

**SUPREME COURT ORDERS
ON THE RIGHT TO FOOD**

A Tool for Action

August 2008

Publisher: Right To Food Campaign, Secretariat

Second Edition: August 2008

Copies: 2000 (Two Thousand)

Contributory Amount: Rs.50 only

(Published by Right To Food Campaign, Secretariat,

For internal circulation only)

To order copies contact:

Secretariat, Right To Food Campaign,

C/o PHRN,

5A, Jungi House, Shahpur Jat,

New Delhi – 110049

Telephone: 011 – 2649 9563

Printing Support : Office of the Commissioner's to the
Supreme Court (Civil Writ Petition 196 of 2001)

PREFACE

In April 2001, People's Union for Civil Liberties (PUCL, Rajasthan) filed a writ petition in the Supreme Court seeking legal enforcement of the right to food. The basic argument is that the right to food is an implication of the fundamental “right to life” enshrined in Article 21 of the Indian Constitution. Following on this, Supreme Court hearings on various aspects of the right to food have been held at regular intervals. This “Public Interest Litigation” (PIL) is far from over, and it may take years before the Supreme Court pronounces its final “judgement”. But many “interim orders” have already been passed.

Experience shows that these interim orders can be a useful tool for action. First and foremost, this is an opportunity to hold the state accountable. For instance, if starvation deaths are reported in a particular area, or if there is no food in the ration shops, or if the State Government fails to provide cooked Mid-Day Meals in primary schools, the Supreme Court orders can be used to demand prompt action from the concerned authorities.

The Supreme Court orders can also be used to help people to understand that they are “entitled” to certain forms of public support as a matter of right. For instance, all primary school-going children are entitled to a nutritious, cooked Mid-Day Meals. Similarly, every hamlet is supposed to have an active “Anganwadis” for children under the age of six. If people perceive these facilities as a matter of right, they are more likely to demand them and to insist on adequate quality.

The aim of this booklet is to introduce activists and the general public to the Supreme Court orders, and help them to make effective use these orders. We have tried to identify the most important orders, and to explain them in simple words. The full text of the orders is given in appendix 1.

The first edition of this booklet was written by Yamini Jaishankar and Jean Drèze on behalf of the secretariat of the Right to Food Campaign, for the second “National convention on the right to food and work” (Kolkata, 28-20 November 2005). This revised version was prepared by Biraj Patnaik , Spurthi Reddy and Gurminder Singh in August 2008.

For helpful advice and suggestions, we are grateful to Anoop Srivastava, Arudra Burra, Colin Gonsalvez, Harsh Mander, Kavita Srivastava, M. Kumaran, Nandini Nayak, Navjyoti Jandu, Rosamma Thomas, Siddharth Lal, Tanushree Sood, Vandana Bhatia, Vandana Prasad, Vivek S., among others. Further comments are most welcome, as this booklet is likely to be updated from time to time. Please send your comments to righttofood@gmail.com, or to the secretariat of the Right to Food Campaign at the address given in Appendix 2. We hope to hear from you.

CONTENTS

1. LEGAL ACTION FOR THE RIGHT TO FOOD

1.1. Legal Foundation of the Right to Food	1
1.2. The PUCL Petition	6
1.3. The Interim Orders	7
1.4. Who is Accountable?	8
1.5. The Commissioner's	11
1.6. Advisors, Assistants and Nodal Officers	14

2. SUPREME COURT ORDERS

2.1. "Umbrella" Orders	16
2.2. The Public Distribution System	18
2.3. Antyodaya Anna Yojana	22
2.4. Mid-Day Meals	25
2.5. Integrated Child Development Services	29
2.6. National Old Age Pension Scheme	36
2.7. National Family Benefit Scheme	39
2.8. Annapurna	40
2.9. National Maternity Benefit Scheme	41
2.10. Sampurna Gramin Rozgar Yojana	43
2.11. Other Interim Orders	47

3. WHAT WE CAN DO

3.1. Court Orders as a Tool for Action	50
3.2. What to Investigate	51
3.3. Community Action	52
3.4. How to Complain	54
3.5. Appeals to the Commissioner's	55
3.6. Interim Applications	55
3.7. Legal Action in the High Courts	56
3.8. Commissioner's Recommendations	57
3.9. Advocacy, Media and Research	60
3.10. Working Together	63

Appendix 1: THE SUPREME COURT ORDERS 64

Appendix 2: FURTHER RESOURCES 145

SUPREME COURT ORDERS ON THE RIGHT TO FOOD: A TOOL FOR ACTION

Legal action is one of the means that can be used, in a democratic political system, to hold the state accountable to its responsibilities. It is in that spirit that People's Union for Civil Liberties (PUCL), Rajasthan went to the Supreme Court in April 2001 to seek legal enforcement of the right to food. The “Public Interest Litigation” (PIL) initiated by the PUCL petition is a complex plot with many actors. This Primer begins, in Section 1, with a detailed introduction to this PIL. From there we proceed to a discussion of the “interim orders” that have been issued by the Supreme Court in the context of this PIL (Section 2). We conclude, in Section 3, with a brief discussion of how Supreme Court orders can be used as a tool for action.

The above-mentioned PIL is listed in the Supreme Court of India as “PUCL vs. Union of India and Others, Writ Petition (Civil) 196 of 2001”. However, it is popularly known as the “right to food case”, and this is how we shall refer to it in this booklet.

1. LEGAL ACTION FOR THE RIGHT TO FOOD

1.1. Legal Foundation of the Right to Food

The right to food can be seen as an implication of the fundamental “right to life”, enshrined in Article 21 of the Indian Constitution. Indeed, the Supreme Court has explicitly stated (several times) that the right to life should be interpreted as a

right to “live with human dignity”, which includes the right to food and other basic necessities.¹

The right to food can also be linked with Articles 39(a) and 47 of the Constitution. Article 39(a) directs the State to ensure that all citizens have “the right to an adequate means of livelihood”. According to Article 47, “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”. These two Articles belong to the “Directive Principles of State Policy”, which are not supposed to be enforceable in Court (Article 37). However, it is possible to argue that Articles 39(a) and 47 are enforceable in court as expressions of the fundamental right to life.² This argument is presented in Box 1, based the National Human Rights Commission's interpretation of the right to food. In the same

¹ For instance, in *Francis Coralie v. Administrator, Union Territory of Delhi and Ors.* (1981) 1 SCC 608 the Supreme Court observed:

"We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.

Similarly, in *Shantistar Builders v. Narayan Khimalal Totame* (1990) 1 SCC 520, the Supreme Court stated: "The right to life is guaranteed in any civilized society. That would take within its sweep the right to food..."

² It is also worth remembering that while Article 37 states that the Directive Principles “shall not be enforceable by any court”, it goes on to emphasize that these Principles “are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws” (Article 37).

statement, dated 17th January 2003, the Commission clearly stated that “there is a fundamental right to be free from hunger”.³

Box 1:

Legal Foundation of the right to food

The legal basis of the right to food has been helpfully spelt by the National Human Rights Commission (NHRC) in the proceedings of a hearing held on 17 January 2003:

“Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The expression 'Life' in this Article has been judicially interpreted to mean a life with human dignity and not mere survival or animal existence. In the light of this, the State is obliged to provide for all those minimum requirements which must be satisfied in order to enable a person to live with human dignity, such as education, health care, just and humane conditions of work, protection against exploitation, etc. In the view of the Commission, the Right to Food is inherent to a life with dignity, and Article 21 should be read with Articles 39(a) and 47 to understand the nature of the obligation of the State in order to ensure the effective realization of this right. Article 39(a) of the Constitution enunciated as one of the Directive Principles, fundamental in the governance of the country, requires the State to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people as a primary responsibility. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfilment of the obligation of the State set out in Articles 39(a) and 47. The reading of Article 21 together with Articles 39(a) and 47 places the issue of food security in the

Contd...

³Proceedings of a hearing held on 17th January 2003; reprinted in Gonsalvez, C., P.R.Kumar and A.K. Srivastava (eds.) (2005), Right to Food, second edition (New Delhi: Human Rights Law Network), pp. 404-421.

correct perspective, thus making the Right to Food a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution.”

The relevant Articles of the Constitution are as follows:

Article 21: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Article 39 (a): “The State shall... direct its policy towards securing that the citizen, men and women equally, have the right to an adequate means of livelihood...”

Article 47: “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...”

Article 32 (1): “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.”

Note: Article 32 (1) applies to the rights conferred in Part III of the Constitution, known as “fundamental rights”. Article 21 appears in Part III, but not Articles 39(a) and 47. These appear in Part IV, under “Directive Principles of State Policy”.

Box 2:
How is the right to food defined Internationally?

The International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the United Nations in 1966, to which India is a signatory along with 152 other countries, deals with the issue of the right to food. The international understanding of what constitutes “food security” is elaborated in the Plan of Action of the World Food Summit (1996), which states that: “Food security, at the individual, household, national, regional and global levels is achieved when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life”. The Council of Food and Agricultural Organisation (FAO) of the United Nations, where India is also a signatory nation, defined the right to food (2004) as “the right of everyone to have physical and economic access at all times to adequate food or means for its procurement”.

Lastly, the UN Special Reporter on the Right to Food has articulated the right to food as follows: “[The] right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures the physical and mental, individual or collective, fulfilling and dignified life free of fear”

Many other International Covenants and Instruments, to which India is also a signatory, refer to the right to food and elaborate it within their own frameworks. These include the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW, Article 12) and the International Convention on the Rights of the Child (CRC, Articles 27.1 and 27.3). For instance, Article 12 of CEDAW focuses on the right to women to adequate nutrition during pregnancy and lactation.

Thus, it is not just the legal framework within the country that binds India to obligations on the right to food, but also a range of international covenants and related instruments which the Indian State has signed.

1.2. The PUCL Petition

In April 2001, People's Union for Civil Liberties (PUCL) filed a “writ petition” on the right to food in the Supreme Court. This petition was filed at a time when the country's food stocks reached unprecedented levels while hunger in drought-affected areas intensified. Initially the case was brought against the Government of India, the Food Corporation of India (FCI), and six State Governments, in the context of inadequate drought relief. Subsequently, the case was extended to the larger issues of chronic hunger and undernutrition, and all the State Governments were added to the list of “respondents”.⁴ As mentioned earlier, the public interest litigation (PIL) initiated by the PUCL petition is known as the “right to food case”.

The basic argument of this petition is that, since food is essential for survival, the right to food is an implication of the fundamental “right to life” enshrined in Article 21 of the Indian Constitution. The petition argues that Central and State Governments have violated the right to food by failing to respond to the drought situation, and in particular by accumulating gigantic food stocks while people went hungry. The petition goes on to highlight two specific aspects of state negligence: the breakdown of the public distribution system (PDS), and the inadequacy of drought relief works. In the final “prayer”, the petition requests the Supreme Court to issue orders directing the government: (a) to provide immediate open-ended employment in drought-affected villages; (b) to provide “gratuitous relief” to persons unable to work; (c) to raise food entitlements under the PDS; and (d) to provide

⁴ Throughout this booklet, the term “states” and “state governments” should generally be understood as “states and Union Territories” and “state governments and administrations of Union Territories”, unless otherwise specified.

subsidised foodgrain to all families and the central government to supply free foodgrain to these programmes.

Over the time, the scope of this PIL has considerably expanded. Today it covers a wide range of issues related to the right to food, including the implementation of food-related schemes, urban destitution, the right to work, starvation deaths, maternity entitlements and even broader issues of transparency and accountability.

1.3. The Interim Orders

The “right to food case” is a massive litigation, and its complexity grows every year. Already, nearly 500 “affidavits” have been submitted by the petitioner (PUCL) and respondents, close to a hundred “interim applications” have been filed, and 49 “interim orders” have been issued. These documents run into thousands of pages and it is very difficult for anyone to keep track of all this material. In this booklet, we confine our attention to the “interim orders” – the most important documents from the point of view of action. The full text of the orders is given in Appendix 1. If you are interested in other aspects of the case (e.g. the wealth of unpublished information available in the “affidavits”), please contact the Human Rights Law Network (HRLN) at the address given in Appendix 2.

“Interim orders” refer to orders that remain applicable for the duration of the case. If and when the Supreme Court issues a final judgement and disposes the case, some of these orders are likely to be incorporated in the judgement. For instance, one interim order directs the government to provide cooked Mid-Day Meals in primary schools (see below). Hopefully, this order will be reiterated in the final judgement, when the case is closed.

As mentioned earlier, nearly 50 “interim orders” have been issued by the Supreme Court in this matter. The main orders are discussed below. The full text of the orders is given in Appendix 1.

1.4. Who is Accountable?

The law applies to everyone, and therefore every citizen has a duty to comply with the Supreme Court orders. However, some people and institutions have special responsibilities for the implementation of the orders. In an order dated 8th May 2002, and a follow-up order on 29th October 2002, the Supreme Court explicitly defined some of these responsibilities.

Most of the interim orders consist of directions to the governments: the Central Government and the State Governments. This is because the prevention of hunger and starvation is “one of the prime responsibilities of the Government - whether Central or State”, as the Court made clear from the very beginning.⁵ In the case of State Governments, the Chief Secretary is answerable to the Court on behalf of the government.

As far as the Central Government is concerned, some orders are addressed to specific departments or ministries, such as the Food Ministry, the Ministry of Rural Development, and the Department of Women and Child Development. The Secretaries of the relevant departments or ministries are responsible for the implementation of Supreme Court orders relevant to them. Some orders are addressed to the Central

⁵ Supreme Court Order dated 20th August, 2001. On this, see also Chameli Singh and Others vs State of UP (1996) 2SCC549 and Kishan Pattnayak and Another vs State of Orissa AIR 1989 SC 677.

Government, which is represented in Court by the Additional Solicitor General (ASG).

Given their importance, the key directions of 8th May 2002 are quoted at length in Box 3. Note in particular that this order: (1) empowers Gram Sabha to conduct “social audits” of all food-related schemes; (2) holds the CEO/Collector responsible for ensuring compliance with the Court orders within the District; (3) makes the Chief Secretary accountable for the implementation of Court orders in the state; (4) gives the Commissioner's extensive powers to monitor the implementation of Court orders throughout the country; and (5) directs all concerned officials to “fully cooperate” not only with the Commissioner's but also with individuals or organisations who have been nominated by the Commissioner's to assist them.

The follow-up order of 29th October 2002 focuses mainly on the mandate and powers of the Commissioner's. These are discussed in the next section. This order also reiterates that “in case of persistent default in compliance with

Box 3:

Lines of Accountability : The 8th May 2002 Order

On 8th May 2002, the Supreme Court laid down specific lines of accountability and grievance procedures for the implementation of all “interim orders”. The key directions issued on 8th May 2002 are as follows:

1. “The Gram Sabhas are entitled to conduct a social audit into all Food/Employment schemes and to report all instances of misuse of funds to the respective implementing authorities, who shall on receipt of such complaints, investigate and take appropriate action in accordance with law.”

