

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

I.A. No.129 of 2013 with I.A. No.110 of 2010 in
WRIT PETITION (CIVIL) NO(s). 196 OF 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(For Directions)

Date: 06/08/2013 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Ms. Jyoti Mendiratta, Adv.
Ms. A. Shukla, Adv.
Mr. R.C. Kaushik, Adv.

For Respondent(s) Ms. Hemantika Wahi, Adv.

Mr. N.Pasha, Adv.
Mr. D.D.Kamat, Adv.
Mr. Gaurav Sharma, Adv.
Mr. Anil Gaur, Adv.
Mr. T.A.Khan, Adv.
MS. Sunita Sharma, Adv.
MS. Anil Katiyar, Adv.
Mr. Chetan Sharma, Adv.
Mr. Neeraj Sharma, Adv.

MS. Indira Sawhney, Adv.

UPON hearing counsel the Court made the following
O R D E R

By our order dated 10.07.2013 we had directed the State of Gujarat to file an additional affidavit inter alia setting out the time frame within which the Government of Gujarat can switch-over from the existing system practice and procedure of implementing the SNP Scheme to fall in line with the provisions of the Food Security Ordinance which came into force w.e.f. 05.07.2013. The Government have in compliance with the said direction filed an additional affidavit sworn by the Director, ICDS, State of Gujarat in which it is inter alia pointed out that a total of 16,65,764 children in the age group of six months to three years, 7,55,356 beneficiaries comprising pregnant and lactating mothers and 9,87,828 beneficiaries comprising adolescent girls are covered by the scheme from the State of Gujarat. The affidavit states that since children in the age group of six months to three years cannot consume food in single sitting, they are given food supplement as Take Home Ration which could be fed by the mothers in the small frequent meals. The State of Gujarat has according to the affidavit been striving to achieve the decentralization of the SNP scheme for all the categories and has in that direction framed a decentralisation policy in terms of GR No. ICD-112012-344 (PF)-B dated 24.7.2013. The policy envisages support for setting up of plants to

manufacture THR by Self Help groups (Sakhi Mandal)/Zila Sakhi Sangh/Milk Producing Units etc. in the State. It also provides for financial assistance by the State Government for setting up of decentralized projects for manufacturing of Take Home Ration as per government norms in an automated facility by local self help groups. A sum of Rs. 20 crores is said to have been set apart by the State Government for the period 2012-2013, besides a sum of Rs. 8 crores set apart for the year 2013-2014 towards financial assistance for the support of such projects. What is significant is that according to the affidavit the Government have given "in principle approval" for Banas Dairy Banaskantha (Milk Dairy at Banas Kantha District of Gujarat as a pilot project and its distribution up to AWCs through net work of Self Help Groups. In addition the Government have granted "in principle approval" to Dhoraji Sakhi Sangh of Dhoraji Block of Rajkot to establish such automated plants for manufacture of supplementary food for ICDS to be provided as take home ration to the beneficiaries. The technical support for these plants is according to the affidavit being provided by GLPC (Gujarat livelihood Promotion Company).

Suffice it to say that the Government have on affidavit stated that the successful completion of the pilot project mentioned above for the manufacture of THR will pave the way for introduction of similar such units elsewhere in the State and a total shift from the existing system to the new system in terms of the policy referred to above over a period of five years.

Ms. H.Wahi, learned counsel for the State of Gujarat submitted that the Government of Gujarat could be permitted to continue with the existing arrangement of procuring take home ration from original manufactures by inviting competitive bids till such time the process of decentralization as envisaged under the Government order referred to earlier is completed. She urged on the instructions of the Secretary to the Government of Gujarat, Department of Women and Children Development who is also present that the three pilot project units referred to in the affidavit namely (1) at Banas Kantha Milk Dairy and District of Gujarat (2) in Dhoraji Block, Rajkot and (3) in the Surendranagar District shall be completed by the Government expeditiously and within a period of one year from today. The successful setting up of these THR manufacturing units will according to learned counsel help the Government in replicating the exercise elsewhere in the State so that there is a system of manufacture and distribution of the take home ration for the benefit of children, lactating mothers and children in the age group of 6 months to three years and adolescent girls is put in place within the next few years according to the new policy.

