

**WRIT PETITION (CIVIL) 196 OF 2001
(PUCL VS UNION OF INDIA & OTHERS)**

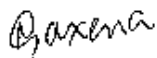
FOLLOW UP REPORT OF THE COMMISSIONERS

28 JANUARY 2004

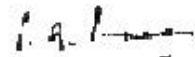
Hon'ble Sir,

With reference to the orders of the Hon'ble Court dated 16th January 2003, we present a follow up report to the one presented by the Advisor to the Commissioners in West Bengal. We hope you find the recommendations put forward in this report, useful in alleviating the situation of hunger in India and in particular the tea estates of West Bengal.

Sincerely,



Dr N.C. Saxena



S.R. Sankaran

FOLLOW UP REPORT OF THE COMMISSIONERS TO THE HONOURABLE SUPREME COURT, DATED 28 JANUARY 2004

(This report seeks to give recommendations to help alleviate the situation of hunger and starvation in tea plantations of the West Bengal state, in response to the Report on "Hunger in the Tea Plantations of North Bengal", submitted by the Advisor to the Commissioners in West Bengal¹)

Section 1: Introduction

It is well documented that a structured social assistance programme efficiently run, can go a long way in alleviating the problem of hunger and destitution among the poor. Several social security schemes discussed in our previous reports were intended precisely to fulfill this need. It is therefore imperative that the schemes are implemented in full and in a timely manner, so that relief might be provided to all those in need of it. This is in line with the Courts Order dated November 2001, whereby all states are directed to ensure that the mentioned food related schemes are implemented as per central guidelines. It seems therefore that a large part of the picture of hunger and malnutrition, mentioned in the Advisors report can be linked directly to the inefficient functioning of the food related social security schemes.

The Commissioners have seen the report of the Adviser and are in full agreement with the findings, which are fully backed by supporting data and field enquiries. The problem, caused due to the closure of the tea plantations is undoubtedly serious. The labour employed in the tea gardens, have a system of benefits (under the Plantation Labour Act and other relevant statutes) that seems to have now collapsed. This has left the tea garden labour consisting predominantly of tribal communities in a state of destitution.

The following paragraphs will first outline the Commissioners specific recommendations with reference to the situation in the tea gardens of Jalpaiguri. Extracts of the suggestions by the Advisor to the Commissioners are given in italics before our comments. Subsequently more general recommendations pertaining to the state and the country will be given.

¹Henceforth referred to as the 'Advisors Report'

Section II: Specific Recommendations of the Commissioners to Directions Sought in Advisors Report

2.1 Payment of Compensation: - *The crisis in the tea plantations is almost 2 years old. It is well known that people there are hungry and dying. The State Government has had the resources in the form of the 9 Central Government Schemes covered under the present Writ Petition. In spite of all this, it continues to be slow in its response. It has in some cases not ensured proper implementation even of existing schemes let alone provide additional resources...*

The government of West Bengal was apprised of the dismal situation prevalent in the tea gardens on a number of occasions in the past few months. The Commissioners, the Advisor as well as civil society groups wrote several letters to the state administration regarding the situation in the tea estates. However it seems that little effort was made by the state to alleviate the problem².

The statewide picture on the performance of a number of schemes is testimony to the wasted opportunities of providing relief at the field level. The performance of the state in lifting grain under the BPL, Antyodya and Annapurna is much below the national average. For the months April to October 2003, the offtake of grain as a percentage of allotment was only 68% and 57% under the BPL and Antyodya schemes respectively. This was much below the all India average of 61% and 82%. A similar picture comes across in the Annapurna scheme. Against a national average of 63% the offtake of grain for West Bengal is a paltry 25%. Moreover, low offtake of grain under the scheme is coupled with incessant delays in identifying beneficiaries under these schemes. According to correspondence received from the state, they are yet to identify 15,000 Annapurna families and over 89,000 Antyodya beneficiaries.

Payment of compensation to the aggrieved parties as a measure of redressal can be an effective one and has been suggested in the past by the Commissioners. A public hearing held in Kotma district of Madhya Pradesh in June 2003 had brought to light several instances of irregularities in the implementation of food and employment related schemes. Allegations of delay/non-payment of wages, irregular distribution of grain under Annapurna, non-receipt of pensions, were some of the complaints received. After asking the

²To view the letter sent by the Commissioners see Annexure 1

state to verify the claims, which were found to hold true, the Commissioners suggested that 'retrospective compensation' be given to the parties. This was done in most of the cases brought to the notice of the Government of Madhya Pradesh.

