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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

NAZMI BEGUM AND OTHERS — Appellant

Vs.

UNION OF INDIA AND OTHERS — Respondent

(Before : Pradeep Kant, J and S.N.Shukla, J)

Writ Petition No.8175 (M/B) of 2007 (Connected with Writ Petition Nos. 7459 (MB) of 2007, 8197 (MB) of 2007, 7129 (MB) of 2007, 7247 (MB) of 2007, 7602 (MB) of 2007, 6934 (MB) of 2007, 8264 (MB) of 2007, 8318 (MB) of 2007, 8350 (MB) of 2007, 8317 (MB) of 2007, 8408 (MB) of 2007, 8555 (MB) of 2007, 8556 (MB) of 2007, 8481 (MB) of 2007, 8528 (MB) of 2007, 8462 (MB) of 2007, 8680 (MB) of 2007, 8820 (MB) of 2007, 8956 (MB) of 2007, 7875 (MB) of 2007, 71 (MB) of 2008, 304 (MB) of 2008, 8872 (MB) of 2007, 137 (MB) of 2008, 9299 (MB) of 2007, 9990 (MB) of 2008, 136 (MB) of 2008, 1510 (MB) of 2008, 1369 (MB) of 2008, 1636 (MB) of 2008, 2280 (MB) of 2008, 2783 (MB) of 2008, 2952 (MB) of 2008, 2924 (MB) of 2008, 3445 (MB) of 2008, 4396 (MB) of 2008, 6212 (MB) of 2008)

Decided on : 16-09-2009

- Constitution of India, 1950 - Article 166, Article 77
- General Clauses Act, 1897 - Section 21
- Mahatma Gandhi National Rural Employment Guarantee Act, 2005 - Section 15, Section 16, Section 20, Section 21, Section 27, Section 28, Section 4, Section 7, Section 8, Section 9

A. National Rural Employment Guarantee Act, 2005 (NREGA) — Sections 4(1), 13, 15, 20, 21, 27 — Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 — Sections 99, 101A — Operation of NREGA Accounts — Central Government's Power to Direct Fund Operation — Challenge to exclusion of Block Pramukhs as joint signatories— The Central Government has the authority under Section 27 (1) of the NREGA to issue directions for the effective implementation of the Act, which includes prescribing the manner in which the National Employment Guarantee Fund

accounts are operated. (Paras 6, 7, 88, 89, 113, 134, 136)

B. National Rural Employment Guarantee Act, 2005 (NREGA) — Section 20 — National Employment Guarantee Fund — Nature of Funds — Funds established under Section 20 of the NREGA are distinct from the Zila Nidhi or Kshetra Nidhi of Panchayats under the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961. Therefore, the provisions of the State Act concerning the operation of Panchayat funds do not apply to NREGA funds. (Paras 82, 83, 84, 90, 91, 92, 95, 118, 127, 136)

C. National Rural Employment Guarantee Act, 2005 (NREGA) — Section 15(5) — Role of Programme Officer — The Programme Officer, as defined in Section 15 of the NREGA, has significant responsibilities for the effective implementation of the scheme, including ensuring prompt and fair payment of wages to laborers. This statutory responsibility justifies their role as a joint signatory for NREGA accounts. (Paras 103, 105, 106, 108)

D. National Rural Employment Guarantee Act, 2005 (NREGA) — Section 27(1) — Issuance of Directions/Clarifications — Arbitrariness and Nexus with Object — A clarification or direction issued by the Central Government under Section 27(1) of the NREGA, aimed at resolving confusion and ensuring effective, transparent, and accountable implementation of the scheme nationwide, especially in light of potential for misuse of funds, is not arbitrary or lacking in nexus with the Act's objective. (Paras 69, 110, 112, 113, 114, 133, 134, 135, 136)

E. Constitution of India, 1950 — Article 77, 166 — Compliance with Constitutional Provisions for Orders and Notifications — The Central Government's clarification under NREGA Section 27 does not require authentication under Article 77 as it is an exercise of statutory power. Similarly, the State Government's amendment to the scheme, issued by notification in the Governor's name, complies with Article 166. (Paras 119, 122, 124, 125, 130, 131)

F. Panchayats — Role Under NREGA — While Panchayats are principal authorities for planning and implementation under NREGA (Section 13), this does not automatically grant Block Pramukhs the right to operate NREGA accounts, especially when the funds are distinct from Panchayat-specific funds and the Act vests specific responsibilities in Programme Officers for financial management. (Paras 6, 68, 97, 98, 101, 118, 135)

G. National Rural Employment Guarantee Act, 2005 (NREGA) — Overriding Effect — Section 28 — The NREGA has an overriding effect on other laws, meaning inconsistencies between the NREGA and other State enactments, such as the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961, concerning the operation of funds, yield to the NREGA. (Para 44, 82)

JUDGMENT

1. This is a bunch of petitions filed by the Block Pramukhs challenging the clarification issued by the Government of India vide circular dated 3rd August 2007, by means of which it has been maintained that at the Block Level, the Programme Officer will be the essential signatory of the joint account, but the officer next to him exclusively looking after the work under the National Rural Employment Guarantee Act, 2005 (hereinafter referred to as 'the NREGA') or the Accounts Officer of the Block shall be the second signatory of the joint account at the Block level.
2. The grievance is against the nomination of the second signatory only.
3. Under challenge is also the circulars issued by the State Government on 7th September 2007, in compliance of the aforesaid directive of the Central Government providing that under NREGA scheme, the accounts will be operated upon by the joint signatures of the Block Development Officer/Programme Officer and the Assistant Development Officer (Panchayat) of the same Block. The scheme as notified by the State Government on 5th October 2007 under Section 4(1), saying that the account shall be operated upon by the joint signatures of the Programme Officer (Block Development Officer) and the Assistant Development Officer (Panchayat) of that block, is also under challenge.
4. All these writ petitions have been filed by the Block Pramukhs namely; various Kshettra Panchayats, which are block level Panchayats.
5. For giving effect to the directive/clarification issued by the Central Government clause 6.4 of the of the U.P. Gramin Rozgar (Sanshodhan) Yojna, notified by the State Government under section 4 sub section 1 of the NREGA, has been amended by means of the impugned notification dated 5th October 2007. Prior to the aforesaid notification dated 5th October 2007, the aforesaid account was to be operated upon by the joint signatures of the Programme Officer (Block Development Officer) and the Block Pramukhs but by means of the aforesaid modification, the Block Pramukhs have been excluded from the operation of the said account.
6. This is the main grievance of the petitioners as their case is that under the NREGA, the scheme framed therein and for their implementation, the power to operate the NREGA accounts cannot be divested from the Block Pramukhs as the Kshettra Panchayats are the

bodies which have been entrusted the responsibility for implementation of the scheme, which cannot be effectively fulfilled unless the said account is operated upon by the Block Pramukh jointly with the Programme Officer.

