

PEOPLE'S UNION FOR CIVIL LIBERTIES

v.

UNION OF INDIA AND ORS

NOVEMBER 20, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Maternity Benefit:

National Maternity Benefit Scheme (NMBS)—Modification of—Janani Suraksha Yojna (JSY) Scheme providing for further maternity benefit to women—Introduction of—Held: NMBS Scheme to continue—Union of India and all State Governments/Union Territories to ensure that all Below Poverty Line (BPL) pregnant women get cash assistance of Rs.500/- per birth irrespective of age of the women and number of children—Schemes should be advertised regularly so that intended beneficiaries become aware of the Scheme and get the benefit of the Scheme—Money ear-marked for the Scheme should not be utilized for any other purpose—Taking into consideration all these aspects, if need be, necessary amendment in the Scheme could be made—Directions issued.

Respondent No.1-Union of India filed an application seeking permission to modify the National Maternity benefit Scheme (NMBS) and to introduce a new Scheme called the Janani Suraksha Yojana (JSY). Another application was filed by the petitioner questioning legality of the discontinuation of the benefit under the NMBS due to introduction of JSY Scheme. This Court vide its order dated 27.4.2004 directed that no Scheme...in particular...National Maternity Benefit Scheme shall be discontinued or restricted in any way without prior approval of the Court. Later, by order dated 9.5.2005 this Court directed that Additional Solicitor General to place on record further material in the form of affidavit to effectively implement the new Scheme sought to be introduced. It was also directed that the Commissioner shall examine

A the matter in depth and file a report. According to the Union of India, JSY Scheme was introduced to put a premium on the willingness of poor women to go in for institutional delivery instead of home delivery.

B Pursuant to the order of this Court dated 9.5.2005 the Central Government, after discussions with the Commissioner, senior officials, took a decision to modify the JSY Scheme to continue benefits of NMBS and also to improve upon such benefits for non-institutional delivery, where the woman chooses to deliver her baby at home and submitted a report. The report submitted by the Government shows that the NMBS
C Scheme has virtually not taken off in many States and also benefits under the JSY Scheme has been disproportionately given to only those women who have had institutional deliveries.

Disposing of I.A. Nos. 37 of 2004 and 54 of 2005, the Court

D HELD: 1.1. On consideration of the submissions of the petitioner and Union of India and various aspects and the material data placed on record, following directions are issued:

E (i) The Union of India and all the State Governments and the Union Territories shall (i) continue with the NMBS and (ii) ensure that all BPL pregnant women get cash assistance 8-12 weeks prior to the delivery.

(ii) The amount shall be Rs.500/- per birth irrespective of number of children and the age of the woman.

F (iii) All concerned Governments are directed to regularly advertise the revised scheme so that the intended beneficiaries can become aware of the Scheme.

G (iv) The Central Government shall ensure that the money earmarked for the Scheme is not utilized for any other purpose. The mere insistence on utilization certificate may not yield the expected result.

H (v) It shall be the duty of all the concerned to ensure that the benefits of the Scheme reach the intended beneficiaries. In case, it is noticed that there is any diversion of the funds allocated for the Scheme,

such stringent action as is called for shall be taken against the erring officials responsible for diversion of the funds. A

(vi) The Union of India, State Governments and the Union Territories shall file affidavits indicating the total number of births in the State, number of eligible BPL women who have received the benefits, number of BPL women who had home/non-institutional deliveries and have received the benefit, number of BPL women who had institutional deliveries and have received the benefit. [Para 14] [321-H; 322-A-G] B

2. It would be necessary to take note of certain connected issues have relevance. It seems from the Scheme that irrespective of number of children, the beneficiaries are given the benefit. This in a way goes against the concept of family planning which is intended to curb the population growth. Further the age of the mother is a relevant factor because women below a particular age are prohibited from legally getting married. The Union of India shall consider this aspect while considering the desirability of the continuation of the Scheme in the present form. After considering the aforesaid aspects and if need be, necessary amendments may be made. [Para 15] [322-H; 323-A-B] C D

CIVIL ORIGINAL JURISDICTION : I.A. Nos. 34, 35, 37, 40, 49, 54, 58, 59, 60, 61, 62 & 77. E

In Writ Petition (Civil) No. 196 of 2001.

(Under Article 32 of The Constitution of India)

With Suo Moto Contempt Petition (C) No. 128 of 2007 in W.P. (C) No. 196 of 2001. F

IN RE: Chief Secy. State of Bihar & 4 Ors.

