

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2020
(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

1.HARSH MANDER

...Petitioner no.1

2.ANJALI BHARDWAJ



... PETITIONER no. 2

VERSUS

1. UNION OF INDIA,
THROUGH ITS SECRETARY
MINISTRY OF HOME AFFAIRS
NORTH BLOCK, CENTRAL SECRETARIAT
NEW DELHI-110001

....RESPONDENT

**WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ENFORCEMENT OF THE FUNDAMENTAL
RIGHT TO LIFE OF MIGRANT WORKERS WHO ARE SEVERLY
AFFECTED WITHOUT WORK, WAGES OR FOOD AND HENCE FORCED
TO REVERSE MIGRATE DUE TO THE NATIONWIDE 21 DAYS
LOCKDOWN**

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES
OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition of the Petitioners above-named

MOST RESPECTFULLY SHOWETH:-

The Petitioner is filing the instant writ petition in public interest under Article 32 of the Constitution of India for the enforcement of the fundamental right under article 21 of the Constitution of India, of migrant workers who are severely affected by the 21 day nation-wide lockdown ordered by the government on the 24th of March 2020 to take effect from the 25th of March 2020 to contain the spread of COVID-19 epidemic in the country. The order for which no prior intimation was given, created a panic across the country and led to the instantaneous loss of jobs and wages of millions of migrant workers employed in establishments across India or self-employed as street vendors, rickshaw pullers, domestic house helps, petty job workers, etc. This led to the large scale exodus of these migrant workers to their home towns. It led to migrant workers crowding in large numbers of many thousands at bus terminals, railway stations, inter-state borders, etc to find their way home, potentially exposing them to the virus and escalating in fact the risk of the spread of this virus. As news reports started emerging of this large scale exodus of migrant workers and the threats that it poses by disrupting the public health measures of social distancing to curb the spread of the virus, the Ministry of Home Affairs issued an order dated 29th March 2020 for 'restriction of movement of migrants'. This order asks employer of the migrant workers to pay their wages during the lockdown and their landlords not to charge them rent for this period. It also asks the State Governments to make arrangements for food and shelter for these workers. The petitioner submits that this order is not the correct or adequate response to the large scale exodus of migrant workers. As directed in the order it is also unrealistic to expect the small establishments employing migrant workers to pay them their wages at their place of work. Due to the lockdown the workers cannot travel to their place of work and

many of these establishments are small businesses that have been forced to shut down and hence employers will not be able to pay these wages. Besides majority of these migrant workers are self employed. The order ignores the harsh realities that workers have to persistently face in cities that is further compounded when a lockdown order deprives them of their job, daily wages and hence means of survival, thus violating their Article 21 rights. The petitioner submits that the lockdown has precipitated an unprecedented humanitarian crisis especially among the class of migrant workers and it is the government, both Central and State, that have to take adequate measures in accordance with National and State plans drawn out under the Disaster Management Act, 2005, under the guidance of the advisory committees that these governments are mandated to constitute, to deal with this epidemic. The current lockdown has cast an unprecedented economic hardship on daily wage earners. It is submitted that the Central and State Authorities have the necessary power and consequential duty to direct that all daily wage earners be provided with their wages at the place where they are currently present under the lockdown.

1A. Petitioner no. 1 is Mr. Harsh Mander, human rights and peace worker, author, columnist, researcher and teacher. He works with survivors of mass violence, hunger, homeless persons and street children. He is the Director, Centre for Equity Studies, and founder of the campaigns Aman Biradari, for secularism, peace and justice; Nyayagrah, for legal justice and reconciliation for the survivors of communal violence; Dil Se, for street children, and 'Hausla' for urban homeless people, for homeless shelters, recovery shelters and street medicine. He was Special Commissioner to the Supreme Court of India in the Right to Food case for twelve years from 2005-17. He is Special Monitor of the statutory National Human Rights Commission for Minority Rights. He convenes and edits the annual India Exclusion Report. He worked formerly in the Indian Administrative Service in Madhya Pradesh and Chhatisgarh for almost two decades. Among his awards are the Rajiv Gandhi National Sadbhavana Award for peace work, the M.A. Thomas National Human Rights Award 2002, the South Asian Minority Lawyers

Harmony Award 2012 and the Chisthi Harmony Award 2012. The petitioners

Petitioner no. 2 is Anjali Bhardwaj, a social activist and is a resident of Delhi. She is the founder member of SatarkNagrikSangathan (SNS), which works in slums settlements in Delhi where a large number of migrants live. SNS works on issues of food security, pensions and social justice. Anjali is a founding member of the Delhi Rozi Roti Adhikar Abhiyan, an association of individuals and groups engaged in advocating for the realisation of the fundamental right to food of the vulnerable and marginalised communities of Delhi. She is also a member of the national Right to Food Campaign. Anjali is the Co-Convenor of the National Campaign for Peoples' Right to Information (NCPRI), which advocates for transparency and accountability in government functioning.

