
(2020) 06 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4281 Of 2020

Hari Singh Rajpurohit

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 09-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 06 RAJ CK 0035

Hon'ble Judges : Sangeet Lodha, J;Rameshwar Vyas, J

Bench : Division Bench

Advocate : Moti Singh Rajpurohit, Pankaj Sharma

Final Decision : Disposed Of

Judgement

1. In the wake of spread of COVID-19 pandemic throughout the country, this petition is filed by the petitioner a resident of Village Palasiya Khurd, District-Jalore, presently residing at Dahisar, Mumbai, espousing the cause of migrant workers who are forced to move from their working places in different States to their native places in the State of Rajasthan.

2. The petitioner has prayed for directions to the respondents to ensure safe return of migrant workers from different States to their native places in the State of Rajasthan. The directions are also sought to provide transportation, food and other facilities to the migrant workers, who while traveling on foot have already reached the border of State of Rajasthan. It is prayed that all the migrant workers, who have already got themselves registered on the portal of State of Rajasthan should be permitted to enter the State without insisting upon the requirement of 'Pass' issued by the District Magistrate or any other government official. That apart, it is prayed that the ration should be provided to the migrant workers in the State where they are presently settled.

3. Precisely, the case set out by the petitioner is that 14 lacs migrant workers have got themselves registered on the portal of State of Rajasthan, however, no

facility for their transportation have been made by the State of Rajasthan and the workers, who have already reached the border are not permitted to enter into the State of Rajasthan without pass/permission being issued by the District Magistrate of the District of which they claim to be permanent residents. The persons, who have reached the border of State of Rajasthan through the vehicles hired by them are not permitted to enter into the State of Rajasthan unless they have valid permit for transportation issued by the Originating State i.e. the State where on account of the employment they are presently staying. Similarly, no workers, who have travelled such a long distance on foot and reached the border of State of Rajasthan are permitted to enter in the State and there is no facility provided for their stay and food at the border. According to the petitioner, the border of the State has been sealed and nobody is permitted to enter into the State of Rajasthan.

4. A reply to the writ petition has been filed on behalf of the State of Rajasthan, wherein while raising the objection regarding maintainability of the writ petition, it is averred that as many as 9,25,550 persons got themselves registered for journey from the State of Rajasthan to other State and 11,53,862 persons got themselves registered for journey from outside of the State to the State of Rajasthan and thus, total registration of migrant workers for inward and outward journey comes to 20,79,412. It is stated that 1,36,026 e-passes have already been issued for inward journey and 1,74,986 for outward journey. It is further stated that now vide SOP dated 11.5.2020, the requirement of e-pass for inward journey stands waived. It is submitted that starting of the trains for transportation of the migrant workers is within the domain of Ministry of Railway, Government of India. It is averred that the persons coming to the State of Rajasthan by the special trains arranged by the Railways are being safely transported to their native places and for this purpose the buses of Rajasthan State Road Transport Corporation ('RSRTC') are being deployed. According to the respondents, during the period from 20.4.2020 to 11.5.2020, 1.02 lacs labour/students/tourists, who were stuck in the various part of the State have been safely sent to their respective places. The services of RSRTC were provided to 2,27,102 persons, out of which 1,63,863 persons were migrant workers. The details of the trains deployed for transportation of the migrant workers related to the State of Rajasthan are furnished by the respondents as under :

"From 13.05.2020 to 18.05.2020, in all 22 trains are scheduled to take around 33000 labours to various States. That the details of various trains which came to Rajasthan or which are scheduled in near future are as under : From 01.05.2020 to 13.05.2020, in all 6 trains had come, wherein 7482 labours were brought back to Rajasthan from various States.

From 13.05.2020 to 18.05.2020, in all 11 trains are scheduled to bring 16500 labours. Further no objection has been issued to various States for scheduling 13 more trains in near future for bringing 18000 labours to Rajasthan." It is further stated that essential facility to the migrant labours and other needy persons has

been provided during the lockdown period by the Disaster Management & Relief Department as also by NGOs. Number of Relief Camps, Shelters and Food Camps were established throughout the State to provide support to stranded population. The respondents have produced a consolidated report in this regard as Annexure-3.

