



W.P.No.21761 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

CORAM

THE HONOURABLE **MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P.No.21761 of 2011**  
**and M.P.No.1 of 2011**

All India Agricultural Labour Association  
(Regn.No.430/TVR),  
12, G.N.T. Road, Karanodai,  
Chennai - 600 067.

... Petitioner

-VS-

The Government of Tamil Nadu,  
Rep. by its Principal Secretary,  
Rural Development and Panchayat Raj  
Department, Fort St. George,  
Chennai - 600 009.

... Respondent

**PRAYER:** Writ Petition filed under Article 226 of Constitution of India,  
pleased to issue a Writ of declaration declaring the linkage of productivity /  
performance norms as per the norms of the Public Works Department for  
payment of wages under the Mahatma Gandhi National Rural Employment  
Guarantee Scheme in its application in Tamil Nadu by the Respondent as



W.P.No.21761 of 2011

arbitrary, illegal and contrary to the Minimum Wages Act, 1948 and Articles 14 and 23 of the Constitution of India.

For Petitioner : Mr.S.Kumaraswamy

For Respondent : Mr.R.Neelakandan, AAG  
Asst. by Mr.R.Neethiperumal,  
Government Advocate

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### **ORDER**

This Writ Petition has been filed for declaration, declaring the linkage of productivity / performance norms as per the norms of the Public Works Department for payment of wages under the Mahatma Gandhi National Rural Employment Guarantee Scheme in its application in Tamil Nadu by the Respondent as arbitrary, illegal and contrary to the Minimum Wages Act, 1948 and Articles 14 and 23 of the Constitution of India.

2. The petitioner, an All India Agricultural Labour Association is formed and guided by the Communist Party of India (Marxist - Leninist)



W.P.No.21761 of 2011

which is registered as a Political Party with the Election Commission of India. The National Rural Employment Guarantee Act, 2005 (hereinafter called the Act) was enacted by the Parliament. The Government of Tamil Nadu passed the G.O vide G.O.(Ms.) No.20, dated 11.02.2011 Rural Development and Panchayat Raj (CGS 1) Department insofar as it links up productivity / performance norms for payment of Rs.119/- per day in the Mahatma Gandhi National Rural Employment Guarantee Scheme Works. Now the association has filed this writ petition for declaration, declaring the linkage of productivity / performance norms as per the norms of the Public Works Department for payment of wages under the Mahatma Gandhi National Rural Employment Guarantee Scheme in its application by Tamil Nadu by the respondent as arbitrary, illegal and contrary to the Minimum Wages Act, 1948 and Articles 14 and 23 of the Constitution of India.

2.1. The facts of the case in a nutshell:

The petitioner, an All India Agricultural Labour Association is formed and guided by the Communist Party of India (Marxist - Leninist) which is registered as a Political Party with the Election Commission of



W.P.No.21761 of 2011

India. The National Rural Employment Guarantee Act, 2005 (hereinafter called the Act) was enacted by the Parliament. Aggrieved by the G.O (Ms) No.20 dated 11.02.2011 the petitioner's association has filed this writ of declaration.

## 2.2. The facts of the case in a nutshell:

The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 was enacted as a response to the deepening agrarian crisis which resulted in the tragic and cruel farmer suicides and starvation deaths in the country side of India. The stated objective of the legislation is to ensure a livelihood security of the poor households in rural areas of the country by providing atleast one hundred days of guaranteed employment to every poor household whose members volunteer to do unskilled manual work. As per the Act, the State Government shall in such rural areas in the State and for such periods as may be notified by the Central Government, provide to every poor household guaranteed wage employment in unskilled, manual work atleast for a period of 100 days in a financial year in accordance with the provisions made in the legislation.



W.P.No.21761 of 2011

WEB COPY 2.3. The Government of Tamil Nadu vide G.O.(Ms.) No.20 dated 11.02.2011 of the Rural Development and Panchayat Raj (CGS 1) Department revised the rural schedule of rates to Rs.119/- per day and linked it up with an increase of 19% productivity / performance norms. Aggrieved by the above G.O the petitioner's association have come forward with the present writ petition for declaring the linkage of productivity / performance norms as per the norms of the Public Works Department for payment of wages under the Mahatma Gandhi National Rural Employment Guarantee Scheme in its application in Tamil Nadu by the Respondent.

