

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7124 of 2020

Court on its own motion on the basis of news item titled “School shut, no mid-day meal, children in Bihar village back to work selling scrap” published in the Indian Express, dated July 6, 2020.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. The Department of Health and Family Welfare through its Principal Secretary, Government of Bihar, Patna
3. The Department of Education, Government of Bihar through its Principal Secretary.

..... Respondent/s

Appearance :

For the Petitioner/s : Ms. Chhaya Kriti, Amicus Curiae
For the Respondent/s : Mr. Lalit Kishore, Advocate General
Mr. Vikash Kumar, S.C. 11
Dr. K.N. Singh, ASG.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18 -09-2020

1. The story of the children of the State of Bihar cannot be one of schools to scraps. With this view, this Court took suo moto cognizance of a news item titled, “School shut, no mid-day meal, children in Bihar village back to work selling scrap”¹ published in the Indian Express, Delhi Edition, dated July 6, 2020.

¹Dipankar Goshe, 'School shut, no mid-day meal, children in Bihar village back to work selling scrap', *The Indian Express* (New Delhi, 6 July 2020) available at <https://indianexpress.com/article/india/school-shut-no-mid-day-meal-children-in-bihar-village-back-to-work>



2. On July 6, 2020, this Court, while issuing notice, *inter alia* observed as under:

“4. The news article highlights an issue of public importance and relevance. It concerns the welfare of children hailing from the lower most strata of the society; the marginalized, downtrodden, socially and economically deprived section of the society. Adequate nutrition is essential for school children’s health and wellbeing. Children are kept away from schools and Anganwadi centres to restrict the spread of COVID 19. As a result, many nutrition deficient children who rely heavily on government schemes to meet their daily nutrition requirements have been put at risk. The disruption and closure of schools across the State will have a negative impact not just on children's right to education but also in specific cases, their right to adequate food.

5. As per Article 47 of the Constitution, the State has a duty to raise the level of nutrition and standards of living of its people and improve public health. Section 5 of the National Food Security Act 2013 provides for nutritional support to children by way of meals at Anganwadi centres and schools run by the Government. The constitutional and statutory mandate needs implementation in letter and spirit.

6. Accordingly, the relevant issue that arises is whether the State is fulfilling its statutory and constitutional mandate of providing food and nutritional security to



children who have been adversely impacted by the closure of schools and Anganwadi centres due to the Pandemic COVID-19. The secondary issue that arises is that with the closing down of schools, what measures can be adopted to prevent school children from indulging in begging and garbage collection.

7. Considering the importance of the issues, we take cognizance of the news article and issue notice to the State. We wish to clarify that the present proceedings may not be misunderstood as a direction to opening and recommencing classes.

11. Perhaps, for meeting the minimum nutritional requirement of a child, Anganwadi Centre; Community Centre(s) or the schools can be opened up, for a limited purpose of providing food to the children. This, of course, has to be in conformity with the directions issued by the authorities for meeting with the situation of the current Pandemic Covid-19. Let the State take a conscious decision on this aspect.

12. However, in the interregnum, we direct the respondents herein to ensure that no child is pushed into or indulges in any activity of rack picking or beggary, more so on account of lack of food.” (emphasis supplied)

3. On July 6, 2020, learned advocate Ms. Chhaya Kirti, was appointed as amicus curiae.

4. The State filed an affidavit assigning reasons for the educational institutions



and discontinuing the Mid Day Meal Scheme. The primary reason given was to prevent the spread of Covid-19.

5. Having taken note of this unfortunate situation concerning the children in the State of Bihar, the following issues arise for this Court's consideration:

- a. Whether the State is fulfilling its statutory and constitutional mandate of providing food and nutritional security to children who have been adversely impacted by the closure of schools and Anganwadi centres due to the Covid-19?
- b. What measures can be undertaken to ensure that the right to education of children in the State is not adversely impacted during this time, and to prevent school children from indulging in begging and garbage collection?

