SUPREME COURT OF INDIA

Swaraj Abhiyan

Vs.

Union of India & Ors.

W.P.(Civil)No.857 of 2015

(Madan B.Lokur and N.V.Ramana,JJ.,)

13.05.2016

JUDGMENT

Madan B.Lokur,J.,

1. In our judgment dated 11th May, 2016 we had adverted to the drought or the drought-like conditions prevailing in several parts of our country and had issued certain directions for compliance. In this judgment, we will deal with the prayer made by the petitioner Swaraj Abhiyan relating to the implementation of the National Food Security Act, 2013 (for short 'the NFS Act'). Implementation of the National Food Security Act, 2013

2. It is submitted by the petitioner that it is necessary to ensure food security to the persons affected by the drought. In this regard, the petitioner made four suggestions and they are:

> "(i) All households should be provided with 5 kg food grains per person per month irrespective of whether or not they fall in the category of priority households as defined in Section 2(14) of the NFS Act read with Section 10 thereof. The provision for food grains should be in addition to and not in derogation of any other entitlement in any other government scheme.
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> (ii) Households that do not have a ration card or family members left out of existing ration cards should be issued special and temporary coupons on production of an appropriate identity card or any other proof of residence.
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> (iii) Each household affected by the drought should be provided 2 kg of dal (lentil) per month at Rs. 30 per kg and one litre of edible oil per month at Rs. 25 per litre through the Public Distribution System. In this regard, reference was made to a similar scheme which is said to be working quite well in Tamil Nadu.
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> (iv) Children affected by the drought should be provided one egg or 200 gms of milk per day (6 days a week) under the Mid-Day Meal Scheme. In addition to this, the Mid-Day Meal Scheme should continue during the summer vacation period in schools

so that children are not deprived of their meals, including eggs or milk, as the case may be.

3. The Union of India has explained in its response that in terms of Section 3 of the NFS Act the monthly entitlement of food grains is 5 kg per person for eligible households under 'priority' category and 35 per kg per family under the Antyodaya Anna Yojna for rice, wheat and coarse grains. Coverage under the NFS Act has been delinked from poverty estimates and is substantially above the percentage of population living below the poverty line. It is submitted that coverage under the NFS Act has to be determined by each State and the criteria for identification of priority households and their actual identification is the responsibility of the State Government. It is further stated that the State Government is expected to digitize the beneficiary database and also set up a 'grievance redressal mechanism'.

4. For implementation of the NFS Act, the State Government is required to complete all preparatory steps for which guidelines have been issued by the Government of India. In this context, it is stated that the implementation of the NFS Act has started in 32 States and Union Territories and as far as Gujarat is concerned it will implement the NFS Act from 1st April 2016. During the course of hearing, we were informed that thankfully Gujarat is now implementing the NFS Act.

5. It is also stated that since drought is a temporary phenomenon, additional food grains are made available on request basis from the State Government. It is further stated that for 2015-16, only Maharashtra made a request for additional food grain allocation for drought affected people and the Government of India made available 1.63 lakh tons of rice and 2.44 lakh tons of wheat, as requested.

6. With regard to the supply of dal/lentil and edible oils, it is stated by the Union of India that under the NFS Act there is no provision to supply these items. In the absence of sufficient domestic availability of these items, their supply under the Public Distribution System is difficult to ensure and there are fiscal constraints on stretching the food subsidy bill by including the supply of dal/lentil and edible oils. However, the State Governments are at liberty to distribute additional items out of their own resources. In fact, Andhra Pradesh, Chhattisgarh, Haryana, Karnataka and Telangana are distributing dal/lentil or edible oils to sections of society while Chhattisgarh is distributing chana (gram) in scheduled areas.

7. With regard to the Mid-Day Meal Scheme, it is stated by the Union of India that there is no special provision for the supply of eggs or milk but there is a requirement of minimum calorific and nutritional contents. These are as follows:

Components	Primary	Upper Primary
Colories	450 Cal	700 Cal
Protein	12 gm	20 gm

Micronutrients Adequate quantities of micronutrients like Iron, Folic Acid, Vitamin A etc.

8. It is further stated by the Union of India that the menu under the Mid-Day Meal Scheme is locally decided and of the 12 States that we are concerned with, only 5 States that is Andhra Pradesh, Karnataka, Madhya Pradesh, Odisha and Telangana provide either eggs or milk under the Mid-Day Meal Scheme. According to Swaraj Abhiyan, additional or different items like chana (for example) is provided by 4 other States, Chhattisgarh, Gujarat, Jharkhand and Maharashtra. Admittedly, neither eggs nor milk nor any other additional item is provided by 3 States, that is, Bihar, Haryana and Uttar Pradesh.

9. With regard to continuing the Mid-Day Meal Scheme during the summer vacations in the drought affected areas, the Union of India says that only 3 of the States that we are concerned with, that is, Karnataka, Maharashtra and Uttar Pradesh made such a proposal during 2015-16 and that was sanctioned by the Performance Appraisal Board. As far as 2016-17 is concerned, only Chhattisgarh, Karnataka and Madhya Pradesh have made a request and that is under consideration by the Performance Appraisal Board.

10. The monitoring and implementation of the NFS Act is really the duty and responsibility of the State Food Commission under Section 16 of the NFS Act. We are told that not every State has established such a Commission making it difficult for any corrective or remedial measures in respect of the review and implementation of the NFS Act. It is high time that the machinery under the NFS Act is put in place by all concerned otherwise the enactment of social justice legislations will have no meaning at all.

Discussion and conclusions

11. We are quite surprised that with regard to the implementation of the NFS Act, even though the statute was passed by Parliament and it extends to the whole of India and is deemed to have come into force on 5th July 2013, some States have not implemented it. As per the chart provided to us by learned counsel for the petitioner in the Note, the State of Uttar Pradesh has partially implemented the NFS Act in the sense that it has been implemented only in 28 of its 75 districts. Gujarat has admittedly implemented the NFS Act only from 1st April 2016.

12. It is surprising that the implementation of a law enacted by Parliament such as the NFS Act is left to the whims and fancies of the State Governments, and it has taken more than two years after the NFS Act came into force for Gujarat to implement it and Uttar Pradesh has only implemented it partially. This is rather strange. A State Government, by delaying implementation of a law passed by the Parliament and assented to by the President of India, is effectively refusing to implement it and Parliament is left a mute spectator. Does our Constitution countenance such a situation? Is this what 'federalism' is all about? Deliberate inaction in the implementation of a parliamentary statute by a State Government can only lead to utter chaos or worse. One can hardly imagine what the consequence would be if a State Government, on a similar logic, decides that it will not implement other parliamentary

statutes meant for the benefit of vulnerable sections of society. Hopefully, someone, somewhere, sometime will realize the possible alarming consequences.

13. We find force in the submission of the learned Additional Solicitor General that no mandamus can be issued by this Court to the State Governments to implement the NFS Act beyond what is required by the terms and provisions of the statute. In other words, it is not possible for us to issue a positive direction to the State Governments to make available to needy persons any item over and above what is mandated by the NFS Act, such as dal/lentil and edible oil (or any other item for that matter) to all households in the drought affected areas. Today, Swaraj Abhiyan prays for the supply of dal/lentil and edible oils; tomorrow some other NGO might pray for the supply of some other items. This might become an endless exercise and would require us to go beyond what Parliament has provided. While this Court or any other constitutional court can certainly intervene, to a limited extent, in issues of governance it has also to show judicial restraint in some areas of governance, and this is one of them.

