

V.

(Writ Petition (Civil) No. 857 of 2015)

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[MADAN B. LOKUR AND N. V. RAMANA, JJ.]

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Central Government is statutorily empowered to scrutinize and

assess the funds to be released to the State Governments and Union Territory Administrations for the purposes of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005. The final assessment is made by the Empowered Committee in consultation with the State Governments and Union Territory Administrations. Therefore, it is not as if the ‘agreed to labour budget’ or the ‘approved labour budget’ is fixed arbitrarily by the Central Government. There is nothing objectionable in this, more particularly since the process is backed by statutory provisions. [Paras 18 and 19] [408-C-D, H; 409-A-B]

1.2 Meaningful discussions are necessary while approving or finalizing the labour budget. The fact that so many States and Union Territories have exceeded the expenditure postulated by the ‘agreed to labour budget’ is an indication that the Scheme is either well received by the unemployed or the Empowered Committee is being a little tight-fisted. The release of funds is for a good socio-economic cause and therefore expeditious and sufficient availability of funds should be the objective. Under the circumstances, it is not correct to say that the Central Government cannot prepare an ‘agreed to labour budget’ or that the process of preparing an ‘agreed to labour budget’ is impermissible or that there is an informal cap on release of funds. [Para 27] [411-D-F]

2.1 If there is some sort of a cap or an unreasonable reduction in the funds made available to the State Governments, it is really for the concerned State Government to object to the cap and non-availability of funds. The Court has not been shown any objection raised by any State to the effect that it has not received adequate funds for implementation of the Scheme for various activities. In the absence of any objection or demand having been raised for funds by the State Governments (and denial of funds by the Central Government), the petitioner cannot be allowed to raise such a contention which ought really to be raised by the affected State Government. [Para 24] [410-D-F]

3. Regarding delayed payments, according to the Central Government, there is some laxity by the State Governments and Union Territory Administrations in respect of obtaining another mother sanction, when the Mother sanction based on the “agreed

- A to labour budget” nears exhaustion or is exhausted. This is a bottleneck that must be addressed and, as stated in the affidavit, checklists have been prepared in consultation with the State Governments and Union Territory Administrations to facilitate smoother processing of proposals. Perhaps something more needs to be done and it is left to the Ministry of Rural Development to find a solution. One of the positive measures adopted by the Ministry of Rural Development to reduce delays in release of funds is conducting a Mid Term Review with the State Governments and Union Territory Administrations. [Paras 25 and 26] [411-A-C]
- C 4.1 Section 3(3) and Section 3(4) of the Act provide that every person who has done work given to him or her under the Scheme, shall be entitled to receive wages and the disbursement of daily wages shall be on a weekly basis or in any case not later than a fortnight after the date on which such work was done.
- D Schedule II to the Act mentions the conditions for guaranteed rural employment and the minimum entitlements of labourers. Paragraph 29 relates to wage payment and is of great significance. It provides, inter alia, that in case wages are not paid within 15 days from the date of closure of the Muster Roll, the wage seeker or labourer shall be entitled to receive compensation for the delay at 0.05% of the unpaid wages per day of delay beyond the sixteenth day of closure of the Muster Roll. Thus, the provisions mandate timely payment and compensation for delayed payment. [Paras 29, 30 and 31] [411-G-H; 412-A-C; 413-E]
- F 4.2 While admitting and appreciating that there is delay in payment of wages (whatever the cause) the Central Government has stated that steps have been taken to ensure that payment of wages is not delayed. The Central Government has suggested timelines for payment of wages within 15 days. The Central Government has required the State Governments and Union Territory Administrations to formulate rules or issue notifications for payment of compensation for delayed payment of wages. As many as 27 States and Union Territories have formulated and issued rules or notifications or guidelines or advisories in this regard. [Paras 35 and 36] [416-B-D; 417-A-B]
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- H 4.3 The law requires and indeed mandates payment of wages not later than a fortnight after the date on which the work was

done by the worker or labourer. Any reason for the delay in receiving wages is not at all the concern of the worker. He or she is entitled to get the due wages within a fortnight of completion of the work. If there are any administrative inefficiencies or deficiencies or laxity, it is entirely for the State Government and the Ministry of Rural Development to sort out the problem. Bureaucratic delays or red tape cannot be pedalled as an excuse to deny payment of wages to the workers. It is precisely to overcome any inefficiency or deficiency that payment of compensation is postulated, otherwise the purpose of Section 3 and paragraph 29 of Schedule II of the Act would get completely defeated. The delayed payment adds several crores to the compensation bill. This is to nobody's advantage and merely adds an avoidable financial burden on the Central Government. [Paras 39 and 40] [417-E-H; 418-A]

