

**CJ & SGRJ:**  
15.04.2021

**W.P No.7708/2020**  
**c/w W.P No.5701/2021**

(through video conferencing)

1. During the last few days, there has been a sudden surge in the number of COVID-19 cases in the State and in particular, in the City of Bengaluru and few other districts.

2. The COVID-19 pandemic started in March 2020. The measures for preventing the spread of COVID-19 are now well known. The first measure is of always covering face with proper face mask. The second measure is of maintaining physical distance of one metre and the third measure is avoiding congregation at any place. Today, we are not dealing with the issue of vaccination which is also one of the important preventive measures. Today, we are concerned with strict implementation of the laws concerning COVID-19 preventive measures.

3. The State Government enacted the Karnataka Epidemic Diseases Ordinance, 2020 (for short, "the said Ordinance") which came into force on 22<sup>nd</sup> April 2020. The said Ordinance was replaced by the Karnataka Epidemic Diseases Act, 2020 (for short, "the said Act of 2020"). Sub-section (3) of section 1 provides that clause (a) of Section 2, sub-sections (3),

(4) and (5) of Section 5 and Sections 9 and 10 of the said Act of 2020 shall be brought into force at once and the remaining provisions shall be deemed to have been come into force with effect from 22<sup>nd</sup> April 2020.

4. There cannot be any dispute that COVID-19 is an epidemic disease and therefore, there cannot be any dispute about the applicability of the provisions of the said Act of 2020. Section 4 of the said Act of 2020 and in particular, sub-section (1) confers the power on the State Government to specify temporary regulations or orders to be observed by the public or by any person or a class of persons so as to prevent the outbreak of such disease or the spread thereof. Under sub-section (2) of Section 4 of the said Act of 2020, there is a specific power under clause (a) vesting in the State Government to prohibit any usage or act which the Government considers sufficient to spread or transmit epidemic diseases from person to person in any gathering, celebration, worship or other such activities within the State. Clause (f) of sub-section (2) of Section 4 of the said Act of 2020 confers a power on the State to restrict or prohibit congregation of persons in public places or religious institutions. There is also a power conferred under clause (j) to restrict social,

political, sports, entertainment, academic, cultural or religious functions or gatherings.

5. Section 5 of the said Act of 2020 before its amendment read thus:

**"5. Prohibition of Contravention or obstruction of Public Servant. - (1) No person, institution or company shall contravene or disobey any of the provisions of section 4, rules, regulation or order made under this Act.**

*(2) No person shall obstruct any officer or any public servant while acting or purporting to act or discharging any duty in pursuance to any provisions of this Act, rules, regulations or orders made there under.*

*(3) No person shall indulge in any act of violence against a public servant or cause any damage or loss to any public or private property during an epidemic.*

*(4) Whoever contravenes any of the provisions of sub-section (1), (2) or (3) shall on conviction be punished with imprisonment for a term which shall not be less than three months, but which may extend to five years and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees.*

*(5) Whoever, while committing an act of violence against a public servant, causes grievous hurt as defined in section 320 of Indian Penal Code, 1860 (Central Act 45 of 1860) to such person, shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees."*

*(emphasis added)*

6. By the Karnataka Epidemic Diseases (Amendment) Act, 2020 (for short, "the Amendment Act"), Section 5 was amended by incorporating sub-section (3A). Section 2 of the Amendment Act reads thus:

**"2. Amendment of section 5.- In the Karnataka Epidemic Diseases Act, 2020 (Karnataka Act 26 of 2020) (hereinafter referred to as the Principal Act), in section 5, -**

*(i) after sub-section (3), the following shall be inserted, namely:-*

***"(3A) whoever contravenes the provisions of sub-section (1) shall be punished with such fine as may be prescribed in rules or in regulations, which may extend to fifty thousand rupees or with imprisonment for a term which may extend up to three months or with both."***

*(ii) in sub-section (4), the figure and brackets "(1)" shall be omitted."*

*(emphasis added)*

Thus, sub-section (3A) was added in Section 5 which provides for punishment for the offence under sub-section (1) of Section 5 of the said Act of 2020.

7. Section 6 of the said Act of 2020 deals with an offence of causing damage to public or private property. Section 7 deals with recovery of loss for damage caused to the public or

private property. At this stage, we need not deal with Sections 6 and 7 of the said Act of 2020.

