

:v

W.P(C)No. 196 OF 2001

ITEM No.2

Court No. 3

SECTION PIL

A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(Civil) No.196/2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

Petitioner (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

(With Appln(s). for interim Relief and interim directions, permission to submit addl. documents and for permission to modify the National Maternity Benefit Scheme and Office Report)

(For further consideration)

With I.A.No.40-41/2004 (For extension of time and interim directions.)

Date : 07/10/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Petitioner (s)Mr. Colin Gonsalves, Sr.Adv.

Ms. Aparna Bhat,Adv.

Mr. Vipin M. Benjamin, Adv.

For the UOI (MinistryMr. Mohan Parasaran, ASG

of Health and H.R.D.)Mr. Hemant Sharma, Adv.

Mrs. Sushma Suri, Adv.

For Respondent (s)Mr. Ashok Bhan, Adv.

(Ministry of Food,UOI)Mr. S.N. Terdal, Adv.

Ms. Suresh Sharma, Adv.

For NCT of DelhiMr. Ashok Bhan, Adv.

Mr. S.Wasim A.Qadri, Adv.

Mrs. Anil Katiyar, Adv.

State of Gujarat/Mizoram Mrs. H. Wahi, Adv.

State of HaryanaMr. Satinder S.Gulati, Adv.

Mr. Vinay Kumar Garg, Adv.

Mr. Praveen Kr. Rai, Adv.

Ms. Kavita Wadia, Adv.

State of U.P.Mr. Sunil Gupta, AAG

Mr. Ravi P.Mehrotra, Adv.

Mr. Garvesh Kabra, Adv.

State of Pb.Ms. Harvinder Kaur, AAG

Mr. Vivek Acharya, Adv.

State of Arun.PradeshMr. Anil Shrivastav, Adv.

State of MeghalayaMr. Ranjan Mukherjee, Adv.

State of ManipurMr. Kh.Nobin Singh, Adv.

State of JharkhandMr. Ashok Mathur, Adv.

State of NagalandMr. U.Hazarika, Adv.

Ms. Sumita Hazarika, Adv.

State of TripuraMr. Anurag Sharma, Adv.

Mr. Rituraj Biswas, Adv.

Mr. Gopal Singh, Adv.

State of West BengalMr. Tara Chandra Sharma, Adv.

Miss Neelam Sharma, Adv.

Mr. Rajeev Sharma, Adv.

Mr. Tarun Sharma, Adv.

State of UttaranchalMs. Rachna Srivastava, Adv.

Mr. Govind Kaushik, Adv.

State of Tamil NaduMr. Subramonium Prasad, Adv.

Mr. S.N. Jha, Adv.

Mr. Gopala Krishnan, Adv.

Mr. Abhay Kumar, Adv.

Mr. Rahul, Adv.

State of SikkimMr. A.Mariarputham, Adv.

Ms. Aruna Mathur, Adv.

for M/s.Arputham, Aruna & Co.

U.T. ChandigarhMs. Kamini Jaiswal, Adv.

Ms. Inkleer Barooah, Adv.

State of ChhattisgarhMr. Rajesh Srivastava, Adv.

Ms. Suparna Srivastava, Adv.

Ms. Deepti Singh, Adv.

State of M.P.Mr. B.S. Banthia, Adv.

State of AssamMs. Krishna Sarma, Adv.

Mr. Atul Kumar, Adv.or Corporate Law Group.

State of GoaMs. A.Subhashni, Adv.

UT of Andaman & Nicobar, Mr.D.S. Mahra, Adv.

Dadra & Nagar Haveli, Ms. Sunita Sharma, Adv.

Daman & Diu

PondicherryMr.V.G. Pragasaam, Adv.

State of RajasthanMr. Aruneshwar Gupta, AAG.

State of BiharMr. B.B.Singh, Adv.

Mr. Jana Kalyan Das, Adv.

Mr. B.V. Balram Das, Adv.

Mr. J.S. Attri, Adv.

Ms. Indra Sawhney, Adv.

Mr. S.V.Deshpande, Adv.

Mr. R.S. Suri, Adv.

Mr. Prakash Shrivastava, Adv.

Mr. Ramesh Babu M.R., Adv.

Mr. T.V.Ratnam, Adv.

Mr. Sanjay R. Hegde, Adv.

Mr. R.K. Mqaheshwari, Adv.

Mr. Kuldip Singh, Adv.

Mr. Mukesh K. Giri, Adv.

Mr. Prashant Kumar, Adv.

