

**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  
IN  
PUBLIC INTEREST LITIGATION No. 133 OF 2007***

***Dr. Ranjendra 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 and 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 and Anr. ...Respondents***

***WITH  
WRIT PETITION No. 1420 OF 2008  
WITH  
CIVIL APPLICATION NO. 559 OF 2009***

**IN  
WP NO. 1420 OF 2008**

**Suresh Bandy Shinda** ...Petitioner  
**Vs.**  
**The State of Maharashtra** ....Respondent

**WITH  
CIVIL APPLICATION (ST) No. 23477 OF 2009  
IN  
WRIT PETITION No. 1420 OF 2008**

**Suresh Bandy Shinda** ...Petitioner  
**Vs.**  
**The Project Officer, Integrated Tribal  
Development Project & Anr.** ...Respondents.

**WITH  
CIVIL APPLICATION No. 570 OF 2010  
IN  
WRIT PETITION No. 1420 OF 2008**

**Dattu Sitaram Padavi and Ors.** ...Applicants  
**Vs.**  
**The State of Maharashtra** ...Respondent

**WITH  
CIVIL APPLICATION No.1120 of 2015  
IN  
WRIT PETITION No. 1420 OF 2008**

**Prakash Wani** ...Applicant  
**Vs.**  
**Shri Suresh Bandy Shinda** ...Respondent

**WITH**  
**CIVIL APPLICATION (ST) No.11607 OF 2016**  
**IN**  
**WRIT PETITION No. 1420 OF 2008**

*Malgaonkar Bhushan Pandurang* ...Applicant  
Vs.  
*Shri Suresh Bandy Shinda* ...Respondent

**WITH**  
**WRIT PETITION No. 3278 OF 2010**

*Purnima Upadhay* ...Petitioner  
Vs.  
*Additional Chif Secretary,  
Health Govt. of Maharashtra* ...Respondents

**WITH**  
**CIVIL APPLICATION No. 1183 OF 2012**  
**IN**  
**WRIT PETITION No. 3278 OF 2010**

*Purnima Upadhay* ...Applicant  
Vs.  
*Dr. Madhukar Gumble* ...Respondent

**WITH**  
**CIVIL APPLICATION No. 2815 OF 2013**  
**IN**  
**WRIT PETITION No. 3278 OF 2010**

*Indavi Tulpule* ...Applicant  
Vs.  
*Purnima Upadhyay* ...Respondent

**WITH  
WRIT PETITION No.3589 OF 2011**

***Kasturba Adivasi Mahila Bahu  
Uddeshiya Mandal Pohara and Anr. ....Petitioners***  
***Vs.***  
***The State of Maharashtra and Ors. ....Respondents***

**WITH  
WRIT PETITION No. 8783 OF 2014**

***Bigar Adivasi Hakka Bachav Samiti,  
Shapur, Through Secretary,  
Mr. Subhash Harad ....Petitioner***  
***Vs.***  
***State of Maharashtra,  
Through Secretary,  
Tribal Development Dept. and Ors. ....Respondents***

**WITH  
CIVIL APPLICATION No. 2736 OF 2015  
IN  
WRIT PETITION No. 8783 OF 2014**

***Purnima Upadhyay ....Applicant***  
***Vs.***  
***Bigar Adivasi Hakka Bachav  
Samiti and Ors. ....Respondents***

**WITH  
PUBLIC INTEREST LITIGATION No. 68 OF 2010**

***Banday K.S. And Anr. ....Petitioners***  
***Vs.***  
***State of Maharashtra ....Respondent***

**WITH  
PUBLIC INTEREST LITIGATION No. 105 OF 2011**

***Courts on its own motion  
through the Registrar General*** **....Petitioner**  
**Vs.**  
***Additional Chief Secretary  
Health, Government of Maharashtra  
and Ors.*** **....Respondents**

**WITH  
CIVIL APPLICATION No. 115 OF 2013  
IN  
PUBLIC INTEREST LITIGATION No. 105 OF 2011**

***Bhushan P. Malgaonkar*** **...Applicant**  
**Vs.**  
***Bombay High Court  
on its own Motion  
through the Registrar General*** **...Respondent.**

**WITH  
PUBLIC INTEREST LITIGATION No. 181 OF 2013**

***Nitin Dashrath Borade*** **...Petitioner**  
**Vs.**  
***The Chief Executive Officer,  
Zilla Parishad, Pune & Ors.*** **...Respondents.**

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Mr. B.S. Sane – Petitioner in person present in PIL No. 133 of 2007.

