

ORDER OF APR 20, 2004

**W.P(C)No. 196 OF 2001
ITEM No.62 Court No. 6 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)

Date : 20/04/2004 This Petition was called on for hearing today.

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

MID-DAY MEAL SCHEME:

We have heard Mr. Colin Gonsalves, learned senior counsel appearing for the petitioner, Mr. Raju Ramachandran, learned Additional Solicitor General appearing for Union of India, Mr. M.L.Verma, learned senior counsel appearing for intervenor-Health India, and learned counsel representing various States. We have also perused the special report of the Committee dated 28th November, 2003 and report dated 28th January, 2004 and other relevant material on record. In one of the orders earlier passed, this Court had observed about the impact of this public interest litigation on the very existence of large section of poor people, their right to life and right to food to those who can ill-afford to provide to their families two meals a day and their misfortune becoming further grave during famine and drought.

On 28th November, 2001, this Court directed the State Governments/Union Territories to implement mid-day meal scheme by providing every child in every government and government aided primary school with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. The said order further directed that those governments which provide dry rations instead of cooked meals, within three months, should start providing cooked meals in all government and government aided primary schools in half of the districts of the State (in order of poverty) and must, within further period of three months, extend the provision of cooked meals to the remaining parts of the State.

By an order dated 29th October, 2002, it was made clear that in case of persistent default in compliance of the orders of this Court, the concerned Chief Secretaries/Administrators of the States/Union Territories shall be held responsible. It was brought to the notice of the Court that despite orders having been passed, some of the States had not even made a beginning. In the order dated 2nd May, 2003, this Court observed the manner in which the directions were being flouted in some of the States. In that order, specific reference was made to the States of Bihar, Jharkhand and Uttar Pradesh. The type of the affidavit that was filed has also been commented upon since it was not stated in the affidavit as to when the State of Bihar proposed to start the supply of mid-day meal, in how many districts they proposed to start it and what scheme had been formulated. The order noticed that every conceivable detail had been missing. Ultimately, the State of Bihar was directed to make a beginning by supplying cooked mid-day meal and implement the said scheme in at least ten districts which might be most poor according to the State's perception. Similarly, the States of Uttar Pradesh, Jharkhand and other States were also directed to make a meaningful beginning of the scheme in at least 25% of the districts which might be most poor.

After the orders were made on 2nd May, 2003, various reports have been filed in regard to the implementation of the directions for supply of the cooked mid-day meal in schools in terms of directions contained in the order dated 28th November, 2001.

We have perused the affidavits and heard learned counsel representing the States of Bihar, Uttar Pradesh, Maharashtra, Delhi, West Bengal, Himachal Pradesh, Uttaranchal, Jharkhand, Madhya Pradesh and Haryana. There are other States and Union Territories as well in respect whereof the aforesaid Reports of the Commissioners have commented upon. Some of the States/Union Territories have not made even a beginning despite lapse of so many years; some have only made a partial beginning; some have made a token beginning and only few of the States have fully implemented the order in respect of cooked mid-day meals that was passed on 28th November, 2001.

Some of the States which claim that they have made a beginning and are partially implementing the scheme have also not given the full and complete details so that this Court could know the extent of the implementation. Most of the affidavits only set out the number of schools and the students where the scheme was being implemented. What was required to be done was to simply state as to how many schools in a particular State/Union Territory would be covered under the directions for supply of cooked mid-day meal, how many students in the said school would be eligible for the benefit and then give the number of the schools and the students who are being supplied cooked meals. The affidavits provide only a part of information without specifying the number of eligible schools and students.

Be that as it may, Table-1 to the second Report of the Commissioners sets out broadly the States which have implemented it fully or partially or have not responded to the queries of the Commissioners. We may, however, note that after the said Report, there has been some improvement by a token beginning having been made by some of the States. The Report of the Commissioners, on the basis of their earlier experience, states that nutritious mid-day meal at schools can be a highly effective way of protecting children from hunger and can also boost school attendance among girls. It also notices some of the areas where such meals are supplied

even during the school vacations, especially in drought affected areas. None can question the desirability of extension of this facility even during vacations in drought affected areas where children are deprived of even one day meal.

It is a matter of anguish that despite lapse of nearly three and half years, the order dated 28th November, 2001 has not been fully implemented by all the States and Union Territories. As already stated earlier, many of the States have given only half-baked information and figures. Further, we wish to make it clear that the fact that some of the States were permitted to at least make a start in some of the districts in terms of the order dated 2nd May, 2003 does not mean that this Court has modified or varied the earlier order dated 28th November, 2001. It is a constitutional duty of every State and Union Territory to implement in letter and spirit the directions contained in the order dated 28th November, 2001. We may also note that the suggestions given by Health India would be considered at an appropriate stage.

