

Chandla v. State of Haryana [(1994) 4 SCC 460] expanded the scope of Article 21 and held that 'right to livelihood' is integral part of the 'right to life'. Taking cognizance of the stark reality that majority of the Indian population (about 76%) is residing in rural areas and unemployment was the greatest challenge before any State or the Central Government, the Parliament decided to enact a law to provide rural employment to restricted persons as stated in such law. This resulted in enactment of the National Rural Employment Guarantee Act, 2005 (for short, 'the Act'). As per the preamble of the Act, it was an enactment to provide for enhancement of livelihood security of households in the rural areas of the country by providing at least 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 and incidental thereto. Even the object and reasons of this enactment demonstrate that objective of the legislation is to enhance the livelihood security of the poor households in rural areas and the Government including the State Government was required to prepare a scheme to give effect to the guarantee proposed under the legislation. Another paramount feature of the Act was that if an

eligible applicant is not provided work as per the provisions of this legislation within the prescribed time limit, it will be obligatory on the part of the State Government to pay unemployment allowance at the prescribed rate. This Act was to extend to whole of India and was to come into force on such date as the Central Government by notification in the official Gazette may appoint. This Act was later amended by Amending Act 46 of 2009 (w.e.f. October 2, 2009) and titled as 'Mahatma Gandhi National Rural Employment Guarantee Act, 2005'.

A Constitution Bench of this court in the case of *Secretary, State of Karnataka v. Uma Devi* [(2006) 4 SCC 1], while dealing with the question that the persons appointed under the provisions of the Act would be entitled to regular appointment, rejected the claim of the Respondents for regularisation and made certain significant observations which read as under :

“51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at

the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.”

Thus, in the present petition, this Court has to examine the relief claimed within the provisions of the Act and the principles of law stated by the Court in the referred judgments.

The present writ petition had been instituted by Centre for Environment and Food Security for issuance of appropriate directions to the respondents (Union of India and all the States were impleaded

as respondents) for formation of appropriate schemes and proper utilization of funds allocated for the said purpose and to achieve the object of the Act. The petitioners claimed to have carried out a survey, copy of which is annexed as 'Annexure-A' to the Writ Petition showing that neither the schemes framed under the provisions of the Act nor the provisions of the Act are being properly implemented. The funds allocated are also not being properly utilized. In fact, the allegation is that the funds are being siphoned by corrupt officials and officers, thereby, denying lakhs of poor people their fundamental right to livelihood. It was, thus, prayed that the Court should issue appropriate directions to ensure proper and equitable functioning of the Act and the scheme envisaged thereunder. Further, they prayed that social audit of all activities undertaken and executed under the auspices of the Act and the schemes made therein should be conducted properly and the information in this regard should be posted on the website. The Court should also formulate some guidelines for paying the workers their wages in a bid to reduce the exchange of cash to a minimum and to ensure that transfer of funds to the workers is through a safe and easily traceable route. Besides praying for some other reliefs, prayer is also made to order CBI probe

or thorough inquiry by a special commission of inquiry appointed by the Court in the scam brought out in the said survey, particularly, with reference to Orissa.

Before, we proceed to examine the response of the respondents and consequential directions that the Court should pass, it will be necessary to examine some of the relevant provisions of the Act. The Act mandates that the Central Council and State Councils should be constituted in terms of Sections 10(1) and 12 of the Act. Chapters II and III deal with guarantee of employment in rural areas, employment guarantee schemes and unemployment allowances. Section 3(1) casts an obligation upon the State Government to provide to every household, whose adult members volunteer to do unskilled manual work, employment for not less than one hundred days of such work in a financial year in accordance with the scheme made under the Act in such rural area in the State as may be notified by the Central Government. Section 3(4) further requires that the Central Government or the State Government may within the limits of its economic capacity and development, make provisions for securing work to every adult member of a household under a Scheme for any period beyond the period guaranteed under sub-section (1), as may

