IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27th DAY OF MAY, 2022

PRESENT

THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.3522 OF 2022 (GM-RES-PIL)
C/W
WRIT PETITION NO.11004 OF 2020 (GM-RES)
WRIT PETITION NO.15767 OF 2021 (GM-RES)

IN W.P.NO.3522 OF 2022

BETWEEN:

SANGEETA GADAGIN

... PETITIONER
(BY SRI ROHAN VEERANNA TIGADI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   REP. BY ITS CHIEF SECRETARY
   VIDHANA SOUDHA
   DR. B.R. AMBEDKAR VEEDHI
   BENGALURU-560 001

2. SECRETARY
   DEPARTMENT OF WOMEN AND
   CHILD DEVELOPMENT AND
   DISABLED AND SENIOR CITIZEN
   M.S. BUILDING
   DR.B.R AMBEDKAR VEEDHI
   BENGALURU-560 001

3. DIRECTOR
   DEPARTMENT OF WOMEN AND

CHILD DEVELOPMENT AND
DISABLED AND SENIOR CITIZEN
M.S. BUILDING
DR. B.R. AMBEDKAR VEEDHI
BENGALURU-560 001

4. HARIHARESHWARA MAHILA
UDYOGA MATTU SEVA SANGHA
SY NO.125/2B, BEKKINA KALMATHA
YANE YALAVATTI VILLAGE
SHIVMOGGA TALUK, SHIVAMOGGA DISTRICT
KARNATAKA -577 203
(REPRESENTED BY ITS PRESIDENT
SMT K.L.MANJULA)

5. RENUKADEVI PRAGATHIPARA
MAHILA SEVA SANGHA
PLOT NO.94-A (C.A.PLOT)
HONAGA INDUSTRIAL AREA
BELAGAVI-591 113
(REPRESENTED BY ITS PRESIDENT
SAVITHA)

6. SANJEEVINI MAHILA VIKASA SEVA SANGHA
PLOT NO.152,153,175,178
NANDUR KESARATAGI INDUSTRIAL AREA
NANDUR HOBLI, KASABA
TALUK KALBURAGI -585 103
(REPRESENTED BY ITS PRESIDENT KAVERI)

... RESPONDENTS

(BY SRI G.V.SHASHI KUMAR, AGA FOR R1 TO R3
SRI A.S.PONNANNA, SENIOR ADVOCATE FOR
SRI V.G.BHANUPRAKASH, ADVOCATE FOR R4
SRI ARJUN SARATHY, ADVOCATE FOR R5
SMT LAKSHMY IYENGAR, SENIOR ADVOCATE FOR
SRI M.JAGADEESH, ADVOCATE FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENT NOS.1 TO 3 TO ENROLL EVERY CHILD FROM THE AGE GROUP OF 6 MONTHS – 6 YEARS, PREGNANT WOMEN, LACTATING MOTHERS AND ADOLESCENT GIRLS

WHO ARE ENTITLED TO BE BENEFICIARIES OF THE ICDS SCHEME IN KARNATAKA AND ETC.

IN W.P.NO.11004 OF 2020

BETWEEN:

SANJIVINI MAHILA VIKASA SEVA SANGH
AN AUTONOMOUS AND INDEPENDENT BODY,
REGISTERED UNDER KARNATAKA SOCIETIES
REGISTRATION ACT, 1960
HAVING THEIR REGISTERED OFFICE AT
SURVEY NO.67, NANDUR KESARAGATAGI
INDUSTRIAL AREA, NANDUR VILLAGE,
SHAHABAD ROAD, GULBARGA TALUK
GULBARGA - 585 209
REPRESENTED BY ITS PRESIDENT
MRS. KAVERI

...

PETITIONER
(BY SMT.LAKSHMI IYENGAR, SENIOR ADVOCATE FOR
SRI JAGADEESH M., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   REP. BY ITS CHIEF SECRETARY
   VIDHANA SOUDHA
   DR. B.R. AMBEDKAR VEEDHI
   BENGALURU-560 001

2. THE DIRECTOR
   DEPARTMENT OF WOMEN AND
   CHILD DEVELOPMENT
   OFFICE AT 1ST FLOOR, M.S.BUILDING,
   DR B.R.AMBEDKAR VEEDHI
   BANGALORE - 560 001.

3. THE PRINCIPAL SECRETARY
   DEPARTMENT OF WOMEN AND
   CHILD DEVELOPMENT
   LEVEL-2, M.S.BUILDING
   DR B.R.AMBEDKAR VEEDHI
   BANGALORE - 560 001.

4. THE PRINCIPAL SECRETARY
   DEPT. OF PANCHAYATH RAJ AND
   RURAL CHILD DEVELOPMENT
   M.S.BUILDING, DR B.R. AMBEDKAR VEEDHI
   BANGALORE - 560 001.

5. THE PRINCIPAL SECRETARY
   DEPARTMENT OF FINANCE,
   VIDHANA SOUDHA
   DR B.R.AMBEDKAR VEEDHI
   BANGALORE - 560 001.

6. THE KARNATAKA STATE FOOD
   AND CIVIL SUPPLIES CORPORATION LTD.,
   NO.16/1, MILLERS TANK BUND AREA
   VASANTHANAGARA
   BENGALURU - 560 052

7. THE KARNATAKA STATE CO-OPERATIVE
   CONSUMER FEDERATION LTD.,
   (JANATHA BAZAAR)
   REP BY ITS PRESIDENT
   CUNNINGHAM ROAD,
   BENGALURU - 560 052

... RESPONDENTS

(BY SRI G.V.SHASHI KUMAR, AGA FOR R1 TO R5
R6 AND R7 ARE SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 8.2.2018 VIDE ANNEXURE-A PASSED BY THE R-5 AND QUASHING THE ORDER DATED 24.2.2018 VIDE ANNEXURE-B BY R-3.

