

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) DIARY NO. 10947 OF 2020

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

JAGDEEP S.CHHOKAR & ANR.

...PETITIONERS

VERSUS

UNION OF INDIA

...RESPONDENTS

SUPPLEMENTARY AFFIDAVIT

ON BEHALF OF THE PETITIONERS

1. That I am the Petitioner No.1 in the aforementioned writ petition and being familiar with the facts and circumstances of the case and being authorized by the Petitioner No.2 to file the instant Supplementary Affidavit, I am competent and authorized to swear this Supplementary Affidavit.
2. That Petitioners have filed the instant writ petition in public interest under Article 32 of the Constitution of India in the wake of the COVID-19 pandemic, for the enforcement of fundamental rights of the

migrant workers as enshrined under Article 14, 19 and 21 of the Constitution of India. Vide notification/order dated 14.04.2020, the period of national lockdown (which came into force on 25.03.2020) was further extended till 03.05.2020. Now, vide Order No.40-3/2020-DM-I (A) dated 01.05.2020, issued by the Ministry of Home Affairs of the Government of India, the national lockdown has been further extended for a period of 14 days with effect from 04.05.2020 and the Union Home Secretary, in his capacity as the Chairperson, NEC has issued new guidelines on lockdown measures which will come into effect from 04.05.2020 for a period of two weeks for strict implementation. A copy of the Order No.40-3/2020-DM-I (A) dated 01.05.2020 issued by the Ministry of Home Affairs of the Government of India and new guidelines on lockdown measures are annexed hereto and marked as **ANNEXURE P-19 (Pg. 12 to 23)**.

3. That the instant writ petition had been filed by the Petitioners herein seeking a writ, order or direction to the Respondent to allow migrant workers across the country to return to their hometowns and villages after conducting necessary testing for COVID-19 and to arrange for their safe travel by providing necessary transportation to this effect. It is pertinent to mention herein that vide Order No.40-3/2020-DM-I (A) dated 29.04.2020, issued by the Ministry of Home Affairs, Government of India, the movement of migrant workers, pilgrims,

tourists, students and other persons who are stranded at different places has been allowed. As per the Order dated 29.04.2020:

“Sub-Clause (iv) under Clause 17 on Movement of persons:

- iv. Due to lockdown, migrant workers, pilgrims, tourists, students and other persons are stranded at different places. They would be allowed to move as under:*
 - a. All States/UTs should designate nodal authorities and develop standard protocols for receiving and sending such stranded persons. The nodal authorities shall also register the stranded persons within their States/UTs.*
 - b. In case a group of stranded persons wish to move between one State/UT and another State/UT, the sending and receiving States may consult each other and mutually agree to the movement by road.*
 - c. The moving person (s) would be screened and those found asymptomatic would be allowed to proceed.*
 - d. Buses shall be used for transport of groups of persons. The buses will be sanitized and shall follow safe social distancing norms in seating.*
 - e. The States/ UTs falling on the transit route will allow the passage of such persons to the receiving State/ UT.*
 - f. On arrival at their destination, such persons (s) would be assessed by the local health authorities, and kept in home quarantine, unless the assessment requires keeping the persons (s) in institutional quarantine. They would be kept under watch with periodic health checkups. For this purpose, such persons may be encouraged to use AarogyaSetu app through which their health status can be monitored and tracked.”*

A copy of the Order No.40-3/2020-DM-I (A), dated 29.04.2020, issued by the Ministry of Home Affairs, Government of India is annexed hereto and marked as **ANNEXURE P-20 (Pg. 24 to 25)**.

4. That whereas the Home Ministry's Order dated 29.04.2020 mentioned buses/road to be the mode of transportation, on 01.05.2020, the Indian Railways has rightly begun operating 'Shramik Special' trains to transport these people back to their homes. As per the PIB notification 01.05.2020, the Indian Railways will start Shramik Special Trains to move migrant workers, pilgrims, tourists, students and other persons stranded at different places due to lockdown and these special trains will run from point to point on the request of both the concerned State Governments. A copy of the PIB notification dated 01.05.2020 is annexed hereto and marked as **ANNEXURE P-21 (Pg. 26 to 27)**.