Even though problems pertaining to low offtake and irregular distribution can be due to delays and administrative failure on account of FCI or the center, problems of non identification and thereby denial of benefits can only be attributed to inertia on the part of the state government. In a system where there is little accountability for administrative failure, an institutionalized system of compensation can prove to be an effective mechanism in ensuring that the state takes all necessary steps to guarantee that 'entitlements' are duly received.

- * **We strongly advise the Hon'ble Court to direct the state of West Bengal to pay adequate compensation to the families where death has occurred due to lack of state support in the situation of closure of the tea estates in the state.**
- * **We also advise the Hon'ble Court to direct the state of West Bengal to pay compensation to those who have been denied their entitlements under the nine schemes, due to administrative negligence.**

2.2 Extension of PDS temporarily: - *As none of the workers are in the BPL category, the facilities available under the PDS do not apply to them. On the other hand it is very necessary that large quantities of subsidized or free foodgrains be made available to them in order to prevent further deaths and hunger....*

It has been mentioned in the Advisers report that prior to closure, the tea garden management gave its permanent workers a 'family ration card' and provided them with foodgrains @Rs 0.4 per Kg. The foodgrain was purchased from the FCI and therefore no additional allocation will be required if the system is to be continued with. As a special case such a transfer should be continued with in the closed tea gardens as well.

³The suggested rates of compensation were as follows: @10% and @25% of the amount of arrear for cash payments delayed for a period greater than a month and a year respectively and Rs 50 for every month for which the cardholder did not receive grain under the Annapurna scheme.

Further as mentioned in the report, Gram Sansad meetings in which beneficiaries for AAY are selected have already taken place in November and December 2003. This will further cause problems since West Bengal is one of the few states to have issued unequivocal orders that identification of additional Antyodaya beneficiaries, need not use BPL as a precondition if the family's eligibility is proved otherwise and collectively in a Gram Sansad meeting⁴. It is therefore important to ensure that AAY and Annapurna benefits are initiated using the family cards distributed by the management, till a process of verification of eligibility may be carried out in the tea estates.

Since many Antyodaya beneficiaries remain to be identified, families which are found to be eligible in the coming months can also be included in the BPL lists. This is essential if they are to gain access to other schemes particularly those falling under the National Social Assistance Programme viz. National Family Benefit Scheme, National Old Age Pension Scheme and the National Maternity Benefit Scheme.

*** In light of the above we advise the Hon'ble Court to direct the state of West Bengal to treat the 'family ration cards' already available with the families as temporary BPL ration cards on which subsidized food grains must be provided to them by the State Government. We would further suggest that families that are identified as the aged destitute be given free food grains under the Annapurna Yojana and that all other families should be provided with food grains at Antodaya rates.**

2.3 Cooked Meals Under MDMS: - *The State Government should cover all 21 schools in closed gardens with cooked meals under MDMS immediately.*

This issue has been taken up with the state administration on a number of occasions, however little action has been forthcoming. Though the Supreme Court had issued the directive, more than two years back, the state is yet to implement the scheme in all government and government aided primary schools. The state has often cited lack of resources as the reason for non-compliance and token implementation was initiated as late as January 2003. However it appears a question of priority since many of the southern states like Karnataka, Tamil Nadu and Andhra Pradesh have covered all eligible schools under the programme.

⁴A copy of the government order in this regard is given in Annexure 2

At present only 1900 schools across nine districts are being provided the benefit. Of 9,764,181 children enrolled in 2003-2004, only 178,054 are being covered under the cooked mid day meal programme, i.e. less than 2% of the intended beneficiaries. However despite the fact that Jalpaiguri is one of those nine, partial implementation has meant that the tea estates covered in the report have not been covered. This issue was raised again at a recent meeting of the Commissioner Mr. Sankaran⁵ with the Chief Secretary, in September this year where the Commissioner reiterated again that the Courts order must be implemented in *all* eligible schools.

*** We therefore urge the Hon'ble Court to direct the state to implement cooked midday meal scheme in all the schools in the closed tea gardens immediately.**

2.4 Total Coverage under the ICDS: - *Many children, adolescent girls and pregnant and lactating mothers are still outside the ambit of the ICDS centers. The State Government should ensure full coverage in the closed plantations.*

While the Hon'ble Court had directed that there be one Anganwadi center in every habitation⁶, the Ministry of Women and Child have expressed their inability to provide more funds for this purpose. The Government of India and the Planning Commission are unable to enhance allocations under the ICDS so that coverage of all children (0-6 age group), women and adolescent girls will not be possible.

