

FR NO 54418/19

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

PRESENTATION FORM

WP No. 52718 2019

Serial No. _____ District _____
Between

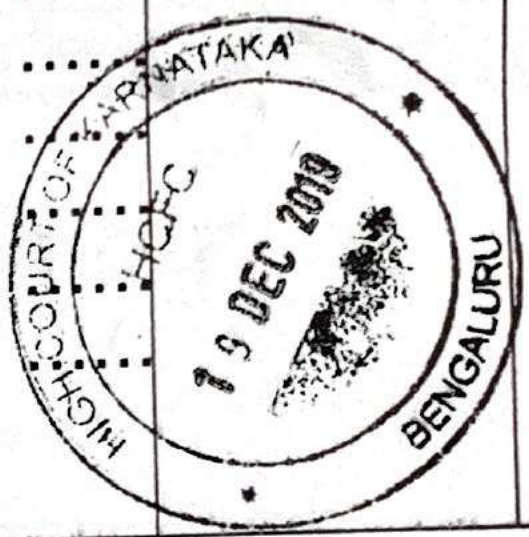
Mr E Saldanha
E O P H A

And

The State of Karnataka
E O P H A

Advocate Sri
SRUTI CHAGANTI
ADVOCATE KAR.No.789/15
1, 1st Floor, Kurubara Sangha Hostel Building
2nd Main Road, Gandhinagar, Bangalore-560009
Mob. + 91-7899482758, srutichaganti@gmail.com

Sl. No.	Description of Paper Presented	Court Fee Affixed On the paper
1.	On the Memo of <u>Writ</u> petition	.....
2.	On the Memo of Appeal	.....
3.	On Vakalath	.....
4.	On Certified Copies	.....
5.	On I.A. No. _____ for	.....
6.	On Process Fee	.....
7.	On Copy Application	.....
8.	<u>O.A for Dismissal</u>	.....
9.	_____	.....
10.	_____	.....



Number of Copies Furnished _____

Other side served _____

Presented by _____

Advocate for petitioner / _____

Received Paper as above _____

Appellant / Respondent _____

Advocate's Clerk _____

Date 19/12/2019

Bengaluru

Receiving Clerk

IN THE HIGH COURT OF BANGALORE AT KARNATAKA
W.P. No. _____/2019

BETWEEN:

Leo F. Saldanha & Ors.

...PETITIONERS

AND:

The State of Karnataka & Anr.

...RESPONDENTS

INDEX

S.No.	PARTICULARS	PAGE Nos.
1.	List of Dates and Synopsis	1-2
2.	Memorandum of Writ Petition	3-8
3.	Verifying Affidavit	9
4.	ANNEXURE-A: Copy of the impugned order along with translated copy	10-16
5.	ANNEXURE-B: Copy of the permission granted to the Dalit Sangharsha Samiti by the Deputy Commissioner of Police, Bangalore Central on 18.12.2019	17-20
6.	ANNEXURE-C: Copy of the police notice dated 18.12.2019 canceling the permission granted to the Dalit Sangharsha Samiti	21-22
7.	ANNEXURE-D: Copy of the show cause notice issued on 18.12.2019	23-24
8.	Vakalaths	25-27
9.	I.A. for Dispensation along with Affidavit	28-29

PLACE: Bangalore
DATE: 19.12.2019

ADVOCATE FOR THE PETITIONERS
SRUTI CHAGANTI

IN THE HIGH COURT OF BANGALORE AT KARNATAKA
W.P. No. _____/ 2019

BETWEEN:

Leo F. Saldanha & Ors.

...PETITIONERS

AND:

The State of Karnataka & Anr.

...RESPONDENTS

LIST OF DATES AND SYNOPSIS

DATE	EVENT
08.12.2019	Peaceful protest held against the Citizenship (Amendment) Bill at the Mysore Bank circle
12.12.2019	Citizenship (Amendment) Act, 2019 (CAA) received the assent of the President of India
15.12.2019 17.12.2019	Peaceful protests held against the CAA at Town Hall
18.12.2019	Permission granted by the Deputy Commissioners of Police of various divisions to various groups and individuals to hold protests
18.12.2019	Respondent No. 2 passed order in exercise of power under Section 144 of the Criminal Procedure Code, prohibiting <i>inter alia</i> the assembly of 5 or more persons within Bangalore city limits from 6 am on 19.12.2019 to 12 am on 21.12.2019.
18.12.2019	Permission granted by the Deputy Commissioners of Police earlier in the day rescinded and show cause notices issued to the organisers of the protests

The passage of the Citizenship (Amendment) Act, 2019 into law on 12.12.2019 has met with widespread protest for being unconstitutional and for posing an existential threat to the very nature of the polity envisaged by the Indian Constitution. Peaceful protests were organised against the CAA both before and after it became law at Mysore Bank circle and the Town Hall.