5. That in the second phase of the national lockdown too, the restriction imposed on the return of the migrant workers led to numerous instances of outburst and protests amongst all kinds of migrant workers, including those living in shelter homes/ relief camps as well as those stuck in their rented accommodations, urging to go back to their hometowns and villages. The same has been reported widely in news media.

6. That as per a recent report, dated 01.05.2020, titled “*32 Days and Counting: COVID-19 Lockdown, Migrant Workers, and the Inadequacy of Welfare Measures in India*”, published by Stranded Workers Action Network (SWAN), based on the interaction with 1,531 groups of workers (around 16,863 people), it has come to light that around 50% workers had rations left for less than 1 day which has remained unchanged since the first phase of the lockdown. Further, since the national lockdown began, 4 out of 5 workers who reached out do not have access to government rations while 68% still do not have access to cooked food. The report further states that with no cash relief for migrants, 64% have less than Rs. 100 left with them and that more than 97 percent (out of 10,383) have not received any cash relief from the government. A copy of the report, dated 01.05.2020, titled “*32 Days and Counting: COVID-19 Lockdown, Migrant Workers, and the Inadequacy of Welfare Measures in India*”, published by Stranded Workers Action Network (SWAN), is annexed hereto and marked as **ANNEXURE P-22 (Pg. 28 to 77)**.

7. That even after passing of the Home Ministry’s order dated 29.04.2020, certain vital issues are have been overlooked by the Government.As per the Order dated 29.04.2020, “*In case a group of stranded persons wish to move between one State/UT and another*

State/UT, the sending and receiving States may consult each other and mutually agree to the movement by road. It is pertinent to mention herein that as per news reports some states have already begun sending the migrants to their native places. However, it is submitted by the Petitioners herein that vide Order dated 29.04.2020, the Ministry of Home Affairs has left it upon the States to allow the travel of migrants to/from other states or not because for travel between two states both the states should agree. It is submitted that all the migrant workers who wish to go back to their native hometowns and villages should be allowed to go back after screening as a matter of right and no migrant desirous of travelling back to his/her home should be left behind. As *vide* order dated 01.05.2020, the national lockdown has already been extended for a period of 14 days with effect from 04.05.2020 and there is possibility of more such extensions, the right of migrants to go back to the native places should not be dependent on the States' willingness and it should be the centre's obligation to allow their travel.

8. It has come to light that the Centre is taking a narrow view of the category of people who are eligible for travel under Home Ministry's Order dated 29.04.2020 and resultantly, many migrant workers who may not be living in shelter homes/relief camps and might be stuck in

rented accommodations may be excluded from the Centre's definition of the word 'stranded' qua the order dated 29.04.2020. As per a news report dated 01.05.2020, titled "*States prepare to bring migrant workers home*" published by the Hindustan Times, it has been reported that "*The Centre, however, has indicated that a careful reading of the home ministry guidelines will reveal that there is an operative word which describes its scope -- stranded. A top government official, who is a part of the decision-making process, said that the order had made it clear that it applied to those workers, pilgrims, students and others who were stranded -- and it was not a "free for all". "If a worker is at home, in say Delhi or Gurugram, where he works, it should not be counted as stranded."* This reading of the order means that arrangements should be primarily made for around 1.5 million people, who are currently housed in thousands of camps. The official quoted above said that this was conveyed to chief secretaries by cabinet secretary Rajiv Gaubain a meeting last Sunday. "*If the situation appears to be getting out of hand, the Centre can change the rules again," he warned.*" A true typed copy of the news report dated 01.05.2020, titled "*States prepare to bring migrant workers home*" published by the Hindustan Times is annexed hereto and marked as **ANNEXURE P-23 (Pg. 78 to 82)**.

