

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) DIARY NO 10801 OF 2020

IN THE MATTER OF:

HARSH MANDER & ANR.

....PETITIONERS

VERSUS

UNION OF INDIA & ANR.

....RESPONDENTS

**REJOINDER AFFIDAVIT ON BEHALF OF THE PETITIONERS TO
THE STATUS REPORT FILED BY RESPONDENT NO. 1, UNION
OF INDIA**

I,

ALL ABOUT LAW

do hereby solemnly affirm and

state on oath as under:

1. That I am Petitioner No. 1 in the aforementioned writ 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 to file this affidavit on behalf of Petitioner No. 2.
2. The petitioner is filing the rejoinder affidavit to the status report filed by Respondent no. 1 (Union of India). It may be

stated at the outset that none of the paragraphs in the petitioners writ petition or in the additional affidavits have been specifically dealt with by the Respondent. The petitioner is responding with a parawise reply to the Status report filed and Annexures A and B annexed with the status report by the respondent.

PART A: REPLY TO STATUS REPORT

3. Paras 1 and 2 do not deal with any of the issues raised by the petitioner in the petition or additional affidavits and merely place reliance on the status report filed in writ petition no. 468/2020, for which a para-wise response is given in the next section.
4. Para 3 is bereft of any facts and makes unfounded allegations and misleading statements. The petition, as well as further Affidavits, rely upon government reports, orders and media reports, all available in the public domain and duly annexed with the submissions. Furthermore, both the petitioners have been involved with responding to emergency food requirements in Delhi for the poor and marginalised especially labourers, homeless persons and people residing in slums clusters and

are also involved in coordinating similar work in other states through various campaigns and networks and both have been signatories to several representations to the Central and state governments regarding the emerging problems on the ground.

5. Paras 4 and 5 make unfounded allegations and appear to give advice to the Hon'ble Court on how it should deal with the present matter.
6. Para 6 makes a reference to Annexure B which as per the respondent, details the steps taken to deal with the various issues concerning the migrant workers including the issue of ensuring payment of minimum wages, in the form of a chart. A perusal of Annexure B shows that it does not, in any way deal with the issue of ensuring payment of minimum wages to migrant workers and therefore, the assertion is misleading. A detailed response for Annexure B is given in Part C of this rejoinder.

PART B: REPLY TO ANNEXURE A

7. The contents of paragraphs 1-34 need no reply. They do not have a bearing on the specific prayer of the petitioners through

the instant writ petition, which is for the protection of the Article 21 rights of migrant workers across the country and thereby for their right to a dignified life, by immediate provision of wages to them by the government, so that they are able to sustain not just themselves but also make provision for their families. The 21 day lockdown as pointed out by the petitioner (through accounts of migrant workers since the lockdown), has caused untold hardship and suffering for this segment of the working population of our country who are largely dependent on daily wages for their sustenance as well as the sustenance of their families. Contrary to the government claim, the panic was not created among this community because of alleged fake news but the hardship that these workers were flung into on the very first day of the lockdown. Their ability to undertake their daily work or report to work, was taken away, and with it the potential for them to earn their daily wage. This created the panic and mass exodus since these migrant workers form one of the poorest segments of our society, survive on daily wages to meet their basic needs. There are various needs such as their health care, food,

education of their children and sustenance of their families (living with them or in their villages) that is met by them through their wages. Provision of drinking water, food and medical facilities in shelter homes for the migrants is not just inadequate, but also caters to only that segment of the migrant workers who have been stopped while migrating to their homes and quarantined in shelter facilities.

