

## **Shashi Kumar And Ors. vs State Of Bihar And Ors. on 30 September, 1985**

**Equivalent citations: [1989]65COMPCAS379(SC), 1985(2)SCALE871, (1986)1SCC64, AIRONLINE 1985 SC 7, 1986 (1) SCC 64**

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**Bench: A.N.Sen, R.S. Pathak**

### **JUDGMENT**

R.S. Pathak, J.

1. Special leave granted.

2. This appeal by special leave is directed against the judgment and order dated March 28, 1979 of the Patna High Court dismissing a writ petition filed by the appellants. The history of this case records how an ambitious plan devised by the Central Government for accelerating and modernizing agricultural development in the villages of India and simultaneously providing employment opportunities to engineers and technically trained personnel has come to grief because of an incomplete perception of the conditions necessary for its success and what seems to be an unfortunate want of determination at Governmental level in the States, besides an attitude of banking institutions which, the petitioners say, is frustratingly clinical and wholly unsympathetic to the cause of the project. It is a tragedy in which an entire range of promises and assurances has been poured, but which seems defeated by the circumstance that an appropriate infrastructure has failed to develop. Those who are affected directly, a large number of individual entrepreneurs who involved themselves in the implementation of the Scheme, found an inadequate response to the aspirations with which they had started out and as disillusionment set in they find themselves not only deep in the mire of vocational distress but also heavily burdened with increasing financial obligation.

3. Several years ago, in 1971 the Government of India in the Ministry of Food, Agriculture, Community Development and Cooperation propounded a Scheme through its Directorate of Extension for the creation of Agro Service centers in rural areas which would provide technical services essential for accelerated rural development by harnessing the energies of, and thus providing employment to, engineers and technically trained personnel. The scheme was intended to provide in-service training, liberalised loans, subsidised interest rates and assistance in establishing and running of Agro Service centers. The benefit envisaged for the agricultural community lay in providing for farmers the means to adopt intensive farming through the use of high yielding

varieties and multiple cropping by mechanising some of the agricultural operations. It was realised that the period between the harvesting of one crop and the sowing of the next was so brief that the use of equipment could alone ensure three crops even in irrigated areas. The small and medium farmers, who form the bulk of the farming community, had not taken to the modernisation of agricultural methods and had yet to realise the full advantage of new technological perspectives. Their means did not allow the possession and operation of costly equipment, and it was thought that a range of machinery servicing and hiring facilities would prove of great assistance to them. The problem was a vast one, extending over the entire State and permeating substantially the entire agricultural economy of the country. The solution was seen in an extensive organisation providing technical services of machinery on hire, of machinery repairs and of input supplies. It was also a solution for alleviating the growing unemployment among technical personnel. Under the scheme, engineers and entrepreneurs would be assisted in the establishment of workshops in the rural areas for repair, maintenance and hiring of agricultural machinery such as tractors, drilling rigs, plant protection and irrigation equipment and for taking up allied activities as the sale of spare parts and inputs which would provide added income and work. Necessarily financial assistance had to be provided for creating an appropriate infrastructure, and an investment ranging from Rs. 50, 000/- to Rs. 2, 00, 000/- was considered suitable depending upon the type and size of activities to be met by the entrepreneurs out of loans taken from the State Bank of India, nationalised banks and other financial institutions. It was also envisaged that appropriate assistance in this regard would be rendered by the State Governments and Agro Industries Corporations. It was pointed out that the Ministry of Agriculture had earmarked imported tractors and other agricultural machinery for priority allotment to Agro Service centers, and had also requested the State Governments and Agro Industries Corporations to assist entrepreneurs in formulating viable schemes and in securing loans from financial institutions. A scheme was already under implementation by the Ministry of Industrial Development of the Government of India for the training of, and assistance to, engineers and entrepreneurs, and was being executed by the Government of India in cooperation with the State Governments. The Government of India financed the trainee, the training covering a period of three months and the trainees were provided free board and lodging. The Government of India would subsidise the payment of interest on loans advanced by the Banks to the entrepreneurs to the extent of the excess over five per cent, (the maximum rate payable by the borrower) for a period of three years, except in backward areas where the period would be five years. It was stipulated that the subsidy would not exceed Rs. 20,000/- per year in individual cases. The entrepreneurs eligible for the benefits of the Scheme were unemployed graduates and diploma holders in mechanical, agricultural and electrical engineering and allied fields, as well as graduates in agriculture and science with experience in industry or agriculture. Under the scheme they would provide on this farm maintenance and repair facilities for agricultural machinery and implements, and ensure an easily accessible source of supply for spare parts, fuel, oils, lubricants and other engineering stores. Besides a supply would be forthcoming of agricultural inputs such as fertilisers and pesticides depending on the needs of the area and related services. Financial assistance, which formed a vital constituent of the Scheme, was to be found through loans from the Banks and financial institutions. One of the features of the Scheme was that the Agro Industries Corporations in different States would appoint the Agro Service centers as their agents for the sale of agricultural machinery and implements and also for servicing agricultural machinery, and assistance would also be offered in the fabrication of implements through the allotment of steel and other engineering stores. Another