5. By way of rejoinder relying upon the guidelines issued by the Ministry of Railways for movement of stranded persons by Shramik Special Trains, vide circular dated 2.5.2020, it is submitted on behalf of the petitioner that the State of Rajasthan has not made serious efforts to arrange requisite number of trains for movement of the migrant workers from different States and upto 13.5.2020 only six trains were deployed to bring 7,482 migrant workers from outside the State to the State of Rajasthan. The State has not made any efforts to deploy inter-state buses for movement of the migrant workers. It is submitted that no buses have been deployed at the border for onward journey of the migrant workers from border of the State to their native places. It is submitted that the State has also not made any efforts to ensure that the migrant workers of the State are provided food and ration in the State where they are presently staying.

6. The State of Rajasthan by way of sur-rejoinder, has taken the stand that the petitioner has indulged in levelling vague, false and reckless allegations against the respondents without making any effort to know as to what is being done by the various States including the State of Rajasthan to facilitate smooth, safe and hassle free movement of the migrant workers while adhering to the directions of Ministry of Home Affairs (MHA). It is submitted that the contention sought to be raised by the petitioner on the strength of circular dated 2.5.2020 issued by the Ministry of Railways regarding deployment of Shramik Special Trains is based on misinterpretation of the various clauses of the guidelines issued. According to the respondents, as per circular dated 2.5.2020, the Originating State is required to finalise the requirement of special trains in consultation with the Receiving States and communicate the requirement of special train to the Nodal Officer of the Railways and accordingly, the Railways be planned and run the special train based on the requirement given by Originating State subject to availability of Rolling Stock. It is submitted that the Government of Rajasthan had been proactive in taking best possible initiatives and steps in making the movement of the migrant workers smooth and hassle free. According to the respondents, the Chief Secretary, Government of Rajasthan vide communication dated 3.5.2020 communicated to its counter parts from other States the decision of the State of Rajasthan to allow/accept migrant workers coming from other States and to facilitate the onward journey of migrant stranded in Rajasthan to their home States. It is submitted that 46 special trains carrying 57,055 migrants have already started from the State of Rajasthan to other States upto 17.5.2020 and total 23 special trains carrying 28,490 migrant workers of the State of Rajasthan have reached at different railway stations in the State. The respondents have also given the details of the vehicles deployed for onward journey of the migrant workers who have reached the State of Rajasthan. It is submitted that the

Supreme Court has already declined the relief for migrant workers travelling on foot from one State to another. It is submitted that even the workers who have reached to the border of the State of Rajasthan without adequate permission from the other States are being allowed to enter the State of Rajasthan after registration and medical screening. In this regard, the orders issued by the District Magistrates of various districts of the State are placed on record.

