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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
PIL-CJ-LD-VC No.33 OF 2020**

Chirag Chanani & Ors. ...Petitioners  
Versus  
Union of India & Ors. ...Respondents

**And  
PIL-CJ-LD-VC-IA No.1 OF 2020  
IN  
PIL-CJ-LD-VC No.33 OF 2020**

Sagar Sahani ...Applicant  
In the matter between  
Chirag Chanani & Ors. ...Petitioners  
Versus  
Union of India & Ors. ...Respondents

**And  
PIL-CJ-LD-VC-IA No.2 OF 2020  
IN  
PIL-CJ-LD-VC No.33 OF 2020**

Nitin Bagonda Patil ...Applicant  
In the matter between  
Chirag Chanani & Ors. ...Petitioners  
Versus  
Union of India & Ors. ...Respondents

**And  
PIL-CJ-LD-VC-IA No.3 OF 2020  
IN  
PIL-CJ-LD-VC No.33 OF 2020**

Chirag Chanani & Ors. ...Applicants  
In the matter between  
Chirag Chanani & Ors. ...Petitioners  
Versus  
Union of India & Ors. ...Respondents

**And**  
**PIL-CJ-LD-VC-IA No.5 OF 2020**  
**IN**  
**PIL-CJ-LD-VC No.33 OF 2020**

Ashley David Cusher	...Applicant
In the matter between	
Chirag Chanani & Ors.	...Petitioners
Versus	
Union of India & Ors.	...Respondents

**And**  
**PIL-CJ-LD-VC-IA No.6 OF 2020**  
**IN**  
**PIL-CJ-LD-VC No.33 OF 2020**

Venkatesh C. Kyathan	...Applicant
In the matter between	
Chirag Chanani & Ors.	...Petitioners
Versus	
Union of India & Ors.	...Respondents

**And**  
**PIL (L.) No.3784 OF 2020**

Bar Council of Maharashtra & Goa	...Petitioner
Versus	
The Union of India & Ors.	...Respondents

**And**  
**CIVIL WP-AS-DB-LD-VC No.157 OF 2020**

Priyatosh R. Tiwari	...Petitioner
Versus	
The State of Maharashtra	...Respondent

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Mr. Shyam Dewani with Ms.Heena Kapoor and Ms.Bhoomi Kataria, Kandarp Trivedi i/b.Dewani Associates for Petitioners in PIL-CJ-LD-VC-33/2020

Dr.Milind Sathye, Senior Advocate with Mr.Prasad Dhakephalkar,

Senior Advocate with Dr.Uday Warunjikar i/b.Sumit Kate, for the Petitioner in PIL (L) No.3784/2020.

Mr.Parth Zaveri for Applicants in PIL-CJ-LD-VC-IA No.1/20.

Mr.Uday Warunjikar, for the Applicant in IA 2/20.

Mr. Ashley David Cusher for Applicants in PIL-CJ-LD-VC-IA No.5/20.

Mr.Abhay Anturkar with Ranjit Shinde i/b. Ajinkya Udhane, for Applicant in IA 6/20.

Mr.Anil Singh, ASG with Mr.Sandesh Patil and Mr.T.J.Pandian,Mr.D.P.Singh, for Respondent No.1-UOI.

Mr.A.A. Kumbhakoni, A.G., with Ms.Purnima Kantharia, GP, with Ms.Jyoti Chavan, AGP for State.

Ms.K.H.Mastakar, for MCGM.

Mr.A.M.Saraogi, for the Petitioner in WP AS DB LD VC 157/2020.

Mr.P.P.Kakade, Govt.Pleader with Smt.Nisha Mehra for State in WP AS DB LD VC 157/2020.