Mohan Parasaran, A.S.G., Jayshree Anand, AAG., Colin Gonsalves, T.S. Doabia, Jaideep Gupta, Anil Diwan, Vipin M. Benjamin, Jai Singh, Jyoti Mendiratta, J.S. Attri, Vivek Singh Attri, D.S. Mahra, Sushma Suri, B.K. Sood, R.C. Kathia, Kh. Nobin Singh, Tarun Jamwal, Dr. Kailash Chand, Venkateshwara Rao, Anumolu, Ravindra Keshvrao Adsure, H

- A Gautam Godara, K.K. Mahalik, Sunita Sharma, Jana Kalyan Das, Hemantika Wahi, Shivangi, B.V. Balram Das, Indra Sawhney, Aruneshwar Gupta, Naveen Kumar Singh, Shashwat Gupta, Riku Sarma (For Corporate Loaw Group), Rachana Srivastava, S.V. Deshpande, Manoj Saxena, Rajnish Kr. Singh, Rahul Shukla, T.V. George, Kamini Jaiswal,
- B Ranjan Mukherjee, S.C. Ghosh, V.G. Pragasam, S. Joseph Aristotle, Prabu Ramasubramanian, Jatinder Kumar Bhatia, Ravi Prakash Mehrotra, Gopal Singh, B.S. Banthia, Tara Chandra Sharma, Neelam Sharma, B.B. Singh, Kumar Rajesh Singh, Anil Shrivastav, Ritu Raj, Gopal Prasad, Prakash Shrivastava, Ramesh Babu M.R., D. Bharathi Reddy, Amit Kr.
- C Chawla, Sanjay R. Hedge, U. Hazarika, Satya Mitra, Sumita Hazarika, R.K. Maheshwari, A. Subhahini, Uday B. Dube, Kuldip Singh, Prashant Kumar, Vishwajit Singh, Anis Suhrawardy, Ashok Bhan, S.W.A. Qadri Jubair Ahmed Khan, K.V. Mohan, Manish Sharma, Suparna Srivastava, Nidhi Minocha, Rajesh Srivastava, Anuvrat Sharma, K.N.
- D Madhusoodhanan, R. Sathish, R.C. Kaushik, Pradeep Misra, G. Prakash, Malvika Trivedi, Anil Kumar Jha, Gopal Singh, Sibho Shankar Mishra, A. Mariarputham and Aruna Mathur (for Arputham Aruna & Co.) for the Appearing parties.

E The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. By this order two IAs. No.37 of 2004 and No.54 of 2005 stand disposed of. IA No.37 of 2004 is an application by the Union of India for permission to modify the National Maternity Benefit Scheme (in short 'NMBS') and to introduce a new scheme called the Janani Suraksha Yojana (in short 'JSY'). IA No.54 of 2005 is an application by the petitioner questioning legality of the discontinuation of the benefit under the NMBS due to introduction of JSY. By order dated 27.4.2004 this Court directed as follows:

G "No Scheme...in particular....National Maternity Benefit Scheme shall be discontinued or restricted in any way without prior approval of the Court."

2. Again by order dated 9.5.2005 this Court directed as follows:

H "By LA 37, permission is sought to modify The National Maternity

Benefit Scheme (NMBC) and to introduce a new scheme namely A
Janani Suraksha Yojana (JSY). Whereas in IA 54, the prayer is
that the Scheme should not be modified by reducing, abridging or
qualifying in any way the social assistance entitlements created
under the original scheme of NMBS for expecting BPL mothers,
including rash entitlement of Rs.500/- provided therein. We have B
requested learned Additional Solicitor General to place on record
further material in the form of affidavit to effectively implement the
new Scheme sought to be introduced. The further material shall
include the approximate distance of Public Health Centre from the
residential complexes and the facility of transportation etc. The C
Commissioner shall also examine the matter in depth and file a
report. The response to the application may be filed within eight
weeks. Meanwhile, the existing National Maternity Benefit Scheme
will continue.”

3. The government set a numerical ceiling of 57.5 lakh beneficiaries D
as the annual target for NMBS. However, the number of beneficiaries
under JSY in 2006-07 was only 26.2 lakh i.e. 45.5% and in the year
2005-06 this was as low as 5.7 lakh i.e. 10%. While there has been an
improvement in the last one year, the coverage under this scheme is still E
way below the target number of women to be covered by the NMBS.

4. According to the Union of India the JSY was introduced to put
a premium on the willingness of poor women to go in for institutional
delivery instead of home delivery. But it was recognized that in States with F
lower institutional delivery rates, one of the reasons for low performance
have been lesser availabilities of facilities in the Health Centres, which act
as disincentive for the poor illiterate women to seek the services.