3. The learned counsel appearing for the petitioner invited an attention of this Court, to Section 6 of the Act and the same is extracted hereunder:

*"Wage Rate: 1. Notwithstanding anything contained in the Minimum Wages Act, 1948 (Act 11 of 1948) the Central Government may be notification specify the wage rate for the purpose of this Act:*



WEB COPY



W.P.No.21761 of 2011

*Provided that different rates of wages may be specified for different areas:*

*Provided further that the wage rates specified from time to time under any such notification shall not be at a rate less than Sixty Rupees per day.*

*2. Until such time as a wage rate is fixed by the Central Government in respect of any area in a State, the minimum wage fixed by the State Government under Section 3 of the Minimum Wages Act, 1948 (11 of 1948), for agricultural labourers shall be considered as the wage rate applicable to that area."*

The Mahatma Gandhi National Rural Employment Guarantee Act contemplates the workers covered under it as agricultural labourers. As per Section 12 of the Act a State Employment Guarantee Council is to be constituted and it should have non-official members from Panchayat Raj Institutions, organizations of workers and disadvantages groups and that one third of such non-official members should be women and another one third should belong the Scheduled Cast, the Scheduled Tribe, the other backward classes and other minorities. Then as per Section 4 of the Act, every State Government should frame an employment guarantee scheme



W.P.No.21761 of 2011

which shall provide for a minimum features specified in Schedule - I of the

Act. The Item-7 of the Schedule - I reads as follows:

"When wages are directly linked with the quantity of work, the wages shall be paid according to the Schedule of rates fixed by the State Government for different types of works every year in consultation with the State Council."

3.1. The learned counsel further submitted that National Advisory Council headed by Tmt.Sonia Gandhi at that time have intervened and stated that the wages under Section 6(1) cannot be less than the minimum wages fixed by the State Government for employment in agriculture under the minimum wages Act, 1948. There is a considered opinion in the country that wage rates under Section 6(1) cannot be less than the minimum wages under Section 6(2) and that the Mahatma Gandhi National Rural Employment Scheme Wages should be linked with the price rise and that these will only fulfil the constitutional objectives.



W.P.No.21761 of 2011

WEB COURT

3.2. The learned counsel further submitted that the Government of India, vide notification dated 14.01.2011 revised the Mahatma Gandhi National Rural Employment Guarantee Scheme Wages to Rs.119/- per day in the State of Tamil Nadu with effect from 01.01.2011. The respondent by impugned G.O.(Ms.) No.20, dated 11.02.2011 of the Rural Development and Panchayat Raj (CGS 1) Department revised the rural schedule of rates to Rs.119/- per day and linked it up with an increase of 19% productivity / performance norms. The State Employment Guarantee Council was not consulted on any of the occasions when wage rates were fixed and this is contrary to the mandatory provision in Item-7 of schedule - 1 of the Act. The wages to go up from Rs.60/- per day to Rs.119/- per day, the norms have been increased by 119%. It is arbitrary, irrational, inhuman and goes against the very constitutional scheme.

3.3. The learned counsel relied on the Judgment of the *Hon'ble Supreme Court of India in Sanjit Roy -vs- State of Rajasthan, reported in 1983(1) LLJ Page 220*, wherein it was held that if for any employment no piece rate is fixed under the Minimum Wages Act, the State cannot deduct



W.P.No.21761 of 2011

wages in any such employment on the ground that the required quantity of work is not performed. The State of Rajasthan deducted a part of the wages from the workers performing famine relief work the Hon'ble Supreme Court held that such an action was contrary to the Constitution of India.

3.4. The learned counsel further submitted that agriculture and allied industry is a scheduled employment in Tamil Nadu under the Minimum Wages Act and for this employment wages are fixed on the basis of a time rate and not on the basis of piece rate. In the Mahatma Gandhi National Rural Employment Guarantee Scheme wages cannot be paid on a piece rate basis where proportionate deductions are possible. The piece rate wage fixation is not done after consultation with the State Employment Guarantee Council when it is mandatory under Item-7 of Schedule-I to the Act.