4.4 The Central Government cannot be seen to shy away from its responsibility or taking advantage of a person who has been placed in the unfortunate situation of having to seek employment under the Act and then not being paid wages for the unskilled manual labour within the statutorily prescribed time. The State Governments and Union Territory Administrations may be at fault, but that does not absolve the Central Government of its duty. [Para 41] [418-C]

4.5 Therefore, it is made clear and directed that in terms of the Act and Schedule II thereof a worker is entitled to payment of wages within a fortnight of the date on which the work was done, failing which the worker is entitled to the compensation as prescribed in paragraph 29 of the Schedule II of the Act. The burden of compliance is on the State Governments and Union Territory Administrations as well as the Central Government. One entity cannot pass on the burden to another and vice versa. The Central Government through the Ministry of Rural Development, in consultation with the State Governments and Union Territory Administrations, is directed to prepare an urgent time bound mandatory programme to make the payment of wages and compensation to the workers. This is not only in the interest of the workers who have expended unskilled manual labour but also in furtherance of the rule of law which must be followed in letter and spirit. [Paras 44 and 45] [419-G-H; 420-A-C]

A CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 857 of 2015.

Under Article 32 of the Constitution of India.

Ms. V. Mohana, Jaideep Gupta, Sr. Advs., Anil Grover, S. S. Shamshery, AAGs, Prashant Bhushan, Ms. Cheryl D'Souza, Avik Saha, B Devesh Agnihotri, Mukul Singh, Rajiv Nanda, M. K. Maroria, Ms. Kashvi Dutta, Pushkar Taimni, Raj Bahadur Yadav, Neeraj Kumar Sharma, Ms. Supriya Juneja, Kuldeep S. Parihar, H. S. Parihar, Guntur Prabhakar, Ms. Prerna Singh, Gopal Singh, Manish Kumar, A. P. Mayee, Avnish M. Oza, Chirag Jain, Ms. Hematika Wahi, Ms. Shodhika Sharma, Anil C Grover, Dr. Monika Gussain, Manpreet Kaur Bhalla, Sanjay Kumar Visen, Ajay Marwah, Mool Singh, Varinder Kumar Sharma, Tapes Kumar Singh, Aditya Pratap Singh, Mohd. Waquas, V. N. Raghupathy, Leishangthem Roshmani Kh., Ms. Maibam Babina, Nishant Katneshwarkar, Ranjan Mukherjee, Daniel Stone Lyngdoh, Mrs. K. Enatoli Sema, Edward Belho, Amit Kumar Singh, K. Luikang Michael, D Sibho Sankar Mishra, Ms. Uttara Babbar, Ms. Akanksha Choudhary, Ms. Bhavana Duhoon, Amit Sharma, Ankit Raj, Ms. Indira Bhakar, Ms. Ruchi Kohli, Ms. Aruna Mathur, Avneesh Arputham, Ms. Anuradha Arputham, Ms. Simran Jeet, P. Venkat Reddy, Prashant Kr. Tyagi (For M/s. Venkat Palwai Law Associates), B. Vinodh Kanna, A. Sriram, E Akshat Kumar, Upendra Mishra, Rajiv Nanda, Bhupesh Narula, K. V. Jagdishvaran, Mrs. G. Indira, V. G. Pragasam, Prabu Ramasubramanian, S. Manuraj, Advs. for the appearing parties.

The Order of the Court was delivered by

F **MADAN B. LOKUR, J.** 1. In the record of proceedings of this Court dated 9th August, 2017 it is noted that learned counsel for the petitioner would like to highlight three issues pertaining to the implementation of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short the Act) and the Scheme framed thereunder. These issues are:

- G 1. Delay in payment of wages and compensation to the beneficiaries under the Act and the Scheme framed thereunder.
- H 2. Reduction in person days and consequent reduction in allocation of funds from the projection made by the State Governments and the Union Territory Administrations.

3. Absence of social audits being conducted.

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2. We have heard learned counsel for the petitioner as well as the learned Attorney General in detail in respect of these issues and have also gone through the various affidavits and written submissions.

3. The Act was enacted by Parliament with the objective, inter alia, of enhancing the livelihood security of poor households in rural areas by providing at least one hundred days guaranteed wage employment to every such household whose adult members volunteer to do unskilled manual work.

