

DIPIKA JAGATRAM SAHANI

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v.

UNION OF INDIA AND ORS.

(Writ Petition (Civil) No. 1039 of 2020)

JANUARY 13, 2021

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**[ASHOK BHUSHAN, R. SUBHASH REDDY AND  
M. R. SHAH, JJ.]**

*Anganwadi Centres – Writ petition filed as a Public Interest Litigation questioning the closure of Anganwari centres across the country – Petitioner stated that through Anganwari Centres supplementary nutrition to pregnant women, lactating mothers, adolescent girls and children upto the age of six years were being provided and prayed for direction to Centre and States for reopening all the Anganwadi Centres in the country and to provide Anganwari services as were provided before the lockdown and in accordance with ss.4 to 7 of National Food Security Act, 2013 – Held: Government has a constitutional obligation to preserve human life – The Centre as well as States are statutorily obliged to implement statutory obligation as imposed under ss.4, 5 and 6 of the Act, 2013 – After spread of COVID-19, Anganwadi Centres were closed throughout the country in March, 2020 – The Ministry of Women and Child Development, Government of India had issued guidance note dated 11.11.2020 providing for resumption of Anganwari Services outside the containment zones – Therefore, in view of the guidelines, all States/Union Territories are directed to take decision in respect of opening Anganwadi Centres situated outside the containment zones – The decision for not opening Anganwadi Centres in any State/Union Territories or any part of State/Union Territory shall be taken only after the State Disaster Management Authority of the State direct for not opening of Anganwadi Centres in State/particular area of the State situated outside containment zone – Anganwadi Centres situated in the containment zone shall not be opened till the containment continues – All States/Union Territories shall ensure that nutritional standards as provided in Schedule II of National Food Security Act, 2013, is fulfilled by providing nutritional support to pregnant women, lactating mothers,*

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- A *nutritional support to children who suffer from malnutrition – All the States/Union Territories shall issue necessary orders regarding monitoring and supervision of Anganwadi Centres to ensure that the benefit reaches to the beneficiaries and a Complaint Redressal Mechanism be put in place in each district – Constitution of India – Art.47 – National Food Security Act, 2013 – ss.4 to 7.*

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**Allowing the writ petition, the Court**

- HELD: 1. It is now statutory obligation of the Centre and the States to provide for nutritional support to the pregnant women and lactating mothers, nutritional support to children and to take steps to identify and provide meals for children who suffer from malnutrition. International covenants also aim at highest attainable standards of physical and mental health. This is in interest of social justice. Inadequate supply of nutritious food to the citizens, more particularly to the children and the women shall affect their health. Therefore, the same shall be in violation of their fundamental right to health/right to live with dignity guaranteed under Article 21 of the Constitution of India. The Centre as well as States are statutorily obliged to implement statutory obligation as imposed under Sections 4, 5 and 6 of the Act, 2013. The nutritional support is required to be of the nutritional standards which have already been laid down to Schedule II of the Act, 2013 and all States/UTs are obliged to implement such Scheme and have to comply with Schedule II. Provision of food grains as per the provisions of the Act, 2013 is a statutory obligation on the State. Article 47 of the Constitution 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. [Paras 18, 19][220-E-H; 221-A-B]**

- 2. It is the obligation of the State to ensure that pregnant women, lactating mothers and children in the age of 3 to 6 years and children who suffer from malnutrition are provided their dues. The State has to provide an appropriate mechanism for supervision and check, child development officers and other district level officers who are entrusted to monitor the functioning of Anganwadi Centres have to be extra vigilant and take steps**

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so that no beneficiary is denied its dues. All States/Union Territories should evolve an appropriate mechanism for supervision so that dues are received by beneficiaries for whom schemes are in place. It is for the State to secure health to its citizens as its primary duty. No doubt, the Government is rendering this obligation through various schemes, such as, opening of Aanganwadis, providing nutritious food through Aanganwadis, Mid-day Meal Scheme, etc., but in order to make it meaningful, it has to be within the reach of its people, as far as possible, and the Government must supply the nutritious food in the real sense bearing in mind the provisions of National Food Security Act. The Government of India by its guidance note permitted all the States and Union Territories to open Anganwadi Centres, it is the obligation of the States/Union Territories to take decision for opening of Anganwadi Centres. Several States/Union Territories have already started running their Anganwadi Centres which is a positive step towards achievement of the goal for which Anganwadi Centres were envisaged. Unless there are any specific reasons for not opening of Anganwadi Centres, all Anganwadi Centres beyond the containment zones should be made functional by all the States/Union Territories at an early date. [Paras 33, 34][226-E-H; 227-A-B; 227-C]

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 1039 of 2020.

