

**BEFORE THE HON'BLE HIGH COURT OF KARNATAKA
AT BENGALURU**

I.A. No. _____ of 2020

in

W.P. No 6435/ 2020 (PIL) and clubbed matters

Between:

Mohammed Arif Jameel and Anr.

... Petitioner

And:

Union of India and Ors.

... Respondents

**APPLICATION BY THE ALL INDIA CENTRAL COUNCIL OF TRADE
UNIONS (AICCTU) UNDER ARTICLE 226 OF THE CONSTITUTION OF
INDIA SEEKING DIRECTIONS IN REGARD TO MIGRANT WORKERS**

It is respectfully submitted as follows:

1. The instant Application is being filed seeking necessary directions from this Hon'ble Court in regard to the transportation of inter-state migrant workers to their Home States, and intra-state migrant workers to their home districts in light of the restriction on the movement of migrant workers having been lifted. The country has been in a complete lockdown since 22nd March 2020, whereby, inter alia, in light of the outbreak of the pandemic of coronavirus (COVID-19), all movement of migrant workers has been prohibited. With State borders being closed and cities, town and villages being sealed off, migrant workers, who are predominantly daily-wage/minimum-wage workers were left stranded, without any livelihood or earning, and unable to return to their home villages. In effect migrant workers were left in the lurch without any money and facing grave food insecurity.
2. AICCTU is a centrally recognised Central Trade Union working in several districts of Karnataka and has been deeply involved in ration relief work among migrants and other vulnerable sections of society. The Union has been receiving several distress calls/ messages from migrant workers from across the State desperately seeking to get back to their villages.
3. Migrant workers, both inter-state and intra-state, are in the lakhs across Karnataka. Large-scale migration takes place from the northern districts of Karnataka to other parts of the State including Bengaluru and migrants

from other States too flock to Karnataka in search of livelihood. These workers make their living under extremely difficult conditions in rural and urban areas and one of the most vulnerable sections of the working class enjoying no protection of labour laws. Comprising a major chunk of the unorganized sector, these workers earn bare wages which is sent back to their families at their villages, while a part is retained for their own expenses. No doubt there are also families that migrate together, which too is seen across the State. Migrant workers from various parts of the country are found employed in the plantations in the Western Ghats including the districts of Kodagu, Hassan and Chikamagaluru. It may be recalled that there was a verification drive of migrant workers in Kodagu district couple of months ago, which found more than 5000 labourers from other states including Uttar Pradesh, Bihar, Rajasthan, Assam and West Bengal. In fact migrant workers are found in rural labour all across the State. Large populations of migrant workers are found in the industrial areas across the State, particularly Bengaluru and Mangaluru. Migrant workers are even found working in rice mills in the various districts including Koppal, called the rice basket of Karnataka. They are also found working in brick kilns across the State. Thousands of migrants are found employed in the fisheries sector. Thousands of migrant workers, predominantly women, work as domestic workers and in the garment industries. Both inter-state and intra-state migrant workers are found in the construction project across the State including in State infrastructure projects such as roads, bridges and even the Metro Rail and International Airport expansion projects in Bengaluru. Inter-state and intra-state migrant workers find employment in Bengaluru and other cities of the State as security guards, sales persons in shopping malls, in beauty salons, street vendors, domestic workers, garment industry workers, industrial workers, brick kiln workers, etc. as also in construction. The Population in Karnataka with 'Work/Employment' as reason for migration as per Census 2011:

From where	Number
<i>From rural area within the State (A)</i>	<i>6,03,816</i>
<i>From urban area within the State (B)</i>	<i>4,21,517</i>
Total intra State migrants (A+B)	10,25,333
<i>From rural area outside the State (C)</i>	<i>1,88,080</i>

<i>From urban area outside the State (D)</i>	<i>2,75,582</i>
Total inter-state migrants (C+D)	4, 63, 662
Total Migrants	14,88,995

Needless to add, the numbers of inter-state and intra-state migrants is definitely well and over the 2011 Census figures.