The petitioner has also made a reference to the announcement made by the Prime Minister extending the mid-day meal scheme upto 10th Standard during his address to the Nation on 15th August, 2003. The suggestion is that extension should be made operational at the earliest. In reply, it has been contended that once the mid-day meal scheme at primary level is consolidated, the question of extension of the scheme upto 10th Standard can be taken up in a phased manner. In this connection, it has been pointed out that the views of various States have been asked in regard to the cost and logistic requirements for the extension of the scheme upto 10th Standard.

Further, the petitioner, referring to the recommendations of the Abhijit Sen Committee appointed by Government of India regarding sharing of conversion cost of implementing the cooked mid-day meal scheme, suggests that the Government should implement that scheme. The Government is stated to be presently discussing the modalities with the concerned Ministries and Planning Commission to provide assistance for meeting with a part of conversion costs towards effective implementation of the said scheme.

Having regard to the aforesaid, in respect of cooked mid-day meal scheme, we issue the following directions:

1. All such States and Union Territories who have not fully complied with the order dated 28th November, 2001 shall comply with the said directions fully in respect of the entire State/Union Territory, preferably, on the re-opening of the primary schools after a long vacation of 2004 and, in any case, not later than 1st September, 2004.
2. All Chief Secretaries/Administrators are directed to file compliance report in regard to directions No.1 on or before 15th September, 2004.
3. The conversion costs for a cooked meal, under no circumstances, shall be recovered from the children or their parents.
4. In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes.

5. The Central Government shall make provisions for construction of kitchen sheds and shall also allocate funds to meet with the conversion costs of food-grains into cooked mid-day meals. It shall also periodically monitor the low take off of the food-grains.

6. In respect of the State of Uttaranchal, it has been represented that the scheme is being implemented in all the schools. It would be open to the Commissioners to inspect and bring it to the notice of the Court, if it is otherwise.

7. In drought affected areas, mid-day meal shall be supplied even during summer vacations.

8. An affidavit shall be filed by the Government of India, within three months, stating as to when it is possible to extend the scheme upto 10th Standard in compliance with the announcement made by the Prime Minister. The affidavit shall also state the time frame within which the Government proposes to implement the recommendations of Abhijit Sen Committee in respect whereof the modalities have been discussed with the concerned Ministries and Planning Commission.

9. Attempts shall be made for better infrastructure, improved facilities (safe drinking water etc.), closer monitoring (regular inspection etc.) and other quality safeguards as also the improvement of the contents of the meal so as to provide nutritious meal to the children of the primary schools.

The issue as to the implementation of this scheme will be considered in the month of September, 2004.

SGR YOJANA - EMPLOYMENT GUARANTEE:

In respect of this Scheme, the following directions are issued:

1. The directions for doubling the food-grains as also cash in terms of the order dated 2nd May, 2003 shall be applicable this year also.

2. The State Governments/Union Territories are directed to pay minimum wages to the workers under the scheme and shall stop use of labour displacement machines.

3. Access to all public documents including muster rolls shall be allowed to such persons who seek such access and the cost of supplying documents shall not be more than the costs of providing copies of the documents.

4. The allocation of funds and food-grains shall be timely made by the Central Government to the State Governments.

5. The State Governments are directed to utilise the entire allocation, as aforesaid, so that the allotted funds and food-grains neither lapse nor result in reduction in subsequent years.

6. In case, some of the State Governments, as a result of financial constraints, wish to pay 100% wages in shape of food-grains and not partly food-grains and partly cash, it would be open to

them to approach the Central Government. On examination of each case, the Central Government may permit payment of 100% wages in the shape of food-grains.

ANTYODAYA ANNA YOJANA:

In regard to this scheme, the following directions are issued:

1. The Government of India shall issue, within two months, guidelines so that the existing condition of possession of a BPL card for inclusion in AAY category is dispensed with.
 2. The State Governments should be directed by the Central Government to accelerate the issue of Antyodaya cards especially to primitive tribes. The guidelines issued to State Governments shall be implemented in letter and spirit.
- List the Writ Petition on 27th April, 2004 for consideration of other Schemes.

.....J.
(Y.K. SABHARWAL)

.....J.
(B.N. AGRAWAL)
New Delhi,
April 20, 2004.