
(2021) 01 SC CK 0019

Supreme Court Of India

Case No: Writ Petition (Civil) No. 1039 Of 2020

Dipika Jagatram Sahani

APPELLANT

Vs

Union Of India And
Others

RESPONDENT

Date of Decision: Jan. 13, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 21, 32, 47
- National Food Security Act, 2013 - Section 2(1), 4, 5, 6, 7
- Disaster Management Act, 2005 - Section 10(2)(I)

Citation: AIR 2021 SC 523 : (2021) 2 SCC 740 : (2021) 1 JT 229 : (2021) 1 Scale 581 : (2021) 1 UPLBEC 318 : (2021) 1 SCJ 578 : (2021) 2 ADJ 277

Hon'ble Judges: Ashok Bhushan, J; R. Subhash Reddy, J; M.R. Shah, J

Bench: Full Bench

Advocate: Colin Gonsalves, Olivia Bang, Satya Mitra, Gurmeet Singh Makker, Chirag M. Shroff, Abhimanyu Tewari, Eliza Barr, Diksha Rai, Abhinav Mukerji, Bihu Sharma, Pratishtha Vij, Vishakha, Deepanwita Priyanka, Abhimanyu Jhamba, R A Thonpinao Thangal, Samir Ali Khan, Sashi Juneja, Pinky Behera, V. N. Raghupathy, Priyanka Prakash, Beena Prakash, G. Prakash, Sachin Patil, Rahul Chitnis, Aditya A. Pande, Geo Joseph, Pukhrambam Ramesh Kumar, Anupama Ng, Karun Sharma, Avijit Mani Tripathi, Siddhesh Kotwal, Bansuri Swaraj, Ana Upadhyay, Divyansh Tiwari, Nirnimesh Dube, Astha Sharma, K. Enatoli Sema, Amit Kumar Singh, Uttara Babbar, Bhavana Duhoon, Manan Bansal, Dr. Manish Singhvi, Sandeep Kumar Jha, Raghvendra Kumar, Raghvendra Kumar, Anand Kumar Dubey, Narendra Kumar, M. Yogesh Kanna, Rajarajeswaran S., Aditya Chadha, S. Udaya Kumar Sagar, Sweena Nair, Shuvodeep Roy, Rahul Raj Mishra, Garima Prashad, Suhaan Mukerji, Vishal Prasad, Nikhil Parikshith Abhishek Manchanda, K.V. Jagdishvaran, G. Indira, V. G. Pragasam, Dr. Monika Gusai

Final Decision: Allowed

Judgement

Ashok Bhushan, J",,,,,

1. This writ petition has been filed as a Public Interest Litigation under Article 32 of the Constitution of India questioning the closure of the Anganwadi,,,,

Centres across the country. The petitioner states that through Anganwadi Centres supplementary nutrition to pregnant women, lactating mothers,",,,,

adolescent girls and children upto the age of 6 years were being provided which fulfilled the State objective of holistic development of children under 6,,,,

years and to provide food and nutrition to the beneficiaries. In ã, writ petition the petitioner impleaded the Union ã, ofã, India,ã, allã, Statesã, andã, " ,,,,,

Unionã, Territoriesã, andã, has prayed for following reliefs:,,,,

a) For a writ of mandamus directing the Union of India and all States and Union Territories to forthwith reopen all the Anganwadi Centres in the,,,,

country and provide Anganwadi services as before the lockdown and in accordance with Sections 4 to 7 of the National Food Security Act, 2013." ,,,,,

b) For writ of mandamus directing the Union of India and all States and Union Territories to provide Hot Cooked Meals, Take Home Rations in" ,,,,,

consonance to the provisions of the National Food Security Act, 2013 as well as The Supplementary Nutrition (under the Integrated Child" ,,,,,

Development Services Scheme)Rules, 2020 as well as make provisions for additional Supplementary Nutrition provisions to all beneficiaries of the" ,,,,,

