

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2020
(PUBLIC INTEREST LITIGATION)

MEMO OF PARTIES

IN THE MATTER OF:

1. ADIVASI DAYA, .PETITIONER NO.1

2. PETITIONER NO. 2
GATHAN
R,

1. UNION OF INDIA,
THROUGH: SECRETARY, BOUT LAW
MINISTRY OF RURAL DEVELOPMENT
KRISHI BHAVAN
NEW DELHI-110001RESPONDENT NO. 1

2. NATIONAL DISASTER MANAGEMENT AUTHORITY
THROUGH: HOME SECRETARY,
CHAIRPERSON OF NATIONAL EXECUTIVE COMMITTEE
MINISTRY OF HOME AFFAIRS
NORTH BLOCK
NEW DELHI-110001RESPONDENT NO. 2

WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA TO PROTECT THE RIGHT TO
HEALTH/LIFE AND LIVELIHOOD OF ALL ACTIVE
REGISTERED JOB CARD HOLDERS UNDER MAHATMA
GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE
ACT, 2005, DURING THE PERIOD OF 21 DAY NATIONAL
LOCKDOWN

To,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES
OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition of the
Petitioners above-named

MOST RESPECTFULLY SHOWETH:-

1. That the present petition is being filed in Public Interest to protect the fundamental rights to health and livelihood guaranteed under Article 14 and Article 21 of the Constitution of India of over 7.6 crore active job card holders under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (hereinafter, MGNREGA Act). Active job card holders are those who have been seeking work and coming to work under MGNREGA over the past two years. In all, over 12.2 crore workers work in MGNREGA every year. Whereas, by order dated 24.03.2020 issued under Section 6 and Section 10 of the National Disaster Management Act, 2005, and binding on all Ministries/Instrumentalities of the Central Government and State Governments, the Central Government has placed the entire country under a National Lockdown with requisite exceptions only for essential services/goods to protect lives/health of all citizens of the country by ensuring social/physical distancing. The Consolidated Guidelines as of 28.03.2020 issued under the order of 24.03.2020 make no exception for works performed under the MGNREGA Act.

In violation of the above binding order/guidelines, Ministry of Rural Development has directed the State Governments to continue with MGNREGA works wherever possible putting:

a. At risk health/lives of MGNREGA workers as it is not possible to ensure social/physical distancing in the nature of the works performed. The MGNREG Act and corresponding regulations provide detailed protocols for carrying out MGNREGA works. For instance the process of demanding work contained in Schedule II of the Act and the 'Minimum Features of the Employment Guarantee Scheme' contained in Schedule I of the Act, describe the process and workflow by which demand for work, worksite management, muster roll maintenance and oversight need to take place. For instance, Section 15 and 16 of Schedule I of the Act makes it clear that social-distancing is practically impossible in the way works are to be managed as per the Act. Being largely construction work, it requires workers to handle pass material from one person to another. People come to work together from different households whose attendance needs to be taken on a daily basis. Pertinently, Covid-19 is now present in almost all districts of the country which is a serious health hazard for these vulnerable citizens particularly because the number of persons seeking work is bound to increase as many persons otherwise employed in other sectors are desperate for work/wages (including migrants who have returned from various cities/places). This is arbitrary and violative of their Article 14 rights as other non-essential workers have been allowed to protect their health by staying home and ensuring physical distancing.

b. At risk is also the livelihood of MGNREGA workers as despite an increased demand and need for work, it is in fact not possible to keep any NREGA work open under lockdown conditions. Transport is available only for essential services and the police have been instructed to prevent any movement and congregation of

any person associated with an activity not listed as an essential service. MGNREGA has not been listed as an essential service. Moreover, violation of the aforementioned 24.03.2020 lockdown order is in itself a punishable offence as reiterated and clarified by order dated 29.03.2020 issued under the National Disaster Management Act, 2005.

