IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WP(C) No. 459 of 2020

1. ***All Manipur School Student Transporter Association (AMSSTA),*** Manipur, Regd. No. 527/M/SR/2012 under the Societies Registration Act, 1989, registered Office address of the Head office at Bamon Leikai Mangjil, Imphal East, Manipur, present Office at Wangkhei Lourembam Leikai, Imphal East District, Manipur, represented by its President, Mr. Maibam Kennedy Singh, aged about 46 years, S/o (L) M. Bheigyachandra Singh of Laipham Khunou Mayai Leikai, Imphal East District, Manipur – 795010.

… Petitioner

-Versus-

1. The State of Manipur represented by the Chief Secretary/Chairperson, State Executive Committee of the State Disaster Management Authority, Government of Manipur, Office address at Secretariat, South Block, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. 795001;
2. The Principal Secretary (Finance), Government of Manipur, Office address at Secretariat, South Block, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. 795001;
3. The Commissioner of Education (Schools), Government of Manipur, Office address at Secretariat, South Block, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin No. 795001;
4. The Director of Education (Schools), Lamphelpat, Imphal West District, Manipur – 795004.

… Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioner	::	Shri K. Modhusudon, Advocate
For the respondents	::	Shri H. Debendra, GA
Date of Hearing	::	**05.10.2020**
Date of Judgment & Order	::	**14-10-2020**

JUDGMENT AND ORDER

[1] Heard Shri K. Modhusudon, learned counsel appearing for the petitioner-association and Shri H. Debendra, learned Government Advocate appearing for respondents.

[2] By the instant writ petition, the petitioner-association has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to provide financial assistance, by way of interest free loan upto Rs.2,00,000/- (Rupees two lakhs) only, to each of its members through it repayable in reasonable monthly installments at least 12 months after normal school functioning commences or in the alternative, to direct the respondents to financially support the needy van drivers through the petitioner-association by depositing the amount directly in their accounts after receiving the necessary details from the petitioner-association. According to the petitioner-association, it is a body in the name and style of "**All Manipur School Student Transporter Association**" registered under the provisions of Manipur Societies Registration Act, 1989 represented by its President.

[3] The petitioner-association was established in the year, 2009 which is a conglomeration of 150 private school student's van driver's associations and has a total number of about 3200 members. The petitioner-association had been rendering their services uninterruptedly for the welfare of the general public and in particular, the students till when all the schools were directed to remain closed on account of the

COVID-19 crisis. The work for transportation of students in schools has come to a grinding halt due to lockdown imposed by the Centre and the State Government as a measure to contain and combat the spread of COVID-19, because of which the members of the petitioner-association have become jobless and they do require financial assistance. Many of them do not have any good saving and are dependent on their income which they earn from the monthly fees collected from the parents for carrying their children to their respective schools. In other words, they have no real saving at all to fall back on and are dependent on the regular functioning of schools for their livelihood. Their financial position is very acute and precarious, since the schools have been closed for more than five months. The prolonged closure of the schools in Manipur has resulted in the deprivation of their only source of income. They do have obligations and commitments in the family, as other members of the society do have. The situation being faced by them is so grim that it may not be an exaggeration to say that they are on the verge of starvation and require urgent and immediate financial aid.

[4] The petitioner-association has submitted a number of representations to the respondents for giving financial assistance in the form of loan or otherwise by preparing a scheme similar to that of street vendors and other small and medium enterprises to meet their requirements occasioned due to the problems caused by the COVID-19 pandemic but the same have not been considered by the respondents till date. The said representations includes the representation submitted to

the Hon'ble Chief Minister, Manipur and the Hon'ble Education Minister, Manipur for providing assistance to its members but no action has been taken till date.

