

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

PETITIONER:
People's Union for Civil Liberties

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 20/11/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
IA NOS. 34, 35, 37, 40, 49, 54, 58, 59, 60, 61, 62 & 77

IN

WRIT PETITION (C) NO. 196 OF 2001

WITH SUO MOTO CONTEMPT PETITION (C) NO. 128 OF 2007
IN W.P. (C) NO.196 OF 2001 IN RE: CHIEF SECRETARY
STATE OF BIHAR AND 4 ORS.

Dr. ARIJIT PASAYAT, J.

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 27.4.2004 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 9.5.2005 this Court directed as follows:

By LA 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 rash 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.\024

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 way 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 for 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 9.5.2005 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 benefits of NMBS and also to improve upon such benefits for non-institutional delivery, where the woman chooses to deliver her baby at home. In this connection, a letter dated 13.7.2006 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:

\0234.1 The scheme focuses on the poor pregnant woman with special dispensation for states having low institutional delivery rates namely the States of Uttar Pradesh, Uttaranchal, 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).\024

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-a-vis the annual targets set by the Government of India for NMBS.

Percentage of Eligible Beneficiaries Covered Under NMBS

State/UT
No. of Women
eligible for
NMBS

No. of
Beneficiaries
in 2006-07
Percentage
of Eligible
Beneficiari
es covered
Andhra Pradesh
296033
457000
154.4
Rajasthan
280123
387648
138.4
J & K
50494
57798
114.5
Assam
182894
183231
100.2
Orissa
264249
227204
86.0
Madhya Pradesh
472840
401184
84.8
Mizoram
4429
3330
75.2
Chattisgarh
148876
74778
50.2
Uttaranchal
37117
18614
50.1
West Bengal
425520
199000
46.8
Tamil Nadu
301676
136091
45.1
Karnataka
289339
81152
28.0
A & N Islands
2295
600
26.1
Kerala
107602
27683
25.7
Bihar
732891

171352
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
 10399
 NR
 NR
 Daman & 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 & Nagar Haveli 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 other states.

Indicated below are percentage of Home delivery figures

State/UT
 % Home delivery
 reported out of JSY
 beneficiaries (2006-
 07)
 % 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
Uttaranchal
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	Name of the State/UTs	Funds released in 2006-07	Expenditure Reported by States	% Utilization
10.00	Andaman & Nicobar Island	1.99	19.9	4073.20
4550.00	Andhra Pradesh	111.7	111.7	26.20
0.31	Arunachal Pradesh	1.2	1.2	0.31
1300.00	Assam	1331.32	102.4	102.4
610.00	Bihar	190.00	31.1	31.1
5.23	Chandigarh	0.00	0.00	0.00
513.00	Chattisgarh	516.55	100.7	100.7
9.17	D & N Haveli	0.73	8.0	8.0
5.23	Daman & Diu	0.00	0.00	0.00
65.49	Delhi	0.20	0.3	0.3
7.86	Goa	3.38		

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
64.8
Kerala
511.94
284.45
55.6
Lakshadweep
4.38
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
Mizoram
78.57
37.27
47.4
Nagaland
65.49
0.00
0.0
Orissa
1600.00
1571.31
98.2
Pondicherry
19.64
6.10
31.1

Punjab
145.37
56.84
39.1
Rajasthan
4085.00
3056.35
74.8
Sikkim
13.10
7.46
56.9
Tamil Nadu
1827.00
1441.00
78.9
Tripura
117.86
43.70
37.1
Uttar Pradesh
1375.00
436.80
31.8
Uttanchal
79.56
56.06
70.5
West Bengal
1678.99
1233.67
73.5
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 woman.

(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 the 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 are accordingly disposed of.