

In Re Problems And Miseries Of Migrant ... vs Union Of India & Ors. ... on 29 June, 2021

Author: Ashok Bhushan

Bench: Ashok Bhushan, Vineet Saran, M.R. Shah

Reportab

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

SUO MOTU WRIT PETITION (CIVIL) NO.6 OF 2020

IN RE: PROBLEMS AND MISERIES OF MIGRANT LABOURERS

With

Writ Petition (C) No.916 of 2020

Bandhua Mukti Morcha

...Petition

Versus

Union of India & Ors.

... Respondents

J U D G M E N T

Ashok Bhushan, J.

1. The Worldwide Pandemic COVID-19 engulfed this country in March, 2020 and continues till date changing its face from time to time. Different mutations in the virus have made it dangerous and fatal at times. The pandemic had affected each and every person in the world including all citizens of this country. The Date: 2021.06.29 11:05:49 IST Reason:

pandemic has adversely affected all businesses including the small scale businesses, industries, markets and smallest of the person.

2. One of the groups, which were severally affected by the pandemic, was the migrant labourers. When Nationwide Lockdown was declared on 24.03.2020, after few days, there was huge exodus of the migrant labourers from their place of work to their native places. Two primary reasons which resulted in the exodus were cessation of employment due to lockdown and fear of the pandemic. When large number of migrant labourers started walking on highways on foot, cycles and other modes of transports without food and facing several untold miseries, this Court suo motu took cognizance of the problems and miseries of the migrant labourers by its order dated 26.05.2020 on

which date, this Suo Motu Writ Petition had been registered. We had issued the notice to the Union of India and all States / Union Territories and directed the learned Solicitor General to assist the Court and by the next date of hearing bring in the notice of the Court all measures and steps taken by the Government of India and to be taken in this regard.

3. In pursuance of our order dated 26.05.2020 affidavits were filed. Apart from filing of affidavit by the Central Government, States/Union Territories, few persons also filed intervention application in this writ petition bringing into notice of this Court several facts, figures and suggested different measures for ameliorating the conditions of the migrant labourers. One of the major issues, which, at that time, was to be tackled by the States and Union Territories was the transportation of migrant labourers from their work place to their native places.

4. We had issued certain directions on 28.05.2020 and thereafter issued further directions on 09.06.2020, in paragraph 26 of which order, we noticed following:-

“26. As noted above, the State and Union Territories in their affidavits have referred to various measures, the orders and guidelines issued by the Central Government, the orders issued by the National Executive Committee under the Disaster Management Act, 2005, policies and decisions taken by the concerned States. The States and Union Territories claimed to be following all directions and policies and taking necessary steps for running the relief camps, shelter camps, attending the needs of food and water of the migrants, attending the requirement of transportation of migrant workers to their native places. There can be no exception to the policies and intentions of the State but what is important is that those on whom implementation of circulars, policies and schemes are entrusted are efficiently and correctly implementing those schemes. Lapses and short-comings in implementing the schemes and policies have been highlighted by various intervenors in their applications and affidavits. The responsibility of the States/Union Territories is not only to referring their policy, measures contemplated, funds allocated but there has to be strict vigilance and supervision as to whether those measures, schemes, benefits reaches to those to whom they are meant. We impress on States and Union Territories to streamline the vigilance and supervision of actions of their officers and staff and take appropriate action where required. We also have no doubt that most of the officers, staff of administration and police are discharging their duties with devotion and hard-work but the lapses have to be taken note of and remedial action be taken. We further notice from the materials on record that police officers of States, para-military forces wherever deployed are doing commendable job but some instances of excess with regard to migrant labourers are also there. The migrant labourers, who were forced to proceed to their native place, after cessation of their employment are already suffering. The Financial difficulty being with all the migrant labourers invariably they have to dealt by the police and other authorities in a humane manner. The concerned Director General of Police/Police Commissioner may issue necessary directions in this regard.”

5. Further eight directions were issued by this Court by Order dated 09.06.2020, which were to the following effect:-

“35. We, thus, in addition to directions already issued by our order dated 28.05.2020 and measures as directed above, issue following further directions to the Central Government, all States and Union Territories:

(1) All the States/Union Territories shall take all necessary steps regarding identification of stranded migrant workers in their State which are willing to return to their native places and take steps for their return journey by train/bus which process may be completed within a period of 15 days from today.

(2) In event of any additional demand, in addition to demand of 171 Shramik trains, as noticed above, railway shall provide Shramik trains within a period of 24 hours as submitted by learned Solicitor General to facilitate the return journey of migrant workers.

(3) The Central Government may give details of all schemes which can be availed by migrant workers who have returned to their native places.

(4) All States and Union Territories shall also give details of all schemes which are current in the State, benefit of which can be taken by the migrant labourers including different schemes for providing employment.

(5) The State shall establish counselling centres, help desk at block and district level to provide all necessary information regarding schemes of the Government and to extend helping hand to migrant labourers to identify avenues of employment and benefits which can be availed by them under the different schemes.

(6) The details of all migrant labourers, who have reached their native places, shall be maintained with details of their skill, nature of employment, earlier place of employment. The list of migrant labourers shall be maintained village wise, block wise and district wise to facilitate the administration to extend benefit of different schemes which may be applicable to such migrant workers.

(7) The counselling centres, established, as directed above, shall also provide necessary information by extending helping hand to those migrant workers who have returned to their native places and who want to return to their places of employment.

(8) All concerned States/UTs to consider withdrawal of prosecution/complaints under Section 51 of Disaster Management Act and other related offences lodged against the migrant labourers who alleged to have violated measures of Lockdown by moving on roads during the period of Lockdown enforced under Disaster Management Act, 2005.”

6. In pursuance of our directions dated 09.06.2020, all States/Union Territories took steps and within a short period, migrant labourers were transported to their native places. On 31.07.2020, the matter was again heard. We, in our order dated 09.06.2020, had referred to following three enactments:-

- i) Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- ii) Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; and
- iii) Unorganized Workers' Social Security Act, 2008.

7. We had directed all the States to file their response in respect to implementation of the aforesaid three enactments. On 31.07.2020, we further granted three weeks' time to the States to file affidavit in compliance to order dated 09.06.2020. In pursuance of our orders dated 09.06.2020 and 31.07.2020, Central Government, States and Union Territories took various measures to implement the orders of this Court and to remedy the grievances of the migrant labourers. The measures taken by different Governments although could not fully ameliorate the conditions of the migrant labourers but brought some solace in the first wave of pandemic and willing migrant labourers reached their native places. It has also been submitted that after few months, large number of migrant labourers again proceeded to their work place in search of employment since at their native place, they were not able to get suitable employment to sustain themselves.

8. The Covid-19, which was declared pandemic by World Health Organisation on 30th January, 2020 continues even today. The intensity of the pandemic varied from time to time, after March, 2021, the second wave of pandemic hit the country and the number of cases started increasing throughout the country. The different States including NCT Delhi took different measures including restrictions, night curfews and lockdown in April, 2021. There has been the migrant workers working at several places including NCT Delhi, State of Maharashtra, State of Gujarat, State of Karnataka, who again started proceeding to their native places fearing the same situation which occurred in first nationwide lockdown, which was imposed in March, 2020. An I.A. No.58769 of 2021 was filed in the writ petition seeking directions from the Court specifically praying for direction to distribute dry ration to migrant workers, facilitating their transport either by road or by train to their native places and with request to direct for running of community kitchen for migrant labourers so that they and their family members could get two meals a day.