(Under Article 32 of the Constitution of India)

Ms. Aishwarya Bhati, ASG, Mr. Nalin Kohli, AAG, Colin Gonsalves, Dr. Manish Singhvi, Sr. Advs., Sadiq Noor, Satya Mitra, V. G. Pragasam, S. Prabu Ramasubramanian, Ms. Ruchi Kohli, Ms. Archana Pathak Dave, Akshay Amritanshu, Ms. Chinmayee Chandra, B. K. Satija, Gurmeet Singh Makker, Avijit Mani Tripathi, Upendra Mishra, Ms. Deepanwita Priyanka, Ms. Vishakha, Ms. Garima Prashad, Abhinav S. Agarwal, Ms. Diksha Rai, Ms. Palak Mahajan, S. Udaya Kumar Sagar, Ms. Swati Bhardwaj, Ms. Uttara Babbar, Ms. Bhavana Duhoon, Manan Bansal, Sachin Patil, Rahul Chitnis, Aaditya A. Pande, Geo Joseph, Sandeep Kumar Jha, Abhimanyu Tewari, Ms. Eliza Bar, Ms. Priyanka Prakash, Ms. Beena Prakash, G. Prakash, Abhinav Mukerji, Ms. Bihu

A Sharma, Ms. Pratishtha Vij, Siddhesh Kotwal, Ms. Ana Upadhyay, Nirnimesh Dube, Raghvendra Kumar, Anand Kumar Dubey, Narendra Kumar, Abhimanyu Jhamba, Ashish Jhamb, Ms. R. A. Thonpinao Thangal, Samir Ali Khan, K. V. Jagdishvaran, Ms. G. Indira, Dr. Monika Gusain, Chirag M. Shroff, Ms. Abhilasha Bharti, V. N. Raghupathy, Suhaan Mukerji, Vishal Prasad, Nikhil Parikshith, Abhishek Manchanda,  
 B Sayandeep Pahari, Shuvodeep Roy, Rahul Raj Mishra, M. Yogesh Kanna, Raja Rajeshwaran S., Aditya Chadha, Pukhrambam Ramesh Kumar, Ms. Astha Sharma, Ms. K. Enatoli Sema, M/s. PLR Chambers and Co., Advs. for the appearing parties.

C The Judgment of the Court was delivered by  
**ASHOK BHUSHAN, J.**

1. This writ petition has been filed as a Public Interest Litigation under Article 32 of the Constitution of India questioning the closure of the Anganwadi Centres across the country. The petitioner  
 D states that through Anganwadi Centres supplementary nutrition to pregnant women, lactating mothers, adolescent girls and children upto the age of 6 years were being provided which fulfilled the State objective of holistic development of children under 6 years and to provide food and nutrition to the beneficiaries. In the writ petition the petitioner  
 E impleaded the Union of India, all States and Union Territories and has prayed for following reliefs:

- a) For a writ of mandamus directing the Union of India and all States and Union Territories to forthwith reopen all the Anganwadi Centres in the country and provide Anganwadi services as before the lockdown and in accordance with  
 F Sections 4 to 7 of the National Food Security Act, 2013.
- b) For writ of mandamus directing the Union of India and all States and Union Territories to provide Hot Cooked Meals, Take Home Rations in consonance to the provisions of the National Food Security Act, 2013 as well as The  
 G Supplementary Nutrition (under the Integrated Child Development Services Scheme) Rules, 2020 as well as make provisions for additional Supplementary Nutrition provisions to all beneficiaries of the ICDS Scheme in the form of a comprehensive package of Cooked Food, Eggs, Fruits, dry  
 H rations including cereals, pulses, etc.