be expedient. In terms of Section 4, every State Government shall, within one year from the date of commencement of this Act, by notification, make a scheme for complying with the provisions of Section 3. Proviso to this Section requires that until any scheme is notified by the State Government, the Annual Action Plan or Perspective Plan for the *Sampoorna Grameen Rozgar Yojna* (SGRY) or the National Food for Work Programme (NFFWP) shall be deemed to be the action plan for the scheme. It is obligatory on the part of the State to provide in the scheme the minimum features specified in Schedule I. Section 6 carves out an exception to the provisions of the Minimum Wages Act, 1948 and the Central Government has been empowered to specify, by notification, the wages different than that Act which shall not be at a rate less than Rs.60/- per day. Section 7 is another important provision of the Act which requires that where an applicant is not given employment within 15 days of the receipt of his application seeking employment, he shall be entitled to receive daily unemployment allowance. This allowance shall cease on attainment of the conditions stated in Section 7(3). Under Section 8(1), obligation is placed on the Programme Officer that if he is not in a position to disburse the unemployment allowance, in time or at all,

for any reason beyond his control, he is required to report the matter to District Programme Coordinator and to even display the same on the notice boards. The Legislature, in its wisdom, has opted not to leave the matter at that stage but have made a provision where the State Government, under Section 8(3), is required to take all measures to make the payment of unemployment allowance to the concerned household as expeditiously as possible. Section 9 declares the circumstances where a person would be disentitled to receive unemployment allowance in certain cases. They are very restricted circumstances like where he does not accept the employment provided, does not report for work within fifteen days of being notified by the Programme Officer and continuously remains absent from work without obtaining a permission from the concerned implementing agency for a period of more than one week or remains absent for a total period of more than one week in any month. Thus, the scheme of the Act clearly contemplates a statutory obligation upon the State and the concerned departments to ensure due compliance of the scheme framed and, in absence thereof, to ensure that the provisions of the Act are adhered to. The object of the Act is clear that the Legislature, in unequivocal terms, has expressed its

intent to ensure employment and payment of allowances to the respective household and the exception is primarily founded on the unwillingness of the recipient to work.

The functions of the Central Council have been spelt out in Section 11 while that of the State Councils in Section 12(3). It is a statutory obligation on these Councils to advise the Government on all matters concerning the scheme and its implementation in the State including promotion of widest possible dissemination of information about the scheme made under this Act, establishment of central evaluation and monitoring system etc. In other words, this whole machinery has been set up to ensure smooth and effective implementation of the provisions of the Act. Besides constituting these Councils which are expected to function at higher level, the Legislature has required constitution of bodies and functionaries at the grass root level, i.e. District, intermediary and *Gram Panchayat* level. In terms of Section 17, the *Gram Sabha* shall monitor the execution of the work within the *Gram Panchayat* and there shall be regular social audit of all the projects under the scheme. In terms of Section 19, the State Government is required to make rules and determine appropriate grievance redressal mechanisms at the Block

and the District levels for dealing with any complaint by any person in respect of implementation of the scheme. Chapter-V requires establishment of National and State employment Guarantee Funds and Audit. In other words, these funds are to be created for ensuring the effective implementation of the schemes. Under Section 20(2), the Central Government can credit, by way of grants or loans, such sums of money as the Central Government may consider necessary to the National Fund which will be utilized in such manner and subject to conditions, as may be provided by that Government. The intention of the Legislature is that it wants the provisions of the Act to be enforced and fix responsibility on the persons causing impediments in its execution. Those who act contrary to the provisions of the Act are liable to conviction and fine under Section 25 which may extend to Rs.1000/-. The Central Government is further empowered to issued directions under Section 27 of the Act for effective implementation of the provisions of the Act and has powers to examine any complaint regarding issue or improper utilization of funds granted under this Act in respect of any scheme and to take remedial measures and even to stop release of funds to the scheme in such condition. The provisions of this Act have been given precedence and shall prevail

notwithstanding anything inconsistent therewith in any other law for the time being in force or even in any instrument having effect by virtue of such law.

