure that—
 - (i) the general Government debt does not exceed sixty per cent.;
 - (ii) the Central Government debt does not exceed forty per cent., of gross domestic product by the end of financial year 2024-2025;
 - (c) not give additional guarantees with respect to any loan on security of the Consolidated Fund of India in excess of one-half per cent. of gross domestic product, in any financial year;
 - (d) endeavour to ensure that the fiscal targets specified in clauses (a) and (b) are not exceeded after stipulated target dates.
- (2) The Central Government shall prescribe the annual targets for reduction of fiscal deficit for the period beginning from the date of commencement of Part XV of Chapter VIII of the Finance Act, 2018 and ending on the 31st March, 2021:
- Provided that exceeding annual fiscal deficit target due to ground or grounds of national security, act of war, national calamity, collapse of agriculture severely affecting farm output and incomes, structural reforms in the economy with unanticipated fiscal implications, decline in real output growth of a quarter by at least three per cent. points below its average of the previous four quarters, may be allowed for the purposes of this section.
- (3) Any deviation from fiscal deficit target under sub-section (2) shall not exceed one-half per cent. of the gross domestic product in a year.
 - (4) The Central Government shall, in case of increase in real output growth of a quarter by at least three per cent. points above its average of the previ-

ous four quarters, reduce the fiscal deficit by at least one-quarter per cent. of the gross domestic product in a year.

(5) Where the fiscal deficit is allowed to vary from the target prescribed under the proviso to sub-section (2) or deviation is initiated under sub-section (4), a statement explaining the reasons thereof and the path of return to annual prescribed targets under this section shall be laid, as soon as may be, before both the Houses of Parliament.]

