

## **HIGH COURT OF ORISSA: CUTTACK**

### **W.P.(C) No.2515 of 2011**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Dillip Kumar Mohapatra	.....	Petitioner
	Versus	
State of Odisha and others	.....	Opposite parties

For Petitioner	:	Mr. K.N. Jena, Advocate
For Opposite parties	:	Mr. S.P. Mishra, Advocate General

### **P R E S E N T:**

**THE HON'BLE CHIEF JUSTICE MR. AMITAVA ROY  
AND  
THE HON'BLE DR. JUSTICE A.K.RATH**

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Date of hearing: 29.10.2014

Date of Judgment: 29.10.2014

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**Dr. A.K. Rath, J.** The petitioner is a practising Advocate. He is neither litigation minded, nor litigation is his pursuit or hobby. The lackadaisical attitude exhibited by the opposite parties in not carrying out the directions of the Hon'ble apex Court passed in W.P.(C) No.196 of 2001 (People's Union for Civil Liberties v. Union of India and others) and implementing the Mid Day Meal Programme (hereinafter referred to as "MDM Programme") under Supplementary Nutrition Programme Scheme (hereinafter referred to as "SNP Scheme") as per the guideline of the Central Government and not taking any steps for supply of pure drinking water to 9543 numbers of Anganwadi Centres (hereinafter referred to as "AWCs") and Schools compelled him to approach the portal of this Court as a last resort.

**2.** The case of the petitioner is that keeping in view of the fact that 57% of the population of India spent Rs.12/- per day and the child mortality is 61% and large number of children upto the age of 14 years suffering from malnutrition and hunger do not go to school, dropout in the middle of the session, the Central Government introduced the Integrated Child Development Scheme (hereinafter referred to as "ICDS") and MDM Programme so that the children upto the age of 6 years, adolescent girl, pregnant women and nursing mother get the benefit of the ICDS Scheme and the school going children upto primary and upper primary school level get the benefit of MDM scheme. The object of the said scheme is to provide nutritious food to the children coming to the AWCs, primary and upper primary schools. In order to prevent malnutrition, the Central Government implemented the MDM Programme under the SNP Scheme throughout the State of Orissa in primary schools, upper primary schools, AWCs to achieve social objective of eradication of illiteracy, check drop out and provide nutritious food at the level of primary, upper primary schools and AWCs. The Anganwadi Workers of different AWCs provide health services including health check up for children under 6 years, antenatal care of expected mothers, postnatal care of nursing mothers and treatment of minor ailments. Under the Scheme, the AWCs supply nutritious foods to the children, adolescent girl, pregnant women for 300 days in a year. Since the implementation of the MDM Programme in the primary schools, upper primary schools and AWCs in the State of Orissa, several complaints/irregularities were reported in various news papers pertaining to supply of rotten, insect infested substandard dal and other substandard mid day meal ingredients to various schools and AWCs of KBK districts and other backward districts. There were also some complaints regarding non-supply of rice, dal, soya chunk to various schools under the MDM Programme. The minor children were admitted to hospitals after taking rotten, insect infested dal in the mid day meal. But

the State Government had not taken any action. The contractors were allowed to supply substandard low quality dal and soya chunk to the schools. In order to check the malnutrition and effective implementation of the various schemes and for efficient and effective implementation of Supplementary Nutrition Programme, the apex Court by order dated 13.12.2006 had issued directions in W.P.(C) No.196 of 2001, reported in (2007) 1 SCC 719 to the Chief Secretaries of all the State Governments/Union Territories to submit affidavits with details of all habitations with a majority of SC/ST households, the availability of AWCs in those habitations and the action plan for ensuring that all the habitations are functioning AWCs within two years. The Chief Secretaries of all the State Governments/UTs were also directed to file affidavits giving details of the steps that had taken with regard to the order of the Court dated 7.10.2004 that the contractors shall not be used for supply of nutrition in AWCs 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 meal. In spite of the aforesaid directions of the apex Court, the State Government and Collectors of different districts are still using contractors for supply of nutritions in Anganwadis. The Central Government, taking into consideration all aspects, approved the revised cost norms under Supplementary Nutrition Programme. Thereafter, the State of Orissa in the Women and Child Development Department issued a circular dated 3.9.2009 revising the norms for supplementary nutrition in ICDS. The same was contrary to the direction of the apex Court. The said guideline envisages the modality for implementation of the programme. It was clearly directed that any supply contractors for dal and other ingredients, i.e., vegetable, soya chunks, rice, etc. which were decided at the district level should only be executed for a period of six months. The Collectors of the districts were directed to initiate fresh tender process accordingly for a period of six months. The

