

CASE NO.:
Writ Petition (civil) 196 of 2001

PETITIONER:
People's Union for Civil Liberties

RESPONDENT:
Union of India and Ors.

DATE OF JUDGMENT: 13/12/2006

BENCH:
Dr. Arijit Pasayat & S.H. Kapadia

JUDGMENT:
JUDGMENT

IN

I.A. Nos. 34, 35, 40, 49, 58, 59, 60, 61 and 62

Dr. ARIJIT PASAYAT. J.

Grievance is made by the petitioner about the non-implementation of the directions given by this Court to the Central Government and the State Government relating to Integrating Child Development Scheme (in short the 'ICDS'). The scheme is meant for children of the age group of 0-6, Pregnant women, lactating mothers and adolescent girls. Undisputedly, funds are released by the Central Government to the State Governments who are required to implement the scheme. State Governments, it is alleged, have failed to match the grants given by the Central Government.

We shall deal with this aspect a little later in detail.

Dr. N.C. Saxena, Commissioner, and Sh. Harsh Mander, the Special Commissioner were appointed pursuant to the orders passed by this Court for giving their reports on the question whether the Scheme has been implemented in the manner desired by this Court by various orders.

A bare reading of the reports shows the grim realities and apparent lethargy of some of the States in implementing the Scheme.

By report dated 19th July 2006 following recommendations are made by the Committee.

- (1) Reassert the figure of 14 lakhs AWCs as a benchmark estimate of the minimum number of AWCs required for universalization of ICDS, based on existing norms.
- (2) Direct the Government of India to raise the number of AWCs to 14 lakhs within three years.
- (3) Direct the government of India to formulate improved norms for the creation and placement of AWCs, in the light of this report, and in consultation with the Commissioners. The improved norms should be consistent with universalization in the sense that implementation of these norms would ensure convenient access to an Anganwadi (or mini-Anganwadi, as the case may be) to all children and eligible women.
- (4) Clarify that universalization of ICDS involves extending all ICDS, services (not just supplementary nutrition) to all children below the age of six, all pregnant or lactating women and all adolescent girls.
- (5) Direct chief secretaries of all State Government/UTs to submit

affidavits to the Honorable Supreme Court 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) Direct Chief Secretaries of all State Governments/UTs to submit affidavits to the Honorable Supreme Court on the steps that have been taken with regard to the interim 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 also commit to a time-frame within which the decentralization of the supply of SNP through local community efforts will be made.

Under the Chapter 1.4 "Will India meet the Nutrition MDG?" The Report indicates as follows:

"The Millennium Development Goals (MDGs) are a set of internationally agreed goals that countries and institutions have committed to reach by 2015. The second MDG target, which we refer to as the nutrition MDC, is to halve between 1990 and 2015:

- (i) the prevalence of underweight children (under five years of age)
- (ii) the proportion of population below a minimum level of dietary energy consumption.

A few studies, using different assumptions, have considered the likelihood that India will attain the second nutrition MDG. Although their projections differ, in sum it seems unlikely that the prevalence of malnutrition in India will fall from its level of 54% in 1990 to 27% by 2015. NFHS data shows that in 1998/99, even the wealthiest quintile had a prevalence of malnutrition (33%) that far exceeded the MDG goal. Our projections indicate that economic growth alone is unlikely to be sufficient to lower the prevalence of malnutrition. When combined with policy interventions, the projections are rosier, but a rapid scaling-up of health, nutrition, education and infrastructure interventions is needed if the MDG is to be met".

In the earlier report, i.e. 6th report, dated 21st November 2005 the following observations of the Commissioner are relevant:

"Compliance with the 28 November 2001 order and coverage of ICDS beneficiaries-significant orders of this court were passed regarding the implementation of the ICDS on 28.11.2001 stating that the services of the ICDS must be made available to every child up to 6 years of age, every adolescent girl, every pregnant woman and nursing mother, that every malnourished child must get an enhanced ration and that there must be an ICDS disbursement centre in every settlement. The order was the first amongst many regarding the implementation of the ICDS.

