

IN THE SUPREME COURT OF INDIA
[EXTRA ORDINARY WRIT JURISDICTION]

WRIT PETITION (CIVIL) No. _____ OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA R/W ORDER
XXXVII, RULE 12(1) (D) AND (2) OF SUPREME COURT OF INDIA RULES,
2013)

[PUBLIC INTEREST LITIGATION]

IN THE MATTER OF

1. ...PETITIONER NO. 1

2. ...PETITIONER NO. 2



VERSUS

- | | | |
|----|--|------------------|
| 1. | UNION OF INDIA
Through Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi 110001. | RESPONDENT NO. 1 |
| 2. | UNION OF INDIA
Th Secretary
Ministry of Home Affairs
New Delhi | RESPONDENT NO. 2 |
| 3. | STATE OF ASSAM
Through the Chief Secretary,
Block C, Third Floor, Assam
Sachivalaya, Dispur 7800016, | RESPONDENT NO. 3 |

- Assam.
4. STATE OF BIHAR, RESPONDENT NO. 4
Through the Chief Secretary,
Main Secretariat, Patna.
 5. STATE OF CHHATTISGARH, RESPONDENT NO. 5
Through the Chief Secretary,
Mahanadi Bhavan, Mantralaya,
Naya Raipur, 492002
 6. STATE OF GOA RESPONDENT NO. 6
Through the Chief Secretary,
Secretariat, Porviroim, Bardez, Goa.
 7. STATE OF GUJARAT RESPONDENT NO. 7
Through the Chief Secretary,
Sachivalaya, Gandhinagar - 382010
 8. STATE OF HARYANA RESPONDENT NO. 8
Through the Chief Secretary,
Room No. 4, 4th Floor, Haryana Civil
Secretariat, Sector I, Chandigarh
160019
 9. STATE OF HIMACHAL PRADESH RESPONDENT NO. 9
Through the Chief Secretary,
H.P. Secretariat, Shimla 171002.
 10. U.T. OF JAMMU AND KASHMIR RESPONDENT NO. 10
Through the Chief Secretary,
R.No. 307, 3rd Floor, Civil Secretariat,
Srinagar 190001.
 11. STATE OF JHARKHAND RESPONDENT NO. 11
Through the Chief Secretary,
1st Floor, Project Building, Dhurwa,
Ranchi 834004
 12. STATE OF KARNATAKA RESPONDENT NO. 12
Through the Chief Secretary,
R. No. 320, 3rd Floor, Vidhan Soudha,
Bengaluru 560001.

13. STATE OF KERALA RESPONDENT NO. 13
Through the Chief Secretary,
Secretariat, Thiruvananthapuram
695001.
14. STATE OF MADHYA PRADESH RESPONDENT NO. 14
Through the Chief Secretary,
MP Mantralaya, Vallabh Bhavan,
Bhopal 462004
15. STATE OF MAHARASHTRA RESPONDENT NO. 15
Through the Chief Secretary,
CS Office, Main Building, Mantralaya,
6th Floor, Madame Cama Road,
Mumbai 400032
16. STATE OF MANIPUR RESPONDENT NO. 16
Through the Chief Secretary,
South Block, Old Secretariat, Imphal
795001.
17. STATE OF MEGHALAYA RESPONDENT NO. 17
Through the Chief Secretary,
Main Secretariat Building, Rilang
Building, Room No. 321, Meghalaya
Secretariat, Shillong 793001.
18. STATE OF MIZORAM RESPONDENT NO. 18
Through the Chief Secretary,
New Secretariat Complex, Aizwal
796001.
19. STATE OF NAGALAND RESPONDENT NO. 19
Through the Chief Secretary,
Civil Secretariat, Kohima 797004
20. STATE OF ODISHA RESPONDENT NO. 20
Through the Chief Secretary,
General Administrative Department,
Odisha Secretariat, Bhubaneswar
751001

