

(2016) 05 SC CK 0073

In the Supreme Court Of India

Case No : Writ Petition (C) No. 857 of 2015

Swaraj Abhiyan - (II)

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 13-05-2016

Acts Referred:

National Food Security Act, 2013 — Section 14, 15

Citation : (2016) AIR(SCW) 2953 : (2016) AIRSC 2953 : (2016) ALLSCR 1347 : (2016) 2 ApexCourtJudgments(SC) 390 : (2016) 2 BBCJ 455 : (2016) 3 BLJud 104 : (2016) 3 JBCJ 162 : (2016) 5 JT 447 : (2016) 2 KCCR 185 : (2016) 4 MLJ 729 : (2016) 3 RCRCivil 202 : (2016) 3 Re

Hon'ble Judges : Madan B. Lokur;N.V. Ramana, JJ.

Bench : Division Bench

Advocate : P.S. Narashima, ASG, Anil Grover, AAG, Sr. Advs, Mukul Singh, Ishan George, Neeraj Kumar Sharma, Gopal Singh, Manish Kumar, Shivam Singh, Aditya Raina, Shreyas Jain, Guntur Prabhakar, Ms. Hemantika Wahi, Vinay Garg, Upendra Mishra, S. Udaya Kumar Sagar, Varinder Kumar Sharma, Sibbo Sankar Mishra, V.N. Raghupathy, Parikshit P.Angadi, C.D. Singh, Aniruddha P. Mayee, A. Selvin Raja, Charudatta Mahindrakar, Mrs. Bimla Sharma, Satish Kumar, Ms. Noopur Singhal, Dr. Monika Gusain, Tapeshe Kr. Singh, Mohd. Waquas, Mahaling P, Nishant R. Katneshwarkar, Sellakumar, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

Madan B. Lokur, J. - In our judgment dated 11th May, 2016 we had adverted to the drought or the drought-like conditions prevailing in several parts of our country and had issued certain directions for compliance. In this judgment, we will deal with the prayer made by the petitioner Swaraj Abhiyan relating to the implementation of the National Food Security Act, 2013 (for short 'the NFS Act').

Implementation of the National Food Security Act, 2013

2. It is submitted by the petitioner that it is necessary to ensure food security to the persons affected by the drought. In this regard, the petitioner made four suggestions and they are:

(i) All households should be provided with 5 kg food grains per person per month irrespective of whether or not they fall in the category of priority households as defined in Section 2(14) of the NFS Act read with Section 10 thereof. The provision for food grains should be in addition to and not in derogation of any other entitlement in any other government scheme.

(ii) Households that do not have a ration card or family members left out of existing ration cards should be issued special and temporary coupons on production of an appropriate identity card or any other proof of residence.

(iii) Each household affected by the drought should be provided 2 kg of dal (lentil) per month at RS. 30 per kg and one litre of edible oil per month at RS. 25 per litre through the Public Distribution System. In this regard, reference was made to a similar scheme which is said to be working quite well in Tamil Nadu.

(iv) Children affected by the drought should be provided one egg or 200 gms of milk per day (6 days a week) under the Mid-Day Meal Scheme. In addition to this, the Mid-Day Meal Scheme should continue during the summer vacation period in schools so that children are not deprived of their meals, including eggs or milk, as the case may be.

3. The Union of India has explained in its response that in terms of Section 3 of the NFS Act the monthly entitlement of food grains is 5 kg per person for eligible households under 'priority' category and 35 per kg per family under the Antyodaya Anna Yojna for rice, wheat and coarse grains. Coverage under the NFS Act has been delinked from poverty estimates and is substantially above the percentage of population living below the poverty line. It is submitted that coverage under the NFS Act has to be determined by each State and the criteria for identification of priority households and their actual identification is the responsibility of the State Government. It is further stated that the State Government is expected to digitize the beneficiary database and also set up a 'grievance redressal mechanism'.

4. For implementation of the NFS Act, the State Government is required to complete all preparatory steps for which guidelines have been issued by the Government of India. In this context, it is stated that the implementation of the NFS Act has started in 32 States and Union Territories and as far as Gujarat is concerned it will implement the NFS Act from 1st April 2016. During the course of hearing, we were informed that thankfully Gujarat is now implementing the NFS Act.

