

Diksha Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 133 OF 2007
WITH
CIVIL APPLICATION (ST) NO. 35428 OF 2013
WITH
CIVIL APPLICATION NO. 56 OF 2018
WITH
CIVIL APPLICATION NO. 57 OF 2018
WITH
CIVIL APPLICATION NO. 59 OF 2008**

Dr. Rajendra Sadanand Burma and anr. ..Petitioners
vs.
The State of Maharashtra and ors. ..Respondents

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

Bandu Sampatrao Sane ..Applicant
vs.
The State of Maharashtra & ors. ..Respondents

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

Malgaonkar Bhushan Pandurang ..Applicant
vs.
Dr. Rajendra Sadanand Burma & anr. ..Respondents

Mr. J. T. Gilda, Senior Advocate for petitioner in
PIL/133/2007 through VC.

Mr. P. P. Kakade, GP a/w. Ms. Neha Bhide, "B" Panel Counsel
a/w. Ms. Reena Salunkhe, AGP for the respondent nos. 1 to
4-State.

Dr. Uday Warunjikar a/w. Mr. Siddhesh Pilankar for the

petitioner in WP/3589/2011 (not on board).
Mr. Y. R. Mishra for respondent no. 6/UOI.
Dr. Ashish Satav, representative of NGO is present through VC.
Mr. Bandu Sane, applicant in person in CAI/87/2009.
Mr. Bhushan P. Malgaonkar, applicant in person in CAI/175/2014.

**CORAM : DIPANKAR DATTA, CJ. &
M. S. KARNIK, J.**

DATE : AUGUST 17, 2022.

P.C. :

1. The submissions made on behalf of the petitioners during the course of the hearing today portray a grim picture. We heard the passionate and ardent plea on behalf of the petitioners for immediate action and measures that need to be taken by the implementing agencies of the State to curb deaths of tribal children as a result of malnourishment and also due to lack of proper medical/health care facilities in the rural and tribal areas. We requested learned senior advocate Shri J. T. Gilda, learned advocate Dr. Uday Warunjikar and parties in person appearing in the PIL petition to place some basic details of the recent happenings on record so that the State can respond. This would enable us to issue appropriate directions.

2. Shri Gilda, learned senior advocate, submitted that during the period from July 15, 2022 to August 15, 2022, 80 children died in the tribal area of Melghat region due to

malnutrition and lack of medical facilities. He made a grievance that adequate number of doctors are not available in rural hospitals and tribal areas. According to him, the doctors posted in such areas are reluctant to join due to the hard conditions. Shri Gilda, learned senior advocate, pointed out that as basic a need as potable water is not available for consumption due to disconnection of water supply.

3. Shri Bandu Sane, one of the applicant, submits that the report filed by Dr. Chhering Dorje, on the earlier occasion, is comprehensive and if implemented in letter and spirit, would go a long way in providing the much needed basic solace to the tribal community which they are deprived of over the years. Though he expressed satisfaction with the schemes floated by the State to alleviate the sufferings of the tribals, however, in his submission, lack of coordination among the implementing agencies at the ground level resulting in the benefits of the schemes not reaching the tribals, is a concern which needs to be addressed urgently. Mr. Sane was at pains to point out that if this concern is addressed, it surely will go a long way in helping the tribal cause, for it is only then the schemes can be said to be effective.

4. An unfortunate incident has come to our notice about a tribal woman in Palghar area, who delivered still born twins due to lack of timely medical help. It is also brought to our notice that in the tribal belt of Nandurbar district, as

many as 86 children died since January 2022 primarily due to malnutrition and lack of adequate medical facilities. We direct the District Collector of Nandurbar to file a detailed report on this aspect by the next date. In the meantime, the District Collector of Nandurbar may take all such measures as may be necessary to address this concern in the tribal belt of Nandurbar.

5. This PIL petition is pending since 2007. Various orders have been passed since the filing of the PIL petition to address the concerns brought to this Court's notice from time to time. The petitioners/applicants have attended the joint meetings organized by the State and have given their suggestions. Pursuant to the report filed by Dr. Dorje, learned Advocate General had on an earlier occasion submitted that the State has formulated long term and short term measures to address the problem. Even today, responses have been filed by different agencies of the State indicating the measures undertaken and the action to be taken.

