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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9744/2017

WALTER KERKETTA

..... Petitioner

Through Mr.Jatin Sharma, Ms.Ruchi
Johnson and Mr.Anshuman Goswami,
Advs.

versus

SUB-DIVISIONAL MAGISTRATE-DELHI SOUTH EAST
DIST. & ORS

..... Respondents

Through Mr.Gautam Narayan, ASC
with Mr.Abhinav Goyal, Adv. for
GNCTD
Ms.Bharathi Raju, CGSC with
Ms.Saakshi Agarwal, G.P. for R-5/UOI
Mr.Sumer Seth and Ms.Dolly Sharma,
Advs. for DSLSA

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **04.07.2018**

1. This writ petition complains regarding the action and omissions of the concerned authorities for preventing bonded labour as well as failure to rescue bonded labourers from unscrupulous employers despite the several judicial precedents commencing from the *Bandhua Mukti Morcha* as well as the enactment of the Bonded Labour System (Abolition) Act, 1976.

Several instances of rescues effected by the respondents of a person from bonded labour have been placed in the writ petition. It cannot be disputed that the several judicial precedents as well as the statutory scheme have been unable to prohibit this menace and to protect the rights of the bonded labourers.

2. Concerned therewith this writ petition was filed seeking issuance of appropriate writ, order or directions to the respondents for grant of immediate financial rehabilitative assistance to the victims of bonded labour in Delhi which is to be placed at the disposal of the District Magistrate under the Government of NCT of Delhi.

We may note that extensive reference has been made to the Central Sector Scheme for Rehabilitation of Bonded Labourer, 2016 which has been notified by Government of India on 18th May, 2016.

3. Pursuant to the orders passed by this Court, we are informed by Mr. Gautam Narayan that during the pendency of this writ petition, the Government of NCT has undertaken a massive exercise for framing of Standard Operating Procedure for release of immediate financial assistance to the rescued bonded labourers in the NCT of Delhi which has been finalized after discussion and in collaboration with the petitioner.

The Government of NCT has placed before us under cover of a letter dated 14th June, 2018 by Sh. R.K. Gupta, Section Officer (Coord-HQ), a copy of the report of the Committee which was constituted for the purpose under the Chairmanship of the District

Magistrate (South East) and has finalised the enclosed Standard Operating Procedure (SOP). We have scrutinized the procedure which has been delineated in the said report. Prescription has been made *inter alia* for pre- rescue protocol; rescue and inquiry protocol; post-rescue protocol and makes specific stipulations regarding the release of financial assistance. The SOP prescription reads as follows:

**“STANDARD OPERATING PROCEDURE FOR
IDENTIFICATION OF BONDED LABOURERS
AND RELEASE OF IMMEDIATE FINANCIAL
ASSISTANCE”**

A. PRE-RESCUE PROTOCOL

1. *The DM/SDM should ensure that the forms at Annexure-I and Annexure-II are made available and Annexure-II are made available to all the officers involved in the inquiry and rescue of the labourers.[Such officers will include officials from the DM/SDM office, Labour Department, Police Department and Child Welfare Committee].*
2. *The DM should ensure that every rescuing team mandatorily comprises of the officials mentioned at clause 2 of the SOP of the Ministry of Labour and Employment [MOLE] dated 17.08.2017 bearing F.No.S-11012/01/2015-BL(Pt). The rescue team should also comprise of a member/s of the Bonded Labour Vigilance Committees constitute under Section 13 and 14 of the BLA.*
3. *The information received by the DM/SDM pertaining to a situation of bonded labour, whether from an NGO or other source, must be kept strictly confidential and*

the rescue should be done within 24 to 48 hours so as to prevent a tip-off to the accused employers.

B. RESCUE AND INQUIRY PROTOCOL

I. IDENTIFICATION AND PRELIMINARY EXAMINATION OF THE RESCUED VICTIM:

- 1. The rescue must be done in a manner that assures all victims of their safety and dignity. Representatives from the various departments involved, particularly the police department, must be present on the ground at the time of the rescue.*
- 2. The rescued victims must be separated from the accused and the rescued victims should be taken to the DM/SDMs office.*
- 3. The officials present must be familiar with the contents and purpose of Annexure I and II, and the same can be ensured at the Pre-Rescue meetings itself. The officials must, subsequent to separating the accused from the victims, conduct an immediate preliminary inquiry by filing out the Annexure under the supervision of the DM/SDM.*
- 4. The said Annexure and other government records/forms filled in by any other Government Department (viz. Labour Department/CWC/Vigilance Committee etc.) must be counter-signed by the SDM/DM.*
- 5. The preliminary inquiry and the filing of the Annexures and other requisite government forms pertaining to the rescued victims and the accused must be completed within 24 hours of the rescue.*
- 6. On the basis of the preliminary inquiry and information recorded, the DM/SDM must make a prima-facie finding/report as to whether the case is*

one of bonded labour or not and pass an order recording the same within 24 hours.

