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Dated: 27.03.2019

To:

1. Hon'ble Justice Thottathil B Radhakrishnan,
The Hon'ble the Chief Justice
High Court at Calcutta

Through email and Whatsapp
via the Office of:
The Learned Registrar General,
Appellate Side
High Court, Calcutta

2. The Hon'ble Justice Dipankar Datta
Judge, High Court at Calcutta

3. The Hon'ble Justice Sanjib Banerjee
Judge, High Court at Calcutta

4. The Hon'ble Justice I.P. Mukherjee
Judge, High Court at Calcutta

5. The Hon'ble Justice Joymalya Bagchi
Judge, High Court at Calcutta and Zonal Judge, A&N Islands

Through email and Whatsapp due to extreme urgency
and absence of other means of communications

Ref:

(i) Monitoring and supervision of essential supplies and commodities at Port Blair, Andaman and Nicobar Islands in accordance with the needs of public interest

(ii) Procedure regarding urgent applications before the Hon'ble High Court, Calcutta on behalf of clients at Port Blair, Andaman and Nicobar Islands.

Sub:

(i) Request for administrative orders to be passed by the Hon'ble the Chief Justice in regard to judicial matters, and/or the matter to be placed before

the Hon'ble Bench having determination for appropriate orders to be passed in regard to urgent general issues for the Andaman and Nicobar Islands.

(ii) Prayer sent to the Learned Registrar General, with the request to urgently and immediately lay before the Hon'ble the Chief Justice for appropriate orders

My Lord the Hon'ble the Chief Justice and the Companion Judges of the Hon'ble Court,

I am a lawyer of the High Court at Calcutta, usually practising at Calcutta, and currently resident at Port Blair in the Andaman and Nicobar Islands. I am making this prayer from Port Blair due to the unique situation we are facing here, different from the rest of the mainland simply due to distance and disconnect from the rest of India, in regard to certain issues.

I have spoken to the Learned District Judge (who is also officiating as the Learned Registrar-in-charge of the Circuit Bench since the demise of the erstwhile officer recently) to seek some guidance, both in regard to judicial matters which is not clear as the Rules of the High Court, Appellate side, including the Rules for the Circuit Bench do not cover this extraordinary situation that we are in, and with regard to the general issues we face which he too must face as a resident here. I have tried to contact the Secretary (Law) but failed, probably due to network connectivity issues.

First of all, let me clarify the situation at Port Blair faced by all in general, and not just lawyers. There are certain ground realities that need to be apprised to the Hon'ble Court which perhaps is not entirely apprised or aware of the situation existing in Port Blair which is also under the jurisdiction of the Hon'ble Court at Calcutta, albeit about 2000 kilometres away.

- a) The Andaman and Nicobar islands cover a huge archipelago with several inhabited islands which are as far flung as the Nicobars in the south and the areas of Diglipur and Mayabunder in the north. The sheer volume of the area where inhabitants are scattered widely, is further compounded by the difficulties of connectivity with ship or helicopter traffic being the only options across the sea. Therefore the Administration obviously has a huge task getting supplies and essentials to everybody in the islands which is understandable and appreciable.
- b) The situation approaching lockdown in the Andaman and Nicobar islands preceded that of the Central Government which was imposed on 23.03.2020. Owing perhaps to the unique location of the islands where everything must come in or go out by air or ship, the restrictions started here on or about 14.03.2020, with specific orders being issued under Section 144 of the Code of Criminal Procedure, 1973 vide Order no. 412 issued on 19.03.2020 in relation to South Andaman, and other Orders related to the other districts of North & Middle Andaman and probably Nicobar as well. I must say in all honesty that I do not have personal knowledge of the

situation in the other districts and islands, save information received sparsely from persons known to me in those places.

