

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2020

CORAM:

THE HONOURABLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P(MD)Nos.2930 and 3333 of 2013

W.P(MD)No.2930 of 2013:

R.Gandhi

... Petitioner

Vs.

- 1.The Union of India,
represented by its
Secretary to Government,
Department of Rural Development,
New Delhi.
- 2.The State of Tamil Nadu,
represented by its
Secretary to Government,
Department of Rural Development,
St. George Fort,
Chennai - 9.
- 3.The Central Employment Guarantee Council,
represented by its
Chairperson,
Ministry of Finance,
New Delhi.

4.The State Employment Guarantee Council,
represented by its
Chairperson,
St. George Fort,
Chennai - 9.

5.The District Programme Co-ordinator,
Inspector of Panchayats (District Collector),
Madurai District, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Declaration, declaring Section 6 of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (Act 42 of 2005) as ultra vires Article 23, 14, and 16 of the Constitution of India and therefore, void ab-initio.

W.P(MD)No.3333 of 2013:

A.Mahaboob Batcha

... Petitioner

Vs.

1.The Union of India,
represented by its
Secretary to Government,
Department of Rural Development,
New Delhi.

2.The State of Tamil Nadu,
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Secretary to Government,
Department of Rural Development,
St. George Fort,
Chennai - 9.

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represented by its
Chairperson,
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Inspector of Panchayats (District Collector),
Madurai District, Madurai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Declaration, declaring Section 6 of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (Act 42 of 2005) as ultra vires Article 23, 14, and 16 of the Constitution of India and therefore, void ab-initio.

For Petitioner : Mr.M.Ajmal Khan
in WP:3333/13 Senior Counsel
for M/s.Ajmal Associates

For Petitioner : Mr.M.Mahaboob Athiff
in WP:2930/13 for M/s.Ajmal Associates

For Respondents : Mr.Boopathi
in both WPs for Mrs.L.Victoria Gowri
for R.1 & R.3
Mr.VR.Shanmuganathan
Spl. Government Pleader
for R.2, R.4 and R.5

COMMON ORDER

(Order of the Court was made by *the Chief Justice*)

The challenge raised is to the effect that non payment of minimum wages as per the Minimum Wages Act, 1948 (for brevity, "*the 1948 Act*") to those who are engaged under the Mahatma Gandhi National Rural Employment Guarantee Act Scheme (for brevity, "*the MGNREGA Scheme*") is violative of Article 14 of the Constitution of India, in as much as persons engaged for performance of similar nature of work are getting the minimum wages in other Government Departments and, therefore, fixing a lower wage notified under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for brevity, "*the 2005 Act*") is *ultra vires* the Constitution of India.

2. The second ground raised is that paying wages less than minimum wages prescribed amounts to compelling the MGNREGA engagees to be treated as forced and bonded labour, which is violative of Article 23 of the Constitution of India.

3. The learned Senior Counsel for the petitioners has taken us to the provisions of Sections 3 and 6 of the 2005 Act. In order to understand the controversy, Sections 3 and 6 of the 2005 Act are extracted herein under:

"Section 3. Guarantee of rural employment to households.—

(1) *Save as otherwise provided, the State Government shall, in such rural area in the State as may be notified by the Central Government, provide to every household whose adult members volunteer to do unskilled manual work not less than one hundred days of such work in a financial year in accordance with the Scheme made under this Act.*

(2) *Every person who has done the work given to him under the Scheme shall be entitled to receive **wages at the wage rate for each day of work.***

(3) *Save as otherwise provided in this Act, the disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight after the date on which such work was done.*

(4) *The Central Government or the State Government may, within the limits of its economic capacity and development, make provisions for securing work to every adult member of a household under a Scheme for any period beyond the period guaranteed under sub-section (1), as may be expedient.*

Section 6. Wage rate.—

(1) **Notwithstanding anything contained in the Minimum Wages Act, 1948 (11 of 1948), the Central Government may, by notification, specify the wage rate for the purposes of this Act:**

Provided that different rates of wages may be specified for different areas:

Provided further that the wage rate specified from time to time under any such notification shall not be at a rate less than sixty rupees per day.

