

**IN THE HON'BLE SUPREME COURT OF INDIA
(ORIGINAL CIVIL JURISDICTION)**

I.A. NO. 51637 OF 2020

IN

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

IN THE MATTER OF

IN RE: PROBLEMS AND MISERIES ...PETITIONER (S)
OF MIGRANT LABOURERS

AND IN THE MATTER OF

NATIONAL HUMAN RIGHTS ...APPLICANT
COMMISSION

WITH

I.A.No. OF2020: Application For Directions

PAPER BOOK

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ADVOCATE FOR APPLICANT: MOHIT PAUL

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APPLICATION FOR DIRECTIONS ON BEHALF OF THE
APPLICANT – NATIONAL HUMAN RIGHTS
COMMISSION

To

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

THE HUMBLE APPLICATION OF THE APPLICANT
ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. This Hon'ble Court in *Suo Motu Writ Petition No. 6 of 2020*, vide order dated 26.05.2020, took cognizance of problems and miseries of migrant labourers who had been stranded in different parts of the country after the nation- wide lockdown. This Hon'ble Court was of the view that although the Government of India and the State Governments had taken measures yet there have been inadequacies and certain lapses. Further, this Hon'ble Court was of the view that effective concentrated efforts was required to redeem the situation and thus issued notice to Union of India and all the States/UT's to submit their response looking into the urgency in the matter.

2. This Hon'ble court on 28.05.2020, looking into the difficulties and miseries of the migrant workers issued the following interim directions in the captioned writ petition:

1. No fare either by train or by bus shall be charged from any migrant workers. The railway fare shall be shared by the States as per their arrangement as submitted by the learned Solicitor General and in no case any fare should be asked or charged from any migrant workers by the States and the Railways.

2. The migrant workers who are stranded at different places in the country shall be provided food free of cost by the concerned States / Union Territories at different places which shall be publicized and notified to them during the period they are waiting for their turn to board the train or bus.

3. Initially, as stated by the learned Solicitor General, the originating State shall provide water and meal and during the journey, the railways shall provide meal and water to the migrant workers and same facilities shall be extended when the migrant workers are transported by bus. The State shall take care of providing necessities water and meal during the period of transportation either in the bus or in the camps on the way.

4. We further direct that the State shall simplify and speed up the process of registration of migrant workers and also provide help desk for registration at the places where they are stranded.

5. The State shall try to endeavour that after registration the workers should be asked to board the train or bus at

the earliest and complete information should be publicized to all the concerned regarding mode of transport.

6. We further direct that those migrant workers who are found walking on the highways or roads shall be immediately taken care by the concerned State / Union Territories and they shall be provided the transport to the destination and all facilities including food and water be provided to those found walking on the road.

7. The receiving State, after the migrant workers reach his native place, shall provide transport, health screening and other facilities free of cost.

3. That the instant application is being filed on behalf of National Human Rights Commission (hereinafter referred as 'commission'), India that has been set up by an Act of the Parliament under the Protection of Human Rights Act, 1993 for the Protection and promotion of Human Rights. Section 12 of the act lays down the functions of the commission, including among others, under section 12(b) to intervene in any proceedings involving any allegation of violation of human rights pending before a court with the approval of such court and under section 12 (d) to review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for effective implementation. For ready reference Section 12 (b) and (d) are reproduced herein below:

"12. Functions of the Commission.—The Commission shall perform all or any of the following functions, namely:—

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with

the approval of such court;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

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4. The Commission also looking into various newspaper reports and media reports showing the unfortunate and a miserable condition of the migrant workers has also taken *suo motu* cognizance of the issue in 6 different cases and has issued notice to various government departments. The details of the matter in which the Commission has taken cognizance are given hereinbelow:

- i. The Indian Express on 08.05.2020, reported that about 20 workers who were walking from Jalna to Bhusawal, which is about 150 kilometres, stopped after walking for 45 kms to take rest and fell asleep on the railway tracks and at about 5:15 am, a goods train ran over them. The Commission in Case/File No.518/13/4/2020 took suo motu cognizance of this incident on account of the fact that the poor labourers were already facing hardships due to the countrywide lockdown and were forced to walk on foot for a very long distance due to non-availability of any mode of transport, lost their lives due to negligence on behalf of the district administration because if there were arrangements made for their shelter or halt during their tiring journey, then such a painful tragedy could have been averted. The Commission on 08.05.2020 issued notice to the Chief Secretary, Government of Maharashtra and the District Magistrate, Aurangabad, Maharashtra to submit a detailed report including details of the steps taken by the State and the district

authorities to provide food, shelter and other basic amenities to the poor people especially the migrant labourers who are facing extreme difficulties from every angle.

- ii. The Hon'ble Commission in Case/File No. 544/13/0/2020-WC on 14.05.2020 took suo motu cognizance of the issue of the plight of the migrant workers particularly women, children, old age people and pregnant women who were falling prey to the states apathy. The Commission took cognizance on the basis of a news report published by HW News that reported that a pregnant migrant woman who was walking on foot from Maharashtra to Madhya Pradesh delivered her baby on road and she resumed walking after two hours of the delivery and that the clothes and essentials for the newborn were provided by a family in Dhule, Maharashtra. Therefore, the Commission issued notice to the Chief Secretaries of Maharashtra and Madhya Pradesh, calling for a detailed report in the matter and to know what measures have been taken by both the states to ensure that the migrant workers are not subjected to harassment and hardships during the lockdown. The Commission also wanted a report to know as to what actions have been initiated against the erring public servants by the state authorities for their apathy and culpable negligence for not implementing the government orders and *various measures as mentioned in the inter-state Migrant Workmen Act, during the lockdown period.*
- iii. The Hon'ble Commission on 15.05.2020 took suo motu cognizance of a news report published in the "Indian Express" and "Millennium Post" that published a picture of a little boy who had fallen asleep on a suitcase being pulled by his mother, a migrant labourer, on the Agra Highway who had started her journey from Punjab to reach her home in Jhansi. The commission in Case/File No. 8474/24/1/2020 took cognizance of this incident as it was a violation of human rights and indicated the carelessness of the local authorities who were not vigilant

to provide immediate relief to such families. The Commission on 15.05.2020 issued notice to the Chief Secretary, Government of Punjab, the Chief Secretary, Government of Uttar Pradesh and the District Magistrate, Agra, Uttar Pradesh calling for a detailed report in the matter including the action taken against the responsible officers/officials and relief/ assistance provided to the victim families.

- iv. The Hon'ble Commission in Case/ File No. 356/6/0/2020 took suo motu cognizance of the issue in hand, on the basis of a video clip posted on the twitter account of Sh. Sanjay Singh, Aam Aadmi Party Leader, that showed in Gujarat, a driver of a commercial vehicle and its other occupants were dragged out by the police and were beaten up. The Commission intervened as it was apparent the police officials violated the human rights of the victims. The Commission on 19.05.2020 issued notice to the Director General of Police, Gujarat calling for a detailed report in the matter and also to know the status of action taken against the delinquent police personnel.
- v. The Hon'ble Commission, on the basis of a news report published in "News 18" on 19.05.2020, that reported that after the collision of two trucks in Auraiya district of Uttar Pradesh on 16.05.2020 in which 26 migrant workers died and more than 30 sustained injuries, the bodies of the injured and the dead were being carried in the same vehicle, took suo motu cognizance of this incident as it was unethical on the part of the authorities to put the dead bodies in the same vehicle in which the injured workers were asked to travel and it violated the right to dignity of the poor labourers. The Commission in Case/File No. 8755/24/5/2020 issued notice to the Chief Secretary, Government of Uttar Pradesh calling for a detailed report in the matter and to give details of the action taken against the delinquent officers and relief/rehabilitation provided to the victim migrant labourers and their families by the state authorities.

