

(2025) 08 KL CK 0814

In the High Court Of Kerala

Case No : Writ Petition (C) No. 713 Of 2020

Adv. George Pulikuthiyil (Former Ombudsman, Mgnrega)

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 01-08-2025

Acts Referred:

Mahatma Gandhi National Rural Employment Guarantee Act, 2005 — Section 2(g), 2(q), 12, 13, 12(3)(b), 12(3)(e), 15, 16, 24, 24(1), 27(1), 27(2)

Mahatma Gandhi National Rural Employment Guarantee Audit of Schemes Rules, 2011 — Rule 2, 3, 4, 5, 5(2), 6, 7, 7(4), 7(5)

Citation : (2025) 08 KL CK 0814

Hon'ble Judges : Nitin Jamdar, CJ;Basant Balaji, J

Bench : Division Bench

Advocate : Aneesh James, Ajit Joy, O. M. Shalina, V. Tekchand

Final Decision : Disposed Of

Judgement

Nitin Jamdar, CJ

1. This petition, filed in public interest, seeks to emphasise the need to strengthen the social audit mechanism under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, and calls upon the State of Kerala to take proactive measures in that regard.

2. The Petitioner, being one of the first Ombudsman of the Mahatma Gandhi National Rural Employment Guarantee Act Kerala State Mission, asserts that he has first-hand knowledge of the vulnerabilities and lacunae in the implementation of the Mahatma Gandhi National Rural Employment Guarantee Schemes in the State of Kerala and from his experience, he claims that the process of Social Audit of the Schemes is always being undermined by the State by inclusion of those who are not qualified and by those connected with the implementation of the Scheme, nullifying the object of independent Social Audit.

3. The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (Act of

2005) was enacted to improve livelihood security in rural areas. The earlier schemes did not guarantee employment on demand and had a limited reach. The Act of 2005 provides for the establishment of a Central Employment Guarantee Council and State Employment Guarantee Councils to oversee implementation. The National Employment Guarantee Fund is to be created by the Central Government, and State Governments may set up similar funds. The Act of 2005 includes provisions to ensure transparency, regular audits, grievance redressal, and penalties for non-compliance. It also lays down the minimum conditions and entitlements under the scheme. The Act of 2005 confers a statutory right of at least 100 days of wage employment in a financial year to every rural household whose adult members are willing to do unskilled manual work. If employment is not provided within the stipulated period, an unemployment allowance has to be paid. The Act envisions the establishment of large and complex machinery to alleviate rural unemployment, with substantial public funds being expended.

4. The State Employment Guarantee Council is specified under Section 12 of the Act of 2005, which reads as under:-

"12. State Employment Guarantee Council.—(1) For the purposes of regular monitoring and reviewing the implementation of this Act at the State level, every State Government shall constitute a State Council to be known as the.....(name of the State) State Employment Guarantee Council with a Chairperson and such number of official members as may be determined by the State Government and not more than fifteen non-official members nominated by the State Government from Panchayati Raj institutions, organisations of workers and disadvantaged groups:

Provided that not less than one-third of the non-official members nominated under this clause shall be women:

Provided further that not less than one third of the non-official members shall be belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes and Minorities.

(2) The terms and conditions subject to which the Chairperson and members of the State Council may be appointed and the time, place and procedure of the meetings (including the quorum at such meetings) of the State Council shall be such as may be prescribed by the State Government.

(3) The duties and functions of the State Council shall include—

(a) advising the State Government on all matters concerning the Scheme and its implementation in the State;

(b) determining the preferred works;

(c) reviewing the monitoring and redressal mechanisms from time to time and recommending improvements;

(d) promoting the widest possible dissemination of information about this Act

and the Schemes under it;

(e) monitoring the implementation of this Act and the Schemes in the State and coordinating such implementation with the Central Council;

(f) preparing the annual report to be laid before the State Legislature by the State Government;

(g) any other duty or function as may be assigned to it by the Central Council or the State Government.

(4) The State Council shall have the power to undertake an evaluation of the Schemes operating in the State and for that purpose to collect or cause to be collected statistics pertaining to the rural economy and the implementation of the Schemes and Programmes in the State."

