

IN THE HON'BLE SUPREME COURT OF INDIA

[CIVIL ORIGINAL JURISDICTION]

WRIT PETITION(CIVIL)NO. _____ OF 2020

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

Aljo K. Joseph

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....PETITIONER

Versus

1. Union of India
Represented by Secretary
Ministry of Law and Justice
Shastri Bhavan New Delhi – 110 011.

2. Union of India
Represented by,
Ministry of Home Affairs,
North Block,
New Delhi - 110001

....RESPONDENTS

**PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE
OF MANDAMUS DIRECTING THE RESPONDENT TO
FORMULATE AN APPROPRIATE SCHEME TO SUPPORT
THE ADVOCATES AND OTHER PROFESSIONALS OF THE**

**COUNTRY FROM PAYING THEIR RENT EXCLUSIVELY
FOR THE PROFESSIONAL PREMISES**

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

THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH THAT:

1. That following are the details which Petitioner is required to disclose in the Writ Petition as per Order XXXVII Rule 12(2) of Supreme Court Rules, 2013:-

a) The Petitioner is citizen of India and an advocate on record practicing in Supreme Court of India. The petitioner is also an elected representative in SUPEME COURT ADVOCATE-ON-RECORDS ASSOCIATION.

b) That cause of action for filing present Writ Petition under Article 32 of Constitution of India is that in the wake of the widespread of COVID-19. The lockdown due to the COVID 19, was

declared by 21 of March 2020 by the government of India and due to the said lockdown none of the professionals especially lawyers are able to practice their profession. Since there is no financial protection given to lawyers and other professionals by the government of India, the present petition has been filed to urge grievances and hardship caused to the lawyers and professionals in this country due to the COVID 19 and unavoidable lockdown pursuant to the epidemic situation in India.

- c) It is submitted that Government of India, without any consultation with any of the professional associations declare a lockdown on 21st of May 2020 pursuant there too no specific steps were taken by the government of India to extend any help to support
- d) All the professionals except a privileged few in this country, especially lawyers earn their

livelihood on a day-to-day basis and are left hardly with any savings. Most of the advocate office/ professional office are there in city or premises close to the Court. Due to the close down, most/majority of the Advocates were able to work or earn any amount of money during all this locked period. It is pertinent to mention here that most of the Courts were also not functioning during this period. As it is stated above, unlike a common person, especially a professional he won't be able to earn anything for his livelihood. Hence, in the circumstances it will not be proper in the part of any professional to pay the respective rent for the tenancy period when the lockdown was continuing.

- e) It is submitted that the Government of India and different state governments now formulated many beneficial schemes for labourers students and other sections of people. But the Government has

not considered hardship and losses which occurred/ caused to the Professionals due to the immediate lock down.

- f) It is submitted that most of the professionals including advocates have paid their respective clerks and office staff during this lock down period to support the families and to avoid any kind of insecurity. It is apparently evident that many of the professionals are using rented premises for their professional activities. Maintaining such premises without any income for months together would be a Herculean task for all the professionals in this country. Advocates are forced to loan money to maintain such premises and unless there is some support or government assistance. Even though different state governments have formulated schemes for which the benefits were extended to different sects/ class of people in the country no

specific scheme was not formulated for advocates or any professionals in this country.

- g) The Petitioner herein has no vested interest or ulterior motive in filing the present Petition, and the same has only been filed to secure larger public interest. The Petitioner is not guided by self-gain or for gain of any other person/institution/body. Further, the Petitioner is approaching this Hon'ble Court with clean hands and sole intention of addressing the larger public concern to secure the fundamental rights which include right to life and practice profession of the citizens of India.
- h) That the Petitioner is not involved in any criminal, civil, revenue, or any other litigation that has any legal nexus with the issues involved in the present public interest litigation.

2. The instant Petition has been filed under Article 32 of the Constitution of India to enforce fundamental rights secured to the citizens of India, particularly those enshrined under Article 21 of the Constitution of India.
3. The instant Petition in the nature of Public Interest Litigation is filed under Article 32 of the Constitution of India by the Petitioner seeking, *inter alia*, a writ of mandamus directing the respondent formulate appropriate scheme to support the advocates and other professionals of the country for paying their rent exclusively for the professional premises which is used for practice or profess.
4. That the Petitioner herein has the requisite *locus standi* to file the present public interest litigation. The state and central government machinery has utterly failed in formulating any scheme to support the cause of the advocate and other professionals the therefore,

the Petitioner is preferring Writ Petition Before this Hon'ble court for appropriate direction .