- c) For a writ of mandamus directing the Union of India and all States and Union Territories to conduct growth monitoring of children to document growth in the wake of the after effects of the pandemic more particularly main nourishment among children and anemia in girl children and initiate corrective steps forthwith. A
- d) For an order in terms of recommendations 1-6 of the Right to Food Campaign in its representation dated 6.8.20 to the Union of India at Annexure P-8 hereto and as set out in paragraph no.37 above. B
- e) For any other order deemed fit and proper under the circumstances of the present case.” C

2. The Constitution of India with the object of securing to all its citizens social and economic justice contains various Articles which empower making of special law in favour of women and children. Article 47 of the Constitution which forms the part of Directive Principles of the State Policy provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The Government of India with the above objective launched a welfare scheme, namely, Integrated Child Development Services Scheme in the year 1975. The Scheme was designed as an early childhood development programme aimed to address health, nutrition and development needs of young children who are future of India and pregnant and nursing mothers. The Scheme was designed to promote holistic development of children under 6 years of age. This Court in a Public Interest Litigation in **Writ Petition No.196 of 2001, People’s Union for Civil Liberties vs. Union of India and others**, had issued various directions for protection of right to food of the poor and the underprivileged sections including children and women. This Court has been pro-actively directing the Central Government and the State Governments to effectively implement the Integrated Child Development Services Scheme. Various directions were issued by this Court from time to time. D  
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3. The Parliament enacted the National Food Security Act, 2013 (hereinafter referred to as the “Act, 2013”) 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

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A life with dignity and for matters connected therewith. The Statement of Objects and Reasons of the Act apart from containing various other objects, proposed to provide following also in paragraph 4(c), (d) and (e):

B “4. In view of the preceding paragraphs, it is proposed to enact a new legislation, namely, the National Food Security Bill, 2011, to-

.....

C (c) entitle every pregnant woman and lactating mother to meal, free of charge, during pregnancy and six months after child birth, through the local anganwadi, so as to meet the nutritional standards specified in Schedule II; and to provide to such women maternity benefit of rupees one thousand per month for a period of six months in accordance with a scheme, including cost sharing, payable in such instalments as may be prescribed by the Central Government.

D (d) entitle every child up to the age of fourteen years-(i) age appropriate meal, free of charge, through the local anganwadi so as to meet the nutritional standards specified in Schedule II in the case of children in the age group of six months to six years; and (ii) one mid day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, up to class VIII, so as to meet the nutritional standards specified in Schedule II in the case of children in the age group of six to fourteen years;

F (e) require the State Government to identify and provide meals through the local anganwadi, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II; and implement schemes covering entitlements of women and children in accordance with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the Central Government.

H 4. The Act, 2013 by Section 4 creates a statutory right of every pregnant woman and lactating mother free meals during pregnancy and six months after the child birth. Section 5 provides for nutritional support

to children, in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local Anganwadi so as to meet the nutritional standards. Similarly, Section 6 provides for and management of child malnutrition. Sections 4,5 and 6 are as follows:

**“Section 4. Nutritional support to pregnant women and lactating mothers.-**Subject to such schemes as may be framed by the Central Government, every pregnant woman and lactating mother shall be entitled to—

- (a) meal, free of charge, during pregnancy and six months after the child birth, through the local anganwadi, so as to meet the nutritional standards specified in Schedule II; and
- (b) maternity benefit of not less than rupees six thousand, in such instalments as may be prescribed by the Central Government:

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

A (2) Every school, referred to in clause (b) of sub-section (1), and anganwadi shall have facilities for cooking meals, drinking water and sanitation:

B 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.-**  
 C 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.”

5. The Anganwadi Centres which were running in the country since 1975 under the Integrated Child Development Services Scheme, now have been given statutory recognition under the Act, 2013. Section 2(1) defines Anganwadi in the following words:

D “Section 2(1) “anganwadi” means a child care and development centre set up under the Integrated Child Development Services Scheme of the Central Government to render services covered under section 4, clause (a) of sub- section (1) of section 5 and 6.”

