

Vaishnorani Mahila Bachat Gat vs State Of Maharashtra . on 26 February, 2019

Equivalent citations: AIRONLINE 2019 SC 2526, AIRONLINE 2019 SC 2329

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Bench: Deepak Gupta, Arun Mishra

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) . 2336 OF 2019
(ARISING FROM SLP(C) NOS.10103 OF 2016)

VAISHNORANI MAHILA BACHAT GAT

..APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA & ORS.

..RESPONDENT(S)

WITH

C.A. NO. 2337/2019 SLP(C) No. 2415/2017
C.A. NO. 2348/2019 @ SLP(C) No. 2187/2017
C.A. NO. 2346/2019 @ SLP(C) No. 2184/2017
C.A. NOS. 2340-2341/2019 @ SLP(C) Nos. 2191-2192/2017
C.A. NO. 2344/2019 @ SLP(C) No. 2178/2017
C.A. NO. 2349/2019 @ SLP(C) No. 2177/2017
C.A. NO. 2338/2019 @ SLP(C) No. 29178/2016
C.A. NO. 2347/2019 @ SLP(C) No. 30156/2016
C.A. NO. 2342/2019 @ SLP(C) No. 29955/2016
C.A. NO. 2339/2019 @ SLP(C) No. 29603/2016
C.A. NO. 2345/2019 @ SLP(C) No. 30088/2016
C.A. NO. 2343/2019 @ SLP(C) No. 30079/2016
C.A. NO. 2350/2019 @ SLP(C) No. 8244/2018
C.A. NO. 2351/2019 @ SLP(C) No. 16947/2018
W.P.(C) No. 910/2017

J U D G M E N T

1. Leave granted.

2. The appellants/petitioner(s) have questioned the judgment NARENDRA PRASAD Date: 2019.03.08 17:33:58 IST and order dated 11.7.2016 passed by the High Court of Bombay, Reason:

Bench at Aurangabad and order dated 15.03.2016 of the High Court of Judicature at Bombay, Bench at Nagpur. The petitioners in the writ petition filed before the High

Court i.e. W.P. No.3359/2016 questioned the tender notice dated 08.03.2016 issued by the State of Maharashtra inviting tender for multilevel contract and for supply of ready to cook food to Anganwadi Centres as supplementary nutritional food for children, pregnant women and lactating mothers, adolescents girls under Integrated Child Development Scheme (ICDS Scheme).

The conditions were questioned by the appellants/petitioner(s) being arbitrary, unreasonable against the spirit of the decision of this Court in W.P.(C) No.196/2001.

3. The question as stated in the appeal is that the local self- help groups are sought to be ousted by the money power of large corporate houses with the help of the State ,the decision by this Court in PUCL v. Union of India (W.P.(C) No.196/2001) is being violated and that of Shagun Mahila Udyogik Sahakari Sanstha Maryadit v. State of Maharashtra and Others, passed in Civil Appeal No.7104/2011. It is urged that the local organization of women (Mahila Mandals) and self-help groups are best suited to give local food and other necessary efforts to provide supplementary nutritional food for children. The so- called Mahila Mandals who have applied under the tender that has been floated is, in fact, large industrial units and nothing to do with the Mahila Mandals and self-help groups. They are close to certain political personalities in the State of Maharashtra. Industrialists are not supplying good food as compared to these Mahila Mandals in different parts of the country, as accepted by the Union of India in its Report. The imposition of the unrealistic conditions made it impossible for the Mahila Mandals to compete. Thus, the State is entertaining fake business units and is acting contrary to the various decisions of this Court and the spirit of the Scheme.

4. The principal issue raised is whether contracts for the supply of such food for Anganwadis should be given to local Mahila Mandals run along democratic lines with local women participating or whether such contracts ought to be given by the State to large corporates/contractors under the guise of the conditions of the tender. In PUCL v. Union of India & Ors. (W.P. (C) No.196 of 2001), this Court has passed the order, on 07.10.2004, inter alia to the following effect:-

"The contractors shall not be used for the supply of nutrition in Anganwadis 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 meals."

5. On 13.12.2006, in PUCL (supra), the Court inter alia passed the following order:-

"...Chief Secretaries of all State Governments/UTs are directed to submit affidavits giving details of the steps that have been taken with regard to the order of this Court of October 7th, 2004 directing that "contractors shall not be used for supply of nutrition in Anganwadis 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 meals". Chief Secretaries of all State Governments/UTs. must indicate a time-frame within which the decentralization of the supply of SNP through local community shall be made."

6. Thereafter, Food Safety Ordinance, 2013 was promulgated on 5.7.2013 in which provision has been made for the benefit of children in the age group of 6 months to 14 years. The Ordinance which has taken the shape of the Act i.e. National Food Security Act, 2013 (for short 'the Act of 2013'), aims at to reform the public distribution system and bringing in transparency and accountability apart from creating obligation of the Central Government and the State Governments in respect of all issues relating to food security.

7. A report was submitted to this Court by the Commissioner appointed in PUCL [W.P.(C) No.196/2001] regarding Take Home Ration (for short 'THR') in Maharashtra, relevant portion is extracted hereunder:-

"In the attached report claims large-scale irregularities in the supply of supplementary nutrition in violation of the orders of the Hon'ble Supreme Court. The report claims though it is not specifically proven that there is a nexus between politicians, bureaucrats and private contractors in the provisioning of SNP to the ICDS leading to large-scale corruption and leakages.

The contracts to supply THR in Maharashtra have been given to three Mahila Mandals, namely, Venkateshwara Mahila Audhyogic Utpadan Sahakari Sanstha Ltd, Mahalaxmi Mahila Grahaudyog & Balvikas Buddheshiya Audhyogic Sahakari Sanstha and Maharashtra Mahila Sahakari Grahudyog Sanstha Ltd. These Mahila Mandals, in turn, have leased in the facilities for production of THR from private agro-companies. My report establishes the de-facto and de-jure ownership of the Mahila Mandals and the private agro- companies are by the same family. In each case, the Mahila Mandal has formed a sub-committee which has been given also operational control over production and finances in relation to a unit which is owned by family members of the members of the said sub-committee.

In some States like Uttar Pradesh, the supplementary nutrition has been contracted out to private companies like Great Value Foods, promoted by Gurdeep Singh (Ponty) Chadha in complete violation of the Supreme Court orders. This continues despite an adverse report on the issue (in Gorakhpur) by the National Human Rights Commission. Similarly, a contractor based out of Noida, Continental Milkose (India) Ltd. provides the supplementary nutrition for the ICDS in Meghalaya. The contract continues despite adverse CAG reports on the provision of SNP in Meghalaya. This state of affairs prevails across many States/UTs.