ICDS Scheme in the form of a comprehensive package of Cooked Food, Eggs, Fruits, dry rations including cereals, pulses, etc." ,,,,,

c) For a writ of mandamus directing the Union of India and all States and Union Territories to conduct growth monitoring of children to document,,,,

growth in the wake of the after effects of the pandemic more particularly main nourishment among children and anemia in girl children and initiate,,,,

corrective steps forthwith.,,,,,

d) For an order in terms of recommendations 1-6 of the Right to Food Campaign in its representation dated 6.8.20 to the Union of India at Annexure,,,,

P-8 hereto and as set out in paragraph no.37 above.,,,,,

e) For any other order deemed fit and proper under the circumstances of the present case.Ã¢â¬â¸,,,

2. The Constitution of India with the object of securing to all its citizens social and economic justice contains various Articles which empower making,,,

of special law in favour of women and children. Article 47 of the Constitution which forms the part of Directive Principles of the State Policy 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. The Government of India with the above objective launched a welfare scheme, namely, Integrated Child Development Services",,,,

Scheme in the year 1975. The Scheme was designed as an early childhood development programme aimed to address health, nutrition and",,,,

development needs of young children who are future of India and pregnant and nursing mothers. The Scheme was designed to promote holistic,,,

development of children under 6 years of age. This Court in a Public Interest Litigation in Writ Petition No.196 of 2001, PeopleÃ¢â¬â¸s Union for Civil",,,,

Liberties vs. Union of India and others, had issued various directions for protection of right to food of the poor and the underprivileged sections",,,,

including children and women. This Court has been pro-actively directing the Central Government and the State Governments to effectively implement,,,

the Integrated Child Development Services Scheme. Various directions were issued by this Court from time to time.,,,,

3. The Parliament enacted the National Food Security Act, 2013 (hereinafter referred to as the Ã¢â¬â¸Act, 2013Ã¢â¬â¸) to provide for food and nutritional",,,,

security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity",,,,

and for matters connected therewith. The Statement of Objects and Reasons of the Act apart from containing various other objects, proposed to",,,,

provide following also in paragraph 4(c), (d) and (e):",,,,

Ã¢â¬â¸4. In view of the preceding paragraphs, it is proposed to enact a new legislation, namely, the National Food Security Bill, 2011, to-",,,,

..... ,,,,

(c) entitle every pregnant woman and lactating mother to meal, free of charge, during pregnancy and six months after child birth, through the local",,,,

anganwadi, so as to meet the nutritional standards specified in Schedule II; and to provide to such women maternity benefit of rupees one thousand",,,,

per month for a period of six months in accordance with a scheme, including cost sharing, payable in such instalments as may be prescribed by the",,,,

Central Government.,,,,

(d) entitle every child up to the age of fourteen years-(i) age appropriate meal, free of charge, through the local anganwadi so as to meet the",,,,

nutritional standards specified in Schedule II in the case of children in the age group of six months to six years; and (ii) one mid day meal, free of",,,,

charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, up to class VIII, so as to",,,,

meet the nutritional standards specified in Schedule.,,,,

II in the case of children in the age group of six to fourteen years;,,,,

(e) require the State Government to identify and provide meals through the local anganwadi, free of charge, to children who suffer from malnutrition," ,,,,

so as to meet the nutritional standards specified in Schedule II; and implement schemes covering entitlements of women and children in accordance.,,,,

with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the",,,,

Central Government.,,,,

4. The Act, 2013 by Section 4 creates a statutory right of every pregnant woman and lactating mother free meals during pregnancy and six months",,,,

after the child birth. Section 5 provides for nutritional support to children, in the case of children in the age group of six months to six years, age",,,,

appropriate meal, free of charge, through the local Anganwadi so as to meet the nutritional standards. Similarly, Section 6 provides for and",,,,

management of child malnutrition. Sections 4,5 and 6 are as follows:" ,,,,

Section 4. Nutritional support to pregnant women and lactating mothers.-Subject to such schemes as may be framed by the Central Government," , , , ,

every pregnant woman and lactating mother shall be entitled to" , , , , ,

(a) meal, free of charge, during pregnancy and six months after the child birth, through the local anganwadi, so as to meet the nutritional standards" , , , , ,

specified in Schedule II; and" , , , , ,

(b) maternity benefit of not less than rupees six thousand, in such instalments as may be prescribed by the Central Government:" , , , , ,