5. It is also stated that since drought is a temporary phenomenon, additional food grains are made available on request basis from the State Government. It is further stated that for 2015-16, only Maharashtra made a request for additional food grain allocation for drought affected people and the Government of India made available 1.63 lakh tons of rice and 2.44 lakh tons of wheat, as requested.

6. With regard to the supply of dal/lentil and edible oils, it is stated by the Union

of India that under the NFS Act there is no provision to supply these items. In the absence of sufficient domestic availability of these items, their supply under the Public Distribution System is difficult to ensure and there are fiscal constraints on stretching the food subsidy bill by including the supply of dal/lentil and edible oils. However, the State Governments are at liberty to distribute additional items out of their own resources. In fact, Andhra Pradesh, Chhattisgarh, Haryana, Karnataka and Telangana are distributing dal/lentil or edible oils to sections of society while Chhattisgarh is distributing chana (gram) in scheduled areas.

7. With regard to the Mid-Day Meal Scheme, it is stated by the Union of India that there is no special provision for the supply of eggs or milk but there is a requirement of minimum calorific and nutritional contents. These are as follows:

Components

Primary

Upper Primary

Calories

450 Cal

700 Cal

Protein

12 gm

20 gm

Micronutrients

Adequate quantities of micronutrients like Iron, Folic Acid, Vitamin A etc.

8. It is further stated by the Union of India that the menu under the Mid-Day Meal Scheme is locally decided and of the 12 States that we are concerned with, only 5 States that is Andhra Pradesh, Karnataka, Madhya Pradesh, Odisha and Telangana provide either eggs or milk under the Mid-Day Meal Scheme. According to Swaraj Abhiyan, additional or different items like chana (for example) is provided by 4 other States, Chhattisgarh, Gujarat, Jharkhand and Maharashtra. Admittedly, neither eggs nor milk nor any other additional item is provided by 3 States, that is, Bihar, Haryana and Uttar Pradesh.

9. With regard to continuing the Mid-Day Meal Scheme during the summer vacations in the drought affected areas, the Union of India says that only 3 of the States that we are concerned with, that is, Karnataka, Maharashtra and Uttar Pradesh made such a proposal during 2015-16 and that was sanctioned by the Performance Appraisal Board. As far as 2016-17 is concerned, only Chhattisgarh, Karnataka and Madhya Pradesh have made a request and that is under

consideration by the Performance Appraisal Board.

10. The monitoring and implementation of the NFS Act is really the duty and responsibility of the State Food Commission under Section 16 of the NFS Act. We are told that not every State has established such a Commission making it difficult for any corrective or remedial measures in respect of the review and implementation of the NFS Act. It is high time that the machinery under the NFS Act is put in place by all concerned otherwise the enactment of social justice legislations will have no meaning at all.

Discussion and conclusions

11. We are quite surprised that with regard to the implementation of the NFS Act, even though the statute was passed by Parliament and it extends to the whole of India and is deemed to have come into force on 5th July 2013, some States have not implemented it. As per the chart provided to us by learned counsel for the petitioner in the Note, the State of Uttar Pradesh has partially implemented the NFS Act in the sense that it has been implemented only in 28 of its 75 districts. Gujarat has admittedly implemented the NFS Act only from 1st April 2016.

12. It is surprising that the implementation of a law enacted by Parliament such as the NFS Act is left to the whims and fancies of the State Governments, and it has taken more than two years after the NFS Act came into force for Gujarat to implement it and Uttar Pradesh has only implemented it partially. This is rather strange. A State Government, by delaying implementation of a law passed by the Parliament and assented to by the President of India, is effectively refusing to implement it and Parliament is left a mute spectator. Does our Constitution countenance such a situation? Is this what "federalism" is all about? Deliberate inaction in the implementation of a parliamentary statute by a State Government can only lead to utter chaos or worse. One can hardly imagine what the consequence would be if a State Government, on a similar logic, decides that it will not implement other parliamentary statutes meant for the benefit of vulnerable sections of society. Hopefully, someone, somewhere, sometime will realize the possible alarming consequences.

13. We find force in the submission of the learned Additional Solicitor General that no mandamus can be issued by this Court to the State Governments to implement the NFS Act beyond what is required by the terms and provisions of the statute. In other words, it is not possible for us to issue a positive direction to the State Governments to make available to needy persons any item over and above what is mandated by the NFS Act, such as dal/lentil and edible oil (or any other item for that matter) to all households in the drought affected areas. Today, Swaraj Abhiyan prays for the supply of dal/lentil and edible oils; tomorrow some other NGO might pray for the supply of some other items. This might become an endless exercise and would require us to go beyond what Parliament has provided. While this Court or any other constitutional court can certainly

intervene, to a limited extent, in issues of governance it has also to show judicial restraint in some areas of governance, and this is one of them.