5. Pursuant to the order of this Court dated 9.5.2005 the
Commissioner had prepared a report. G

6. After discussions with the Commissioner appointed by this Court,
senior officials, the Central Government took a decision to modify the JSY
Scheme to continue benefits of NMBS and also to improve upon such
benefits for non-institutional delivery, where the woman chooses to deliver H

A her baby at home. In this connection, a letter dated 13.7.2006 was written to the Commissioner by the Secretary health and Family Welfare under the amended JSY. The Low Performing States and High Performing States were defined as follows:

B “4.1 The scheme focuses on the poor pregnant woman with special dispensation for states having low institutional delivery rates namely the States of Uttar Pradesh, Uttaranchal, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Assam, Rajasthan, Orissa and Jammu and Kashmir. While these states have been named as Low Performing States (LPS), the remaining states have been named as High Performing States (HPS).”

C 7. The table below gives details of the number of beneficiaries under JSY (all these would have received the Rs.500/- under NMBS irrespective of place of delivery) vis-a-vis the annual targets set by the Government of India for NMBS.

Percentage of Eligible Beneficiaries Covered Under NMBS

E	State/UT	No. of Women eligible for NMBS	No. of Beneficiaries in 2006-07	Percentage of Eligible Beneficiaries covered
	Andhra Pradesh	296033	457000	154.4
F	Rajasthan	280123	387648	138.4
	J & K	50494	57798	114.5
	Assam	182894	183231	100.2
	Orissa	264249	227204	86.0
G	Madhya Pradesh	472840	401184	84.8
	Mizoram	4429	3330	75.2
	Chattisgarh	148876	74778	50.2
H	Uttaranchal	37117	18614	50.1

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West Bengal	425520	199000	46.8	A
Tamil Nadu	301676	136091	45.1	
Karnataka	289339	81152	28.0	
A & N Islands	2295	600	26.1	
Kerala	107602	27683	25.7	B
Bihar	732891	171352	23.4	
Puducherry	6446	1315	20.4	
Gujarat	212845	42373*	20.0	
Punjab	41297	8276	20.0	C
Maharashtra	529777	97390	18.4	
Tripura	20601	3203	15.5	
Manipur	11112	1684	15.2	D
Goa	3188	483	15.1	
Lakshadweep	333	42	12.6	
Sikkim	4598	446	9.7	
Meghalaya	22768	2031	8.9	E
Himachal Pradesh	29222	2508	8.6	
Uttar Pradesh	1073341	71456	6.7	
Haryana	92856	3294	3.5	
D & N Haveli	3850	76	2.0	F
Chandigarh	2108	0	0.0	
Delhi	42447	20	0.0	
Arunachal Pradesh	10399	NR	NR	
Daman & Diu	632	NR	NR	G
Jharkhand	208592	NR	NR	
Nagaland	12763	NR	NR	
Total-India	5925554	2618889	44.2	H

A 8. The scheme as the details above go to show has virtually not taken off in many states. Delhi has given the benefit under the NMBS to only 20 women in 2006-07, while in Chandigarh the number of beneficiaries is 0. In Sikkim, Meghalaya, Himachal Pradesh, Uttar Pradesh, Haryana and Dadar & Nagar Haveli less than even 10% of the eligible beneficiaries B have been covered under the NMBS. Except for the states of Andhra Pradesh, Jammu & Kashmir, Rajasthan, Madhya Pradesh, Assam, Orissa and Mizoram where more than 75% of the eligible beneficiaries seem to have been reached out to, the performance of this scheme has been very poor in all other states.

C Indicated below are percentage of Home delivery figures

State/UT	% Home delivery reported out of JSY beneficiaries (2006-07)	% Home delivery in the State (NFHS 3)
D Assam	4.4	77
Madhya Pradesh	0.9	70
E Haryana	0.0	61
Rajasthan	13.5	68
Manipur	0.0	51
F Delhi	0.0	39
Meghalaya	41.4	70
Orissa	33.3	61
Chattisgarh	59.2	84
G Sikkim	44.8	51
Tamil Nadu	5.7	10
Bihar	75.9	78

H

Karnataka	37.6	33	A
Kerala	5.2	0	
Mizoram	44.1	35	
Tripura	60.5	51	B
Uttar Pradesh	90.2	78	
Uttaranchal	96.9	64	
Punjab	82.9	47	
Maharashtra	86.0	34	C
Goa	67.9	7	

9. In the States of Madhya Pradesh, Haryana, Manipur and Delhi there are almost no JSY beneficiaries who had a home delivery. This indicates that in these States the scheme's focus continues to be only on institutional deliveries and not all deliveries. Even in the States of Assam, Rajasthan, Meghalaya, Orissa and Chhattisgarh the JSY has been disproportionately given to only those who have had institutional deliveries.

