

**DR. N. C. SAXENA, COMMISSIONER AND
HARSH MANDER, SPECIAL COMMISSIONER OF THE SUPREME COURT
IN THE CASE: PUCL v. UOI & Ors. WRIT PETITION (Civil) No. 196 of 2001**

January 9th, 2009.

All schemes/612/Bihar.

Shri. R J Mohan Pillai

Chief Secretary

Government of Bihar,

Main Secretariat

Patna

Bihar.

Sub: Status of implementation of food and employment schemes.

Dear Shri. Mohan Pillai,

As you are aware, in our capacity as Commissioners of the Supreme Court in CWP 196/2001, PUCL v. UOI and others, we monitor the implementation of the food and employment related schemes in the country which fall under the purview of the case including the ICDS, MDMS, NREGA, NOAPS, TPDS, NMBS /JSY and NFBS.

Mr. Harsh Mander has proposed to visit Bihar to review with you and the concerned Secretaries the progress of the state in the implementation of the schemes and compliance with court orders. We have separately written in detail about the issues that need in depth discussion vide our letters: Icds.coverage/518/allstates; NREGA/519/allstates; ICDS/526/Bihar; NMBS/555/Bihar; Allschemes/590/Bihar and Report/605/Bihar, where we had raised several issues of concern regarding the implementation of food schemes in your state. However, we regret that despite repeated reminders, we have not received replies. In particular, the following issues, some of which we had raised in our earlier letters, need in depth discussion and

would like to request you kindly respond to us on these issues within two weeks of time. We are also enclosing the letters referred above for your perusal.

Integrated Child Development Services:

1. The number of children in the 0-6 age group according to the anganwadi survey register is 1,05,45,140 and of this 34,63,564 children (about 33%) are beneficiaries of the SNP programme, for the year 2006-07. Moreover, the number of 0-6 children in the state as per Census 2001 is 1,68,06,063. Therefore only about 21% of all children in the state are being covered under ICDS and only 63% have been identified by the anganwadi survey. A mapping must please be done to ensure that every habitation and slum has been covered by an anganwadi centre and within each area every child has been reached out to (as per Supreme Court orders). Efforts must be also made to improve the coverage as more than 50% of the children do not receive the benefits of the SNP which is a critical part of the ICDS programme. We would be grateful if you could please also examine and let us know the reasons why such a large gap still persists in this basic element of ICDS operationalisation.

2. It is a matter of great concern that the percentage of children who are underweight actually *increased* from 54 to 58 between NFHS-2 and NFHS-3. Kindly examine the reasons for this, and let us know the assessment of the state government for this very worrying increase. We urge you to treat child malnutrition as a matter of top priority.

3. The Supreme Court order dated 28th November 2001 requires the universal coverage under ICDS of all urban slums and SC/ST habitations across the State on a priority basis. In line with this order, we had requested a detailed survey of all urban slums and to find out the population in each urban area under slums (both authorised and unauthorised) in the state. We had also

requested to undertake a survey to list all hamlets that have more than 50% SC and/or ST population. Please send us the details of the surveys.

We also request you to please let us know, Of all the hamlets in the state which have more than 50% SC and/or ST population and urban slums, what per cent have been covered by anganwadi centres? If there is a gap between the list and coverage what are the plans of the State for filling the gap.

4. We acknowledge that Bihar is making concerted efforts to comply with the Supreme Court order of October 2004 banning contractors in supply of SNP. We had requested you that this must happen both for the 0-3 age group, lactating and pregnant women and adolescent girls where THR is being provided as well as the 3-6 age group where hot, cooked meals are being provided at the centre.
5. Further, we had asked you to conduct a campaign to include disabled children under ICDS. For this Anganwadi level survey of disabled children would have been undertaken in a time bound manner, and in future data at ICDS centre upwards to project, district and state levels should be disaggregated for coverage of disabled children. We requested that necessary steps should be taken to ensure that children of all migrant workers have access to all the six services of the ICDS. Please send us a copy of the state government's instructions in this regard.
6. We also request the state government to start collecting data of coverage with ICDS services disaggregated for gender, SC, ST, Muslims and disability, to ensure full coverage of these categories.

