

## **The Supreme Court Orders**

So far, 44[revise] “interim orders” have been issued by the Supreme Court in the “right to food case” (PUCL vs Union of India and others, Writ Petition [Civil] 196 of 2001). Many of these orders are of no consequence, e.g. adjournments or listings of dates for further hearings. The substantive orders are given below. This is the full text, without any change in wording. However, we did correct typos and spelling mistakes, to improve readability.<sup>1</sup>

### **1. Text of the Order of July 23<sup>rd</sup>, 2001**

Counsel for the petitioner is permitted to file a fresh application for interim relief. A copy of the same be given to the counsel for the Union of India as well as to the counsel for the States and for the Food Corporation of India. Learned Attorney General states that this should not be regarded as an adversarial litigation and it is a matter of concern for all. In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems. Reply affidavits be filed within two weeks by the States and the Union of India as well as the Food Corporation of India.

In the meantime, we are sure that the responsible Governments will act for the benefit of their people. By way of an interim order, we direct the States to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made. Leave is granted to the petitioner to implead other States also as parties to this petition. On such an application being filed today, notice to issue to them. List the matter for further consideration on 20<sup>th</sup> August, 2001.

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<sup>1</sup> The full text all the orders is also available on the Supreme Court website ([www.courtnic.nic.in](http://www.courtnic.nic.in)).

## **2. Text of the Order of August 20<sup>th</sup>, 2001**

The anxiety of the Court is to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government - whether Central or State. How this is to be ensured would be a matter of policy which is best left to the Government. All that the Court has to be satisfied and which it may have to ensure is that the food grains which are overflowing in the storage receptacles, especially the FCI godowns, and which are in abundance, should not be wasted by dumping into the sea or eaten by rats. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.

## **3. Text of the Order of September 3<sup>rd</sup>, 2001**

Issue notice to the Union of India as well as, in the first instance, to the States of Andhra Pradesh, Chhatisgarh, Gujarat, Himachal Pradesh, Karnataka, Maharashtra, Madhya Pradesh, Orissa, Rajasthan and Kerala. Notice to serve through the standing counsel. Liberty is given to the petitioner to file a supplementary affidavit giving fresh suggestions after taking into consideration the affidavit of these states as well as the Union of India and the statutory order dated August 31<sup>st</sup>, 2001. Affidavit be filed within a week. Response to the application as well as to the additional affidavit be filed within a week thereafter. To come up on September 17<sup>th</sup>, 2001. Learned Attorney General brings to our notice that 16 States and Union Territories have not as yet identified the below poverty line families under the Antyodhya Anna Yojana. We direct these 16 States and Union Territories, namely, Arunachal Pradesh, Assam, Bihar, Delhi, Goa, Manipur, Nagaland, Orissa, Sikkim, Tamil Nadu, Tripura, Uttaranchal, West Bengal, Chandigarh, Lakshadweep and Pondicherry to comply with the Central Government's directions within two weeks from today and report compliance.

## **4. Text of the Order of September 17<sup>th</sup>, 2001**

With reference to this Court's direction dated 3<sup>rd</sup> September, 2001 requiring 16 States & Union Territories who, according to the learned Attorney General, had not identified the below poverty line families under the Antyodaya Anna Yojana, to identify, we are not satisfied that any such exercise in the right earnestness has been undertaken. Some of the States mention that the exercise is underway. Considering the seriousness of the matter, one further opportunity is granted to these 16 States and Union Territories to comply with the Central Government's directions within three weeks and to inform the Central Government about the number of below poverty line families under the Antyodaya Anna Yojana which they have identified. Copies of the

communication said by the said 16 States/Union Territories should also be forwarded to the Attorney General who will inform the Court on the next date of hearing whether compliance has been made or not.

In I.A. No. 8/2001 at pages 66–68, certain schemes of the Central Government are mentioned which are required to be implemented by the State Governments. These schemes are: Employment Assurance Scheme which may have been replaced by a Sampurna Gramin Yojana, Mid-day Meal Scheme, Integrated Child Development Scheme, National Benefit Maternity Scheme for BPL pregnant women, and National Old Age Pension Scheme for destitute persons of over 65 years, Annapurna Scheme, Antyodaya Anna Yojana, National Family Benefit Scheme and Public Distribution Scheme for BPL & APL families. The Chief Secretaries of all the States & the Union Territories are hereby directed to report to the Cabinet Secretary, with copy to the learned Attorney General, within three weeks from today with regard to the implementation of all or any of these Schemes with or without any modification and if all or any of the Schemes have not been implemented then the reasons for the same.

The Central Government shall collate all the facts and thereafter take necessary action in order to ensure the implementation of the said Schemes. A Status Report with regard thereto may be filed in Court within five weeks. Before giving the Status Report, the Central Government will also ascertain with regard to the actual implementation of the various Schemes. In the meantime, we direct all the State Governments to forthwith lift the entire allotment of foodgrains from the Central Government under the various Schemes and disburse the same in accordance with the Schemes.

The Food for Work Programme in the scarcity areas should also be implemented by the various States to the extent possible. To come up on November 5<sup>th</sup>, 2001.

## **5. Text of the Order of November 28<sup>th</sup>, 2001**

After hearing learned counsel for the parties, we issue, as an interim measure, the following directions:

## **1. Targeted Public Distribution System (TPDS)**

(i) It is the case of the Union of India that there has been full compliance with regard to the allotment of foodgrain in relation to the TPDS. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

(ii) The States are directed to complete the identification of BPL families, issuing of cards and commencement of distribution of 25 kgs. grain per family per month latest by 1st January, 2002.

(iii) The Delhi Govt. will ensure that TPDS application forms are freely available and are given and received free of charge and there is an effective mechanism in place to ensure speedy and effective redressal of grievances.

## **2. Antyodaya Anna Yojana**

(i) It is the case of the Union of India that there has been full compliance with regard to the allotment of foodgrain in relation to Antyodaya Anna Yojana. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

(ii) We direct the States and the Union Territories to complete identification of beneficiaries, issuing of cards and distribution of grain under this Scheme latest by 1st January, 2002.

(iii) It appears that some Antyodaya beneficiaries may be unable to lift grain because of penury. In such cases, the Centre, the States and the Union Territories are requested to consider giving the quota free after satisfying itself in this behalf.

## **3. Mid Day Meal Scheme (MDMS)**

(i) It is the case of the Union of India that there has been full compliance with regard to the Mid Day Meal Scheme (MDMS). However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

(ii) We direct the State Governments/ Union Territories to implement the Mid-Day Meal Scheme

by providing every child in every Government and Government assisted Primary Schools 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. Those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in all half the Districts of the State ( in order of poverty ) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State.

(iii) We direct the Union of India and the FCI to ensure provision of fair average quality grain for the Scheme on time. The States/ Union Territories and the FCI are directed to do joint inspection of food grains. If the food grain is found, on joint inspection, not to be of fair average quality, it will be replaced by the FCI prior to lifting.

#### **4. National Old Age Pension Scheme (NOAPS)**

(i) It is the case of the Union of India that there has been full compliance with regard to the National Old Age Pension Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

(ii) The States are directed to identify the beneficiaries and to start making payments latest by 1st January, 2002.

(iii) We direct the State Govts. / Union Territories to make payments promptly by the 7th of each month.

#### **5. Annapurna Scheme**

The States/ Union Territories are directed to identify the beneficiaries and distribute the grain latest by 1st January, 2002.

## **6. Integrated Child Development Scheme (ICDS)**

(i) We direct the State Governments/Union Territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under:

- (a) Each child up to 6 years of age to get 300 calories and 8–10 gms of protein;
- (b) Each adolescent girl to get 500 calories and 20–25 grams of protein;
- (c) Each pregnant woman and each nursing mother to get 500 calories & 20–25 grams of protein;
- (d) Each malnourished child to get 600 calories and 16–20 grams of protein;
- (e) Have a disbursement centre in every settlement.

