

Daily Order

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CHIEF JUSTICE AND B.V.NAGARATHNA	WP 6435/2020	18/05/2020	<p>Before dealing with the important issue of the migrants, we are dealing with the issue of a marriage in the house of a politician on 17th April, 2020. The response of the State Government on this issue in the latest written submissions is in paragraph Nos.13 to 16. To put it mildly, it is shocking. In paragraph 13, the State Government has stated that not satisfied with the application made by the organizer of the function for granting permission to hold the marriage ceremony, the Deputy Commissioner made a request to the organizers to send another letter seeking permission specifying that the number of guests would not exceed one hundred. It is stated that the date of the said application/letter is 15th April, 2020. Firstly, this letter has not seen the light of the day for several weeks after this Court started dealing with the issue. Existence of such a letter was not pleaded by the State Government in its earlier written submissions. Secondly, we fail to understand why the Deputy Commissioner became so proactive and requested the organizer to submit one more application specifying that the number of guests would not exceed one hundred. In case of an application made by a common man, we are sure that the Deputy Commissioner would not have gone out of the way by calling for another application. Thirdly, it is accepted that no movement passes were applied for and no passes were issued to enable the guests to travel up to the venue of marriage in Ramnagara district. The submission of the learned Additional Advocate General is that since most of the guests are covered by various categories of security, such as 'Y' or 'Z', they did not require the passes. However, the State has not come out clearly whether only those guests who have been given 'Y' or 'Z' category of security traveled from one district to another district for attending the marriage. We may note here that at the relevant time, Ramanagara was in Green Zone.</p>

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			<p>2. The stand of the State is that only in the month of May, 2020, that the Central Government through its Ministry of Home Affairs restricted the number of guests to fifty, and prior to that, there was no upper limit fixed. If we accept the submission of the State, the policy of the Central Government will become arbitrary and irrational as it will mean that in April, 2020, it was possible for the Deputy Commissioners to grant permission for holding of marriage ceremony even if one thousand guests were to attend. The fact that in May 2020, a relaxation was granted by the Central Government by allowing not more than fifty guests to attend a marriage ceremony indicates that in April, even fifty guests were not permitted. On 15th April, 2020, the organizer of the function has allegedly written two letters to the Deputy Commissioner. The first letter seeks permission for holding a marriage ceremony. The second letter seeking permission states that the guests will be limited to about one hundred. We do not understand the necessity of submitting two applications on the same day. According to the case of the State Government, the second letter was invited by the Deputy Commissioner. We fail to understand why the State Government did not point out to the Court the second letter of 15th April, 2020, though the matter was examined by the Court on several dates and even the earlier submissions of the State refer to the said issue. The State is not prepared to make an inquiry whether all the persons who traveled from the districts other than Ramanagara to attend the marriage ceremony had the benefit of cover of 'Y' or 'Z' security. It is not the stand of the State Government that any inquiry was made and it was found that every person who traveled from the other districts to Ramanagara District had the benefit of 'Y' or 'Z' security.</p> <p>3. Even after several orders are passed, the State Government is not coming out with the truth and now for the first time, after few weeks,</p>

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			<p>an attempt is made to rely upon the second letter dated 15th April, 2020. The marriage ceremony has taken place on 17th April, 2020. In this petition, we are dealing with very serious issues of hunger, issues of marginalized sections of the society, issues of migrant workers who are stranded in the streets, etc. While we record that the State has not come out with a correct factual stand regarding the wedding and there is an attempt to keep back certain material from the Court, we do not propose to waste any further time of the Court on this issue as on today. Suffice it to say that notwithstanding several orders, the State Government has failed to come out with a clear factual stand and the State is not willing to accept the errors committed by its officers. Though we are not passing any order today only on the ground that we need to spare time to deal with issues of marginalized sections of society, we hope that the State Government comes out with a fair stand on the subject.</p> <p>4. Now, we come to the issue of migrants. Today, it is pointed out that from 17th May, 2020, there will be 47 shramik trains to transport 70,000 migrants/shramiks from the State of Karnataka to the State of Bihar, 13 trains to transport 19,500 migrants/shramiks to State of Jharkhand, 4 trains to transport 6,000 migrants/shramiks to the State of West Bengal and 28 trains to transport 42,000 migrants/shramiks to the State of Uttar Pradesh. Thus, about 1,37,500 migrants will go back to their respective States by these trains. There is no clarity on the question which migrants have been selected to go back by these trains. There is no clarity on the question how they are selected. In the written submissions filed by the State Government, there is no clarity about the approximate figure of migrant workers who wish to go back to their respective states. The clear picture of available number of migrant workers who want to go back to their respective States is not before the Court. It may not be possible to give accurate figures, but even a</p>