14. In *State of Himachal Pradesh v. Umed Ram Sharma*, (1986) 2 SCC 68 the High Court had treated a letter as a public interest petition received from some poor and mostly Harijan residents of a village complaining of the failure of the State Government to complete the construction of a road due to collusion between the residents of another village and the administrative authorities. The High Court heard the matter and gave directions, inter alia, for early completion of the road. This was challenged by the State before this Court. This Court took resort to Article 21 of the Constitution and observed that for residents of hilly areas, access to roads is access to life itself. This Court held:

"The entire State of Himachal Pradesh is in hills and without workable roads, no communication is possible. Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication."

15. After referring to Article 38(2) of the Constitution, this Court observed that "access to life should be for the hillman an obligation of the State but it is primarily within the domain of the legislature and the executive to decide the priority as well as to determine the urgency." There had been allocation of funds and the "court has directed the executive to bring it to the notice of the legislature if some reallocation was feasible amongst the sanctioned expenditure for roads leaving the priorities to the discretion of the competent authorities."

16. In *State of H.P. v. High Court of H.P.*, (2000) 10 SCC 646 the High Court acted on a newspaper report and directed the construction of a certain road during the current financial year and the State Government was directed to make the funds available for the purpose. This Court found it extremely difficult to uphold the order of the High Court. Two principal reasons were given: firstly, it is for the State Government to determine its priorities and allocate funds, even though it might be necessary to lay a communication network; secondly, the necessity could be fulfilled only on the availability of funds. "Any interference of this nature would require diversion of funds carefully allocated on the basis of priority requirements and thereby disturb the programme of development chalked out by the State Government."

17. In matters involving financial issues and prioritization of finances, this Court should defer to the priorities determined by the State, unless there is a statutory obligation that needs to be fulfilled by the State. It is for this reason that in the matter of construction of roads (for example) this Court has left the prioritization to the State.

18. In *State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402 this Court observed that public interest litigation in India has travelled through three phases. These are:

Phase I. - It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalised groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts.

During this phase, the courts relaxed the traditional rule of locus standi and broadened the definition of aggrieved persons and gave directions and orders to preserve and protect the fundamental rights of marginalized, deprived and poor sections of society.

Phase II. - It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments, etc. etc.

This hardly needs any elucidation. This Court has been in the forefront in issues relating to the environment, forests and historical movements, amongst others. There are several decisions of this Court in this regard.

Phase III. - It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance.

In the third phase, the constitutional courts "broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and no extraneous considerations are taken into consideration except the public interest."

19. As far as the present case is concerned, there is no doubt that provision of food grains as per the provisions of the NFS Act is a statutory obligation on the State. This Court can certainly direct the State to faithfully implement the provisions of the NFS Act. Unfortunately, there is no statutory or constitutional obligation on the State to provide edible oils and dal/lentil to people in distress. If these items were vital for the survival of the people, this Court would have surely directed their distribution. But there is nothing to suggest that without edible oils and dal/lentil the fundamental right of the people in drought affected areas guaranteed under Article 21 of the Constitution is violated. We therefore cannot reasonably read into the Constitution or the law something that is not there. That apart, although the number of affected households is not available with us, we can only assume the number to be sizeable given the fact that drought has been declared in vast areas of the country. Even on a conservative

estimate, more than 33 crore people are affected by drought with varying degrees of distress and intensity. The estimate of Swaraj Abhiyan is between about 40 crore and over 50 crore people being affected by drought. All that we can say and do say in this regard is that at least 1/3rd of the country's population (if not 1/3rd) is affected by drought and the State Governments must take appropriate steps to ensure that at least the statutory requirement of food grains is made available to the people in the drought affected areas of the country. In addition, and to the extent possible, the State Government should take appropriate measures to provide dal/lentil and an appropriate cooking medium and any other items of necessity to persons affected by the drought and if a request is made by a State Government to the Government of India, it must consider the request with compassion.