4. Pursuant to the lockdown, it was found that thousands of migrant workers across the country, desperate to get back to their villages, began walking since there was no public transport available. This was also witnessed in the State of Karnataka where a 29-year-old migrant construction worker, Late Smt. Gangamma from Venkateshwar Nagar in Sindhanur taluk of Raichur district died at VIMS Hospital in Ballari on 07.04.2020. She has taken ill after covering around 230km on foot, from Bengaluru, where she worked at a construction site, to her native town. Many were stopped midway and not allowed to continue further and are housed in the migrant worker shelters across the State. Vide Order bearing No. 40-3/2020-DM-I(A) dated 29.03.2020, all movement of migrant workers was prohibited, and State Governments were directed to ensure adequate arrangements of temporary shelters and provision of food etc. for the poor and needy people, including migrant labourers, stranded due to lockdown measures in their respective areas. The said order also mandated action to be taken under the Disaster Management Act, 2005 in case of violation of these measures and for the personal liability of the District Magistrate/Deputy Commissioner and Senior Superintendent of Police/Superintendent of Police/Deputy Commissioner of Police for their implementation.
5. The Ministry of Home Affairs has also issued an advisory dated **nil** in regard to health measures to be taken at place of congregation of migrant workers, including at the cities of their local residence, in transit and at the destination point. Most importantly it reiterates the Advisory by Ministry of Home Affairs (MHA) that *"...migrant workers will remain at their regular place of work/local residence within the city. They will not be evacuated either by their employer/landlord. Action to this effect and to address other related issues will be taken by local administration as per advisories being issued by Ministry of Home Affairs..."*. The Advisory issued by the Ministry of Home Affairs is placed as **Annexure – 1**.
6. It is submitted that the PUCL has filed a detailed Interlocutory Application, bearing I.A. No. 4 2020 in W.P. NO. 6435/2020, in regard to

the plight of migrant labour and their entitlements, which is supplemented by a Memo dated 13.04.2020, and the same is pending before this Hon'ble Court.

7. The Karnataka State Legal Services Authority (KSLSA) has filed a Report before this Hon'ble Court, in these pending matters, in which it has identified about 7082 migrants in 358 camps in 27 districts. The Report by and large finds the conditions of the camps are such that health, food and sanitation are adequately taken care of. State Government has issued a Circular bearing No. RD 162 PRS 2020 dated 18.04.2020 wherein it is stated that there are 230 shelters in the districts (excluding BBMP) for migrant labour taking care of 14542 inmates. In fact the said Circular mandates that a survey would be conducted by the Revenue department in coordination with the Gram Panchayats in rural areas and Urban local bodies in urban areas to identify migrant workers. The Karnataka State Government's Circular bearing No. RD 162 PRS 2020 dated 18.04.2020 is placed as **Annexure – 2**.
8. The lockdown, first announced on 24.04.2020 was further extended vide Order dated 14.04.2020 upto 03.05.2020, and vide order dated 01.05.2020 issued by the Ministry of Home Affairs is now extended for a period of two weeks. The order dated 01.05.2020 issued by the Ministry of Home Affairs is placed as **Annexure – 3**. An order dated 02.05.2020 has also been issued by the Chief Secretary and Chairman, State Executive Committee, Karnataka State Disaster Management Authority extending the lockdown for a period two weeks from 04.05.2020, which is placed as **Annexure – 4**.
9. The Ministry of Home Affairs has issued Order dated 29.04.2020 permitting migrant workers to return to their villages by bus or trains, and the same is placed herewith as **Annexure – 5**. The Ministry of Railways has issued Circular dated 02.05.2020 regarding the operation of Shramik Special Trains and issuing guidelines in this regard, which is placed herewith as **Annexure – 6**.
10. The State Government has issued order dated 01.05.2010, titled "Addendum-5" containing the Standard Operating Procedures for persons leaving Karnataka to other States/UTs. Clause 2 mandates as follows:
 - "2. *Application for permission to leave Karnataka*
 - (i) *Online application will be received from persons seeking to leave Karnataka*

- (ii) *Such applicants can submit applications online/ Bangaore one centres/ BBMP ward office/ at district as decided by DCs*
- (iii) *For submitting applications log on to <http://sevasindhu.karnataka.gov.in>*
- (iv) *All submitted applications will get an unique ID number for future correspondence/reference"*

The order dated 01.05.2010 titled "Addendum-5" containing the Standard Operating Procedures for persons leaving Karnataka to other States/UTs is placed herewith as **Annexure – 7**.