Contd...

2. "On a complaint being made to the... 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. "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 Commissioner's of this Court for the purpose of looking into any grievance that may persist after the above-mentioned grievance resolution procedure has been exhausted."
6. "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."
7. "The Commissioner's 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."
8. "The Gram Sabhas are empowered to monitor the implementation of the various schemes and have access to relevant information relating to, inter alia, selection of beneficiaries and the disbursement of benefits. The Gram Sabhas can raise their grievances in the manner set out above and the redressal of the grievances shall be done accordingly."

the orders of this Court concerned Chief Secretaries... shall be held responsible”.

Last but not least, this order states in no uncertain terms that that the State Governments are responsible for preventing “deaths due to starvation or malnutrition”:

“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... may be held responsible for the same.”

1.5. The Commissioner's

On 8th May 2002, the Supreme Court appointed two “Commissioner's” for the purpose of monitoring the implementation of the interim orders. Initially, the two Commissioner's were Dr. N.C. Saxena (former Secretary, Planning Commission) and Mr. S.R. Sankaran (former Secretary, Ministry of Rural Development). Mr. Sankaran resigned in November 2004, for personal reasons. Dr. Saxena continues, with the help of Mr. Harsh Mander (also a former IAS officer), who was authorised by the Supreme Court to assist the Commissioner's in an order dated 9th May 2005. Mr. Harsh Mander assists Dr. N.C. Saxena as a 'special commissioner'.

The Commissioner's are empowered to enquire into any violations of the interim orders and to demand redressal, with the full authority of the Supreme Court. They are also expected to report to the Court from time to time, and may seek

interventions going beyond existing orders if required. Further, in an order dated 29th October 2002, the Court clarified that the mandate of the Commissioner's included "monitoring and reporting to this Court of the implementation by the respondents of the various welfare measures and schemes."⁶ This is quite important, as it means that the Commissioner's may scrutinise any aspect of food-related "measures and schemes", even if they are not the object of any specific order. Other tasks of the Commissioner's include analysis of secondary data to monitor the performance of State Governments, seeking responses from them on specific issues, taking up complaints from grassroots organisations, setting up enquiry committees for verification purposes, and so on. In short, the role and powers of the Commissioner's are potentially very wide.

The Commissioner's have been submitting detailed reports to the Supreme Court from time to time. So far, seven reports and a few interim reports have been submitted. These "Commissioner's' Reports", as they are known, are available on the website of the Right to Food Campaign (www.righttofoodindia.org), along with summaries. They are a rich source of information on the food situation in India, the implementation of interim orders, the functioning of various schemes, and so on. The reports also include detailed recommendations to the Court.

Six years after the Commissioner's' work began, the results are mixed. On the positive side, the Commissioner's have played a key role in ensuring that the interim orders are taken seriously, and in keeping the Central and State Governments on their toes. They have also intervened in a number of instances of

⁶ Supreme Court Order dated 29th October, 2002.

violation of the orders, and their reports have been of great help in giving some sort of direction to this complex PIL.

The Commissioner's have been able, on a number of occasions, to intervene out of the Supreme Court with the State and the Central Governments on crucial policy matters relating to the food and employment schemes that fall within the purview of the "right to food case". The Commissioner's conduct meetings at state capitals with chief secretaries and the relevant secretary-level officials to sustain the policy engagement and ensure state accountability. Significantly, this engagement has resulted in many states actively soliciting the advice or interventions of the Commissioner's on specific policy issues.

On the other side, the interim orders are far from being fully implemented, and the Commissioner's often lack specific means of holding the government accountable. Some State Governments do not even bother to reply to the Commissioner's letters, in spite of a Supreme Court order explicitly directing them "to respond promptly to the correspondences addressed to them by the Commissioner's and provide full information as required".⁷

The Commissioner's' work is funded by the Government of India, based on an order dated 29th October 2002: "Adequate funds shall be made available to the Commissioner's by the Union of India to enable them to perform [their] functions." For further information about the Commissioner's' work, please contact their office at the address given in Appendix 2, or check their website (www.sccommissioners.org), or the website of the Right to Food Campaign (www.righttofoodindia.org).

⁷ Supreme Court Order dated 29th October, 2002.

1.6. Advisors, Assistants and Nodal Officers

Also on 29th October 2002, the Supreme Court directed the state governments to appoint “assistants to the Commissioner’s”. The mandate of the assistants is simply to “render such assistance to the Commissioner’s as the Commissioner’s may require”. The assistants to the Commissioner’s are to be appointed by the chief secretary in consultation with the Commissioner’s. In addition, each state government is to appoint a “Nodal Officer” for the purpose of “ensuring the due implementation” of food-related schemes. The nodal officers are expected to “provide to the Commissioner’s full access to relevant records and provide relevant information”.

The Commissioner’s have also nominated their own “Advisor” in each state. This has been done with the full backing of the Court: the order of 8th May 2002 allows the Commissioner’s “to take the assistance of individuals and reliable organisations”, and adds that all officials are directed to fully cooperate with such persons/organizations” (see Box 1). The Advisors essentially serve as a bridge between the Commissioner’s, the State Government, and various citizens’ groups. Their brief includes sending periodic reports to the Commissioner’s; conducting enquiries in response to local complaints; sending appeals for intervention to the Commissioner’s whenever required; organising research and surveys; working towards a more effective monitoring and redressal system; and liaising with the State Governments on behalf of the Commissioner’s. Some advisors have also convened joint commission of enquiries at the State level to investigate gross violations of the interim orders or cases of endemic hunger and starvation deaths. The role of the Advisors is not rigidly pre-specified and their activities are potentially wide-ranging. The current list of Advisors is given in Appendix 2.

2. SUPREME COURT ORDERS

The first major interim order of the Supreme Court in this PIL was issued on 28th November 2001. This order focuses on eight food-related schemes: (1) Public Distribution System (PDS); (2) Antyodaya Anna Yojana (AAY); (3) National Programme of Nutritional Support to Primary Education, also known as “Mid-Day Meals scheme”; (4) Integrated Child Development Services (ICDS); (5) Annapurna; (6) National Old Age Pension Scheme (NOAPS); (7) National Maternity Benefit Scheme (NMBS); and (8) National Family Benefit Scheme (NFBS).⁸ Essentially, the interim order of 28th November 2001 converted the benefits of these eight “schemes” into legal entitlements. This means, for instance, that if someone has an Antyodaya card but she is not getting her full quota of 35 kg of grain per month at the official prices (Rs 3/kg for rice and Rs 2/kg for wheat), she can claim her due as a matter of right, by going to Court if necessary.

In the case of Mid-Day Meals, the interim order went further than just giving a legal protection to existing entitlements. It also directed the government to replace monthly “dry rations” of grain with daily, cooked Mid-Day Meals, within 3 months.

The basic idea of this order was that, at the very least, the government should be held accountable to what it claims to be doing to protect the right to food, i.e. implement

⁸ A ninth scheme, Sampurna Gramin Rozgar Yojana (SGRY), was not mentioned in this order but it did figure in the initial list of food-related schemes on which the Supreme Court requested affidavits from the State Governments (on 17th September 2001), and SGRY became the main focus of the next interim order, issued on 8th May 2002.

these food-related schemes. Many of the subsequent hearings were concerned with the implementation of the 28th November order, leading to further orders around the schemes. After a brief discussion of "umbrella" orders that pertain to all the food-related schemes, this section presents a scheme-wise summary of the orders.

2.1. "Umbrella" Orders

While most of the interim orders concern specific schemes (e.g. ICDS or Public Distribution System), some of them apply "across the board" to all the relevant schemes. We shall refer to these orders as "umbrella orders". We have already discussed some umbrella orders in Section 1, notably those relating to lines of accountability. Other important umbrella orders include the following:

1. Responsibility for compliance: Chief Secretaries of the concerned states "shall be held responsible" for any "persistent default in compliance with orders".⁹

2. Accountability to Gram Sabhas: "The Gram Sabhas are entitled to conduct a social audit into all Food/Employment schemes and to report all instances of misuse of funds to the respective implementing authorities, who shall on receipt of such complaints, investigate and taken appropriate action in accordance with law."¹⁰

3. Access to information: "The Gram Sabhas are empowered to monitor the implementation of the various schemes and have access to relevant information relating to,

⁹ Supreme Court Order dated 29th October 2002.

¹⁰ Supreme Court Order dated 8th May 2002.

inter alia, selection of beneficiaries and the disbursement of benefits.”¹¹

4. Dissemination of Court orders:¹² Chief Secretaries have been directed “to translate and permanently display” the orders dated 28th November, 2001 and 8th May, 2002 “on all the Gram Panchayats, school buildings and fair price shops”. The Central Government is to give “wide publicity” to these orders through All India Radio and Doordarshan.

5. Schemes not to be discontinued: “No scheme covered by the orders made by this Court... shall be discontinued or restricted in any way without the prior approval of this Court.”¹³

6. Full utilization of grain quotas: “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.”¹⁴

7. Jurisdiction of High Courts in the Right to Food Case: It is important to note here that since the Supreme Court passed these landmark orders, a number of cases have been filed in various High Courts across the country. These writ petitions were filed not only by right to food activists and citizens concerned with the denial of entitlements to poor people in their respective states, but also by vested interest groups (like contractors) who were adversely affected by the Supreme Court orders. In some cases (notably in Rajasthan and Delhi), the High Courts refused to entertain these petitions since the

¹¹ Supreme Court Order dated 8th May 2002.

¹² Supreme Court Order dated 29th October 2002.

¹³ Supreme Court Order dated 27th April 2004.

¹⁴ Supreme Court Order dated 17th September 2001.

matter was sub-judicial in the Supreme Court. The Supreme Court then, in a significant order dated 1st May 2006 in this case passed an order which settled this issue of jurisdiction of the High Courts in this case. The Supreme Court allowed High Courts to entertain petitions on the “right to food case”, and directed that High Courts could entertain Writ Petitions on the right to food and deal with them appropriately.

2.2. The Public Distribution System

Background

The Public Distribution System (PDS) is a means of distributing foodgrain and other basic commodities at subsidised prices through “fair price shops”. Every family is supposed to have a ration card. In 1997, the PDS became “targeted”: different ration cards were issued to households “Below Poverty Line” (BPL) and those “Above Poverty Line” (APL), and each category has different entitlements. Today, both BPL and APL households are entitled to 35 kgs of grain per month, but the issue price is higher for APL households. In fact, it is so high that most APL households do not buy grain from the PDS. Thus, in practice the PDS is restricted to BPL households. Even in years when the APL prices correspond very closely with the market prices, the APL offtake has remained very low since State Governments are not lifting their APL quotas. The Government of India has now reduced the APL quotas for all States and restricted it to the average of the last three years of APL offtake for that particular State.

In 2001 Antyodaya cards were introduced as a sub-category of BPL cards. However, the Supreme Court later stated that the Antyodaya programme should not be restricted to those with a BPL card (see Section 2.3). Thus, Antyodaya cards

have become a separate card, distinct from either BPL or APL. Some households also have other cards, such as Annapurna cards (see Section 2.9).

The PDS is facing many obstacles including widespread leakages and corruption. The Supreme Court has taken notice of this and formed a Central Vigilance Committee on the Public Distribution System in its order dated 12th July 2006. The CVC (PDS) is chaired by Justice (Retd.) D.P. Wadhwa with the Commissioner of the Supreme Court, Dr. N.C. Saxena as the member-convenor. The committee is presently looking into the problems that are affecting the proper functioning of the Public Distribution System and exploring remedial measures. The CVC has recently submitted its report (in August 2007), which is expected to be taken up shortly in the Supreme Court.

Supreme Court Orders

1. Identification of BPL families: On 28th November 2001, the Court directed the State Governments “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”. Note that the entitlements of BPL families were subsequently raised from 25 kgs of grain per month to 35 kgs. per month. On the BPL list, see also para 7 below.¹⁵

¹⁵ A related issue concerns the quantum of grain allocations from the Central Government to State Governments for PDS purposes. This issue was discussed against the background of wide controversy about the official poverty estimates for 1999-2000, which implied that the national “head-count ratio” had declined from 36% in 1993-4 to 26% in 1999-2000. In an order dated 14th February 2006, the Supreme Court directed the Central Government to continue allocating food grain on the basis of Planning Commission estimates of 1993-94 poverty ratios, associated with a 36% head-count ratio at the national level.

2. Accessibility of ration shops and regular supply of grain: On several occasions, the Supreme Court directed the government to ensure that all ration shops open regularly. For instance, one of the very first interim orders (dated 23 July 2001), states: “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.” Similarly, an interim order dated 8 May 2002 states: “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.”

3. Accountability of PDS dealers: The licenses of PDS dealers and shop-keepers should be cancelled if they: “(a) do not keep their shops open throughout the month during the stipulated period; (b) fail to provide grain to BPL families strictly at BPL rates and no higher; (c) keep the cards of BPL households with them; (d) make false entries in the BPL cards; (e) engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/organizations”. Further, “the concerned authorities/functionaries would not show any laxity on the subject”.¹⁶

4. Monitoring of the PDS:¹⁷ As mentioned earlier, a Central Vigilance Committee has been constituted to investigate the problems affecting the proper functioning of the public distribution system and 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 dealer and; (c)

¹⁶ Supreme Court Order dated 2nd May, 2003.

¹⁷ Supreme Court Order dated 12th July, 2006.

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." Aside from this, the Committee was asked to suggest a transparent mode of appointing PDS dealers and ways to make the existing vigilance committees more effective.

5. Permission to buy in instalments: Arrangements must be made to “permit the BPL household to buy the ration in instalments”.¹⁸

6. Awareness generation: “Wide publicity shall be given so as to make BPL families aware of their entitlement.”¹⁹

7. BPL list: Orders relating to the “BPL list” are also relevant to the Public Distribution System, since the BPL list is the basis on which BPL and APL ration cards are distributed. These orders are discussed in Section 2.12. Note in particular that (1) the Central and State Governments have been directed to “frame clear guidelines for proper identification of BPL families”²⁰ in consultation with the Supreme Court Commissioner's²¹; and (2) no-one is supposed to be removed from the BPL list until such time as the Court deliberates this matter.²²

Comments

1. The Supreme Court orders on the PDS should be read together with the Central Government's “PDS (Control) Order”

¹⁸ Supreme Court Order dated 2nd May, 2003.

¹⁹ Supreme Court Order dated 2nd May, 2003.

²⁰ Supreme Court Order dated 8th May, 2002.