According to the National Family Health Survey 3, every day close to 5,000 children dies in India due to preventable causes including malnutrition. The ICDS is the only institutional mechanism of the Government to deal with issues of children under the age of six. The government of India/States and UTs spend close to 8,000 crores every year on the provision of Supplementary Nutrition. It is unconscionable that a country with one of the highest rates of child malnutrition, globally, allows rampant corruption to undermine the ICDS and thereby the future of its children."

8. The second report was submitted by the Commissioner appointed in PUCL (W.P.© No.196/2001) to this Court, the relevant portion is extracted hereunder:

“Part A of the existing report further probes the subject of the large-scale irregularities in the supply of Supplementary Nutrition Provisioning (SNP) in violation of the orders of the Hon'ble Supreme Court by the engagement of contractors in ICDS in four states namely, Maharashtra, Karnataka, Uttar Pradesh, and Gujarat.

Part B of the report documents the best practice study from two states viz, Odisha and Kerala on the effective involvement of the local women's' groups in the form of the decentralized model of nutrition provisioning under ICDS, which is in consonance with 2004 and 2006 Hon'ble Supreme Court order.

Part C of the report is the nutrient analysis of the samples Take Home Rations collected from four states (Maharashtra, Uttar Pradesh, Gujarat, Meghalaya), carried out by National Institute of Nutrition (NIN) Hyderabad. NIN data shows a significant gap between state specifications and the results of the lab test.

We reiterate our concern for the health, nutrition, and life of millions of children in India, in the larger public interest and in order to be able to indisputably establish the facts of this case, we would again request the Hon'ble Supreme Court to set up an independent Special Investigation Team (SIT) to enquire into the matter.”

9. Further directions were issued by this Court in PUCL (W.P.© No.196/2001) on 10.7.2013:

“Mr. Colin Gonsalves, learned senior counsel appearing for the writ petitioner, on the other hand argued that although the Government of Gujarat had made a statement before the High Court on 14 March, 2011 that they will completely switch-over to the system of providing rations through Mahila Mandals and Self-Help Groups within a period of one year, the Government had not been diligent in doing the needful with the result that the switch-over was achieved only to the extent of 16 percent. He submitted that the Government had in derogation of the orders of this Court dated 7.10.2004, 13.12.2006 and 22.04.2009 engaged a contractor for the supply of nutritional food to the children falling in the age group of six months to three years and that the present application was only an attempt to perpetuate that violation. He submitted that according to his instructions each Anganwadi was equipped with pucca/kaccha kitchen for many many years and that there was indeed no difficulty in supplying to the targeted age group of children cooked nutritional food in terms of the scheme as directed by this Court.

In the circumstances, therefore, and keeping in view the submissions made at the Bar we direct the State Government of Gujarat to file an additional affidavit on the lines indicated above, indicating the time-frame within which it will switch-over to the system of supply of food to the targeted

population of children and others entitled to the same in the State of Gujarat under the Ordinance and also indicating the time- frame within which every school and Anganwadi may be equipped with facilities for cooking meals within the meaning of Section 5 (2) of the Ordinance.”

10. On 6.8.13, this Court passed an order in PUCL (W.P.© No.196/2001) with respect to Gujarat:-

“In the meantime, we permit the Government of Gujarat to continue the system under which it has been procuring for distribution take-home ration as EFBF from the original manufacturers by inviting competitive bids for a period of one more year.

The State would, therefore, would do well to diligently identify not only reliable self-help groups who can be entrusted with the process of setting up of the plants but also providing all such assistance as may be required for the plants to become functional as early as possible.

We make it clear that in case its found that the State Government have not taken appropriate steps in terms of what we have said above, we may be forced to recall this order and issue appropriate direction in the matter.”

11. This Court again in PUCL (W.P.© No.196/2001) directed State of Gujarat and Rajasthan, on 01.09.2014, to the following effect:-

“Rajasthan: The directions of this Court have over the past 10 years resulted in a switchover of decentralization of the feeding process to Self-Help Groups and Women Co-operatives only in 107 such projects as against 304 projects spread over in the entire State. The pace of switchover is very slow and needs to be increased by the authorities concerned.”

Gujarat: "There is no manner of doubt that the State has undertaken steps in setting up of pilot projects four of which projects have already been commissioned, no matter the capacity of the project is limited. There is also no manner of doubt that the thirteen additional sanctioned projects will not be sufficient to cater to the States of its requirement of 12,000 metric tonnes. In that view, therefore, we are inclined to extend the time fixed for completing the switchover but impress upon the State to expedite the process of switchover for otherwise it can go on indefinitely for decades."

12. The tender notice has been issued by Government of Maharashtra dated 08.03.2016, the tender conditions that came to be questioned were contained in Clauses VII (h), (j) and (l) and Clause X (e) and (g), which are extracted hereunder:-

"VII... (h) Machinery Performance Certificate:

Proposer must furnish a list of machineries installed in his premises and a latest certificate from a Chartered Engineer registered with the Institution of Engineers (India), stating that the machinery is sufficient to meet the production requirement

of various Ready to Cook Food Mixes as per product specification given under this proposal and also stating that the machinery can effectively perform for a further period of 5 years. The certificate shall also clearly indicate the installed capacity of such machinery.

(j) The Proposer should have In house Quality Control facilities, and any quality control laboratory equipped with appropriate laboratory equipment for testing the parameters prescribed in the Food Safety and Standard Act (Prevention of Food Adulteration Act) and as per the specifications given in the proposal regarding the Nutrient contents, Moisture content, Microbiological and Chemical contamination, Physical conditions e.g. dryness, softness, consistency, Micronutrient contents. The proposer must submit a list of equipment list of technically qualified personnel engaged in quality control etc.

(l) The latest consent letter received from the micronutrient manufacturer/importers, for the supply of micronutrient, minimum for the contract period to the proposer, should be submitted before the work order gets awarded.

X. Blueprint/drawing of the plant approved by the Food and Drug Authority from where the product as specified in this proposal will be produced and supplied by the proposer. The design/detail should cover location and capacity (in MT) of silos, covered storage areas with capacity in MT, open storage areas with capacity in MT, process divisions like extrusion, cleaning, grinding etc. Proposers shall also submit Notarized copies of the following registration/licenses for producing Extruded Fortified Blended Food as specified in this proposal.

(e) A valid license under FSSA, 2006.

(g) ISO 22000:2005, ISO 14001:2004 OHSAS 18001:2007 Good Manufacturing Practice."

13. The Nagpur Bench has dismissed W.P. No.1807/2016 that has been questioned in the special leave petitions i.e. SLP(C) Nos.10103/16, 8551/16 and 2415/2017.

14. Whereas Aurangabad Bench has set aside the tender notice to the extent of reducing the products to 70. All the terms and conditions of the tender have been held valid. The direction was issued to the respondent to conduct the survey of the eligible units with respect to extrusion technology and satisfying all other conditions and shall thereafter proceed to form projects and issue tender notice accordingly.