(ii) It is the case of the Union of India that there has been full compliance of its obligations, if any, under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

## **7. National Maternity Benefit Scheme (NMBS)**

(i) We direct the State Govts. / Union Territories to implement the National Maternity Benefit Scheme (NMBS) by paying all BPL pregnant women Rs. 500/- through the Sarpanch 8-12 weeks prior to delivery for each of the first two births.

(ii) It is the case of the Union of India that there has been full compliance of its obligations under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

## **8. National Family Benefit Scheme (NFBS)**

(i) We direct the State Govts. / Union Territories to implement the National Family Benefit Scheme and pay a BPL family Rs. 10,000/- within four weeks through a local Sarpanch, whenever the primary bread winner of the family dies.

9. We direct that a copy of this order be translated in regional languages and in English by the respective States/ Union Territories and prominently displayed in all Gram Panchayats, Govt. School Buildings and Fair Price Shops.

10. In order to ensure transparency in selection of beneficiaries and their access to these Schemes, the Gram Panchayats will also display a list of all beneficiaries under the various Schemes. Copies of the Schemes and the list of beneficiaries shall be made available by the Gram Panchayats to members of public for inspection.

11. We direct Doordarshan and AIR to adequately publicise various Schemes and this order. We direct the Chief Secretaries of each of the States and Union Territories to ensure compliance of this order. They will report compliance by filing affidavits in this Court within 8 weeks from today with copies to the Attorney General and counsel for the petitioner.

We grant liberty to the Union of India to file affidavit pursuant to the order of this Court dated 21st November, 2001. List the matter for further orders on 11<sup>th</sup> February, 2002. In the meanwhile, liberty is granted to the parties to apply for further directions, if any.

## **6. Text of the Order of May 8<sup>th</sup>. 2002**

After hearing learned counsel for the parties we issue the following directions:

(a) The Gram Panchayats shall frame employment generation proposals in accordance with the Sampoorna Gramin Rozgar Yojana (SGRY) guidelines for creation of useful community assets that have the potential for generating sustained and gainful employment such as water and soil conservation, afforestation and agro-horticulture, salvipasture, minor irrigation and link roads, These proposals shall be approved and sanctioned by the Gram Panchayats and the work started expeditiously.

(b) The respondents shall focus the SGRY programme towards agricultural wage earners, non agricultural unskilled wage earners, marginal farmers and, in particular, SC and ST persons whose wage income constitutes a reasonable proportion of their household income and to give priority to them in employment, and within this sector shall give priority to women.

- (c) The respondents shall make the wage payment on a weekly basis.
- (d) The respondents shall prohibit the use of contractors in the SGRY programme.
- (e) The Central Government shall make financial releases under the different employment generation schemes to each State on schedule, provided that the State Governments fulfil the conditions as prescribed by the SGRY. The State Governments are directed to fulfil these conditions and implement the SGRY expeditiously. The State Government will furnish utilisation certificate and it is only on the furnishing of the same that further amounts shall be released. The funds provided shall only be utilised in respect of SGRY programme.
- (f) The Gram Sabhas are entitled to conduct a social audit into all Food/Employment schemes and to report all instances to misuse of funds to the respective implementing authorities, who shall on receipt of such complaints, investigate and taken appropriate action in accordance with law.
- (g) On a complaint being made to the Chief Executive Officer of the Zilla Panchayat (CEO)/Collector regarding non-compliance of the orders of this Court the Concerned CEO/Collector shall record the salient features of the complaint in a register maintained for this purpose, acknowledge receipt of the complaint and forthwith secure compliance with this Court's order.
- (h) The CEO/Collector of all the Districts in the States and territories shall scrutinize the action taken by all the implementing agencies within their jurisdiction to ensure compliance with this court's orders and report to the Chief Secretary.
- (i) The responsibility for implementation of the order of this Court shall be that of the CEO/Collector. The Chief Secretary will ensure compliance with the order of this Court.
- (j) Dr. N.C. Saxena, former Planning Secretary, Government of India, and Mr.S.R. Shankaran, former Secretary, Rural Development, Government of India, shall function as Commissioners of this Court for the purpose of looking into any grievance that may persist after the above-mentioned grievance resolution procedure has been exhausted.

(k) On the Commissioner's recommending a course of action to ensure compliance with this Court's order, the State Government/UT administrations, shall forthwith act upon such recommendation and report compliance.

(l) The Commissioners shall be at liberty to take the assistance of individuals and reliable organizations in the State and Union Territories. All officials are directed to fully cooperate with such persons/organizations, to bring about effective monitoring and implementation of the order of this Court.

(m) The Gram Sabhas are empowered to monitor the implementation of the various schemes and have access to relevant information relating to, inter alia, selection<sup>2\*</sup> of beneficiaries and the disbursement of benefits. The Gram Sabhas can raise their grievance (s) in the manner set out above and the redressal of the grievance (s) shall be done accordingly.

(n) It has been stated by the Petitioner that the identification of BPL families is not being done properly and that the criteria for the identification of the BPL families are neither clear nor uniform. The Central and the State Governments are directed to frame clear guidelines for proper identification of BPL families.

(o) The respondents shall ensure that the ration shops remain open throughout the month, during fixed hours, the details of which will be displayed on the notice board.

To come up for further directions after 12 weeks.

## **7. Text of the Order of October 29<sup>th</sup> 2002**

On May 8<sup>th</sup>, 2002, detailed directions were given by this Court with regard to the implementation of various schemes which had been floated for giving relief to the poor, impoverished and the hungry. In the said order Dr. N.C. Saxena and Mr. S.R. Sankaran were appointed as Commissioners of the Court, inter alia, for the purpose of looking into any grievance that may persist after the grievance resolution procedure set out in the said order has been exhausted.

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<sup>2</sup> The order actually says "section", but this is almost certainly meant to read "selection".

Pursuant to the said order Dr. N.C. Saxena has filed the first Report dated 12<sup>th</sup> October, 2002. In the said Report, there is a reference with regard to the food requirement in the State of Rajasthan. We need not go into this aspect but what requires to be considered is the directions which are sought for by the Commissioners in the said Report.

We have heard the learned Attorney General, Mr. Colin Gonsalves and Dr. A.M. Singhvi and in furtherance and in addition to our aforesaid order of May 8<sup>th</sup>, 2002; we issue the following directions.

The Chief Secretaries/Administrators of the States/Union Territories are directed to respond promptly to the correspondences addressed to them by the Commissioners and provide full information as required.

In case of persistent default in compliance with the orders of this Court concerned Chief Secretaries/Administrators of the States/Union Territories shall be held responsible.

The Chief Secretaries/Administrators are given one last chance to translate and permanently display the order dated November 28<sup>th</sup>, 2001 and May 8<sup>th</sup>, 2002 of this Court, on all the Gram Panchayats, school buildings and fair price shops and give wide publicity on the All India Radio and Doordarshan. This should be complied with within eight weeks from today.

It is clarified that the scope of the work of the Commissioners appointed by this Court is to include the monitoring of the implementation of this Court's orders as well as the monitoring and reporting to this Court of the implementation by the respondents of the various welfare measures and schemes.

The respective State Governments shall appoint Government officials as Assistants to the Commissioners within eight weeks from today. The appointment shall be made by the Chief Secretaries/Administrators of the States/Union Territories in consultation with Dr. N.C. Saxena. The Assistants so appointed will render such assistance to the Commissioners as the Commissioners may require and help them in discharging the responsibility which has been cast upon them.

In order to ensure that there is effective implementation of the Governmental Schemes, the States as well as the Central Government shall appoint one Nodal Officer each. The Assistants appointed to help the Commissioners, as well as the Commissioners would remain in constant touch with the said Nodal Officers for the purpose of ensuring the due implementation of the Schemes.