Mr. Vishwajit Singh, Adv.

Mr. Anis Suhrawardy, Adv.

UPON hearing counsel the Court made the following

O R D E R

We have gone through the 5th (August, 2004) Report of the Commissioners S/Shri Dr.N.C.Saxena and N.R. Sankaran. First of all, we wish to place on record our compliments and appreciation for the enormous work done by the learned Commissioners and presenting the Report under consideration.

The Report is in three parts. First part is divided into 14 sections covering different schemes. Under Section 1, Integrated Child Development Services (ICDS) has been considered. Part I sets out summary of findings and Part III sets out recommendations. We would first consider the aspect of ICDS. In order to fully appreciate the problem, it would be useful to notice the background briefly.

ICDS, as noticed in the Order dated 29.4.2004 is perhaps the largest of all the food and supplementation programmes in the world that was initiated in the year 1975 with the following objectives as per the document prepared by Planning Commission:

- 1.To improve the health and nutrition status of children 0-6 years by providing supplementary food and by coordinating with state health departments to ensure delivery of required health inputs;
- 2.To provide conditions necessary for pre-school children's psychological and social development through early stimulation and education;
- 3.To provide pregnant and lactating women with food supplements;
- 4.To enhance the mother's ability to provide proper child care through health and nutrition education;
5. To achieve effective coordination of policy and implementation among the various departments to promote child development.

The scheme intends to cover all the children under age group of 0-6 years. The food is supplied to the children through Anganwadi Centres (For short, 'AWCS'). The norms of Government of India provide for one Centre for a population of one thousand (700 in case of tribal area). It is not in serious dispute, as contended by Mr. Mohan Parasaran, learned Additional Solicitor General that according to norms, there should be approximately 14 lakhs ACWS. Admittedly, nearly 6 lakh Centres have been sanctioned. Many of the sanctioned Centres are also not operational as is evident from the Report under consideration. The problem seems to be more acute in States like Bihar, Uttar Pradesh and Jharkhand. It deserves to be noticed that the direction

ns in respect of ICDS were issued as far back in 28.11.2001. The order dated 27.4.2004 notice s that most of those covered by the Order dated 28.11.2001 are not getting the benefit under ICDS. That observation was made on the basis of figures which were provided under National Family Benefit Health Scheme on conducting survey. The result was that a large number of children between the age group of 0-6 years were malnourished. That Order also noticed that the position was alarming in the aforesaid three States as well as the State of Uttaranchal. By Order dated 29.4.2004, the Government of India was directed to file within three months an affidavit stating the period within which it proposed to sanction the remaining number of AWCS. The Government of India was also directed to consider the revision of norms of supply of nutritious food worth rupee one to every child in the Centres as norm of rupee one was fixed way back in the year 1991 and incorporate its suggestion in the affidavit.

It is most unfortunate that instead of three months, nearly six months have expired, the Government of India has still not filed the affidavit and instead an oral application has been made by learned Additional Solicitor General for grant of further time to file an affidavit in terms of the Order dated 29.4.2004. We are shocked at the attitude of the Central Government which is in respect of giving nutritious food to all children though in practice it concerns those unfortunate section of the society who can ill-afford to provide nutritious food to the children of the aforesaid age group. In absence of the affidavit, we could have straightway issued directions for the sanction of the remaining AWCS and for increase of norm of rupee one to rupees two but having regard to the totality of the circumstances, we grant one final opportunity to the Central Government to file affidavit within a period of two weeks whereafter we would consider these two aspects, namely, (i) sanction of 14 lakh AWCS; (ii) increase of norm of rupee one to rupees two.

We make it clear that if the affidavit is not filed, this Court will be left with no option but to issue directions for implementation of the two aspects.

Now, we would deal with the aspect of sanctioned AWCS and their working. In the Order dated 29.4.2004, it was directed that the sanctioned AWCS shall be made fully operational by 30th June, 2004. Further direction issued was that the sanctioned AWCS shall supply nutritious food/supplement to the children, adolescent girls and to pregnant and lactating women under the scheme for 300 days in a year. The Report presents a glooming picture both in regard to the operation of the sanctioned AWCS in some of the States like Uttar Pradesh, Bihar and Jharkhand and the position in those which are operational. Instances have been given in the Report where for months the supplies were not made to the children. For example, in the State of Jharkhand, the sanctioned AWCS were not working from May to December, 2003. No satisfactory reply is forthcoming from that State. Further, there are material discrepancies in two affidavits filed by the said State one in September and the one handed over in the Court today. In the September affidavit, it was deposed on oath that 16689 AWCS were operational. In the affidavit filed today, the figure of operational AWCS is stated to be 7429. According to the Report, on an average, 42 paise as against the norm of rupee one was being allocated per beneficiary per day by the State of Jharkhand. The position in Bihar and Uttar Pradesh is also no better. Out of 394 sanctioned ICDS projects, only 249 were operational in the State of Bihar. As per the affidavit dated 30th September, 2004, all the projects were being made operational from 4th October, 2004. Whether that has happened or not, Mr. B.B. Singh, learned counsel appearing for the State is unable to state for want of instructions. Be that as it made, if all have not been made operational since 4th October, 2004 has already passed and gone we direct that the same shall be made operational in period not later than one week from today.

