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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.133 OF 2007
WITH
CIVIL APPLICATION NO. 59 OF 2008

Dr. Rajendra Sadanand Burma & Anr. … Petitioners
Versus
The State of Maharashtra & Ors. …Respondents

WITH
CIVIL APPLICATION NO.87 OF 2009
IN
PUBLIC INTEREST LITIGATION NO.133 OF 2007

Bandu Sampatrao Sane … Petitioner
Versus
The State of Maharashtra & Ors. …Respondents

WITH
CIVIL APPLICATION NO.175 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.133 OF 2007

Malgaonkar Bhushan Pandurang … Petitioner
Versus
The State of Maharashtra & Ors. …Respondents

WITH
CIVIL APPLICATION NO.56 OF 2018
AND
CIVIL APPLICATION NO.57 OF 2018
IN
PUBLIC INTEREST LITIGATION NO.133 OF 2007

Dr. Rajendra Sadanand Burma & Anr. … Petitioners
Versus
The State of Maharashtra & Ors. …Respondents

Mr. Jugal Kishor Gilda, Senior Advocate with Ms. Bhavika Thakkar for the Petitioner.

Mr. P.P. Kakade, Government Pleader with Ms. Neha Bhide, 'B' Panel Counsel for State.
Mr. Bhushan P. Malgaonkar for Applicant in CAW No.175 of 2014.
Mr. U.P. Warunjikar, for Respondent in WP No.3589 of 2011.
Mr. Y.R. Mishra with Mr. Dharesh Joshi for Respondent No.6 (Govt. of India)

CORAM: S.C. DHARMADHIKARI & R. I. CHAGLA, JJ.
DATED: 5TH NOVEMBER 2019

PC:-

1. In these matters which have been listed before several benches from time to time, the issue of malnutrition deaths in Vidarbha region specially Melghat and in some villages of erstwhile Thane and now Palghar district, has been highlighted.

2. This Court has issued several directions from time to time principal amongst them were to have a study carried out independently and in the form of a audit. The Tata Institute of Social Sciences was involved so that the root cause for malnutrition deaths can be identified and appropriate solutions found to these vexed problems.

3. We agree with the counsel appearing for the Petitioners that unfortunately despite 13 years and more of continuous monitoring by this Court, the State Government has not been able to demonstrate that they are anywhere near the target zero deaths. What is projected and continuously before this Court is the reduced percentage of the deaths on account of malnutrition.

4. There are several orders passed directing Affidavits to be filed particularly by the Union of India through the appropriate ministry official. We are informed today that the concerned ministry in the Central Government is the department of Women and Child Development. If that is the concerned or incharge department, then we expect a senior level officer of that department to file his personal Affidavit and remain present in this Court on the next occasion for answering some of the queries arising out of our past directions.

5. An Affidavit was to be filed much earlier and within the time stipulated in this Courts order and directions issued from time to time. However, it is admitted that same is delayed. Ordinarily we would have been justified in not granting the request for adjournment or granting it with condition *inter alia* of payment of heavy costs. We refrain from doing so simply because it is stated that within two weeks from today, the Affidavit would be filed by the Central Government with advance copies to the Petitioners and the learned Assistant Government Pleader representing the Government of Maharashtra.

6. We have informed during the course of today's hearing that there are two schemes evolved and known as Integrated Child Development Scheme, and, Integrated Child Progression

Scheme. The first amongst it, namely Integrated Child Development Scheme postulates that the health of the children is the paramount consideration including the new born children. The concern of both the Central and State Government is that there should be no death by malnutrition nor any child should be left malnourished. Then we expected zero tolerance. We expected by this time that responsibility would be fixed and appropriate action taken against the erring officials who did not extend the benefit of these schemes to the needy and deserving tribal population. If the Integrated Child Development Scheme is aimed at eliminating deaths on account of malnutrition particularly in tribal areas, then, whether appropriate measures have been taken and if measures have been taken what are the results thereof should be placed on Affidavit. We expected the officials to be present today even with minimal data. However, today the unfortunate situation is that the Central Government Affidavit has not been filed and as far as the State Government is concerned, post the elections to the legislative assembly, there is a caretaker arrangement. The newly elected MLAs of the largest single party have yet to elect its leader leave alone forming a government with the alliance partners. Therefore, today two officials present in Court were not able to answer satisfactorily all other queries.

7. We therefore, firstly direct the Affidavit of the Central Government to be filed in the Registry within the time stipulated above with advance copies. Secondly, we direct the deponent of that Affidavit to remain present in this Court to answer the necessary and relevant queries and thereafter to assist the Court in better coordination and cooperation with the State Government officials particularly the concerned departments. Thirdly, it is our anxiety that the Central Government's concerned department and that of the State Government work in complete coordination so that the funds allocated for the specific schemes are utilized and disbursed only for that purpose and the benefits of the welfare schemes reach the needy and deserving persons particularly inhabiting in tribal areas of the State.