IN W.P.NO.15767 OF 2021

BETWEEN:

HARIHARAESHWARA MAHILA
UDYOGA MATTHU SEVA SANGHA
REPRESENTED BY ITS PRESIDENT
MANJULA K.L.
REGISTERED OFFICE AT
SY NO.125/2B

BEKKINA KALMATHAYANE
YALAVATTI VILLAGE
SHIVAMOGGA-577 203
GSTIN-20AABAH0212M1ZV

... PETITIONER

(BY SRI A.S.PONNANNA, SENIOR ADVOCATE FOR
SRI BHANUPRAKASH V.G., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   REPRESENTED BY ITS
   CHIEF SECRETARY
   VIDHANA SOUDHA
   DR B.R. AMBEDKAR VEEDHI
   BENGALURU-560 001

2. PRINCIPAL SECRETARY
   DEPARTMENT OF WOMEN AND
   CHILD DEVELOPMENT AND DISABLED
   AND SENIOR CITIZEN
   VIDHANA SOUDHA
   DR B.R. AMBEDKAR VEEDHI
   BENGALURU-560 001

3. DIRECTOR
   DEPARTMENT OF WOMEN AND
   CHILD DEVELOPMENT AND
   DISABLED AND SENIOR CITIZEN
   VIDHANA SOUDHA
   DR B.R. AMBEDKAR VEEDHI
   BENGALURU-560 001

... RESPONDENTS

(BY SRI G.V.SHASHI KUMAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED GOVERNMENT ORDER DATED 15.05.2021 ANNEXURE-A ISSUED BY THE R-2 AND QUASH THE IMPUGNED GOVERNMENT ORDER DATED 20.05.2021 ANNEXURE-B ISSUED BY THE R-2 AND ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.04.2022 COMING ON FOR 'PRONOUNCEMENT OF ORDERS' THIS DAY, ***S.R. KRISHNA KUMAR, J.,*** MADE THE FOLLOWING:

ORDER

All these petitions relate to implementation of the Integrated Child Development Services Scheme (for short 'ICDS scheme') in the State of Karnataka, [which was introduced on 02.10.1975 by the Government of India. In W.P.(Civil) 196/2001, the Apex Court has issued detailed guidelines regarding implementation of the ICDS scheme; amongst other things, the Central and State Government were directed not to use contractors and preferably implement the scheme making use of village communities, self help groups and Mahila Mandals. Pursuant to the directions and guidelines issued by the Apex Court, Mahila Supplementary Production Training Centres (for short 'MSPTC') were established by the State Government for implementation of the scheme.]

FACTUAL MATRIX

Integrated Child Development Services Scheme (ICDS Scheme)

The ICDS Scheme was introduced by the Government of India in the year 1975 and is administered through State Governments. As per the information available on the web-portal of the State of Karnataka as well as stated in the

Public Interest Litigation, there are more than 50 lakh beneficiaries of the ICDS Scheme in Karnataka. These beneficiaries comprising of children aged about 0 – 6 years, pregnant women and lactating mothers depend on the ICDS Scheme to receive 50% of their recommended dietary allowance per day. In simple terms, 'recommended dietary allowance' is the level of nutrition that a healthy person shall consume to live a healthy life.

Supreme Court directions and administration of ICDS Scheme in Karnataka

On 07.10.2004, the Supreme Court of India in Writ Petition (Civil) No.196/2001 had directed the State Governments not to use contractors for supply of nutrition in Anganwadis. The Apex Court directed that *"preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals."*

In view of the aforesaid directions, the State of Karnataka established 137 Mahila Supplementary Nutrition Production Training Centers (MSPTCs) for implementation of the ICDS Scheme. Each MSPTC consists of 22-32 women members from the most vulnerable sections of the

society. The MSPTCs manufacture and supply food to the Anganwadi Centres (AWCs). The AWCs inturn supply the food to the beneficiaries under the ICDS Scheme.

Revised Nutrition and Feeding Norms

The Government of India has issued guidelines on 24.02.2009 for implementation of the ICDS Scheme (Revised Nutritional and Feeding Norms). Paragraph 7 of the Revised Nutritional and Feeding Norms require the supplementary food supplied under the ICDS Scheme to be fortified with essential nutrients so as to meet 50% of the Recommmendatory Dietary Allowance (RDA) per beneficiary per day. The said norms/guidelines were again revised on 06.10.2017. Thereafter, vide Government order dated 24.02.2018, the State Government directed the MSPTCs to procure grams and pulses from the Karnataka State Food and Civil Supplies Corporation Limited and vegetables from the Karnataka State Co-operative Consumer Federation Limited (Janata Bazar); the said order was stayed by this Court in W.P.No.16153/2019 on 26.04.2019, which was filed by Karnataka Rajya MSPTCgala Okkuta, Bangalore. On 24.12.2019, the Central Government directed the State

Government to take necessary remedial action immediately to improve the quality of supplementary nutrition served in Anganwadi Centres (AWCs).

Circular Dated 02.07.2020

On 02.07.2020, the State Government issued a Circular regarding supply of good quality of food items to the beneficiaries of the AWCs under the ICDS scheme. In the said circular, the State Government referred to the orders of the Apex Court referred to supra in relation to the ICDS scheme as well as the Central Government guidelines referred to supra and various steps taken in this regard. After referring to all relevant facts and details, it was directed to obtain technical assistance by the MSPTCs for preparation of fortified SNP food to be given to the beneficiaries, agreements are to be entered with the women groups possessing BIS licences. It was further directed that the MSPTCs are to obtain the assistance of women groups with BIS licence for a period of three years and function independently. The said circular also prescribed the terms and conditions for entering into agreements by the MSPTCs with the women groups having

BIS licences. It was clarified that the said circular was issued as per the Apex Court directions and the Supplementary Nutrition Rules, 2017 and that the same would be subject to final orders in the pending writ petitions wherein the aforesaid order dated 24.02.2018 had been challenged by the respective petitioners.