14. In *State of Himachal Pradesh v. Umed Ram Sharma* [1] the High Court had treated a letter as a public interest petition received from some poor and mostly Harijan residents of a village complaining of the failure of the State Government to complete the construction of a road due to collusion between the residents of another village and the administrative authorities. The High Court heard the matter and gave directions, inter alia, for early completion of the road. This was challenged by the State before this Court. This Court took resort to Article 21 of the Constitution and observed that for residents of hilly areas, access to roads is access to life itself. This Court held:

> "The entire State of Himachal Pradesh is in hills and without workable roads, no communication is possible. Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication."

15. After referring to Article 38(2) of the Constitution, this Court observed that "access to life should be for the hillman an obligation of the State but it is primarily within the domain of the legislature and the executive to decide the priority as well as to determine the urgency." There had been allocation of funds and the "court has directed the executive to bring it to the notice of the legislature if some reallocation was feasible amongst the

sanctioned expenditure for roads leaving the priorities to the discretion of the competent authorities."

16. In State of H.P. v. High Court of H.P. the High Court acted on a newspaper report and directed the construction of a certain road during the current financial year and the State Government was directed to make the funds available for the purpose. This Court found it extremely difficult to uphold the order of the High Court. Two principal reasons were given: firstly, it is for the State Government to determine its priorities and allocate funds, even though it might be necessary to lay a communication network; secondly, the necessity could be fulfilled only on the availability of funds. "Any interference of this nature would require diversion of funds carefully allocated on the basis of priority requirements and thereby disturb the programme of development chalked out by the State Government."

17. In matters involving financial issues and prioritization of finances, this Court should defer to the priorities determined by the State, unless there is a statutory obligation that needs to be fulfilled by the State. It is for this reason that in the matter of construction of roads (for example) this Court has left the prioritization to the State.

18. In *State of Uttaranchal v. Balwant Singh Chaufa*[2] this Court observed that public interest litigation in India has travelled through three phases. These are:

> Phase I. - It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalised groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts. During this phase, the courts relaxed the traditional rule of locus standi and broadened the definition of aggrieved persons and gave directions and orders to preserve and protect the fundamental rights of marginalized, deprived and poor sections of society.
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> Phase II. - It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments, etc. etc.
> This hardly needs any elucidation. This Court has been in the forefront in issues relating to the environment, forests and historical movements, amongst others. There are several decisions of this Court in this regard.
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> Phase III. - It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance. In the third phase, the constitutional courts "broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and no extraneous considerations are taken into consideration except the public interest."

19. As far as the present case is concerned, there is no doubt that provision of food grains as per the provisions of the NFS Act is a statutory obligation on the State. This Court can

certainly direct the State to faithfully implement the provisions of the NFS Act. Unfortunately, there is no statutory or constitutional obligation on the State to provide edible oils and dal/lentil to people in distress. If these items were vital for the survival of the people, this Court would have surely directed their distribution. But there is nothing to suggest that without edible oils and dal/lentil the fundamental right of the people in drought affected areas guaranteed under Article 21 of the Constitution is violated. We therefore cannot reasonably read into the Constitution or the law something that is not there. That apart, although the number of affected households is not available with us, we can only assume the number to be sizeable given the fact that drought has been declared in vast areas of the country. Even on a conservative estimate, more than 33 crore people are affected by drought with varying degrees of distress and intensity. The estimate of Swaraj Abhiyan is between about 40 crore and over 50 crore people being affected by drought. All that we can say and do say in this regard is that at least 1/4th of the country's population (if not 1/3rd) is affected by drought and the State Governments must take appropriate steps to ensure that at least the statutory requirement of food grains is made available to the people in the drought affected areas of the country. In addition, and to the extent possible, the State Government should take appropriate measures to provide dal/lentil and an appropriate cooking medium and any other items of necessity to persons affected by the drought and if a request is made by a State Government to the Government of India, it must consider the request with compassion.

20. We would like to draw attention to Article 47 of the Constitution which provides that one of the primary duties of the State is to raise the level of nutrition and the standard of living of the people. Although Article 47 is not enforceable being a Directive Principle, there is considerable moral force and authority in this provision to persuade the State Governments and the Government of India to attempt at ensuring that the people, particularly those in drought affected areas, are provided adequate food grains and a cooking medium for the preparation of their meals.

21. Similarly, the entitlement of food grains at 5 kg per person per month (as per the NFS Act) is a goal that must be achieved by the State at the earliest particularly in drought affected areas. In fact, statute or no statute and implementation or non-implementation of a law enacted by Parliament, the State ought to appreciate and realize that an adequate supply of food grains must be made available without much fuss to people in drought affected areas. As it is, because of the drought such persons undergo immense hardship mainly for reasons beyond their control and if there is a scarcity of food, it would only add to their misery and adversity if not multiply it. The State being a welfare State must take these factors into consideration and strain every nerve to ensure that the mandate of the NFS Act is adhered to.

22. In this context, it would be inappropriate for the State Governments to deprive any household in drought affected areas of the requisite food grains merely because they do not have a ration card. We find substance in the contention of learned counsel for Swaraj Abhiyan that in grave and emergent situations such as those in the drought affected areas, the requirement of a ration card for obtaining food grains can only be considered a procedural requirement and that requirement should be substituted with a valid identity card or any appropriate proof of residence that is acceptable to the functionaries in the State

Governments, who need to construe such a condition open-handedly and without being tight-fisted.

23. We reject the contention on behalf of the Union of India that fiscal constraints or an increase in the food subsidy bill can be a reason for denying relief to persons in drought affected areas. Our constitutional jurisprudence has travelled an enormous distance over the years to even think of attempting a roll-back.

24. In *Municipal Council, Ratlam v. Vardichan*[3] this Court took the view that a plea of financial inability cannot be an excuse for disregarding statutory duties. It was held in paragraph 12 of the Report:

> "The statutory setting being thus plain, the municipality cannot extricate itself from its responsibility. Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties under Section 123 of the Act. This "alibi" made us issue notice to the State which is now represented by counsel, Shri Gambhir, before us. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis. The criminal procedure code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, Section 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be."

25. Similarly, in *Khatri (II) v. State of Bihar*[4] this Court referred to a constitutional obligation (as against a statutory obligation) of providing free legal services to an indigent person and had this to say in paragraph 5 of the Report:

> "Mr K.G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to an indigent accused but he suggested that the State might find it difficult to do so owing to financial constraints. We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, as pointed out by the court in Rhem v. Malcolm1 "the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty" and to quote the words of Justice Blackmun in Jackson v. Bishop "humane considerations and constitutional requirements are not in this day to be measured by dollar considerations."

26. Finally, in *Paschim Banga Khet Mazdoor Samity v. State of W.B*[5]. this Court referred to another constitutional obligation of providing adequate medical services to the people and held in paragraph 16 of the Report as follows:

> "It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. [See: Khatri (II) v. State of Bihar] The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view."

There is undoubtedly a distinction between a statutory obligation and a constitutional obligation but there can be no doubt that the right to food is actually a constitutional right and not merely a statutory right. [See for example: *Shantistar Builders v. Narayan Khimalal Totame.*[6]] In any event, even if the right to food is a statutory right, it would be the obligation of the State to make all possible efforts and some more to ensure that to the extent possible, adequate food grains are available to all and particularly to those in drought affected areas. There can hardly be any dispute on this. In this context, it would be worth recalling the Preamble to the NFS Act which states that it is "An Act to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto."