²¹ Supreme Court Order dated 14th February, 2006.

²² Supreme Court Order dated 5th May, 2003.

of August 2001. This Order contains sweeping directions for holding FPS managers and others accountable, and should itself be read in conjunction with the essential commodities Act. Taken together, these three sets of orders (Supreme Court orders, PDS control order and essential commodities Act) can be used quite effectively to ensure that people get their due.

2. BPL targeting has attracted widespread criticism. There is much evidence that the “BPL list” is highly unreliable: well-off households often have a BPL card while poor households have an APL card, if they have a card at all. This is partly because the “BPL survey” used for identifying families below the poverty line is fundamentally flawed. This issue has been taken up in Supreme Court hearings from time to time – see Section 2.12 for further discussion.

3. Orders relating to Antyodaya Anna Yojana and Annapurna (see below) are also relevant to the Public Distribution System, since these schemes are implemented through the PDS.

4. Since the recommendations of the Central Vigilance Committee shall be first applicable to Delhi and then expanded to the rest of the country, it presents a good opportunity for civil society organisations to give suggestions for improving the PDS.

2.3. Antyodaya Anna Yojana

Background

The aim of this scheme, launched in 2000, is to provide special food-based assistance to destitute households. These households are given a special ration card (an “Antyodaya

card”), and are entitled to special grain quotas at highly subsidised prices. Today, Antyodaya cardholders are entitled to 35 kg of grain per month, at Rs 2/kg for wheat and Rs 3/kg for rice. Initially, the Antyodaya scheme covered 1 crore families, but this was later expanded to 1.5 crore families and then 2 crore families. Currently, around 40% of all BPL families are included in the Antyodaya category.

Supreme Court Orders

1. Orders related to the Public Distribution System also apply to Antyodaya Anna Yojana (AAY), since AAY is a component of the PDS. For instance, the order of 23rd July 2001, directing State Governments to ensure regular supply of grain to the ration shops applies to AAY also.

2. The State Governments were requested to consider providing grain free of cost to those who are so poor that they are unable to lift their quota, even at the highly subsidised AAY prices.²³

3. The Central Government “shall formulate the scheme to extend the benefits of the Antyodaya Anna Yojana to the destitute section of the population”.²⁴

4. On 2nd May 2003, the Supreme Court declared that all households belonging to six “priority groups” would be entitled to Antyodaya cards. More precisely, the Government of India was directed “to place on AAY category the following groups of persons:

²³ Supreme Court order dated 28th November 2001.

²⁴ Supreme Court order dated 29th October 2002.

- (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.”

5. Possession of a BPL card is not necessary for inclusions in the AAY category. The Central Government was directed to issue guidelines to this effect.²⁵

6. In April 2004, the Court asked the Central Government to direct the State Governments to “accelerate the issue of Antyodaya cards especially to primitive tribes”. Further, “the guidelines issued to State Governments shall be implemented in letter and spirit”.²⁶

7. In the order dated 17th October 2004, the State Governments were directed to complete the identification of AAY families and the distribution of AAY cards “by the end of the year”, and to begin the distribution of grain to AAY cardholders “immediately”. Further, the AAY cardholders “should not be made to pay, directly or indirectly, any amount other than what they are liable to pay for the supply taken”.

²⁵ Supreme Court Order dated 20th April, 2004.

²⁶ Supreme Court Order dated 20th April, 2004.

Comments

The most important order here is the order of 2nd May 2003, whereby six “priority groups” are entitled to Antyodaya cards as a matter of right. However, the government is yet to devise (and implement) an effective procedure to ensure that all households in these priority groups are identified and covered under AAY. In the case of (so-called) “primitive tribes”, the task is relatively easy, and in some states at least Antyodaya cards have been distributed to most families in this group. The other groups, however, have no simple means of claiming an Antyodaya card as a matter of right.

2.4. Mid-Day Meals*

Background

As mentioned earlier, the Supreme Court order of 28th November 2001 directs State Governments to start providing cooked Mid-Day Meals in primary schools. Every child who attends a government or government-assisted primary school is now entitled to a cooked, nutritious Mid-Day Meals every day.

The provision of cooked Mid-Day Meals in primary schools is an important step towards the right to food. Indeed, Mid-Day Meals help to protect children from hunger (including “classroom hunger”, a mortal enemy of school education), and if the meals are nutritious, they can facilitate the healthy

* For a more detailed discussion of Mid-Day Meals, see *Mid-Day Meals: A Primer*, available from the secretariat of the Right to Food Campaign as well as from the office of the Commissioner's of the Supreme Court (the addresses are given in Appendix 2).

growth of children. Mid-Day Meals also serve many other useful purposes. For instance, they are quite effective in promoting regular school attendance, and in that respect Mid-Day Meals contribute not only to the right to food but also to the right to education. Mid-Day Meals also help to undermine caste prejudices, by teaching children to sit together and share a common meal. They reduce the gender gap in school participation, provide an important source of employment for women, and liberate working women from the task of having to feed children at home during the day. Aside from this, Mid-Day Meals can be seen as a source of economic support for the poorer sections of society, and also as an opportunity to impart nutrition education to children. For all these reasons, the Supreme Court order on Mid-Day Meals has been widely welcome, especially among disadvantaged sections of society.

Supreme Court Orders

So far, there have been two crucial Supreme Court orders on Mid-Day Meals: on 28th November 2001 and 20th April 2004, respectively. Further orders have been issued from time to time also. The landmark order of 28th November 2001 clearly directed all State Governments to introduce cooked Mid-Day Meals in primary schools:

“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.”

This was supposed to be done within six months. But most State Governments took much longer, prompting the Supreme

Court to issue stern reminders to them from time to time (e.g. on 2nd May 2003). A series of important follow-up orders were issued on 20th April 2004, to speed up the implementation of earlier orders, improve the quality of Mid-Day Meals, and address various concerns raised in the Commissioner's reports. These orders include the following:²⁷

1. Timely compliance: “All such States and Union Territories who have not fully complied with the order dated 28th November, 2001 shall comply with the said directions fully in respect of the entire State/Union Territory... not later than 1st September, 2004.”

2. No charge: The meal is to be provided free of cost. Money for the meal is not to be collected from parents or children under any circumstances.

3. Priority to SC/ST cooks and helpers: “In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes.”

4. Extension to summer vacations in drought-affected areas: “In drought-affected areas, Mid-Day Meals shall be supplied even during summer vacations”.

5. Kitchen sheds: The Central Government was directed to “make provisions for construction of kitchen sheds” and also to contribute to the cooking costs.

6. Quality improvements: “Attempts shall be made for better infrastructure, improved facilities (safe drinking water etc.),

²⁷ The paragraphs that follow are based on the 20th April 2004 order, except for the paragraph on “fair quality of grain”, which goes back to initial order of 28th November 2001

closer monitoring (regular inspection) 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.”

7. Fair quality of grain: The Food Corporation of India (FCI) is to “ensure provision of fair average quality grain” for Mid-Day Meals. Joint inspections of the grain are to be conducted by the FCI and State Governments. “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”.

8. Extension to Class 10: On 20th April 2004, the Government of India was directed to file an affidavit within three months, “stating as to when it is possible to extend the scheme up to 10th Standard in compliance with the announcement made by the Prime Minister.” In response to this, an affidavit was filed by the Department of Elementary Education (Ministry of Human Resources Development) in 2004, but the Court is yet to examine it.

In October 2004, the Court noted that some progress had been made with the implementation of earlier orders on Mid-Day Meals. However the feedback received from the States made it clear that implementation was being held up by a lack of funds in many cases. The Court then directed the Central Government to provide financial assistance of “one rupee per child per school day” to meet cooking costs. The Court also clarified that the responsibility to monitor the implementation of the Mid-Day Meals scheme “essentially lies with the Central Government”.²⁸ Again, the Court stressed the urgency of the situation and directed that “every child eligible

²⁸ Supreme Court Order dated 17th October 2004.

for a cooked meal under the Mid-Day Meals Scheme in all States and Union Territories shall be provided with the said meal immediately”.

Comments

The Supreme Court orders have led to lively “campaigns” for Mid-Day Meals all over the country. The implementation of these orders has been a long and arduous process, but over time, most State Governments have fallen in line. Today, about 12 crore children are getting a cooked Mid-Day Meals at school every day.²⁹ However, the quality of Mid-Day Meals remains quite poor in many states: the content of the meal is inadequate, health safeguards are lacking and social discrimination is common. Also, nothing has been done to extend Mid-Day Meals beyond the primary stage. Further action is required to consolidate the gains that have been made and to ensure that Mid-Day Meals live up to their promise.

2.5. Integrated Child Development Services

Background

ICDS is the only major national programme that addresses the needs of children under the age of six years. It seeks to provide young children with an integrated package of services such as supplementary nutrition, health care and pre-school education. Because the health and nutrition needs of a child cannot be addressed in isolation from those of his

²⁹ Official figures for 2005-2006, available on the website of the Ministry of Human Resource Development (www.education.nic.in).

or her mother, the programme also extends to adolescent girls, pregnant women and lactating mothers.³⁰

These services are provided through ICDS centres, also known as “Anganwadis”. Today there are 8.63 lakh Anganwadis in the country, covering 6.06 crore children in the age group 6 months to 6 years.³¹ This is less than half of all children in the 0-6 age group.³² The coverage of ICDS is therefore far from universal. Further, the quality of ICDS services is very low in most states. The Supreme Court orders on ICDS are essentially aimed at achieving “universalisation with quality” within a reasonable time frame.

Supreme Court Orders

Here again the crucial order goes back to 28th November 2001, when the Supreme Court directed the government to “universalize” 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

³⁰ For a reader-friendly introduction to ICDS, see the companion booklet *Universalization with Quality: Action for ICDS*, and also the *Focus On Children Under Six (FOCUS) Report*. Both are available from the Secretariat of the Right to Food Campaign (righttofood@gmail.com).

³¹ Women and Child Development Ministry, 30th June 2007.

³² Population projections based on 2001 Census data suggest that the number of children below the age of 6 years was around 14 crores in 2006 (Government of India, 2007, “Sarva Baal Vikas Abhiyan”, draft, Ministry of Women and Child Development, page 1).

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.”

This order, however, received very little attention for several years. Virtually nothing was done to implement it. In April 2004, several marathon hearings on ICDS were held in the Supreme Court and detailed orders were issued, followed by further orders on 7th October 2004. This was followed by a landmark judgement regarding the ICDS scheme on 13th December 2006. However, before discussing the 13th December order, we shall look at a few key directions of the 7th October 2004 order. These are as follows:

1. The Supreme Court directed the Government of India to increase the number of Anganwadis from 6 lakh to 14 lakh habitations, and to “file within three months an affidavit stating the period within which it proposes to increase the number of Anganwadis centers (AWCS) so as to cover the 14 lakh habitations.”

2. “All the State Governments/UTs shall allocate funds for the ICDS on the basis of one rupee per child per day, 100 beneficiaries per AWCS and 300 days feeding in a year, i.e. on the same basis on which the centre makes the allocation.”³³

3. All SC/ST habitations should have an Anganwadis “as early

³³ Note: While this order effectively raises the budget norm for supplementary nutrition under ICDS to “two rupees per child per day” (with equal sharing between Central and State Governments), there was no explicit order to that effect until the Supreme Court order of 13 December 2006, discussed further on.

as possible”. Until the SC/ST population is fully covered, all new Anganwadis should be located in habitations with high SC/ST populations.

4. “All State/UTs shall make earnest effort to cover the slums under the ICDS”.

5. ICDS services should never restrict to BPL families (“BPL shall not be used as an eligibility criteria for ICDS”).

6. “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.”

7. ICDS funds provided by the Central Government under the Pradhan Mantri Gramodaya Yojana (PMGY) should be fully utilised by the State Governments. Further these funds should supplement, and not substitute for, ICDS funds provided by the State Governments.³⁴

8. “The Central Government and States/UTs shall ensure that all amounts allocated are sanctioned in time so that there is no disruption whatsoever in the feeding of children.”

9. “All State Governments/UTs shall put on their websites 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.”

10. Local women's self-help groups and Mahila Mandals should be encouraged to supply the supplementary food distributed in

³⁴ Note: The PMGY was discontinued from 2005-6.

Anganwadis centers. They can make purchases, prepare the food locally, and supervise the distribution.

The entitlements of children under six have been further strengthened in the Supreme Court judgement of 13th December 2006. This landmark judgement, which was the culmination of a long series of Court hearings on ICDS, clearly orders the government to ensure “universalization with quality” in a time-bound manner. The key directions contained in this order are presented below.

"(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 "Anganwadis 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 Anganwadis.

(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) The order also specifies the monetary allocation to be made per beneficiary under the ICDS scheme. The court instructs all State Governments and Union Territories to fully implement the ICDS scheme by, interalia,

(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 woman, nursing mother/adolescent girl per day for supplementary nutrition out of which the Central Government shall contribute Rs.1.15 per child per day.

(5) 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.

(6) 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 7th, 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 decentralization of the supply of SNP through local community shall be done."

Comments

The Supreme Court orders of April and October 2004 gave a useful wake-up call to the government, as far as the universalization of ICDS is concerned. The universalization of ICDS was included in the National Common Minimum Programme of the UPA Government in May 2004. The National Advisory Council submitted detailed recommendations for achieving “universalization with quality” in October 2004, and some “follow-up recommendations” in February 2005 (see www.nac.nic.in). The expenditure of the Central Government on ICDS was roughly doubled (from Rs 1,500 crores to Rs 3,000 crores) in the Union Budget 2005-06.

The real breakthrough, however, came with the Supreme Court judgement of 13th December 2006. The specification of a time frame for “universalization with quality” was a major step forward. Some of the provisions of this judgement, such as the principle of “Anganwadis on demand”, also went much beyond the entitlements that were already available under earlier orders.

Having said this, there is a long way to go in ensuring the implementation of these orders. As this booklet comes to completion, there are anticipations of major increases in funding for ICDS in the 11th Plan. However, the proposed allocations remain much lower than what is required to ensure universalization with quality. Also, ICDS remains a much neglected programme and little has been done to improve the quality of services.

Meanwhile, the Supreme Court hearings and orders on ICDS have contributed to the growth of a lively campaign on “children's right to food”. A convention on children's right

to food, held in Hyderabad in April 2006, helped to build a consensus on universalization with quality, and to link this with related issues such as maternity entitlements, women's right to child care facilities, and social support for breastfeeding. Since the Hyderabad convention, many campaign activities have taken place around the country, from the convening of "Anganwadis Divas" in many villages to Bal Adhikar Yatras and a national gathering (Bal Adhikar Samvad) held in Delhi on 19th December 2006. The campaign continues.

