

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF MAY, 2020

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE B.V. NAGARATHNA

WRIT PETITION NO.6695 OF 2020 (GM-RES-PIL)

c/w

WRIT PETITION NO.6696 OF 2020 (GM-RES-PIL)

IN W.P. NO.6695 OF 2020:

BETWEEN

1 . SRI. H C SHIVARAMU
ADVOCATE,
FORMER CHAIRMAN,
KARNATAKA STATE BAR COUNCIL
AND FORMER PRESIDENT,
ADVOCATES' ASSOCIATION,
NO. 14/19, 1ST FLOOR,
2ND MAIN, V BLOCK,
KUMARA PARK WEST,
BENGALURU 560020

...PETITIONER

(By SHRI H.C.SHIVARAMU, PARTY-IN-PERSON)

AND:

1 . UNION OF INDIA
BY ITS SECRETARY,
DEPARTMENT OF LAW AND
PARLIMENTARY AFFAIRS,
ROOM NO 86B, PARLIAMENT BHAVAN,
NEW DELHI 110001.
REP BY ITS SECRETARY,

ORDER

COVID-19 has adversely affected all the sections of the society. This Court is dealing with a public interest litigation where the issue is about supply of food and necessities of life to migrant workers, people on the streets, marginalized sections of the society like daily wage workers who are completely deprived of their income, trans-genders, sex workers, etc. The petition is pending and we have issued various directions from time to time.

2. By way of these two writ petitions, now we are dealing with another category of citizens who are claiming to be affected by COVID-19. The said category is of members of the legal profession.

3. It is pointed out that as a result of the initial closure of the Courts and subsequent partial resumption of the Court work, the members of the legal fraternity are not getting income. W.P. No.6695 of 2020 is filed by a member of the Bar where the first prayer is to direct the fifth respondent-Bar Council of India Advocates Welfare Fund Committee (for short, "BCI Welfare Fund") to provide *ex-gratia* payment to

the tune of Rs.50,000/- (rupees fifty thousand only) to each member/advocate on the roll of Karnataka State Bar Council (for short, "KSBC) who are facing financial hardship, except the advocates who have enrolled after the age of 40 years. The second prayer is to direct the State Government as well as the Central Government to immediately release sufficient fund of Rs.50,00,00,000/- (rupees fifty crores only) to KSBC to enable it to provide financial assistance to the advocates who are members of the Welfare Fund, at the earliest, since the total number of advocates is over 70,000. The next prayer is to direct KSBC to release a sum of Rs.10,00,00,000/- (rupees ten crores only) out of BCI Welfare Fund and Bar Council of India Trust. The last prayer is to direct the fifth respondent to release a sum of Rs.25,00,00,000/- (rupees twenty five crores only) out of Karnataka State Advocates Welfare Fund immediately.

4. So far as W.P. No.6696 of 2020 is concerned, the prayer made by the petitioners who are the members of the Bar, is essentially to issue directions to help legal practitioners who are on the verge of starvation. Sweeping directions have been sought in the said petition.

5. The petitioner who is appearing in person in W.P. No.6695 of 2020 has invited our attention to three schemes of BCI which are annexed as Annexures-E, F and G. He invited our attention to the order passed by the High Court of Uttarakhand dealing with the same issue. He pointed out an order of the Allahabad High court which records the statement of the Chairman of BCI that assistance of an amount which is not more than Rs.1,00,00,000/- (rupees one crore only) will be extended to all State Bar Councils by BCI. Essentially, his submission is that KSBC cannot restrict the aid only to those advocates who have a practice of less than ten years, and the relief has to be extended to all those advocates who are in distress and who have completed more than ten years of practice. His submission is that, as done by the High Court of Uttarakhand, a Committee be constituted under the leadership of the learned Advocate General of the State. He submits that a direction can be issued to release the funds out of Karnataka State Advocates Welfare Fund, as it is the money of the members of the Bar.

6. On behalf of the petitioners in W.P. No.6696 of 2020, the prayers are more or less similar. Our attention is invited to a letter dated 6th April, 2020 issued by KSBC to the Presidents/Secretaries of the Bar Associations. The petitioners are objecting to condition no.3 in the said petition which says that those who have entered the profession after the age of 40 years are not entitled to financial assistance.

7. The learned counsel appearing for BCI states that out of the three schemes which are annexed to W.P. No.6695 of 2020, only the third scheme at Annexure-G is applicable. But, under the said scheme, it is provided that if more than one member of the Bar is affected by a calamity, there is an upper limit of Rs.1,00,000/- (rupees one lakh only) on the release of the funds. He has stated that a sum of Rs.45,00,000/- (rupees forty five lakhs only) has been released by BCI to KSBC for rendering assistance to the needy advocates.

8. The learned senior counsel appearing for KSBC pointed out that KSBC is utilizing the said amount of Rs.45,00,000/- as well as a sum of Rs.2,00,00,000/- (rupees

two crores only) from its own funds to render financial assistance to those advocates who have not completed ten years in the legal profession and those who satisfy the eligibility criterion set out in the letter dated 6th April, 2020 (Annexure-A in W.P. No.6696 of 2020). He also pointed out that a large number of applications have been received by KSBC which are being processed. He states that in case of women advocates, KSBC is considering of relaxation of condition of not practicing for ten years.