The legislative scheme of the Act clearly places the 'right to livelihood' at a higher pedestal than a mere legal right. Conjunct reading of the afore referred provisions of the Act demonstrates that the legislature desired to provide minimum one hundred days of employment to one person in the family to ensure that the members of the family do not starve and are able to make their ends meet with reference to the bare minimum requirements for existence. The Act provides constitution of fora and functionaries right from the higher levels in the Central and State Governments to the grass-root levels at Block and *Panchayat*. The powers of the Central Government are very wide. They have to ensure that there is proper utilisation of funds allocated and in the event of any misappropriation or siphoning of such funds the Central or the State Governments shall not only to examine such complaints but is commanded by law to stop the financing to such scheme and take remedial measures immediately. Where persons are found contravening the law they are required to be punished in accordance with law. Central and State Governments

have been vested with wide powers only with the purpose to ensure that the schemes under the Act are implemented appropriately, effectively and the money in the form of allowances reaches the poorest strata of the society. The ones, irrespective of their stature in the hierarchy of the Government, who are obstructing the implementation of the law needs to be dealt with and punished as per the provisions of the Act.

As already noticed, in the report of the survey conducted by the petitioner, reference to various States has been made with respect to malfunctioning and improper implementation of the schemes framed under the provisions of the Act. Since State of Orissa is accused of maximum violations and complete non-adherence to the law, for the present, we are dealing only with the State of Orissa as a defaulting State while leaving the others. The allegations relate to siphoning of funds, non-framing of guidelines and improper declaration and implementation of the schemes in that State. Instead of referring to the allegations in greater detail it will be appropriate for us to refer to the relevant portions of 'Annexure-A' to the Writ Petition which reads as under:

“You may have heard about the loopholes and irregularities in implementation of the National Rural Employment Guarantee Act (NREGA), the biggest anti-poverty scheme in the history of India. The State of Orissa, however, does not have any loopholes or irregularities in the implementation of this high-profile rural job scheme. In a random survey conducted in 100 villages of Orissa’s 6 districts, we found only blackholes and serious irregularities as the only regular thing in all these villages. Our calculations suggest that about 75 per cent of the NREGA funds spent in Orissa have been siphoned and pocketed by the government officials and this loot has been very participatory and organized.

This survey was conducted during May-June 2007 by Delhi-based Centre for Environment and Food Security (CEFS) to access and evaluate the performance of National Rural Employment Guarantee Scheme (NREGS) in the state of Orissa. The survey was carried out in 100 villages spread over six districts of KBK (Kalahandi-Bolangir-Koraput) region, namely; Bolangir, Nuapada, Kalahandi, Koraput, Nabarangpur and Rayagada.

The findings of CEFS survey are shocking, scandalous and outrageous. The Rural Employment Guarantee Scheme in Orissa has been virtually hijacked by officials responsible for the implementation of this scheme. Our survey findings have revealed that there is participatory loot, plunder and pillage in Orissa’s rural job scheme. There is open loot of taxpayers’ money, there is plunder of poors’ right to guaranteed wage employment for 100 days and there is pillage

of every single norm of democratic governance and administrative accountability.

It is shocking to note that we could not find a single case where entries in the job cards are correct and match with the actual number of workdays physically verified with the villagers. Out of the 100 sample villages covered for this survey, 18 villages have not received any job card, 37 villages have not received any job under NREGS even after 16 months of launch of the scheme, 11 villages have received neither job cards nor any job, Job cards of 23 villages were lying with VLWs (Village Level Worker) and JEs (Junior Engineer) for more than 6-8 months against the will of card holders.

In 25 villages, only half, one third or partial wage payments were made. In 20 villages, we found scandalous difference in the number of workdays recorded in the job cards and the number of actual workdays given to the workers. There are 3 villages where no wage payments have been made even after 4-8 months of the works done. We found 6 villages in Kashipur block of Rayagada district where NREGS work was being done without any job cards being issued to the villagers.

