

(2023) 05 OHC CK 0260
In the Orissa High Court
Case No : Writ Petition (C) No. 12966 Of 2023

Mantu Das

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 18-05-2023

Acts Referred:

Citation : (2023) 05 OHC CK 0260

Hon'ble Judges : Dr. S. Muralidhar, CJ;G. Satapathy, J

Bench : Division Bench

Advocate : Afraaz Suhail, P.K. Parhi, D.R. Bhokta, Debakanta Mohanty

Judgement

1. Pursuant to the order passed by this Court on 1st May, 2023 affidavits have been filed by the Collector, Jajpur (dated 15th May, 2023), by the Commissioner-cum-Secretary to Government, Women and Child Development (WCD) Department, Odisha (dated 13th May, 2023), by the Chief District Medical and Public Health Officer (CDM & PHO), Jajpur (dated 15th May, 2023) and by the Deputy Secretary, Ministry of WCD, Government of India (dated 18th May, 2023). Apart from Mr. Pandey, Secretary, Ministry of WCD, Government of India, the deponents of the other three affidavits have also participated online in today's hearing.

2. As regards the 11 children whose instances were cited in the petition, the Collector, Jajpur has in his affidavit given a break-up which confirms that 4 of the 11 children were severely and acutely malnourished (SAM). 3 of the children were moderately acutely malnourished (MAM). One child, Subhalaxmi Tarai, who was suffering from cerebral palsy and secondary malnutrition had died. The remaining children are stated to be 'normal' children i.e. not falling within the above categories of SAM or MAM.

3. The affidavit of the Collector, Jajpur suggests that Subhalaxmi Tarai had been abandoned by her family. She was found dead on 20th April, 2023. Prior thereto, the Accredited Social health Activist (ASHA) of the area is stated to have visited

the child on two dates in January and one date in February, 2023. The Rashtriya Bal Swasthya Karyakrama (RBSK) team is also said to have visited her. The finding that "as she was suffering from cerebral palsy, she could neither move nor inform the neighbours of the plight" is a pointer to the fact that there could be a child in need of attention, who is unable to get it despite the existence of a plethora of schemes both at the level of the Central Government and the State Government which will be referred to hereafter.

4. As regards the death of another child, Arjun Hembram, whose name, according to the affidavit of the Collector, 'does not find mention' in the records of the Mobile Health Team (MHT), it is a pointer to the fact that there could still be families and children, who are not covered by the schemes. The fact is that these are all children in the age group of 0 to 6 years and belong to tribal community and the poorest sections of the society.

5. The affidavit of the Commissioner-cum-Secretary to Government, WCD Department, Odisha sets out the process of identification of children as falling under the SAM and MAM category and the system of referral to the Nutrition Rehabilitation Centers (NRCs) which, as far as Jajpur district is concerned, are located at the Jajpur Road and Sukinda taluks. The said affidavit further states that there are field level workers like Anganwadi Workers (AWWs), the Auxiliary Nurse Midwife (ANM) and the ASHA, who are trained in infant and young child feeding practices. There is a listing of the programmes that are currently stated to be in operation including the Janani Sishu Surakshya Karyakram (JSSK), the Social Awareness and Action for Neutralize Pneumonia Successfully (SAANS) and Sishu Abong Matru Mrutyura Purna Nirakarana Abhiyan (SAMMPurNA) apart from the RBSK. There are also said to be Village Health Sanitation and Nutrition Days (VHSND) where regular check ups are supposed to be undertaken of the women and children for provision of free drugs, lab tests, referral transportation and so on. Then there is the PM Poshan Mid-Day Meal Programme implemented by the Department of School and Mass Education (S & ME) Department of the Government of Odisha and which is expected to improve the nutritional status of the children in Classes-I to VIII in government local bodies and government aided schools.

6. Statistics wise, the Secretary WCD Department, stated that there are approximately 36 lakh children in Odisha and 28,541 (as of April, 2023) are stated to be in the SAM category. In July, 2022 this figure stood at 49,205. Further she stated that around 86,000 children in Odisha could belong to the MAM category. In the affidavit of the WCD Ministry, Government of India, it is stated that "as per reported in April, 2023, 1.29 lakh children in Jajpur who were measured out of which 0.78% was found to be SAM and 2.11% were found to be MAM which is lower than the national average of 2.26% SAM and 4.75 % MAM".