11. The AICCTU has submitted a response to the same with suggestions in regard to the abovesaid SOP. The same was submitted to the Chief Minister, Home Minister, Transport Minister and the Chairperson for the Group of Ministers for migrant workers on 02.05.2020 and the same mail is placed as **Annexure – 8**. The said representation was also submitted to the Chief Secretary, Labour Secretary, Transport Secretary and the Nodal Officer for Migrant Workers, and the said representation sent by mail dated 02.05.2020 is placed as **Annexure – 9**.
12. It is submitted that on 01.05.2020, the Government of Karnataka started running KSRTC buses from Bengaluru to other parts of the State. Initially, the State Government had put out a fare chart where persons were being charged more than double the fare. The fare-chart put up by the Government is placed herewith as **Annexure – 10**.
13. It is submitted that after the buses started plying, due to lack of local transportation, persons were required to walk several kilometres to reach the majestic station. An article appearing in the Times of India date 03.05.2020 titled "*Bengaluru: Thousands of migrants walk to Majestic for a bus home*" is placed herewith as **Annexure – 11**.
14. It is submitted that the lack of clarity also resulted in several persons who had walked the entire way having to return home walking. An article appearing in the Hindu dated 04.05.2020 titled "*Chaos at majestic as others throng to use service meant for migrant workers*" is placed herewith as **Annexure – 12**.
15. It is submitted that on 02.05.2020 several persons who had gone to Majestic in anticipation of finally going home to their families were left stranded at the bus stands since they were informed that no buses were available to their home towns. An article appearing in the Deccan Herald dated 03.05.2020 titled "*We fear hunger, not virus*" and "*Fear, Schedule*

mess leave migrants stranded” is placed herewith as **Annexure - 13**. An article appearing in the New Sunday Express titled *"Eager to get home, many land at Majestic bus station"* appearing on 03.05.2020 is placed herewith as **Annexure - 14**.

16. It is submitted that the AICCTU submitted an e-mail representation on 02.05.2020 to the Chief Minister, Home Minister, Transport Minister and the Chairperson for the Group of Ministers and the Chief Secretary, Labour Secretary, Transport Secretary and the Nodal Officer for Migrant Workers, highlighting the various problems faced by workers and seeking the provision of free and safe transport, which is placed as **Annexure – 15**. The AICCTU has highlighted the fact that workers are in an extremely vulnerable condition and do not have the resources to pay the train fare and has sought for free and safe travel.
17. It is submitted that subsequently on 03.05.2020, the Government of Karnataka announced that buses for intra-state migrant workers would run free and no charge for the same would be taken from persons using them. The announcement of the Government dated 03.05.2020 is placed as **Annexure – 16**.
18. It is submitted that in regard to inter-state migrant workers, several workers have registered on the said online portal, but have not received any subsequent information in this regard.
19. It is submitted that the members of the All India Central Council of Trade Unions have been receiving several calls over the last few days from migrant workers who are stranded in Bangalore and have to go back home. The workers have stated that the police has informed them that they are required to approach the local police station and submit their details to the police who will arrange for their return back home. It is also learnt that the jurisdictional police has also visited migrant worker colonies and prepared lists of migrant workers who want to return.
20. It is submitted that thereafter the AICCTU became aware that several workers who had approached the police station had paid about Rs. 900/- to Rs. 1050/- for trains and had been issued tickets by the BMTC and they have already left by train on the evening of 03.05.2020. Some tickets issued by BMTC are placed herewith as **Annexure – 17**. An article appearing in the Times of India titled *"Now, railways makes migrant workers pay dearly for tickets"* appearing on 04.05.2020 is placed as **Annexure – 18**.