- c) From the night of 19.03.2020 onwards, all petrol stations in Port Blair were shut down, perhaps with the intention to conserve fuel for extremely essential utilities only. Therefore fuel has not been made available to anyone who is not specifically permitted or authorised by the Administration to collect fuel from one or two service stations which are open to cater to emergency vehicles, essential supplies or Administration vehicles. As of now for example, I have a few litres of petrol in my vehicles, but as I reside 20 kilometres from the Court premises, getting there and back is practically impossible.
- d) Even if we were able to get to Court by means other than conventionally fuelled vehicles, there is a virtual curfew that has been imposed here. The lockdown here goes far beyond what was mandated by the Center vide Directive of the Government of India, Ministry of Home Affairs being No. 40-3/2020-DM-I(A) dated 24.03.2020 issued by the Home Secretary, Government of India. I will come to that later, but for now, suffice it to say that it is not possible to step out of the house, for any reason whatsoever. This is being strictly enforced by the local police as well.
- e) Essential supplies such as food through grocery shops have also been shut down and the Administration has adopted the method of providing supplies through door to door distribution. The same situation is there with medicines. This is probably to prevent any more social contact than is absolutely necessary, for the simple reason that we live on islands that may not have the medical capacity or capability that the mainland has, and it is wiser to have stricter controls in place in view of the unique geographical situation. I do understand this, as well as the fact that the Administration is desperately engaged in trying to bring food and medicines to people, rather than dealing with issues of criminal justice administration right now.
- f) I know that My Lord the Chief Justice was in the islands when the tsunami took place. I know that Your Lordship saw some of the horrors here and faced some of the hardship. My Lords the other Hon'ble Judges are regular visitors here on the Circuit Bench. Therefore all of the Hon'ble Judges including Your Lordships can perhaps understand the situation when I say, without exaggeration, that in some ways the crisis we are facing, is felt by most people here to be worse than the time of the tsunami.

There are two vital parts to my letter. The first deals with the situation here with supply of food and medicines which are vital to life, as well as medical preparedness for the epidemic. As I speak, I understand that at least six confirmed cases are there, with several people quarantined and under observation. The numbers going around are in the form of a tweet of the Chief Secretary Chetan Sanghi made from the Twitter handle @chetansanghi on 27.03.2020 at 15.23 hours, although I have no means or ways of confirming the truth of the same: 1592 persons under home isolation, 78 in special

quarantine premises and at least 6 positive cases. The second deals with certain situations involving judicial proceedings.

With regard to essential supplies of food and medicine, and the issue of medical preparedness, the issue is as follows:

As I said before there is a virtual curfew. Dissemination of information is largely through Whatsapp where internet is available. Newspapers are scarce or non-existent (at least where I live), and information is difficult to come by. There are certain questions in everyone's mind, which I list for convenience as follows:

1. What is the immediate status of supplies of essential commodities available in the Andaman and Nicobar islands?
2. What is the status of cargo ships currently en route bringing in essential commodities and supplies to the Andaman and Nicobar islands?
3. What is the status of cargo ships which have already reached and are docked, bringing in essential commodities and supplies to the Andaman and Nicobar islands, which may or may not have been unloaded?
4. What is the contingency plan for further supplies being obtained from the mainland to the archipelago in light of the lockdown?
5. The Directive of the Government of India, Ministry of Home Affairs being No. 40-3/2020-DM-I(A) dated 24.03.2020 issued by the Home Secretary, Government of India has specifically exempted essential supplies including medicines and food through shops. Home delivery is an alternative being developed by the Administration which is not fully functional in all areas and seems to be working sporadically and at the unilateral whims of local officials including police officers. Why is the Central Directive overruled and what are the contingency plans for inhabitants of Andaman and Nicobar Islands other than Port Blair?
6. Port Blair Municipal Corporation has come up with home delivery plans for the municipal area. What are the plans being put into place for immediate supply of essentials to rural areas of South Andaman and all other islands throughout the archipelago using the means of the Panchayati Raj system?
7. What is the reason and logic behind ignoring of Central guidelines, and not being followed for keeping shops/stores/petrol pumps open? – this might have quite a logical answer in light of the unique geographical situation of the islands, nature of stocks and supplies – but one method or the other has to be decided on and adopted for reaching materials to the people.
8. What is the justification for closure of pharmacies which provide essential medical supplies, which cannot be effectively delivered in general package to all households, and is specific to the needs of individual persons, when the Central

Government has permitted the medicine shops to remain open to prevent panic, and ensure availability of supplies of necessary medicines in the population? – I must qualify this by saying that I personally have availed of the emergency medicine helpline, and I was most impressed by the timely reaction and fast response in getting me vital heart medication for my elderly dependent cardiac patient, within 24 hours in a manner publicised and made available to all.