Section 13 of the Act of 2005 deals with the authorities for planning and implementation of the Schemes which is entrusted to the Panchayat. The Chief Executive Officer of the District Panchayat is to be the District Programme Co-ordinator for the implementation of the Scheme. Responsibilities of the Grama Panchayats and the Programme Officers are specified in Sections 15 and 16 of the Act of 2005.

5. Section 24 of the Act of 2005 refers to the audit of accounts. Under Section 24(1) of the Act of 2005, the Ministry of Rural Development, Government of India, framed the Mahatma Gandhi National Rural Employment Guarantee Audit of Schemes Rules, 2011 (Rules of 2011).

6. Rule 2 of the Rules of 2011 stipulates a Scheme for the audit of the account. The audit of the accounts of a Scheme under the Act of 2005 for each district, as well as of the State Employment Guarantee Fund, shall, for each year, be carried out by the Director, Local Fund Audit or equivalent authority or by Chartered Accountants. Rule 3 of the Rules of 2011 specifies that social audit is a part of the Scheme. Rule 3 of the Rules of 2011 reads as under:-

"3. Social audit to be part of audit of schemes.-

(1) The State Government shall facilitate conduct of social audit of the works taken up under the Act in every Gram Panchayat at least once in six months in the manner prescribed under these rules.

(2) A summary of findings of such social audits conducted during a financial year shall be submitted by the State Government to the Comptroller and Auditor General of India."

7. Rule 4 of the Rules of 2011 provides for social audit facilitation which reads as under:-

"4. Social audit facilitation.-(1) The State Government shall identify or establish, under the Act, an independent organization (hereinafter referred to as Social Audit Unit) to facilitate conduct of social audit by Gram Sabhas.

(2) The Social Unit shall be responsible for the following namely:--

(a) build capacities of Gram Sabhas for conducting social audit; and towards this purpose, identify, train and deploy suitable resource persons at village, block, district and state level, drawing from primary stakeholders and other civil society organizations having knowledge and experience of working for the rights of the people;

(b) prepare social audit reporting formats, resource material, guidelines and manuals for the social audit process;

(c) create awareness amongst the labourers about their rights and entitlements under the Act;

(d) facilitate verification of records with primary stakeholders and work sites;

(e) facilitate smooth conduct of social audit Gram Sabhas for reading out and finalizing decisions after due discussions;

(f) host the social audit report including action taken reports in the public domain."

8. Rule 5 of the Rules of 2011 deals with social audit pre-requisites, which reads as under:-

"5. Social audit pre-requisites.- (1) The Social Audit shall be a process independent of any process undertaken by the implementing agency of the scheme.

(2) The implementing agency shall at no time interfere with the conduct of social audit.

(3) Notwithstanding anything contained in sub-rule (2), the implementing agency of the Scheme shall provide requisite information to the Programme Officer for making it available to Social Audit Unit at least fifteen days prior to the date of commencement of the social audit.

(4) The resource persons deployed for facilitating social audit in Panchayat shall not be residents of the same Panchayat."

There is a specific negative mandate against the implementing agency at no time to interfere with the conduct of the social audit.

9. Rule 6 of the Rules of 2011 deals with the process for conducting a social

audit. As per Rule 6 of the Rules of 2011, the social audit unit shall, at the beginning of the year, frame an annual calendar to conduct at least one social audit in each Grama Panchayat every six months, and a copy of the calendar shall be sent to all the District Programme Co-ordinators for making necessary arrangements. The social audit reports shall be prepared in the local language by the social audit unit and displayed on the notice board of the Grama Panchayat. The action taken report relating to the previous social audit shall be read out at the beginning of the meeting of each social audit. Rule 7 of the Rules of 2011 specifies the obligations regarding the social audit. As per Rule 7(4) of the Rules of 2011, the State Government is responsible for taking follow-up action on the findings of the social audit. The Employment Guarantee Council has to monitor the actions taken by the State Government and incorporate the action taken report into the annual report to be laid before the State Legislature by the State Government. It can be seen that there is a specific emphasis on the State Government in constituting an independent organisation, a social audit unit, to facilitate the conduct of social audit by Grama Sabhas.

10. Despite notifying the Rules for audit in the year 2011, some of the States, including Kerala, had not set up the requisite audit agencies. The Ministry of Rural Development, Government of India, on 7 December 2015, wrote to the States to expedite the setting up of an independent social audit society for conducting social audits under the Scheme. It was emphasised that the social audit society cannot be set up within the Department or with Non-Governmental Organisations, as it will violate the fundamental provisions of independent social audits as mandated under the Rules of 2011.

