

IN THE HIGH COURT OF KARNATAKA, AT BENGALURU.
(ORIGINAL JURISDICTION)

WRIT PETITION No.

/2020 (GM- PIL)

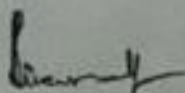
BETWEEN:

Sri. H. C. SHIVARAMU,
S/o. Age: 60 years,
Advocate, Former Chairman
Karnataka State Bar Council &
Former President,
Advocates' Association,
No. 14/19, 1st Floor, 2nd Main, V block,
Kumara Park West, Bengaluru-560020
(Party- in- Person)

... PETITIONER

AND:

1. UNION OF INDIA,
By its Secretary,
Department of Law & Parliamentary Affairs,
Room No. 86B, Parliament Bhavan,
NEW DELHI. 110001
Rep: by its Secretary.
2. GOVERNMENT OF KARNATAKA,
Department of Law & Parliamentary Affairs,
Vidhana Soudha, Bengaluru. -560001
Rep: by its Chief Secretary.
3. BAR COUNCIL OF INDIA
No. 21, Rouse Avenue,
Institutional Area, Near Bal Bhavan,
NEW DELHI. 110 002
Rep: by its Secretary.
4. KARNATAK STATE BAR COUNCIL,
Old Chief Election Commission Office,
Adj. to Press Club, Dr. Ambedkar Veedhi,
BENGALURU – 560 001. Rep: by its Secretary.



5. Bar Council of India Advocates Welfare Funds Committee,
No. 21, Rouse Avenue,
Institutional Area, Near Bal Bhavan,
NEW DELHI. 110 002
Rep: by its Secretary.

6. Karnataka Advocates' Welfare Fund Trustee Committee,
Old Chief Election Commission Office,
Adj. to Press Club, Dr. Ambedkar Veedhi,
BENGALURU – 560 001.
Rep: by its Secretary.

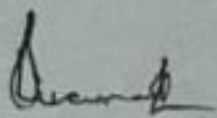
... RESPONDENTS

MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE
CONSTITUTION OF INDIA

The Petitioner respectfully submits as follows:-

01. The Petitioner is a practicing Advocate, and is the Former Chairman of the Karnataka State Bar Council and also former President of the Advocates Association, Bengaluru. The petitioner is filing this writ petition as a Public Interest Litigation to espouse the cause of large number of Junior Advocates, Advocates who are not having sufficient practice and the Registered Advocates Clerks who are facing financial hardship due to non-functioning of Courts on account of lock down declared to contain COVID-19 in the State. The petitioner is not having any personal interest.

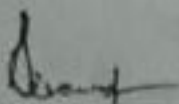
02. The fourth and fifth respondents are the statutory bodies constituted under THE ADVOCATES' ACT, 1961. The function of the Respondent No. 4 is to lay down standards of professional conduct and etiquette for advocates, to safeguard the rights, privileges and interest of advocates, to promote and support law reforms, to exercise general supervision and control over State Bar Councils , giving financial assistance to organize Welfare Schemes for indigent, disabled or other advocates as and when they require/s .. etc as per Section 7 of the Advocates' Act. Similarly the functions of the Respondent No. 5 is to admit persons as advocates on its roll, to entertain and determine cases of misconduct against advocates of its roll, to safeguard the rights, privileges



and interests of advocates on its roll, giving financial assistance under the welfare schemes for the indigent, disabled or other advocates as and when they require/s as per Section 6 of the Advocates' Act, 1961.

03. As per Rule 40 of the Bar Council of India Rules, 1975 every Advocate borne on the rolls of the State Bar Council shall pay to the State Bar Council a sum of Rs. 90/- every three year or in the alternative consolidated amount of Rs 300/. As on today at the time of enrolment the Karnataka State Bar Council is collecting Rs. 200 towards Karnataka State Bar Council Trust, from the new advocates at the time of their enrollment. The Respondent No. 4 has constituted Committee called **'THE BAR COUNCIL OF INDIA ADVOCATES' WELFARE FUND** 'Under Rule 40 of BAR COUNCIL OF INDIA RULES, to provide financial assistance to the needy advocates, by way of collecting the prescribed fee/contributions from the advocates' on its roll. Under Rule 44B the Bar Council of India shall utilize the funds received under Rule 41(2) in accordance with the schemes which may be framed from time to time.

