

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018

CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.489 of 2018

V.Kanniappan
.. Petitioner

Vs

- 1 The District Collector/Chairman
District Rural Development Agency
Villupuram, Villupuram District.
 - 2 The Director
Directorate of Rural Development and
Panchayat Raj Department
Panagal Maligai
Saidapet, Chennai.
 - 3 The Project Officer
District Rural Development Agency
Villupuram, Villupuram District.
 - 4 The Assistant Director (Panchayats)
District Rural Development Agency
Villupuram, Villupuram District.
 - 5 The Supervisor
Melmalayanur Panchayat Union
Melmalayanur
Villupuram District.
 - 6 The Block Development Officer Projects
Melmalayanur Panchayat Union
Villupuram District.
- .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of mandamus forbearing respondents 1 to 4 from deploying the JCB machines for carrying works in Karumanthangal Tank at Kannalam Village work and under the scheme of Mahatma Gandhi National Rural Employment Guarantee Act PMKSY and also along with the scheme of Pradhan Mantri Krishi Sinchayee Yojana (PMKSY) 2017-2018.

For Petitioner : Mr.G.Rajan

For Respondents : Mr.T.N.Rajagopalan
Government Pleader
(incharge)

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition, purportedly by way of public interest, has been filed for a direction in the nature of mandamus restraining the Respondent Nos.1 to 4 from deploying JCB machines for carrying on work in Karumanthangal Tank at Kannalam Village.

2. The petitioner claims to be an agriculturist owning four acres of agricultural land at the village in question. The petitioner claims to have filed this public interest litigation in the interest of economically underprivileged labourers of the village. The petitioner contends that the National Rural Employment Guarantee Act, 2005 has been enacted to ensure livelihood for one person of every rural household.

3. Our attention has been drawn to the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and in particular the Second Schedule thereto. It appears that under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, States have notified Schemes. The State Schemes are required to be consistent with the amendments made from time to time to the Act and its schedules.

4. Under the Act, every rural household is entitled to a job card which contains the names and photographs of all

adult members in the household so that they can apply for and receive work. The job card is a key document that records workers' entitlements.

5. There can be no doubt that the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, notified as National Rural Employment Guarantee Act, 2005, to which 'Mahatma Gandhi' was later prefixed by amendment, is a beneficial piece of legislation and must be strictly enforced. It is for the concerned respondents to ensure that at least one adult of all rural households is provided with employment.

6. Under Section 7(1) of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, if an applicant for employment under the Scheme is not provided with employment within fifteen days of receipt of his application seeking employment or from the date on which employment has been sought in the case of an advance application, whichever is later, he shall be entitled to a daily unemployment allowance in accordance with the said section. The daily unemployment allowance is to be at a rate not less than one fourth of the wage rate for the first thirty days during the financial year and not less than one half of the wage rate for the remaining period of the financial year.

7. There are elaborate provisions with regard to calculation of payment of unemployment allowance. Under the scheme of the Act, unemployment allowance is to be paid to those who have not been given a job and not to those who did not accept employment. Under the Act, it has been decided to have programmes with a view to provide rural employment.

8. In the affidavit in support of the petition, reference has been made to paragraph (22) of Schedule I of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, which provides that as far as practicable, works executed by the programme implementing agencies shall be performed by using manual labour and no labour displacing machines shall be used. However, for the activities which cannot be done manually, machines as specified in the third column might be used. Some such jobs are as follows:

- (i) The excavation and/or deepening of dug wells;
- (ii) Compaction of earthen embankment as per specification;
- (iii) Compaction of moorum/gravel as per specification;
- (iv) Mixing of cement concrete;
- (v) Cutting of joint in Cement Concrete;

(4)

- (vi) RCC Footing, Column, Beam and Roof;
- (vii) For compressing compressed stabilised earthen blocks;
- (viii) For production of fly ash bricks/blocks
- (ix) Digging pits for plantation.

9. There does not appear to be any specific bar in law in deploying JCB Machines for carrying on the work of improvement of a tank, which may require de-silting, removal of slush, solid, etc.

10. In any case, this Court exercising jurisdiction under Article 226 of the Constitution of India does not sit in appeal over every administrative decision. In the absence of any patent illegality in the decision making process, the Court does not intervene.

11. Restoration and improvement of water bodies and tanks is absolutely essential for preservation of the environment. The Court itself has passed numerous orders directing clearance and maintenance of water bodies. Whether JCB machines are essential for clearance of the tank in question is a matter for the appropriate authorities to decide.

12. The writ petition is not entertained and the same is rejected. It is, however, made clear that this judgment is not to be construed as any observation and/or permission to dispense with the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005. The provisions of the said Act shall be complied with. No costs. Consequently, W.M.P.No.591 of 2018 is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To:

- 1 The District Collector/Chairman
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Melmalayanur
Villupuram District.
 - 6 The Block Development Officer Projects
Melmalayanur Panchayat Union
Villupuram District.
- +1cc to Mr.G.Rajan, Advocate, S.R.No.3247
- +1cc to the Government Pleader, S.R.No.3626

सत्यमेव जयते

W.P.No.489 of 2018

abr (03/02/2018)

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