8. Para 35 states that to ensure that citizens are not deprived of basic amenities of food, drinking water, medication etc., the Central Government announced a financial package of Rs. 1.70 Lakh Crores under the Pradhan Mantri Garib Kalyan Yojana. It is submitted that the package is inadequate to deal with the scale of the current crisis and many of the schemes announced will not benefit migrant workers. Rs. 1.70 lakh crores constitutes only around 1% of the GDP of India. Further, many elements of the scheme are merely front-loading instalments of existing schemes, or disbursement of cess funds already earmarked for welfare of particular sectors, or programs that were in any case in the pipeline. For instance, the scheme includes an announcement of providing

an average of 2000 rupees extra annually per household through MGNREGA. This is claimed by way of a 10% increase in minimum wages which would amount to 2000 rupees extra per family if they are given work for 100 days. In fact, the wage rate increase is a regular adjustment against inflation which is made every year and therefore, in no way, an additional resource. However these MNREGA workers are hardly being provided any work or wages during the lockdown because of their inability to go for work during lockdown and because of the social distancing norm which makes it impossible for them to undertake the work. Similarly the announcement that emergency support will be granted through BOCW cess funds which has accumulated Rs. 52,000 crore is not an additional resource. The funds are specifically earmarked for construction workers and in fact the issue of non-utilisation of these funds has even been brought before this Hon'ble Court.

9. In para 36, the respondent has stated that 80 crore individuals will be provided 5 kgs of food grains and 1 kg of pulses free of cost every month for the next three months and further that under the same package, 8 crore poor families will

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get one gas cylinder per month free of cost for the next three months and 20.4 crore women who are account holders under the PM Jan Dhan Yojana will get an ex-gratia of Rs. 500 per month for next three months. On the announcement of additional rations, at the outset is submitted that the submission made is misleading. The announcement of providing 1 kg pulse free of cost for next three months is to be given per ration card and not to each person covered under the Public Distribution System. This means that the 23 crore ration cards will be given one kg pulse each for next three months and not each of the 80 crore persons covered under the PDS.

(A copy of the Ministry of Finance press release dated 26th March 2020 is annexed as **Annexure R1 (Page 26 to 29)**).

10. Further, as this petition deals specifically with the plight of migrant workers, it is submitted that a large section of migrant workers is excluded from the PDS as the system is a domicile based entitlement wherein, while applying for a ration card, proof of address, aadhaar card, proof of residing in the state

for a minimum period of time is normally required. This results in a very large number of migrants not having ration cards. Also, in the absence of any system of inter-state portability of ration cards, many migrant workers with ration cards will also be unable to access foodgrains under the PDS. To ensure that each person is able to get a modicum of food security, there is an urgent need to universalise access to food grains, pulses, cooking oil and soap, and provide it to everyone desirous of obtaining these, irrespective of whether they have a ration card or not. This would be in keeping with the directions of the Supreme Court issued in 2016 to mitigate starvation (judgment related to drought affected areas dated May 16, 2016 in Writ Petition (C) No. 857 of 2015, Swaraj Abhiyan – (II) versus Union of India & Ors.). The stock of foodgrains in India in the FCI godowns is at an all time high currently.

The announcement of ex-gratia of Rs. 500 to 20.4 crore women who have Jan Dhan accounts, is extremely inadequate in terms of the quantum and will only benefit those who have functional accounts and the necessary instruments to withdraw funds from their accounts. Every Jan Dhan account

holder should be paid wages for the next three months (calculated using the daily wage rate of notified agricultural minimum wages of states for 26 days per month). This must be made universal and not to only "poor households" identified by the government.

It is important to point out according to an NDTV report dated 9th April, 39 women in Madhya Pradesh who went to access the 500 rupees, were arrested, stuffed in a police van and made to fill up a bond of 10000 rupees instead for breaking the social distancing norm and lockdown orders. To those who can access this money, the modalities of how it will reach them is ambiguous and cruel.

11. Para 37 states that separate financial support would be made available for those earning less than Rs 15,000 in the organised sector and working in businesses having less than 100 workers by way of 24% of their monthly wages being paid into their PF account for the next three months. This will benefit a very miniscule percentage of people, as by government's own estimates more than 90% of workers are in the unorganised sector and therefore, will not receive any

benefit. Most migrant workers are engaged in the informal sector or as casual workers in the organised sector and will therefore, not benefit from this scheme. No income/wage support has been announced for such people.