27. As far as the provision of eggs or milk for Mid-Day Meals is concerned, there is no dispute that calorific and nutritional contents for children have been prescribed under the Mid-Day Meal Scheme. How that standard is to be met is for each State Government to decide and no direction can be given in this regard by this Court. Apart from milk and eggs, there are other nutritional items that can be provided, such as chana or gram. However, it is unfortunate that neither milk nor eggs or anything else is provided under the Mid-Day Meal Scheme in Bihar, Haryana and Uttar Pradesh. Even in the States that we are concerned with, eggs or milk is not being provided to the beneficiaries on a daily basis or 5 days in a week, except in Chhattisgarh where eggs are provided for 6 days in a week. In other States that provide eggs or milk, the provision varies from one day to three days per week.

28. No one can doubt that children are the future of our country and if there is some stinginess in providing them with adequate nutrition, the country as a whole is deprived in future of taking the benefit of their potential. Therefore, the calorific and nutritional requirements mentioned by the Union of India cannot be treated as the maximum requirements but only as the minimum requirements.

29. As regards the provision of extending the Mid-Day Meal Scheme during the summer vacations, it is a pity that for the year 2016-17 only three States, that is Karnataka, Madhya Pradesh and Chhattisgarh have submitted a proposal for consideration to the Government of India. Is it that the States expect the children and their families to fend for themselves during the summer months? Maharashtra had submitted a proposal in 2015-16 to the Union of India and that was accepted as it is by the Performance Appraisal Board but no proposal appears to have been made by Maharashtra for 2016-17. Is it that the drought conditions have improved in Maharashtra over the last one year? We do not know. We have not been given any reason for not extending the Mid-Day Meal Scheme into the summer vacation in respect of some of the drought affected States before us, nor is there any opposition to the prayer for extension made by Swaraj Abhiyan in this regard. In fact the Guidelines of September 2006 for the Mid-Day Meal Scheme provide in Chapter 5 thereof (paragraph 5.1(4)(iii) as follows:

> "In case notification declaring an area as 'drought-affected' is issued at a time when summer vacation has already commenced or is about to commence, State Govt. should provide mid-day meal in primary schools located in such areas in anticipation of release of Central assistance."

Accordingly, we take it, that the State Government of each of the drought affected States before us (other than the three States mentioned above) are not averse to extending the Mid-Day Meal Scheme into the vacation period for schools in the drought affected areas.

Directions

30. In view of the discussion and the conclusions arrived at by us, we issue the follow directions:

> "1. Each of the States before us shall establish an internal grievance mechanism and appoint or designate for each district a District Grievance Redressal Officer as postulated by Section 14 and Section 15 respectively of the NFS Act within one month from today, unless these provisions have already been complied with. The said Officer would also be entitled to address grievances relating to non-supply of food grains due to the absence of a ration card.
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> 2. Each of the States before us shall constitute a State Food Commission for the purpose of monitoring and reviewing the implementation of the NFS Act as postulated by Section 16 thereof within two months from today, unless a State Food Commission has already been constituted.
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> 3. In the States in which drought has been declared or might be declared in the future, all households should be provided with their monthly entitlement of food grains in terms of the NFS Act regardless of whether they fall in the category of priority household or not. The provision made under the NFS Act shall be in addition to and not in derogation of any other entitlement under any other government scheme.

4. No household in a drought affected area shall be denied food grains as required under the NFS Act only because the household does not have a ration card. The requirement of a household having a ration card is directed to be substituted by an appropriate identification or proof of residence that is acceptable to the State Government.

5. It is made clear that each of the States before us is fully entitled to provide any food grains or other items over and above and in addition to the entitlement of a household under the NFS Act. There is no restriction in this regard.

6. The States of Bihar, Haryana and Uttar Pradesh must within a month from today make adequate provision for the supply of eggs or milk or any other nutritional substitute for children under the Mid-Day Meal Scheme. Eggs, milk or another nutritional substitute should be made available preferably five days in a week or at least three days in a week. The other States before us must make a similar provision for the supply of eggs or milk or any other nutritional substitute preferably five days in a week or at least three days in a week. Keeping in mind the children of this country, financial constraints shall not be an excuse for not complying with this direction. It is a sad commentary that we should have to say this but we need to in the interest of the children of our country.

7. The States before us are directed to extend the Mid-Day Meal Scheme for the benefit of children during the summer vacation period in schools, if the extension has not yet been made, within a week from today. The Union of India shall immediately approve any such a proposal in consultation with these State Governments. This direction is being passed in the interest of children in drought-affected areas."

31. We might mention that the Union of India usually brings into force a statute without putting in place the implementation machinery. This is clearly demonstrated by the fact that the mechanism for enforcing several provisions of the NFS Act has not been established or constituted. This is completely inexplicable. We fail to understand how a statute enacted by Parliament can be given effect to without appropriate rules and regulations being framed for putting in place the nuts and bolts needed to give teeth to the law or setting up mechanisms in accordance with the provisions of the statute. It is perhaps this tardiness in execution that enables some State Governments to take it easy and implement the law whenever it is convenient to do so.

JUDGMENT

Madan B.Lokur,J.

32. In our judgment dated 11th May, 2016 we had considered the issue of the drought or drought-like conditions prevailing in some parts of the country and had issued certain directions for compliance. Subsequently, in a related matter in our judgment pronounced today, we have dealt with the provisions of the National Food Security Act, 2013 and the

Mid-Day Meal Scheme announced by the Government of India and issued directions for the effective implementation of the statute and the Mid-Day Meal Scheme to benefit people (including children) particularly those affected by the drought or drought-like conditions.

33. In this judgment we deal with the implementation of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Mahatma Gandhi National Rural Employment Guarantee Scheme framed under the provisions of Section 4 of the said Act. Implementation of the MGNREG Scheme

34. The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short the 'NREG Act') has a very simple and straightforward Preamble which says that it is:

> "An Act to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto."

For the effective implementation of the NREG Act, the Mahatma Gandhi National Rural Employment Guarantee Scheme (for short 'the Scheme') has been announced and is implemented throughout the country.

35. Learned counsel for the petitioner submits that the Scheme is demand driven and in terms of Section 3(1) read with Section 3(3) of the NREG Act, every rural household registered for employment is entitled as a matter of right to have one adult person provided with unskilled manual work and adequate wages under the Scheme for a minimum of 100 days in a year. In other words, if an adult member of a registered rural household is voluntarily desirous of doing unskilled manual work, he/she is guaranteed work for at least 100 days in a year.

36. The first submission of the petitioner in this context is that the Government of India and the concerned State Governments are obliged to ensure that adequate budgetary provision is made for the financial implementation of the Scheme. It is submitted that in addition to ensuring adequate financial provision, the Government of India as well as the concerned State Governments should not place any budgetary limit under the Scheme if employment is sought over and above 100 days. The first prayer, therefore, is for issuing appropriate directions to the Union of India in this behalf. While the guarantee is for 100 days in a year, the State should encourage employment for more than that.

37. The second prayer made in this context is that even if there is no budgetary limit, there is an informal cap on funds under the Scheme and that should be done away with. To appreciate what is sought to be conveyed by this prayer requires an understanding of the procedure followed by the Government of India in the implementation of the Scheme.

38. Reference is made by learned counsel to the "Operational Guidelines for NREGA" issued in 2013 particularly paragraph 6.9 thereof. This paragraph provides that the Labour Budget

(or LB) should be finalized by each State by 31st December for all Gram Panchayats (or GP) in the State and placed before an Empowered Committee chaired by the Secretary in the Ministry of Rural Development. This projected Labour Budget is then slashed and an "agreed to" Labour Budget is prepared which is only a percentage of the Labour Budget presented by the State Government. It is submitted that in the financial year 2014-15 the "agreed to" Labour Budget was 78% of the Labour Budget and for the financial year 2015-16 the "agreed to" Labour Budget was 75% of the Labour Budget. This is the informal cap on funds adverted to by learned counsel.

