

SWARAJ ABHIYAN - (III)

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 857 of 2015)

MAY 13, 2016

[MADAN B. LOKUR AND N.V. RAMANA, JJ.]

Public interest litigation – Mahatama Gandhi National Rural Employment Guarantee Scheme – Implementation of – Prayer sought that Government of India and State Government to ensure adequate budgetary provision is made for financial implementation of the Scheme and that the State Government not to place any budgetary limit under the Scheme if employment is sought over and above 100 days; that the informal capping of funds through labour budget and agreed to budget process to be done away with; that there is delayed release of payments both for wages and materials; and effective monitoring of the scheme – Held: There is no informal capping of funds although it does appear that Government of India is not prone to easily release funds for the projects under the Scheme – There has been unconscionable delay on the part of the Government of India in release of funds both under the wage and material component – When rights of lakhs of people are affected by delayed payment of the legitimate dues, there is clear constitutional breach committed by the State – Further, not clear as to existence of Centre Employment Guarantee Council and State Employment Guarantee Council – In view thereof, issuance of directions by this Court – State Governments to present a realistic budget and thereafter, Government of India to release to State Governments adequate funds under the Scheme in a timely manner – Government of India to ensure that compensation for delayed payment beyond 15 days made to workers – State Governments and Government of India to make all efforts to encourage needy persons to come forward and take advantage of the Scheme – Government of India to constitute Central Employment Guarantee Council and State Governments to establish State Employment Guarantee Council within the stipulated period – NREG Act being a social welfare and social justice legislation, Government of India

A *to ensure faithful implementation of its provisions – Constitution of India – Art. 32 – Mahatma Gandhi National Rural Employment Guarantee Act, 2005 – ss. 3(1), 3(3), 7, 10, 11, 14(6).*

Sanjit Roy v. State of Rajasthan (1983) 1 SCC 525: 1983 (2) SCR 271 – referred to.

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Case Law Reference

1983 (2) SCR 271 referred to Para 32

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 857 of 2015.

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Under Article 32 of the Constitution of India.

Prashant Bhushan, Rohit Kr. Singh, Govind Jee, O. Kuttan, Advs., for the Petitioner.

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P.S. Narasimha, Tushar Mehta, ASGs, Ajit Kumar Sinha, Sr. Adv., Anil Grover, Irshad Ahmad, AAGs, Mukul Singh, Irhan George, Ajay Sharma, Sridhar Potaraju, B.K. Satija, Neeraj Kumar Sharma, Guntur Prabhakar, Ms. Prerna Singh, Gopal Singh, Manish Kumar, A.P. Mayee, Ms. Shashi Juneja, A. Selvin Raja, Ms. Hemantika Wahi, Kabir Hathi, Ms. Puja Singh, Ms. Noopur Singhal, Manan, Dr. Monika Gusain, Tapesh Kumar Singh, Kumar Anurag Singh, Mohd. Waquas, Shashank Singh, V. N. Raghupathy, C. D. Singh, Ms. Sylona Mohapatra, Udit Arora, Nishant R. Katneshwarkar, Sibor Sankar Mishra, Umakant Mishra, S. Udaya Kumar Sagar, Krishna Kumar Singh, Upendra Mishra, Vinay Garg, Advs., for the Respondents.

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The Judgment of the Court was delivered by

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MADAN B. LOKUR, J. 1. In our judgment dated 11th May, 2016 we had considered the issue of the drought or drought-like conditions prevailing in some parts of the country and had issued certain directions for compliance. Subsequently, in a related matter in our judgment pronounced today, we have dealt with the provisions of the National Food Security Act, 2013 and the Mid-Day Meal Scheme announced by the Government of India and issued directions for the effective implementation of the statute and the Mid-Day Meal Scheme to benefit people (including children) particularly those affected by the drought or drought-like conditions.

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2. In this judgment we deal with the implementation of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Mahatma Gandhi National Rural Employment Guarantee Scheme framed under the provisions of Section 4 of the said Act.¹ A

Implementation of the MGNREG Scheme

3. The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short the 'NREG Act') has a very simple and straightforward Preamble which says that it is: B

“An Act to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto.” C

For the effective implementation of the NREG Act, the Mahatma Gandhi National Rural Employment Guarantee Scheme (for short 'the Scheme') has been announced and is implemented throughout the country. D

4. Learned counsel for the petitioner submits that the Scheme is demand driven and in terms of Section 3(1) read with Section 3(3) of the NREG Act, every rural household registered for employment is entitled as a matter of right to have one adult person provided with unskilled E