feature required the State Governments to make available accommodation in the industrial estates, common facility workshops, block development offices, and tehsil headquarters at nominal hire charges. The State Governments and Agro Industries Corporations were requested to take urgent steps to set up as many service centers as possible on a priority basis. The Scheme had many attractive features, but an essential condition to its success lay in the need for cooperation by the credit institutions. To those institutions the Reserve Bank of India issued a Circular dated July 7, 1971 drawing their attention to the basic features of the Scheme formulated by the Government of India and mentioning that it was decided to treat the Agro Service centers as an "eligible industry" in terms of Clause 2(f) of the Credit Guarantee Scheme for small-scale industries, and therefore credit facilities would be granted to such unit sharing investment in plant and machinery of a value not exceeding Rs. 7.50 lakhs including items maintained for letting out on hire.

4. The Scheme of Agro Service centers was launched by the Government and there was an encouraging response from the unemployed sector of engineers and technical personnel from different parts of the country. Some thousands of engineers and technical personnel came forward. But it was not too long before the progress of the Agro Service centers in the State of Bihar and certain other States began to falter, and very soon the entire project began to grind to a halt. Some light on the reasons for this state of affairs is thrown by the report submitted by the Tractor Training center of the Government of India at Hissar (Haryana) in 1977 on the performance of Agro Service centers in the Northern region. It was pointed out that the price hike of oil, lubricants and machines made it difficult for the Agro Service centers to break even on the original schedule of work time per tractor, and that it was necessary that a tractor unit should work atleast 1500 hours per year to sustain its activity. The problem had been met in Punjab, Haryana and Rajasthan by employing combined harvesters. Moreover, in contrast with Bihar the Agro Service centers in Punjab and Rajasthan had proved very successful in trading activities in agricultural inputs. Some of the Agro Service centers which were running at a loss had been compelled to take up other activities, such as agricultural process service stations, fuel pump calibrations and the manufacture of agricultural implements. It was stated that the annual cash flow of Agro Service centers was highest with those which sold tractors followed by those which dealt in the sale of fertilisers and pesticides. A high level of cash flow per center per year was evidenced in Haryana, Rajasthan and Punjab and was poorest in Uttar Pradesh while no report was received from the Agro Service centers in Bihar. The report declared that those Agro Service centers which had taken up custom hiring of combined harvesters and also trading activities were doing quite well, but most Agro Service centers engaged in custom hiring of tractors did not prosper because of existing inadequacy of work and the high cost of operation. As regards the Agro Service centers which had turned to other activities such as agricultural processing, it was feared that even they would have to face losses. The problems faced by the Agro Service centers in Bihar were attributed by the Report to various bottlenecks in the implementation of the Scheme. It was stated that the sanction and disbursement of loans by the Banks were considerably delayed for periods ranging from six months to a year or even more, and this had caused dissatisfaction among the trained entrepreneurs and had resulted in their becoming defaulters. The Banks who had entered into financial agreements with entrepreneurs did not extend any further finance on default in repayment by the entrepreneurs. They did this without ascertaining the reasons for the default and without considering the need to finance the entrepreneurs further in order to improve their repayment capacity. It was also stated that some of