Reports commissioned by State Government/ Central Government

Several reports commissioned by the State Government / Central Government throw light on the tardy implementation of the ICDS Scheme by the State of Karnataka.

a. Deloitte Report: In December 2016, the Deloitte Report highlighted that *"no form of THR (i.e., Take Home Ration) is micronutrient fortified''* in the State of Karnataka. Further, it was observed that *"both raw material and ready to cook pre-mix are not compliant with the GoI mandate for THR."* Moreover, the Deloitte Report also observed that the *"food items are distributed to the AWCs before the receipt of test reports from laboratories."* That apart, there were serious issues in procurement of food items for the ICDS Scheme. Amongst other

things, the Deloitte Report noted that supplementary nutrition items supplied by the MSPTCs were not weighed by the Anganwadis on delivery. Therefore, there were increasing chances of pilferage.

b. Central Government Letter: In December 2019, the Ministry of Women and Child Development, Government of India informed the State of Karnataka that the members of the Food and Nutrition Board had found the food samples supplied under the ICDS Scheme to be non-compliant with the Revised Nutritional and Feeding Norms. A perusal of the letter issued by the Ministry of Women & Child Development, Government of India indicates that the officials of the Food and Nutrition Board had collected total of 13 take home ration samples from various AWCs under different ICDS Projects and sent to Regional Food Testing Laboratory for analysis. Protein and calorie content of 12 THR samples were found less than the prescribed norms.

c. Sub-Standard supply of Food: In the circular dated 02.07.2020 and Government order dated

05.05.2021 (discussed in greater detail below), the Respondent State has itself admitted that the quality of food presently being supplied by MSPTCs is of sub-standard quality. Amongst other things, the Respondent State attributes this supply of sub-standard food is due to lack of technological upgradation of the MSPTCs and lack of technical expertise amongst members of the MSPTCs.

d. Test report filed by the Petitioner: During the pendency of the Writ Petition No.3522/2022, the Petitioner therein had filed analytical report issued by Eurofins Analytical Services India Private Limited regarding compliance of *"Pushti"* supplied under the ICDS Scheme with the Revised Nutrition and Feeding Norms. The sample was drawn from Bagalkot District in Karnataka. The sample was also found to be non-compliant with the Revised Nutrition and Feeding Norms (Memo dated 11.03.2022, Writ Petition No.3522/2022).

Newspaper reports

Several newspaper articles are appended to the public interest litigation filed by the Petitioner. These articles also perfectly demonstrate the dire state of affairs

in the implementation of the lCDS Scheme in Karnataka.

a. In an article published on January 25, 2020, it is reported that expired food was given to the beneficiaries by the Anganwadi Centers under the ICDS Scheme.

b. In another newspaper article published on November 06, 2021, it is alleged that the "rubber-like, plastic mixed rice" was supplied to the beneficiaries in Mudhola Taluk of Karnataka.

c. In yet anotner newspaper article published on July 18, 2021, in the national daily Indian Express, it is alleged that more than 10% of the children who are the beneficiaries of the ICDS Scheme in Karnataka are malnourished.

2. Thus, a perusal of the newspaper articles, Deloitte Report, observations of the Central Government and the Technical Committee (as discussed below) and the test reports filed by the Petitioner demonstrate a compelling need for this Court to exercise its extraordinary powers under Article 226 of the Constitution of India to safeguard the rights of

50,00,000 beneficiaries of the ICDS Scheme in the State of Karnataka under Part III of the Constitution of India.

3. When W.P.No.16153/2019 referred to supra came up before the learned Single Judge of this Court on 14.12.2020, after hearing the learned Senior counsel for the writ petitioner as well as the learned Advocate General for the State, this Court took into account the fact that proper and speedy implementation of the ICDS scheme thereby providing nutritious food to all the beneficiaries including children, pregnant women etc., was extremely important and accordingly, permitted the State Government to revisit the matter all over again and come up with a proper solution which would be in the best interest of supply of nutritious food to children and pregnant women within a period of three months from 14.12.2020 and by further directing till such time, the existing arrangement would continue. It is necessary to reiterate that as per the interim order dated 26.04.2019 passed in W.P.No.16153/2019, the Government order dated 24.02.2018, whereby the MSPTCs directed to procure grams and pulses from the KSF and CSC Ltd., and

vegetables from KSCCF Ltd., (Janata Bazars) had been stayed by this Court.

4. Subsequently, on 05.05.2021, the State Government issued Government order in relation to entering into agreements by all MSPTCs with BIS licenced women groups. In the said order dated 05.05.2021, all relevant and material facts, orders of the Apex Court, orders passed by this Court, Central and State Government orders, notifications, circulars etc., including the aforesaid circular dated 02.07.2020 were referred to and directions / guidelines were issued for the purpose of entering into the aforesaid agreements in relation to the ICDS scheme.

5. However, on 15.05.2021, the State Government passed Government order unconditionally withdrawing the aforesaid Government order dated 05.05.2021; so also, on 20.05.2021, the State Government passed one more Government order also unconditionally withdrawing the aforesaid Government circular dated 02.07.2020.

Formation of the Technical Committee

6. On 14.07.2021, the State Government constituted a committee to re-examine the implementation of the ICDS

scheme in Karnataka; the said committee further constituted a sub-committee styled as a technical committee in this regard. Pursuant thereto, the technical committee addressed a communication dated 19.08.2021, enclosing a report regarding improving the quality of nutrition supplied to AWCs as per ICDS norms and for implementation of the ICDS scheme in the State of Karnataka. In the said report, the technical committee recommended that the Government order dated 05.05.2021 may be implemented and alternatively, the methods mentioned at paragraphs 10.2.2 (i) or 10.2.2(ii) or 11 of the report may be adopted; a perusal of the said paragraphs will indicate that involvement of BIS licence women groups has been recommended by the committee.

7. In the case of *Dipika Jagatram Sahani vs. Union of India & others*[1], the Apex Court vide order dated 13.01.2021 has issued several directions with regard to opening and management of Anganwadi centres in all the States and Union Territories and further directed them to ensure and provide nutritional support to pregnant women, lactating mothers and children suffering from malnutrition.

[1] W.P.(Civil) 1039 / 2020 (PIL)

8. The implementation of the ICDS scheme and the Government circular dated 02.07.2020, order dated 05.05.2021 as well as the withdrawal orders dated 15.05.2021 and 20.05.2021 and the report of the technical committee dated 19.08.2021 are the subject matter of the present petitions.

9. W.P.No.11004/2020 and W.P.No.15767/2021 have been filed by BIS licence women groups challenging the impugned order dated 24.02.2018 as well as the impugned orders dated 15.05.2021 and 20.05.2021 issued by the State Government and for other reliefs.