The Nodal Officers so appointed shall provide to the Commissioners full access to relevant records and provide relevant information.

Whenever the States/Union Territories have a meeting in relation to food scarcity it will be appropriate that the Commissioners and in their absence the assistants are notified to participate in the same.

It is the duty of each States/Union Territories to prevent deaths due to starvation or malnutrition. If the Commissioner reports and it is established to the satisfaction of the Court that starvation death has taken place, the Court may be justified in presuming that its orders have not been implemented and the Chief Secretaries/Administrators of the States/ Union Territories may be held responsible for the same.

We reaffirm our earlier order dated May 8<sup>th</sup>, 2002 and direct the parties to comply with the same, and, in particular the Central Government shall formulate the scheme to extend the benefits of the Antyodhaya Anna Yojana to the destitute section of the population.

Adequate funds shall be made available to the Commissioners by the Union of India to enable them to perform the functions. To await the next Report of the Commissioners, and to come up for further orders after four months before a Bench of which Hon'ble Mr. Justice Y.K. Sabharwal is a Member.

### **8. Text of the Order of May 2<sup>nd</sup>, 2003**

In this petition that was filed little more than two years back various issues have been framed many of which may have a direct and important relevance to the very existence of poor people; their right to life and the right of food of those who can ill-afford to provide to their families two meals day. Their misfortune becomes further grave during the times of famines and drought. The

petitioner has sought directions for enforcement of Famine Code. The petitioner seeks immediate release of surplus food-grains lying in the stocks of Union of India for drought affected areas. Directions are also sought requiring the Government to frame fresh schemes of Public Distribution for Scientific and Reasonable Distribution of food-grains. In order that any meaningful and immediate relief is given by the Central Government and the State Government without any delay various applications have been filed by the petitioner. Considering the importance of the matter particularly in relation to those who are Below Poverty Line (BPL) an order was made by this Hon'ble Court on March 3<sup>rd</sup>, 2003 requiring the respondents to file replies to the applications and place on record the requisite materials, while adjourning the case to the April 8<sup>th</sup>, 2003. In respect of the directions that the Central Government shall formulate the scheme to extend the benefits of the Antyodaya Anna Yojana (AAY) to destitute section of the population, learned Attorney General stated on the last date of hearing which was on March 3<sup>rd</sup>, 2003 that for the budget for the year 2003–2004 a provision has been made for it. Despite the order of this Court the document has not been placed on record. The approach of Government is more distressing since this matter which was to come up on April 8<sup>th</sup>, 2002, has come up today after nearly four weeks of the scheduled date but neither the documents have been filed nor other aspects required to be dealt with in the last order have been adverted to. In I.A.25 one of the grievance that has been made is that names of various persons have been removed from BPL arbitrarily. In I.A.26 it has been highlighted that the allocation made for supply of grain in lieu of the labour of BPL family has been recommended to be reduced from 10 kgs. per day per household to 5 kgs. and for 10 days in every month till June, 2003. In terms of the last order the specific instructions were required to be obtained on the relevant schemes mentioned in I.A.26 including in the matter of reduction of supply of the grain and the number of days. In I.A.26 directions sought against Union of India are to release 20 million tones food-grains, at the very minimum, free of cost every year for the Food-for-Work Programmes besides other reliefs. Response from Government was sought within three weeks.

Declining request for filing of replies we have heard learned counsel since it is necessary to consider issuing certain directions without any further delay with a view to provide some ad hoc interim relief to a class which deserves a sympathetic approach. We have heard Mr. Colin Gonsalves, learned counsel for the petitioner, Mr. Mukul Rohtagi, learned Additional Solicitor General for Union of India, besides Mr. B.B. Singh, for State of Bihar, Mr. Ashok Srivastava, for State of U.P. and Ms. Indra Sawhney, for Food Corporation of India.

This Court in various orders passed in the last two years has expressed its deep concern and it has been observed, in one of the orders, that what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existing leading to mal-nutrition, starvation and other related problems. The anxiety of the Court is to see that poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government-whether Central or the State. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.

Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which inter alia provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

In the light of the aforesaid, we are of the view that for the time being for the months of May, June and July, 2003, it is necessary to issue certain directions so that some temporary relief is available to those, who deserve it the most.

Our attention has been drawn to the Famine Code (Annexure Petitioners/ Appellants herein-VIII). That Famine Code, we are informed, is the one formulated by State of Rajasthan and similar Codes have been formulated by other States. A perusal of this Famine Code shows that first three chapters deal with the steps to be taken as preventive measure before the famine and drought and Chapter IV onward deal with declaration of distress and commencement of relief setting out in detail the reliefs and the officers responsible thereof. One of the reliefs claimed in the petition is for enforcement of the Famine Code. Learned Additional Solicitor General submitted that the Famine Codes were formulated long time back and many of the aspects have been dealt with under various schemes that have been formulated later like Sampoorna Grain Rozgar Yojana (SGRY). This should not present any difficulty in implementing the Famine Code for the time

being. Under the circumstances, we direct the implementation of the Famine Code for the period May, June and July, 2003 as and when and where situation may call for it, subject to the condition that if in subsequent schemes the relief to be provided and preventive measures to be undertaken, during famine and drought, are better than the one stipulated by the Famine Code, the same may be implemented instead of Famine Code.

The next aspect pertains to Food-for-Work. We have been taken through Employment Assurance Scheme of the Government of India. Though the same stands merged into SGRY, but it has been submitted by learned counsel for the petitioner that the reliefs under SGRY, instead of improvement, have since been reduced. SGRY provides for an outlay of only Rs.5000 crores and 5 million tonnes of free grain. It was pointed out that as far as the guarantee of employment is concerned, in the Employment Assurance Scheme, it was 100 days, whereas according to SGRY, it is 15 days and rather 10 days according to States and at the most 20 days which is according to Union of India. Our attention has also been drawn to the Report of the High Level Committee on Long-Term Grain Policy-July, 2002. A detailed reference to report has been made in I.A.25. That Committee was constituted by Department of Food and Public Distribution, Ministry of Consumer Affairs and Food and Public Distribution, Union of India. In the summary and recommendation the Report inter alia states that an importantly social and security measure in the context is provision for employment on public works. While a food component can and could be part of such employment generation in the short run or in periods of local food shortages in long run, employment generation should be distinct from the food delivery system. This should not, however, undermine the importance of employment and income generation in eliminating hunger and malnutrition. The Report further states that no long run policy can be effective unless present imbalances, specifically, the large excess holding of public stocks, the Report has outlined a two year Plan of Action which includes immediate steps to lower procurement inflows on the one hand, and to raise outflows, on the other hand, by several means including a large Food for Work programme, a revitalized universal PDS and other grain-based welfare schemes. It has also recommended a major food-based employment programme for the short run. In ultimate, the recommendation of the said committee is that the present SGRY scheme should be expanded and at least doubled. It says that this implies doubling grain allocation from 5 to 10 million tonnes, and also an increase in the cash allocation to States by at least 5000 crores.

The prayer of the petitioner, in fact, is for allocation of 20 million tonnes though, according to it, the requirement is of 40 million tonnes. The High Level Committee was appointed by the

Government of India. It gave its Report in July, 2002. Ten months have passed. We do not know what consideration the report has received if at all it has been considered by the Government. We may also note that the Report has further mentioned that currently, about half of the food subsidy is being spent on holding stocks in excess of the buffer stock levels necessary for food security. As these stocks are reduced to normal levels, very large fiscal resources of around Rs.10,000 crores annual will become available.