E 6. Anganwadi Centres which are manned by Anganwadi workers/ helpers are entrusted with implementation of a large number of welfare schemes initiated by the Central Government as well as by the State Governments. The beneficiaries who are registered with Anganwadi are also provided following:

- F a) providing supplementary nutrition;  
 b) growth monitoring and counseling;  
 c) pre-school education;  
 d) immunization and  
 G e) referral services.

7. After spread of pandemic Corona virus (COVID-19), Anganwadi Centres were closed throughout the country in March, 2020. The distribution of special nutrition and other benefits to be provided for beneficiaries being essential services were permitted to be conducted by Anganwadi staff by resorting to Take Home Ration.

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8. Under Section 7 of the Act, 2013 it is the obligation of the State Governments to implement schemes covering entitlements under Sections 4,5 and 6 of the Act, 2013 in accordance with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the Central Government. The Schedule II of the Act, 2013 provides for nutritional standards. Schedule II of the Act, 2013 is as follows:

**“SCHEDULE II**

[See sections 4(a), 5(1) and 6]

**NUTRITIONAL STANDARDS**

**Nutritional standards:** The nutritional standards for children in the age group of 6 months to 3 years, age group of 3 to 6 years and pregnant women and lactating mothers required to be met by providing “Take Home Rations” or nutritious hot cooked meal in accordance with the Integrated Child Development Services Scheme and nutritional standards for children in lower and upper primary classes under the Mid Day Meal Scheme are as follows:

Serial	Category	Type of meal	Calories (Keal)	Protein (g)	number
1.	Children(6 months to 3 years)	Take Home Ration	500	12-15	
2.	Children(3 to 6years)	Morning Snack and Hot Cooked Meal	500	12-15	
3.	Children (6 months to 6 years) who are malnourished	Take Home Ration	800	20-25	
4.	Lower primary classes	Hot Cooked Meal	450	12	
5.	Upper primary classes	Hot Cooked Meal	700	20	
6.	Pregnant women and Lactating mothers	Take Home Ration	600	18-20	

9. The lockdowns which were placed in the entire country in exercise of the power under the Disaster Management Act, 2005 were lifted by the competent authority in phased manner and gradually specified activities were permitted to be opened.

A            10. In this writ petition we had issued notice on 21.09.2020  
and also directed the petitioner to serve a copy of the petition to the  
learned Solicitor General of India. The counter-affidavits have been filed  
on behalf of Union of India. The Union of India has filed an affidavit  
dated 20.11.2020. It states that the Supplementary Nutrition  
B Programme supplied under ICDS Scheme is of two types for different  
beneficiaries i.e. (a) Take Home Ration for pregnant women & lactating  
mothers and children in the age group of 6 months to 3 years; and (b)  
Morning Snacks and Hot Cooked Meal for children in the age group of  
3-6 years. Since the Supplementary Nutrition Programme is  
C implemented, managed and controlled by the respective State/UT, it is  
at their discretion to decide items of food to be supplied under the  
Supplementary Nutrition as per local food habits, regional preferences  
and availability of food in local area which, however, has to be done by  
keeping in view the overall guidelines, nutritional norms and food safety  
standards.

D            11. It has been further pleaded that Government of India, Ministry  
of Women & Child Development has issued communication (Guidance  
Note) dated 11.11.2020 to States and Union Territories on operations  
of Anganwadi Services.

E            12. After filing of the affidavit the matter was taken up by this  
Court on 27.11.2020 on which dated following order was passed by this  
Court:

F            “The affidavit has been filed on behalf of the Union of India.  
In the affidavit it has been stated that the decision has been taken  
on 11.11.2020 and guidelines issued on operation of Anganwadi  
services with operational guidance note for continuation of services  
in the context of COVID-19 which has been brought on the record  
as Annexure R-4.

G            Let Government of India file a detailed affidavit with regard to  
implementation of the guidelines dated 11.11.2020. The States may  
also file an additional affidavit regarding the measures taken 3  
with regard to guidelines dated 11.11.2020 issued by the  
Government of India.

H            Mr. Colin Gonsalves, learned senior counsel has also  
submitted that for small children, upto 6 years, neither food nor  
any education is provided.