15. It was pointed out that while rendering the decision in Shagun (supra) on 19.8.2011 this Court was shown a letter dated 28.7.2009 which was issued by the Deputy Technical Advisor, Food and Nutrition Board (Western Region), Ministry of Women and Child Development, sent recipes to the Government of Maharashtra. The recipes inter alia provided for mandatory micronutrient fortification and mandatory use of extrusion technology in preparation of meals, thus requiring factory-based production which is difficult at the level of Anganwadi Centres, Relevant portion of

the recipes, which was relied on in the case of Shagun (supra), is extracted hereunder:

“Protein content in the food can be increased by confined sources and among the available sources Soybean is the best sources for who are vegetarian, now the question arises that milk can also be considered as one of the sources but protein content of milk are not as much as that of soybean. Again we can say that legumes can also be considered as one of the sources available for protein but when compared to soybean the protein contents of legumes is very less and the problem faced with legumes is very expensive.

Hence the only sources left to attain the required protein content are SOYABEAN which fits into the budgetary and nutrition norms Problem encountered with soybean is that presence of Tropism inhibitor and complex starch structure in Soybean makes protein unavailable the solution to this was the use of apt processing technology.

The technology that we came across after studying the various factors was "EXTRUSION TECHNOLOGY".

EXTRUSION TECHNOLOGY Is a multivariable unit operation i.e. mixing shearing, cooking, puffing and drying in one energy efficient rapid continuous process? This process of High-Temperature Short Time (HTST) combined with high-pressure cooking in presence of moisture.

Try spin Inhibitor: They interface with the proper digestion of the protein kakde at all (1973) estimated that nearly 40% of the reduction in growth performance of any mammal fed raw soybean is due to the trips in inhibitor.

The anituntironal factors can be deactivated through proper heat processing such as across in extrusion.

Once the product is being extruded and is in granule or powder form the fortification of the micronutrients will be easy which leads to a homogeneous mix of required nutrition in correct proportion.

Micronutrient Fortification: The revised guidelines lays major streets on micronutrient fortification of the THR to be provided to the beneficiary this step of micronutrient fortification requires expert technical supervision and can be achieved in precise perfection by using accurate machines with precision in measuring the quantity in milligrams. The fortification of the said receipts at AWC will be quite difficult."

16. The Government of Maharashtra passed a Resolution dated 24.08.2009 on the basis of the advice dated 28.7.2009, which required a highly mechanized and automated process of extrusion and micronutrient fortification. The State Government further issued a tender notification based on these requirement laying onerous conditions on Mahila Mandals to have automated production

units, turnover of Rs.1 Crore or more etc. Following is the Resolution of the Government of Maharashtra:

"There being need of change in the diet system to bring about multifariousness in the diet and to effect micronutrient certification by chemical process, individual cleanliness from the public health point of view, or cleanliness of the premises, vaccination, creating public awareness are the points which require to be given preference. It is not possible to remove the deficiency in the diet of children and mothers by the diet being provided under the Integrated Child Development Service Scheme. However, the instructions of the Central Government are that 50% need of the micronutrient requirement may be made good by fortification process."

17. The Government of Maharashtra sought clarification from Government of India regarding extrusion process, factory-based production etc., as required in the recipe dated 28.07.2009. A letter was written on 29.1.2010. Relevant extract of a letter dated 29.01.2010 is extracted hereunder:-

"Meanwhile, we have received a report from Mr. Balbeer Singh, Dy. Director (Technical), Food and Nutrition Board, Western Region, a copy of which is enclosed herewith.

From this report, it is seen that the Food and Nutrition Board has recommended factory-based production with extrusion technology and specific recipes which use this technology for production of THR.

In this regard, we would be grateful, if you would kindly clarify the following points so that the further tender process can be finalised.

1. Does GOI prescribe or recommend factory-based production, or any specific technology, for production of THR? Has it prescribed any specific recipes or products?
2. Does it recommend 'Extrusion Technology for THR production'?
3. Does it recommend any minimum shelf life for THR? Is there any prescribed water content?
4. Can the state go in for gur-groundnut chikki or similar products as THR, as long as it satisfied the prescribed criteria for calories and proteins etc.?
5. Has it authorized Food and Nutrition Board, Western Region, to prescribe Extrusion technology for THR?"

18. On 26.2.2010, Government of India sent its clarification to the Government of Maharashtra regarding the use of extrusion technology and as to mandatory specifications laid down in the recipe

dated 28.7.2009. Following is the reply sent by the Government of India:-

"Please refer to your DO letter
No. ICDS/2008/CR-59 (Part-II)/2005 dated 29th

January 2010 raising queries regarding factory- based production or specific technology for production of THR.

The provision of SNP, whether in the form of morning snack, hot cooked meal or THR has been left with the State. So far, there are no specific recommendations for the use of extrusion technology or any other technology for THR. The suggestions given by Regional DTA (Western Region) are only suggestive in nature and not a recommendation by GOI."

(emphasis supplied)

19. It was clarified by the Government of India that there is no specific recommendation for the use of extrusion technology or any other technology for THR. The suggestion given by the Regional DTA, (Western Region) is only suggestive in nature and not a recommendation made by the Government of India. In Shagun (supra) this Court on 19.08.2011 observed thus:-

"The Central Government, through the Ministry of Women and Child Development and Food and Nutrition Board office vide its letter dated 28th July 2009, circulated the Recipe to the State Government (respondent No.1) as per new norms of ICDS for preparation of the food. It was provided that the feeding norms ought to have two components in it, to be provided as supplementary nutrition to the beneficiaries at Anganwadis namely:- Hot Cooked Meal (HCM) and Take Home Ration (THR).

Directions were issued that HCM and THR should be given in the form of "energy-dense food/micronutrient fortified food" and should conform to the standards laid by the Prevention of Food Adulteration Act, Integrated Food Law, Infant, and Young Child Practices. The micronutrient fortified food was defined to be the food in which essential mineral and vitamins are added separately to ensure that minimum dietary requirements are met. It was emphasised that to attain the required protein content in the food proposed to be supplied, the only source was Soybean. The food was to be processed by using Extrusion Technology to draw maximum results by use of Soyabean. The guidelines in the aforesaid letter further emphasised that since the revised guidelines laid major stress on micronutrient fortification of the THR, it required "expert technical supervision" and that it can be achieved by using accurate machines with precision in measuring the quantity in milligrams.

The Government of India communicated the judgment in the Shagun Mahila Mandal case to all States/UTs. The judgment nowhere mentioned that private manufacturers or contractors are allowed, and the judgment was only limited to the tender conditions applicable to eligible Mahila mandals. However, the Central Government

communication allowed the states to supply even from manufacturers:"

20. It is thus clear that observations made by this Court in Shagun (supra) was based upon not upon Government of India recommendations but in the letter of Deputy Technical Director, Western Region, which was wrongly represented to this Court as recommendations of the Government of India. In view of the clarification made by the Government of India, the observations made by this Court as to extrusion technology stand diluted, based on misrepresentation.

