

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

November 07, 2008.

Allschemes/584/J&K.

Shri. Sham Singh Kapur
Chief Secretary
Government of J & K,
Srinagar 190004

Sub: Regarding the implementation of Food schemes in the State.

Dear Shri. Kapur,

As you are aware, in our capacity as Commissioners of the Supreme Court in CWP 196/2001, PUCL v. UOI and others, we monitor the implementation of the food and employment related schemes in the country which fall under the purview of the case including the ICDS, MDMS, NREGA, NOAPS, TPDS, NMBS /JSY, NFBS. We have been hesitating earlier to write as we know that the state government will be very preoccupied with the protests and law and order situation.

1. We are writing to remind you that we have not received any correspondence in response to our earlier letter dated 28th April, 2008, kindly refer to this letter and send us the information sought in that letter within 15 days. I attach a copy of the letter, and request early response.
2. Further, we would like to bring it in your notice the order of the supreme court dated 29 Oct. 2002 which states as, *"The Chief Secretaries/Administrators are given one last chance to translate and permanently display the order dated 28th November, 2001 and 8th May, 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"*. Again in an order dated 7 Oct. 2004 the Supreme Court stated, *"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"*. The sections of the orders dated 28th November, 2001 and 8th May, 2002 are annexed herewith as **Annexure 1**.

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3. Instead of the consistent thrust from the Supreme Court on the display of information regarding the food and employment related schemes, it is our information that the State government neither has displayed the orders and nor has put the detailed information regarding food schemes on the website. Therefore, we urge you please take necessary steps mentioned in the above orders as a step towards the awareness among the masses and ensure that the information is displayed within two months. The ICDS website of the Maharashtra Government (www.icds.gov.in), for instance, is not only very informative but is also a very good example of proactive disclosure of information about the programme. You may consider preparing a website along the lines that Maharashtra has done.
4. We would be also grateful if you could please send us the detailed guidelines and rules issued from time to time thereafter, of all the schemes falling under the Right to food case including the ICDS, MDMS, NREGA, NOAPS, TPDS, NMBS /JSY, NFBS, within two weeks.
5. We would also like to know the guidelines including the criteria and methodology adapted for the identification of BPL and AAY families in the State. Kindly also attach the copies of instructions/rules that have been issued to ensure this process.
6. We also request you please let us know what are the steps that State Government has undertaken for awareness among the people about NREGA in the districts where NREGA was implemented in phase 3rd and also send us the detailed information on the performance of the NREGA in all the districts (including the newly created districts) from April to September 2008 in the format annexed as **Annexure 2**, within a month.
7. We would also like to see the performance of the NREGA in the State for 2007-08 district wise on the allocation and utilisation of funds, share of wages in total expenditure, employment demanded and provided, no. of households applied for job cards and no. of job cards issued and percentage of involvement of SCs, STs, women and disabled in NREGA. Please provide the information within one month and separately of the information required under **para 6**.

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8. We have learnt that people from Kashmir migrate to nearby states like Punjab, Haryana, Chandigarh and Delhi in winters and, therefore, we request you please examine what are reasons for this and also explore why NREGA has failed to make a check on the migration. We would be grateful to you if you could also send us a detailed report, within two months of time, on the status of migration in the state including the total number of people who migrate to other states for wage work, season(s) in which the migration takes place, socio-economic status of the people who undertake the migration and what are the conditions under which the migration takes place. Also please examine what works can be undertaken under NREGA if demanded by workers in the winters.

9. We also request you kindly appoint a nodal officer from among the State Secretaries for the case PUCL vs. Union of India, CWP 196/2001.

We would be very grateful if you could please look into the above concerns on a priority basis and send us the information at the earliest.

Warm regards,

Dr. N.C. Saxena

Harsh Mander

Annexure 1:

TEXT OF THE ORDER OF 28th November, 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 food grain 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 food grain per family per month latest by 1st January, 2002.

The Supreme Court passed one another order recently (dated 10/ 01/ 2008) which states that, "The order dated 28. 11. 2001 is modified to the extent that the allotment shall be 35 KGs in view of the increase, subsequent to the order"

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 food grain 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 Govts. / 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.

The supreme Court passed one another order recently (dated 20.11.2007) which states that, "The Union of India and all the State Governments and the Union Territories shall (i) continue with the NMBS and (ii) ensure that all BPL pregnant women get cash assistance 8-12 weeks prior to the delivery." The above order also states that, "The amount shall be Rs.500/- per birth irrespective of number of children and the age of the women".

(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 (dated 28th November, 2001) 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 11th February, 2002. In the meanwhile, liberty is granted to the parties to apply for further directions, if any.

TEXT OF THE ORDER OF 8 MAY, 2002

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

1. The Gram Sabhas are entitled to conduct 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.
2. 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.
3. 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.
4. 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.
5. **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.**
6. 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 orders of this Court.
7. The Gram Sabhas are empowered to monitor the implementation of the various schemes and have access to relevant information relating to, inter alia, selection¹* 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.
8. It has been started 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.
9. 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.

¹ The order actually says "section", but this is almost certainly meant to read "selection".

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Annexure 2: Format for the NREGA (Please include and mention the newly created districts separately):

S. No	Name of the district	Number of households applied for job cards from April 08 to September 08	Number of households issued job cards (out of col. 3)	No. of households who have demanded employment (out of col. 4)	No. of the households given employment (out of col. 5)	Number of the households who have been employed for more than 40 days in the period of April 08 to September 08.
1	2	3	4	5	6	7