ARRAY OF PARTIES

- (i) The Petitioner is citizen of India and an advocate on record practicing in Supreme Court of India. The petitioner is also an elected representative in SUPREME COURT ADVOCATE-ON-RECORDS ASSOCIATION.
 - (ii) The Respondent No. 1 is the Union of India, through the law and justice, represented by its Secretary, which is the appropriate ministry responsible for the making laws and policies in general specifically for Advocates in the country.
5. The Respondent referred to hereinabove are "State" within the meaning of Article 12 of the Constitution of India and hence amenable to writ jurisdiction of this

Hon'ble Court under Article 32 of the Constitution of India.

BRIEF FACTS OF THE CASE

6. The facts and circumstances leading to the filing of this Writ Petition is as under:

6.1 On 31.12.2019, Chinese Health officials informed the World Health Organization (shortly WHO) about a cluster of 41 patients with a mysterious pneumonia. Shortly after, Chinese authorities identified the virus that caused the pneumonia-like illness as a new type of coronavirus. And in about 2 months, the death caused by novel corona virus in China surpassed 774.

6.2 Subsequently, global outbreak of COVID-19 began and cases appeared in Europe, Iran, South Korea and other regions of the around the world. On 11.03.2020, WHO declared COVID-19 outbreak a pandemic.

6.3 That, the entire world is facing the problem of Novel Coronavirus (COVID-19), and as many as 196 countries, about 20,83,607 people affected and 1,34,632 deaths took place till 16.04.2020 (04:51 GMT) as per the information available on the official website of World Health Organization (WHO). In India also the situation of Novel Coronavirus (COVID-19) is alarming and till 20.04.2020 there about 18000 confirmed case in India reported and 500 death happened.

6.4 It is submitted that Government of India due to the pandemic without any consultation with any of the professional associations declare a lockdown on 21st of May 2020 pursuant to that no specific steps were taken by the government of India to extend any help to support to any of the professionals in this country, especially lawyers. Most of the lawyers in this country earn their livelihood on a day-to-day basis and they

are left hardly with any savings except a few. Most of the advocate office/ professional office are there in city or premises close to the court. Due to the close down none of the advocates were able to work or earn any amount of money during all this locked on period. It is pertinent to mention here that most of the courts where also not functioning during this period. As it is stated above unless a person was especially carryout professional activity he won't be able to earn anything For his livelihood. As stated in part III of constitution of India right to life and practice any profession is a fundamental right And such a situation if it arose due to the pandemic and continuing lock down if the professionals are forced to vacate the professional premises and or pay the rent during this pandemic continuing lock down, it would also affect the constitutional guarantee under part III of the constitution of India.

6.5 It is submitted that the government of India and different state governments now formulated many beneficial schemes for labourers students and other sects of people. But the government has not considered hardship and losses Which occurred/ caused due to the immediate lock down especially for lawyers and professionals. It is submitted that most of the professionals including advocates have paid their respective clerks and office staff during this lock down period to support the families and to avoid any kind of insecurity. It is apparently evident that many of the professionals are using rented premises for their professional activities. Maintaining such premises without any income for months together would be a Herculean task for all the professionals in this country. When forced to lend money to maintain such premises and less there is some support or government assistance is given to the professionals to survive during such a difficult situation, would caused a great

hardship. Even though different state governments have formulated schemes for which the benefits were extended to different sectors/ class of people in the country no specific scheme was not formulated for advocates or any professionals in this country.

6.6 It is submitted that the Government of India (GOI) ministry of Home (MHA) vide its order dated 29.03.2020. Directed to all the Landlords not to collect any rent from the labours and students for one month. It is submitted that the GOI passed many directions and declared moratorium and financial assistance to different sectors and class of people. But till date no policy was formulated by the GOI to support the hardship to the professionals and especially lawyers.

6.7 It is submitted that in light of the nationwide lockdown which has rendered many advocates without work, the Bar Council of Delhi has written a letter to the Hon'ble Judges of the Hon'ble High Court of Delhi requesting for the waiver of the rent for premises which

is used for professional purpose by the advocates, but till date no such action is taken.

6.8 It is further submitted that many state government also discussed about the waver of rent for the professional premises of the lawyers but as of now no decision was taken by the respective government till date.