3.5. The learned counsel further submitted that because of the arbitrary piece rate fixation more than 90% of workers are unable to get 100% wages in all these 6 years of operation of the Scheme. The Employment Guarantee Scheme is manual and involves physical labour. It



W.P.No.21761 of 2011

is more or less similar to loading and unloading work. While performing manual work there is a limit for physical exertion and increase in norms cannot be reasonable while revising the minimum wages. In Tamil Nadu there are more than 72 Scheduled employments under the Minimum Wages Act and nearly in 30 of them piece rate wages are fixed.

3.6. The learned counsel further submits that it is absolutely arbitrary and unfair to fix or to revise upwardly the productivity / performance norms for Mahatma Gandhi National Rural Employment Guarantee Scheme Wages. According to the learned counsel more than 95% of the workers and the Scheme have never got their full wages for the day in all these 6 years of the Scheme's operation due to the linkage of wages with productivity norms. The linkage of wages with productivity / performance norms leads to reduction in and deduction from minimum wages fixed for the scheduled employment in Agriculture and allied industry by the Government of Tamil Nadu and is therefore violative of Articles 23 and 14 of the Constitution of India. The object of the Act will be fulfilled only if the rural workers get Rs.119/- per day, the Act guarantees not only



W.P.No.21761 of 2011

employment but also assured minimum wages. The full realization of NREGS wages has always been illusory and the rural workers are forced to chase a mirage. The respondent cannot deny the rural workers Rs.119/- per day directly, it cannot indirectly deny them by linkages with arbitrary, productivity / performance norms and prays for allowing the writ petition.

3.7. The learned counsel also submitted that the Government of India has implemented the National Rural Employment Guarantee Act with the committed to providing a real wage of Rs.100/- a day as an entitlement under the NREGA. To increase the productivity of assets and resources under NREGA, convergence with other schemes relating to agriculture, forests, water resources, land resources and rural roads has been initiated. The learned counsel also relied on the Judgment of the *Hon'ble Supreme Court of India reported in Union of India and others -vs- Karnataka Prantya Raita Sangha and others* is extracted below:

*"12. Consequent on the above, the notification dated 01.01.2009 notifying the wage rate for agricultural labourers in Karnataka at Rs.82/- is quashed and it is held that the appropriate 'wage rate'*



W.P.No.21761 of 2011

*with effect from the said date shall be treated as Rs.119.42. The subsequent revision of minimum wage shall be treated as the wage rate from the relevant date of fixation of the minimum wage. The respondent shall take steps for payment of the difference of the amount to the wage earners who had worked during the said period."*

4. The counter affidavit has been filed on behalf of the respondent.

The learned Additional Advocate General appearing for the respondent submitted that as per Section 4 of the NREG Act, the State Government of Tamil Nadu had already framed the Employment Guarantee Scheme vide G.O.(Ms.) No.10, Rural Development (CGS-1) Department dated 01.02.2006 which was subsequently revised. In Item-7 of Schedule-I indicates that when wages are directly linked with the quantity of work, the wages shall be paid according to the schedule of rates fixed by the State Government for different types of work every year, in consultation with the State Council. Based on this a "Special Rural Schedule of Rate" for NREGS was issued for the first time in the year 2006. The Rural Schedule of Rate is being revised regularly every year in comparison with existing



W.P.No.21761 of 2011

Public Works Department (PWD) schedule of rate which is an increase markup of 100% for earthwork components and 150% of jungle clearance components over and above the PWD Schedule of Rates.

4.1. The learned Additional Advocate General further submitted that the average number of days for employment was provided as 37 days as far as Tamil Nadu is concerned. With regard to the unemployment allowance, it is submitted that it will be provided when a household or individual worker has not been provided with employment within 15 days as written / oral request. As far as Tamil Nadu is concerned, work is available in all the Village Panchayats and are being executed every week without any gap. At any point of time, the worker, who is seeking employment can be engaged in the ongoing works. Hence, there is no necessity to provide unemployment allowance so far. The Government of India considering the inflation rate, has revised the wage rate for Tamil Nadu as Rs.119/- and the State of Tamil Nadu has issued a G.O.(Ms.) No.20, Rural Development and Panchayat Raj (CGS-1) Department, dated 11.02.2011 fixed the wage rate at Rs.119/- as the minimum wages as determined by the Government of India.



