

PVR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**PUBLIC INTEREST LITIGATION NO.133 OF 2007
WITH
CIVIL APPLICATION NO.87 OF 2009
WITH
CIVIL APPLICATION NO.59 OF 2018
WITH
CIVIL APPLICATION NO.57 OF 2018
WITH
CIVIL APPLICATION NO.56 OF 2018
WITH
CIVIL APPLICATION NO.175 OF 2014
WITH
CIVIL APPLICATION (STAMP) NO.35428 OF 2013**

Dr.Rajendra Sadanand Burma & Anr.

... Petitioners

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr.J.T.Gilda, Senior Advocate for the Petitioner.

Mr.A.A.Kumbhakoni, Advocate General with Mr.P.P.Kakade, Government Pleader, with Ms.Neha Bhide "B" Panel Counsel, Mr.Akshay Shinde "B" Panel Counsel for the Respondent-State.

Mr.Siddhesh Pilankar i/b. Dr.Uday Warunjikar, for the Petitioner in WP 3589/2011.

Mr.Bandu Sane, Applicant in Person in CAI 87/2009.

Mr.Y.R.Mishra with Mr.Dharmesh Joshi, for Union of India.

Dr.Duryodhan Chavhan, Asstt. Director, Public Health Services, Public Health Department, Mantralaya present.

Mr.Bhalchandra M.Wadsamudrakar, A.S.O./D-5 Woman and Child Development Department, Mantralaya, Mumbai present.

Mr.Devanand Shesharao Mahajan, A.S.O./D-6, Tribal Development Department, Mantralaya present.

**CORAM : DIPANKAR DATTA, CJ &
G.S.KULKARNI, J.**

DATE : 13th September, 2021.

P.C.:

1. Affidavit dated September 6, 2021 and additional affidavit dated September 13, 2021 filed by the petitioners are taken on record.
2. This PIL petition which is about 14 years old raises a concern of seminal importance in regard to the incessant deaths of the children in the tribal areas of Maharashtra due to malnutrition. The record of this petition is replete with significant orders raising serious concerns on the plight of such children and expecting mothers in the tribal areas. In continuation of several such orders passed on this petition since its institution, on August 23, 2021 we had passed a detailed order considering the current situation. It was brought to our notice that again there was a surge in the number of children dying between the ages of 0 to 6 years. We observed that it was difficult to fathom that even after 72 years of Constitutional governance, that children could die

for want of food. We also doubted as to whether there was at all, any executive will, to cater to the needs of such underprivileged and impoverished children and expecting mothers. A serious concern was also raised in regard to the executive governance in protecting the basic fundamental rights of such underprivileged citizens. In such context, we had referred to the decisions of the Supreme Court in **Francis Coralie Mullin Vs. The Administrator, Union Territory of Delhi & Ors.**¹; **Kishen Pattnayak & Anr. Vs. State of Orissa with Indian People's Front through Its Chairman**²; **Bandhua Mukti Morch Vs. Union of India & Ors.**³ governing principles of law protecting the fundamental rights of the children and women, on the basic human needs of food, clothing and shelter, which is also a matter of a continuing concern in the present proceedings. We observed that should any such incident be reported, the Principal Secretary could be held personally responsible. Our expectation was that the Health Department would chalk out an immediate plan of deputing specialist doctors like gynecologists, pediatricians,

1 AIR 1981 SC 746

2 AIR 1989 SC 677

3 AIR 1984 SC 802

etc. in the tribal areas so that the tribal population is not deprived of the basic medical and healthcare facilities as also availability of nutritious food. We, accordingly, directed the State Government to file an affidavit before the returnable date indicating the measures that have been taken in compliance with our order. We had also directed that such affidavit shall also indicate the status of the core committee and the functions undertaken by it since the time it was constituted by the order dated July 9, 2013.

3. Today learned Advocate General represents the State Government. He states that three affidavits are filed on behalf of the State Government. The first affidavit being of Dr.Duryodhan Chavhan, Assistant Director of Health Services, Public Health Department dated September 6, 2021; the second affidavit of Mr.Laxmikant G.Dhoke, Joint Secretary, Tribal Development Department (TDD), Mumbai, dated September 6, 2021, and the third affidavit of Mr.Mahesh Ashokrao Varudkar, Deputy Secretary, Women and Children Development Department, Mantralaya, Mumbai.

4. These affidavits although claim to point out various facets which the State intends to deploy in handling the situation and to cater the nutrition and health needs of children and expecting mothers from the tribal areas, however, in our opinion, such affidavits do not address the reasons as to how and why there are continuing incidents of deaths of children aged 0 to 6 years and as to why they are not being controlled. We are informed that between the last adjournment and today, again 40 children between the age group of 0 to 6 years, have died by malnutrition, as also there were 24 still born deliveries.

5. Considering such data of persistent deaths of children, the situation, in our opinion, is quite alarming and would require an aggressive approach and a targeted intervention of the State Government on all fronts.

6. We have accordingly suggested Mr.J.T.Gilda, Senior Advocate, Mr.B.S.Sane, applicant/intervenor who is appearing in person, as also Dr.Uday Warunjikar, Advocate who appears in person for some of the petitioners in the connected writ petitions, to suggest urgent measures which can be taken

into consideration so as to prevent further deaths and improve the incidents of malnutrition. We note from the submissions made by the intervenor-in-person that there is an urgent need of specialist doctors like pediatricians, gynecologists etc. who are required to urgently attend to such situation. At the same time, there is requirement of supply of food/nutrition to the children and the expecting mothers. Also a nutritionist is required to be appointed who can treat the children suffering from malnutrition so that their lives are saved. We are also of the opinion that there is an urgent need for the State Government to create a robust machinery by having field workers who would actually visit different villages/tribal areas and identify children and the expecting mothers who require urgent medical attention. It is not possible to conceive that only when the children or expecting mothers are taken ill, only then they should be removed and brought to the medical centres. An approach of preventing children from such disease or prevent expecting mothers' suffer ill health during their pregnancy needs to be adopted. According to the intervenor-in-person, the neglect and/or dis-attention to such

medical and nutritional needs has proved fatal to the children and the expecting mothers considering that there were 24 still born children in the past month.

7. In today's situation as to what would be such machinery; what is the immediate infrastructure which would be required to be created; who would be the field workers; what would be the responsibilities of the field workers; how the tribal population can be catered to by providing nutrition and medical aids; are issues which require urgent attention on the part of the State Government and its expert officers. Mr.B.S.Sane has selflessly devoted himself to the cause and has travelled through the interior of the tribal areas, to bring to the forefront the miserable plight of the children and expecting mothers from these tribal areas. We appreciate his valuable work. We are of the opinion that the high officials of the Government can discuss the issues with Mr.B.S. Sane in arriving at an urgent and an effective mechanism to attend the present situation as also to plan out long term measures. We are hopeful that the intervention of the learned Advocate General would aid to cater to the crisis

as he has assured us of immediate steps to be taken so that such tribal population is immediately attended on such basic requirements of a healthy livelihood.

8. We expect the State Government to place on record the measures which would be taken after considering the list of measures as handed over today on behalf of the petitioners and the progress of its implementation on or before the adjourned date of hearing.

9. Accordingly, stand over to September 20, 2021.

(G.S.KULKARNI, J.)

(CHIEF JUSTICE)