

## **Order of 2 May 2003**

### **Interim Order of May 2, 2003**

The Supreme Court gave the following interim order on 2nd May, 2003 in the case PUCL Vs. UoI and Ors.

#### **IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO.196 OF 2001**

**People's Union for Civil Liberties ... Petitioner (s)**

**-Versus-**

**Union of India & Ors. ... Respondent (s)**

*Date : 2/5/03 This Petition was called on for hearing today.*

#### ***UPON hearing counsel the Court made the following Order***

In this petition that was filed little more than two years back various issues have been framed many of which may have a direct and important relevance to the very existence of poor people; their right to life and the right of food of those who can ill-afford to provide to their families two meals day. Their misfortune becomes further grave during the times of famines and drought. The petitioner has sought directions for enforcement of Famine Code. The petitioner seeks immediate release of surplus food-grains lying in the stocks of Union of India for drought affected areas. Directions are also sought requiring the Government to frame fresh schemes of Public Distribution for Scientific and Reasonable Distribution of food-grains. In order that any meaningful and immediate relief is given by the Central Government and the State Government without any delay various applications have been filed by the petitioner. Considering the importance of the matter particularly in relation to those who are Below Poverty Line (BPL) an order was made by this Hon'ble Court on 3rd March, 2003 requiring the respondents to file replies to the applications and place on record the requisite materials, while adjourning the case to the 8th April, 2003. In respect of the directions that the Central Government shall formulate the scheme to extend the benefits of the Antyodaya Anna Yojana (AAY) to destitute section of the population, learned Attorney General stated on the last date of hearing which was on 3rd March, 2003 that for the budget for the year 2003-2004 a provision has been made for it. Despite the order of this Court the document has not been placed on record. The approach of Government is more distressing since this matter which was to come up on 8th April, 2002, has come up today after nearly four weeks of the scheduled date but neither the documents have been filed nor other aspects required to be dealt with in the last order have been adverted to. In I.A.25 one of the grievance that has been made is that names of various persons have been removed from BPL arbitrarily. In I.A.26 it has been highlighted that the allocation made for supply of

grain in lieu of the labour of BPL family has been recommended to be reduced from 10 kgs. per day per household to 5 kgs. and for 10 days in every month till June, 2003. In terms of the last order the specific instructions were required to be obtained on the relevant schemes mentioned in I.A.26 including in the matter of reduction of supply of the grain and the number of days. In I.A.26 directions sought against Union of India are to release 20 million tones food-grains, at the very minimum, free of cost every year for the Food-for-Work Programmes besides other reliefs. Response from Government was sought within three weeks.

Declining request for filing of replies we have heard learned counsel since it is necessary to consider issuing certain directions without any further delay with a view to provide some ad hoc interim relief to a class which deserves a sympathetic approach. We have heard Mr. Colin Gonsalves, learned counsel for the petitioner, Mr. Mukul Rohtagi, learned Additional Solicitor General for Union of India, besides Mr. B.B. Singh, for State of Bihar, Mr. Ashok Srivastava, for State of U.P. and Ms. Indra Sawhney, for Food Corporation of India.

This Court in various orders passed in the last two years has expressed its deep concern and it has been observed, in one of the orders, that what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existing leading to mal-nutrition, starvation and other related problems. The anxiety of the Court is to see that poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government-whether Central or the State. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.

Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which inter alia 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.

In the light of the aforesaid, we are of the view that for the time being for the months of May, June and July, 2003, it is necessary to issue certain directions so that some temporary relief is available to those, who deserve is the most.

Our attention has been drawn to the Famine Code (Annexure Petitioners/ Appellants herein-VIII). That Famine Code, we are informed, is the one formulated by State of Rajasthan and similar Codes have been formulated by other States. A perusal of this Famine Code shows that first three chapters deal with the steps to be taken as preventive measure before the famine and drought and Chapter IV onward deal with declaration of distress and commencement of relief setting out in detail the reliefs and the officers responsible thereof. One of the reliefs claimed in the petition is for enforcement of the Famine Code. Learned Additional Solicitor General

submitted that the Famine Codes were formulated long time back and many of the aspects have been dealt with under various schemes that have been formulated later like Sampoorna Grain Rozgar Yojana (SGRY). This should not present any difficulty in implementing the Famine Code for the time being. Under the circumstances, we direct the implementation of the Famine Code for the period May, June and July, 2003 as and when and where situation may call for it, subject to the condition that if in subsequent schemes the relief to be provided and preventive measures to be undertaken, during famine and drought, are better than the one stipulated by the Famine Code, the same may be implemented instead of Famine Code.