supply of substandard dal in the MDM Programme was reported in Electronic/Print Media. On 20.1.2011, the State Vigilance conducted raids in different places and detected large scale irregularities in supply of dal under the mid day meal scheme and Supplementary Nutrition Programme. The raids were also conducted in the office of suppliers of dal in Baramunda colony at Bhubaneswar. In the meeting held on 10<sup>th</sup> November, 2010 headed by the Chief Secretary, it was decided to procure Kandula dal from the women self help groups of five KBK districts. But the opposite party no.3 maintained a sphinx-like silence. The opposite party no.3 was also aware about supply of such low quality insect infested dal to various schools and AWCs. The further case of the petitioner is that there are at present 42104 numbers of primary schools, 11510 numbers of upper primary schools, total 53614 schools and 34492 numbers of AWCs in the State. In almost all the schools and AWCs, the substandard insect infested, rotten, bacteria contaminated dal are being supplied by the contractors. The same are cooked and served to the minor children. The Vigilance Department has only lodged the FIRs, but no action whatsoever has been taken against the accused persons. It is further stated that out of total numbers of 34492 AWCs, conditions of only 4293 buildings are in good condition, 1639 AWCs beyond repairing condition, 4819 require major repairing and 5023 require minor repairing. There is no toilet in 19643 AWCs. No drinking water facility is available in 9543 AWCs, no kitchen in 18836 AWCs, no store room in 19328 AWCs. Pure drinking water is not available in most of the Centres. It is further stated that in most of the remote villages, without implementing MDM Programme, false bills were prepared in the name of fake/non-existing beneficiaries and public money was siphoned off. It is further stated that the Controller and Auditor General of India submitted a report for the year March, 2012 which was presented before the Orissa Legislative Assembly. The said report reveals that no annual household survey was carried out

for assessment of the actual number of beneficiaries. The projected figure includes 3.66 lakh non-existent beneficiaries detected by Department during 2010-11. Fixation of ceiling price of Rs.75 per kg. of Arhar Dal as against the existing system of bidding/tender process prescribed in the rules and even quoting this ceiling as the rate in tenders led to loss of Rs.43.61 crores in 30 districts during April, 2010 to March, 2011. It was also found that the ceiling price was much higher than the whole price of Arhar Dal. Tenders were finalized without conducting the prescribed quality tests. Several other irregularities were also pointed out. It is further stated that one M/s.Puja Enterprises, Bhubaneswar was debarred from participating in any tender in the district of Dhenkanal by the Collector, Dhenkanal, but the said firm was engaged as a contractor in many districts. Undue favour had been shown by the State functionaries to the contractors/suppliers for supply of dal.

**3.** Spate of orders had been passed by this Court from time to time, pursuant to which, 14 numbers of affidavits had been filed by the opposite parties at different point of time including the Vigilance Department. But then a comprehensive counter affidavit was filed by the opposite party nos.1 and 3 on 18.7.2011. Since the stand of opposite parties is same, we refer to the counter affidavit dated 18.7.2011 filed by the opposite party nos.1 and 3. Additionally we refer to the affidavits dated 5.7.2011 and 10.07.2014 filed by the Principal Secretary and Additional Secretary to the Government, Rural Development Department respectively.

**4.** The case of the opposite parties is that the MDM Programme is implemented by the Human Resource Development Ministry, Government of India for providing one hot cooked meal per day to children studying in primary and upper primary schools. The Supplementary Nutrition Programme is part of the ICDS being implemented by the Women and Child Development Ministry, Government of India. In Orissa, both the programmes are being implemented by the Women and Child