7. It is also the case of the petitioners that earlier the State Government under the powers conferred under section 4, sub section 1 of the Act, framed the scheme in which it had provided for operation of the said account under the joint signatures of the Programme Officer and the Block Pramukh but despite their being no confusion and no statutory requirement, the Central Government issued a clarification purportedly in exercise of the power under section 27 of the Act and consequently the State Government has modified the scheme which is absolutely arbitrary, illegal and against the constitutional scheme as well as the provisions of U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam as amended by the Constitutional Seventy Third Amendment.

8. For appreciating the controversy involved in these petitions, it would be appropriate to have a glance upon the background, object and scheme of the Act.

9. Productive absorption of underemployed and surplus labour force in the rural sector has been a major focus of planning for rural development. The gravity of the situation of unemployment stands compounded by the absence of social security mechanism. In order to provide direct supplementary wage employment to the rural poor through public works, many programmes were initiated by the Government of India, namely, National Rural Employment Programme (NREP), Rural Landless Employment Guarantee Programme (RLEGP) and Jawahar Rozgar Yojana (JRY). Sampoorna Grameen Rozgar Yojana (SGRY) which are being implemented all over the country with the objective to provide supplementary wage employment in rural areas, create durable rural infrastructure and to ensure food security. It has been indicated in the Statement of Objects and Reasons annexed to the National Rural Employment Guarantee Bill, 2004, the scale of employment generation under SGRY in 200203, and 200304 was barely adequate to provide an average 20 days of employment to each Below Poverty Line (BPL) household in the rural areas.

10. Recognizing the urgent need to ensure a certain minimum days of wage employment, the National Rural Employment Guarantee Bill, 2004 was introduced, in pursuance of which, the National Rural Employment Guarantee Act, 2005 has been enacted to provide for the enhancement of livelihood security of the poor households in rural areas of the country so as to achieve the basic objective of the Act.

11. The Act envisages a collaborative partnership between the Central Government, the State Governments, the Panchayats and the local community. The Gram Sabha is the statutorily mandated institutional mechanism for community participation.

12. This Act extends to the whole of India except the State of Jammu and Kashmir.

13. The basic object of the Act is to provide for the enhancement of livelihood security in

rural areas by providing at least 100 days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for the matters connected therewith or incidental thereto.

14. Subsection (1) of Section 3 of the Act says that save as otherwise provided, the State Government shall, in such rural areas in the State as may be notified by the Central Government, provide to every household whose adult members volunteer to do unskilled manual work not less than one hundred days of such work in a financial year in accordance with the Scheme made under this Act.

15. Subsection (2) of Section 3 says that every person who has done the work given to him under the Scheme shall be entitled to receive wages at the wage rate for each day of work, whereas subsection (3) says that save as otherwise provided in this Act, the disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight after the date on which such work was done.

16. An obligation has been placed upon the Central Government or the State Government for making provisions for securing work to every adult member of a household under a Scheme for any period beyond the period guaranteed under subsection (1), as may be expedient, within the limits of its economic capacity and development.

17. For giving effect to the provision of Section 3 aforesaid, every State Government is required to notify a scheme within six months from the date of commencement of this Act, for providing not less than one hundred days of guaranteed employment in a financial year to every household in the rural areas covered under the Scheme and whose adult members, by application, volunteer to do unskilled manual work subject to the conditions laid down by or under this Act and in the Scheme.

18. The proviso attached to subsection (1) of Section 4 of the Act says that until any such scheme is notified by the State Government, the Annual action plan or Perspective Plan for the Sampoorna Grameen Rozgar Yojana (SGRY) or the National Food for Work Programme (NFFWP) whichever is in force in the concerned area immediately before such notification shall be deemed to be the action plan for the Scheme for the purposes of this Act.

19. Subsection (3) of Section 4 says that the Scheme made under subsection (1) shall provide for the minimum features specified in Schedule 1.

20. Schedule 1 deals with minimum features of a rural employment scheme, and provides that the focus of the Scheme shall be on the works in their order of priority, like water conservation and water harvesting, drought proofing (including afforestation and tree plantation), irrigation canals including micro and minor irrigation works etc.

21. Subsection (1) of Section 5 says that the State Government may, without prejudice to the conditions specified in Schedule II, specify in the Scheme the conditions for providing

guaranteed employment under this Act and subsection (2) says that the persons employed under any Scheme made under this Act shall be entitled to such facilities not less than the minimum facilities specified in Schedule I and Schedule II referable to Section 5 dealing with conditions for guaranteed rural employment under a scheme and minimum entitlement of labourers.

Section 6 speaks about the wage rate and reads as under:

"Notwithstanding anything contained in the Minimum Wages Act, 1948, the Central Government may, by notification, specify the wage rate for the purposes of this Act.

Provided that different rates of wages may be specified for different areas:

Provided further that the wage rate specified from time to time under any such notification shall not be at a rate less than sixty rupees per day.

22. Section 7 makes a provision for payment of unemployment allowance and Section 8 deals with non disbursement of unemployment allowance in certain circumstances.

23. Section 10 under Chapter IV of the Act defines and constitutes implementing and monitoring authorities including Central Government Guarantee Council.

24. Section 11 deals with functions and duties of Central Council.

25. Section 12 says that there has to be regular monitoring and reviewing for the implementation of this Act at the State level, making monitoring obligatory upon the State Government.

26. Section 13 which deals with Principal authorities for planning and implementation of Schemes, says that the Panchayats at district, intermediate and village levels shall be the principal authorities for planning and implementation of the Schemes under the Act.

27. The functions of Panchayats at the district level and block level have been given in subsection (2) and subsection (3) of Section 13 of the Act, respectively, wherein subsection (3) provides that the functions of the Panchayat at intermediate level shall be (a) to approve the Block level Plan for forwarding it to the district Panchayat and the district level for final approval; (b) to supervise and monitor the projects taken up at the Gram Panchayat and Block level; and (c) to carry out such other functions as may be assigned to it by the State Council, from time to time.

28. Subsection (4) of Section 13 says that the District Programme Coordinator shall assist the Panchayat at the district level in discharging its functions under this Act and any Scheme made thereunder.

