

J-16020/55/2012-MGNREGA (pt.)

**Government of India
Ministry of Rural Development
Department of Rural Development
MGNREGA Division**

Krishi Bhawan, New Delhi,
Dated: 7th September, 2012

The Principal Secretary/Secretary (RD)/
Secretary (In-charge-MGNREGA)
Government of All States/UTs

CIRCULAR

Sub: - Standard Operating Procedure (SOP) for operationalizing provisions of Section 27 (2) of MGNREGA.

Standard Operating Procedure (SOP) for dealing with complaints and operationalizing provisions of Section 27 (2) of MGNREGA has been uploaded on MGNREGA website for strict compliance and necessary action by all the State Government/UTs.


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Government of India
Ministry of Rural Development
(MGNREGA Division)

**Standard Operating Procedure (SOP) for Stoppage of Funds Under Section 27(2) of
MGNREGA**

1. As per the provisions in Section 27(2) of MGNREGA, the Central Government may, on receipt of any complaint regarding lack of effective implementation of the provisions of the Act or regarding the improper utilization of funds granted under this Act, order an investigation into the complaint and if necessary, shall order stoppage of release of funds to the scheme if no appropriate remedial measures are instituted for proper implementation within a reasonable period of time as defined by the Central Government. In accordance with the principles governing statutory powers granted by Parliament to Government, such powers are to be exercised in a consistent way in keeping with the basic objective of the Act, which in this case is to provide for enhancement of livelihood security.

2. Ministry of Rural Development receives large number of complaints from Members of Parliament, other public representatives, NGOs and the general public regarding violation of Guidelines for implementation of MGNREGS. The complaints received in the Ministry are broadly on the following issues :
 - i. Non involvement of Gram Sabha in selection of works
 - ii. Non-Issuance of Job Cards
 - iii. Denial of application for registration
 - iv. Non availability of work site facilities like crèche, drinking water, first aid box etc.
 - v. Non-Payment of Unemployment Allowance
 - vi. Not providing works within the time frame
 - vii. Social audits not being conducted
 - viii. Delay in payment of wages under MGNREGA
 - ix. Irregularities in selection of beneficiaries
 - x. Delay in completion of projects
 - xi. Financial irregularities
 - xii. Purchase of material with out following prescribed procedure
 - xiii. Embezzlement /Misappropriation of funds
 - xiv. Use of Machinery
 - xv. Involvement of contractors
 - xvi. Forging of muster rolls
 - xvii. Execution of inadmissible works

3. As the Schemes are implemented by respective State Governments/UT Administrations, the action on complaints also primarily needs to be taken by them only. However, it has been observed that in many cases, State Governments do not take timely remedial action. The Ministry of Rural Development has formulated a Standard Operating Procedure (SOP) for application of the provisions of Section 27 (2) read with the provisions relating to accountability given in Section 23 of the Act, in the manner given below:
4. MGNREGA division in the Ministry will look into all complaints received in the Ministry and categorize them into (1) Petitions (2) Grievances/Complaints regarding procedural violation of Guidelines (3) Complaints relating to effective implementation of the Act and (4) Complaints involving financial irregularities. The categorization will be broadly based on the following *(The list of allegations referred in paragraphs next is only indicative and not exhaustive. Allegations which are not listed above will be categorized appropriately by MGNREGA Division):*

i) **Petitions:** General/ non-specific statements on the implementation of the Scheme and general observations/suggestions on the improvement in the Scheme will come under this category. These would include (1) increasing the number of days of works (2) increasing the wage rate (3) inclusion of new category of works (4) convergence with other programmes (5) general statement like corruption at all levels in the district/block/village etc.

Action on references in the nature of **petitions** will be taken by MGNREGA Division of the Ministry itself in accordance with the provisions of the Act, Rules and accepted policy of the Government and may not be referred to the State Government unless required to do so.

ii) **Grievances/Complaints regarding procedural violation of Guidelines:** Irregularities, which are born out of deficiencies like lack of capacity building, shortage of staff, lack of planning etc. will come under this category. These include allegations where no criminal intent is involved, such as delay in completion of works etc. or random cases of a nature where lack of management capacity appears to be the major cause.