8. Sections 8, 9 and 10 of the said Act of 2020 are of some importance which read thus:

**"8. Abetment of offences.** - *Whoever, abets any offence under this Act and the act abetted is committed in consequence of the abetment, shall be punished as of the offence committed.*

**9. Cognizance, investigation and trial of offences.**- *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), -*

**(i) an offence punishable under section 5 or section 6 shall be cognizable and non-bailable;**

*(ii) any case registered under section 5 or section 6 shall be investigated by a police officer not below the rank of Inspector;*

*(iii) investigation of a case under section 5 of section 6 shall be completed within a period of thirty days from the date of registration of the First Information Report;*

*(iv) in every inquiry or trial of a case under section 5 or section 6, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has one begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded, and an endeavour shall be made to ensure that the inquiry or trial is concluded within a period of one year:*

*Provided that, where the trial is not concluded within the said period, the Judge shall record the reasons for not having done so:*

*Provided further that, the said period may be extended by such further period, for reasons to be recorded in writing, but not exceeding six months at a time.*

**10. Composition of certain offences.-** *Where a person is prosecuted for committing an offence punishable under sub-section (3) of section 5, such offence may, with the permission of the Court, be compounded by the person against whom such act of violence is committed."*

*(emphasis added)*

9. Section 10 of the said Act of 2020 was substituted by the Amendment Act. The substituted Section 10 reads thus:

**"10. Composition of certain offences.-** (1) *Any offence punishable under the provisions of sub-section (3A) of section 5 committed before or after commencement of the Karnataka Epidemic Diseases (Amendment) Act, 2020 may either before or after institution of prosecution be compounded by such officer authorised by the Government, on payment of such amount as may be notified by the Government. On such compounding, an offender if in custody shall be discharged and no further proceedings shall be taken against him in respect of such offence.*

(2) *Any offence punishable under sub-section (4) of section 5, committed before or after the commencement of the Karnataka Epidemic Diseases (Amendment) Act, 2020 may be compounded with permission of the court, by a person against whom such act of violence is committed."*

10. Thus, Section 5 of the said Act of 2020 is an important legal provision. As provided in sub-section (1) of Section 5 of the said Act of 2020, any contravention or disobedience of the orders or temporary regulations or rules issued under Section 4 of the Act of 2020 is an offence. Under sub-section (2), act of obstructing any officer or a public servant while acting or purporting to act or discharging his duties in pursuance to any provisions of the Act, rules, regulations or orders is also an offence. If any person indulges in any act of violence against a public servant or causes any damage or loss to any public property or private property during the pandemic, he commits an offence. As can be seen from clause (i) of Section 9 of the said Act of 2020, the offence punishable under Sections 5 and 6 are cognizable and non-bailable offences. Clause (ii) and (iii) of Section 9 of the said Act of 2020 require that the offences punishable under Sections 5 and 6 should be investigated by a police officer not below the rank of an Inspector and that the investigation should be completed within a period of thirty days. Section 8 of the said Act of 2020 is of a considerable importance. However, we will come to Section 8 a little later.

11. Now the question is what are the temporary regulations or orders issued under Section 4 of the said Act of

2020. The Karnataka Epidemic Diseases Regulations, 2020 (for short, "the said Regulations") were promulgated on 2<sup>nd</sup> May 2020. What is material is Regulation 2 of the said Regulations which reads thus:

**"2. Wearing mask and maintenance of social distance and penalty,- (1) Whenever any person is in a public place he/she shall, -**

**(i) compulsorily wear mask or cover his/her mouth and nose with a handkerchief or other loose cloth tied properly around the mouth and nose; and**

**(ii) maintain social distancing of minimum 1 metre from other persons.**

*(2) Whoever contravenes the provisions of Sub Regulation (1) shall be punishable under the provisions of the said Ordinance. However, a Police Officer of not below the rank of Sub-Inspector, Health Inspector of Municipal Corporation, Gram Panchayat Development Officer or any other officer authorized by the Government may levy and collect a spot fine of Rs.200/- in Municipal Corporation areas and Rs.100/- in areas other than the Municipal Corporation areas.*

**Explanation.** - *For the purpose of these Regulations "Public place" means as indoor or outdoor area, whether privately or publicly owned to which the public have access by right or by invitation, expressed or implied, whether by payment of money or not and includes a public conveyance but not a place when used exclusively by one or more individuals for private gathering or other personal purpose."*

*(emphasis added)*



12. There were certain modifications made to the said Regulations for empowering the marshals of Bruhat Bengaluru Mahanagara Palike (BBMP) and any other public servants to enforce Regulation 2 of the said Regulations and in particular, sub-regulation (2) thereof. Subsequently, even the Bill Collectors of all the urban local bodies, the Assistant Sub-Inspectors, the Head Constables of the Police Department and the Secretaries of Gram Panchayath were authorised to enforce the provisions of sub-regulation (2) of Regulation 2 of the said Regulations.