**CORAM : DIPANKAR DATTA CJ & G.S.KULKARNI, J.**

**DATED : OCTOBER 9, 2020.**

**P.C. :**

1. Hearing of this batch of PIL petitions and the solitary writ petition was adjourned by an order dated October

7, 2020 till today to enable Ms. Kantharia, learned Government Pleader for the State to obtain instructions as to whether the State wishes to respond to the suggestion of Railways, expressed through Mr. Anil Singh, Additional Solicitor General, for increase in the frequency of local train services in the Mumbai Metropolitan Region (hereafter “the MMR”, for short) as well as to enable the bar associations of each of the Courts at Mumbai, Thane, Raigad and Palghar to inform us the approximate number of members of the legal profession (hereafter “the lawyers”, for short) and their registered clerks who would be willing to attend the proceedings before the judicial fora physically, should there be an increase in the frequency of local train services. It was also recorded in such order, upon taking note of the truncated suburban train services presently in operation and the ever increasing demand for more such services, that the State ought to consider whether the Western Railway and the Central Railway ought to be requested to operate 700 services daily to meet the current pressing need to ensure less crowding in the suburban trains.

2. Mr. Kumbhakoni, learned Advocate General representing

the State today, has placed reliance on an 'Additional Affidavit'. Referring to the same, he submits that even before the last order was passed by us, the Government of Maharashtra in the Department of Revenue and Forest, Disaster Management, Relief and Rehabilitation, had promulgated an order dated September 30, 2020 on "Easing of Restrictions and Phase-wise Opening of Lockdown (MISSION BEGIN AGAIN)". Referring to Paragraph 8 of Annexure-II to such order, he contends that frequency of train services in the MMR would be increased to meet the demand upon an assessment being made in this regard shortly. Pursuant thereto, the Principal Chief Operations Manager, Central Railway by a letter dated October 1, 2020 approached the Railway Board with a request to permit increase in the number of suburban services, depending on demand, and for 'in principle' approval of such request. This was followed by a document dated October 6, 2020, whereby approval of such request was conveyed together with a direction on the Central Railway to formulate and notify the required protocols. Our attention has further been invited by Mr.Kumbhakoni to another letter dated 6<sup>th</sup> October, 2020 issued from the office

of the Divisional Railway Manager's Office, Commercial Department, Mumbai Central, Western Railway. It lists 14 (fourteen) categories of essential services staff, who have been permitted to travel in EMU trains on demand from the State Government. *Inter alia*, employees of 'judiciary' and 'dabbawalas' are included in such list. Finally, Mr.Kumbhakoni has referred to documents to demonstrate that apart from suburban train services, BEST has been operating sizable number of buses in Mumbai as well as beyond Mumbai limits.

3. Based on the above, Mr.Kumbhakoni submits that while opening up activities as part of the "MISSION BEGIN AGAIN" initiative in a phased manner, the State has shown its keenness to ensure that more public transport facilities are made available but keeping an eye on the capacity of the public sector to treat patients infected by COVID-19. The prevailing conditions being still grim, the Government is taking a judicious approach to ensure that the number of COVID infected patients does not exceed the capacity. It is also his submission that there being a policy decision taken by the Government for increasing the frequency of suburban trains the demand factor would now have to be assessed. He

has assured us of joint deliberations that the Government intends to hold with the Railways shortly, and of appropriate measures being devised to cater to the needs of not only the lawyers and their registered clerks, but also employees/staff working in other sectors; however, for the present, he reiterates that it would not be advisable to allow train services being made available to employees/staff of all sectors. While concluding, Mr.Kumbhakoni submitted that the number of buses presently plying would be doubled in the MMR.

4. Responding to our query as to whether the interim arrangement being worked out in pursuance of the order of this Court dated September 15, 2020 (for lawyers practicing in this Court and having to attend physical hearings) could be extended to lawyers who practice in courts located in the MMR, Mr.Kumbhakoni initially appeared to be skeptical and cited instances of commuters, who have been allowed to avail suburban train services, travelling without face masks and not maintaining social distancing norms. He was heard lamenting that people seem to be more interested in wearing oxygen masks while lying on hospital beds rather than face masks while travelling.