11. The Ministry of Rural Development, Government of India, issued Exhibit-P4 Master Circular for the financial year 2016-2017 for guidance for programme implementation. Clause 2.9.1 referred to setting up of an independent social audit unit, which reads as under:-

"2.9.1. Setting up of an independent Social Audit Unit:

2.9.1.1. State Governments have to identify and/or establish independent Social Audit Units (SAU), to facilitate Gram Sabha/Ward Sabha in conducting social audits of works taken up under the Mahatma Gandhi NREGA within the Gram Panchayat. To this effect, State Governments are mandated to set up independent societies tasked with the exclusive responsibility of conducting social audits under Mahatma Gandhi NREGA.

2.9.1.2. Every Independent Social Audit Unit shall be headed by a Governing Body which will be responsible for overseeing the performance of the Unit periodically and provide advice and direction to the Unit as and when needed. The following shall be the minimum composition of the Governing Body:

a. Principal Accountant General, C&AG

b. Principal Secretary, Department of Rural Development/Panchayati Raj

c. Director, Social Audit Unit

d. 3 representatives from Civil Society Organisations, Academic and Training Institutions, working in the State or outside, having long standing experience in working with issues related to transparency and public accountability.

e. Other special invitees from Departments that are undertaking social audits in their programmes. It shall be ensured that the Principal Secretary, Department of Rural Development/Panchayati Raj does not chair the Governing Body to ensure independence of the Social Audit Unit from the implementing agency.

2.9.1.3. Special Social Audit: In areas where social audits have not been conducted in the manner prescribed by the Rules due to social audit teams facing violence, non-cooperation, intimidation from officials/non-officials and the same is communicated to the Ministry in writing, the Ministry would conduct a Special Social Audit of the Gram Panchayat concerned within a stipulated period in partnership with a reputed organization.

2.9.1.4 Financial independence: State Governments are directed to allocate up to 0.5% of the total annual expenditure under Mahatma Gandhi NREGA in the States conducting social audit of Mahatma Gandhi NREGA works. The State Government must transfer the 0.5% allocation of total annual expenditure under Mahatma Gandhi NREGA in the States directly into the independent bank account of the Social Audit Unit."

*** (emphasis supplied)

The composition of the Social Audit Unit as above is to be headed by the Governing Body as specified in Clause 2.9.1.2. Apart from the ex officio members, three members from civil society organisations and academic and training institutions with long-standing experience in working on issues related to transparency and public accountability are to be included. The financial independence of the audit mechanism is emphasised. The need for members with experience in issues related to transparency and public accountability is emphasised. Again, Exhibit P4 Master Circular emphasised the independence of the audit mechanism for social audit.

12. On 8 September 2016, referring to the earlier Government Order dated 30 December 2015, the Local Self Government Department, Government of Kerala issued Exhibit-P6 Government Order in respect of the composition and appointments of the Social Audit Society. Accordingly, the Mahatma Gandhi NREGA Social Audit Society was registered as per Exhibit-P3 on 27 January 2017.

13. Another Master Circular Exhibit-P5 was issued in the year 2019 by the Ministry of Rural Development, Government of India. Exhibit-P5 Master Circular slightly modified the composition of the Governing Body of the Social Audit Unit. Clause 10.1 of Exhibit-P5 Master Circular deals with the conduct of social audits. 10.1.1 specifies setting up of an Independent social audit unit, which reads as under:-

"10.1.1. Setting up of an Independent Social Audit Unit: State Governments have to identify and/or establish independent Social Audit Units (SAU), to facilitate Gram Sabha/Ward Sabha in conducting social audits of works taken up under Mahatma Gandhi NREGA within the Gram Panchayat. To this effect, State Governments are mandated to set up independent societies tasked with the exclusive responsibility of conducting social audits."

