

Anun Dhawan & Ors.

v.

Union of India & Ors.

(Writ petition (Civil) No. 1103 of 2019)

22 February 2024

[Bela M. Trivedi* and Pankaj Mithal, JJ.]

Issue for Consideration

In the instant writ petition, Petitioners claiming to be social activists sought directions against the States and Union Territories to formulate a scheme to implement the concept of Community Kitchens to combat hunger, malnutrition and starvation and the deaths resulting therefrom. The Petitioners also sought direction against National Legal Services Authority to formulate a scheme in order to further the provisions of Art.50(1)A of the Constitution, as also against the Central Government to create a National Food Grid beyond the scope of the Public Distribution Scheme.

Headnotes

Public health – Food and nutritional security – Alternate welfare schemes – Scope of judicial review in examining policy matters – Prayer of Petitioner to direct the States/UTs to implement the concept of Community Kitchens – Tenability – National Food Security Act, 2013 – Constitution of India – Art. 32.

Held: There being a systematic legal framework provided under the National Food Security Act, 2013 (NFS) for the implementation of the schemes and programmes like Targeted Public Distribution System, Mid-day Meal Scheme, Integrated Child Development Services and Maternity Cash Entitlement along with a Monitoring Mechanism and a Grievance Redressal Mechanism, and the States/UTs having also implemented various other schemes and programmes under the said Act, this Court does not propose to direct the States/UTs to implement the concept of Community Kitchens as prayed for by the petitioners in the instant petition – It is well settled that the scope of judicial review in examining the policy matters is very limited – The Courts do not and cannot examine the correctness, suitability or appropriateness of a policy, nor are the courts advisors to the executive on the matters of policy

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which the executive is entitled to formulate – The Courts cannot direct the States to implement a particular policy or scheme on the ground that a better, fairer or wiser alternative is available – Legality of the policy, and not the wisdom or soundness of the policy, would be the subject of judicial review – When the NFSA with a ‘right based approach’ for providing food and nutritional security, is in force and when other welfare schemes under the said Act have also been framed and implemented by the Union of India and the States, to ensure access to adequate quantity of quality food at affordable prices to people to live a life with dignity, this Court does not propose to give any further direction in that regard. [Paras 7, 8 and 9]

Constitution of India – Arts. 21 and 47 – Right to Food – Discussed.

Held: Though the Constitution of India does not explicitly provide for Right to food, the fundamental Right to life enshrined in Art.21 of the Constitution does include Right to live with human dignity and right to food and other basic necessities – Art.47 of the Constitution also provides that the State shall regard the raising of level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. [Para 5]

National Food Security Act, 2013 – Object and purpose of the Act – Discussed.

Held: Keeping in view the goal of eradicating extreme poverty and hunger as one of the goals of United Nations, and keeping in view the constitutional guarantees for ensuring food security of the people as also for improving the nutritional status of the population, especially of women and children, the Parliament has enacted the National Food Security Act, 2013 – The object of the Act is to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto – With the enactment of the NFSA there was a paradigm shift in the approach to food security from “welfare to rights based approach.” [Para 6]

Case Law Cited

Directorate of Film Festivals and Others vs. Gaurav Ashwin Jain and Others, [2007] 5 SCR 7 : (2007) 4 SCC 737 – referred to.

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National Food Security Act, 2013 ; Constitution of India

List of Keywords

Constitution of India; Food and nutritional security; Hunger; Starvation; Malnutrition; Community Kitchen; Right to Food; Right to life; Human dignity; Welfare scheme; Judicial review; Policy matter; Public health; Rights based approach; Social activist.

Case Arising From

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.1103 of 2019

(Under Article 32 of The Constitution of India)

Appearances for Parties

Ms. Ashima Mandla, Surya Pratap Singh, Fuzail Ahmad Ayyubi, Advs. for the Petitioners.

K.M. Nataraj, Vikramjit Banerjee, A.S.Gs., Ms. Garima Prasad, Sr. A.A.G., B.K. Satija, Ms. Ankita Choudhary, Tapesh Kumar Singh, A.A.Gs., Gurminder Singh, Sr. Adv./A.G., R Bala, Dr. Manish Singhvi, V.K. Mudigl, Sr. Advs., Chinmayee Chandra, Amit Sharma B, Mrs. Sonali Jain, Raman Yadav, Chitvan Sinhal, Abhishek Kumar Pandey, Kartikay Agrawal, Arvind Kumar Sharma, Amrishi Kumar, Raj Bahadur Yadav, Gaurav Agrawal, Chandra Prakash, Siddhesh Shirish Kotwal, Ms. Ana Upadhyay, Ms. Manya Hasija, Tejasvi Gupta, T. Illayarasu, Nirnimesh Dube, Ms. Purnima Krishna, Shuvodeep Roy, Dr. Joseph Aristotle S., Rajiv Kumar Choudhry, Ms. Deepanwita Priyanka, Shreekanth Neelappa Terdal, Mukesh Kumar Maroria, Ms. Indira Bhakar, Vinayak Sharma, Krishan Kant Dubey, Piyush Beriwal, Rajesh Singh Chauhan, Apoorv Kurup, Harish Pandey, Shashwat Parihar, Debojit Borkakati, Chirag M. Shroff, Dhananjay Kataria, Sumeer Sodhi, Ms. Shreya Singh, Manish Kumar, Shrirang B. Varma, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Raavi Sharma, Sandeep Kumar Jha, Tanmaya Agarwal, Wrick Chatterjee, Mrs. Aditi Agarwal, Vinayak Mohan, Samar Vijay Singh, Sukhdev Sharma, Keshav Mittal, Ms. Sabarni Som, Fateh Singh, V. N. Raghupathy, Manendra Pal Gupta, Sunny Choudhary, Rajesh K. Singh, Mayur Chaturvedi, Karan