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			<p>broad estimate is not available. The written submissions of the State record the arrangements made for the migrants who have started walking on the highways or the roads and for taking them to temporary shelters such as Bengaluru International Exhibition Centre, KTO and other designated locations. There is an assurance that Police Department along with Labour Department have agreed to ensure that all migrant workers/shramiks wishing to return to their home States are registered by reaching out to them at the migrant camps and migrant colonies. The stand taken in the written submissions indicates that even those migrants who have not registered themselves on the designated website will be registered by manual filling of forms. That is specifically stated in clause (viii) of paragraph 11 of the written submissions. In paragraph 12 of the written submissions, it is stated that the State has arranged for buses to ply migrants to neighbouring States such as Tamilnadu, Telangana, Andhra Pradesh, Kerala, Goa and Maharashtra. However, the details of the buses have not been placed on record. The plan of the State to provide more buses to various parts of the country is also not placed on record. The State must place on record broadly the number of migrant workers who are registered for going back to their respective States and the manner in which the State proposes to facilitate their return.</p> <p>5. In paragraph 10 of the order dated 12th May, 2020, we have recorded following prima facie finding:</p> <p>“10. Prima facie, it appears to us that considering the constitutional rights of the migrant workers, no one should be deprived of an opportunity to go back to his own State only for the reason that he has no capacity to pay for the transport. The reason is that inability to pay is due to loss of livelihood.”</p>

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			<p>6. It is pointed out in the written submissions filed by the State that there are workers who originally belong to the State of Karnataka who have been working in other States. In paragraphs 4 to 9 of the written submissions, it is stated that six shramik trains were arranged till 15th May, 2020 from various States to bring back the migrant workers working in other States who originally belong to the State of Karnataka. The stand specifically taken in paragraph 7 is that the expenses for travel by shramik trains have been paid fully by the Government of Karnataka. Thus, the train fare payable by the migrants from Karnataka has been borne by the State. However, the stand taken as regards the migrant workers in the State who want to go back to their States of their origin is that unless the corresponding States to which the migrants wish to travel agree to bear the train fare, the migrant workers will have to pay the train fare.</p> <p>7. An argument is canvassed that the State cannot discriminate by creating two artificial classes of migrant workers on the basis of the State of their origin. Irrespective of the State of origin, the reasons why the migrant workers are desperate to go back to their respective States are the same. The reasons are well known which are highlighted in the earlier order. An argument is canvassed that the stand of the State is in violation of the rights conferred by Articles 14 and 15 and sub-clause (d) of clause (1) of Article 19 of the Constitution of India. It was canvassed by the learned Additional Advocate General that the order of the Apex Court dated 15th May, 2020 concludes the issue and this Court cannot deal with the issue of compelling the State Government to bear the train fare of migrant workers.</p>

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			<p>8. We have perused the order dated 15th May, 2020. We made a query whether it will constitute a binding precedent especially when it is alleged before us that the policy of the State is arbitrary and violates fundamental rights of the migrants. The learned Additional Advocate General states that if time is granted, he will address the Court in detail why this order of the Apex Court will preclude this Court from dealing with the issue. We grant time to the learned Additional Advocate General to address the Court on this issue.</p> <p>9. When we made a query about the stand of the Union of India on this issue, our attention was invited by the learned Additional Solicitor General to the order dated 5th May, 2020 in W.P. (Civil) Diary No.10947 of 2020. The relevant part of the said order reads thus:</p> <p>“As noted above, in the writ petition direction was prayed for to the Respondents to allow migrant workers across the country to return to their hometowns and villages after conducting necessary testing for COVID-19 and to arrange for their safe travel by providing necessary transportation. The order dated 29.04.2020 issued by the Government of India, Ministry of Home Affairs sub-clause (iv) under Clause 17 on movement of persons, the Government of India had allowed the movement by directing all States/Union Territories to designate nodal authorities and develop standard protocols for receiving and sending such stranded persons. The main relief which was sought in the writ petition, thus, stood substantially satisfied by the aforesaid order.</p> <p>The order dated 01.05.2020 issued by the Ministry of Railways has also been placed before us where the Railways has decided to run “Shramik Special” trains to move migrant workers, tourists, students and other persons</p>