[5] Being aggrieved by the inaction on the part of the respondents, the petitioner-association approached this Court by way of PIL No.31 of 2020 praying for providing financial assistance to its members, which was disposed of on 20-07-2020 with the following observations:

> *"**[6]** We are inclined to accept the objection raised by Mr. N. Kumarjit, learned Advocate General. Prima facie waiver of loan or grant of fresh loan/financial assistance can be given to specific individuals based on eligibility and if there is a scheme or order to that effect. The association can at best collect individual claims or requests and forward it to the authorities for their consideration. Each claim will have to be assessed on merits. Therefore, each individual has to make specific representation to the authorities if he so desires, and the same can be considered on merits. We find no reason to issue specific direction as sought for by the petitioners' association for a relief as above."*

[6] In compliance with the order dated 20-07-2020 passed by this Court, on 25-07-2020, the petitioner-association submitted the detailed claims or requests of each member of the petitioner-association to the respondents for consideration of the loan amount ranging from Rs.1,50,000/- to Rs. 2,00,000/- taking into account the conditions of their vehicles, if collateral security is required at the time of disbursement of the loans. The aforesaid claims were preceded by a legal notice dated

24-07-2020 issued to the respondents sent through their Advocate.

[7] Being aggrieved further by the inaction on the part of the respondents, the instant writ petition has been filed by the petitioner-association on the inter-alia grounds that the members of the petitioner-association are in urgent need of financial support in view of the prevailing circumstances brought about by the COVID-19 crisis resulting in the closure of schools for a long time. The provisions of Article 21 of the Constitution of India include the right to get effective and immediate assistances from the State Government. The Disaster Management Act, 2005 (hereinafter referred to as "**the Act, 2005**") provides for meeting the contingencies arising during disaster. The provisions of the Act, 2005 and in particular, Section 13 which provides for grant of financial relief including loans on concessional terms to persons affected by the disaster. Section 39(f)(iii) provides for assistance for carrying out rehabilitation and reconstruction. On account of the loss of their income, most of the members of the petitioner-association have started mortgaging their vehicles and taking loans from the private financers by paying huge interest and therefore, in order to rehabilitate and reconstruct them, it becomes necessary for the respondents to provide loans to the members of the petitioner-association. Since many of the members of the petitioner-association do believe in their professional discipline for their livelihood, they are unable to take up any other avocation other than carrying the school children. The role of the members of the petitioner-association has become an essential and integral part of the present day

education system and therefore, it is incumbent upon the respondents to look after the well being of this important segment of the education system. In many of the States, the school van drivers and taxi drivers have been given financial assistance by their respective Governments to meet their day to day requirements for their livelihood.

[8] An affidavit-in-opposition on behalf of respondent No.1 has been filed stating that since the claim of the petitioner-association is solely based on the provisions of Section 13 and Section 39(f) of the Act, 2005, the assistance is to be provided only when such requirement is felt by the National Executive Committee, State Executive Committee and District Executive Committee. In other words, unless the requirement is felt by the National/State Executive Committee and District Authorities, it does not mandate the State Government to provide assistance. In terms of the order dated 20-07-2020 passed by this Court in PIL No.31 of 2020, each individual has to make specific representation to the authorities if he so desires and the same can be considered on merits. No individual member has so far made any specific representation to the authorities except the representation dated 25-07-2020 submitted by the petitioner-association. As per the directive of the Government of India issued vide memorandum dated 14-03-2020, the list of items and norms of assistance from the State Disaster Response Fund in the wake of COVID-19 virus outbreak do not include any provision for payment of loan or arrangement of financial assistance by way of interest free loan. The provisions of Sections 13 & 39 concern only with the National

Authority and not the State Authority and since the National Disaster Management Authority is not arrayed as a party respondent herein, the writ petition suffers from non-joinder of necessary party and accordingly, it deserves to be dismissed. The petitioner-association has no legal right to claim for financial assistance, unless such financial assistance is felt required by the National Executive Committee, State Executive Committee and District Authorities. The PM Street Vendor's Atma Nirbhar Nidhi (PM SVA Nidhi) is a Central Scheme which is available for beneficiaries belonging to only the States/UTs which have notified the rules and schemes under the Street Vendors (Protection of livelihood and Regulation of Street Vending) Act, 2014. The State of Manipur being a poor state, cannot be equated with the other states in the country which have abundant financial resources. The State of Manipur which has limited financial resource, is not at all capable to formulate its own scheme as demanded by the petitioner-association. Since the writ petition is devoid of any merit and not maintainable, it deserves to the dismissed by this Court with a heavy costs.