9. Whether an order of curfew has been passed for the islands, or any other order has been passed in accordance with law, justifying actions of the police in forcibly preventing vehicular movement which is necessary for obtaining essential articles including food and medicines, which is specifically permitted by the Central government directive? For example, door to door delivery is sporadic, and prevented in many places by police officers who unilaterally invoke authority.
10. Is there a centralised monitoring authority to act and synchronise all the different government agencies and services? The Chief Secretary and Administration and bureaucrats and police officers are obviously there, talking to each other and hopefully coordinating their efforts. But although they may be making their best efforts in the interests of the people the one issue that always plagues the Andaman islands is the lack of transparency to the general public at large. We do not know what is happening, what decisions are being taken, or even why they are being taken which is a bad recipe for creating panic and disturbance among the people.
11. What are the medical contingency plans put into place for treatment of positive patients or to deal with a possible spread in cases?
12. What is the status of medical equipment including emergency equipment available in the islands to deal with possible infections arising in the islands?
13. What is the contingency plan for treatment of persons in the islands or outside the islands including arrangement of medical supplies including drugs and equipment?
14. What is the contingency plan for emergency air transport, in event it is necessary? For example during the tsunami even the military assistance was necessary to stabilise the situation.

The situation in the entire Andaman and Nicobar Islands is potentially a severe one. While I understand that all details cannot be publicised in public interest, yet, some transparency on the preparations made, are key to bringing stability, assurance, security and comfort to the people of the islands in a time of crisis, and to instill confidence in the administration at this time in the minds of the common public, knowing that their government is prepared, taking steps and ready to look after their interests.

I have tried and failed to contact senior Administrative officials. Owing to the inability to move around, the only way to do so is over telephone, and my efforts have not been successful in finding out any information. I have spoken to the President of the

Bar Association which is also deliberating over the matter and what is to be done. Despite three days having passed since the lockdown was announced, there is still no clear system in place for provision of essential food supplies to all persons. This is the first and biggest worry for most people, with families and loved ones facing difficult times ahead, and no clear indications of solutions in sight.

Notifications are there for grocery stores and medicines stores which are specified to open and supply door to door articles on orders being placed. Unfortunately, this does not cover all areas of Port Blair, let alone all the islands. Moreover, there are certain practical difficulties in absence of supplies, fuel for deliveries, and unilateral steps taken in some places by executive officers who do not permit the shops to open or the system to function for reasons completely incomprehensible to the general public who are expected to simply follow orders without any information on the rational or reasonable background for the same.

There are poultry farms, vegetable farms, meat and fish stocks, which are sitting idle, and in some cases, I understand they are even being wasted owing to improper asset management. Without fuel, and with a practical curfew, items being produced cannot reach the shops, which are in any event closed. Supply chains are not functional it appears. It is a lose-lose situation all around, which may prevent coronavirus but which also cause disaster in other ways.

Prevention of spread of coronavirus is a genuine concern and strict enforcement may be the only way to deal with the situation in Andamans which perhaps does not possess infrastructure to deal with a massive outbreak. Therefore prevention of the problem is the best and only solution rather than trying to deal with a problem or curing it - I understand this. But this has to be balanced with the public interests, in a way that brings confidence and protects people's lives. Protecting people from disease by depriving them of the means to live, is not a practical or feasible answer.

The picture that a common man sees is not one of a government taking informed decisions. It is one based on rumours and gossip fed by the actual practical fact of failure of supply of food and essentials, and absence of effective measures on the ground. There must be a practical solution worked out as an alternative to keeping grocery and medicine shops open and petrol pump closed - and that solution must actually work. It is not enough for provision of numbers and details to contact, food and medicines must reach every door in a way that is effective. There are many other aspects to the matter, but I am focusing on these main ones for the time being.

With regard to the judicial proceedings, the issue at hand is as follows:

In light of the circumstances detailed hereinabove, we are faced with a situation where everyone is to stay indoors and not to move out at all. Certain vital questions arise immediately which I have been trying to answer for the last few days, but to no avail. I list them hereunder for convenience of analysis.