21. STATE OF PUNJAB RESPONDENT NO. 21
Through the Chief Secretary,
Punjab Administration,
Chandigarh, 160001.
22. STATE OF RAJASTHAN RESPONDENT NO. 22
Through the Chief Secretary,
Secretariat, Jaipur 302005
23. STATE OF SIKKIM RESPONDENT NO. 23
Through the Chief Secretary,
New Secretariat, Gangtok 737101
24. STATE OF TAMIL NADU RESPONDENT NO. 24
Through the Chief Secretary,
Secretariat, Chennai 600009
25. STATE OF TELANGANA RESPONDENT NO. 25
Through the Chief Secretary,
Burgula Ramakrishna Rao Bhavan,
9th Floor, Adarsh Nagar, Hyderabad
500063
26. STATE OF TRIPURA RESPONDENT NO. 26
Through the Chief Secretary,
New Secretariat Complex, Secretariat,
Agartala 799010, West Tripura
27. STATE OF UTTAR PRADESH RESPONDENT NO. 27
Through the Chief Secretary,
1st Floor, Roon No. 110,
Lal Bahadur Sastri Bhavan,
Uttar Pradesh Secretariat, Lucknow
28. STATE OF UTTARAKHAND RESPONDENT NO. 28
Through the Chief Secretary,
Uttarakhand Secretariat,
4 Subhash Road, Dehradun 248001
29. STATE OF WEST BENGAL RESPONDENT NO. 29
Through the Chief Secretary,
Nabanna, 13th Floor, 325,

- Sarat Chatterjee Road, Mandirtala,
Shibpur, Howrah 711102
30. UNION TERRITORY OF DELHI RESPONDENT NO. 30
Through the Chief Secretary,
Delhi Secretariat, IP Extension,
New Delhi 110002.
31. UNION TERRITORY OF PUDUCHERRY RESPONDENT NO. 31
Through the Chief Secretary,
Main Building, Chief Secretariat,
Puducherry 605001.
32. ANDAMAN AND NICOBAR RESPONDENT NO. 32
ADMINISTRATION
Through Chief Secretary,
Secretariat, Port Blair 744101
33. UT OF DAMAN AND DIU AND DADRA w RESPONDENT NO. 33
AND NAGAR HAVELI,
Through Administrator,
Secretariat, Moti, Daman 396220
34. UT OF LASKADWEEP RESPONDENT NO. 34
Through Administrator,
Kavaratti, 682555
35. STATE OF ANDHRA PRADESH RESPONDENT NO. 35
Through the Chief Secretary,
Interim Government Complex,
A.P. Secretariat, Velagapudi, Guntur,
Andhra Pradesh.
36. STATE OF ARUNACHAL PRADESH RESPONDENT NO. 36
Through the Chief Secretary,
Civil Secretariat, Itanagar 791111

**WRIT PETITION UNDER ARTICLE 32 FOR THE PROTECTION OF
FUNDAMENTAL RIGHTS UNDER ARTICLES 14/19(1)(G)/21 IN
PART III OF THE CONSTITUTION.**

To,
Hon'ble the Chief Justice of India
and his Hon'ble Companion Justices
of the Hon'ble Supreme Court of India;

The Humble Petition of the
Petitioner above-named

MOST RESPECTFULLY SHOWETH: -

1. The present writ petition under Article 32 of the Constitution of India is being filed in public interest is being filed seeking to counter an emergent situation, and is, inter alia, seeking directions of this Hon'ble Court to implement the Advisory dated 20.03.2020 issued by the Ministry Labour and Employment (Respondent No.2) r/w Order dated March 29 2020, issued by the Government of India r/w Maharashtra State Government resolution (GR) by Industries, Energy and Labour Department dated 13 March 2020 so far as it relates to the directions to the employers of both the private and public companies to not lay off employees or cut their salaries, in the wake the unprecedented lockdown situation due to the COVID-19 or novel Coronavirus crisis, in order to ensure the protection of the fundamental rights under Articles 14/19(1)(g)/21.
2. The Petitioner No. 1 is an advocate practicing in New Delhi and is regularly appearing before this Hon'ble Court, and has a standing of about 10 years. He has appeared in several matters before this Hon'ble Court as well as the Hon'ble Delhi High Court and the Hon'ble Trial Courts. The Petitioner is a member of the Supreme Court Bar Association. The Petitioner No. 1 herein, in his capacity as a lawyer,

has been approached by several people bringing to light several issues of delay in the release of salaries, illegal terminations, non-release of salary, etc. leading to hardships faced. It is submitted most of these employees were reluctant to come forward and take up the cases on individual level fearing adverse actions against them. The Petitioner is an income tax assessee with PAN AAQPI7141G and income of about Rs. 10 lakh per annum. (Permanent Account No. AAQPI7141G, Email id: advrajeshinamdar@gmail.com). Copies of PAN card, AADHAR card and bank account details for last one year has been enclosed along with the **vakalatnama**.