*** (emphasis supplied)

As regards the Governing Body of the Social Audit Unit, in Clause 10.1.2 of Exhibit-P5 Master Circular, the earlier composition was modified and specified as under:-

"10.1.2. Governing Body of the Social Audit Unit

Every Independent Social Audit Unit shall be headed by a Governing Body which will be responsible for overseeing the performance of the Unit on a periodic basis and provide advice and direction to the Unit as and when needed. The following shall be the minimum composition of the Governing Body:

- a. Principal Accountant General, C&AG
- b. Principal Secretary, Department of Rural Development/Panchayati Raj
- c. Director, Social Audit Unit
- d. 3 representatives from Civil Society Organizations, Academic and Training Institutions, working in the State or outside, having long-standing experience in working with issues related to transparency and public accountability. At least one of these should be a woman member.
- e. Other special invitees from Departments that are undertaking social audits in their programmes.
- f. It shall be ensured that the Principal Secretary, Department of Rural Development/ Panchayati Raj does not chair the Governing Body to ensure independence of the Social Audit Unit from the implementing agency.
- g. The Governing Body of the SAU should be chaired by a senior officer or an eminent person identified by the State Government. The Director, SAU should serve as the Convener of Governing Body.
- h. The officials of implementing agencies should not be member of the Governing Body or the Executive Committee."

*** (emphasis supplied)

Under Clause 10.1.3 of Exhibit-P5 Master Circular, the Central Government put the State to notice that in areas where social audits have not been conducted in the manner prescribed by the Rules of 2011, the Central Government under Section 27(2) of the Act of 2005, may order stoppage of release of funds to the

Scheme and institute appropriate remedial measures for its proper implementation within a reasonable period of time.

14. This petition was filed on 10 January 2020. The Petitioner alleged that Respondent Nos. 9 to 16, the members of the Social Audit Society, are also part of the State Employment Guarantee Council (hereinafter referred to as the 'Employment Guarantee Council'), the authority responsible for overseeing the implementation of rural employment schemes in the State, and the inclusion of such members in both the bodies was against the object of social audit and violated the negative mandate under the Rules of 2011. The Petitioner alleged that some members of the Social Audit Society are purely political appointees having no experience as warranted, because of which the object of social audit is being defeated. The Petitioner sought a declaration that the Governing Body of Respondent No. 3 – Social Audit Society, constituted by Respondent No. 1 as per Exhibits P6, P7 and P10, is illegal and ultra vires the mandate of the Act of 2005, the Rules of 2011, and Exhibits P4 and P5 Master Circulars. The Petitioner also sought a direction to the State of Kerala to constitute the Governing Body of the Social Audit Society in line with the Master Circulars issued by the Central Government, the Act of 2005, and the Rules of 2011 to ensure complete independence of the Social Audit Society and to avoid any conflict of interest.

15. A counter affidavit was filed by the Respondent – State on 21 March 2024, placing on record the order passed on 21 March 2022 [Exhibit-R1(a)] by the Government of Kerala reconstituting the General Body, Governing Body, and Executive Committee of the Social Audit Society. In the counter affidavit, it is stated that the constitution of the Governing Body has been changed by way of the order dated 21 March 2022, and consequently, the Members of the Governing Body of the Audit Society have been changed. Therefore, the challenge raised by the Petitioner does not survive.

16. We have heard Mr. Ajit Joy, learned counsel for the Petitioner, and Mr. V. Tekchand, the learned Senior Government Pleader.

17. The Petitioner has not sought any amendment to challenge the Government Order dated 21 March 2022, which has modified the Governing Body of the Social Audit Society constituted under Exhibits- P6, P7 and P10, during the pendency of this petition. However, the learned counsel for the Petitioner submits that Respondent Nos. 11 and 12 remain common to both the Social Audit Society and the Employment Guarantee Council. It is, therefore, contended that such a composition is bad in law, as it vitiates the independence of the Social Audit Society, warranting the issuance of necessary directions. The Petitioner made a grievance that the approach of the State Government is to dilute the independence of the audit and, therefore, this approach needs to be corrected. It is not in dispute that Respondent Nos. 11 and 12 are common members of both bodies.