The State-wise coverage of beneficiaries under the ICDS as it currently stands as per the Department of Women and child Development, GoI is given in Table 1.1 The number of children in the 0-6 year age group being provided supplementary nutrition services under the ICDS stands at 403 lakhs. In comparison, as per the 2001 Census of India the 0-6 year population in India stands at 1578 lakhs. Thus, as many as 1201 lakhs or 74% of children entitled to the ICDS are currently left out of its net.

The coverage of adolescent girls in the 11-18 year age group is

worse than that of children in the 0-6 year age group .The Kishori Shakti Yojana (KSY), under which adolescent girls are covered remains limited to 2000 TCDS Projects. The total coverage of adolescent girls stands at a mere 2.4 lakhs. In comparison, as per the census of 2001, the total female population in the 11-18 years age group stands at approximately 844 lakhs. The coverage of adolescent girls has therefore virtually no taken off with a mere 0.3% of adolescent girls being covered under the scheme. It is important to note that of the 35 states and Uts only Chattisgarh, Gujrat, Haryana, Meghalaya, Rajasthan, Uttar Pradesh and Andaman and Nicobar Islands have reported to the Commissioner that adolescent girls are being covered under the ICDS. Other States such as Bihar, Goa,, Jharkand and Orissa have pointedly stated that adolescent girls are not being covered under the ICDS, although Blocks were identified for the implementation of the project as far back as 1991-92. Thus an entire section of beneficiaries. Remain completely ignored in the implementation of the scheme.

The number of pregnant women and nursing mothers is estimated to be 4% of the total population at any point in time as per ICDS Scheme guidelines. The current coverage of 81.05 lakh beneficiaries in this category therefore, is less than 20% of the estimated number of persons who should be covered by the scheme."

The essence of the previous orders dated 28.11.2001, 29.4.2004 and 7.10.2004 of this Court can be summed up as follows:

(1) Almost five years ago (on 28th November 2001), the Hon'ble Supreme Court issued an interim order calling for the universalization of ICDS, in the sense that (1) every habitation should have a functional ICDS centre (Anganwadi), and (2) ICDS services should be extended to all children upto the age of six years, all pregnant or nursing mothers and all adolescent girls. This order was reiterated and extended on 29th April, 2004 and 7th October, 2004, along with further directions on ICDS.

(2) We are concerned that very little progress has been made towards the implementation of these orders. In the 2004-05 financial year, the Government of India sanctioned the opening of 1.88 lakh new Anganwadi Centres towards implementation of the above quoted orders. It is a matter of concern that these Anganwadi Centers have not so far been operationalised. The Hon'ble Court may seek an explanation from the Ministry of women and Child Development, government of India, in this regard.

(3) In fact, the Government of India has not only failed to implement aforementioned orders of the Hon'ble Court, but challenged the basic principle of universalization outlined in these orders. The aim of this note is to clarify some key issues and present recommendations for further orders.

Anganwadi Centers are hereinafter referred to as AWCs.

As noted above, the reports of the Commissioner present a grim picture. Though directions were given by this Court in relation to universalisation of coverage under ICDS, immediate operationalisation of all sanctioned projects/centers without delay, utilization of all funds allocated, the implementation by the Central Government and the State Governments is more in breach than observance. In the earlier orders dated 29.4.2004, 7.10.2004 the submissions made by the petitioner regarding universalisation was accepted to the effect that about 14 lakhs AWCs should be made functional. As the data available indicates till now only 9,52,764 centers have been sanctioned (including 1.8 lakhs new AWCs)under the first phase of expansion that was sanctioned in 2005. It appears that the Central Government has announced sanction of 1.07 lakhs in the last week of August, 2006, which means the total number of sanctioned centers would be around

10.5 lakhs leaving a deficit of 3.5 lakhs centers. It appears that even the earlier expansion of 1.88 lakhs centers, which were sanctioned have not yet become operational.