8. We have noticed that though several orders and directions have been issued by this Court, probably because multiple departments of the government are involved, they have either not understood the purport of these directions or they have failed to coordinate with each other so that Court is assisted in an efficient manner. Our concern is that if Melghat or other tribal hamlets in Palghar District have been identified as remote and inaccessible, then, how, some of these areas have, by passage of time and improvement in the means of transport and communication,

become accessible. If these areas are now accessible then whether the health care requirements of those affected are completely addressed by providing timely medical assistance. Malnutrition and malnourishment primarily arises because the mother giving birth to the child herself is malnourished. She has never been provided with nutritious diet much less during the pregnancy. If she is weak, ill and infirm, it is not expected that she will deliver a healthy child. Consequently, the child will suffer serious illness and on occasions immediately on birth. The child in formative years, therefore, is not able to grow and as per the norms evolved. There are milestones which have to be reached by the child and in stages. The child during the first 3 to 6 months of the birth requires nourishment and lack of proper growth influences the immunity levels. As it is they are very low and the child suffers serious illness often resulting in death. A child is prone to illness. Therefore, if the medical teams deputed for their assistance have identified causes, then we would like to know as to whether benefits of health and integrated development schemes have reached the pregnant women and in time. If there are various incentives given so as to encourage these women to come and take regular treatment, including monitoring and supervising their monthly blood levels and other vital parameters,

then, whether the tribal population particularly the pregnant mothers have been taken to the health care centres at the local or rural level should be clarified to us. We require the feeback from the field level officers. It is at the field level that the ground realities are noted. Very often these officials at the field level are not superior in the hierarchy and are afraid that if they reveal the truth, they may suffer at the hands of their superiors. Very often postings and transfers to remote, far off tribal areas are taken as punishment. We also have noticed that though units are set up the required number of officials are either not deputed or if they are deputed they are absent and not available whenever their presence is vital and necessary. In these circumstances, we want a first hand report of the field level officers so that these schemes are monitored, supervised and implemented in a coordinated manner.

9. These field officers should be ready with the data which may include the number of new born children, the facilities extended to the mothers of such new born children during the pregnancy and the assistance given to them in the event the child has faced any serious illness. In these hamlets children may suffer serious illness immediately after their birth but on account of poverty, unemployment, lack of education and literacy the

concerned persons have not come forward to report these incidents. It is the feedback from these field level officers which will eventually assist the Court in ascertaining whether the schemes are at all implemented in the affected areas. Today, the complaint is that numerous schemes are announced, functions are held which are attended by senior level officials and local politicians as well. However, later on out of allocated one rupee only ten paise is actually spent and the rest of the amounts are either diverted to some other work or returned unspent. Therefore, the field level officers should remain present in the Court armed with the data to answer the above essential queries. we reproduce them hereinbelow:-

(a) Whether the schemes as evolved by the State Government with the assistance of the Central Government funds are to the knowledge of these officers. If they are, do they have necessary literature and information brochures in the language of the State with them, so as to pass the information in relation thereto at the village level.

(b) Secondly, if they are aware of the schemes then whether the funds have reached the field level so that the field staff could have utilized these funds to extend the benefits of these schemes and to minimize the number of

deaths on account of malnutrition, (c) whether these schemes have been revised so that nutritious food reaches these remote areas or that there is an access to the same. Finally, we would like to know as to how many villages or pockets are covered by them or some of them are inaccessible and the reasons for the same. We are informed by the learned AGP that the following field level officers would be ideally suited for remaining present and assisting this Court on the next occasion.

10. Therefore, we direct that the following officers shall attend this Court with the relevant records on the next date :-

1. Mr. Vilas Durge, ICDS Department (WCD), Chikhaldara
2. Mr. Sanjay Zanzad, ICDS Department, CDPO, Dharni.
3. Mr. Devare, Deputy Commissioner (Health & Nutrition).

TRIBAL DEVELOPMENT

4. Mittali Sethi, IAS Officer. (ITDP Dharni).

HEALTH DEPARTMENT

5. Dr. Shashikant Pawar, Taluka Health Officer, Dharni.
6. Dr. Satish Pradhan, THO, Chikhaldara.
7. Dr. Dilip Ranmale, District Health Officer, Amravati.

11. Since we are expecting concrete decisions to be taken as well, we post this matter on 5th December, 2019 on the supplementary board.

(R. I. CHAGLA, J.) (S.C. DHARMADHIKARI, J.)