21. By introducing the extrusion Technology it was pointed out that in 2010 three Mahila Mandals, which were chosen, were found to be fake and were only acting as fronts for existing companies and industrialists. Following facts have been mentioned in the reply filed by the State of Maharashtra :

"The following women institutions are selected for the supply of THR to the beneficiaries of the Gramin/Aadivashi and Urban Project and the following product unit is allotted district wise.

1. Mahalaxmi Mahila Gruhuddiyog and Bal Vikas Bahu Uddyeshiya Aoudyo. Co.-Operative Society, Nanded Unit 1. Mahalaxmi M.G.B.V.B.A. Cooperative Society, Nanded Districts- Nanded, Parbhani, Hingoli Unit 2. Indo Allied Protein Food Districts-Thane Pune, Ahmednagar Unit 3. Kota Rajasthan Districts Mumbai, Raigad, Ratnagiri, Sindhudurg, Sangali, Satara, Kolhapur, Solapur, Usmanabad, Akola, Gondiya.

2. Maharashtra Women Cooperative Home Industry Societies, Dhule, Districts – Dhule, Nandurbar, Nashik, Jalgaon, Aurangabad.

3. Vyankateshwar Women Cooperative Home Industry Societies, Udgir.

Unit -1 Kapshikhurd Nagpur Districts- Bhandara, Gadchiroli, Nagpur, Yavatmal, Jalna, Buldhana, Washim.

Unit 2- Dongargaon, Nagpur Districts Chandrapur, Amravati, Beed, Latur, Vardha”

22. Following averments have also been made in reply filed by the State of Maharashtra with respect to Venkateshwara Mahila Ayodhogic Sanstha:-

“It is necessary here to clarify that applicant Venkateshwara Mahila Ayodhogik Sanstha is in fact contractor: which is being well practically operated by male members, merely by showing female relatives or, documents for projection.

11. I further submit that detailed enquiry regarding Venkateshwara Mahila Ayodhogik Utpadak Sahakari Sanstha will clearly reveal that the ladies are being projected merely on record and said Sanstha is actually managed by all male members. It is not out of place to point out that the said Sanstha being Utpadak

Sahakari Sanstha registered under Maharashtra Co-operative Societies Act only for the purpose of production/manufacturing has no right to claim any relief for supply of food grains as prayed in the present application as the said Society is not registered as trading/consumer society.

Hereto annexed and marked as ANNEXURE R-6 is a copy of the registration certificate of Venkateshwara Mahila Ayodhogik Utpadak Sahakari Sanstha issued by Deputy Registrar, Co-operative Societies, Udgir.

I Further submit that on 12.7.1999 the said Venkateshwara Mahila Ayodhogik Utpadak Sahakari Sanstha authorized Deepak Dinkarrao Lakhangonkar to carry all the activities on their behalf that makes it very clear that actually male counterparts are administering affairs of so- called Mahila Society."

23. Thus, it was urged that the field has been left open to the industrialists in the conditions of the tender under the guise of Mahila Mandal's fake persons are obtaining contracts.

24. In the judgment rendered by the Aurangabad Bench, it has been noted that three big contractors were selected who were not really Mahila Mandals or Mahila self-help groups:-

(i) Maharashtra Mahila Sahakari Grahudyog Sanstha Ltd., Dhule.

(ii) Venkateshwara Mahila Audhyogic Utpadan Sahakari Sanstha Ltd., Latur.

(iii) Mahalaxmi Mahila Garhudyog and Balvikas Buddeshiya Audhyogic Sahakari Sanstha.

25. As in PUCL (supra) and Shagun (supra), divergent orders were passed. Circular dated 26.09.2014 was issued. The order in PUCL (supra) was received by the government of India on 15.10.2014. On 17.11.2014 departmental note was circulated. Secretary made a recommendation to review circular dated 26.09.2014 in the light of PUCL order dated 1.9.2014. Director, ICDS also prepared a similar note dated 17.12.2014. On 22.12.2014 it was observed that requirement of certification as per circular dated 26.09.2014 be kept on hold till April 2015. It was again introduced on 23.06.2015. Then again Maharashtra Government Principal Secretary sought guidance from J.S. (ICDS) regarding mandatory use of extrusion technology. On 03.09.2015, it was written back that decision of Supreme Court may be followed.

26. The appellants/petitioners have relied on the report as to corruption and poor quality of meals supplied by contractors as positive instances of decentralized production model by SHGs. The Commissioner appointed in PUCL (W.P.© No.196/2001) observed in a letter:-

"We also welcome the enhanced calorie and protein supplementation norms proposed by the Ministry of Women and Child Development for the Supplementary Nutrition Programme as mentioned in the draft.

However, we are in strong disagreement with the manner in which the Ministry of Women and Child Development is seeking to allow a backdoor entry of contractors and middlemen back into the Supplementary Nutrition Programme by suggesting the introduction of micro-nutrient fortified food obviously through contractors, although this is not specifically stated in the letter dated 24/02/2009.

Such an attempt to introduce contractors by the back door in the guise of supplying micro- nutrient fortified food was repeatedly rejected by this Honorable Court when several State Governments filed affidavits seeking to promote the contractor lobby for the provisioning of fortified foods, snack and other ready to eat food in ICDS.

This contractor lobby seeks to capture what it perceives to be potential Central Government annual budget of Rs.5000 crore in the Supplementary Nutrition Programme."

27. The petitioners have also relied on the NHRC in a report on the functioning of ICDS in Gorakhpur (U.P.) as to the poor quality of THR recommended thus:-

"...a rapacious private sector is riding on the back of the ICDS to a captive rural market with the help of government machinery in a naked display of crony capitalism.

By procuring food from a contractor the State Government is probably violating the orders of the Supreme Court dated 7.10.2004 and 13.12.2006 in WP (C) No. 196 of 2001, though the contractor hides behind the fig leaf of being a manufacturer. Less than two years back, the contractor set up a processing plant in Bahraich district for the sole business of supplying ready-to-eat food (RTE) to AWCs in Gorakhpur and 11 other districts of eastern Uttar Pradesh. This shows that the State Government far from phasing out contractors is encouraging expansion of their business in ICDS. The RTE does not seem to contain the ingredients claimed and the weaning food may not be suitable for babies.

The ready to eat food is produced in poor hygienic conditions. Some of the ingredients shown on the bags containing the finished product were not found in stock at the time of the visit and the stock of maize was only enough to meet 25% of the daily requirement.

ICDS in Uttar Pradesh is a highly centralised programme. Virtually everything is procured by the Directorate in Lucknow. There is nothing purchased at the district level. The only exception is the small amount allotted to each AWC to purchase food items, which accounts for 14% of the total purchase of foodstuff.

All communication is top-down. The programme suffers because of the lack of free flow of information. There is no scope for local initiative. The authorities rely too

much on paperwork, which seems to have become an end in itself.