18. The learned counsel for the Petitioner contended, briefly, as follows. As per

the statutory Scheme of the Act of 2005, Rules of 2011 and the Master Circulars, a member of the Employment Guarantee Council established under the Act of 2005 to monitor the implementation of the Scheme can never be a member of the Social Audit Society, either in the General Body, the Governing Body or the Executive Committee. The Employment Guarantee Council is established for regular monitoring and review of the implementation of the Act of 2005 and the Scheme. Under Section 12(3)(b), the Employment Guarantee Council has to determine the preferred works, and under Section 12(3)(e), monitor the implementation of the Act of 2005 and the Schemes. On the other hand, as per Rule 7(4) of the Rules of 2011, the State Government is responsible for taking follow-up action on the findings of the social audit and as per Rule 7(5), it is the Employment Guarantee Council that has to monitor the action taken by the State Government. The Social Audit Society may, in its report, record findings that could include aspects of misappropriation, embezzlement, and improper utilisation of funds during the implementation of the Scheme. The State Employment Council is responsible for monitoring the actions taken, and it would mean that it will be the Employment Guarantee Council that will decide whether to act upon the findings of the Social Audit Society. Therefore, there is a direct contravention of Rule 5(2), which specifically prohibits the implementing agency from ever interfering with the conduct of a social audit. For the purpose of independence and transparency, the Employment Guarantee Council will have to be considered as the implementing agency.

19. The learned Senior Government Pleader submitted, in short, as follows. The General Body, Governing Body and Executive Committee of the Social Audit Society have now been changed and most of the contentions raised by the Petitioner regarding the independence of the Social Audit Society have now been taken care and there was no such concern in the first place. The argument of the Petitioner that Respondent Nos. 11 and 12, for virtue of their being Members of the Employment Guarantee Council, are disqualified to be Members of the Social Audit Society, is fallacious and is not borne out by the Scheme of the Act of 2005 and the Rules of 2011. The definition of implementing agency under Section 2(g) of the Act of 2005 is relevant as it defines the implementing agency as any Department of the Central Government or a State Government, a Zila Parishad, Panchayat at the intermediate level, Grama Panchayat or any local authority or Government undertaking or Non-Governmental Organisation authorised by the Central Government or the State Government to undertake the implementation of any work taken up under a Scheme. Employment Guarantee Council can in no manner be considered as an implementing agency and it has been separately defined under Section 2(q) of the Act of 2005. The Employment Guarantee Council is responsible for overseeing and monitoring the Scheme, but is not actively involved in its implementation. The programme is implemented through Panchayat Raj Institutions and, therefore, works are formulated at the Panchayat Raj Institutions, with no interference at the State level in this regard. No Member of any implementing agency as defined under Section 2(g) of the Act of 2005 is a

member of the Social Audit Society. The composition of the Social Audit Society is as per the Act of 2005, Rules of 2011 and the Master Circulars issued and there is no merit in the challenge of the Petitioner.

20. We have considered the rival contentions.

21. There is no specific prayer against Respondent Nos. 11 and 12 for quashing and setting aside their appointment to the Social Audit Society as part of the newly constituted Committee. According to the State, Rule 5(2) of the Rules of 2011 states that the Implementing Agency shall not interfere with the conduct of the social audit. The Implementing Agency has been specifically defined under Section 2(g) of the Act of 2005 to include any department of the Central Government or State Government, a Zila Parishad, a Panchayat at intermediate level, a Grama Panchayat or any local authority or Government undertaking or non-governmental organisation authorised by the Central Government or State Government to undertake the implementation of any work taken up under the Scheme. Thus, the simplistic stand of the State is that the Employment Guarantee Council does not fall within the definition of implementing agency under Section 2(g) of the Act of 2005.

22. The learned counsel for the Petitioner submitted that even proceeding on this position that a writ to set aside the appointment of Respondent Nos. 11 and 12 cannot not be issued, the public interest for which the petition is moved is to direct the State Government to constitute the Social Audit Society in such a manner that it enhances its independence and the State should be directed to reconsider the composition of the Social Audit Society considering the statutory backdrop and to correct the fallacies in the manner the State has approached the concept of social audit. The learned counsel for the Petitioner points out the object of social audit, the need for its independence, and the emphasis given by the Act of 2005, the Rules of 2011, and the Master Circulars on ensuring independence and transparency. He submitted that the State, considering the large amount involved in implementing the Scheme, has to ensure that there is no semblance of conflict of interest and that all members of the Social Audit Society have experience and credentials in transparency and public accountability. If purely political appointments are made of persons who have no experience in matters of transparency and accountability their involvement itself will defeat the purpose of having an independent scheme. The learned counsel relied upon the decision in the case of *Swaraj Abhiyan v. Union of India* (2018) 12 SCC 181 arising from the National Food Security Act, 2013, in respect of social audit. The learned counsel also referred to the resolution adopted by the General Assembly of the United Nations in its 76th Session Agenda Item No. 21 on 22 December 2011 in respect of promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening Supreme Audit Institutions.