With regard to the above aspect also, in the additional affidavit, details may be given by the Union of India as well as by the States. Two weeks' time is granted. List in the week commencing from 14.12.2020.” A

13. The Union of India as well as the States and Union Territories have filed affidavits in this writ petition bringing on record the steps taken by the respective States/UTs regarding implementation of the requirement as contained in Sections 4,5 and 6 of the Act, 2013. B

14. Shri Colin Gonsalves, learned senior counsel appearing for the petitioner contends that although initially under the order issued by the Government of India, Ministry of Home Affairs beneficiary were not to attend the Anganwadi but after lockdown came to an end due to non-opening of Anganwadi in various States beneficiaries, children pregnant women and lactating mothers are suffering. The pandemic has caused severe strain on the employment and means of livelihood of a large sections of the society especially marginal sections, who require immediate extension of all benefits as envisaged in the Scheme. Shri Gonsalves has also filed additional documents in support of his writ petition and submits that even National Human Rights Commission has also made recommendations on 28.09.2020 and 29.09.2020 after impact assessment, issued advisory to reopen Anganwadi Centres immediately. Shri Gonsalves submits that due to non-providing of hot cooked meals to children upto the age of six years and children who are affected of malnutrition they are suffering which needs immediate attention and remedial action. C  
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15. Smt. Aishwarya Bhati, learned Additional Solicitor General appearing for Union of India submits that Union of India has filed its Guidance Note dated 11.11.2020 providing resumption of Anganwadi Services outside containment zones with immediate effect, after complying health and safety protocols. It is further submitted by the learned Additional Solicitor General that Union of India has also issued an operational Guidance Note for continuation of services in the context of COVID-19. The Union of India also referring to the Guidance Note dated 11.11.2020 has sought status report from the States and Union Territories. In the additional affidavit it has been stated that a few of UTs and States like Andaman and Nicobar, Chhattisgarh, Goa, Meghalaya and Rajasthan, Anganwadi Centres have been opened and services are being provided therein. F  
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- A 16. Learned counsel appearing for various States and Union Territories have also advanced their submissions. The States and Union Territories in their affidavits have submitted that the States and Union Territories have been providing necessary Home Take Ration as per the requirements to the beneficiaries which were delivered at door steps once in 15 days. Some of the States in their affidavits have stated that
- B Anganwadi Centres have been opened. With regard to few States it is stated that matter has been referred and the approval of the State Government is awaited. Some of the States have stated that decision has been taken, as of now, not to open the Centres looking to the continuance of the pandemic. Some of the States have stated that the
- C Centres are closed till 31.12.2020 and decision will be taken thereafter.

17. We have considered submissions of the learned counsel for the parties and have perused the records. Children are the next generation and therefore unless and until the children and the women have the nutritious food, it will affect the next generation and ultimately the country as a whole. 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.
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18. As observed above, it is now statutory obligation of the Centre and the States to provide for nutritional support to the pregnant women and lactating mothers, nutritional support to children and to take steps to identify and provide meals for children who suffer from malnutrition. Government has a constitutional obligation to preserve human life. Good health of its citizens is its primary duty. International covenants also aim at highest attainable standards of physical and mental health. This is in interest of social justice. Inadequate supply of nutritious food to the citizens, more particularly to the children and the women shall affect their health. Therefore, the same shall be in violation of their fundamental right to health/right to live with dignity guaranteed under Article 21 of the Constitution of India.
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- G 19. The Centre as well as States are statutorily obliged to implement statutory obligation as imposed under Sections 4,5 and 6 of the Act, 2013. The nutritional support is required to be of the nutritional standards which have already been laid down to Schedule II of the Act,

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2013 and all States/UTs are obliged to implement such Scheme and have to comply with Schedule II. The main emphasis in the writ petition being the issue of opening of Anganwadi Centres throughout the country, we need to first consider the above issue. Provision of foodgrains as per the provisions of the National Food Security Act, 2013 is a statutory obligation on the State. Article 47 of the Constitution 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.

