

SECTION: PIL

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

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

IN THE MATTER OF:

IN RE: PROBLEMS AND MISERIES OF MIGRANT
LABOURS

....PETITIONER

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Prashant Bhushan

(PRASHANT BHUSHAN)
COUNSEL FOR THE APPLICANT
301, NEW LAWYERS CHAMBERS
SUPREME COURT OF INDIA
NEW DELHI 110 001
CODE NO.: 515

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DOL RAJ BHANDARI , REGD. CLERK, I.D. NO. 3745, MOB. NO. 9868255076

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**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

I.A. NO. 58769/2021

IN

SUO MOTO WRIT PETITION (C) NO. 6/2020

IN THE MATTER OF:

IN RE: PROBLEMS AND MISERIES OF
MIGRANT LABOURERS

...PETITIONER

AND IN THE MATTER OF:

HARSH MANDER
ANJALI BHARDWAJ
JAGDEEP S. CHHOKAR

...APPLICANTS

PAPER-BOOK

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COUNSEL FOR THE APPLICANTS: **PRASHANT BHUSHAN**

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WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANTS

1. The note is presented under four headings- Dry Rations To Migrant Workers, One Nation One Ration (ONOR), Provision Of Emergency Cash Transfers To Migrant Workers And Provision Of Cooked Food To Migrant Workers.

DRY RATIONS TO MIGRANT WORKERS

2. On May 24, 2021, this Hon'ble Court had directed that ration be provided to all migrant workers across the country:

"13. With regard to distributing of dry ration by the States to the migrant workers and to the migrant workers in the NCR region as directed by us on 13.05.2021, let all States to file affidavits indicating

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the mechanism by which the dry ration should be distributed to those migrant workers, who does not possess a ration card. Whether the AtmaNirbhar Bharat Scheme of the Union of India, which was implemented for giving dry rations to migrant workers in May and June, 2020 is to be utilized or some other scheme has to be utilized is a matter for States to take a decision but the dry ration has to be distributed to the migrant workers throughout the country by the States.” (Emphasis supplied)

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

3. However, a perusal of the affidavits filed by the states shows that **most states have not put in place any specific scheme for providing dry grains to migrant workers** without ration cards pursuant to these directions. It appears that the states of Bihar, Haryana, Chhattisgarh, Jharkhand, Goa, Assam, Maharashtra, Manipur, Meghalaya, Nagaland, Odisha, Punjab, Rajasthan, Telangana, Sikkim and Chandigarh have not operationalised any specific scheme during the second wave of COVID in 2021 to provide dry rations to migrant workers without ration cards. It is pertinent to mention that most of these states had identified migrant workers and given rations to them last year under the AtmaNirbhar Bharat Yojana. In their affidavits, several states have indicated that if the AtmaNirbhar Bharat Yojana were to be revived for 2021, they will provide rations to migrant workers.

4. **The Central government has also not put in place any scheme for specifically providing rations to migrant workers.** As per affidavit filed by Union of India dated 09.06.21, in Para 5 on page 9 it is stated that in compliance with the order of Hon'ble Supreme Court dated 24.05.2021, the Department of Food and Public Distribution vide its letter dated 25.05.2021 has again requested States/UTs to avail the various relaxations under the OMSS (D) schemes to obtain any additional quantity of foodgrains they may need for providing to other migrants/stranded migrants without ration card, from the FCI, over and above the allocation under the NFSA/PMGKAY. However, the OMSS(D) scheme described in the table at point 3 on page 5, is a general scheme for Bulk consumers/State Governments/UTs wherein wheat and rice can be purchased at Rs. 20/- per Kg. and Rs. 21/- per Kg. respectively.

In contrast, last year during the lockdown, the Central government had announced the **AtmaNirbhar Bharat Scheme** under which the central government had made allocation of rations for 2 months for 8 crore migrant workers (5 Kgs grain per person per month and 1 Kg pulses per household per month) which was provided free of cost to states which were to identify and distribute the rations. As per para 8 on page 12 of UOI affidavit dated 9.6.2021, states/UTs identified and distributed rations to 2.8 crore migrant workers. **However, in 2021, there is no such specific scheme for providing rations to migrant workers by the central government.**

It is pertinent to note that the Central government is well aware of the distress among people caused due to the second surge in the

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pandemic and the concomitant lockdowns, and has therefore, launched the Pradhan Mantri Gareeb Kalyan Ann Yojana (PMGKAY) for the months of May and June 2021 and subsequently extended it till Diwali. Under the PMGKAY all ration cardholders (approx. 80 crore) are entitled to receive additional 5 kgs of foodgrains per person per month free of cost. During times of distress, access to food must be extended to all, irrespective of whether they possess a ration card. This is essential to safeguard peoples' right to food which is a fundamental facet of Right to Life guaranteed under Article 21 of the Constitution. This was also directed by this Hon'ble Court in the context of drought affected areas in *Swaraj Abhiyan v. Union of India*, (2016) 7 SCC 498 : 2016 SCC OnLine SC 549 (extract at Annexure A-1).