the Banks who had financed the Agro Service centers were asking for the return of the principal amount of the loan within six months of disbursement, a period which was considered for too short. In addition, it was stated that some of the Banks were calling for payment of interest and the loan amount on monthly or quarterly basis, and in the case of an agricultural activity which was seasonal this period was unreasonably short and resulted in the defaulting entrepreneurs being required to pay interest over interest. The repayment period fixed by the Agro Service centers under the Scheme from three to five years, it was said, was too short, and attention was drawn to a case where a private firm financed for the purchase of a tractor from the Loan and Mortgage Bank was obliged to pay a low rate of interest only and the period of repayment was about ten years. In view of the running competition between the tractor owner farmer and the entrepreneurs of Agro Service centers, it was necessary that the repayment terms of three to five years by Banks financing the Agro Service centers should be liberalised and should fall in line with the Loan and Mortgage Bank financing. It was also pointed out that there was a considerable lack of spare parts of imported tractors and combined harvesters. Besides, the entrepreneurs had been denied road permits by the transport authorities thus disabling them from undertaking transportation work for the better utilisation of tractors during the off season; if road permits were issued it was possible to envisage State Government departments such as Irrigation, the P.W.D. and Agriculture, and autonomous bodies such as the F.C.L. and the Municipality patronising the entrepreneurs of the Agro Service centers for contract carriage work. There was a further grievance that interested entrepreneurs were not appointed dealers in fertilisers, pesticides, pumping sets and other agricultural inputs. The principal reason for this deplorable state of affairs, according to the Report, appeared to be a lack of proper follow up action on the part of the State. To restore health into the entire Scheme of Agro Service centers the Report suggested that a grant-in-aid should be extended towards capital equipment in the case of Agro Service centers who had undertaken Agro-based Industries and were facing losses. It was suggested that the road tax on tractors and traders should be exempted by all State Governments for five years. It was also suggested that even as the Bihar State Government had exempted the entrepreneurs of small scale industries from payment of sales tax during the first year of production, similar facilities should be extended to the entrepreneurs who had set up Agro Service centers during the first three years at least. In view of the difficulties experienced by unemployed and inexperienced entrepreneurs in the business it was thought that the period of subsidy on the interest should be increased from three to five years, and the period of repayment itself should be increased upto 10 years as in the case of Loan and Mortgage Bank financing. Further, it was suggested that the State Government and private manufacturers should patronise the Agro Service centers by appointing them as dealers in their products. The Report appears to have met with little support from the State Government and in fact in some cases the Banks had commenced the realisation of the loans by auctioning the properties of the entrepreneurs.

5. The petitioners then filed a writ petition in the Patna High Court for declaring the Agro Service centers of Bihar as sick industries and to secure for them the finances envisaged by the original scheme with an extension of the period of repayment to a longer term. The writ petition was dismissed by the Patna High Court, and thereafter this appeal followed.

6. The State Bank of India, Patna has taken the position that as it had advanced the loans to the Agro engineers it was entitled to take appropriate legal measures for obtaining repayment of the loan with

interest. The individual loans were extended on the basis of materia placed by the entrepreneurs before the State Bank with regard to the viability of their individual projects and their personnel financial capacity. According to the State Bank, each petitioner received loan not less than the amount required for the purchase of a tractor and equipment considered adequate for the successful running of the Aero Service center. The Bank alleges that the borrowers did not use the loan for the purpose of their self-employment and misused the concession shown to them by the Bank because some of them never utilized the tractors for themselves. In some cases the tractors were actually purchased by other interested persons in the "benami" of the borrowers. It was said that some of the borrowers had obtained employment elsewhere and transferred the tractors illegally to third parties without the sanction or knowledge of the Bank. The State Bank denies its liability to honour the assurances extended by the Government to the Agro engineers and insists on compliance with the terms of the contract entered into by the Agro engineers with the Bank. It is admitted by the State Bank that in accordance with the Scheme of the Government of India the Aero engineers would have been entitled to a subsidy at the rate equivalent to the difference between the normal lending rate of the Bank and base rate of 5 percent. The rate of 5 percent was the maximum rate payable by the Agro engineers subject to availability of the subsidy. It was also admitted that according to the Scheme the period of subsidy was normally three years except that in the areas declared as backward by the Planning Commission for the purpose of concessional finance the period was five years. The Bank states that the applications for claiming interest subsidy, which had to be submitted by the Agro engineers to the notified agencies, such as the Bihar State Agro Industries Development Corporation, were in many cases not submitted. It is said that many Agro engineers did not pay the instalments in time, and in most cases not more than one or two instalments had been paid. In the result the amount of interest kept on swelling, and became payable at compound interest. It is admitted that in some cases the tractor, being the primary security in respect of the loan, was auctioned for the purpose of recovering the loan amount. In other cases where the viability of the Agro Service centers could still be established, it was asserted that the instalments had been rephased.