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20. After issuance of Order dated 24.03.2020 by Ministry of Home Affairs, for containment of Covid-19, Anganwadi Centres in States/Union Territories were closed. The Government of India, Ministry of Women and Child Development vide letter dated 30.03.2020 directed issuance of necessary instructions to the District Authorities to utilize services of Anganwadi workers/helpers for providing supplementary nutrition to the beneficiaries at their doorsteps. After taking suitable measures as suggested by Health Authorities, Government of India, Ministry of Home Affairs issued an order dated 15.04.2020 in exercise of powers under Section 10(2)(l) of the Disaster Management Act, 2005, wherein in paragraph 8, it was provided that Anganwadis shall remain functional by distributing the food items and nutrition once in fifteen days at the doorsteps of the beneficiaries i.e. Children, pregnant women and lactating mothers. The order further stated the beneficiaries shall not attend the Anganwadi.

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21. By subsequent order issued by the Government of India, Ministry of Home Affairs, various more activities were permitted. ON 14.10.2020, the Ministry of Women and Child Development wrote to the Ministry of Home Affairs (Disaster Management Division) regarding reopening of Anganwadi Centres. The Government of India, Ministry of Home Affairs, issued an O.M. dated 22.10.2020 stating that the Ministry of Women and Child Development may take decision after consultation with concerned States/Union Territories for reopening of Anganwadi centres which are out of the containment zone taking appropriate measures related to health and safety.

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22. The Government of India, Ministry of Women and Child Development issued a guidance note on 11.11.2020 on operation of Anganwadi services, which note is to the following effect: -

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- A                                   **“F. No. PA/85/2020-CPMU C No 85941**  
  **Government of India**  
  **Ministry of Women & Child Development**  
  **Jeevan Vihar Building,**  
  **New Delhi - 110001**  
B                                   **11<sup>th</sup> November, 2020**
- To  
The Principal Secretaries/Secretaries,  
Department of Social Welfare/Women & Child  
Development of all States/UTs
- C                                   **Subject:** Guidance note on operations of  
Anganwadi Services — regarding,  
Sir/Madam,
- D                                   Under-nutrition is one of the leading causes of morbidity and  
mortality in children under the age of 5 years. Delivery of  
preventive services to mitigate the impact of the pandemic on the  
nutrition is well recognized. Provision of essential services like  
Growth Monitoring Referral, and supplementary nutrition etc. to  
ensure the health and well- being of the pregnant ladies, lactating  
mothers and children below 5 years is most important. In view of  
Covid 19 pandemic globally, it is imperative to ensure, that the  
beneficiaries do not suffer and remain away from Anganwadi  
services.
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containment zones with immediate effect, complying health and  
safety protocols. Further, cleanliness, Hygiene and Sanitization  
may be ensured in and around the premises of Anganwadi Center,  
use of mask/face covers shall be mandatory for everyone  
visiting the Centre, including AWW and AWH. Also, frequent hand  
washing, and strict social distancing as per MoHFW guidelines  
must be followed at Anganwadi Centre.
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the matter with Ministry of Home Affairs regarding reopening of  
AWCs. Ministry of Home Affairs vide OM No. 40-6/2020/DM-  
1(A)/Part-2 dated 22nd October 2020 (copy enclosed) advised  
that AWCs may be opened outside the containment zones, by
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adhering to the Standard Operating Procedures (SOP) related to health and security measures in consultation with State/UTs. A

4. A guidance note for resuming Anganwadi Services is **enclosed** herewith. Based on the guidance note, States / UT Governments need to develop their own SOP for reopening AWC when the State/Union Territory Governments declare it safe for AWC to operate. **All States/UTs are expected to comply with the COVID-19 related directions issued by Ministry of Home Affairs and Ministry of Health and Family Welfare, Government of India, from time to time.** B

5. Therefore, it is requested that States/UTs may decide reopening of AWCs outside containment zones while adhering to health and safety protocols as per the guidelines of MOHFW. C

Yours sincerely,

  
(Sanjiv Gajraj) D

Executive Director,  
POSHAN Abhiyan, MWCD

Copy to:  
PS to Minister,  
PS to MoS,  
Secretary MoHFW and Secretary MHA”

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23. It is also relevant to notice that in the month of September, 2020, the National Human Rights Commission issued an advisory on Right to food security and nutrition in context of Covid-19. The National Human Rights Commission issued following Advisory dated 28.09.2020 Related to Nutrition: - F

**“I. Implementation of Anganwadi Services**

- i. Recognise ICDS as an ESSENTIAL SERVICE and reopen anganwadi centres immediately to provide crucial growth monitoring, immunization, cooked meal, and nutritional counselling services, with adequate safety protocols to prevent COVID infection for anganwadi workers, women and children. G

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- A            ii. Ensure that sufficient quantity of dry rations (food grains, eggs, milk powder and medicines, etc.) and take-home rations are made available to children under three years, as well as pregnant and lactating women.”