04. The Petitioner also submits that, the Respondent No. 2 has also constituted a Committee called **'The Karnataka Advocates' Welfare Fund, Trustee Committee** under the state enactment called **Karnataka Advocates' Welfare Fund Act, 1986** to provide financial assistance to its members by way of collecting the membership admission fee, annual subscription, affixing of welfare fund Stamps on each vakalath, Any application filed before the Courts, Tribunals/Authority.. Etc. by the advocates on its roll. As on today, at the time of enrolment the Karnataka State Bar council is collecting Rs. 2100 towards Karnataka Advocates Welfare Fund Membership Fees from the new advocates at the time of their enrollment. After enrolment the Advocates have to pay Rs. 1000/- per year (who has put in less than 15 years practice and Rs. 2000/- per year (Who has put in more than 15 years practice) towards the yearly subscription to the Karnataka State Bar Council Trust. Under Section 16A of the **Karnataka Advocates' Welfare Fund Act, 1986** if any member

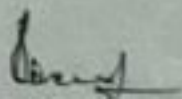


suffering from illness can claim amount as medical relief. The Chairman of the State Bar Council is the Chairman of the Karnataka Advocates' Welfare Fund Trustee Committee.

05. The petitioner submits that, both the Respondent No. 4 and 5 have collected several crores rupees from the practicing advocates in the state of Karnataka to provide financial assistance only in case of death, retirement, medical benefit and financial hardship to the members of the fund/advocates. Further the petitioner submits that, all the sums collected by the respondent No. 4 & 5 is kept in the various bank by way of Fixed Deposit/s.

06. The petitioner submits that, since the Government of India declared the National Lock Down to control the spreading of pandemic Novel Corona virus (COVID - 19), all the courts in the state are closed till 3rd of May, 2020 . Considering the COVID - 19 situation, the Union Government/State Government has provided financial help and also provided basic facilities like food grains, gas, milk, etc. to the citizens of this country (BPL Card holders only) for their lively hood. It appears both the central and the State Governments ignored the welfare of the advocates community as a whole. Since the Advocates community as a whole is presumed to be elite class of the society. In reality it is not so in respect of many young junior Advocates and many advocates who are not having sufficient practice after starting independent practice.

07. The petitioner submits that, at this stage (COVID -19) many of the advocates' in the state are facing financial difficulties to ~~eat~~^{elke} out their livelihood in these hard days, more particularly Junior advocates since they are depending upon day to day earnings from this profession. Similar problems are faced by the Advocates Registered clerks. Considering all these facts, the petitioner wrote a letter Dt: 14-4-2020 to the chairman of the Bar Council of India and letter dt: 31-3-2020 to the Karnataka State Bar Council requesting to



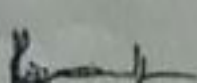
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release certain amount from the Welfare Fund. Copy of the letter is produced and marked as **ANNEXURE – A & B** respectively which were sent through whatsapp.

08. The petitioner also submits that, in this regard it is learnt that the Chairman of Karnataka State Bar Council i.e. respondent No. 5 sent a communication/letter dated 30.03.2020 marked as **ANNEXURE "C"** and a Circular dt: 31-3-2020 marked as **ANNEXURE "D"** to all the President/Secretary of the Advocates Association in the state of Karnataka stating that, he has requested to the Hon'ble Prime Minister, Hon'ble Chief Minister and the Chairman of Bar Council of India to provide financial assistance to the needy advocates since the respondent No.5 has received representation/ requisition from various Bar Associations and also from the advocates at large from different parts of the state.

09. The petitioner submits that, Under Sub- Section 2 of Section 6 and similarly under Sub-Section 2 of Section 7 the State Bar Council and the Bar Council of India has power to constitute one or more funds in the prescribed manner for the purpose of giving financial assistance to organize welfare schemes for indigent, disabled or other advocates. Under Rule 44B of the Bar Council Rules the Bar Council of India shall utilize the funds received under Rule 41(2) in accordance with the schemes which may be framed from time to time.

10. As per the information gathered by the petitioner from the website, In exercise of the above said Rule the Bar Council of India framed a schemes called "Scheme For Granting Financial Assistance to indigent practicing Advocates when suffering from serious ailment" marked as **ANNEXURE 'E'**, "Scheme For Financial Assistance to Indigent and disabled advocates" marked as **ANNEXURE "F"**, and "Scheme for Financial Assistance to State Bar Councils And Individuals under Rule 44B of the Bar Council of India Rules". Marked as **ANNEXURE "G"**. the petitioner submits that under the present situation, the




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scheme framed by Bar council of India called "Scheme For Financial Assistance to Indigent and disabled advocates" comes to the rescue of the Advocates and the respondents can extend Ex-Gratia Payment to the needy Advocates who are facing financial hardship due to nonfunctioning of the courts because of lock down declared by the Union of India. But unfortunately till today the respondents have not taken any steps to provide financial aid/assistance to the said Advocates by inviting necessary applications. Or in the alternative have not taken any steps to frame a new scheme by exercising its power Section 7(2) of the Advocates Act R/w Rule 44B of the Bar council Rules if it feels that, none of the schemes framed by it covers the present situation. Large number of Advocates are put to financial hardship and their right to life is affected as guaranteed under Article 21 of the Constitution of India. Hence the petitioner submits that, this Hon'ble Court because of the extreme urgency is required to exercise power under Article 226 to issue necessary direction to the respondent/s No. 1 to 5 to grant interim financial assistance of Rs. 50,000/- (Rupees fifty thousand only) immediately to the advocates who are the members of the Welfare Fund (except the advocates who have enrolled after the age of 40 years) so as to enable to survive in these hard days.