(2) *Until such time as a wage rate is fixed by the Central Government in respect of any area in a State, the minimum wage fixed by the State Government under section 3 of the Minimum Wages Act, 1948 (11 of 1948) for agricultural labourers,*

shall be considered as the wage rate applicable to that area."

4. To correlate it with the arguments advanced on the strength of the constitutional provisions, it would be apt to quote Article 23 of the Constitution of India herein under:

"Article 23. Prohibition of traffic in human beings and forced labour.-

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

5. The contention is that Section 3 read with Section 6 of the 2005 Act empowering the authority to fix wages lower than the minimum wages is *ultra vires* the provisions of Articles 14 and 23 of

the Constitution of India, as indicated above, and also *ultra vires* the very provisions of the Act, which itself indicate that the wages would continue till the wages are notified and this continuance shall be at a rate not less than the minimum wages of agricultural labourers. The contention, therefore, is that the notification fixing a wage less than the minimum wage prescribed under the 1948 Act for similar nature of work deserves to be struck down and so also the provisions aforesaid which empower the authority to fix a wage lower than the minimum wages prescribed under the 1948 Act.

6. We may point out that the learned counsel for the petitioners has proceeded to advance his submissions on the strength of the logic and reasoning as expounded by the Apex Court in the case of **Sanjit Roy v. State of Rajasthan, AIR 1983 SC 328**, to contend that this will amount to forced labour, in as much as unemployed youth have been given the guarantee of employment and it is on account of their penury and helpless circumstances that they are compelled to work, but they cannot be compelled to receive wages less than the minimum wages

prescribed, that too even in a scheme floated by the respondent Government.

7. It is in this background and based on the ratio of the judgment of the Supreme Court, referred supra, it is urged that the legislation even though is to lessen the distress of poverty, yet it has been designed to extend help to those who are facing unemployment and the Government cannot be allowed to take undue advantage of such a status so as to pay wages less than the minimum wages. It is urged that, in such a situation, the ratio of the decision cited supra is clearly attracted on the facts of the present case and hence, the relief prayed for should be granted.

8. Having considered the submissions raised, we find that the purpose of the 2005 Act is to extend a helping hand to the unemployed youth and is not to force unwilling labour on any person. The 2005 Act is clearly intended to augment and supplement the penury conditions of poverty and provide financial benefits in the shape of wages, while executing schemes of the

nature as described under the Act.

9. The defence taken in the counter affidavit of the first respondent/Union of India is worth noticing. Paragraphs (3) to (9) of the said counter affidavit is extracted herein under:

"3. The Central Government, aware of the inadequacy of rural livelihood opportunities and in furtherance of its commitment to ensure enhanced livelihood security to the rural poor, enacted various programmes and schemes to provide direct (but supplementary) wage-employment to the rural poor through a series of measures including public works.

4. These included the National Rural Employment Programme, Rural Landless Employment Guarantee Programme, Jawahar Yojna and Sampoorna Gramin Rozgar Yojna.

5. Though these programmes provided some relief to the rural poor, their reach and impact continued to be limited in view of the widespread and endemic nature of unemployment in rural areas. Therefore, an urgent need was felt to ensure that, at the very least, a basic and justifiable minimum guarantee of employment

(through the fixation of number of days of manual labour) should be provided through the means of an independent legal instrument.

6. *To achieve this objective the Mahatma Gandhi National Rural Employment Guarantee Act was passed in 2005 (Hereinafter "the MGNREG Act"). The MGNREG Act provided for 100 days of guaranteed wage employment in every financial year to every household from which adult members volunteer to do unskilled manual work. The MGNREG Act also provides for payment of unemployment allowance and the other facilities indicated in Schedule II of the MGNREG Act. Section 6(1) r/w. Section 28 of the MGNREG Act give the Central Government the power to determine its wage rates independent of the provisions of the Minimum Wages Act, 1948 (Hereinafter "the MW Act").*

7. *The Central Government adopted the wage rate fixed on 1.12.2008 by the States for unskilled agriculture labourers under the MW Act, and notified as the wage rate under Section 6(1) of the MGNREG Act vide Government of India Notification dated 1.1.2009 (being the impugned notification in the writ). However, it was never the intention of the Central Government to link the wages under the two*

legislations. This legislative intent is expressed clearly and categorically under the MGNREG Act (Section 6(1) read with Section 28). Furthermore, the nature of work intended to be assigned under the MGNREG Act was separate to be and distinct from those listed under the Schedule to the MW Act. Therefore any comparison between works assigned under the two legislations seems specious and legally untenable.

