

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2020

PRESENT

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

AND

THE HON'BLE MR.JUSTICE NATARAJ RANGASWAMY

WRIT PETITION NO.7876 OF 2020 (GM-RES-PIL)

BETWEEN:

MR. S.R. KRISHNA MURTHY,
AGED 84 YEARS,
S/O LATE G.V.S. RAMIAH,
NO.7, 36TH MAIN ROAD,
BSK 3RD STAGE,
BENGALURU-560085.

...PETITIONER

(BY SRI. S.R. KRISHNA MURTHY, PARTY-IN-PERSON)

AND:

1. UNION OF INDIA
REPRESENTED BY SECRETARY,
HOME DEPARTMENT,
NEW DELHI.
2. STATE OF KARNATAKA
REPRESENTED BY SECRETARY,
HOME DEPARTMENT,
BENGALURU.

...RESPONDENTS

(BY SRI. M.N.KUMAR, C.G.C., FOR RESPONDENT NO.1;
SRI. VIJAY KUMAR A. PATIL, ADDITIONAL GOVERNMENT
ADVOCATE FOR RESPONDENT NO.2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING THAT A WRIT OF MANDAMUS BE ISSUED TO RESPONDENT NOS.1 AND 2 TO FORBEAR FROM IMPOSING THE USE OF THE UNSCIENTIFIC MASKS AND PPE'S, WHICH HAVE PROVED THEMSELVES AS NO REAL SHIELDS AND TO WITHDRAW THOSE ORDERS FOR THE BENEFIT OF THE PEOPLE AT LARGE AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS THROUGH VIDEO CONFERENCING THIS DAY, CHIEF JUSTICE MADE THE FOLLOWING:

ORDER

The petitioner appearing in person has appeared through video conferencing. As he was not clearly audible, we have heard him via cell phone on speaker phone.

2. The petitioner has stated that he passed the Actuarial Examination in 1962 and took up research in Longevity of Life through Medico-Actuarial Investigations in Life Insurance Corporation of India. He has stated that he is a Life-Fellow of the Insurance Institute of India.

3. Prayers 3.1 to 3.3 made in this petition are the substantive prayers which read thus:

“3.1. A writ of Mandamus be issued to Respondents Nos.1 and 2 to forbear from imposing the use of the unscientific Masks and PPE's, which have proved themselves as no real shields; and to withdraw those orders for

the benefit of the people at large;

3.2 A direction **NOT** to restrict the *timings* for movement of people at all, either as *planned* by the Government as 7 a.m. to 7 p.m. or even as *suggested* by the Petitioner, i.e. from early morning to 9 a.m. and after 5 p.m. up to 11 p.m. which will enable all the people the weaker sections to attend to all their needs; since rains have set in in many parts of the State, and since Monsoons are expected to close in soon after;

3.3 A direction to the Respondents to nominate their representative who should be easily available all the time to any *Constituent* who needs to communicate with the *Constituted* urgently on any issue that he considers important, as **a true feature of a Republic**; as India was, in pre-Independence days (when many a king would provide a bell in front of his Court for anybody to ring to claim justice!), which Republican feature is totally missing today; so as to avert a **national tragedy like the one that hit the country on 30th October 1984;**"

4. The submission of the petitioner is that in Indian conditions, use of mask is most unscientific. His submission is that the act of making use of mask as compulsory is violative of Article 21 of the Constitution of India. His second submission is that action on public restrictions on movement of people from late evening to early morning is illegal. He submitted that though he posted a blog on 5th May 2020 tagging the same to the Hon`ble

Prime Minister, the Hon`ble Chief Minister of the State and the City Police Commissioner, they have not responded. The third submission is that though the then Hon`ble Prime Minister Smt. Indira Gandhi in a public speech expressed an apprehension that there is a threat to her life, no one cared and that is how the tragedy happened on 30th October 1984. He, therefore, submits that the Central Government and the State Government must nominate their representatives who should be easily available all the time to anyone who needs to communicate with the Constituent urgently.

5. We have considered the submissions. Whether the action of the respondents of making the use of masks mandatory is right or wrong is not an issue which can be decided by a writ Court in exercise of jurisdiction under Article 226 of the Constitution of India. It is for the experts to decide whether the use of masks should be made mandatory and what category and what type of masks should be used by members of the public. The same is the case with the use of PPE kits.

6. For meeting the huge challenge created by pandemic of COVID-19, various measures are being taken by the Central

and the State Governments including restrictions on movement of citizens from late in the evening till early morning. The petitioner is not personally affected by these restrictions. He is of the view that weaker sections of the people will be affected. The directions issued by the Central Government and the State Government under the Disaster Management Act, 2005 are being modified from time to time. Therefore, if exigency created by onset of monsoon requires modification on the restrictions imposed on the movement of the citizens, both the Governments will have to take a call.

7. As regards the third prayer, in our view, the illustration given by the petitioner of tragedy of 30th October 1984 has no application to the present situation. The State Government has created help lines and there are official email IDs of various departments of the State Government as well as the Central Government. Sending e-mail is a very convenient mode available to the petitioner for seeking redressal of his grievances.

8. All the officials of both the Governments are very busy 24 x 7 in fighting with the situation created by a pandemic. Therefore, we cannot find fault with the Hon`ble Prime Minister,

the Hon`ble Chief Minister and the Police Commissioner for not responding to the blogs of the petitioner.

9. Hence, we are of the view that this is not a fit case where this Court should entertain the present petition in the nature of a public interest litigation in its discretionary jurisdiction under Article 226 of the Constitution of India.

10. Accordingly, the writ petition is disposed of. There will be no order as to costs.

11. Though we are not entertaining the petition on the ground that this is not a fit case where a writ Court should entertain the petition and encroach upon the area which is best left open to the experts, we appreciate the efforts made by the petitioner while formulating his suggestions which are annexed to the petition.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**