9.1 It is relevant to state that initially, W.P.No.11004/2020 had been preferred challenging only the impugned order dated 24.02.2018 and since the subsequent impugned orders dated 15.05.2021 and 20.05.2021 were issued during the pendency of the petition, the petitioners have suitably amended the petition and challenged the said orders also.

9.2 W.P.No.15767/2021 which was filed on 25.08.2021, challenges the impugned orders dated 15.05.2021 and 20.05.2021.

9.3 W.P.No.3522/2022 is a Public Interest Litigation (PIL) in which petitioner has sought for the following reliefs:-

a) Direct the Respondent Nos.1 to 3 to enroll every child from the age group of 06 months-6 years, pregnant women, lactating mothers and adolescent girls who are entitled to be beneficiaries of the ICDS Scheme in Karnataka.

b) Direct the Respondent Nos.1 to e to provide Take Home Ration in the form of micronutrient fortified food to children from 06 months-3 years, pregnant women, lactating mother and adolescent girls as prescribed by the Revised Nutritional and Feeding Norms on Supplementary Nutrition dated 24.02.2009 bearing number F.No.5-9/2005/ND/Tech (Vol-II) (Annexure "B") as modified by the Revision of Cost Norms for Supplementary Nutrition dated 06.10.2017 bearing No.CD-I-11/2/2016-CD.I (Annexure "C").

c) Scrap the existing system of nominating the suppliers to make the suppliers to make the supplies to the MSPTCs under the ICDS Scheme and implement the uniform process throughout the State of Karnataka;

d) Direct the Respondent Nos.1 to 3 to formulate the guidelines for the digital monitoring of manufacturing of SNP food to ensure the SNP food supplied to beneficiaries are in compliance with the Revised Nutritional and Feeding Norms on Supplementary Nutrition dated 24.02.2009 bearing number F.No.5-9/2005/ND/Tech(Vol.II) (Annexure "B").

e) Direct the Respondents to strictly comply with the Technical Report dated 19.08.2021 bearing No.:TT/ICDS Corr/21 (Annexure "N") without any deviation in terms of procurement, processing, fortification, supply and hygienic practice in the letter and spirit.

f) Direct the Respondents to implement the Technical Committee Report dated 19.08.2021 bearing No.TT/ICDS Corr/21 (Annexure "N") as per guidelines specified therein so as to procure the quality raw materials to manufacture and supply the nutrition as per the said report by giving effect to the Government Order No.MMR 04 ICD 2020 (Part-I) dated 05.05.2021 (Annexure "I").

g) Pass such other directions or orders that this Hon'ble Court may deem fit, in the interests of justice.

10. Heard Sri.A.S.Ponnanna and Smt.Lakshmi Iyengar, learned Senior counsel for the petitioners in W.P.No.15767/2021 and W.P.No.11004/2020 respectively as well as Sri.Rohan V.Tigadi in W.P.No.3522/2022 (PIL) and the learned AGA for the respondents – State and perused the material on record.

11. In addition to reiterating the various contentions urged in the petitions and referring to the material on record, learned Senior counsel for the petitioners submit that the impugned orders dated 15.05.2021 and 20.05.2021 are illegal, arbitrary and violative of principles

of natural justice apart from being contrary to the objectives of the ICDS scheme and the norms, rules etc., framed thereunder as well as the other material on record and if the impugned orders are not quashed, the same would result in great prejudice and hardship to the beneficiaries of the ICDS scheme and as such, the impugned orders which are without jurisdiction or authority of law deserve to be quashed.

12. Per contra, learned AGA for the respondents – State in addition to reiterating the various contentions urged in the statement of objections would support and justify the impugned orders and submits that there is no merit in the petitions and that the same are liable to be dismissed.

13. At the outset, before adverting to the rival contentions, it is relevant to state that in addition to the present petitions, other writ petitions in W.P.No.43515/2016 and connected matters in relation to the ICDS scheme had been preferred before this Court and tagged / linked along with the present petitions. In the said writ petitions, the subject matter related to orders, notifications, circulars etc., including the order dated

24.02.2018, which were issued / passed prior to the aforesaid circular dated 02.07.2020. Since all the earlier orders, notifications, circulars etc., had been superseded by the said circular dated 02.07.2020 and Government order dated 05.05.2021, all the other aforesaid petitions in W.P.No.43515/2016 and connected matters were disposed of on 19.04.2022 by this Court as having become infructuous.

14. It is also pertinent to note that when all the matters came up for hearing before this Court on 17.02.2022, this Court passed the following order:-

> *"Notice for respondent Nos.1 to 3 shall be accepted by learned Additional Government Advocate.*
>
> *The copy of the writ petition shall be furnished to learned Additional Government Advocate during the course of the day.*
>
> *Issue notice to respondent Nos.4,5 and 6.*
>
> *PF shall be taken within three days.*
>
> *Learned counsel for the petitioner submits that in this Public Interest Litigation, the petitioner has highlighted the poor quality of nutrition being supplied under the Integrated Child Development Services (for short 'ICDS') scheme. 50 lakh children, pregnant and lactating women are beneficiaries of the ICDS scheme. Under the Supreme Court order, the Mahila Supplementary Nutrition Production Training Centers (for short 'MSPTCs') have been established in*

Karnataka for implementation of the ICDS scheme. The MSPTCs are not being able to maintain the quality of the food supplied to the beneficiaries. The Government Order dated 05.05.2021 was issued in order to allow the MSPTCs to enter into an agreement with the Bureau of Indian Standards (B.I.S.) Licensed Women Groups to ensure quality of Supplementary Nutrition Programme (SNP) food to be supplied to the beneficiaries of Anganwadi Centres (AWCs) under SNP Food Programme. However, without assigning any reason the said Government Order was rescinded by another Government Order dated 15.05.2021.

It is submitted that the supply of the raw materials to MSPTCs was being done under the Government Order dated 24.02.2018. The Government Order dated 24.02.2018 was challenged in Writ Petition No.16153/2019 and vide order dated 14.12.2020, the Court has directed the State Government to revisit the matter all over again and come with a proper solution which would be in best interest of supply of nutritious food to the children and pregnant women. It was also directed that the exercise shall be done within a period of three months from the date of order (14.12.2020).