2.6. National Old Age Pension Scheme

Background

This scheme was launched in 1995 to provide "old age pensions" to senior citizens (aged 65 years or more). It is part of the National Social Assistance Programme³⁵, which also includes two other schemes: the National Family Benefit Scheme (NFBS) and Annapurna.

The National Old Age Pension Scheme (NOAPS) is primarily addressed to old men and women with no assured means of subsistence, but the eligibility conditions vary from state to state, and so does the coverage of the scheme. The pensions are given in cash, with the Central Government contributing Rs 75 per month, often supplemented with a contribution from the State Government (e.g. in Rajasthan the old age pension is Rs 200 per month). The Central Government enhanced its contribution to Rs. 200 per month, in March 2006. One of the main problems with this scheme is its small coverage: there are plenty of applications, but funds are limited.

³⁵ The National Social Assistance Programme also included the National Maternity Benefit Scheme (NMBS) until the latter was transferred to the Ministry of Health and Family Welfare in 2001-2.

Recently, government of India issued directions for covering all BPL individuals above the age of 60 under the NOAPS. However, this order has still not been fully implemented by the state governments. The fact that many state governments link eligibility under NOAPS to those BPL individuals who are not “supported” by other family members, further restricts the outreach of the programme.

In 2002-03, NOAPS was “transferred” to the State Governments (along with other NSAP schemes): from a “Centrally Sponsored Scheme”, it became part of the State plans. This is meant to be a relatively minor administrative reform, whereby the Central Government gives a cash grant to the State Government (under “Additional Central Assistance”) and lets it run the scheme, instead of co-implementing the scheme with the State Government. In practice, however, this “transfer” tends to have an adverse impact in several ways. First, the cash grants disbursed by the Central Government are often “diverted” by State Governments for other purposes, or released after long delays. Second, after a scheme is transferred to the State plans, the Central Government stops monitoring it. Third, the transfer has also terminated the payment of administrative charges by the Central Government, and State Governments often fail to make up for this. Aside from NOAPS, other schemes under the National Social Assistance Programme (i.e. Annapurna and the National Family Benefit Scheme) have also been transferred to the State plans.

Supreme Court Orders

1. State governments have been directed to complete the identification of persons entitled to pensions under NOAPS, and to ensure that the pensions are paid regularly.³⁶
2. Payment of pensions is to be made by the 7th day of each month.³⁷
3. The scheme must not be discontinued or restricted without the permission of the Supreme Court.³⁸ This actually applies to all the schemes covered by the interim order of 28th November 2001 (see Section 2.1). However it is particularly relevant to schemes such as NOAPS, because these schemes are quite “fragile”: there are no strong lobbies to defend them, and they often come under the financial axe when State Governments face a financial crisis.
4. The NOAPS grants paid by the Central Government to the State Governments under “Additional Central Assistance” should not be diverted for any other purposes.³⁹

Comments

Even though the enhancement of the contribution of the Central Government for the pension amount was announced in the Budget Speech of the Finance Minister in March 2006, the funds reached the states only by September. Many states therefore did not enhance the pension amounts for the financial year 2006-07.

³⁶ Supreme Court Order dated 28th November, 2001.

³⁷ Supreme Court Order dated 28th November, 2001.

³⁸ Supreme Court Order dated 27th April 2004.

³⁹ Supreme Court Order dated 18th November 2004.

There are many problems in this scheme including exclusion and inclusion errors in the identification of beneficiaries. Many old people are forced to walk long distances to collect their pensions from the Block headquarters and often do not get it on time – with the pensions reaching, say, once in six months rather than monthly. However, this is the only programme that reaches out in any significant manner to old people living in poverty.

Even though state governments are expected to match the amount of Rs. 200 being given by the central government, only 9 states are currently giving a pension of Rs. 400 or more.

2.7. National Family Benefit Scheme

Background

This scheme, like NOAPS, is part of the National Social Assistance Programme. It provides for lump-sum cash assistance of Rs 10,000 to BPL families on the death of a primary breadwinner, if he or she is aged between 18 and 65 years. A “primary breadwinner” is a household member whose earnings contribute substantially to household income. The amount of assistance is Rs 10,000 for accidental deaths and Rs 5,000 in the case of death due to natural causes. The payment is to be made to the “surviving head” of the household, after a local enquiry.

Supreme Court Orders

1. As with other food-related schemes, the Supreme Court order of 28th November 2001 calls for prompt implementation of the National Family Benefit Scheme. BPL families are to be paid Rs 10,000 within four weeks through the local Sarpanch when the breadwinner dies.

2. As with NOAPS, this scheme is not to be discontinued or restricted in any way without the permission of the Supreme Court.⁴⁰

3. None of the benefits should be withdrawn from this scheme as a result of this order till further orders, by any of the State Governments or Union Territories.⁴¹

Comments

So far, the National Family Benefit Scheme has not received much attention in the Supreme Court hearings and interim orders. While field reports as well as official data point to glaring gaps in the functioning of this scheme, it has been somewhat out of focus in the “right to food case” as well as in the Right to Food Campaign.

2.8. Annapurna

Background

The Annapurna Scheme was launched on 1st April 2000. The target group consists of “senior citizens” who are eligible for an old age pension under the National Old Age Pension Scheme (NOAPS), but are not actually receiving a pension. The beneficiaries, to be identified by the Gram Panchayat after giving wide publicity to the scheme, are entitled to 10 kgs of grain per month free of cost through the Public Distribution System (special ration cards are issued to them for this purpose). The intention appears to be to provide some sort of emergency food security to elderly persons who are waiting for a pension to be sanctioned to them under NOAPS. However, the coverage of Annapurna itself is very

⁴⁰ Supreme Court Order dated 27th April 2004.

⁴¹ Supreme Court Order dated 18th November 2004.

limited. In 2002-03 this scheme was “transferred” to the State Plans, like NOAPS. Note also that with the enhancement of Central assistance for the NOAPS from Rs.75 to Rs.200 per month, income support in kind through Annapurna is now of much lower value than a cash pension under NOAPS.

Supreme Court Orders

1. As with other food-related schemes, the Supreme Court order of 28th November 2001 calls for prompt implementation of Annapurna (“the States/Union Territories are directed to identify the beneficiaries and distribute the grain latest by 1st January, 2002”).⁴²

2. As with NOAPS and NFBS, this scheme is not to be discontinued or restricted in any way without the permission of the Supreme Court.⁴³

Comments

The status of Annapurna is not very clear. It seems to have been launched in a half-hearted manner, and never really “took off”. Field reports suggest that the coverage is very limited. Also, there are occasional reports of the scheme being discontinued in particular states, in violation of Supreme Court orders. Ideally, those who are eligible for Annapurna should be promptly covered by the National Old Age Pension Scheme.

2.9. National Maternity Benefit Scheme

Background

This scheme is a timid attempt to introduce “maternity benefits” in India's social security system. It was introduced in 1995 as

⁴² Supreme Court Order dated 28th November 2001.

⁴³ Supreme Court Order dated 27th April 2004.

part of the National Social Assistance Programme, and later transferred to the Health Ministry. Under NMBS, pregnant women from BPL families are entitled to lump-sum cash assistance of Rs 500, up to two live births. The payment is to be made 8-12 weeks before delivery, but in practice there are long delays, partly due to the complex application procedures. Women are often paid months if not years after delivery, and this defeats the purpose of the scheme. Further, the coverage of this scheme is very low: according to official figures, the number of women who actually received cash payments under NMBS in 2003-04 was as low as 4.3 lakh - less than 2 per cent of the total number of births in that year.

Supreme Court Orders

1. As with other food-related schemes, the Supreme Court order of 28th November 2001 calls for prompt implementation of the National Maternity Benefit Scheme.
2. As with NOAPS, this scheme is not to be discontinued or restricted in any way without the permission of the Supreme Court.⁴⁴
3. On 9th May 2005, the Supreme Court refused to allow the Government of India to phase out NMBS and provide maternity benefits under a new scheme, Janani Suraksha Yojana (JSY). The reason given for this refusal is that it is not clear whether the new scheme preserves all the benefits available under NMBS, as the government claims. The Court requested the government to submit further information on JSY, and asked the Commissioner's to “examine the matter in depth

⁴⁴ Supreme Court Order dated 27th April 2004.

and file a report”. “Meanwhile, the existing National Maternity Benefit Scheme will continue”⁴⁵

Comments

This scheme is in bad shape. The procedures are complicated, the quantum of benefits is small, payments are often delayed for months if not years, and the coverage is very limited. The government seems to be keen to phase out this scheme and replace it with Janani Suraksha Yojana (JSY), but JSY itself has many flaws. In fact, the main focus of JSY is not maternity entitlements but the promotion of institutional deliveries and safe motherhood. Also, it is not clear whether this new scheme preserves the earlier NMBS entitlements, in particular maternity benefits in cases of a delivery at home. This issue is yet to be fully deliberated in the Supreme Court.

2.10. Sampurna Gramin Rozgar Yojana

Background

The initial PUCL petition, submitted in April 2001, argued that assured employment at a living wage is the best protection against hunger. In this and other ways, the right to food is closely connected to the right to work. An important step towards the realisation of the right to work was made in August 2005, with the enactment of the National Rural Employment Guarantee Act (NREGA)⁴⁶. Employment issues have figured in the Supreme Court hearings from time to time,

⁴⁵ Supreme Court Order dated 9th May, 2005.

⁴⁶ It is not possible to discuss the National Rural Employment Guarantee Act in this booklet. However, another booklet is available for this purpose: Employment Guarantee Act: A Primer. This primer is written in simple language and addressed to a wide audience, and is particularly suitable for training workshops and related activities. You can download this booklet from www.righttofoodindia.org or request a copy from the secretariat of the Right to Food Campaign” (see Appendix 2 for contact details).

especially with reference to Sampurna Gramin Rozgar Yojana (SGRY), one of the eight food-related schemes covered by the interim order of 28th November 2001. Note that SGRY is being automatically phased out in districts where NREGA has come into force. With the universalisation of NREGA, the SGRY has been merged into NREGA across the country.

Sampurna Gramin Rozgar Yojana (SGRY) is a centrally-sponsored employment scheme. It was initiated in August 2001, and officially aimed at generating 100 crore person-days of employment each year. According to the official guidelines: “The SGRY is open to all rural poor who are in need of wage employment and desire to do manual and unskilled work in and around his/her village/habitat. The primary objective of the scheme is to provide additional wage employment in rural areas, thereby provide food security and nutritional levels. The secondary objective is the creation of durable community, social, economic assets and infrastructural development in rural areas. While providing employment preference shall be given to agricultural wage earners, non agricultural unskilled wage earners, marginal farmers, women, members of the Scheduled Castes/ Scheduled Tribes and parents of child labour withdrawn from hazardous occupations, parents of handicapped children or adult children of handicapped parents who want to work for wage employment.”⁴⁷

Supreme Court Orders

Important orders pertaining to SGRY were issued by the Supreme Court on 28th November 2001, 8th May 2002, 2nd May 2003, and 20th April 2004. These include:

⁴⁷ Government of India (2002), Guidelines for Sampurna Grameen Rozgar Yojana (New Delhi: Ministry of Rural Development), page 1.

1. Speedy implementation: Several directions were issued (notably on 8th May 2002, 20th April 2004 and 17th October 2004) to the effect that SGRY should be implemented “expeditiously” by the Central Government and State Governments. In particular funds should be released on time and fully utilised, and SGRY funds should not be “diverted” for other purposes⁴⁸.

2. Priority groups: “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.”⁴⁹

3. Doubling of SGRY: On 2nd May 2003, the Court directed the government to “double” the scale of SGRY, in view of drought conditions prevailing in large parts of the country: “The present SGRY system should be expanded, at least doubled, both in terms of allocation of food-grain and cash for the months of May, June, and July”. On 20th April 2004, this direction was extended: “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.”

4. Timely wage payments: Wage payments under SGRY are to be made on a weekly basis.⁵⁰

⁴⁸ Supreme Court Order dated 8th May, 2002.

⁴⁹ Supreme Court Order dated 8th May 2002.

⁵⁰ Supreme Court Order dated 8th May 2002.

5. Ban on contractors: The use of contractors is “prohibited”.⁵¹

6. Minimum wages: “The State Governments/UTs are directed to pay minimum wages to the workers under the Scheme.”⁵²

7. Ban on labour-displacing machines: The State Governments were also directed to “stop use of labour displacement machines” under SGRY⁵³.

8. Role of Gram Panchayats: Gram Panchayats are entitled to “frame employment generation proposals in accordance with the SGRY guidelines for creation of useful community assets that have the potential for generating sustained and gainful employment”. Further, “these proposals shall be approved and sanctioned by the Gram Panchayats and the work started expeditiously”.⁵⁴

9. Social audits: Gram Sabhas are entitled to conduct social audits of SGRY (and indeed of all food-related schemes). On receipt of any complaint of misuse of funds from the Gram Sabhas, the implementing authorities shall “investigate and take appropriate action in accordance with the law”.⁵⁵

10. Transparency: “Access to all public documents including all muster rolls shall be allowed to such persons who seek such access and the cost of supplying documents shall not be more than the cost of providing copies of the documents.”⁵⁶

⁵¹ Supreme Court Order dated 8th May 2002.

⁵² Supreme Court Order dated 20th April 2004.

⁵³ Supreme Court Order dated 20th April 2004.

⁵⁴ Supreme Court Order dated 8th May 2002.

⁵⁵ Supreme Court Order dated 8th May 2002.

⁵⁶ Supreme Court Order dated 20th April 2004.

Comments

Field reports suggest that most of the above orders are routinely violated in most states. Some specific instances, such as the violation of Court orders on SGRY in Badwani District (Madhya Pradesh), have been taken up by the Commissioner's or even referred to the Supreme Court through Interim Applications. But even there, attempts to seek redressal have been partially successful at best.

The National Rural Employment Guarantee Act 2005 may be an opportunity to make a new start as far as employment programmes are concerned. Under this Act, anyone who is willing to do unskilled manual labour at the statutory minimum wage is entitled to being employed on public works within 15 days (subject to a limit of “100 days per household per year”), or failing that, to an unemployment allowance. The Act creates durable legal entitlements, helps labourers to enforce their rights, and includes strong provisions for transparency and accountability. SGRY is being merged with other employment schemes initiated under the Act., after the universalisation of the NREGA.

2.11. Other Interim Orders

The BPL List

The identification of BPL families is highly problematic, and by implication, so is the “targeting” of the Public Distribution System. On 8th May 2002, the Supreme Court directed the Central and State Governments to “frame clear guidelines for proper identification of BPL families”, but this is yet to be done. By then, the “BPL Census” of 2002 had been completed and the Central Government was keen to

proceed with the finalisation of the BPL list on this basis. However, following reports of massive irregularities in the BPL Census, and widespread criticism of the Census methodology, the Supreme Court stayed the use of the 2002 list in an interim order dated 5th May 2003. More precisely, it prohibited removing anyone from the previous BPL list (which goes back to 1997) until further orders.

