

(6)Cri.WP-AS-DB-LD-VC-118-2020.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION-ASDB-LD-VC NO.118 OF 2020

Imran Mohd. Salar Shaikh : Petitioner.

Versus

The State of Maharashtra and ors. : Respondents.

Mr. Kareem Pathan for the Petitioner.

Mr. Deepak Thakre, PP a/w Mr. S R Shinde Addl.PP for the Respondent/State.

CORAM : S. S. SHINDE &
MADHAV JAMDAR, JJ

DATE : JULY 10, 2020

ORAL JUDGMENT

1 The Writ Petition has been filed under Article 226 of the Constitution of India r/w Section 482 of Criminal Procedure Code seeking following reliefs :-

- (a) This Hon'ble Court by passing appropriate writ, order or direction, be pleased to direct the Respondent No.2 to exempt the lawyers, their staff from restrictions of lockdown for the purpose of their court work only.
- (b) This Hon'ble Court by passing appropriate writ, order or direction, be pleased to direct the Respondent No.3 to revoke the challan issued against the Petitioner for alleged violation of lockdown rules.
- (c) This Hon'ble Court by passing appropriate writ, order or direction, be pleased to direct the Respondent No.2 to the advocates, legal service providers into the category of 'Essential Services'

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2 Heard the learned counsel for the parties.

3 The principal grievance raised in the Petition is that the advocates services have not been included in the category of “essential services”, in spite of many lawyers all over the country are attending the courts for delivering their legal services on humanitarian ground in prevailing pandemic situation. Hence direction is sought to the second Respondent to include the advocates legal services as essential services by including the same in the category of “essential services” under the Maharashtra Essential Services Maintenance Act, 2017.

4 We have considered the submissions advanced by the learned counsel appearing for the Petitioner. The State Legislature in their wisdom thought it appropriate to enact the Maharashtra Essential Services Maintenance Act, 2017 to provide for the maintenance of certain essential services and the normal life of the community; and to provide for the matters connected therewith or incidental thereto. Sections 2 (a) and 3 of the said Act read as under :-

2. In this Act, unless the context otherwise requires,—

(a) “ essential service ” means,—

(i) any transport service for the carriage of passengers or goods, by land or water, with respect to which the State Legislature has power to make laws ;

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- (ii) any service connected with the supply of gas or milk or water or electricity with respect to which the State Legislature has power to make laws ;
 - (iii) any service connected with the maintenance of public health and sanitation including hospitals and dispensaries ;
 - (iv) any public service, post and employment in connection with the affairs of the State and also persons appointed to the secretarial staff of both Houses of the State Legislature, and the officers and servants of the High Court ;
 - (v) any service or post in connection with the affairs of the local authorities ;
 - (vi) any other service, post, employment or class thereof, connected with matters in respect of which the State Legislature has power to make laws and when the State Government is of opinion that strike in such service, post, employment or class thereof would prejudicially affect the public safety or the maintenance of the supplies or services essential to the life of the community or would result in the infliction of grave hardships on the community, and which the State Government by notification in the Official Gazette, declares to be an essential service for the purpose of this Act ;
3. (1) Every notification issued under sub-clause (vi) of clause (a) of section 2 shall be laid before each House of the State Legislature, immediately after it is made, if it is in session, and on the first day of the commencement of the next session of the House if it is not in session and shall cease to operate at the expiration of forty days from the date of its being so laid or from the re-assembly of the State Legislature, as the case may be, unless before the expiration of that period, a resolution approving the issue of the notification is passed by both Houses of the State Legislature.
- (2) Where any notification ceases to operate by or under sub-section (1), the cesser shall be without prejudice to

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anything done or omitted to be done before such cesser.

Explanation.—Where the Houses of the State Legislature are summoned to re-assemble on different dates, the period of forty days shall be reckoned from the later of those dates.

As it is evident from reading the aims and object and the aforesaid provisions of the said Act that, it is within the exclusive domain of the State Legislature to legislate as to whose services to be included into the essential services, keeping in view paramount interest of the community.

5 In the present Petition the Petitioner has sought mandatory directions to the 2nd Respondent to include the advocates legal services into “essential services” In our considered view, no mandatory directions, much less directions, can be issued to the State Legislature to include the legal services rendered by the advocates into “essential services”. The directions as sought by the Petitioner cannot be issued to the State Legislature to legislate in a particular manner, and it is for the State Legislature to take an appropriate decision. Hence the reliefs claimed in terms of prayer clauses (a) and (c) cannot be granted.

So far as relief claimed in terms of prayer clause (b) is concerned, the Petitioner has an alternate efficacious remedy for claiming the said relief and it is not desirable to exercise the writ jurisdiction.

Hence the Petition stands rejected.

6 At this stage the learned Additional Public Prosecutor, on instructions, submits that the Respondents are ready to consider the grievances raised in this Petition by the Petitioner. The learned counsel appearing for the Petitioner submits that the Petitioner will file a comprehensive representation to the State Government and, upon filing such representation the State Government may be directed to decide the said representation within a stipulate period. In case, such a representation, as submitted by the learned counsel appearing for the Petitioner, is filed by the Petitioner with the Respondents, the Respondents are free to consider the said representation in accordance with law and rejection of the present Writ Petition shall not be construed as an impediment to consider such representation.

7 This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

[MADHAV JAMDAR, J]

[S. S. SHINDE, J]