7. Clear instructions may please be issued for implementing the orders of the Supreme Court dated 13 December 2006 for 'anganwadis on demand'. The Supreme Court, in its said orders directs, "Rural communities and slum dwellers should be entitled to an "Anganwadi on demand" (not later than three months) from the date of demand in cases where a settlement has at least 40 children under six but no Anganwadi'.

National Maternity Benefit Scheme:

8. We would also like to bring to your notice the latest order of the Supreme Court (dated 20.11.2007) which states that, "The Union of India and all the State Governments and the Union Territories shall (i) continue with the NMBS and (ii) ensure that all BPL pregnant women get cash assistance 8-12 weeks prior to the delivery." The above order also states that, "The amount shall be Rs.500/- per birth irrespective of number of children and the age of the women".
9. We had raised following issues of concern regarding the implementation of NMBS in Bihar vide our letter NMBS/555/ Bihar dated 29th March,2008 and had requested you to send us an action taken report on the same at the earliest but we haven't received any correspondence from the State in this matter.
 - a) Based on projected population, birth rates and poverty rates, we estimate that around 7.3 lakh women in Bihar would be eligible for benefit under the NMBS each year. The number of beneficiaries of NMBS/JSY in the state in 2006-07 was only 1,71,352 which is only about 23.4% of eligible beneficiaries. We would urge you to treat this with a sense of utmost priority for state intervention so as to increase the awareness and coverage of the scheme.

- b) With regard to utilisation of funds too, it is seen that the state spent only 31.1% of the funds allocated under JSY by the Government of India.

- c) Of the JSY beneficiaries, it has been reported that more than 75% were those who had home deliveries. We hope that this reflects the fact there is no confusion regarding the scheme and that all BPL women are being given Rs. 500 during pregnancy, irrespective of place of delivery.

We would like to request you please send us an action taken report within two weeks time.

Public Distribution System:

- 10. The offtake (2007-08) of rice allocated under AAY category is almost 82.9 % and almost 36.3 % for BPL. Also the offtake (2007-08) of wheat allocated under AAY is 89.4 % and 63.05 % for BPL. The percentages of BPL and AAY quota are already underestimated, therefore, efforts must be made to ensure that the entire food grain quota allocated for the state is utilised, so that all those need subsidised grains get it.

- 11. Further, offtake (for 2007-08) under APL quota for wheat is 30.8 % and State didn't use any of the allocated rice to them by the Central Government. We request you to kindly look into the reasons for such low offtake. Here, we would also like to bring to your notice the practice in the Southern states, and more recently Chhattisgarh, where the APL quota is being lifted and used to expand the net of BPL beneficiaries in the state. Since there have been reports that many who are in fact poor are being left out of the BPL category because ceiling set for the state is low, the Government of Bihar may like to consider increasing the number of BPL cards in the state. The burden on the state government exchequer can be reduced if the APL quota is entirely lifted and

the additional subsidy to be borne is only the difference in the APL and BPL prices. This is however contingent on Government of India restoring the entire APL quota to the State Government.

In case you decide to use the APL quota for subsidising to people at BPL rates, we would urge you to write to the Government of India to restore the State quota for APL.

12. In the interim order dated May 2nd 2003, the Honorable Supreme Court had declared that all households belonging to six “priority groups” would be entitled to Antyodaya cards. The Government of India was directed “to place on AAY category the following groups of persons:

- Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women;
- widows and other single women with no regular support;
- old persons (aged 60 or above) with no regular support and no assured means of subsistence;
- households with a disabled adult and no assured means of subsistence;
- households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house;

We would like information on whether all the categories of people mentioned above have been fully covered under the AAY Scheme. Please send us information on the following questions:

- 1) Did the State Government enumerate the numbers of the above mentioned categories of people by conducting a census survey ? If so, could you please share a copy of the order on the Antodaya survey.