9. On 13.05.2021, we while entertaining the petition and asking the few States for reply, issued following interim directions:-

“[2.0] After having heard learned counsel for the parties we direct the Central Government as well as the Government of State of NCT of Delhi, State of U.P. and State of Haryana (for the Districts included in the NCR) to file a reply to the application suggesting means and measures by which they shall ameliorate miseries

of stranded migrant labourers. We also issue notice on the application to State of Maharashtra, State of Gujarat and State of Bihar to file their reply giving the details of the measures which they propose to take to ameliorate the miseries of migrant workers regarding transportation of stranded migrant workers and providing dry ration as well as cooked meals to the stranded migrant workers. In the meantime, 7 we issue following interim directions:

(1) Dry ration to migrant workers in National Capital Region under Atma Nirbhar Bharat Scheme or any other scheme be provided by the Union of India, NCT of Delhi, State of U.P. and State of Haryana utilising the Public Distribution System prevalent in each State with effect from May, 2021. While providing dry ration the authorities of the States shall not insist on an identity card for those migrant labourers who do not possess for the time being and on self-

declaration made by the stranded migrant labourers dry ration be given to them.

(2) NCT of Delhi, State of U.P. and State of Haryana (for the Districts included in the NCR) shall ensure that adequate transport is provided to stranded migrant labourers (in the National Capital Region) who want to return to their home. The District Administration in coordination with Police Administration may identify such stranded migrant labourers and facilitate their transport either by road transport or train. The Union of India may also issue necessary instructions to Ministry of Railways to take necessary and adequate measures to cater the need of migrant labourers.

(3) NCT of Delhi, State of U.P. and State of Haryana (for the Districts included in the NCR) shall open community kitchen at welladvertised places (in the National Capital Region) for stranded migrant labourers so that they and their family members who are stranded could get two meals a day.”

10. Subsequent to the order dated 13.05.2021, the matter was again heard by this Court on 24.05.2021 and in paragraphs 14 and 15, we had made following directions:-

“14. The Union of India in its letter dated 26.04.2020, which has been brought on record as Annexure R-14 has also stated that efforts should be made by States/Union Territories to encourage migrant NFSA beneficiaries to use the facility of portability under One Nation One Ration Card (ONORC) to those migrants.

15. We, thus, direct that migrant workers wherever stranded throughout the country should be provided the dry ration under the Atma Nirbhar Scheme or any other scheme is found suitable by the States/Centre.”

11. The writ petition again came for hearing before this Court on 11.06.2021, on which day, after hearing learned counsel for the parties including learned counsel for the intervenors, we closed the hearing.

12. We have heard Shri Tushar Mehta, learned Solicitor General for India, Shri Dushyant Dave and Shri Colin Gonsalves, learned senior counsel for applicants. We have also heard learned counsel for the different States/Union Territories.

13. According to survey carried out by National Statistics Office (NSO) in 2017-2018, there are around 38 crores workers engaged in the unorganized sectors. Thus, the number of persons in the unorganized sector is more than 1/4th population of the entire country. These unorganized workers did not have any permanent source of employment and have engaged themselves in small time vocations and occupations at various places away from their native places. Contributions of these labourers towards different projects, industries, make considerable additions in the economic development of the country.

14. Our Constitution enjoins that the ownership and control of the material resources of the community are for promoting welfare of the people by securing social and economic justice to the weaker section so as to sub-serve the common good to minimize inequalities in income and endeavour to eliminate inequality in status.

15. Both, in the first and the second wave of the pandemic, migrant workers had been exposed to financial and other forms of hardships due to their limited access and claim to the welfare resources offered by the States/Union Territories. The migrant labourers are particularly vulnerable to the economic regression. A Constitution Bench of this Court in National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, (1983) 1 SCC 228 while dealing with the right of workmen of company had made weighty observations regarding the nature of labour which is put by the workers while working in a company. The observations made by the Constitution Bench are more pertinent in respect to unorganized workers, who do not even have consistent and regular employment. Bhagwati, J. speaking for the majority in paragraph 6 of the judgment observed:-

“6.The workers therefore have a special place in a socialist pattern of society. They are no more vendors of toil; they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital. They supply labour without which capital would be impotent and they are, at the least, equal partners with capital in the enterprise. Our Constitution has shown profound concern for the workers and given them a pride of place in the new socio-economic order envisaged in the Preamble and the Directive Principles of State Policy. The Preamble contains the profound declaration pregnant with meaning and hope for millions of peasants and workers that India shall be a socialist democratic republic where social and economic justice will inform all institutions of national life and there will be equality of status and opportunity for all and every endeavour shall be made to promote fraternity ensuring the dignity of the individual. Everyone is assured under Article 14 equality before the law and equal protection of the laws and implicit in this provision is the guarantee of equal remuneration for men and women for same work or work of a similar nature.”

16. When the migrant labourers form more than 1/4th population of the country, all Governments/authorities have to take special care regarding welfare of these migrant workers/labourers. The Parliament has enacted various legislations to safeguard the interest and welfare of the migrant labourers, which we shall notice hereinafter.

17. The Right to Life as guaranteed by Article 21 of the Constitution gives right to every human being to live a life of dignity with access to at-least bare necessities of life. To provide food security to impoverished persons is the bounden duty of all States and Governments. The Parliament with object to provide food and nutritional security in human life cycle had enacted the National Food Security Act, 2013. In paragraph 3 of the Statement of Objects and Reasons of the Act, following was stated:-

“3. Ensuring food security of the people, however, continues to be a challenge. The nutritional status of the population, and especially of women and children, also needs to be improved to enhance the quality of human resource of the country. The proposed legislation marks a paradigm shift in addressing the problem of food security—from the current welfare approach to a right based approach. Besides expanding coverage of the Targeted Public Distribution System, the proposed legislation would confer legal rights on eligible beneficiaries to receive entitled quantities of foodgrains at highly subsidised prices. It will also confer legal rights on women and children to receive meal free of charge.”

18. Those who have been identified as beneficiary under National Food Security Act, 2013 are provided dry rations as per the Centre and States' Schemes. In event, a migrant labour is covered under the National Food Security Act, 2013 and had been issued a ration card under the Act, he is entitled to access the dry ration wherever he is, at his work place also, in accordance with scheme of the Central Government namely “One Nation One Ration Card”.

19. Before us, in these proceedings, learned counsel appearing for applicants/intervenors have raised concerns regarding non-supply of dry ration to large section of migrant workers, who are not covered under the National Food Security Act, 2013 and who does not possess ration card.

20. Both the Central Government and the State Governments have floated various schemes for unorganized workers, building and construction workers but sad picture of the ground reality is that large number of beneficiaries are deprived from access to these welfare schemes of the Central Government or the State Governments. In this petition, we had issued various directions earlier regarding the registration of unorganized workers but the progress has not been satisfactory rather shows lethargy on the part of the concerned Government.

21. From the affidavits, which have been filed by the States, it is clear that in most of the States, the stranded migrant labourers, who wanted to go to their native places during the second wave of the pandemic have been facilitated by the concerned State Government as per our directions issued from time to time in this writ petition. Thus, no further directions are required in respect to facilitating the transportation of migrant workers.

22. The main subjects with which we are concerned in this proceeding are:-

(i) Entitlement of dry ration by migrant workers who are not covered by the National Food Security Act, 2013 and who does not possess a ration card;

(ii) The implementation of “One Nation One Ration Card” by States and Union Territories;

(iii) Coverage of Rural and Urban population under National Food Security Act, 2013;

(iv) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, its working and implementation;

(v) The registration of unorganized workers’

(a) under the legislations namely 1996 Act and 2008 Act and the steps taken by different State Governments in the above regard;

(b) The project – National Database for the Unorganised Workers (NDUW) of Ministry of Labour and Employment, Government of India; and

(c) The mechanism to ensure access by migrant labourers to different welfare schemes of the Central Government and the State Governments.

(vi) Community Kitchen for Migrant Labourers by States/Union Territories; and

(vii) Direct Bank Transfer to unorganized workers.