21. It is submitted that the Bangalore Mirror has reported that policemen in Yelahanka have demanded Rs. 2,000/- per person and unable to pay the same, workers have started walking back. The article appearing in Bangalore Mirror dated 04.05.2020 is placed as **Annexure – 19**.
22. It is submitted that as per a communication dated 01.05.2020 submitted by the Director Passenger Marketing, Railway Board to the PCCM's zonal railway states that the Fare for the special trains shall be Fare for sleeper mail express train + superfast charge (Rs. 30/-) + additional charge (Rs. 20/-). In addition to this, workers have also been required to pay additional amount for the buses to the railway stations. The communication dated 01.05.2020 submitted by the Director Passenger Marketing, Railway Board to the PCCM's zonal railway is placed as **Annexure – 20**.
23. It is submitted that thereafter, AICCTU submitted another representation through e-mail again seeking for clarity in the process of travel, raising the issue of high fares which were unaffordable and sought for free and safe transport. The e-mail sent by AICCTU on 03.05.2020 is placed herewith as **Annexure – 21**.
24. It is submitted that meanwhile the problems faced by migrant workers in not receiving ration and food continues. An article appearing the Sunday Express dated 03.05.2020 titled "*For B'luru's poor, no ration card, no food*" is placed herewith as **Annexure – 22**.
25. It is pertinent to submit that several workers have also not been paid wages due to them despite the clear directive of the Ministry of Labour and Employment. In one such instance, workers working with the Bangalore Metro Rail Corporation are reported to have not been paid wages for 2 months. When they sought for their wages and asked to be permitted to go home, it is reported that there was a lathi charge. Article appearing in the New Indian Express dated 04.05.2020 titled "*Metro workers demand to be sent home, caned in Bengaluru's Bommanahalli*" is placed herewith as **Annexure – 23**. An article appearing in the Deccan Herald titled "*Namma Metro workers protest over delayed wages*" dated 04.05.2020 is placed herewith as **Annexure – 24**.

26. It is submitted that the main issues being faced by migrant workers are detailed below:

Regarding Intra-state migrant workers:

- a. Lack of public transport is requiring workers to walk long distances to the bus stand
- b. There are no food and water arrangements in the bus stand due to which workers waiting for long periods without food or water
- c. Lack of proper information and communication to the workers about bus timings, bus availability and other information
- d. No transportation facilities from districts other than Bangalore
- e. No public transport to their villages on reaching the district headquarters by bus
- f. There are no sanitsers available in the bus stand or on the buses

Regarding Inter-state migrant workers:

- a. The ticket rates that are being charged are very high and workers are not in a position to make any payment. It is necessary that charges are waived and free transport is provided.
- b. There is lack of information and no clarity on the method of registration of workers in order to be able to travel back – while the Standard Operating Protocol mandates online registration, workers are now informed that they should approach the police station.
- c. Lack of public transportation, which clubbed with the lack of information, is causing workers to walk long distances even for information.
- d. No train services to the destination states from other railway stations in Karnataka. There are several inter-state migrant workers in other districts, for instance in Mangaluru, in regard to who there is no clarity of further steps.

27. It is submitted that AICCTU is constrained to move this Hon'ble Court in public interest, in view of the urgency of the matter, which pertains to the fundamental rights of a very large section of society that is unable to approach this Hon'ble Court due to their poverty and onerous lockdown restrictions have been unable to access justice.