[9.1] From the aforesaid pleadings and in particular, the peculiar facts and circumstances of the present case, two issues have arisen for consideration by this Court-one, relating to the applicability of the provisions of the Act, 2005 and if applicable, the actions to be taken thereunder by the respondents and two, relating to the violation of the provisions of Article 19(1)(g) and 21 of the Constitution of India. As regards the first issue, the petitioner-association has heavily relied upon

the provisions of Section 13 and 39(f)(iii) of the Act, to which the stand of the State Government is that unless and until the requirement is felt by the National Executive Committee, State Executive Committee and District Executive Committee, the State Government is under no obligation to provide financial assistance. Section 13 and 39 of the Act, 2005 read as under:

> *"S.13 Relief in loan repayment, etc.- The National Authority may, in case of disaster of severe magnitude, recommend relief in repayment of loans or for grant of fresh loans to the persons affected by disaster on such concessional terms as may be appropriate."*
>
> *"S.39(f)(iii)- It shall be the responsibilities of every department of the Government of a State to –*
>
> *f) Provide assistance, as required, by the National Executive Committee, the State Executive Committee and District Authorities, for:-*
>
> *iii) carrying out rehabilitation and reconstruction;"*

[9.2] The Act, 2005 was enacted by the parliament with a view to provide for requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of the Government. The term "disaster" is defined in Section 2(d) of the Act, 2005. It is not in dispute that the COVID-19 comes within the meaning of the disaster, as it is evident from the fact that orders are being issued from time to time by the Chief Secretary, Manipur in exercise of power conferred upon him by Section 20 of the Act, 2005. Section 48 provides for establishment of various funds. Section 39(f)(iii) as has been submitted by the petitioner-

association, provides for providing assistance, if required by the National Executive Committee, the State Executive Committee and District Authorities towards rehabilitation and reconstruction. Section 13 provides that the National Authority may recommend relief in repayment of loans or for grant of fresh loans to the persons affected by disaster on such concessional terms as may be appropriate. It is also not in dispute that in order to contain the spread of COVID-19, various steps are being taken by the Central Government and the State of Manipur including the imposition of lockdown, because of which many people in the country including the school van drivers, have suffered different kinds of problems. In respect of the street vendors and the persons who are carrying on the business of medium and small scale industries, financial aids in the form of loan have been provided by the Central/ State Government. There is no reason as to why the case of the school van drivers shall not be considered by the State of Government for providing a financial help depending upon the financial capacity of the State Government.

[9.3] **T**he second issue relates to the interpretation of the provisions of Article 19(1)(g) and 21 of the constitution of India. Article 19(1)(g) guarantees to all citizens the rights to practise any profession, or to carry on any occupation, trade or business subject to the power of the State to impose restrictions on the exercise of the right. This article is intended to protect the right against State action other than in the legitimate exercise of its power to regulate private rights in the public interest. In other words, the State has the power to make laws imposing reasonable restrictions

on the exercise of this right. In the present case, the members of the petitioner-association had been carrying on the business of carrying students from their homes to their respective schools for the last many years. On account of the lockdown being announced and imposed by the State, they have been deprived completely of their business. In fact, it is not a mere regulation or for that matter, a reasonable restriction but a total denial of their business for the last some months. While imposing the lockdown in order to contain further spread of COVID-19, the State Government ought to have thought of doing something for them and the failure of the part of the State Government to do that, is unfair & unreasonable thereby resulting in the violation of Article 14 of the Constitution of India. Article 21 mandates that no person shall be deprived of his life and liberty except according to the procedure established by law. Right to life, enshrined in Article 21 means something more than survival or animal existence. It would include all those aspects of life which go to make a man's life meaningful, complete and worth living. It is, therefore, incumbent upon the State Government to provide some kind of help to them. This Court had the occasion to examine the scope for payment of compensation in violation of fundamental rights including that of Article 19 & 21 of the Constitution of india in **Shri Somi Kamkara vs. State of Manipur & ors, WP(C) No. 894 of 2017** wherein this Court vide its judgment and order dated 11-07-2018 held:

> ***"[4]*** *Compensation can be broadly divided into two- one, a compensation that can be claimed in private law and two, a compensation that can be claimed in public law for violation of*

fundamental rights. So far as the present case is concerned, it falls in the second category, in the sense that the compensation is being claimed by the petitioners for the violation of fundamental rights. The law relating to payment of compensation on account of the violation of fundamental rights, is no longer res integra. In ***Rudul Sah Vs. State of Bihar & ors., (1983) 4 SCC 141*** *which relates to an illegal detention of a person for about 14 years, the petitioner who was acquitted by the Court of Session, was released from the jail after about 14 years. A habeas corpus petition was filed praying for some reliefs, out which the one which is relevant for the present case, is the prayer for payment of compensation. Underlining the importance of Article 21 of the Constitution of India which guarantees the right to life and liberty, the Hon'ble Supreme Court ordered for payment of compensation in the nature of a palliative. Para 9 and 10 thereof are as under:*

> ***"9.*** *It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was*

wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

10. *We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringementsof fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of*

public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

In ***Nilabati Behera (Smt) Alias Lalita Behera Vs. State of Orissa & ors, (1993) 2 SCC 746****, a letter was sent to the Hon'ble Supreme Court by Smt. Nilabati Behera about the death of her son which was converted into a petition under Article 32 of the Constitution of India for determining the claim of compensation. The Hon'ble Supreme Court, after referring to its various decisions on the similar issues, was of the view that the liability of the State of Orissa to pay compensation could not be doubted but the Hon'ble Supreme Court went ahead spelling out the principles as regards the liability of the State for payment of compensation and the liability in private law for payment of compensation in an action tort. It has been observed that the award of compensation in a proceeding under Article 32 or under Article 226 of the Constitution of India is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as defence in private law in an action based on tort. The Hon'ble Supreme Court held:*

*"**17.** It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of*

such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah[1] and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

***20.** We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but*

may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

22. *The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner*

for the custodial death of her son.

*In **D.K. Basu Vs. State of West Bengal, (1997) 1 SCC 416**, a letter came to be treated as a petition which raises an issue to develop custodial jurisprudence and to formulate modalities for awarding compensation to the victim and/ or family members of the victim for atrocities and death caused in police custody. The Hon'ble Supreme Court reiterated the decision rendered in Nilabati Behera case and held:*

> ***"44.** The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.*
>
> ***45.** The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too*

*much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.***"***

In ***M.C. Mehta & anr. Vs. Union of India & ors., (1987) 1 SCC 395****, the Hon'ble Supreme Court while observing that it has the power to grant remedial reliefs including the power to award compensation in appropriated cases, held:*

*"**3.** The first question which requires to be considered is as to what is the scope and ambit of the jurisdiction of this Court under Article 32 since the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association are applications sought to be maintained under that article. We have already had occasion to consider the ambit and coverage of Article 32 in the Bandhua Mukti Morcha v. Union of India and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the*

fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

7. *We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide Bandhua Mukti Morcha case. If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can inject such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile.*

We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in Rudul Shah v. State of Bihar. So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and Kashmir. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such asto shock

the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation."

From the aforesaid decisions of the Hon'ble Supreme Court, it is clearly seen that the Hon'ble Supreme Court or for that matter, the High Court in exercise of power under Article 226 of the Constitution of India is competent to award compensation in cases where the fundamental rights, guaranteed in the Constitution of India, have been infringed by the State authorities. The aforesaid decisions have been rendered by the Hon'ble Supreme Court on the general issue relating to the liabilities of the States to pay compensation in the cases of violation of fundamental rights.