Development Department. In order to ensure a single line control, Government of Orissa have taken a decision to transfer the MDM Programme to the School and Mass Education Department as it is implemented in schools, which are under the administrative control of the said Department. Apart from denying the supply of substandard dal and substandard mid day meal ingredients to KBK districts and other backward districts, it is stated that the endeavour of the State Government has always been to supply the best quality foodstuff to the beneficiaries under SNP and MDM. The whole timeline of the procurement for feeding programmes can be divided into two distinct systems, i.e., one in vogue from 2001 till 31<sup>st</sup> March, 2011 and the other one from 1<sup>st</sup> April, 2011 onwards. Prior to 2001, procurement was done centrally at the State level. The Government decentralized procurement of dal to the district level in 2001 and issued guidelines and directions repeatedly to the districts for ensuring its quality. Since the year 2001, a District Level Committee had been constituted under the Chairmanship of the Collector for procurement of quality foodstuff like dal. The said Committee consists of district level technical officers. The Committee was instructed to follow the tender process as per the Orissa Public Works Department Code. The 'Agmark' standards for checking the quality of dal had been circulated on various occasions to the districts. The quality check through this method does not require any laboratory testing and can be performed by anybody. At the time of procurement, all samples are subjected to the quality check and only the samples pass the test are procured. The Procurement Committee would test the quality of dal given by the supplier. The best quality of dal tested as per procedure would be passed for procurement. The supplier, so selected for supply of food materials on a monthly basis to each AWCs and Schools, has to deposit the samples of the food items at the district level. Simultaneously, the samples supplied to the AWCs and schools would be certified by the recipients, i.e., AWC, SHG or School

Headmaster. There is a provision that the mothers of the children would check the quality of foodstuff and submit a certificate to that effect basing upon which payment would be made to the supplier. The mothers' committee comprises of village mothers. There is also a provision for random checks by different levels of field officers. In the last year, nearly 3700 checks were made by district and block level officials. In compliance to the direction of the apex Court in W.P.(C) No.196 of 2001, the State Government made a concerted effort to decentralize procurement of foodstuff under ICDS by disengaging the contractors and selecting the Headquarters block of all 30 districts as pilot blocks for decentralization of procurement and then issued instructions to extend the same to other blocks of the State. The new system of decentralized procurement had been taken up for both SNP and MDM throughout the State. Thus the State Government have put in place a robust system to ensure that the guidelines are sacrosanctly followed. The local communities have been put in place through formation of a 'Jaanch' committee at village level comprising of a retired Government/PSU official, one person with disability, two Presidents/Secretaries of SHGs, Mothers' Committee and Presidents of SMC/VEC. The Mothers' Committee and SMC and VEC are involved in monitoring and fixation of price. In order to ensure quality, minimum storage time for foodstuff has been specified. The process of cooking and nutritive value has been given and training imparted through CDs for ensuring nutritive cooking. Personal hygiene instructions has been given to all AWWs, cooks and helpers through the Collectors. Verification of all beneficiaries are carried out beforehand to ensure that there is no over-reporting. All districts are asked to ensure the publication of entitlement charts contained in guidelines indicating the quantity per meal and the cost thereof in each AWCs and Schools. It is further stated that involvement of WSHGs/Mahila Mandals for procurement of foodstuff under ICDS across the State disengaging the contractors/suppliers need

careful planning for which the District Headquarters blocks are selected as pilot blocks for procurement of foodstuff through WSHGs/Mahila Mandals. The price of dal has been fixed at Rs.75/- per kg. which is market price and inclusive of all costs. It is further stated that the report on irregularities on supply of dal was received from Deogarh District during 2010. Prompt steps are taken against the errant officers like DSWOs, CDPOs, etc. and the supplier is also blacklisted. In case of other four districts, the Vigilance Department has filed FIRs. Basing on the enquiry, the State Vigilance Department has already registered FIRs in the district of Balasore, Mayurbhanj, Ganjam, Jajpur and Deogarh against the persons who are involved in supplying the substandard food materials. So far as 'kandul' is concerned, it is stated that the guidelines did not specify any particular type of dal for the State as a whole, rather it indicates that locally produced dal, especially those processed by SHGs, should be given preference for procurement and a list of prohibited dal has also been given in the guidelines to ensure that no substandard dal is procured. It is further stated that 40 lakhs primary students in 47,780 primary schools, 17 lakhs upper primary students in 18,993 schools were covered under the programme during the year 2010-11. Similarly, 49,08,801 numbers of beneficiaries had been covered in 60,918 AWCs and 10,216 numbers in Mini AWCs during the year 2010-11. It is further stated that the W & CD Department had placed a sum of Rs.17.00 crores with all the districts for repairing/construction of AWCs across the State during the year 2009-10. However, 13<sup>th</sup> Finance Commission had earmarked a sum of Rs.400.00 crores for the construction of AWCs across the State.

**5.** It is apt to state here that the affidavit dated 05.07.2011 filed by the Principal Secretary to the Government, Rural Development Department in compliance of the order dated 13.5.2011 of this Court shows that out of 71,134 AWCs in the State, only 8050 AWCs lack drinking water facilities within a distance of 250 meters in rural areas.