3. The Petitioner No. 2 is the National Information Technology Employees Sena – (NITES) is the unregistered Union is working for welfare and benefits of IT/ITES and its related sector employees in Pune. The Petitioner No. 2 is focused on various issues faced by IT/ITeS/BPO/KPO Employees. So far National Information Technology Employees Sena – NITES have raised issues of more than 39000 employees and have filed petitions in Labour Departments and District Magistrate against illegal terminations, Reduction in wages, forceful resignation, deduction of earned leaves, forcing employees to apply leaves as vacation, Maternity Benefits & various other issues. National Information Technology Employees Sena – NITES also spread awareness amongst employees regarding labour laws and encourage them to unite and now more than 5000 employees have joined us on various platforms. National Information Technology Employees Sena –

NITES is committed for the welfare and rights of IT/ITES/BPO/KPO

Employees and extensively working for below mentioned issues:

- i. Stop Illegal termination & Forced Resignation
- ii. Stop Illegal employment bonds
- iii. Companies to provide Re-Skilling opportunities to Employees instead of layoff
- iv. Urgent resolution for Issues of Full & Final Settlement, Relieving / Experience Certificate
- v. Grant of Additional authority/ power to LC office to pass an order for illegal termination / forced resignation apart from being conciliatory authority
- vi. Expedite Labour Court Proceedings
- vii. Labour Welfare
- viii. Implementation of Labour welfare fund for all IT employees.
- ix. Monitoring of Grievance Redressal Cell of IT companies
- x. Women Employees
- xi. Enhancing Security of women employees
- xii. Implementation of Maternity Amendment Act 2017 – Crèche facility
- xiii. Sexual harassment of women at workplace
- xiv. Compliance
- xv. Transparency in Appraisal & Performance Evaluation
- xvi. Fair Back Ground Verification
- xvii. Over-time and allowances
- xviii. Discrepancy of wages
- xix. Awareness of Labour laws at company premises.

The Petitioner No. 2 is being represented through General Secretary, Mr. Harpreet Saluja), (Permanent Account No. CIDPS1975B, Email id: help.nites@gmail.com). Copies of PAN card, AADHAR card and bank account details for last six months have been enclosed along with the **vakalatnama**.

4. It is submitted that there is no civil, criminal, or revenue litigation involving the Petitioners which has or could have a legal nexus with the issues involved herein. It is further stated that the Petitioners prefers the present Petition in larger public interest.
5. The present matter is being filed in public interest, and the Petitioners have no private interest in the present matter. It is submitted that the Petitioners are seeking, by the present writ petition in public interest, a direction to the Government of India and to the Governments of all the States/Union Territories, to ensure that the most cherished fundamental rights under Articles 14, 19 and 21 of the Constitution are protected. It is submitted that the present petition is being preferred only to ensure that in the unprecedented situation, whereby the functioning of whole country has virtually come to a standstill, does not result in an unmitigated disaster in the loss of jobs in the public/private sectors, thereby forcing a huge human cost on the country.
6. The Respondent No. 1 and 2 is the Union of India, through the Ministry of Home Affairs and Ministry of Labour and Employment.
7. The Respondents No. 2 to 36 are the State Governments of all the States in India as well as the Administrators of the Union Territories. It is submitted that the Petitioners are seeking the directions mentioned in the prayers against the Respondents.
8. BRIEF FACTS LEADING TO FILING OF THE PRESENT PETITION IS AS UNDER:

- i. Due to the global break out of the pandemic of Covid 19, also called the novel coronavirus, the normalcy in the entire world was affected. Social distancing, being the only immediate manner of prevention of the spread of the pandemic widely, was prescribed and practiced. Being thus, several industries, business and companies have had to face temporary closure of operations. Further, this has led to the disruption of normal life globally.
- ii. That on 20.03.2020, the Union Ministry of Labour and Empowerment had issued a directive to all Chief Secretaries of respective state governments to issue advisories to public and private companies to not layoff/Terminate employees or give them pay cuts at a time when a lockdown is in place in the wake of the SARS-Cov-2 pandemic. True copy of the advisory issued by Union Ministry of Labour and Employment dated 20.03.2020 is annexed hereto and marked as **ANNEXURE P-1**
[Pages 35]
- iii. The Prime Minister of India announced that on 22.03.2020 the country would observe "Janta Curfew" by which the whole country was closed down from 7 am to 9 pm on 22.03.2020. It was successfully implemented.
- iv. The Prime Minister, on 24.03.2020, announced a nationwide lock down for 21 days beginning 25.03.2020, ending on 14.04.2020, in order to prevent the spread of COVID 19. In his

address to the nation the Hon'ble Prime Minister has requested Companies not to fire/terminate employees due to coronavirus lockdown and also to pay full wages/salaries to the employees. At the time of filing of the present petition, the country is in a lock down situation, and will continue so for another fortnight.

- v. On 23.03.2020 The Government of Telangana has issued notification under the provisions of the Telangana Shops and Establishment Act, 1988 by which it has been directed that the lockdown period in the State of Telangana shall be declared as 'paid holiday' for all categories of employees. True copy of the notification issued by the State of Telangana on 23.03.2020 is annexed hereto and marked as **ANNEXURE P-2 [Pages 36-37]**
- vi. On 29.03.2020, the Government of India (Respondent No. 35), to effectively implement the lockdown order and to mitigate the economic hardship of the migrant workers issued an order under Section 10(2)(1) of the NDMA. It directed the State governments and the Union Territories (SGs/UTs) to issue orders, compulsorily requiring all the employers in the industrial sector and shops and commercial establishments to pay wages to their workers at their workplaces on the due date without any deduction during their closure due to lockdown. A true copy of the Notification dated 29.03.2020 issued by Respondent No. 35 – Union of India is annexed hereto and marked as **ANNEXURE P-3 [Pages 38-39]**.

- vii. Some of the States, namely state governments such as Maharashtra, Haryana, and Delhi have also issued similar advisories.
- viii. On 14.04.2020, the Prime Minister extended the national lock down to 03.05.2020, to prevent the spread of COVID 19.
- ix. When things stood thus, several companies across the country have started to terminate its employees without any reasonable cause and have started withholding their salaries. It is submitted that in such testing times, the rights of the employees ought to be protected by necessary orders/directions to the companies through the Respondents to effectively implement the lockdown and to contain the spread of the virus. It is submitted that prospects of several young members/citizens of the country is under dilemma.
- x. It is submitted that various IT Companies in the country have initiated a drive of illegal mass termination of the employees, withholding of the salaries or illegal deduction of salaries in complete breach and violation of the directions/advisories and appeal made by Respondent No. 1 to 3 taking advantage of the deadlock situation which has emerged in the Country. It is submitted that the employers who are on dominant position are taking harsh decisions and unconscionable bargains with the employees. It is submitted that in few cases the employees through Petitioner No. 2 have approached the Labour

Commissioner, however, due to the lockdown no orders restraining the Employers has been passed so far and proceedings are not likely to be concluded.

- xi. It is submitted that the employees are in no way responsible for the present pandemic lockdown situation, but are at the receiving end. It is submitted that in the absence of issuance of any binding directives/directions to the private companies, thousands of employees will be susceptible to losing their jobs/incomes, which will lead to an unprecedented economic situation – a situation that the country cannot afford. It is relevant to note that the Government's order directs all commercial establishments, private offices, industrial establishments and factories to remain closed for twenty-one (21) days starting on March 24, 2020, which is further extended to 3.05.2020.
- xii. It is submitted that salaries have also been withheld and deducted without any basis. It is submitted that most of the IT employees who stay away from their family are finding it difficult to even pay monthly rents, EMIs, manage daily expenses and other liabilities.
- xiii. As per the report published by Centre for Monitoring Indian Economy, (CMIE) as on 19.04.2020 the unemployment rate 30 day moving average (%) in Urban India 23.93 whereas in Rural