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Bishnoi, Shailesh Madiyal, Santosh Kumar-I, Aravindh S., Abbas, Ms. Kavya Geetha, Ms. Archana Pathak Dave, Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Ms. Uttara Babbar, Satish Pandey, Akshai Malik, Khawar Saleem, Nikhil Jain, Ms. Divya Jain, Ms. Monica Dhingra, Ms. K. Enatoli Sema, Ms. Limayinla Jamir, Amit Kumar Singh, Ms. Chubalemla Changa, Prang Newmai, Ms. Mukti Chowdhary, Ajay Pal, Tapesh Kumar Singh, Prashant Bhardwaj, Aditya Pratap Singh, Priyanshu Malik, Pukhrambam Ramesh Kumar, Karun Sharma, Ms. Rajkumari Divyasana, R. Rajaselvan, Shreyas Awasthi, Bhanu Mishra, Ms. Astha Sharma, Ranjan Mukherjee, Shibashish Misra, Gurmeet Singh Makker, Mrs. Vaishali Verma, Ms. Sonali Jain, Chitvan Singhal, Kartikay Aggarwal, Abhimanyu Tewari, Ms. Eliza Bar, Avijit Mani Tripathi, Upendra Mishra, P.S. Negi, T.K. Nayak, Ms. Marbiang Khongwir, Ms. Taruna Ardhendumauli Prasad, Pranav Sachdeva, Sanjay Kumar Visen, Ankur S. Kulkarni, Pashupathi Nath Razdan, M. Shoeb Alam, Abhinav Mukerji, Nishe Rajen Shonker, Mrs. Anu K Joy, Alim Anvar, Abraham Mathew, Santosh Krishnan, Sahil Bhalaik, Hitesh Kumar Sharma, S.K. Rajora, Akhileshwar Jha, Amit Kumar Chawla, Ms. Ritika Raj, Ms. Komal, Ms. Niharika Dwivedi, M. Yogesh Kanna, Ms. Vanshaja Shukla, Ms. Ankeeta Appanna, Ms. Rachna Gandhi, Raghvendra Kumar, Anand Kumar Dubey, Ms. Inderdeep Kaur Raina, Kartikeya Rastogi, Karan Sharma, Ms. Princy Sharma, Ms. Mrinal Elker Mazumdar, Ms. Indira Bhaskar, Vineet Singh, Kumar Vaibhav, Ms. Devina Sehgal, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment****Bela M. Trivedi, J.**

1. The petitioners claiming to be the social activists have filed the present petition under Article 32 of the Constitution of India seeking various directions against the States and Union Territories to formulate a scheme to implement the concept of Community Kitchens to combat hunger, malnutrition and starvation and the deaths resulting thereof. The petitioners have also sought direction against the National Legal Services Authority to formulate a scheme in order to further the provisions of Article 50(1)A of the Constitution, as also against the Central Government to create a National Food Grid beyond the scope of the Public Distribution Scheme.

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2. This Court vide the order dated 27.10.2021 had directed the Union of India to interact with the concerned stakeholders for consideration of the Community Kitchens Scheme or any other similar schemes relating to Community Kitchens which are already in operation in different states. Subsequently also various orders were passed by the Court directing the States to attend the meetings managed by the Union of India for exploring the possibility of framing up of the Community Kitchens Scheme.
3. The States/Union Territories have filed their counter affidavits/ responses stating in detail about the schemes adopted and enforced in their respective states like Poshan Abhiyan, Take Home Ration, Pradhan Mantri Garib Kalyan Anna Yojana, Mid-Day Meal, Open Market Sales Scheme, One Nation One Ration Card Scheme, Annapurna Scheme, Antyodaya Anna Yojana etc. also stating that some of the schemes are monitored by the Integrated Child Development Services and Integrated Tribal Development Program. The States in their respective affidavits had also stated that there were no deaths reported due to starvation or malnutrition. The Union of India has also submitted that the Government is committed to focus on combating hunger and malnutrition by implementing various schemes through the State Governments to enhance the food security. As per the submission, the Pradhan Mantri Garib Kalyan Anna Yojana was launched to address economic disruptions and is extended to free grain provision to Antyodaya Anna Yojana and Priority Households to alleviate poverty burdens; Atma Nirbhar Bharat Package allocated additional food grain for migrants during the Covid-19 crisis; Pradhan Mantri Poshan Shakti Nirman Scheme aims to improve nutrition among school students and accordingly allocates food grains; Scheme for Adolescent Girls focuses to improve the health and nutrition of adolescent girls aged 11 to 18 years; Annapurna Scheme provides indigent senior citizens with free food grains. The Advisories are being issued from time to time to include millets and to widen nutritional standards to enhance nutrition levels amongst the beneficiaries.
4. The learned counsels for the petitioners submitted that undoubtedly the Union of India and the States have taken the steps to combat hunger, malnutrition and starvation by implementing various Central and State Government Schemes, however according to them even if the hunger, malnutrition or starvation may not necessarily result in