It is further submitted that pursuant to the Court order, the State Government has constituted a Committee, which in turn constituted a Technical Committee which submitted its report dated 19.08.2021. The report of the Technical Committee dated 19.08.2021 has not been implemented till date. In case the said report is implemented, the problem of supply of nutritious food to the children, pregnant and lactating women will be solved to some extent.

Learned Additional Government Advocate appearing for the respondents informs that a Public Interest Litigation in Writ Petition No.38157/2011 is pending in this Court, in which one of the issue raised in the present writ petition is under consideration. It is also informed that Writ Petition No.38157/2011 is likely to be listed tomorrow.

Put up tomorrow (18.02.2022) along with Writ Petition No.16153/2019 and Writ Petition No.38157/2011.

In the meantime, learned Additional Government Advocate may seek instructions particularly on the point as to why the Government Order dated 05.05.2021 was rescinded and also on the point with respect to the status of the Technical Committee Report dated 19.08.2021 and what decision has been taken by the State Government in compliance of the Court order dated 14.12.2020 passed in Writ Petition No.16153/2019.

14.1 Subsequently, on 02.03.2022, this Court passed the following order:-

On 17.02.2022, after hearing the learned counsel for the parties, this Court directed learned Additional Government Advocate to seek instructions on the point as to why the Government Order dated 05.05.2021 was rescinded and also with regard to status of the Technical Committee Report dated 19.08.2021 and what decision has been taken by the State Government in compliance with this Court's order dated 14.12.2020 passed in Writ Petition No.16153/2019.

Learned Additional Government Advocate on instructions submits that pursuant to the aforesaid order passed by this Court, the State Government has so far not taken any decision with regard to acceptance of the aforesaid Technical Committee Report dated 19.08.2021 which is marked as Annexure-N in Writ Petition No.3522/2022.

Per contra, learned Senior counsel for the respective petitioners submit that since the State Government is unnecessarily protracting the matter and not taking any decision with regard to acceptance of the said report, it is necessary that the State Government is directed to take a decision in this regard at the earliest without being influenced by the impugned withdrawal orders dated 15.05.2021 and 20.05.2021 marked as Annexures-K and L respectively in Writ Petition No.3522/2022.

The aforesaid submissions at the bar are placed on record.

In view of the aforesaid facts and circumstances and submissions made at the Bar, we deem it just and proper to direct the State Government to take a decision with regard to acceptance of the Technical Committee Report (Annexure-N) dated 19.08.2021 immediately and at the earliest and at any rate before the next date of hearing without being influenced by the impugned orders at Annexure-K dated 15.05.2021 and Annexure-L dated 20.05.2021 and in accordance with law.

Mr.Arun Sarathi.V., learned counsel has put in appearance for respondent No.5 in Writ Petition No.3522/2022.

Mr.V.G.Bhanuprakash, learned counsel has put in appearance for respondent No.4 in Writ Petition No.3522/2022.

Re-list on 14.03.2022.

15. As can be seen from the aforesaid order dated 02.03.2022, the State Government was directed to take a decision with regard to acceptance of the Technical committee report dated 19.08.2021 before the next date of hearing. However, the said direction was not complied with by the State Government and on 14.03.2022, this Court passed the following order:-

" W.P.No.3522/2022 is a Public Interest Litigation (PIL) filed seeking directions in relation to the Integrated Child Development Services Scheme (ICDS scheme) and for other reliefs. Since identical issues arise for consideration in the other connected matters, the same have been tagged / linked along with the said PIL.

2. Heard learned Senior Counsel appearing for the respective petitioners and learned Additional Government Advocate appearing for the State.

3. In W.P.No.3522/2022, on 17.02.2022 this Court passed the following order:-

"Notice for respondent Nos.1 to 3 shall be accepted by learned Additional Government Advocate.

The copy of the writ petition shall be furnished to learned Additional Government Advocate during the course of the day.

Issue notice to respondent Nos.4,5 and 6.

PF shall be taken within three days.

Learned counsel for the petitioner submits that in this Public Interest Litigation, the petitioner has highlighted the poor quality of nutrition being supplied under the Integrated Child Development Services (for short 'ICDS') scheme. 50 lakh children, pregnant and lactating women are beneficiaries of the ICDS scheme. Under the Supreme Court order, the Mahila Supplementary Nutrition Production Training Centers (for short 'MSPTCs') have been established in Karnataka for implementation of the ICDS scheme. The MSPTCs are not being able to maintain the quality of the food supplied to the beneficiaries. The Government Order dated 05.05.2021 was issued in order to allow the MSPTCs to enter into an agreement with the Bureau of Indian Standards (B.I.S.) Licensed Women Groups to ensure quality of Supplementary Nutrition Programme (SNP) food to be supplied to the beneficiaries of Anganwadi Centres (AWCs) under SNP Food Programme. However, without assigning any reason the said Government Order was rescinded by another Government Order dated 15.05.2021.

It is submitted that the supply of the raw materials to MSPTCs was being done under the Government Order dated 24.02.2018. The Government Order dated 24.02.2018 was challenged in Writ Petition No.16153/2019 and vide order dated 14.12.2020, the Court has directed the State Government to revisit the matter all over again and come with a proper solution which would be in best interest of supply of nutritious food to the children and pregnant women. It was also directed that the exercise shall be done within a period of three months from the date of order (14.12.2020).

It is further submitted that pursuant to the Court order, the State Government has constituted a Committee, which in turn constituted a Technical

Committee which submitted its report dated 19.08.2021. The report of the Technical Committee dated 19.08.2021 has not been implemented till date. In case the said report is implemented, the problem of supply of nutritious food to the children, pregnant and lactating women will be solved to some extent.

Learned Additional Government Advocate appearing for the respondents informs that a Public Interest Litigation in Writ Petition No.38157/2011 is pending in this Court, in which one of the issue raised in the present writ petition is under consideration. It is also informed that Writ Petition No.38157/2011 is likely to be listed tomorrow.