India is 20.54.¹ It is pertinent to indicate that as per the statistic presented Centre for Monitoring Indian Economy, (CMIE) as on 19.04.2020 the unemployment rate 30 day moving average (%) in Urban India 23.93 whereas in Rural India is 20.54 and if no steps are taken in this regard the ratio of unemployment will be further exacerbated. True copy of the report/Statistic of CMIE on unemployment ratio as on 19.04.2020 is annexed hereto and marked as **ANNEXURE P- 4**
[page 40]

- xiv. If this Hon'ble Court were not to pass orders, there would be an unprecedented economic situation created in the country, and several thousand persons falling within the bracket of "middle class" would be adversely and prejudicially affected. It is submitted that the economic and social impact of unregulated mass terminations and delayed payment of salaries or pay cuts will be extremely severe and have a very large and serious human impact, and in contravention of the fundamental rights under Articles 14, 19(1)(g) and 21, which have been held to be most essential.
- xv. Hence this Petition

¹ <https://unemploymentinindia.cmie.com/>

GROUNDS

9. The present writ petition is on the following amongst other grounds::

I. BECAUSE in the case of *Lochner v. New York*, 198 US 45 (1905), the majority of the Hon'ble Supreme Court of the United States held that health was not a reasonable ground to interfere with the liberty to contract, thereby striking down a New York State law limiting the number of working hours of the employees of bakeries. However, this was strongly dissented to by four Judges of the Hon'ble Supreme Court of the United States, most prominently by Justice Oliver Wendell Holmes Jr. During the great depression in the United States, the dissent of Justice Holmes was upheld in the case of *West Coast Hotel Co. v. Parrish*, 300 US 379 (1936), and the majority held (pg. 391):

"...The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognise an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organisation which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process."

It is submitted that the law laid down by the Hon'ble Supreme Court of the United States relates to statutes which

were made for protection of labour, and have been cited as authority for not interfering in economic legislation even by this Hon'ble Court [See *Swiss Ribbons v. Union of India*, (2019) 4 SCC 17]. However, in the present case, they are relevant only to bring to the fore the principle that the liberty to contract can be restricted on the grounds of health, safety, morality and welfare of the people. This principle is also legislated upon and found in the Indian Contract Act, 1882, in Section 23, by which Contracts which are opposed to public policy are void. It is submitted that the mass termination of employees, and the withholding of the salaries of the employees during these severe times is contrary to public policy, and directly affecting the right to livelihood of several persons. Further, it is submitted that the purpose of filing the present petition is not to seek a direction from this Hon'ble Court to burden employers. However, it is submitted that a balance needs to be drawn between the rights of the employers and those of the employees, the latter being the more disadvantaged class.

- II. BECAUSE in the unprecedented situation, whereby the functioning of whole country has virtually come to a standstill, does not result in an unmitigated disaster in the loss of jobs in the public/private sectors, thereby forcing a huge human cost on the Country. The Country which was already trying to recover from the economic crisis and

unemployment issues had to be brought to complete blockade due to rapid spread of the COVID-19 wherein the entire nation was put into lockdown due to which the issues which were already existing will be worsened.

III. BECAUSE present situation has been caused due to the global breakout of the pandemic by the name COVID-19 or novel Coronavirus crisis. The Government of India issued an advisory dated 20.03.2020 to the various public/private companies to not lay off its employees or to not terminate their services, and also not deduct their pay. On 22.03.2020, the Prime Minister of India imposed a one-day lockdown on a trial basis terming it "Janta Curfew". Thereafter, the Prime Minister of India imposed a 21 day lockdown in the entire country, which was to end on 14.04.2020. However, on 14.04.2020, the Prime Minister extended the lockdown to 03.05.2020. In his address to the nation the Hon'ble Prime Minister has requested Companies not to fire/terminate employees due to coronavirus lockdown and also to pay full wages/salaries to the employees. At the time of filing of the present petition, the country is in a lock down situation, and will continue so for another fortnight.

IV. BECAUSE a Constitution Bench of this Hon'ble Court, in the case of *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 has held that the right to livelihood forms a part of the right to life and liberty protected by the Constitution.