In February 2006, a settlement was reached between the petitioner (PUCL), the Ministry of Rural Development and the Food Ministry, Government of India. According to this settlement, the Central Government shall continue allocation of food grains, under the TPDS, on the basis of the 1993-4 poverty ratios (i.e. 36% at the national level), applied to projected state populations as on 1st March 2000. Meanwhile new names could be added and ineligible names deleted from the BPL List 2002, on a continuous basis during the period that the list will be applicable.

After taking note of this settlement, the Supreme Court Order vacated the earlier stay order on the BPL list (dated 5th May 2003), in an order dated 14th February 2006. The Government of India was also directed by the Supreme Court to conduct a fresh BPL survey and finalise the content of the survey in consultation with the Supreme Court Commissioner's. While the new survey was to be completed by April 2007, the Government of India is yet to initiate it.

Starvation Deaths and Destitution

The “right to food case” began with a concern for the plight of drought-affected people. In this context, starvation deaths were brought to the attention of the Court. As the

case evolved, starvation deaths were recognised as the extreme manifestation of a much larger problem of widespread hunger and undernutrition. As we saw earlier (section 1.4), the Court has clearly stated that the prevention of “hunger and starvation” is “one of the prime responsibilities of the Government - whether Central or State”⁵⁷. On 29th October 2002, the Court also declared that starvation deaths would be taken as evidence that its orders have not been implemented. Further, Chief Secretaries may be held responsible for incidents of starvation deaths.⁵⁸ The same order directed the Central and State Governments to ensure that Antyodaya Anna Yojana is extended to “the destitute section of the population”. Taken together, these orders can be read as a strong statement to the effect that the time has come to stop tolerating starvation deaths and extreme destitution.

State-specific Orders

From time to time the Supreme Court has issued orders addressed to specific State Governments. For instance, on 28th November 2001 the Court directed the Delhi Government to ensure that application forms for ration cards are available to everyone free of charge. Similarly, on 17th October 2004 the Court issued various directions to the Government of Madhya Pradesh, regarding the prompt payment of wages under SGRY and related matters. Note that no attempt will be made to list or summarise the state-specific orders in this booklet.

⁵⁷ Supreme Court Order dated 20th August 2001.

⁵⁸ Supreme Court Order dated 29th October 2002.

3. WHAT WE CAN DO

3.1. Supreme Court Orders as a Tool for Action

The Supreme Court orders on the right to food can be a powerful tool for action. These orders give people a whole range of legal rights: the right to a nutritious Mid-Day Meals at school, to a functioning public distribution system, to an Anganwadis in the neighbourhood, to prompt payment of minimum wages on public works, and so on. The orders also put in place various appeal and redressal procedures that people can use to claim these entitlements. Ultimately, the realisation of the right to food requires much more than these “interim orders”. Nevertheless, these orders provide legal safeguards for some important aspects of the right to food.

Having said this, the implementation of Supreme Court orders depends crucially on organised public demand. Without public pressure, the orders typically remain on paper. The orders are just a helpful “stick” to keep the government on its toes. But hands are needed to lift the stick and use it.

Much can be done to campaign for the implementation of Supreme Court orders. Action is required at all levels, from remote villages to the national capital. And there is a role for everyone: activists, workers, parents, teachers, journalists, administrators, politicians, researchers, or just concerned members of the community. Some ideas and suggestions are given below, based on recent experience. Many of them have already been used with good effect somewhere or the other. We hope that these “hints” will help you to initiate similar activities in your own area.

3.2. What to "Investigate"

A good starting point is to find out what is happening in your village or area, as far as the implementation of Supreme Court orders is concerned. This can be done through informal enquiries (e.g. discussions with local residents), or through formal surveys (see below). Here are some examples of issues to investigate in one way or another:

- ✿ Are Mid-Day Meals being provided regularly in the local schools? Is the content of the meal adequate? Have there been any incidents of social discrimination, such as the removal of a Dalit cook? Are hygiene safeguards in place?
- ✿ Has the implementation of the National Rural Employment Guarantee Act begun in the area? Are people aware of the Act, and making active use of it? Have any applications for work been rejected? Is the unemployment allowance being paid to those who have not been given work?
- ✿ Does every hamlet in the area have a functioning Anganwadis? Are children being fed regularly, and is the food nutritious? Are effective arrangements in place for children below the age of three?
- ✿ Are ration shops open throughout the month, at pre-specified times displayed on a notice board? Does everyone have a ration card? Is every cardholder getting his or her full rations at the right price? Is there any evidence of corruption in the Public Distribution System?
- ✿ What is the status of the monitoring and redressal

procedures outlined in the Supreme Court orders? For instance, are social audits being conducted by the Gram Sabha? Is the District Collector registering, and responding to, complaints of violations of the Interim Orders?

These are just some illustrations of the key issues – the list can be expanded without difficulty in the light of local conditions.

3.3. Community Action

It is useful to involve the village community in the enforcement of Supreme Court orders on the right to food. This can be done in various ways. Here are some examples:

- ✿ The Village Education Committee (VEC) or Parents-Teachers Association (PTA) can help to monitor the provision of Mid-Day Meals in the local school, and to improve the quality of the meal.
- ✿ The Gram Panchayat can play an active role in the implementation of the National Rural Employment Guarantee Act, e.g. by preparing a shelf of projects, registering labourers, and implementing local works.
- ✿ Social audits of food-related schemes can be done by the Gram Sabha.
- ✿ A “Vigilance Committee” can be formed to ensure that there is no corruption in the Public Distribution System, and that food rations are delivered on time.

- ✱ The local Mahila Mandal can help the Anganwadis Worker to improve the functioning of the Anganwadis: demand better facilities, ensure that the Anganwadis opens on time, enhance the nutritional supplements, organise counselling for pregnant and lactating women, and so on.

- ✱ Local youth can help to spread awareness of the Supreme Court orders among all concerned: village residents, teachers, Anganwadis workers, Panchayat members, MLAs, and even local officials.

In most villages, there are functioning community institutions of one sort or another. It may be the Gram Panchayat, the Village Education Committee, a Mahila Mandal, a Self-Help Group, a Youth Club, or some other association. It is a good idea to find out which of these institutions are active in your area, and to involve them in the implementation of Supreme Court orders. In some cases, new institutions may have to be created. For instance, in some areas, special village committees have been formed to check (every day!) that the ration shop is open and that school children are getting a nutritious meal.

When you work with community institutions, it is important to ensure that they are fair and “inclusive”. If, say, a Gram Panchayat is dominated by upper-caste landlords, it is unlikely to do much for the poorer households. Similarly, if Dalits are excluded from the local Mahila Mandal, something must be done about it before the Mandal can be actively involved in the implementation of Mid-Day Meals. Indeed, one of the purposes of Mid-Day Meals is to counter this kind of social discrimination. The participation of disadvantaged groups in community institutions is essential to ensure that these institutions further their interests.

3.4. How to Complain

Suppose that you have noticed some violation of the Supreme Court orders. For instance, Mid-Day Meals are not being provided in the local school, or grain is not available in the ration shop. Where and how should this problem be taken up?

The best thing to do is start at the local level, and appeal to “higher” levels if you are unable to sort things out at the local level. For instance, if the problem concerns a particular school, it would be natural to speak to the teachers, the Parents-Teachers Association (PTA), or the Gram Panchayat. Similarly, if the problem relates to the local ration shop, it may be best to discuss it first with the PDS dealer or inspector. Often it is possible to solve the problem at that level.

If this does not work, try to approach the concerned officials, say the Block Education Officer (for Mid-Day Meals), the District Supply Officer (for the public distribution system), the Child Development Project Officer (for integrated child development services) or the Programme Officer (for the employment guarantee act). Remember also that the District Collector is bound to register any complaint of violation of the Supreme Court orders, and to respond to it (see Box 3).

A “public hearing” is often a good way of drawing the public's attention to a particular issue and putting pressure on local officials to take action. If they don't wake up, various forms of “agitation” can be considered, such as a *Rally*, *Dharna* or *Gherao*.

If a complaint is not getting attention through official channels, you can also approach the “Advisor” to the Commissioner's of the Supreme Court. Each state has its own Advisor (see Appendix 2 for further details). The Advisor is often able to take up these matters with the state government and persuade it to intervene.

3.5. Appeals to the Commissioner's

In cases of severe apathy or resistance from the local administration, a complaint can also be sent directly to the Commissioner's of the Supreme Court in Delhi. Interventions from the Commissioner's have often (not always) proved effective in the past. This is because the Commissioner's act with the full authority of the Supreme Court, as far as the monitoring of interim orders is concerned. However, appeals to the Commissioner's are best used as a “last resort”, when local action has failed. And these appeals should be well documented, to enable the Commissioner's to demand specific action from the concerned authorities—typically the Chief Secretary of the State Government. For advice on how to send complaints to the Commissioner's, please contact their office at the address given in the Appendix.

3.6. Interim Applications

If you are unable to obtain redressal in other ways, you can consider the possibility of filing an “Interim Application” in the Supreme Court, under the right to food case (PUCL vs. Union of India and Others, Write Petition [Civil] 196 of 2001). An “Interim Application” (IA) is an application to the Court for some relief or orders, usually submitted after the case has already begun but before the final judgement has been reached, and therefore “interim” (or “in

between”). The Court can decide whether or not to accept a particular application and deliberate it.

So far, close to 100 Interim Applications have been filed in the right to food case. Some have been rejected; others have led to useful orders or reliefs. For instance, the Court rejected several applications for relaxation of earlier orders, submitted by the Government of India. On the other hand, the Court did accept an application filed by Jagrit Adivasi Dalit Sangathan in Madhya Pradesh, demanding the prompt payment of wages under Sampurna Gramin Rozgar Yojana in Badwani District. In response to this application, the Court issued detailed orders on 17th October 2004, directing the State Government of Madhya Pradesh to address the Sangathan's grievances.

If you want to explore the possibility of filing an Interim Application in the right to food case, please contact the Human Rights Law Network, which is arguing the case for the petitioners (People's Union for Civil Liberties). The contact details are given in the Appendix 2. Please remember, however, that it is best to consider Interim Applications when (1) other means of redressal have failed, and (2) the relief's sought are of interest to the public at large rather than to specific groups or areas.

3.7. Legal Action in the High Courts

Another possibility is to file petitions in the High Courts, rather than in the Supreme Court. Activating the High Courts on this issue is a useful way of broadening the reach of legal action for the right to food. Also, High Courts are often easier to deal with than the Supreme Court. And a petition submitted to the High Court is likely to be heard more quickly than an Interim Application in the Supreme Court, as the right to food case is moving quite slowly.

A useful example of intervention through the High Courts is the recent litigation on the Public Distribution System in Chhattisgarh. Following evidence of massive corruption in the PDS, a petition was filed demanding that ration shops should be “de-privatized”, i.e. taken away from private dealers and transferred to collective institutions such as Panchayats, cooperatives and Self-Help Groups. In spite of fierce resistance from private dealers, the Court settled in favour of the applicants and the PDS in Chhattisgarh was de-privatized. Early field reports suggest that this has helped to reactivate the PDS in Chhattisgarh.

3.8. Commissioner's Recommendations

In addition to the Supreme Court Orders the Commissioner's to the Supreme Court have from time to time made recommendations to the State Government and intervened with the Government of India on the food and employment scheme. We are listing them below:

MDMS

1. Decentralised procurement and preparation of hot cooked meals by local women's groups and other village level institutions,
2. No burden on teachers in procurement and preparation of hot cooked meals,
3. Permitting aged people to share in MDM in the pattern of Tamil Nadu,
4. Providing all meals for urban street children and children of migrant worker families in community based residential hostels run by sharing spaces in existing schools,
5. Admission to children of migrant workers.

ICDS

1. Hot cooked meals for children in the 3 to 6 years age group,
2. Locally prepared weaning foods for children between 6 months and 3 years,
3. Location of ICDS centres adjacent to school buildings in hamlets that have school buildings,
4. On-going campaign to include all disabled children,
5. Admission to children of migrant workers.

TPDS

1. All urban homeless people to get Antyodaya cards,
2. All slum dwellers, both authorised and unauthorised, to get BPL cards,
3. All released bonded labourers to get Antyodaya cards,
4. All families internally displaced by conflict entitled to Antyodaya cards,
5. Consider replacing private PDS retailers with panchayat or cooperative management.

NOAPS

1. Establish budgetary systems to ensure that pensions' payment is made of every month by the 7th, in the same ways as salaries and pensions of government servants are released without awaiting allocations.
2. Ensure doorstep payment of pensions every month, through Bank, Post office or money orders.
3. Many state governments formally or informally allow old people to avail or either pensions or AAY card coverage. This is inappropriate, because the AAY enables old people to maximise the grain that they can access through the pension. Therefore these instructions should be withdrawn.

What is the mechanism at the level of the State Government that has been put in place by the Supreme Court to ensure compliance with its interim orders in the Right to Food Case?

On 8th May 2002, the Supreme Court laid down specific lines of accountability and grievance procedures for the implementation of all “interim orders”. The key directions issued on 8th May 2002 are as follows:

“... (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 Zila 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.Sankaran, former Secretary, Rural Development, Government of India, shall function as Commissioner's 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 Commissioner's 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, selection⁵⁹ 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.....”

3.9. Advocacy, Media and Research

Some problems are difficult to solve through “local action”, and require policy changes at higher levels. For instance, if the budget allocation for Mid-Day Meals is too low, the local headmaster and even the Block Education Officer may not

⁵⁹ The order actually says “section”, but this is almost certainly meant to read “selection”.

be able to do anything about it. This is because budget allocations are decided by the State Government. Similarly, issues such as the eligibility criteria for BPL cards, the price of grain in ration shops, the coverage of old-age pensions, the location of Anganwadis, and so on, are matters of state policy.

Achieving policy changes requires organised “advocacy”. This involves activities like lobbying Members of the Legislative Assembly (MLAs), sending petitions to the Chief Minister, organising rallies in the state capital, writing in the newspapers, and so on. Here are some examples of demands that can be made in this context:

- ✿ Arrangements must be made to provide nutritious, cooked Mid-Day Meals in all primary schools (see section 2.4). This requires adequate budget allocations as well as provisions for cooking staff, training programmes, cooking sheds, drinking water, micronutrient supplementation and related inputs.
- ✿ Every hamlet should have an Anganwadis. The budget allocation for “supplementary nutrition” under ICDS should be at least two rupees per child per day. Every child under age six should have access to the full range of ICDS services.
- ✿ The State Government must lift its entire allocation of grain under the PDS from the Food Corporation of India and enforce the PDS Control Order of August 2001.
- ✿ The State Government should implement the National Rural Employment Guarantee Act 2005. This means ensuring that anyone who applies for work under the Act is employed within 15 days, and failing that, receives an unemployment allowance.