20. We would like to draw attention to Article 47 of the Constitution which provides that one of the primary duties of the State is to raise the level of nutrition and the standard of living of the people.[4*] Although Article 47 is not enforceable being a Directive Principle, there is considerable moral force and authority in this provision to persuade the State Governments and the Government of India to attempt at ensuring that the people, particularly those in drought affected areas, are provided adequate food grains and a cooking medium for the preparation of their meals.

[4* 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - 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 and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.]

21. Similarly, the entitlement of food grains at 5 kg per person per month (as per the NFS Act) is a goal that must be achieved by the State at the earliest particularly in drought affected areas. In fact, statute or no statute and implementation or non-implementation of a law enacted by Parliament, the State ought to appreciate and realize that an adequate supply of food grains must be made available without much fuss to people in drought affected areas. As it is, because of the drought such persons undergo immense hardship mainly for reasons beyond their control and if there is a scarcity of food, it would only add to their misery and adversity if not multiply it. The State being a welfare State must take these factors into consideration and strain every nerve to ensure that the mandate of the NFS Act is adhered to.

22. In this context, it would be inappropriate for the State Governments to deprive any household in drought affected areas of the requisite food grains merely because they do not have a ration card. We find substance in the contention of learned counsel for Swaraj Abhiyan that in grave and emergent situations such as those in the drought affected areas, the requirement of a ration card for obtaining food grains can only be considered a procedural

requirement and that requirement should be substituted with a valid identity card or any appropriate proof of residence that is acceptable to the functionaries in the State Governments, who need to construe such a condition open-handedly and without being tight-fisted.

23. We reject the contention on behalf of the Union of India that fiscal constraints or an increase in the food subsidy bill can be a reason for denying relief to persons in drought affected areas. Our constitutional jurisprudence has travelled an enormous distance over the years to even think of attempting a roll-back.

24. In *Municipal Council, Ratlam v. Vardichan*, (1980) 4 SCC 162 this Court took the view that a plea of financial inability cannot be an excuse for disregarding statutory duties. It was held in paragraph 12 of the Report:

"The statutory setting being thus plain, the municipality cannot extricate itself from its responsibility. Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties under Section 123 of the Act. This "alibi" made us issue notice to the State which is now represented by counsel, Shri Gambhir, before us. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis. The criminal procedure code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, Section 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be."

25. Similarly, in *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627 this Court referred to a constitutional obligation (as against a statutory obligation) of providing free legal services to an indigent person and had this to say in paragraph 5 of the Report:

"Mr K.G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to an indigent accused but he suggested that the State might find it difficult to do so owing to financial constraints. We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, as pointed out by the court in *Rhem v. Malcolm*, 377 F Supp 995 "the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty" and to quote the words of Justice

Blackmun in *Jackson v. Bishop*, 404 F Supp 2d 571 "humane considerations and constitutional requirements are not in this day to be measured by dollar considerations."

26. Finally, in *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37 this Court referred to another constitutional obligation of providing adequate medical services to the people and held in paragraph 16 of the Report as follows:

"It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. [See: *Khatri (II) v. State of Bihar*] The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view." There is undoubtedly a distinction between a statutory obligation and a constitutional obligation but there can be no doubt that the right to food is actually a constitutional right and not merely a statutory right. [See for example: *Shantistar Builders v. Narayan Khimalal Totame.*, (1990) 1 SCC 520] In any event, even if the right to food is a statutory right, it would be the obligation of the State to make all possible efforts and some more to ensure that to the extent possible, adequate food grains are available to all and particularly to those in drought affected areas. There can hardly be any dispute on this. In this context, it would be worth recalling the Preamble to the NFS Act which states that it is "An Act 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 or incidental thereto."

27. As far as the provision of eggs or milk for Mid-Day Meals is concerned, there is no dispute that calorific and nutritional contents for children have been prescribed under the Mid-Day Meal Scheme. How that standard is to be met is for each State Government to decide and no direction can be given in this regard by this Court. Apart from milk and eggs, there are other nutritional items that can be provided, such as chana or gram. However, it is unfortunate that neither milk nor eggs or anything else is provided under the Mid-Day Meal Scheme in Bihar, Haryana and Uttar Pradesh. Even in the States that we are concerned with, eggs or milk is not being provided to the beneficiaries on a daily basis or 5 days in a week, except in Chhattisgarh where eggs are provided for 6 days in a week. In other States that provide eggs or milk, the provision varies from one day to three days per week.