7. The petitioners contest the position assumed by the State Bank and assert that the State Bank has been a part and parcel of the entire Agro Service centers Scheme since the very inception of the Scheme and it was not open to the Bank to deny its obligation of providing complete financing under the Scheme. One of the basic reasons, according to the petitioners, for the failure of the Scheme was the tardy response of the Bank in the matter of providing finance. As regards the applications for the arant of interest subsidy, the petitioners affirm that their applications were submitted to the Director of Training (Agro Service centers Scheme) in the Bihar State Agro Industries Development Corporation Limited. It was asserted that in most of the case where applications were submitted directly to the State Bank by the entrepreneurs they were turned down on the plea that the individual entrepreneurs were not regular in repayment. According to the petitioners, the repayment of the loan instalments could not be made because of delay by the Government in the release of the Government subsidy. It was denied that loans were extended by the State Bank on the basis of the project reports. It was also denied that the Agro engineers had diverted the funds granted by the State Bank or the tractors purchased by them to third parties.

8. A counter affidavit has been filed by the Government of Bihar in the Department of Agriculture. The counter affidavit affirms the continued validity of the Agro Service center Scheme and the continuing interest in the success of the scheme on the part of the Government of India the State Government, the Agro Industries Development Corporation and even the commercial Banks. It is stated that while the Central and the State Governments are supporting the Scheme with the object of providing self-employment to unemployed Agro engineers and for the purpose of creating an adequate infrastructure in the rural areas for agricultural development, the commercial Banks under directions from the Reserve Bank of India have expressed interest in financing these projects and are still willing to assist in the rehabilitation of the sick centers and the further development and expansion of all the centers as a whole. It is pointed out that most of the Agro Service center entrepreneurs, after taking loans from the Banks, were unable to submit additional proposals for expansion of the centers. Besides they had failed to make timely repayment of the instalments of the loans and therefore the Banks in the interest of those who had deposited money with them had to initiate action for recovery of the dues Reference has been made to a meeting with the financing Banks in which it was decided that the Banks would be agreeable to rescheduling the existing loans after considering the circumstances of the default in each case and that they were agreeable to further financing of Agro Service centers upto a maximum of Rs. 2 lakhs without requiring any margin money. It was also stated that on a consideration of the representation of the Agro Service entrepreneurs the State Government was agreeable, with a view to rehabilitating these centers, to subsidise the interest according to the original Scheme, to permit and also try to obtain carriage work for the Agro Service centers and to appoint them as selling agents for seeds and also to try and obtain for them selling agencies from the National Seeds Corporation, Fertiliser Corporation of India and other institutions concerned with food fertilisers. It was also agreed that the Bihar State Agro Industries Development Corporation would be prepared to appoint Agro Service centers as their selling agents in respect of power tillers, agricultural implements and other farm machinery, and the State Government would entertain proposals from Agro Service centers for being associated in any Government scheme relating to the concerned area. It was suggested that the Agro Service entrepreneurs should also formulate their own schemes within the framework of the original model Scheme and approach their Banks and try to persuade them to actively participate in rehabilitating the programme for those centers with such assistance and facilities as the State Government had agreed to provide.

9. In a subsequent affidavit, the State Bank has denied the agreement alleged by the Government of Bihar, and the Bank has come out strongly asserting its right to recover the loan amount from defaulting borrowers, and it disclaims completely any obligation to honour any assurance made by the State Government or to comply with the guidelines suggested by the State Government in respect of the Scheme relating to the Agro Service centers.

10. In their rejoinder affidavit, the principal complaint of the petitioners is that the Banks did not extend the finance necessary for the successful implementation of the Agro Service centers Scheme. Inasmuch as the Banks provided finance for the purchase of tractors and their implements only and did not provide the working capital and finance for other essential components such as workshop equipment, fertilisers, seeds, insecticides and spare parts envisaged by the Scheme, the petitioners say that the entire Scheme of Agro Service centers became a mere "tractor driving" scheme and the

qualified engineers and technocrats became virtually mere "tractor drivers" with no experience in the field for competing with experienced capitalist farmers and the Agro Industries Development Corporation Limited itself, both of whom used to run their tractors on custom hiring basis.