Put up tomorrow (18.02.2022) along with Writ Petition No.16153/2019 and Writ Petition No.38157/2011.

In the meantime, learned Additional Government Advocate may seek instructions particularly on the point as to why the Government Order dated 05.05.2021 was rescinded and also on the point with respect to the status of the Technical Committee Report dated 19.08.2021 and what decision has been taken by the State Government in compliance of the Court order dated 14.12.2020 passed in Writ Petition No.16153/2019".

4. Subsequently on 02.03.2022, this Court passed the following order:

"On 17.02.2022, after hearing the learned counsel for the parties, this Court directed learned Additional Government Advocate to seek instructions on the point as to why the Government Order dated 05.05.2021 was rescinded and also with regard to status of the Technical Committee Report dated 19.08.2021 and what decision has been taken by the State Government in compliance with this Court's order dated 14.12.2020 passed in Writ Petition No.16153/2019.

Learned Additional Government Advocate on instructions submits that pursuant to the aforesaid order passed by this Court, the State Government has so far not taken any decision with regard to

acceptance of the aforesaid Technical Committee Report dated 19.08.2021 which is marked as Annexure-N in Writ Petition No.3522/2022.

Per contra, learned Senior counsel for the respective petitioners submit that since the State Government is unnecessarily protracting the matter and not taking any decision with regard to acceptance of the said report, it is necessary that the State Government is directed to take a decision in this regard at the earliest without being influenced by the impugned withdrawal orders dated 15.05.2021 and 20.05.2021 marked as Annexures-K and L respectively in Writ Petition No.3522/2022.

The aforesaid submissions at the bar are placed on record.

In view of the aforesaid facts and circumstances and submissions made at the Bar, we deem it just and proper to direct the State Government to take a decision with regard to acceptance of the Technical Committee Report (Annexure-N) dated 19.08.2021 immediately and at the earliest and at any rate before the next date of hearing without being influenced by the impugned orders at Annexure-K dated 15.05.2021 and Annexure-L dated 20.05.2021 and in accordance with law.

Mr.Arun Sarathi.V., learned counsel has put in appearance for respondent No.5 in Writ Petition No.3522/2022.

Mr.V.G.Bhanuprakash, learned counsel has put in appearance for respondent No.4 in Writ Petition No.3522/2022.

Re-list on 14.03.2022."

5. In Pursuance of the aforesaid orders, learned Additional Government Advocate has filed a status report dated 14.03.2022 inter alia stating that since the Committee members were not in station, they were not in a position to attend the meeting scheduled to be held on 11.03.2022 and that the next meeting

is scheduled to be held during the first week of April 2022 and accordingly, the matters may be adjourned.

6. Per contra, learned Senior Counsel appearing for the petitioners in the connected matters submit that despite specific directions issued by this Court, the respondents are unnecessarily protracting the proceedings on one pretext or the other. It is also pointed out that a perusal of the orders passed in the connected writ petitions by the learned Single Judge produced as Annexure-H in W.P.No.3522/2022 will clearly establish the said conduct on the part of the State as can be seen from the order dated 10.12.2021 passed in W.P.No.16153/2019, wherein the learned Single Judge issued the following directions:

"Heard the learned Senior counsel Smt. Lakshmi Iyengar appearing on behalf of the petitioner in W.P.No.11004/2020.

It is seen that petitioner has called in question the Government Notification issued by the Finance Department granting exemption under Section 4 (g) of the Karnataka Transparency in Public Procurement Act, 1999 (hereinafter referred to 'KTPP Act' for short) enabling them to purchase the food grains and pulses from Karnataka State Food and Civil Supplies Corporation Limited and other eatable from the Karnataka State Co-operative Consumers Federation Limited (Janatha Bazars).

The question is the said Notification issued under Section 4 (g) of the KTPP Act, it is submitted is violative of the conditions stipulated by the Hon'ble Apex Court.

On a reading of the Notification, it is seen that the said Notification has been issued by the competent authority thereby waiving the rigor of the enactment, namely, the Karnataka Transparency in Public Procurement Act, 1999 i.e., to invite tender and purchase materials.

In the opinion of this Court, there is nothing to demonstrate that these impugned proceedings, rather

the exemption under Section 4 (g) of the KTPP Act, compels the beneficiaries, namely, Department of Women and Child Development and Disabled and Senior Citizens, to purchase only from these sources. It only enables them to purchase from the named entities without referring to the rigmarole of tender. Despite the Notification, it is still open to the Department to devise the method of purchase of food grains. On perusal of the said Notification, prima facie, it does not appear that any of the petitioners' right stands abridged or vitiated.

Learned Senior counsel would submit that they have also filed an application seeking to amend the prayer in the writ petition in W.P.No.11004/2020.

Be that as it may. Prima facie, this Court is of the opinion that petitioners have no locus to question the Notification conferring the exemption on the Department. It cannot be a ground to presume that the Department would purchase from the named entity only. Be that as it may, the subsequent actions of the State also proves the same. In fact, the State has attempted to purchase or source the materials through private entities.

Learned AGA yet again seeks time. It was made known to learned AGA that the matter would be taken up and heard on merits on the last two dates. Yet again, a request for time is made. It is stated that the Chief Secretary has requested for a week's time finally to convey the stand of the Government.

Learned Senior counsel Sri. A. S. Ponnanna, appearing on behalf of the petitioner in W.P.No.15767/2021 submits that the petitioner in W.P.No.15767/2021 was the beneficiary of the Government Policy framed in the year 2020. That pursuant to the said policy, the petitioner had submitted his bids and he was declared successful bidder and an agreement was entered into in favour of the petitioner, but no work order was issued and ten days thereafter, the Government withdrew the earlier order dated 05.05.2021. He would submit that the same being issued without assigning any reasons, is unsustainable.

Learned AGA is put on notice that in the event, the State is unable to assist the Court on the next date

of hearing, officials shall be squarely responsible for any orders that may flow from this Court.

I.A.No.1/2021 is preferred in W.P.No.11004/2020 praying for amendment of the writ petition. Counsel for the respondents and learned AGA submit that they have no objection to allow I.A.No.1/2021. Accordingly, I.A.No.1/2021 is allowed.

