

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.8548 of 2015

Between:

V.Surya Rao and others.

....Petitioners

and

State of Andhra Pradesh,
Rep.by Principal Secretary,
Panchayat Raj and Rural Development
(RD-II) Department,
Secretariat Buildings,
Hyderabad,
And others.

....Respondents

JUDGMENT PRONOUNCED ON

17.09.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : No

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.8548 of 2015

ORDER:

The petitioners are residents of Chintapally Mandal and are working as labourers under the Mahatma Gandhi National Rural Employment Guarantee Scheme. They filed the Writ Petition in a representative capacity on behalf of other similarly situated persons seeking payment of wages. It is their case that as per Section 3(3) of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, the disbursement of daily wages shall be made on weekly basis or in any case not later than a fortnight after the date on which such work was done. The scheme was notified in G.O.Ms.No.550, dated 06.12.2007. In case of non-receipt of wages within a fortnight, the workers are entitled to receive compensation as per the provisions of the Payment of Wages Act, 1936. The Government issued another G.O.Ms.No.153, dated 06.07.2011, specifying the payment cycle and modifying the provisions relating to compensation for delayed payments. The petitioners have not received their wages for the work done even after two years, which comes to around five lakhs. They state that they worked during the months of July and August, 2012 and others worked in the month of May, 2013. They brought the issue to the notice of the Additional Program Officer, Chintapally Mandal, in June and July 2014. In response to the said representation, he addressed a letter in August, 2014, to the Assistant Project

Manager of Indira Kranthi Patham, Chintapally Mandal, and the latter confirmed the same. They further state that they are members of the Andhra Pradesh Vyavasaya Vrittidarula Union, a registered trade union.

A counter affidavit is filed by the third respondent stating that the Writ Petition is not maintainable at the instance of the wage seekers and they have to approach the Labour Court or competent civil Court against the Village Organisation, which was entrusted with the work. The third respondent also raised the ground of laches. It is further stated that that the fourth respondent also transferred the wage amounts to the concerned Village Organisation in the months of August and September 2012 and July 2013 for the works executed by the petitioners and others but the petitioners remained silent for two years. As per G.O.Ms.No.27, dated 28.01.2006, it is the responsibility of the Mandal Samakhya (federation of the Village Organisations of the poor) to mobilize and build capacities of the wage seekers through the Village Organisation and self help groups to access their rights and entitlements provided under the scheme. The wage seekers' families have to get their household registered under the scheme and each household is provided with a job card with different identity numbers. The names of all the family members are recorded in the job card. The wage seeking members of the job card are formed into 15 to 20 member groups called Srama Sakthi Sanghams (SSS). The work is allotted to the group as a whole. After performing the work, the

Field Assistant will record the muster roll every day, sign on the muster roll and the same is handed over to the Technical Assistant for measuring the work actually done at the week end. The Technical Assistant will hand over the muster roll with his signature to the Additional Programme Officer. Thereafter, pay order is generated in the online software as per the details given in the muster. Subsequent to generation of pay order, fund transfer order (FTO) is generated and uploaded. The NREGS funds from the central pool account would be transferred to the account of the Programme Officer, which is maintained at Mandal level. The Programme Officer in turn transfers the funds to the accounts of the Village Organisations. As and when the funds are transferred into the bank account, the Village Organisations convene a meeting and pass a resolution stating that the Pay Order Numbers and respective amounts for which payment is made is received and is to be drawn and disbursed. Subsequently, office bearers of the Village Organisations make the payment directly to the wage seekers as per the pay order details and get the signatures of the wage seekers on the acquittance and handover the acquittance so obtained from the wage seekers to the MPDO/Programme Officer of the scheme.

During the financial year 2012-2013 the works with the land development in rain fed lands of SCs and STs and coffee plantation were accorded administrative sanction to implement the scheme in Annavaram and Bennavaram Panchayats and its

habitations of Chintapally Mandal respectively. The payment was transferred to the Village Organisation, Panasalapadu, for the works executed in Panasalapadu Village of Annavaram Gram Panchayat. However, a complaint was lodged by the petitioners and others before the third respondent on 03.07.2014 stating that they have executed works in coffee plantation but they have not received the wage amounts. After receipt of the said complaint, the Assistant Project Director, Chintapally, was asked to conduct a detailed enquiry and submit a report. He submitted a report stating that the Village Organisations misappropriated the funds and not disbursed to the wage seekers. The Project Officer, ITDA, Paderu, also ordered enquiry through the Assistant Programme Manager, IKP, Chintapally, and he also submitted a report to the same effect. After receipt of the report, the Assistant Project Manager, IKP, Velugu, Chintapally, lodged a complaint with Chintapally PS on 11.10.2014. The Superintendent of Police, Visakhapatnam Rural, was impleaded as the sixth respondent and he has to submit a report. Finally, it was stated that the Mandal Mahila Samakhya (MMS), the Assistant Project Manager, IKP, and community coordinator are jointly responsible for misappropriation of NREGS funds by the Village Organisations Panasalapadu and Regallu.