The petitioner has no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioner, which has or could have a legal nexus with the issues involved in the PIL.

The petitioner has not made any representations to the respondent in this regard because of the extreme urgency of the matter in issue.

That the instant writ petition is based on the information/documents which are in public domain.

FACTS OF THE CASE

1. By January 30, 2020, the World Health Organisation (WHO) declared a new coronavirus which causes an illness known as COVID-19 as a global emergency that has now spread to at least 170 countries. More than 31,000 people have died and some 6,78,000 people are infected

globally. The WHO in February affirmed that there was no known effective treatment for the coronavirus. By March 11, 2020, WHO declared the coronavirus outbreak a pandemic.

(A copy of the Aljazeera news report dated 29th March 2020 detailing a timeline of how the Coronavirus spread is annexed as **Annexure P1** at Page 19 to 34)

2. It is clear in light of the aforementioned sequence of events that the threat of the Coronavirus Pandemic affecting India with all potential disastrous consequences was evident to all. Yet, the National, State, & District authorities under the Disaster Management Act of 2005, are still to put in place a comprehensive strategy to tackle the outbreak of coronavirus in consonance with advice of domain experts and their powers and duties as provided under the Act especially with respect to mitigation and rehabilitation measures for the most affected and vulnerable citizens i.e. daily wage earners.
3. The Act creates the National Disaster Management Authority (Sec 3) and State Disaster Management Authorities (Sec 14) headed by the Prime Minister and Chief Ministers of States respectively and other members nominated by them. These authorities *may* constitute Advisory Committees (Sec 7 for Centre and Sec 17 for states) with domain experts to aid and advise them.
4. National Executive Committee (sec 8) and State Executive Committees (sec 20) are statutory bodies with Secretaries of various Ministries/ Departments as ex-officio members responsible for co-ordinating the implementation of the Act subject to directions issued by the National and State Authorities.
5. The National Authority and State Authority have broad overriding powers to issue directions when disaster strikes on the aid and advice

of the Advisory Committees of domain experts that they may constitute.

6. It is clear from the sequence of events that these authorities require expert advice of epidemiologists, economists with expertise on daily wage earners, & Social Workers to deal with the fallout on daily wage earners and issue necessary directions for their welfare in consonance with their powers under the Act.
7. National Authority has the following powers and functions under Section 6:

"6. Powers and functions of National Authority.—(1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster.

(2) Without prejudice to generality of the provisions contained in subsection (1), the National Authority may —

- (a) lay down policies on disaster management;*
- (b) approve the National Plan;*
- (c) approve plans prepared by the Ministries or Departments of the Government of India in accordance with the National Plan;*
- (d) lay down guidelines to be followed by the State Authorities in drawing up the State Plan;*
- (e) lay down guidelines to be followed by the different Ministries or Departments of the Government of India for the purpose of integrating the measures for prevention of disaster or the mitigation of its effects in their development plans and projects;*
- (f) coordinate the enforcement and implementation of the policy and plan for disaster management;***
- (g) recommend provision of funds for the purpose of mitigation;***

(h) provide such support to other countries affected by major disasters as may be determined by the Central Government;

(i) take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary;

(j) lay down broad policies and guidelines for the functioning of the National Institute of Disaster Management.” (emphasis supplied)

The State Authority similarly has broad powers under Section 18 as under;

“18. Powers and functions of State Authority.—(1) Subject to the provisions of this Act, a State Authority shall have the responsibility for laying down policies and plans for disaster management in the State.

(2) Without prejudice to the generality of provisions contained in sub-section (1), the State Authority may—

(a) lay down the State disaster management policy;

(b) approve the State Plan in accordance with the guidelines laid down by the National Authority;

(c) approve the disaster management plans prepared by the departments of the Government of the State;

(d) lay down guidelines to be followed by the departments of the Government of the State for the purposes of integration of measures for prevention of disasters and mitigation in their development plans and projects and provide necessary technical assistance therefor;

(e) coordinate the implementation of the State Plan;

(f) recommend provision of funds for mitigation and preparedness measures;

(g) review the development plans of the different departments of the State and ensure that prevention and mitigation measures are integrated therein;

(h) review the measures being taken for mitigation, capacity building and preparedness by the departments of the