7. Mr. Moti Singh Rajpurohit, learned counsel appearing for the petitioner submitted that admittedly 20,79,412 migrant workers have got themselves registered on e-portal of the State of Rajasthan for inward and outward journey but no requisite facility for transportation of the workers has been provided by the State Government till this date. Learned counsel submitted that as per the circular issued by the Railway Board for the movement of the stranded persons the sending and the Receiving States are required to consult each other and mutually agree for movement of the workers by rail. The requirement of the special trains is to be finalized by the Originating State in consultation with the Receiving States and communicate the requirement of special trains to the nodal officer of the Railway, who in his turn will endeavor to plan and run the special trains based on requirement given by the Originating State subject to availability of Rolling Stock. On arrival of the special trains at their destination, the passengers will be received by the State Government Authorities, who would make all arrangements for their screening, quarantine (if necessary) and further travel from Railway Station. Learned counsel submitted that the State has not come out with the details as to requirement of the special trains for transportation of the migrant workers from various States and thus, the stand sought to be taken that necessary transport facilities is being provided by the State for movement of the migrant workers to their native places is apparently incorrect. Learned counsel submitted that thousands of migrant workers have travelled from various States to their native places in the State of Rajasthan on foot but no arrangements whatsoever have been made by the State for their further transportation to their native places and no facility for their shelter and food is provided and thus, such migrant workers are at the brink of starvation. It is submitted that presently thousands of stranded migrant workers are assembled at various borders of the State of Rajasthan i.e. at Ratanpur-Dungarpur, Banswara-Ratlam, Sirohi-Mawal and Mandar, Jalore-Raniwada and Sanchore. Learned counsel submitted that all the persons who have already reached the border must be permitted to enter the boundary of the State of Rajasthan and should be provided all facilities for safe transportation to their native places without insistence on the requirement of passes/NOC issued by the District Administration. The State must take all necessary steps to ensure that adequate number of trains are started for transportation of migrant workers from various States to the State of Rajasthan. Learned counsel submitted that the State must ensure that the migrant workers are provided adequate Ration and they may not be deprived of the ration on account of non-availability of the Ration Card. Learned counsel submitted that at the border the Medical Team is

available only for 5 hours and thus, in absence of the requisite screening, the migrant workers are not permitted to enter the State and therefore, the State must ensure that the Medical Team is deployed at all the borders 24 X 7 till the COVID-19 situation persists and the movement of the migrant workers from various States to the State of Rajasthan continues. It is submitted that the condition imposed by the State Government vide notification dated 11.5.2020 regarding requirement of Pass/NOC must be relaxed.

8. On the other hand, Mr. Pankaj Sharma, learned Additional Advocate General submits that the State is taking all appropriate measures for smooth and safe movement of the migrant workers to their native places in the State of Rajasthan. The present petition filed by the petitioner seeking directions to the State for providing special trains for movement of migrant workers is absolutely misconceived inasmuch as the matter with regard to deployment of the special trains is within the domain of the Railway, which is not impleaded as party respondent in the petition. Learned AAG contended that the petitioner has not made any research and has indulged in levelling reckless allegations against the State Authorities while twisting the guidelines laid down by the Ministry of Railways for deployment of Shramik Special Trains. Learned AAG submitted that the petitioner has attempted to project before this Court as if the Receiving State is required to take initiative for the trains required for movement of the migrant workers, whereas, as per clause 4 of the circular dated 2.5.2020, the Originating State is required to finalise the requirement of special trains in consultation with the Receiving States and communicate the requirement to the Nodal Officer of the Railways. Drawing the attention of the Court to the communications sent by the Chief Secretary, Government of Rajasthan to his counterparts in other States, learned AAG submitted that the State Government has also consented to receive all the migrant workers of the State and make arrangements for their onward journey and thus, the allegations of the petitioner that the State Government has not made any efforts to ensure smooth and safe movement of the migrant workers from different States to the State of Rajasthan is absolutely false. Learned AAG submitted that the number of special trains initially deployed have also been increased and the regular trains to the extent possible are also scheduled to be operated shortly and therefore, the grievance of the migrant workers if any, in this regard, does not survive. Reiterating the stand taken in reply to the writ petition, learned AAG submitted that all effective steps are being taken by the State for safe movement of stranded migrant workers to their native places and all facilities such as shelters, food etc. are being provided to them. Learned AAG submitted that it is not possible for the State to arrange the transportation facilities for lacs of migrant workers in short span of time, however, sincere efforts are being made to ensure their safe movement to the State of Rajasthan earliest possible. Learned AAG submitted that the requirement of the pass at the border has already been dispensed with by the State and the migrant workers, who have already reached the border are being allowed to enter in the State of Rajasthan on the basis of the passes issued by

the Originating States and even the persons not having the passes are being allowed to enter the State of Rajasthan after registration and medical screening. Learned AAG would submit that the grievances of the migrant workers already stands redressed to a great extent and therefore, no interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India is warranted.