The present petition therefore *inter alia* prays that Respondents issue uniform guidelines to all States/Union Territories that for the entire duration of the lockdown at least all active and registered job card holders under the MGNREGA Act will be deemed to be at work and accordingly make full payment of their wages at the earliest. Such a direction will be in consonance with directions dated 20.03.2020 of Ministry of Labour whereby it had directed all Public/Private establishments and all Chief Secretaries of States that during the Coronavirus crisis all workers will be "*deemed to be on duty*" even if they are absent from work and should be paid full wages and object/spirit of order dated 29.03.2020 of National Disaster Management Authority/Central Government whereby it has directed that "*all the employersshall make payment of wages of their workers....on the due date without any deductions for the period their establishments are under closure during the lockdown*"

1A. About the Petitioners

Petitioner No. 1, Ms. Aruna Roy, is a social & democratic activist. She was a part of the Indian Administrative Services from 1968 to 1975. She resigned to work directly with people not merely for their rights to access services, but to claim the constitutional rights of equality and justice. Led by Aruna Roy in 1987, after two intense local struggles for land and minimum wages, the workers and peasants formed the Mazdoor Kisan

Shakti Sangathan in 1990. The MKSS and its collective campaigning helped ensure the passage of the Right to Information (RTI) Law and National Rural Employment Guarantee Act (NREGA, now MGNREGA) by the Indian Parliament in 2005. From 2004 - 2006, she was a member of the National Advisory Council (NAC), set up by the UPA Government. She joined the second NAC set up in 2010, as a member from 2010-2013. Apart from her involvement with campaigns for the rights to information and work she has spoken out against attacks on religious minorities and the right to free speech and expression. She was a member of the 'Concerned Citizens Tribunal', which investigated the organized violence and killing of innocent people in the state of Gujarat, India in 2002. She has published extensively on the rights to information, right to work, civil liberties, minority rights, free speech and the right to dissent.



Petitioner No 2, Mr. Nikhil Dey, is a social activist. He, along with many others helped found the Mazdoor Kisan Shakti Sangathan (MKSS). Since 1990, he has been a full time worker of the MKSS, and has been involved in struggles of the poor for justice, including grass root struggles for land and the payment of minimum wages. He has been a founding member of peoples platforms like National Campaign for People's Right to Information (NCPRI), and the Soochana Evam Rozgaar Adhikar Abhiyan (SR Abhiyan) who put together 'peoples drafts' of the Right to Information and Employment Guarantee Bills, and have consistently worked for their effective implementation. Nikhil Dey is also part of the effort by peoples movements to build institutions of participatory democracy. He has been integrally involved in large state wide campaigns for peoples monitoring of education (*Shiksha Ka Sawaal*) in

Rajasthan in 2016, and the SR Abhiyan is currently planning a *Swasthya Ka Sawaal* Campaign in Rajasthan. To make progress in the journey from transparency to accountability, the MKSS and SR Abhiyan are currently in the midst of a campaign for the enactment of a 'social accountability' legislation at the State and National level. He has been a member of the Central Employment Guarantee Council (CEGC) and of the State Employment Guarantee Council of Rajasthan. He is a Co-convener of the NCPRI, and is currently a member of the Rajasthan State Audit Advisory Board. He was a member of the Steering Committee of the Multilateral Open Government Partnership (OGP) from 2011 to 2014. He is currently an oGP Envoy.

The petitioners have no personal interest, or private/oblique motive in filing the instant petition.

There is no civil, criminal, revenue or any litigation involving the petitioner, which has or could have a legal nexus with the issues involved in the PIL.

The petitioners have not made any representations to the respondent in this regard because of the extreme urgency of the matter in issue.

That the instant writ petition is based on the information/documents which are in public domain.

The petitioners have means to pay costs, if any.

That no other petition has been filed by the petitioner pertaining to this matter before any other court or authority.