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			<p>stranded at different places due to lock down. Necessary modalities for such transportation has to be implemented by the concerned States/Union Territories in collaboration with the Railways. Insofar as charging of 15% of Railway tickets' amount from workers, it is not for this Court to issue any order under Article 32 regarding the same, it is the concerned State/Railways to take necessary steps under the relevant guidelines.</p> <p>Certain other difficulties have been pointed by Shri Prashant Bhushan with regard to</p> <p>stranded migrant workers which difficulties are to be addressed and taken care by the concerned State Governments/Union Territories. The substantial relief in the writ petition having been fulfilled we cannot expand the scope of the writ petition to consider other issues sought to be raised by the learned counsel for the petitioners during course of argument.</p> <p>In view of the aforesaid, no purpose will be served in keeping the writ petition pending. Taking note of the statement made by Shri Tushar Mehta, learned Solicitor General and for the reasons as above the writ petition is closed.”</p> <p>(Emphasis added)</p> <p>10. Thus the Apex Court firstly relied upon the order dated 29th April, 2020 issued by the Government of India, Ministry of Home Affairs and in particular, sub-clause (iv) of clause 17 on movement of persons. Secondly, the Apex Court referred to the order dated 1st May, 2020 issued</p>

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			<p>by the Ministry of Railways. Lastly, the Apex Court has observed that the scope of the petition cannot be expanded by going into the question regarding the difficulties faced by the migrant workers.</p> <p>11. The learned Additional Solicitor General invited our attention to a memo dated 16th May, 2020 filed by the Union of India. Clause (c) of the said memo is relevant which reads thus:</p> <p>“c. Concession in trains ticket fare to migrant workers.</p> <p>i. Nodal Officer of originating State Government requests Railways for arranging a train to transport migrant workers from station ‘A’ in Karnataka to Station “B” in a destination state.</p> <p>ii. Once destination/receiving state confirms their readiness to receive migrant workers/passengers of a Shramik Special Train, and nominates a destination station/s. Nodal Officer of South Western Railway, then advises originating State Government to remit ticket fare (the “amount” being normally chargeable fare between station A and station B as indicated in 1 above), then, the originating State Govt remits ticket fare amount to the Railways.</p> <p>iii. On receipt of the payment, Railways arrange a train for migrant workers/labour to the destination state station/s.</p> <p>iv. The State Government arranges to transport migrant workers to originating railway station, and after due procedure of medical screening in</p>

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			<p>coordination with railways allows for their boarding to a nominated train.</p> <p>v. Necessary provision for food and water free of charges is ensured by railways during travel.</p> <p>vi. The state of Madhya Pradesh, Himachal Pradesh, Odisha, Assam, West Bengal, Manipur, Uttarakhand, Nagaland, Tripura etc. have all deposited money in advance with the Government of Karnataka for arrangement train services for the movement of migrant workers to their respective home states through the designated trains i.e. Shramik special Trains. Till 15/05/2020 the Indian Railways have operated 400 trains and transported 12 lakh migrant labours to their home states.”</p> <p>(emphasis added)</p> <p>12. The learned Additional Solicitor General states that certain States which are listed in sub-clause (vi) of clause (c) have deposited money in advance with the Government of Karnataka towards train fare payable by the migrants belonging to their States. He states that in case of migrant workers from other States which have not agreed to pay the train fare of the migrant workers, the State Government will have to pay the fare to the Railways and thereafter, take up the matter with the corresponding States for reimbursement of the amounts. This stand which was orally taken by the learned Additional Solicitor General is clearly recorded in sub-clause (ii) of clause (c) of the memorandum dated 16th May, 2020. The State Government is not willing to accept this.</p> <p>13. As pointed out earlier, a prima facie finding has been already recorded by this Court in paragraph 10 of the order dated 12th May, 2020</p>

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			<p>which we have quoted earlier. Now the State wants to create two separate classes of migrant workers who wish to go back to their respective States based on the State of their origin. The State will have to satisfy the Court about the legality of the said stand in the context of the arguments based on Articles 14, 15 and sub-clause (d) of clause (1) of Article 19 of the Constitution of India. Apart from this, the stand of the Government of India is very clear which is reflected from clause (c) of the memo dated 16th May, 2020. The State Government must state before the Court whether it wants to deviate from the stand taken by the Government of India on the issue of bearing the fare of the Railways and whether it really wants to take a stand that a migrant worker who has no income and is not in a position to pay Railway fare will not be allowed to travel by Shramik special trains to his home State.</p> <p>14. On the aspect of the issue of migrant workers which we have highlighted above, we will hear the learned Additional Advocate General and the learned counsel appearing for the parties. We must note here that we are dealing with the issue of violation of fundamental right of migrant workers who are unable to approach Writ Court for the reasons which are obvious.</p> <p>15. The petition shall be listed on 21st May, 2020 at 3.00 p.m. A broad data regarding the number of migrant workers who wish to go back shall be placed on record along with the data of buses which are made available to migrant workers traveling to the neighbouring States. The hearing on 21st May, 2020 will be confined only to the issue of migrants and the rest of the issues will be heard in the next week.</p>

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