W.P.No.21761 of 2011

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4.2. The learned Additional Advocate General further submitted that as per Sub-Section (i) of Section 6 of NREG Act, 2005 the Central Government specified wage rate payable to the unskilled labourer as Rs.119/- per day for the State of Tamil Nadu. Consequently the Government of Tamil Nadu have also revised the Rural Schedule of Rates and in this revision, rate per unit has been increased for the same quantum of work to be done i.e., for a person, to receive Rs.100/- as wage the required output by the persons is 2.37 Cu.m quantity of earthwork (unskilled labour). In the Rural Schedule of Rate the cost fixed for excavating 1 Cu., is Rs.42.20/-.

4.3. The learned Additional Advocate General further contended that G.O.(Ms.) No.56 Rural Development and Panchayat Raj (CGS-1) Department, dated 21.04.2022 were the Government after careful examination have decided to accept the proposal of the Director of Rural Development and Panchayat Raj and to adopt the revised wage rate from



W.P.No.21761 of 2011

Rs.273/- to Rs.281/- per person per day with effect from 01.04.2022 under

Mahatma Gandhi Rural Employment Guarantee Scheme.

4.4. The learned Additional Advocate General further submitted that the statement of the petitioner that 90% of workers are unable to get 100% wages in all these 6 years of operation of the scheme is not correct and has no factual background. During the 1st year of implementation of 6 Districts when the wage rate was fixed as Rs.80/- , 70% of the NREGS workers were getting the full wages. The average wage rate of the individual districts ranges from Rs.72/- to Rs.78/-. When it was increased to Rs.100/- and when it was extended to all 31 Districts the wage rate was also increased and the average wage rate ranges from Rs.80/- to Rs.100/-. This is mainly due to increase in number of workers and the varied pattern of work done by the number of workers. Nearly 60% of the workers used to get the full wage of Rs.100/-. When the wage rate was raised to Rs.119/- the workers used to receive Rs.100/- to Rs.110/-. Nearly 60% of workers used to get the full wage of Rs.119/-.



W.P.No.21761 of 2011

WEB COURT

4.5. The learned Additional Advocate General relied on the Division Bench Judgment of this Court, where the challenge raised is to the effect that non-payment of minimum wages as per the Minimum Wages Act, 1948 to those who are engaged under the Mahatma Gandhi National Rural Employment Guarantee Act Scheme is violative of Article 14 of the Constitution of India, in as much as persons engaged for performance of similar nature of work are getting the minimum wages in other Government Departments and, therefore, fixing the lower wage notified under the MGNREGA is ultra vires the Constitution of India.

5. Heard the learned counsels appearing on both sides and perused the materials available on records.

6. It is pertinent to mention the objectives of the scheme:

The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA) guarantees 100 days of employment in a financial year to any rural household whose adult members are willing to do unskilled manual work. This Act is an important step towards the realization of the



W.P.No.21761 of 2011

right to work. It is also expected to enhance people's livelihoods on a sustained basis, by developing the economic and social infrastructure in rural areas. The Village Panchayat will issue job cards to every registered individual. Payment of the statutory minimum wage and equal wages for men and women are the notable features of the scheme.

7. The petitioner's association has filed this writ petition for declaration declaring the linkage of productivity / performance norms as per the norms of the Public Works Department for payment of wages under the Mahatma Gandhi National Rural Employment Guarantee Scheme in its application in Tamil Nadu by the Respondent as arbitrary, illegal and contrary to the Minimum Wages Act, 1948 and Articles 14 and 23 of the Constitution of India. This writ petition came up to be filed only after the issuance of the G.O.(Ms.) No.20 dated 11.02.2011 Rural Development and Panchayat Raj Department insofar as it links up productivity / performance norms for payment of Rs.119/- per day in the Mahatma Gandhi National Rural Employment Guarantee Scheme and the petitioner's association have not challenge the same.



W.P.No.21761 of 2011

WEB COPY 7.1. It is pertinent to extract the relevant portion of the G.O.(Ms.)