24. After issuing a guidance note on 11.11.2020, several States  
B have taken decision to open Anganwadi Centres. The State of Meghalaya opened its Anganwadi Centres w.e.f. 03.12.2020. The State of Punjab opened its Anganwadi Centres w.e.f. 09.12.2020, the State of Rajasthan also opened its Anganwadi Centres w.e.f. 07.12.2020.

25. Even before the order dated 11.11.2020, the State of  
C Chhattisgarh had opened 12,593 Anganwadi Centres in the State w.e.f. September, 2020. It is relevant to notice the affidavit filed on behalf of the State of Arunachal Pradesh. The State of Arunachal Pradesh issued order dated 18.06.2020 titled “Strategy for opening of Anganwadi Centres” and under the aforesaid strategies, Anganwadi Centres were to be reopened in two phases, first Phase-I from 15.07.2020 and phase-II  
D from 01.08.2020. Standard Operating Procedure dated 18.06.2020 was issued by the Government of Arunachal Pradesh, Ministry of Women and Child Development department.

26. On the other hand, there are few States who have taken  
E decision not to reopen Anganwadi Centres. We may notice the counter affidavit filed on behalf of the State of Assam. In the affidavit, it has been stated that Anganwadi Centres will be open as and when the permission will be accorded by the Central Government in this regard. The State of Assam is under the impression that the order issued by the Ministry of Home Affairs dated 25.11.2020, provides for not opening  
F of the Centres. The order dated 25.11.2020 of Government of India, Ministry of Home Affairs, filed as Annexure-R1. Paragraph 16 which contains the heading “protection of Vulnerable persons” is as follows: -

“16. Persons above 65 years of age, persons with co-  
G morbidities, pregnant women, and children below the age of 10 years are advised to stay at home, except for essential and health purposes.”

27. The paragraph 16 as noted above does not in any manner  
H create any prohibition in opening of Anganwadi Centres. The above guidelines have been issued keeping in view the protection of vulnerable persons and which requires pregnant women, children below the age of



10 years to stay at home except for essential and health purposes.  
Services which are being provided by Anganwadi Centres are essential services.

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28. We have already noticed the guidance note dated 11.11.2020 issued by Government of India which permits reopening of Anganwadi Centres with consultation of States/Union Territories. State of Assam was thus fully empowered to take the decision regarding reopening of Anganwadi Centres and its stand taken in paragraph 7 to the following effect- "All Anganwadi Centres will be opened as and when the permission is accorded by the Central Government in this regard" is not correct. The State could have very well taken a decision for reopening the Anganwadi Centres in view of the guidance note issued by the Government of India dated 11.11.2020.

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29. The State of Maharashtra in its affidavit has stated that the Disaster Management department has restricted the reopening of Anganwadi Centres till the control of Covid-19 pandemic in the State and has approved the continuation of arrangement of supplies of Take Home Rations at the doorsteps of the beneficiaries. Some of the States have also in their affidavits stated that Anganwadi Centres be closed till particular date like State of Tripura states that Anganwadi Centres are to be closed till 31.12.2020, State of Mizoram states that Anganwadi Centres be closed till 10.01.2021. Some of the States/ Union Territories have stated that the approval from the States/ Union Territories are awaited for reopening of Anganwadi Centres.

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30. All the States/Union Territories in their affidavits have given details of providing Take Home Rations (THR) as per guidelines and requirement contained in Act, 2013. Different cereals and other items have been referred to in the affidavits filed by the States/Union Territories which according to them complies with nutrition standards. Most of the States/Union Territories have mentioned cereals as Take Home Ration for the beneficiaries from 3 to 6 years of age. The State of Maharashtra claim to supply Wheat/Rice-62 grams, Masoor Dal-28 grams, Chana-30 grams, Mirchi Powder-4 grams, Turmeric Powder-4 grams, Salt-8 grams, Soybean Oil-10 gram per day per beneficiary.