- vi. On 28.05.2020, the commission took suo moto cognizance of the issue that the migrant labourers were losing their lives during their journey by train due to longer duration and no arrangements of drinking water and food, on the basis of a news report published in Hindi daily “Dainik Bhaskar”, which reported 2 persons died in Muzaffarpur and one each on Danapur, Sasaram, Gaya, Begusarai and Jehanabad in Bihar including a 4 year old boy who all died due to starvation. It also reported an incident where a train reportedly started from Surat district in Gujarat for Siwan in Bihar on 16.05.2020 and it reached Bihar on 25.05.2020 i.e. after 9 days. Therefore, the commission in Case/File No. 118/4/23/2020 took suo-motu cognizance of the matter and issued notice to (i) Chief Secretary, Government of Gujarat, (ii) Chief Secretary, Government of Bihar (iii) the Chairman, Railway Board, Ministry of Railways, Government of India, New Delhi and (iv) the Home Secretary, Ministry of Home Affairs, Government of India, New Delhi calling for a detailed report in the matter.
5. That a key piece of legislation governing the inter-state migrant workers is the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The act was enacted to regulate the employment of inter-state migrant workmen and to provide for their conditions of service and matters connected thereto so as to prevent exploitation of inter-state workmen by contractors and to ensure fair and decent conditions of employment. The act requires that all establishments hiring inter-state migrants to be registered and contractors who recruit such workmen be licensed. Under the act migrant workers were entitled to wages similar to other workmen, displacement allowance, journey allowance and payment of wages during the period of journey for the migrant workers.
6. The hardships faced by the migrant workers during the lockdown clearly shows that the act was never implemented in its true spirit.

7. That by way of the present Application, the Applicant seeks directions from this Hon'ble Court for implementation of short term and long term measures that may be considered by this Hon'ble Court in order to decrease the plight of the migrant workers and to ensure that the human rights of these poor labourers are not violated. Some of the measures that this Hon'ble Court can consider and direct implementation of are as following:

A. Short term measures:

- i. In order to estimate the in-flow of migrant workers, States should collect the data of migrant workers at the point of departure in the originating State as well on arrival in the destination States. This will help States to effectively plan quarantine and relief measures for the migrant workers.
- ii. The Government of India and the State Governments must ensure proper implementation of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 so that the migrant workers are provided with a journey allowance.
- iii. Menstrual hygiene products should be provided to migrant women and adolescent girls across the country.

For example, at the Andhra-Odisha border in Odisha's Ganjam district, the women and adolescent girls among migrant workers walking homeward on the NH16 have received menstrual hygiene products, along with food and other relief material, from Youth for Social Development (YSD), an NGO.

- iv. Each state should be directed to ensure proper functioning of shelter homes especially for the accommodation of pregnant women, lactating mothers, children, and elderly persons. It should be ensured

that medical facilities and nutritious food are available in these shelter homes.

- v. Each State should be directed to identify the industry in which the migrant labour is working i.e construction, agriculture, brick kiln, etc. This identification will aid the State in creating schemes for the migrant workers and in the preparation of a State-wide and Nation-wide database.
- vi. States should be directed to take steps for the support of migrant workers, similar to the steps taken by the State of Odisha which has set up a toll-free Shramik (labour force) Sahayata Helpline, Migrant Labour Help Desk, seasonal hostels for the children of migrant workers, and has strengthened Anti-Human Trafficking Units for migrant workers.
- vii. States must ensure medical facilities for check-ups for migrants before and after the journey, as well as availability of food and medical care during the journey. For migrants who are walking or travelling on bicycles, food and water should be made available both at the originating and destination states, as well as en route.
- viii. The originating States should take steps to identify the destitute among the migrant labour and provide some quantum of compensation to ensure that they do not resort to begging after reaching their destination.
- ix. It is of concern that as per many reports 40 per cent of the Shramik trains are late, there is an average delay of 8 hours. Railways in consultation with the respective State Governments should ensure that such delays do not take place and the trains do not reach wrong destinations. A mission similar to that of the dedicated Vande Bharat

Mission should be started in a phased manner to help migrant workers reach their source destination.

