

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 857 OF 2015

IN THE MATTER OF:

SWARAJ ABHIYAN

...PETITIONER

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

WRITTEN NOTE ON BEHALF OF PETITIONER

To,

The Hon'ble Chief Justice of India

And his companion Justices of the Supreme Court of India

The humble application of the applicant above named

1. That the Petitioner is filing the instant writ petition under Article 32 of the Constitution of India seeking intervention of this Hon'ble Court for providing necessary relief and compensation to farmers and other classes of citizens suffering from the harsh effects of second consecutive drought, further compounded by failure of post-monsoon rains in most parts of the country, which has resulted in severe livelihood crisis, mass migrations, severe malnutrition, starvation deaths, fodder crisis for cattle, increasing debt-burden on farmers leading to escalation in farmers' suicides. The situation has deteriorated since the filing of this petition.
2. That the Union and the States have been negligent in their constitutional duty to respond to this humanitarian crisis in the manner required by the nature of crisis and prescribed

by the Manual of Drought Management of the Government of India, as is clear from their submission to this Court in response to the present petition.

3. That in view of the aforesaid and the justification provided below, this Hon'ble Court may be pleased to issue the following direction to the Union and States, limited to rural areas declared to be drought affected by the respective governments and for a limited period upto October 2016 or till the impact of drought is mitigated:

4. That, all States may be directed to ensure food security of the drought affected by making provisions for:

a. Food-grains as prescribed for "priority households" in the National Food Security Act (5 Kg. per person per month) for all the households irrespective of their category, provided that entitlements for Antyodaya householders any additional entitlements announced by any government shall not be adversely affected by this order. The households that do not have a ration card or family members left out from existing ration cards shall be issued special and temporary coupons for this purpose on production of ADHAR or Election Photo Identity Card or any other proof of residence accepted by the government.

b. Additional 2 kg of daal per household (or 400 gm. per person) per month @Rs. 30 per kg and 1 litre of edible oil per household (or 200 gm per person) per month @

Rs 25 per litre to be made available through the Public Distribution System, as is being done in Tamil Nadu. Copy of the details given by Tamil Nadu under the Public Distribution system from the government website <http://www.tncsc.tn.gov.in/html/pds.htm> has been annexed as **ANNEXURE-N1**

c. Additional one egg (or, failing that, 200 gm of milk) per day in the Mid-Day Meal scheme in the rural schools.

5. That Union of India may be directed to make funds available to the drought affected states for employment under MNREGA without any cap or delay and the States may be directed to initiate immediately work demand application camps under MNREGA in all panchayats and to keep at least one MNREGA work open at all times in every village

6. That States may be directed to:

a. Ensure transparent and timely payment of Crop Input Advance to the drought affected farmers as per the norms laid down by the Ministry of Home Affairs latest by 31st March 2016. Copy of the MHA circular(32-7/2014-NDM-1 dated 8 April 2015 has been annexed as **ANNEXURE-N2**.

b. Establish Fodder Banks as per the revised guidelines of the Centrally Sponsored Fodder and Feed Development Scheme. Copy of the letter of Ministry of Agriculture, Department of Animal Husbandry, Dairy and Fisheries, F. No. 2-39/2012/AHT/FF, dated 26

September 2012, has been annexed as **ANNEXURE-N3**, and follow the Union government's Advisory on measures to be taken to increase the availability of fodder. Copy of Ministry of Agriculture, Department of Animal Husbandry, Dairying and Fisheries circular, dated 29 May 2015 has been annexed as **ANNEXURE-N4**; Union of India may be directed not to put financial cap on support for Fodder Bank component.

c. Hold meetings of State Level Bankers' Committees for restructuring of crop loans and other outstanding loans of drought affected farmers as per the RBI guidelines (RBI/2014-15/512 FIDD No. FST.BC.52/05.10.001/2014-15 dated 25 March 2015. Copy of the RBI guidelines (RBI/2014-15/512 FIDD No. FST.BC.52/05.10.001/2014-15 dated 25 March 2015 has been annexed as **ANNEXURE-N5** and report the relief granted.

d. Take all necessary measures to tackle water crisis, especially any shortage of drinking water as per the Manual of Drought Management.