(i) Dry Ration to Migrant Workers

23. Shri Dushyant Dave and Shri Colin Gonsalves, learned senior counsel have submitted that migrant

workers are great sufferers in this pandemic and those who do not possess any ration card are entitled to dry ration. It is submitted that the Central Government itself in the first wave of pandemic has provided dry ration for two months, i.e., May and June, 2020 under Atma Nirbhar Bharat Scheme. The submission is that the Central Government needs to extend the Atma Nirbhar Bharat Scheme in view of the second wave of the pandemic. The Union of India has filed affidavits dated

23.05.2020 and 09.06.2021. In the affidavit dated 09.06.2021, in paragraphs 4 and 8, following has

been stated: -

“4. It is further submitted that, the Atma Nirbhar Bharat Scheme was valid for only May and June, 2020. However, vide this Department’s letter dated 20.05.2021 States/UTs, have been advised that they may use the various other schemes launched/renewed as detailed above, to get additional quantities of foodgrains at subsidized rates, as per the need, from the FCI, for distribution to selected target groups including other migrants/stranded migrants, as per locally assessed requirements.

8. It is respectfully submitted that, in view of the situation arising due to spread of COVID-19 pandemic during last year, under Atma Nirbhar Bharat Package(ANBP), the Department of Food and Public Distribution (DFPD) vide letter dated 15.05.2020 had liberally allotted about 8 Lakh Metric Tonne (LMT) of additional food grain (4LMT per month, i.e. around 10% of monthly NFSA allocation) covering all the States/UTs for migrants/stranded migrants @5Kg per person per month free of cost for a period of two months(May and June, 2020). It is stated that, both migrants and stranded migrants were covered under the scheme, subject to the condition that such migrants/stranded migrants are neither covered under NFSA nor have they been issued State Scheme PDS Cards by the State/UT, in which they were at that time. However, States/UTs later come out with approximate requirements for about 2.8 crore total migrant/stranded migrant population.

The responsibility for identifying such migrants/stranded migrants was given to the respective States/UTs.....”

24. Those migrant workers, who possess the ration card and are covered under the National Food Security Act, 2013 can avail the dry ration utilising their card even in the State where they have migrated for work. Real difficulty arises with regard to migrant workers who do not possess any card issued under National Food Security Act or even by respective States. There is a large number of such migrants who do not possess any card. Their above disability is due to their poverty and lack of education but the State cannot abdicate its duty towards such persons, especially in the wake of the pandemic and the events where large numbers of migrant workers are not able to get jobs which may satisfy their basic needs.

25. The affidavit of Union of India indicates that under Atma Nirbhar Bharat Scheme, which was issued by the Department of Food and Public Distribution, migrants/stranded migrants were covered and 5 Kg per person per month free of cost dry ration for a period of two months was given. It was the States, who identified about 2.8 crore migrant population in the first wave of pandemic, which is clearly stated in paragraph 8 of the affidavit of Union of India as noted above. When there is identification by the States of 2.8 crore migrants, there is no difficulty for the State in reaching such migrants and supplying dry ration to those who may still be at their identified places. The Union of India in its affidavit has clearly stated that the Union of India is ready and willing to provide the additional food grains to the States under various schemes in event such request is made

by the States/UTs.

26. The Union of India submits that there is no lack of food grains nor the Central Government is shirking from its responsibility to provide dry ration to migrant workers. It is submitted by the learned Solicitor General that identification of such migrant workers and distribution of dry ration is to be done by respective States/UTs. He further submits that each State/Union Territory can devise appropriate schemes for providing dry ration to migrant workers.

27. Various States have filed their affidavits. From the affidavits filed by different States, it does appear that although some States have devised certain schemes for distribution of dry ration to migrant workers, most of the States do not have such schemes. Several States have not mentioned any scheme under which in the second wave of pandemic any ration has been distributed to the migrant workers. State of Gujarat has referred to a scheme namely 'Annambrahma' Scheme which scheme has been once again implemented and as on date is current. However, no details have been given as to how many migrant workers have been provided dry ration in this second wave of pandemic.

28. It has been stated on behalf of State of NCT Delhi that a cabinet decision has been taken on 25.05.2021 where it has been stated that dry rations to Non-PDS be provided at the same entitlement as specified under National Food Security Act, 2013. A statement has been made as under:-

“Vide Cabinet Decision No.3004 dated 25.05.2021. it has been decided that Dry Rations (food grains) under Non-PDS to be provided at the same entitlement as specified under NFS Act 2013 which is 5 Kg food grains (4 Kg wheat and 1 Kg rice per person per month) free of cost to the needy persons who don't possess ration cards, including unorganized workers, migrant workers, building and construction workers, domestic help from a school identified in each Municipal wards of Delhi. The beneficiary has to visit the designated schools to collect this non-PDS ration. This scheme has been operationalized w.e.f. 5th June, 2021 and is envisaged for 20 Lakh beneficiaries.”

29. Most of the States have been harping on providing food grains free of cost for two months, i.e., May and June, 2020. The State of West Bengal has stated that there is no scheme for providing dry ration to migrant workers. The States/Union Territories who are responsible for Public Distribution System and who are the agency to reach beneficiary have to devise the scheme to cater the needs of migrant workers and find out ways and means to reach those migrant workers and supply the dry ration. Especially during this pandemic, the States/Union Territories have to make extra efforts to reach migrant labourers so that no migrant labourer is denied two meals a day.

30. The Union of India in paragraphs 7 and 8 has mentioned that Ministry has extended various schemes to enable all States/UTs to obtain additional quantities of food grains. The Union of India has also referred to Circular dated 20.05.2021 issued by Government of India, Ministry of Consumer Affairs, which states on the subject “various food security measures announced during COVID-19,

2021”, in paragraph 3, following has been stated : -

“3. In addition to actively promoting the use of portability through One nation One Ration Card (ONORC) for NFSA beneficiaries, it is advised that States/UTs may also use the different schemes detailed above to get additional quantities of food grains, as per the need, from the FCI, for distribution to selected target groups including other migrants/stranded migrants, as per locally assessed requirements.”

31. As noted above, the Central Government is ready to allocate additional quantities of food grains to the States for supplying food grains to migrant workers after identification. The Central Government may, in consultation with the States, devise a mechanism to reach migrant labourers especially in this pandemic so that dry ration be provided to them.

32. There has been worldwide awareness regarding right to food to human being. Our country is no exception. Lately, all Governments have been taking steps and taking measures to ensure that no human being should be affected by hunger and no one dies out of hunger. The basic concept of food security globally is to ensure that all people, at all times, should get access to the basic food for their active and healthy life. The Constitution of India does not have any explicit provision regarding right to food. The fundamental right to life enshrined in Article 21 of the Constitution may be interpreted to include right to live with human dignity, which may include the right to food and other basic necessities.

33. The Central Government having undertaken to distribute additional quantity of foodgrains as demanded by the States/Union Territories for distribution to migrant labourers under some Scheme framed by the States, we direct the Central Government, Department of Food and Public Distribution (Ministry of Consumer Affairs, Food and Public Distribution) to allocate and distribute foodgrains as per demand of additional foodgrains from the States for disbursement of dry foodgrains to migrant labourers.

34. We further direct the States to bring in place an appropriate scheme for distribution of dry ration to migrant labourers for which it shall be open for States to ask for allocation of additional foodgrains from the Central Government, which, as directed above, shall provide the additional foodgrains to the State. The State shall consider and bring an appropriate Scheme, which may be implemented on or before 31.07.2021. Such scheme may be continued and operated till the current pandemic (Covid-19) continues.

(ii) One Nation One Ration Card

35. “One Nation One Ration Card” is a scheme

implemented by the Government of India providing for nation-wide portability of National Food Security Act Ration card. Several States have been integrated under One Nation One Ration Card cluster at the National level. In the affidavit, the Department of Expenditure, Ministry of Finance, has granted additional drawing permission to States for completing One Nation One Ration Card

system. One Nation One Ration Card is an important citizen centric reform. Its implementation ensures availability of ration to beneficiaries under National Food Security Act (NFSA) and other welfare schemes, especially to the migrant workers and their families at any Fair Price Shop across the Country. To ensure seamless inter-State portability of the ration card, Aadhaar seeding of all ration cards as well as Biometric Authentication of beneficiaries through automation of all Fair Price Shops (AFPS) with installation of electronic- Point of Sale (e-POS) devices are necessary.

