

\$~6

*

IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 2nd June, 2020*

+

W.P.(C) 3324/2020 & CM APPL. 11679/2020**SHASHANK S. MANGAL & ANR.**

..... Petitioners

Through: Petitioners in person.

versus

GOVERNMENT OF NCT OF DELHI & ORS. RespondentsThrough: Mr. Ramesh Singh, Standing Counsel
(Civil) GNCTD and Mr. Ankur
Chhibber & Advocates for R-1&2,
GNCTD.Mr. Kirtiman Singh, CGSC and Mr.
Rohan Anand for Respondent No.3,
UOI.**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been held by video-conferencing.
2. In this petition, filed under Art.226 of the Constitution of India, the prayer sought is for implementation of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. This enactment has been the subject matter of a large number of decisions going back to the seminal decisions of the Supreme Court in *Bandhua Mukti Morcha v Union of India AIR 1984 SC 177* and *Labourers Working on Salal Hydro Project v State of Jammu & Kashmir & Ors. AIR 1984 SC 177*.
3. However, what is called into question is the actual implementation of this Act. The prayer sought in the petition is as under:

“a. To issue a writ of mandamus directing the Respondents to ensure that the machinery for

enforcement and implementation of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is put in place in the Union Territory of Delhi, which inter-alia includes, appointment of Registering Officers under Section 3 of the Act, Licensing Officers under Section 7 of the Act, Appellate Officer under Section 11 of the Act and Inspectors under Section 20 of the Act.

b. To direct the Respondent No.1 and 2 to frame Rules under Section 35 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 for operationalization of the Act in the Union Territory of Delhi.”

4. Mr. Ramesh Singh, ld. counsel appearing for Government of NCT of Delhi submits that insofar as the Registering Officers, Licensing Officers, Appellate Officers and Inspectors are concerned, the same have been appointed by the Government of NCT of Delhi. He also submits that the Rules under this Act have been notified.

5. Insofar as the Central Government, is concerned, ld. Standing Counsel would also seek instructions and inform on the next date as to the actual status of the appointments of the Registering Officers, Licensing Officers, Appellate Officers and Inspectors. Ld. counsel appearing on advance copy seeks time to take instructions in the matter.

6. As per the provisions of the Act -

- Establishments employing five or more inter-State migrant workmen are required to apply for registration to a Registering Officer (Section 4);
- Principal employers of such establishments are prohibited from employing inter-State migrant workmen unless a certificate of

registration is issued (Section 6)

- Contractors are prohibited from recruiting inter-State migrant workmen except under and in accordance with a license granted by a Licensing Officer (Section 8) ;
- Contractors are required to furnish particulars relating to the inter-State migrant workmen to the specified authority in the State from which an inter-State migrant workman is recruited and in the State in which such a workman is employed (Section 12)

Under Section 2(a), the “*appropriate Government*” would be both the Central and the State Governments depending upon the nature of the ‘Establishment’. Apart from the appointments of the officers as per Sections 3, 7, 11 and 20 of the Act, what would be important is whether the data pertaining to the migrant workmen is in fact being collected and if so, what is the actual data, which is available with the Central Government and the State Government. Section 16 imposes a duty upon the contractor employing inter-state migrant workmen to provide for hygienic living conditions, proper food arrangement, medical facilities, protective clothing, regular payment of wages etc. Section 15 also stipulates payment of a ‘Journey allowance’ from the place of residence of the workman to the place of work in another state. The outward and return journeys are the responsibility of the Contractor or the employer. However, this Act and its implementation is to be supervised by Inspectors appointed by the ‘appropriate government’ i.e., both the Central and State Governments. The Act contemplates regular maintenance of Registers, submission of data etc., by the Contractors and the employers. These provisions are thus essential for the overall well-being of workmen.

7. The Supreme Court, in *Salal Hydro Project (supra)* had, way back in 1983, observed “*that its provisions have not been implemented at all and the workmen are denied many of the benefits and advantages provided under it*”, in the context of the Salal Hydro Project of the NHPC, where workmen from Orissa had been employed. The Supreme Court, further observed:

“ ...