As per the NREGA implementation Status Report for the Financial Year 2006-07 (<http://nrega.nic.in/state/nregampr.asp>), the total number of job cards issued in Orissa was 2593194. Orissa was able to provide 7.99 crore persondays of employment to 13,94,169 households spread over 19 districts of the state. In other words, 13,94,169 families have got an average of 57 days of wage employment. This includes 3.93 crore

persondays of employment provided to Adivasis (STs) and 1.89 crore persondays of employment provided to Dalits (SCs). Orissa also claims that 1,54,118/families in the state completed 100 days of wage employment during 2006-07. But, our experience in 100 villages of Orissa suggests that all these claims are bogus and manufactured only in official records in order to siphon NREGS funds.

Our back of the envelope calculations suggests that less than 2 crore persondays of employment has been provided on the ground and more than 6 crore persondays of employment has been provided only in the pages of false job cards and fabricated muster rolls. We could not find a single family in the 100 sample villages who had actually got 100 days of wage employment. We found very few families who had got 40-60 days of wage employment. The rest of the families, if at all they have got any employment, it is mostly between 5 to 21 days. However, online job cards of most of these households have false and fabricated job and wage entries for 108 days, 104 days, 102 days, 100 days, 96 days, 90 days, 84 days, 72 days, 65 days, 60 days, 52 days and so on. This is the way Orissa Government has “successfully” spent Rs.733/- crore and provided about 8 crore persondays of employment.

Our back of the envelope calculations suggest that out of Rs.733 crore spent in Orissa during 2006-7, more than 500 crore has been siphoned and pocketed by the government officials of executing agencies. In other words, less than 25 per cent of the NREGS funds have reached the targeted

population and more than 75 per cent have been eaten up by *sarkari babus*. There are thousands of villages in Orissa where more than 80-90 per cent of NREGS funds have been misappropriated by the executing officials.

According to the Government of Orissa, each of the needy households in 19 districts of the state was given on an average 57 days of wage employment under NREGA during 2006-7. Our calculations suggest that only about 5 days of average employment has been given to the needy families in the 19 districts of Orissa where NREGA was implemented during 2006-7. How have we arrived at the figure of 5 days of average employment? It is very simple.”

The State of Orissa has filed two different reply affidavits. First affidavit was filed on 10th July, 2009 while the second on 29th April, 2010. In these affidavits, the averments made in the said survey report and the Writ Petition has been denied and it is averred that the schemes are appropriately being implemented. It is stated that it is not correct to say that 25% of the person-days have been provided and 75% of the person-days are only shown in paper is not at all correct, in view of the involvement of *Palli Sabha*, *Gram Sabha*, G.P., Block and *Zilla Parishad* as well as the district administration including Collectors. Further by creating 799 lakhs of person-days assets have been created like tanks, roads, plantations, forestry etc.

The allegation with regard to partial wage payment, discrepancy in the number of working days recorded in the job cards vis-à-vis the number of actual work days provided to the workers and further averment with respect to Kasipur block, Raygara district regarding execution of NREGS work without issuing any job-card are stated to be false. It is, however admitted that for the year 2006-07 a sum of Rs. 890 crores was allocated and Rs. 733 crores has been utilized. It is denied that any amount thereof was misappropriated. In the latter affidavit attempt has been made to show as to how the suggestions made by the petitioner in their affidavits in relation to social audit, transparency and grievance redressal and unemployment allowances are to be dealt with. Regarding issuance of guidelines for proper implementation of the schemes it was stated that once the operational guidelines framed by the Central Government are made mandatory, which are to be implemented by the State Government, it would tell upon the federal character of the country and the State Government should have no scope to improve upon the implementation apparatus by infusing some innovations during execution.