28. No one can doubt that children are the future of our country and if there is some stinginess in providing them with adequate nutrition, the country as a whole is deprived in future of taking the benefit of their potential. Therefore, the calorific and nutritional requirements mentioned by the Union of India cannot be treated as the maximum requirements but only as the minimum requirements.

29. As regards the provision of extending the Mid-Day Meal Scheme during the summer vacations, it is a pity that for the year 2016-17 only three States, that is Karnataka, Madhya Pradesh and Chhattisgarh have submitted a proposal for consideration to the Government of India. Is it that the States expect the children and their families to fend for themselves during the summer months? Maharashtra had submitted a proposal in 2015-16 to the Union of India and that was accepted as it is by the Performance Appraisal Board but no proposal appears to have been made by Maharashtra for 2016-17. Is it that the drought conditions have improved in Maharashtra over the last one year? We do not know. We have not been given any reason for not extending the Mid-Day Meal Scheme into the summer vacation in respect of some of the drought affected States before us, nor is there any opposition to the prayer for extension made by Swaraj Abhiyan in this regard. In fact the Guidelines of September 2006 for the Mid-Day Meal Scheme provide in Chapter 5 thereof (paragraph 5.1(4)(iii)) as follows:

"In case notification declaring an area as 'drought-affected' is issued at a time when summer vacation has already commenced or is about to commence, State Govt. should provide mid-day meal in primary schools located in such areas in anticipation of release of Central assistance."

Accordingly, we take it, that the State Government of each of the drought affected States before us (other than the three States mentioned above) are not averse to extending the Mid-Day Meal Scheme into the vacation period for schools in the drought affected areas.

Directions

30. In view of the discussion and the conclusions arrived at by us, we issue the follow directions:

1. Each of the States before us shall establish an internal grievance mechanism and appoint or designate for each district a District Grievance Redressal Officer as postulated by Section 14 and Section 15 respectively of the NFS Act within one month from today, unless these provisions have already been complied with. The said Officer would also be entitled to address grievances relating to non-supply of food grains due to the absence of a ration card.
2. Each of the States before us shall constitute a State Food Commission for the purpose of monitoring and reviewing the implementation of the NFS Act as postulated by Section 16 thereof within two months from today, unless a State Food Commission has already been constituted.

3. In the States in which drought has been declared or might be declared in the future, all households should be provided with their monthly entitlement of food grains in terms of the NFS Act regardless of whether they fall in the category of priority household or not. The provision made under the NFS Act shall be in addition to and not in derogation of any other entitlement under any other government scheme.

4. No household in a drought affected area shall be denied food grains as required under the NFS Act only because the household does not have a ration card. The requirement of a household having a ration card is directed to be substituted by an appropriate identification or proof of residence that is acceptable to the State Government.

5. It is made clear that each of the States before us is fully entitled to provide any food grains or other items over and above and in addition to the entitlement of a household under the NFS Act. There is no restriction in this regard.

6. The States of Bihar, Haryana and Uttar Pradesh must within a month from today make adequate provision for the supply of eggs or milk or any other nutritional substitute for children under the Mid-Day Meal Scheme. Eggs, milk or another nutritional substitute should be made available preferably five days in a week or at least three days in a week. The other States before us must make a similar provision for the supply of eggs or milk or any other nutritional substitute preferably five days in a week or at least three days in a week. Keeping in mind the children of this country, financial constraints shall not be an excuse for not complying with this direction. It is a sad commentary that we should have to say this but we need to in the interest of the children of our country.

7. The States before us are directed to extend the Mid-Day Meal Scheme for the benefit of children during the summer vacation period in schools, if the extension has not yet been made, within a week from today. The Union of India shall immediately approve any such a proposal in consultation with these State Governments. This direction is being passed in the interest of children in drought-affected areas.

31. We might mention that the Union of India usually brings into force a statute without putting in place the implementation machinery. This is clearly demonstrated by the fact that the mechanism for enforcing several provisions of the NFS Act has not been established or constituted. This is completely inexplicable. We fail to understand how a statute enacted by Parliament can be given effect to without appropriate rules and regulations being framed for putting in place the nuts and bolts needed to give teeth to the law or setting up mechanisms in accordance with the provisions of the statute. It is perhaps this tardiness in execution that enables some State Governments to take it easy and implement the law whenever it is convenient to do so.