While directing the Government of India to place on record by 8<sup>th</sup> August, 2003, the consideration bestowed on the Report of the Committee and the decision, if any, we direct that on pro rata basis, the recommendation that present SGRY scheme should be expanded at least doubled be implemented, both in regard to allocation of food-grain as also cash, for the months of May, June and July. The State Government shall lift those allocations and ensure that the same reach those for whom it is meant. In case, however, after considering the response of Union of India, we hold that the allocations do not deserve to be doubled as recommended, the question of adjustment being made for the future supplies on the basis of the allocations in terms of SGRY can be considered.

Further, it is necessary to issue immediate directions to evolve a system whereby eligible BPL families, which may not be on BPL list, are so included as also regarding the ration shops and other outlets remaining open and giving deliveries of food-grains to those, who are on the list and hold the requisite cards. For the present, we are not going into the question whether only 41% of the poorest households are on BPL list. We may note that in May last year an order was passed that the respondents shall ensure that the ration shops remain open throughout the month during fixed hours and the details of which shall be displayed in the notice board.

To facilitate the supply of the grain, we issue the following directions:

- (1) Licensees, who do not keep their shops open throughout the month during the stipulated period,
  - (a) fail to provide grain to BPL families strictly at BPL rates and no higher,
  - (b) keep the cards of BPL households with them,
  - (c) make false entries in the BPL cards,
  - (d) engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/organizations,

- (e) shall make themselves liable for cancellation of their licenses. The concerned authorities/functionaries would not show any laxity on the subject.
- (2) Permit the BPL household to buy the ration in instalments.
- (3) Wide publicity shall be given so as to make BPL families aware of their entitlement of food-grains.

What was observed in the order dated July 23<sup>rd</sup>, 2001 in regard to the making available of food to aged, infirm, disabled etc. has already been noticed hereinabove. According to the figures supplied by the petitioner, approximately 1.5 crore persons are eligible to get Antyodaya Anna Yozana (AAY) Card. We direct the Government of India to place on AAY category the following groups of persons:

- (1) Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women;
- (2) widows and other single women with no regular support;
- (3) old persons (aged 60 or above) with no regular support and no assured means of subsistence;
- (4) households with a disabled adult and assured means of subsistence;
- (5) 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;
- (6) primitive tribes.

What we have stated above in regard to BPL Cardholders for effective supply of grains to them, would equally apply for those, who are on AAY list.

Regarding Mid Day Meal, on November 28<sup>th</sup>, 2001, this Court directed the State Government/Union Territories to implement the Mid Day Meal Scheme (MDMS) by providing every child in every Government and Government assisted Primary Schools 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. It was further directed that those Governments which provide dry rations instead of cooked meals, within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in all half the Districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State. Some States in implementation of the said direction are supplying cooked mid day meal to the students. We are, however, told that despite the fact that 1½ years has passed, some of the States have not even made a beginning. Particular reference has been made to States of Bihar, Jharkhand and Uttar Pradesh. It is not in dispute that in these three State even beginning has not been made whereas some of the other States are fully implementing directions for supply of cooked Mid Day Meal. Counsel for Uttar Pradesh and Jharkhand could not give any satisfactory reason for non-implementation. No reply or affidavit was filed by the said State. In so far as the State of Bihar is concerned, Mr. B.B. Singh has drawn our attention to the affidavit filed by Secretary and Relief Commissioner, Relief and Rehabilitation Department, Government of Bihar, inter alia stating that the State Government proposes to implement this scheme in few blocks on a pilot basis through panchayat, pending settlement of the issue regarding funding of conversion cost and to establish the capacity of the panchayat raj institution to supply hygienic cooked meals to all eligible students on a regular basis, without compromising teaching activities. The affidavit could not be more vague than what it is. When they propose to start, in how many districts they propose to start, what scheme has been formulated and every other conceivable detail is missing from the affidavit. We are told that there are 38 districts in the State of Bihar. For the present, we direct the said State to implement the cooked Mid Day Meal Scheme in terms of the directions of this Court in at least 10 District, which may be most poor according to the State's perception.

We also direct the State of Uttar Pradesh, Jharkhand and other States to make a meaningful beginning of the cooked Mid Day Meal Scheme in at least 25% of the District, which may be most poor.

By order dated May 8<sup>th</sup>, 2002 Dr. N.C. Saxena, former Planning Secretary, Government of India and Mr. S.R. Shankaran, former Secretary, Rural Department, Government of India were

appointed to function as Commissioners of this Court for the purpose of looking into any grievance that may persist after the grievance resolution procedure has been exhausted. In subsequent orders, directions have been issued to the Government to fully cooperate with the learned Commissioners. Mr. Shankaran has said to have written a letter to the Government expressing personal difficulty in functioning as Commissioner on account of ill-health. Mr. Gonsalves states that he has recovered and now is in a position to so function. We would, therefore, request Mr. Shankaran to start functioning as Commissioner with Dr. Saxena in terms of the orders already passed.

The copies of the order shall be sent to the Chief Secretaries of all States/Union Territories. The State Governments/Union Territories are directed to file affidavits showing the compliance and extent thereof. The affidavits may be filed on or before August 8<sup>th</sup>, 2003. Union of India may also file its affidavit(s) by the same date. For further consideration the matter shall be placed on August 19<sup>th</sup>, 2003.

### **9. Text of the Order of May 5<sup>th</sup>, 2003**

The matter has been mentioned by Mr. Colin Gonsalves, learned counsel for the petitioner. He has also produced copy of the letter dated May 3<sup>rd</sup>, 2003 written to the learned Attorney General for India in addition to the orders passed on May 2<sup>nd</sup>, 2003. None is present for the Union of India. Having heard learned counsel for the petitioner, we direct that till the date of hearing the Government of India will not insist the State Governments to remove any person from the existing Below Poverty Line (BPL) list.

### **10. Text of the Order of December 2<sup>nd</sup>, 2003**

A report dated November 28<sup>th</sup>, 2003 has been filed by the Committee. Such of the parties who have not been supplied with the said report may obtain it from the Registry. Response to the report may be filed within six weeks.

Mr. Gonsalves, learned counsel, submits that though some aspects have been sorted out, some still remain on which directions may be issued by the Court. Let a compilation be filed stating the matters which have been sorted out and which remain to be resolved, within a period of six weeks.

List on a Friday in the month of January, 2004.

### **11. Text of the Order of April 20<sup>th</sup>, 2004**

Upon hearing counsel the Court made the following order.

#### **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 November 28<sup>th</sup>, 2003 and report dated January 28<sup>th</sup>, 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 November 28<sup>th</sup>, 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 October 29<sup>th</sup>, 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 May 2<sup>nd</sup>, 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 May 2<sup>nd</sup>, 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 November 28<sup>th</sup>, 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 November 28<sup>th</sup>, 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 November 28<sup>th</sup>, 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 May 2<sup>nd</sup>, 2003 does not mean that this Court has modified or varied the earlier order dated November 28<sup>th</sup>, 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 November 28<sup>th</sup>, 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 up to 10<sup>th</sup> Standard during his address to the Nation on August 15<sup>th</sup>, 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 up to 10<sup>th</sup> 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 up to 10<sup>th</sup> 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 November 28<sup>th</sup>, 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 September 1<sup>st</sup>, 2004.
2. All Chief Secretaries/Administrators are directed to file compliance report in regard to directions No.1 on or before September 15<sup>th</sup>, 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 loss 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 up to 10<sup>th</sup> 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 April 27<sup>th</sup>, 2004 for consideration of other Schemes.

## **12. Text of the Order of April 27<sup>th</sup>, 2004**

Upon hearing counsel the Court made the following order:

### **National Social Assistance Programme (NSAP)**

We have further heard for some time Mr.Gonsalves, learned senior counsel and Mr.Raju Ramachandran, learned Additional Solicitor General. The various schemes for the poorer sections of the citizens of this country have been the subject matter of the orders passed by this Court from time to time. It seems that some States have discontinued some of the schemes. As an interim measure, till the matter is fully heard in detail, we direct that no scheme covered by the orders made by this Court including the National Old Age Pension Scheme, National Family Benefit Scheme, in particular Annapurna, and National Maternity Benefit Scheme shall be discontinued or restricted in any way without the prior approval of this Court. In other words, it means that till further orders, the schemes would continue to operate and benefit all those who are covered by the schemes. We hope that the Government of India and the State Governments would simplify the procedure so that high proportion of eligible persons remain to be covered by the schemes.