The complete decentralization of the feeding programme through local women's groups, contemplated by the Supreme Court's orders referred to above, is still a far cry in Uttar Pradesh.

Weak Links Centralization of powers at Lucknow has made the field level functionaries powerless, apathetic and devoid of initiative. The biggest danger of centralization lies in the area of purchases. It makes small sums spent per AWC attractive to rapacious private sector players and their corrupt collaborators by pooling the resources meant for 166073 AWCs spread across the State. I would call centralized purchase the weakest link.

Manufactured ready to eat food is difficult and unsafe to store, indifferent in taste and nutritive value lacks variety and is easy to divert in bulk. It is supplied at the same rate as prescribed per beneficiary by the government. If we take away a modest value addition of 15% in the procession plants, the real value of supplies to the beneficiary will be reduced by the same percentage. So I will call RTE the second weakest link.

Dependence on official machinery, with only token beneficiary participation, is the third weak link.

Ultimately, the mothers in a village can be said to be the beneficiaries of the programme. Until the management of the programme at AWC level is delegates to mothers' groups, diversion of resources and corruption cannot be rooted out. Suggestions for improvement.

Before taking any other steps, the government has to demonstrate its intentions by doing away with private contracts for food supply altogether. This will send a message to the field functionaries who seem to be confused about the real intentions of their superiors at Lucknow.

Simultaneously, the entire feeding programme has to be decentralised to the village-level women's' groups. The existing Matri Samitis, self-help groups of women or mothers' groups formed by the community can be adopted as the vehicle of decentralization. There should be no prescription about cooked food and 'take- home' food. There is no need to assume that women and babies at the weaning stage cannot be fed cooked meals at the Anganwadi. Every community should be allowed to decide what suits it best. Advice and guidance may be provided to help the community make a decision. The assistance of CFTRI may be sought to generate alternatives from which the community can choose. For the decentralised system to succeed, it is imperative that funds for every month are placed at the disposal of the women's' group in the last week of the previous month."

28. The National Rural Livelihood Mission, Government of India, on 21.01.2013, gave guidelines for involvement of SHGs in the supply of THR under ICDS. The extract of a letter of Additional Secretary, Ministry of Rural Development are as under:-

“A Women's' Self Help Group (SHG) (of 10- 20 women in general, 5-20 women in difficult areas) is the primary building block of NRLM's institutional design. The S.H.G. is an informal and unregistered group. Under N.R.L.M., one member from each identified rural poor household, preferably a woman, is to be organized into a Self Help Group (SHGs).

These groups are formed on the basis of affinity and common bonding among members. They are not arbitrarily put together, and more important this task is not to be performed mechanically. It requires very sensitive facilitation, initially by an external social mobilizing agency, N.G.O or Govt. Missions and later on their own federation emerges as a sensitive support agency and takes over most of the functions being performed by the initial external support organizations. Now SHGs are formed out of the existing BPL list. We are attempting to switch over to a participatory identification methodology which will ensure much better inclusion of the deserving poor.

The time required capacitating groups to undertake a micro-enterprise model related to Skills and Placement. Currently, only two State Missions under NRLM have experience in undertaking micro-enterprise models for ICDS - Kerala, and Odisha. Based on the models developed by Kerala and Odisha, where Community Based Organisations (CBOs) including SHGs/federations are trained to develop a micro-enterprise related to SNP using local ingredients, it could take between 4-8 weeks to train and capacitate a CBO depending on their potential and skills. There are also models promoted by reputed N.G.Os in many states in cooperation with the Dept, of Women and Child Welfare.

How can your department/N.R.L.M. support WCD in involving S.H.Gs/M.Ms./local women groups in supplying Supplementary Nutrition esp? Take Home Rations for ICDS as a livelihood activity viable enterprise?

Essentially, the tasks suggested should have to be accepted by the State Rural Livelihood Missions and implemented initially on a pilot mode. The total acceptance by the State WCD is a pre-condition for this. Already Kerala and Orissa have experience in supplying Take Home Ration under ICDS. These States can be declared as the Resource States, the experience of which can be formally shared with other willing States from which joint teams of the State Livelihood Mission and State WCD can learn and prepare an action plan as appropriate to the State."

29. On 24.12.2013, Government of India has issued Operational Guidelines for Food Safety and Hygiene in ICDS with respect to SHGs and local groups as under:-

“Take Home Ration (THR) is dry packed food produced locally by SHG's, local groups and federations. The production should meet the standards and specifications for food safety and handling.

The establishment in which food is being handled; processed, stored, distributed by the SHG/ producer is a holder of the registration certificate or a license as per the norms laid down by the Food Standards and Safety Authority Act, 2006, Regulations 2011. Sanitary and hygienic requirement, food safety measures, and other standards should be confirmed and it will be the responsibility of the producer to ensure adherence to necessary requirements.

Processing of Food (Take Home Rations):

Processing involves activities like sieving, washing, drying, roasting, mixing, grinding etc., which requires handling of food.”

30. The Government of India in its 'Social Service Delivery: Good Practices Resource Book 2015 applauded the Odisha model in the following terms:

"Decentralisation of ICDS Supplementary Nutrition Programme: Ensuring timely and quality nutrition to all beneficiaries in Odisha.

The Department of Women and Child Development (WCD), Government of Odisha, has undertaken decentralization of the Integrated Child Development Services (ICDS) supplementary nutrition programme in the state to streamline and strengthen the programme and ensure ' universalization with quality' in a time-bound manner. The initiative reaches out to all beneficiaries with a standard weekly menu, meeting the protein and calorie norms within the allocated ration cost, removing contractors and encouraging women Self Help Groups (SHGs) in adherence with the Supreme Court directive. Results from a social audit indicate that 71% of the respondents felt that the menu chart was being followed."

“Replicability and Sustainability Social sustainability of the initiative is high, owing to the successful run of the community-driven model that has been institutionalized for the SNP. Following the success of Jaanch Committees in SNP, the system will now also been extended to other components of ICDS on a trial basis to induce more community participation in implementation.

Long-term sustainability requires the state administration to create an enabling environment. For the purpose of introducing reforms, support for this initiative was garnered from the apex to the grassroots level and the required trust to be invested in grassroots functionaries.

The replication of this model requires a strong administrative thrust in identifying the context-relevant loopholes in the system, as was done in the case of Odisha. Training and capacity building of the community is also an essential factor for the smooth deployment of the model which has demonstrated that procuring food materials at ration rates may be difficult but is possible and that contractors can be removed from the supply chain of SNP with beneficial results in terms of effective implementation.”

31. In our opinion, it was argued rightly that this Court was misled while rendering the decision in Shagun (supra) when it was projected that it was mandatory to follow the recipes dated 28.7.2009 whereas Government of India itself has clarified that it was only suggestive and was not the decision of Government of India as pointed out in the letter dated 26.2.2010 extracted above.