Grievances/complaints on violation of Guidelines will be referred to respective State Government by the Ministry within 15 days of receipt. The State Govt will have the complaint enquired into by deputing a field Investigation team.

The State Government will be required to send an Action Taken Report (ATR) within three month's time of receipt of the complaint. The ATR should include the action taken on the current case and also the systemic changes that the State proposed to carry out so that such grievances do not recur.

- iii) **Complaints relating to effective implementation of the Act:** In this category, will be included complaints relating to large scale and prolonged deviation from the main provisions of the Act including (1) non-involvement of Gram Sabha in the selection of works, (2) not conducting Social Audits, (3) delay in payment of wages, (4) Non availability of work site facilities like crèche, drinking water, first aid etc (5) non-issuance of job cards, (6) Denial of application for registration (7) non-payment of unemployment allowance, (8) not providing works within the time frame, (9) non_maintenance of records, (10) use of machinery (11) involvement of contractors etc.

Complaints relating to effective implementation of the Act will also be referred to the State Governments. However, in this case, the State Government will need to depute a senior officer or a team of officers from the Secretariat/Directorate to enquire into the matter and make specific actionable recommendations, which should be placed before the SEGC along with the views of the State Government in accordance with Section 12 (3) of the Act. The Field Investigation Report, the views of the State Government and the decision of the SEGC should also be conveyed to the Central Government as an ATR within three months of receiving the complaint from the Ministry.

- iv) **Complaints on financial irregularities:** Any allegation relating to possible or actual loss to the exchequer and where criminal intent is involved will come under this category. These include (1) purchase of materials without following applicable financial procedures with the intention of causing wrongful loss to the scheme or wrongful gain to another party, (2) embezzlement of funds/misappropriation of funds, fudging of financial records including duplication of muster rolls, bogus entries, etc.

The cases under **complaints on financial irregularities** will also be referred to State Governments to furnish their views within 15 days. However, in case of serious nature of complaints, where criminal intent is involved and immediate action is necessitated and if the Division finds a prima facie case exists, then, with the approval of Secretary (RD) or Additional Secretary (RD), a Central team with one officer of the Ministry (preferably Dir/DS level and above and not necessarily from MGNREGA Division) along with an Institutional National Level Monitor (NLM) will be constituted (within 15 days of receiving such complaint) for enquiring into the allegation(s) and submitting a field investigation report to the Ministry within a period of one month. The field investigation report of NLMs/Central Team, after examination in the Ministry, will be immediately shared with the State Government / SEGC and they shall submit the ATR to the Ministry within a period of 30 days.

5. **Extension of time for submission of ATRs**

For any category of complaint, if the State fails to submit an ATR within the prescribed time period, the Ministry shall issue a reminder giving a grace period of another two weeks time with a caution that non submission of ATR will lead to invoking Section 27(2) of the Act for stoppage of funds. If required, State Government can ask for reasonable additional time with justification. Consideration for providing additional time shall be undertaken by a Committee under the Chairmanship of Additional Secretary, comprising of the following officers as members from the Ministry:

JS (RE) / JS(RE & PC)	-	Member
CCA	-	Member
Concerned Director in the division	-	Convener

The Convener will prepare a gist of complaints along with the justification given by the state for seeking additional time. Based on the seriousness of the complaint and the explanation offered by the State, the Committee may decide to give additional time to the state for submitting the ATR.

6. **Receipt and Review of Action Taken Report**

The same committee will review the ATRs received from the States. The convener will place before the committee, gist of the complaint, the ATR, findings of NLMs/Central Team if any and the action taken by the State thereon. The Committee will look into enquiry report and ATR and satisfy itself about appropriateness of the action taken on the complaints. The Committee may also invite the concerned State/district Officers to present its case before the Committee, if need be. In case of category (iv) involving misappropriation/ embezzlement or financial irregularities..