7. That States of Bihar, Gujarat and Haryana may be directed to immediately declare drought in areas that meet the criteria laid down by the governments or in the Manual of Drought Management

8. That the Hon'ble Court may appoint independent and empowered Commissioners to oversee the implementation of

these orders and make any further suggestions for mitigation of the misery of drought affected people. On the same lines as order of the Supreme Court appointing Commissioners in WPC. 196 of 2001, Copy of the order in WPC. 196/2001 have been annexed as **ANNEXURE-N6**.

NOTES AND JUSTIFICATIONS FOR EACH PRAYER:

9. Universalization of PDS (para 4a): this step is necessary because the existing PDS system leaves out a significant proportion of needy households for various reasons:

- a. There are widespread reports of large number of people in villages without any ration card or NFSA entitlement slips; those households left out tend to be poor and vulnerable.
- b. Classification of "BPL/APL" households in the previous systems (that continues to operate in UP and Gujarat and still persist in many states that have transited to NFSA) is notoriously unreliable (only 42% of the poorest households possessed BPL card in Bundelkhand in UP in 2015) or "priority/non-priority" that operate in states where NFSA is fully implemented.
- c. In such an emergency situation, the surest way to reach the needy is universal coverage. Voter I-Cards (EPIC) and ADHAR help achieve this objective since these are more frequently available with the poor and

needy and could help cover those who are left out of other identifications.

- d. We propose to limit this benefit only for the most needy population: a) only rural areas in the districts/tehsil/blocks officially declared to be drought affected; b) only for the period till the effects of drought are neutralised. The period could be suggested by the Commissioners appointed by the Hon'ble Court.

10. Additional provision of daal and edible oil in PDS (para 4b):

- a. Daal is the principle source of high quality protein for vegetarians in India. *Nutrient Requirements and Recommended Dietary Allowances for Indians*, National Institute Of Nutrition Indian Council of Medical Research, 2009 [ICMR] recommends that protein from cereals must be supplemented with pulses (legume protein). Its recommended high protein diet contains about 75 gm. pulses per person per day, but "Low cost Indian vegetarian diet" for an adult is 40 gms of pulses per person per day (ICMR, p. 112) which works out to 1.2 kg per person per month (about 6 kg per month per household).
- b. Actual consumption of pulses has been lower than this minimum recommendation. The average consumption in rural India reported by National Sample Survey for 2011-12 was 783 gm per person per month (about 4

kg per household per month). The drought has had a drastic effect on this already dangerously low consumption of pulses. Due to crop failure, the farmers and agricultural labour did not get their usual share of pulses. The sharp increase in the price of pulses made it prohibitive for them to buy. Swaraj Abhiyan's survey in Bundelkhand revealed that 39% families did not consume any daal in the 30 days prior to the survey. This indicates a nutritional emergency which could have long term consequences for public health, particularly for children.

- c. This is why we propose 2 kg daal per household per month, one-third of the minimum daal intake recommended for low cost vegetarian diet, for the drought affected population for a short period. This amount of daal (1 kg of Urad and 1 kg of Toor/Arhar per household per month) is already being offered by Tamil Nadu under its Special Public Distribution system.
- d. The price recommended here (Rs. 30 per kg) is the same as existing in Tamil Nadu. This balances the dual requirement of affordability for the distressed poor while keeping government's subsidy under check.
- e. Similarly, the minimum requirement of "visible fat in Indian adults" has been fixed at 20-40 gm. per person per day (ICMR, p. 132) which works out to a minimum

of 600 gm per person per month (or about 3 kg per household per month). Here again we propose one-third of this bare minimum as additional quota through the PDS for the drought affected areas for a limited period at the existing price in Tamil Nadu.

11. Egg (or milk) as part of Mid-Day Meal scheme (para 4c)

- a. School going children need quality nutrition for which egg and milk are critical. In drought-affected areas, besides general decline in quality of food, shortage of fodder for cattle has led to widespread selling of cattle and reduction in their milk. Therefore it is critical to supplement the mid-day meal for school going children so that it can partly make up for nutritional deficiency at home. Hence the proposal for one egg per day. Egg has the advantage that it cannot be adulterated easily. If it is not possible to provide egg, or it is not acceptable to student or local community, then 200 gm of milk can be provided.
- b. Egg is already being provided in the MDM menu in 11 states, but not in the currently drought affected states of Karnataka, Maharashtra, M.P., Chhattisgarh, U.P., Haryana and Gujarat. Some states like U.P and Gujarat are offering milk on selective basis. Our plea is to extend it to all rural schools in the drought affected areas.