- ✿ The State Government must take steps to ensure wide awareness of the Supreme Court orders on the right to food.

If you take up advocacy work, don't forget the media. Mass media such as daily newspapers and TV interviews are the best way of reaching a large audience in a short time. Also, politicians and bureaucrats tend to be quite concerned to avoid “critical” media reports, so this is a good way to keep them on their toes. However, getting attention for social issues like Mid-Day Meals in the mainstream media is not always easy. It requires taking time to write, building contacts with friendly journalists, conducting “newsworthy” investigations, organising effective press conferences, and so on. “Learning by doing” is the best approach here, but it is also useful to seek advice from people with media experience. Effective media work is hard work, but it is a powerful tool of action.

Research is another useful tool of action. If you have solid facts, it will be that much harder for the concerned authorities to ignore your demands. Like media work, good research is hard work and there is no alternative to “learning by doing”. But much can be learnt from surveys and studies conducted earlier in various states: Bihar, Chhattisgarh, Jharkhand, Karnataka, Madhya Pradesh, Rajasthan, West Bengal, among others. Many of these studies are available on the website of the Right to Food Campaign (www.righttofoodindia.org). Also on this website, you will find samples of surveys questionnaires, guidelines for field investigators, and related material.

3.10. Working Together

Many people around the country are working for the implementation of Supreme Court orders, and for the right to food. They are doing this in many different ways: by lobbying with State Governments, filing petitions in the Courts, writing in the newspapers, organising demonstrations, and so on. It may be a good idea to check who is working on the right to food in your area or state, and to link up with other link-minded people.

A good place to start is the Right to Food Campaign, an informal network of individuals and organisations committed to the realisation of the right to food in India. For advice on how to contact the campaign, see Appendix 2.

Last but not least, if you found this booklet helpful, please help to disseminate it. Here are some ways in which this can be done:

- ✱ Organising a group discussion of this booklet in your village or organisation.
- ✱ Arranging a translation in the local language, if it is not available already.
- ✱ Using portions of this booklet to prepare posters and leaflets. For instance, the orders on Mid-Day Meals (section 2.4) could be used to make a poster to be displayed in the local school, Panchayat Bhawan, etc.
- ✱ Distributing or selling copies of this booklet in your area. Bulk orders can be sent as indicated in Appendix 2.

Finally, please remember that we are interested in your comments and suggestions on this booklet. It will be updated from time to time as new Court orders come up. Your ideas and suggestions will be of great help in preparing improved booklets in the future.

APPENDIX 1: THE SUPREME COURT ORDERS

So far, over fifty “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.⁶⁰

1. Text of the Order of 23rd July, 2001

Counsel for the petitioner is permitted to file a fresh application for interim relief. A copy of the same is 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

⁶⁰ The full text all the orders is also available on the Supreme Court website (www.courtnic.nic.in).

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 impaled 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 20th August, 2001.

2. Text of the Order of 20th August, 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 go downs, 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 3rd September, 2001

Issue notice to the Union of India as well as, in the first instance, to the States of Andhra Pradesh, Chhattisgarh, 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 31st August, 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 17th September, 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 Antyodaya Anna Yojana. We direct these 16 States and Union Territories, namely, Arunachal Pradesh, Assam, Bihar, Delhi, Goa, Manipur, Nagaland, Orissa, Sikkim, Tamil Nadu, Tripura, Uttarakhand, West Bengal, Chandigarh, Lakshadweep and Pondcherry to comply with the Central Government's directions within two weeks from today and report compliance.

4. Text of the Order of 17th September, 2001

With reference to this Court's direction dated 3rd 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 Meals Scheme, Integrated Child Development Service, 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 food grains 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 5th November, 2001.

5. 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. 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 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 Meals 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 Meals 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 Service (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 Service.

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, government 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.

6. Text of the Order 8th May, 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 Sampurna 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, a forestation 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 Zila 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 Commissioner's of this Court for the purpose of looking into any grievance that my 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 Commissioner's 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, selection⁶¹ 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 29th October, 2002

On 8th May, 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 Commissioner's 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.

⁶¹ 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 12th 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 Commissioner's in the said report.

We have heard the learned Attorney General, Mr. Colin Gonsalvez and Dr. A.M. Singhvi and in furtherance and in addition to our aforesaid order of 8th May, 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 Commissioner's 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 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.

It is clarified that the scope of the work of the Commissioner's 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 Commissioner's 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 Commissioner's as the Commissioner's 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 Commissioner's, as well as the Commissioner's 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 Commissioner's 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 Commissioner's 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 8th May, 2002 and direct the parties to comply with the same, and, in particular the Central Government shall formulated the scheme to extend the benefits of the Antyodaya Anna Yojana to the destitute section of the population.

Adequate funds shall be made available to the Commissioner's by the Union of India to enable them to perform the functions. To await the next report of the Commissioner's, 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 2nd May, 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. There 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 3rd March, 2003 requiring the respondents to file replies to the applications

and place on record the requisite materials, while adjourning the case to the 8th April, 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 3rd March, 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 8th April, 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 Gonsalvez,

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 is 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 relief's 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 Sampurna Gramin 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 tones 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 Gramin 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 8th 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

(a) do not keep their shops open throughout the month during the stipulated period,

(b) fail to provide grain to BPL families strictly at BPL rates and no higher,

(c) keep the cards of BPL households with them,

(d) make false entries in the BPL cards,

(e) engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/organizations,

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 23rd July, 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 Meals, on 28th November, 2001, this Court directed the State Government/Union Territories to implement the Mid-Day Meals Scheme (MDMS) by providing every child in every Government and Government assisted primary schools with a prepared Mid-Day Meals

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 Meals. 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 Meals 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 Meals Scheme in at least 25% of the District, which may be most poor.

By order dated 8th May, 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 Commissioner's 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 Commissioner's. 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. Gonsalvez 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 8th August, 2003. Union of India may also file its affidavit(s) by the same date. For further consideration the matter shall be placed on 19th August, 2003.

9. Text of the Order 5th May, 2003

The matter has been mentioned by Mr. Colin Gonsalvez, learned counsel for the petitioner. He has also produced copy of the letter dated 3rd May, 2003 written to the learned Attorney General for India in addition to the orders passed on 2nd May, 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 19th August, 2003

Fourth report dated 14th August, 2003 has been filed by the Commissioner's, Dr. N.C. Saxena and Mr. S.R. Sankaran. Copy of the report may be supplied to such of learned counsel who may approach the registry. In respect of the report of the high powered committee, the same may be supplied by the petitioner to the States through their counsel on payment basis.

In the report dated 14th August 2003, various issues have been dealt with such as Mid-Day Meals, ICDS, Targeted Public Distribution System, Antyodaya Anna Yojana, and other social security schemes, employment programmes, urban destitution, corruption and transparency and various directions have been sought from this Court. We are of the view that many aspects dealt in the report can be sorted out between the Central and /or State Governments and the petitioners, particularly, having regard to the fact that it is a non-adversary litigation and the aspects dealt with pertain to that class of citizens which cannot afford even two times meal. Mr. Gonsalvez states that he had discussed the matter with Mr.

Soli J. Sorabjee, learned Attorney General and he was also of the view that many aspects can be thrashed out across the table during mutual discussions. It is also so stated by learned counsel for the Union of India. If necessary, at appropriate stage, States can also be involved in the aspect of resolution of some of the matters. Let this be done within four weeks. The matters which remain unresolved, parties can seek directions from the Court.

11. Text of the Order 2nd December, 2003

A report dated 28th November, 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. Gonsalvez, 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.

12. Text of the Order of 16th January, 2004

IA No.31

We have perused the Report annexed to I.A. No 31 of 2003. The Report seems to be as a result of visit of Sukumar Gain, Convenor, Right to Food and Work West Bengal Network and Anuradha Talwar, Advisor to the Commissioner's appointed by this Court, to Tea-Plantations in Jalpaiguri District between 12th December 2003-14th December 2003. The Report reveals alarming state of affairs. The State of West Bengal shall respond to the Report and, in the meanwhile, take such action as it may consider appropriate having regard to the various

aspects and incidents of malnutrition and other problems highlighted in the Report. The response be filed within 10 days.

In the meanwhile, the Commissioner's are also requested to give their suggestions on the aspects highlighted in the Report, particularly on directions 1-7 sought for in the Report.

13. Text of the Order of 20th April, 2004

Upon hearing counsel the Court made the following order.

Mid-Day Meals Scheme

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

On 28th November, 2001, this Court directed the State Governments/Union Territories to implement Mid-Day Meals scheme by providing every child in every government and government aided primary school with a prepared Mid-Day Meals with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. The said order further directed that those governments

which provide dry rations instead of cooked meals, within three months, should start providing cooked meals in all government and government aided primary schools in half of the districts of the State (in order of poverty) and must, within further period of three months, extend the provision of cooked meals to the remaining parts of the State.

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

After the orders were made on 2nd May, 2003, various reports have been filed in regard to the implementation of the directions for supply of the cooked Mid-Day Meals in schools

in terms of directions contained in the order dated 28th November, 2001.

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

Some of the States which claim that they have made a beginning and are partially implementing the scheme have also not given the full and complete details so that this Court could know the extent of the implementation. Most of the affidavits only set out the number of schools and the students where the scheme was being implemented. What was required to be done was to simply state as to how many schools in a particular State/Union Territory would be covered under the directions for supply of cooked Mid-Day Meals, 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 Commissioner's sets out broadly the States which have implemented it fully or partially or have not responded to the

queries of the Commissioner's. 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 Commissioner's, on the basis of their earlier experience, states that nutritious Mid-Day Meals at schools can be a highly effective way of protecting children from hunger and can also boost school attendance among girls. It also notices some of the areas where such meals are supplied even during the school vacations, especially in drought affected areas. None can question the desirability of extension of this facility even during vacations in drought affected areas where children are deprived of even one day meal.

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

The petitioner has also made a reference to the announcement made by the Prime Minister extending the Mid-Day Meals scheme upto 10th Standard during his address to the Nation on 15th August, 2003. The suggestion is that extension should be made operational at the earliest. In reply, it has been contended that once the Mid-Day Meals scheme

at primary level is consolidated, the question of extension of the scheme upto 10th Standard can be taken up in a phased manner. In this connection, it has been pointed out that the views of various States have been asked in regard to the cost and logistic requirements for the extension of the scheme upto 10th standard.

Further, the petitioner, referring to the recommendations of the Abhijit Sen Committee appointed by Government of India regarding sharing of conversion cost of implementing the cooked Mid-Day Meals 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 Meals scheme, we issue the following directions:

1. All such States and Union Territories who have not fully complied with the order dated 28th November, 2001 shall comply with the said directions fully in respect of the entire State/Union Territory, preferably, on the re-opening of the primary schools after a long vacation of 2004 and, in any case, not later than 1st September, 2004.
2. All Chief Secretaries/Administrators are directed to file compliance report in regard to directions No.1 on or before 15th September, 2004.
3. The conversion costs for a cooked meals, 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 of the food-grains.

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

7. In drought affected areas, Mid-Day Meals shall be supplied even during summer vacations.

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

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

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

SGR Y – Employment Guarantee

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

1. The directions for doubling the food-grains as also cash in terms of the order dated 2nd May, 2003 shall be applicable this year also.
2. The State Governments/Union Territories are directed to pay minimum wages to the workers under the scheme and shall stop use of labour displacement machines.
3. Access to all public documents including muster rolls shall be allowed to such persons who seek such access and the cost of supplying documents shall not be more than the costs of providing copies of the documents.
4. The allocation of funds and food-grains shall be timely made by the Central Government to the State Governments.
5. The State Governments are directed to utilise the entire allocation, as aforesaid, so that the allotted funds and food-grains neither lapse nor result in reduction in subsequent years.
6. In case, some of the State Governments, as a result of financial constraints, wish to pay 100% wages in shape of food-grains and not partly food-grains and partly cash, it would be open to them to approach the Central Government. On examination of each case, the Central Government may permit payment of 100% wages in the shape of food-grains.

Antyodaya Anna Yojana

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

1. The Government of India shall issue, within two months, guidelines so that the existing condition of possession of a BPL card for inclusion in AAY category is dispensed with.

2. The State Governments should be directed by the Central Government to accelerate the issue of Antyodaya cards especially to primitive tribes. The guidelines issued to State Governments shall be implemented in letter and spirit.

List the Writ Petition on 27th April, 2004 for consideration of other Schemes.

14. Text of the Order of 27th April, 2004

Upon hearing counsel the Court made the following order:

National Social Assistance Programme (NSAP):

We have further heard for some time Mr. Gonsalvez, learned senior counsel and Mr. Raju Ramachandran, and 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.

Integrated Child Development Scheme (ICDS)

In respect of Integrated Child Development Scheme, directions were issued on 28th 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. Gonsalvez and perused the report submitted by the Commissioner's 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 per cent of the children, in the rest of the country the average seems to be below 25 per cent. The position in the States of Bihar, Uttar Pradesh, Jharkhand and Uttarakhand 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 28th November, 2001.

As prayed, the case is adjourned to 29th April, 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.

15. Text of the Order of 29th April, 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 Anganwadis Centers (AWCS). In all, there are 6 lakh 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 30th June, 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 1st April, 2003 till 31st March, 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 31st July, 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.

16. Text of the Order of 17th August, 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 16th September, 2004.

17. Text of the Order of 16th September, 2004

Mr. Colin Gonsalvez, learned senior counsel appearing for the petitioner has handed to us the fifth report of the Commissioner's of August 2004. According to the learned counsel, in some of the States there is hardly any implementation of the Mid-Day Meals Scheme and other schemes as extensively stated in the report. It is further submitted that urgent directions are required to be made on the basic of the recommendations made in the report so that schemes can be meaningfully implemented and the benefits of the Scheme reaches the downtrodden for whom the schemes have been made form time to time by the Central Government. Copy of the report shall be supplied to such counsel appearing for the State Governments who may approach Ms. Aparna Bhat, learned counsel within three days. It would for be open to the Central Government and / or the State Governments to respond to the recommendations made and the findings of the report on or before 1st October 2004. We direct the following State Governments to positively respond to the report: Uttar Pradesh, Bihar, Jharkhand, Chhattisgarh, Madhya Pradesh, Delhi, West Bengal, Assam, Manipur and Rajasthan.

