

06.06.2023

Item No.3

Ct. No.1

PG/KS

**W.P.A.(P) 237 of 2023**

**Paschim Banga Khet Mazdoor Samity & Anr.**

**Vs.**

**The Union of India & Ors.**

Mr. Bikash Ranjan Bhattacharya

Mr. Saptarshi Banerjee

Mr. Purbayan Chakraborty

Mr. Kuntal Banerjee

.....for the Petitioners

Mr. Billwadal Bhattacharya, Ld. Dy. SGI

Mr. Arijit Majumdar

.....for the Union of India

Mr. Samrat Sen, Ld. AAAG

Mr. Piyush Agarwal

Mr. Utsha Dasgupta

Ms. Shrivalli Kajaria

.....for the State

1. By this public interest litigation, the petitioners, which is an organization seeks for issuance of a writ of mandamus to direct the respondent authorities to forthwith release payments and wages to the workers in the State to the tune of Rs.276484.47 lakhs along with statutory interest @ 0.05% of the unpaid wages per day of delay beyond the sixteenth day of closure of muster roll, who have worked under the schemes of Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for brevity, "the Act of

2005”), who have not received their wages since December, 2021 by crediting their respective due wages to their bank or postal accounts.

2. The petitioners also sought for issuance of a writ of mandamus to direct the 2<sup>nd</sup> respondent to immediately start the implementation of the schemes under M.N.G.E.G.A. within the State of West Bengal upon due sanction of funds as required by law.
3. A further direction has been sought for against the respondent nos.6 to 27 to carry out necessary fact finding as to the amount of wages remaining due and payable in their respective districts.
4. Earlier, a public interest writ petition in W.P.A.(P) 555 of 2022 was filed, wherein an allegation was made that there has been misappropriation of funds in the State under the M.G.N.R.E.G.A.. The Division Bench by order dated 28<sup>th</sup> November, 2022 after recording the submissions of the learned advocate for the writ petitioner as well as the learned Additional Solicitor General for the Union of India and the learned Advocate General for the State directed the respondents/State to file their affidavit in opposition within a time frame and liberty was also granted to file their reply. It is stated that the said writ petition is still pending.

5. Before filing the present writ petition, certain events have taken place. The Central Government by an order dated 9<sup>th</sup> March, 2022 in exercise of its powers under Section 27 of the Act of 2005 stopped the release of funds under Wage, Material and Administrative Component under the said scheme and further directed that the Fund Transfer Order for wage payment generated from the date of the order dated 9<sup>th</sup> March, 2022 will be paid by the State Government from its own resources and it will be continued till necessary compliance with reference to the direction issued in paragraph 10 (i) of the said order is complied with by the State Government. Further, the order states that pending wage payment and material payment, if any, prior to the date of the order (09.03.2022) will be released by the Central Government.
6. It is pointed out by the learned Deputy Solicitor General representing the Union of India that the Central Government has passed the order under Section 27 of the Act of 2005 dated 9<sup>th</sup> March, 2022 after examining the Action Taken Report (A.T.R.) submitted by the State Government and finding the same to be not satisfactory.
7. It is pointed out by the learned Assistant Advocate General appearing for the State of West

Bengal that a fresh Action Taken Report has been submitted by the State Government on 2<sup>nd</sup> February, 2023 containing all the relevant details and annexures and a request has been made for revocation of the order passed under Section 27 of the Act of 2005.

8. Thus, what is required to be considered is whether the Action Taken Report submitted by the State Government on 2<sup>nd</sup> February, 2023 is to the satisfaction of the Central Government and whether any order has been passed pursuant to such report. The other issue would be that in terms of the order dated 9<sup>th</sup> March, 2022 passed by the Central Government under Section 27 of the Act of 2005, it has been specifically mentioned that the Fund Transfer Order (F.T.O.) for wage payment generated from the date of the said order (09.03.2022) will be paid by the State Government from its own resources and it will be continued till necessary compliance of the directives of the Central Government with respect to the Inquiry Report of Central Team led by the then Joint Secretary and Director is complied with.
9. Therefore, the State of West Bengal has to answer as to why a direction should not be issued to direct the State Government to implement the

directions of the Central Government issued in paragraph 10(ii) of the order dated 9<sup>th</sup> March, 2022.