4. *It was felt that since Inter State migrant workmen are generally illiterate and unorganised and are by reason of their extreme poverty, easy victims of these abuses and malpractices, it was necessary to have a comprehensive legislation with a view to securing effective protection to Inter State migrant workmen against their exploitation and hence the Inter State Migrant Workmen Act was enacted. This Act received the assent of the President on 11th June, 1979 but it was brought into force only on 2nd October 1980 by a notification issued under Section 1 Sub-section (3). The Inter State Migrant Workmen (Regulation of employment and Conditions of Service) Rules 1980 (hereinafter referred to as the Central Inter State Migrant Workmen Rules) were also made by the Central Government and brought into force with effect from 2nd October 1980. But, unfortunately, through the Inter State Migrant Workmen Act and the Central Inter State Migrant Workmen Rules came into force from 2nd October, 1980, the bureaucratic apparatus for implementing the provisions contained in the Act and the Rules was not set up by the Central Government for a period of more than 20 months and it was only in the month June, 1982 that the Central Government appointed various authorities such as Registered Officers, Licensing officers and Inspectors. Even so we fail to see why the obligations of contractors set out in Section 12 and wages, welfare and other facilities provided in Sections 13 to 16 of the Inter State Migrant*

Workmen Act could not be made available to Inter State migrant workmen employed in the project work and the Central Government as the appropriate Government could not enforce the same from and after 2nd October 1980. When the Act and the Rules came into force with effect from 2nd October, 1980, the provisions contained in Section 12 and Sections 13 to 16 became clearly applicable to the establishments pertaining to the, project work and there was no justification for the Central Government to delay any longer the implementation of these provisions in, so far as Inter State migrant workmen were concerned. The Central Government in any event ought to have enforced the provisions relating to registration of principal employers and licensing of contractors as also the provisions set out in Section 12 and Sections 13 to 16 from June, 1982 when the various authorities contemplated under the Act were appointed by the Central Government. We do not think the Central Government can escape its obligation to enforce the provisions of the Inter State Migrant Workmen Act on the plea that there are no Inter State migrant workmen employed in the project work The final report of the Labour Commissioner (J & K) clearly shows that Oriya workmen employed on the project site were recruited by khatedars from their villages in Orissa and brought to the project site for work and they would clearly be Inter State migrant workmen within the definition of that term in Clause (e) of Section (2) of the Inter State Migrant Workmen Act. We would therefore direct the Central Government to take immediate steps for enforcement of the provisions of the Inter State Migrant Workmen Act in regard to Inter State migrant workmen employed in the project work. The Central Government will at once proceed to identify 'Inter State migrant workmen' from amongst the workmen employed in the project work and adopt necessary measures for ensuring to them the benefits and advantages provided under the Inter State Migrant Workmen Act."

8. The Act was again considered in 2012 by the Supreme Court in ***Public Union for Civil Liberties v State of Tamil Nadu & Ors. (2013) 1 SCC (LS) 215***, in the context of '*Bonded labour*' wherein, again, several directions were issued to ensure implementation of the Act including periodic inspections etc.,

9. The recent crisis which the country has witnessed with respect to migrant workmen shows that for the effective enforcement and implementation of the Act, there is an immediate need for proper data to be always available so as to ensure that steps can be taken in a timely and adequate manner, especially in times of a pandemic such as COVID-19 or in any other form of emergent situation. The collection of data ought to be vertically integrated so that data relating to migrant workmen, from the Central Government and the States is collected, cross-checked, maintained and is readily available, without any time-lag. In order for any measures to be taken for migrant workmen, such data is of prime importance.

10. This Court is of the *prima facie* opinion that in order to have a proper, streamlined regulation of migrant workmen and their conditions of service, the first and the foremost significant measure would be the collection of the actual data and the integration of the same between the Central Government and the State Governments. For the said purpose, the said Governments would have to consider as to whether there should be a centralized portal for registration of migrant workmen by the contractors who engage them or the employers who employ them. Mechanisms and tools also ought to be made available so that employers and contractors do not find the same burdensome and that they can submit the data without glitches.

11. However, before passing any further orders in this matter, both the

Governments are directed to file their respective affidavits disclosing the data relating to migrant workers, set out below, as available with them as of 1st June, 2020. In addition to the data, the respective Governments would also place on record the procedure currently being followed for contractors or employers to register migrant workers as also what are the procedures being followed for ensuring compliance. Accordingly, a status report be filed by both the Ministry of Labour, UOI and the GNCTD in respect of the following:

- i) Number of establishments which are currently registered under Section 4 of the Act;
- ii) Number of licences issued to contractors in terms of Section 8 of the Act;
- iii) The number of inter-state migrant workers who have, in fact, been declared under Section 12 to the State Government or even to the Central Government.
- iv) Number of actions taken against `contractors' and/or `employers' for contravention of provisions of the Act since 2010.
- v) Total number of `officers' appointed under Sections 3, 7, 11 and 20 of the Act.

12. Let the affidavit in this regard be placed on record on or before 25th June, 2020. List for further hearing on 29th June, 2020.

PRATHIBA M. SINGH
JUDGE

JUNE 02, 2020/Rahul/RG