

September 20th, 2006

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SUO MOTU WRIT PETITION NO.5629 OF 2004

Suo Motu Writ Petition on the reports published in various Marathi Newspapers about the untimely death of many children due to malnutrition within two months in Dhule and Nandurbar District...Petitioner versus

State of Maharashtra & Ors...Respondents

Mrs. Jyoti S. Pawar, Additional Government Pleader, with Mr. P.M. Patil, Assistant Government Pleader for the respondent-State.

WITH

WRIT PETITION NO.1623 OF 2003

Manubhai Paragji Vashi...Petitioner
versus

The State of Maharashtra & Ors...Respondents

Mr. Santosh Shetty i/b. Mr. M.P. Vashi for the petitioner. Mrs. Jyoti S. Pawar, Additional Government Pleader, with Mr. p.m. patil, Assistant Government Pleader for respondent

CORAM: R.M. LODHA & S.A. BOBDE, JJ.

DATE: SEPTEMBER 20th, 2006

ORAL ORDER (Per R.M. Lodha, J.)

1. In continuation of various affidavits filed on behalf of the State Government and the directions issued by this Court from time to time, further affidavit has been filed on behalf of the State Government by Dr. Raju Manohar Jotkar, Assistant Director of Health Services on September 20, 2006.
2. It is apparent from the affidavit dated September 20, 2006 that the State Government has failed to combat child deaths within the State, tribal as well as non-tribal areas. In 15 tribal districts of the State, in the year 2003-04, the child mortality was 8,321 while in the years 2004-05 and 2005-06, it was 8,003 and 7,700, respectively. That means, there is only a marginal decrease in child death despite the claim of the State Government that various welfare schemes have been launched in the tribal districts. The statement annexed with the affidavit is also revealing and saddens us. It appears that the child death of one to six years of age has been on increase over the years except the marginal decrease last year. It leads us to infer that either the welfare schemes framed by the State Government are not being implemented properly as it should be or that such schemes have failed to have any impact. Is it not slur on the society that even after more than eight years and five decades of independence, the State is having large number of child deaths due to malnutrition as a major contributory factor? In almost all the affidavits filed on behalf of the State Government, from time to time, the statement has been made that the State Government is doing its best to combat the child deaths and that the welfare schemes are being implemented, but the figures that have come on record belie the claim of the State Government.

3. On 12.12.2003, the State Government constituted Child Mortality Evaluation Committee under the chairmanship of Dr. Abhay Bang. The Committee comprised of 13 other members and has submitted two reports. The first report dealt with improving registration of the infant deaths and the child deaths in the tribal areas and in the second report measures to be taken for curbing infant mortality, child mortality, maternal mortality and malnutrition in the tribal districts of the State have been recommended. In the affidavits filed by the State Government from time to time, the recommendations made by Dr. Abhay Bang Committee and the actions taken in that regard have been mentioned. The facts and figures of the infant and child mortality that have come on record show that the steps taken by the State Government so far are not adequate and much more effective steps need to be taken.
4. We may also notice here the affidavit filed on 4.10.2005 by one Pranali Praveen Chitnis, Under Secretary in the office of the Secretary, Women and Child Development Department wherein the statement has been made that the additional sanctioned 12,684 Anganwadi Centres will be made functional by June 2006.
5. To our specific query to the Additional Government Pleader as to whether the sanctioned additional 12,684 Anganwadi Centres have become functional, the Additional Government Pleader submitted that according to the instructions given by Dr. Prakash Doke, about 80% of the said additional Anganwadi Centres have come into operation; all the additional 12,684 Anganwadi Centres have not become functional.
6. It needs no emphasis by us that by such large number of child deaths; malnutrition being major contributory factor, there is wholesome violation of Article 21 of the Constitution of India by the State Government. The salutary directive given in Article 47 of the Constitution of India 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 appears to be distant dream in tribal areas. If the thousands of children die every year in the State of Maharashtra, more particularly in tribal areas; malnutrition being major contributory factor, the only inference that can be drawn is that the State Government has failed in its primary duty in raising the level of nutrition of feeding mothers and the children.
7. Having considered the recommendations given in the two reports by Dr. abhay Bang Committee, the magnitude and seriousness of the matter, the action taken so far by the State Government and the Constitutional provisions, we issue the following directions as of now:
 1. The State Government shall make functional additional 12,684 Anganwadi Centres as per the Government of India guidelines as set out in the affidavit dated 4.10.2005 by 31.10.2006. Failure to do so shall expose the Principal Secretary, Women and Child Development Department, Mantralaya, Mumbai, to an action under the Contempt of Courts Act, 1971.
 2. The State Government shall initiate the Mission "Bal Mrutyu Mukta Maharashtra" (by whatever name called) as suggested by Dr. abhay Bang Committee and, accordingly, modify "Rajmata Jijau Maternal Child Health and Nutrition Mission" started from 11.3.2005 to ensure that the infant mortality rate due to malnutrition is reduced to almost nil within five years from today. In other words, the State Government shall ensure that by 30th September, 2011, the infant mortality rate

due to malnutrition is brought down to almost nil in tribal as well as non-tribal areas.

3. To begin with, the State Government shall, as suggested by Dr. abhay Bang Committee, identify malnutrition free villages and maternal death and child death free villages and felicitate such villages. To achieve that more and more villages are malnutrition free and maternal death and child death free, the State Government shall give responsibility and funds to Gram Panchayats and self-help groups.
4. The State Government shall involve the local Gram Panchayats, self-help groups and non-Governmental organisations for control of child deaths and malnutrition.
5. While reviewing the assessment of the officers/workers working in the Health Department, officers and workers who have contributed in controlling child deaths and malnutrition and in prevention of child mortality, adequate incentives shall be given to such officers and workers.
6. The scheme, 'Rajmata Jijau Maternal Child Health and Nutrition Mission', be adequately modified by providing more facilities, adequate medicines and kits to Anganwadis which may help in eradicating malnutrition deaths.
7. The State Government, as far as possible, may involve Tribal Gram Sabha where tribal areas are concerned, for the development programme planning.
8. The Female Pada volunteers who have been appointed in the districts must be suitably trained for management of common childhood problems and also for home-based neonatal care. Training programme must start, if not started so far, by 1.1.2007.
9. For emergency referral of pregnant women, transport should be made available or the provision for delivery vans should be made.
10. As per infant mortality rate and severe malnutrition, high risk areas should be identified and these areas should be provided with additional budget and requisite resources. If necessary, Nav Sanjivani Programme initiated by the State Government be modified to ensure that it has the desired impact.
11. The State Government shall issue instructions to the Collectors of 15 tribal districts to spend minimum of two days in a month in the tribal villages of the district where there is high rate of infant mortality and severity of malnutrition and during their stay in the tribal villages, the Collectors shall coordinate with all agencies, including NGOs, involved in the mission. If there is no substantial improvement in combating the child deaths due to malnutrition in a particular district, the poor performance in this regard must be reflected in the service record of the concerned Collector.
12. The Chief Secretary shall ensure that every single rupee allocated in the State budget to the various schemes for the purposes of combating child mortality and malnutrition, is used for such purposes timely and percolates down to the needy.
13. The State Government shall ensure the availability of the Doctors and the emergency obstetrics Centres not only in district hospitals but also in small places.
14. The Chief Secretary shall submit the compliance report on affidavit by 18.10.2006.

Stand over to 19.10.2006.

Sd/-
R.M. LODHA, J.

Sd/-
S.A. BOBDE, J.