CHILD'S RIGHT TO FOOD- IN THE TIMES OF PANDEMIC, COVIC-19

6. Children have two requirements. First, is to keep their mind and body occupied with some engaging activity and second, to keep their stomachs fed. Mid Day Meal Scheme is a flagship programme of the Government of India, specifically targeting both these requirements. In 1995, Mid Day Meal Scheme was launched at the pan-India level as a joint effort by the Central and State Governments, as the National Programme of Nutritional Support to Primary Education



(NP-NSPE), for provision of cooked meals to every child in government and government aided primary schools. The Scheme functions with a dual objective of improving nutrition levels in school-going children, and enhancing enrolment, retention and attendance of students in government aided schools. The learned amicus curiae brought to our attention that 12 Lakh schools and close to 12 Crore children across the country are beneficiaries of this Scheme, making it the largest school feeding programme in the world. The Mid Day Meal Scheme has also significantly improved school retention rates. The Mid Day Meal Scheme is therefore pivotal in facilitating both, the right to food and the right to education for children in the country.

7. The right to food is an implication of the right to life enshrined in Article 21 of the Constitution of India. It encompasses the right to have regular, permanent, and unrestricted access to quantitatively and qualitatively adequate and sufficient food. This emanates from the right of every human being to live with dignity and freedom from hunger. The nature of the right to food is such that it forms the backbone for the realization of other fundamental rights that are guaranteed to every citizen of the country. It constitutes the basic requirement to ensure physical survival of an individual, such that



they have a platform to avail all other rights guaranteed under the Constitution of India.

8. The right to an adequate standard of living recognized under Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), acknowledge food as the first and foremost facet of health and well-being. Article 11(2) of the ICESCR also provides for the right of every person to be free from hunger. Further, the United Nations Convention on the Rights of the Child (UNCRC) establishes a responsibility on the State to ensure appropriate measures to combat disease and malnutrition, through the provision of adequate nutritious foods, clean drinking water and health care to children. Having ratified and acceded to these International Conventions, the Government of India and consequently the Government of Bihar becomes obligated to respect, protect and fulfil the right to food of all citizens of the country.

9. Although the right to food does not feature directly as a fundamental right under Part III of the Constitution of India, the Hon'ble Supreme Court has, through their numerous pronouncements, read the right to food into Article 21 of the Constitution.



10. In **Francis Coralie Mullin v. UT of Delhi (1981) 1 SCC 608**, the Hon'ble Supreme Court observed as under:

“7. Now, obviously, the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival...

8. ...We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings.”

11. In **Shantistar Builders v. Narayan Khimalal Totame (1990) 1 SCC 520**, the Hon'ble Supreme Court observed that:

"9. Basic needs of man have traditionally been accepted to be three- food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.”

12. Finally, in the case of **Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1** the Hon'ble Supreme Court took note of the international perspective on the right to food under Article 11 of International Covenant on Economic, Social and Cultural Rights, 1966.



13. Accordingly, we hold that it is the legal and moral obligation of the State, under the constitutional provision and international treaty obligations to ensure that the children and their families are provided with means to feed themselves so as to not, owing to their substandard conditions, be forced into activities like beggary and rag-picking.

14. Owing to the Covid-19 pandemic, the Government of India had advised all State Governments vide office memorandum dated March 5, 2020, to take all necessary actions to avoid mass gathering in the State of Bihar. In its attempt to follow this advisory, the State had undertaken closure of all educational institutions.

15. The right to food is also statutorily recognized under Section 39 of the National Food Security Act, 2013. This Section read with Rule 9(1) of the Mid-day Meal Rules, 2015, envisages that if Mid-day Meal is not provided, the State Government shall pay to every child, Food Security Allowance by way of bank transfer into the accounts of parents, to the amount of:

"9.(1) ...a. quantity of food grains as per child's entitlement;
b. and cooking cost prevailing in the State."

16. In the State of Bihar, for the period commencing March 14, 2020 to May 3, 2020, each student of class I to V was paid ₹ 264/- and that of class VI to VIII



₹ 396/-. A total amount of ₹ 379 Crore has been distributed through the direct benefits transfer among 1.19 Crore students of classes I to VIII.