39. It is submitted that the consequence of this informal cap is that the State Governments do not have an adequate fund at their disposal and because of a lack of funds, they are unable to encourage voluntary unskilled manual labour. Resultantly, they cannot reach the target of 100 days of employment per household per year. Since there is a shortage of the 'workforce' caused by a lack of funds, the State Governments are compelled to drop some development works. In other words, fiscal constraints result in a vicious cycle adversely impacting employment and development.

40. The third prayer therefore relates to an additional consequence of a shortage of funds and a depleted 'workforce'. The consequence, as projected by learned counsel, is that due to fiscal constraints, the unskilled manual labour put in is not duly compensated by payment of wages in time, the excuse of the State Governments being a lack of funds. Consequently, the pending wage bill continues to rise and that increasing liability actually makes a complete mockery of the Scheme and the NREG Act since the dues are cleared much later than required by law. This is a modern form of begar and is contrary to the spirit of Article 23 of the Constitution.

41. The fourth prayer made under this heading is for the Government of India to increase the minimum statutory obligation of 100 days employment per rural household by another 50 days for drought affected States for the year 2016-17 and to release the additional financial requirements well in time.

42. Responding on behalf of the Union of India, the Joint Secretary in the Ministry of Rural Development ably assisted us on facts on this issue. She is extremely well-versed in the subject and we acknowledge her valuable assistance in understanding the point of view of the Government of India.

43. The Government of India acknowledges that the minimum guaranteed employment is 100 days in a year in terms of the NREG Act, but that it is voluntary. That apart, it is submitted that given the magnitude of the effort required, it is not easy to achieve the target. It is not denied that job cards have been issued to about 13.26 crore households all over the country and the number of active job cards is about 5.72 crores and the total households that have worked in the financial year 2015-16 is about 4.77 crores. The total number of households that have been provided 100 days of employment in the year 2015-16 is said to be 47,06,129 (as on 19th April, 2016) and in the drought affected States the number of such households is said to be 27,64,508 (as on 19th April, 2016). The petitioner has different

figures as on a different date but it is not necessary to decide which set of figures is correct since the Government of India believes that in view of the large numbers, the implementation of the Scheme is dependent upon the efforts of the State Governments. The Government of India can only persuade the State Governments to reach the minimum statutory guarantee of 100 days employment. It is submitted that as a result of this persuasion, employment provided per household at the national level is 47 days which is the highest achieved in the last six years. As far as the drought affected States are concerned, the average days of employment provided per household is 46.4 days. Based on this, it is submitted that all efforts are being made to faithfully implement the Scheme in spirit and no effort is spared in this regard.

44. With regard to the informal capping of the Labour Budget, it is submitted that in terms of Section 14(6) of the NREG Act the District Programme Coordinator (who is usually the Collector in the district), prepares a district specific budget in December for the coming financial year. This budget contains the details of anticipated demand for unskilled manual work in the district. The district budgets for the State are then collated at the State level and the State Government prepares its Labour Budget. This is then communicated and presented to the Government of India in the Ministry of Rural Development which then examines it in the Programme Division in the Ministry in consultation with the concerned State Governments. Thereafter, the budget is finalized by an Empowered Committee headed by the Secretary in the Ministry of Rural Development. It is submitted that the Labour Budget is essentially a tool for the financial management of funds released and is purely indicative. What the Empowered Committee does is to prepare a budget based on the performance of the State Government and other related criteria and arrive at a somewhat more realistic budget, which too is indicative.

45. It is submitted that there is no cap on the expenditure and States may exceed the budget approved by the Empowered Committee after seeking approval of the said Ministry. A comparative statement of expenditure incurred over the last four financial years has been placed before us and a perusal thereof does show that there has been a fluctuation in expenditure over the years as follows:

YEAR	BUDGET PROVISION (in crores)	ACTUAL EXPENDITURE (in crores)
2011-12	31,000.00	37,072.82
2012-13	30,287.00	39,778.29
2013-14	33,000.00	38,601.59
2014-15	33,000.00	36,032.48
2015-16	37,345.95	42,253.75

46. With regard to the shortage of funds, it is submitted that the Ministry of Rural Development has been in touch with the Ministry of Finance to ensure that there is no such shortage. While a request was made for the release of Rs. 5,000 crores to the Ministry of Finance what was in fact released is only Rs. 2,000 crores. There is therefore a tacit admission that the Ministry of Finance does not release funds in adequate amounts or in time for the effective implementation of the Scheme. In her presentation, the Joint Secretary in the

Ministry of Rural Development submitted that efforts are also being made through the Ministry of Agriculture for the release of funds.

47. It is submitted that notwithstanding this, some States have in fact exceeded the budget approved by the Empowered Committee. There is therefore no question of any informal capping of funds.

48. With regard to the pending wage bill under the Scheme, it is admitted that till 31st March, 2016 there is a pending balance of about Rs. 8,000 crores. However, it is stated in the fourth affidavit filed by the Government of India on or about 11th April, 2016 that an amount of Rs. 11,030 crores will be released to the States within one week subject to fulfillment of standard conditions by the States. This will take care of the pending wage liability of Rs. 7,983 crores as on 31st March, 2016 for the financial year 2015-16. This includes the wage liability of Rs. 2,723 crores in the ten drought affected States that we are concerned with where the Ministry of Rural Development has allowed additional 50 days of employment to the concerned households. It is further stated in the affidavit that an amount of Rs. 3,047 crores will be released to the States for implementing the Scheme in April 2016 (inclusive of wages and material component). The pending liability of the material component of Rs. 4,359 crores for the financial year 2015-16 (as on 31st March, 2016) will be released in June, 2016. In other words, it is admitted that for the financial year 2015-16 there is an existing wage and material component liability in excess of Rs.12,000 crores.

49. As far as the release of funds for 2016-17 is concerned, it is submitted by learned counsel for the petitioner that in terms of the Master Circular under the Scheme, funds are required to be released in two tranches, the first tranche in the first week of April (for the period 1st April to 30th September) and the second tranche in the first week of October (for the period 1st October to 31st March). It is submitted that therefore the release of Rs. 3,047 crores for implementing the programme only for April 2016 is contrary to the Master Circular.

50. It is explained in the fourth affidavit of the Government of India that the first tranche is actually released in two parts. The first part of the first tranche is released in the first week of April because of the vote on account while the second part of the first tranche is released in June after the regular budget is passed in Parliament. It is, therefore, submitted that while there has been a delay in the release of funds, that has now been taken care at least for the financial year 2015-16 (with regard to the wage bill) and for the month of April (both wage bill and material component) in the financial year 2016-17.

51. With regard to implementing and extending the Scheme for an additional 50 days in drought affected States (over and above the guarantee of 100 days) we are informed by the Joint Secretary that in the drought affected States, employment is guaranteed for 150 days in a year and funds will be made available to every household whose adult members volunteer to do unskilled manual work under the Scheme. The extension of the Scheme for a period of 50 days over and above 100 days is therefore now not an issue.