A copy of this order shall be sent to the Chief Secretaries of every State Government/Union Territory. The Union of India, through the concerned Ministry, shall also issue directives to the State Governments/Union Territories to comply with this order.

### **ICDS (Integrated Child Development Scheme)**

In respect of Integrated Child Development Scheme, directions were issued on 28<sup>th</sup> November, 2001. It seems that most of those who are covered by the said order are not getting benefit under the said scheme. We have heard the submissions of Mr. Gonsalves and perused the report

submitted by the Commissioners and the directions sought. From the facts and figures that have been furnished to us, it seems evident that there are a large number of mal-nourished children between the age group of 0 to 6 years. These figures are based on the survey conducted under the National Family Benefit Health Scheme. The position is quite alarming. These young children are the future of the nation. Further, it appears that except Kerala and Tamil Nadu where the benefit under the scheme is said to be reaching to about 50% of the children, in the rest of the country the average seems to be below 25%. The position in the States of Bihar, Uttar Pradesh, Jharkhand and Uttaranchal seems to be quite alarming. According to the survey for the period 2002–2003 the access to supplementary nutrition for the children in Bihar reaches about 12.6 per cent of those who are otherwise covered by the scheme. Mr. Raju Ramachandran, learned ASG prays for a short adjournment to discuss the matter with the concerned officials and make submissions on the directions that may be issued to ensure the compliance of the Order dated November 28<sup>th</sup>, 2001.

As prayed, the case is adjourned to April 29<sup>th</sup>, 2004. BPL (Below Poverty Line Scheme) The case may be put up for hearing on a non-miscellaneous day after re-opening of the Court after summer vacation.

### **13. Text of the Order of April 29<sup>th</sup>, 2004**

Upon hearing counsel the Court made the following order:

With the assistance of learned counsel, we have perused various documents including Report No.1 of 2000 prepared by CAG and a working paper on Health, Nutrition and Family Welfare Programme Review of Progress during the Ninth Plan Period by Planning Commission, Government of India (February, 2001). It is evident that Integrated Child Development Scheme (ICDS) is perhaps the largest of all the food supplementation programmes in the world, was initiated in the year 1975 with the following objectives as per the aforesaid document prepared by the Planning Commission.

i) 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;

- ii) To provide conditions necessary for pre-school children's psychological and social development through early stimulation and education;
- iii) To provide pregnant and lactating women with food supplements;
- iv) To enhance the mother's ability to provide proper child care through health and nutrition education;
- v) To achieve effective coordination of policy and implementation among the various departments to promote child development.

From the facts and figures given in the documents it appears that despite the fact that for the development of children, in particular, mal-nourished and under nourished children, the scheme is elaborate and intends to cover all the children under the age group of 0–6 years but it appears that a lot more deserves to be done in field to ensure that nutritious food reaches to those who are under nourished or mal-nourished or others covered under the scheme.

The food is supplied to children through Aanganwadi Centers (AWCS). In all, there are 6 lac centers. The norms of Government of India provide for one center for the population of 1000 (700 in case of tribal area). According to the petitioner, going by the said norms there should be 14 lakh ACWS. It appears that according to the calculation of Government of India the AWCS would be 12 lakhs. We direct the Government of India to file within 3 months an affidavit stating the period within which it proposes to increase the number of AWCS so as to cover the 14 lakh habitations. We notice that the norm for supply of nutritious food worth rupee one for every child was fixed in the year 1991. The Government of India should consider the revision of the norm of rupee one and incorporate their suggestion in the affidavit.

In respect of sanctioned AWCS, we direct that the same shall be made fully operational by June 30<sup>th</sup>, 2004. We further direct 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.

We direct the Chief Secretaries to file reports showing that for the period from April 1<sup>st</sup>, 2003 till March 31<sup>st</sup>, 2004 from the sanctioned AWCS how many children, adolescent girls and pregnant

and lactating women were supplied nutritious food/supplement and for how many days during the said period. The report shall be filed by July 31<sup>st</sup>, 2004. List the matter in the month of August, 2004.

The question regarding Below Poverty Line Scheme will also be taken up on that day instead of July, 2004. Not to be treated as part heard.

#### **14. Text of the Order of August 17<sup>th</sup>, 2004**

Four weeks' time is granted by way of last chance to the States of Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Jharkhand, Mizoram, Orissa, Sikkim and Union Territories of Daman & Diu and Lakshadweep to file report of the respective Chief Secretaries on affidavit, failing which the Chief Secretary of the defaulting State shall be required to remain present in-person in Court on the next date of hearing.

So far as the States of Chhattisgarh, Meghalaya and Nagaland are concerned, though counsel have entered appearance on their behalf, but neither report/affidavit of the Chief Secretaries have been filed nor the States are represented through any counsel. Report of the Chief Secretaries on affidavit must be filed within the aforesaid time, otherwise the Chief Secretary of the defaulting State shall remain present in-person in Court on the next date of hearing.

I.A. No. 37:

Issue notice to the petitioner.

Place this petition on September 16<sup>th</sup>, 2004.

#### **15. Text of the Order of October 7<sup>th</sup>, 2004**

We have gone through the 5<sup>th</sup> (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 II 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 objections 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 directions in respect of ICDS were issued as far back in 28.11.2001. The order dated 27.4.2004 notices 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 June 30<sup>th</sup>, 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 paisa 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 September 30<sup>th</sup>, 2004, all the projects were being made operational from October 4<sup>th</sup>, 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 October 4<sup>th</sup>, 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% are not operational. In the affidavit, it has been claimed that the remaining will be operational by November 30<sup>th</sup>, 2004. We direct the State Government to make operational all sanctioned AWCS by November 30<sup>th</sup>, 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 learned 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.

## **16. Text of the Order of November 17<sup>th</sup>, 2004**

### **Sampoorn Grammen Rozgar Yojana**

The Order dated October 7<sup>th</sup>, 2004 notices as to what is stated at page 20 in box 2 regarding failure of authorities to take case of Madhya Pradesh in respect of payment of wages to the labourers. The State of Madhya Pradesh was directed to file an affidavit giving explanation. Our attention has been drawn to letter dated September 22<sup>nd</sup>, 2004 written by the commissioners appointed by his Court to the Chief Secretary of the state requesting for arranging payments of Rs. 88,996/- ( Rupees eighty eight thousand, nine hundred and ninety six only) for the work done at Limbi. The said letter makes a grievance of about non-payments of wages and also refers to Joint enquiry Report. We have also perused that Report. It appears from the material on record that a resolution was passed by Gram Sabha on April 14<sup>th</sup>, 2003 for construction of the dam in question in Limbi village. Further, it appears that the work of construction commenced on May 22<sup>nd</sup>, 2004 and it was completed on June 2<sup>nd</sup>, 2004. The inauguration was done by Naib Tehsildhar. It further appears from the material on record that even post evaluation estimate

shows that the work was of over eighty thousand rupees. In the Report dated 10th September, 2004, the following summary recommendations have been made.

The Collector Badwani must ensure that the process of social audit is taken seriously by all Gram Panchayats in the district. All records must be made available at meeting of the Gram Sabha, which, must be regularly held. Copies of records must be made available to any citizen on demand. Strict action must be initiated on any dereliction of duty in this respect.

The Collector Badwani must be fully co-operated with any individual/ organization seeking to enforce transparency and accountability in governance.