The protests were to be continued on 19.12.2019 and on 20.12.2019. The Petitioners intended to participate in these protests. Initially, the Deputy Commissioners of Police of various divisions granted permission for the protests on 18.12.2019. Within a few hours, however, ostensibly on reports received from the very same Deputy Commissioners of Police who granted the police permissions, Respondent No. 2 passed the impugned order exercising power under Section 144 of the Code of Criminal Procedure, 1976 imposing *inter alia* prohibitions on the assembly of 5 or more persons within city limits.

②
The impugned order is *ex-facie* illegal, arbitrary and an abuse of power. It is passed without authority and jurisdiction. On the face of it, it is clear that the order is passed with a view to muzzling legitimate dissent against the CAA and the National Register of Citizens. The order is lacking in sufficient grounds, is a violation of the principles of natural justice, is passed without due cause and amounts to an unreasonable restriction on the fundamental rights of the Petitioners. It is a colourable exercise of power and liable to be struck down by this Hon'ble Court for violating the legitimate rights of citizen to undertake peaceful protests/ demonstrations to freely express themselves and to peacefully assemble in order to make their voices heard by the representatives of the people in power.

Hence, this writ petition.

PLACE: Bangalore
DATE: 19.12.2019

ADVOCATE FOR THE PETITIONERS
SRUTI CHAGANTI

IN THE HIGH COURT OF BANGALORE AT KARNATAKA

W.P. No. _____ / 2019

BETWEEN:

1. Leo F. Saldanha
S/o S.J. Saldanha
Aged about 50 years
Residing at:
1, Pearl Gardens
Vajarahalli, Kanakapura Road
Bangalore - 560 062
2. Kavitha Lankesh
D/o Late P. Lankesh
Aged about 55 years
Residing at:
No 208 4th Cross 7th Main
BHCS Layout
Chikkalsandra
Bangalore - 560 061
3. M.D. Pallavi
D/o Malur Seetharam Dattatreya
Aged about 40 years
Residing at:
No. 40, Kalamandir, 5th Cross
Hanumanthanagar
Bengaluru - 560 019
4. U. Ramdas Rao
S/o Late Raghavendra Rao
Aged about 72 years
Residing at:
No. 59, Shivaji Road
Shivajinagar
Bangalore - 560 051
5. Peoples Union of Civil Liberties
Karnataka State Unit
Represented by its State President
Rajendra Y.J.
S/o Late Y R Jayashekaraiiah
Aged about 65 years
Having office at:
No. 15, 1st Floor
1st Cross, Post Office Road
Sampangiramnagar
Bangalore - 560 027

...PETITIONERS

(4)

AND:

1. The State of Karnataka
Vidhana Soudha
Bangalore - 560 001
Represented by its Chief Secretary
2. The Commissioner of Police
and Additional District Magistrate
No. 1, Infantry Road
Bangalore - 560 001

...RESPONDENTS :

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

The Petitioners respectfully state as follows -

1. The names and addresses of the Petitioners for the purpose of service of summons, court notices, etc. is as stated in the cause title above. The Petitioners may also be served through their counsel: **MAITREYI KRISHNAN, AARTI MUNDKUR AND SRUTI CHAGANTI**, Advocates, having their chambers at No. 11, 1st Floor, Kurubara Sangha Hostel Building, 2nd Main Road, Gandhinagar, Bangalore - 560 009.
2. The names and addresses of the Respondents for similar purposes is also as stated in the cause title above.
3. Being aggrieved by the order passed by Respondent No. 2 bearing No. SB/Gu.Va/Prohibition/50/2019 dated 18.12.2019, produced herewith as **ANNEXURE-A**, imposing prohibitions on assembly of groups of 5 or more persons, among others, within Bangalore city limits from 6 am on 19.12.2019 to 12 am on 21.12.2019, ostensibly in exercise of power under Section 144 of the Code of Criminal Procedure, 1976, the present writ petition is preferred on the following facts and grounds.

FACTS

4. Petitioner No. 1 is an environmental researcher who has worked on various public causes, including in advancing Public Interest Litigations in the Karnataka High Court, National Green Tribunal and Supreme Court and is Coordinator/Trustee of Environment Support Group, a not for profit working with a variety of environmental and social justice causes.
5. Petitioner No. 2 is an International award winning Film director and writer.