We also expect the Union of India to respond within the stipulated time. List the matter for consideration of the Report and hearing on 7th October 2004. Till further orders,

the Union of India shall not transfer the Mid-Day Meals Scheme to the State Governments. The order shall not be construed to mean that we have restrained the Central Government from transferring funds or grains to the State Governments or restrained the implementation of the Schemes by the State Governments.

Further Mr. Gonsalvez has brought to our notice a Note which, according to the petitioner has been prepared by its Rajasthan branch and sets out the details of hunger related deaths and a situation of nutritional emergency amidst primitive tribes in Baran district of Rajasthan. According to the said Note, in the month of August 2004 twenty-six deaths took place in Baran district of Rajasthan as a result of malnutrition and hunger. As per the note, mostly children have died on that account. Reference is also made in the Note to a special package for tribals announced by the State Government on 15th September 2004, which prominently appeared in major newspapers like Hindustan Times, Dainik Bhaskar, Rajasthan patrika etc. The said announcement includes:-

“100 days 'employment assurance scheme' for one person from every Sahariya household in Shahbad and Kishanganj block of Baran district, for which the Government has allocated 21.30 crores and 4000 quintals of grain to Baran. Also 100 days 'employment assurance scheme' for one person of every household of the Kathori tribals of Kotra and Jhadol blocks of Udaipur. According to the announcement this scheme is already being implemented.

15,000 families of Sahariyas will be taken under Antyodaya Anna Yojana and be provided according to the scheme 35 Kgs of grain at the rate of Rs.2 per kilogram every month. For which an amount of Rs 2 crore and 90 lakhs has

been budgeted by the State Government. 1200 Sahariya families will be given economic support for housing facilities.”

We have requested learned counsel appearing for the State of Rajasthan to seek instructions and file an affidavit of a responsible officer responding to what has been stated in the aforesaid Note filed by the People's Union for Civil Liberties dealing specifically as to the State Government's version of the cause of death of so many children within a span of few days in one particular district of the State. If the special package as claimed has been announced in the newspapers for the Tribals, it ought to be implemented without further delay. The affidavit shall also be filed by 1st October 2004, so that matter can be taken up on 7th October 2004.

18. Text of the Order of 7th October, 2004

We have gone through the 5th (August, 2004) Report of the Commissioner'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 Commissioner's 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 Anganwadis 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 Uttarakhand. 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 where

after 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 30th June, 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 paise 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 30th September, 2004, all the projects

were being made operational from 4th October, 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 4th October, 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 per cent are not operational. In the affidavit, it has been claimed that the remaining will be operational by 30th November, 2004. We direct the State Government to make operational all sanctioned AWCS by 30th November, 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 Gonsalvez, 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 Anganwadis 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 Yojana 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 eligibility criteria for ICDS.

9. All sanctioned projects shall be operationalize 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.

19. Text of the Order of 17th November, 2004

Sampurna Gramin Rozgar Yojana

The Order dated 7th October, 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 22nd September 2004 written by the Commissioner's 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 14th April, 2003 for construction of the dam in question in Limbi village. Further, it appears that the work of construction commenced on 22nd May, 2004 and it was completed on 2nd June, 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 Commissioner's of the Supreme Court on India that the payment has been made not later than 20th September, 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 8th October, 2004 sent by the Collector to the Commissioner's letter dated 22nd September, 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 Sampurna Gramin Rozgar Yojana (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 Sanghatan and within two weeks thereafter Sanghatan will provide the receipts to the State Government.

Mid-Day Meals Scheme

In the order dated 28th November, 2001, directions were issued for supply of prepared Mid-Day Meals in implementation of Mid-Day Meals 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 20th April, 2004, noticing that despite lapse of nearly 3-1/2 years, the order dated 28th November, 2001 was not being fully implemented in all States and Union Territories and, expressing anguish, further directions for supply of cooked Mid-Day Meals were issued directing for supply of cooked Mid-Day Meals were issued directing that those States which have not implemented the order of 28th November, 2001 shall implement it immediately and, in any case, not later than 1st September, 2004. The report filed by the Commissioner's show that in many of the States of Manipur, Nagaland, U.P and Assam, as per the 5th report of the Commissioner's 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 Jharkhand, 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 6th October, 2004 sent to Chief Secretaries of all States and Union Territories of Andaman & Nicobar, Pondcherry 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 Meals Scheme by providing at the rate of Re 1/- per child per school

day to meet cooking cost as from 1st September, 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 Meals Scheme, read with the directions issued in the order dated 28th November 2001, for supply of cooking meal, shall not be implemented forthwith in letter and spirit.

The letter dated 6th October, 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 1st September, 2004.

The aforesaid letter further stipulates that detailed guidelines if the revised Mid-Day Meals Programme will be issued in the next few weeks which will, inter alia, also lay soon 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 very child eligible for cooked meal under the Mid-Day Meals 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 16th December, 2004 placing on record

necessary steps taken to implement this order. Further affidavits shall be filed by 2nd week of January, 2005 detailing the full implementation of direction 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 6th October, 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 6th October, 2004 which, in fact, requires those governments to use available resources and recover it later 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, Jharkhand and Madhya Pradesh, 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 18th November, 2004.

20. Text of the Order of 18th November, 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

* This is an extract of the order pertaining to the 'directions' given by the Court

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.

21. Text of the Order 9th May, 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. Gonsalvez, for the present, we permit Mr. Harsh Mander to continue to assist the Commissioner - Dr. Saxena.

In 5th Report of August, 2004 of the Commissioner's 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 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. Gonsalvez 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.

22. Text of the Order 14th February, 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 1993-94 poverty rations, 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 Commissioner's in the right to food matter Case No. 196/2001 along with other sections of the society latest by the beginning of the XIth 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 5th May 2003 is vacated. Adjourned by four weeks.

23. Text of the Order 1st May, 2006

Heard Learned counsel for the petitioner.

It appears that the High Court declined to interfere only on the ground that the matter is sub-judicial before this Court.

We notice that this court in *D.K. Basu vs. State of West Bengal* 1997 (1) SCC 416 passed the following order: "Failure to comply with the requirements herein above mentioned shall apart from rendering the official concerned liable for departmental action also rendered him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country having territorial jurisdiction over the matter".

Instead of contempt proceedings, it would be appropriate if the High Court shall take up the matter as a writ petition so that the matter can be appropriately dealt with.

With the aforesaid observations, the special leave petition is disposed of.

24. Text of the Order 12th July, 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 Gonsalvez, 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 27th July, 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., 27th July, 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. 27th July, 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.

25. Text of the Judgement 13th December, 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 "Anganwadis on demand" (not later than three months) from

* This is an extract of the order pertaining to the 'directions' given by the Court

the date of demand in cases where a settlement has at least 40 children under six but no Anganwadis.

(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 woman, 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 7th October, 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 decentralization 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.

26. Text of the Order 1st February, 2007

A detailed memorandum has been filed by Mr. Colin Gonsalvez 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 Gonsalvez. 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, Uttarakhand, 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 appears 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 modifications 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 there from. 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 Gonsalvez 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.

27. Text of the Order 9th July, 2007

1. Grievance of the writ petitioner in these I.As. Is that a number of Anganwadis centres which are required to be sanctioned by December 2008 is 14 lakhs. But the number of centres sanctioned as on March, 2007 is 10.53 lakhs. Therefore, about 3.47 lakhs centres need to be sanctioned. As per the data available, the numbers of Anganwadis centres which are operational as on 30.9.2006 is 7.81 lakhs. Therefore, even the sanctioned centres have not become operational and their

number is 2.72 lakhs. The details of some of the States where sanctioned Anganwadis centres have not been operationalized to a large extent are as follows:

From the affidavit of the Union of India it appears that the position is as follows:

State	No. of sanctioned Anganwadis*	No. of sanctioned Anganwadis centres Not operationalised*	
		As per UOI	As per State Govt. Affidavits
Bihar	80528	22761	19602
Jharkhand	32097	10638	7680
Madhya Pradesh	69238	19432	16165
Punjab	20169	5439	5439
Haryana	17192	1225	1225
West Bengal	92152	37088	37092
Uttar Pradesh	150727	33987	22087
Manipur	7639	3138	3138
Assam	37082	11635	11666

* This includes the ICDS centres sanctioned in December 2006 under Phase II expansion. None of these centres have obviously been operationalised.

2. By 31.3.2005-7, 64,709, by 30.9.2006-9, 46,000 (approx.) and by December 2006- 1.02 lakhs centres have been sanctioned with a total of about 10, 48,000.

3. By order dated 13.12.2006 it was inter-alia directed 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 Anganwadis 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 Anganwadis."

4. It is a matter of concern that even the sanctioned centres (the number of which is much less than the targeted one) have not been made operational.

5. Learned counsel appearing for different States has indicated various reasons for the same. Prima facie we are not satisfied with the reasons indicated. The need for having functional Anganwadis centres has never been questioned and cannot be questioned.

6. The importance of Anganwadis centres has been highlighted by this Court in several orders. By order dated 7.10.2004 it was noted as follows:

"..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 30th June, 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 30th September, 2004, all the projects were being made operational from 4th October, 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 may, if all have not been made operational since 4th October, 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 per cent are not operational. In the affidavit, it has been claimed that the remaining will be operational by 30th November, 2004. We direct the State Government to make operational all sanctioned AWCs by 30th November, 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 affidavits that the procurements are 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.

7. Learned counsel for the State of U.P. has pointed out that because of elections there was some delay.

8. In the circumstances, we direct as follows:

The backlog has to be cleared immediately and the centres which have been sanctioned upto September 2006

shall be made operational and functional by 15th July, 2007 in the case of all States except the State of U.P. where the last date is fixed to be 31st July, 2007. Those centres which have been sanctioned upto January 2007 shall be made functional by 30.9.2007.

9. It is made clear that if there is any non observance of the time period fixed would be seriously viewed. Affidavits shall be filed by 20th July, 10th August and 10th October, 2007 by the States in respect of the date lines fixed indicating the action taken.

10. List this matter on 20th July, 2007.

28. Text of the 25th July, 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 Anganwadis 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 Anganwadis centres. It is shocking to note that even in respect of Anganwadis 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% operationalization 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 30th August, 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 24th August 2007.

29. Text of the Order 30th August, 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 Anganwadis Centres which were sanctioned upto 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.

30. Text of the Order 20th November, 2007

As regards Suo Moto Contempt Petition (C) No. 128 of 2007 in W. P. (C) No. 196/2001 IN R E: Chief Secy. State of Bihar & 4 Ors. The I. As. are disposed of in terms of the signed judgment.

31. Text of the Order 20th November, 2007

1. By this order two IAs. No. 37 of 2004 and No. 54 of 2005 stand disposed of IA No. 37 of 2004 is an application by the Union of India for permission to modify the National Maternity Benefit Scheme (in short 'NMBS') and to introduce a new scheme called the Janani Suraksha Yojana (in short 'JSY'). IA No. 54 of 2005 is an application by the petitioner questioning legality of the discontinuation of the benefit under the NMBS due to introduction of JSY. By order dated 27.04.2004 this Court directed as follows:

“No Scheme...in particular...National Maternity Benefit Scheme shall be discontinued or restricted in any way without prior approval of the Court.”

2. Again by order dated 09.05.2005 this Court directed as follows:

“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 entitlements 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.”

3. The government set a numerical ceiling of 57.5 lakh beneficiaries as the annual target for NMBS. However, the number of beneficiaries under JSY in 2006-07 was only 26.2 lakh i.e. 45.5% and in the year 2005-06 this was as low as 5.7 lakh i.e. 10%. While there has been an improvement in the last one year, the coverage under this scheme is still very below the target number of women to be covered by the NMBS.

4. According to the Union of India the JSY was introduced to put a premium on the willingness of poor women to go in the institutional delivery instead of home delivery. But it was recognized that in States with lower institutional delivery rates, one of the reasons for low performance have been lesser availabilities of facilities in the Health Centres, which act as disincentive for the poor illiterate women to seek the services.

5. Pursuant to the order of this Court dated 09.05.2005 the Commissioner had prepared a report.

6. After discussions with the Commissioner appointed by this Court, senior officials, the Central Government took a decision to modify the JSY Scheme to continue the benefits of NMBS and also to improve upon such benefits for non institutional delivery, where the women chooses to deliver her baby at home. In this connection, a letter dated 13.07.2006 was written

to the Commissioner by the Secretary Health and Family Welfare under the amended JSY. The Low performing States and High Performing States were defined as follows:

“4.1 The scheme focuses on the poor pregnant woman with special dispensation for states having low institutional delivery rates namely the States of Uttar Pradesh, Uttarakhand, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Assam, Rajasthan, Orissa and Jammu and Kashmir. While these states have been named as Low Performing States (LPS), the remaining states have been named as High Performing States (HPS).”

7. The table below gives details of the number of beneficiaries under JSY (all these would have received the Rs.500/- under NMBS irrespective of place of delivery) vis-à-vis the annual targets set by the Government of India for NMBS.

(Table on next page)

Percentage of Eligible Beneficiaries Covered Under NMBS

State	No. of Women eligible for NMBS	No. of Beneficiaries in 2006-2007	Percentage of Eligible Beneficiaries covered
Andhra Pradesh	296033	457000	154.4
Rajasthan	28123	387648	138.4
J&K	50494	57798	114.5
Assam	122894	183231	100.2
Orissa	264249	227204	86.0
Madhya Pradesh	472840	401184	84.8
Mizorum	4429	3330	75.2
Chattisgarh	148876	74778	50.2
Uttarakhand	37117	18614	50.1
West Bengal	425520	199000	46.8
Tamil Nadu	301676	136091	45.1
Karnataka	28939	81152	28.0
A & N Islands	2295	600	26.1
Kerala	107602	27683	25.0
Bihar	732891	171353	23.4
Puducherry	6446	1315	20.4
Gujarat	212845	42373*	20.0
Punjab	41297	8276	20.0
Maharashtra	529777	97390	18.4
Tripura	20601	3203	15.5
Manipur	11112	1684	15.2
Goa	3188	483	15.1
Lakshadweep	333	42	12.6
Sikkim	4598	446	9.7
Meghalaya	22768	2031	8.9
Himachal Pradesh	29222	2508	8.6
Uttar Pradesh	1073341	71456	6.7
Haryana	92856	3294	3.5
D & N Haveli	3850	76	2.0
Chandigarh	2108	0	0.0
Delhi	42447	20	0.0
Arunachal Pradesh	1039	NR	NR
Damman and Diu	632	NR	NR
Jharkhand	208592	NR	NR
Nagaland	12763	NR	NR
Total India	5925554	2618889	44.2

8. The scheme as the details above go to show has virtually not taken off in many states. Delhi has given the benefit under the NMBS to only 20 women in 2006-07, while in Chandigarh the number of beneficiaries is 0. In Sikkim Meghalaya, Himachal Pradesh, Uttar Pradesh, Haryana and Dadar and Nagar Haveli have less than even 10% of the eligible beneficiaries have been covered under the NMBS. Except for the states of Andhra Pradesh, Jammu & Kashmir, Rajasthan, Madhya Pradesh, Assam, Orissa and Mizoram where more than 75% of the eligible beneficiaries seem to have been reached out to, the performance of this scheme has been very poor in all the other states.