No.20 dated 11.02.2011:

| Sl. No. | Description of Work                                              | Rates being adopted to achieve minimum wage of Rs.100/- per day per person as per G.O.Ms.No.146, RD & PR Dept, dated 23.12.2009. (Rs. per unit) | Rates to be adopted only for works under Mahatma Gandhi National Rural Employment Guarantee Scheme (To achieve a minimum wage of Rs.119/- per day per person) (Rs. per unit) |
|---------|------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1       | 2                                                                | 3                                                                                                                                               | 4                                                                                                                                                                            |
| I       | Earthwork excavation in ordinary soil                            |                                                                                                                                                 |                                                                                                                                                                              |
|         | Category I                                                       |                                                                                                                                                 |                                                                                                                                                                              |
| 1.      | For Contour bunding roads, rock fill dams and desilting of tanks | 42.20/ Cum                                                                                                                                      | 50.22/Cum                                                                                                                                                                    |
|         | CategoryII                                                       |                                                                                                                                                 |                                                                                                                                                                              |
| 2.      | For Farm ponds and plantation pits                               | 42.20/Cum                                                                                                                                       | 50.22/Cum                                                                                                                                                                    |
| 3.      | For all other works                                              | 42.20/Cum                                                                                                                                       | 50.22/Cum                                                                                                                                                                    |
| II      | Earthwork excavation in hard soil                                |                                                                                                                                                 |                                                                                                                                                                              |
|         | Category I                                                       |                                                                                                                                                 |                                                                                                                                                                              |
| 1.      | For Contour bunding roads, rock fill dams and desilting of tanks | 61.20/Cum                                                                                                                                       | 72.83/Cum                                                                                                                                                                    |
|         | Category II                                                      |                                                                                                                                                 |                                                                                                                                                                              |



W.P.No.21761 of 2011

| Sl. No. | Description of Work                                                                                                                                                                                                                      | Rates being adopted to achieve minimum wage of Rs.100/- per day per person as per G.O.Ms.No.146, RD & PR Dept, dated 23.12.2009. (Rs. per unit) | Rates to be adopted only for works under Mahatma Gandhi National Rural Employment Guarantee Scheme (To achieve a minimum wage of Rs.119/- per day per person) (Rs. per unit) |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2.      | For Farm ponds and plantation pits                                                                                                                                                                                                       | 61.20/Cum                                                                                                                                       | 72.83/Cum                                                                                                                                                                    |
| 3.      | For all other works                                                                                                                                                                                                                      | 61.20/Cum                                                                                                                                       | 72.83/Cum                                                                                                                                                                    |
| III     | SDR (Soft disintegrated rock) (Not Requiring Blasting)<br>Earthwork Excavating and Depositing on bank with initial lead of 10 m and initial lift of 2 m in Soft Disintegrated rock, laterite soft rock or kankar not requiring blasting. | 85.80/Cum                                                                                                                                       | 102.10/Cum                                                                                                                                                                   |
| IV      | Stone Pitching (Unskilled)                                                                                                                                                                                                               |                                                                                                                                                 |                                                                                                                                                                              |
| 1.      | Farm Ponds                                                                                                                                                                                                                               | 380.86/Cum                                                                                                                                      | 453.22/Cum                                                                                                                                                                   |
| 2.      | Mini Percolation tank                                                                                                                                                                                                                    | 380.86/Cum                                                                                                                                      | 453.22/Cum                                                                                                                                                                   |
| V       | Rough Stone Dry packing (unskilled)                                                                                                                                                                                                      |                                                                                                                                                 |                                                                                                                                                                              |
| 1.      | Rock fill dams, Stone Checks                                                                                                                                                                                                             | 380.86/Cum                                                                                                                                      | 453.22/Cum                                                                                                                                                                   |
| 2.      | Contour Bunding                                                                                                                                                                                                                          | 380.86/Cum                                                                                                                                      | 453.22/Cum                                                                                                                                                                   |
| VI      | Jungle Clearance                                                                                                                                                                                                                         |                                                                                                                                                 |                                                                                                                                                                              |