36. As stated above, the Union of India, Department of Expenditure has permitted State-wise additional borrowing for completion of One Nation One Ration Card Scheme. Shri Tushar Mehta, learned Solicitor General during his submissions has submitted that Four States have not yet implemented the One Nation One Ration Card Scheme being the States of Assam, Chhattisgarh, Delhi and West Bengal.

37. Learned counsel appearing for Delhi submits that Government of NCT Delhi has implemented the One Nation One Ration Card Scheme. Shri Tushar Mehta's submission is that the Government of NCT Delhi has not implemented the scheme fully and only in one circle, i.e., Circle No.63, Seemapuri, only a handful of transactions with 42 e-POS machines have been done. One Nation One Ration Card scheme is one of the important welfare measures to extend food security to migrants who are covered under the National Food Security Act Scheme. When migrant workers are spread throughout the Country, each State has to implement the scheme, which is a necessary welfare measure towards food security to this class of persons. The States are duty bound to implement this Scheme, which is a welfare scheme in the interest of poor and marginal sections of the society. When a migrant labour reaches to a particular State for work/employment and is covered by National Food Security Act Scheme, the receiving State is under duty to ensure that his rights and entitlement under National Food Security Act is not denied merely because of the fact that he is not in his native State from where he was issued the ration card under National Food Security Act scheme.

38. We, thus, are of the view that those States who have not yet implemented One Nation One Ration Card scheme should implement the same. We direct the States who have not implemented the One Nation One Ration Card scheme to implement the scheme by not later than 31.07.2021.

(iii) Coverage of Rural and Urban population under National Food Security Act, 2013.

39. Section 3 of the National Food Security Act, 2013 provides for Right to receive foodgrains at subsidised prices by persons belonging to eligible households under Targeted Public Distribution System. Sections 3(1) and 3(2) are as follows:-

“3. Right to receive foodgrains at subsidised prices by persons belonging to eligible households under Targeted Public Distribution System.-- (1) Every person belonging to priority households, identified under sub- section (1) of section 10, shall be entitled to receive five kilograms of foodgrains per person per month at subsidised prices specified in Schedule I from the State Government under the Targeted Public Distribution System:

Provided that the households covered under Antyodaya Anna Yojana shall, to such extent as may be specified by the Central Government for each State in the said scheme, be entitled to thirty-five kilograms of foodgrains per household per month at the prices specified in Schedule I:

Provided further that if annual allocation of foodgrains to any State under the Act is less than the average annual off take of foodgrains for last three years under normal Targeted Public Distribution System, the same shall be protected at prices as may be determined by the Central Government and the State shall be allocated foodgrains as specified in Schedule IV.

Explanation.— For the purpose of this section, the "Antyodaya Anna Yojana" means, the scheme by the said name launched by the Central Government on the 25th day of December, 2000; and as modified from time to time.

(2) The entitlements of the persons belonging to the eligible households referred to in sub-section (1) at subsidised prices shall extend up to seventy-five per cent. of the rural population and up to fifty per cent. of the urban population.”

40. Section 9 provides for coverage of population under Targeted Public Distribution System, which is to be determined by the Central Government and the total number of persons to be covered in such rural and urban areas of the State shall be calculated on the basis of the population estimates as per the census of which the relevant figures have been published. The State-wise coverage under National Food Security Act was determined by the then Planning Commission (now Niti Aayog) by using the NSS Household Consumption Survey data for 2011-2012. More than 10 years have elapsed from determination of State-wise coverage. In event, Central Government undertakes fresh determination of the State-wise coverage under National Food Security Act, number of beneficiaries State-wise are bound to increase benefitting the large number of eligible persons. We, thus, are of the view that Central Government need to take steps to undertake exercise under Section 9 of the National Food Security Act, 2013 to re-determine the total number of persons to be covered under Rural and Urban areas of the State, which shall be beneficial to large number of persons.

(iv) Inter-state Migrant Workman (Regulation of Employment and Condition of Service) Act, 1979

41. The Parliament enacted the above enactment with a very laudable object protecting migrant workers from large number of ill-practices. The Statement of Objects and Reasons of the enactment elaborately noticed the object and purpose of the enactment, which is to the following effect:-

“STATEMENT OF OBJECTS AND REASONS The system of employment of inter-State migrant labour (known in Orissa as Dadan Labour) is an exploitative system prevalent in Orissa and in some other States. In Orissa, Dadan Labour is recruited from various parts of the State through contractors or agents called Sardars/ Khatadars for work outside the State in large construction projects. This system lends itself to various abuses. Though the Sardars promise at the time of

recruitment that wages calculated on piece- rate basis would be settled every month, the promise is not usually kept. Once the worker comes under the clutches of the contractor, he takes him to a far-off place on payment of railway fare only. No working hours are fixed for these workers and they have to work on all the days in a week under extremely bad working conditions. The provisions of the various labour laws are not being observed in their case and they are subjected to various malpractices.

2. The Twenty-eighth Session of the Labour Ministers' Conference (New Delhi, October 26, 1976) which considered the question of protection and welfare of Dadan Labour recommended the setting up of a small Compact Committee to go into the whole question and to suggest measures for eliminating the abuses prevalent in this system. The inter-

State migrant workmen are generally illiterate, unorganised and have normally to work under extremely adverse conditions and in view of these hardships, some administrative and legislative arrangements both in the State from where they are recruited and also in the State where they are engaged for work are necessary to secure effective protection against their exploitation. The Compact Committee which was constituted in February, 1977, therefore, recommended the enactment of a separate Central legislation to regulate the employment of inter-State migrant workmen as it was felt that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, even after necessary amendments would not adequately take care of the variety of malpractices indulged in by the contractors/Sardars/Khatadars, etc., and the facilities required to be provided to these workmen in view of the peculiar circumstances in which they have to work.

3. The recommendations of the Compact Committee have been examined in consultation with the State Governments and the Ministries of the Government of India and the suggestions made by them have been taken into account in formulating the proposals for legislation. The main features of the Bill are as follows:-

(i) The proposed legislation will apply to every establishment in which five or more inter-

State migrant workmen are employed or were employed on any day of the preceding twelve months. It will also apply to every contractor who employs or employed five or more inter-State migrant workmen on any day of the preceding twelve months.

(ii) The establishment proposing to employ inter-State migrant workmen will be required to be registered with registering officers appointed under the Central Government or the State Governments, as the case may be, depending on whether the establishment falls under the Central sphere or State sphere. Likewise, every contractor who proposes to recruit or employ inter-State migrant workmen will be required to obtain a licence from the specified authority both of the State to which the workman belongs (home State) and the State in which he is proposed to be employed (host State).

(iii) The contractor will be required to furnish particulars regarding the workmen in the form to be prescribed by rules to the specified authority of both the home State and the host State. The contractor will also be required to issue to every workman employed by him, a pass book containing the details of the employment.

(iv) Specific guidelines have been indicated regarding the wages payable to inter-State migrant workman and he is required to be paid wages from the date of his recruitment.

(v) The inter-State migrant workman will be entitled to a displacement allowance and a journey allowance in addition to his wages.

(vi) The amenities that are required to be provided to the workmen would include provision of suitable residential accommodation, adequate medical facilities, protective clothing to suit varying climatic conditions and suitable conditions of work taking into account that they have migrated from another State.

(vii) Inspectors will be appointed by the appropriate Government to see that the provisions of the legislation are being complied with. In addition, power has been given to the State Government of the home State to appoint, after consultation with the Government of the host State, inspectors for visiting the establishments wherein workmen from the former State are employed to see whether the provisions of the legislation are being complied with in the case of such workmen.

(viii) The inter-State migrant workman may raise an industrial dispute arising out of his employment either in the host State or in the home State after his return to that State after the completion of the contract of employment. He will also be permitted to apply for the transfer of proceedings in relation to an industrial dispute pending before an authority in the host State to the corresponding authority in the Home State on the ground that he has returned to the State after the completion of his contract.

(ix) Deterrent punishments have been proposed for the contravention of the provisions of the legislation.”

42. Section 1(4) provides for applicability of the Act in following manner:-

“1(4) It applies-

(a) to every establishment in which five or more inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months;

(b) to every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.”