12. As per Para 38, construction workers (most of whom are migrant workers as per the respondent) will be provided financial assistance through "Welfare Fund for Building and Other Construction Workers" which will cover 3.5 crore registered workers. The registration is an elaborate/ tedious process with an application fee, requiring a certificate of employment showing 90 days of working from the employer/ contractor concerned and annual renewal of registration by the worker. In this regard, it is submitted that the vast majority of construction workers are not actually registered under the Building and Other Constructions Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as the "BOCW Act") and therefore, this will benefit only a very small percentage of construction workers. Based on a rapid survey done by Jansahas with 3,196 migrant construction workers from North and Central

India, it found that 94% of its respondents do not have BOCW cards and hence will not be eligible for any benefits for registered construction workers. A news report in the Indian Express notes that due to the tedious application process and requirement of annual renewal, the number of registered construction workers has fallen drastically from 3 lakh to less than 40,000 in Delhi alone. An extract from the report is given below:

“However, in many cases, construction labourers are not registered with the Delhi Building and Other Construction Workers Welfare Board, which handles the corpus. Plus, the labour department had made the registration process more extensive last year, under which every applicant is expected to fill up a 12-page form.

Officially, 37,127 construction labourers are registered with the board currently, while 9,149 applications are under process — a far cry from the lakhs working in the capital. Past records indicate thousands of workers disappeared from the registered list since 2015.

In 2015, the board had 3.17 lakh registered workers; the number fell to 62,663 in 2017-18; and further over the next three years. While many workers routinely fall off the grid of the safety net due to their inability to stick to the compulsory annual renewal, mandated under the Building and Other Construction Workers Act, 1996, the numbers in Delhi appear to have dipped between 2016-2020 due to a "verification drive".

(A copy of the Indian Express report dated 2nd April 2020 is annexed as **Annexure R2 (Page 30 to 33)**)

Therefore, while it is an important initiative, its benefit will reach a very small percentage of migrant workers engaged in the construction sector. In the current emergency situation where people have experienced sudden loss of livelihood and are struggling to secure access to food and other basic amenities, it is crucial that a simple system of self-attestation be allowed, on the basis of which financial assistance at the prevailing minimum wage is transferred to migrant workers.

13. In para 39, the respondent has stated that all State Governments have been required to utilise District Mineral Fund [DMF] for medical and other needs arising out of Covid-

19 for health care workers, safai karamcharis, ward-boys, nurses, ASHA workers, paramedics in terms of an insurance scheme of Rs. 50 lakh if they meet with any accident. It is submitted that this scheme has no specific component for migrant workers and in the given scenario where District Mining Funds are established only in 12 states and there is no comprehensive database of health care workers, safai karamcharis, ward-boys, nurses, ASHA workers, paramedics and in the absence of any specific modalities of the working of the scheme, its implementation is not likely to be robust.

14. In para 40, the respondent has submitted that in view of the financial package which takes care of daily needs of every poor person, which include migrant workers as well as their respective families, there was no necessity for migration of workers to rush to their villages and that their daily needs were being taken care of wherever they were working and needs of family were being taken care of in the villages and that Ministry of Finance and Reserve Bank of India have taken unprecedented steps to minimise hardships of other sections of society. In this regard it is submitted that as shown above,

the measures are inadequate given the nature of labour force in India and its toll on migrant workers, many of whom have had to walk hundreds of kilometers till their villages. The order dated March 29, 2020 directing employers to pay wages to workers at the place of work and to landlords to provide rent-free accommodation, is impractical as they do not taken into account the ground realities. In this time of unprecedented economic hardship, countries across the world have made provision for wage support by the government to workers and the same is urgently required for India as well. Other than provision for food, migrant workers need to be provided money for addressing other basic needs like health care, education of their children, rent and sustenance of their families (living with them or in their villages). Minimum wages are fixed by governments taking into account the cost of living in each state and therefore, at this time of intense distress and lack of opportunity to earn their livelihood, it is important that the government provide financial support equivalent to minimum wages to migrant workers.