17. Once this Court took suo moto cognizance of the news item dated July 6, 2020, and issued notice in the present petition, the Government almost immediately, on July 6, 2020 itself, directed the District Education Officers in the State of Bihar to disburse the Food Security Allowances from May 4, 2020 to July 31, 2020. For this period the children from classes I to V and VI to VIII were to be given 8 and 12 kg of food grains, along with an amount of ₹ 358/- and ₹ 536/- respectively. Pursuant to this Court's order issuing notice, the monetary transfer amount was further enhanced to ₹ 397/- and ₹ 596/- respectively.

18. This increase in the amount of food allowance is a positive step in ensuring that enough financial resources are made available to parents to feed their children and maintain their nutritional standards.

However, the issue of ensuring whether the transferred funds are indeed being utilized for the purpose of feeding their children, remains to be addressed. We will accordingly pass directions for it in the latter part of the judgment.

CHILD'S RIGHT TO EDUCATION- IN THE TIMES OF PANDEMIC, COVID-19



19. Having discussed the relevance of the right to food, we move on to the other issue pointed out by the news item dated July 6, 2020. This is with respect to the need to ensure that the children can continue their education while sitting at their homes, while also not worrying about their next meal.

We are now concerned with the broader issue of equally greater importance arising out of shutting down of educational institutions for children across the State of Bihar.

20. Significantly, no concrete proposal for reopening of the schools is forthcoming. Our concern be not read as to mean, that at this juncture we are favouring reopening of the schools. But are only highlighting the need and importance of the students' engagement during this time of pandemic.

21. The significant role of education in human development has been universally accepted. Quality education is fundamental to the development and growth of every individual. The right to a free and compulsory primary education has also been established as an inalienable human right under Article 26 of the Universal Declaration of Human Rights, Article 4 of the United Nations Educational, Scientific and Cultural Organization (UNESCO), Convention against Discrimination in Education as well as the Article 13(1)



of the International Covenant of Economic Social and Cultural Rights.

22. The importance of education is further highlighted by the fact that right to education is enshrined as a fundamental right under Article 21A of the Constitution of India as well as Directive Principles of State Policy under Articles 41 and 45 of the Constitution of India. Right to education is also recognized as a statutory right under the provisions of The Right of Children to Free and Compulsory Education Act, 2009.

23. The right to education not only encompasses a right to access education but also a positive obligation on the State to provide free and compulsory education to all children aged 6-14 years.

24. In the State of Bihar, as has come on record, more than 1.19 Crore children cannot attend school on account of Covid-19. To keep them engaged, as the learned Advocate General informs us, the State has come out with programmes of imparting teaching through the platform of television.

But then, we ask, is that enough? Does every household have a television set? Or does every village have cable/aerial connectivity? Are the teaching modules/ programmes being prepared by experts? How does the state enthuse the children to watch these programmes? What is the mechanism for ensuring that



they do so? Who is monitoring such activity? All these questions arise in our mind.

25. The State has a responsibility to prioritize its efforts in building capacity to support the system and citizens that are Below Poverty Line (BPL) and lift them above the poverty threshold. More importantly, the State must consider the numerous adverse effects on a child's progress that come from parents being BPL. In the context of children, our reference to BPL is not in purely economic terms, rather it is the idea of a life of deprivation which exists below a certain accepted level of wellbeing. When the State works towards building capacity to ensure the nutritional health of children, they must be conscious of the fact that a child's welfare goes beyond mere nutritional needs. It is not sufficient for the State to merely provide them with bare minimum sustenance via food security and other monetary support. For a child, BPL has to be something more than meeting a nutritional threshold and be extended to include capacity building towards holistic development, which includes nutritional, educational and psychological needs of the child. A holistic view on child development would be paramount to enable these children to lead optimum lives. Unless the State can empower these children to think independently and choose their path in life, it would be a significant failure of our developing society.



We place our opinion in consideration with the Directive Principles of State Policy enshrined in Article 39(f) of the Constitution of India, which states as follows:

"(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

25. In the aforesaid backdrop, we further pose the following questions:

a. Whether the State has formulated and implemented an action plan to combat the hardships faced by vulnerable children across the State?

b. Can actions of the State in combating the issues be said to be sufficient for ensuring the overall development including physical, nutritional and psychological health of the children?

c. What steps should the State take to ensure that children are kept engaged during this time of school closure and bring them back into the educational mainstream?

d. Whether the State is obligated to ensure that its children enjoy life at a level which is beyond BPL (Below Poverty Line) to include their educational, nutritional and physical health, and not mere sustenance?

e. Whether the State has taken note of and, if required, looked into implementing the various



suggestions by international organizations such as United Nations Children's Fund (UNICEF) and World Food Programme, to best combat the issue of providing school children with meals and for their continued development?