13. On 7<sup>th</sup> October 2020, a notification was published bringing amendment to Regulation 2 of the said Regulations and introducing Regulation 3. Clauses 2 and 3 of the Karnataka Epidemic Diseases (Second Amendment) Regulations, 2020 read thus:

**"2. Amendment of regulation 2.-** *In Regulation 2 of the Karnataka Epidemic Diseases Regulations, 2020, (hereinafter referred to as the said regulations), in sub-regulation (2),-*

*(i) for the letters and figures "Rs.200/-" the letters and figures "Rs.250/-" shall be substituted.*

*(ii) after sub-regulation (2), the following proviso shall be inserted namely:-*

*"provided that, wearing of mask is exempted in the following cases, namely:-*

(a) *While playing sports or exercising in a park or gym;*

(b) *While eating, drinking and activities that involve getting the face wet such as swimming, showering; and*

(c) *While driving alone in a two-wheeler or auto rickshaw or four wheeler. However while stopping at the signal wearing of mask is mandatory."*

**3. Insertion of new regulation,-** After regulation 2 of the said regulations the following shall be inserted, namely:-

**3. Penalty for violation of regulation 2 by the owner of public place like owner of hotel, theatre, mall or shop, etc.,-** Any owner of a public place who allows in his premises the violation of sub-regulation (1) of regulation 2 shall be liable for a fine which shall be not less than 10,000/- rupees but which may extent upto one lakh rupees in the following slabs, namely:-

(a) *Self service hotels and food outlets, small shops or any other similar public place - Rs.5,000/-;*

(b) *Non-air conditioned restaurants, party halls, shops, departmental stores, private bus-stands or any other similar public places - Rs.25,000/-;*

(c) *Air conditioned restaurants, party halls, departmental stores, branded shops (single and multiple brands), cinema halls, multiplexes, shopping malls or any other similar public places - Rs.50,000/-;*

(d) *Starred hotels 3 star and above, marriage or convention halls with a minimum capacity of 500 persons or any other similar public places - Rs.1.00.000/-;*

(e) *Organisers of public functions or rallies or gatherings or celebration - Rs.50,000/-;*

*(f) Any other public places other than public places specified above Rs.10,000/-."*

14. On 24<sup>th</sup> March 2021, a notification was issued by the State Government in exercise of the powers conferred under Section 4 read with Section 10 of the said Act of 2020. There are two parts of the said notification. One part is a notification under substituted Section 10 of the said Act of 2020 prescribing the amounts by way of compounding charges and authorising certain officers to compound the offences punishable under sub-section (3A) of Section 5 of the said Act of 2020. The second part of the notification also contains regulations/orders/directions under Section 4 of the said Act of 2020. It lays down that the owners of the premises shall be responsible for ensuring compulsory wearing of mask and social distancing. It also provides for restrictions on number of persons to be allowed for various categories of functions. For example, for marriages, maximum 500 persons in open places are allowed and 200 persons are allowed in enclosed areas. The political celebrations or functions are restricted to 500 persons in open spaces. The same is the case with the religious celebrations. There are restrictions on cremation and other functions. Thus, violation of these restrictions will also attract sub-section (1) of Section 5 of the

said Act of 2020 and the said violations will be punishable in accordance with sub-section (3A) of Section 5 of the said Act of 2020.

15. It is necessary to clarify the position as regards the applicability of sub-section (1) of Section 5 of the said Act of 2020. We reiterate that all temporary regulations and orders issued by the State Government in exercise of the power under Section 4 of the said Act of 2020 will attract sub-section (1) of Section 5 of the said Act of 2020. As noted earlier, the offence under sub-section (1) of Section 5 of the said Act of 2020 is punishable in accordance with sub-section (3A) thereof. However, what is important is that the offence is cognizable and non-bailable. The same is the case with an offence covered by sub-section (2) of Section 5 of the said Act of 2020 which is attracted when any officer or public servant is obstructed while discharging any duty pursuant to the provisions of the said Act of 2020 and the rules, regulations as well as the orders made thereunder. The offences are cognizable and non-bailable. Therefore, the mandate of Section 154 of the Code of Criminal Procedure, 1973 will squarely apply. If any information is received by an officer in-charge of a police station about commission of an offence punishable under Section 5 of the said

Act of 2020, the officer is under an obligation to immediately record the First Information Report. Thereafter, the investigation must be carried out expeditiously within 30 days by an officer not below the rank of Inspector.