6. The impression that we get from the submissions made by the parties is that, though the schemes and measures are in place to deal with the concerns expressed, however, the effect thereof is not seen at the ground level. As pointed out by the petitioners/applicants, if indeed the lack of coordination between the implementing agencies at the ground level is coming in the way of the tribals getting the benefits of the schemes, it is necessary for respective

heads of the concerned departments to come together and provide a road map to the implementing agencies at the ground level thereby ensuring that the schemes and measures do not remain just on paper. The petitioners/applicants appearing before us are more than willing to render all possible assistance to the implementing agencies. Learned Government Pleader submits that the suggestions made by the petitioners from time to time have been respected and the State does not look at the present PIL petition as adversarial. We appreciate the stand of learned Government Pleader and expect the concerned heads of the department to sensitize the implementing agencies at the ground level, and if necessary to seek assistance of the petitioners whenever needed, as the petitioners and the applicants are more than willing to render such assistance for the tribal cause with which they are so concerned.

7. While deliberating on this order, a thought came to mind about the inspirational true story of Shri Dashrath Manjhi, popularly known as "Mountain Man", a poor labourer in Gehlaur village, near Gaya in Bihar. We read that Manjhi, single handedly started carving a path in the mountain using only a hammer and a chisel because of an unfortunate incident that had taken place in his life. The Government eventually recognized his efforts and then went out of its way to complete the task that Manjhi had single handedly undertaken for the development of the village for

the availability of the hospital and the road.

8. We would like to make a reference to the reported decision of the co-ordinate Bench of this Court in **Suo Motu Writ Petition on the reports published in various Marathi newspapers about the untimely death of many children due to malnutrition within two months in Dhule and Nandurbar District vs. State of Maharashtra and others**¹ (Coram : R. M. Lodha and S. A. Bobde, JJ., as The Chief Justices of India then were), whereunder as many as thirteen (xiii) directions were issued. Despite such directions issued as far back in 2006, the problem persists. We do find that the State is concerned but surely something more needs to be done.

9. Right to live with human dignity is one of the fundamental right guaranteed under Article 21 of the Constitution of India. We are reminded of what Their Lordships observed in **Francis Coralie Mullin Vs. Union Territory of Delhi**², *albeit* in the context of law relating to preventive detentions. However, the observations in paragraph 7 and 8 assume relevance. Their Lordships observed that "*now obviously, the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival.*" Then in paragraph 8 Their Lordships observed that "*we think that the right to life includes the right to live with*

1 Suo Motu W.P.No. 5629/2004 decided on 20-9-2006 (Bombay)

2 (1981) 1 SCC 608

human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self."

What the petitioners want through this PIL petition is the bare necessities of life such as adequate nutrition and timely medical aid from qualified doctors.

10. We had called upon the petitioners to suggest immediate measures which can be placed for the State's consideration till such time we hear the matter next. The verbatim suggestions placed on record by Shri Bandu Sane are as under: -

- (i) PHC should have provision to take care of all patients by increasing manpower and other infrastructure with training.
- (ii) Co-ordination between PHC to RH-SdH EGS, PH, Tribal, Forest, E.
- (iii) Joint Inspection by CDPO of ICDS and PH medical officers.
- (iv) Quality and quantity of food provided to pregnant

women and 0-6 years must be improved.

(v) Timely release of monetary relief/incentives given to pregnant women and post delivery women.

(vi) Rates of VCDC, CTC, NRC should be increased.

(vii) Meeting of Core Committee at District level, monthly which should include, CEO of ZP, District Collector, Deputy CEO, ICDS, Deputy CEO Panchayat, Deputy CEO Education, Deputy CEO EGS, PO Tribal, Additional Tribal Commissioner, Deputy Director Health.

(viii) Continuous medical education to Medical Officers for care of malnourished children.

(ix) Direction to EGS to start plantation of Moringa / drumstick trees which is effective and provides micronutrients to be introduced in the diet at Aanganwadi Centres, PHC and sub centre. This can be grown in the premises of Aanganwadi as a kitchen garden.

(x) Doctors / specialists (Pediatricians, Gynecologists) to be sent to Nandurbar District.

(xi) Provide drivers, diesel and maintenance to available vehicles / ambulances.

11. We request the State to consider these suggestions in the meantime and take suitable steps.

12. List the PIL petition along with Civil Applications on **September 12, 2022, at 4.00 p.m.**

(M. S. KARNIK, J.)

(CHIEF JUSTICE)