For the state of West Bengal 13 ICDS projects or close to 1560 Anganwadi centers⁷ have been sanctioned but not made operational.⁸ This potentially denies the benefits of supplementary nutrition to nearly 1,30,000 infants and children and 19,000 women⁹, with the numbers being denied access to basic health services, being significantly more. When compared to states like Madhya Pradesh, Karnataka, Gujarat, Chattisgarh, Kerala and Karnataka, where all sanctioned ICDS projects have been made fully operational, the situation in West Bengal seems dismal.

⁵A summary record of the discussions is given in Annexure 3

⁶Order dated 28 November 2001

⁷On an average one ICDS project has about 120 Anganwadi centers under its administration

⁸According to the status report of the ICDS as on 30th June 2003, Ministry of Women and Child Development

⁹The average number of children and mothers served per Anganwadi center is about 83 and 12 respectively.

Given the situation described in the report, immediate action needs to be taken to operationalize the remaining Anganwadi centers particularly in the tea estate districts of Jalpaiguri and Darjeeling. Additional efforts to ensure that feeding activity is not plagued with delays and irregularity, as mentioned in the Advisors report, also need to be made.

- * **We therefore urge the Hon'ble Court to direct the state of West Bengal to ensure that all sanctioned ICDS projects in Jalpaiguri district be made operational immediately.**
- * **We therefore urge the Hon'ble Court to direct the state of West Bengal to ensure that feeding activity in the existing centers be extended to all children in the age group six month to six years, all pregnant and nursing mothers and all adolescent girls in the closed gardens.**

2.5 Expansion of SGRY: - *According to its November 2003 report, the State Government has spent 54% of cash and 57% of foodgrains under the SGRY in Jalpaiguri district. Almost half of the funds for 2003-4 therefore remain unspent. The State Government should be asked to generate at least 15-20 days of work every month for every worker in the plantations...*

We have mentioned earlier the inextricable link between the right to work and the right to food. By virtue of being an employment generation programme, implementation of the SGRY is crucial in providing a source of food and livelihood.

Jalpaiguri district has been designated one of the 150 most backward districts in the country and is therefore ideally suited for the implementation of wage and self-employment programmes¹⁰. Given this the district would prove to be an ideal choice to initiate the implementation of Jaya Prakash Narayan Employment Guarantee Yojana (JPEGY) announced in the budget of 2002 – 03.¹¹ As the provisions stand, this would enable individuals to get employment at the legal minimum wage within one fortnight of registration and also be eligible for compensation if employment is not thus provided.

It has been shown in the report that the percent utilization of funds and foodgrains in the current financial year according to official records ranges from as low as 18% in the month of

¹⁰Source: "Report Of The Task Force On Identification Of Districts For Wage And Self Employment Programmes," Planning Commission, Government of India, May 2003

¹¹Budget speech of the Finance Minister, February 2002

April and May to 51% in the month of November. Thus for a large part of the year, even though funds were available they were not used to generate employment. Even where projects were implemented, no more than six days on an average was created per worker.

The situation calls for immediate steps to be taken to ensure that remaining funds are utilized in creating community assets. Additional foodgrains under the SGRY- Special Component may also be allocated and subsequently used in creating more employment. In areas where selection of assets appears to be a problem and where the need is imminent, construction of Anganwadi buildings and kitchen and storage sheds for the cooked meal programme may also be considered.

- * **In light of the above we advise the Hon'ble Court to direct the state of West Bengal to ensure that sufficient allocations be made to generate at least 15-20 days of work per worker every month. In case additional funds are required, the Central Government should be asked to make special provisions for the same.**

2.6 Dealing with defaulters: - The owners of the tea gardens have defaulted on payment of wages and rations to workers, leaving each plantation with a backlog of many months. On the other hand the owners still have assets both in the closed garden and in other businesses that can be used to recover these dues.

- * **We are in agreement with the Advisors suggestion that the previous owners assets be liquidated to help disburse all wage arrears and payments due to the workers employed on the tea estates.**

2.7 Emergency like steps: - Considering the huge magnitude of the problem and the extent of deprivation...a sense of urgency is still missing in the Government's efforts though they have now begun to take some small steps.