Government of the State and issue such guidelines as may be necessary.” (emphasis supplied)

8. Pertinently, Chapter 7.15 of the National Disaster Management Plan, 2019, concerns with ‘Biological and Public Health Emergencies’. Chapter 9 on ‘Recovery and Building Back Better’ lays special emphasis on economic and social rehabilitation. Chapter 11 pertains to ‘Financial Arrangements’ that the Centre and States have to make to give effect to the mandate of the Act.
9. The current lockdown has cast an unprecedented economic hardship on daily wage earners. It is submitted that the Central and State Authorities have the necessary power and consequential duty to direct that all daily wage earners be provided with their wages at the place where they are currently present under the lockdown.
10. On 19th March 2020, the Prime Minister addressed the nation for the first time after the outbreak of the Coronavirus and called for a self-imposed Janta Curfew on March 22, 2020. The Lok Sabha was adjourned sine die on the 23rd of March due to the Coronavirus. Thus, though by 19th March, the government was fully aware of the gravity of the disaster, without putting in place adequate measures to mitigate the consequences on migrant workers, a sudden and total lockdown was declared on the 24th of March. .
11. On the 24th March, vide order no. 40-3/2020-DM-1(A) the government of India via the Ministry of Home affairs issued an order directing a nation-wide 21 day lockdown.

(Copy of the order is annexed as **Annexure P2 at Page 35 to 41**)

(Copy of the consolidated guidelines on the measure to be taken by Ministries/Departments of Government of India, State/Union Territory Governments and State/Union Territory Authorities for

containment of COVID-19 Epidemic in the Country, as notified by Ministry of Home Affairs on 24.03.2020 and further modified on 25.03.2020 and 27.03.2020 is annexed as **Annexure P3 at Page 42 to 45**)

12. The aftermath of the national lockdown has been chaotic and has led to tragic consequences for the poor, especially migrant workers. This has been evidenced by heart wrenching scenes at railway stations, inter-state bus terminals, state borders, labour markets, etc. of thousands of migrant workers subjected to forced unemployment by this lockdown and hence loss of wages and means of survival, desperately attempting to leave the big cities for their home towns and villages. As per the 2011 Census, India has 41 million migrant workers. Migrant workers employed by both large and small scale establishments or self employed as vendors, rickshaw pullers, domestic workers, petty labour, etc. were either rendered jobless or without any money and consequently food and means of retaining their rented premises. Provisions were not made for migrant labourers to either continue to get their wages for those employed or by means of assurances that those self employed would be compensated by the government. Many of these workers therefore in extreme distress and facing starvation, started walking over 500 kms to their villages.

(A copy of the news report from The Caravan dated 26th March 2020 is Annexed as **Annexure P4 at page 46 to 50**)

(A copy of the news report from the Business Insider dated 26th March 2020 is Annexed as **Annexure P5 at Page 51 to 52**)

13. In response to the reports about this mass reverse migration and these migrant workers massing together at the borders, bus terminal, etc, the government on the 29th of March 2020 issued an order to restrict the movement of migrants. The order states that the mass movement of such migrants is "a violation of the lockdown measure

on maintaining social distance". The order was thus issued apparently to better enforce the lockdown measures and mitigate the economic hardship on the migrant workers. Videthe order, the National Executive Committee under the Disaster Management Act, 2005 directed the relevant State/Union territory governments and authorities to take necessary actions and issue necessary orders to their District Magistrate/Deputy Commissioner and Senior Superintendent of Police, etc. to take the following measures with respect to migrants:

- i. State/Union Territory Governments shall ensure adequate arrangements of temporary shelters, and provision of food etc. for the poor and needy people, including migrant labourers standard due to lock the measures in their respective areas
- ii The migrant people, who have moved out to reach their home states/ hometowns must be kept in the nearest shelter by respective State/Union territory government quarantine facilities after proper screening for a minimum period of 14 days as per standard health protocol.
- iii. All the employers be it in the industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their work places on the due date without any deduction, for the period their establishments are under closure during the lockdown.
- iv. Where ever the workers including the migrants are living in rented accommodation, the landlords of those properties shall not demand payment of rent for a period of one month.
- v. If any landlord is forcing labourers and students to vacate premises, they will be liable for action under the Act.

(A copy of the government order dated 29th March 2020 is annexed as **Annexure P6 at Page 58 to 59**).