As per the report submitted to the learned Government Pleader, all the seven accused, except A3 and A5, were arrested on 29.07.2016 and produced before the Court.

Now the point that arises for consideration is whether the official respondents can be directed to pay the wages due to the petitioners for the work done by them under NREGS?

Learned Counsel for the petitioners submits that in view of the report submitted by the authorities, it is clear that no wages were paid to the petitioners and the payment of wages to the Village Organisations will not absolve the respondents from paying the amounts due to the petitioners.

Learned Standing Counsel appearing for the respondents, on the other hand, submits that it is the responsibility of the Village Organisation to disburse the amounts and in view of the payment already made and in view of the pending investigation, the respondents cannot be directed to pay the amounts.

The Mahatma Gandhi National Rural Employment Guarantee Act, 2005, was enacted by the Parliament in order to secure the wage employment to the poor households in the rural areas as a guaranteed entitlement. The Act came into force with effect from 05.09.2005. The erstwhile Government of Andhra Pradesh formulated the scheme in G.O.Ms.No.550, Panchayat Raj & Rural Development (RD.II) Department, dated 06.12.2007. The scheme came into force with effect from 02.02.2006 in respect of the rural areas of 13 districts in Phase-I, another 6 districts in Phase-II, and 3 districts in Phase-III. As per the said scheme, every registered rural household shall be

provided not less than 100 days of wage employment, on demand, in a financial year. Payment of wages shall be made on a weekly basis. Equal wages shall be paid to men and women. The contractors and labour displacing machinery shall not be engaged. Only works approved by the Gram Panchayat (identified in the Gram Sabha at village level, the Mandal Parishad at Mandal level and the Zilla Parishad at District level) shall be taken up. Para 5(6) states that in case payment of wages is not made within a fortnight, the workers shall be entitled to receive payment of compensation as per the provisions of the Payment of Wages Act, 1936. The implementation arrangements are provided in para 6. As per sub para (5) of para 6, it is the duty of the Additional Programme Officer in each Mandal to see that the workers receive their due entitlements. His other important functions are ensuring the social audit by the Gram Sabha, disposing complaints and grievance redressal etc.

A circular was issued in Circular No.312/EGS(P)/08, dated 11.03.2008, by the Government of Andhra Pradesh issuing instructions with regard to payments to the labour through Village Organisations in Phase III districts. As per sub para (11) of Para II of the said circular, the Village Organisation shall make payments to the labourers under a proper acquittance in duplicate. The instructions contained detailed guidelines and as per the same, in the monitoring mechanism, the MPDO and Addl.PO, EGS shall super check the accounts

books, acquittances and bank statements of the Village Organisation on monthly basis.

The Government issued revised job charts of Field functionaries i.e., Field Assistant, Technical Assistant, EC, Additional Programme Officer (APO), Assistant Project Director and Programme Officer (PO). The duties of the Additional Programme Officer include supervision of wage payments by the paying agencies. The Additional Programme Officer shall ensure that the recoveries proposed by the Quality Control and Social Audit are effected. Further instructions were issued with regard to the compensation for delayed payments in circular dated 10.01.2012 prescribing the number of days to complete the task by each functionary. It was stated that in case of delay beyond the specified periods, 0.3% per day of wages delayed will be recovered from the functionary identified and will be paid to the labourers for the delay. Thus, it is clear that the Additional Programme Officer is entrusted with the duty of ensuring payment of wages to the workers and checking of the accounts periodically. It is assumed by the Additional Programme Officer that no action would be taken for his negligence. On the other hand, when the petitioners submitted a representation after two years, the petitioners are blamed stating that they brought it to the notice of the authorities after two years and the Village Organisation had embezzled the funds. So far as workers are concerned, it is the responsibility of the functionaries to see that they receive the wages due to them irrespective of the fact of

registering cases against the Village Organisation. Now the report submitted by the Assistant Project Director, Chintapally, and the Assistant Programme Manager, IKP, Chintapally, confirmed that the wages due to the petitioners and others were not paid. The counter affidavit also says that out of an amount of Rs.2,08,024/-, only an amount of Rs.91,737/- was disbursed and the remaining Rs.1,16,287/- was misutilised by the office bearers of the Gramaikya Sangam for their personal gains. The petitioners are not responsible for the misuse and they are entitled for their wages.

In the circumstances, the Writ Petition is allowed directing respondent Nos.3 and 4 to ensure payment of the amounts due to the petitioners for the work done by them in the months of July and August of 2012 and others in the month of May, 2013, by verifying the books available with them, within a period of three months from the date of receipt of a copy of this order. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

17.09.2016
vs

(A.RAMALINGESWARA RAO, J)