

IN THE HON'BLE HIGH COURT OF KARNATAKA
AT BENGALURU
(ORIGINAL JURISDICTION)
WRIT PETITION No. _____ /2020 (PIL)

Between:

All India Central Council of Trade Unions (AICCTU)

No.18, Riyaz Building,

Basavanagar Main Road,

Hoodi, Mahadevapura,

Bangalore – 560048.

Represented by its President

... Petitioner

And:

1. Union of India

Represented by the Secretary

Department of Health and Family Welfare,

Government of India.

2. State of Karnataka,

Represented by the Chief Secretary,

Government of Karnataka,

Vidhana Soudha,

Bengaluru – 560001.

3. State of Karnataka,

Represented by the Secretary,

Department of Health and Family Welfare,

Government of Karnataka,

Vikasa Soudha,

Bengaluru – 560001.

4. State of Karnataka

Represented by the Principal Secretary,

Department of Labour, Government of Karnataka

Vikasa Soudha,

Bengaluru – 560 001.

5. National Institute of Mental Health and Neuro-Sciences
(NIMHANS)
Represented by its Director
Hosur Road, Bengaluru.
6. Bangalore Medical College and Research Institute
Represented by its Dean and Director
Fort, K.R. Market,
Bengaluru.

... Respondents

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

The Advocate for the Petitioner Union submits as follows

1. The Address for service of the Petitioner Union is as shown in the cause title. The Petitioner Union may also be served through its Counsels, Maitreyi Krishnan, Raghupathi S., Avani Chokshi, Lekha K.G. and Clifton D' Rozario, having their office at "Manthan Law", No. 18, 1st Floor, Bharat Bhawan, No. 35, Infantry Road, Bengaluru – 560001. The address for service for the respondents is as shown in the cause title.
2. The Petitioner is a central trade union, recognised by the Government of India, working among thousands of workers in the organised and unorganised sector across India and the State of Karnataka including agricultural labour, contract powrakarmikas and safaikarmacharis in various government departments, rice mill workers, domestic workers, hospital workers, contract workers in public sector undertakings, Race Course workers in Bangalore and Mysore, readymix workers, Oil and LPG workers, Computer operator, electricity generation workers, automobile industry contract workers, street vendors and also among workers of various other corporate and multinational companies. The Petitioner Union endeavours to organise workers towards upliftment of their lives by fighting for better wages, dignified working conditions and establishment of a just and egalitarian social order in our country. It is submitted that the All India Central Council of Trade Unions (hereinafter referred to as AICCTU) has been actively working with the housekeeping staff of various government hospitals in Bangalore and other parts of the country, and

raising issues pertaining to their working conditions. In both Victoria Hospital and NIMHANS, the housekeeping staff is part of the Unions affiliated with the AICCTU.

3. It is submitted that this Petitioner had filed I.A. No. 12/2020 in WP 6435/2020 in regard to the same grounds and prayers, in which this Hon'ble Court, at Para 13 of its order dated 18.06.2020, granted liberty to the Petitioner to file a separate Writ Petition in the nature of a Public Interest Litigation and disposed of the said Application. A copy of the order dated 18.06.2020 is placed as **Annexure – A**.
4. It is submitted that the instant Petition is being filed drawing attention to the service conditions of housekeeping and other allied staff working in COVID-19 Hospitals, and seeking for relief to protect their fundamental right to health under Article 21. The immediate reasons for the filing of this writ petition is that housekeeping staff in the various hospitals, private and government, where COVID-19 patients are being treated are exposed to the very real risk of contracting the said disease due to the failure of the respondents to take all precautionary steps to protect their health. It is submitted that the number of Covid-19 cases in Karnataka is increasing daily. As of 28.06.2020, there are 13190 Covid-19 cases in Karnataka and the number of new cases in the 24 hours preceding 28.06.2020 was 1267. The number of containment zones across the State is also increasing as well with there being more than 400 containment zones in Bengaluru city and several more in the various districts across the State. Bengaluru in fact has a high spurt in Covid-19 cases as on 28.06.2020 the total number stood at 3,321 and 85 deaths, a massive increase from 31.05.2020 when it had just 386 confirmed cases. This Petition is being filed in the nature of a Public Interest Litigation.
5. It is submitted that at least two specific incidents have been reported where housekeeping and other allied staff in COVID-19 dedicated hospitals have tested positive. The details are as below –
 - a. In the first instance, four attenders and two security personnel at the National Institute for Mental Health and Neuro-Sciences (hereinafter referred to as NIMHANS) tested positive for COVID-19 on 12.06.2020, after a psychiatric patient visited the hospital premises on 05.06.2020 and was later tested positive for COVID-19. It is submitted that these six workers were shifted to Victoria Hospital for the required treatment, and 5 other workers have been institutionally

quarantined. At NIMHANS, it has been reported that not even N-95 masks were provided to the workers in the psychiatric ward. A copy of the press report titled "*COVID-19 Impacts Two Premier Health Institutes*" appearing in The Hindu reporting the same is placed herewith as **Annexure – B**.