29. Section 14 speaks of District Programme Coordinator and Section 15 prescribes for a Programme Officer.

30. As per subsection (1) of Section 15, at every Panchayat at intermediate level, the State government shall appoint a person who is not below the rank of Block Development Officer with such qualifications and experience as may be determined by the State government as Programme Officer at the Panchayat at intermediate level. Subsection (2) of Section 15 says that the Programme Officer shall assist the Panchayat at intermediate level in discharging its functions under the Act and any scheme made thereunder, Subsection (3) says that the Programme Officer shall be responsible for matching the demand for employment with the employment opportunities arising from projects in the area under his jurisdiction whereas subsection (4) says that the Programme Officer shall prepare a plan for the the Block under his jurisdiction by consolidating the project proposals prepared by the Gram Panchayats and the proposals received from intermediate Panchayats.

31. Subsection (5) of Section 15 lays down the functions of the Programme Officer, which shall include (a) monitoring of projects taken up by the Gram Panchayats and other implementing agencies within the Block; (b) sanctioning and ensuring payment of unemployment allowance to the eligible households; (c) ensuring prompt and fair payment of wages to all labourers employed under a programme of the Scheme within the Block; (d) ensuring that regular social audits of all works within the jurisdiction of the Gram Panchayat are carried out by the Gram Sabha and that prompt action is taken on the objections raised in the social audit; (e) dealing promptly with all complaints that may arise in connection with the implementation of the Scheme within the Block; and (f) any work as may be assigned to him by the District Programme Coordinator or the State Government.

32. Subsection (6) of Section 15 says that the Programme Officers shall function under the direction, control and superintendence of the District Programme Coordinator and Subsection (7) says that the State Government may, by order, direct that all or any of the functions of a Programme Officer shall be discharged by the Gram Panchayat or a local authority.

33. Section 16 lays down the responsibilities of the Gram Panchayats, which prescribes that the Gram Panchayat shall be responsible for identification of the projects in the Gram Panchayat area to be taken up under a Scheme as per the recommendations of the Gram Sabha and the Ward Sabhas and for executing and supervising such works.

34. Subsection (3) of Section 16 says that every Gram Panchayat shall, after considering the recommendations of the Gram Sabha and the Ward Sabhas, prepare a development plan and maintain a shelf of possible works to be taken up under the Scheme as and when demand for work arises and subsection (4) says that the Gram Panchayat shall forward its proposals for the development projects including the order of priority between different works to the Programme Officer for scrutiny and preliminary approval prior to the commencement of the year in which it is proposed to be executed.

35. Subsection (5) of Section 16 says that the Programme Officer shall allot at least fifty per cent of the works in terms of its cost under a Scheme to be implemented through the

Gram Panchayats.

36. Subsection (6) says that the Programme Officer shall supply each Gram Panchayat with (a) the muster rolls for the works sanctioned to be executed by it; and (b) a list of employment opportunities available elsewhere to the residents of the Gram Panchayats.

37. The responsibility of the State Government in implementing the scheme has been specifically provided under Section 18, which says that the State Government shall make available to the District Programme Coordinator and the Programme Officer necessary staff and technical support as may be necessary for the effective implementation of the Scheme.

38. Section 19 makes a provision for grievance redressal mechanism, which says that the State Government shall, by rules, determine appropriate grievance redressal mechanism at the block level and the district level for dealing with any complaint by any person in respect of implementation of the Scheme and lay down the procedure for disposal of such complaints.

39. Chapter V of the Act deals with establishment of National and State Employment Guarantee Funds and Audit.

40. Under Section 20 subsection (1), it is provided that 'the Central Government shall, by notification, establish a fund to be called the National Employment Guarantee Fund for the purposes of the Act. In subsection (2) it has been provided that the Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants or loans such sums of money as the Central Government may consider necessary to the National Fund. Subsection (3) says that the amount standing to the credit of the National Fund shall be utilised in such manner and subject to such conditions and limitations, as may be prescribed by the Central Government.'

41. Section 21 speaks of State Employment Guarantee Fund, which reads as under:

"21. (1) State Government may, by notification, establish a fund to be called the State Employment Guarantee Fund for the purposes of implementation of the Scheme.

(2) The amount standing to the credit of the State Fund shall be expended in such manner and subject to such conditions and limitations as may be prescribed by the State Government for the purposes of implementation of the Act and the Schemes made thereunder and for meeting the administrative expenses in connection with the implementation of the Act.

(3) The State Fund shall be held and administered on behalf of the State Government in such manner and by such authority as may be prescribed by the State Government."

42. The audit of accounts has been provided under Section 24, which says that the Central

Government may, in consultation with the Comptroller and Auditor General of India, prescribe appropriate arrangements for audits of the accounts of the Schemes at all levels and that the accounts of the Scheme shall be maintained in such form and in such manner as may be prescribed by the State Government.

43. Under subsection (1) of Section 27, power has been vested in the Central Government to give such directions as it may consider necessary to the State Government for the effective implementation of the provisions of the Act and subsection (2) prescribes as under:

"27. (2) Without prejudice to the provisions of subsection (1), the Central Government may, on receipt of any complaint regarding the issue or improper utilisation of funds granted under this Act in respect of any scheme if prima facie satisfied that there is a case, cause an investigation into the complaint made by any agency designated by it and if necessary, order stoppage of release of funds to the Scheme and institute appropriate remedial measures for ;its proper implementation within a reasonable period of time."

44. The National Rural Employment Guarantee Act, 2005 (NREGA) has an overriding effect under Section 28 of the Act, which says that the provisions of this Act or the Schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law.

45. The first proviso attached to Section 28 says that where a State enactment exists or is enacted to provide employment guarantee for unskilled manual work to rural households consistent with the provisions of this Act under which the entitlement of the households is not less than and the conditions of employment are not inferior to what is guaranteed under this Act, the State government shall have the option of implementing its own enactment and second proviso further says that in such cases the financial assistance shall be paid to the concerned State Government in such manner as shall be determined by the Central Government, which shall not exceed what the State would have been entitled to receive under this Act had a Scheme made under this Act had to be implemented.

46. Power to amend Schedules I and II of the Act has been given to the Central Government under Section 29 and Section 31 confers power upon the State Government to make rules, which says that the State Government may, by notification, and subject to the condition of previous publication, and consistent with this Act and the rules made by the Central Government, make rules to carry out the provisions of this Act.

47. The "implementing agency" has been defined in Section 2 subsection (g), which says that implementing agency includes any department of the Central Government or a State Government, a Zila Parishad, Panchayat at intermediate level, Gram Panchayat or any local authority or Government undertaking or nongovernmental organisation authorised by the Central Government or the State Government to undertake the implementation of any work

taken up under a Scheme.

48. The "Programme Officer" has been defined in subsection (m), which says that the Programme Officer means an officer appointed under subsection (1) of section 15 for implementing the Scheme and "Scheme" means a Scheme notified by the State Government under subsection (1) of section 4, as given in subsection (p).