On the receipt of preliminary reports of the situation in the tea estates of North Bengal, the Commissioners outlined some immediate measures that the local administration needed to take. In light of the situation in the tea estates of Jalpaiguri, we advise the Hon'ble Court to direct the state of West Bengal:

- * **To complete the process of identification of families to be given 'unemployment allowance' of Rs 500 per month as promised by the state government. Payments must be disbursed no later than a month from the date of the order.**
- * **To initiate measures to reopen the tea gardens, as this alone will bring lasting relief. It appears that there are close to 300 registered gardens in WB, mostly in Jalpaiguri and Darjeeling districts employing close to 2.5 lakh workers. Ensuring that the tea gardens remain open is the best way of ensuring that they are provided with a continued means of livelihood.**
- * **To set up health camps, community kitchens and arrange for mobile vans to provide medical care and to identify severely malnourished children, and others in need of immediate nutrition supplementation. Small inexpensive measures like medical checkup, provision of vitamins and other micronutrients should also be undertaken in all primary schools of the area.**
- * **To appoint a senior officer on special duty to verify reports of deaths due to starvation, to act upon any complaints received and to look into the progress of food and food related social security schemes operating in the tea plantations over the past nine months.**

Section III: General Recommendations

In light of the issues described in this and previous reports, we advise the Honourable Court to:

- * Direct the Government of West Bengal to initiate cooked mid-day meals in all government and government aided primary schools in compliance with the order of November 28, 2001 immediately. Further consider issuing clarificatory orders that the order dated 8 May 2003 permitting partial implementation was only a temporary measure and the intention is to ensure universal coverage in the state.
- * Direct the Government of West Bengal to complete the process of identification and distribution of Antyodaya ration cards within four weeks. All efforts must be made to

ensure that all priority groups are given these cards, with particular emphasis on the Primitive Tribal Groups of 'Birhor', 'Lodhas' and 'Totos.' In addition special efforts to identify eligible families in the tea estates of the districts of Darjeeling and Jalpaiguri must be made.

- * Direct the Government of West Bengal to issue orders to complete the process of identification and distribution of the cards under the Annapurna scheme. Distribution of grain to such designated households must start by February 2004. In addition special attention to identify aged destitute families not receiving pensions in the tea estates of the districts of Darjeeling and Jalpaiguri must be made.
- * Direct the Government of West Bengal to initiate the process of operationalizing all remaining sanctioned ICDS projects. Efforts should be made to resume feeding activity as well as other health and referral services at the earliest.
- * Direct the Government of India to implement the Jaya Prakash Narayan Employment Guarantee Yojana in the identified 131 backward districts forthwith and in any case not later than one month from the date of the order. The programme may be initiated in the districts of West Bengal including Jalpaiguri from where it can be implemented in all the selected districts.
- * Direct all states are to provide compensation at the following rates if proof of administrative negligence/ corruption is found to hold true, in cases where people have been denied their entitlements.

For all food related schemes that deal with payments in cash viz wage payments under SGRY, pensions, National Family Benefit Scheme, National Maternity Benefit scheme:

@10% of the amount of arrear for cash payments delayed for a period greater than a month

@25% of the amount of arrear for cash payments delayed for a period greater than a year

For payments made through transfers of grain viz wage payments made in grain under SGRY, mid day meal scheme, entitlements of BPL, Antyodya and Annapurna through the public distribution system:

Entitlement of grain * Price used for accounting purposes, for every month the cardholder did not receive grain under the scheme.¹²

Section IV: Special Report Submitted in December 2003

The recommendations given above were with special reference to the state of West Bengal only. However an earlier special report submitted to the Court in December 2003¹³ contains measures that have nation wide applicability in order to ensure that 'the right to food' truly becomes a reality. In particular the Commissioners sought the intervention of the court on to ensure that previous directions are complied with. Directions to states that are yet to initiate cooked mid-day meals in all primary schools and those that are yet to complete the process of identification of additional Antyodya cards were sought from the Court. Orders to implement the JPEGY and the Right to Information Act were also suggested to the Court.

We request the Honourable Court to consider this report of the Commissioners and issue the directions sought for, therein.

¹²For e.g. non-receipt of Annapurna grain for three months would entitle the card holder for compensation of Rs 150 in compensation (10*5*3)

¹³"Special Report Of The Commissioners To The Honourable Supreme Court," November 2003