- b. In the second incident, two workers in Victoria Hospital and one in BMCRI have also tested positive and are currently under treatment at Bowring Hospital and Victoria Hospital. This has been learnt by the Petitioner Union from its Union members who are working in Victoria Hospital.
6. It is submitted that apart from this, 13 workers working at the Jayadeva Institute of Cardiovascular Sciences and Research were quarantined on 12.06.2020 after a 74-year-old woman who died from respiratory illness and heart block was tested positive. The newsreport appearing in the Times of India dated 14.06.2020 is placed herewith as **Annexure – C**.
7. It appears that the workers have contracted COVID-19 due to non-implementation of proper precautionary measures, especially when it comes to the housekeeping and allied staff in hospitals.
8. It is submitted that there are about 300 workers in Victoria Hospital who are employed to perform the tasks of housekeeping, attenders, lift operators and security. The housekeeping staff ensure cleanliness and hygiene in the premises of the hospital, including the COVID-19 Ward. The task of the attenders is to attend to the in-patients of the hospital, and since currently all departments, except the COVID-19 ward is non-functional, the attenders are to look after the COVID-19 patients i.e. bringing them medicines, food, water, helping them to the toilets, etc. The security personnel are in-charge of the security of the hospital. However, it is pertinent to note that there is inadequate staff at this hospital to maintain cleanliness and hygiene and to look after the COVID patients. This is also true since there is a concentrated use of facilities at these designated hospitals, and therefore there is a requirement to hire more staff in the interests of keeping the people safe. Victoria Hospital, being a COVID treatment hospital, has exposed the workers to the serious risk of contracting the disease. These workers are all members of the Karnataka General Labour Union, affiliated to the Petitioner Union. Hence the Union submitted a representation dated 27.03.2020 seeking for steps to be taken to ensure the health and safety of workers, and the same is placed

herewith as **Annexure – D**.

9. It is submitted that workers in NIMHANS who are employed to perform the tasks of housekeeping, attenders and security are all members of the NIMHANS Pragatipara Workers' Union, affiliated to the Petitioner Union. NIMHANS, being a COVID treatment hospital, has exposed the workers to the serious risk of contracting the disease. Hence the NIMHANS Pragatipara Workers' Union submitted a representation dated 25.04.2020 seeking for steps to be taken to ensure the health and safety of workers, and the same is placed herewith as **Annexure – E**.
10. It is submitted that these representations were submitted to the concerned authorities since the Petitioner Union was apprehensive that precautionary measures would not be taken and that the workers would be exposed to COVID-19.
11. Incidentally all government hospitals across the State are designated to deal with this health crisis, and the housekeeping staff therein are particularly made vulnerable to contracting this disease. In Karnataka, there are 31 hospitals dedicated to COVID-19 treatment in Karnataka. The list of government hospitals designated as COVID-19 Hospitals is placed herewith as **Annexure – F**.
12. It is submitted that on 23.06.2020, the Government of Karnataka vide Notification bearing No. HFW 228 ACS 2020 designated Private Hospitals in addition to the Public Health Institutions to treat COVID-19 patients and stated:

Whereas the State Government recognizes that the State is threatened with the spread of COVID-19 epidemic, already declared as a pandemic by the World Health organization. A large number of persons affected by COVID-19 are in the need of treatment, which at present is being mainly provided by Public Health institutions (PHIs) and it has become imperative to involve private hospitals, nursing homes etc.,(hereinafter referred as private Healthcare Providers(PHPs)) registered under KPME Act, in the treatment of such patients.

Further the Department of Health, Government of Karnataka has notified 518 private hospitals to take in patients referred by the government for treatment of COVID-19. Therefore, it is pertinent that the safety of housekeeping and allied staff in not just government hospitals, but private hospitals is ensured. The Notification dated 23.06.2020 bearing no. HFW

228 ACS 2020 issued by the Government of Karnataka is placed herewith as **Annexure – G**. A copy of the press report titled "*Karnataka ropes in 518 private hospitals to augment Covid-19 treatment facilities*" appearing in The New Indian Express dated 21.06.2020 is placed as **Annexure – H**.

13. It is submitted that COVID-19 Care Centres (hereinafter referred to as CCC) have also been identified by the Directorate of Health and Family Welfare Services, Government of Karnataka vide notification dated 20.06.2020 bearing serial no. DHS/PS/97/2020-21 which states that as per the SOP No. HFW 216 ACS 2020 dated 19.06.2020, the CCCs will be managing asymptomatic persons, where nearly 75% of COVID patients fall in this category. The notification identifies three facilities to function as CCCs:

- a. Sri Sri Sri Ravishankar Ashram, Kanakapura Road
- b. Kanteerava Indoor Stadium, Sampangiramanagara
- c. Koramangala Indoor Stadium, 80 Ft Road

It is submitted that housekeeping staff who will be employed in these centres to maintain hygiene and cleanliness of the premises, will also be at risk of infection and steps need to be taken to ensure their safety. The notification dated 20.06.2020 issued by the Directorate of Health and Family Welfare Services, Government of Karnataka is placed herewith as **Annexure – J**.