32. Apart from that after the decision has been rendered by this Court in Shagun (supra) Act has been enacted and new policy has been framed by the Government of India and thereafter new policies have been filed by the Government of India on 6.8.2018, contained in the affidavit of the Secretary, Ministry of Home and Child Development. In the affidavit filed by UOI represented by the Ministry of Women and Child Development following has been mentioned with respect to the supplementary nutrition programme of the Government under the Integrated Child Development Scheme:-

“SUPPLEMENTARY NUTRITION PROGRAMME OF THE GOVERNMENT UNDER THE ICDS SCHEME

3. That the Anganwadi Services Scheme (earlier known as Integrated Child Development Services (hereinafter referred to as “ICDS”) aims at holistic development of Children (0-6 years) and Pregnant Women and Lactating Mothers. It comprises of integrated services including supplementary nutrition, immunization, health check-ups, referral services, pre-school non-formal-education, and Health & Nutrition Education.

4. That ICDS is a Centrally Sponsored Scheme, wherein the Central Government in the Ministry of Women and Child Development is responsible for programme planning and its share of operating costs and the State Governments/UT Administrations are responsible for day-to-day program implementation including Supplementary Nutrition Programme and management thereof.

5. That the Government of India provides its share of funds for administrative, operative and implementation costs as per cost sharing norms. For ICDS (General), the Central share is 90% for North-Eastern (NE) States and Himalayan States and 60% for other States and UTs with the legislature and 100% for UTs without the legislature. It is most respectfully submitted that for Supplementary Nutrition, Government of India bears the expenditure on 50:50 basis for all States and UTs with the legislature and at 90:10 ratio for NE and the Himalayan States. For UTs without a legislature, the entire expenditure is borne by Central Government.

6. That the Supplementary Nutrition Programme (SNP) supplied under ICDS Scheme is of two types for different beneficiaries i.e.:

a. Take Home Ration (THR) for Pregnant Women, Lactating Mothers, and Children in the age group of 6 months to 3 years; and b. Hot Cooked Meal (HCM) for children in the age group of 3-6 years.”

7. That it is necessary to clarify that Supplementary Nutrition is not a full meal as in the case of Mid-Day Meal. SN is the difference in nutritional value of Recommended Dietary Allowance and Average Daily Intake to cover up the deficiency.

8. That the HCM is served at the Anganwadi Centre (AWC) itself and is mostly prepared at the AWCs. Take Home Ration is served to the beneficiaries once/twice in a month as regulated by the concerned State Government/UT Administration and is to be prepared as per the guidelines, instructions or orders issued by the Central Government from time to time and the orders or guidelines issued by the Supreme Court or High Courts, to conform to the quality, hygiene and quantity standards.

9. That the Central Government provides parameters of maintaining standard and quality of food (which include calorie, protein, food safety hygiene, and contamination).

10. That Food & Nutrition Board functioning under the Ministry of Women and Child Development carries out periodic checks to ensure that prescribed standards are adhered to and quality and nutritive value of Supplementary Nutrition is maintained. There are four regional laboratories under FNB for carrying out the tests so as to ensure food safety supplied by the State Governments.

There are 43 field units under FNB spread across the country to collect the sample and get food tested to ensure food quality.

11. That the Government of India issued the detailed Operational Guidelines for Food Safety and Hygiene in ICDS on 24.12.2013, copy whereof is enclosed herewith as Annexure R-1. These guidelines provide the broad contours of Food Safety measures in ICDS and include separate sections on general principles for maintenance of cleanliness, hygiene at Anganwadi centers and manufacturing units, precautionary measures, handling emergencies and cases of chemical poisoning and easy to follow simple protocols for food handling at different stages."

33. It has also been pointed out in the affidavit on behalf of the Government of India dated 06.08.2018 that the guideline prescribes the following measures for maintaining hygiene and sanitation at the Anganwadi centers and ensuring food safety:-

a) Food Handling and Safety Measures for Hot Cooked meal and Morning Snack which includes transportation, procurement, storage, food safety, safety while cooking and serving, disposal of leftover, monitoring, and supervision, quality assurance, etc.

b) Guidelines for Food Safety and Hygiene in Take Home Ration which includes location, surrounding and building, drainage and waste disposal, washing facilities, storage, etc.

c) Food Handling and Safety Measures for THR which includes procurement, processing, packaging, quality assurance.

d) To prevent contamination of Supplementary Nutrition, all equipment and utensils must be cleaned and disinfected.

e) Adequate precautions must be taken to prevent the food item from being contaminated during cleaning or disinfecting of rooms, equipment or utensil, by use of water, detergents or disinfectants.

f) Floors and drains must not be cleaned whilst the food is being prepared.

g) Detergents and disinfectants must be suitable for the purpose and any residues of these agents on a surface which may come in contact with food item must be removed by thorough rinsing with potable water before the area or equipment is used again.

h) Immediately at the end of the day's work, floors (including drains), structures and walls of food handling areas must be thoroughly cleaned.

i) Toilets must be kept clean and tidy at all times.

j) Provision of safe disposal of stool and wastes must be made.

k) Nearby outside area/surroundings must also be kept clean and tidy.

l) Regular pest control measures should be adopted at the Anganwadi centers. However, before pesticides are applied, care must be taken to protect people, food, equipment and utensils from contamination.

m) Substances which could contaminate food must not be used or stored in food handling areas

n) The personal hygiene standard of food handlers at kitchen, AWW/AWH includes a high standard of personal cleanliness, freedom from infectious diseases and a sufficient standard of hygiene.

o) The state may ensure that AWWs/AWHs are in good health and all staff enrolled for the supply of food items must be adequately trained in good hygiene practices. p) Hands must always be washed before entering the foods handling area immediately after using the toilet, after handling contaminated material and whenever necessary.

34. It has also been pointed out by the Secretary in the affidavit dated 06.08.2018 that Supplementary Nutritional Programme (for short 'SNP') is implemented, managed and controlled by the respective States/UTs, it is at their discretion to decide items of food to be supplied under the

supplementary nutrition as the local food habits, regional preferences and availability of food in the local area vary from place to place. However, this is to be done by keeping in view the overall guidelines, nutritional norms and food safety standards, a copy of some of the suggestive recipes prepared by the National Institute of Nutrition, Hyderabad, has been placed on record as Annexure R-2.

35. The various recipes which have been prescribed were Cereal- Pulse Mix, Regina, Rice Flakes-Groundnut Barfi, Wheat-Groundnut Barfi, Bajra and Pulse/Legume Mix, Sweet Ready Mix, Paushtik panjeeri, Besan-Suji Ladus, Paushtik Barfi, Paushtik mathri, Amylase Rice Energy Food, Wheat Soya Laddu, Nutro Soya Corn Chikkis, as specified in Annexure R2.