7. **Action expected from States for a satisfactory ATR:**

In the case of complaints in category given in para 4 (ii) and 4 (iii), it is expected that the State Govt would have issued necessary instructions/ guidelines to correct the deficiency observed. The Ministry may ask the State Government to intimate the effectiveness of the guidelines.. In addition, appropriate administrative action should be taken against those found to be violating the provisions of the Act / guidelines.

With regard to the complaints relating to financial irregularities, generally, the following action should have been completed for an acceptable ATR:

For employees:

- (i) Lodging FIR against the delinquent officer(s) in case, prima facie, a criminal intent is apparent and
- (ii) Formal initiation of departmental enquiry

Elected officials:

- (i) Proceedings for disqualification/ termination / recovery should have been initiated under the State PR Act and
- (ii) Recovery should have been ordered by issue of a formal recovery certificate or a written order if, following a due process, recovery is due.

It is expected that proceedings initiated as above will progress to their logical conclusion with all due speed and progress in this regard will also be reviewed by the Committee in the manner given in para 6. The Committee may seek periodic ATRs in this regard.

8. Consequences of not submitting satisfactory or timely ATRs

If the State fails to respond with a satisfactory ATR or within the specified time period, the Committee may recommend remedial action including stoppage of funds under Section 27(2) of the Act. Where the matter is of a serious nature, it could recommend CBI inquiry. Entrusting investigation to CBI would require consent of the State Government concerned under Section 6 of the Delhi Special Police Establishment (DPSE) Act, 1946. Hence, the State Government concerned would be requested to accord their consent on such proposed investigation under Section 6 of DPSE Act, 1946, within four weeks of issue of such request. The State Government may also initiate a CBI inquiry on its own behalf and keep the Ministry informed.

The decision of the Ministry on the ATR will be communicated to the State along with the course of remedial action to be taken by the State Government immediately. The State Government shall take appropriate action on the matter and submit to the Ministry the Compliance Report within three weeks. The Compliance Report received from the State Government will again be placed before the Committee. If the Committee feels that the action taken by the State is satisfactory, then the Committee may recommend for release of full amount due to the State/district. In case of unsatisfactory compliance of the recommendations/action, the Committee may continue to recommend stoppage of funds till a satisfactory 'cure' is commenced.

In case ATRs are not received timely or are not satisfactory an Institutional NLM(s) may be deputed with the approval of Additional Secretary/ Secretary, Ministry of Rural Development to enquire into the matter and submitting a report to the Ministry within a period of one month.

In case of a financial loss, and if the committee is of the view that the State Govt has not taken adequate steps to recover the loss and/or punish officials involved, the quantum of loss shall be treated as additional State liability (in addition to the due share as per Section 22). Upon recovery of embezzled / misappropriated amounts, the same will be deposited in SEGF (or in the MGNREGA fund at District level if the State has no SEGF) and States' liability accordingly adjusted.

9. Use of a common software:

A software will be prepared by NIC, MoRD to ensure effective monitoring and quick disposal of the complaints in Category (B), (C) and (D). The software will support uploading the complaints and generating unique complaint number to the complainant for knowing the status of their complaint. The complaints will be categorized State/UT wise and each State/UT will be given user name and password to access the complaints and upload the enquiry report/ATR. The system will generate reminder to the State/UT in case the report is not uploaded on time.

10. Establishing Complaint Cells in States

The State Governments should establish a Complaint Cell, under the direct charge of Secretary, Rural Development in the state, for looking into all the complaints related to MGNREGA. The complaint cell may either be for complaints specifically related to MGNREGA or it may be the same as for complaints related to other programmes/ Schemes of Ministry of Rural Development.

11. Provisions of Para 36 of Schedule II to apply

Notwithstanding the detailed procedure listed above that deals with the procedure for handling complaints received in the Ministry and referred to the States for necessary action, provision of para 36 of Schedule II of the Act will be applicable to the complaints received directly by the PO/ DPC or State Government.