It must also be pointed out currently foodgrain stock with the Food Corporation of India is at a record high of more than 100 million metric tonnes and therefore, there is no reason for the Central government to not make available this grain for a specific scheme to alleviate the distress and hunger among those in need including migrant workers.

'Inter-State Migration' falls squarely within the ambit of the Union list and is enumerated at Entry 81 in List I (Union List) in the Seventh Schedule of the Constitution of India.

- 5. Therefore, with respect to dry rations to migrant workers, it is prayed:**

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- 5.1 **States be directed to ensure strict compliance with order dated May 24, 2021 by the Hon'ble Court in this matter to provide dry rations to migrant workers.**
- 5.2 **UOI be directed to put in place a specific scheme for providing dry rations free of cost to migrant workers.**
- 5.3 **All migrant workers identified under AtmaNirbhar Bharat Yojana be provided rations, in addition to providing opportunity to new or unregistered migrant workers to avail of dry grains.**
- 5.4 **Provision of dry grains to migrant workers not be restricted to a one or two month entitlement and continue for atleast the next 6 months.**
- 5.5 **A court- monitored mechanism be set up to ensure compliance with directions in order dated May 24, 2021.**

ONE NATION ONE RATION (ONOR)

6. The concept of portability of ration entitlements across the country is important given the nature of migration of labour. However, it is important to highlight the key issues related to the scheme which hinder access of migrant workers from availing its benefits:

- 6.1 **Necessity of ration card-** This scheme is only applicable to persons who possess ration cards. There are many economically vulnerable migrant workers who are unable to obtain a ration card on account of either the ration card quota under the National Food Security Act, (NFSA) being exhausted in their state or due to

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inability to furnish the numerous documents required for applying for, and obtaining, a ration card including proof of address, Aadhaar, electricity bill etc. It is pertinent to mention that most states have already exhausted their quotas for issuing ration cards (22 out of 29 states have less than 5% quota remaining). Further the state-wise quotas are severely underestimated on account of being calculated as per the figures of the 2011 census and never having been updated since. At the current population projection of 139 crore, applying coverage of 67% under NFSA (as per 2011 figures), coverage under NFSA should be 93 crore people as against the current figure of 80 crore.

6.2 Exclusions on account of Aadhaar based biometric authentication- ONOR requires every ration card in the country to be seeded with Aadhaar, every Fair Price Shop (ration shop) to have the e-POS system and the necessary infrastructure including access to internet, connectivity of mobile network, electricity and success of biometric authentication in addition to dynamic stock availability of rations at each shop. Failure of any of these necessary conditions lead to exclusion of the rationcardholder from being able to access their ration entitlements thereby leading to a denial of the fundamental right to food. There are no uniform established procedures in cases of biometric failures and states have made ad hoc arrangements often requiring complex procedure of establishing identity before designated officials and obtaining necessary certificates. Further, in many states if biometrics fail, the only way to get ration is by obtaining and

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furnishing a One Time Password (OTP) sent to the registered mobile number linked to the ration card. In the event that the phone number has changed or has not been updated or there is poor connectivity, ration is not provided. In the immediate term, provision of reliable and easy to access mechanisms in case of biometric failure or technological failure are crucial to prevent denial of access to food. In the medium term, a shift to more reliable technology or delivery system is required. For instance a system of smart cards would eliminate the issue of biometric failures on account of difficulty to authenticate fingerprints of people involved in hard physical manual labour using their hands. Further, robust and people friendly transparency measures and effective grievance redress systems can prevent misappropriation of foodgrains under the NFSA without creating any scope for exclusions.

The gaps between the number of migrant workers located in a state and those who possess ration cards and are able to access ration entitlements is also borne out by figures. For instance, as per affidavit of State of Gujarat dated May 20, 2021, there are 23 lakh migrant workers from other states working in the state of Gujarat (para 7.1), however, only 4,289 transactions of ration cards from other states were carried out in Gujarat during the period January to May 2021 (para 8.9).

7. Therefore, with respect to One Nation One Ration, it is prayed:

- 7.1 Direct UOI to revise the state-wise quota of ration cards under the National Food Security Act (NFSA) as per 2021 population projections.**
- 7.2 Direct states and UOI to give priority to including migrant workers under NFSA by easing norms for obtaining a ration card through provision of self-declaration in case of people without necessary documents as also directed by this Hon'ble Court in this case for provision of dry ration on basis of self certification.**
- 7.3 Direct UOI and states to ensure no person is denied access to food on account of biometric failure or technological failure in e-POS machines by putting in place uniform, reliable and easy to access alternatives in case of such failures.**

