

W.P. No.6435 of 2020

CJ / BVNJ:
21.05.2020
(Through Video Conferencing)

ORDER

The written submissions of the State have been filed today morning. Apart from taking a technical stand in the written submissions that the issue which is subject matter of the order dated 18th May, 2020 has been concluded by the Apex Court, the stand of the State Government is that it is not in a position to pay the train fare in respect of the migrant workers who wish to travel to their respective States by Shramik special trains. There is a vague submission made in paragraph 14 that so long as the migrants are living in the State and the present crisis continues, the State will continue to take care of the interests of the migrants and every effort will be made to ensure that they find vocation within the State. It is further stated that if the migrants wish to leave the State, the Government will not impose any restriction for such travel.

2. So far as the Government of India is concerned, the learned Additional Solicitor General of India who is present through

video conferencing hearing, has reiterated the stand taken by the Government of India in the memo dated 16th May, 2020. He states that there is an order dated 19th May, 2020 passed by the Ministry of Home Affairs in exercise of the powers conferred under clause (l) of sub-section (2) of Section 10 of the Disaster Management Act, 2005 by which a new Standard Operating Protocol for movement of stranded workers by trains has been laid down. He pointed out that as per the earlier protocol, it was necessary that the State from which the migrants wished to travel and the State to which the migrants intended to travel must reach an agreement. He states that in the Standard Operating Protocol notified on 19th May, 2020, that condition is no longer there.

3. It is not clear whether the Railways are going to charge only 15% of the fare for travel by Shramik special trains. The stand of the Government of India as reflected from the memo dated 16th May, 2020 is that the train fare payable to the Railways shall be paid by the State Government and shall be recovered by it from the corresponding States to which the migrants will be traveling. There

has to be a clarity on the question of the extent of fare charged by the Railways for Shramik special trains.

4. The State Government has raised several legal and technical issues in the written submissions which this Court is bound to deal with in accordance with law. We grant time to the learned counsel appearing for the applicant-All India Central Council of Trade Unions (AICCTU) to file the written submissions on record along with case laws, if any, till tomorrow.

5. We must note here that in none of the written submissions filed by the State and in the written submissions filed today, a copy of the conscious decision taken by the competent authority of the State on the issue of bearing the train fare payable by the migrants is placed on record. We are not made aware whether any such conscious decision has been taken that the State will not pay the train fare payable to enable those migrant workers to travel by Shramik special trains who are not in a position to pay the train fare. In many cases, the migrant workers who wish to go back to their respective States are women and they are

accompanied by children also. In case of male migrant workers, in some cases, their wives and children are accompanying them.

6. The situation which has arisen today is due to the reason that there was no time available for the migrant workers to go back to their respective States after the declaration of lockdown. By the time the embargo on travel from one State to another was diluted, many of the migrant workers must have lost their jobs and/or source of livelihood and therefore, they are unable to pay the train charges.

7. The concept of a Welfare State has been consistently a part of our Constitutional philosophy. Today, because of the reluctance of the State Government to bear the train fare of the migrant workers who are not in a position to pay, apart from the allegation that it will violate the fundamental rights of the migrant workers, they will be forced to continue to stay in the State. They will have to look upon to the State Government for providing food and other necessities. We must record here that it is not merely an issue of survival of the migrant workers who are unable to go back to their respective States because they do not have money, there

are other needs of the migrant workers, such as their health, their families. The migrant workers who are staying in the State by leaving their families in the States of their origin are in precarious position because they are unable to send money for the maintenance of their respective families. These are all human issues which need to be addressed by the State Government as well as the Central Government, considering the concept of Welfare State.

8. As there is no clarity on the question whether the State has taken a conscious decision, we are constrained to direct the Chief Secretary of the State Government as well as the Secretary of the Labour Department of the State Government to remain present for video conferencing hearing on Tuesday, 26th May, 2020 at 11.00 a.m. We make it clear that considering the fact that the Chief Secretary and Secretary of the Labour Department will be hard pressed for time, immediately after the matter is called out, the Secretaries will be heard so that they can immediately resume their work.

9. If any other learned counsel wishes to file written submissions along with the case laws, if any, on record, they are free to do so by tomorrow (22nd May, 2020). Needless to add that copies of the written submissions shall be exchanged by the learned counsel representing the parties.

10. We request the learned Additional Solicitor General of India to take instruction from the Central Government and Railways on the question of waiver of train fare for the migrants who have been stranded in the State and who are not in a position to pay.

11. Learned counsel appearing for the applicant pointed out that the Government of Tamil Nadu has taken a decision to bear the train fare of the migrant workers from other States who were working in the State of Tamil Nadu and who wish to go back to their respective States.

12. Assuming that the stand taken by the State Government is legal and proper, it must place on record in what manner it will take care of the migrant workers and their families, if any, who are unable to go back to their respective States, as they

are unable to pay the train fare. The State Government must also make it clear how long it will take care of such migrant workers and their families. If the State wants to file any submissions dealing with this issue of taking care of the stranded migrant workers, the State is free to file written submissions by Saturday, 23rd May, 2020.

13. The learned counsel appearing for the applicant stated that the State has not taken up the issue of payment of unpaid wages to the migrant workers. His contention is that in one of the meetings some of the representatives of Confederation of Real Estate Developers' Association of India (CREDAI) accepted that the wages of some of the construction workers have not been paid.

14. The learned Additional Solicitor General will take instructions whether the State can be permitted to use the funds transferred by the National Disaster Response Fund for payment of train fare of the migrants who are not in a position to pay any amount.

15. As the participation of the learned Additional Solicitor General of India could not continue till we dictated the order, the Registrar (Judicial) shall forward a copy of this order by e-mail to Shri Kumar, learned Standing Counsel for the Central Government.

16. A copy of this order be also sent by e-mail to the e-mail ID of the office of the learned Advocate General.

17. List this petition on Tuesday, 26th May, 2020 at 11.00 a.m. for video conferencing hearing.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

VGH/ RK/-