14. The government ordered that these migrants who have moved out to reach their home states/towns/villages, must be kept in the nearest shelter in quarantine facilities after proper screening for a minimum period of 14 days. The order further directs that all the employers, be it the industry or in the shops and commercial establishments, shall make payment of wages to their workers at their work places, for the duration of the lockdown.
15. While the order gives direction to state/UT governments and authorities to take action and issue orders that employers give salaries to their workers without any deduction, for the period their establishments are closed; and landlords not demand payment of rent for a period of one month from workers, it does not take into account the ground reality of the condition of migrant workers in so far as:
- Many of the small employers will not be in a position to pay workers their salaries since their businesses and establishments have permanently closed down as a consequence of the lockdown
 - It makes no provision for the financial security of the large percentage of migrant workers that are self-employed as street vendor, rickshaw pullers, dhobis, petty service providers, etc. and are therefore not paid any salaries.
 - The government does not have an accurate record of workers employed in the informal sector, and therefore, will not have the necessary information to enforce the order as also stated by officials to the media
 - As most migrant workers live in slum settlements, in jhuggies or at worksites there would be no formal rent agreement to prove that they were staying there and the government would also have no record of this, making enforcement untenable.
 - (A copy of the Indian Express news report dated March 30th is annexed as **Annexure P7 at Page 60 to 61**)

16. In any case it is really the governments and the authorities that have to provide reliefs to people affected by national disasters. That is the whole object of the Disaster Management Act. This was emphasised by this Hon'ble Court in *Swaraj Abhiyan v. Union of India & Ors.* 2016 (7) SCC 498 whereby the Court directed the government to formulate a National Plan under Section 11 of the Disaster Management Act 2005, which despite the passage of 10 years had not been put in place by the government. This plan was finally released in June 2016 and subsequently updated in November 2019. A national advisory committee was constituted on 29th November 2016 but it does not appear that this advisory committee has had a meeting after the COVID-19 disaster was apparent in January 2020. The term of the previous advisory committee was to expire on the 29th of November 2019. In any case if such a committee had met prior to the announcement of the lockdown order or the order on restriction in movement of migrants, the decisions of such committee has not be put in the public domain.

(A copy of the notification constituting the Advisory Committee is Annexed as **Annexure P8 at Page 62 to 66**)

ALL ABOUT LAW

17. The Inter-State Migrant Workmen (Regulation of employment and conditions of Service) Act, 1979, contains various provisions pertaining to the employment of inter-State migrant workmen and to provide for their conditions of service and for matters connected therewith.

Section 4 provides for the registration of establishments employing migrant workers and issuance of registration certificates.

Section 6 prohibits against employment of inter-State migrant workmen without registration and without the establishment obtaining a certificate of registration.

Section 8 provides for the licensing of contractors who employ migrant workers. The licence may contain such conditions including the terms and conditions of the agreement or other arrangement under which the workmen will be recruited.

Section 13 further provides that the pay of migrant workmen shall be the same as applicable to other workmen performing similar work in the establishment. It further provides that the wages to inter-state migrant workmen shall be paid in cash.

Section 14 provides for a displacement allowance to be paid by the contractor to every inter-State migrant workman at the time of recruitment.

18. As per subpoint (iii) of the government order dated 29th March 2020, the employer must pay the migrant workers at their work place. This is in itself impracticable during the lockdown. The government must thus ensure that the wages are paid to migrant workers at the place that they are presently located during the lockdown, whether in their home state or in shelter homes or in the state where they had migrated to before the lockdown.

19. All the problem created for migrant workers due to the unplanned and sudden lockdown that is their loss of job and money and thereby access to food and shelter, would be obviated if the State-central or state governments were to provide these workers their wages during the period of the lockdown.

20. Under section 4 of the Inter-State Migrant Workers Act, the government is obligated to keep complete record of all the establishments employing migrant workers, contractors providing migrant workers for employment and migrant workers in every State. It should therefore be possible for the government to identify each migrant worker working under any establishment and ensure that he/she is paid their wages. If in violation of the necessary statutes, the governments have not maintained records of migrant workers, it would be necessary to immediately put in place a mechanism for workers to self-identify and self-attest based on which the government can release wages.

21. The government also has records of most of the other self employed workers such as street vendors, rickshaw pullers etc under various acts and regulations, who must also be provided with minimum wages by the government during the lockdown. This must be extended to those migrant workers who have been accommodated in shelters. If in violation of the necessary statutes, the governments have not maintained records of self-employed workers, it would be necessary to immediately put in place a mechanism for workers to self-identify and self-attest based on which the government can release wages.
22. In any case, the fundamental rights of all persons under Article 21 obligate the government to provide food, healthcare and shelter and all the basic necessities for leading a dignified life to these migrant workers. It is therefore essential for enforcement of the rights of these workers under Article 21 and for enforcing the obligations of the government under the National Disaster Management Act for the central or State governments to be compelled to pay the wages of these migrant workmen. It is for these reasons that this public interest petition is being filed on the following grounds.
23. The petitioner has not filed any other petition seeking the same relief in any other court.