Facts Briefly

3. That on/by:

- i. 05.02.2020: WHO states there is no known treatment for Coronavirus.
- ii. 11.03.2020: WHO declared Coronavirus as a 'Pandemic'.
- iii. 19.03.2020: Prime Minister's address to the nation calling for Janta Curfew on 22.03.2020.
- iv. 20.03.2020: By order dated 20th of March, 2020, Ministry of Labour directed to all Public and Private Establishments, all 'Employers Associations', all Chief Secretaries of States/U.T.'s, & Ministry of Housing & Urban Affairs that,

"the world is facing a catastrophic challenge due to outbreak of Covid-19...in view of the above, there may be incidence that employee's/worker's services are dispensed with on this pretext or the employees/workers are forced to go on leave without wage/salaries....All the Employers of Public/Private Establishments are advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from their job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction of wages for this period. Further, if the place of employment is to be made non-operation due to Covid 19, the employees of such unit will be deemed to be on duty" A copy of direction dated 20.03.2020 of Ministry of Labour to all Chief Secretaries of States/UT's is attached hereto as **Annexure P1 at Pages 24 to _____**

- v. 22.03.2020: *Janta Curfew*.
- vi. 24.03.2020: By order dated 24.03.2020, issued under Sections 6 and 10 of the Disaster Management Act, 2005, the country was placed under a 21 day National Lockdown. By Clause 15 of

Guidelines annexed to the order all movement of people was prohibited. The order clearly advises social/physical distancing for all those who are not engaged in provision of essential services/goods. The order correctly makes no exceptions for works performed under MGNREGA Act as they are not of essential nature. The decision to continue MGNREGA works exposing the workers to Coronavirus is violative of their right to health. Asking them to appear for work is violative of lockdown conditions under which no transport is available for non-essential personnel and their very movement is a punishable offence. A copy of order dated 24.03.2020 promulgated under Section 6 and Section 10 of the Disaster Management Act, 2005, along with comprehensive guidelines issued as of 28.03.2020 is annexed hereto as **Annexure P2 at Pages 25 to 29**

vii. 27.03.2020: That in violation of the aforementioned order which is binding on all Central Ministries/State Governments, Ministry of Rural Development via orders dated 27.03.2020 and successive orders thereafter has directed that works under MGNREGA be continued even when they are not of an essential nature risking the lives of all workers. On 27.03.2020, Secretary of Ministry of Rural Development wrote to all States,

"3 b) Focus of MGNREGS works may be on individual beneficiary oriented works which directly benefits SC, ST, and women headed households as well as small and marginal farmers and other poor household. However, close consultation of the State as well as district authorities would be necessary to ensure that lockdown conditions are not violated and norms of social distancing are scrupulously followed"

Instead of using MGNREGA as a platform to deliver wages to its registered workers, the government chose to pass a vague set of instructions, indicating that MGNREGA could continue, while at the same time binding the States and implementing agencies to enforce lockdown orders and 'social distancing'.

A copy of orders dated 27.03.2020 and 28.03.2020 from Ministry of Rural Affairs to all Chief Secretaries of States asking them to continue MGNREGA works even in the face of lockdown are annexed hereto as **Annexure P3 at Pages 30 to 33**

A copy of order dated 28.03.2020 issued by State of Rajasthan pursuant to order dated 27.03.2020 of Ministry of Rural Affairs requiring workers to be present for work if they want to avail wages even in the face of lockdown is annexed hereto as **Annexure P4 at Pages 34 to 40**

viii. 29.03.2020: Under Section 6 and Section 10 of National Disaster Management Act, 2005, order issued directing that,

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"all the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their work places, on the due date, without any deduction for the period their establishments are under closure during the lockdown"

It is submitted that the aforementioned order is binding on all Central Government Ministries and all State Governments. A copy of order dated 29.03.2020 issued under Section 6 and Section 10 of Disaster Management Act, 2005, is annexed hereto as **Annexure P5 at Pages 41 to 42**

4. That MGNREGA is a law that entitles any rural Indian household to seek and obtain 100 days of employment in a year at the specified wage rate. In its preamble it states,

“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.”

5. That there are 7.6 crore active job cards in the country and 12.2 crore workers who work every year under MGNREGA (active job card holders are those who have been seeking work and coming to work under MGNREGA over the past two years).