- x. A fund should be created for payment of ex-gratia relief by the concerned DM, which will provide fixed compensation to every migrant returning home.

B. Long term measures:

- i. A special provision to be inserted in the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 to deal with emergency situations like Covid-19, natural disasters etc.
- ii. Appointment of a claim commissioner to look into recovery from employers who abandoned their labourers despite notification for continuity of wages by Central Govt.

For example it appears prima facie that the provisions regarding Accommodation as provided for under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 have been ignored by the employer thus leading to a situation where the workers had to resort to travelling back to their home State.

- iii. Allocation of funds to states to be allotted to gram panchayats in order to create employment opportunities in the home states of migrants.
- iv. National portal for registration of migrants so that a nationwide database is created.

- v. Compensation to family members of those who died while migrating to their respective states.
- vi. Universal ration card to be granted to migrants
- vii. Maximum benefits be extended to the migrant labour as provided for under the Unorganised Workers' Social Security Act, 2008.
- viii. The government announced it would launch a scheme for affordable rental housing for migrant workers and urban poor to provide ease of living by converting government-funded housing in cities into Affordable Rental Housing Complexes (ARHC). This would be carried out through PPP mode. This should be implemented as soon as possible in order to provide shelter to the migrants.
- ix. There should be a nodal agency created under the Ministry of Labour for the resolution of inter-state migrant labour issues. The Secretary from each State/UTs should be a part of this nodal agency and will coordinate with the migrants in their respective states. A study looking at best practices from other countries on issues concerning migrant labour could be commissioned in order to implement or adapt the same in the domestic context.
- x. A simpler registration process ensuring the understanding capability of the migrant workers. Also, the forms should be made available in the local language or the language that is most commonly used in the area.

In the matter of *National Campaign for Central Legislation on Construction Labour v. Union of India & Ors.* reported in (2018) 5 SCC 607, the Ministry of Labour and Employment had proposed the issuance of a Universal Access Number for construction workers.

While this Hon'ble Court left it to the Ministry to decide on an appropriate system of registration, it is submitted that a universal number/ smart card with portability for migrant workers may be revisited.

8. The present application is being filed *bonafide* and in the interests of justice.

PRAYER

It is therefore, in the interest of justice that this Hon'ble Court, may be pleased to:

- a) Allow the present application and pass directions as suggested by the applicant in para 7 hereinabove as deemed fit by this Hon'ble Court;
- b) Pass such other/further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT, AS IN DUTY BOUND, SHALL EVER PRAY.

FILED BY:



(MOHIT PAUL)

ADVOCATE FOR THE APPLICANT

PLACE: NEW DELHI

DATED: 03.06.2020

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AFFIDAVIT

I, Sunil Arora s/o Late Shri K. S. Rai, aged about 58 years, R/o 716, Vikas Kunj, Vikas Puri, New Delhi-110018, posted as Deputy Registrar in the National Human Rights Commission do hereby solemnly and affirm as under:

1. That I am posted as Deputy Registrar in the National Human Rights Commission and as such I am well conversant with the facts and circumstances of the case and as such, competent and authorized on behalf of the applicant to swear to this Affidavit.
2. I state the facts stated in the accompanying application are true and correct to the best of my knowledge and the same has been drafted under my instructions.
3. That the contents of the above affidavit are true and correct and no part thereof is false and nothing material

has been concealed therefrom.


DEPONENT
Deputy Director
National Human Rights Commission
Manoj Acharya (Signature)
Block C GPO Complex INA
New Delhi-110023

VERIFICATION

Verified at New Delhi on this _____ day of June, 2020 that the contents of the above affidavit are true and correct to the best of my knowledge and belief. No part of this affidavit is false and no material has been willfully concealed therefrom.


DEPONENT
Deputy Director
National Human Rights Commission
Manoj Acharya (Signature)
Block C GPO Complex INA
New Delhi-110023