Mrs. Neha Bhide- AGP for Respondent -State.

Mrs. Geeta P. Mulekar, Amicus Curiae, appointed in WP No. 1420 Of 2008.

Mr. Y.R. Mishra a/w Mr. Joshi & Mr. N.R. Prajapati for Respondent- Union of India in PIL No. 133 of 2007.

Mr. Y. S. Bhate a/w. N.R. Prajapati & Y. R. Mishra for Respondent -Union of India in WP No. 1420 of 2008.

Mr. S.P. Thorat, for Respondent No.1 Zillha Parishad in PIL 181/2013.

Mr. Bhushan Malgaonkar -Applicant-party-in-person in CAI No. 175 of 2014 in PIL No. 133 of 2007 and in CAI No. 115 of 2013 in PIL No. 105 of 2011, and CAW(st) No. 11607 of 2016 in WP No. 1420/2008.

Mr. Sumit Kate i/by Uday P. Warunjkar for Petitioner in WP No. 3589 of 2011.

Shri S. B. Londhe, Under Secretary, Shri R.S.Karanjkar, Nodal Officer, Dr. Geeta Kakade, Assistant ADHS(FW)- Public Health Dept., and Dr. Jayant Sarode, Under Secretary, Legal and Shri L. S. Dhoke, Pvt. Secretary – Tribal Development Dept.. all are present.

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**CORAM : V. M. KANADE AND  
MRS.SWAPNA JOSHI,JJ.**

**DATE : 14<sup>th</sup> OCTOBER, 2016**

**P.C. :**

1 Mrs. Bhide, learned AGP appearing on behalf of the State has submitted a compilation of documents, disclosing statistical data, firstly, regarding various schemes which have been floated by the Government and financial assistance which has been provided every year and thirdly, the expenditure which is incurred by the State Government for the purpose of the those schemes/projects.

2 Mrs. Bhide with reference to the said data submitted that the number of child death has decreased considerably in the last five years. She further submitted that because of the routine immunization programme there is reduction of pulse polio and in some of the tribal areas the polio has been eradicated. So far as the malnutrition schemes are concerned, which have been classified as schemes for Moderately Acute Malnourished children (MAM) and Severely Acute Malnourished children (SAM), she submitted that periodically programmes have been organized for the benefit of these children and that the moderately malnourished and severely malnourished children, having medical complications, are also admitted in the hospitals for 14 days. It is submitted by her that the therapeutic diet is also given to such children and their mother/caretaker. Mrs. Bhide also submitted that Nutrition Rehabilitation Center (NRC) has been established in the State at 15 places since 2011-2012 and now this year 20 new NRCs have been established at various districts. Thirdly, it is submitted by her that Drive of De-worming and introduction of Vitamin "A", has also been implemented at the various places in the State.

3 At the first blush, the data which has been produced in a tabular form appears to be impressive. However, on its closure scrutiny it appears that the money which have earmarked for each of these schemes/projects either have not

been fully utilized and/or, as submitted by the petitioner-in-person, the money have been siphoned off. Mr. Sane, petitioner-in-person has also invited our attention to news articles published in "Lokmat Newspaper" under caption "Manthan" written/circulated by Dr. Abhay Bang, who is a social activist, working in the field for more than 30 years, has given facts and figures of actual malnourished children deaths and prevalence of the malnutrition throughout the State of Maharashtra. It is stated in the news report that a large number of child deaths are not reported and that in the last year actual number of child deaths was between 58,000 to 75,000. Out of which, only 18,000 deaths have been reported. It is stated in the report that a very little progress has been made in eradication of malnutrition. He has stated that though Maharashtra is a progressive State, not much has been done in the State regarding this issue. A second article dated 9<sup>th</sup> October, 2010 has been written by Dr. Ashish Satav in the said news paper, wherein Dr. Satav has made analysis of the reasons for malnutrition in the State and has given solutions to it. He has also provided statistical data regarding the state of malnutrition in the State of Maharashtra.