The next aspect pertains to Food-for-Work. We have been taken through Employment Assurance Scheme of the Government of India. Though the same stands merged into SGRY, but it has been submitted by learned counsel for the petitioner that the reliefs under SGRY, instead of improvement, have since been reduced. SGRY provides for an outlay of only Rs.5000 crores and 5 million tonnes of free grain. It was pointed out that as far as the guarantee of employment is concerned, in the Employment Assurance Scheme, it was 100 days, whereas according to SGRY, it is 15 days and rather 10 days according to States and at the most 20 days which is according to Union of India. Our attention has also been drawn to the Report of the High Level Committee on Long-Term Grain Policy-July, 2002. A detailed reference to report has been made in I.A.25. That Committee was constituted by Department of Food and Public Distribution, Ministry of Consumer Affairs and Food and Public Distribution, Union of India. In the summary and recommendation the Report inter alia states that an importantly social and security measure in the context is provision for employment on public works. While a food component can and could be part of such employment generation in the short run or in periods of local food shortages in long run, employment generation should be distinct from the food delivery system. This should not, however, undermine the importance of employment and income generation in eliminating hunger and malnutrition. The Report further states that no long run policy can be effective unless present imbalances, specifically, the large excess holding of public stocks, the Report has outlined a two year Plan of Action which includes immediate steps to lower procurement inflows on the one hand, and to raise outflows, on the other hand, by several means including a large Food for Work programme, a revitalized universal PDS and other grain-based welfare schemes. It has also recommended a major food-based employment programme for the short run. In ultimate, the recommendation of the said committee is that the present SGRY scheme should be expanded and at least doubled (emphasis supplied). It says that this implies doubling grain allocation from 5 to 10 million tonnes, and also an increase in the cash allocation to States by at least 5000 crores.

The prayer of the petitioner, in fact, is for allocation of 20 million tonnes though, according to it, the requirement is of 40 million tonnes. The High Level Committee was appointed by the Government of India. It gave its Report in July, 2002. Ten months have passed. We do not know what consideration the report has received if at all it has been considered by the Government. We may also note that the Report has further mentioned that currently, about half of the food subsidy is being spent on holding stocks in excess of the buffer stock levels necessary for food security. As these stocks are reduced to normal levels, very large fiscal resources of around Rs.10,000 crores annual will become available.

While directing the Government of India to place on record by 8th August, 2003, the consideration bestowed on the Report of the Committee and the decision, if any, we direct that on pro rata basis, the recommendation that present SGRY scheme should be expanded at least doubled be implemented, both in regard to allocation of food-grain as also cash, for the months of May, June and July. The State Government shall lift those allocations and ensure that the same reach those for whom it is meant. In case, however, after considering the response of Union of India, we hold that the allocations do not deserve to be doubled as recommended, the question of adjustment being made for the future supplies on the basis of the allocations in terms of SGRY can be considered.

Further, it is necessary to issue immediate directions to evolve a system whereby eligible BPL families, which may not be on BPL list, are so included as also regarding the ration shops and other outlets remaining open and giving deliveries of food-grains to those, who are on the list and hold the requisite cards. For the present, we are not going into the question whether only 41% of the poorest households are on BPL list. We may note that in May last year an order was passed that the respondents shall ensure that the ration shops remain open throughout the month during fixed hours and the details of which shall be displayed in the notice board.

To facilitate the supply of the grain, we issue the following directions :-

(1) Licensees, who

(a) do not keep their shops open throughout the month during the stipulated period,

(b) fail to provide grain to BPL families strictly at BPL rates and no higher,

(c) keep the cards of BPL households with them,

(d) make false entries in the BPL cards,

(e) engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/organizations,

shall make themselves liable for cancellation of their licenses. The concerned authorities/functionaries would not show any laxity on the subject.