¹ 4. Employment Guarantee Schemes for rural areas - (1) For the purposes of giving effect to the provisions of Section 3, every State Government shall, within six months from the date of commencement of this Act, by notification, make a Scheme, for providing not less than one hundred days of guaranteed employment in a financial year to every household in the rural areas covered under the Scheme and whose adult members, by application, volunteer to do unskilled manual work subject to the conditions laid down by or under this Act and in the Scheme : F

Provided that until any such Scheme is notified by the State Government, the Annual Action Plan or Perspective Plan for the *Sampoorna Grameen Rozgar Yojana* (SGRY) or the National Food for Work Programme (NFFWP) whichever is in force the concerned areas immediately before such notification shall be deemed to be the action plan for the Scheme for the purpose of this Act. G

(2) The State Government shall publish a summary of the Scheme made by it in at least two local newspapers, one of which shall be in a vernacular language circulating in the area or areas to which such Scheme shall apply.

(3) The Scheme made under sub-section (1) shall provide for the minimum features specified in Schedule I. H

A manual work and adequate wages under the Scheme for a minimum of 100 days in a year.² In other words, if an adult member of a registered rural household is voluntarily desirous of doing unskilled manual work, he/she is guaranteed work for at least 100 days in a year.

5. The first submission of the petitioner in this context is that the Government of India and the concerned State Governments are obliged to ensure that adequate budgetary provision is made for the financial implementation of the Scheme. It is submitted that in addition to ensuring adequate financial provision, the Government of India as well as the concerned State Governments should not place any budgetary limit under the Scheme if employment is sought over and above 100 days. The first prayer, therefore, is for issuing appropriate directions to the Union of India in this behalf. While the guarantee is for 100 days in a year, the State should encourage employment for more than that.

6. The second prayer made in this context is that even if there is no budgetary limit, there is an informal cap on funds under the Scheme and that should be done away with. To appreciate what is sought to be conveyed by this prayer requires an understanding of the procedure followed by the Government of India in the implementation of the Scheme.

7. Reference is made by learned counsel to the “Operational Guidelines for NREGA” issued in 2013 particularly paragraph 6.9 thereof.³ This paragraph provides that the Labour Budget (or LB) should

² 3. **Guarantee of rural employment to households** - (1) Save as otherwise provided, the State Government shall, in such rural area in the State as may be notified by the Central Government, provided to every household whose adult members volunteer to do unskilled manual work not less than one hundred days of such work in a financial year in accordance with the Scheme made under this Act.

(2) Every person who has done the work given to him under the Scheme shall be entitled to receive wages at the wage rate for each day of work.

(3) Save as otherwise provided in this Act, the disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight after the date on which such work was done.

(4) The Central Government or the State Government may, within the limits of its economic capacity and development, make provisions for securing work to every adult member of a household under a Scheme of any period beyond the period guaranteed under sub-section (1), as may be expedient.

³ **6.9. SUBMISSION OF LABOUR BUDGET TO MINISTRY OF RURAL DEVELOPMENT AND ITS SCRUTINY**

The MIS entry made in regard to the LB at GP level will get aggregated at different levels. The aggregated LB at District level is required by the Ministry by 31st December

be finalized by each State by 31st December for all Gram Panchayats (or GP) in the State and placed before an Empowered Committee chaired by the Secretary in the Ministry of Rural Development. This projected Labour Budget is then slashed and an “agreed to” Labour Budget is prepared which is only a percentage of the Labour Budget presented by the State Government. It is submitted that in the financial year 2014-15 the “agreed to” Labour Budget was 78% of the Labour Budget and for the financial year 2015-16 the “agreed to” Labour Budget was 75% of the Labour Budget. This is the informal cap on funds adverted to by learned counsel.

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8. It is submitted that the consequence of this informal cap is that the State Governments do not have an adequate fund at their disposal and because of a lack of funds, they are unable to encourage voluntary unskilled manual labour. Resultantly, they cannot reach the target of 100 days of employment per household per year. Since there is a shortage of the ‘workforce’ caused by a lack of funds, the State Governments are compelled to drop some development works. In other words, fiscal constraints result in a vicious cycle adversely impacting employment and development.