Provided that all pregnant women and lactating mothers in regular employment with the Central Government or State Governments or Public Sector" , , , , ,

Serial number, Category, Type of meal, "Calories

(Kcal)", Protein (g)

1., Children (6 months to 3 years), Take Home Ration, 500, 12-15

2., Children (3 to 6 years), "Morning Snack and

Hot Cooked Meal", 500, 12-15

3., "Children (6 months to 6 years) who are

malnourished", Take Home Ration, 800, 20-25

4., Lower primary classes, Hot Cooked Meal, 450, 12

5., Upper primary classes, Hot Cooked Meal, 700, 20

6., "Pregnant women and Lactating

mothers", Take Home Ration, 600, 18-20

raise the level of nutrition and the standard of living of the people. , , , , ,

20. After issuance of Order dated 24.03.2020 by Ministry of Home Affairs, for containment of Covid-19, Anganwadi Centres in States/Union" , , , , ,

Territories were closed. The Government of India, Ministry of Women and Child Development vide letter dated 30.03.2020 directed issuance of" , , , , ,

necessary instructions to the District Authorities to utilize services of Anganwadi workers/helpers for providing supplementary nutrition to the,,,,

beneficiaries at their doorsteps. After taking suitable measures as suggested by Health Authorities, Government of India, Ministry of Home Affairs" ,,,,

issued an order dated 15.04.2020 in exercise of powers under Section 10(2)(I) of the Disaster Management Act, 2005, wherein in paragraph 8, it was" ,,,,

provided that Anganwadis shall remain functional by distributing the food items and nutrition once in fifteen days at the doorsteps of the beneficiaries,,,,

i.e. Children, pregnant women and lactating mothers. The order further stated the beneficiaries shall not attend the Anganwadi." ,,,,

21. By subsequent order issued by the Government of India, Ministry of Home Affairs, various more activities were permitted. ON 14.10.2020, the" ,,,,

Ministry of Women and Child Development wrote to the Ministry of Home Affairs (Disaster Management Division) regarding reopening of,,,,

Anganwadi Centres. The Government of India, Ministry of Home Affairs, issued an O.M. dated 22.10.2020 stating that the Ministry of Women and" ,,,,

Child Development may take decision after consultation with concerned States/Union Territories for reopening of Anganwadi centres which are out of,,,,

the containment zone taking appropriate measures related to health and safety.,,,,

22. The Government of India, Ministry of Women and Child Development issued a guidance note on 11.11.2020 on operation of Anganwadi services," ,,,,

which note is to the following effect: - ,,,,

Ã¢â€F. No. PA/85/2020-CPMU C No 85941 Government of India Ministry of Women & Child Development,,,,

Jeevan Vihar Building," ,,,,

New Delhi - 110001,,,,

11t hÃ, November, 2020" ,,,,

To ,,,,

The Principal Secretaries/ Secretaries, Department of Social Welfare/ Women & Child Development of all States/UTs" ,,,,

Subject: Guidance note on operations of Anganwadi Services "regarding",,,,

Sir/Madam,",,,,

Under-nutrition is one of the leading causes of morbidity and mortality in children under the age of 5 years. Delivery of preventive services to mitigate,,,

the impact of the pandemic on the nutrition is well recognized. Provision of essential services like Growth Monitoring Referral, and supplementary",,,,,

nutrition etc. to ensure the health and well-being of the pregnant ladies, lactating mothers and children below 5 years is most important. In view of" ,,,,,

Covid19 pandemic globally, it is imperative to ensure, that the beneficiaries do not suffer and remain away from Anganwadi services." ,,,,,