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death, the Centre and States have the constitutional duty to ensure basic sustainability of human life. The learned ASG Mr. R. Bala submitted that this being not an adversarial litigation, the details of schemes, programmes, policies and other measures taken by the Central Government and the State Governments have been submitted to satisfy the conscience of the court that they have successfully implemented the schemes for protecting the fundamental rights of the citizens. He also submitted that there is no further need for continued monitoring by this Court.

5. It is significant to note that though the Constitution of India does not explicitly provide for Right to food, the fundamental Right to life enshrined in Article 21 of the Constitution does include Right to live with human dignity and right to food and other basic necessities. The Article 47 of the Constitution also provides that the State shall regard the raising of level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.
6. Keeping in view the goal of eradicating extreme poverty and hunger as one of the goals of United Nations, and keeping in view the constitutional guarantees for ensuring food security of the people as also for improving the nutritional status of the population, especially of women and children, the Parliament has enacted the National Food Security Act, 2013 (for short NFSA). The object of the said Act is to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto. With the enactment of the NFSA there was a paradigm shift in the approach to food security from “welfare to rights based approach.” The said Act has been implemented in all States/ UTs. One of the guiding principles of the Act is its “life cycle approach, wherein special provisions have been made for pregnant women and lactating mothers and children in the age group of 6 months to 14 years, by entitling them to receive nutritious meals free of cost, through a widespread network of Integrated Child Development Services (ICDS) centers, called Anganwadi centers under the ICDS schemes, and also through the schools under Mid-day Meal (MDM) scheme”. Higher nutritional norms have also been prescribed for malnourished children. Pregnant women and lactating mothers are entitled to receive cash maternity benefit to partly compensate them for the wage loss during the period of pregnancy and to supplement

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nutrition. The Central Government after consultation with the State Governments, has also framed the Rules called Cash Transfer of Food Subsidy Rules 2015, in exercise of the powers conferred by clause (d) of sub section 2 of Section 39 read with clause (h) of sub section 2 of Section 12 of the NFSA. Under the said Rules, the State Governments have been enabled to implement the scheme with the approval of the Central Government to provide food subsidy in cash directly into the bank accounts of entitled households to purchase the entitled quantity of food grains from the open market. Significantly, Chapter VI under the Head "Women Empowerment" has been incorporated which provides that the eldest woman who is not less than 18 years of age in every eligible household, shall be head of the household for the purpose of issue of ration cards. The Grievance Redressal Mechanism at the District and the State level has also been provided for expeditious and effective redressal of grievances of the aggrieved persons in the matters relating to distribution of entitled food grains or meals under Chapter II and to enforce entitlements under the Act.

7. Thus, there being a systematic legal framework provided under the NFSA for the implementation of the schemes and programmes like Targeted Public Distribution System, Mid-day Meal Scheme, Integrated Child Development Services and Maternity Cash Entitlement along with a Monitoring Mechanism and a Grievance Redressal Mechanism, and the States/UTs having also implemented various other schemes and programmes under the said Act, we do not propose to direct the States/UTs to implement the concept of Community Kitchens as prayed for by the petitioners in the instant petition.
8. It is well settled that the scope of judicial review in examining the policy matters is very limited. The Courts do not and cannot examine the correctness, suitability or appropriateness of a policy, nor are the courts advisors to the executive on the matters of policy which the executive is entitled to formulate. The Courts cannot direct the States to implement a particular policy or scheme on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, would be the subject of judicial review.¹

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9. As elaborated earlier, when the NFSA with a 'right based approach' for providing food and nutritional security, is in force and when other welfare schemes under the said Act have also been framed and implemented by the Union of India and the States, to ensure access to adequate quantity of quality food at affordable prices to people to live a life with dignity, we do not propose to give any further direction in that regard. We have not examined whether the concept of Community Kitchens is a better or wiser alternative available to the States to achieve the object of NFSA, rather we would prefer to leave it open to the States/UTs to explore such alternative welfare schemes as may be permissible under the NFSA.
10. Subject to the afore stated observations, the Writ Petition is disposed of.

Headnotes prepared by: Bibhuti Bhushan Bose
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Result of the case:
Writ Petition disposed of