9. The third prayer therefore relates to an additional consequence of a shortage of funds and a depleted ‘workforce’. The consequence, as projected by learned counsel, is that due to fiscal constraints, the unskilled manual labour put in is not duly compensated by payment of wages in time, the excuse of the State Governments being a lack of funds. Consequently, the pending wage bill continues to rise and that increasing liability actually makes a complete mockery of the Scheme and the NREG Act since the dues are cleared much later than required

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each year in format as per Annexure - 10. Therefore, it needs to be ensured that all data entry work for LB is completed in all respect by 31st December for all GP’s in State. The LB entered in the MIS (as given in para 6.6 above) will be analysed by the Ministry and put up to the Empowered Committee chaired by Secretary, Ministry of Rural Development. The Empowered committee will discuss the projected LB with the Secretary of the Rural Development of the concerned State and a final LB for the State as a whole will be agreed to. The implication of this is that district/Block/GP wise LBs as prepared earlier and submitted to the Ministry are required to be revised by the State Government and communicated to respective districts/blocks and GPs. The LB agreed to, disaggregated district and month wise shall be entered at the State/District level in the MIS appropriately. States are required to complete this exercise within 15 days from the date the decision regarding agreed to LB is conveyed to them.

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A by law. This is a modern form of *begar* and is contrary to the spirit of Article 23 of the Constitution.

10. The fourth prayer made under this heading is for the Government of India to increase the minimum statutory obligation of 100 days employment per rural household by another 50 days for drought affected States for the year 2016-17 and to release the additional financial requirements well in time.

11. Responding on behalf of the Union of India, the Joint Secretary in the Ministry of Rural Development ably assisted us on facts on this issue. She is extremely well-versed in the subject and we acknowledge her valuable assistance in understanding the point of view of the Government of India.

12. The Government of India acknowledges that the minimum guaranteed employment is 100 days in a year in terms of the NREG Act, but that it is voluntary. That apart, it is submitted that given the magnitude of the effort required, it is not easy to achieve the target. It is not denied that job cards have been issued to about 13.26 crore households all over the country and the number of active job cards is about 5.72 crores and the total households that have worked in the financial year 2015-16 is about 4.77 crores. The total number of households that have been provided 100 days of employment in the year 2015-16 is said to be 47,06,129 (as on 19th April, 2016) and in the drought affected States the number of such households is said to be 27,64,508 (as on 19th April, 2016). The petitioner has different figures as on a different date but it is not necessary to decide which set of figures is correct since the Government of India believes that in view of the large numbers, the implementation of the Scheme is dependent upon the efforts of the State Governments. The Government of India can only persuade the State Governments to reach the minimum statutory guarantee of 100 days employment. It is submitted that as a result of this persuasion, employment provided per household at the national level is 47 days which is the highest achieved in the last six years. As far as the drought affected States are concerned, the average days of employment provided per household is 46.4 days. Based on this, it is submitted that all efforts are being made to faithfully implement the Scheme in spirit and no effort is spared in this regard.

13. With regard to the informal capping of the Labour Budget, it is

submitted that in terms of Section 14(6) of the NREG Act⁴ the District Programme Coordinator (who is usually the Collector in the district), prepares a district specific budget in December for the coming financial year. This budget contains the details of anticipated demand for unskilled manual work in the district. The district budgets for the State are then collated at the State level and the State Government prepares its Labour Budget. This is then communicated and presented to the Government of India in the Ministry of Rural Development which then examines it in the Programme Division in the Ministry in consultation with the concerned State Governments. Thereafter, the budget is finalized by an Empowered Committee headed by the Secretary in the Ministry of Rural Development. It is submitted that the Labour Budget is essentially a tool for the financial management of funds released and is purely indicative. What the Empowered Committee does is to prepare a budget based on the performance of the State Government and other related criteria and arrive at a somewhat more realistic budget, which too is indicative.

14. It is submitted that there is no cap on the expenditure and States may exceed the budget approved by the Empowered Committee after seeking approval of the said Ministry. A comparative statement of expenditure incurred over the last four financial years has been placed before us and a perusal thereof does show that there has been a fluctuation in expenditure over the years as follows:

YEAR	BUDGET PROVISION (in crores)	ACTUAL EXPENDITURE (in crores)
2011-12	31,000.00	37,072.82
2012-13	30,287.00	39,778.29
2013-14	33,000.00	38,601.59
2014-15	33,000.00	36,032.48
2015-16	37,345.95	42,253.75

15. With regard to the shortage of funds, it is submitted that the

⁴ 14. District Programme Coordinator – (1) to (5) xxx

(6) The District Programme Coordinator shall prepare in the month of December every year a labour budget for the next financial year containing the details of anticipated demand for unskilled manual work in the district and the plan for engagement of labourers in the works covered under the Scheme and submit it to the district panchayat.

A Ministry of Rural Development has been in touch with the Ministry of Finance to ensure that there is no such shortage. While a request was made for the release of Rs. 5,000 crores to the Ministry of Finance what was in fact released is only Rs. 2,000 crores. There is therefore a tacit admission that the Ministry of Finance does not release funds in adequate amounts or in time for the effective implementation of the Scheme. In her presentation, the Joint Secretary in the Ministry of Rural Development submitted that efforts are also being made through the Ministry of Agriculture for the release of funds.