[10] In **J. Hillson Angam Vs. The State of Manipur, PIL No.16 of 2020,** this Court vide its judgment and order dated 16-07-2020, had the occasion to consider the issues relating to COVID-19 crisis in the State. This Court had expressed its opinion suggesting that the State Government needs to follow two pronged plan-one, short term plan and two, long term plan. It has further been held that the State Government shall constitute many expert committees, for the major Departments, which shall collect data, analyze it and make recommendations so that the State Government can take appropriate decisions from time to time. The State Government shall share with the public the information as to its financial capacity and the actions taken/ to be taken by it. It has not been brought to the notice of this Court by anyone whether the said directions

have been implemented & complied with by the State Government. The relevant paragraphs of the said judgment and order read as under:

> ***"[6.1]*** *What is "**COVID-19**" needs no explanation, as many of us are well aware of it. It is nothing but the name of a disease, coined by the World Health Organisation (hereinafter referred to as "**the WHO**"), caused by a novel corona virus. The WHO has declared it pandemic. In order to contain it, various activities are required to be undertaken by the Government of India and in particular, the State of Manipur. Although this Court is not an expert body, it is well known that in order to tackle such a crisis, the Government needs to make two plans-one, short term plan and two, long term plan and accordingly, the activities are to be undertaken by it. As regards the short term plan, one of the activities was the need of establishment of quarantine centres. Before carrying out any activity either under the short term plan or long term plan, the Government needs to keep in mind two essential components- one, the financial capacity and two, the rules and regulations. As we know, finance is considered to be the backbone of any organization/ institution, without which the objectives sought to be achieved by it, can never be achieved by it. So is the case with the Government. What does the Government mean? A Government is a group of people that have the power to rule a territory according to the law. There are different forms of Government. We need not go into the details thereof but suffice it to say that ours is a democratic form of Government. India is considered to be the largest democratic country in the world. A country is like a big family and in other words, India is a big family consisting of more than 130 crore population. In a family of five members, any decision can be taken by them sitting together after due deliberation and such a decision need not be reduced into writing all the time. But it*

cannot be done so in respect of a country. There can be no occasion where all the citizens of a country can sit together at one place and take a decision, because of which the need of having a constitution arises. A constitution is nothing but a statement of the basic principles and laws of a Nation, State or Group. The noun 'constitution' is from Latin, from constitutes, "set up, established", plus suffix-ion, meaning "act, state, or condition." A Constitution is a legal document setting forth rules governing a particular kind of activity. In short, a Constitution means the law determining the fundamental political principles of a Government. The Constitution of India came into force on 26-01-1950 and the expression "we, the people of India" as stipulated in the preamble, emphasizes the republican and democratic character of the polity and that all power ultimately stems from the people. Indian Constitution is basically federal in form and unitary in character. It contemplates two kinds of Government-one, at the centre and others at the States. Indian Constitution is supreme and is the source of power of all authorities including the Government. Since the provisions of the Constitution are not sufficient to deal all kinds of situations, Article 246 thereof empowers the Parliament and the State Legislatures to make laws in respect of the items enumerated in their respective lists mentioned in the seventh schedule. In other words, the Government is a group consisting of the representatives of the people and the public servants. It being an institution, has no heart and soul and the money held by it, is public money. Some people in the State, while talking in the public through print and electronic media, describe the Government as the mother/ father or for that matter, the parents of the people. It appears to be incorrect and a wrong notion for the reason that they are only the representatives of the people who are running the administration on behalf of the people and are answerable to them. Here lies the dictum that the