23. Thus, according to the Petitioner, under the wider principles governing the social audits, the provisions of the Act of 2005, the Rules of 2011 and the

notifications issued thereunder, a member of the Employment Guarantee Council cannot be a member of the governing body of the Social Audit Society. The stand of the Respondent – State in the counter affidavit is that there is no such statutory bar under the Act of 2005 or the Rules of 2011, and in fact, it is for the better administration that the Members of the Employment Guarantee Council are made part of the Social Audit Society. As regards the non-existence of a statutory prohibition that may result in nullifying the appointments of the Respondents, the interpretation of the legal position by the State may be technically correct, but it is the approach of the State of moving in the opposite direction from strengthening the social audit that requires course correction.

24. When the Respondent – Social Audit Society was constituted by the State Government, its functions were enumerated in Clause 7 under the Rules and Regulations of the Memorandum of the Society wherein also independence of the Society was emphasised. The relevant clauses in the functions of the Society are as under:-

"(d) Most crucially, shall be responsible for ensuring that the autonomy and transparency of the Social Audit process is maintained at all times;

(e) Ensure that the implementing agency, including the Mahatma Gandhi NREGA State Mission, does not interfere in the conduct of the Social Audit at any stage;

(h) Engage persons/institutions who are experts in the specific areas as consultants for specific processes entrusted to the Society. The consultants will be appointed or engaged for specific work and for a specific period on such terms and conditions as per HR policy;

(i) Act as a Liaison Agency with Civil Society groups and NGO's on issues of Transparency and Accountability;

(n) Also undertake the following activities; xxx

iv. Ensure that the social audit process remains independent from mainstream Government administration;

v. Create an enabling environment for the conduct of impartial and objective social audits in Kerala;

vi. Ensure that the purity, impartiality and objectivity of the social audit processes are emphasised at all times;

vii. Bring on board all stakeholders so as to ensure that the Social Audit is a means of strengthening the programme."

(emphasis supplied)

Thus, the very objective of the Social Audit Society is to create an environment for the conduct of impartial and objective social audits in the State. This clearly means that a proactive role has to be ensured in making the social audit impartial. It is quite clear that the objective is to explore more avenues and take more steps to keep the social audit independent. More importantly, the objective is to keep the Society away from the mainstream Government Departments.

25. The primary functions of the Social Audit Society include ensuring the autonomy, transparency, and independence of the social audit process at all times. It has to prevent any interference from implementing agencies, including the Mahatma Gandhi NREGA State Mission. It has to engage expert consultants for specific tasks as per Human Resources policy. It functions as a liaison with civil society and NGOs on issues related to transparency and accountability. The Society is committed to creating an environment for impartial and objective social audits, safeguarding the purity and integrity of the process, and involving all relevant stakeholders to strengthen the programme. Therefore, there is clear guidance in the statutory framework and the statement of objects to enhance the independence of the social audit unit.

26. On 8 September 2016, by referring to the earlier Government Order dated 30 December 2015, the Local Self Government Department of the Government of Kerala issued Exhibit-P6 Government Order in respect of the composition and appointments of the Social Audit Society. The Master Circular had stated that the Principal Secretary of the Department of Rural Development and Panchayat Raj was to be included as an ex officio Member; however, the Chairman of the Social Audit Society was the Additional Chief Secretary of the Water Resources Department. Instead of including the Director of the social audit unit, the Social Audit Society included the Director of the Social Justice Department as a Member. Regarding non-ex officio Members, five were under the simpliciter category of eminent citizens, and two were representing various other organisations. They were stated to have long-standing experience in issues related to transparency and public accountability. They were to be included from civil society organisations, academic institutions, and training institutions; however, these two were Members of the Legislative Assembly and one was a Member of Parliament. Thus, the composition of the Social Audit Society was not in consonance with Exhibit-P4 Master Circular issued by the Central Government. This reflected in the approach of the State Government, which the Petitioner has sought to highlight.