Affidavits have been filed by the Union of India on three different occasions. Union of India claims to have notified the wage rate in relation to different States and that rate has now been revised to Rs. 100/- for the States who have approached the Ministry of Rural Development for revision of the same. According to Central Government it has been meeting the cost of implementing the Act since its enactment. For strengthening the professional support for transparency and accountability, the limit of administrative expenses has been enhanced from 4% to 6% in March, 2009. Funds released to the State Governments approximately constitute about 70% as wage component and 30% as material component. In the year 2009-10 Central release accounted for Rs. 33,506 crores out of total available fund of Rs. 49,529 crores. It is stated that the provisions of the Act are being implemented. In the latest affidavit it is averred that amendments have already been made to Schedule I to the Act with regard to social audit to strengthen transparency and accountability. Instructions are stated to have been issued to the State Government for better implementation of the schemes and efforts are also being made to integrate the Management Information System (MIS) with the Post Office so that the amounts can be directly credited into the

Post Office accounts. In another affidavit reference has been made to various provisions of the Act and all that is sought to be reflected therein, is that schemes are operating properly and matters were also discussed in the meetings of the Chief Secretaries and Cabinet Secretaries on 12th April 2008. It is interesting to note that in Annexure R-1 to this affidavit it has been stated that newspaper reports appearing in the Business Standard featuring allegation made by the petitioner NGO were obtained and it was noticed that these were allegations of very serious nature. The matter was taken up with the Chief Secretary of Government of Orissa to constitute a High Level Fact Finding Committee. Director General, National Institute of Rural Development, Hyderabad was to take up evaluation of implementation performance of the schemes. A preliminary report was received from the State Government which contemplated further enquiry at different levels. Some reports were received and the State Government was requested to support its findings by facts and figures. The inquiry report of Fact Finding Committee was forwarded by the State Government on 28th October, 2007 and on 7th December, 2007 the State Government was reminded to indicate issue by issue investigation done which should reflect the status on each issue

specifically. The Fact Finding Team's report received from the field was submitted to the State Government but was probably incomplete. This affidavit was filed in July, 2008 but no details have been furnished as to what transpired during the period 2007-08.

It is clear from the affidavits filed on behalf of the State of Orissa as well as Union of India that the allegations of the petitioner are not without any basis. Extent of their correctness may be a question to be examined separately but the manner in which the affidavits have been filed on behalf of the concerned State as well as the Union of India do not, statistically, deny the allegations as no figures to the contrary have been provided. The inquiry committee which had been appointed for quite some time has failed to submit any final report to the competent authority. The interim report which has been submitted with respect to the 'action taken' by the Union of India is again a matter which has been left to imagination of all concerned. It is nowhere stated in these affidavits that whether, even a single officer/official, till today, has been found to be guilty of contravening the provisions of the Act or causing impediments in effective implementation of the schemes. This petition itself has been pending since the year 2007 and the records are available to the

respective respondents, still no efforts have been made by the concerned authorities to place on record any reports to show that the averments made by the petitioner NGO in the Writ Petition, and particularly 'Annexure-A' to the same, are absolutely incorrect.

To us, from the record available, it appears that all is not well in the State of Orissa with regard to implementation of the schemes framed under the provisions of the Act. In the affidavit filed on behalf of the Union of India as well as the States, the allegations in regard to irregularities, diversion of funds, improper maintenance of records and non-implementation of schemes have been vaguely denied without providing any specific data based explanation in response thereto. The enquiries which were initiated years back have not culminated into any final orders or issuance of directions in regard to proper implementation of the schemes. This clearly shows default on the part of the Union of India as well as the States in discharging their statutory obligation of achieving the public purpose that is sought to be achieved under the provisions of the Act. There seems to be serious irregularities in the effective implementation of such schemes. A statutory obligation under the provisions of the Act, i.e. right to livelihood which has also been declared by the courts as an integral

part of Article 21 of the Constitution is being frustrated by the very functionaries who are responsible for proper and effective implementation of the Act.

To add to all this, we also need to notice that nobody even appeared on behalf of State of Orissa, before the Court on 13th December, 2010, when the case was taken up for hearing. Union of India claims to be releasing funds to the State of Orissa for purposeful implementation of the schemes but has miserably failed to exercise its supervisory and investigative powers including the power to issue directions under different provisions of the Act. From the affidavit filed, it is clear that there is no record to substantiate proper utilization of the released funds and whether or not they have been distributed as per the schemes or even have been diverted towards other expenses of the State. It is expected of the Union of India to create proper check and balances by issuance of directions, framing of rules and issuing guidelines so that there is no contravention of the statutory provisions and the laudable legislative purpose is not defeated by inactions and/or improper actions. Be it the State Government or the Union of India, accountability, transparency and effective implementation of the statutory scheme are the established

canons which would govern their action. To implement the legislative intent is the primary duty of all concerned.