10. At this juncture, the financial performance needs to be noted.

11. The Janani Suraksha Yojana is a centrally-sponsored scheme with the centre providing 100% of the funds. Some States e.g. Andhra Pradesh make their own contribution thereby increasing the amount of cash assistance for institutional deliveries. Tamil Nadu has introduced a separate scheme for providing mothers with Rs.1000/- per month for six months i.e. three months prior to the delivery and three months after. Given below are the details of allocation and utilization of the funds provided by the Central Government.

12. Out of the funds provided for JSY for 2006-07, about 71.2% of the funds allocated have been utilized in the year 2006-07.

A Utilization of funds allocated by JSY

Rs. In lakhs			
Name of the State/UTs	Funds released in 2006-07	Expenditure Reported by States	% Utilization
B Andaman & Nicobar Island	10.00	1.99	19.9
C Andhra Pradesh	4073.20	4550.00	111.7
C Arunachal Pradesh	26.20	0.31	1.2
Assam	1300.00	1331.32	102.4
Bihar	610.00	190.00	31.1
D Chandigarh	5.23	0.00	0.0
Chattisgarh	513.00	516.55	100.7
D & N Haveli	9.17	0.73	8.0
E Daman & Diu	5.23	0.00	0.0
Delhi	65.49	0.20	0.3
Goa	7.86	3.38	43.0
F Gujarat	851.85	185.56	21.8
F Haryana	350.00	39.11	11.2
Himachal Pradesh	100.00	20.66	20.7
J & K	138.33	123.84	89.5
G Jharkhand	392.89	64.67	16.5
Karnataka	916.00	594.02	64.8
Kerala	511.94	284.45	55.6
H Lakshadweep	4.38	0.31	7.1

Madhya Pradesh	4261.00	2482.00	58.2	A
Maharashtra	785.79	209.07	26.6	
Manipur	78.57	13.45	17.1	
Meghalaya	39.29	42.75	108.8	B
Mizoram	78.57	37.27	47.4	
Nagaland	65.49	0.00	0.0	
Orissa	1600.001571.	3198.2		C
Pondicherry	19.64	6.10	31.1	
Punjab	145.37	56.84	39.1	
Rajasthan	4085.00	3056.35	74.8	
Sikkim	13.10	7.46	56.9	D
Tamil Nadu	1827.00	1441.00	78.9	
Tripura	117.86	43.70	37.1	
Uttar Pradesh	1375.00	436.80	31.8	E
Uttranchal	79.56	56.06	70.5	
West Bengal	1678.99	1233.67	73.5	
Total	26141.00	18600.93	71.2	F

13. Looking at the State-wise break-up it is seen that states like Delhi, Nagaland and Arunachal Pradesh, and union territories of Chandigarh and Daman & Diu have not at all utilized the funds allocated to them for the purpose of JSY. Among other states, Manipur, Jharkhand and Haryana utilized less than 20% of the funds released to them. Only 10 states spent more than 70% of the funds allocated to them under JSY.

14. At the time of hearing of the applications, learned counsel for the petitioner and the Union of India highlighted various aspects. Considering the submissions and the material data placed on record we

A direct as follows:-

(a) The Union of India and all the State Governments and the Union Territories shall (i) continue with the NMBS and (ii) ensure that all BPL pregnant women get cash assistance 8-12 weeks prior to the delivery.

(b) The amount shall be Rs.500/- per birth irrespective of number of children and the age of the woman.

(c) The Union of India, State Governments and the Union Territories shall file affidavits within 8 weeks from today indicating the total number of births in the State, number of eligible BPL women who have received the benefits, number of BPL women who had home/non-institutional deliveries and have received the benefit, number of BPL women who had institutional deliveries and have received the benefit.

(d) The total number of resources allocated and utilized for the period 2000-2006.

(e) All concerned Governments are directed to regularly advertise the revised scheme so that the intended beneficiaries can become aware of the scheme.

(f) The Central Government shall ensure that the money earmarked for the scheme is not utilized for any other purpose. The mere insistence on utilization certificate may not yield the expected result.

(g) It shall be the duty of all the concerned to ensure that the benefits of the scheme reach the intended beneficiaries. In case it is noticed that there is any diversion of the funds allocated for the scheme, such stringent action as is called for shall be taken against the erring officials responsible for diversion of the funds.

15. At this juncture it would be necessary to take note of certain

connected issues which have relevance. It seems from the scheme that A
irrespective of number of children, the beneficiaries are given the benefit.
This in a way goes against the concept of family planning which is intended
to curb the population growth. Further the age of the mother is a relevant
factor because women below a particular age are prohibited from legally B
getting married. The Union of India shall consider this aspect while
considering the desirability of the continuation of the scheme in the present
form. After considering the aforesaid aspects and if need be, necessary
amendments may be made.

16. The IAs are accordingly disposed of. C

S.K.S.

Interlocutory Applications disposed of.