

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 23144 of 2007**

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GRAMIN MAJDOOR SABHA, GUJARAT - Petitioner(s)

Versus

UNION OF INDIA & 5 - Respondent(s)

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Appearance :

MR BHUSHAN B OZA for Petitioner(s) : 1, MS E. SHAILAJA for Petitioner(s) : 1, MR
HIMANSHU N BANKER for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,
MR MRUGEN K PUROHIT for Respondent(s) : 1,
MR LR PUJARI, AGP for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3,
MR PV HATHI for Respondent(s) : 4 - 5.
MS KHYATI P HATHI for Respondent(s) : 6,

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CORAM : HONOURABLE MR. JUSTICE JAYANT PATEL

Date : 23/07/2008

ORAL ORDER

The petitioner has preferred the petition for appropriate directions to the respondents to provide employment in accordance with the provisions of National Rural Employment Guarantee Act, 2005 (hereinafter referred to as the Act) with the Scheme known as Gujarat Rural Employment Guarantee Scheme, 2006 (hereinafter referred to as the Scheme) and to provide unemployment allowances to 100 members of the petitioner whose names are mentioned at Annexure G.

Heard Mr. Oza, learned Counsel appearing for the petitioner, Mr. Pujari, learned AGP for respondent State Authorities, Mr. Purohit, learned Counsel for respondent No.1, and Mr. Hathi, learned Counsel for respondents No.4, 5, and 6.

The contention raised on behalf of the petitioner is that the provisions of the Act are not complied with for the purpose

of offering employment to the labourers, whose names are mentioned in the list, nor the unemployment allowances have been paid to them. It has also been submitted that the complaints were made to the Project Officer as well as the District Programme Coordinator, but no action is taken and, therefore, this petition.

It appears from the statement made in the petition read with the affidavit-in-reply filed on behalf of the Panchayat Authorities that there are allegations and counter-allegations. The claim of the petitioner is that the employment was not offered and, therefore, the members of the petitioner Union would be entitled to unemployment allowances, whereas on behalf of the Panchayat Authorities/Project Coordinator, the contention is that as per the Scheme, the work was offered, but the concerned workmen did not assume the work and in certain cases, wherever the persons were desirous to work, the work has been offered. It has also been submitted that as per the Scheme of the Act, if the work is not available, then only unemployment allowances can be paid.

It appears to the Court that it would be required for the appropriate authority to see that the Act is complied with in its letter and spirit for the purpose of offering work in the rural area and upon the failure to offer work, the minimum unemployment allowances are paid to the persons concerned. As it is the grievance of the petitioner that complaints were made and no action was taken, but it appears that in the present proceedings, the affidavit-in-reply has been filed denying the entitlement by the persons on whose behalf the present petition is filed. Therefore, it would be just and proper if the officer at the State level examines the matter and appropriate directions are given to the concerned authorities in the event it is found that the employment could not be provided to the persons and they were entitled for unemployment allowances. However, if ultimately upon verification of record it is found by the concerned authority that the employment was offered and was not accepted by the workmen concerned, it may attract different consideration.

This Court in a petition under Article 226 of the Constitution of India cannot conveniently examine the record and it would be just and proper to direct the State authorities to look into the matter and to pass appropriate orders after considering the record of the concerned Panchayat as well as after giving opportunity to the members of the petitioner Union, who are labourers or the persons, who

were desirous to get the employment or in alternative, persons, who were desirous to get unemployment allowances as per the Scheme. As the respondent No.3 is an authority constituted at the State level for supervising the implementation of the Scheme read with the provisions of the Act, it would be just and proper to direct respondent No.3 to examine the matter.

In view of the above, the following order shall meet with the ends of justice:-

(a) Respondent No.3, Gujarat State Coordinator (NREGA) shall examine the grievance of the petitioner as raised in the present petition for non-providing of the employment to the persons concerned or not providing unemployment allowances to such persons.

(b) He shall be at liberty to hold any inquiry and call for the record from the Panchayat authorities. The petitioner shall also be at liberty to produce any additional documents, if any, in support of the Scheme.

(c) After inquiry and giving opportunity of hearing to the petitioner as well as to the concerned officer(s) of the Panchayat, the respondent No.3 shall take appropriate decision as to whether the employment was provided to the persons concerned and if it is found by him that the employment was not provided to the persons concerned, he shall pass consequential order for payment of unemployment allowances as permissible in law. In the event it is found by him that the employment was offered to the persons concerned and was not accepted by the concerned persons, he shall be at liberty to pass appropriate orders, taking into consideration the said circumstances.

(d) The aforesaid exercise shall be completed within a period of four months from the date of receipt of the order of this Court.

(e) In the event the respondent No.3 finds that the persons concerned were entitled for payment of unemployment allowances, the actual disbursement shall also be made within a period of one months from the date of the order passed by respondent No.3.

The petition is disposed of in terms of the aforesaid directions. No order as to costs.

23.7.2008 **(Jayant Patel, J.)**

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