A payment of a total of Rs. 88,995.78 be immediately made to labourers who worked at the earthen dam site in Dadwani Pahlia (near Iohania s/o Hira's field) in village Limbi, block Pati, tehsil Badwani, and district Badwani as per the record of work done.

The payments must be made in a transparent manner at village Limbi in full public view in the presence of an officer of rank not less than Tehsildhar.

The Collector should report to the Commissioners of the Supreme Court on India that the payment has been made not later than September 20<sup>th</sup>, 2004. Non compliance with this would necessitate bringing the issue to the notice of the Hon'ble Supreme Court.

We have also perused the reply dated October 8<sup>th</sup>, 2004 sent by the Collector to the Commissioner's letter dated September 22<sup>nd</sup>, 2004. That reply has been annexed with the affidavit of the State Government which commences from pages 4003 of volume 1(I). The factum of the construction of the Dam is not in dispute. The cost of the work is also not in dispute have, however, been raised" such as lapse of the resolution passed by the Gram Panchayat, Authority of the Naib Tehsildhar and the like.

To decide the larger question and to issue appropriate directions on the aforesaid summary recommendation, we have asked learned Additional Solicitor General whether the Central Government has taken any decision and issued orders for the effective implementation of various schemes. Here we are concerned with Sampoon Grameen Rozgar Yojna ( SGRY). The schemes are to be properly implemented, amounts properly released and spent. We have also asked in

other States, in particular, Andhra Pradesh so that keeping entire backgrounds into consideration, appropriate directions can be issued. Mr. Parasaran, learned ASG prays for time to obtain instructions and place on record the appropriate material in the form of an affidavit. Let that be done within three weeks.

Pending consideration of the aforesaid larger question, we see no reason as to why the payments of Rs. 88, 996/- to the labourers should be further delayed, particularly when the construction of the Dam and its appropriate cost is not in dispute. In this view, without prejudice to the rights and contentions of the parties and without it being treated as a precedent, we direct State of Madhya Pradesh to release to Jagrat Adivasi Dalit Sanghtana the aforesaid amount, for the Sanghtana in turn to pay the same to the concerned labourers on obtaining receipts from them. The receipts so obtained shall be given by the Sanghtana to the appropriate officers of the State Government. The State Government is granted two weeks time to make payments to the Sanghtana and within two weeks thereafter Sanghtana will provide the receipts to the State Government.

### **Mid-Day Meal Scheme**

In the order dated November 28<sup>th</sup>, 2001, directions were issued for supply of prepared Mid-Day meal in implementation of Mid-Day meal scheme by directing that cooked meal in all Government and Government aided primary schools within three months thereafter. That order should have been implemented by May, 2002. In the order dated April 20<sup>th</sup>, 2004, noticing that despite lapse of nearly 3 ½ years, the order dated November 28<sup>th</sup>, 2001 was not being fully implemented in all States and Union Territories and, expressing anguish, further directions for supply of cooked mid-day meal were issued directing for supply of cooked mid-day meal were issued directing that those States which have not implemented the order of November 28<sup>th</sup>, 2001 shall implement it immediately and, in any case, not later than September 1<sup>st</sup>, 2004. The report filed by the Commissioners show that in many of the States of Manipur, Nagaland, U.P and Assam, as per the 5<sup>th</sup> Report of the Commissioners filed in August, 2004. There has been some progress thereafter inasmuch as there was partial implementation in the States of U.P and Assam. In the State of Himachal Pradesh, till August, 2004, the coverage was only 3.1%, in Assam, there is partial implementation of 18% whereas in Jharkand, it is 15% and in Bihar 24%. One of the difficulties put forth in providing cooked meal is the cost involved therein. Now, the Government of India, in terms of its letter dated October 6<sup>th</sup>, 2004 sent to Chief Secretaries of all States and Union Territories of Andaman & Nicobar, Pondicherry and Delhi, Advisor to Administrator of UT of Chandigarh and Administrators of UT Daman and Diu, Dadra Nagra Haveli and

Lakshadweep, has informed all concerned that the Central Government had taken a decision to augment central assistance under Mid-Day meal Scheme by providing at the rate of Re1/- per child per school day to meet cooking cost as from September 1<sup>st</sup>, 2004. The letter also refers to further assistance such as increasing transport subsidy. In this view, at present, without going into the past non-implementation, we see no reason why Mid-Day Meal Scheme, read with the directions issued in the order dated November 28<sup>th</sup>, 2001, for supply of cooking meal, shall not be implemented forthwith in letter and spirit.

The letter dated October 6<sup>th</sup>, 2004 further postulated that actual release of Central assistance to States for meeting cooking cost would take place soon after the central Government's first Supplementary Budget is passed by the Parliament in the winter session and necessary Appropriation Act comes into force. It further states that once this happens, the assistance to meet cooking cost will be provided retrospectively with effect from September 1<sup>st</sup>, 2004.

The aforesaid letter further stipulates that detailed guidelines for the revised Mid-Day Meal Programme will be issued in the next few weeks which will, inter alia, also lay down the procedure for claiming central assistance to meet cooking cost. It further requests the State Government and Union Territories that in the light of the firm commitment conveyed under the letter, the government shall immediately take all necessary steps, using available resources to universalize the cooked meal programme in all school and EGS & AIE centers for children studying in classes I- V.

In view of the aforesaid, we direct that every child eligible for cooked meal under the Mid-Day Scheme in all States and Union Territories, shall be provided with the said meal immediately and, in any case, not later than the month of January, 2005. Affidavits shall be filed by the Chief Secretaries by 16<sup>th</sup> December, 2004 placing on record necessary steps taken to implement this order. Further affidavits shall be filed by 2<sup>nd</sup> week of January, 2005 detailing the full implementation of directions of supply of cooked meal to all eligible children.

The responsibility to monitor the implementation of the scheme essentially lies with the Central Government which is providing assistance. The letter dated October 6<sup>th</sup>, 2004 gives some indication that revised guidelines are being prepared for the purpose of management, monitoring and evaluation of the programme. We direct the Central Government to file, within four weeks, an affidavit stating how it is meant. We make it clear that it would not be open to the State

government/ Union Territories to delay the implementation of the scheme so that the benefit under the scheme reaches those for whom it is meant. We make it clear that it would not be open to the State Government/ Union Territories to delay the implementation of the Scheme beyond January, 2005 on the ground that the necessary assistance has not been released by the Central Government. The Scheme should be implemented forthwith and cooking costs can be claimed from the Central Government in terms of letter dated October 6<sup>th</sup>, 2004 which, in fact, requires those governments to use available resources and recover it late from the Central government.

### **Antyodaya Anna Yojana**

This scheme is meant for the poorest of the poor. A person entitled to the benefit under this scheme is issued a red card. The holder of red card entitles him to obtain grain and rice from the dealer of Public Distribution System (PDS) at a highly subsidized rate which at present is rupees two per kilogram for wheat and rupees three per kilogram for rice.

First of all it is of utmost important that those who have already been issued red card shall straightaway be supplied the rice and grain as per their entitlement. It is also important that those falling under this category should be immediately identified. The special attention is required to be given to Primitive travel Groups, which we are told, are in large in Maharashtra, West Bengal, Jharkand and Madhya Pardesh, which are still to be identified in large numbers, card issued and grains supplies. We direct all the State Governments to complete the process of identification of persons falling under this scheme and issue then the red card by the end of the year so that immediately thereafter supply of food grains to them may commence.

For supply of the food grains to red card holders, we are told, that no commission is being paid to the dealer. Mr. Parasaran, learned ASG states that guidelines are being framed in that regard. The Central Government shall file an affidavit within eight weeks placing on record those guidelines. The object is that the red card holders should not be made to pay, directly or indirectly, any amount other than what they are liable to pay for the supply taken.

To be taken up on November 18<sup>th</sup>, 2004.