The matter was reviewed by the Hon'ble Chief Minister and the Chief Secretary of Odisha in different meetings who instructed the Collectors to make provision of drinking water in all AWCs at the earliest. It is further stated that the Principal Secretary to the Government, Rural Development Department had reviewed the matter several times and instructed the Collectors, Chief Engineer, RWSS and the Executive Engineers, RWSS to make out all efforts for drilling tube wells in all AWCs. During review, it was revealed that earlier the Collectors had reported that 8050 AWCs (2776 in Government premises and 5274 in private accommodation excluding reports from 4 districts namely, Kalahandi, Kandhamal, Koraput and Kendrapara) lacked drinking water facilities on the assumption that the tube wells should be located within the AWC premises. However, when the criteria of 250 meters was taken, it was found that in total 3454 AWCs lacked drinking water facilities within a distance of 250 meters. By letter dated 30.6.2011, the Chief Engineer, RWSS had reported that drinking water facilities had already been provided to 1316 AWCs. It is further stated that in addition to 15 drilling rigs under RWSS organization, the Chief Engineer had hired additional 131 rigs from different parts of the country to achieve the target. Despite the best efforts, the target could not be achieved. The Collectors had been advised to carry on with the process till remaining 2138 AWCs were provided with drinking water within 250 meters distance.

**6.** The affidavit dated 10.7.2014, filed by the Additional Secretary, Rural Development Department in compliance to the order dated 20.12.12 and 6.3.2014, shows that till 20.12.2012, Rural Water Supply Organization had already drilled 3752 numbers of tube wells in AWCs. All AWCs, whether in Government or Private buildings, had been provided with safe drinking water within 250 meters radius. The Rural Water Supply and Sanitation (RWS&S) Organization had taken all possible

steps for providing safe drinking water facilities to all the AWCs to ensure compliance of the order passed by this Court.

**7.** We have heard Mr. K.N. Jena, learned counsel for the petitioner and Mr. S.P. Mishra, learned Advocate General.

**8.** Spate of orders have been passed by this Court from time to time, pursuant to which as many as 14 affidavits in shape of counter and additional affidavits have been filed by the opposite parties including the Vigilance Department apprising this Court from time to time about the compliance of the orders.

So far as supply of substandard dal to the primary schools and AWCs is concerned, we find that prior to the year 2001, procurement of dal was done centrally at the State level. The Government decentralized procurement of dal to the district level in the year 2001 and issued guidelines and directions to the districts for ensuring its quality. Since 2001, the District Level Committee had been constituted under the Chairmanship of the Collector for procurement of dal. The said Committee consists of district level technical officers. The Committee was also instructed to follow the tender process as per the Orissa Public Works Department Code. The 'Agmark' standards for checking the quality of dal had been circulated on various occasions to the districts. The quality test through this method did not require any laboratory testing. At the time of procurement, all samples were subjected to the quality check and only samples passed the test were procured. The Procurement Committee would test the quality of dal given by the supplier. The supplier so selected supplied food materials on a monthly basis to each AWCs and schools. Simultaneously, the samples supplied to the AWCs and schools were certified by the AWC, SHG or School Headmaster. There is a provision that the mothers of the children would check the quality of foodstuff and submit a certificate to that effect basing upon which payment would be made to the supplier. The mothers' committee comprises of village

mothers. There is also a provision for random checks by different levels of field officers. Further, in compliance to the directions of the apex Court in W.P.(C) No.196 of 2001, the State Government made a concerted effort to decentralize procurement of foodstuff under ICDS by disengaging the contractors and selecting the Headquarters blocks of 30 districts as pilot blocks for decentralization of procurement and then issued instructions to extend the same to other blocks. The new system of decentralized procurement had been taken up for both SNP and MDM throughout the State. A 'Janch' committee had been formed at village level comprising of a retired Government/PSU official, one person with disability, two Presidents/Secretaries of SHGs, Mothers' Committee and SMC and VEC. The Mothers' Committee and SMC and VEC had been involved in monitoring and fixation of price.

**9.** It is submitted at the Bar that W.P.(C) No.196 of 2001 is still pending before the apex Court wherein the State of Orissa is one of the opposite party. The next date of hearing of that case is fixed to 10.11.2014. Any observation/direction of this Court would be in conflict with the judgment/order of the apex Court.

**10.** In view of the same, we close the proceeding with an observation that pursuant to the directions/orders passed by this Court from time to time, the opposite parties had taken steps as enumerated in the preceding paragraphs and thus no order is required to be passed.

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**JUDGE**

**CHIEF JUSTICE : I agree.**

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**CHIEF JUSTICE**