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

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- A their parents. The State of Bihar, however, has started distributing cereals as Home Take Rations by orders issued by the State of Bihar in April, 2020. The State of Gujarat in its affidavit has stated that it is providing to Children (below 6 years of Age), 8 packets of Balshakti (500gm Packets) Take Home Ration per month to match up nutritional requirements. Take Home Ration is being distributed through the medium of Gujarat Cooperative Milk Marketing Federation. It further states that since June 2020, the ready to eat nutritional traditional sweet (Sukhadi) 1-Kilogram per week in lieu of hot cooked meals is provided to 3 to 6 years' children. We are of the view that the State ought to have included certain cereals in Take Home Ration instead of providing only 'Balshakti' and 'Sukhadi'. The nutritional standard as provided in Schedule II of Act, 2013, has to be met by all States and Union Territories.

32. There is no doubt that the Central Government as well as all the States and Union Territories have issued necessary guidelines for implementing statutory requirements of Act, 2013 and for meeting the nutritional standards. The big question however is as to what extent the implementation is on the ground and the benefits are extended to beneficiaries as required by the Statute. The beneficiaries which belong to vulnerable class are not equipped with suitable mechanisms to raise issues of non-implementation and not providing food articles complying with nutritional standards as provided in the Statute.

33. It is the obligation of the State to ensure that pregnant women, lactating mothers and children in the age of 3 to 6 years and children who suffer from malnutrition are provided their dues. The State has to provide an appropriate mechanism for supervision and check, child development officers and other district level officers who are entrusted to monitor the functioning of Anganwadi Centres have to be extra vigilant and take steps so that no beneficiary is denied its dues. All States/Union Territories should evolve an appropriate mechanism for supervision so that dues are received by beneficiaries for whom schemes are in place. It is for the State to secure health to its citizens as its primary duty. No doubt, the Government is rendering this obligation through various schemes, such as, opening of Aanganwadis, providing nutritious food through Aanganwadis, Mid-day Meal Scheme, etc., but in order to make it meaningful, it has to be within the reach of its people, as far as possible, and the Government must supply the nutritious food in real sense bearing in mind the provisions of National Food Security Act.

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34. The Government of India by its guidance note permitted all the States and Union Territories to open Anganwadi Centres, it is the obligation of the States/Union Territories to take decision for opening of Anganwadi Centres. As noted above, several States/Union Territories have already started running their Anganwadi Centres which is a positive step towards achievement of the goal for which Anganwadi Centres were envisaged. We are of the view that unless there are any specific reasons for not opening of Anganwadi Centres, all Anganwadi Centres beyond the containment zones should be made functional by all the States/Union Territories at an early date. All States may review the situation and take positive decisions on or before 31.01.2021 and unless there are specific decisions taken by the State Disaster Management Authority of a particular State, Anganwadi Centres be opened on or before 31.01.2021.

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

- I) As per guidance note dated 11.11.2020 issued by Government of India, Ministry of Women and Child Development, all States/Union Territories who have not yet opened Anganwadi Centres shall take a decision to open Anganwadi Centres on or before 31.01.2021 situated outside the containment zone.
- II) The decision for not opening Anganwadi Centres in any State Union Territories or any part of State/Union Territory shall be taken only after the State Disaster Management Authority of the State direct for not opening of Anganwadi Centres in State/particular area of the State situated outside containment zone.
- III) Anganwadi Centres situated in the containment zone shall not be opened till the containment continues.
- IV) All States/Union Territories shall ensure that nutritional standards as provided in Schedule II of National Food Security Act, 2013, reproduced herein above in para 13 is fulfilled by providing nutritional support to pregnant women, lactating mothers, nutritional support to children who suffer from malnutrition.

- A      V) All the States/Union Territories shall issue necessary orders regarding monitoring and supervision of Anganwadi Centres to ensure that the benefit reaches to the beneficiaries and a Complaint Redressal Mechanism be put in place in each district.

36. The parties shall bear their own costs.

Devika Gujral

Writ petition allowed.