27. Now the reconstituted General Body of the Social Audit Society contains the Secretary to Government of the Local Self Government Department, Planning & EA Department, Finance Department, Agriculture Department, SC/ST Development Department, Rural Development Department, Director of Panchayats, Secretary to Government of the Labour Department, State Performance Audit Officer, Member of Decentralized Planning etc. All these

persons who are now included as ex officio Members in the General Body of the Social Audit Society have a role in the implementation of public administration. Again, there is a failure to distinguish between the two concepts, i.e. work and audit of the work. Regarding the non-ex officio Members, three are the Presidents of Grama Panchayat, Block Panchayat, and District Panchayat, and some others are simply stated as representatives of voluntary/social organisations. It is not stated whether they have any expertise in transparency or accountability. There is no doubt that representatives of the people in political spheres have a grasp of social issues; however, the requirement in this case is specific regarding working on issues with transparency and public accountability. This field is different from being involved in public work administration. This highlights the manner in which the State has approached the concept of social audit under the Act of 2005.

28. The Petitioner has placed on record that the United Nations General Assembly, in its 76th Session (Agenda Item 21, 22 December 2011), adopted a resolution promoting the efficiency, accountability, effectiveness, and transparency of public administration by strengthening Supreme Audit Institutions (SAIs). The Petitioner has also placed on record that the Comptroller and Auditor General of India is a member of the International Organisation of SAIs. The Resolution recognises that SAIs play a key role in achieving national and international development goals, including the Millennium Development Goals, and that they have to function independently and free from external influence. One of the core principles is that these institutions can only be objective, credible, and effective if they are independent from audited entities and protected from outside influence.

29. The Hon'ble Supreme Court in the case of *Swaraj Abhiyan* considered the aspect of social audit in implementation of the National Food Security Act, 2013 (Act of 2013). The Hon'ble Supreme Court in the case of *Swaraj Abhiyan* referred to the report of the working group as regards protocol for conducting a social audit in consultation with the Comptroller and Auditor General of India in the context of the Act of 2005, and opined that there was no reason that the social audit carried out under the Act of 2005, along with the guidelines, should not be put in place as far as the Act of 2013 is concerned. In the case of *Exploitation of Children in Orphanages in State of Tamil Nadu, In Re v. Union of India and Others* (2017) 7 SCC 578, the Hon'ble Supreme Court dealt with the issue of social audit to monitor and evaluate the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Supreme Court referred to the concept of social audit under the Act of 2005 and issued various directions for the effective implementation of social audits. The Bombay High Court in the case of *Bachpan Bachao Andolan and Another v. the State of Maharashtra and Others* 2024 (2) Bom CR 272 in Public Interest Litigation No. 108 of 2021 directed the State of Maharashtra to implement the regime of social audit in respect of the functioning of the institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015.

30. Despite the importance of social audit under the Act of 2005, as the earlier narration would show, the State of Kerala has approached it in a restrictive manner. In this petition, there is no counter-affidavit filed by the Social Audit Society. Further, a counter-affidavit has been filed by the State through the Under Secretary of the Local Self Government Department, which oversees the functioning of guaranteeing rural employment. As stated earlier, the counter-affidavit states that the Master Circular issued by the Central Government is only a broad guideline and not binding. The deponent of this counter-affidavit has made no reference to Section 27(1) of the Act of 2005, which empowers the Central Government to issue such directions as it may consider necessary for the effective implementation of the provisions of the Act of 2005. At least an attempt to distinguish Section 27(1) should have been made. Then, a stand is taken that the Act of 2005, the Rules of 2011, and the Guidelines do not provide for any disqualification, and no officials of the implementing agency are included in the Governing Body. The averments in the counter-affidavit suggest that the State has found the presence of members of the Social Audit Society to be beneficial to the Scheme. The Employment Guarantee Council, under Section 12 of the MGNREGA Act, is empowered to identify preferred works and monitor the implementation of the Act and the Scheme. Although it may not fall within the definition of an "implementing agency" under the Act, it is involved in the implementation process. It also has the authority to decide on the course of action based on the reports submitted by the social audit unit