Mr. Colin Gonsalves, learned senior counsel appearing for the writ petitioner submitted that although the State of Gujarat had made similar promises in the past not only before the High Court of Gujarat but also in this court, the transition has not been completed with the result that the supply of take home ration continues to flow from a big time contractor who has set up a factory for that purpose in the process making, huge profits out of such contracts. He urged that the Government of Gujarat does not appear to be very serious in ensuring decentralization of the process of manufacture and supply of take home ration to the beneficiaries as is evident from its performance over the past years. He submitted that even if this court were to allow the Government to continue procuring take home ration from the manufacturers by inviting competitive bids for a year or so nothing worthwhile would be done even at the end of that period as has been the experience in the past.

We have given our anxious consideration to the submissions made at the Bar. It is true that although the Government of Gujarat has been professing that decentralization of the manufacture and supply of take home ration to the beneficiaries shall be completed within the time frame suggested from time to time yet that process has not been completed over the past years. The position that obtains today is that the micro

nutrients take home ration are purchased by the Government from manufacturers selected for supply on the basis of a competitive bids. Contracts for such supply with the manufacturers appear to have expired with the lapse of time which necessitated the making of this application by the Government of Gujarat asking for permission to continue the said arrangement. The affidavit filed by the Director, ICDS makes certain specific assertions and commitments not only in regard to the government policy regarding decentralization but also in regard to steps that have been taken pursuant to the said policy in the form of approval given to the Banas, Banaskantha for setting up a manufacturing plant at Banas, Banaskantha District of Gujarat. Two other similar units one at Dhoraji, Rajkot, and the other at Surendranagar also appear to be coming up as a part of the new system by which the process of manufacture of micro nutrients take home ration will be decentralised to District/ Taluka level in the State. There is, in that view, no reason for us to hold as at present that the State of Gujarat does not intend to bring about the proposed decentralisation despite the government order issued by it and the steps that have been taken in pursuance thereof. Even so having regard to the apprehension expressed by Mr. Gonsalves that the Government may only be gaining time for continuing the existing arrangement ad infinitum, we are inclined to permit the continuance of the arrangement made by the State Government by allowing contracts on the basis of competitive bids subject to the condition that government takes effective steps towards completion of the pilot project units at the three places identified in para 5.2 and 5.3 of the additional affidavit filed by Mr. Victor Mecwan, Director, ICDS.

We asked the Secretary to the Government whether three projects referred to in the affidavit could be completed within a period of six months from today. According to her, the process of acquisition of land and setting up of the plants may require a little more time than six months as suggested by us. She however assures us that the Government would do every thing possible to ensure that the project at the three places referred to in the affidavit are commissioned within a period of one year. We record that assurance with a direction that the Government of Gujarat shall file a status report on the projects within six months from today.

In the meantime we permit the Government of Gujarat to continue the system under which it has been procuring for distribution take home ration as EFBF from the original manufacturers by inviting competitive bids for a period of one more year. We also make it clear that while Government would give special attention for pilot project for an early completion of the same, this order shall not be interpreted to mean that the it will take no steps or will go slow on similar such plants being set up elsewhere in the State. Setting up of similar plants in the rest of the State, it is obvious will take considerable time having regard to the size of the State and the number of beneficiaries under the scheme. The State would therefore would do well to diligently identify not only reliable self help groups who can be entrusted with the process of setting up of the plants but also providing all such assistance as may be required for the plants to become functional as early as possible.

With these observations I.A. is disposed of. We make it clear that in case it is found that the State Government have not taken appropriate steps in terms of what we have said above. We may be forced to recall this order and issue appropriate direction in the matter.

We had in our order dated 10.7.2013 referred to the provisions of the ordinance and the power vested in the Government of India to formulate schemes and frame rules under Section 4(7) therefore and to issue guidelines and orders. We make it clear that this order shall not prevent the Government of India from exercising its powers and framing rules and schemes and/or taking any other action that it may be empowered to take under the provisions of the ordinance. On the contrary we would

expect the Government to expedite taking of such steps under the ordinance or act or the Act as the case may be.

(Shashi Sareen)
Court Master

(Veena Khera)
Court Master

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