14. It is submitted that similarly Dedicated COVID Health Centres (hereinafter referred to as DCHC) have also been setup by the Government of Karnataka vide Notification dated 20.06.2020 bearing serial no. DHS/PS/96/2020-21, which states that as per SOP No. HFW 216 ACS 2020 dated 19.06.2020, the DCHCs will act as Health Screening Centres for classifying the cases, allotting the appropriate facility for them and managing mild to moderate symptomatic persons. The Notification identifies 16 centres that will function as DCHCs and are as follows:

- a. Sir CV Raman General Hospital
- b. General Hospital Jayanagar
- c. KC General Hospital
- d. Epidemic Diseases Hospital
- e. ESI Indiranagar
- f. ESI Rajajinagar
- g. ESI Peenya
- h. Command Hospital

- i. KR Puram General Hospital
- j. Yelahanka General Hospital
- k. Anekal General Hospital
- l. Nelamangala General Hospital
- m. Doddaballapura General Hospital
- n. Hosakote General Hospital
- o. Devanahalli General Hospital
- p. Leprosy Hospital, Magadi Road

The Notification dated 20.06.2010 issued by the Government of Karnataka is placed herewith as **Annexure – K**.

15. It is further submitted that the Department of Health and Family Welfare, Government of Karnataka in their Circular dated 22.06.2020 bearing serial no. NHM/NUHM/Covid-19/28/2020 has setup '*Fever Clinics*' for screening, swab collection and referral of Influenza Like Illness (ILI) and Severe Acute Respiratory Illness (SARI) cases, and will be established at all District Hospitals/District Level Hospitals and Taluk Level Hospitals wherein all fever cases will be screened 24/7 in separate area and ILI/SARI cases will be subjected to swab testing. The circular also states that private institutions in the corporation areas will also be designated as Fever Clinics. The abovesaid Circular dated 22.06.2020 issued by the Department of Health and Family Welfare, Government of Karnataka along with the list of notified Fever Clinics is placed as **Annexure – L**. Similarly, the list of government clinics notified to function as Fever Clinics has been provided through a Press Note issued by the Department of Health and Family Welfare dated 24.06.2020 and the same is placed herewith as **Annexure – M**. The list of private clinics notified to function as Fever Clinics is placed as **Annexure – N**.
16. It is submitted that health workers, including housekeeping workers and other allied staff are at the front line of the COVID-19 outbreak response and as such are exposed to hazards that put them at risk of infection. These workers and the tasks allocated to them, play a crucial role in reducing the spread of pathogens and the contamination of surfaces and inanimate objects. Hazards include pathogen exposure, long working hours, psychological distress, fatigue, occupational burnout, stigma, and physical and psychological violence.
17. It is submitted that despite these risks, housekeeping staff and other allied workers are often neglected. It is submitted that a large number of

workers are employed under sham contract system, in violation of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and are very often not paid minimum wages or provided with any form of social security measures and do not enjoy job security either. They deal with biomedical and sanitary waste on a daily basis and are exposed to hazardous substances and infected waste, and are made to clean toilets and bathrooms in hospitals, thus exposing them to risk of infection, even if they are not in contact with patients themselves.

18. It is submitted that during the times of pandemic, their working conditions makes them especially vulnerable to contracting the disease. As stated above, it has been reported that at NIMHANS, not even N-95 masks were provided to the workers in psychiatric ward, which increased the risk faced by the workers. However, at present the housekeeping workers and attenders in the COVID-19 Ward are being given aprons, masks, gloves, but the workers in other wards and departments of NIMHANS are still being given N-95 masks only. Security Guards at NIMHANS are still made to register their attendance through the biometric system.
19. It is further submitted that where the spread of the disease has increased manifold since the lockdown has been lifted, additional precautions are required to be taken care to ensure the health and safety of the workers.
20. It is submitted that the hospitals designated for the treatment of COVID-19 are required to follow the precautionary measures as prescribed in the following guidelines in the 'Safety of Cleaning and Sanitation Staff' section (extracted portion below in running Page 81 of the Writ Petition):
 - a. *'National Guidelines for Infection Prevention and Control in Healthcare Facilities'*, issued by the Ministry of Health and Family Welfare, Government of India provides inter alia as follows in regard to safety of cleaning and sanitation staff
 - i. Housekeeping staff should be enrolled in the hospitals occupational health programme and provided immunization against Hepatitis B and tetanus.
 - ii. Appropriate and adequate PPE should be provided and staff trained in its use.
 - iii. Training should be provided in safe work practice, IPC policies and procedures relevant to their work and biomedical waste management.
 - iv. If commercial/ outsourced housekeeping is used then contract

housekeeping must comply with the infection prevention and control policies and guidelines. "Training and education of HCWs Training and education should be provided to all HCWs in IPC including supervisory, managerial staff and contractual housekeeping staff. They should be taught IPC principles, policies and procedures relevant to their work. Emphasis should be put on safety of the worker as well as the patient. The aim is to inform and educate HCWs about the infectious hazards they will face during their employment and their role in minimizing the spread to others. Special attention should be given to hand hygiene. The training should be participatory, and based on skills and competency of HCWs." "Components of education and training and education should include:

- Information on modes of transmission of infectious diseases, level of occupational risk (to reduce fear of contact with infected patients) prevention and control
- Safe work practices x Handling of PPE and clothing
- Reporting of exposure incident
- Techniques on stress management, provision of appropriate staffing levels, shift, rotation, counselling, support and communication skills
- Regulations and policies"

The relevant extract of '*National Guidelines for Infection Prevention and Control in Healthcare Facilities*' issued by the Ministry of Health and Family Welfare, Government of India is placed herewith as **Annexure – P.**

- b. '*National Guidelines for Clean Hospitals*', 2005 issued by the Ministry of Health and Family Welfare, Government of India provides in Chapter 14 on Occupational Health and Safety and states as follows (extracted portion below in running Page 83 of the Writ Petition):

"Sanitation staffs are exposed to chemical agents and may be exposed to the same infectious agents in the workplace as are health care providers. Many tasks may require the use of personal protective equipment for protection from chemicals or microorganisms. There are also many ergonomic issues related to housekeeping activities, such as pushing, pulling, lifting and twisting.

(1) Occupational Health and Safety Issues include staff immunization, appropriate use of PPE, staff exposures to blood and body fluids and other infection hazards, work restrictions and staff safety issues. There must be written policies and procedures for the evaluation of staff (employees or contract workers) who are, or may be, exposed to blood or body fluids and other infectious hazards that include:

- *A sharps injury prevention program*
- *Timely post-exposure follow-up and prophylaxis when indicated*
- *A respiratory protection program if staffs are entering an airborne infection isolation room and a mechanism for following staff that have been exposed to tuberculosis review.*
- *Reporting of exposures to appropriate authorities. Personal Protective Equipment, or PPE, may be defined as all equipment, including clothing affording protection against the weather, which is intended to be worn or held by a person at work and which protects him/her against one or more risks to his/her health and safety. PPE is to be supplied and used at work whenever there are risks to health and safety that cannot be adequately controlled in any other way. PPE must be:*
 - *Properly assessed before use to ensure that it is suitable;*
 - *Maintained and stored properly;*
 - *Provided with instructions on how to use it safely;*
 - *Used correctly by employees. Selection of housekeeping cleaning equipment must follow ergonomic principles. Care should be taken in the choice of buckets, mops and other materials. Due to the repetitive nature of many of the tasks, products that are lighter in weight, easily emptied and having proper handle length help reduce the risk of injury”*

The relevant extract of 'National Guidelines for Clean Hospitals', 2005 issued by the Ministry of Health and Family Welfare, Government of India is placed herewith as **Annexure – Q**.

- c. It is submitted that the "*Guidelines for Handling, Treatment and Disposal of Waste Generated during Treatment/Diagnosis/ Quarantine of COVID-19 Patients*" dated 25.03.2020 issued by the Central Pollution Control Board provides as follows (extracted portion below in running Page 90 of the Writ Petition):

"The staff involved in handling and collection of waste from quarantine homes or home care centers shall be provided with adequate Personnel Protective Equipment such as three layer masks, splash proof aprons/gowns, heavy-duty gloves, gum boots and safety goggles. These PPEs are required to be worn all the time while collecting of waste from quarantine center/quarantine homes/home care/waste deposition centres."

The "*Guidelines for Handling, Treatment and Disposal of Waste Generated during Treatment/Diagnosis/ Quarantine of COVID-19 Patients*" dated 25.03.2020 issued by the Central Pollution Control Board is placed herewith as **Annexure – R**.

- d. "*Advice on the use of masks in the context of COVID-19*" published by the World Health Organization (WHO), "*Coronavirus disease (COVID-19) outbreak: rights, roles and responsibilities of health workers, including key considerations for occupational safety and health*", published by the WHO and the "*Rational use of personal protective equipment (PPE) for coronavirus disease (COVID-19)*", published by the WHO are also relevant in the instant matter and is placed herewith as **Annexure – S, Annexure – T, and Annexure – U** respectively. Additionally, the Advisory for Managing Health Care Workers working in COVID and Non-COVID areas of the hospital dated 15th May, 2020 issued by the Ministry of Health & Family Welfare Directorate General of Health Services (EMR Division) is also relevant, and the same is placed herewith as **Annexure – V**.
21. It is submitted that the Government and the Hospital Administration has the primary responsibility in implementing these guidelines. There are various levels of precautionary measures that have to be taken by people running the hospitals, especially for the housekeeping staff. The precautionary measures to be undertaken by them can be summarized as

below:

- a. Ensuring full payment of wages for all workers who test positive for COVID-19 and those in institutional quarantine
- b. Appropriate working hours with breaks must be maintained
- c. Health workers must be consulted on occupational safety and health aspects of their work, and notify the Factories and Boilers Department of cases of occupational diseases
- d. Health workers must be allowed to exercise the right to remove themselves from a work situation that they have reasonable justification to believe presents an imminent and serious danger to their life or health, and protect health workers exercising this right from any undue consequences;
- e. Health workers must not be required to return to a work situation where there has been a serious danger to life or health until any necessary remedial action has been taken, especially during such pandemic;
- f. Honour the right to compensation, rehabilitation, and curative services for health workers infected with COVID-19 following exposure in the workplace – considered as an occupational disease arising from occupational exposure;
- g. Provide access to mental health and counselling resources; and
- h. Enable cooperation between hospital management/administration and health workers and their representatives
- i. The housekeeping service is responsible for the regular and routine cleaning of all surfaces and maintaining a high level of hygiene in the facility in accordance with the policies including the collection and transportation, treatment and disposal of waste generated in the facility. The policy for waste management should be in compliance with Environmental Protection Rules, and the Biomedical Waste Management and Handling Rules, 2016 and 2018.
- j. To ensure availability of Personal Protection Equipment at all times, including
 - (1) Immunization against Hepatitis B, tetanus and other vaccinations
 - (2) Appropriate and adequate PPEs as prescribed in WHO Guidelines and training to be provided on its use
 - (3) Soap and towel at all times

- (4) Training should stress on personal hygiene and adherence to SOPs. To encourage workers to report to the concerned authority if any cleaning staff has illness of any nature, and to create a safe and conducive atmosphere for the workers, on safe work practices, exposure incidents, procedures relevant for their work and biomedical waste management.
22. It is submitted that apart from ensuring the compliance of these guidelines in respect of all hospitals, both government and private in order to ensure the safety and health of housekeeping staff.
23. It is submitted that the frontline workers have been guaranteed 50 lakhs insurance in the Pradhan Mantri Garib Kalyan Yojana Package as follows (extracted portion below in running Page 119 of the Writ Petition):

"I. Insurance scheme for health workers fighting COVID-19 in Government Hospitals and Health Care Centres

- *Safai karamcharis, ward-boys, nurses, ASHA workers, paramedics, technicians, doctors and specialists and other health workers would be covered by a Special insurance Scheme.*
- *Any health professional, who while treating Covid-19 patients, meet with some accident, then he/she would be compensated with an amount of Rs 50 lakh under the scheme.*
- *All government health centres, wellness centres and hospitals of Centre as well as States would be covered under this scheme approximately 22 lakh health workers would be provided insurance cover to fight this pandemic."*

The Pradhan Mantri Garib Kalyan Yojana Package is placed herewith as **Annexure – W**. The said package must also be extended in unprecedented situations to those private hospital staff/ retired/volunteer/ local urban bodies/contract/daily wage/ ad-hoc/outsourced staff requisitioned by States/ Central hospitals/autonomous hospitals of Central/States/UTs, AIIMS & INIs/ hospitals of Central Ministries can also be drafted for COVID-19 related responsibilities. These cases will also be covered subject to numbers indicated by Ministry of Health & Family Welfare. The same is stated in a letter dated 30.03.2020 bearing serial no. D.O. No. Z.21020/16/2020-PH issued by the Secretary, Ministry of Health and Family Welfare, Government of India and the same is placed as **Annexure – X**. Subsequently, the Additional Secretary & Mission Director

(NHM) also issued a letter dated 03.04.2020 bearing serial no. D.O. O. F.No. Z-18016/1/2020/PMGKP-NHM II in pursuance of the abovesaid letter instructing to inform all such health care providers through various mediums like SMS, whatsapp, e-mail etc. in local language about their inclusion under Pradhan Mantri Garib Kalyan Package : Insurance Scheme for Health Workers Fighting COVID-19 in line with the enclosed order regarding this scheme. The said letter is placed as **Annexure – Y**. The same is also mentioned in the press release issued by the Press Information Bureau dated 29.03.2020 which is placed as **Annexure – Z**.