- V. BECAUSE it is incumbent upon the State to protect the Fundamental Rights guaranteed under Part III of the Constitution, and to ensure that they blossom and are exercised unabashedly by the citizenry. Further, the unprecedented situation of the lockdown is not caused due to the employees who are facing termination or pay cuts, and therefore, they must not be made to suffer on that account.
- VI. BECAUSE by virtue of Part IV, the State has an obligation to promote the welfare of the people. Further, it is submitted that this Hon'ble Court, in the *Minerva Mills v. Union of India*, (1980) 3 SCC 625, has held that there ought to be a harmonious construction of Part III and Part IV of the Constitution. It is submitted that the Petitioner is seeking, by the present writ petition in public interest, a direction to the Government of India and to the Governments of all the States/Union Territories, to ensure that the most cherished fundamental rights under Articles 14/19/21 of the Constitution are protected.
- VII. Because various private Companies in the country have initiated a drive of illegal mass termination of the employees, withholding of the salaries or illegal deduction of salaries in complete breach and violation of the directions/advisories and appeal made by Respondents taking advantage of the deadlock situation which has emerged in the Country.

- VIII. BECAUSE the employers who are on dominant position are taking harsh decisions and unconscionable bargains with the employees.
- IX. BECAUSE salaries have also been withheld and deducted without any basis. It is submitted that most of the IT employees who stay away from their family are finding it difficult to even pay monthly rents, EMIs, manage daily expenses and other liabilities. If this Hon'ble Court were not to pass Orders, there would be an unprecedented economic situation created in the country, and several thousand persons falling within the bracket of "middle class" would be adversely and prejudicially affected. It is submitted that the economic and social impact of unregulated mass terminations and delayed payment of salaries or pay cuts will be extremely severe and have a very large and serious human impact, and in contravention of the fundamental rights under Articles 14/19(1)(g)/21, which have been held to be most essential.
- X. BECAUSE there has already been a serious situation created due to the lack of work for migrant workers. It is submitted that the Respondents are duty bound to ensure that the same is not replicated with regard to employees in the private sector. Further, the Respondents have a constitutional responsibility to ensure that the fundamental rights under Articles 14/19(1)(g)/21 of several lakh people is protected.

XI. BECAUSE a sizable population in the country is in the service of private companies, and therefore, apart from their employment contracts, have no other refuge. The employees working in various IT/ITES companies across countries for over several years have been instructed/informed over phones calls about their termination without even following the procedure envisaged under various enactments viz Industrial Disputes Act etc moreover such terminations are illegal, unreasonable and based on convenience. It is submitted no procedure like notice period, intimation to government authorities, payment of retrenchment compensation, payment of gratuity, Leave encashment, etc. has been undertaken by the Companies. It is submitted that the employees are in no way responsible for the present pandemic lockdown situation, but are at the receiving end. It is submitted that in the absence of issuance of any binding directives/directions to the private companies, thousands of employees will be susceptible to losing their jobs/incomes, which will lead to an unprecedented economic situation – a situation that the country cannot afford. It is relevant to note that the Government's order directs all commercial establishments, private offices, industrial establishments and factories to remain closed for twenty-one (21) days starting on March 24, 2020, which is further extended to 3.05.2020.

XII. Because on March 20, the Union Ministry of Labour and Employment had issued a directive to all Chief Secretaries of respective state governments to issue advisories to public and private companies to not *layoff* terminate employees or give them pay cuts at a time when a lockdown is in place in the wake of the SARS-Cov-2 pandemic. It is submitted that the notification also mentions that even if a place of employment is non-operational, the employees would be deemed to be on duty. The relevant portion of the advisory is extracted hereunder for your convenience:

*"..In the backdrop of such challenging situation, **all the employers of public/ private establishments are advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages"***

XIII. Because on March 29 2020, the Government of India, to effectively implement the lockdown order and to mitigate the economic hardship of the migrant workers issued an order under Section 10(2)(1) of the NDMA. It directed the State governments and the Union Territories (SGs/UTs) to issue orders, compulsorily requiring all the employers in the industrial sector and shops and commercial establishments to pay wages to their workers at their workplaces on the due date without any deduction during their closure due to lockdown.