6. That in addition to serving as a critical mechanism of social and income security in rural areas to nearly 12 crore workers, the MGNREGA is also uniquely placed to serve as a protective mechanism for the rural poor particularly in periods of unemployment, underemployment and distress. This is evident from the Government of India's own measures to use MGNREGA :

i. as a means of overcoming hunger and unemployment caused due to drought and thereby providing an additional 50 days of employment to every rural household in drought affected areas. A copy of order dated 18.12.2019 issued by Government of India to Government of Karnataka extending entitlement of MGNREGA per household by 50 days on account of drought is attached as

Annexure P6 at Pages 43 to 61

ii. as a means of countering loss of livelihoods due to natural calamities by providing an additional 50 days of employment to every rural household. A copy of order dated 11.07.2013 issued by Government of India to Government of Uttarakhand to use MGNREGA in rebuilding and reconstruction activities post the 2013 floods is attached as **Annexure P7 at Pages 62 to 63**

7. That the Covid-19 crisis and 'social distancing' has made MGNREGA in its current form, a big challenge to implement. When the lockdown was announced, this programme became completely untenable in the form that it is, for the following reasons:

- i. The message from the Prime Minister downwards was that everyone was to stay at home and anyone coming out of the house would compromise the impact of the lockdown. Therefore, only essential services were to carry on during the lockdown period.
- ii. The lockdown order, both from the Centre and the States, make it very clear that breaking lockdown norms would be considered a punishable offence and particular categories were identified for exemption. MGNREGA, not being an "essential service", was not one of them.
- iii. The government has also ordered all non-essential government and private work to be brought to a halt. The government has ordered that full wages would be paid by employers to their employees during this period so as not cause them distress.

8. However, strangely enough, instead of using MGNREGA as a platform to deliver wages to its registered workers, the government chose to pass a vague set of instructions, indicating that MGNREGA could continue,

while at the same time binding the States and implementing agencies to enforce lockdown orders and 'social distancing'.

9. That this is impossible to follow for the following reasons:

- i. The MGNREGA requires many workers from different families to collectively work on public works.
- ii. The work itself requires the passing of construction material from one person to another and working together. Proximity amongst workers on a MGNREGA worksite is inevitable.
- iii. Seeking work under MGNREGA also requires people to come out of their homes, deposit their work applications with panchayat officials and obtain dated receipts. There are a number of human interactions which are required by the time the person is allocated and given work.
- iv. Work is supposed to be measured by mates on a daily basis and supervised as it carries on. Payments are made on the basis of measurements taken by the engineer once in a week or fortnight. Therefore, implementation officials also require to visit the worksites on a routine basis
- v. Work is supposed to be provided in a radius anywhere 5 kilometres from home and work carries on for 8 hours a day, including lunch break.

10. That as can be seen from the preceding paragraph, it is impossible to follow Covid-19 safety measures, strictly observe lockdown instructions, and carry on with NREGA work as envisaged by the Ministry of Rural Development.

11. Despite the challenge, MGNREGA is a programme that is meant to be a lifeline to rural workers during this kind of distress circumstances. It would be completely unfair to not enable MGNREGA to provide the support that it is designed to give when rural workers are facing the country's worst challenge of unemployment and limited access to money and foodgrains. It is imperative that MGNREGA workers continued to get their wages through the crisis caused due to the spread of COVID 19, and particularly during the period that the lockdown is enforced. This is required to be done to implement the Government's own instructions issued on 29th March 2020 which clearly stated that "*all the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their work places, on the due date, without any deduction for the period their establishments are under closure during the lockdown*". As the MGNREGA is an "*employment guarantee*" where the government is the employer, it is obvious that it is duty bound to abide by its own legal mandate. The Government can only effectively enforce this order, if it does so itself.

14. That in light of all the facts stated above, the petitioner's prayer is for the Hon'ble Supreme Court to direct the respondents to *inter alia* direct that at least all active job card holders under MGNREGA over the past one year will be deemed to be on duty during the 21 day lockdown period and accordingly direct them to make payment of wages without deductions urgently.

GROUND

A. Because requiring non-essential workers to risk their health/ lives by reporting for work to earn their wages under lockdown conditions when transport is not available, and police have

instructions to prevent people without passes or specifically exempted from activity outside their homes, and where a violation of the lockdown in itself is a punishable offence - it is a violation of their Right to Health/ Life and Right to Equality.