10. The learned Assistant Advocate General appearing for the State of West Bengal has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Swaraj Abhiyan Vs. Union of India & Ors.*** reported in ***(2016) 7 SCC 498*** and has drawn our attention to paragraph 175 of the judgment to explain as to how the system called the National Electronic Management System or NeFMS has been put in place and the said system has been brought into effect in the State of West Bengal with effect from 2017.
  
11. As mentioned above, the Central Government has to respond by specifically stating as to what is the decision taken on the Action Taken Report submitted by the State Government dated 2<sup>nd</sup> February, 2023. It is to be borne in mind by the concerned authority that the object of the scheme has to be fulfilled by the concerned authorities. The Act of 2005 was enacted to provide for enhancement of livelihood security of the households in rural areas of the country by providing at least 100 days of guaranteed wage employment in every financial year to every

household whose adult members volunteered to do unskilled manual work and for matters connected therewith or incidental thereto. Therefore, it should be the endeavour of all the concerned authorities to ensure that the benefits under the Act of 2005 as well as the schemes, which have been formulated under the Act of 2005 are implemented. If in the opinion of the Central Government there has been misappropriation of funds and the actual beneficiaries have not been benefited, as it is alleged by the petitioner in W.P.A.(P) 555 of 2022 that job cards have been issued in the names of persons, who are not living in the villages and are even gainfully employed in private organizations and it is also alleged that dummy bank accounts have been opened to receive the payments for the fictitious job etc, the endeavour of the authority should be to separate the chaff from the grains. If genuine persons have offered themselves for employment under the provisions of the Act of 2005 and they have satisfactorily completed the work, then it goes without saying that those employees and workmen are entitled for disbursement of wages in accordance with the provisions of the Act and the Schemes framed thereunder.

12. Therefore, the inquiry to be conducted has to proceed in an appropriate manner so that the persons, who have actually worked are not denied the wages for the labour, which they have contributed.
13. To take a decision in the matter, concise affidavits are directed to be filed by the respective authorities of the Central Government as well as the State Government by 20<sup>th</sup> June, 2023, reply thereto, if any, be filed by 27<sup>th</sup> June, 2023.
14. Further, we note that in the order passed by the Central Government dated 9<sup>th</sup> March, 2022 in paragraph 10(iii) it has been specifically ordered that pending wage payment and material payment, if any, prior to the date of the order (09.03.2022) will be released by the Central Government. The affidavit to be filed by the concerned authority of the Central Government should specifically indicate as to the status of release of the pending wage payment.
15. We have specifically used the word 'concise' to mean that the affidavits should be precise to the point answering some of the issues, which have been flagged in this order and it should not be verbose. Otherwise, it may cause much difficulty for the Court to take an expeditious decision in the matter. The annexures, which the Central

Government as well as the State Government, which they may rely upon, shall be filed in the form of a compilation for easy reference.

16. The State Government in their affidavit shall also indicate as to whether the State Government has complied with the mandate under Section 19 of the Act of 2005. The said provision deals with the grievance redressal mechanism and the State Government is to answer as to whether such a redressal mechanism has been established at block level and the district level for dealing with any complaint by any person in respect of implementation of the scheme and whether any procedure has been laid down for disposal of such complaint.
17. The learned Assistant Advocate General submits that the direction issued in the order passed by the Central Government dated 9<sup>th</sup> March, 2022, more particularly in paragraph 10(ii) is beyond the provisions of the scheme and this contention is vehemently disputed and denied by the learned Deputy Solicitor General.
18. List this matter along with W.P.A.(P) 555 of 2022 in the Combined Monthly List of Cases for the Month of July, 2023 higher on board.



**(T. S. SIVAGNANAM)  
CHIEF JUSTICE**

**(HIRANMAY BHATTACHARYYA, J.)**