5. Dr.Sathe, learned senior advocate representing the Bar Council of Maharashtra and Goa, placed before us a chart showing the names of the bar associations, the number of members of such associations and the number of registered clerks who normally travel by train for reaching Courts at Mumbai, Thane, Raigad and Palghar. According to him, it has not been possible to ascertain the exact number of lawyers who would be inclined to physically appear before the judicial fora to conduct their respective cases as well as the number of their registered clerks because of the short time, but given the situation that not all 9030 lawyers would have cases fixed on any particular day, on a reasonable estimation not more than 25% of such lawyers would be required to travel on any single day. It has also been his submission that all the lawyers travelling by train may not be required to de-board at one particular station leading to crowding on the platform, since the Courts are located at different sites and adequately connected by the Railways. Considering the plight of the lawyers during the pandemic, he has made a fervent prayer to allow the lawyers and their registered clerks to avail suburban



train services to eke out a living, in such manner as may be directed by the Court.

6. Mr.Singh, learned Additional Solicitor General representing the Railways while concurring with Mr.Kumbhakoni submits that the problem of non-adherence to social distancing persists and it would not be prudent to take the virus lightly. However, he submits that the Railways would have no objection if the number of train services are increased and non-essential service providers are permitted to commute. A chart has been placed by Mr.Singh containing figures of the number of commuters during different time slots of one hour each. According to him, the problem of overcrowding is acute during 08.00 to 10.00 hours and 16.00 to 19.00 hours, and that yesterday 2.10 lakh travelled on trains out of the capacity of 3.26 lakh. He also submits that since the Railways are ready to increase the number of daily services of suburban trains, the issue of assessing the demand for operating more such services as well as the number of services that should be operated during peak rush period and other paraphernalia would be finalized in the course of discussion which the State might arrange upon due

notice to the officers of the Railways. He also urges that though increasing the frequency of suburban train services is a necessity, it would be proper if staggered office timings for different sectors are introduced to avoid crowd gathering on platforms at the same time and surge in cases of infection.

7. We have heard Mr.Saraogi, Mr.Kadam, Mr.Dewani, and Mr. Cusher, learned advocates as well as the other learned advocates in support of the prayers that the lawyers practising in the subordinate courts in the MMR having been passing through hard times and that they should also be extended similar benefits as extended to the lawyers having matters in the High Court.

8. Mr.Abhay Anturkar, learned advocate representing the cause of the registered clerks submits that they are required to physically file petitions/affidavits in the High Court and, therefore, keeping them in mind, the Court ought to widen the scope of relief so as to cover such registered clerks also.

9. We have given thoughtful consideration to the submissions advanced on behalf of the respective parties. We have also looked into paragraph 8 of Annexure-II to the order

dated September 30, 2020, which reads as follows:-

“8. The Railways to increase the frequency of the local trains in the MMR region to meet the increased demand subject to the protocols regarding Covid-19 laid down by the State and Central Government from time to time.”

The other documents annexed to the ‘Additional Affidavit’ of the State have also been read.

10. It is quite true that the pandemic has severely affected lives and livelihood of a large cross-section of the society, including lawyers and the registered clerks, and the local bar associations would like the Courts to resume physical hearings. While taking note of the concern expressed on their behalf, we cannot overlook the interest of the judicial officers posted at the Courts in the MMR as well as the staff functioning there. Allowing the Courts to function normally, as in pre-pandemic days, still appears to be at some distance. Opening up the doors of the suburban trains for all the lawyers and their registered clerks to attend Courts in the MMR would also not be advisable, lest the numbers rise and the State is unnecessarily burdened with more cases requiring provisions for additional health and medi-care services.

Survival in these difficult times has to be the foremost concern. That the State has been opening up and permitting more and more activities on easing of lockdown restrictions is no doubt encouraging but complacency at any cost has to be avoided. The priority sector of essential service providers has been identified. We wish to give directions hereafter for the benefit of the lawyers and the registered clerks. Now, it is time for the State to identify employees/staff of other sectors too who could gradually be allowed to avail suburban train services. We are conscious that some time would be required for such purpose but the effort must start in the right earnest immediately. In course of hearing, we have expressed that the State (not necessarily the officers but also the Hon'ble Ministers of the relevant departments ought to be involved) should devise a mechanism drawing from past experiences and in consultation with the Railways so that no sector is completely left out and to ensure that commuters belonging to different sectors and availing suburban train services can reach their workplace and return home without overcrowding on trains and platforms as well as draw up a comprehensive policy, not only to deal with the situation for present times but

also for the near future bearing in mind that in December-January next, a second wave of the virus affecting our lives is apprehended by experts. We have also expressed that taking all stakeholders into confidence, the Government must work towards drawing up of such a policy that would advance the interests of all concerned.