8. It must also be understood that the MGNREG Act does not seek to replace existing employment opportunities but rather to supplement them. The intent is to create a wage opportunities based social net for those living in rural areas who do not find normal livelihood on account of temporary distress conditions. The MGNREG Act has been drafted with the principle intent of creating a social security net that can be invoked to enhance or augment livelihood security for the rural households. In other words, it is meant to be used as a last resort. That is why Section 6(1) prescribes the wage rate in a way that clearly distinguishes it from minimum wages for agricultural labourers. The MGNREG Act is in pursuance of the directive principle of state policy under Article 41 of the Constitution of India.

9. *When the MGNREGA Scheme was first introduced the minimum wages for agriculture labour notified by the States was adopted as the wage rate for the MGNREG Act under the transitory clause i.e., Section 6 (2) of the MGNREG Act pending notification wage rates under Section 6(1) by Central Government. Subsequently, the Central Government issued the Notification dated 01.01.2009 adopting the minimum wage rate for agriculture labour as on 1.12.2008 as the MGNREGA wage rate under Section 6(1) of the MGNREG Act."*

10. A perusal thereof would indicate that the first respondent has taken a stand that the nature of activities envisaged under the 2005 Act are not exactly similar to the regular work being performed in any Government Department. The MGNREGA Scheme is based on a work demand and a voluntary availing of such benefit by a person who is trying to augment his means of livelihood. The scheme, therefore, is a social piece of legislation that was envisioned for accommodating unemployed youth by giving them an alternative source of livelihood with a guarantee of a minimum of 100 days of employment. This was to implement a policy of social

upliftment by providing a succor to those who were not able to tap any other resources for a sustained livelihood. The right, therefore, that could be claimed under the said Act would be governed by the provisions and cannot be construed to be a scheme or an Act for encouraging exploitation of labour. From this point of view, we do not find this to be an enactment that is bringing about any exploitation or compelling forced bonded labour so as to violate Article 23 of the Constitution of India.

11. The argument on the strength of Article 14 of the Constitution of India is also not well founded, as the nature of the claim, the work and the projects that are to be executed have been clearly explained by the respondents to be of a different nature and not a regular workforce engaged for performing any regular work. The two classes therefore being different, we do not find this to be a case attracting Article 14 of the Constitution of India.

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12. Having held so, we find that this issue was also raised before the Karnataka High Court in the case of ***Karnataka Prantya***

Raita Sangha and others v. Union of India and others, MANU/KA/1139/2011 [W.P.No.301619 of 2009 etc., decided on 23.9.2011], where a contrary view was taken applying the judgment in the case of **Sanjit Roy v. State of Rajasthan** (supra) and the notification fixing the wage rates under the 2005 Act was declared to be not in conformity with the 1948 Act. The Court in paragraphs (11) and (12) held as under:

"11. Thus, having given our thoughtful consideration, we are of the opinion that the exercise of power by the first respondent to notify the 'wage rate' under Section 6(1) at the rate lesser than the minimum wages notified for the particular area is not sustainable. As such, it is declared that the power exercisable by the Central Government under Section 6(1) of Act 2005 to notify the wage rate shall be in such manner that the 'wage rate' notified shall not be less than the minimum wage fixed by the State Government under Section 3 of the MW Act, 1948, for agricultural labourers applicable to that area.

12. Consequent on the above, the notification dated 01.01.2009 notifying the wage rate for agricultural

labourers in Karnataka at Rs.82/- is quashed and it is held that the appropriate 'wage rate' with effect from the said date shall be treated as Rs.119.42. The subsequent revision of minimum wage shall be treated as the wage rate from the relevant date of fixation of the minimum wage. The respondents shall take steps for payment of the difference of the amount to the wage earners who had worked during the said period."