6. Petitioner No. 3 is a renowned singer and actor from Bangalore. She sings Kannada poetry and is actively involved in theatre.
7. Petitioner No. 4 retired as Head of the English Department, Bangalore University. He is member of the Peoples' Union of Civil Liberties and has done several fact findings on manual scavenging, garment workers, and other human rights issues
8. Petitioner No.5 is a well- known organisation that has represented several civil liberties causes in various High Courts and the Supreme Court of India.
9. The Citizenship (Amendment) Act, 2019 ("CAA") was signed into law by the President of India on 12.12.2019. The CAA amends Section 2(1)(b) of the Citizenship Act, 1955 to exclude persons belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan who entered India on or before the 31.12.2014 from the definition of "illegal migrants", subject to the fulfilment of certain prescribed criteria.
10. The aforesaid amendment attempts to foundationally re-orient the Indian polity by making religion the basis for grant of Indian citizenship and amounts, in effect, to an illegal and unconstitutional amendment of the Indian Constitution by ordinary legislation, violating its basic structure of the most deeply embedded principles of secularism and humanism.
11. The Indian Constitution envisages a state that stands as a bulwark against the ordinary and desperate violence that human beings are capable of inflicting on each other in the name of religion, race, caste, sex, place of birth, to name only a few, and is one of the few constitutions in the world to guarantee the horizontal application of fundamental rights. The Indian state of the Ambedkarite Constitution is thus intended to be indifferent to the social bases of *discrimination* in order to secure a truly egalitarian polity; for this reason, the Constitution permits *differentiation* on social bases in order to secure truly substantive equality among persons. The CAA attempts to illegally and unconstitutionally re-write the Constitution by permitting the Indian state, perhaps for the first time ever, to *discriminate* among persons, *inter alia*, on the basis of religion and attempts to do so by means of ordinary legislation. Undoubtedly, the CAA is *ultra vires* the Indian Constitution and liable to be struck down for that reason. Various petitions in this regard are pending adjudication before the Hon'ble Supreme Court.

- (6)
12. In this background, there have been widespread protests against the CAA in various parts of the country. In Bangalore, the proposal to table the bill in the Lok Sabha on 09.12.2019 was met with peaceful protests at Mysore Bank circle on 08.12.2019. After the bill was passed by Parliament, several protests were organized and conducted peacefully in which the voice of the people opposing the CAA was sought to be made audible to those in power. In particular, two peaceful protests were held at Town Hall on 15.12.2019 and 17.12.2019.
 13. The peaceful protests were to be continued on 19.12.2019 and on 20.12.2019 by diverse groups and individuals and the Petitioners were intending to participate in the same to add their voices to the outcry against the CAA.
 14. It was widely reported in the press that the Bangalore city police had granted permissions to all those who had applied for permission to protest. As one such instance, copy of the permission granted by the Deputy Commissioner of Police, Central Division, Bangalore City on 18.12.2019 is produced herewith as **ANNEXURE-B**. Various other groups and individuals also were granted police permission on 18.12.2019 and were assured of police protection during the protests/ demonstrations.
 15. However, without any notice and without assigning proper reasons, within a few hours of the grant of permissions as aforesaid, Respondent No. 2 issued the impugned order produced as **Annexure-A** imposing prohibitions, among others, on the assembly of 5 or more persons within Bangalore city limits from 6 am on 19.12.2019 to 12 am on 21.12.2019. Respondent No. 2 called for a press conference at which the contents of the order were repeated and publicized. The order has since received wide publicity in the press.
 16. Shortly after the aforesaid order was issued, the permissions granted by the police were canceled and show cause notices were issued to persons who had applied for permission to protest. As one such instance, the police notice dated 18.12.2019 canceling the permission given to the Dalit Sangharsha Samiti is produced herewith as **ANNEXURE-C** and the copy of the show cause notice issued to the organisers is produced herewith as **ANNEXURE-C1**.
 17. Being aggrieved by the order passed by Respondent No. 2 exercising powers under Section 144 without due cause, proper notice or valid reasons, and having no other alternate or more efficacious remedy, the present writ petition is preferred on the following, among other -