C 16. It is submitted that notwithstanding this, some States have in fact exceeded the budget approved by the Empowered Committee. There is therefore no question of any informal capping of funds.

D 17. With regard to the pending wage bill under the Scheme, it is admitted that till 31st March, 2016 there is a pending balance of about Rs. 8,000 crores. However, it is stated in the fourth affidavit filed by the Government of India on or about 11th April, 2016 that an amount of Rs. 11,030 crores will be released to the States within one week subject to fulfillment of standard conditions by the States. This will take care of the pending wage liability of Rs. 7,983 crores as on 31st March, 2016 for the financial year 2015-16. This includes the wage liability of Rs. 2,723 crores in the ten drought affected States that we are concerned with where the Ministry of Rural Development has allowed additional 50 days of employment to the concerned households. It is further stated in the affidavit that an amount of Rs. 3,047 crores will be released to the States for implementing the Scheme in April 2016 (inclusive of wages and material component). The pending liability of the material component of Rs. 4,359 crores for the financial year 2015-16 (as on 31st March, 2016) will be released in June, 2016. In other words, it is admitted that for the financial year 2015-16 there is an existing wage and material component liability in excess of Rs.12,000 crores.

G 18. As far as the release of funds for 2016-17 is concerned, it is submitted by learned counsel for the petitioner that in terms of the Master Circular under the Scheme, funds are required to be released in two tranches, the first tranche in the first week of April (for the period 1st April to 30th September) and the second tranche in the first week of October (for the period 1st October to 31st March). It is submitted that therefore the release of Rs. 3,047 crores for implementing the programme only for April 2016 is contrary to the Master Circular.

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19. It is explained in the fourth affidavit of the Government of India that the first tranche is actually released in two parts. The first part of the first tranche is released in the first week of April because of the vote on account while the second part of the first tranche is released in June after the regular budget is passed in Parliament. It is, therefore, submitted that while there has been a delay in the release of funds, that has now been taken care at least for the financial year 2015-16 (with regard to the wage bill) and for the month of April (both wage bill and material component) in the financial year 2016-17. A B

20. With regard to implementing and extending the Scheme for an additional 50 days in drought affected States (over and above the guarantee of 100 days) we are informed by the Joint Secretary that in the drought affected States, employment is guaranteed for 150 days in a year and funds will be made available to every household whose adult members volunteer to do unskilled manual work under the Scheme. The extension of the Scheme for a period of 50 days over and above 100 days is therefore now not an issue. C D

Discussion and conclusions

21. A review of the NREG Act indicates that under Section 3(3) thereof after the work is done, the disbursement of wages shall be on a weekly basis and in any event within a fortnight after the date on which the work is done. However, if no work is provided to an applicant within 15 days, then as per Section 7 of the NREG Act the applicant shall be entitled to receive an unemployment allowance. Consequently, the NREG Act provides for a guarantee of employment, payment for the work within a week and in any event within a fortnight, and if employment is not provided then a payment of unemployment allowance. What if the payment of wages is delayed in the first instance? E F

22. The Guidelines on Compensation for delayed wage payment circulated by a letter dated 12th June, 2014 by the Ministry of Rural Development draws attention to paragraph 29 of Schedule II of the NREG Act which provides that the workers are entitled to receive 'delay compensation' at a rate of 0.05% of the unpaid wages per day for the duration of the delay beyond the sixteenth day of the closure of the Muster Roll. Guideline No.2 in this regard reads as follows:- G

A **“2. Compensation due to delay in payment of wages**

Para 29, Schedule II of MGNREGA 2005 has laid down a detailed procedure for establishing a delay compensation system. As per the system MGNREGA workers are entitled to receive delay compensation at a rate of 0.05% of the unpaid wages per day for the duration of the delay beyond the sixteenth day of the closure of the MR.”

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The relevant part of paragraph 29 of Schedule II of the NREG Act reads as follows:

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29. Wage payment (1) In case the payment of wages is not made within fifteen days from the date of closure of the muster roll, the wage seekers shall be entitled to receive payment of compensation for the delay, at the rate of 0.05% of the unpaid wages per day of delay beyond the sixteenth day of closure of muster roll.

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(a) Any delay in payment of compensation beyond a period of fifteen days from the date it becomes payable, shall be considered in the same manner as the delay in payment of wages.

(b) to (f) xxxx

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(2) Effective implementation of sub-paragraph (1) shall be considered necessary for the purposes of the section 27 of the Act.