13. The matter went up in appeal before the Apex Court in ***Union of India and others v. Karnataka Prantya Raita Sangha and others, MANU/SCOR/26392/2014***, and the Union of India came up with a wage revision schedule dated 1.4.2014. Taking notice of the same, the Special Leave Petition was disposed of observing that the prescription of minimum wages now stands modified in respect of all the States, and permitting the Union of India and other authorities to act in conformity with the said notifications. The Apex Court, however, while disposing of the appeal further observed that in the event the fresh notification issued revising the wages is challenged, then the Court may decide

the same uninfluenced by the judgment impugned therein of the Karnataka High Court. The said order of the Apex Court is extracted herein under:

"By the impugned judgment, the High Court while dealing with the wages prescribed pursuant to powers conferred under sub-Section 1 of Section 6 of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 held as follows:

"11. Thus, having given our thoughtful consideration, we are of the opinion that the exercise of power by the first respondent to notify the 'wage rate', under Section 6(1) at the rate lesser than the minimum wages notified for the particular area is not sustainable. As such it is declared that the power exercisable by the Central Government under Section 6(1) of Act 2005 to notify the wage rate shall not be less than the minimum wage fixed by the State Government under Section 3 of the MW Act, 1948, for agricultural labourers applicable to that area.

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be treated as the wage rate from the relevant date of fixation of the minimum wage. The respondent shall take steps for payment of the difference of the amount to the wage earners who had worked during the said period."

In course of argument heard counsel for Union of India brought to our notice that Government of India from its Ministry of Rural Development issued notification dated 13th February, 2014 published in the Gazette of India (Extraordinary) whereby in exercise of power conferred under sub-section (1) of Section 6 of Mahatma Gandhi National Rural Employment Guarantee Act, 2005 revised the wages as per Schedule w.e.f. 1st April, 2014.

In view of the notification aforesaid, we are of the opinion that the wages as prescribed earlier stands modified in respect of all the States including the State of Karnataka. Impugned order passed by High Court is now effective only up to the period of 31st March, 2014.

For the reasons aforesaid, while we are not deciding the issues as raised in the present special leave

*petition, allow the Union of India to act in terms of notification dated 13th February, 2014 for the period from 1st April, 2014 onwards. **In case the present notification is challenged before any Court, the court may decide the same uninfluenced by impugned Judgment and Order dated 23rd September, 2011 passed by the High Court of Karnataka at Bangalore in W.P. Nos. 30619, 29954-29958, 28685-28689 and 32502 of 2009.** The special leave petition stands disposed of."*

14. Thus, the Supreme Court therefore did not approve of the reasoning given by the Karnataka High Court and observed that the High Court would be at liberty to decide the matter uninfluenced by the said Division Bench judgment.

15. We have been further able to lay our hands on the latest notification dated 26.3.2019 issued by the Central Government, which is extracted herein under:

MINISTRY OF RURAL DEVELOPMENT

NOTIFICATION

New Delhi, the 26th March, 2019

S.O. 1424(E).—In exercise of the powers conferred by sub-section (1) of section 6 of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (42 of 2005), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Rural Development number S.O. 463(E), dated the 26th February, 2013, namely:—

1. In the said notification, for the SCHEDULE, the following SCHEDULE shall be substituted, namely:—

**"SCHEDULE
State-wise wage rate for unskilled manual
workers (Rupees per day)**

Sl.No.	Name of State/Union territory	Wage rate in rupees per day
(1)	(2)	(3)
1	Andhra Pradesh	Rs.211.00
2	Arunachal Pradesh	Rs.192.00
3	Assam	Rs.193.00
4	Bihar	Rs.171.00
5	Chhattisgarh	Rs.176.00
6	Goa	Rs.254.00

Sl.No.	Name of State/Union territory	Wage rate in rupees per day
7	Gujarat	Rs.199.00
8	Haryana	Rs.284.00
9	Himachal Pradesh	Non-scheduled Areas-Rs. 185.00 Scheduled Areas-Rs. 231.00
10	Jammu and Kashmir	Rs.189.00
11	Jharkhand	Rs.171.00
12	Karnataka	Rs.249.00
13	Kerala	Rs.271.00
14	Madhya Pradesh	Rs.176.00
15	Maharashtra	Rs.206.00
16	Manipur	Rs.219.00
17	Meghalaya	Rs.187.00
18	Mizoram	Rs.211.00
19	Nagaland	Rs.192.00
20	Odisha	Rs.188.00
21	Punjab	Rs.241.00
22	Rajasthan	Rs.199.00
23	Sikkim	Rs.192.00
24	Tamil Nadu	Rs.229.00
25	Telangana	Rs.211.00
26	Tripura	Rs.192.00
27	Uttar Pradesh	Rs.182.00
28	Uttarakhand	Rs.182.00
29	West Bengal	Rs.191.00