In its letter dated 23.1.2006, the Central Government in its letter addressed to the Commissioners rejected the figure of 14 lakhs suggested by the petitioner on the ground that it was based on a survey of drinking water facilities whereby any population cluster of at least 250 persons counts as a separate "habitation". According to norms suggested by the petitioner, one AWC was intended "for every 1,000 population". This was suggested on a practical basis because one AWC cannot serve more than 1000 persons i.e. about 200 households. Since many of the AWCs have a single worker even 1000 persons appear to be a high cut off.

The suggestions presently given are that a full-fledged AWC should be made operational for a population of 300 persons or above. This is stated to be on the basis of 7th All Indian Educational Survey (in short "AIES"). Though the Central Government has accepted the need for revision of the norms for creation or placement for AWCs, very little appears to have been done. An Inter-Ministerial Task Force (in short "IMTF") was constituted for this purpose. It has submitted its report some times earlier this year.

Whatever be the norms suggested, immediate steps should be taken to make all the sanctioned centers functional and operational without further delay. Petitioner has placed on record various materials to contend that the benchmark needs to be substantially reduced to provide a rational base. As the data available goes to show about 79% of the sanctioned centers have been made operational. As the data placed by the petitioner goes to show only about 69.4% of the sanctioned centers are providing supplementary nutrition.

According to the data provided regarding the funds allocation and utilization, following is the position:

"Till the 2004-05 financial year, norms for per beneficiary per day' allocation of funds to be made by State/UT government were those set in 1991. In the last financial year (in December 2004), the DoWCD took the long overdue step of revising the financial norms for money to be spent per beneficiary per day for the provision of supplementary nutrition. The cost norms have been changed to the following:

Table 1.3: Norms for per beneficiary per day allocation of funds under State/UT plans

Beneficiary	Old Rates*	New Rates**
Children (6-72 months) per day	Re. 0.95 per child	Rs 2/- per child per day
Severely malnourished children (6-72 months)	Rs.1.35 per child per day	Rs 270 per child per day
Pregnant women and nursing mothers/adolescent girls(KSY)	Rs.1.15 per beneficiary per day	Rs.2.30 per beneficiary per day

girls(KSY)

*Rates set by the DoWCE, GOI in 1991

**Rates set by the DoWCD, GOI in December 2004"

This is based on DoWCD letter No. F.No.19-5/2003-CD-I (pt) dated 19th October 2004.

As mentioned in the Sixth Report of the Commissioners to this Court, over the years the funds allocated by the State Governments for Supplementary Nutrition Programme (in short 'SNP') has been low and the utilisation of allocated funds has also been poor. According to data from the DoWCD, the following is the position of allocation and expenditure by States and GOI for SNP In 2005-06:

Statement indicating Budget allocation by States, Releases made by GOI and Expenditure reported during 2005-06 for Supplementary Nutrition Programme (SNP) under Integrated Child Development Services (ICDS) Scheme.

Rs. In Lakh

Budget		Releases	Total	Expenditure	%
allocation for		made by	Allocation	including	Utilisation
SNP by the		GOI	State share		
States in the					
year 2005-06					
Plan	Non	During	Reported		
	Plan	2005-06	by the		
			States		
			during		
			2005-06		
1	2	3	4	5	6
197512.08		84351.13	97458.55	379321.76	218801.73
57.7					

*expenditure upto 15/2/06

This is based in DoWCED, GOI's letter to Commissioners (letter no. 19-5/2003-CD-I (Vol.111) dated 28.08.06)

It is thus seen that the extent of utilization of funds allocated for SNP is on an average only 57.7% for the country as a whole. Despite allocations made by the States and a corresponding grant given by the Centre, huge amounts of money is being left unspent and rightful beneficiaries are being denied critically needed supplementary nutrition.

Further, shortfall in allocation required to cover all the children under 6 in the country under the SNP programme is about 60%.

Total	Total no. of	Required	Shortfall	%
Allocation	Chidren under-	Allocation*	Shortfall	
	6 (according to			
	Census 2001)			
379321.76	1578.6	947178.87	567857.11	59.95%

The figures are in lakhs.