- B. Because orders dated 24.03.2020 and 29.03.2020 issued under Sections 6 and Section 10 of National Disaster Management Act, 2005, are binding on all Central Government Ministries and State Governments, MGNREGA works have not been classified as of a "*essential nature*"
- C. Because asking MGNREGA workers to report for work risks exacerbating the public health crisis and further spreading the coronavirus.
- D. Because the MGNREGA in its Statement of objects and reasons defines this as "... *a pioneering endeavour to secure wage employment for the poor households in the rural areas as a guaranteed entitlement.*" Further the Statement of Objects and reasons stipulate that the "*objective of the legislation is to enhance the livelihood security of the poor households in rural areas of the country.*"
- E. Because Ministry of Labour by order dated 20.03.2020 directed all Public/Private Employers and Chief Secretaries of all States/U.T.'s to ensure that if any contract/casual worker is absent from duty due to Covid-19, she will be "*deemed to be duty*" and she will be paid "*full wages without any deductions*" whatsoever. These directions have been further reiterated in orders dated 29.03.2020 issued under National Disaster Management Act, 2005, and are binding on all concerned.
- F. Because Section 22(1)(a) of the MGNREG Act mandates that the Central Government shall pay the entire wage component and the

Central Government has called a nationwide lockdown it must be the duty of the Central Government to follow the orders of Ministry of Labour dated 20.03.2020 to pay full wages without any deductions.

G. Because any job card holder may choose to demand work at any time and this is a particular period of acute crisis, it should be assumed that all active job card holders are potential workers and need employment assistance at this time.

PRAYER

In these circumstances, it is therefore most respectfully prayed that your Lordships may graciously be pleased to:

- I. Issue writ of Mandamus or any other appropriate writ, order, or direction to respondents to deem all active MGNREGA registered households as on duty for the entire duration of the lockdown period starting from 24.03.2020 and pay their full wage on a time rate basis accordingly.
- II. Issue writ of Mandamus or any other appropriate writ, order, or direction to the Respondents to issue individual temporary job cards within 15 days to all migrants who have returned from the cities to their native villages.
- III. Issue writ of Mandamus or any other appropriate writ, order, or direction to the Respondents to draw up interim guidelines, and/or an amended scheme under section 4 of the Act, and appropriately amend the schedule of works under schedule 1 of the act for implementing MGNREGA during the FY 2020-21 once the lockdown period is over, to

respond to this crisis in a sustainable manner in view of the lasting threat of waves of the virus.

- I. Issue writ of Mandamus or any other appropriate writ, order, or direction to the Respondents to increase the entitlement of households from 100 days of work to 200 days per household to support rural livelihoods during the emerging economic crisis.
- II. Pass such other orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present petition

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY



FILED BY:

(PRASHANT BHUSHAN)

ADVOCATE ON RECORD FOR PETITIONERS

NEW DELHI
DATED: 03.04.2020

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. of 2020

IN THE MATTER OF:

ARUNA ROY & ANR

....PETITIONERS

VERSUS

UNION OF INDIA & ANR

....RESPONDENTS

AFFIDAVIT

I, Aruna Roy, d/o Elupai Doraiswami Jayaram, r/o Tilonia, Bandersindri, Ajmer, Rajasthan - 305816, do hereby solemnly affirm and state on oath as under:

1. That I am the Petitioner in the aforementioned writ petition and being familiar with the facts and circumstances of the case, I am competent and authorized to swear this Affidavit. I have been authorised to file this affidavit on behalf of Petition no. 2.
2. That I have read and understood the contents of the Synopsis and List of Dates (Page B to G), Writ Petition (Page I to 16), and all accompanying Miscellaneous Applications. I state that the facts therein are true to the best of my knowledge, belief and nothing material has been concealed therefrom.
3. The annexures are true copies of their respective originals.
4. The source of the information is government orders and media stories which are available in the public domain.
5. That this petition is only motivated by public interest. I affirm that I have no personal interest in this matter.

6. That I have done whatsoever enquiry that was possible and I state that no relevant facts in my knowledge have been withheld.



DEPONENT

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge; that no part of it is false and that nothing material has been concealed therefrom.

Verified at New Delhi on 2nd day of APRIL 2020.

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DEPONENT