11. We place on record that after his initial skepticism, Mr.Kumbhakoni ultimately has agreed that with the easing of the lockdown restrictions and opening up of activities in different sectors, it is necessary that there should be a corresponding increase in suburban train services and also that the Government, at the highest level, would immediately endeavour to work out a formula in consultation with the Railways so as to ensure staggered work timings for different sectors upon taking into confidence all the stakeholders.

12. We also record our appreciation for the fair stance taken by all the learned advocates who have addressed us. They have agreed to phase-wise opening up of activities in the different sectors depending upon the prevailing situation, which necessarily includes travelling in the suburban trains, and that not all lawyers and registered clerks but only lawyers

who wish to appear physically in Courts in the MMR representing their respective clients and the registered clerks who have to file documents physically may, for the time being, be granted benefits similar to that ordered by this Court on September 15, 2020.

13. We, accordingly, grant benefit of the order dated September 15, 2020, since extended on October 7, 2020, to those lawyers practising in Courts in the MMR who would be required to appear in physical hearings as well as the registered clerks who would be required to file documents physically in Courts, on an experimental basis till October 19, 2020, on similar terms as indicated therein and subject to orders that we propose to pass upon further hearing of these petitions.

14. Those lawyers whose names appear on the board of a particular court in the MMR for a particular day shall be under an obligation to apply for a certificate and a travel pass in the same manner as in the order of September 15, 2020. The modalities for issuance of such certificate shall be prescribed by the judicial officer of the highest rank in the Courts in the MMR (Principal Judge/Principal District Judge/Chief

Metropolitan Magistrate). We make it clear, it shall be open to such judicial officer to designate an officer to whom applications for certificate shall be made and who shall issue the certificate in the same manner as in vogue in the principal seat of the High Court.

15. As for remand proceedings to be heard by Courts within the MMR, we hereby direct that the lawyers (arguing and instructing) engaged in the said proceedings by the accused/victim, shall make an application to the Registrar/ Additional Registrar/Assistant Registrar/Superintendent/ Assistant Superintendent, specially designated for the purpose by the seniormost magistrate at the concerned station, for issuance of certificates permitting travel of lawyers by local train for attending such remand proceedings by giving details, viz. Crime number/ FIR number, name of the accused/victim and details of travel through email on dedicated email address to be created for this purpose. We require the concerned lawyers to file undertaking with the concerned officer referred above to the effect that he will not misuse the certificate. Along with such application and undertaking, the concerned lawyers shall also annex self-

attested photocopies of their/his identity card(s) issued by the Bar Council of Maharashtra and Goa. The designated officer, referred to above, after verifying the details from the Inter-operable Criminal Justice System (ICJS) or from the concerned investigation officer by email, may issue certificate permitting travel by local trains to and fro, to the lawyers applying for such travel. In the alternative, the concerned lawyer may also apply to the concerned investigation officer who shall, after verification, issue such certificate. Accordingly, we direct that all the investigation officers shall issue such certificate in case of receipt of an application.

16. The registered clerks, who are required to attend the principal seat of the High Court for the purpose of physical filing of matters, shall apply through email to the designated Registrar of the High Court seeking a day's pass relating to the particular date by mentioning the details viz. which matter he intends to file, name of the advocate on whose behalf he is filing such matter and the token number generated from the system. Such clerk, along with his application, shall also annex a self attested photocopy of his identity card issued by the High Court, copy of token number and an undertaking that



he will not misuse the said pass. The designated Registrar, only after confirming the correctness of the claim so made in the application in terms of the token generated from the system, via email, will issue a certificate of the requirement for a particular day to the concerned clerk.

17. List these petitions once again on October 19, 2020 to enable the State to take steps and report developments in terms of this order on working out a mechanism for travel by suburban trains by employees/staff of different sectors either by staggering office timings or otherwise.

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

**G.S.KULKARNI, J.**

**CHIEF JUSTICE**