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4. Section 3(1) of the Act provides that the State Government shall in rural areas (as notified by the Central Government) provide to every household whose adult members volunteer to do unskilled manual work not less than one hundred days of such work in a financial year in accordance with the Scheme made under the Act. Section 3(3) provides that the disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight after such work has been done. Section 3 of the Act reads as follows:

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“3. Guarantee of rural employment to households. - (1) Save as otherwise provided, the State Government shall, in such rural area in the State as may be notified by the Central Government, provide to every household whose adult members volunteer to do unskilled manual work not less than one hundred days of such work in a financial year in accordance with the Scheme made under this Act.

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(2) Every person who has done the work given to him under the Scheme shall be entitled to receive wages at the wage rate for each day of work.

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(3) Save as otherwise provided in this Act, the disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight after the date on which such work was done.

(4) The Central Government or the State Government may, within the limits of its economic capacity and development, make provisions for securing work to every adult member of a household under a Scheme for any period beyond the period guaranteed under sub-section (1), as may be expedient.”

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5. Section 4 of the Act provides that to give effect to the provisions of Section 3 thereof every State Government shall frame a Scheme

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A providing not less than one hundred days of guaranteed employment in a financial year to every household in the rural areas covered under the Scheme and whose adult members, by application, volunteer to do unskilled manual work subject to the conditions laid down in the Act and in the Scheme.

B 6. In terms of Section 4 of the Act a working Scheme has been formulated and is in place and there is no dispute in this regard.

Reduction in person days through approved labour budget and allocation of funds

C 7. The grievance of the petitioner under this head is succinctly stated and understood by the Union of India in its written submissions of 14th March, 2018 as follows:

- (a) “Approved Labour Budget” violates the essence of the Act which does not envisage any role for the Central or State Government in altering the labour budget in any form.
- D (b) The labour budget projections are arrived at through the process spelt out in Section 14(6) and paragraph 7 of Schedule I of the Act¹ and any reduction of the labour budget goes against the spirit of the Act.
- (c) The Central Government has started exercising discretionary powers in deciding how much a State can spend on generating employment.
- E (d) The generation of the Muster Roll is halted once the State has reached the “Approved Labour Budget”.

To appreciate the grievance of the petitioner, it is necessary to refer to a few more provisions of the Act.

F **Approved labour budget**

8. Article 243-G of the Constitution was introduced by the 73rd Amendment Act and this endows the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of State Government.

G ¹ There shall be a systematic, participatory planning exercise at each tier of Panchayat, conducted between August to December month of every year, as per a detailed methodology laid down by the State Government. All works to be executed by the Gram Panchayats shall be identified and placed before the Gram Sabha, and such works which are to be executed by the intermediate Panchayats or other implementing agencies shall be placed before the intermediate or District Panchayats, along with the expected outcomes.

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9. Section 14 of the Act provides for the appointment of a District Programme Coordinator who is the Chief Executive Officer of the District Panchayat or the Collector or any other district level officer of an appropriate rank as decided by the State Government. The District Programme Coordinator is expected to implement the Scheme in the district, in addition to his/her other functions.

10. Section 14(6) of the Act requires the District Programme Coordinator to prepare, in the month of December every year, a labour budget for the next financial year containing the details of anticipated demand for unskilled manual work in the district and the plan for engagement of labourers in the works covered under the Scheme and submit it to the District Panchayat.

11. The step by step requirement (as submitted by the petitioner and in which there is no serious disagreement voiced by the Union of India)² for identification of works, their finalization, planning and approval of the labour budget under the Act and the Scheme is as follows:

Step 1	Gram Panchayat identifies works to be taken up in area based on recommendations of the Gram/Ward Sabha	Section 16(1) of the Act: “The Gram Panchayat shall be responsible for identification of the projects in the Gram Sabha area to be taken under a Scheme as per the recommendations of the Gram Sabha and the Ward Sabha and for executing and supervision of works.”
Step 2	Gram Panchayat to forward the works identified by the Gram Sabha to the Programme Officer for scrutiny + preliminary approval	Section 16(4) of the Act: “The Gram Panchayat shall forward its proposals for the development projects including the order of priority between different works to the Programme Officer for scrutiny and preliminary approval prior to the commencement of the year in which it is proposed to be executed.”

² Essentially this is only a procedural matter. Too much should not be read into the ‘disagreement’ if any.