In the State of Uttar Pradesh, though percentage of non-functional/non-operational AWCS is more as per the Report but according to the State, admittedly 24 per cent are not operational. In the affidavit, it has been claimed that the remaining will be operational by 30th November, 2004. We direct the State Government to make operational all sanctioned AWCS by 30th November, 2004. After that, we would not entertain any application for extension of time.

The Report also mentions that some of AWCS are operating from private houses including those of grain dealers which it is suggested is not a healthy way of working as it is likely to increase the chances of pilferage of the grain etc. We are happy to note that as stated in the affidavit of State of Uttar Pradesh, it has made efforts to shift AWCS to primary schools. It is a good example for other States to follow. The Report also mentions about the attempt to centralise the procurements in some of the States which has many fallouts. It has been explained in one of the affidavit that the procurements is at district level and not at the State level. Further, the problem of using contractors for procurement has also been mentioned in the Report suggesting that it should be done by agencies and officers at the Government level. These are only by way of illustrations as to facts and figures given in Section 1 of the Report relating to Integrated Child Development Services.

Having heard Mr. Colin Gonsalves, learned Senior Counsel appearing for the petitioner and lear

ned Additional Solicitor General appearing for the Central Government and learned counsel appearing for the State Governments in particular, the States of Bihar, Jharkhand and Uttar Pradesh, for present, we issue following directions :-

- 1.The aspect of sanctioning 14 lakhs AWCS and increase of norm of rupee one to rupees 2 per child per day would be considered by this Court after two weeks.
- 2.The efforts shall be made that all SC/ST hamlets/habitations in the country have Anganwadi Centres as early as possible.
- 3.The contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals.
- 4.All State Governments/Union Territories shall put on their website full data for the ICDS schemes including where AWCS are operational, the number of beneficiaries category-wise, the funds allocated and used and other related matters.
- 5.All State Governments/Union Territories shall use the Pradhanmantri Gramodaya Yojna fund (PMGY) in addition to the state allocation and not as a substitute for state funding.
- 6.As far as possible, the children under PMGY shall be provided with good food at the Centre itself.
- 7.All the State Governments/Union Territories shall allocate funds for ICDS on the basis of norm of one rupee per child per day, 100 beneficiaries per AWC and 300 days feeding in a year, i.e., on the same basis on which the Centre make the allocation.
- 8.BPL shall not be used as an eligibility criteria for ICDS.
- 9.All sanctioned projects shall be operationalised and provided food as per these norms and wherever utensils have not been provided, the same shall be provided (Instance of Jharkhand State has been noticed in the Report where utensils have not been provided). The vacancies for the operational ICDS shall be filled forthwith. (Instance of Uttar Pradesh where vacancies have not been filled up is quite alarming though in the affidavit it has been stated that a drive has been initiated to fill up the vacancies).
- 10.All the State Governments/Union Territories shall utilise the entire State and Central allocation under ICDS/PMGY and under no circumstances, the same shall be diverted and preferably also not returned to the Centre and, if returned, a detailed explanation for non-utilisation shall be filed in this Court.
- 11.All State/Union Territories shall make earnest effort to cover the slums under ICDS.
- 12.The Central Government and the States/Union Territories shall ensure that all amounts allocated are sanctioned in time so that there is no disruption whatsoever in the feeding of children.

Our attention has been drawn to what is stated at page 20 in box 2 regarding failure of authorities to take appropriate action despite Commissioner's intervention in the case of Madhya Pradesh pertaining to the area mentioned therein and the non-payment to the work force. We direct the State Government to either make payment of wages to the labourers or file an affidavit giving detailed explanation within two weeks.

List the matter after two weeks.

(Satish K. Yadav)
Court Master

(V.P. Tyagi)
Court Master