## **17. Text of the Order of November 18<sup>th</sup>, 2004\***

We direct that the amounts paid by the Central Governments to the State Governments as Additional Central Assistance under NOAPS shall not be diverted for any other scheme.

However, we wish to make it clear that the beneficiaries under the said scheme would continue to be paid the benefits being paid by the State Government. Further, the State Government would continue to pay them, the other additional benefits which the State Government which the State may be giving them. No benefit would be withdrawn as a result of this order till further orders, by any of the State Governments/UT's.

## **18. Text of the Order of May 9<sup>th</sup>, 2005**

By IA 37, permission is sought to modify the National Maternity Benefit Scheme (NMBS) and to introduce a new scheme namely Janani Suraksha Yojana (JSY). Whereas in IA 54, the prayer is that the Scheme should not be modified by reducing, abridging or qualifying in any way the social assistance entitlements created under the original scheme of NMBS for expecting BPL mothers, including cash entitlement of Rs. 500/- provided therein. We have requested learned Additional Solicitor General to place on record further material in the form of affidavit to effectively implement the new Scheme sought to be introduced. The further material shall include the approximate distance of Public Health Centre from the residential complexes and the facility of transportation etc. The Commissioner shall also examine the matter in depth and file a report. The response to the application may be filed within eight weeks. Meanwhile, the existing National Maternity Benefit Scheme will continue.

On oral application of Mr. Gonsalves, for the present, we permit Mr. Harsh Mander to continue to assist the Commissioner, Dr. Saxena.

In 5<sup>th</sup> Report of August, 2004 of the Commissioners it has been reported that on ground level, Public Distribution System is not working well, many poor people living BPL have not been issued the BPL ration cards. Orders of this Court are not being implemented and to support details have been given at page 3411 along with recommendations up to page 3421. The recommendation is that the Chief Secretaries shall put in place a mechanism to ensure suitable action against the officials who hesitate in taking action against the guilty; the State Government

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\* This is an extract only: the portion of the order pertaining to the directions given by the Court.

shall set up Committees to frame detailed procedure and time frames for dealing with various types of grievances and complaints received from the public; an independent Public Service Commission be constituted to listen to the grievances and provide redressal in a time bound manner and the said body should be vested with necessary powers and finances to carry out its functions and to ensure implementation of Court's orders. Some of the States mentioned are Rajasthan, M.P., Orissa, Delhi, Bihar, West Bengal, Chhattisgarh and Assam. The State Governments have not responded to the report. A grievance has also been made by Mr. Gonsalves that despite letters from the Commissioner pointing out the violations of the Court's Orders appropriate actions are not taken. Learned counsel suggests that the licenses of the violators shall be cancelled and work of Public Distribution System be assigned to Panchayat or other bodies. Before we consider these aspects, we deem it appropriate to give a last opportunity to the State Governments to respond to the report, particularly those States whose names have been mentioned in the report, to file their response within eight weeks.

IA No.45.

Issue notice only to Delhi State. Mr. Ashok Bhan, learned counsel, accepts notice. Reply may be filed within eight weeks.

IA No.48.

Response to this application may be filed within eight weeks.

IA No.50.

The prayer of the nature made in the application cannot be entertained. If the applicant is aggrieved for non issue of BPL Card, she may have recourse to appropriate remedy. IA is dismissed.

Rest of the matters are adjourned.

## **19. Text of the Order of February 14<sup>th</sup>, 2006**

Counsel for the parties state that a settlement has been arrived at between the petitioner and Ministry of Rural Development and the Ministry of Consumer Affairs, Food and Public Distribution, Government of India. The terms of which are as follows:

“1. Food grain allocations by the Central Government to beneficiaries under TPDS will be continued to be made at the present to States on the basis of Planning commission estimates of 1993–1994 poverty ratios, which is at 36% applied to the population projections of the Registrar General of India as on 1.3.2000 or on the basis of families identified and issued ration cards by the State Government whichever is less.

2. The survey methodology for the next BPL census will be designed by the Ministry of Rural Development in consultation with the Supreme Court Commissioners in the right to food matter Case No. 196/2001 along with other sections of the society latest by the beginning of the XI Five Year Plan.

3. Provisions will be made to allow new names to be added and ineligible names deleted from the BPL List 2002 on a continuous basis during the period that the list will be applicable.”

In view of the afore-stated settlement arrived at between the parties, counsel for the petitioner states that additional affidavit, as directed by this Court on 15.12.2005 is not required to be filed. Counsel for the parties further state that I.A. Nos.25, 26, 31, 32, 48 and 53 may be disposed of in terms of the settlement arrived at between the parties.

Ordered accordingly.

The stay order dated May 5<sup>th</sup> 2003 is vacated.

Adjourned by four weeks.

## **20. Text of the Order of July 12<sup>th</sup>, 2006**

After having heard learned counsel for the parties, we find that there is practically no monitoring over the sums allotted for the Public Distribution System (in short PDS) by the Central Government, and its utilisation. The amount involved, we are told, is in the neighbourhood of Rupees Thirty Thousand Crores annually.

Certain suggestions have been given by Mr. Colin Gonsalves, learned senior counsel, as to the modalities to be adopted in such cases. At the present stage, we feel it would be necessary to constitute a Central Vigilance Committee, headed by a retired Judge of this Court to be assisted by Dr. N.C. Saxena, the Commissioner earlier appointed by this Court. We request Mr. Justice D.P. Wadhwa to head the Committee.

The Committee shall look into the maladies which are affecting the proper functioning of the system, and also suggest remedial measures. For this purpose, the Committee shall, amongst other things, focus on:

- a) The mode of appointment of the dealers,
- b) The ideal commission or the rates payable to the dealers, and
- c) Modalities as to how the Committees already in place, can function better.
- d) Modes as to how there can be transparency in allotment of the food stock to be sold at the shops.

While dealing with the question of the mode of appointment, the Committee shall also suggest as to a transparent mode in the selection of the dealers. The Committee shall also indicate as to how more effective action can be taken on the report of the Vigilance Committees already appointed. It goes without saying that the same shall be in addition to the legal remedies available to any citizen in setting law into motion. We request the Committee to give its report within a period of four months so that further instructions/directions can be given.

The Committee would invite suggestions from general public, organizations and would consider the suggestions, if any received, in the proper perspective.

We are giving this unusual direction in view of the almost accepted fact that large scale corruption is involved and there is hardly any remedial step taken to put an end to this. The ultimate victim is the poor citizen who is deprived of his legitimate entitlement of food grains. The Public Distribution System is intended to ensure that a citizen gets the food grains at a reasonable price keeping in view his economic standards.

The expenses including honorarium to the Chairman and the Member Convener and other financial involvements of the Committee shall be borne by the Food Ministry of the Central Government. The honorarium shall be same as the pay and allowances of a sitting Judge of this Court and a Joint Secretary of the Union of India. The necessary infrastructure shall be provided by the concerned Ministry within three weeks from today. This direction is initially given for the Government of Delhi to be followed on All India basis.

List the matter after the Report is filed.

I.A. NOS.34, 35, 40 AND 49

List on July 27<sup>th</sup>, 2006.

I.A. NOS.58 AND 59

Mr. Ravindra K. Adsure, learned counsel accepts notice on behalf of the State of Maharashtra. Response, if any, shall be filed before the next date of hearing, i.e. July 27<sup>th</sup>, 2006.

I.A. NOS.60 AND 61

Learned counsel for the State of Maharashtra waives notice. However, it is stated that an affidavit indicating the factual position shall be placed on record before the next date., i.e. July 27<sup>th</sup>, 2006.

S.L.P. (C) NO.17906 OF 2003

Delay condoned.

We find that the grievance made in this petition can be considered by the authorities in the light of orders to be passed in the connected matters, if occasion so arises. This special leave petition is, accordingly, disposed of.