2. Hence, Anganwadi Services may be resumed outside containment zones with immediate effect, complying health and safety protocols. Further," ,,,,,

cleanliness, Hygiene and Sanitization may be ensured in and around the premises of Anganwadi Center, use of mask/face covers shall be mandatory" ,,,,,

for everyone visiting the Centre, including AWW and AWH. Also, frequent hand washing, and strict social distancing as per MoHFW guidelines must" ,,,,,

be followed at Anganwadi Centre.,,,,,

3. Ministry of Women and Child Development has taken up the matter with Ministry of Home Affairs regarding reopening of AWCs. Ministry of ,,,,,

Home Affairs vide OM No. 40-6/2020/DM-1(A)/Part-2 dated 22nd October 2020 (copy enclosed) advised that AWCs may be opened outside the ,,,,,

containment zones, by adhering to the Standard Operating Procedures (SOP) related to health and security measures in consultation with State/UTs." ,,,,,

4. A guidance note for resuming Anganwadi Services is enclosed herewith. Based on the guidance note, States / UT Governments need to develop" ,,,,,

their own SOP for reopening AWC when the State/Union Territory Governments declare it safe for AWC to operate. All States/UTs are expected to ,,,,,

comply with the COVID-19 related directions issued by Ministry of Home Affairs and Ministry of Health and Family Welfare, Government of India," ,,,,,

from time to time.,,,,,

5. Therefore, it is requested that States/UTs may decide reopening of AWCs outside containment zones while adhering to health and safety protocols",,,,

as per the guidelines of MOHFW.,,,,

Yours sincerely," ,,,,

Executive Director," ,,,,

POSHAN Abhiyan, MWCD" ,,,,

Copy to:,,,,

PS to Minister," ,,,,

PS to MoS," ,,,,

Secretary MoHFW and Secretary MHAÃ¢â€â€â€,â€â€, ,,,,

23. It is also relevant to notice that in the month of September, 2020, the National Human Rights Commission issued an advisory on Right to food" ,,,,

security and nutrition in context of Covid-19. The National Human Rights Commission issued following Advisory dated 28.09.2020 Related to,,,,

Nutrition: -,,,,

Ã¢â€â€I. Implementation of Anganwadi Services,,,,

i. Recognise ICDS as an ESSENTIAL SERVICE and reopen anganwadi centres immediately to provide crucial growth monitoring, immunization," ,,,,

cooked meal, and nutritional counselling services, with adequate safety protocols to prevent COVID infection for anganwadi workers, women and" ,,,,

children.,,,,

ii. Ensure that sufficient quantity of dry rations (food grains, eggs, milk powder and medicines, etc.) and take-home rations are made available to" ,,,,

children under three years, as well as pregnant and lactating women.Ã¢â€â€â€,â€â€" ,,,,

24. After issuing a guidance note on 11.11.2020, several States have taken decision to open Anganwadi Centres. The State of Meghalaya opened its" ,,,,

Anganwadi Centres w.e.f. 03.12.2020. The State of Punjab opened its Anganwadi Centres w.e.f. 09.12.2020, the State of Rajasthan also opened its" ,,,,

Anganwadi Centres w.e.f. 07.12.2020.,,,,

25. Even before the order dated 11.11.2020, the State of Chhattisgarh had opened 12,593 Anganwadi Centres in the State w.e.f. September, 2020. It",,,,

is relevant to notice the affidavit filed on behalf of the State of Arunachal Pradesh. The State of Arunachal Pradesh issued an order dated 18.06.2020.,,,,

titled "Strategy for opening of Anganwadi Centres" and under the aforesaid strategies, Anganwadi Centres were to be reopened in two phases," ,,,,

first Phase-I from 15.07.2020 and phase-II from 01.08.2020. Standard Operating Procedure dated 18.06.2020 was issued by the Government of ,,,,