24. An article titled "*Coronavirus crisis: Centre extends Rs 50 lakh insurance cover for healthcare providers till September*" appearing in Business Today newspaper states that the insurance scheme announced by Central Government provides a comprehensive personal accident cover of Rs 50 lakh to a total of around 22.12 lakh public healthcare providers and the same which was bound to expire on June 30th, 2020 has been extended by three months, i.e., until September 2020. The news article is produced herewith as **Annexure – AA**. Unfortunately, though the housekeeping staff are entitled to this benefit, the same has not yet been implemented insofar these workers are concerned, including those workers who have contracted Covid-19 as detailed supra.
25. It is submitted that the Petitioner has submitted representation vide email dated 15.06.2020 to all the government hospitals notified as dedicated COVID-19 Hospitals and also to the Department of Health and Family Welfare, Karnataka and the Ministry of Health and Family Welfare. The e-mail dated 15.06.2020 submitted by the AICCTU is placed herewith as **Annexure – AB**. The housekeeping workers and attenders in Victoria Hospital are being provided with PPEs in the COVID-19 Ward and other wards, including aprons, caps, masks, face-sheet, gloves and boots. They are being quarantined on the premises of Victoria Hospital in C-Block of the Hospital post their duty in the COVID Ward.
26. Subsequently, on 22.06.2020, the Karnataka General Labour Union, which represents housekeeping and other allied workers in Victoria Hospital submitted a representation via email elaborating on the working conditions of the workers, where –
 - a. Only contract workers are being made to report for COVID-19 duty and made to work in the ward where all the COVID-19 patients across the city are housed. No permanent worker has been

designated to render their service at the COVID-19 Ward since the pandemic began to spread in the city.

- b. The schedule of workers has been put up on the notice board, where they are required to render their service for a full-week and are quarantined for the next full week (with full facilities provided within the hospital premises). After a couple days of leave, they are again made to report to the COVID-19 ward to render their full week's duty.
- c. It is pertinent to note that none of these workers are being provided with any holiday or leave during this period. They move between work and quarantine. This is taking a toll on their mental health.
- d. The attenders were being paid wages of Rs. 6,000/- before the pandemic hit the city and are now being paid a paltry bonus of Rs. 2,000/-, bringing their wages up to Rs. 8,000/-.
- e. No risk allowance, ESI, EPF, bonus, gratuity or any other social security benefits are extended to them as has been mentioned above.
- f. The housekeeping workers, a majority of whom are women, are being assigned for night-shift along with attenders, i.e., between 8 PM and 2 AM, and between 2 AM and 8 AM. It is established that it is unsafe for women workers to be doing night-shifts, and especially in times where public transport is scarcely available even during day-time. No risk allowance is being to these workers, nor is night-shift allowance being paid.

The email representation dated 22.06.2020 is placed herewith as **Annexure – AC.**

27. It is submitted that in regard to the frontline warriors against COVID-19, i.e., doctors and health workers not receiving their salaries regularly and on time during the pandemic, the Hon'ble Supreme Court of India in WP (Civil) Diary No. 10852/2020 has passed an order dated 17.06.2020 stating:

"The Central Government shall issue appropriate direction to the Chief Secretary of the States/Union Territories to ensure that the orders are faithfully complied with, violation of which may be treated as an offence under the Disaster Management Act read with the Indian Penal Code. In view of the aforesaid, let appropriate orders be issued by the Ministry of Health & Family Welfare, as indicated by

Shri Tushar Mehta, learned Solicitor General by tomorrow."

The abovesaid order is placed herewith as **Annexure – AD**.

28. It is submitted that it is of vital importance that hospital workers are protected by the State and the employers during the course of their occupation, which has exposed them to the risk of contracting the pandemic, especially since they are already in a vulnerable condition. Hence, this Writ Petition is being filed to ensure the fundamental right of life under Article 21 of all housekeeping and other allied workers.
29. The Petitioners have not presented any other Writ Petition before this Hon'ble Court or any other Forum on the same cause of action. The Petitioners having no other efficacious or alternate remedy have approached this Hon'ble Court by presenting this Writ Petition in the nature of Public Interest Litigation under Article 226 of the India Constitution on the following grounds:

G R O U N D S

30. That the Constitution of the World Health Organization lays down the following principles:
- Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity.
 - The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.
 - The health of all peoples is fundamental to the attainment of peace and security and is dependent on the fullest co-operation of individuals and States.
 - The achievement of any State in the promotion and protection of health is of value to all.
 - Unequal development in different countries in the promotion of health and control of diseases, especially communicable disease, is a common danger.
 - Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development.
 - The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health.

- Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people.
 - Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.
31. Articles 38, 39 (e) and (f), 41, 42 and 47 of the Directive Principles enshrined in Part IV of the Constitution of India provide the basis to evolve right to health and healthcare and read with Article 21 deal with the substantive and potent content of right to life which includes right to live with human dignity and which also includes right to good health. The Hon'ble Courts have by a dynamic interpretation of Article 21 expanded the meaning of right to life, to include right to health and this right to health can be guaranteed only if the State provides for adequate measures for treatment. Further it is the obligation of the State in a welfare State to ensure the creation and the sustaining of conditions congenial to good health.
 32. That the 'Right to Health' is inseparable from 'Right to Life', and the 'Right to Medical Facilities' as a concomitant of 'Right to Health' is also part and parcel of Right to Life.
 33. That in a welfare state, the duty to the right to health and medical facility lies with the State.
 34. That in *Consumer Education and Research Centre & Ors. Vs. Union of India & Ors.* [AIR 1995 SC 922] the Supreme Court of India has stated that –