4 Shri Sane, the petitioner-in-person has further invited our attention to a food packet which is supposed to be distributed to the tribal children or their mothers which is supposed to be a food supplement viz. "Take Home Ration"

(THR). According to the noting on the packet, the weight of this packet is 1170 grams and it contains “micro nutrients” of foods like Wheat, Sugar and Gram (chickpeas). He submitted that the contents of this packet were analyzed by “Anacon Laboratories Pvt. Ltd.,” and it has given the test report dated 29<sup>th</sup> July, 2016. It is stated in the said report that the nutritional value of the actual nutrient contents in the said food packet is far less than what is presented/shown on the packet. We are not sure whether any research has been made before preparing these food nutrients. We are of the view that an opinion of some expert in the field should be invited so that such experts would be in position to advise the State Government as to what type of food has to be supplied to the malnourished children.

5 We direct the State Government to appoint some expert in the field like Ratan Tata Institute of Management, a Tata Group of Companies and others, who shall give an opinion as to what kind of foods should be distributed to the moderately and severely malnourished children. At the moment only 4.92 paise are charged for the said THR packet.

6 We are satisfied that no progress has been made by the State Government though report items have appeared in the several sections of the press regarding condition of the malnutrition cases in Thane District and Melghat. However,

we direct the State Government to annexe entire data tendered till date to be tendered in the form of affidavit on the next date.

7           The Women and Child Department of the State shall also go through the reports/ articles which have been published in the news papers, as mentioned hereinabove.

8           We are informed that some appointments of medical officers have been made and that about 179 posts of medical officers in the State are in the process of being filled up.

9           In our view these problems need to be tackled in a systematic manner by preparing action plan which will consider earmarking of funds, the current position and the steps which are to be taken to eradicate these problems. The plan should also consider the time which is likely to be taken to address the programs and the financial investment which is to be made by the State Government. Though last time, we had asked the State Government to give total amount which is earmarked for the said purpose, what we are informed about is the allocation of funds which is made to different departments. We would like to know the grant to the State as also the total amount which is earmarked from the yearly budget for these

schemes/programmes but also total grant which is given by the Central Government to the State.

10 Mrs. Geeta Mulekar, learned counsel appointed as Amicus Curiae in writ petition No. 1420 of 2008 has submitted that the report of the investigation in the matter is not yet tendered. We are informed by the learned AGP on behalf of the State that action has been taken against one project officer Shri Shivaji Shelke; however, the progress made is not reported or the report is not submitted. In this case, the project officer was responsible for siphoning off the funds. One other allegation was made against other officer namely Shri Vinod Shirsat, Superintendent Govt. Ashram School Govade, who was appointed as male warden in the Female Observation Home. The allegation was that the said officer had raped the minor child in the said home. It is submitted that in the said case, the male warden was acquitted by the Sessions Court. We find that in large number of cases of sexual assaults on women, children and infant, either proper investigation is not made or case is not presented before the court in a proper manner and/or even if an order of acquittal is passed, the State does not either take action against the delinquent officer / investigation officer and/or it does not prefer an appeal against the order of acquittal.

11 In this regard also, we direct that the State Government shall submit a report to this court regarding total number of cases of sexual assault of rape on women, children and infant and the result of such cases and the reasons for which appeals against acquittal have not been filed in such cases.

12 Stand over to 26<sup>th</sup> October, 2016; to be shown on supplementary board.

(MRS.SWAPNA JOSHI,J.)

(V. M. KANADE,J.)

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