43. Section 2 is a definition clause. Sub-clause(b) defines “contractor” and sub-clause(e) defines “inter- state migrant workman” as follows:-

“2. Definitions.- (1) In this Act, unless the context otherwise requires,-

XXXXXXXXXXXX

(b) "contractor", in relation to an establishment, means a person who

undertakes (whether as an independent contractor, agent, employee or otherwise) to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a sub-contractor, Khatadar, Sardar, agent or any other person, by whatever name called, who recruits or employs workmen;

(e) "inter-State migrant workman" means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment;”

44. Chapter II deals with registration of establishments employing inter-State Migrant Workmen. Section 6 contains an injunction that no principal employer of an establishment shall employ inter-State migrant workmen in the establishment unless a certificate of registration in respect of such establishment is issued under the Act. Similarly, Chapter III deals with licensing of contractors. Section 8(2) provides that a licence under sub-section (1) may contain the terms and conditions of the agreement or other arrangement under which the workmen will be recruited, the remuneration payable, hours of work, fixation of wages and other essential amenities in respect of the inter-State migrant workmen are to be included. Section 12 provides for duties and obligations of contractor. Section 12(1)(a) provides that it shall be the duty of every contractor to furnish such particulars and in such form as may be prescribed, to the specified authority in the State from which an inter-State migrant workman is recruited and in the State in which such workman is employed, within fifteen days from the date of recruitment, or, as the case may be, from the date of employment. In the Rules framed namely “the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980”, Rule 21 provides for following:-

“21. Particulars of migrant workman.- (1) Every contractor shall furnish to the specified authorities the particulars regarding recruiting and employment of migrant workmen in Form X. (2) The particulars shall be either personally delivered by the contractor to the concerned specified authorities or sent to them by registered post.”

45. Form X under which the information is to be given by a contractor contains various details pertaining to the migrant workmen. In event, the licensed contractors engage migrant workmen, he is bound to give the particulars of the migrant workmen to the specified authorities and it is in the

domain of the authorities recruiting migrant workers to enable the authorities to reach the migrant workers and extend the benefits to which such migrant workers are entitled. Chapter VI of the Act deals with inspecting staff and Section 20 deals with Inspectors. The appropriate Government is to appoint Inspectors for the purpose of this Act.

46. Learned counsel appearing for different applicants and intervenors have contended that though 1979 enactment has been implemented by several States but neither there is proper licensing of contractors nor registration of establishments due to which the migrant workers are not able to reap the benefit to which they are entitled. References of different State, i.e., State of Karnataka (2017), State of Kerala (2018) have been made where it has been stated that 1979 enactment has not been implemented. A legislation which has been enacted by the Parliament as a welfare measure for the migrant workers needs to be strictly implemented. The affidavits filed on behalf of different States and Union Territories does not give any facts and figures pertaining to implementation of the Act. Non- implementation of the Act adversely affects the rights of migrant workers. We, thus, are of the view that a direction need to be issued to the States/Union Territories to register all establishments and license all contractors under the Act and ensure that statutory duty imposed on the contractors to give particulars of the migrant workers is fully complied with. The competent authority while registering the establishments and granting license to the contractors may also impose conditions pertaining service condition, journey allowance and other facilities as set out in Chapter V of the Act.

(v) Registration of Unorganised Workers

47. In orders passed by this Court in these proceedings on 09.06.2020 and 31.07.2020, we have already referred to enactments namely (i) The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; and the Unorganized Workers' Social Security Act, 2008. The 1996 enactment was enacted by Parliament to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith. The Act provides for registration of establishments. Chapter IV provides for registration of building workers as beneficiaries and also contemplates issuance of identity cards. Sections 12 and 13 of the 1996 Act are as follows:-

“12. Registration of building workers as beneficiaries:-(1) Every building worker who has completed either eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act.

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the rules made thereunder, he shall register the name of the building worker as beneficiary under this Act:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final:

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.

13. Identity cards:-(1) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

(2) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(3) A beneficiary who has been issued an identity card under this Act shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.”

48. The other enactment, which has been enacted by Parliament to provide for the social security and welfare of unorganized workers’ is the Unorganised Workers’ Social Security Act, 2008. The Statement of Objects and Reasons of the enactment elaborately noticed the object and purpose of the enactment, which is to the following effect:-

“Statement of Objects and Reasons.- It is estimated that the workers in the unorganised sector constitute more than ninety-four per cent. of the total employment in the country. On account of their unorganised nature, these workers do not get adequate social security. Some welfare schemes are being implemented by the Central Government for specific groups of unorganised sector workers such as beedi workers, non- coal mine workers, cine workers, handloom weavers, fishermen, etc. State Governments are implementing welfare programmes for certain categories of unorganised sector workers and some Non-Government Organisations also

provide social security to certain categories of workers. Despite all these efforts, there is a huge deficit in the coverage of the unorganised sector workers in the matter of labour protection and social security measures ensuring the welfare and well-being of workers in the unorganised sector, such as agricultural workers, construction workers, beedi workers, handloom workers, leather workers, etc.

2. The Unorganised Workers' Social Security Bill, 2007 aims to provide for social security and welfare of the unorganised sector workers and for matters connected therewith or incidental thereto. The Bill, inter alia, provides for the following matters, namely:-

(i) The Central Government shall constitute a National Social Security Advisory Board to recommend suitable welfare schemes for different sections of unorganised sector workers, and upon consideration of these recommendations, the Central Government may notify suitable welfare schemes relating to life and disability cover, health and maternity benefits, old age protection, or any other benefits.

(ii) The State Government shall constitute the State Social Security Advisory Board to recommend suitable welfare schemes for different sections of unorganised workers in that State and the State Government may notify suitable schemes for one or more sections of the unorganised workers.

(iii) A worker of an unorganised sector shall be eligible for social security benefits if, he is duly registered.

Every registered worker in the unorganised sector shall be issued an identity card which shall be a smart card carrying a unique identification number and shall be portable.

(iv) The Central Government and the State Government shall have the power to make rules for the purposes of carrying out the objects of the Bill.

3. The Bill seeks to achieve the above objectives.”

49. The Unorganised Workers constitute ninety-four percent of the work force, which is also noticed in the Statement of Objects and Reasons extracted above. The unorganized workers belong to poor strata of society, less educated and are not much aware of their rights and obligations of their employer. Unorganised workers are also not able to easily get themselves registered under Act, 2008 so as to enable them to reap the welfare schemes of the Central Government as well as of the State Governments. Section 10 deals with the registration and social security benefit, which is to the following effect:-

“10. Eligibility for registration and social security benefits.—(1) Every unorganised worker shall be eligible for registration subject to the fulfilment of the following conditions, namely:—

- (a) he or she shall have completed fourteen years of age; and
 - (b) a self-declaration by him or her confirming that he or she is an unorganised worker.
- (2) Every eligible unorganised worker shall make an application in the prescribed form to the District Administration for registration.
- (3) Every unorganised worker shall be registered and issued an identity card by the District Administration which shall be a smart card carrying a unique identification number and shall be portable.
- (4) If a scheme requires a registered unorganised worker to make a contribution, he or she shall be eligible for social security benefits under the scheme only upon payment of such contribution.
- (5) Where a scheme requires the Central or State Government to make a contribution, the Central or State Government, as the case may be, shall make the contribution regularly in terms of the scheme.”

50. At this stage, we may notice the provisions of Code on Social Security, 2020. Although, Code on Social Security, 2020 has received the Presidential assent in August, 2020 but the same has not yet been enforced except the provision for use of Aadhaar. Thus, the registration under Act, 1996 and Act, 2008 as noted above has to continue till the provisions of Code on Social Security, 2020 are enforced, the registration of unorganized workers both under Act, 1996 and Act, 2008 is beneficial to the unorganized workers since it is only after registration they are able to access the welfare schemes of the Central Government and the State Governments. The registration of the unorganized workers is, thus, pivotal and most important insofar as welfare of workers is concerned.