- XIV. Because the present COVID-19 scenario, the employees and the employers, apart from the above two legislations will also be governed by State-Specific Shops and Establishment Legislations as well as the various orders that have been issued by various departments of the Central and the State Governments. We must not forget that India is a Welfare State, and therefore, the Governments are also under an obligation, in these exceptional times, to ensure that people are not suddenly out of employment.
- XV. BECAUSE advisory is in nature of guideline and is/may not be binding on the employers. However, the State Governments are empowered to issue a direction in this regard under their respective Shops and Establishment legislations, and the employers are thus bound.
- XVI. BECAUSE to this effect the State of Telangana has under Section 13 and subsection (2) of Section 31 of the Telangana Shops & Establishments Act, 1988, all shops and establishments in public interest and shall be declared as paid holiday for all categories of employees.
- XVII. BECAUSE the invocation of provisions of the Disaster Management Act, 2005 by the Government of India and the directions/orders issued there under are legally binding on the Establishments. In this regard relevant provisions of the Act are Section 10, 51 and 58 which are reproduced for convenience of this Hon'ble Court:

10. Powers and functions of National Executive Committee.—(1) The National Executive Committee shall assist the National Authority in the discharge of its functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster management in the country.

51. Punishment for obstruction, etc.—Whoever, without reasonable cause—

(a)

(b) **refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act,**

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.

58. Offence by companies.—(1) Where an offence under this Act has been committed by a company or body corporate, every person who at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with

the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also, be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

60. Cognizance of offences.—No court shall take cognizance of an offence under this Act except on a complaint made by—

(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or

(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.”

XVIII. Because if there is deliberate non compliance of the directions issued by the Government, the complaint in this regard can be made by the authorities as enumerated in Section 60 (a) or any person as envisaged in Section 60 (b). On an enquiry it is made out the offence is committed by any company the head/incharge of such company shall be deemed to be guilty of the contravention and be punishable

with imprisonment for a term which may extend to two years.

- XIX. BECAUSE any termination without following the due process is illegal and amenable to the judicial scrutiny under respective legislations. Moreover, since the provisions of the Disaster Management Act since are in operation, any decision by an employer to terminate the employee will invite the wrath of penal provisions under the Act.
- XX. BECAUSE the mass terminations of employees would bring about an unprecedented economic situation. There is a need to strike a balance, and the Government/Respondents ought certainly to play a constructive role.^w
- XXI. Because if such mass termination is carried out, youth or employees will have no other alternate but to starve and in exchange the entire family. Firstly, there are no employment opportunities and country was already faced with economic crisis and this global pandemic has worsened the situation. Many companies have closed operations and few are reducing the strength of employees.
- XXII. BECAUSE after liberalisation in 1991, the jobs in private companies are on the rise. There are several thousand families in the country which are dependent on this income from the companies. These companies have a social responsibility to ensure that so many people are not left to starve.

- XXIII. BECAUSE there has to be balance which needs to be struck off. Employees should also accept reasonable pay deductions and support the company, and the companies must and should endeavour to adopt a pragmatic method and indulge into dialogues with the employees and seek their support and propose a salary deduction than terminations. To abandon their employees in these difficult times would have disastrous effects.
- XXIV. BECAUSE there has already been a serious situation created due to the lack of work for migrant workers. It is submitted that the Respondents are duty bound to ensure that the same is not replicated with regard to employees in the private sector.
- XXV. Because all these employees were terminated over a phone call/emails in the midst of the lockdown situation leaving no option to the employees even to protest or seek explanations. Immediately thereafter in almost all cases access to company emails and other platforms were barred.
- XXVI. BECAUSE the salaries have also been withheld and deducted without any basis. It is submitted that most of the IT employees who stay away from their family are finding it difficult to even pay monthly rents, EMIs, manage daily expenses and other liabilities.
- XXVII. Because if this Hon'ble Court were not to pass Orders, there would be an unprecedented economic situation created in the

country, and several thousand persons falling within the bracket of "middle class" would be adversely and prejudicially affected.