(2) Permit the BPL household to buy the ration in instalments.

(3) Wide publicity shall be given so as to make BPL families aware of their entitlement of food-grains.

What was observed in the order dated 23rd July, 2001 in regard to the making available of food to aged, infirm, disabled etc. has already been noticed hereinabove. According to the figures supplied by the petitioner, approximately 1.5 crore persons are eligible to get Antyodaya Anna Yozana (AAY) Card. We direct the Government of India to place on AAY category the following groups of persons :-

- (1) Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women ;
- (2) widows and other single women with no regular support;
- (3) old persons (aged 60 or above) with no regular support and no assured means of subsistence;
- (4) households with a disabled adult and assured means of subsistence;
- (5) households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house;
- (6) primitive tribes.

What we have stated above in regard to BPL Cardholders for effective supply of grains to them, would equally apply for those, who are on AAY list.

Regarding Mid Day Meal, on 28th November, 2001, this Court directed the State Government/Union Territories to implement the Mid Day Meal Scheme (MDMS) by providing every child in every Government and Government assisted Primary Schools with a prepared mid day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. It was further directed that those Governments which provide dry rations instead of cooked meals, within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in all half the Districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State. Some States in implementation of the said direction are supplying cooked mid day meal to the students. We are, however, told that despite the fact that 1½ years has passed, some of the States have not even made a beginning. Particular reference has been made to States of Bihar, Jharkhand and Uttar Pradesh. It is not in dispute that in these three State even beginning has not been made whereas some of the other States are fully implementing directions for supply of cooked Mid Day Meal. Counsel for Uttar Pradesh and Jharkhand could not give any satisfactory reason for non-implementation. No reply or affidavit was filed by the said State. In so far as the State of Bihar is concerned, Mr. B.B. Singh has drawn our attention to the affidavit filed by Secretary and Relief Commissioner, Relief and Rehabilitation Department, Government of Bihar, inter alia stating that the State Government proposes to implement this scheme in few blocks on a pilot basis through panchayat, pending settlement of the issue regarding funding of conversion cost and to establish the capacity of the panchayat raj institution to supply hygienic cooked meals to all eligible students on a regular basis, without compromising teaching activities. The affidavit could not be more vague than what it is. When they propose to start, in how many districts they propose to start, what scheme has been formulated and every other conceivable detail is missing from the affidavit. We are told that there are 38 districts in the State of Bihar. For the present, we direct the said State to implement the cooked Mid Day Meal Scheme in terms of the directions of this Court in at least 10 District,

which may be most poor according to the State's perception.

We also direct the State of Uttar Pradesh, Jharkhand and other States to make a meaningful beginning of the cooked Mid Day Meal Scheme in at least 25% of the District, which may be most poor.

By order dated 8th May, 2002 Dr. N.C. Saxena, former Planning Secretary, Government of India and Mr. S.R. Shankaran, former Secretary, Rural Department, Government of India were appointed to function as Commissioners of this Court for the purpose of looking into any grievance that may persist after the grievance resolution procedure has been exhausted. In subsequent orders, directions have been issued to the Government to fully cooperate with the learned Commissioners. Mr. Shankaran has said to have written a letter to the Government expressing personal difficulty in functioning as Commissioner on account of ill-health. Mr. Gonsalves states that he has recovered and now is in a position to so function. We would, therefore, request Mr. Shankaran to start functioning as Commissioner with Dr. Saxena in terms of the orders already passed.

The copies of the order shall be sent to the Chief Secretaries of all States/Union Territories. The State Governments/Union Territories are directed to file affidavits showing the compliance and extent thereof. The affidavits may be filed on or before 8th August, 2003. Union of India may also file its affidavit(s) by the same date. For further consideration the matter shall be placed on 19th August, 2003.

Sd/.....J

(Y.K. SABHARWAL)

Sd/.....J

(H.K.SEMA)

New Delhi,

May 2, 2003.