

Illegals in MGNREGA continue, all eyes on Supreme Court

4th August 2017

The PIL filed by Swaraj Abhiyan in the Supreme Court on the severe drought conditions in the country, has drawn attention to the inadequate efforts being made by Central and State Governments in implementing welfare programmes; particularly to counter wide spread distress in rural areas caused by consecutive droughts. One of focus areas of the petition is the failure of the State and Central Government in implementing the National Food Security Act (NFSA) and the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) in the true spirit of these legislations. This has created a situation of the hollowing out of legal frameworks passed by Parliament, and a failure to provide legal social security to the majority of citizens in this country.

I. Running out of funds

Despite repeated claims by the Finance Minister and the [Rural Development Minister](#) of adequately providing for MGNREGA, as of today, only 20% of the funds budgeted for 2017-18 are left. Further, states have utilised only 48%, or less than half of their approved labour budget for the same year, an estimate of the employment they can generate in a year (MIS¹ Report titled ‘At a Glance’ accessed on 3.08.2017). **Thus in four months, 80% of the programme funds have been utilized.**

A moot point in court has been the discretionary and arbitrary slashing of the labour budget projections of state governments by the Central Government. For 2017-18, the centre approved only 75% the labour budget projected by states (Report R.2 of MIS accessed on 3.08.2017). For last year, this figure was only 70%. The calculations for funds are only based on the Centre’s approved labour budget and they don’t take into consideration states’ projections. Three states already have a negative balance; Andhra Pradesh, Uttar Pradesh and West Bengal (Report R.7.1.2 accessed on 3.08.2017). Last year, in a similar situation, the Ministry had used an official WhatsApp group to informally direct states to [slow down](#) employment generation.

This issue has been repeatedly highlighted, since 2nd February 2015. Even as the Government continues to announce “[highest ever](#)” allocations, this is not adequate for even the approved labour budget let alone allowing the MGNREGA to function to its true potential.

We demand that adequate funds, at least for the approved labour budget are immediately made available to honour the legal right to an employment guarantee.

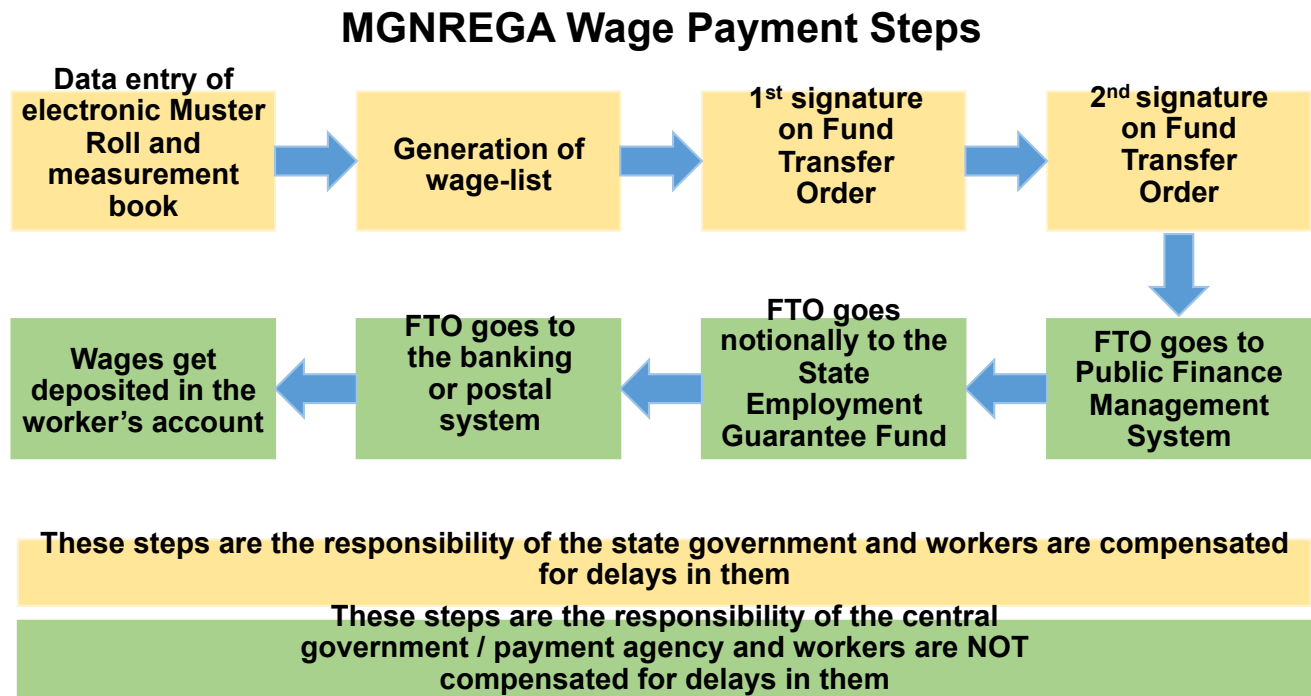
¹ NREGA MIS- www.nrega.nic.in

II. Illegal delays in wage payments

Ministry officials have publicly pointed out that wage delays in MGNREGA are [decreasing](#). This is incorrect and a willful misrepresentation. **The figures on the MGNREGA MIS have been manipulated to only partially calculate the duration of wage delay.** This has been submitted to the Minister via the Central Employment Guarantee Council in November 2016, and publicly pointed out in a [press conference](#) in April 2017. However, the Ministry has continued with this practice.