Arunachal Pradesh, Ministry of Women and Child Development department." ,,,,

26. On the other hand, there are few States who have taken decision not to reopen Anganwadi Centres. We may notice the counter affidavit filed on" ,,,,

behalf of the State of Assam. In the affidavit, it has been stated that Anganwadi Centres will be open as and when the permission will be accorded by" ,,,,

the Central Government in this regard. The State of Assam is under the impression that the order issued by the Ministry of Home Affairs dated ,,,,

25.11.2020, provides for not opening of the Centres. The order dated 25.11.2020 of Government of India, Ministry of Home Affairs, filed as" ,,,,

Annexure-R1. Paragraph 16 which contains the heading "protection of Vulnerable persons" is as follows: - ,,,,

"16. Persons above 65 years of age, persons with co-morbidities, pregnant women, and children below the age of 10 years are advised to stay at" ,,,,

home, except for essential and health purposes." ,,,,

27. The paragraph 16 as noted above does not in any manner create any prohibition in opening of Anganwadi Centres. The above guidelines have ,,,,

been issued keeping in view the protection of vulnerable persons and which requires pregnant women, children below the age of 10 years to stay at" ,,,,

home except for essential and health purposes. Services which are being provided by Anganwadi Centres are essential services. ,,,,

28. We have already noticed the guidance note dated 11.11.2020 issued by Government of India which permits reopening of Anganwadi Centres with ,,,,

consultation of States/Union Territories. State of Assam was thus fully empowered to take the decision regarding reopening of Anganwadi Centres,,,,,

and its stand taken in paragraph 7 to the following effect- "All Anganwadi Centres will be opened as and when the permission is accorded by the,,,,,

Central Government in this regard" is not correct. The State could have very well taken a decision for reopening the Anganwadi Centres in view of,,,,,

the guidance note issued by the Government of India dated 11.11.2020.,,,,,

29. The State of Maharashtra in its affidavit has stated that the Disaster Management department has restricted the reopening of Anganwadi Centres,,,,,

till the control of Covid-19 pandemic in the State and has approved the continuation of arrangement of supplies of Take Home Rations at the doorsteps,,,,,

of the beneficiaries. Some of the States have also in their affidavits stated that Anganwadi Centres be closed till particular date like State of Tripura,,,,,

states that Anganwadi Centres are to be closed till 31.12.2020, State of Mizoram states that Anganwadi Centres be closed till 10.01.2021. Some of the",,,,,

States/Union Territories have stated that the approval from the States/Union Territories are awaited for reopening of Anganwadi Centres.,,,,,

30. All the States/Union Territories in their affidavits have given details of providing Take Home Rations(THR) as per guidelines and requirement,,,,,

contained in Act, 2013. Different cereals and other items have been referred to in the affidavits filed by the States/Union Territories which according",,,,,

to them complies with nutrition standards. Most of the States/Union Territories have mentioned cereals as Take Home Ration for the beneficiaries,,,,,

from 3 to 6 years of age. The State of Maharashtra claim to supply Wheat/Rice-62 grams, Masoor Dal-28 grams, Chana-30 grams, Mirchi Powder-4",,,,,

grams, Turmeric Powder-4 grams, Salt-8 grams, Soybean Oil-10 gram per day per beneficiary." ,,,,,

31. The State of Bihar for a few months has not supplied Take Home Rations rather it has directed for crediting the amount equivalent to Take Home,,,,,

Ration to the Bank Account of the beneficiaries or their parents. The State of Bihar, however, has started distributing cereals as Home Take Rations",,,,,

by orders issued by the State of Bihar in April, 2020. The State of Gujarat in its affidavit has stated that it is providing to Children (below 6 years of" ,,,,

Age), 8 packets of Balshakti (500gm Packets) Take Home Ration per month to match up nutritional requirements. Take Home Ration is being" ,,,,

distributed through the medium of Gujarat Cooperative Milk Marketing Federation. It further states that since June 2020, the ready to eat nutritional" ,,,,

traditional sweet (Sukhadi) 1-Kilogram per week in lieu of hot cooked meals is provided to 3 to 6 years" children. We are of the view that the" ,,,,