7. At the outset, this Court would like to observe that while discussing issues relating to health of persons and of children in particular, presenting statistics in terms of percentages would hide more than they reveal about the ground

situation. Perhaps human lives and human health should, in the present context, not be discussed in terms of percentages but by acknowledging that they are actual persons. To have in Odisha in 2023 nearly 30,000 SAM and 86,000 MAM children is a cause for alarm not just for the State of Odisha but for the Government of India as well. If one were to understand the national percentages of 2.26% SAM and 4.75% MAM on a 1.8 billion population, and translate them into actual numbers, the severity of problem would become evident.

8. Mr. Pandey, the Secretary, WCD, Government of India explained in some detail how the schemes, starting from the Integrated Child Development Scheme (ICDS) which commenced in 1975, were intended to improve the health of children and deal with the problem of malnourishment. What a petition like this, and report of the CDMO and the Collector, Jajpur tells us is that there are obvious gaps in the implementation of these various schemes and that the benefit of the schemes may not be reaching the intended beneficiaries.

9. One fact that emerged in course of today's deliberations was that even in a district like Jajpur in Odisha the coverage of the population by public distribution system (PDS) under the National Food Security Act (NFSA) is not 'universal'. Today's discussion threw up expressions like 'allocation' and 'vacancies' pointing to the fact that there might be sections of our society, and this includes the most vulnerable, who may not be covered under the PDS system. Since the distribution of nutritional supplements and rations happens only through the PDS, there is every likelihood that a child or an expectant mother in a family in need of such supplements and rations may not receive them. This, therefore, points to a larger problem of the coverage attempted to be achieved by the NFSA. This also shows that the absence of pending 'applications' for coverage under the PDS in a particular district may not explain how many people there are in actual need of such rations and supplements for their children, who may be either in the SAM or MAM categories. What compounds this issue further is that all the statistics are projected on the basis of 2011 census and not on the actual figures on the ground as of 2023. Therefore, the number of persons 'excluded' from the coverage of all the schemes could be much larger than what is projected in these affidavits. This is a matter for reflection both by the Government of India and the State of Odisha when they sit down to address the issue of gaps in the implementation of the schemes.

10. The Court impressed upon Mr. Pandey that at the level of Government of India, it has to be ensured that the coverage under the schemes is increased progressively year after year and that can only happen if there are systems put in place that incentivise 'inclusion' rather than 'exclusion'. For e.g., the failure to possess an Aadhaar Card or a mobile phone or a proper 'identity' paper of a particular kind can result in a child or a family being denied the basic support in terms of food and supplements which are so essential for basic survival. The absence of these documents cannot become obstacles to availing the benefits under the schemes.

11. The Collector, Jajpur has in his affidavit sought to explain that, at least in Jajpur district, the absence of an Aadhaar card is not coming in the way of a person being included in the PDS. He refers to the instructions issued on 10th July, 2020 and reiterated on 6th January, 2023 wherein "it has been stated that people not having Aadhaar cards will be provided with ration through a bypass system". It may be noted at this juncture that this Court is separately dealing with the issue of coverage under the NFSA in another PIL i.e. W.P.(C) No.16216 of 2019 (Odisha State Legal Services Authority v. State of Odisha).

12. Mr. Pandey, the Secretary, WCD Ministry, Government of India also assured that as far as the children from the age of 0 to 6 years are concerned, clear instructions have been issued not to insist upon Aadhaar cards in order to acknowledge entitlements. While he volunteered to make this instruction more public and down the line, he was unable to deny that there is every possibility of a child above the age of 6 years (or for that matter any person) not having an Aadhar card or a mobile phone getting excluded from the PDS system.

13. The fact remains that a child above six years gets excluded by definition from the benefit of many of the above schemes that have been listed out since it is presumed that a child over the age of six will be enrolled in a nearby school where such child will get a Mid-Day Meal (MDM). This is just a 'presumption' since there are statistics that show that there are a substantial number of children, and in particular girl children, who drop out of school or are not enrolled at all to begin with. Again, as regards adolescent children, the benefit has been restricted to girl children between 14 and 18. In other words, instead of increasing the coverage of the schemes for all children in need from age 0 onwards, it appears that specific age groups of children actually get 'excluded' from the benefit of many of the schemes. This requires a serious re-think at the level of both the Government of India and the State of Odisha.