9. It is submitted by the Petitioners herein that all the migrant workers who wish to go back to their hometown/villages, including those who are living in shelter homes/relief camps as well as those who might be stuck in rented accommodations, must be treated as 'stranded' for the purpose of Home Ministry's order dated 29.04.2020 and their travel by trains or buses should consequently be facilitated free of cost by the central government.
10. It is emerging that migrant workers are being charged to take buses. In a news report, dated 01.05.2020, with regard to buses arranged for migrant workers, titled "*Steep ticket price makes migrant workers' journey home arduous*" published by The Hindu, it has been reported that: "*A senior KSRTC official explained that the trips were being considered as contract carriage engaged by private parties. "Of the 55 seats, we are allowing only 30 passengers. The ticket price is being calculated to ensure the cost of the trip — ₹39/km calculated for a round trip and toll rates — is equally borne by 30 passengers," he explained. It essentially means, a passenger travelling on these trips will have to bear the cost of not only 15 seats kept vacant to ensure social distancing, but also of the return trip, which results in the ticket price being more than double the usual.*" A true typed copy of the news report, dated 01.05.2020, titled "*Steep ticket price makes migrant workers' journey home arduous*" published by The Hindu is annexed hereto and marked as **ANNEXURE P-24 (Pg. 83 to 85)**.

11. It has been reported that the Indian Railways is actually hiking its fare by 50 rupees per passenger. A true typed copy of the news report, dated 02.05.2020, titled "*Extra charges of ₹50 per passenger on special trains, says Indian Railway*", published by The Hindu is annexed hereto and marked as **ANNEXURE P-25 (Pg. 86)**.
12. That the migrants are being required to pay exorbitant fees as train fares in order to go back to their homes. On 02.05.2020, the Ministry of Railways issued as circular and as per Clause 11(c) regarding the Sale of Tickets - "*The local state government authority shall handover the tickets to the passengers cleared by them and collect the ticket fare and hand over the total amount to Railways.*" A copy of the circular, dated 02.05.2020, issued by the Ministry of Railways is annexed hereto and marked as **ANNEXURE P-26 (Pg. 87 to 92)**.
13. That migrants are being required to pay around Rs. 800 as train fares and the same is highly unjustified. In a news report dated 03.05.2020 titled "*Cash-strapped migrants forced to pay for passage back home*" it has been reported by The Hindu that "*The other key obstacle is that of the fare. With no income for more than a month, migrant workers have been forced to shell out money for their transport*" Further, it has been reported that "*Activists have slammed the government for making the workers bear the cost of both the travel and the medical check-up. If the government can bring back people who are stuck abroad for free, why can't they transport*

these workers back home for free,” asked Lara Jesani of People’s Union of Civil Liberties. “The government should bear this cost as it is part of rescue and rehabilitation,” she said. The workers who boarded the train from Bhiwandi to Gorakhpur paid about ₹800 for a ticket.” It is submitted that migrants have been stranded for no fault of their own, with zero earnings and not financial support. Therefore, it must be made clear that the Railways and the states would not be charging the migrant workers for the train and bus travel being arranged for them. A true typed copy of the news report, dated 03.05.2020, titled “*Cash-strapped migrants forced to pay for passage back home*” published by The Hindu is annexed hereto and marked as **ANNEXURE P-27 (Pg. 93 to 95)**.

14. That on 03.05.2020, the Ministry of Home Affairs (MHA) in a letter to Chief Secretaries and Administrators clarified about the movement of distressed stranded persons and shockingly, in this clarification, the MHA has given a very narrow definition of stranded migrants by including only those who had moved from their native places just before the lockdown period but could not return to their native places on account of restrictions placed on movement of persons and vehicles as part of lockdown measures. It is common knowledge that a very large number of migrants, including labourers, street vendors, maids, factory workers etc., stay in their cities of migration for months and thus, such a narrow definition would exclude millions who have lost all income and savings and wish to go back

to their native villages. Thus, it is submitted by the Petitioners herein that this Hon'ble Court may direct the Centre that all migrants should be allowed to travel back to their native hometowns and villages. A copy of the Ministry of Home Affairs' letter, dated 03.05.2020, to Chief Secretaries and Administrators is annexed hereto and marked as **ANNEXURE P-28 (Pg. 96 to 97)**. A true typed copy of the news report, dated 04.05.2020, titled "*Covid-19: Inter-state travel allowed only for 'distressed' workers, students, Centre tells states*", published by The Scroll, is annexed hereto and marked as **ANNEXURE P-29 (Pg. 98 to 99)**.

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 this 4th day of May, 2020.

DEPONENT