36. However, it would be for the concerned State or the Union Territory to take an action on the recipes they want as per local requirement, the aforesaid recipe is only suggestive, as specified in the affidavit of 06.08.2018 of the Secretary Government of India of the concerned department itself.

37. It has also been pointed out that under THR normally dry mixtures are supplied such as Daliya, Khichdi etc. However, some other States are giving in some other forms. Most of the items do not require a sophisticated technique of manufacturing process and the self-help groups/Mahila Mandals are fully equipped and competent to supply the said food. The concerned Authorities of the State Government are expected to undertake all such steps which becomes necessary that the self-help groups/Mahila Mandals and such other similar organizations are allowed to meaningfully participate in providing HCM and THR, all over the country and terms and conditions of the tenders etc., should not be framed in such a manner that they get excluded from participating itself in such tenders. It has also been pointed out that with respect to management, preparation, supply, monitoring and service of the supplementary nutrition under the Integrated Child Development Scheme the policy of the Central Government is guided by the provisions contained in the Office Memorandum dated 24.02.2009 of the Ministry concerned and the decision of this Court in PUCL v. Union of India dated 22.04.2009 in W.P.(C) No.196/2001 to follow and implement the guidelines.

38. Sections 4, 5 and 6 of the Act of 2013 are extracted hereunder:-

“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 childbirth, 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 installments 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 Undertakings or those who are in receipt of similar benefits under any law for the time being in force shall not be entitled to benefits specified in clause (b).

5. Nutritional support to children.- (1) Subject to the provisions contained in clause

(b), every child up to the age of fourteen years shall have the following entitlements for his nutritional needs, namely:—

(a) 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 specified in Schedule II:

Provided that for children below the age of six months, exclusive breastfeeding shall be promoted;

(b) in the case of children, up to class VIII or within the age group of six to fourteen years, whichever is applicable, one mid-day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, so as to meet the nutritional standards specified in Schedule II. (2) Every school, referred to in clause (b) of sub-section (1), and Anganwadi shall have facilities for cooking meals, drinking water and sanitation:

Provided that in urban areas facilities of centralised kitchens for cooking meals may be used, wherever required, as per the guidelines issued by the Central Government.

6. Prevention and management of child malnutrition.- The State Government shall, through the local Anganwadi, identify and provide meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards; specified in Schedule II."

39. Calorie requirement has also been pointed out in the affidavit dated 06.08.2018 in the tabular form:

S. No. Category Type of meal Calories Protein (Kcal) (g)

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

2. Children Morning Snacks 500 12-15 (3 to 6 years) and Hot Cooked Meal

3. Children Take Home Ration 800 20-25 (6 months to 6 years) who are malnourished

4. Pregnant women Take Home Ration 600 18-20 and Lactating Mothers

40. It has also been pointed out that before enactment of the Act of 2013, the National Food Security Ordinance was issued on 5.7.2013. Note 1 below Schedule II of the said Ordinance states "Energy Dense Food fortified with micronutrients as per 50 percent of Recommended Dietary Allowance". However, the Parliament while discussing and passing the Act of 2013 deleted the above provision thereby making the preparation of THR in the simplest way.

41. In exercise of powers, under Section 39 of the Act of 2013, the Central Government has framed the Rules after consultation with the State Government and Union Territories, experts and the civil society notified the Rules relating to Sections 4, 5 & 6 of the Act of 2013 called as Supplementary Nutritional (under ICDS) Rules, 2015 on 08.06.2015, which have been amended on 20.02.2017.

42. Rule 7 of the modified Rules is relevant, the same is extracted hereunder:-

“7. Preparation of meal and maintenance of its standard and quality.-

(1) The procurement of food items and preparation of meals by the State Governments and the Union Territory Administrations shall be in accordance with the guidelines, instructions or orders issued by the Central Government from time to time in conformity with various directions issued by Supreme Court of India, the provisions of Schedule II to the Act and any other law for the time being in force.

(2) The State Governments and the Union territory Administrations, with the support of Food and Nutrition Board (hereinafter referred to as the Board), shall ensure the quality of supplementary nutrition with reference to the norms of food safety, as well as food composition.

(3) The Supplementary Nutrition shall conform to the standards laid down under the provisions of the Food Safety and Standards Act, 2006 (34 of 2006) to ensure consistent quality and nutritive value of the intervention per serving and it shall also be ensured that the meal is prepared in the kitchen having adequate sanitation and safe drinking water to maintain hygienic conditions.

(4) It shall be the responsibility of the concerned District Programme Officer and the Child Development Project Officer under the Anganwadi Services (Integrated Child Development Services) to ensure the quality of supplementary nutrition with reference to the norms of food safety, as well as food composition.

(5) The Board, in collaboration with the State Governments and the Union territory Administrations, shall carry out periodic checks and test the meal or get it tested through the Government Food Research Laboratories accredited or recognized by any law for the time being in force, so as to ensure that the meal meets with the nutritional standards and quality specified in Schedule II of the Act.

(6) Similarly, the officers, as authorized by the State Governments or the Union territory Administrations, shall also conduct surprise checks and draw samples and get them tested through the above laboratories to ensure quality and nutrient value of the meal.

(7) The food should be tasted by the Anganwadi worker or helper before it is served to the beneficiaries at Anganwadi center."

43. Rule 9 of the modified Rules is also relevant, the same is also extracted hereunder:-

9. Responsibility to monitor and review arrangement for supplementary nutrition.- The respective State Governments and Union Territory Administrations, and the Monitoring and Review Committees at the National, State, District, Block and Anganwadi levels, constituted by the Central Government in the Ministry of Women and Child Development from time to time, shall be responsible to monitor and review the status of arrangement for Supplementary Nutrition, convergence with the line departments to ensure water and sanitation facilities, ensure regular functioning of Anganwadi centres, ensure regular supply of Supplementary Nutrition at Anganwadi centres without disruptions and use of iodised or iron-fortified iodised salts, ensure monitoring and supervision visits by officials at different levels as per norms, method of delivery of supplementary food at Anganwadi centres, engagement of Self Help Groups, ensure supply and quality of Supplementary Nutrition through them and all other issues relating to the above, as per their roles defined in the guidelines issued by the Central Government in the Ministry of Women and Child Development from time to time:

Provided that till the engagement of Self Help Groups, the supply of Supplementary Nutrition shall be ensured from such other sources or approved agencies in terms of the existing rules and regulations notified by the Central Government and the State Governments or Union Territory Administrations.

44. It has been also pointed out in the affidavit filed by the Union of India that the Government of India has launched the POSHAN Abhiyaan on 08.03.2018 with the objective to comprehensively address the problem of stunting, under- nutrition, low birth weight, and anemia in a time-bound manner children and Pregnant & Lactating Mother as per the following targets:-

S. No.	Objective	Target
1	Prevent and reduce Stunting in children (0-6 years)	By 2% p.a.
2	Prevent and reduce under-nutrition	By 2% p.a.