9. Replying the arguments of learned AAG, Mr. Moti Singh, learned counsel for the petitioner submitted that the allegations levelled on behalf of the State against the petitioner regarding his indulging in levelling false allegations while twisting the guidelines issued by the Ministry of Railways vide circular dated 2.5.2020 are absolutely baseless. Learned counsel submitted that the petitioner has produced on record the circular dated 2.5.2020 for perusal of this Court, which is self explanatory. Learned counsel submitted that it is true that the requirement of number of special trains is to be assessed by the Originating State but the State of Rajasthan not shirk from its responsibility in ensuring that the arrangements of requisite number of special train is made to bring the migrant workers from different States to their home States without any further delay. Learned counsel submitted that admittedly, till 17.5.2020, only 28,490 migrant workers have been brought to the State of Rajasthan from different States, which apparently reflects the lack of seriousness on the part of the State Authorities in making efforts to ensure smooth, safe and expeditious movement of the migrant workers. Learned counsel submitted that besides the buses of RSRTC, the State must also make serious efforts to deploy private buses to facilitate the movement of the migrant workers from different States to the State of Rajasthan. Learned counsel submitted that the migrant workers who have rendered unemployed and reached to the State of Rajasthan must be provided shelter and adequate ration and they should not be deprived of the same merely because they are not holding valid ration cards in the State of Rajasthan.

10. We have considered the submissions of the learned counsel for the parties and perused the material on record.

11. Indubitably, lacs of unemployed and poverty stricken unskilled and casual labourer, who had migrated from the State of Rajasthan to the towns and cities in the various States for work to feed their families, on account of sudden announcement of the lockdown in the wake of spread of COVID-19 Pandemic and loss of job or otherwise, were compelled to rush from their work places in the different States of the country to their native places in the State of Rajasthan on foot, bicycles, auto-rickshaws, tempos, buses and trains, whatever mode of transport available.

12. It is noticed that in the first instance the Government of India ordered a nationwide lockdown for 21 days on 24.3.2020, which was extended from time to time. However, the guidelines in respect of the movement of the migrant workers was issued by the Ministry of Home Affairs, Government of India on 29.4.2020, vide Sub-clause (iv) of Clause 17, which reads as under:

"iv. Due to lockdown, migrant workers, pilgrims, tourists, students and other persons are stranded at different places. They would be allowed to move as under:

- a. All States/UTs should designate nodal authorities and develop stranded protocols for receiving and sending such stranded persons. The nodal authorities shall also register the stranded persons within their State/UTs.
- b. In case a group of stranded persons wish to move between one State/ UT and another State/UT, the sending and receiving States may consult each other and mutually agree to the movement by road.
- c. The moving person(s) would be screened and those found asymptomatic would be allowed to proceed.
- d. Buses shall be used for transport of groups of persons. The buses will be sanitized and shall follow safe social distancing norms in seating.
- e. The States/UTs falling on the transit route will allow the passage of such persons to the receiving State/UT.
- f. On arrival at their destination, such person(s) would be assessed by the local health authorities, and kept in home quarantine, unless the assessment requires keeping the person(s) in institutional quarantine. They would be kept under watch with periodic health check-ups. For this purpose, such persons may be encouraged to the Aarogya Setu app through which their health status can be monitored and tracked."

13. Thereafter vide order dated 1.5.2020 issued by the Ministry of Home Affairs, Government of India, in respect of the movement of the migrant workers sub-clause (v) was added in Clause 17 of the existing guidelines, which reads as under :

"v. Movement of migrant workers, pilgrims, tourists, students and other persons, stranded at different places, is also allowed by special trains to be operated by Ministry of Railways (MoR). MoR will designate nodal officer(s) for coordinating with State/Uts for their movement. MoR will issue detailed guidelines for sale of tickets; and for social distancing and other safety measures to be observed at train stations, train platforms and within the trains."

14. Pursuant to the directions issued by the Government of India vide order dated 1.5.2020 as aforesaid, the Ministry of Railways issued the order dated 2.5.2020, laying down detailed guidelines for movement of migrant workers, pilgrims, tourists, students and other persons stranded at different places.