Government ought to act in accordance with law and any action taken by it without following due process of law is illegal. Therefore, before any action is taken, the Government ought to examine its financial capacity; analyze it minutely and find out ways & means of getting further amount of money which must be shared with the public. After having done that, the Government ought to examine the rules and regulations to be framed to regulate the manner in which the money is to be utilized by it, in the absence of which the Government ought to frame guidelines to meet any urgency. In order to deal with war like situation namely COVID-19 crisis, the Government ought to constitute a committee consisting of experts in the relevant fields which will look into the matter on day to day basis and submit its report/ recommendation to the Government for its consideration and for taking appropriate and immediate decision as regards the future course of action. So far as the long term plan is concerned, the government ought to constitute many committees of experts in respect of different problems relating to various Departments viz. Finance, Education, Health, Home, Agriculture, Horticulture, Industries etc. which will collect data, discus with the stakeholders including CSOs and assess the impact of COVID-19 crisis taking into account the actions already taken by the State Government under short term plan.

[10] *It is well known that the State Government has been/ is trying its best level to contain COVID-19 crisis which is commendable by all. Since it is a problem concerning humanity, the State Government alone cannot solve it without the co-operation of the general public, for which they shall be informed in advance about the specific role to be played by them, in the absence of which they will be unable to render their assistance, even if they desire to do so. They need to be trained properly. But the short question that arises for consideration is as to*

whether the State Government has been doing the needful systematically and effectively and in accordance with law. The answer appears to be in the negative for the reason that a State Level Committee consisting of experts only appears to have not been constituted by the State Government nor have the State Government framed the exhaustive rules and regulations to deal with COVID-19 crisis, because the affidavit filed on behalf of the State Government is silent on that. However, it is learnt from the newspaper that a High Level Consultative Committee has been constituted by the State Government. What is the power & functions; the duties and responsibilities; the role to be played and the manner in which the duties are to be discharged by the said Committee, is not indicated in the affidavit and therefore, public is not fully aware of its details. But its name suggests that its function appears to be to review the actions taken by the concerned authorities and take decisions for the future course of action. It is not clear as to whether the detailed data are collected from the ground and are taken into account by the said committee while taking the decisions.

[11] *In a democratic country like ours, the sharing of information is paramount as seen from the statement of objects and reasons, the preamble and relevant provisions of the Right to Information Act, 2005. In this regard, it will be useful to refer to some of the decisions rendered by the Hon'ble Supreme Court. In* ***State of Uttar Pradesh Vs. Raj Narain, (1975) 4 SCC 428*** *the Hon'ble Supreme Court observed –*

> ***"74.*** *In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public*

transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security…

In **Dinesh Trivedi vs. Union of India, (1997) 4 SCC 306,** the Hon'ble Supreme Court held –

"16. *In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute…*

17. *Implicit in this assertion is the proposition that in transaction which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated.*

19. *What then is the test? To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But is equally important to be alive to the dangers that lie ahead. It is important to realized that undue popular pressure brought to bear on decision-makers is Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect*

on the independence of the decision-maker who may find it safer not to take any decision. It will paralyze the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.

In People's Union for Civil Liberties Vs. Union of India, (2004) 2 SCC 476, *the Hon'ble Supreme Court held that right of information is a facet of the freedom of "Speech and expression" as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions. The above decisions have been referred to and relied by the Hon'ble Supreme Court in* ***Central Board of Secondary Education & ors. Vs. Aditya Bandopadhyay & ors, (2011) 8 SCC 497****. Some of the reasons as to why public raised hue and cry as regards the functioning of the quarantine centres and in particular, the community quarantine centres can be summarized as under:*

(a) *The State Government has failed to share the information about its financial capacity, in the sense that the amount of money that can be spent by the State Government towards combating COVID-19 in relation to facilities available in the hospitals and the facilities being provided in the quarantine centres;*

(b) *The State Government has failed to share the information about the type & standard of facilities to be provided in the quarantine centres. Public do expect a lot as they were/ are not aware of, in advance, the facilities to be provided in the quarantine centres;*

(c) *The rules & regulations or for that matter, the exhaustive guidelines to be followed by all concerned including the front*

line workers consisting of doctors, nurses, para-medical staff from the Health Department, Police Department etc, members of the CSOs and the inmates in all the quarantine centres, appear to have not been framed by the State Government except the SOP filed along with the PIL which does not contain details about the infrastructure, manpower, toilet, water, electricity, quality of food etc. If the rules & regulations are properly laid down and are followed strictly by the State Government, no one can raise his/her finger towards the functioning of the quarantine centre. Many of the complaints appear to have arisen in the area which is silent in the SOP.