15. Paragraph 41 seems to focus on the risk of "fake or inaccurate reporting either in electronic, print or social media and particularly in web portals" that has the "inevitable potential of causing panic in large sections of the society". It is wrong to blame 'fake news' for the massive movement of migrant workers after the lockdown. The cause was only that they were stranded suddenly with just 4 hours' notice with no work, no assured income, no assured food, and fear of infection and death far away from home.

The petitioners further state that the economic package was announced 36 hours after the sudden lockdown and therefore none of the workers who began migrating soon after the lockdown was announced were aware of it at that time. Considering that the vast majority of migrants are in the unorganised sector and are devoid of any access to any form of social security, the government needed to have given them sufficient time to prepare for this uncertainty.

16. Paragraph 44 to 47 of the Status report deal with the central governments provision of and directions to States to provide food, shelter and medical facilities to migrant workers who

have been quarantined enroute to their places of origin. These measures are inadequate to deal with the large migrant labour workforce (only a small fraction of these workers have been accommodated in shelters) who are still in their cities of migration and because of the interstate and inter-district prohibition on migration, are facing untold hardships without access to any money, food and shelter.

17. In response to paragraph 48 the petitioners submit that the panic was created by the sudden lockdown, without adequate provisions for meeting basic needs of workers, especially migrant workers and upon overnight finding themselves without work, wages and food, lakhs of migrant workers all over the country attempted to reach their homes. While addressing the psychological impact of the sudden lockdown through "Requisite counselling" is a welcome measure, however, provision for wages for the workers to meet their basic needs is a fundamental prerequisite to ensure their survival. .Media stories have reported that as on 30th March, 22 migrant workers, kin have died trying to return home since the lockdown started.

(A copy of The Wire report dated 30th March 2020 titled "22 Migrant workers, kin have died trying to return home since the lockdown started, is annexed as **Annexure R3 (Page 34 to 38)**

A 39 year old migrant worker from Morena, Madhya Pradesh, on the walk towards his village collapsed in Agra, after walking 200kms.

(A copy of the Times of India report dated 29th March 2020 titled "Migrant worker, 39, collapses after walking 200kms from Delhi to Agra, dies" is annexed as **Annexure R4 (Page 39 to 40)**).



- 18. In response to paragraph 49 the petitioners submit that the figures on the number of shelter homes and people housed there are dealt with in detail in Part C of this rejoinder.
- 19. Paragraph 50 and 51 of the status report refers to the order that the government has passed on the 29th of March to restrict movement of migrant workers. As pointed out above, the said order which mandates employers to make full payment of wages for workers at their work place without deduction throughout the lockdown and also directs landlords

to not charge rent, does not take into account the ground realities that

- a. 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
- b. 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.
- c. 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
- d. 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.

The government while making such an order has not made provision for any funds and wage support to the employers, especially small employers, nor has it provided any income support for self-employed workers. The responses and measures of the governments worldwide show the way forward to aid the employers and the employees. Denmark government has announced to cover 75% of the wage bills, Canada introduced a wage subsidy scheme, England provided for 80% of average earnings subsidised, Australia framed a 'job keeper' wage subsidy plan. These are a few examples of provisions introduced by various governments as pointed out in the petitioners additional affidavit.

Associations representing small businesses have flagged concerns in terms of their inability to pay wages and rising unemployment on account of the lockdown. The All India Manufacturers Association, an industry body representing some 1,00,000 small manufacturers has said that more than two-thirds of its members are facing problems in paying salaries. Delays in receipt of payments from clients including governments, have also adversely impacted their financial

resilience. As per a report submitted to parliament, the centre, state governments and state owned companies owe nearly \$66 billion to small businesses.

(A copy of the NDTV report dated April 8th titled "Small businesses struggle to pay wages amid coronavirus lockdown" is annexed as **Annexure R5 (Page 41 to 43)**)

20. Paragraph 52 onwards elaborates the steps that the central government has taken to control the spread of the virus. These are a matter of record and the measures do not have a direct bearing on the prayers of the petitioner through this petition.