15. It is true that as per Clause 4 of the said guidelines, the requirement of the special trains was required to be finalized by the Originating State in consultation with Receiving States and communicate the requirement of the special trains to the nodal officer of Railways and the Railways was required to plan and run the special trains based on requirement given by the Originating State subject to

availability of Rolling State. Further, it cannot be doubted that the State of Rajasthan acted upon the guidelines and made efforts facilitate the movement of stranded migrant workers from different States to other States. But the fact remains that upto 17.5.2020 only 28,490 migrant workers were brought to the Rajasthan from different States as against 11,53,862 migrant workers already registered for journey from different States to the State of Rajasthan. Thus, if the Originating States were not taking initiative and expediting the process for deployment of the requisite number of trains for transportation of stranded migrant workers from various States, it was bounden duty of the State of Rajasthan to take all appropriate measures to ensure expeditious and safe transportation of migrant workers from different States to the State of Rajasthan by resorting to other modes of transportation available. To say the least the problem faced by the stranded migrant workers is a human problem, which needs to be dealt by all the authorities of the State responsibly by adopting a humanitarian approach.

16. We would have dealt with this issue in detail and issued the directions in this regard to the State of Rajasthan to take appropriate measures but recently the Supreme Court in Suo Moto Writ Petition (Civil) No.6/2020 'In Re : Problems and Miseries of Migrant Labourers' while taking suo moto cognizance of problems and miseries of migrant labourers who had been stranded in different parts of the country, vide order dated 28.5.2020 has already issued directions to the Union of India and various States/Union Territories in the following terms:

"1. No fare either by train or by bus shall be charged from any migrant workers. The railway fare shall be shared by the States as per their arrangement as submitted by the learned Solicitor General and in no case any fare should be asked for charged from any migrant workers by the States and the Railways.

2. The migrant workers who are stranded at different places in the country shall be provided food free of cost by the concerned States/Union Territories at different places which shall be publicized and notified to them during the period they are waiting for their turn to board the train or bus.

3. Initially, as stated by the learned Solicitor General, the originating State shall provide water and meal and during the journey, the railways shall provide meal and water to the migrant workers and same facilities shall be extended when the migrant workers are transported by bus. The State shall take care of providing necessities water and meal during the period of transportation either in the bus or in the camps on the way.

4. We further direct that the State shall simplify and speed up the process of regularisation of migrant workers and also provide help desk of registration at the places where they are stranded.

5. The State shall try to endeavour that after registration the workers should be asked to board the train or bus at the earliest and complete information should be publicized to all the concerned regarding mode of transport.

6. We further direct that those migrant workers who are found walking on the highways or roads shall be immediately taken care by the concerned State/Union Territories and they shall be provided the transport to the destination and all facilities including food and water be provided to those found walking on the road.

7. The receiving State, after the migrant workers reach his native place, shall provide transport, health screening and other facilities free of cost."

17. The issues with regard to the transportation of all stranded workers within the time frame and all other facilities including food, water, the process of registration, health screening etc. are also being dealt with by the Supreme Court in aforesaid suo moto petition and therefore, we are not inclined to delve into the grievances raised in this regard by the petitioner in the present writ petition any further.

18. Coming to the issue raised by the petitioner regarding the facilities of food, shelter and other facilities to the migrant workers, who have already reached to their native places, undoubtedly the welfare State is under an obligation to secure a social order for promotion of the welfare of the people and while treating all the citizens equally to provide adequate means of livelihood to them. We trust and hope that the State will take all precautions and measures to ensure that the migrant workers and their families do not suffer the starvation on account of loss of livelihood and their all basic needs are taken care of. The State shall also endeavor to make short term and long term policy to deal with the problems faced by the migrant workers including the matter with regard to providing employment to the migrant workers, who do not intend to go back to their work places in the different States after lifting of the lockdown.

19. With these observations and directions, the writ petition stands disposed of.