Discussion and conclusions

52. A review of the NREG Act indicates that under Section 3(3) thereof after the work is done, the disbursement of wages shall be on a weekly basis and in any event within a fortnight after the date on which the work is done. However, if no work is provided to an applicant within 15 days, then as per Section 7 of the NREG Act the applicant shall be entitled to receive an unemployment allowance. Consequently, the NREG Act provides for a guarantee of employment, payment for the work within a week and in any event within a fortnight, and if employment is not provided then a payment of unemployment allowance. What if the payment of wages is delayed in the first instance?

53. The Guidelines on Compensation for delayed wage payment circulated by a letter dated 12th June, 2014 by the Ministry of Rural Development draws attention to paragraph 29 of Schedule II of the NREG Act which provides that the workers are entitled to receive 'delay compensation' at a rate of 0.05% of the unpaid wages per day for the duration of the delay beyond the sixteenth day of the closure of the Muster Roll. Guideline No.2 in this regard reads as follows:-

> "2. Compensation due to delay in payment of wages Para 29, Schedule II of MGNREGA 2005 has laid down a detailed procedure for establishing a delay compensation system. As per the system MGNREGA workers are entitled to receive delay compensation at a rate of 0.05% of the unpaid wages per day for the duration of the delay beyond the sixteenth day of the closure of the MR."
>
> The relevant part of paragraph 29 of Schedule II of the NREG Act reads as follows:
>
> 29. Wage payment (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.
>
> "(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.
>
> (b) to (f) xxxx
>
> (2) Effective implementation of sub-paragraph (1) shall be considered necessary for the purposes of the section 27 of the Act."

54. The meat of the matter lies in three issues: (i) Informal capping of funds through the Labour Budget and the 'agreed to' budget process; (ii) Delayed release of payments both for wages and materials; and (iii) Ineffective monitoring of the Scheme.

55. As far as the informal cap on funds is concerned, no doubt a process has to be followed by the Government of India for the release of funds. The issue really is one of accepting a budget presentation as it is made by the State Government. The Government of India believes that the budget presentation cannot be accepted as it is and the Empowered Committee must consider the totality of facts and take a final decision.

56. It seems to us that a comparative table on the annual demand made by the States and the final decision of the Empowered Committee must be available, but the relevant figures have not been placed before us. However, during the course of hearing, it was the admitted position that there is a reduction from the demand made to the actual approval and that is based, inter alia, on the performance of the State Government in implementing the Scheme. This is also apparent from a reading of paragraph 7.1.1 of the Master Circular (FY 2016-2017) Guidance for Programme Implementation issued by the Ministry of Rural Development of the Government of India.

57. There is, therefore, a chicken and egg situation - the release of funds by the Government of India is low because the performance of the State Government is poor and the performance of the State Government is poor because the release of funds by the Government of India is low. The suffering is of the unemployed unskilled manual labourer as an individual and the society as a whole.

58. Regarding the informal cap on funds, learned counsel for the petitioner sought to substantiate his contention by referring to the Minutes of the meeting of the Empowered Committee held on 21st March, 2016 for the State of Madhya Pradesh for FY 2016-17. Paragraph 4 of the Minutes is illustrative of the view of the Government of India and this records: "Under no circumstances, the State will cross the approved Labour Budget for 2016-17 without the prior approval of the Ministry."

59. It seems to us that the petitioner is perhaps reading too much into these Minutes. The reason we say so is because the learned Additional Solicitor General has drawn out attention to a subsequent letter dated 11th April, 2016 sent by the Secretary in the Ministry of Rural Development to the Chief Secretary of about 10 States (including Madhya Pradesh) wherein it is categorically stated that: "the agreed to Labour Budget for 2016- 17 does not imply that work cannot be provided beyond the Labour Budget if there is a genuine demand for work." Also, in the fourth affidavit filed by the Union of India it is stated as follows:

> "8. That there has been no restriction on registration of demand for work and states have been allowed to go beyond estimated labour budget in FY 2015-16. The labour budget is just a rough estimation of the demand and is one of the tools for financial management.
>
> 9. That 13 States i.e. West Bengal, Uttarakhand, Odisha, Meghalaya, Uttar Pradesh, Assam, Rajasthan, Nagaland, Kerala, Sikkim, Gujarat, Punjab and Tripura have generated persondays beyond the estimated labour budgets for FY 2015-16. These

states include three drought affected states namely Odisha, Uttar Pradesh and Rajasthan."

60. Keeping the above in mind and the submissions made, it appears to us that there is no informal capping of funds although it does appear that the Government of India is not prone to easily release funds for the projects under the Scheme. This really takes us to the second issue namely the delayed release of payments both for wages and materials.

61. According to the petitioner delayed release of payments has an adverse impact in the sense that it acts as a disincentive to a person taking on any work under the Scheme. If a person does some work under the Scheme and is not sure when he or she is likely to get the payment, there will definitely be some reluctance to seek employment under the Scheme.

62. With reference to FY 2016-17 the Union of India states in the fourth affidavit filed on or about 11th April, 2016 that an amount of Rs.11,030 crore will be released to the States within one week subject to certain conditions and the release will take care of the pending wage liability of Rs.7,983 crore (as on 31st March, 2016) pertaining to FY 2015- 16. T-his is a clear admission on the part of Government of India that huge amounts remain unpaid towards wages The unfortunate part is that an amount of Rs.2,723 crore from this is with respect to 10 drought affected States where the unemployed perhaps need their wages the most.

63. In *Sanjit Roy v. State of Rajasthan*[7] this Court held that providing labour for less than the minimum wage amounts to forced labour and as such violates of Article 23 of the Constitution. It was said by Justice Bhagwati as follows:

> ".where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words "forced labour" and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated."

What we are concerned with in the present case is not strictly payment less than the minimum wage but delayed payment to crores of people. We can understand delayed payment of a few days or weeks to a few people, but in this case it is delayed payment of a few weeks (if not more) to lakhs of people. Given the enormous number of persons involved, this is really unfortunate.

64. In Sanjit Roy, a strange submission was made by the State. It was submitted that it would not be possible to pay the minimum wage to persons undertaking famine relief work and to persons affected by drought and scarcity conditions since that would cripple the potential to

provide employment to the affected persons. Rejecting this contention, Justice Bhagwati held:

> ".when the State undertakes famine relief work with a view to providing help to the persons affected by drought and scarcity conditions, it would be difficult for the State to comply with the labour laws, because if the State were required to observe the labour laws, the potential of the State to provide employment to the affected persons would be crippled and the State would not be able to render help to the maximum number of affected persons and it was for this reason that the applicability of the Minimum Wages Act, 1948 was excluded in relation to workmen employed in famine relief work. This contention, plausible though it may seem is, in my opinion, unsustainable and cannot be accepted. When the State undertakes famine relief work it is no doubt true that it does so in order to provide relief to persons affected by drought and scarcity conditions but, nonetheless, it is work which enures for the benefit of the State representing the society and if labour or service is provided by the affected persons for carrying out such work, there is no reason why the State should pay anything less than the minimum wage to the affected persons Whenever any labour or service is taken by the State from any person, whether he be affected by drought and scarcity conditions or not, the State must pay, at the least, minimum wage to such person on pain of violation of Article 23.."

65. Justice Pathak concurred with the view of Justice Bhagwati but preferred to rest his decision on a breach of Article 14 of the Constitution and not Article 23 thereof. Justice Pathak held:

> "The circumstance that employment has been given to persons affected by drought and scarcity conditions provides only the reason for extending such employment. In other words, the granting of relief to persons in distress by giving them employment constitutes merely the motive for giving them work. It cannot affect their right to what is due to every worker in the course of such employment. The rights of all the workers will be the same, whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere. The mere circumstance that a worker belongs to an area effected by drought and scarcity conditions can in no way influence the scope and sum of those rights. In comparison with a worker belonging to some other more fortunate area and doing the same kind of work, is he less entitled than the other to the totality of those rights? Because he belongs to a distressed area, is he liable, in the computation of his wages, to be distinguished from the other by the badge of his misfortune? The prescription of equality in Article 14 of the Constitution gives one answer only, and that is a categorical negative."