State ought to have included certain cereals in Take Home Ration instead of providing only "Balshakti" and "Sukhadi". The nutritional" ,,,,

standard as provided in Schedule II of Act, 2013, has to be met by all States and Union Territories." ,,,,

32. There is no doubt that the Central Government as well as all the States and Union Territories have issued necessary guidelines for implementing" ,,,,

statutory requirements of Act, 2013 and for meeting the nutritional standards. The big question however is as to what extent the implementation is on" ,,,,

the ground and the benefits are extended to beneficiaries as required by the Statute. The beneficiaries which belong to vulnerable class are not" ,,,,

equipped with suitable mechanisms to raise issues of non-implementation and not providing food articles complying with nutritional standards as" ,,,,

provided in the Statute." ,,,,

33. It is the obligation of the State to ensure that pregnant women, lactating mothers and children in the age of 3 to 6 years and children who suffer" ,,,,

from malnutrition are provided their dues. The State has to provide an appropriate mechanism for supervision and check, child development officers" ,,,,

and other district level officers who are entrusted to monitor the functioning of Anganwadi Centres have to be extra vigilant and take steps so that no" ,,,,

beneficiary is denied its dues. All States/Union Territories should evolve an appropriate mechanism for supervision so that dues are received by" ,,,,

beneficiaries for whom schemes are in place. It is for the State to secure health to its citizens as its primary duty. No doubt, the Government is" ,,,,

rendering this obligation through various schemes, such as, opening of Aanganwadis, providing nutritious food through Aanganwadis, Mid-day Meal" ,,,,

Scheme, etc., but in order to make it meaningful, it has to be within the reach of its people, as far as possible, and the Government must supply the" ,,,,

nutritious food in the real sense bearing in mind the provisions of National Food Security Act.,,,,

34. The Government of India by its guidance note permitted all the States and Union Territories to open Anganwadi Centres, it is the obligation of the" ,,,,

States/Union Territories to take decision for opening of Anganwadi Centres. As noted above, several States/Union Territories have already started" ,,,,

running their Anganwadi Centres which is a positive step towards achievement of the goal for which Anganwadi Centres were envisaged. We are of ,,,,

the view that unless there are any specific reasons for not opening of Anganwadi Centres, all Anganwadi Centres beyond the containment zones" ,,,,

should be made functional by all the States/Union Territories at an early date. All States may review the situation and take positive decisions on or ,,,,

before 31.01.2021 and unless there are specific decisions taken by the State Disaster Management Authority of a particular State, Anganwadi" ,,,,

Centres be opened on or before 31.01.2021.,,,,

35. In view of the above discussions, we allow this writ petition with following directions: -" ,,,,

I) As per guidance note dated 11.11.2020 issued by Government of India, Ministry of Women and Child Development, all States/Union Territories" ,,,,

who have not yet opened Anganwadi Centres shall take a decision to open Anganwadi Centres on or before 31.01.2021 situated outside the ,,,,

containment zone.,,,,

II) The decision for not opening Anganwadi Centres in any State/Union Territories or any part of State/Union Territory shall be taken only after the ,,,,

State Disaster Management Authority of the State direct for not opening of Anganwadi Centres in State/particular area of the State situated outside ,,,,

containment zone.,,,,

III) Anganwadi Centres situated in the containment zone shall not be opened till the containment continues.,,,,

IV) All States/Union Territories shall ensure that nutritional standards as provided in Schedule II of National Food Security Act, 2013, reproduced",,,,

herein above in para 13 is fulfilled by providing nutritional support to pregnant women, lactating mothers, nutritional support to children who suffer from",,,,

malnutrition.,,,,

V) All the States/Union Territories shall issue necessary orders regarding monitoring and supervision of Anganwadi Centres to ensure that the benefit,,,,

reaches to the beneficiaries and a Complaint Redressal Mechanism be put in place in each district.,,,,

36. The parties shall bear their own costs.,,,,