A	Step 3	Programme Officer at the Block level consolidates plans received by all Gram Panchayats	Section 15(4) of the Act: “The Programme Officer shall prepare a plan for the Block under his jurisdiction by consolidating the project proposals prepared by the Gram Panchayat and the proposals received from intermediate panchayats”
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C	Step 4	Block Panchayat to approve the block level plan prepared by the Programme Officer and forwarding it to the District Panchayat for approval	Section 16(3)(b) of the Act: “to approve the Block level Plan for forwarding it to the district Panchayat at the district level for final approval”
D	Step 5	District Programme Coordinator to consolidate all Block level plans and submit it to the District Panchayat	Section 13(3)(a) of the Act: “The District Programme Coordinator shall “consolidate the plans prepared by the Blocks and project proposals received from implementing agencies for inclusion in the shelf of projects to be approved by the Panchayat at the District level”
E			
F	Step 6	District Panchayat finalizes and approves block-wise works to be taken up under the Scheme	Section 13(2)(a) of the Act: “The functions of the Panchayats at the district level shall be-
G			a. To finalise and approve block-wise shelf of projects to be taken up under a programme under the Scheme”
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It is after the above exercise is complete that the role of the District Programme Coordinator commences. A

12. At this stage it is important to notice: (i) The State Government and the Central Government have really no specific role in the formulation of programmes for the benefit of the rural areas and in the expenditure that would be required to carry out the development activities of the Panchayat; (ii) The provisions and steps form the basis of the number of person days of work in a year in each year and the fund requirement; (iii) The requirements made out are anticipatory and indicative. B

13. The submission of the petitioner is that, as mandated by the Act, every State Government obtains detailed information from every district and prepares a labour budget which indicates the expenditure anticipated and the person days necessary for implementation of the programmes in the concerned rural area. However, the Central Government in the Ministry of Rural Development through an Empowered Committee discusses the annual labour budget with representatives of the State Governments and after such discussions, an 'agreed to labour budget' (different from the labour budget) is prepared. According to the petitioner, there is no question of having these discussions or an 'agreed to labour budget' particularly when a detailed assessment has been made by the District Programme Coordinator and the Panchayat and forwarded by the State Government to the Central Government. C D E

14. On the other hand, the view of the Central Government, based on experience, is that some State Governments are not able to fully utilize the proposed labour budget and therefore through discussions, the labour budget is appropriately rationalized to a reasonable figure based on the person days necessary. As mentioned above, this is objected to by the petitioner. F

15. The further grievance of the petitioner is that the 'agreed to labour budget' works as a cap on the expenditure for every financial year and the generation of the Muster Roll is stopped. Therefore, even though there would be unemployed persons willing to do some unskilled manual work but they are prevented from doing so because of an informal cap on expenditure. G

16. Essentially, the submission of learned counsel for the petitioner is that first of all there cannot be an 'agreed to labour budget' for the reason that once the State Government raises a demand for H

- A implementation of the Scheme under the Act, the Central Government must release the funds without any reduction in the quantum. The second objection by learned counsel for the petitioner is that if the amount demanded by the State Government is not released there is a very strong possibility of some persons not being able to get employment due to insufficiency of funds and also due to the informal cap on the availability of funds.
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17. We are not in agreement with learned counsel on both the submissions. We may mention that we have already dealt with some facets of this issue in our judgment and order of 13th May, 2016³ and have nothing to add to that.

- C 18. Rule 5 of The National Employment Guarantee Fund Rules, 2006 provides, inter alia, for release of grants from the National Employment Guarantee Fund (NEGF) to the State Governments and Union Territory Administrations. It prescribes that:

- D “(1) Before the beginning of each financial year on or before 31st January, all Secretaries of the State Governments and Union Territories concerned with the implementation of the Act and the State Employment Guarantee Scheme shall present their annual work plan and labour budget to the Ministry of Rural Development.

- E (2) The State Governments and Union Territories may also in their annual work plan and labour budget submit proposals for any work other than those specified in Schedule I of the Act.

- F **(3) The Ministry of Rural Development may examine the proposals received by it on or before the 31st of January of each financial year and review the performance of the States and Union Territories with respect to the implementation of the Act and estimate the amount to be released to the State Governments and Union Territory Administrations from the National Fund.**

- G (4) Release of funds to the State Governments and Union Territory Administrations shall be made in accordance with the directions issued by the Ministry of Rural Development from time to time.” [Emphasis supplied by us].

19. It is quite clear that apart from anything else, the Central Government is statutorily empowered to scrutinize and assess the funds

H ³ Swaraj Abhiyan (III) v. Union of India & Ors. (2016) 7 SCC 544

to be released to the State Governments and Union Territory Administrations for the purposes of the Act. The final assessment is made by the Empowered Committee in consultation with the State Governments and Union Territory Administrations. Therefore, it is not as if the 'agreed to labour budget' or the 'approved labour budget' is fixed arbitrarily by the Central Government. We do not see anything objectionable in this, more particularly since the process is backed by statutory provisions.