- (i) How do our clients access justice in these extremely difficult times? I do not speak of regular matters, but only extremely urgent matters which must be taken up, such as those involving life or liberty.
- (ii) How do we help our clients to access courts when there is a situation unprecedented and unplanned for in any contingency or rules or procedures in the unique situation in the islands?
- (iii) How do we take out an application before the Hon'ble High Court when we cannot access its premises or departments?
- (iv) If the answer is electronic means – the simple and practical difficulty is the absence of internet facilities in the islands – a fact which is known to every person who visits here including the Hon'ble Judges on circuit
- (v) Even if e-filing were possible, how do we move for affirmation of affidavits in the absence of infrastructure in place, internet facilities, or the means to physically move to the Court to access it?
- (vi) Though a trend is emerging through the judicial system from the Hon'ble Supreme Court onwards, how can we participate in urgent proceedings through video-conferencing especially when we cannot access the Court premises where the facilities are, and moreover, we live in a place where there is by far and large no internet connectivity that we can use set up a video conference from our homes through mobiles or computers? Despite having dates fixed for Andaman and Nicobar Islands on videoconferencing, unless lawyers are given special status to claim fuel and to violate the lockdown and practical curfew, we cannot get to court to participate therein.
- (vii) Is it feasible for us to file applications to the Hon'ble High Court through SMS or Whatsapp/email (where internet is available), without affirmation, on the strength of the lawyers' statements, and without annexures, in extraordinary cases, seeking immediate relief, and to be heard over the phone if necessary, in the absence of the other parties including the Learned Public Prosecutor, as conference calls are a fiction in the connectivity available here?
- (viii) A simple example of one of my clients may be taken who is an undertrial, facing prosecution, who is unwell with kidney problems, and needs to be regularly taken to hospital by the prison staff, thereby being exposed to patients and others despite being in a vulnerable state himself – a simple question posed to myself is, how do I move a bail application for him, either before the District Court, or the Hon'ble High Court in light of the points above if he is not produced, and I cannot get to Court?
- (ix) There may be several other persons in the same situation, which I am not aware of, or do not speak for. If lawyers themselves cannot access the courts to speak for the people, how can anyone raise issues of urgency before courts? We are

part of the judicial system, and yet, we cannot reach out to the Courts of which we are very much an integral part, yet far away from Calcutta.

- (x) I am aware that we have various rules, disciplines and procedures. But desperate times call for desperate measures, and I beseech Your Lordships to invoke the inherent powers available to do justice, and to lay out some formula which we can adopt to take steps for clients and people who need urgent judicial intervention.
- (xi) I am aware through news media that a Committee has been set up by the Hon'ble Court vide Order dated 24.03.2020 to look into matters of bail and parole of undertrials and convicts. We need intervention in Port Blair as well which also falls under the jurisdiction of the Hon'ble High Court, but which is not included in the Order. A similar Committee may be set up here with the Learned District Judge, Chief Secretary and Director General of Police if necessary participating jointly to take decisions.
- (xii) In light of all that I have said regarding essentials, I do realise that this may not be quite the priority. However, if it can be done simultaneously, we can allow those in custody in certain categories to be released in interests of their safety and that of others in a time of crisis, when locking them up, feeding them and looking after them is an added burden on the resources of the State.

Conclusion and submission

I submit with the greatest of respect that our Hon'ble Court needs to intervene and provide some guidance, wisdom, supervision and monitoring, to ensure that things are happening properly. I understand that the need of the hour from us, vis-a-vis the administration and government, is cooperation and coordination, rather than conflict and criticism. But it is equally important that there is some judicial oversight to ensure that basic needs are met, and time is not spent in non essential processes and decision making, which may be expedited to bring relief to all.

I do not for a moment criticise the administration, or say that nothing is being done. What I do say however is that cooperation and coordination is there, from people in general. Governance is not restricted to a few officers of the executive, and it is necessary that it is done in a manner that brings the greatest good to the greatest number.