Sl.No.	Name of State/Union territory	Wage rate in rupees per day
30	Andaman and Nicobar	Andaman District
		Rs.250.00
		Nicobar District
		Rs.264.00
31	Dadra and Nagar Haveli	Rs.224.00
32	Daman and Diu	Rs.202.00
33.	Lakshadweep	Rs.248.00
34	Puducherry	Rs.229.00

2. This notification shall come into force on the 1st day of April, 2019.

[F. No. J-11011/1/2019-MGNREGA (RE-III)]

KAMRAN RIZVI, Jt. Secy."

Such facts had not been brought to our notice by either of the parties.

16. By prescription of a new wage revision, as observed above, and in view of the Supreme Court having not approved of the judgment of the Division Bench of the Karnataka High Court, referred to above, we are not persuaded to extend any such relief for the reasons given herein above, as we do not find the provisions

under challenge to be *ultra vires* Article 14 and Article 23 of the Constitution of India.

For all the reasons, the challenge raised fails and these petitions stand closed accordingly. No costs.

(A.P.S., C.J.) (S.P., J.)
26.02.2020

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To:

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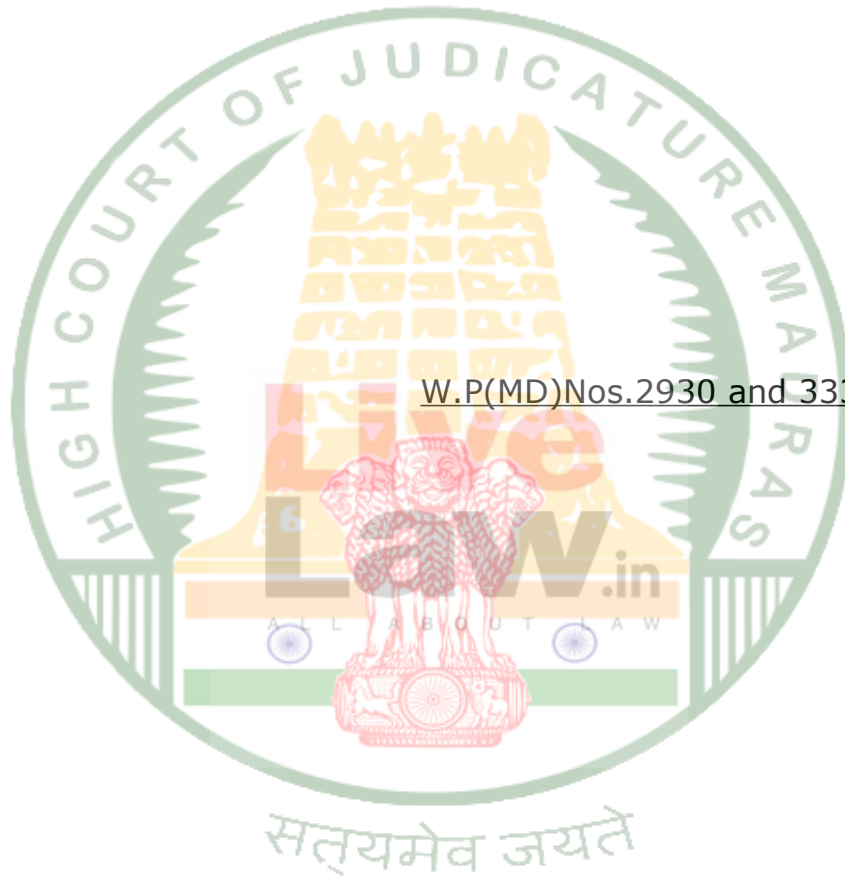
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