GROUND

28. Migrant workers constitute a large proportion of the working class today and are, perhaps, the most vulnerable inasmuch as they lack wage, job and social security. Workers divide the year between the time they work in their villages/Home States and the time they spend working in Karnataka. This migration could be seasonal as well.
29. Since 22nd March 2020 onwards, migrant workers who are mainly daily wage/minimum wage workers have been denied employment and sources of livelihood. Those migrant workers in other establishments, working on monthly salaries, too are in a very difficult situation since wages are not being paid or less wages have been paid. As such today migrant workers have exhausted whatever little money they had and are desperate to return to their homes and families.
30. That the migrant workers are permitted to return, yet the Order dated 01.05.2020 mandates that the workers would have to pay for their travel. Given the fact that they have been denied employment and any source of livelihood since 22nd March 2020, it is inhuman and illegal to expect the workers to pay for the travel. Given their desperation to go back to their homes and families, it is seen that they are falling into a vicious debt trap and are at the risk of being bonded to moneylenders.
31. The Standard Operating Procedure issued by the State Government renders illusory the possibility of return for the majority of workers and hence the suggestions made by AICCTU needs close examination by the State Government.
32. There is no proper procedure in place to ensure that the migrant workers can reach back their homes. This is in blatant violation of the fundamental rights of the migrant workers, especially Article 19(1)(d). Courts have held that the right to move freely throughout the territory of India means the right of locomotion which connotes the right to move wherever one likes, and however one likes.
33. The decision of the State Government to provide free transport to intra-state migrant workers is just and necessary. However, the failure to extend the same to inter-state migrant workers constitutes a blatant violation of their right to equality guaranteed by Article 14. Both inter-state migrant workers and intra state migrant workers are persons under Article 14 entitled to the same treatment in law. Any distinction made between both groupings in state policy which unfairly disadvantages

inter-state migrants right to movement, will not withstand the scrutiny of the principle of equality in Article 14.

34. Migrant workers have been left stranded in Karnataka, either in the labour colonies or on the streets or in their dingy rented rooms, by the declaration of lockdown and cessation of all economic activities thus depriving them of any source of livelihood and income. The days under the lockdown has been spent by them deprived of food, financial security and stripped of their dignity as human beings. Furthermore, they have been compelled to spend these days away from their families in such a time of crisis, which has caused serious mental trauma and agony to them. They have every right to want to go back to their villages and ensuring that they do so is the duty of the State Government.
35. Denial of free and safe transport to their villages and home States is an affront to the right to life of migrant workers and severely erodes human dignity.
 - Human dignity was construed in *M. Nagaraj v Union of India* [(2006) 8 SCC 212] by a Constitution Bench of this Court to be intrinsic to and inseparable from human existence. Dignity, the Court held, is not something which is conferred and which can be taken away, because it is inalienable:

"26... The rights, liberties and freedoms of the individual are not only to be protected against the State, they should be facilitated by it... It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. It cannot give. It simply is. Every human being has dignity by virtue of his existence...

42... India is constituted into a sovereign, democratic republic to secure to all its citizens, fraternity assuring the dignity of the individual and the unity of the nation. The sovereign, democratic republic exists to promote fraternity and the dignity of the individual citizen and to secure to the citizens certain rights. This is because the objectives of the State can be realized only in and through the individuals...."

- In *Shabnam v Union of India* [(2015) 6 SCC 702], the Apex held as follows:

"14. This right to human dignity has many elements. First and foremost, human dignity is the dignity of each human being 'as a human being'. Another element, which needs to be highlighted, in the context of the present case, is that human dignity is infringed if a person's life, physical or mental welfare is alarmed. It is in this sense torture, humiliation, forced labour, etc. all infringe on human dignity. It is in this context many rights of the accused derive from his dignity as a human being."

- In *K. S. Puttaswamy vs. Union of India* [(2017) 10 SCC 1] (Privacy case), the Hon'ble Supreme Court held that:

"108. Over the last four decades, our constitutional jurisprudence has recognised the inseparable relationship between protection of life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realisation of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective well being of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).

...

...

118. Life is precious in itself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the state is to safeguard the ability to take decisions – the autonomy of

the individual – and not to dictate those decisions. 'Life' within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends one's being in its fullest sense. That which facilitates the fulfilment of life is as much within the protection of the guarantee of life."

