

Daily Order

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CHIEF JUSTICE AND B.V.NAGARATHNA	WP 6435/2020	28/05/2020	<p>We must record here that when we commenced hearing of the matter, we were informed that the Apex Court is hearing a suo motu petition concerning the issue of migrant workers and the Apex Court was in the process of passing orders. We have taken up this petition today as we are dealing with specific factual issues arising in the State of Karnataka and as there is no order passed by the Apex Court which prevents the High Courts from dealing with the issue of migrants.</p> <p>2. Firstly, we are dealing with the issue of migrant workers who have applied to accommodate them on Shramik special trains to the States of their origin. It is pointed out across the Bar that there are approximately 9,13,742 migrant workers/their family members/associates who have registered on Seva Sindhu website for seeking transport to their respective States. The written submissions filed by the State today indicate that 2,52,252 persons have been transported by 177 Shramik special trains. Later on, this figure is corrected orally by pointing out that about 2,56,000 such persons have been transported by Shramik special trains. That leaves about 6,30,000 persons who have registered themselves for transport to their respective States.</p> <p>3. The process of transporting the migrant workers and their family members by Shramik special trains has commenced in the State of Karnataka from 3rd May 2020. Therefore, between 3rd May 2020 till yesterday (27th May 2020), 2,56,000 persons have been transported which is even less than one third of the total number of migrant workers/their family members who have been registered on Seva Sindhu website. It is not in dispute that the applications were required to be made for registration on</p>

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			<p>Seva Sindhu Website by those migrant workers who intended to go back to their respective States. We must bear in mind that all this was required to be done because as a consequence of lockdown, normal modes of transport were not available to the migrant workers to return to their States.</p> <p>4. Though several orders have been passed by this Court from time to time, as of today, the State has not placed on record any transparent and rational policy of selecting the persons out of those who have registered on Seva Sindhu website for being transported by a particular Shramik special train. It is not placed on record in what manner the persons registered on Seva Sindhu website are chosen to travel by a particular train.</p> <p>5. We are conscious of the fact that the State is required to deal with more than 9,00,000 such persons who wish to go back to their respective States. However, there is no policy in place which can be said to be fair and transparent for selecting the migrant workers to travel by a particular train to a particular destination.</p> <p>6. In paragraph 6 of the written submissions, it is stated that the Police Department identified 1,20,507 migrant workers across the Bengaluru City who are located in 736 migrant camps and arranged for their transport to their respective States. It is not clear whether this 1,20,507 migrant workers were registered on Seva Sindhu website. Even assuming that they were registered on Seva Sindhu website, it is not clarified by the State Government why they were given out of turn priority for returning to their respective States.</p> <p>7. By the order dated 12th May 2020, we had</p>

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			<p>directed the State Government to take steps to communicate in various forms an assurance to the migrant workers who are registered on Seva Sindhu website that the State will make all arrangements to transport them to their respective States. This was in the context of the fact that at one stage, the State Government decided not to allow any migrant worker to leave the State. The object was to ensure that there is no unrest and none of them should even attempt to walk upto their respective States. Even as of 28th May 2020, that assurance has not been communicated. Not only that the assurance was not communicated, paragraphs 3 and 4 of the written submissions filed today would reveal that though only the persons who were intending to go back to their States were told to register themselves on Seva Sindhu website, an exercise was again undertaken by sending SMS on the registered mobile numbers of all the registered applicants seeking their willingness or otherwise to travel by Shramik special trains. Messages were sent in Hindi and English languages requesting the recipients to confirm by typing 'YES' followed by last six digits of their registration number to a specified three digits number (161). Initially, a deadline was fixed to send the confirmation by 6.00 p.m. on 26th May 2020 which was extended to 6.00 p.m. till today (28th May 2020). It is also noted that there were also certain technical issues faced by Reliance JIO customers for sending confirmation and the said issues were later on resolved. Thus, knowing fully well that all the migrant workers who intended to go back to their respective States had registered themselves on Seva Sindhu website long back, instead of sending messages on their cell phones assuring that the State Government will make all possible efforts to send them back, messages were sent to more than 8,33,667 applicants calling for their confirmation. The confirmation was called for in a most complicated manner by calling upon them to type 'YES' followed by the last six digits of their registration number. Lakhs of migrant workers and their family members who have registered themselves on Seva Sindhu website</p>

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			<p>are in a very bad condition. Most of them may not be in a position to give reply as aforesaid even assuming that their cell phones are working. They have no income and they are looking to the State Government for daily food and all basic necessities of life.</p> <p>8. It is stated in the written submissions that only 55,464 persons have communicated their willingness to go back to their respective States. In the beginning of paragraph 3, it is stated that this huge exercise of sending SMS calling for confirmation was done to ascertain whether the persons who had registered on Seva Sindhu website are really interested to travel to their home States. Perhaps, the State wants to defend this peculiar action by pointing out that two Shramik trains which originated from the State of Karnataka to Uttar Pradesh prior to 26th May 2020 had some vacant seats.</p> <p>9. The data placed on record by the State Government shows that the State Government received confirmation of 5,179 persons that they intend to travel back to the State of Uttar Pradesh. Thus, it is prima facie apparent that some seats in the aforesaid trains were vacant as the State could not inform all those who intended to travel to Uttar Pradesh to use the facility. Therefore, this ground for doing this exercise of calling for confirmation is not available to the State.</p> <p>10. Prima facie, we are of the view that this exercise undertaken by the State of seeking confirmation from the migrant workers in a complicated manner appears to be an exercise undertaken to exclude large number of persons who have already registered themselves on Seva Sindhu website to go back to their respective States.</p>