PROVISION OF EMERGENCY CASH TRANSFERS TO MIGRANT WORKERS

- 8. Emergency cash transfers** are crucial to enable migrant workers to cope with the deep economic crisis in the country on account of the disruption of economic activity caused due to lockdowns/restrictions to curb the spread of COVID. Money is needed to pay for health expenditure, rent payment and basic expenses like cooking oil, milk, vegetables. All evidence points to deep economic crisis of job loss, reduced wages and contraction of economy and manufacturing sector. As per 'State of Working India 2021: One Year of Covid-19' by Azim Premji University, an estimated 23 crore Indians have been

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pushed into poverty during the past one year of the pandemic. (http://publications.azimpremijfoundation.org/2649/1/State_of_Working_India_2021-One_year_of_Covid-19.pdf) A perusal of the affidavits filed by states show that most have made provision to give cash transfers to construction workers who are registered with the state's construction workers board, welfare board or social security board in order to help them cope with the loss of livelihood. However, migrant workers are not just restricted to the construction sector. They also work in factories, as domestic help, casual labour, street vendors, rickshaw pullers, auto drivers etc. . It is imperative that the cash transfers be made to them too, in order to enable them to cope with this unprecedented crisis. It is on account of the undue delay in identifying and registering migrant workers despite directions of this Hon'ble Court, that workers engaged in work other than construction are not being provided these benefits

9. Therefore, with respect to cash transfers to migrant workers, it is prayed:

9.1 Direct Central and the State governments to jointly/severally ensure emergency cash transfers to all migrant workers identified under any scheme/law including, but not limited to, those identified under the AtmaNirbhar Bharat Yojna of 2020, under Street Vendors Act, Inter State Migrant Workmen Act for the period that economic activity is adversely impacted by the pandemic to compensate for the loss of livelihood and income.

9.2A mechanism be set up to monitor compliance with directions of this Hon'ble Court with respect to registration of unorganised sector workers and migrant workers under the various laws and databases.

PROVISION OF COOKED FOOD TO MIGRANT WORKERS

10. On May 24, 2021, this Hon'ble Court had directed all the States/Union Territories to make operational the community kitchen to the stranded migrant workers wherever they may be situated in the country, and ensure wide publicity with respect to the various schemes including the places of community kitchens so that such needy persons may in fact take benefits. A perusal of the affidavits show that several states have made provision of cooked food through community kitchens.

11. Therefore, with respect to operationalising community kitchens to provide cooked food to migrant workers, it is prayed:

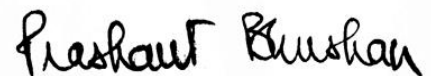
11.1 States be directed to ensure strict compliance with order dated May 24, 2021 by the Hon'ble Court in this matter to make operational easily accessible community kitchens to provide cooked food for migrant workers.

11.2 States be directed to open community kitchens in every block in rural areas and in every ward in urban areas to provide cooked food to migrant workers and to operate such kitchens for atleast the next 6 months.

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It is submitted that due to the second wave of the COVID 19 pandemic and the concomitant lockdowns/ restriction imposed by governments, livelihoods and income earning opportunities of millions of migrant workers have been adversely impacted. In this context, every day of delay in providing food and cash support results in exacerbating the hardships and miseries of migrant workers and their families.

THROUGH:



(PRASHANT BHUSHAN)

COUNSEL FOR THE APPLICANTS

NEW DELHI

DATED: 15.06.2021

ANNEXURE A-1**Extract of Swaraj Abhiyan v. Union of India, (2016) 7 SCC 498 :
2016 SCC OnLine SC 549**

118. Similarly, the entitlement of foodgrains at 5 kg per person per month (as per the NFS Act) is a goal that must be achieved by the State at the earliest particularly in drought-affected areas. **In fact, statute or no statute and implementation or non-implementation of a law enacted by Parliament, the State ought to appreciate and realise that an adequate supply of foodgrains must be made available without much fuss to people in drought-affected areas.** As it is, because of the drought such persons undergo immense hardship mainly for reasons beyond their control and if there is a scarcity of food, it would only add to their misery and adversity if not multiply it. The State being a welfare State must take these factors into consideration and strain every nerve to ensure that the mandate of the NFS Act is adhered to.

119. In this context, **it would be inappropriate for the State Governments to deprive any household in drought-affected areas of the requisite foodgrains merely because they do not have a ration card. We find substance in the contention of the learned counsel for Swaraj Abhiyan that in grave and emergent situations such as those in the drought-affected areas, the requirement of a ration card for obtaining foodgrains can only be considered a procedural requirement and that requirement should be substituted with a valid identity card or any**

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appropriate proof of residence that is acceptable to the functionaries in the State Governments, who need to construe such a condition open-handedly and without being tight-fisted.

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Directions

128.4. No household in a drought-affected area shall be denied foodgrains as required under the NFS Act only because the household does not have a ration card. The requirement of a household having a ration card is directed to be substituted by an appropriate identification or proof of residence that is acceptable to the State Government.

Preshant Bhusan
(TRUE COPY)