11. Meanwhile, a note was submitted by the Director of Training (Agro Service centers Scheme) in the Bihar State Agro Industries Development Corporation Limited on the same lines as the Tractor Training center run by the Government of India at Hissar (Haryana), and it was suggested that the Banks should extend the period for re-payment of the loan from five to seven years or even upto ten years where availability of work for the tractor was very low, that the Banks should be advised by the Government of India in the Ministry of Agriculture through the Banking Department to defer legal action for two to three years, that the tractors operated by the Agro Service center should be exempted road tax and road permit tax and that dealership appointments in fertilisers and seeds should be entrusted to Agro entrepreneurs and that suitable sites for Agro Service centers should be rented to the Agro engineers. It was suggested that the Banks should refinance the Agro Service centers to enable them to enter into trading business in respect of agricultural machinery and implements, fertilisers, seeds, spare parts and other essential inputs, and this could be done by the Government of India in the ministry of Agriculture taking up the matter with the Banking Department. It was also suggested that the Banks should extend the period for repayment of loans to at least eight years. A suggestion of substantial importance was that inasmuch as the Banks were charging penal and compound interest from an entrepreneur who had defaulted in repayment due to non-receipt of subsidy of interest from the Government of India, the penal and compound interest should be waived by the Bank Department. The report concluded that almost all the Agro Service centers were sick and running at a loss as the Scheme with its present activity of custom hiring was not profitable nor remunerative and due to non-availability of work the Agro Service centers were functioning at a mere "survival" level. A massive effort was required to diversify the activity of the Agro Service center and, it was suggested that the Banks should be advised to exercise greater restraint in recalling loans, auctioning the tractors and other machinery of the Agro Service centers and taking legal action against entrepreneurs and the guarantors. In order to recover loan amounts and making the Agro Service centers viable and remunerative the report confirmed the need to reformulate the Scheme in respect of "activities of services, diversification of services, subsidy, incentive and other facilities provided by the State/Central Government/Undertaking".

12. Amidst this medley of conflicting claims and diverse versions, and some helpful suggestions, this Court made an attempt to bring the parties together in order to evolve a solution for salvaging the Agro Service centers or, in any event, to relieve the Agro engineers from the financial burden suffered by them because of their involvement in the Scheme. The task of bringing about a settlement between the parties was entrusted by us to Shri K. Parasaran, then Solicitor General of India, but it appears that despite several meetings and his very able and patient conduct of the negotiations it was not possible to get the parties to reach an agreement. The proposals made by the petitioners during the negotiations owed their inspiration partly to the reports submitted by the Tractor Training center of the Government of India at Hissar and the Director of Training in the Bihar State Agro Industries Development Corporation for leviving the Agro Service centers and partly from the desire to give some relief to the Agro engineers from their financial obligations where there was no possibility of salvaging the Agro Service centers. Where it was not possible to

put the Agro Service centers back on the rails, the proposals put forward by the petitioners contemplated a repayment of the loans to the extent of the principal amount only and waiver by the Bank of the interest, the pledged machinery to be sold for the purpose of paying the principal amount of the loan and the balance of the loan remaining if any to be paid in four annual instalments without any interest. The State Bank, on the other hand, took the stand that in the case of closure of Agro Service centers it would still insist on payment of the entire amount of interest due on the loans.

13. In February 1982, questions were raised in Parliament on the mal-functioning of the Agro Service centers, and the Minister of State in the Ministry of Agriculture in the Government of India explained that :

Reasons for the failure :