- 2) Were all the categories of the above listed groups, provided with Antodaya ration cards in line with Supreme Court Orders? If so, please attach a copy of the administrative instructions that were issued to ensure this process.
 - 3) What percentage of Antodaya families was issued Antodaya cards? A copy of the orders detailing the numbers district-wise may kindly be appended to the note.
 - 4) Was a grievance redressal mechanism put in place to address those cases where there was a grievance regarding the identification process? If so, a copy of the order setting up the grievance redressal mechanism may kindly be attached with this note?
13. The Government of Delhi has started a process of identifying homeless people in the city for allocation of ration cards. We suggest that the Government of Bihar also consider initiating a similar process of identifying homeless populations in urban areas and distributing ration cards among this category of people. We suggest that all urban homeless people should be given Antodaya cards on a priority basis.
14. Further, we recommend that all slum dwellers, both authorised and unauthorised, should be given BPL cards.

Indira Gandhi National Old Age Pension Scheme:

15. The coverage of beneficiaries under NOAPS for the year 2007-08 is 92.6 % against the estimated number of 1527246 beneficiaries under NOAPS. However, the NOAPS has been extended to cover all the BPL aged persons above 65 years with effect from November 2007; therefore, the eligible

beneficiaries would increase to almost double. We would like to know what the steps are taken by the State to bridge the gap and cover all the old people who are above 65 years of age and BPL from November 2007 onwards. What percentage of the old people who were though eligible to the pension but were waiting to get pension sanctioned and were beneficiaries of Annapurna, have been covered under IGNOAPS from November 2007.

We would also like to request you please send us the information on the What is the number of the eligible people after universalising the scheme among all the old people who are BPL and above 65 years of age ?

16. We would like to bring it in your notice that Supreme Court in its order dated 28th November, 2001 has clearly stated that "Payment of pensions is to be made by the 7th day of each month". Therefore, we request please take steps to ensure that the monthly old age pension reaches the beneficiaries at time.

17. We would be grateful if you could please also send us the details about the total number of the widows in the state and the present coverage of the widows under the widows' pension scheme of the state government. We would also be grateful for details of the procedure that State has been following for the identification of widows as beneficiaries for the widow pension scheme.

National family Benefit scheme:

Coverage:

Utilisation:

National Rural Employment Guarantee Scheme:

18. We had written you vide our letter: NREGA/578/Jharkhand dated July 8th 2008 about the serious irregularities in the implementation of the National Rural Employment Guarantee Act (NREGA) in Palamau District, Jharkhand. A survey of NREGA (initiated by the G.B. Pant Institute of Social Sciences, Allahabad University) was conducted by Prof. Jean Drèze and Reetika Khera in Chainpur and Chhattarpur Blocks of Palamau District on 12-25 May 2008. They visited 10 randomly-selected Gram Panchayats in these two Blocks. In each Gram Panchayat, one NREGA worksite was surveyed and the following serious violations of the Act (among others) were found at these worksites:

1. Fake muster roll entries and forged signatures.
2. Job Card hoarding and Irregular/Invalid/Fake Job Card entries.
3. Delays in wage payment and underpayment.
4. Fraudulent work applications and cases of bribery.

We had sent you also a summary of supporting evidence and the preliminary results of the survey. We regret that we have not heard from the State whether any action on the concerned authorities was called off on this and nor we have received any report investigation into the matter. Therefore, we urge you to send us an action taken report on the matter within two weeks of time.

19. Of the number of households who have demanded wage employment for 2007-08 the number of households that have been provided employment show acceptable coverage but the cumulative number of households which have completed 100 days of employment is just 2.9% which might be due to the reason that the state government hasn't been able to provide and make sufficient work available under NREGA from time to time and on demand. Also only 84.69 % of the fund available have been spent under the scheme. Please undertake steps in advance to ensure work is available as per requirements of the people and full utilization of funds.

20. We would also like to know what is the system of disbursement of wages under NREGS to ensure that labourers receive wages on time.

21. We have received number of reports and complaints regarding the absence of the facilities that are supposed to be available at the work sites. We believe these facilities are very important and encourage people to participate in the NREGA work. More importantly the provisions of shade and crèche/deputation of one woman to look after the children in case the number of children under six accompanying women working at any worksite are five or more, facilitates the participation of women in NREGA work.