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23. The meat of the matter lies in three issues: (i) Informal capping of funds through the Labour Budget and the ‘agreed to’ budget process; (ii) Delayed release of payments both for wages and materials; and (iii) Ineffective monitoring of the Scheme.

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24. As far as the informal cap on funds is concerned, no doubt a process has to be followed by the Government of India for the release of funds. The issue really is one of accepting a budget presentation as it is made by the State Government. The Government of India believes that the budget presentation cannot be accepted as it is and the Empowered Committee must consider the totality of facts and take a final decision.

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25. It seems to us that a comparative table on the annual demand made by the States and the final decision of the Empowered Committee

must be available, but the relevant figures have not been placed before us. However, during the course of hearing, it was the admitted position that there is a reduction from the demand made to the actual approval and that is based, *inter alia*, on the performance of the State Government in implementing the Scheme. This is also apparent from a reading of paragraph 7.1.1 of the Master Circular (FY 2016-2017) Guidance for Programme Implementation issued by the Ministry of Rural Development of the Government of India.⁵

26. There is, therefore, a chicken and egg situation – the release of funds by the Government of India is low because the performance of the State Government is poor and the performance of the State Government is poor because the release of funds by the Government of India is low. The suffering is of the unemployed unskilled manual labourer as an individual and the society as a whole.

27. Regarding the informal cap on funds, learned counsel for the petitioner sought to substantiate his contention by referring to the Minutes of the meeting of the Empowered Committee held on 21st March, 2016 for the State of Madhya Pradesh for FY 2016-17. Paragraph 4 of the Minutes is illustrative of the view of the Government of India and this records: “Under no circumstances, the State will cross the approved Labour Budget for 2016-17 without the prior approval of the Ministry.”

28. It seems to us that the petitioner is perhaps reading too much into these Minutes. The reason we say so is because the learned Additional Solicitor General has drawn out attention to a subsequent letter dated 11th April, 2016 sent by the Secretary in the Ministry of Rural Development to the Chief Secretary of about 10 States (including Madhya Pradesh) wherein it is categorically stated that: “the agreed to Labour Budget for 2016-17 does not imply that work cannot be provided beyond the Labour Budget if there is a genuine demand for work.” Also, in the fourth affidavit filed by the Union of India it is stated as follows:

“8. That there has been no restriction on registration of demand for work and states have been allowed to go beyond estimated labour budget in FY 2015-16. The labour budget is just a rough estimation of the demand and is one of the tools for financial management.

⁵ 7.1.1 Funds are released to the States/UTs normally in two tranches on the basis of agreed to Labour Budget (LB) and the performance of the States/UTs during the year till NEFS comes into effect.

A 9. That 13 States i.e. West Bengal, Uttarakhand, Odisha,
Meghalaya, Uttar Pradesh, Assam, Rajasthan, Nagaland,
Kerala, Sikkim, Gujarat, Punjab and Tripura have generated
persondays beyond the estimated labour budgets for FY
2015-16. These states include three drought affected states
B namely Odisha, Uttar Pradesh and Rajasthan.”

29. Keeping the above in mind and the submissions made, it appears
to us that there is no informal capping of funds although it does appear
that the Government of India is not prone to easily release funds for the
projects under the Scheme. This really takes us to the second issue
C namely the delayed release of payments both for wages and materials.

30. According to the petitioner delayed release of payments has
an adverse impact in the sense that it acts as a disincentive to a person
taking on any work under the Scheme. If a person does some work
under the Scheme and is not sure when he or she is likely to get the
payment, there will definitely be some reluctance to seek employment
D under the Scheme.

31. With reference to FY 2016-17 the Union of India states in the
fourth affidavit filed on or about 11th April, 2016 that an amount of
Rs.11,030 crore will be released to the States within one week subject to
certain conditions and the release will take care of the pending wage
E liability of Rs.7,983 crore (as on 31st March, 2016) pertaining to FY
2015-16. This is a clear admission on the part of Government of India
that huge amounts remain unpaid towards wages The unfortunate part
is that an amount of Rs.2,723 crore from this is with respect to 10 drought
affected States where the unemployed perhaps need their wages the
F most.

32. In *Sanjit Roy v. State of Rajasthan*⁶ this Court held that
providing labour for less than the minimum wage amounts to forced
labour and as such violates of Article 23 of the Constitution. It was said
by Justice Bhagwati as follows:

G “...where a person provides labour or service to another
for remuneration which is less than the minimum wage, the
labour or service provided by him clearly falls within the
meaning of the words “forced labour” and attracts the
condemnation of Article 23. Every person who provides

H ⁶ (1983) 1 SCC 525

labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated.”