(underweight prevalence) in children (0-6 years) 3 Reduce the prevalence of anemia among By 3% p.a. young Children (6-59 months), Women and Adolescent Girls in the age group of 15-49 years 4 Reduce Low Birth Weight (LBW) By 2% p.a.

45. Further instructions have been issued vide letter dated 10.07.2017 with respect to meet the requirement of fortification of food with micro-nutrient, the Union of India has mandated the use of double fortified salt (Iodine & Iron) and fortified oil (Vitamin A & D) and fortified Wheat flour (Iron, Folic Acid and Vitamin B-12) for preparation of SNP under the ICDS. In POSHAN Abhiyaan, a National Council on India's Nutrition Challenges which is an apex body to give policy direction, review and effective coordination and convergence between Ministries having a sectoral responsibility was constituted on 03.01.2018 with the following Chairperson/Members:-

a. Vice Chairman, NITI Aayog	...
Chairperson	
b. Minister, Women & Child Development	... Member
c. Minister, Health & Family Welfare	... Member
d. Minister, Drinking Water & Sanitation	... Member
e. Minister, Rural Development	... Member
f. Minister, Tribal Affairs	... Member
g. Minister, Panchayati Raj	... Member
h. Minister, Consumer Affair & Food	... Member
i. Minister of State of, Finance	... Member

j. Minister of State of, Human Resource Development ... Member k. Minister of State Urban Development ... Member l. Minister of State Information & Broadcasting ... Member m. Minister of State Environment, Forest & Climate Change ... Member n. State Chief Ministers of 5 States ... Member (Bihar, UP, Rajasthan, Tamil Nadu & Chhattisgarh on rotation for 2 years) o. Member, Health & Nutrition, NITI Aayog ... Member p. Secretary, Health Research & DG, ICMR ... Member q. Secretary, MWCD ... Member-

Secretary Secretaries of the line Ministries as Special Invitees. DCs/DMs from 10 districts with the highest prevalence of child stunting (to be co-opted)

46. The terms of reference of the above Council are as follows:-

“a. Provide policy directions to address India's nutritional challenges through coordinated inter-sectoral action.

b. Review programmes for nutrition on a quarterly basis.”

47. The National Council of India, pursuant to the meeting held on 18.04.2018 discussed the issue of Hot Cooked meals for children in the age group of 3 years to 6 years and Take Home Ration (THR)

for the children in the age group of 6 months to 3 years and Pregnant Women and Lactating Mother as decided by the State Government in conformity with the the Act of 2013 and the Supplementary Nutrition (Under the Integrated Child Development Services Scheme) Rules, 2015, which have been amended in 2017. Minutes have been placed on record as Annexure R-10 to the affidavit.

48. The issues discussed and the directions thereon are contained in paragraph 28 of the Minutes of Meeting, which are extracted hereunder:-

“28. The Issue of Hot Cooked meals and THR at Aanganwadi was discussed and deliberated upon. Secretary, MWCD brought out that help of SHGs and mothers (whose children were in the Aanganwadi) was being sought in preparing the meals. 17 States were following this approach and the menu had been fixed based on the demographic profile as well as the availability of local resources. The point was also stressed upon by Hon'ble Minister of CAF&PD. It was agreed that the mothers should be involved for the preparation of the meals to ensure quality and encourage Jan bhagidari.”

49. Ultimately, it has been pointed out in the affidavit on behalf of the Government of India, Ministry of Women and Child Welfare that the policy of the Government of India vis-a-vis the Supplementary Nutrition under the ICDS Scheme based on the Nutritional Norms on 24.02.09 read with the Act of 2013 and Supplementary Nutrition (Under the Integrated Child Development Services Scheme) Rules, 2015, which have been amended in 2017 and the guidelines issued by the Union of India. The following points broadly emerge:-

“a. Preparation of Hot Cooked Meal at the AWC itself where there should be the provision of the kitchen, water, and sanitation as per the provisions of Section 5(1) of the NFSA; b. Supply of Take Home Ration meant for children 6 months - 3 years age and P&LM from the Self Help Groups as per Schedule-II of NFSA, 2013 and Rule-9 of the SNP Rules, 2017; C. Maintenance of quality, cleanliness, and hygiene as per the provisions of Section-7 of SNP Rules, 2017 and the Government of India guidelines issued in July 2013;

d. Protein and the calorific requirement to be met as per the provisions of Schedule-II of NFSA, 2013;

e. Fortification of food ingredients of SNP under ICDS as per MWCD's letter dated 10.07.2017;

f. States/UTs to decide recipes keeping in view the nutritional requirement prescribed food habits and availability of local food.”

50. When we consider the NIT in question issued by the Government of Maharashtra we are of the considered opinion that it was not in the spirit of the orders passed by this Court as the imposition of the condition of 25% of turnover during any one of the last three financial years in the various

districts by insisting for the performance for supplying at least annual average value equal to 25% of required turnover of applied sectors. As to the formation of applied sectors it is apparent from the tender notice that each of the districts has been taken as a unit and yearly expenditure, for example, Ahmednagar is Rs.31,78,87,200/- yearly, 25% would come to Rs.7,94,71,800/- and so on district-wise which ranges from Rs. 1 Crore to more than Rs.10 Crores in various districts. Thus, we find force in the submission that by virtue of the imposition of the aforesaid condition only big players have been left in the field and that is not in tune with the spirit of the Act and the orders passed by this Court as well as the policy framed by the Government of India, as projected in the aforesaid affidavit dated 06.08.2018. Thus, the tender conditions cannot be held to be valid as they were arbitrarily fixed and it was fairly conceded by Mr. Nadkarni, learned Additional Solicitor General appearing for the State of Maharashtra as well as by Mr. Vijay Thora, learned senior counsel, appearing for the State of Maharashtra that they have to abide by the conditions as imposed by the Union of India and the policy framed by the Union of India as projected in the affidavit dated 06.08.2018.

51. Tender notice which has been issued also falls down, we direct the tenders to be invited afresh, within four weeks, strictly as per the policy and observations made in this judgment.

52. It has also been found that fixing of unit area as a district several players have been effectively ousted from the field, it would be appropriate to form groups of the smaller area such as at panchayat or group of panchayats etc., within the District so that the real intention behind the policy is fulfilled in its real sense and supply should be decentralized as much as possible as it is not for the big players/industrialists in the field to cater to the needs of the Scheme as they have usurped in past. It is open to the State Government to make alternative arrangement and they are restrained from continuing the existing system of supply in the interregnum period. This decision as to alternative arrangement should be taken within ten days.

53. The appeals and writ petition are, accordingly, disposed of.

54. The applications for impleadment/intervention are allowed to the extent of intervention and were heard and disposed of.

55. Pending application(s), if any, shall stand disposed of.

.....J. [ARUN MISHRA]J. [DEEPAK GUPTA] NEW DELHI;

FEBRUARY 26, 2019.