Cap on funds

20. It has been brought on record by the Union of India in its affidavit of 4th December, 2017 that not only is there no informal cap on the release of funds, but whenever required, necessary funds have been released over and above the 'agreed to labour budget'. It is stated that in 2015-16 as many as 16 State Governments and Union Territory Administrations had exceeded the 'agreed to labour budget' and funds had been released. In 2016-17 as many as 20 State Governments and Union Territory Administrations had exceeded the 'agreed to labour budget' and funds released. The position was similar for 2017-18 with 12 State Governments and Union Territory Administrations exceeding the 'agreed to labour budget' and funds released.⁴ This is possible only if there is no cap, informal or otherwise and the generation of the Muster Roll continues.

21. Learned counsel for the petitioner pointed out instances where there had been a shortage of funds released to two States namely Tripura and Telangana.

22. In this regard, it was pointed out by the learned Attorney General that as far as Tripura is concerned, there were some allegations of corruption in the sense of mis-utilization of funds and that was being investigated. It was reported that the funds made available had not been used for the purpose for which they were released. We need not delve into this issue at all and leave it at that.

23. As far as the State of Telangana is concerned it was stated that according to the State functionaries there was 100% utilization by June 2017 itself that is in a period of about two months. We find this difficult to appreciate and in fact we were informed by the learned

⁴ Upto the date of the written submissions, that is, 13th April, 2018 but the data is said to be incomplete.

A Attorney General that the factual position is otherwise and it was found that Telangana had not been able to utilize 100% funds released as per the ‘agreed to labour budget.’ In the written submissions filed by the Union of India on 13th April, 2018 it is stated as follows:

B “However, the State has never exceeded 12 crores person days except in FY 2015-16 which was a severe drought year and provision for additional 50 days were granted by Central Government to help the rural poor tide over the impacts of the national calamity. The State after due consultation with the Ministry agreed to 12 crores person days for FY 2017-18. This was 20% more than the approved Labour Budget of FY 2016-17 and due consideration was given to the increased demand for work under the scheme. It is important to mention here that Telangana received the highest ever allocation (Rs.2539.20 Cr) of MGNREGA funds in FY 2017-18. Despite having no paucity of funds in FY 2017-18, the State could not generate 100% of the agreed to Labour Budget.”

D 24. What is most significant and important, in our opinion, is that if there is some sort of a cap or an unreasonable reduction in the funds made available to the State Governments it is really for the concerned State Government to object to the cap and non-availability of funds. We have not been shown any objection raised by any State to the effect that it has not received adequate funds for implementation of the Scheme for various activities. In the absence of any objection or demand having been raised for funds by the State Governments (and denial of funds by the Central Government) we are of the view that the petitioner cannot be allowed to raise such a contention which ought really to be raised by the affected State Government.

G 25. The Central Government through the Ministry of Rural Development has expressed the view in its affidavit of 3rd January, 2018 that implementation of the Scheme is the responsibility of the States and, hence, securing funds for implementation is the responsibility of the States. We cannot accept this blanket statement, particularly when it concerns delayed payments. It is true that when the Mother Sanction based on the ‘agreed to labour budget’ nears exhaustion or is exhausted, the concerned State or Union Territory must obtain another Mother Sanction by providing the Central Government with the requisite

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documents as per the financial norms. According to the Central Government, there is some laxity in this regard by the State Governments and Union Territory Administrations, which cannot be overlooked in view of the General Financial Rules. This is a bottleneck that must be addressed and, as stated in the affidavit, checklists have been prepared in consultations with the State Governments and Union Territory Administrations to facilitate smoother processing of proposals. Perhaps something more needs to be done and we leave it to the Ministry of Rural Development to find a solution.

26. One of the positive measures adopted by the Ministry of Rural Development to reduce delays in release of funds is conducting a Mid Term Review with the State Governments and Union Territory Administrations. One such Mid Term Review was conducted from 29th August, 2017 to 13th October, 2017 to “reorient” them on the financial norms and the checklists to be adhered to for preparing proposals for release of funds. We expect a similar exercise to be conducted for 2018-19 and for subsequent years to tide over any possible stumbling blocks.