GROUND

- A. Because the Disaster Management Act obliges the Central and State governments to put in place a detailed plan and machinery for dealing with and mitigating the effects of disasters and obliges them to take all steps required to help the victims of the disasters whether direct or indirect in accordance with the plan.
- B. Because Article 21 of the Constitution gives the right to every citizen to have access to all the minimal requirements of living with dignity and consequently obligates the State to provide these minimal

facilities to them especially when they are deprived of these on account of the orders of the State (even when such orders are required for dealing with disasters). Article 21 guarantees human dignity, which in turn guarantees further rights. In *Francis Coralie Mullin v Union Territory of Delhi* (1981) 1 SCC 608 Hon'ble Bhagwati J (as he then was) opined for a two Judge Bench of this Hon'ble Court:

6. *"The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person..."*

7. *"...the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival...Every limb or faculty through which life is enjoyed is thus protected by Article 21 and a fortiori, this would include the faculties of thinking and feeling. Now deprivation which is inhibited by Article 21 may be total or partial, neither any limb or faculty can be totally destroyed nor can it be partially damaged. Moreover it is every kind of deprivation that is hit by Article 21, whether such deprivation be permanent or temporary and, furthermore, deprivation is not an act which is complete once and for all: it is a continuing act and so long as it lasts, it must be in accordance with procedure established by law. It is therefore clear that any act which damages or injures or interferes with the use of, any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.*

8. *"...We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings...Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in*

accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights..."

C. Because in *M Nagraj v Union of India* (2006) 8 SCC 212 a Constitution Bench of this Hon'ble Court affirmed the inalienability of human dignity to all humans, its axiomatic importance to all human life, and the responsibilities of the State to facilitate it:

26. *"The rights, liberties and freedoms of the individual are not only to be protected against the State, they should be facilitated by it... It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. It cannot give. It simply is. Every human being has dignity by virtue of his existence..."*

D. Because the Migrant Workers Act obliges the Central and State governments to maintain complete records of migrant workers working in different establishments and under different contractors in every state.

E. Because the order of the National Executive Committees imposing a lockdown have led to loss of jobs and employment of these migrant workers, their consequent lack of money, food and shelter and their consequent forced migration back to their home towns, makes a mockery of the rules and norms of social distancing.

PRAYERS:

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Direct the Central and the State governments to jointly and severally ensure payments of wages/ minimum wages to all the migrant workers within a week, whether employed by other establishments,

contractors or self-employed, as they are unable to work and earn wages, during the period of the lockdown.

- b) Direct the central and state governments to immediately activate National and State Advisory Committees of experts in the field of disaster management and public health and prepare national and state disaster management plans for dealing with the COVID-19 epidemic, taking into account all relevant aspects, mitigation measure, their possible costs and consequences as required under the Disaster Management Act, 2005.
- c) Pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Petitioner Through:

 *Prashant Bhushan*
(PRASHANT BHUSHAN)
ALL ABOUT LAW

Counsel for the Petitioner

Drawn by: Cheryl D'souza, Advocate

Drawn & Filed On: 31st March 2020

New Delhi

IN THE SUPREME COURT OF INDIA

18

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

In the matter of:

Harsh Mander & Anr

...Petitioners

Versus

Union of India & Anr

...Respondent

AFFIDAVIT

I, Shri Harsh Mander, S/o Shri Har Mander Singh, R/o C 6 6233, Vasant Kunj, New Delhi-110001, do hereby solemnly affirm and state on oath as under:

1. That I am the Petitioner in the above petition and being familiar with the facts and circumstances of the case, I am competent and authorized to swear this Affidavit. I have been authorised by Respondent no. 2 to swear this affidavit on her behalf as well.
2. That I have read and understood the contents of the Synopsis and List of Dates (Page No. to) and the Petition (Page No. to). I state that the facts therein are true and correct to the best of my knowledge and nothing material has been concealed therefrom. Source of information is official documents and news reports as available on websites and in the public domain.
3. I further state that all the Annexures to the Petition are true copies of their respective originals.
4. That this petition is only motivated by public interest. I affirm that I have no personal interest in this matter.
5. That I have done whatsoever enquiry that was possible and I state that no relevant facts in my knowledge have been withheld.

H Mander

DEPONENT

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this 31st of March 2020.

H Mander