66. It is quite clear, therefore, that when the rights of tens of thousands of people are affected by delayed payment of their legitimate dues, there is a clear constitutional breach committed by the State - be it the Government of India or a State Government.

67. As mentioned above, a worker is entitled to compensation @ 0.05% per day for delayed payment of the wages due. We are quite pained to note that the Government of India has made no provision for this compensation while releasing the wages for 2015-16 of Rs. 7,983 crores. This is extremely unfortunate and certainly does not behove a welfare State in any situation, more so in a drought situation. Social justice has been thrown out of the window by the Government of India.

68. To make matters worse, the Union of India has admitted in the fourth affidavit that the material component of FY 2015-16 (as on 31st March, 2016) is Rs. 4,359 crore for the entire country which includes the material liability of Rs. 1,995 crore in the 10 drought affected States. This amount, according to Government of India will be released in June 2016. Why should there be a delay in this?

69. We are unable to appreciate the unconscionable delay on the part of the Government of India in the release of funds both under the wage component as well as under the material component. It is quite clear, and there is no worthwhile justification forthcoming from the learned Additional Solicitor General, that delay in payment of wages acts as a disincentive to those persons who are intending to take the benefit of the Scheme. We have not been given any explanation whatsoever why a person would want to work without wages or at least work with an uncertainty in timely receipt of wages. It just does not stand to reason.

70. The Union of India has also stated in the fourth affidavit that an amount of Rs. 3,047 crore will be released to the States for implementing the Scheme in April 2016 and that this amount would be inclusive of both the wage and material components.

71. In terms of the Master Circular (2016-17) the first tranche of the "agreed to" Labour Budget is required to be released in April 2016 (for the period ending in September). In terms of paragraph 7.1.2 of the Master Circular the release would be made after adjusting for unspent balance available with the Districts/States and considering the pending liabilities if any. As is apparent from the fourth affidavit filed by the Government of India the possibility of any unspent balance perhaps does not exist but what does exist is the pending liabilities. Therefore, the amount that is released in the first tranche would actually be much less than the required amount for the first six months of the financial year since the pending liabilities themselves are more than Rs. 12,000 crore. Clearly the implementation of the Scheme in the first six months of the financial year 2016-17 would begin with a deficit and the actual amount required for the first six months of the financial year (even as per the "agreed to" Labour Budget) would not be fulfilled. In our opinion, this is hardly any encouragement to persons willing to take advantage of the Scheme.

72. The fourth affidavit goes on to say that the first tranche will be released in two installments - the first installment being released in April 2016 which would apparently take care of the implementation of the Scheme for the month of April and the second tranche would be released in June 2016 after the regular budget is passed in Parliament. The reason given in the fourth affidavit for the release of the first tranche in two installments is because of the vote on account. It is a matter of common knowledge that the annual budget is

presented every year on the last day of February and it naturally takes time for the budget proposals to be accepted by Parliament and hence the need for a vote on account. That being so it is rather odd that the Master Circular proceeds on the basis that the entire quantum of the first tranche will be released in April 2016 - something that is apparently not possible. There is no mention of any vote on account in the Master Circular and to this extent an incorrect picture of the release of funds is held out. All that we can say is that this is an unfortunate way of implementing a social welfare Scheme intended for the benefit of unemployed persons.

73. We are informed by the Joint Secretary that the Labour Budget for 2016- 17 is calculated on 314 crore person days of employment. This has been scaled down by the Empowered Committee and the "agreed to" Labour Budge for 2016-17 is calculated on 217 crore person days of employment. Therefore, (roughly) only 70% of the Labour Budget is accepted by the Empowered Committee based on the past performance of the States. On this basis, (roughly) about Rs. 20,000 crores ought to be released by the Government of India in the first tranche towards financial implementation of the Scheme. The amount actually released is only Rs. 3047 crores. The implicit assurance is that the balance amount of about Rs. 17,000 crores will be made over the States in June, 2016 in the second installment of the first tranche after the annual budget is approved by Parliament. We can only wait and hope.

74. As far as the third issue of monitoring the Scheme is concerned the NREG Act makes adequate provision in this regard. Section 10 of the NREG Act provides for constituting a Central Employment Guarantee Council (for short 'the CEGC'). As per Section 11 of the NREG Act, the functions of the CEGC include, amongst others, establishing a central evaluation and monitoring system; advising the Central Government in all matters concerning the implementation of the NREG Act; monitoring the implementation of the NREG Act; and preparing annual reports to be laid before Parliament by the Central Government on the implementation of the Act. It is not clear to us whether the CEGC is in existence and whether any monitoring mechanism is in place. A visit to the official website of the NREG Act indicates that as of now there is no CEGC in place.

75. Similarly, the State Government is required to constitute a State Employment Guarantee Council under Section 12 of the Act. The duties and functions of the State Council include advising the State Government on all matters concerning the Scheme and its implementation in the State, monitoring the implementation of the NREG Act and preparing an annual report to be laid before the State Legislature by the State Government. Again we have not been informed of the existence of any such State Council or whether the NREG Act is being faithfully implemented both by the Government of India and by the State Government.

76. At this stage, we may mention that the Joint Secretary in the Ministry of Rural Development informed us that the Government of India has introduced a potentially exciting Scheme for prompt payment of wages to the persons availing the benefit of the Scheme. A system called the National Electronic Fund Transfer System or Ne-FMS system is in place in about a dozen States. The objective of this system is to ensure that the wage component under the Scheme is released directly to the account of the person concerned based on a

Funds Transfer Order to be generated by the implementing agencies of the States. The benefit of the system is that the person will be assured of timely payment of wages after the pay order generation. We have been informed that the Ne-FMS system is in place in several States with effect from 12 th April, 2016. Although it is early days, we are told by the learned Additional Solicitor General that the system is working quite satisfactorily, although this is disputed by the petitioner who says that the system was first introduced in Kerala from 1st January, 2016 but even then there are huge delays in making the payment of wages.

Directions

77. On the basis of the provisions of the NREG Act and the material placed before us, it is appropriate that the following directions are issued:

> "1. The State Governments ought to present a realistic budget which should then be pragmatically considered by the Empowered Committee. This procedure will avoid any unnecessary controversy between the State Governments and the Government of India about the release of funds under the Scheme.
>
> 2. The Government of India is directed to release to the State Governments adequate funds under the Scheme in a timely manner so that the 'workforce' is paid its wages well in time. It is regrettable that the pending wage bill for 2015-16 was cleared only during the pendency of this petition. The Government of India must shape up in this regard.
>
> 3. The Government of India is directed to ensure that compensation for delayed payment is made over to the workers whose wages have been delayed beyond 15 days as postulated by paragraph 29 of Schedule II of the NREG Act and the Guidelines for Compensation formulated pursuant thereto.
>
> 4. Both the State Governments and the Government of India are directed to make all efforts to encourage needy persons to come forward and take advantage of the Scheme. A success rate below 50% is nothing to be proud of.
>
> 5. The Government of India is directed to ensure that the Central Employment Guarantee Council is immediately constituted under Section 10 of the NREG Act. In any event, the Central Employment Guarantee Council should be constituted within a maximum of 60 days from today.
>
> 6. The Government of India is directed to proactively request the State Governments to establish the State Employment Guarantee Council under Section 12 of the Act within a period of 45 days from today. The effective implementation of the NREG Act will certainly not be possible unless these monitoring and reviewing authorities faithfully and urgently established by the Government of India and the State Governments.