36. At para 373 of the Privacy case, the Hon'ble Court, in understanding the scope of privacy, the Court held as follows:

"373. Concerns of privacy arise when the State seeks to intrude into the body of subjects.... Similarly, the freedom to choose either to work or not and the freedom to choose the nature of the work are areas of private decision making process. The right to travel freely within the country or go abroad is an area falling within the right of privacy. The text of our Constitution recognised the freedom to travel throughout the country under Article 19(1)(d). This Court has already recognised that such a right takes within its sweep the right to travel abroad. A person's freedom to choose the place of his residence once again is a part of his right of privacy..."

Thus, the decision to not provide free transport to the migrant workers will have to be subjected to the tests laid down by the Hon'ble Court as follows at para 325 of the "Privacy case":

"325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article. An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them; and (I) Privacy has both positive and negative content. The negative content restrains the state from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an

obligation on the state to take all necessary measures to protect the privacy of the individual."

37. The State has a positive obligation to realise the fundamental rights of the migrant workers guaranteed under Articles 21 and 19(1)(d), which would entail removal of all obstacles in the enjoyment of the said fundamental rights. In this case, having full knowledge of the poverty and lack of access to any finances at this moment, it is imperative that the State provide free transport to the migrant workers. It is a welcome decision that the travel of intra-state migrant workers to their district headquarters, by bus, is declared free as of yesterday (03.04.2020). On similar lines free transport by trains, for inter-state migrant workers, is necessary for this treatment not to fall foul of Article 14.
38. Additionally migrant workers face an extremely uncertain future in regard to their employment and livelihood. Complaints of non-payment of wages have been raised in several instances and workers have had to resort to protests just for their earned wages to be paid to them. Under these circumstances, creating a situation where workers cannot afford to return to their home State would amount to compelling migrant workers to continue to work under oppressive and uncertain conditions, which would be violative of their fundamental right to life under Article 21 and freedom of choice of work. Furthermore, this may amount to forced labour, which is prohibited under Article 23. The sweep of Article 23 is wide and unlimited and it strikes at traffic in human beings and begar and other similar forms of forced labour, since it is violative of human dignity and is contrary to basic human values. The Apex Court, in *PUDR vs. Union of India and Others [AIR 1982 SC1473]*, has held that Article 23 prohibits labour or service which a person is forced to provide and the 'force', which would make such labour or service 'forced labour' may arise in several ways. The Court held that force may be 'physical force' which may compel a person to provide labour or service to another or it may be force exerted through a legal provision or it may even be compulsion arising from hunger and poverty, want and destitution. In fact the Court held that: *"... Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to*

fight disease or feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour.'..."

39. That any restriction to Article 19(1)(d) has to be a reasonable restriction, and in order to be a reasonable restriction, the said restriction must fulfill the test of proportionality. In *Rupinder Singh Sodhi v. Union of India* (AIR 1983 SC 65) the Hon'ble Supreme Court, held that:-

"all restraints on personal Liberty have to be commensurate with the object that furnishes their justification. These should be minimal and ought not to exceed the constraints of the particular situation, either in nature or duration. Above all these cannot be used as engines of oppression, persecution and harassment"

40. That in context of the dire need of migrant workers to return their home state or city, proportional measures such as physical distancing and mandatory wearing of face masks may be imposed. However, to deny their movement itself would amount to a disproportional measure.

41. That the Supreme Court through a catena of decisions has reiterated Article 19 (1)(d), imposes a positive obligation on the state to ensure infrastructure in order for the freedom of movement to be exercised. In *State of Himachal Pradesh and Ors. vs. Umed Ram Sharma and Ors.* [AIR 1986 SC 847], the Hon'ble Supreme Court interpreted the obligation of the state to construct roads in the hilly and tough terrains of Himachal Pradesh as part of Article 19 (1)(d). Hence, making it a positive right. The court held:-

"It is well-settled that the persons who have applied to the High Court by the letter are persons affected by the absence of usable road because they are poor Harijan residents of the area, their access by communication, indeed to life outside is obstructed and/or prevented by the absence of road. The entire State of Himachal

Pradesh is in hills and without workable roads, no communication is possible. Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well-settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our Constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication."