51. We had in our various orders passed in this proceedings had asked the States/Union Territories to file affidavits regarding the status of registration of workers undertaken under the various legislations of States and Union Territories and they have filed their detailed affidavits referring to status of registration of workers. From the facts as brought on record on behalf of States/Union Territories, steps taken by respective States and Union Territories are decipherable. It is useful to notice briefly the status of registration as reflected in the affidavits of different States.

NCT Delhi

52. In the affidavit dated 08.06.2021 filed on behalf of State of NCT Delhi, no details regarding process of registration of construction workers, inter-State migrant workers and unorganized workers have been mentioned. However, in the note dated 14.06.2021 submitted on behalf of NCT Delhi with regard to Act, 1979 and Act, 1996, it has been stated that online portal for registration of establishments employing migrant workers is in place since December, 2019. It is further mentioned that Delhi Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service)

Rules, 1982 have been notified on 04.06.1982. It is further stated that by virtue of Section 2(e), migrant workers themselves cannot register under Act, 1979 and it is the contractor, who has to register the migrant workers. With regard to Act, 1996, it is stated that under the said Act, Delhi Building and Other Construction Workers (RE & CS) Rules, 2002 have been notified. It is further mentioned that steps are being taken by issuing notice to the various employers to get them registered under Act, 1996. With regard to the Unorganised Workers' Social Security Act, 2008, following is the statement made:-

i. Unorganized Workers Social Security Act, 2008 has been subsumed in the Code on Social Security, 2020. Labour Department, GNCTD is drafting Rules under Code on Social Security Code, 2020.

ii. Central Government is in the process of making a National Database for Unorganised Workers (NDUW) and Integrated Portal for Social Security and Welfare Schemes, on Unorganised workers – State wise regarding unorganized workers and also develop a suitable National Software for registration of unorganized workers which will have uniformity across the country and portability also – action is awaited from Central Government, in this regard.

iii. Job portal was launched by GNCTD on 27.07.2020 to provide a interactive platform between the employers and prospective jobseekers. This interactive platform shall help prospective jobseekers to procure employment.” State of Gujarat

53. It is submitted that an estimated 23 lakhs inter- State migrant workers are engaged in various industries, establishments and factories in the State of Gujarat. In pursuance of the same, it is submitted that the portal, called the “e-nirman” portal is ready and is launched by the Hon’ble Chief Minister of Gujarat on 08.06.2021 and made operational. Through, the “e-nirman” portal, the construction workers will now be provided with a smart card containing their details as opposed to a physical passbook which was being provided in the older system. The smart card will enable the construction workers to directly avail the benefits of more than 20 schemes of the Government pertaining to maternity assistance, assistance in cases of death and permanent disability, educational assistance, hostel facility scheme etc. and thus permeating the deepening the impact of such schemes for the beneficiaries.

54. The State of Gujarat has simultaneously set up a portal (gujaratuwin.csccloud.in) for registration of Unorganised Workers. The said portal is also launched by Hon’ble Chief Minister of Gujarat on 08.06.2021 and made operational, along with the “e-nirman” portal. This portal for Unorganised Workers is also integrated with more than 21290 Common Service Centres in the State and will be used to issue Unorganised Worker Identity Number (U-WIN) cards. It is submitted that the data registered on this portal will be subsequently integrated with the National level portal that is being operationalised in the form of the National Database of Unorganised Workers Project by the Government of India.

55. It is submitted that district-wise pockets of unorganised workers like street vendors, retail workers, fisherman, textile market workers, wiremen, rickshaw drivers, kite making workers, vegetable sellers, bidi making workers, tailors etc. have already been identified and a registration drive will be carried out focusing on such pockets. Thus, the process of registration will be brought to the doorstep of unorganized workers.

State of Telangana

56. It has been stated on behalf of State of Telangana that the registration of workers and issue of identity cards to the unorganized workers will be processed soon after receiving the Registration Module from Government of India, Ministry of Labour and Employment, New Delhi. State of Chhatisgarh

57. At the outset, it is submitted that in compliance of the orders of this Court, approximately 4,34,658 migrant workers who have returned to the State of Chhatisgarh from other states have been benefited according to their eligibility under various schemes of the Central Government and State Government.

58. The registration of unorganized workers is being done through the online portal and a total of approximately 14,33,702 unorganised workers have been registered.

State of Uttar Pradesh

59. The State of UP is maintaining a robust system of registration of such migrant workers as they come into the State, as has been detailed in the previous affidavit dated 22.05.2021. A portal on the website of the Relief Commissioner, <http://www.rahat.up.nic.in>, has been created, on which all relevant details of all migrant workers are to be uploaded in real-time.

60. As per data available with the Director, Training and Employment, Uttar Pradesh, as many as 37,84,255 migrant workers have returned to their native places during the entire Covid-19 pandemic period. Their skill mapping has been completed and 10,44,710 labourers have already been given employment in different schemes of different departments of the State Government. It is submitted that as per the data available as on 08.06.2021, the details/data of 3,79,220 migrant workers have been registered and their skills mapped on the rahat.up.nic.in portal since 01.04.2021.

61. It is further submitted that the rahat.up.nic.in portal is also being utilized to identify workers other than registered workers for availing of the benefit of the decision taken by the State Cabinet on 15.05.2021 to provide all eligible persons a sustenance allowance of Rs.1000 per month by way of direct Bank Transfer. The rahat.up.nic.in portal is to be utilized for the purpose of such registration of such beneficiaries. As on 08.06.2021 the data/details of 12,92,247 such persons has been uploaded on the rahat portal since 18.05.2021.

State of Jharkhand

62. It is submitted that during the second phase of lockdown, an additional number of 39,853 have been registered under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act). Out of these benefits have been extended to 22,830 beneficiaries and Rs.13,98,15,919/- has been disbursed under various schemes run by the Jharkhand Building and Other Construction Workers Welfare Board, Ranchi.

63. It is further submitted that directions have been issued to Officers in the State by Labour Commissioner, Jharkhand vide letter No.557 dated 28.05.2021 and letter No.577 dated 08.06.2021 to complete the process of registration of unorganised workers in the area under their jurisdictions and the following steps have been taken:-

(a) Under Unorganised Workers Social Security Act, 2008, 14.71 lakhs unorganized workers have been registered till now.

(b) Five Schemes have been launched by the State for the benefit of unorganized workers.

(c) In the financial year 2020-2021 total number of registered beneficiaries sum of Rs.51,50,650/- has been disbursed under different schemes.

State of Bihar

64. The State of Bihar has submitted details regarding registration of migrant labours in the affidavit dated 21.05.2021. About 19 lakh migrant labours were registered and brought under skill mapping through the portal app on their arrival at their blocks/Block Quarantine Camps. About 11 lakh migrant labours were registered under Shramik Panjikaran Portal of the Labour Resource Department. About 2 lakh unorganized workers have been enrolled under “Pradhan Mantri Shram Yogi Maandhan Yojna”.

65. Regarding the development of National Data Base for the Unorganised Workers (NDUW), it is respectfully submitted that the Ministry of Labour and Employment, Government of India vide its letter D.O.No.M- 16011/1/2019-SS-III dated 28.10.2020 has informed to the State Government that it has started the development of comprehensive National Data Base for the Unorganized Workers (NDUW) including migrant and construction workers. The portal may be used for the delivery of various Social Security/Welfare Schemes. It was also informed that the NDUW portal is being developed under the technical guidance of NIC.

66. It is further submitted that it was expected from the department to provide comprehensive action plan for the registration of unorganized workers along with the details of two Nodal Officers. The department through its letter No.1/UL.10-05/2020-21 dated 08.04.2021 nominated the Labour Commissioner, Bihar and Joint Labour Commissioner, Bihar as the nodal officers for the implementation of the National Data Base for the Unorganised Workers (NDUW). Further, the department also provided the comprehensive action plan for the registration of unorganized workers to the Ministry of Labour and Employment vide letter No.-1/UL.10-05/2020- 107 dated

16.04.2021.