12. Use of MNREGA for drought relief (para 5): although implementation of MNREGA is legally binding, the scheme has not been used effectively for drought relief.

a. Online official statistics show that there is no appreciable increase in employment offered under MNREGA in drought-affected states this year, compared to the employment offered in non-drought years like 2012-13 and 2013-14. Copy of the data from MNREGA website for the years 2012-13 and 2013-14 has been annexed as **ANNEXURE-N7**.

b. Many states have complained about an informal ceiling on MNREGA funds that prevents them from using this at this moment; they need to be assured that MNREGA funds will flow without any interruption.

c. The existing procedure of accessing MNREGA requires demand generation from the job-seekers through Panchayat. This needs to be changed during drought time, since there is presumption of demand for employment. The states may be asked to hold MNREGA applications camps where demand can be ascertained and works sanctioned on the same lines as ordered by UP government for select districts.

13. Distribution of Input subsidy (Para 6a):

a. This is a form of crop loss compensation from the State Disaster Relief Fund or the National Disaster

Relief Fund. The Union government has laid down norms for payment in its circular of Ministry of Home Affairs (32-7/2014-NDM-1 dated 8 April 2015). The circular provides for rates of input subsidy for different kinds of landholdings where crop loss is 33% and above.

- b. Experience of input subsidy shows that the payment takes a long time, even up to a year, and is subject to arbitrariness, discrimination and massive corruption at the local level (Lived Anamoly, Assessment Report by Centre for Science and Environment, 2015). Hence the plea for quick and transparent disbursal before the end of the current financial year.

14. Fodder Bank and Fodder Availability enhancement (para 6b):

- a. Union of India had included a new component on "Establishment of Fodder Bank" in the Centrally Sponsored Fodder and Feed Development Scheme (CSFFDS), and the National Mission for Protein Supplements (NMPS), for the areas notified as drought affected in 2012. It is requested that the same benefits be extended to all the drought affected areas in the country this year as well and that there be no cap on support for this component by the Union of India.
- b. Union of India had, in anticipation of drought, issued detailed Advisory to all the states on measures to be

taken on fodder availability during the drought period. Since most states did not take these steps, the Court may consider directing them to comply with these now.

15. **Crop loan restructuring and relief (para 6c):** State governments can order various reliefs for the drought affected farmers, including deferment of various arrears and restructuring of loans by rural banks. But the restructuring of loans by nationalised banks requires the involvement of State Level Bankers Committee as per the guidelines issued by the Reserve Bank of India. While these meetings have taken place in most states following the drought, restructuring of agricultural loans has not taken place as per the guidelines. This needs to be monitored by the Hon'ble Court with the help of independent Commissioners.

16. **Emergency measures for drinking water supply (para 6d):** The Manual for Drought Management details measures to be taken by the Government for managing water resources in the drought affected areas including policy for use of reservoir storage (p. 71), repair and augmentation of all existing water supply schemes (p. 71) and other emergency measures for supply of drinking water (pp. 75-77). The States may be directed to follow these.

17. Declaration of drought in Gujarat, Bihar and Haryana

(para 7): A cursory glance at rainfall deficiency in the ten states that have declared drought and the three states that have not shows little difference between these two categories. Bihar and Haryana have experienced more severe rainfall shortage than most states that have declared drought. Some districts in Gujarat have experienced very severe rainfall deficit. Copy of the rainfall deficiency chart has been annexed as **ANNEXURE-N8**.

18. Appointment of independent empowered

Commissioners (para 8): The monitoring of the directions prayed for needs an independent set of Commissioners who report directly to this Hon'ble Court and may be empowered to carry out routine monitoring. The Court had appointed two Commissioners in a related case involving right to food in WPC. 196 of 2001.

a. Shri N. C. Saxena, IAS (rtd), Ex-Member, Planning Commission

b. Shri Harsh Mandar, ex-IAS, Director, Centre for Equity Studies

Copy of the Bio-data of court Commissioners in WPC.196 of 2001 has been annexed as **ANNEXURE-**

N9.

Through:

(Prashant Bhushan)
(Counsel for the Petitioner)