7.Since the NREG Act is a social welfare and social justice legislation the Government of India must ensure that its provisions are faithfully implemented by all concerned."

JUDGMENT

Madan B.Lokur,J.,

78. In three earlier decisions concerning the prevailing drought or drought-like situation, we had stressed the obligation of the Government of India complying with all the provisions of the laws enacted by Parliament, namely, the Disaster Management Act, 2005, the National Food Security Act, 2013 and the Mahatma Gandhi National Rural Employment Guarantee Act, 2005. This will, of necessity, require establishing and constituting bodies and authorities provided for by law and making available the necessary finances for implementing and abiding by the law. The State cannot say that it is not bound to follow the law and cannot adhere to statutory provisions enacted by Parliament and create a smokescreen of a lack of finances or some other cover-up. The rule of law binds everyone, including the State.

79. In this decision, we concern ourselves with the remaining substantive issues raised by the petitioner Swaraj Abhiyan.

Relief for Crop Loss

80. The grievance of Swaraj Abhiyan is that the 'Crop Input Advance' or the 'Agricultural Input Subsidy' offered by the Government of India is far too low and in the event of a drought, the monetary relief (compensation or ex gratia) received by a farmer does not even cover the cost of cultivation of crops. Reference is made to the cost of cultivation of some principal crops in India relating to 2015-16 (average 2010-11 to 2012-13) obtained from the Comprehensive Scheme for Studying the Cost of Cultivation of Principal Crops in India by the Directorate of Economics and Statistics in the Ministry of Agriculture. By way of illustration, it has been pointed out that in respect of some Kharif crops such as paddy, the cost per hectare is Rs. 42,441; for maize it is Rs. 31,492 per hectare; for jowar it is Rs. 27,292 per hectare; for bajra it is Rs. 19,558 per hectare.

81. According to the petitioner, in terms of the norms of assistance from the States Disaster Response Fund (SDRF) and the National Disaster Response Fund (NDRF) the input subsidy where the crop loss is 33% and above for agriculture crops, horticulture crops and annual plantation crops is Rs. 6,800/- per hectare in rainfed areas and restricted to sown areas; Rs.13,500/- per hectare in assured irrigated areas, subject to minimum assistance not less than Rs. 1,000 and restricted to sown areas. Reference in this regard is made to a letter dated 8 th April, 2015 issued by the Ministry of Home Affairs (Disaster Management Division). This is said to be clearly insufficient.

82. On these broad facts, the first prayer made by the petitioner is that the relief or subsidy is extremely low and only where the crop loss is 33% and above. The amount should be realistic and there is no reason why an arbitrary figure of 33% of crop loss should be fixed. It is submitted that the subsidy is a safety net for farmers in times of distress and therefore the compensation should be far more realistic in the event of a failed crop.

83. The second prayer is connected with the first prayer and is to the effect that farmers should be given immediate relief for crop loss for the year 2015-16. The relief or subsidy should not be only adequate but should also be given timely with the entire process being transparent so that there is no allegation of corruption.

84. In response, the Union of India submits that under Section 46 of the Disaster Management Act, 2005, the Central Government has constituted a National Disaster Response Fund (NDRF) for meeting any threatening disaster situation or disaster. This is exclusively for the purposes of alleviating the adverse impact of a disaster. Similarly, under Section 48 of the Disaster Management Act, the State Governments have constituted a fund called the State Disaster Response Fund (SDRF).

85. The 14th Finance Commission has recommended an allocation of Rs. 61,219 crores as the aggregate corpus for the SDRF for the period 2015-20. The norms for providing financial assistance have been revised on 8th April, 2015 (as mentioned above) and the Agricultural Input Subsidy that was earlier Rs. 4,500 per hectare with the crop loss being 50% and above has since been revised upward by an order dated 8 th April, 2015 to Rs. 6,800 per hectare where a crop loss is 33% and above in respect of rainfed areas. Similarly, there has been an upward revision in respect of irrigated areas and perennial areas. It is therefore submitted that adequate provision has been made in this regard and the State Governments, even in the drought affected States, are entitled to utilize the funds available in terms of the norms laid down.

86. It is further submitted that in addition to the amount recommended by the 14th Finance Commission towards the SDRF, the Government of India has also approved a sum of about Rs. 12,774 crores from the NDRF to the State Governments in the grip of drought. This amount is also considerably enhanced from the amount made available in previous years.

91. It is further submitted that the norms are not a compensatory measure but are a measure of immediate relief. Therefore, to require payment of the exact amount of subsidy as determined by the Directorate of Economics and Statistics in the Ministry of Agriculture would not be appropriate.

92. With regard to the funds in the NDRF, it is submitted that the basis of the fund is the estimated tax revenue collection in the form of National Calamity Contingency Duty imposed on Union Excise and Customs and releases are made to the State Governments by the Ministry of Finance of the Government of India from this provision.

Fodder Banks

93. The grievance of the petitioner in this regard is that even though a Fodder Bank has been established under the Centrally Sponsored Fodder and Feed Development Scheme and the National Mission for Protein Supplements for the areas notified as drought affected in 2012, the benefits under this Scheme and Mission have not been extended to all drought affected areas in the country for the year 2015-16 and 2016-17. It is prayed that the Scheme and Mission be extended to all drought affected areas and there should be no financial cap on support for this component. It is further submitted that in anticipation of drought the Union of India had issued a detailed Advisory on 12th September, 2012 and that should be implemented in letter and spirit.

94. The purpose of the Fodder Bank is to meet the requirement of livestock in areas notified as drought affected. Fodder Banks are expected to facilitate procurement and storage of fodder from surplus areas or areas where rainfall is satisfactory and this fodder can be than distributed to cattle camps and deficient areas. To reduce the cost of establishment of a Fodder Bank, it appears to have been recommended that low capacity tractor mountable fodder block machine should be used as far as feasible.

95. The prayer of the petitioner in this respect is for the effective management of the Fodder Banks in the drought affected areas and for the establishment of Fodder Banks where no such bank has been established in a drought affected area.

96. The response of the Union of India is that apart from the above-mentioned Scheme and Mission, the Department of Animal Husbandry, Dairying and Fisheries is implementing the National Live Stock Mission and one of the sub-missions of this Mission is feed and fodder development. The State Governments can avail financial assistance under the sub-mission.

97. In addition, the Central Government has approved an Additional Fodder Development Programme as a special scheme of the Rashtriya Krishi Vikas Yojna for the year 2015-16 to mitigate the adverse impact of drought in drought affected districts/blocks of the country. Funds have been allocated for this purpose to various States as per the cost norms. Crop Loan Re-structuring and Relief

98. In this regard, the submission of the petitioner is that deferment of arrears and re-structuring of loans is an important aspect of relief for the drought affected farmers and necessary directions should be given to Rural and Cooperative Non-Scheduled Banks, Scheduled Banks including Nationalized Banks etc. to abide by the guidelines issued by the Reserve Bank of India. The State Level Bankers Committees have considerable discretion in the matter of deferment of arrears and re-structuring of loans with the result that re-structuring has not taken place as per the guidelines in several States. The prayer of the petitioner therefore is to have a more realistic deferment of arrears and re-structuring of loans by all the concerned banks, particularly in respect of farmers in drought affected areas.