Petitioner to amend the cause title and file amended writ petition by 16.12.2021, failing which, order passed today shall stand recalled automatically.

List on 17.12.2021."

7. As can be seen from the aforesaid orders, despite specific directions issued by this Court, the State Government is not taking any decision in the matter. It is also relevant to state that a perusal of the Government orders dated 15.05.2021 and 20.05.2021 produced as Annexures – K and L in W.P.No.3522/2022 which are also the impugned orders produced as Annexures-A and B in W.P.No.15767/2021 will clearly indicate that the same are non-speaking, cryptic, bald, vague and laconic orders which are passed without any application of mind and without assigning valid or cogent reasons as to why the State Government Circular dated 02.07.2020 and State Government order dated 05.05.2021 are sought to be withdrawn by passing the impugned orders. Under these circumstances, we are of the view that the impugned orders dated 15.05.2021 and 20.05.2021 are prima facie illegal, arbitrary, vitiated and violative of the principles of natural justice and the same deserve to be stayed.

8. In the result, we pass the following order:

(i) The Government orders dated 15.05.2021 and 20.05.2021 produced as Annexures – K and L in

W.P.No.3522/2022 (also produced as Annexures-A and B in W.P.No.15767/2021) are hereby stayed till the next date of hearing.

(ii) It is needless to state that upon staying of the aforesaid orders dated 15.05.2021 and 20.05.2021 by virtue of this order, the earlier order dated 05.05.2021 and earlier Circular dated 02.07.2020 would stand revived and the same shall continue to remain in force and be effective henceforth till the next date of hearing.

(iii) Fresh status report to be filed by the next date of hearing with respect to acceptance of the Technical Committee Report dated 19.08.2021.

Office objections / needful, if any, in the petitions to be complied with by the next date of hearing.

Re-list on 11.04.2022."

16. As per the aforesaid order, this Court directed fresh status report to be filed with regard to acceptance of the technical committee report dated 19.08.2021. In pursuance of the same that the State Government filed a status report dated 11.04.2022 bringing to the notice of this Court that except on 07.04.2022, the report and recommendations of the technical sub-committee has been accepted subject to certain modifications. Thereafter, this Court heard both parties on their rival claims and perused the material on record and proceeded further in the matter.

FINDINGS

17. We have given our anxious consideration to the rival submissions and perused the material on record.

18. As rightly contended by the learned Senior counsel appearing in W.P.No.11004/2020 and W.P.No.15767/2021, the impugned orders dated 15.05.2021 and 20.05.2021, whereby the circular dated 02.07.2020 and Government order dated 05.05.2021 respectively are sought to be withdrawn are illegal, arbitrary and vitiated and the same deserve to be quashed for the following reasons:-

(i) The material on record discloses that as per the ICDS scheme as well as the Central Government Norms dated 24.02.2009 and 2017 Rules and directions issued by the Apex Court pertaining to implementation of the scheme, the State government issued an order dated 24.02.2018 which was stayed by this Court. A perusal of the circular dated 02.07.2020 and Government order dated 05.05.2021 as well as the technical committee report dated 19.08.2021, the feasibility for the MSPTCs to tie up with BIS licenced / certified women self help groups such as the petitioners has been recognised, acknowledged and

recommended by the State Government bearing in mind the objectives of the scheme, Apex Court directions and the relevant norms / rules. It is therefore clear that the impugned orders dated 15.05.2021 and 20.05.2021 purporting to withdraw the circular dated 02.07.2020 and Government order dated 05.05.2021 are illegal, arbitrary and deserve to be quashed.

(ii) A perusal of the impugned orders dated 15.05.2021 and 20.05.2021 clearly indicates that the same are completely unreasoned, non-speaking, cryptic, laconic and arbitrary orders which have been passed unconditionally and unilaterally without assigning any reasons and without any application of mind, thereby being violative and contrary to the principles of natural justice and on this ground also, the impugned orders deserve to be quashed.

(iii) A perusal of the circular dated 02.07.2020 and Government order dated 05.05.2021 indicates that the same were issued in conformity and pursuant to the National Food Security Act r/w SNP Rules, 2017 as well as the directions issued by the Apex Court regarding implementation of the ICDS scheme which is meant for pregnant women, children, lactating mothers etc., and

consequently, withdrawal of the said circular and Government order by passing the impugned orders will substantially delay the implementation of the ICDS scheme in the State of Karnataka and as such, the impugned order deserve to be quashed.

(iv) It is also relevant to state that taking into account larger public interest involved in speedy implementation of the ICDS scheme, of which, pregnant women, children, lactating mothers etc., are the beneficiaries, it was absolutely essential that the circular dated 02.07.2020 and order dated 05.05.2021 are implemented and given effect to at the earliest without any delay and under these circumstances, issuance of the impugned orders seeking to withdraw the said circular and order will cause great prejudice and hardship to the beneficiaries of the ICDS scheme and consequently, the impugned orders deserve to be quashed on this ground also.

(v) Insofar as the defence of the State Government that the impugned orders were passed since the circular dated 02.07.2020 and the Government order dated 05.05.2021 were contrary to the directions issued by the Apex Court and failure on the part of the women self help

groups to comply with the requirements of the said circular and order is concerned, it is significant to note that the said circular dated 02.07.2020 and Government order dated 05.05.2021 indicate that all relevant and material facts including the directions of the Apex Court, the objectives sought to be achieved by the ICDS scheme, earlier government orders, notifications, rules, norms etc., have been considered and taken into account while issuing the said circular and order and consequently, the said contention of the respondents – State is devoid of merit and is liable to be rejected.

(vi) Insofar as the contention of the respondents – State that the women self help groups have not complied with the terms and conditions of the circular dated 02.07.2020 and Government order dated 05.05.2021 is concerned, the material on record discloses that as directed by this Court, the petitioners have filed affidavits along with documents which indicate that all the terms and conditions prescribed in the said circular and order have been fulfilled and complied with by the petitioners and as such, the said contention urged by the respondents – State is also liable to be rejected.

(vii) The respondents have completely failed to substantiate that the circular dated 02.07.2020 and Government order dated 05.05.2021 were contrary to the directions issued by the Supreme Court.