49. The Operational Guidelines, 2006 under the NREGA, lay down formulation of State Employment Guarantee Schemes. Each State Government (where the Act is notified) shall formulate an Employment Guarantee Scheme. This is required under Section 4 of the Act.

50. The Act defines the legally nonnegotiable parameters within which the State Governments have the flexibility of drawing up the Employment Guarantee Scheme according to their contextual requirements. Schedule I of the Act specifies the minimum features of a State Rural Employment Guarantee Scheme, and Schedule II defines the entitlements of workers employed under the Scheme. In addition, Annexure A1 of these Guidelines suggests the essential points that the State scheme should cover. The State Government will also make Rules pertaining to those aspects of the Act that determine the functions of the State Government. The Scheme will be implemented as a Centrally Sponsored Scheme on a costsharing basis between the Centre and the States as determined by the Act.

51. The Operational Guidelines also lay down basic implementation principles.

52. The role of Panchayats as defined in the Guidelines, is that the Panchayats at each level will be the 'Principal Authorities for planning and implementation of the Schemes under the Act' (NREGA, Section 13(1)). Where Part Nine of the Constitution does not apply, local councils/authorities as mandated by the State concerned will be invested with corresponding responsibilities.

53. The District Programme Coordinator and Programme Officer have been entrusted with overall responsibility for ensuring that the Scheme is implemented according to the Act at the District level, and at the Block level respectively.

54. The Panchayats at different levels will need to coordinate with each other for the effective implementation of the Act. Similarly, the Panchayats and the District/Block administration will have to work together. Each REGS must stipulate clearly the institutional mechanisms for effective coordination, appropriate to the context.

55. The Intermediate Panchayat will be responsible for planning at the Block level, and for monitoring and supervision. It can also be given the responsibility of executing works from among the 50 per cent that are not to be executed by the Gram Panchayat.

56. A Programme Officer will be appointed at the Block level with necessary support staff for facilitating implementation at the Block level. The Programme Officer will not be

below the rank of the Block Development Officer. The Programme Officer will be a fulltime dedicated officer, and may be selected from among Departmental personnel and may also be taken on deputation. Fresh recruitment may also be made on contract. The Programme Officer essentially acts as a 'coordinator' for REGS at the Block level. Among his/her important functions are: scrutinizing village plans; matching employment opportunities with the demand for work at the Block level; supervising the Implementing Agencies; safeguarding the entitlements of REGS works; ensuring that social audits are conducted by the Gram Sabhas; and responding to complaints. Ultimately, the chief responsibility of the Programme Officer as coordinator of REGS at the Block level is to ensure that anyone who applies for work gets employment within 15 days. The Programme Officer will also assist the Intermediate Panchayat in its functions. He/she will be answerable to the District Programme Coordinator.

57. Under the Scheme, at least 50% of the works in terms of costs will be allotted to the Gram Panchayat for execution. This is the statutory minimum, and the Programme Officer or the District Programme Coordinator may allot more if deemed feasible. The other Implementing Agencies can be Intermediate and District Panchayats, like departments of the Government, Public Sector Undertakings of the Central and State Governments, Cooperative Societies with a majority shareholding by the Central and State Governments, and reputed NGOs having a proven track record of performance. SelfHelp Groups may also be considered as possible Implementing Agencies.

58. The Programme Officer is authorised to change the Implementing Agency, if he finds that the work is not executed, as required.

59. In each Block, the Programme Officer shall allot at least 50 per cent of the works in terms of its cost under a Scheme to be implemented through the Gram Panchayats.

60. For general works, the Programme Officer shall act as the authority empowered to 'start' works by issuing work orders. Priority will be given to projects that are located in or near Panchayats where applications for work are pending.

61. Information on new applications for work shall be conveyed at least once a week by the Gram Panchayat to the Programme Officer. At the same time, the Gram Panchayat shall specify how many of the new applicants are being employed on Panchayat works and for how long, and how many are to be provided employment on 'general works' by the Programme Officer.

62. Muster rolls for all REGS works shall be issued by the Programme Officer. The Programme Officer shall prepare a consolidated shelf of projects for the Block based on proposals received from the Gram Panchayats and the Intermediate Panchayat, distinguishing between Panchayat works and general works.

63. The District Programme Coordinator, the Programme Officer, PRIs and other

Implementing Agencies may engage the services of accredited engineers of their choice for any work under the Scheme.

64. The Programme Officer, the District Programme Coordinator and the State Government shall keep a watch on the average wages earned under a taskbased system. If necessary, the Schedule of Rates may be revised to ensure that workers earn the minimum wage.

65. If a worker who has applied for work under NREGA is not provided employment within 15 days from the date on which work is requested, an unemployment allowance shall be payable by the State Government at the rate prescribed in the Act. This entitlement comes into effect as soon as the Act is notified in a particular District or area.

66. The Programme Officer shall be responsible for the prompt payment of unemployment allowances throughout the Block.

67. The Financing Pattern as given in Para 1 of the guidelines is as under:

"7.1.1. The Central Government will bear the following costs:

(a) The entire cost of wages for unskilled manual workers.

(b) 75 per cent of the cost of material and wages for skilled and semiskilled workers.

(c) Administrative expenses as may be determined by the Central Government will include, inter alia, the salary and allowances of Programme Officers and their support staff and work site facilities.

(c) Administrative expenses of the Central Employment Guarantee Council.

7.2 EMPLOYMENT GUARANTEE FUNDS

7.2.1. The Central Government shall establish a fund to be called the National Employment Guarantee Fund, to be managed according to the Rules made for this purpose. The grants to State Governments or Districts for implementation of NREGA shall be released from this Fund.

7.2.2. The State Government may, by notification, establish a fund to be called the State Employment Guarantee Fund. This fund is to be expended and administered as a Revolving Fund, with Rules that govern and ensure its utilization according to the purpose of the Act.

7.2.3. Similar Revolving Funds should be set up under REGS at the District, Block, and Gram Panchayat Levels.

7.2.4. The State Government must indicate the Funds that it has designated as the Receptacle Fund for receiving the Central Share. This may be at the State or the District

Level.

7.2.5. The responsibility of the State Government to ensure the fulfilment of the legal guarantee under the Act will begin as soon as the funds are received in the account designated by it as the Receptacle Fund for the Central Share.

7.2.6. The State Government will design a complete Financial Management system for the transfer and use of funds. This must ensure transparency, efficiency and accountability, and track the use of funds towards the final outcome.

7.2.7. Separate bank accounts shall be opened for funds under the Scheme at the State, District and Block levels. The accounts shall be opened in public sector banks. The District Programme Coordinator will be a joint holder of the account at the District level, and the Programme Officer will be a joint holder of the account at the Block level.