## **21. Text of the Judgement of December 13<sup>th</sup>, 2006**

Keeping in view the submissions made and considering the materials placed on record we direct as follows:

(1) Government of India shall sanction and operationalize a minimum of 14 lakh AWCs in a phased and even manner starting forthwith and ending December 2008. In doing so, the Central Government shall identify SC and ST hamlets/habitations for AWCs on a priority basis.

(2) Government of India shall ensure that population norms for opening of AWCs must not be revised upward under any circumstances. While maintaining the upper limit of one AWC per 1000 population, the minimum limit for opening of a new AWC is a population of 300 may be kept in view. Further, 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.

(3) The universalisation of the ICDS involves extending all ICDS services (Supplementary nutrition, growth monitoring, nutrition and health education, immunization, referral and pre-school education) to every child under the age of 6, all pregnant women and lactating mothers and all adolescent girls.

(4) All the State Governments and Union Territories shall fully implement the ICDS scheme by, inter alia,

(i) allocating and spending at least Rs. 2 per child per day for supplementary nutrition out of which the Central Government shall contribute Rs.1 per child per day.

(ii) allocating and spending at least Rs. 2.70 for every severely malnourished child per day for supplementary nutrition out of which the Central Government shall contribute Rs. 1.35 per child per day.

(iii) allocating and spending at least Rs. 2.30 for every pregnant women, nursing mother/adolescent girl per day for supplementary nutrition out of which the Central Government shall contribute Rs. 1.15.

(5) The Chief Secretaries of the State of Bihar, Jharkhand, Madhya Pradesh, Manipur, Punjab, West Bengal, Assam, Haryana and Uttar Pradesh shall appear personally to explain why the orders of this Court requiring the full implementation of the ICDS scheme were not obeyed.

(6) Chief Secretaries of all State Governments/UTs are directed to submit affidavits with details of all habitations with a majority of SC/ST households, the availability of AWCs in these habitations, and the plan of action for ensuring that all these habitations have functioning AWCs within two years.

(7) Chief Secretaries of all State Governments/UTs are directed to submit affidavits giving details of the steps that have been taken with regard to the order of this Court of October 7<sup>th</sup>, 2004 directing that "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". Chief Secretaries of all State Governments/UTs must indicate a time-frame within which the decentralisation of the supply of SNP through local community shall be done.

(8) It is a matter of concern that 15 States and Union Territories have not submitted any affidavit in compliance with the order dated 7.10.2004. They are the States of Orissa, Uttar Pradesh, Sikkim, Arunachal Pradesh, Nagaland, Goa, Punjab, Manipur, Tamil Nadu, Andhra Pradesh, Mizoram, Haryana, Bihar and the National Capital of Delhi and the Union Territory of Lakshadweep. Within four weeks reply shall be filed through the concerned Chief Secretary as to why action for contempt shall not be initiated for the lapse.

The matters shall be listed after three months. Upto date statistic report shall be filed by the different States, Union Territories and the Central Government.

## **22. Text of the Order of February 1<sup>st</sup>, 2007**

A detailed memorandum has been filed by Mr. Colin Gonsalves and certain directions have been prayed for. Essentially the National Maternity Benefit Scheme (in short the 'NMBS') and Janani Suraksha Yojana (JSY) are the schemes with which the present I.As. i.e. I.A.No. 37/2004 and I.A. No. 54/2005 are concerned. With reference to the report of the Commission appointed by this Court and certain statistical data, it has been highlighted that there is practically no step taken for implementation of the schemes in question.

Additionally, it is submitted that because of lack of monitoring the schemes have not taken up in the way they were intended to be put in place. Let the Union of India, which is providing the funds for the implementation of the schemes; file its response to the suggestions given by Mr. Colin Gonsalves. It has also been highlighted that there has been total non-implementation of the schemes in certain States including Delhi where it is stated the number of persons getting benefits i.e. targeted beneficiaries is nil.

Let the States of Uttar Pradesh, Uttaranchal, Bihar, Delhi, Jharkhand, Madhya Pradesh, Chhattisgarh, Assam, Rajasthan, Orissa and Jammu and Kashmir file their response as to why there has been such dismal inaction in implementation of the schemes. While filing the response, the Union of India shall indicate as to how the Union of India proposes to monitor the implementation of the schemes by the State Government and in what way there can be more coordinated effort for implementing the schemes. In the response to be filed, the Union of India shall also indicate as to whether it would be in the interest of the beneficiaries if the funds are directly placed at the disposal of the Gram Panchayats so that without unnecessary delay

beneficiaries can get immediate benefit of the schemes. The intention of the schemes appear to be providing nutritional assistance to the expecting mothers. It is apparent from the report of the Commissioner that in the rural areas the non performance is more acute. It is brought to our notice that there have been some modification in the JSY scheme which do not appear to have been made known to the beneficiaries.

It would be appropriate if the Union of India and the State Governments take steps to make the beneficiaries aware of the benefits of the schemes and the entitlements flowing therefrom. Let the response be filed within three weeks by the Union of India and by the State Governments within four weeks. The State Governments shall also indicate their suggestions as to what effective steps can be taken for better implementation of the schemes and how there can be more coordinated effort between the Union of India and the State Governments.

Mr. Colin Gonsalves, learned senior counsel is also requested to compile the responses, if any filed, and give his suggestions as regards the modes to be adopted for better results.

Call this matter in the third week of March 2007.

The budget estimates required for the Commissioner by this Court is placed on record. A copy has also been handed over to the learned counsel for the Union of India, let him take the instructions so that necessary orders can be passed on the next date of hearing.

### **23. Text of the Order of July 25<sup>th</sup>, 2007**

Upon hearing the counsel the Court made the following ORDER.

In spite of several orders of this Court, the pace at which operationalization of the sanctioned Anganwadi Centres is taking place is a sad reflection on the sincerity and seriousness of various State Governments to carry out the policy decisions relating to functioning of the Anganwadi centres. It is shocking to note that even in respect of Anganwadi Centres sanctioned in 2005–2006, in several States, the percentage of functional centres is very low. Glaring examples are the States of Bihar, Rajasthan, Himachal Pradesh, Kerala and Orissa. Though in some of the other States, 100% operationalisation has not been done, keeping in view the deadlines of phases as fixed by this court, but they are in most cases more than 90%. It needs no reiteration that by various previous orders, emphasis was laid on the need for making the sanctioned Anganwadis

Centres functional. Taking note of the lapse so far as named States are concerned, notice of contempt is issued to the Chief Secretaries of the States of Bihar, Himachal Pradesh, Kerala, Rajasthan and Orissa to appear in person in this Court on August 30<sup>th</sup>, 2007. They shall file affidavits indicating the reason for non-compliance with this Court's orders. In the affidavits, they shall also indicate the names of the other officers who are responsible for not complying with the Court's orders. The affidavit shall be filed latest by August 24<sup>th</sup>, 2007.

#### **24. Text of the Order of August 30<sup>th</sup>, 2007**

Upon hearing the counsel the Court made the following ORDER.

Heard learned amicus curiae and learned counsel for different States. From the details filed, it appears that more or less the stipulated operationalization has been done, so far as the Anganwadi Centres which were sanctioned up to September 2006. For the subsequent period it is expected that the zeal shown after the notice of contempt was issued shall be continued to see that there is no further lapse.

The matter shall be listed after six weeks. The personal presence of the Chief Secretaries who are present in Court is dispensed with for the present. So far as the State of Orissa is concerned, though there is substantial progress, because the Chief Secretary has not appeared today, he shall appear on the next date of hearing to consider whether his appearance can be dispensed with. Further affidavits, if any, are permitted to be filed. A copy of Mr. Justice D.P. Wadhwa's report be supplied to the learned amicus curiae and learned counsel appearing for the Union of India.