[12] *COVID-19 is a global crisis and it is not likely to come to an end in the near future. It is believed by many that we have to learn living with COVID-19. While combating it, the State Government needs to share any kind information about its financial capacity and various actions being taken by it from to time and make them aware of it so that it becomes easier for them to extend co-operation. Public money is nothing but tax payer's money and the State Government, before spending it, needs to inform the public the amount intended or earmarked to be spent; the amount already spent and the amount yet to be spent, because the standard of facilities to be provided in the quarantine centre will depend upon it. To do anything by the State Government towards spending public money, there has to be always a norm either in the form of Act, rules and regulation or guidelines, in the absence of which anything done by it will lead to a problem anytime and anywhere. The norm is to be made first by the State Government and the action is to be taken by it in accordance with the said norm only. If the State Government is in short of money, it can make a request to the Government of India for its help and if such request is made by*

all the State Governments, the Government of India can generate its income either by enhancing the rate of existing taxes or by introducing a new tax towards combating COVID-19 crisis.

It is absolutely correct that the State Government took a lot of pain in organizing manpower, finance, infrastructure etc. when a large number of stranded persons were brought back to Imphal via Jiribam within few days only. This Court reiterates that all the people in the State must appreciate it. But all that this Court feels, is that this hectic job could have been avoided to a great extent, had the State Government taken action in time. COVID-19 crisis started in the later part of the year, 2019 and has been spreading uninterruptedly till date. People in the State of Manipur started getting full information about it, probably, in the month of February, 2020 with the result that people in the State were told to avoid public meetings, ritual ceremonies or large gathering in any form and to desist from organizing 'thabal chongba' during and after holy festivals. The moment the Government and in particular, health department came to know about COVID-19 crisis, it could have constituted a committee of experts, either in the month of February, 2020 or March, 2020, or even in the early part of April, 2020 after the lockdown was announced by the Government of India, which could have given the report on the basis of which the relevant rules & regulations could have been framed well in advance. In the month of April, 2020 itself, the stranded persons started expressing their desire to come back to Manipur and requesting the State Government to arrange ways & means for them and to provide assistance. Although the State Government was not aware of the exact number, it was definitely aware of the rough idea about the number of stranded persons and accordingly, it could have made the proper arrangement at the quarantine

centres. A Government which is a legal entity and is a perpetual institution, consists of many Departments which are run and managed by the permanent and regular public servants. Be that as it may, many of the stranded persons might have come back to Manipur by now except those who are returning to Manipur daily by flight and after they having left the community quarantine centres, it is said that most of the community quarantine centres are being gradually closed. After some days, the State Government may have to confine its attention to the institutional quarantine centres only, for which the State Government may be required either to frame an exhaustive rules and regulations or modify suitably the existing SOP, depending upon the change of circumstances touching on all aspects of the matter, to meet any eventuality so that no public could raise any voice.

[13] In view of the above, this PIL stands disposed of with the following directions:

(a) *The State Government shall constitute a committee consisting of experts only within a week from the date of receipt of a copy of this order, if not already done, which shall collect all the relevant data, discuss with the stakeholders including CSOs, farmers, persons who are unable to earn anything because of the lockdown etc., analyze the detailed aspects and keep on submitting reports to the State Government from time to time so that the same can be placed before the High Level Consultative Committee headed by the Hon'ble Chief Minister, Manipur for consideration and to take appropriate decisions accordingly;*

(b) *The State Government shall consider to constitute various committees consisting of experts only, probably, in all major Departments which shall collect information, relevant data,*

discuss with the stakeholders including CSOs, farmers, entrepreneurs, workers etc., assess the impact of the COVID-19 crisis and submit their reports with suggested remedial measures to the State Government through their respective Departments so that an effective action plan can be made well in advance;