7.2.8. Funds allocated to REGS should not be used for other purposes under any circumstances.

The Rural Employment Guarantee Scheme differs from SGRY and NFFWP in that the release of funds is based on State proposals rather than on predetermined allocations.

The release of the Central Share of funds during the next financial year will depend on the submission of the Audit Report and the Utilization Certificate for the previous year to the satisfaction of the Ministry of Rural Development.

The Central Government will normally release funds equal to the expenditure incurred and admissible under the Scheme. If, on the basis of the actual utilization pattern, it is felt that the initial instalment approved is not adequate for meeting the District's halfyearly requirements, the Central Government may release a larger instalment of funds to the District. On the other hand, if the pace of utilization is slow, the Central Government may release a smaller amount.

The Central Government may suspend assistance to an Implementing Agency for improper use of funds. Assistance will be restored after remedial measures have been effected. In such cases, the workers affected will be allocated alternative employment opportunities by the Programme Officer.

Central assistance to REGS will be on the works and processes permissible under the Act and these Guidelines.

68. The main plank of the argument of the petitioners is that Panchayats in the instant cases at Block level being the implementing agency, have been entrusted with the responsibility of effective implementation of the Act and, therefore, if the accounts are not allowed to be operated with the joint signatures of Block Pramukh, it would be difficult to implement the Scheme in the manner, as required.

69. It is further submitted that in view of the direction for operating the accounts jointly by District Programme Officer and Assistant Development Officer (Panchayat) by completely ignoring the Block Pramukh at the Block level, the Block Pramukhs find themselves helpless in discharging their obligations under the Act and the Scheme and that besides the fact that the Central Government did not have any jurisdiction to issue such a direction under Section 27(1) of the Act, the direction so issued is palpably arbitrary and has no nexus with the object to be achieved.

70. A further plea has been raised that the State Government once having notified the Scheme under Section 4(1) of the Act, giving power of operating the NREGA accounts to the District Programme Officer as well as Block Pramukh, the same could not have been directed to be modified on the pretext that there was some confusion amongst the States in the matter of operation of NREGA accounts and, therefore, there being no reason germane to the change, the said direction is palpably without authority.

71. The petitioners urge that whatever amount is given to the Panchayats, either by the State Government or Central Government or any other agency, that forms the funds of the Panchayats over the local authority under Section 100 of U.P. Kshettra Panchayat & Zila Panchayat Adhiniyam, 1961(hereinafter referred to as the Act of 1961) as amended from time to time, wherein Section 101 deals with custody and investment of fund, which says that the Zila Nidhi or Kshettra Nidhi shall be kept in the Government treasury or subtreasury or in the Bank to which Government treasury business has been made over or with the previous sanction of the State Government in one or more of the Scheduled Banks or Cooperative Banks specified in this behalf.

72. Relying upon Section 101A, which has been inserted by U.P. Act No. 33 of 1999, it has been emphasized that all withdrawal of money from the fund of Kshettra Panchayat and disbursement thereof shall be made jointly by the Pramukh and the Khand Vikas Adhikari.

73. Section 99 of the Act of 1961 requires establishment of a fund known as Zila Nidhi for Zila Panchayat and Kshettra Nidhi for Kshettra Panchayat, which says that there shall be established for each Zila Panchayat a fund called Zila Nidhi and for each Kshettra Panchayat a fund called Kshettra Nidhi, to the credit whereof shall be placed all sums received including the grants in aid from the Consolidated Fund of the State, and all loans raised by or on behalf of the Zila Panchayat or the Kshettra Panchayat, as the case may be.

74. The proviso attached to the said Section 99 provides that a Zila Panchayat or a Kshettra Panchayat shall earmark parts of the fund received by it for a particular purpose for that purpose and shall expend the same in carrying out that purpose.

75. Subsection (3) of Section 99 provides that a Zila Panchayat or Kshettra Panchayat may receive such contributions in cash or in kind as may be made by any persons for any work of public utility and the Zila Panchayat or the Kshettra Panchayat shall, there upon, utilize the same together with its contributions, wherever necessary, in executing such work.

76. Section 102 deals with application of fund, namely, Zila Nidhi and Kshettra Nidhi, which says that the Nidhi and all property vested in a Zila Panchayat and the Kshettra Nidhi and all property vested in a Kshettra Panchayat shall be applied for the purposes, express or implied, for which by or under this or any other enactment, powers are conferred or duties or obligations are imposed upon the Zila Panchayat or the Kshettra Panchayat, as the case may be.

77. Subsection (3) of Section 102 says that subject to the provisions of Section 99 the fund and property of a Zila Panchayat or a Kshettra Panchayat shall be applied in the following order of priority

(a) liabilities and obligations arising from a trust legally imposed upon, or accepted by the Zila Panchayat or the Kshettra Panchayat;

(b) the payment of establishment charges including contributions to pension, provident fund and leave allowances;

(c) all sums due to the Government;

(d) the repayment of, and the payment of interest on any loan incurred under the provisions of the Local Authorities Loans Act, 1914;

(e) any sum ordered to be paid from the Zila Nidhi or the Kshettra Nidhi, as the case may be, under subsection (2) of Section 109, subsection (3) of Section 137, subsection (2) of Section 229, subsection (3) of Section 230 and subsection (3) of Section 252;

(f) the carrying on of the duties and obligations imposed upon under Sections 31, 32, 33 and 34 of this Act or any other enactment.

78. Section 31 of the Act of 1961, is the exercise of powers and functions of Kshettra Panchayats and Zila Panchayats, which says that every Kshettra Panchayat and Zila Panchayat shall exercise the powers and perform the functions conferred and entrusted or delegated to it by or under the Act, whereas Section 32 deals with general powers and functions of the Kshettra Panchayats, which says that every Kshettra Panchayat shall, within the Khand exercise powers and performs the functions specified in Schedule I.

79. Section 33 is the general powers and functions of Zila Panchayat, to which this case does not concern and Section 34 deals with transfer of any function by Zila Panchayat or Kshettra Panchayat to another local authority.

80. The provisions of the Act of 1961, which deal with the powers and functions of Zila Panchayat and duties of Kshettra Panchayat, speak of the funds known as Kshettra Nidhi and Zila Nidhi, as the case may be, which funds have to be operated upon by the Block Pramukh and Block Development Officer. The property which vests in the Zila Panchayat or Kshettra Panchayat under Section 103 and 104 respectively, shall be for the purpose of

this Act, namely, Act of 1961.