State of Karnataka

67. The Karnataka Building and other Construction Workers Welfare Board under the Act, 1996 has computerized the registration process and the eligible building and other construction workers are registered through the “Seva Sindhu portal”. Once registered, smart cards with unique identity number are provided to the workers. The note submitted on behalf of State of Karnataka also refers to 19 welfare schemes formulated by Karnataka Building and Other Construction Workers Board. With regard to Act, 2008, it has been stated that Karnataka State Unorganised Workers Social Security Board is functioning under Labour Department of the State of Karnataka in registering 11 categories of Unorganised Sector Workers on web portal “ksuwssb.in”.

State of West Bengal

68. The Government of West Bengal in its affidavit has referred to a Scheme under which cash benefit of Rs.1,000/- was transferred to the unorganized workers, who were permanent resident of West Bengal and not getting any benefit from any Government Scheme. The no details have been given regarding process of registration under the aforesaid two Acts. State of Madhya Pradesh

69. With regard to registration of migrant workers, following is stated:-

“The Panchayat and Rural Development Department through Gram Panchayat machinery in Rural area and Urban Administration Department through their Urban local bodies in urban areas are in process of compiling information with respect of all categories of migrants and their family returning back to their residences. A portal namely “PRAVASISHAMIK” has been launched wherein migrants returned to their residences in Madhya Pradesh are registered by the Panchayat and Urban Body’s local staff respectively. Total number of 41,392 migrant workers have been registered on this portal till 01.06.2021.

Besides above, registration of unorganized workers had started in State in the year 2018 under the ‘Mukhyamantri Jan Kalyan (SAMBAL) Yojana’. Under the said scheme, approximately 1.47 unorganised workers with complete database have so far been registered.” State of Maharashtra

70. With regard to registration of unorganized workers, it has been stated that under Act, 2008, Maharashtra Unorganised Workers Social Security Rules, 2013 have been framed. Maharashtra Social Security Board has also been constituted on 03.04.2018. The registration under the Unorganised Workers Social Security Act, 2008 has yet to start, but till date, around 5,88,304 workers have been enrolled under Pradhan Mantri Shram Yogi Maandhan Yojana through Common Service Centres since March, 2019. Further, the unorganized workers will also be given benefits of various schemes by the State Government, such as (i) provident fund, (ii) financial assistance in case of injury at work place, (iii) housing schemes, (iv) scholarship scheme for children,

(v) skill development, (vi) funeral benefits, (vii) old age homes.

71. Further, with regard to Act, 1996, following has been stated on behalf of the State of Maharashtra:-

“In exercise of Section 18 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the State has constituted the Maharashtra Building and Other Construction Workers Welfare Board (“the Board”). The Board has undertaken various measures to register construction workers. The Board has implemented four special registration drives in the last two years across Maharashtra. The monthly contribution of registered construction workers is reduced to Rs.1/- per month (from Rs.5/- per month). The Board is taking help of NGOs, workers union and local representatives for registration of construction workers. Monitoring Committees under the Chairmanship of district collectors is also constituted for registration, renewal and benefit distribution. Benefit distribution programs were also conducted in presence of the Chief Minister, Labour Minister, Guardian Minister of the concerned district and a local representative. Due to the effect of various measures undertaken by the Board the registration of construction workers increased in the last three years. The total registration of construction workers till 15.05.2021 is 25,53,519 and active registered construction workers are 11,82,152.”

72. In our last order, we had referred to earlier order of this Court dated 21.08.2018 passed in Special Leave Petition (Crl.) No. 150 of 2012. This Court had directed the Ministry of Labour and Employment to make available the module to all States and Union Territories for purposes of registration under Act, 2008 and following was the order passed on 21.08.2018:-

“Mr. Vinod Kumar, Director, Ministry of Labour and Employment and Mr. Ajit Kumar Dung Dung, Under Secretary, RSBY, are present before this Court.

The Ministry of Labour and Employment is now involved in the process of finalizing a registration module for unorganized workers and after the security audit it will be made ready by the end of December, 2018. It is submitted that thereafter it will be made available to the States/Union Territories for further process of registration and issuance of paper identity cards.

We direct the Chief Secretary of all the States and Administrators of all the Union Territories to start registering 10% of the estimated number of workers every month starting from the month of January, 2019 and submit a Report to this Court by 31.01.2019.

Needless to say that the Ministry will make available the module to all the States and Union Territories for the purpose of registration by the last week of December, 2018.”

73. In spite of the above direction which was issued on 21.08.2018, the Ministry of Labour and Employment has not yet been able to provide the module to all States and Union Territories for the purpose of registration. We have noticed above that several States have stated in their affidavits that they are waiting for the module to be provided by the Ministry of Labour and Employment to proceed further with the registration of unorganized workers. In this context, we may also refer to press release dated 05.05.2021 of the Ministry of Labour and Employment, which states:-

“Section 142 of the Social Security Code, 2020 has been notified by Ministry of Labour & Employment covering applicability of Aadhaar. The notification of section will enable Ministry of Labour and Employment to collect Aadhaar details for the database of beneficiaries under various social security schemes.

National Data Base for unorganised workers (NDUW) is at an advanced stage of development by National Informatics Centre. The portal is aimed at collection of data for unorganised workers including migrant workers for the purpose of giving benefits of the various schemes of the Government. An inter-

state migrant worker can register himself on the portal on the basis of submission of Aadhaar alone.

Union Minister of State (I/c) for Labour and Employment Shri Santosh Gangwar has clarified that the section under the Social Security Code has been notified only for collection of data of workers including migrant workers. No benefit will be denied to workers for want of Aadhaar.”

74. We had specifically directed to the Union of India by our order dated 24.05.2021 to file a detailed affidavit with regard to process of registration of unorganized workers as undertaken by Ministry of Labour and Employment. In pursuance of our direction, an affidavit has been filed by the Union of India dated 09.06.2021. In paragraphs 16, 17 and 18 of the affidavit, following has been stated:-

“16. It is respectfully submitted that, the major technical as well as other operational issues have been resolved and development of the portal had commenced. However, the recent outbreak of Corona has impacted the development of the portal as many of the personnel associated with the project were affected with Covid. It is submitted that, the MoLE has already released first installment of Rs.45.39 Crore to National Informatics Centre Services Inc. (NICSI) in the month of January/February, 2021 for required development work and necessary purchases of hardware and software.

17. It is humbly submitted that, NIC has been tasked prepare and hand over the NDUW Portal at the earliest, preferably in the next 3 to 4 months to the State/UT Governments to carry out the registration of the Unorganised Workers through their districts and state levels administrative machinery. Finally, it will be the responsibility of State/ UT Governments to populate the data by mobilising unorganised workers to register in their respective States/UTs through Common Service Centres, State Seva Kendras, Labour Facilitation Centers, Digital Seva

Kendras under Department of Posts etc on this portal.

For this purpose, a Comprehensive Action Plan is being prepared in the Ministry along with monthly measurable milestones to monitor the registration work in an effective manner. In addition, the workers will also be able to register themselves through mobile app or NDUW Portal in a more convenient way in a self-mode or assisted mode.

18. It is humbly submitted that, the Central Government is committed in developing a comprehensive, dynamic and useful National Database for Unorganised Workers (NDUW) including migrant workers, gig workers, platform workers, Building/Construction Workers, domestic workers and similar other workers, in order to ensure that they can be the rightful beneficiaries of the various schemes/benefits by the Central Government and the State Governments.”

75. Regarding registration of unorganized workers, the stand taken by the Union of India as noted above does not commend us. We have noticed that this Court as early as on 21.08.2018 had directed the Ministry of Labour and Employment to make available a module to the States/Union Territories for the purpose of registration. No exception can be taken to the Central Government deciding to create NDUW portal for facilitating the States and Union Territories to register so that national Database of Unorganised Workers may become available. A statement is made in the above paragraph that NIC has been required to develop a portal for which an amount of Rs.45.39 crores have been released in the month of January/February, 2021. When the unorganized workers are waiting for registration and are waiting to reap the benefit of various welfare schemes of the States and Centre, the apathy and lackadaisical attitude by the Ministry of Labour and Employment is unpardonable. There was urgency in the portal to be finalized and implemented looking to the pandemic and dire need of unorganized workers to receive the benefit. The attitude of Ministry of Labour and Employment in not completing the module even though directed as early as on 21.08.2018 shows that Ministry is not alive to the concern of the migrant workers and the non-action of the Ministry is strongly disapproved. We further direct the Secretary, Ministry of Labour and Employment to ensure that NDUW portal is finalized and implementation of the portal commences on or before 31.07.2021. Let Secretary of the Ministry of Labour and Employment file a report to that effect within a period of one month thereafter.