XXVIII. BECAUSE the economic and social impact of unregulated mass terminations and delayed payment of salaries or pay cuts will be extremely severe and have a very large and serious human impact, and in contravention of the fundamental rights under Articles 14, 19(1)(g) and 21, which have been held to be most essential.

XXIX. BECAUSE the Respondents have a constitutional responsibility to ensure that the fundamental rights of several lakh people are protected.

XXX. BECAUSE this is the time when entire nation should stand together and fight this deadly virus. Although, Government is taking necessary steps to provide possible assistance to the needy on priority like daily wagers, migrant workers, small businesses, the corporate employers have been reluctant and are acting inhuman in fulfilling their duty towards the nation and assist the Government by ensuring timely payments of full wages and salaries.

XXXI. BECAUSE employers as their Corporate Social Responsibility be mandated to not terminate or layoff the employees and pay their full salaries so that large section of the employees are not compelled to come on streets and join the workers on the street who are struggling to manage to two times meals.

- XXXII. BECAUSE this will add excessive and unwarranted burden on the Union and State Government.
- XXXIII. BECAUSE this Hon'ble Court as *sentinel on qui vive* is implored upon to direct the Respondents to take necessary actions against such companies/establishments who have been acting detriment to all such employees taking advantage of their dominant position and COVID situation.
10. The Petitioners have filed no other petition seeking a similar relief before any other High Court or this Hon'ble Court.
11. Further, the Petitioners have no personal interest in the filing of the present petition, and the reliefs sought herein are not in any manner causing personal gain or benefit to the Petitioners.
12. This Hon'ble Court has the jurisdiction to entertain the present Writ Petition. This writ petition is made bona fide and in the interest of justice and the Petitioners have no other efficacious remedy left other than approaching this Hon'ble Court.
13. The Petitioners seek liberty to amend/alter/urge additional grounds at the later stage and seek liberty to make additional submissions at the time of hearing.

PRAYERS

In the facts and circumstances above mentioned the Applicant most respectfully prays that this Hon'ble Court may graciously be pleased;-

- a) Issue a writ of mandamus or any other writ or direction to the Respondents herein to enforce the rights of all the employees in various public and private sector undertakings across the country under Articles 14, 19(1)(g) and 21, to ensure that the right to livelihood protected by the Constitution is not unduly infringed/abrogated; and
- b) Issue a writ of mandamus or any other writ or direction to the Respondents herein to initiate action against all such companies under Section 51 and 58 of the DMA Act, 2005 who are in breach of orders/circulars/advisories dated 20.03.2020 issued by the Ministry Labour and Employment, Order dated March 29 2020, issued by the Government of India issued under Section 10(2)(1) of the NDMA, 2005; and
- c) Issue a writ of mandamus to direct the Respondents to ensure that employers in the private sector do not employ the course of mass termination of employees, thereby leaving several lakhs of people without any livelihood, thereby protecting their rights under Articles 14/19/21; and
- d) Issue a writ of mandamus to direct the Respondents to ensure that employers in the private sector at least make payment of a subsistence salary to the employees, without terminating employees unreasonably and illegally thereby protecting their rights under Articles 14, 19, and 21; and

- e) Issue a writ of mandamus or any other writ or direction to the Respondents herein to provide immediate financial assistance after due verification to all such employees whose companies have closed their business after the lockdown was imposed in the Country; and
- f) Issue a writ of mandamus or any other writ or direction to the Respondents to issue directions to their respective ministries to not to demand any school fees from students amid the COVID-19; and
- g) pass such other and further order/orders as deemed fit and proper in the facts and circumstances of the present case and in the interest of justice.

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

<p>DRAWN BY:</p> <ol style="list-style-type: none"> 1) MR. RAJESH INAMDAR 2) MR. AMIT PAI 3) MS. AISHWARYA RAI B 4) MR. TOSIF SHAIKH ADVOCATES <p>SETTLED BY:</p> <p>MR. DEVADATT KAMAT SR. ADVOCATE</p> <p>DRAWN ON: 19.04.2020 FILED ON: 20.04.2020</p>	<p>Filed by:</p> <p style="text-align: center;">v</p> <p style="text-align: center;">Pai Amit Advocate on Record</p>
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