As per the Act, Para 29, Schedule II of MGNREGA mandates payment of wages to workers within 15 days of them completing their allocated work. In addition, workers are entitled to receive compensation for each day that they have faced a delay in receiving wages subsequent to the stipulated 15 days.

The following are the steps that are required to be completed within 15 days, to ensure the above.



Section 10.4 of the Annual Master Circular 2017-18², states that the MGNREGA Management Information System (MIS) is designed to calculate delays in wage payments, and the consequent compensation due, uptill the second signatory of the Fund Transfer Order³ (Step 1-4). This is

² A set of administrative guidelines that define the operationalization of the MGNREGA in all States

³ A Fund Transfer Order (FTO) is an e-voucher generated by the MGNREGA MIS that lists the workers who are supposed to be paid, and the amount of wage payable to each which is calculated on the basis of work completed.

contravention with Para 29 (1) (c) of Schedule II of the Act which categorically states that wage delays and the consequent compensation has to be calculated till the deposit of the wages into the bank account of the worker, and not just till the generation of the Fund Transfer Order (Step 1-8).

Long and unpredictable delays in wages, severely diminishes the ability of MGNREGA to provide economic respite in the lives of rural households. Instead of alleviating respite, the Ministry of Rural Development has absolved itself and payment agencies (banks and post offices) from any responsibility for causing delays in payment of wages. This willful denial has been given administrative sanction through the Annual Master Circular notification, which is in clear violation of the provisions of the Act.

The Union of India has repeatedly and misleadingly projected the National Electronic Fund Management System (N-eFMS) as a solution to reducing wage delays. However, N-eFMS as a mechanism for transfer of funds from the Center to the worker account is meaningless if the Center does not have adequate funds, in time, at its disposal to transfer to the worker account. The FTOs pending processing were 100% for the first days of the current financial year, and at present is 30% thus debunking the perpetuated myth of “real time demand pull of funds.”(Report titled ‘At a Glance’ accessed on 3.08.2017)

In response to a Right to Information request, the Central Government states clearly that they do not record the time taken for the sub-processes at their level, thus giving them total discretion and no accountability to adhere to legal timelines.

Chief Secretaries filed affidavits with the Supreme Court in this case, inter alia, on the reasons for delay in wages.

Government of Chhattisgarh stated, “It is respectfully submitted that due to unavailability of funds, and non receipt thereof on time from the Union Government, there was delay in making timely wage payments.”

Government of Haryana stated, “That as regards delay in payment of wages to the beneficiaries have occurred mainly due to the delay in release of funds by the Ministry ranging 3 to 4 months.”

III. Manipulations with Compensation

Given that the wage delays are only partially calculated, the corresponding compensation due to workers is also not fully. Even the partially calculated compensation is not paid in most cases – **this year only 6% of the compensation calculated by the MIS was actually paid** , and only 2.5% since 2013 (MIS Report R.14.1 accessed on 3.08.2017). This is a complete mockery.

Findings of an ongoing study being conducted by independent researchers, illustrates the shocking implication of this. Analysing a random sample of 3,446 Gram Panchayats, across the states of Jharkhand, Bihar, Chhattisgarh, Karnataka, Uttar Pradesh, Rajasthan, Madhya Pradesh, Odisha, West Bengal and Kerala, it is **estimated that 57% of compensation due is going uncalculated**. While the MIS calculated compensation for the sample Panchayats to be Rs. 15.6 crores, the uncalculated compensation is Rs. 20.3 crores.

This is occurring in one of two ways due to the Central Government/Payment Agencies;

- i. State Government Delays: When the state government delays are calculated, but those by the central government/payment agencies are not. On average there is a **38-day delay** by the central government/payment agencies unaccounted for.
- ii. No State Government Delays: When the state government completes their processes on time, but the delays by the central government/ payment agencies are not calculated. On average there is a **63-day delay** by the central government/payment agencies unaccounted for.

We demand that the Ministry of Rural Development calculate, record and disclose the full extent of wage delays, including the portion of Central Government/payment agencies, as per Para 29 of Schedule II of the MGNREGA, 2005, and pay the full extent of compensation due.

IV. Social Audits

The Supreme Court in its hearings has reiterated the importance of implementing social audits as mandated under the Act and the Audit of Scheme Rules, 2011. Most significantly, it has emphasised the importance of having social audits conducted in compliance with Auditing Standards of Social Audit as laid out by the O/o the Comptroller and Auditor General of India.

We demand that the Ministry of Rural Development ensure setting up of independent Social Audit Units in all States and equip them with adequate financial and technical resources so that they can conduct independent and credible social audits. We urge the Ministry to notify the Auditing Standards of Social Audit so that non compliance can be penalized.

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