76. To provide access to the migrant workers to different Schemes of State Government and Central Government, registration is a must. We impress upon Central Government as well as States and Union Territories to complete the portal for registration under National Database for Unorganised Workers (NDUW) project as well as implement the same, which by all means may commence not later than 31.07.2021. We make it clear that after registration is complete, the correction and updating of the data should be always possible and which is part of the process. It is only after registration of the workers that the States and the Centre shall be able to extend the benefits of the welfare schemes to them. Prior to that unless the registration is complete, tall claims by all the States and Union that they have implemented various welfare schemes for the migrant workers and unorganized workers remain only on paper without giving any benefit to unorganized workers.

(vi) Community Kitchen

77. Most of the States during this pandemic have been running community kitchens for migrant labourers and other persons, who needed two meals a day due to various reasons including cessation of employment. We had also directed the States to run community kitchens for migrant labourers. States in their affidavits have given details regarding running of the community kitchens. The State of Karnataka states that community kitchens called Indira Canteens are being run in the City Corporation/Municipal Corporation limits. It has been stated on behalf of the State of Kerala that the State of Kerala is providing community kitchen to the stranded migrant workers during outbreak of Covid-19 pandemic in 2020 as per Government order dated 26.03.2020 and 03.04.2020. It is stated that Kerala Government has issued combined guidelines for the operation of the scheme “Hunger free Kerala- Janakeeya Hotel and Community Kitchens” under the Local Self Government Institutions for providing food packets to the eligible categories. On 11.05.2021 further guidelines have been issued for the operation of Janakeeya Hotels and Community Kitchens. The State of Punjab submits that 38 community kitchens are working in different districts of Punjab. State of Telangana’s case is that 140 Annapurna Canteens are available in Greater Hyderabad Municipal Corporation limits where food is given @ Rs.5/-. Migrant workers can utilize their services. The state of Tamil Nadu’s case is that as per Government policy, everyone can avail food at free of cost during the lock-down period at Government run canteens functioning as community kitchens in various Municipal Corporations of Tamil Nadu. The Government of NCT Delhi states that in view of the curfew and lockdown announced on 19.04.2021, the Government of NCT of Delhi made various arrangements for the relief and welfare of the migrant labourers. Hunger Relief Centres for migrant workers, daily workers and other needy persons have been established in all 11 districts of Delhi. Food packets are being provided at the construction sites. The case of the State of U.P. is that vide G.O. dated 15.04.2021, the Government of U.P. had directed temporary shelter camps/quarantine facilities/screening camps to be set up to accommodate the migrant workers returning to their native places during the second wave of pandemic, whereby in temporary camps two complete meals a day were provided. In the State of West Bengal, it is stated that “Maa Community Kitchen Scheme” is in operation in Kolkata Municipal Corporation area and other municipalities/corporations areas since March, 2021 where good food at a subsidized rate of Rs.5/- per meal is provided, which scheme can be availed by anyone. There are 150 canteens running across 23 districts. The State of Madhya Pradesh also states that under the “Deendayal Antyodaya Rasoi” Scheme 100 kitchen centres are operating since February, 2021 in 52 district headquarters and in 6 other prominent religious towns. State of Maharashtra submits that presently there are no migrant workers, who are ‘stranded’ in the State, hence there is no question of providing community kitchen to ‘stranded’ migrant workers. State refers to a scheme titled ‘Shiv Bhojan Thali’, which provides meals to the public @ Rs.10/-.

78. It is true that after relaxation of lockdown and restrictions imposed, all the industries have started functioning, providing of employment to large number of people including migrant workers but still there are migrant labourers, who have not got any employment. The States have been running community kitchens during the pandemic. We are of the view that State should run the community kitchens at prominent places where large number of migrant labourers are there, which community kitchens should be continued at-least till the pandemic continues. The States should

advertise places where facility of community kitchen/subsidized meals is provided so that no migrant labour, who is unable to arrange for his two meals can remain hungry.

(vii) Direct Bank Transfer to unorganized workers.

79. All States have filed their affidavits and most of the States have made direct bank transfers to construction workers, who are registered under Act, 1996. The amount ranging from Rs.1,000/- to Rs.6,000/- has been transferred to the construction workers. Few States have also made transfer to other categories including auto rickshaw drivers and some other categories. The right of direct bank transfer flows from a particular scheme framed by a State. In event, a person including a migrant labourer is entitled for any direct bank transfer from any scheme, he can claim for such entitlement. Before us, no such scheme by any State has been pleaded on record where conscious decision has been taken by the State to make direct bank transfer to a migrant labourer. The direct bank transfer being matter of policy and being in domain of the State, no direction can be issued by this Court for any direct bank transfer as claimed by certain applicants/intervenors. We only observe that in event any person is entitled for direct bank transfer as per the existing scheme in any State, he can avail the said benefit by the mechanism as provided in the policy decision.

80. In view of the foregoing discussions and our conclusions, we dispose of the writ petitions with the following directions:-

(i) It is directed that the Central Government to develop the Portal in consultation with National Informatics Centre (NIC) for registration of the unorganized labourers/migrant workers. We also impress upon and direct that the Central Government as well as the respective States and the Union Territories to complete the process of Portal for registration under National Data Base for Unorganised Workers (NDUW Project) as well as implement the same, which by all means may commence not later than 31.07.2021. We also impress upon and direct that the process of registration of the unorganized labourers/migrant workers is completed at the earliest, but not later than 31.12.2021. All the concerned States/Union Territories and the Licence Holders/Contractors and others to cooperate with the Central Government to complete the process of registration of migrant workers and unorganized labourers so that the benefits of the welfare schemes declared by the Central Government/State Governments/ Union Territories be available to migrant workers and unorganized labourers for whose benefits the welfare schemes are declared.

(ii) The Central Government having undertaken to distribute additional quantity of foodgrains as demanded by the States/Union Territories for distribution to migrant labourers under some Scheme framed by the States, we direct the Central Government, Department of Food and Public Distribution (Ministry of Consumer Affairs, Food and Public Distribution) to allocate and distribute foodgrains as per demand of additional food-grains from the States for disbursement of dry foodgrains to migrant labourers.

(iii) We direct the States to bring in place an appropriate scheme for distribution of dry ration to migrant labourers for which it shall be open for States to ask for allocation of additional foodgrains from the Central Government, which, as directed above, shall provide the additional foodgrains to the State.

The State shall consider and bring an appropriate Scheme, which may be implemented on or before 31.07.2021. Such scheme may be continued and operated till the current pandemic (Covid-19) continues.

(iv) The States, who have not yet implemented “One Nation One Ration Card” scheme are directed to implement the same by not later than 31.07.2021.

(v) The Central Government may undertake exercise under Section 9 of the National Food Security Act, 2013 to re-determine the total number of persons to be covered under the Rural and Urban areas of the State.

(vi) We direct all the States/Union Territories to register all establishments and license all contractors under the Act, 1979 and ensure that statutory duty imposed on the contractors to give particulars of migrant workers is fully complied with.

(vii) The State/Union Territories are directed to run community kitchens at prominent places where large number of migrant labourers are found for feeding those migrant labourers who does not have sufficient means to procure two meals a day. The running of the community kitchen should be continued at-least till pandemic (Covid-19) continues.

81. In view of the above directions, this writ petition and the Writ Petition (C) No.916 of 2020 are disposed of.

.....J. (ASHOK BHUSHAN)J. (M.R. SHAH) New Delhi, June 29, 2021.