(viii) Insofar as the contention advanced by the respondents – State that Section 21 of the General Clauses Act enables them to withdraw the circular dated 02.07.2020 and order dated 05.05.2021, having regard to the peculiar and special facts and circumstances of the instant case including the aims and objects of the ICDS scheme, directions issued by the Apex Court and other proceedings, orders etc., prior to issuance of the same, respondents were not entitled to unilaterally and unconditionally issue the impugned orders under Section 21, which does not confer unfettered or unbridled powers on the State Government to withdraw its earlier order dated 05.05.2021, that too within a period of fifteen days and as such, even this contention of the respondents is liable to be rejected. It is well settled that exercise of power under Section 21 of the General Clauses Act is circumscribed, limited and restricted by the attending and surrounding facts and circumstances including the instant circular / order sought to be withdrawn and in the facts of the case on hand,

particularly having regard to the ICDS scheme which is beneficial in nature, effective and speedy implementation of the scheme was absolutely essential and consequently, the impugned orders are vitiated on this ground also.

(ix) The material on record also reveals that the already miserable situation and condition of the beneficiaries of the ICDS scheme had substantially and considerably deteriorated and worsened on account of the Covid-19 pandemic and on this charge also, the respondents were not justified in passing the impugned orders, which deserve to be quashed on this ground also.

(x) It is also significant to state that one M/s.Shri. Sharadamba Foods had preferred W.P.No.580/2020 seeking quashing of the circular dated 02.07.2020 and for other reliefs. The said petition having been dismissed by the learned Single Judge of this Court vide order dated 24.08.2020, the writ petitioner preferred an appeal in W.A.No.580/2020 which was also dismissed by the Division Bench vide order dated 21.01.2021. It is therefore clear that the legality, validity and correctness of the said circular dated 02.07.2020 has been upheld by this Court and the same has attained finality and become conclusive and consequently, this circumstance also indicates that the

impugned order dated 15.05.2021 seeking to withdraw the said circular dated 02.07.2020 is illegal, arbitrary and deserves to be quashed.

(xi) As stated supra, W.P.No.3522/2022 is a PIL which was preferred on 14.02.2022 seeking several directions for implementation of the ICDS Scheme. In this context, as rightly contended by the learned counsel for the petitioner, the impugned orders dated 15.05.2021 and 20.05.2021 which proceed on the basis that some of the women self help groups do not meet the eligibility criteria or the conditions in the circular dated 02.07.2020 or order dated 05.05.2021 would not be a ground to repeal the entire frame work and consequently, the impugned orders would not only be disproportionate but also irrational and violative of Article 14 of the Constitution of India and the same deserves to be quashed on this ground also.

(xii) So also, learned counsel for the petitioner is right in his contention that the power of the State Government under Section 21 of the General Clauses Act is circumscribed, restricted and limited by the constitutional provisions, in particular, Articles 14 and 21 of the Constitution of India; in this context, it is significant to note that consequent upon issuance of the impugned orders

dated 15.05.2021 and 20.05.2021, the circular dated 02.07.2020 and order dated 05.05.2021 are sought to be withdrawn, thereby denying more than 50 lakhs beneficiaries in Karnataka, the right to nutritious food, particularly to pregnant women, lactating mothers and children whose fundamental rights under Article 21 of the Constitution of India stands violated and on this score also, the impugned orders being arbitrary and capricious under Article 14 of the Constitution of India deserve to be quashed in view of the decisions of the Apex Court in the case of *Shayara Bano vs. Union of India*[2] and *Dipika Jagatram Sahani vs. Union of India & others*[3].

(xiii) It is needless to state that upon quashment of the impugned orders dated 15.05.2021 and 20.05.2021, the earlier circular dated 02.07.2020 and order dated 05.05.2021 which have been referred to in the technical committee report dated 19.08.2021 would stand revived and the same would necessarily have to be implemented and given effect to by the State Government. Under these circumstances, though several directions are sought for by the petitioner in this petition, in view of the quashment of

[2] (2017) 9 SCC 1
[3] W.P.(Civil) 1039 / 2020 (PIL)

the impugned orders dated 15.05.2021 and 20.05.2021, this petition deserves to be allowed directing the respondents – State to give effect to and implement the circular dated 02.07.2020 and order dated 05.05.2021 in the light of the report of the technical committee dated 19.08.2021 by taking necessary steps forthwith in this regard immediately without any further delay.

19. In the result, we pass the following:-

ORDER

(i) All the writ petitions are hereby allowed;

(ii) The impugned Government orders dated 15.05.2021 and 20.05.2021 passed by the respondents – State are hereby quashed.

(iii) The respondents – State are directed to forthwith implement and give effect to the circular dated 02.07.2020 and Government order dated 05.05.2021 issued and passed by the State Government immediately without any further delay.

(iv) The State Government is also directed to take necessary steps to forthwith implement and give effect to the Integrated Child Development Services Scheme (ICDS Scheme) immediately without any further delay, bearing in

mind the Central Government Norms dated 24.02.2009 and Rules dated 06.10.2017 and in the light of the report of the technical committee dated 19.08.2021 as well as all other applicable Government Rules, Regulations, Norms, Orders, Circulars etc., in this regard.

(v) It is directed that the supply of food products, without following specifications and standards as per Revised Nutrition and Feeding Norms shall be suspended with immediate effect and supply of quality nutrition as per Government order dated 05.05.2021 and circular dated 02.07.2020 shall be ensured by the respondents, by executing the agreements as specified in the Government order dated 05.05.2021.

(vi) In order to ensure uninterrupted quality supply of the menu of food items, the respondents are directed that, if the parties of the contract (Agreements) as per Government order 05.05.2021 fail to perform their obligation, the final products as specified in the contract (Agreements) shall be procured at a competitive rate from any eligible entities as specified vide circular dated 02.07.2020 and supply the same to Anganawadi Centres in the interest of the beneficiaries.

(vii) The State Government is directed to submit a compliance report to this Court within a period of three months from today.

(viii) Liberty is reserved in favour of the petitioner in W.P.No.3522/2022 (PIL) to seek revival of the said petition, if the occasion so arises.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Srl.