"26. *The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependents, should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of*

the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial thereof denudes the workman the finer facets of life violating Art. 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Arts.38 and 39 of the Constitution. Facilities for medical care and health against sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the workers' best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

27. *Therefore, we hold that right to health, medical aid to protect the health and vigour to a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."*

35. Further the Supreme Court of India in *State of Punjab and Ors. Vs. Mohinder Singh Chawla Etc. [AIR 1997 SC 1225]*, stated that:

"Para 4. ...It is now settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment

which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. The High Court was, therefore, right in giving direction to reimburse the expenses incurred towards room rent by the respondent during his stay in the hospital as an inpatient."

36. Further in Para 10 of the judgment in *Occupational Health and Safety Association Vs. Union of India & Ors* [AIR 2014 SC 1469] it was held that:

"10. Right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from Article 21. Clean surroundings lead to healthy body and healthy mind. But, unfortunately, for eking a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, particularly clauses (e) and (f) of Articles 39, 41 and 42. Those Articles include protection of health and strength of workers and just and humane conditions of work. Those are minimum requirements which must exist to enable a person to live with human dignity. Every State has an obligation and duty to provide at least the minimum condition ensuring human dignity. But when workers are engaged in such hazardous and risky jobs, then the responsibility and duty on the State is double-fold. Occupational health and safety issues of CFTPPs are associated with thermal discharge, air and coal emission, fire hazards, explosion hazards etc. Dust emanates also contain free silica associated with silicosis, arsenic leading to skin and lung cancer, coal dust leading to black lung and the potential harmful substances. Necessity for constant supervision and to the drive to mitigate the harmful effects on the workers is of extreme importance..."

37. Thus, the judgments of the Hon'ble Supreme Court and the established International norms contained in the various Conventions, are binding and mandate that Right to Health is the fundamental right of every person and it is the duty of the State to provide access to medical facilities to protect the same.
38. That the State is obligated to ensure the enjoyment of a healthy life by all

its citizens and must prioritise this amongst other obligations.

39. That the Preamble and the Directive Principles envision social justice as the arch to ensure life to be meaningful and livable with human dignity. The concept of "social justice" which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, farmers, and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Further this right to social justice is a fundamental right and it is the obligation of the State to ensure that the health and safety of all healthcare professionals, especially during the spread of the COVID-19 pandemic is take care of.
40. That as the number of Covid-19 pandemic spreads through society, and more and more hospitals, government and private, treat Covid-19 patients, the hospital staff are most exposed to the disease. In this, the workers employed are nurses, care-givers, in housekeeping and other allied are at grave risk unless their health is protected by the providing PPEs and taking all other necessary steps.
41. That the norms for protecting these workers has been laid down, but the failure to comply with the same is resulting in these workers contracting Covid-19 even as their insecure working conditions implies that are contracting the disease and are not in any financial position to get proper medical treatment for themselves.
42. That the hospitals, government and private, engage workers guised as contract workers through sham contracts. The said aspect is not the subject matter of this petition, except to the extent that the, besides having no wage, job or social security have to deal with biomedical and sanitary waste on a daily basis and are exposed to hazardous substances and infected waste, and are made to clean toilets and bathrooms in hospitals, thus exposing them to risk of infection, even if they are not in contact with patients themselves. They are exposed to the same degree of risks as other regular workers and other members of the healthcare staff and hence are entitled to the same protections.
43. That these health workers, including housekeeping workers and other allied staff are exposed to hazards that put them at risk of infection, hence ensuring provision of complete PPE kits, providing adequate space to allow physical distance of at least 1 metre to be maintained between patients

and between patients and health care workers and ensuring the availability of well-ventilated isolation rooms for patients with suspected or confirmed COVID-19 are all necessary.

44. That the respondents are duty bound to take care of these health workers who contract Covid-19 in the course of performing their official duties and keeping in mind their economic status, free treatment has to be ensured for them.
45. That the workers who contract Covid-19 in the course of performing their official duties cannot be denied their wages during the time that they recover from this illness and, in the unfortunate event of any death, the family members should receive the insurance under the Pradhan Mantri Garib Kalyan Yojana Package.
46. That the number of such workers across the various hospitals, government and private, across the State, run into lakhs and they are mostly unorganised except in a handful of hospitals and hence are not in a position to agitate their rights, hence this Public Interest Litigation.
47. That the Petitioner Union has drawn the attention of the authorities to the risks faced by the housekeeping workers and allied staff, yet they have failed to pay heed to the same.