6.9 It is submitted that In the absence of any relief or clarity by the Government the petitioner and other similarly placed advocates and other professionals are left with no other option but to perform the obligation to pay lease rentals under commercial lease agreements, even when they don't work at all. In additions to payments of employee (office staff) payment obligations and are vigorously evaluating the 'Force Majeure' clause under their respective agreements during the present COVID-19 crises.

6.10 It is submitted that 'Force Majeure' event can only be availed if such a relief is explicitly provided under the lease agreement. Generally, lease agreements excuse the lessees from payment of rent during a Force Majeure event if there is a damage or destruction of the property leading to its unavailability for use by the lessee and they do not provide blanket waiver from payment of lease rentals on occurrence of every Force Majeure event.

6.11 It is further submitted that, as a matter of right, invoke non-payment due to a Force Majeure event in the absence of a supporting clause and/or a specific rent waiver agreed under the contract is not possible. If the lease agreement does provide for stoppage of rent or suspension of all obligations during a Force Majeure period without any qualifications or riders, then the lessee should immediately exercise its right by issuing a letter to the lessor invoking Force Majeure event and intimating cessation of its obligation to pay lease rental

during the period the Force Majeure event continues. In the present situation the lessee was not in a position to issue any letter to the lessor nor was in a position to pay the payment to the Landlord.

6.12 It is submitted that in the absence of such a clause in the lease agreement all the professionals and lawyers were forced to pay the rent which will create huge hardship to the majority of advocates in the country as well as to other professionals. in the view of the foregoing, in the absence of a Force Majeure clause under the lease agreement, it is unlikely that a lessee can claim frustration of contract (which eventually leads to termination of the contract and may, therefore, not assist the lessee in the long run) and seek waiver of lease rental as consequence of a Force Majeure event. Which ultimately affect the right to life and earn a livelihood, (even after the lockdown period) and also affect practice of each professionals.

6.13 It is submitted that unless the Government issues any relaxation from payment or a law declared by this Hon'ble court either for waiver or suspension of lease rentals during this period would be the only solution. Non payment of rent or invocation Force Majeure provisions in their lease agreements or any Unilateral decision may lead to termination of the lease agreement by the lessor for breach of the agreement.

6.14 The Petitioner herein has no vested interest or ulterior motive in filing the present Petition, and the same has only been filed to secure larger public interest. The Petitioner is not guided by self-gain or for gain of any other person/institution/body. Further, the Petitioner is approaching this Hon'ble Court with clean hands and sole intention of addressing the larger public concern to secure the fundamental rights which include right to life and practice profession of the citizens of India.

7. GROUNDS

The Petitioner herein is approaching this Hon'ble Court under Article 32 of the Constitution of India, on the following grounds inter alia –

- A. Because, Article 21 of Constitution of India guaranteed the Right to Life to every citizen and it is the duty of the State to ensure the same.
- B. Because, the Government of India due to the pandemic without any consultation with any of the professional associations declare a lockdown on 21st of May 2020.
- C. Because, no specific steps were taken by the government of India to extend any help to support to any of the professionals in this country, especially lawyers. Most of the lawyers in this country earn their livelihood on a day-to-day basis and they are left hardly with any savings except a few.

- D. Because Most of the advocate office/ professional office are there in city or premises close to the court. Due to the close down, none of the advocates were able to work or earn any amount of money during all this locked on period.
- E. Because, a person who was especially carryout professional activity won't be able to earn anything For his livelihood unless he works. As stated in part III of Constitution Of India right to life and practice any profession is a fundamental right And such a situation if it arose due to the pandemic and continuing lock down, if the professionals are forced to vacate the professional/office premises and or pay the rent during continuing lock down period, it violates constitutional guarantee under part III of the constitution of India.
- F. Because, Government of India and different state governments have formulated many beneficial schemes for labourers students and other sects of people. But

the government has not considered hardship and losses Which occurred/ caused due to the immediate lock down especially for lawyers and professionals.

- G. Because, most of the professionals including advocates have paid their respective clerks and office staff during this lock down period to support the families and to avoid any kind of insecurity.
- H. Because, Maintaining such premises without any income for months together would be a Herculean task for all the professionals in this country. They will be forced to lend money to maintain such premises.
- J. Because, Different state governments have formulated schemes for with the benefits were extended to different sects/ class of people in the country no specific scheme was not formulated for advocates or any professionals in this country.
- K. Because Government of India (GOI) ministry of Home (MHA) vide its order dated 29.03.2020 directed to all the Landlords not to collect any rent from the labours

and students for one month. It is submitted that the GOI passed many directions and declared moratorium and financial assistance to different sectors and class of people. But till date no policy was formulated by the GOI to support the hardship to the professionals and especially lawyers.