14. The Court takes on board the statement made in the affidavit of the Collector, Jajpur that no person in Jajpur district in Odisha has been denied any ration only because such person does not possess an Aadhaar card or a mobile phone. The Secretary, WCD Department, Odisha confirmed that this was the position elsewhere in Odisha too. The Court is of the considered view that given the unfortunate happenings in the Danagadi Block in Jajpur district spoken of in the petition, this needs to be made abundantly clear at both the State level as well as the National level since this welfare schemes are meant to cater to the needs of the most vulnerable and poor sections of our society who cannot be excluded on any ground including the lack of an Aadhaar Card or a mobile phone. The fact is that there are still several poor and vulnerable individuals, in the State of Odisha and in the country, who may not possess either.

15. The Collector, Jajpur explained how families belonging to the Schedules Tribes (ST) are not willing to have their children treated at the public health facilities and it requires great persuasion and sometimes even coercion to get them to have their children, who are obviously in the SAM and MAM categories,

treated at the CHCs or DHHs. This points to the fact that more active efforts would have to be made by the Tribal Welfare Department to spread awareness of the existence of the schemes and to convince the tribal populations that they are intended to positively benefit them and their children.

16. Both the Commissioner-cum-Secretary, WCD Department and the Collector, Jajpur have stated that concerted efforts will be made to ensure that there is a progressive reduction in the numbers of children falling in the SAM and MAM category in the immediate short term i.e. in the next two months and those efforts will be kept up to ensure that there is no child in the SAM category in the near future in Odisha.

17. While this petition has highlighted the alarming situation concerning SAM and MAM children in the Danagadi and Sukinda Blocks in Jajpur district in Odisha, there could be other districts and blocks in Odisha where the situation may be equally bad or perhaps even worse. From the statistics available with the Commissioner-cum-Secretary, WCD Department it appears that in Keonjhar district there are 2,820 children in the SAM category who would require immediate attention. The Court, therefore, would like to extend the scope of the present petition to include Keonjhar district as well. The Collector and the CDMO, Keonjhar are accordingly directed to undertake visits to the Blocks in Keonjhar district in the next one month to ascertain for themselves the factual position regarding children in the SAM and MAM categories, but not stop at that. Just like the Collector, Jajpur has been able to identify the broader category of 'vulnerable' children and has undertaken to also identify the category of 'vulnerable women', the CDMO and the Collector, Keonjhar will do likewise. Their joint report be placed before the Court with an affidavit before the next date. Unless we have healthy women and healthy adults in general, it is unlikely that the children in such families would be healthy. This again points to the larger problem of lack of 'universal' coverage under the PDS.

18. It is now obvious that the issue concerns more than one Department in the Government of Odisha. While it definitely concerns the WCD Department, it also concerns the SME Department, the Health and Family Welfare Department and the Tribal Welfare Department. Unless all the concerned Departments work in tandem in consultation with each other it would not be possible to find a workable solution to improve the situation.

19. The Court would, therefore, urge that the Secretaries in the Departments of SME, WCD, Health and Family Welfare, Tribal Welfare and Food and Civil Supplies hold a review meeting within one month from today. The Secretaries of the Odisha State Commission for Women, Odisha Food Commission and the Odisha Child Rights Commission should also participate in such meeting. The Chief Secretary, Government of Odisha will convene the said meeting in the next one month in order to draw up an action plan to achieve the target of complete absence of SAM children in Odisha and a reduction by more than half of MAM children in Odisha by the end of 2023. The minutes of the meeting be placed

before the Court with an affidavit before the next date. The compliance with the directions issued in this order also be indicated in the said affidavit.

20. While the participation of the Secretary, WCD Ministry, Government of India, the Commissioner-cum-Secretary, WCD Department, Government of Odisha and the Collector and the CDMO, Jajpur in today's hearing has been of great assistance, the Court would like to emphasize that PILs like the present one are not to be viewed as 'adversarial' but as an opportunity for all to work together to find a workable solution to a problem that is acknowledged.

21. List on 1st August, 2023. A copy of this order be communicated to the Chief Secretary, Government of Odisha forthwith by the Registry for necessary action.

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