GROUND FOR INTERIM PRAYER

48. That the housekeeping workers and other allied staff are at the front line of the COVID-19 outbreak response and as such are exposed to hazards that put them at risk of infection. These workers and the tasks allocated to them, play a crucial role in reducing the spread of pathogens and the contamination of surfaces and inanimate objects. Hazards include pathogen exposure, long working hours, psychological distress, fatigue, occupational burnout, stigma, and physical and psychological violence. That these workers, in government and private hospitals, where Covid-19 patients are being treated, face the real risk of contracting Covid-19 and, indeed this has happened in NIMHANS and Victoria Hospital. Given that these workers are being employed as guised contract workers under sham contractors, their already precarious situation is further worsened and they face grave risk of contracting Covid-19, and the inability to pay for their treatment or take care of their families until they recover.

PRAYERS

In the facts and circumstances of the matter, the Petitioner most respectfully prays that the Hon'ble Court may be pleased to:

- A. Direct that, in the event of any housekeeping workers and allied staff, contracting Covid-19, the employer-Hospital shall take care of their treatment and not alter any service conditions or terminate their employment on this count, and pay their wages till they recover and return to duty in view that the illness has been contracted in the course of their employment, including in regard to the 5th respondent NIMHANS and the 6th Respondent BMCRI.
- B. Issue appropriate directions to the 3rd respondent Department of Health and Family Welfare and the 1st respondent Ministry of Health and Family Welfare to ensure that all hospitals designated for COVID treatment to ensure the provision of complete PPE Kits for all housekeeping and allied staff.
- C. Direct the authorities and hospitals to comply with the *National Guidelines for Infection Prevention and Control in Healthcare Facilities*, issued by the Ministry of Health and Family Welfare (placed as Annexure – P), *"National Guidelines for Clean Hospitals"*, 2005 issued by the Ministry of Health and Family Welfare, Government of India (placed as Annexure – Q), the *"Guidelines for Handling, Treatment and Disposal of Waste Generated during Treatment/Diagnosis/ Quarantine of COVID-19 Patients"* dated 25.03.2020 issued by the Central Pollution Control Board (placed as Annexure – R), the Advisory for managing Health care workers working in COVID and Non-COVID areas of the hospital dated 15th May, 2020 issued by the Ministry of Health & Family Welfare Directorate General of Health Services (EMR Division) (placed as Annexure – S), *"Advice on the use of masks in the context of COVID-19"* (placed as Annexure – T) and the *"Rational use of personal protective equipment (PPE) for coronavirus disease (COVID-19)"* (placed as Annexure – U).
- D. Direct the Central Government and NIMHANS to consider representation dated 15.06.2020 (placed as Annexure – Z) and take necessary decisions in regard to the health and safety of workers.

- E. Direct the State Government and BMRCI to consider representation dated 22.06.2020 (placed as Annexure – AC) and take necessary decisions in regard to the health and safety of workers.
- F. Direct the respondents to expeditiously complete the process of identification of the housekeeping staff as beneficiaries of the *Insurance scheme for health workers fighting COVID-19 in Government Hospitals and Health Care Centres* under the Pradhan Mantri Garib Kalyan Yojana Package.
- G. Direct the respondents not to change the conditions of services of the workers employed in all COVID hospitals to their detriment and to pay the wages on time as and when they become due
- H. Pass any writ, direction or order within the facts and circumstances of this Application and in the interests of justice and equity.

INTERIM PRAYER

That, pending this writ petition, in the interests of justice and equity, it is prayed that this Hon'ble Court may be pleased to direct the respondents to ensure that all housekeeping workers and allied staff in hospitals, government and private, are provided with the necessary PPEs and sensitisation programmes to protect their health, and the treatment of the workers who have contracted Covid-19 in the course of their employment is provided by the hospitals free of cost and grant any other necessary interim relief necessary to protect their health of these workers.

Place: Bengaluru

Date:

Advocate for Petitioner

Address for Service

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**IN THE HON'BLE HIGH COURT OF KARNATAKA
AT BANGALORE
(Original Jurisdiction)**

W.P. No. _____ /2016 (PIL)

Between:

All India Central Council of Trade Unions

... PETITIONER

And:

Union of India & Ors

... RESPONDENTS

VERIFYING AFFIDAVIT

I, P. P. Appanna, S/o P. A. Poovaiah, Aged about forty-eight (48) years, currently residing at #24/1, 1st Cross, 1st Main, Indira Gandhi Main Road, Udayanagar, Bangalore – 560 016, do hereby solemnly state on oath as follows:

1. I state that I am the Secretary of the All India Central Council of Trade Unions, and am conversant with the facts and circumstances of the case. I have been authorised to swear to this Affidavit by the other Petitioners. Hence, I am swearing to this Affidavit
2. I affirm that the facts stated in paragraphs 1 to 48 in the accompanying Interlocutory Application are true and correct to the best of my knowledge, information and belief.
3. I state that Annexures A – AD are true copies of the original documents.

I, Shri P. P. Appanna, the deponent herein do hereby verify and declare that this is my name and signature and the contents in para 1 and 3 are true and correct to the best of my knowledge, information and belief.

Place: Bengaluru

Date:

DEPONENT

Identified by me

Advocate