16. Various orders passed by this Court indicate that there were functions/rallies/congregations in various forms in the City of Bengaluru attended by thousands of citizens. Not only that the organizers were not wearing masks but the large number of persons who attended the events were not wearing masks. The offence under sub-section (1) of Section 5 of the said Act of 2020 regarding the failure to wear mask and the failure to maintain social distancing is attracted not only in relation to the leaders or organizers of the rallies, functions, congregations, etc. but, to each and every person who participates in the same and who commits violation of the rules regarding wearing of masks and maintaining social distancing as provided in the Regulation 2 of the said Regulations. Moreover, any person who abates any offence under the said Act of 2020 commits an offence as provided in Section 8 of the said Act of 2020. There are cases where in the congregations, rallies, functions, the officers or public servants discharging their duties as per the said Act of 2020, regulations, rules, orders issued thereunder were

obstructed. Even in such cases, the offenders are not only organizers or leaders but, all those who obstructed the officer or the public servant.

17. Somehow, the police machinery in the State is taking the offences punishable under Section 5 of the said Act of 2020 very lightly. Therefore, we find that unless orders are passed by the Court, even the first information reports are not being registered. It is, therefore, necessary that the directions are issued by the Director General of Police to all the police stations inviting their attention to the penal provisions of the said Act of 2020 and in particular, Sections 5 to 9 of the said Act of 2020.

18. It is true that the offences punishable under sub-section (3A) of Section 5 of the said Act of 2020 can be compounded in accordance with sub-section (1) of Section 10 of the said Act of 2020 as substituted with effect from 17<sup>th</sup> February 2021. There again we find from the material on record that the police officers or the officers who have been authorised to compound the offences are taking compounding fees only from the organizers or leaders of the rallies, congregations, etc. As stated earlier, if the persons participating in the rallies, congregations, etc. commit violation of the rules, regulations or

orders under Section 4 of the said Act of 2020, all of them will have to be brought to the book under Sub-Section (1) of Section 5 of the said Act of 2020. Since the offence punishable under sub-section (3A) of Section 5 of the said Act of 2020 is compoundable, perhaps the police officers are hesitating to register the first information reports though the offence is cognizable and non-bailable offence. Under sub-section (1) of Section 10 of the said Act of 2020, even after registration of the first information reports, the offence can be compounded. Under the Government notification dated 24<sup>th</sup> March 2021, the officers who are competent to compound the offences punishable under sub-section (3A) of Section 5 of the said Act of 2020 have been notified. Even a direction needs to be issued to sensitize the said officers. If number of people assemble and commit violations of the regulations, rules, orders etc. issued under Section 4 of the said Act of 2020 and if the leaders of the congregations or group compound the offence, it will not amount to compounding of the offence committed by the persons who have participated in the event. The first information report and consequently, the investigation must continue against every violator against whom the allegation of commission of offence under sub-section (1) of Section 5 of the said Act of 2020 has been made.

19. There have been instances where the members of the public have obstructed the public servants and indulged in acts of violence against the public servants while they are performing their duties of implementing the regulations, rules, orders issued under Section 4 of the said Act of 2020. It is necessary to bring to the notice of all the police stations that not only the offences under sub-sections (2) and (3) of Section 5 are cognizable and non-bailable but, as regards the offences under sub-sections (2) and (3) of Section 5 of the said Act of 2020, compounding cannot be made without the permission of the Competent Court. Moreover, the compounding can be only by persons against whom the said act of violence has been committed. There is a specific provision made to that effect under sub-section (2) of Section 10 of the said Act of 2020 as substituted with effect from 17<sup>th</sup> February 2020.

20. The said Act of 2020 has been brought on the statute book during the pandemic of COVID-19. The object of the said Act of 2020 is obvious. As can be seen from the provisions of the said Act of 2020, the main object is to ensure that the Government gets powers to issue regulations and the orders by exercising the power under Section 4 so that the measures are taken to prevent the spread of epidemic. The



powers under Section 4 of the said Act of 2020 are very wide. All the said powers are intended to provide an effective tool in the hands of the State Government to ensure that the epidemic diseases like COVID-19 do not spread. Unless the penal provisions under the said Act of 2020 and especially, the penal provisions of Section 5 are enforced strictly, the measures taken by the State Government under Section 4 of the said Act of 2020 will be of no consequence and will be of no effect.