- L. Because, Nationwide lockdown which has rendered many advocates without work, the Bar Council of Delhi has written a letter to the Hon'ble Judges of the Hon'ble High Court of Delhi requesting for the waiver of the rent for premises which is used for professional purpose by the advocates.
- M. Because the petitioner and other similarly placed advocates and other professionals are left with no other option but to perform the obligation to pay lease rentals under commercial lease agreements, even when they don't work at all. In additions to that payments of employee (office staff) payment obligations and are vigorously evaluating the 'Force Majeure' clause under

their respective agreements during the present COVID-19 crises.

- N. Because the 'Force Majeure' event can only be availed if such a relief is explicitly provided under the lease agreement.
- O. Because, the lease agreements excuse the lessees from payment of rent during a Force Majeure event if there is a damage or destruction of the property leading to its unavailability for use by the lessee and they do not provide blanket waiver from payment of lease rentals on occurrence of every Force Majeure event.
- P. Because, if the lease agreement does provide for stoppage of rent or suspension of all obligations during a Force Majeure period without any qualifications or riders, then the lessee should immediately exercise its right by issuing a letter to the lessor invoking Force Majeure event and intimating cessation of its obligation to pay lease rental during the period the Force Majeure event continues. The present situation

the lessee is as such neither to issue any letter to the lessor nor was in a position to delay the payment to the land load.

- Q. Because, unless the Government issues any relaxation from payment or a law declared by supreme court either for waiver or suspension of lease rentals during this period would be the only solution. Non payment of rent or invocation Force Majeure provisions in their lease agreements or any Unilateral decision may lead to termination of the lease agreement by the lessor for breach of the agreement.
8. That this Hon'ble Court has the jurisdiction to entertain and try this Petition.
9. That the Petitioner craves leave to alter, amend or add to this Petition.

10. That the Petitioner seeks leave to rely on documents, a list of which, along with true typed copies has been annexed to this Petition.
11. That this Petition has been made bona fide and in the interest of justice.
12. That the Petitioner has not filed any other Petition before this Hon'ble Court or before any other Court seeking the same relief.
13. The petitioner seeks permission to exempt the attested / affirmed affidavit, hard / photocopies of paper books (3+1) of Writ Petition and deficit court fee (if any) in the prevailing circumstances as the matter is urgent and need urgent hearing. The petitioner is also agree for hearing of the present writ petition through video conferencing.

PRAYER

In the facts and circumstances stated above, it is most humbly prayed that this Hon'ble Court may be pleased to issue appropriate writs, orders and directions as set out below:

- a) Issue a writ of mandamus, or any appropriate writ, order or direction to the Respondents to formulate appropriate scheme to support the Advocates and other professionals of the country for paying their rent exclusively for the professional premises which is used for practice or office purpose; and
- b) Issue a writ of mandamus, or any appropriate writ, order or direction or delectation that, the national lock down period will be treated as 'Force Majeure' period hence forth all the advocates are exempted from paying rent during that period; and
- c) Issue a writ of mandamus, or any appropriate writ, order or direction or delectation, that the advocates

and other professionals are exempted from making monthly rental for the premises leased out for professional purpose or office purpose during the lockdown; and

- d) Pass any other order or relief as this Hon'ble Court may deem fit and proper under the circumstances of the present case in the interest of justice, equity, and good conscience.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY:

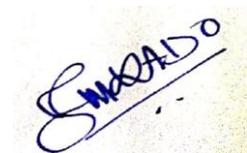


**SACHIN SHARMA
ADVOCATE-ON-RECORD
FOR THE PETITIONER**

**DRAWN ON: 20.04.2020
FILED ON: 20.04.2020
PLACE: NEW DELHI**

WP(PIL) are true and correct and nothing material is concealed therefrom.

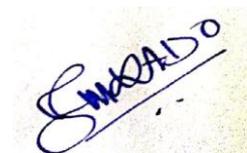
3. That the annexures filed alongwith the writ petition are correct copies from their originals.
4. The petitioner is unable to file attested / affirmed affidavit, hard / photocopies of paper books (3+1) of Writ Petition in the present circumstances and undertake to deposit deficit court fee (if any).



DEPONANT

VERIFICATION:

Verified at Indore on this 20th day of April 2020 that the contents of this affidavit are true and correct and that nothing material is concealed therefrom.



DEPONANT