PART C: REPLY TO ANNEXURE B

21. The status report filed by the respondent states that Annexure B lists the steps taken to deal with the various issues concerning the migrant workers, including the issue of ensuring payment of minimum wages. At the outset it is submitted that a perusal of the Annexure, shows that its gives no information about payment of minimum wages to migrant workers. Further, it gives no information regarding compliance with the March 29 order of the Ministry of Home Affairs on restricting movement of migrants in so far as it directs all

employers to make payment of wages to their workers, without any deduction for the period their establishments are under closure during the lockdown and directs landlords not to not charge rent for a period of one month to workers, including migrants.

22. A perusal of the Annexure of the figures on the number of active relief camps and shelters for migrant workers reveal the complete inadequacy of the provisions made. The table states that a there are a total of 26,476 active Relief Camps and Shelters in which 10,37,027 persons are housed. Kerala alone accounts for 59% of the relief camps and shelters even though the state's population constitutes only 2.6% of India's population. In terms of number of persons housed in relief camps, Kerala and Maharashtra together account for 72% of the total. Large states like Uttar Pradesh, Bihar, Jharkhand, which saw huge numbers of people moving back due to reverse migration in light of the hardships caused by the lockdown together account for only 12% of the active Relief Camps and Shelters and persons housed. In terms of number of persons given food, two states- Haryana and Delhi account

for 51% of the total showing the wide regional variation and the overall inadequacy of such facilities.

23. Annexure B also states that about 15 lakh workers are being given shelter and food by employers/industry where they were working, however the annexure does not state the source of this data. It is submitted that if the government is able to access such data from employers, it should also be possible for the government to also ask employers/industry about compliance with MHA order regarding payment of wages. Further, the figure of 15 lakh taken together with the number of people living in shelters (around 10 lakh) accounts for only 25 lakh people. Estimates on the number of migrant workers in India range from 4 crore to 12 crore and therefore, even if the lower end of the estimate is used, 25 lakh accounts for only 6% of the migrant labour force which is being provided shelter at the shelters and by employers/industry.
24. The petitioner seeks to make some additional submissions as a rejoinder to the Status report and Annexures A and B which are as follows:

a. Centre for Monitoring Indian Economy (CMIE) data published on April 7, 2020 shows that in March 2020, the labour participation rate fell to an all-time low and the unemployment rate shot up sharply. The unemployment rate increased to 23.8% during last week of March and 23.4% in the week ending April 5, 2020. It was 3.4% in July 2017. The report states that this is the first time that the Labour participation rate has fallen below 42 per cent. Between January and March 2020, the LPR has fallen an entire percentage point - from 42.96 per cent in January to 41.90 per cent in March. This fall in the LPR in March was the result of a sharp 9 million fall in the labour force - from 443 million in January 2020 to 434 million in March 2020. (A copy of the CMIE report is annexed as **Annexure R6** at (Page 44 to 48).

b. Economic distress of workers, especially migrant workers is going to increase with each passing day as meagre savings dry up. Having lost their sources of income, migrant workers have no money to procure food, medicines, other essential commodities and basic amenities needed to lead a

life of dignity. They have no money to support their families (living with them or in villages) and have no way to repay debt. The International Labour Organisation (ILO) has, in a report dated April 7, 2020, estimated that 40 crore Indian workers may sink into poverty due to COVID lockdown. An extract from the report reads:

“The COVID-19 is already affecting tens of millions of informal workers. In India, Nigeria and Brazil, the number of workers in the informal economy affected by the lockdown and other containment measures is substantial (figure 3). In India, with a share of almost 90 per cent of people working in the informal economy, about 400 million workers in the informal economy are at risk of falling deeper into poverty during the crisis. Current lockdown measures in India, which are at the high end of the University of Oxford’s COVID-19 Government Response Stringency Index, have impacted these workers significantly, forcing many of them to return to rural areas.”

(A copy of the ILO report is annexed as **Annexure R7 (Page 49 to 59)**).

DEPONENT

VERIFICATION:

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

Verified at New Delhi on 11th April 2020



DEPONENT