What we are concerned with in the present case is not strictly payment less than the minimum wage but delayed payment to crores of people. We can understand delayed payment of a few days or weeks to a few people, but in this case it is delayed payment of a few weeks (if not more) to lakhs of people. Given the enormous number of persons involved, this is really unfortunate.

33. In *Sanjit Roy*, a strange submission was made by the State. It was submitted that it would not be possible to pay the minimum wage to persons undertaking famine relief work and to persons affected by drought and scarcity conditions since that would cripple the potential to provide employment to the affected persons. Rejecting this contention, Justice Bhagwati held:

“...when the State undertakes famine relief work with a view to providing help to the persons affected by drought and scarcity conditions, it would be difficult for the State to comply with the labour laws, because if the State were required to observe the labour laws, the potential of the State to provide employment to the affected persons would be crippled and the State would not be able to render help to the maximum number of affected persons and it was for this reason that the applicability of the Minimum Wages Act, 1948 was excluded in relation to workmen employed in famine relief work. This contention, plausible though it may seem is, in my opinion, unsustainable and cannot be accepted. When the State undertakes famine relief work it is no doubt true that it does so in order to provide relief to persons affected by drought and scarcity conditions but, nonetheless, it is work which enures for the benefit of the State representing the society and if labour or service is provided by the affected persons for carrying out such work, there is no reason why the State should pay anything less than the minimum wage to the affected persons.

A Whenever any labour or service is taken by the State from any person, whether he be affected by drought and scarcity conditions or not, the State must pay, at the least, minimum wage to such person on pain of violation of Article 23....”

B 34. Justice Pathak concurred with the view of Justice Bhagwati but preferred to rest his decision on a breach of Article 14 of the Constitution and not Article 23 thereof. Justice Pathak held:

C “The circumstance that employment has been given to persons affected by drought and scarcity conditions provides only the reason for extending such employment. In other words, the granting of relief to persons in distress by giving them employment constitutes merely the motive for giving them work. It cannot affect their right to what is due to every worker in the course of such employment. The rights of all the workers will be the same, whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere. The mere circumstance that a worker belongs to an area effected by drought and scarcity conditions can in no way influence the scope and sum of those rights. In comparison with a worker belonging to some other more fortunate area and doing the same kind of work, is he less entitled than the other to the totality of those rights? Because he belongs to a distressed area, is he liable, in the computation of his wages, to be distinguished from the other by the badge of his misfortune? The prescription of equality in Article 14 of the Constitution gives one answer only, and that is a categorical negative.”

E 35. It is quite clear, therefore, that when the rights of tens of thousands of people are affected by delayed payment of their legitimate dues, there is a clear constitutional breach committed by the State – be it the Government of India or a State Government.

G 36. As mentioned above, a worker is entitled to compensation @ 0.05% per day for delayed payment of the wages due. We are quite pained to note that the Government of India has made no provision for this compensation while releasing the wages for 2015-16 of Rs. 7,983 crores. This is extremely unfortunate and certainly does not behave a

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welfare State in any situation, more so in a drought situation. Social A
justice has been thrown out of the window by the Government of India.

37. To make matters worse, the Union of India has admitted in
the fourth affidavit that the material component of FY 2015-16 (as on
31st March, 2016) is Rs. 4,359 crore for the entire country which includes
the material liability of Rs. 1,995 crore in the 10 drought affected States. B
This amount, according to Government of India will be released in June
2016. Why should there be a delay in this?

38. We are unable to appreciate the unconscionable delay on the
part of the Government of India in the release of funds both under the
wage component as well as under the material component. It is quite C
clear, and there is no worthwhile justification forthcoming from the learned
Additional Solicitor General, that delay in payment of wages acts as a
disincentive to those persons who are intending to take the benefit of the
Scheme. We have not been given any explanation whatsoever why a
person would want to work without wages or at least work with an
uncertainty in timely receipt of wages. It just does not stand to reason. D

39. The Union of India has also stated in the fourth affidavit that
an amount of Rs. 3,047 crore will be released to the States for
implementing the Scheme in April 2016 and that this amount would be
inclusive of both the wage and material components. E