FINDING OF THE PRELIMINARY EXAMINATION:

7. *The DM/SDM in his preliminary inquiry report shall either conclude that the case is one of bonded labour or that it is not one of bonded labour and pass an order recording the same within 48 hours of the rescue.*

C. POST RESCUE PROTOCOL

8. *In case the DM/SDM is of the view that the rescued victim, prima facie, appears to be bonded labourer based on his preliminary inquiry then the following procedure is to be adhered to:*
 - 8.1 *The DM/SDM shall issue a Release Certificate along with Annexure-I and II to each of the rescued bonded labourer within 24 hours of the rescue (as per SOP dated 17.08.2017 of the MoLE, GOI).*
 - 8.2 *The DM/SDM shall ensure that victims who do not have any identification are assisted with applying for an Aadhar card within 48 hours of the rescue and shall ensure that the same are received as soon as possible. [The concerned NGO shall assist the DM/SDM in this process]. The DM/SDM shall also ensure that the details of the rescued victims is entered into the rehabilitative database. The database shall be created and maintained by each DM in terms of clause 5 (x) of the CSS Scheme- 2016 of MoLE, GoI.*

8.3 *The DM/SDM shall also ascertain whether the victims have bank accounts immediately upon the completion of the preliminary inquiry report.*

If the Bank Account of the Rescued victim is already operational:

8.4 *The concerned DM/SDM must grant the rescued Bonded Labourer the Immediate Financial Assistance of Rs.20,000/- (by way of IMPS-Immediate Payment Service) or by way of Cheques/Demand Draft as per clause 5(xiv) of office Memorandum dated 18th May, 2016 (CSS Scheme) read with addendum dated 17.01.2017 to the CSS Scheme within a week from the date of rescue. Alternatively, if there are any difficulties in verifying the account or making payment, a cheque/demand draft of the value of the immediate financial assistance of Rs.20,000/- must be handed over to the adult rescued bonded labourer and in case of minor, the same shall be handed over to the CWC for disbursement instead of making electronic payment within a week from the date of rescue.*

In case the Rescued victim does not have a Bank Account:

8.5 *The DM/SDM shall grant the rescued Bonded Labourer the Immediate Financial Assistance of Rs. 20,000/- by way of a cheque/demand draft which shall be handed over to the adult rescued bonded labourer and to the CWC in the case of a minor child bonded labourer. Such payment must be made within a week from the date of rescue.*

8.6 *In the alternative to the above mode of payment via cheque/demand draft, the concerned NGO under the directions of the concerned SDM may assist the victims in opening a bank account expeditiously and make electronic payment of the immediate*

compensation of Rs.20,000/- within a week from the date of rescue.

Other General post-rescue provisions for bonded labourers

9. *Once the SDM/DM issues release certificate and grants the Immediate Financial Assistance to the rescued Bonded Labourer, he shall immediately send the complete file to the released bonded labourer along with all requisite documents to the concerned ADM enabling him/her to initiate appropriate proceedings of summary trial. If the DM/SDM finds during the pendency of the summary trial, the rescued victim is in need of any assistance, it should provide such assistance under any other law or scheme.*
 10. *After receiving the file from the SDM/DM, the concerned ADM, exercising powers under Section 21 of the Bonded Labour Act, shall conduct proceedings of summary trial of the offences committed under the Bonded Labour Act and shall conclude the same within the time stipulated in the SOP dated 17.08.2017. The Labour department must immediately initiate proceedings for the recovery of back wages from the accused employers/owners, including wages for overtime in accordance with the Minimum Wages Act, 1948.*
 11. *The Authorities can take the assistance of NGO's and Vigilance committees for carrying out this SOP and must keep the complainant/complainant NGO updated about steps being taken under this SOP including the supplying of relevant documents and records pertaining to the rescue”.*
4. The above Standard Operating Procedure shows that every aspect of pre and post rescue as well as release of financial

assistance has been provided for. The Standard Operating Procedure suggested by the Committee appointed by the Government of NCT of Delhi is approved and taken on record. The respondents shall take urgent steps to ensure that the above procedure and the scheme for release of financial assistance as well as rehabilitation of the rescue bonded labour is efficiently implemented.

5. We place on record our appreciation for the elaborate exercise undertaken in drafting the Standard Operating Procedure.

The writ petition is disposed of in the above terms.

6. A status report regarding implementation of the Standard Operating Procedure be placed on record within four weeks from today. We also direct the Government of NCT of Delhi to place this Standard Operating Procedure on the website in an appropriate file so far as the same is put in public domain.

7. List on 14th August, 2018 for reporting compliance.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JULY 04, 2018

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