(c) *The State Government shall share all the information, without any discrimination except those which are exempted under the provisions of Section 8 of the Right to Information Act, 2005, with the general public relating to any action taken by it towards combating COVID-19 crisis including the one relating to spending public money, infrastructure, manpower, facilities etc. in the quarantine centres and in particular, the institutional quarantine centres for combating COVID-19 crisis;*

(d) *The State Government shall frame an exhaustive rules and regulations to regulate the functioning of the State Government towards combating COVID-19 crisis or modify suitably the existing SOP, depending upon the change of circumstances touching on all aspects of the matter and keeping in mind the shortcomings, difficulties, drawbacks, complaints from the public etc. faced by the State Government in the recent past, to meet any kind of eventuality so that there would be no occasion for the public to raise any voice.*

[11] There is hardly country in the world which has not been affected by the Covid-19 crisis in one way or the other. India is no exception and its people have suffered a lot in many ways. In other words, it has a great impact on the economy of the country. It is well known that India's GDP had been gradually going down for about five years prior to the year, 2020 and when the lockdown was imposed by the Prime Minister of India

in the month of March, 2020 due to Covid-19 crisis, the GDP of the first quarter of the financial year, 2020-2021 went down as low as about minus 24%. Our country's economy is really in recession. Many of the experts in the field of economics appear to have expressed their views, both in the electronic & print media, about the financial problems being faced by the people in the country and the means to solve them. One of the problems which is commonly expressed by all of them, is the lack of buying capacity in the hands of the people because many of the sections of the society have lost their jobs or the means of earning income due to the lockdown being imposed by the Government. The immediate solution to this problem as suggested by the experts, is to make money available in the hands of the people either in the form of cash transfer or loan or in any other form by which the buying capacity of the people can be enhanced at the earliest possible. The school van drivers are a group of people in the State of Manipur who have lost their job resulting in the loss of their earning income and according to them, they are on the verge of starvation which is imminent, if their problem continues for some more months without any solution. In other words, they need immediate financial help from the State Government to maintain their livelihood because, it is submitted by them, it is the State Government which is responsible for the loss of their means of earning income being violative of Article 19(1)(g) of the Constitution of India. Their contention appears to be correct to some extent. On the other hand, the stand of the State Government is that the State of Manipur is a poor State having little or no source of income. But our country being a welfare State, to say that the

State Government do not have any money, cannot be said to be the only solution. It is incumbent upon the State Government to find out means by which financial help can be extended to the school van drivers or for that matter, the members of the petitioner-association. What could the expression "**financial help**" mean in the present case ? It being a relative one, it cannot have a definite meaning and it will depend upon the financial capacity of the State Government or in other words, it will depend upon the wisdom of the State Government. All that this Court has felt, is that the State Government cannot remain a mute spectator and that it will do something to help them, even though their jobs cannot be restored to them. As has been observed by this Court in J. Hilson Angam (supra), Government being an institution, it is for the public; money being held by it, is public money and the persons working in the Government are public servants. Therefore, if the State Government will not be in position to provide any financial help to them, it ought to share with them the information about its incapability so that they will have no grievance at all.

[12] In view of the above and for the reasons stated hereinabove, the instant writ petition is disposed of with the following directions:

(a) The State Government shall constitute a Committee to verify the genuineness of the claims made by the members of the petitioner-association including the problems being faced them, within a week from the date of receipt of a copy of this judgment and order;

(b) The Committee shall, after the enquiry being held, submit a report to the State Government within a month from the expiry of a week as mentioned in direction (a) above;

(c) The State Government shall consider the report submitted by the Committee and take an appropriate decision for providing financial help to them within a month from the expiry of a month as mentioned in direction (b) above;

(d) If necessary, the State Government may approach the Central Government for grant of a financial package so that it can extend help to them, at least, on humanitarian grounds. .

JUDGE

Victoria

FR/NFR

Yumkham Rother

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