40. In terms of the Master Circular (2016-17) the first tranche of
the "agreed to" Labour Budget is required to be released in April 2016
(for the period ending in September). In terms of paragraph 7.1.2 of the
Master Circular the release would be made after adjusting for unspent
balance available with the Districts/States and considering the pending
liabilities if any.⁷ As is apparent from the fourth affidavit filed by the
Government of India the possibility of any unspent balance perhaps does
not exist but what does exist is the pending liabilities. Therefore, the
amount that is released in the first tranche would actually be much less
than the required amount for the first six months of the financial year
since the pending liabilities themselves are more than Rs. 12,000 crore. F
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⁷ 1st tranche is released to States/Districts in the month of April. The quantum of 1st
tranche is based on the number of person days projected by the State/UT for the first
six months of the year (up to September) in the Labour Budget. However, it would
not exceed 50 percent of the total person days agreed to in the Labour Budget. The
first tranche is released after adjusting unspent balance available with the districts/States
and considering the pending liabilities, if any. H

A Clearly the implementation of the Scheme in the first six months of the financial year 2016-17 would begin with a deficit and the actual amount required for the first six months of the financial year (even as per the “agreed to” Labour Budget) would not be fulfilled. In our opinion, this is hardly any encouragement to persons willing to take advantage of the Scheme.

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41. The fourth affidavit goes on to say that the first tranche will be released in two installments – the first installment being released in April 2016 which would apparently take care of the implementation of the Scheme for the month of April and the second tranche would be released in June 2016 after the regular budget is passed in Parliament.

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The reason given in the fourth affidavit for the release of the first tranche in two installments is because of the vote on account. It is a matter of common knowledge that the annual budget is presented every year on the last day of February and it naturally takes time for the budget proposals to be accepted by Parliament and hence the need for a vote on account.

D

That being so it is rather odd that the Master Circular proceeds on the basis that the entire quantum of the first tranche will be released in April 2016 – something that is apparently not possible. There is no mention of any vote on account in the Master Circular and to this extent an incorrect picture of the release of funds is held out. All that we can say is that this is an unfortunate way of implementing a social welfare Scheme intended for the benefit of unemployed persons.

E

42. We are informed by the Joint Secretary that the Labour Budget for 2016-17 is calculated on 314 crore person days of employment. This has been scaled down by the Empowered Committee and the “agreed to” Labour Budget for 2016-17 is calculated on 217 crore person days of employment. Therefore, (roughly) only 70% of the Labour Budget is accepted by the Empowered Committee based on the past performance of the States. On this basis, (roughly) about Rs. 20,000 crores ought to be released by the Government of India in the first tranche towards financial implementation of the Scheme. The amount actually released is only Rs. 3047 crores. The implicit assurance is that the balance amount of about Rs. 17,000 crores will be made over the States in June, 2016 in the second installment of the first tranche after the annual budget is approved by Parliament. We can only wait and hope.

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43. As far as the third issue of monitoring the Scheme is concerned the NREG Act makes adequate provision in this regard. Section 10 of

the NREG Act provides for constituting a Central Employment Guarantee Council (for short 'the CEGC').⁸ As per Section 11 of the NREG Act, the functions of the CEGC include, amongst others, establishing a central evaluation and monitoring system; advising the Central Government in all matters concerning the implementation of the NREG Act; monitoring the implementation of the NREG Act; and preparing annual reports to be laid before Parliament by the Central Government on the implementation of the Act. It is not clear to us whether the CEGC is in existence and whether any monitoring mechanism is in place. A visit to the official website of the NREG Act⁹ indicates that as of now there is no CEGC in place.

44. Similarly, the State Government is required to constitute a

⁸ **10. Central Employment Guarantee Council - (1)** With effect from such date as the Central Government may, by notification specify, there shall be constituted a Council to be called the Central Employment Guarantee Council to discharge the functions, and perform the duties, assigned to it by or under this Act.

(2) The headquarters of the Central Council shall be at Delhi.

(3) The Central Council shall consist of the following members to be appointed by the Central Government, namely:—

(a) a Chairperson;

(b) not more than such number of representatives of the Central Ministries including the Planning Commission not below the rank of Joint Secretary to the Government of India as may be determined by the Central Government;

(c) not more than such number of representatives of the State Governments as may be determined by the Central Government;

(d) not more than fifteen non-official members representing Panchayati Raj Institutions, organisations of workers and disadvantaged groups :

Provided that such non-official members shall include two chairpersons of District Panchayats nominated by the Central Government by rotation for a period of one year at a time :

Provided further that not less than one-third of the non-official members nominated under this clause shall be women :

Provided also that not less than one-third of the non-official members shall be belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes and Minorities;

(e) such number of representatives of the States as the Central Government may, by rules, determine in this behalf;

(f) a Member-Secretary not below the rank of Joint Secretary to the Government of India.

(4) The terms and conditions subject to which the Chairperson and other members of the Central Council may be appointed and the time, place and procedure of the meetings (including the quorum at such meetings) of the Central Council shall be such as may be prescribed by the Central Government.