31. It is an elementary principle that the auditing mechanism has to be separate from the agencies under audit. This separation is at the core of the concept of audit itself. An independent audit has to be performed by an external, unbiased agency for the audit to be effective. Once the Act of 2005 has provided for social audit, it is not necessary for the statute to again elaborate on the core principles that govern an auditing mechanism. These principles are inherent in the idea of audit itself. When Rule 5(2) of the Rules of 2011 states that the social audit process shall be independent of any process undertaken by the implementing agency of the Scheme, and that the implementing agency shall at no time interfere with the conduct of social audit, it does not lay down any new principle but only reiterates the obvious principle behind making social audits independent. Rule 5(2) of the Rules of 2011, therefore, does not bring about an embargo at the first instance, but only recognises a pre-existing principle underlying social audit, making it more explicit. Rule 6 of the Rules of 2011 elaborates on the social audit. The Master Circulars issued by the Central Government emphasise the independence of the social audit units. The ex officio members who are connected with the social audit, such as the Principal Accountant General, the Director of the Social Audit Unit, and the representative of civil society, have to be carefully chosen so that they have experience in working with issues related to transparency and public accountability.

32. Therefore, we find merit in the contention of the Petitioner that the State has not approached the issue of the independence of social audit in a manner

required and expected and requires course correction. The State has sought to justify the present composition of the Social Audit Unit strictly relying upon the legal provisions, overlooking that these provisions are minimum safeguards that are to be maintained to secure the independence of the Unit, and nothing stops the State from taking steps to remove all doubts regarding the independence. It cannot be argued that the State Employment Guarantee Council has nothing to do with the implementation of the Schemes. These are authorities constituted under one legislation, and there is no such strict compartmentalisation between their functions. The issue regarding the non-inclusion of persons involved in the Employment Guarantee Council in the Social Audit Unit is not to be viewed as service conditions or recruitment rules, but as a means to strengthen the social audit mechanism. The approach of the State should not be to justify the inclusion of its nominated members or protect the appointments, but to strive for the improved independence of the Social Audit Society. By excluding certain individuals involved in implementation, the State does not cast aspersions on their independence and instead, seeks to eliminate any semblance of overlap. Thus, the endeavour in this judgment is to stress the principles behind the statutory provisions, the guidelines, and the basic concept, which require the State to take steps to strengthen the social audit, not dilute it. The statutory framework under the Act of 2005, the Rules of 2011, and the Master Circulars emphasises the independence and expertise of the Social Audit Units. The objects of the Social Audit Society itself state that there should be minimal interference from mainstream government agencies. Social audit is a mandatory tool under the Act of 2005 for enhancing the efficacy of the Schemes. Efforts have to be made to make the Social Audit Unit as independent as possible. Social audit has been recognised as an important tool in public governance, and the social audit under the Act of 2005 is a role model. As laid down by the Hon'ble Supreme Court, the social audit has gained relevance as a tool of public accountability. A social audit is considered novel, as it is supposed to serve as a supplement to a conventional government audit. Social audit is necessary not only for purposes of introspection but also for transparency and accountability, and there can be no reason to avoid conducting social audits. Audit independence is a universally recognised norm. Social audit is not to be treated as an impediment but as a mechanism to ensure accountability and efficiency in public welfare schemes under the Act of 2005. Therefore, we are of the opinion that the State of Kerala should re-examine the composition of the Social Audit Society in the context of the object behind the inclusion of social audit, as highlighted in this judgment.

33. Accordingly, the Writ Petition is disposed of with the following directions:-

(i) The Chief Secretary of the State, within four weeks from today, will constitute a committee comprising the Chief Secretary, the Principal Accountant General, the Director of the Social Audit Unit, and two persons who have worked in the field of transparency and public accountability related to social audit;

(ii) This Committee will examine the composition of the members of the General Body, the Governing Body, and the Executive Committee of Mahatma Gandhi NREGA Social Audit Society, in light of the principles enumerated in this judgment, and take a reasoned decision as to whether the existing composition of the Social Audit Society requires a change, and thereafter, the Chief Secretary will issue necessary orders.

(iii) The reasoned decision taken by the Chief Secretary be notified and published on the website of the State Government along with the report of the Committee within a period of three months from the constitution of the Committee as above.

(iv) As regards the challenge, the decision to be taken, if any, is kept open.

34. The Writ Petition is disposed of in the above terms.