In view of the above, we are constrained to observe that the Union of India as well as the State of Orissa, prima facie, have failed to effectively and purposefully implement the provisions of the Act. This has resulted in the deprivation of the entitled class from getting employment and receiving the allowances due to them in terms of the statutory guarantees available to them under the Act.

Thus, we are compelled to issue the following directions for strict compliance by the concerned authorities :

1. The compliance report shall be filed in the form of affidavit which shall be sworn by the Additional Secretary, in-charge for compliance of the provisions of the Act in the Ministry of Rural Development, Government of India, New Delhi and the Chief Secretary, State of Orissa within three weeks from today.
2. The instances and figures referred to in the survey report submitted by the petitioner shall be specifically dealt with in that affidavit.

3. The affidavit should be filed positively within the stipulated time directed in this order and further we call upon both the Union of India and the State Government to show cause as to why there should not be a direction to the CBI to investigate this matter in accordance with law.

We also issue the direction that affidavits to be filed by the respective authorities shall, inter alia, but specifically answer the following points :

- (a) What is the extent of funds released by the Union of India to the State of Orissa for implementation of the schemes under the provisions of the Act for each of the year between 2006 to 2010?
- (b) To what extent and for what projects, the released funds have been utilized? Whether state of Orissa has given to the Central Government the requisite certificate of utilization?
- (c) Findings to be recorded whether any amount earmarked for any of the schemes under NREGA has been diverted to any other Head of Account including revenue account by State of Orissa.

- (d) How many applicants, of how many households, have been actually employed and have been paid allowances under the provisions of the Act?
- (e) The figures in terms of the above directions shall be provided for the period from 2006 to 2010.
- (f) Whether any social audit of the projects under the Gram Sabha has been conducted in terms of Section 17(2)? If yes, its detailed findings for the above mentioned period.
- (g) Whether all the authorities/officers/officials, from the higher levels in the Central Government or State Governments to the grass-root levels at District, intermediary and *Panchayats*, to ensure effective implementation of the schemes under the Act have been appointed? If no, reasons therefor.
- (h) Whether the Union of India or the State Government, in consultation with the Comptroller and Auditor General of India or otherwise, have conducted any general audit of accounts of the schemes at any level in terms of Section 24 of the Act? If the answer is in the affirmative, then details thereof, particularly,

the objections, if any, raised by the Auditors; if the answer is in the negative, then reasons therefor.

- (i) Whether the Central Government has issued any directions concerning utilization of funds under NREGA while disbursing the amounts to State of Orissa? Whether these have been complied with by State of Orissa?
- (j) Whether the Central Government has received any complaints about working of the schemes, utilization of funds, providing of employment and payment of allowances under the provisions of the Act? If so, what action has been taken in terms of Section 27(2) of the Act? It should be stated with complete statistics and data.
- (k) Whether the Union of India or the State of Orissa have, till date, found even a single official/functionary guilty of contravention in terms of Section 25 of the Act and whether any complaint has been filed in any Court of competent jurisdiction? If so, the result thereof.
- (l) The contents and the background of the complaints received and referred in 'Annexure-R1' to the affidavit filed by the Union

of India should be stated precisely. Why the enquiry reports as referred to in 'Annexure-R1' to the Affidavit of the Union of India of July 2008, no final reports have been prepared and submitted before this Court till date. Further, it shall also be stated as to why the findings of the interim reports referred in the said affidavit have not been placed before this Court. A complete summary thereof shall be annexed to the Affidavit.

Stand over for four weeks.

.....CJI.
(S.H. Kapadia)

.....J.
(K.S. Panicker Radhakrishnan)

.....J.
(Swatanter Kumar)

New Delhi;
December 16, 2010