27. We reiterate the necessity of meaningful discussions while approving or finalizing the labour budget. The fact that so many States and Union Territories have exceeded the expenditure postulated by the ‘agreed to labour budget’ is an indication that the Scheme is either well received by the unemployed or the Empowered Committee is being a little tight-fisted. It must be appreciated that the release of funds is for a good socio-economic cause and therefore expeditious and sufficient availability of funds should be the objective. Under the circumstances, we reject the submission of learned counsel for the petitioner that the Central Government cannot prepare an ‘agreed to labour budget’ or that the process of preparing an ‘agreed to labour budget’ is impermissible or that there is an informal cap on release of funds.

Compensation for delayed payment of wages

28. The second issue raised by learned counsel for the petitioner is of delay in payment of wages to the beneficiaries and to make it worse, compensation is not paid to them in terms of the Act. Both issues are intrinsically interlinked.

29. Section 3(3) and Section 3(4) of the Act provide that every person who has done work given to him or her under the Scheme shall be entitled to receive wages and the disbursement of daily wages shall

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- A be on a weekly basis or in any case not later than a fortnight after the date on which such work was done.

- B 30. In this context, Schedule II to the Act mentions the conditions for guaranteed rural employment and the minimum entitlements of labourers. Paragraph 29 relates to wage payment and is of great significance. It provides, inter alia, that in case wages are not paid within 15 days from the date of closure of the Muster Roll, the wage seeker or labourer shall be entitled to receive compensation for the delay at 0.05% of the unpaid wages per day of delay beyond the sixteenth day of closure of the Muster Roll.

- C Paragraph 29 of Schedule II of the Act reads as follows:

“Wage payment:—

- D 29. (1) In case the payment of wages is not made within fifteen days from the date of closure of the muster roll, the wage seekers shall be entitled to receive payment of compensation for the delay, at the rate of 0.05% of the unpaid wages per day of delay beyond the sixteenth day of closure of muster roll.

- E (a) Any delay in payment of compensation beyond a period of fifteen days from the date it becomes payable, shall be considered in the same manner as the delay in payment of wages.

- F (b) For the purpose of ensuring accountability in payment of wages and to calculate culpability of various functionaries or agencies, the States shall divide the processes leading to determination and payment of wages into various stages such as—

- G i. measurement of work;
 ii. computerising the muster rolls;
 iii. computerising the measurements;
 iv. generation of wage lists; and
 v. uploading Fund Transfer Orders (FTOs),
 and specify stage-wise maximum time limits along with the functionary or agency which is responsible for discharging the specific function.
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- (c) The computer system shall have a provision to automatically calculate the compensation payable based on the date of closure of the muster roll and the date of deposit of wages in the accounts of the wage seekers. A
- (d) The State Government shall pay the compensation upfront after due verification within the time limits as specified above and recover the compensation amount from the functionaries or agencies who is responsible for the delay in payment. B
- (e) It shall be the duty of that District Programme Coordinator or Programme Officer to ensure that the system is operationalised. C
- (f) The number of days of delay, the compensation payable and actually paid shall be reflected in the Monitoring and Information System and the Labour Budget. D

(2) Effective implementation of sub-paragraph (1) shall be considered necessary for the purposes of the section 27 of the Act.”

31. A perusal of Section 3(3) read with Section 3(4) and paragraph 29 of Schedule II of the Act mandates timely payment and compensation for delayed payment. This needs to be emphasized. E

32. The Central Government does admit that there has been delay in payment of wages and some of the causes for delay have been explained. These include delay in filling of attendance sheet, delay in measurement of work, delay in check measurement, delay in generation of wage list and non-submission or partial submission of requisite documents by the States to the Ministry of Rural Development etc. Since funds are released in accordance with the provisions of the General Financial Rules (GFR) and if the State Governments does not submit the papers or documents in accordance with the GFR, it is difficult for the said Ministry to release funds. F
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33. Learned counsel for the petitioner submitted that one of the major causes of delay in payment of wages is the State Government having insufficient funds even as per the approved or agreed to labour H

A budget. It is also submitted that the wage payment process or wage cycle is as follows:

MGNREGA Wage Payment Process			
SI	Activity	Description	Responsibility
B 1.	Muster Roll is closed	Muster Roll is a document, which record the attendance of workers at the worksite	State Government
C 2.	Data entry of Muster Roll + measurement book	The details of the attendance and the measurement of the work done are entered into the Management Information System.	State Government
D 3.	Generation of Wage List	After these two items are recorded, the wages payable to the worker is calculated and an electronic Fund Transfer Order (FTO) is generated.	State Government
E 4.	1st Signature on Fund Transfer Order	This is approved electronically by a designated authority. It requires two electronic signatures. This is the “maker” portion.	State Government
F 5.	2nd signature on Fund Transfer Order	After the first signature, it is electronically sent to the second signatory. This is the “checker” portion. This then gets pushed as an e-pay order onto the MNREGA server.	State Government
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6.	Sent to Public Fund Management System (run by Ministry of Finance)	<p>These files are then pulled from the MGNREGA server to the Public Fund Management System (PFMS) server. The following steps happen at that level:</p> <p>Public Fund Management System will send these files to the accredited bank.</p> <p>The accredited bank will send the files to the sponsor bank.</p> <p>Sponsor Bank will process the files using National Payments Corporation of India.</p> <p>PFMS shares responses with NREGASoft.</p>	Central Government/ Payment Agency
7.	Sent to State Employment Guarantee Fund – NeFMS	The PFMS window notionally sends it to the State Employment Guarantee Fund. This bank account under the NeFMS is solely for wage payments	Central Government/ Payment Agency
8.	Sent to Post Office/Bank	After notionally passing through the State Employment Guarantee Fund it is then sent to the Post Office/Bank.	Central Government/ Payment Agency
9.	Deposited in workers account	The payment agency deposits the money into the workers account.	Central Government/ Payment Agency

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A 34. According to the petitioner, the delay caused by the Central Government in steps No. 6 to 9 is not taken into account for the purpose of payment of compensation, meaning thereby that the Central Government washes its hands off any liability for payment of compensation.

B 35. While admitting and appreciating that there is delay in payment of wages (whatever the cause) the Central Government has stated in its affidavit of 4th December, 2017 that steps have been taken to ensure that payment of wages is not delayed. Initially, the onus to prove the delay and to claim compensation was on the worker but now it has been provided (since January 2014) that the responsibility for payment of compensation is that of the State Government which may recover the compensation from the defaulting functionary/agency responsible for the delay in payment of wages. In other words, the Central Government has realized and appreciated the importance of timely payment of wages to the workers and has taken steps in this regard. The Central Government has suggested the following timelines for payment of wages within 15 days:

	PROCESSES	PERIOD
	STAGE – I	T+8
E	Last date of Muster roll as per e-muster	T
	Data entry of attendance into MIS	T+2
	Measurement of the work and entering the same in NREGASoft	T+5
F	Generation of wage list.	T+6
	Generation of FTOs (1st Signatory).	T+7
	Approval of FTO for payment (2nd Signatory).	T+8
G	STAGE – II	T+9 to T+15
	Signing of Pay Orders by US of MoRD (In NeFMS States/UTs)	T+9 to T+11
H	Crediting into Bank Accounts of Beneficiary by FIs	T+10 to T+15

36. In addition to the above, the Central Government has required the State Governments and Union Territory Administrations to formulate rules or issue notifications for payment of compensation for delayed payment of wages. As stated in the affidavit of 4th December, 2017 as many as 27 States and Union Territories have formulated and issued rules or notifications or guidelines or advisories in this regard.

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37. It is stated by the Central Government in its written submissions dated 14th March, 2018 that the compensation envisaged under the Act is only for the delay caused due to inefficiency on the part of different State functionaries. Compensation is, therefore, only for the delay in uploading the Fund Transfer Orders and it does not account for any delay caused thereafter.

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38. Learned counsel for the petitioner has drawn our attention to a note prepared by the Department of Expenditure in the Ministry of Finance of the Government of India. The note is dated 21st August, 2017 and forms a part of the supplementary affidavit of the petitioner dated 30th November, 2017. The note acknowledges (to the extent relevant) the contents of an article in the Business Standard of 8th August, 2017 to the effect that “the current rules do not compute or compensate the delay in payments after the generation of FTOs [Fund Transfer Orders].” It is true that between 10 and 15 lakh pay orders are issued on an average day and delays are due to infrastructural bottlenecks, availability of funds and a lack of administrative compliance.

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39. Notwithstanding the large number of pay orders, we are afraid delays are simply not acceptable. The law requires and indeed mandates payment of wages not later than a fortnight after the date on which the work was done by the worker or labourer. Any reason for the delay in receiving wages is not at all the concern of the worker. He or she is entitled to get the due wages within a fortnight of completion of the work. If there are any administrative inefficiencies or deficiencies or laxity, it is entirely for the State Government and the Ministry of Rural Development to sort out the problem. Bureaucratic delays or red tape cannot be pedalled as an excuse to deny payment of wages to the workers. It is precisely to overcome any inefficiency or deficiency that payment of compensation is postulated, otherwise the purpose of Section 3 and paragraph 29 of Schedule II of the Act would get completely defeated.