42. Migrant workers, due to the egregious violation of the Inter-State Migrant Workmen Act, 1979 has resulted in no facilities for inter-state migrant workmen. This has meant that in the crisis created by COVID 19 and the announcement of a lockdown, there is no possibility of inter-state migrants being guaranteed any means of survival in the absence of employment. This has resulted in thousands upon thousands of migrant workers being locked down with no means of survival at all. The Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1976 provides for strict regulation and safeguards of the working conditions of interstate migrants. Section 6 of the Act prohibits employment of inter-State migrant workmen by establishments that have not been registered. Similarly, section 8 provides that contactors may recruit or employ interstate migrants only if they have been licensed. It is the duty of the Contractor in terms of Section 12 to provide each inter-state migrant worker with a passbook containing updated details of his employment as prescribed. The Act in Sections 13-15 also provides for wages and working conditions of migrant workers on par with other workmen, provision for displacement allowance, journey allowance. Section 16 imposes a mandate on the contractor to inter alia ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State;

to provide and maintain suitable residential accommodation to such workmen during the period of their employment; to provide the prescribed medical facilities to the workmen, free of charge and to provide such protective clothing to the workmen as may be prescribed. In terms of section 18 of the Act, the Principal Employer would be liable to comply with the above mandates in case of failure by the contractor, and could thereafter recover the same from the contractor.

43. In Karnataka, as other states, thousands of migrant workers in desperation have taken to the road to try and get back to their villages to at least ensure their bare survival. In the absence of any facilities for ensuring that migrant workers are guaranteed the right to life itself, its imperative that the state not come in the way of persons seeking to ensure their own survival. The state should ensure that taking on board social distancing norms, those in desperation on the highway, seeking to return to their homes are facilitated in their return by the state making adequate and safe transportation arrangements.

P R A Y E R S

Hence it is prayed that this Hon'ble Court may be pleased to pass the following directions:

1. Pass an appropriate order, writ or direction to the State Government to provide free and safe transport from various parts of Karnataka, by either bus or train, for intra-state migrant workers upto their villages
2. Pass an appropriate order, writ or direction to the Central and State Government to provide free and safe transport from various parts of Karnataka, by train, for inter-state migrant workers upto their home States
3. Direct the State Government to immediately implement the Circular dated 18.04.2020 issued by the Principal Secretary to the government, Revenue Department and Nodal Officer, Migrants Issue (placed as Annexure – 2) and identify all inter-state and intra-state migrant workers across the State of Karnataka, who want to return to their villages/home States, and provide them with free and safe transport as prayed supra.
4. Pass an appropriate order, writ or direction to the Central and State Government to provide all necessary basic amenities including food, drinking water and toilets as also sanitisers at the bus stands and railway stations from where migrant workers are scheduled to leave.

5. Pass an appropriate order, writ or direction to the Central and State Government to ensure all necessary basic amenities including food, drinking water and toilets as also sanitisers *en route* to the migrant workers travelling in the buses and trains while ensuring physical distancing is maintained.
6. Pass an appropriate order, writ or direction to the State Government to take necessary steps to ensure that migrant workers are paid the wages due to them by their respective employers including for the lockdown period as mandated by the Central Government by the lockdown order.
7. Pass an appropriate order, writ or direction to provide adequate free public transport to migrant workers to reach the place of departure (bus/railway station).
8. Pass an appropriate order, writ or direction to the State Government to consider the representations dated 02.05.2020 made by the All India Central Council of Trade Unions (AICCTU) (placed as Annexures – 8 and Annexure - 9) and pass necessary orders.
9. Pass an appropriate order, writ or direction quashing Clause 11 of the Standard Operating for persons leaving Karnataka to other States/UTs to the Addendum dated 01.05.2010 (placed as Annexure – 7), which mandates that migrant workers will be charged train fare
10. Pass any other appropriate relief within the facts and circumstances of this case, in the interests of justice and equity.

Place: Bangalore

Date: 04.04.2020

Advocate for Applicant