81. The question, therefore, arises as to whether the Kshetra Panchayat being one of the implementing agencies with the responsibility of ensuring effective and honest implementation of the Scheme under the NREGA, is it necessary for the Kshetra Panchayats to have a right to operate the account jointly with District Programme Officer with their Block Pramukhs and corollary to the said question is as to whether the funds which are released by the Central Government and are made available to the Panchayats for implementing the Scheme under NREGA, can be said to be the funds of the Panchayats, namely, Zila Nidhi or Kshetra Nidhi.

82. NREGA is an Act which has an overriding effect over all other enactments as given in Section 78 of the Act. Any inconsistency in the 1961 Act with the NREGA would not allow the Panchayats to have any right under the said Act.

83. Section 20 of the NREGA clearly mentions of the National Employment Guarantee Fund and says that the Central Government shall establish a fund to be called the National Employment Guarantee Fund, to be managed according to the Rules made for the purpose of this Act.

84. This leaves no doubt that the National Employment Guarantee Fund, is a fund established by notification by Central Government for the purpose of the Act, namely, for implementing the schemes under the Act.

85. Subclause (3) of Section 20 makes it abundantly clear that the amount standing to the credit of the National Fund shall be utilised in such manner and subject to such conditions and limitations as may be prescribed by the Central Government.

86. So far the State Employment Guarantee Fund is concerned, the State fund shall be held and administered on behalf of the State Government in such manner and by such authority as may be prescribed by the State Government.

87. In the instant case, we are dealing with National Employment Guarantee Fund.

88. The Central Government thus, is empowered to utilize the funds in the manner, in which it requires and subject to such conditions and limitations as may be prescribed by the Central Government.

89. The prescription of 'conditions and limitations' would include the power of the Central Government to issue directive as to in what manner and under whose signatures the account of National Employment Guarantee Fund can be operated upon.

90. Block Pramukhs or the Kshetra Panchayats cannot have any grievance, if these funds are not allowed to be operated under the joint signatures of the District Programme Officer and Block Pramukh. The funds so created under Section 20 of NREGA cannot be taken as

the fund of the Kshetra Panchayat or Zila Panchayat nor Kshetra Nidhi or Zila Nidhi.

91. The argument of the counsel for the petitioners that whatever contributions, funds and profits etc. are given to the Kshetra Panchayat or Zila Panchayat, they form part and parcel of the funds of the Panchayat, is not borne out from the provisions of the Act of 1961 and, of course, from none of the provisions of NREGA.

92. A bare perusal of the provisions of Section 99 of the Act of 1961 would reveal that these funds, namely, Zila Nidhi and Kshetra Nidhi, shall be established to the credit where of shall be placed all sums received including the grants in aid from the Consolidated Fund of the State, and all loans raised by or on behalf of the Zila Panchayat or the Kshetra Panchayat, as the case may be. But it does not say that if the funds are given for implementing the Scheme under the NREGA, that will constitute the Kshetra Nidhi or Zila Nidhi.

93. Under Section 101A, withdrawal from and disbursement of the fund of Kshetra Panchayat has been provided, which provision is relatable only to the Zila Nidhi and Kshetra Nidhi.

94. Subsection (3) of Section 99, where the utilization of the Kshetra Nidhi and Zila Nidhi, has been provided, does not bring within its campus the Scheme under NREGA nor the same can be read into this provision.

95. National Employment Guarantee Fund is a separate Fund, which is established by notification issued by the Central Government and the State Government is to frame a Scheme under Section 4(1) for implementing the Schemes which are known as State Scheme and for that purpose, it is the discretion of the Central Government to provide the mechanism and the manner, in which such accounts are to be operated. The funds either under the NREGA is thus, not a fund of the Kshetra Panchayat or it is the fund of Zila Panchayat, for which Section 101A of the Act of 1961 would be applicable.

96. Section 102 also talks only of 'Nidhi' and provides that the Nidhi and all property vested in a Zila Panchayat and the Kshetra Nidhi and all property vested in a Kshetra Panchayat shall be applied for the purposes, express or implied, for which by or under this or any other enactment, powers are conferred or duties or obligations are imposed upon the Zila Panchayat or the Kshetra Panchayat, as the case may be, whereas the aforesaid fund does not fall within the aforesaid definition.

97. The argument of the petitioners that since the Panchayats have been made implementing agency, the responsibility is fastened upon them for implementation of the Scheme under NREGA and, therefore, the accounts have to be necessarily operated under their joint signatures, also does not call for any merit as there can be many more implementing agencies, as given in Para 5.2 of the Operational Guidelines and all implementing agencies cannot claim that they should be the signatory of NREGA

accounts. The responsibility fastened upon the Kshettra Panchayat is for implementation of the Scheme, in so far its proper functioning and execution is concerned.

98. It has been vehemently urged that after 73rd Constitutional Amendment, when the Panchayats have been given a Constitutional status, the functions, duties and obligations arising out of the said Constitutional Scheme have to be implemented, executed and discharged by the Panchayats and, therefore, the works which are to be looked after by the Panchayats cannot be entrusted to any other agency and for that matter, Panchayats have been made the implementing agency and also responsible for the execution of the schemes, which means that the interference by the Central Government by means of the impugned circular, excluding Block Pramukh from the joint operation of accounts is against the Constitutional provision.

99. Recourse has been taken to Eleventh Schedule of the Constitution, where the works, which are to be done by the Panchayats have been enumerated. Argument is that all the works, which are to be undertaken under NREGA, are the works which are given in Schedule Eleven of the Constitution and, therefore, the Central Government, while making the Panchayats responsible for implementation of the said Scheme rightly did so, but it had no authority or power to divest the Block Pramukhs from operating the accounts.

100. So far the execution of works provided in Eleventh Schedule are concerned, the learned counsel for the petitioners have drawn the attention of the Court to the work undertaken under NREGA to establish that they are identical and, therefore, the entire Scheme is to be governed by the said Act and the Constitutional Scheme.

101. In this regard, suffice would be to mention that by means of the impugned circular, the authority, powers, obligations and duties of the Panchayats under the Constitutional Schemes or under the Schedule given under the Act, have not been taken away from them. The works are still to be performed in the manner prescribed by the Central Government through the agency of Panchayat and other implementing agencies.

102. It is only the release of funds for the purpose of prompt payment to the labourers that the operation of the accounts has been allowed to be undertaken under the joint signatures of District Programme Officer with the Block Development Officer and the Assistant Development Officer (Panchayat) instead of Block Pramukh.