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			<p>11. We are conscious of the fact that making arrangements for more than 9,00,000 people to travel back to their respective States is a huge exercise and there are bound to be some glitches in the process of transporting them back to their respective States. However, what we find is a complete absence of policy to choose the eligible persons from those who have registered on Seva Sindhu website for traveling by a particular Shramik special train. The lack of policy is evident from the fact that the police in Bengaluru City picked up about 1,20,000 migrants and ensured that they go back to their respective States. Apart from the fact that a fair and transparent policy to select the eligible applicants out of those who have registered on Seva Sindhu website is not placed on record, an attempt is made to create confusion in the mind of the migrant workers who have already registered on the website by seeking their confirmation by SMS in a most complicated manner. Moreover, notwithstanding the order dated 12th May 2020, even an assurance is not communicated to lakhs of applicants that the State is taking all possible steps to arrange for their transport in due course. Now, the State cannot come out with an excuse that it is not possible to communicate such assurance as they have undertaken the exercise of sending SMS to all registered mobile numbers of the applicants registered on Seva Sindhu website. While we say this, the learned Additional Advocate General states that the State Government has no intention of excluding anyone who is registered on Seva Sindhu website and the State will take immediate steps to communicate an assurance to all those who have registered on Seva Sindhu website that the State will make all possible arrangements to enable their transport back to their respective States.</p> <p>12. Prima facie, it appears to us that the State cannot give out of turn priority to 55,464 persons</p>

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			<p>who have communicated their willingness by sending SMS. The reason is that there is complete absence of a transparent and fair policy to choose persons out of registered applicants.</p> <p>13. Though going by the stand taken by the State Government, arrangements are required to be made for transporting remaining 6,30,000 migrant workers and their family members to their respective States, as of today, the State has submitted requisition to the Railways to arrange 22 trains to the State of West Bengal from Bengaluru, 4 trains to Bihar from Bengaluru, one train to Assam from Mysuru and one train to Odisha from Koppal. Thus, the State has submitted requisitions only for running of 28 Shramik trains which will accommodate 1,500 migrants each. The State has not placed on record any systematic plan to facilitate transport of more than 6,00,000 people who are yet to return to their respective States.</p> <p>14. It is pointed out across the Bar that today one Shramik train will definitely run today from Bengaluru to West Bengal. The State will place on record the manner in which it has selected the persons who are going to travel by the said train. We are calling upon the State to disclose this only with a view to understand the manner in which the State is choosing migrants to travel by Shramik trains. We hasten to add that we are not coming in the way of the State allowing persons who are already selected to travel by the said train which will leave for West Bengal.</p> <p>15. As regards the Shramik trains, in terms of the assurance of the Central Government which is noted in the order dated 26th May 2020, a memo has been filed by the learned Central Government Counsel stating that if the State</p>

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			<p>Government requests for point to point service of Shramik trains even after 31st May 2020, the Indian Railways will arrange to operate the same.</p> <p>16. It can be gathered from the written submissions of the State in paragraph 8 and Clause (b) of the memo dated 28th May 2020 filed by the Central Government Counsel that food for first few hours of journey by Shramik trains will be provided by the State Government and further meals will be provided by the Railways.</p> <p>17. As regards the grievance made on the last date regarding the delay on the part of the Railways in providing food, an explanation has been offered in Annexure.R-5 to the memo filed by the learned Central Government Counsel. The explanation is that there was a delay in the trains reaching the railway stations where arrangements were made to serve food as the trains were stranded due to various reasons. The assurance given in the memo filed by the learned Central Government Counsel and what is stated in paragraph 8 of the written submissions of the State, takes care of the issue of supply of proper food and drinking water to migrant workers who are traveling by Shramik special trains.</p> <p>18. The learned counsel appearing for Bengaluru Water Supply and Sewerage Board states that wages to all migrant workers who have left the work have been fully paid. He states so on the instruction of the officers of Suez India Private Limited who were present along with him during the course of video conferencing hearing. The learned counsel states that he will place on record necessary details by filing statement of objections within one week from today.</p>

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			<p>19. In Clause (iv) of paragraph 11 of the written submissions filed today, there is an assurance that the State Government will take action for violation of the provisions of Payment of Wages Act, 1936 and Minimum Wages Act, 1948. We hope and trust that in terms of the said assurance, action will be initiated by the State Government against the concerned employers/contractors and the same is taken to its logical end which will ensure that the workers get their unpaid wages.</p> <p>20. Place this petition at 2.30 p.m. on 4th June, 2020.</p>

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