The calculation is at the rate of Rs. 2 per child per day for 300 days. The calculations above have been made only taking into account children under 6 years of age in the country. However, the allocations are for the entire SNP programme of the ICDS which is to also cover pregnant women, lactating mothers and adolescent girls taking this into account the shortfall in allocation would be even larger.

Certain States have been performing particularly badly in respect to most of the indicators seen above. The following is the data in relation to these states.

State	No. of AWCs sanctioned	No. of AWCs providing SNP	% providing service
Punjab	17421	14730	84.6
Haryana	16359	13546	82.8
Uttar Pradesh	137557	102881	74.8
Jharkand	30854	19571	63.4
Bihar	80415	50503	62.8
West Bengal	74640	45285	60.7
Madhya Pradesh	59324	35549	59.9
Assam	32.75	4330	13.5
Manipur	4501	0	0.0

Further even though the other States have a higher number of centers that are providing SNP, in terms of the utilization and allocation of funds they are performing badly.

State	Total Allocation (Center + State)	Expenditure (upto to 15/0206)	% Utilisation
Manipur	133424	1329.16	99.6
Jharkhand		16473.84	12711.01 77.2
Uttar Pradesh		67569.73	45916.19 68.0
Assam	9666.67	5337.64	55.2
Madhya Pradesh		20877.53	9457.82 45.3
Bihar	43040.62		18989.12 44.1
Haryana	13628.80		4046.03 29.7
West Bengal		45345.67	11845.38 26.1
Punjab	14814.55		3599.65 24.3

The basis for working out the above details is DoWCD, GOI's letter to

Commissioners (letter no. NO. 19-5/2003-CD-1 (Vol. III), 28.08.2006).

While none of the States are utilizing the funds allocated to them for the purpose of SNP, percent of utilization is less than even 30% in the States of Haryana, West Bengal and Punjab. In the case of Manipur it is suspicious as to where the funds have been spent as according to the data given by the Department of Women and Child Development, number of beneficiaries under SNP in Manipur is nil.

In the following table the funds required for SNP to cover all the children under the age of six (based on the norm of Rs. 2 per child per day for 300 days) has been calculated. As can be seen in the table below, in states like Assam, Uttar Pradesh, Madhya Pradesh, Punjab, West Bengal and Haryana there is a shortfall of more than 60% of funds that are actually required to cover all children under -6. This combined with the fact that these states do not fully utilize even what is currently being allocated to them shows that many deserving beneficiaries are being left out of the supplementary nutrition programme of the ICDS.

State	Total Allocation (Centre + States) 2001 Census	0-6 population as per for the 0-6 population (in Rs. Crores)#	Amount population be allocated 0-6	% required to be allocated	Shortfall
Manipur	1334.24	3.1	1876.146	28.88	
Jharkhand		16473.84	48.0	28777.128	42.75
Bihar	43040.62		162.3	97407.234	55.81
Assam	9666.67	43.5	26101.488	62.97	
Uttar Pradesh		67569.73	304.7	182832.252	63.04
Madhya Pradesh	20877.53		106.2	63709.938	68.23
Punjab	14814.55		30.6	18332.952	67.53
West Bengal		45345.67	111.3	66796.944	70.69
Haryana	13628.80		32.6	19554.48	75.11

The above details are culled out from DoWCD, GOI's Letter to Commissioners, letter no. No. 19-5/2003-CD-1(Vol. III) 28.08.06 which has been referred to in detail above.

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

(2) Government of India shall ensure that population norms for opening of AWCs must not be revised upward under any circumstances. While maintaining the upper limit of one AWC per 1000 population, the minimum limit for opening of a new AWC is a population of 300 may be kept in view. Further, rural communities and slum dwellers should be entitled to an "Anganwadi on demand" (not later than three months) from the date of demand in cases where a settlement has at least 40 children under six but no anganwadi.

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

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

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

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

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

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

(6) Chief Secretaries of all State Governments/UT are directed to submit affidavits giving 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 regards 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 decentralisation of the supply of SNP through local community shall be done.

(8) It is 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 State 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.