21. The State Government ought not tolerate reluctance on the part of the police machinery in enforcing the penal provisions in the said Act of 2020. The orders passed by this Court in this petition clearly show that there is a great deal of reluctance on the part of the police for registering the first Information Reports. The reason being that the eminent political leaders and religious leaders as well as so called celebrities have indulged in violating the regulations, rules and orders passed under Section 4 of the said Act of 2020. In fact, the political leaders and religious leaders as well as the celebrities are supposed to lead by example and therefore, for sending the correct signals, it is all the more necessary that the police machinery acts very stiffly and strictly when it comes to violations

committed by any citizens and more importantly, the prominent leaders, celebrities and religious leaders.

22. Ultimately, one cannot forget that the exercise of powers under Section 4 of the said Act of 2020 is for maintaining public health. Right to lead a healthy life is an integral part of Article 21 of the Constitution of India. The right to lead a healthy life cannot be allowed to be obstructed or violated by the individuals who do not bother to follow the rules regarding masks, maintaining social distancing, congregating, etc. Therefore, when the said agencies take strict view of the violations made, it must be remembered that is being done for upholding the fundamental rights of the citizens under Article 21 of the Constitution of India of leading a healthy life.

23. While we are dictating this order, it is pointed out that even some of the so-called celebrities (actors, etc.) have violated the regulations under the said Act of 2020. We hasten to add that no one should be spared who has committed violation of the regulations, rules and orders issued under Section 4 of the said Act of 2020.

24. By I.A No.1 of 2021 filed by the applicant, several photographs have been brought on record which according to the applicant show violations committed by the Karnataka State Transport Services Employees' Union and the political leaders in the State. Certain photographs are placed on record along with the memo dated 6<sup>th</sup> April 2021. The State Government will have to take note of the said photographs and take stringent action in accordance with law.

25. The Director General of Police will have to issue the directions/guidelines to all the police officers as well as the officers who are authorized to take action of compounding under sub-section (1) of Section 10 of the said Act of 2020 for effective implementation of the penal provisions under the said Act of 2020.

26. The police officers will have to be educated about the provisions of Sections 5, 8 and 9 of the said Act of 2020, inasmuch as there have been few cases of registration of the First Information Reports though the offences punishable under sub-sections (2), (3) and (3A) of Section 5 of the said Act of 2020 are cognizable offences. We, therefore, direct the Director General of Police to immediately issue directions/guidelines to all

the police officers and all the officers who are authorised to compound the offences about the proper implementation of the provisions of the said Act of 2020. The Director General of Police shall also constitute a team of senior police officers who will monitor implementation of the penal provisions under the said Act of 2020.

27. As this order is dictated in the open Court, we direct the learned Additional Government Advocate to communicate the gist of this order to the Director General of Police who will immediately issue directions without waiting for a copy of the order becoming available.

28. It will be also appropriate if the State Government gives wide publicity to the fact that violation of the rules regarding wearing of masks and maintaining social distancing are cognizable and non-bailable offences.

29. At this stage, our attention is invited to the order dated 3<sup>rd</sup> April 2021. By the said order, the earlier direction of restricting a maximum 50% of the sitting capacity in the theatres was relaxed at the instance of one organization till 7<sup>th</sup> April 2021. Though the regulations and orders which are issued under

Section 4 of the said Act of 2020 are in the nature of delegated legislation and a Writ Court cannot decide in what manner the regulations and orders should be issued, needless to add that considering the seriousness of the situation, we hope and trust and the power of relaxation is not exercised at the request of selected few individuals. The reason being that such actions may amount to violation of Article 14 of the Constitution of India.

30. Considering the fact that the offences under sub-section (1) of Section 5 which is punishable under sub-section (3A) of Section 5 of the said Act of 2020 are made compoundable offences, there may be cases of multiple offences committed by the same accused. Though we cannot issue a writ in the nature of mandamus, it is for the Legislature to look into this aspect and consider whether for successive offences, any stringent punishment can be imposed.

31. The petitions shall be listed on 22<sup>nd</sup> April 2021 at 2.30 p.m. for reporting compliance by the State Government.

32. Though an assurance was given by the learned counsel for the fifth respondent to file a proper affidavit as the earlier affidavit was defective, as of today, no such affidavit has

been filed. Even as regards other political parties who have not responded to the orders of the Court, we will consider of issuing necessary directions on the next date. In the meanwhile, the learned counsel for the petitioner is free to communicate the date fixed to the learned counsel appearing for the fifth respondent and if the ninth respondent is not represented, directly to the ninth respondent.

33. The notification dated 2<sup>nd</sup> May 2020 containing the Karnataka Epidemic Diseases Regulation, 2020 will come to an end on 1<sup>st</sup> May 2021. It is obvious that the State Government will have to exercise the power of extending the same.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

AHB  
Sl.No.1