9. We have considered the submissions. Firstly, so far as the Karnataka State Advocates Welfare Fund is concerned, it is established under the Karnataka State Advocates Welfare Fund Act, 1983 (for short, "the said Act of 1983"). The reliefs which can be granted to the members of the Welfare Fund are governed by the said Act of 1983. Essentially, a relief can be granted to the advocates only on cessation of practice as provided under Section 16 of the said Act of 1983. Therefore, if assistance is to be granted to the members of Karnataka State Advocates Welfare Fund for dealing with a situation arising due to spread of COVID-19, the State Government will have to amend the said Act of

1983. The petitioners can always make a representation in that behalf.

10. Under sub-section (2) of Section 6 of the Advocates Act, 1961 (for short, "the Advocates Act"), the State Bar Council is empowered to constitute one or more Funds in the prescribed manner for the benefit of the members of the Bar. Even the said funds will be governed by the Advocates Act and the Rules framed thereunder.

11. It is true that several advocates will be affected due to closure of the Courts as a result of COVID-19. It is an accepted position that both the State as well as the Central Governments are facing severe cash crunch. Both the Governments are required to deal with the marginalized sections of the society who are in large numbers and who are deprived of even daily food requirements as a result of COVID-19. Ultimately, it is a matter of policy for the State as well as Central Governments to take a decision of utilization of the limited resources available with both the Governments. The priorities for the use of available resources is also a matter of policy. That is the reason why

we are unable to issue a writ of *mandamus* directing both the Central Government and State Government to release the amounts as prayed for in W.P. No.6695 of 2020. However, this will not preclude both BCI as well as KSBC from approaching the State or Central Government for seeking necessary financial assistance. If such applications are made, both the Governments are bound to decide the same in accordance with law and as expeditiously as possible.

12. Today, as pointed out across the Bar, a sum of Rs.2,45,00,000/- is available with KSBC. It is stated that the amount will be utilized for extending financial help to those needy advocates who satisfy the criterion laid down in the letter dated 6th April, 2020 which we have referred to earlier. KSBC seems to have laid down its own priorities by giving attention to junior members of the Bar who have not completed ten years of practice. As pointed out the learned counsel appearing for BCI, none of the three schemes which are annexed to W.P. No.6695 of 2020 are of assistance to deal with the extraordinary situation created by COVID-19. Even the scheme at Annexure-G has limited utility as there is an upper cap of Rs.1,00,000/-.

13. As noted in the decision rendered by the Allahabad High Court, BCI has agreed to extend help to all State Bar Councils and the upper limit for assistance will be Rs.1,00,00,000/-. Ideally, both BCI and KSBC should extend relief to all advocates who are affected by COVID-19 irrespective of the number of years of legal practice. However, as of today, only a sum of Rs.2,45,00,000/- (rupees two crores forty five lakhs only) is available with KSBC for this purpose. It is stated that there are more than 70,000 advocates enrolled with KSBC.

14. It cannot be disputed that the class of advocates who have not put in ten years of practice deserve help and assistance. For extending the relief to those needy advocates who have put in more than ten years of practice, KSBC will have to appeal to the senior members of the Bar to make donations so that the amount so collected can be utilized for extending the benefit to other members of the Bar who are not covered by the scheme which is being implemented by KSBC. Even BCI can make such an appeal so that it is in a position to render more assistance to the State Bar Councils.

15. Though we cannot constitute a Committee as prayed for by the petitioners, KSBC can always appeal to the senior members and other members of the Bar to make handsome donations. We are sure that if KSBC makes a request to the learned Advocate General who is the leader of the Bar to convene a meeting of the senior members of the Bar for assisting KSBC to collect donations, the learned Advocate General will assist KSBC in its efforts to generate funds so that the help can reach all the needy members of the Bar.

16. A statement is made by the learned senior counsel representing KSBC that the question of relaxing the criterion of ten years for women advocates is under consideration of KSBC. We hope and trust that KSBC takes such a decision, as for the purposes of rendering assistance, the class of women advocates cannot be treated on par with the class of other advocates. We expect KSBC to take a decision on this aspect at the earliest.

17. Though we are unable to issue a writ of mandamus as prayed for in both the petitions, we expect both the BCI and KSBC to make all possible efforts to generate more and more funds. As and when sufficient funds are generated,

KSBC can take a decision to extend the scheme which is now being implemented by KSBC even to those advocates who do not satisfy the criterion laid down in the letter dated 6th April, 2020. We hope and trust that immediately an appeal will be made by KSBC to all the senior members of the Bar to make effective monetary contribution so that assistance can be rendered to other advocates in distress who are not covered by the present scheme which is being implemented by KSBC. We are sure that considering the rich traditions of the Bar in the State, if an appeal is made by KSBC to the members of the Bar, it will receive a spontaneous response and a large amount will be collected by way of donations which will ultimately reach the advocates who badly need financial assistance in the present crisis. If additional funds are generated, KSBC will apply a rational criteria to distribute the funds as expeditiously as possible to the needy members of the Bar.

18. We pass the following order:

ORDER

(i) With the above observations, the writ petitions are disposed of. All interlocutory applications are also disposed of;

(ii) It is pointed out that some members of the Bar have filed more than 150 applications/affidavits seeking directions regarding providing financial assistance to them. It is for them to apply to KSBC and we cannot issue any effective direction on the basis of the said applications/affidavits.

**(Sd/-)
CHIEF JUSTICE**

**(Sd/-)
JUDGE**

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