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OD
T+15
T+11
T+15

A 40. We may add that delayed payment adds several crores to the compensation bill. This is to nobody's advantage and merely adds an avoidable financial burden on the Central Government.

B 41. We also cannot countenance the view advanced by the Central Government that it has no responsibility after the second signature is placed on the FTO. The wages due to the worker in terms of Stage II above must be transferred immediately and the payment made to the worker forthwith failing which the prescribed compensation would have to be paid. The Central Government cannot be seen to shy away from its responsibility or taking advantage of a person who has been placed in the unfortunate situation of having to seek employment under the Act and then not being paid wages for the unskilled manual labour within the statutorily prescribed time. The State Governments and Union Territory Administrations may be at fault, but that does not absolve the Central Government of its duty.

D 42. Learned counsel for the petitioner has drawn our attention to the Annual Master Circular (FY 2017-2018). This validates the objection raised by learned counsel that payment of compensation goes beyond the signing of FTOs. The relevant provisions of the Annual Master Circular relied on by learned counsel read as follows:

E "10.4 NREGASoft has a provision to calculate the total compensation payable, after due verification, based on the date of closure of Muster Roll (MR) and the date of generation of the pay order (Fund Transfer Order) for paying wages taking into account:

F a. Date of uploading of FTO for payment of wages in the account of wage seeker.

b. Date of closure of muster roll.

c. The duration of such delay.

d. Total wage payable.

G e. Rate of compensation (0.05% per day).

H 10.5 The compensation is to be paid after due verification. **Every Programme Officer shall, within 15 days from the date that the delay compensation becomes due, decide whether the compensation that has been calculated by the NREGASoft**

is payable or not. The compensation shall be met from the State Employment Guarantee Fund (SEGF) upfront. This can be recovered from the functionaries/agencies responsible for the delay. A

10.6 The exceptions when compensation is not payable are:

a. Compensation is not due. B

b. Natural calamities.

10.7 The Programme Officer will ensure that compensation claims are settled during the prescribed time, i.e. within 15 days of compensation being due, and such claims will not be allowed to be accumulated without any decision of acceptance or rejection. In all cases of rejection, the Programme Officer shall give detailed reason(s) for rejection on NREGASoft and maintain record of the same, in her/his office for future verification. All cases approved for payment of compensation shall be done in the same manner as payment of wages. District Programme Coordinator will monitor this regularly. C D

10.8 Failure to settle claims during the prescribed time shall result in payment of due amount into the account of the worker.” [Emphasis supplied by us].

Surely, the Central Government cannot violate its own Master Circular and seek to otherwise absolve itself of any liability. E

43. Apparently realizing its responsibility, it is stated in the written submissions of 13th April, 2018 that the Ministry of Rural Development is making all efforts for improving the Stage-I and Stage-II of the wage payment process. Due to the concerted efforts, the Stage - I timely payment has increased from 26.85% in FY 2014-15 to 86% in FY 2017-18 and Stage-II has increased from 17% in FY 2016-17 to 43% in FY 2017-18. While there is some improvement, it is not enough. There cannot be any justifiable reason to delay payment of wages or justifiable denial of compensation for delayed payment of wages. Any delay in payment of wages or compensation violates statutory provisions. F G

44. We therefore make it clear and direct that in terms of the Act and Schedule II thereof a worker is entitled to payment of wages within a fortnight of the date on which the work was done, failing which the H

A worker is entitled to the compensation as prescribed in paragraph 29 of the Schedule II of the Act. The burden of compliance is on the State Governments and Union Territory Administrations as well as the Central Government. One entity cannot pass on the burden to another and vice versa.

B 45. In view of the above, we direct the Central Government through the Ministry of Rural Development, in consultation with the State Governments and Union Territory Administrations to prepare an urgent time bound mandatory program to make the payment of wages and compensation to the workers. This is not only in the interest of the workers who have expended unskilled manual labour but also in furtherance of the rule of law which must be followed in letter and spirit.

C 46. The third grievance relating to social audits was not urged before us.

Conclusion

D 47. All issues pertaining to the Act now stand closed and concluded. The petitioner has, from time to time, highlighted issues of seminal importance and must be complimented for it. The Ministry of Rural Development has reacted positively and brought about some significant changes to make the Act and the Scheme more effective and must also be complimented. It must, however, take urgent remedial steps to iron out the creases, since there is still some way to go before the Act finally touches the lives of millions of unemployed persons. The efforts of the petitioner and the said Ministry should continue to be inexorably for the socio-economic benefit of the millions of unemployed persons in the country.

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