99. In response, it is stated by the Union of India that the Reserve Bank of India has issued a Master Circular on 1st July, 2015 (updated up to 21st August, 2015) while NABARD has

issued a circular on 26th August, 2015 addressed to all Cooperative Banks and Regional Rural Banks recommending a moratorium of one year in re-structuring the loans of borrowers affected by a natural calamity. However, over-due loans are not included since they are not attributed to a natural calamity. Notwithstanding this, there is no prohibition on any bank from re-structuring any loan including any over-due loan subject to the guidelines of the Reserve Bank of India and in accordance with their internal policy guidelines.

Discussion and conclusions

100. It is quite apparent from the submissions made and the reliefs claimed that essentially the concerns raised pertain to policy, whether economic and fiscal policy or policy impacting on drought effected persons. We are certainly not equipped to commend the view expressed by the petitioner or the view expressed by the State on issues of this nature. It is really for experts in the field to take a call, for example, on what percentage of crop loss deserves to be addressed, whether the crop loss should be 33% and above or 50% and above. The quantum of monetary relief to be given to a farmer is again a matter of policy.

101. Similarly, issues regarding establishing fodder banks or restructuring bank loans, the extent to which restructuring should be carried out are all issues that are required to be decided by experts. Even then, within the community of experts, there are likely to be differences of opinion. While one set of experts might fix crop loss for relief at 50% another set of experts might consider the crop loss for relief above or below 50%. This being the position, there cannot be any judicially manageable standards for determining issues of policy and it would be hazardous if not dangerous for us to venture into such areas when we lack the expertise to do so.

102. This Court has, on several occasions, dealt with issues of policy whether having an economic and fiscal flavour or even mundane matters of policy including, for example, transfer of government servants from one place to another. This Court has not interfered in such matters unless the policy is demonstrably perverse.

103. Fairly recently, in *Essar Steels Ltd. v. Union of India (Supra)* this Court summed up the position in law as follows:

> "Broadly, a policy decision is subject to judicial review on the following grounds:
>
> (a) if it is unconstitutional;
>
> (b) if it is de'hors the provisions of the Act and the Regulations;
>
> (c) if the delegatee has acted beyond its power of delegation;
>
> (d) if the executive policy is contrary to the statutory or a larger policy."

103. There are several decisions to the same effect including, for example, another recent decision of this Court *Centre for Public Interest Litigation v. Union of India* [8] and some

earlier decisions such as *M.P. Oil Extraction v. State of Madhya Pradesh*[9] , *Villianur Iyarkkai Padukappu Maiyam v. Union of India*[10] and of course the Constitution Bench decision in *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India* [11]. For the present purposes, the summation provided in Essar Steels is quite clear:

> "Executive policies are usually enacted after much deliberation by the Government. Therefore, it would not be appropriate for this Court to question the wisdom of the same, unless it is demonstrated by the aggrieved persons that the said policy has been enacted in an arbitrary, unreasonable or mala fide manner, or that it offends the provisions of the Constitution of India."

104. Therefore, the issues raised by the petitioner should actually be looked at from the point of view of implementation of a policy and monitoring its implementation. In our opinion, in the process of implementation and monitoring, what is important is for the Union of India and the State Governments to set up watch-dog committees or ombudsmen to see that the polices framed are faithfully implemented. There is little utility in knee-jerk reactions and stumbling along from one situation to another.

105. Ad hoc measures really do not serve any purpose and eventually the consequence of an ad hoc reaction tends to travel to this Court for a response. The one possible solution appears to be for the Union of India and the States to set up their respective watch-dog committees that will specialize in certain disciplines for the purposes of implementation and monitoring the schemes and policies framed by the Union of India and the State Governments. A policy might be acceptable and worthy, but often it is the effective implementation and monitoring that is lacking.

106. Under the circumstances, we are inclined to issue only one direction in respect of the three issues raised by the petitioner which is to direct the concerned authorities in the Union of India, the State Governments and the Reserve Bank of India and other banks to religiously implement their policies since they are ultimately intended for the benefit of the people of our country and not for the benefit of any stranger.

Court Commissioners

107. Learned counsel for the petitioner insists on the appointment of Court Commissioners to oversee the implementation of the various directions issued by us. Reference is made by learned counsel to what is commonly called the Right to Food Campaign which resulted in the appointment of Commissioners by this Court to report on the functioning and improvement of the public distribution system. Some useful and valuable suggestions were certainly given by the Court Commissioners and which were implemented under the directions of this Court. Learned counsel for the petitioner submits that it is necessary for us to direct the appointment of Court Commissioners so that the provisions of the various statutes under consideration are faithfully implemented and the various schemes framed by the Government of India and the State Governments are implemented in their true spirit.

108. Learned Additional Solicitor General vehemently opposes this plea on the ground that the appointment would serve no useful purpose. He submits that it is not as if the officers in the Government of India are not doing their work. While there may be some laxity or slackness on occasion but that cannot be generalized to necessitate some external authorities to monitor the functions of the officers of the State. He submits that there are internal checks within the administration which ensure that governance is carried out for the welfare of the people and in a transparent and accountable manner.

109. petitioner and the learned Additional Solicitor General and find that the system of in-house checks has already been statutorily recognized for all the issues that we have dealt with in this case. For example, the Disaster Management Act, 2005 constitutes authorities and bodies like the National Disaster Management Authority, the National Executive Committee etc. to ensure that the Act is faithfully implemented and measures taken are reviewed and monitored from time to time. Similarly, the National Food Security Act, 2013 and the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 also mandate the constitution and establishment of bodies and authorities under the statute to review and monitor the implementation of the statute and the schemes or programs thereunder.

110. It is another matter altogether that some provisions of these statues have been converted into a dead letter and various authorities under these statutes have not yet been constituted compelling us to comment on the failure of the Executive branch of the Government of India and the State Governments to faithfully implement the law enacted by Parliament. We have also given directions in this regard and we certainly expect a favourable response to the directions issued and their compliance. For the present, therefore, we do not see the need for the appointment of any Court Commissioner.

Continuing mandamus

111. We are firmly of the view that the principle of continuing mandamus is now an integral part of our constitutional jurisprudence. There are any number of public interest petitions in which this Court has continued to monitor the implementation of its orders and on occasion monitor investigations into alleged offences where there has been some apparent stonewalling by the Government of India. A few years ago, one of us had occasion to advert to the requirement of a continuing mandamus as a part of our jurisprudence. It is not necessary to repeat the views expressed therein.

112. Under these circumstances, we agree with learned counsel for the petitioner that this petition ought not be disposed of but should be kept pending and the possibility of a continuing mandamus being issued ought to be kept open to ensure that the directions that have been given are complied with by the Government of India as well as the State Governments.

113. We adjourn this case to 1st August, 2016 at 2.00 p.m. and direct the Union of India to file a status report on or before 25 th July, 2016 stating the action taken by the Government of India on the various directions that we have given in this case on different dates.

Judgment Referred.

[1]*(1986) 2 SCC 0068*
[2]*(2010) 3 SCC 0402*
[3]*(1980) 4 SCC 0162*
[4]*(1981) 1 SCC 0627*
[5]*(1996) 4 SCC 0037*
[6]*(1990) 1 SCC 0520*
[7]*(1983) 1 SCC 0525*
[8]*C.A.No.4610 of 2009*
[9]*W.P.(Civil)No.382 of 2014*
[10]*(1997) 7 SCC 0592*
[11]*(2009) 7 SCC 0561*
[12]*(1992) 2 SCC 0343*