GROUNDS

18. The impugned order is *ex-facie* illegal, arbitrary and an abuse of power.
19. The impugned order violates the fundamental, constitutional and legal rights of the Petitioners without reasonable cause.
20. There is no nexus between the prohibitions imposed by the impugned order and the purpose sought to be served thereby.
21. The impugned order makes it clear that its *raison d'etre* is to suppress legitimate dissent voiced against the Citizenship Amendment Act and the National Register of Citizens and is a colorable exercise of power.
22. The impugned order makes reference to reports received from the Deputy Commissioners of Police heading various city divisions. No information is given regarding the contents of the reports received except to state vaguely that imposition of curfew is recommended as a pre-emptive peacekeeping measure. Reference is made also to a report received from the Deputy Commissioner of Police, Bangalore Central Division. It is not made clear why the Deputy Commissioner of Police, Bangalore Central would grant permission on 18.12.2019 as evidenced by **Annexure-B** and why he would address a letter to Respondent No. 2 on the same day reporting otherwise. The Deputy Commissioner of Police, Bangalore Central then addresses a letter as seen in **Annexure-C** stating that, at the orders of Respondent No. 2, the permission granted earlier for the protest stands cancelled. Undoubtedly, the impugned order is a colorable exercise of power and no sufficient ground is made out in the impugned order to justify it.
23. The impugned order does not set out sufficient grounds for apprehending violent protests or for disturbance of public order, given that (a) the earlier protests against the CAA had all, contrary to what is stated in the impugned order, been conducted with prior intimation to/permission of the police and (b) the earlier protests against the CAA had all without exception been conducted in an organized and peaceful manner.
24. The statement in the impugned order that it is passed with a view to facilitate citizens in Bangalore to exercise their constitutional rights makes a complete mockery of itself and of the Indian Constitution - it is the constitutional right of every citizen of India to exercise their freedom of speech and expression and to assemble peacefully. These fundamental rights can only be restricted in accordance with the conditions prescribed in Articles 19(2) and 19(3), which envisage that any restriction is imposed by law and is reasonable. The

(8)

fundamental rights guaranteed under Article 19(1) cannot be restricted by executive action alone and for reasons which are lacking in foundation in either law or fact. Undoubtedly, the impugned order does not fulfil any of the conditions set out in Article 19 for the reasonable restriction of the fundamental rights of the Petitioners.

25. It is a well-settled principle of law that peaceful protests/ demonstrations are protected under Article 19(1)(a) and Article 19(1)(b) and that any restriction of the same must be strictly in accordance with law.

26. The Petitioners reserve liberty to adduce additional grounds at the time of arguments.

27. No other petition has been filed/proceedings have been initiated by the Petitioners before this Hon'ble Court or any other court/forum on the same cause of action.

GROUND FOR INTERIM PRAYER

28. If the impugned order is not stayed pending disposal of the writ petition, the fundamental and constitutional rights of the Petitioners will stand violated which will result in the Petitioners suffering untold and grievous harm and injury, no reparation in respect of which can possibly be made. The Petitioners have a good case on merits and the balance of convenience is in favour of the Petitioners.

PRAYER

WHEREFORE, it is prayed that this Hon'ble Court be pleased to -

(i) issue a writ/order/direction in the nature of certiorari quashing the impugned order bearing No. SB/Gu.Va/Prohibition/50/2019 dated 18.12.2019 and produced herewith as **ANNEXURE-A**;

(ii) issue any other order(s)/direction(s) as this Hon'ble Court may deem fit in the circumstances of the case, in the interests of justice and equity.

INTERIM PRAYER

WHEREFORE, it is prayed that this Hon'ble Court be pleased to stay the impugned order bearing No. SB/Gu.Va/Prohibition/50/2019 dated 18.12.2019 and produced herewith as **ANNEXURE-A**, pending disposal of the above writ petition, in the interests of justice and equity.

PLACE: Bangalore

DATE: 19.12.2019

SRUTI CHAGANTI

ADVOCATE KAR.No.789/15
11, 1st Floor, Kurubara Sarapha Hostel Building
2nd Main Road, Gandhinagar, Bangalore-560009

ADVOCATE FOR THE PETITIONERS

SRUTI CHAGANTI

IN THE HIGH COURT OF BANGALORE AT KARNATAKA

W.P. No. _____/2019

BETWEEN:

Leo F. Saldanha & Ors.

...PETITIONERS

AND:

The State of Karnataka & Anr.

...RESPONDENTS

VERIFYING AFFIDAVIT

I, Leo F. Saldanha, S/o S.J. Saldanha, Aged about 50 years, Residing at: 1, Pearl Garden, Vajarahalli, Kanakapura Road, Bangalore - 560 062, do hereby solemnly affirm and state on oath as follows -

1. I state that, I am Petitioner No. 1 in the above case and I know the facts and circumstances of the case. Hence, I am swearing to this affidavit on my own behalf and on behalf of the other Petitioners also.
2. I state that, the averments made in paragraphs 1 to _____ are true and correct to the best of my knowledge, information and belief.
3. I state that, Annexures A to D produced along with the writ petition are true copies of the originals.

VERIFICATION

I, the Deponent above named, do hereby verify that what is stated above is true and correct to the best of my knowledge, information and belief.

IDENTIFIED BY ME

ADVOCATE

DEPONENT

PLACE: Bangalore

DATE: 19.12.2019