11. The petitioner has not filed any other Writ or Case on the same cause of action. The petitioner has no other alternative efficacies remedy and hence this Writ Petition Under Article 226 and 227 of the Constitution of India.

GROUND

12. The petitioner submit that, the respondent No. 5 ought to have taken steps by inviting applications from the needy Advocates who are facing financial hardship due to non-functioning of Courts because of the lock down declared by the Government as per Section 6 and 7 of the Advocates Act 1961 and Rule 44B of the Bar Council Rules.



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13. The Petitioner submits that, to safe guard the interest of the public at large, the Union Government and the State Government has provided financial assistance and provided the basic needs viz. free meals, food grains, milk, gas.. etc. to the citizens of this country (BPL Card holders), the labor class people and also other financial backward class needy people. Unfortunately the said benefit cannot be claimed by the Advocates as they belongs to elite class of the society. In reality it is not so in case of ^{Advocates} Junior advocates and Registered Advocates clerks.

14. The petitioner submits that, as per the request made by the Bar Council of Delhi, as a special case the Government of Delhi has sanctioned/released a sum of Rs. 50 cr. (Rupees fifty Cr. Only) to the Bar Council of Delhi Advocates' Welfare Fund to provide financial assistance to the members of the fund.

15. The Petitioner submits that, hitherto the Bar council of India has come to the rescue of Advocates for providing Ex-gratia payment by framing various schemes. One of the scheme framed by the Bar council of India called as "Scheme For Financial Assistance to Indigent and disabled advocates" takes care of the situation and the Bar Council ought to have provided Ex-gratia payment to the needy advocates Or in the alternative if the Bar Council feels that the said scheme is not applicable to the situation in question, then it ought to have introduced a new scheme for providing Ex-gratia payment to the Advocates who are facing financial hardship to maintain ^{aim} themselves and to maintain their dependents.

16. The petitioner submits that the inaction on the part of the respondents in not taking any steps to provide financial help to the Advocates who are facing financial hardship amounts to denial of right to live with dignigy and is violative of Article 21 of the Constitution.

[Signature]

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GROUND FOR INTRIEM PRAYER.

17. The petitioner submits that, both the respondent No. 4 & 5 collected the subscription amount from each member/advocate who are on the rolls of this Bar Council to the BAR COUNCIL OF INDIA ADVOCATES' WELFARE FUND and KARNATAKA ADVOCATES' WELFARE FUND by way of admission fee, subscription fee, sale of welfare fund stamps ... etc. The petitioner further submits that, in the present extra ordinary circumstances and financial crisis arises to the members of the legal fraternity in the state due to the lock down of all the courts in view of spreading of Pandemic Novel Corona virus (COVID - 19) Ex-gratia paymment of Rs. 50,000/- (Rupees fifty thousand only) is very much needed to the advocates for their lively hood. Hence the interim order as prayed for is very essential.

PRAYER.

WHEREFORE, the petitioner respectfully pray's that, this Hon'ble Court may be pleased to

- a). issue a Writ of Mandamus or any other writ in the same nature directing the respondent No. 5 to provide Ex-gratia payment to the tune of Rs. 50,000/- to each member/advocate on the roll of this State Bar Council who are facing financial hardship except advocate/s those who have enrolled after the age of 40 years or retired from the service.
- (b) Direct both the 1st and 2nd respondent individually to release sufficient fund i.e. Rs. 50 cr. (Rupees Fifty Cr. Only) immediately to the state Bar Council i.e. Respondent No. 5 to enable to provide financial assistance to the advocates who are the members of the Welfare Fund at the earliest, since the total number of members/advocates to the welfare fund is little over 70,000 (seventy thousand).



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(c) Direct the Respondent No. 4 to release Rs. 10 Cr. (Rupees Ten Cr. Only) out of the Bar Council of India Advocates' Welfare Fund and Bar Council of India Trust.

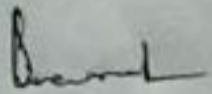
(d) Direct the Respondent No.5 to release Rs. 25 Cr.(Rupees twenty five Cr. Only) out of the Karnataka Advocates' Welfare Fund immediately.

(e) Pass such other order as this Hon'ble Court deems fit based on the facts and circumstances of the case, in the interest of equity and justice.

INTERIM PRAYER

Pending disposal of this Writ Petition (PIL), the Petitioner prays that, this Hon'ble Court may be pleased to direct the respondent No. 5 to provide Ex-gratia payment of Rs. 50,000/- (Rupees fifty thousand only) to the advocate/s who are the members of the Karnataka Advocates' Welfare Fund, who are facing financial hardship due to non-functioning of courts in the interest of equity and justice.

Bangalore
Date: 14-4-2020


PETITIONER
(H C SHIVARAMU)

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