Indicated Below are Percentage of Home Delivery Figures

State	% Home delivery reported out of JSY beneficiaries (2006-2007)	% Home delivery in the state (NFHS 3)
Assam	4.4	77
Madhya Pradesh	0.9	70
Haryana	0.0	61
Rajasthan	13.5	68
Manipur	0.0	51
Delhi	0.0	39
Meghalaya	41.4	70
Orissa	33.3	61
Chattisgarh	59.2	84
Sikkim	44.8	51
Tamil Nadu	5.7	10
Bihar	75.9	78
Karnataka	37.6	33
Kerala	5.2	0
Mizoram	44.1	35
Tripura	60.5	51
Uttar Pradesh	90.2	78
Uttarakhand	96.9	64
Punjab	82.9	47
Maharashtra	86.0	34
Goa	67.9	7

9. In the States of Madhya Pradesh, Haryana, Manipur and Delhi there are almost no JSY beneficiaries who had a home delivery. This indicates that in these States the scheme's focus continues to be only on institutional deliveries and not all deliveries. Even in the States of Assam, Rajasthan, Meghalaya, Orissa and Chhattisgarh the JSY has been disproportionately given to only those who have had institutional deliveries.

10. At this juncture, the financial performance needs to be noted.

11. The Janani Suraksha Yojana is a centrally-sponsored scheme with the centre providing 100% of the funds. Some states e.g. Andhra Pradesh make their own contribution thereby increasing the amount of cash assistance for institutional deliveries. Tamil Nadu has introduced a separate scheme for providing mothers with Rs.1000/- per month for six months i.e. three months prior to the delivery and three months after. Given below are the details of allocation and utilization of the funds provided by the Central Government.

12. Out of the funds provided for JSY for 2006-07, about 71.2% of the funds allocated have been utilized in the year 2006-07.

Utilization of Funds Allocated by JSY (Rs. in Lakhs)

State	Fund released in 2006-2007	Expenditure reported by state	% Utilization
Andaman Nicobar Island	10.00	1.99	19.9
Andhra Pradesh	4073.20	4550.00	111.7
Arunachal Pradesh	26.2	0.31	1.2
Assam	1300.00	1331.32	102.4
Bihar	610.00	190.00	31.1
Chandigarh	5.23	0.00	0.0
Chattisgarh	513.00	516.55	100.7
D & N Haveli	9.17	0.73	8.0
Daman & Diu	5.23	0.00	0.0
Delhi	65.49	0.20	0.3
Goa	7.86	0.38	43.0
Gujarat	851.85	185.56	21.8
Haryana	350.00	39.11	11.2
Himachal Pradesh	100.00	20.66	20.7
J & K	138.33	123.84	89.5
Jharkhand	392.89	64.67	16.5
Karnataka	916.00	594.02	
Kerala	511.94	284.45	55.6
Lakshdweep	4.83	0.31	7.1
Madhya Pradesh	4261.00	2482.00	58.2
Maharashtra	785.79	209.07	26.6
Manipur	78.57	13.45	17.1
Meghalaya	39.29	42.75	108.8
Mizorum	78.57	37.27	47.4
Nagaland	65.49	0.00	0.0
Orissa	1600.00	1571.31	98.2
Pondichery	19.64	6.10	31.1
Punjab	145.37	56.84	39.1
Rajasthan	4085.00	3056.35	74.8
Tami Nadu	13.1	7.46	56.9
Sikkim	1827.00	1441.00	78.9
Tripura	117.86	43.70	37.1
Uttar Pradesh	1375.00	436.80	31.8
Uttarakhand	79.56	56.06	70.5
West Bengal	1678.99	1233.67	733.5
Total	26141.00	18600.93	71.2

13. Looking at the State-wise break-up it is seen that states like Delhi, Nagaland and Arunachal Pradesh, and union territories of Chandigarh and Daman & Diu have not at all utilized the funds allocated to them for the purpose of JSY. Among other states, Manipur, Jharkhand and Haryana utilized less than 20% of the funds released to them. Only 10 states spent more than 70% of the funds allocated to them under JSY.

14. At the time of hearing of the applications, learned counsel for the petitioner and the Union of India highlighted various aspects. Considering the submissions and the material data placed on record we direct as follows:-

a) 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.

b) The amount shall be Rs.500/- per birth irrespective of number of children and the age of the women.

c) The Union of India, State governments and the Union Territories shall file affidavits within 8 weeks from today indicating the total number of births in the State, number of eligible BPL women who have received the benefits, number of BPL women who had home/ non-institutional deliveries and have received the benefit, number of BPL women who had institutional deliveries and have received the benefit.

d) The total number of resources allocated and utilized for the period 2000-2006.

e) All concerned governments are directed to regularly

advertise the revised scheme so that the intended beneficiaries can become aware of the scheme.

f) The Central Government shall ensure that the money earmarked for the scheme is not utilized for any other purpose. The mere insistence on utilization certificate may not yield the expected result.

g) It shall be the duty of all concerned to ensure that the benefits of the scheme reach the intended beneficiaries. In case it is noticed that there is any diversion of the funds allocated for the scheme, such stringent action as is called for shall be taken against the erring officials responsible for diversion of the funds.

15. At this juncture it would be necessary to take note of certain connected issues which have relevance. It seems from the scheme that irrespective of number of children, the beneficiaries are given the benefit. This in a way goes against the concept of family planning which is intended to curb the population growth. Further the age of the mother is a relevant factor because women below a particular age are prohibited from legally getting married. The Union of India shall consider this aspect while considering the desirability of the continuation of the scheme in the present form. After considering the aforesaid aspects and if need be, necessary amendments may be made.

16. The IAs is accordingly disposed of.

32. Text of the Order 10th January, 2008

We have perused the report submitted by the Commission headed by Justice D.P. Wadhwa. The report is very comprehensive and gives a detailed analysis of various aspects which needed to be addressed. There is unanimity at the Bar that the report deserves acceptance. Therefore, we direct acceptance of the report. In terms of the earlier order, let a similar exercise be undertaken for the entire country, because the factors highlighted by the Commission are not restricted to Delhi alone, and appear to be prevalent throughout the country. The Commission is requested to submit its report within a period of six months. The earlier modalities relating to salary etc. shall be continued. The various suggestions given and shortfalls noticed by the Commission shall be addressed after the subsequent report is received.

The order dated 28.11.2001 is modified to the extent that the allotment shall be 35 KG in view of the increase, subsequent to the order.

APPENDIX 2: FURTHER RESOURCES

1. Internet Resources

1.1. Websites

Right to Food website www.righttofoodindia.org

Supreme Court Commissioner's website
www.scommissioners.org

If you have access to the internet, you may be interested in the website of the “right to food campaign” (www.righttofoodindia.org). This website has a large amount of material on the Supreme Court orders and other issues discussed in this booklet, including:

- The full text of the original petition submitted by PUCL.
- The full text of Supreme Court orders on the right to food.
- The full text of the Commissioner's Reports.
- Primers on ICDS, MDM and NREGA.
- Guidelines for conducting field surveys on various aspects of the right to food, along with ready-made “questionnaires”.
- Lots of articles and field reports.
- Links to related sites.

1.2. E-mail addresses

Office of the Commissioner's of the Supreme Court:
commissioners@vsnl.net

Human Rights Law Network :
righttofoodscase@hrln.org

Secretariat of the Right to Food Campaign:
righttofood@gmail.com

2. Useful Addresses

If you do not have access to the internet, you can contact one of the following for guidance:

Office of the Commissioner's of the Supreme Court:
B102, First Floor, Sarvodaya Enclave,
New Delhi 110017
Tel: 011- 26851335, 26851339
Email : commissioners@vsnl.net

Human Rights Law Network:
576, Masjid Road , Jungpura
New Delhi - 110 014;
Tel : 011-24374501, 24376922;
Email : righttofoodscase@hrln.org

Secretariat, Right to Food Campaign:
5 A , Jungi House, Shahpur Jat,
New Delhi 110049.
Tel: 011-26499563
Email: righttofood@gmail.com

3. List of State Advisors

As explained in Section 1.6, the Commissioner's have nominated an “advisor” in most states. The current list of advisors is given below (note that some states have two advisors). If your state is not in the list, or if the contact details below turn out to be out of date, please contact the Commissioner's' office for the latest information.

State Advisor in Andhra Pradesh

1. Shri M. Kodandram
Department of Political Science, Osmania University
12-13-578, Nagarjunanagar, Tarnaka
Secunderabad 500 017
Tel: 040-27175353, +919848387001
Email: kodandram2003@yahoo.com

2. Prof. Rama S. Melkote
B-156, Sainikpuri, Secundrabad- 500019
Email: hyd2_melkote@sancharnet.in

State Advisors in Assam

1. Shri Sunil Kaul
The ANT (Action North East Trust), Ward No. 10
B.O.C. Gate, Bongaigaon(N) 783 380, Guwahati, Assam
Email: theant1@rediffmail.com

2. Ms Anju Talukdar
Avalon House No 40 Mandir Path Zoo Narangi Road Gita
Nagar, Guwahati-781024
Tel: +919864034505
Email: anjutralukdar@yahoo.com

State Advisor in Chhattisgarh

Mr. Samir Garg

Adivasi Adhikar Samiti

C/o Sangam X-Ray, CHM Road,

Manendragarh, District Koriya, Chhattisgarh

Tel: 07771-244105, +9109425583395

Email: koriya@gmail.com

State Advisor in Gujarat

1. Prof. Indira Hirway

Director and Professor of Economics, Centre For Development

Alternatives, E 71, Akash Towers , Bodakdev,

Ahmedabad-380054

Tel: 079- 26850160, +919824061837

Email: hirwayad1@sacharnet.in

2. Mr. Gagan Sethi

C/o Centre For Social Justice

109-C, Royal Chinmavy, Bokakdev,

Near Judges Bunglow Road,

Ahmedabad-380015

Tel : 079-26854248, +919824023209

Email: gssethi@gmail.com

State Advisor in Jharkhand

Shri Balram

5A, Sandhya Tower, Gharana Place, Purlia Road, Ranchi.

Tel: +919934320657, +919334726691

Email: balramjo@gmail.com

State Advisor in Karnataka

Shri S.R. Hiremath

'Ashadeep',

Jayanagar Cross, Saptapur,

Dharwad 580 001

Tel: 0836-2777430 (R), 0836-2774472

(O), +919448916010; Fax : 0836 - 2743558

State Advisor in Madhya Pradesh

Dr. Mihir Shah

Samaj Pragati Sahayog, Bagli, District Dewas

Madhya Pradesh - 455 227

Tel: 07271-275757, 275500, 275550

Email : samprag@sify.com

State Advisor in Maharashtra

Shri Joseanthony Joseph.

B-503 Bhakti Complex, Dahisar (W)

Mumbai 400 068

Tel: 022-8958313; Tel/Fax: 022-8925988

e-mail : josantonyjoseph@gmail.com

State Advisor in Meghalaya

Mr. Tarun Bhartiya

c/o Dr. M.S. Dunn, Lily Cottage, Harisabha, Laban,

Shillong-793004

Tel: 09863061770 / +919863097754

Email: thefreedomproject@rediffmail.com

State Advisor in Nagaland

Mr. Chingmak Chang,
Eletherus Christian Society,
Post Box - 51, Tuensang - 798612,
Nagaland
Tel: 03861-220127 (O) 03861 -220319(R)
Email : phutoc@yahoo.co.in

State Advisor in New Delhi

1. Dr. Vandana Prasad
L - 91, Sector 25, Noida,
Uttar Pradesh - 201301
Tel: +919891552425
E-mail chaukhat@yahoo.com

2. Mr. J.P. Mishra
B-4/331, Paryatan Vihar,
Vasundhara Enclave
New Delhi 110096
Ph. : 011-22623903, +919899315900
E-mail : jaypmishra@gmail.com

State Advisor in Orissa

1.Mr. Rajkishor Mishra
At : VIP-123,
Nayapalli
Bhubaneswar-15
Tel. : 06746-544841
Email: rajkishormishra@gmail.com

2. Ms. Vidya Das
Agramee, P.O. Kashipur ,
District - Rayagada - 765015, Orissa
Tel: 06865-55009
Email : vjatspr@gmail.com;
 agramee@satyam.net.in

State Advisor in Rajasthan

1. Ashok Khandelwal,
C-217, Tilak Nagar, Jaipur- 302004
Tel: +919968249247
Email: ashokko@rediffmail.com; rajlabour@gmail.com

2. Dr. Ginny Shrivastva
Asta, 35 Kharol Colony,
Udaipur, Rajasthan-313004
Tel: 0294-2451348; Fax: 0294-2451391
Email: asta@gmail.com

State Advisor in Tamil Nadu

Dr. V. Suresh
Husain House, II Floor, 7/1, Kondi Chetty Street
Chennai 600 001
Tel: 044-2392459 or 25392464
E-mail: rights@vsnl.com

State Advisor in Uttar Pradesh

1. Ms. Arundhati Dhuru
A – 893 Indira Nagar

Lucknow 226016

Tel: 0522-2347365, +919415022772

E-mail : arundhatidhuru@yahoo.co.uk

2. Dr. Pradeep Bhargava,

Director,

G. B. Pant Social Science Institute,

Jhusi, Allahabad - 211019, Uttar Pradesh

Tel: 0532- 2569214

Email : pradeep@gbpssi.org.in

State Advisor in West Bengal

Ms. Anuradha Talwar

1, Shibtala Road, Maheswarpur, Badu

Kolkata -700128

Tel: 033-25380386

Email : jsk@cal2.vsnl.net.in

National Advisor (Nutrition)

Dr. Veena Shatrugna

Deputy Director, National Institute of Nutrition,

P.O. Jamia Osmania

Secunderabad

Andhra Pradesh

Email: veena52@yahoo.com

Other Primers in the Series:

Muster Roll Watch

Mid-Day Meals: A Primer

Focus On Children Under Six

Employment Guarantee Act: A Primer

Anganwadis For All : A Primer

eLVj jksy dh fuxjkuh

e/; kà Hkkstu % , d i ðf' kdk

jkst xkj xkj à/h dkuru % i ðf' kdk

Ng o"lz l s de ds cPpkà ij Qksd l

vk; xuokMh dk; Øe ds fy, igy % , d i ðf' kdk