I pray that the Hon'ble High Court steps in. It is necessary to restore confidence of all, and to protect the rights of all. When this crisis started, the Hon'ble Circuit Bench was present here and sitting for a two week period. However in the circumstances, the Circuit was terminated midway and the Hon'ble Judges of the Circuit left the islands to return to Calcutta. Perhaps their continued presence through this unprecedented crisis would have imparted more confidence to the people of the islands who look to the Calcutta High Court, 2000 kilometres away across the sea, for the sole means of access to justice in this remote part of India. Now the courts are shut, no Circuit Judges are

there to take up matters administratively or judicially, no flights are there for me or anyone else to reach Calcutta and move the Hon'ble Court, and save some duty Magistrates functioning, I have no way to access the Courts or raise these issues in any other manner than through these means, especially the Hon'ble High Court. For this reason, I am writing to Your Lordship, raising a myriad of issues and praying for intervention to assist the people of the Andaman and Nicobar Islands.

Similar situations are arising in other States of the country, and with the limited internet resources available, I have seen similar issues arising, where the Hon'ble Courts are stepping in to look after the interests of the general citizenry, for adequate medical arrangements and essential commodities and supplies, to help the administrations to fine tune the system and bring the maximum benefit to the maximum number. Can our High Court be far behind in coming to the aid of people who look up to it for justice?

I have seen Orders passed by our Hon'ble Court on 24.03.2020 in a Bench of Your Lordships tackling the urgency and need of the hour in W.P. No. 5323(W) of 2020 by extending interim Orders protecting people's rights. There is grave urgency here in the Andaman and Nicobar Islands which also needs the Hon'ble Court's intervention and wisdom. I have waited three days to see the situation before sending this letter, as I did not want to resort to litigation and legalities in this time of crisis. I had contacted several officers of the Administration, some of whom responded immediately and admirably to my call and rose to the occasion magnificently. Others did not respond, or were perhaps busy engaged in relief planning and could not respond. Therefore, I say clearly that I have faith in the Administration, but things need to move on the ground and practical needs must be addressed without further ado. Time is running out, with three days having passed, and disturbance among the general public must be avoided at all cost. The announcement of lockdown hit us like a bolt from the blue and unfortunately, the islands are very different from the rest of the mainland.

But as a lawyer and an officer of this Court, in the last 48 hours I have received far too many calls for help from people throughout the islands, who tell me that the lawyers are their only hope to try and contact the Courts, to monitor, guide and regulate the Administration and its positive steps, and bring some form of respite to the people of the islands, in the absence of any perceptible response from the Administration. Yet some lawyers they have contacted, have cited the Bar Council resolution, the lockdown, the unavailability of the High Court Circuit, or closed courts as reasons to deny access to justice. This letter is not in my personal interest, or that of my family, but of each and every one of the citizens of these islands. In such situation after thinking of what I could do to improve the situation and struggling with my conscience, I was constrained to put my thoughts to paper and commit them to a letter to Your Lordships.

There is grave urgency and necessity. As I write I am receiving information that the quarantine arrangements are not proper. Health care is not proper and there is no protective material available for medical and paramedical staff to prevent further transmission. Ventilators are few, ICU beds are occupied, and those in quarantine are

not receiving proper food, care and attention. The hotels which are converted to isolation and quarantine areas are without adequate facilities, serviced by untrained staff and unprotected persons, further increasing the risk of spread of infection. This is a new development and information just received which may be confirmed from the President of the Bar Association who is also receiving such information from his sources, and people desperately asking us to help.

My submissions made hereinabove may be verified as to the practical reality on the ground from Your Lordships' judicial officers including the Learned District Judge and Secretary (Law), who forms an important bridge between the judiciary and the administration here in the islands. Mr. Tabraiz, the President of the Bar Association is aware of the contents of this letter, and can also be asked to confirm and verify the magnitude of the situation. I stand by whatever is contained hereinabove, and solemnly affirm it all as true to my personal knowledge.

Further, I pray that this communication may be treated as a letter petition if felt appropriate by Your Lordships for necessary orders to be passed on the judicial side. I have copies of most of the relevant orders and materials in electronic form, which can be forwarded on Whatsapp to be treated as annexures hereto.

I remain My Lords, in anxious anticipation of orders both administrative and judicial as may be deemed fit and proper by the Hon'ble Court,

Yours faithfully,



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