In this regard we had requested you vide our letter: NREGA/519/all states, that if you could kindly send us a detailed report about the work site facilities that are being provided in your state within ten days time. Please refer to that letter and send us the information in the format appended as annexure in the letter.

22. It seems from the website of Ministry of Rural development that the coverage of disabled beneficiaries in total beneficiary households shows satisfactory improvement (about 3.28 %) but it is equally confusing whether the data for disabled beneficiaries is of the households with PWDs or individual PWDs which then gives very less coverage (about 0.07 %) out of total person days generated for 2007-08, therefore, we would like to request you please send us the data separately on the total number of households with PWDs who have been beneficiaries of NREGS and individual PWDs who participated in NREGS and cumulative number of work days they have been provided individually for the year 2007-08.

23. We would like to request you that State government should also consider the increase in the number of work days to 150 to the households with a disabled member and should ensure that work is being provided to disabled persons on demand. The government of Andhra Pradesh has recently issued order in this direction. A listing of all the light tasks like carrying drinking water for labourers, looking for the children accompanying nursing mothers, maintaining muster rolls and attendance register etc. should be done before the work actually begins at the worksite and allocated to the disabled persons. And also the data on the coverage of the disabled persons under NREGA should be collected separately for disabled persons as provided under the national operational guidelines.

Mid Day Meal Scheme:

24. The Supreme Court order dated 20th April 2004 states, 'In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes". Therefore, we request you please let us know the total number of cooks appointed in the state under MDM and the number of the cooks appointed from the above categories. Kindly attach the orders and guidelines issued in this direction by the State.
25. Has the State Government issued guidelines regarding varied menus to the districts and implementing agencies? Please send a copy of the same.
26. Has the costing for the provision of this menu been worked out? Please provide details.
27. If there is any weekly menu prescribed for the MDMS in the State, please send a copy of the same.
28. We request the state government to consider adopting the Tamil Nadu model of permitting aged destitute people to share in the school MDM, as a final defence against starvation.

National Family Benefit Scheme:

29. We would like to bring it in your notice that that Supreme Court in its order dated 28th November, 2001 has clearly stated that “BPL families are to be paid Rs 10,000 within four weeks through the local Sarpanch when the breadwinner dies”. Therefore, we request please take steps to ensure that the benefit under this scheme reaches the beneficiaries at time.
30. As there have been issues of misidentification of beneficiaries due to the under- estimated ceiling, therefore, we would like to know how the distribution of funds allocated collectively by Government of India, is done for NOAPS and NFBS?
31. What is the process of identification of the beneficiaries under the scheme? Kindly attach the details outlining the methodology used for such process.
32. What kind of investigation is conducted into the deaths of adults of the BPL families to determine whether the person who died was primary bread earner in the family? Please send us the details of the same.
33. How is the primary bread earner defined and whether the definition equally applies to the single women headed households? Please send us a copy of the guidelines.
34. What percentage of the beneficiaries were the families where women had died, for the last year? Please send us the details.
35. What is the mode of payment and process for ensuring that payment is made within four weeks of time as per the Supreme Court orders? Please send us the details and guidelines of the same.

Grievance Redressal Mechanisms and Social Audits:

36. We request to the state government kindly takes steps immediately to implement the following order of the Supreme Court dated 8 May 2002 relating to establishing a grievance redressal system has not been implemented.

“Gram Sabhas are entitled to conduct social audits of SGRY (and indeed of all food-related schemes). On receipt of any complaint of misuse of funds from the Gram Sabhas, the implementing authorities shall “investigate and take appropriate action in accordance with the law.”

37. Also, a register may please be opened to receive complaints in every district collector’s office, and the receipt and disposal of the complaints posted on a website.

38. Further the District Magistrate’s office and the Gram Sabha should put on their notice boards all the complaints received and the redressal undertaken for the complaint.

We would be grateful if you could kindly look into the above listed matters and respond to us at the earliest.

Warm Regards,

Dr. N.C. Saxena

Harsh Mander

CC: Mr. Rupesh, Advisor to the Supreme Court Commissioners, Bihar.