⁹ nrega.nic.in

- A State Employment Guarantee Council under Section 12 of the Act.¹⁰ The duties and functions of the State Council include advising the State Government on all matters concerning the Scheme and its implementation in the State, monitoring the implementation of the NREG Act and preparing an annual report to be laid before the State Legislature by the State Government. Again we have not been informed of the existence of any
- B such State Council or whether the NREG Act is being faithfully implemented both by the Government of India and by the State Government.

45. At this stage, we may mention that the Joint Secretary in the

- C ¹⁰ **12. State Employment Guarantee Council** - (1) For the purposes of regular monitoring and reviewing the implementation of this Act at the State level, every State Government shall constitute a State Council to be known as the (name of the State) State Employment Guarantee Council with a Chairperson and such number of official members as may be determined by the State Government and not more than fifteen non-official members nominated by the State Government from Panchayati Raj institutions, organisations of workers and disadvantaged groups :
- D Provided that not less than one-third of the non-official members nominated under this clause shall be women :
- Provided further that not less than one-third of the non-official members shall be belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes and Minorities.
- (2) The terms and conditions subject to which the Chairperson and members of the State Council may be appointed and the time, place and procedure of the meetings (including the quorum at such meetings) of the State Council shall be such as may be prescribed by the State Government.
- E (3) The duties and functions of the State Council shall include—
- (a) advising the State Government on all matters concerning the Scheme and its implementation in the State;
- (b) determining the preferred works;
- F (c) reviewing the monitoring and redressal mechanism from time to time and recommending improvements;
- (d) promoting the widest possible dissemination of information about this Act and the Schemes under it;
- (e) monitoring the implementation of this Act and the Schemes in the State and coordinating such implementation with the Central Council;
- G (f) preparing the annual report to be laid before the State Legislature by the State Government;
- (g) any other duty or function as may be assigned to it by the Central Council or the State Government.
- (3) The State Council shall have the power to undertake an evaluation of the Schemes operating in the State and for that purpose to collect or cause to be collected statistics pertaining to the rural economy and the implementation of the Schemes and Programmes in the State.
- H

Ministry of Rural Development informed us that the Government of India has introduced a potentially exciting Scheme for prompt payment of wages to the persons availing the benefit of the Scheme. A system called the National Electronic Fund Transfer System or Ne-FMS system is in place in about a dozen States. The objective of this system is to ensure that the wage component under the Scheme is released directly to the account of the person concerned based on a Funds Transfer Order to be generated by the implementing agencies of the States. The benefit of the system is that the person will be assured of timely payment of wages after the pay order generation. We have been informed that the Ne-FMS system is in place in several States with effect from 12th April, 2016. Although it is early days, we are told by the learned Additional Solicitor General that the system is working quite satisfactorily, although this is disputed by the petitioner who says that the system was first introduced in Kerala from 1st January, 2016 but even then there are huge delays in making the payment of wages.

Directions

46. On the basis of the provisions of the NREG Act and the material placed before us, it is appropriate that the following directions are issued:

1. The State Governments ought to present a realistic budget which should then be pragmatically considered by the Empowered Committee. This procedure will avoid any unnecessary controversy between the State Governments and the Government of India about the release of funds under the Scheme.

2. The Government of India is directed to release to the State Governments adequate funds under the Scheme in a timely manner so that the 'workforce' is paid its wages well in time. It is regrettable that the pending wage bill for 2015-16 was cleared only during the pendency of this petition. The Government of India must shape up in this regard.

3. The Government of India is directed to ensure that compensation for delayed payment is made over to the workers whose wages have been delayed beyond 15 days as postulated by paragraph 29 of Schedule II of the NREG Act and the Guidelines for Compensation formulated pursuant thereto.

4. Both the State Governments and the Government of India are directed to make all efforts to encourage needy persons to come forward

A and take advantage of the Scheme. A success rate below 50% is nothing to be proud of.

B 5. The Government of India is directed to ensure that the Central Employment Guarantee Council is immediately constituted under Section 10 of the NREG Act. In any event, the Central Employment Guarantee Council should be constituted within a maximum of 60 days from today.

C 6. The Government of India is directed to proactively request the State Governments to establish the State Employment Guarantee Council under Section 12 of the Act within a period of 45 days from today. The effective implementation of the NREG Act will certainly not be possible unless these monitoring and reviewing authorities faithfully and urgently established by the Government of India and the State Governments.

D 7. Since the NREG Act is a social welfare and social justice legislation the Government of India must ensure that its provisions are faithfully implemented by all concerned.

Nidhi Jain

Directions issued.