103. The Programme Officer is a full time officer and may be selected from among Departmental personnel and may also be taken on deputation. Fresh recruitment may also be made on contract. The Programme Officer essentially acts as a 'coordinator' for REGS at the Block level. Among his/her important functions are: Scrutinizing village plans; matching employment opportunities with the demand for work at the Block level; supervising the Implementing Agencies; safeguarding the entitlements of REGS workers; ensuring that social audits are conducted by the Gram Sabhas; and responding to complaints. Ultimately, the chief responsibility of the Programme Officer as coordinator of

REGS at the Block level is to ensure that anyone who applies for work gets employment within 15 days. The Programme Officer will also assist the Intermediate Panchayat in its functions. He/she will be answerable to the District Programme Coordinator.

104. The responsibility for coordination of employment data will lie with the Gram Panchayat at the Gram Panchayat level, and with the Programme Officer at the Block level. Therefore, a mechanism for timely sharing of information between these two levels has to be ensured. The Programme Officer will be responsible for ensuring that this coordination mechanism is functional. Any problem in this regard will be addressed immediately by the District Programme Coordinator.

105. Under Section 15 subsection (5), where the functions of Programme Officer have been given illustratively, it also has a clause (c) which vests responsibility on the Programme Officer for ensuring prompt and fair payment of wages to all labourers employed under a programme of the Scheme within the Block.

106. This means that the responsibility of ensuring prompt and fair payment of wages is of the Programme Officer. Kshetra Panchayats have not been shown anywhere to be vested with the responsibility of payment of wages. Their function is to get the Schemes implemented.

107. Subsection (6) of Section 15 of NREGA provides that the Programme Officer shall function under the direction, control and superintendence of the District Programme Officer.

108. Subsection (5) of Section 14 provides that the Programme Officer shall be responsible to assist the District Programme Coordinator in carrying out his functions under the National Rural Employment Guarantee Act, 2005. Thus, the functions and powers of the Programme Officer are multifarious and important so as to be so exercised as to ensure that full benefit of National Rural Guarantee Scheme (REGS) reaches its rural beneficiaries, most of whom belong to below poverty line. Hence it is the statutory responsibility of the Programme Officer under Section 15(5)(b) & (C) of the Act to ensure timely transfer of fund.

109. The Operational Guidelines issued by the Government of India, in Para 7.2.7 provides that "Separate bank accounts shall be opened for funds under the scheme at the State, District and Block levels. The accounts shall be opened in public sector banks. The District Programme Coordinator will be a joint holder of the account at the District level, and the Programme Officer will be a joint holder of the account at the Block level.

110. This makes clear that the Bank accounts are to be operated through joint account. One of the signatory of the joint account at Block level was specified to be Programme Officer. However, it did not specify the second signatory. It having come to the notice of the Ministry of Rural Development that there was some confusion regarding appointment of

second signatory for operation of the NREGA account, as it has been misunderstood by some States, the Central Government in exercise of powers under Section 27 had issued a clarification on 3.8.07 naming the second signatory of the joint account at the district level and at the Block level. The Central Government specified the second signatory as Assistant Development Officer, Accounts or the person next below the Development Officer, who shall look after the NREGA work.

111. The State Government, as a sequel to the directive issued by the Central Government, modified the Clause 6.3 and 6.4 of the Scheme and the Act framed in exercise of powers under Section 4(1) of the Act by incorporating the specified of the second signatory for operating the accounts of NREGA.

112. It may be taken note of, that this clarification was issued by the Central Government with respect to all States and it was not a direction for a particular State. Therefore, it cannot be said that it was an arbitrary direction or motivated direction. It is the case of the Union of India in their counter affidavit that the Government of India has taken note of the fact that in the past it has been seen that in many cases the intended benefit of government programme does not reach its target group due to complex procedural requirements and corruption at both Block and District level. With a view to remove these obstacles to the speedy and effective implementation of NREGS, the Central Government thought it necessary to give full powers and responsibility to the Programme Officer and the Assistant Programme Officer, who are exclusively involved with the implementation of NREGS to operate the Bank Account jointly. It was in this context that it was thought necessary by the Central Government that the clarification regarding joint operation of the NREGA accounts shall be issued to the State Governments. As such, the intention of issuance of these instructions was in the larger interest of the NREGA beneficiaries and in accordance with the NREG Act, 2005.

113. Section 27(1) of the Act gives power to the Central Government to give such directions as it may consider necessary to the State Government for the effective implementation of the provisions of the Act. It is the overall responsibility of the Central Government for the effective implementation of the Act. Under Section 27, the Central Government is required to ensure effective implementation of the Act and institute remedial measures to resolve difficulties in the implementation of the Scheme and the Act in a time bound manner. As such considering the facts and circumstances and in the larger public interest the Central Government after thorough examination of the problems arising out of the ambiguity of the guidelines issued the clarification letter dated 3.8.07.

114. This has been done evidently to strengthen the transparency and accountability requirement of the Act which is the soul of the Statute. It was expected that with this amplification of the provision of the guideline the Programme Officers will be able to ensure timely release of funds to the beneficiaries and institutions working with them, and the National Rural Employment Guarantee Programme would be properly implemented.

115. It has also been urged by the respondents that it appears that because under various schemes, which were in force prior to the enforcement of the NREGA, the Block Pramukh were allowed to operate the accounts and, therefore, Government Order was issued on 27.4.06 by the State Government laying down the same pattern of operation of accounts, namely, under the joint signatures of Programme Officer, who was specified in the Act and guidelines issued by the Central Government alongwith Block Pramukh.

116. With the same thought process when the State Government framed the Scheme under Section 4(1) of the Act, same provisions were incorporated in Para 4 with respect to Block level Panchayats.

117. On issuance of clarification by the Government of India, aforesaid clause has been amended and it has been provided that the accounts would be operated by the Programme Officer.

118. The petitioners who are the Block Pramukhs, cannot claim any enforceable and vested right to operate the account of NREGA, which are separate accounts duly created and undertaken by the Central Government and also the accounts, which are meant for implementing the Scheme under the said Act, as given in Section 20 and 21 of the Act nor they can claim that they are the funds of Zila Nidhi and Kshetra Nidhi so as to attract the provisions of Section 101A of the Act of 1961.

119. An argument has been raised that the impugned directions issued by the Central Government dated 3.8.07 and the consequent direction issued by the State Government on 7.9.07 are not in consonance with the provisions of Article 77 and 166 of the Constitution and, therefore, they are nullity.

120. The direction dated 3.8.07 issued by the Government of India, Ministry of Rural Development, Department of Rural Development has been issued with regard to the joint account system at district and block level under NREGA. The aforesaid clarification specifically recites that it has come to the notice of the Ministry that joint account system as per para 7.2.7 of the NREGA guidelines has not been properly understood by some States and so is creating confusion as to who would be the joint signatory at the district level and block level to operate NREGA accounts. Under these circumstances, the aforesaid clarification says that at Block level Programme Officer will of the joint account and that the officer next to him exclusively looking after NREGA or the Account Officer of the Block should be the second signatory of the joint account at Block level. Directions were issued to all the States to issue instructions to all the NREGA district under their respective charge.