| Sl. No. | Description of Work             | Rates being adopted to achieve minimum wage of Rs.100/- per day per person as per G.O.Ms.No.146, RD & PR Dept, dated 23.12.2009. (Rs. per unit) | Rates to be adopted only for works under Mahatma Gandhi National Rural Employment Guarantee Scheme (To achieve a minimum wage of Rs.119/- per day per person) (Rs. per unit) |
|---------|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.      | Scrub jungle Clearance          | 3.92/Sq.m                                                                                                                                       | 4.66/Sq.m                                                                                                                                                                    |
| 2.      | Light jungle Clearance          | 4.23/Sq.m                                                                                                                                       | 5.03/Sq.m                                                                                                                                                                    |
| 3.      | Heavy jungle Clearance          | 5.30/Sq.m                                                                                                                                       | 6.31/Sq.m                                                                                                                                                                    |
| 4.      | Juliflora Jungle with uprooting | 5.69/Sq.m                                                                                                                                       | 6.77/Sq.m                                                                                                                                                                    |

7.2. It is also relevant to extract the provisions of Section 6 of the Mahatma Gandhi Rural Employment Guarantee Act, 2005:

*"Wage Rate: 1. Notwithstanding anything contained in the Minimum Wages Act, 1948 (Act 11 of 1948) the Central Government may by notification specify the wage rate for the purpose of this Act:*

*Provided that different rates of wages may be specified for different areas:*

*Provided further that the wage rates specified from time to time under any such notification shall not be at a rate less than Sixty Rupees per day.*



W.P.No.21761 of 2011

*2. Until such time as a wage rate is fixed by the Central Government in respect of any area in a State, the minimum wage fixed by the State Government under Section 3 of the Minimum Wages Act, 1948 (11 of 1948), for agricultural labourers shall be considered as the wage rate applicable to that area."*

**7.3. Subsequently, the Government has passed 12 G.O's fixing the minimum wages on the last G.O is G.O.(Ms.) No.56, Rural Development and Panchayat Raj (CGS-1) Department dated 21.04.2022 in which Rs.281/- was a minimum wage fixed per person per day with effect from 01.04.2022 under the Mahatma Gandhi National Rural Employment Guarantee Scheme.**

**7.4. The above writ petition is of the year 2011, challenging the part of the G.O which was issued in the year 2011.** Subsequently, the above said 12 G.O's have been issued by the Government of Tamil Nadu. In Sanjit Roy -vs- State of Rajasthan, the Hon'ble Apex Court has held that "Respondent was not entitled to reduce wage payable to the workman below



W.P.No.21761 of 2011

minimum wage on ground that gang of which workman was member had turned out less work than norm fixed by Public Works Department.

Petitioner entitled to minimum wages".

7.5. It is clear and evident that the State Government has paid the minimum wages under the MGNREGS Act, 2005 as notified by the Central Government of India time to time and the **latest G.O.(Ms.) No.56 of the Panchayat Raj and Rural Development Department dated 01.04.2022 the minimum wages per person per day in the MGNREGS Act, 2005 was fixed at Rs.281/- per day.** The petitioner's association have miserably failed to challenge the entire G.O, but challenge only one portion of the order which is linked with productivity / performance norms, this Court is not inclined to entertain the above writ petition for these reasons. The G.O.(Ms.) No.20 of Rural Development and Panchayat Raj Scheme (CGS-1) Department was issued on 11.02.2011, But the writ petition was filed by the petitioner's association only on 20.09.2011. Even after the lapse of 7 months the petitioner's association did not choose to challenge the above said G.O.



W.P.No.21761 of 2011

**WEB COPY** 8. In view of the above facts and circumstances of the case, this writ petition stands dismissed. No costs. Consequently, M.P.No.1 of 2011 is closed.

**28.04.2023**

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Index : Yes / No

Internet : Yes / No

**To**

The Principal Secretary,  
Rural Development and Panchayat Raj  
Department, Fort St. George,  
Chennai - 600 009.



WEB COPY



W.P.No.21761 of 2011

**J.SATHYA NARAYANA PRASAD,J**

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**W.P.No.21761 of 2011**  
**and M.P.No.1 of 2011**

**28.04.2023**