

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PIL-CJ-LD-VC-33 OF 2020

Chirag Chanani and Ors. } Petitioners
versus
Union of India and Ors. } Respondents

WITH
PIL-CJ-LD-VC-IA-1 OF 2020
IN
PIL-CJ-LD-VC-33 OF 2020

Sagar Ashok Shahani } Applicant
in the matter of
Chirag Chanani and Ors. } Petitioners
versus
Union of India and Ors. } Respondents

WITH
PIL-CJ-LD-VC-IA-2 OF 2020
IN
PIL-CJ-LD-VC-33 OF 2020

Nitin Babgonda Patil } Applicant
in the matter of
Chirag Chanani and Ors. } Petitioners
versus
Union of India and Ors. } Respondents

WITH
PIL-CJ-LD-VC-IA-3 OF 2020
IN
PIL-CJ-LD-VC-33 OF 2020

Chirag Chanani and Ors.	}	Applicants
in the matter of		
Chirag Chanani and Ors.	}	Petitioners
versus		
Union of India and Ors.	}	Respondents

Mr. Shyam Dewani a/w Ms. Heena Kapoor and Ms. Bhoomi Katira i/b Dewani & Associates, for the Petitioners and for the Applicant in PIL-CJ-LD-VC-IA-3-2020

Mr. Anil Singh, ASG a/w Mr. Sandesh Patil, Amogh Singh & Mr. D. P. Singh, for the Respondent No.1 – Union of India.

Mr. A. A. Kumbhkoni, Advocate General with Ms. Purnima H. Kantharia, Government Pleader for Respondent-State.

Ms. Yamuna Parekh, for MCGM.

Mr. Parth H. Zaveri a/w Adv. Ashok Shahani, for applicant in PIL-CJ-LD-VC-IA.NO.1 OF 2020

Mr. Uday Warunjikar for the Applicant in PIL-CJ-LD-VC-IA.NO.2 OF 2020.

CORAM :- DIPANKAR DATTA, CJ & SARANG V. KOTWAL, J.

DATE :- JULY 31, 2020

PC :-

1. By an order dated July 10, 2020, a coordinate Bench of this Court disposed of Criminal Writ Petition-ASDB-LD-VC No. 118 of 2020. In such writ petition, the petitioning legal practitioner had prayed for an order on the respondents to exempt lawyers and their staff from the restrictions of the lock-down for the purpose of court work as well as for an order on the respondents to consider the advocates and legal services providers as belonging to the category of “essential services”. The Court, upon hearing the learned counsel appearing for the parties, was of the view that inclusion of a particular category of persons within “essential services” is within the exclusive domain of the State Legislature and that no mandatory direction, much less any direction, can be issued to the State Legislature to categorize advocates and their staff as providing “essential services”. The writ petition stood rejected. We have, however, noticed from paragraph 6 of the said order that the learned Additional Public Prosecutor appearing for the State, on instructions, had submitted that the respondents were ready to consider the grievances raised in the writ petition. Considering such submission

the coordinate Bench granted liberty to the petitioner to file a comprehensive representation before the State Government and the State was left free to consider such representation in accordance with law, the rejection of the writ petition notwithstanding.

2. In course of hearing of these PIL petitions and interim applications for intervention, we have been informed that a representation had indeed been filed by the aforesaid petitioner before the State, availing the liberty granted by the order dated July 10, 2020, but no decision has yet been taken.

3. Having regard to the present crises that the nation is facing owing to the pandemic, Court functioning through physical hearings is under suspension in Mumbai although virtual hearings are taking place. In some of the Courts, physical hearings are being conducted in a very limited manner. The High Court, while conducting hearings through the virtual platform only, has permitted physical filings. The Western Railway and the Central Railway are operating limited train services but it is open to only those persons having passes issued by the appropriate department of the Government who can avail the same at the moment. Advocates and their staff are not

presently being allowed to avail train services. Disabled thereby, a major section of the advocates have been precluded from participating in whatever physical hearings that are being conducted and in assisting the Courts. It is also asserted on behalf of the advocates that not all of them have personal cars and, thus, commuting to the Courts in Mumbai is a big problem for them. These are some of the concerns expressed in this group of writ petitions as well as interim applications, whereby similar relief is sought for as in Criminal Writ Petition-ASDB-LD-VC No. 118 of 2020.

4. Having regard to the decision of the coordinate Bench referred to above on such writ petition, we are of the considered opinion that the State ought to have decided the representation in accordance with law. Unfortunately, the decision of the State is yet to see the light of the day.

5. We have been informed by Mr. Singh, learned Additional Solicitor General that presently, 353 out of 1774 trains (as per normal schedule) are being operated by the Central Railway whereas, 150 out of 1365 trains (as per normal schedule) are being operated

by the Western Railway. Such trains are halting at limited stations and carry such passengers who have passes to travel. It is also submitted by him that the State has been requested by the Railways to identify “essential services” for the purpose of augmenting train services but the State is yet to respond.

6. Bearing these facts and circumstances in mind, we are of the considered opinion that the State must apply its mind and take an informed decision with regard to the concerns voiced by the advocates as well as their staff. The State must not be ignorant that access to justice is now recognised as a Fundamental Right and advocates and their staff constitute an integral part of the entire system, which is dedicated to “delivery of justice”. We hope and trust that the concerns expressed by the aggrieved petitioners and parties seeking to intervene would be given due consideration and an appropriate decision taken at the appropriate level, in the light of the proposal of the Railways. For this purpose, all representations pending before the State may be taken into consideration while it proceeds to decide the matter in terms of this order. The resultant order shall be placed before us on Friday next (August 7, 2020)

when all these writ petitions and the interim applications therein shall be listed for further consideration.

7. Stand over to August 7, 2020.

8. 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.

(SARANG V. KOTWAL, J.)

(CHIEF JUSTICE)