121. A perusal of the aforesaid clarification brings forth the confusion, which was created and finding that in some States, guidelines have not been properly followed, meaning thereby that there was confusion of account operation, as per the guidelines to make the uniform system and for effective implementation of the Scheme throughout the country.

122. Article 77 which deals with conduct of business of the Government of India, says that the all executive action of Government of India shall be expressed to be taken in the name of the President and that the orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President. The aforesaid Article does not come in the way of issuing the aforesaid clarification. The clarification has been issued under Section 27 of the NREGA, which empowers the Central Government to issue such clarifications and, therefore, the said clarification did not require any authentication as provided under Article 77 of the Constitution.

123. In regard to the plea of Article 166 not being followed by the State Government, while issuing the circular/directive on 7.9.07, by means of which the operation of the Employment Guarantee Fund has been directed to be carried on under the joint signatures of the Programme Officer, namely, Block Development Officer and the Assistant Development Officer (Panchayat) of the same block, suffice would be to mention that the State Government while amending the Scheme under Section 4(1), issued a notification in exercise of powers under subsection (1) of Section 4 of the National Rural Employment Guarantee Act, 2005 (Act No. 42 of 2005) read with Section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897), saying that the Governor is pleased to make the following scheme with a view to amending the Uttar Pradesh Gramin Rozgar Guarantee Yojna published with Government notification no. 170/38720068 NREGA/06 dated February 08, 2007.

124. The issuance of said notification by the Governor and consequent amendment of the previous Scheme in Clause 6.3 and 6.4 is completely in consonance with the provisions of Article 166 of the Constitution.

125. It is not mere a directive issued by the State Government on 7.9.07, which is being sought to be implemented, while prescribing the nominees of the joint account holders of NREGA fund, but, as a matter of fact, it is the notification issued on 5.10.07 i.e. the statutory Scheme being amended by the Governor in exercise of powers conferred upon him, as mentioned therein and, therefore, it cannot be said that there is any violation of Article 166 of the Constitution.

126. A perusal of the directive issued on 7.9.07 shows that by the aforesaid directive, the Government order dated 26.4.06 was set aside and the Scheme promulgated on 8.2.07 was required to be amended in respect of its clauses 6.3 and 6.4. Further the clause 6.4 in the aforesaid directive once again made it clear that there would be a separate bank account, wherein the employment guarantee fund would be kept.

127. It is this employee guarantee fund, which is a fund under the NREGA, which was to be operated upon and for which Central Government issued a direction/clarification that

such an account shall be operated upon by the nominees given by them and, therefore, the petitioners, who are the Block Pramukhs cannot have any grievance, such a fund not being Zila Nidhi or Kshetra Nidhi of the Panchayat.

128. Reliance has been placed on the case of *Bachhittar Singh v. State of Punjab*, AIR 1963 SC 395 and *State of Kerala v. A. Lakshmikutty*, (1986) 4 SCC 632, by the petitioners in support of their contention that announcement of cabinet decision to the press is not an order since it is not an order under Article 166(1) and, therefore, whatever Council of Ministers may say, it does not become 'action of the State' till advice of Council of Ministers is accepted or deemed to be accepted by Governor.

129. It has, therefore, been urged that a decision of a Minister under the Business Rules is not final or conclusive until the requirements in terms of Article 166(1) and (2) are complied with.

130. We have already observed that Article 166 stands complied with by the notification amending the Scheme, known as Uttar Pradesh Grameen Rozgar (Sanshodhan) Yojna, 2007.

131. The proposition laid down in the aforesaid cases, in no way affects the plea of the respondents that the Scheme has been duly amended by notification issued in the name of Governor and that there is full compliance of Article 166 of the Constitution.

132. It has also been argued that the reasons given for the issuance of the aforesaid clarification by the Central Government on 3.8.07 are, in fact, nonexistent and that it is a fraud on power, in as much as that there is no material to indicate that there was corruption as pleaded in the counter affidavit, in the matter of operation of NREGA account or there were any difficulties, which were being faced in this operation nor there was any confusion, as stated in the impugned direction.

133. The counter affidavit filed by the respondents elaborates the reasons for such a direction issued by the Central Government and consequent amendment of the statutory Scheme by the State Government. The very fact that in the clarification, it has been mentioned that some of the States have misunderstood the NREGA guideline 7.2.7, leaves no room of doubt that there was no uniform pattern of operating the account jointly and, therefore, it cannot be said that there was no confusion while making the provision for operation of NREGA account, which account was separately opened in a Bank.

134. Further the plea of corruption and difficulties being faced in the matter effective implementation of the provisions of NREGA and the Scheme framed thereunder, was a matter to be considered by the Central Government and if the Central Government on the basis of the information received, was of the view that this clarification need be issued for effective implementation of the Scheme under the Act, this Court would not probe nor will enquire into the wisdom of the said policy or discretion exercised by the Central

Government. The change so made, neither runs contrary to the provisions of NREGA nor is in violation of any Constitutional provision, which deal with the functions, powers and duties of the Panchayats. The account in question, being the account of the Employment Guarantee Fund, the Central Government was fully competent to issue such a directive.

135. The State Government is also not at liberty to provide mechanism for operation of accounts of NREGA of its own and not in consonance with the directives issued by the Central Government, it being essentially a Central Government Scheme, which is to be implemented through the State agency. By providing that the NREGA account would be operated by the Programme Officer as well as Assistant Development Officer or the officer next below the officer, who is looking after the NREGA works, no right either of the Panchayat or its functionaries or elected representative, namely, Block Pramukh, has been infringed nor has been taken away.

136. If for proper, effective and prompt implementation of NREGA Scheme, the Central Government in its wisdom has provided a mechanism for operating the NREGA account, it cannot be said that the Central Government has acted arbitrarily or without any authority. It is the fund of the Central Government and, of course, all that fund which is given for implementation of the Scheme, would constitute a separate account, may be with the contribution of the State Government and this fund cannot be said to be a fund of the Panchayat or Zila Nidhi or Kshetra Nidhi. The said fund has to be used for the Scheme in force and in the manner prescribed.

137. We thus, do not find any illegality or impropriety in the aforesaid clarification issued by the Central Government and the modification in Clause 6.4 of the Scheme by the State Government, following the directive issued by the Central Government.

138. The writ petitions lack merit and are hereby dismissed.

139. Interim orders, if any, stand discharged.