As per the survey carried out in 1977 the reasons for failure or closing down of some of these centers were low work turn over because of their being engaged only in the activity of custom hiring in tractors accompanied by competition from tractor-owning farmers, escalation in the operational cost of these machines due to hike in the prices of diesel and other lubricants and other raw materials, high cost of these machines escalation in the cost of repair and maintenance, non maintenance of proper records about their working, lack of requisite efforts on the part of entrepreneurs to improve their performance etc. He detailed the steps taken by the Government of India to improve the situation and stated that the Ministry of Finance had advised the Reserve Bank of India to issue instructions to the nationalised Banks to rephrase the payment schedule of the instalments of Bank loans wherever necessary, and that on the transfer of the Scheme to the State plan sector on April 1, 1977, the States were directed to honour the commitments out of such transfer and to extend such other necessary help as would be required for running the centers on a viable basis. It was also stated that the Ministry of State for Agriculture had requested the Chief Ministers of the States to take steps for strengthening the Agro Service centers and to expeditiously settle the claims of Agro Service entrepreneurs to interest subsidy, and also to route the distribution of important agricultural inputs to the areas where those centers were functioning to help them in getting customs hiring work. Besides, he had requested the Union Minister of Finance to instruct the commercial Banks to waive the interest on loans advanced to Agro Service centers. The Union Minister of Petroleum, Chemicals and Fertilisers had also been requested to consider the case of the Agro Service centers for allotment of dealerships in diesel, petrol, and petro-based lubricants. In the letter addressed to the Chief Ministers of the States the Ministry of Agriculture in the Government of India explained the reasons for the collapse of the Agro Service centers Scheme in certain States, and in particular expressed the view that while the centers had rendered useful service to the farming community by providing agricultural inputs and additional farm power in raising agricultural productivity they had come to a sorry pass for no fault on their part and deserved all consideration for salvaging and rehabilitating them. He stressed the



need for the State Government to honour the large number of pending claims for interest subsidy in view of the transfer of the Scheme to the State sector. He also pointed out that one of the main reasons for a large number of centers being in difficulty was the lack of support from the State Governments in enabling the centers to diversify their activities. The sale of agricultural inputs, such as fertilisers, pesticides, seeds, small agricultural implements and pump-sets, he pointed out, had not been routed through the centers as had been originally envisaged.

14. During the pendency of these cases, we have permitted the Banks to protect themselves by instituting suits for the recovery of amounts alleged to be due on the basis of the loans extended by them to the Agro engineers, but we have stayed further proceedings in the suits as we are convinced that with sufficient good-will among the parties it is still possible to resuscitate the Scheme and ensure its success.

15. It is evident that a Scheme which has been conceived with great deliberation with the purpose of fulfilling two paramount objects of our national economy, the modernisation of agricultural technology and the provision of employment for a large host of unemployed Agro engineers and technical personnel, is failing in some of the States in this country because of differences of perspective between the principle actors, the Government of India, the State Governments concerned, the nationalised Banks, and the engineer entrepreneur, the successful interaction between whom can alone ensure the success of this laudable Scheme. The Scheme was initiated by the Government of India, and some time after it was launched the responsibility for implementing it was entrusted to the State Governments who were to provide the conditions necessary for its success. A vital and integral feature of the Scheme was the provision of adequate finance to the entrepreneur. The scheme has met with considerable success in Maharashtra and a few other States, but in others it has practically ground to a halt. We are of opinion that the controversy involved in the case can find an appropriate and satisfactory conclusion if the Government of India addressed itself to this problem, a problem which involves an intimate intermix of legal and sensitive human considerations, and enjoying the unique position the Government of India does in relation to the other two administrations concerned, a just and viable solution can no doubt be found. The matter has already received sympathetic consideration from the Government of India, as is evidenced by the position taken by it during the initial stages of the Scheme and the Parliamentary and ministerial response made by it in earlier years. We believe it would be tragic, not only for the Agro engineers and technocrats in distress today but also for a Scheme of great promise put into effect with much hope, if despair was allowed to defeat it. Accordingly, while we keep these cases pending, we request the Government of India in the Ministry of Agriculture to re-formulate the Scheme after consultation with all the parties concerned, including an appropriate opportunity to the petitioners and other Agro engineers and technical personnel covered by the original Scheme to represent their case before it. The Scheme will take into account two broad divisions, one for revival of the Agro Service centers where that can be reasonably envisaged, and the other providing for equitable reduction in appropriate cases of the financial obligations of the entrepreneurs concerned to the extent reasonably possible where Agro service centers have irretrievably broken down. Upon the formulation of the Scheme, it should be submitted to this Court for appropriate Orders disposing of these cases. We allow time upto December 31, 1985 for the purpose and adjourn the cases

meanwhile. A copy of this order shall be sent forthwith to the Secretary, Ministry of Agriculture, Government of India.