26. These domestic issues and posed questions become more valuable when contextualized with the international perspective on the issues that are plaguing the whole world. In the words of Henrietta Fore, the Executive Director of the UNICEF,

"School is so much more than a place of learning. For many children, it is a lifeline to safety, health services and nutrition. Unless we act now – by scaling up lifesaving services for the most vulnerable children – the devastating fallout caused by Covid-19 will be felt for decades to come²"

27. As pointed out by the learned amicus curiae, perhaps, a careful study of programmes and strategies employed overseas to combat the novel challenges created by this pandemic, is essential in implementing a workable domestic action plan.

28. The UNICEF in its report titled *Coronavirus (COVID-19) Global Response*³, has stated that at its peak, the Covid-19 pandemic has interrupted the learning of about 1.19 billion pre-primary to upper-

²UNICEF and World Food Program, 'Futures of 370 million children in jeopardy as school closures deprive them of school meals'(29 April 2020) Press Release NewYork/Rome, available at <<https://www.unicef.org/turkey/en/press-releases/futures-370-million-children-jeopardy-school-closures-deprive-them-school-meals>>.

³UNICEF Humanitarian Action for Children – 2020 'Coronavirus (COVID-19) Global Response' (22 July 2020) available at <<https://www.unicef.org/appeals>>



secondary school students across 150 countries world over, highlighting that vulnerable and hard to reach children are in danger of dropping out of the education system altogether because of the lack of access to remote learning platforms. Efforts to mitigate the transmission of Covid-19 are disrupting food systems, upending health and nutrition services, devastating livelihoods, and threatening food security. As per the official joint press release by UNICEF and World Food Programme titled *Futures of 370 million children in jeopardy as school closures deprive them of school meals*⁴, 369 million children, many of who primarily rely on these meals as a source of nutrition, are missing out on meals due to the closure of schools.

29. The learned amicus curiae has further averred that the economic hardship imposed by the ongoing pandemic is putting millions of children at risk of being forced into child labour, which could lead to the first global rise in child labour after 20 years of progress.

Rag-picking is one of the worst forms of child labour plaguing our society. This deplorable activity exposes young children to a host of health and psychological issues. It increases the children's susceptibility to frequent injuries, chemical poisoning and infections, which when coupled with malnutrition,

⁴UNICEF and World Food Program 'Futures of 370 million children in jeopardy as school closures deprive them of school meals'(29 April 2020) Press Release [New York/Doha available at <https://www.unicef.org/turkey/en/press-releases/futures-370-million-children-jeopardy-deprive-them-school-meals>](https://www.unicef.org/turkey/en/press-releases/futures-370-million-children-jeopardy-deprive-them-school-meals).



leads to disease, and stunted growth. Despite the fact that India has passed a number of constitutional protections and laws abolishing and regulating child labour, including the Child Labour (Prohibition and Regulation) Act of 1986, it still persists in our country, hindering the growth and development of our children. It is in derogation of the principles enunciated in Part IV of the Constitution and more specifically Article 39(e) which reads as under:

“39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength”

30. The learned amicus curiae has placed on the record research article endorsed by International Food Policy Research Institute titled *Learning in times of lockdown: how Covid-19 is affecting education and food security in India*⁵. This states that of the 320 million students in India affected due to school closures, 84% of them live in rural areas, and 70% attend government schools. Past evidence suggests that short term interruptions in schooling have a tendency to cause a permanent dropout in poor students. This dropout rate more severely affects girls and rural children. Therefore,

⁵Muzna Alvi and Manavi Gupta, 'Learning in times of lockdown: How Covid-19 is affecting education and food security in India' (2020) 12 Food Sec 793-796 available at <<https://link.springer.com/article/10.1007%2Fs12571-020-01065-4>>.



it becomes imperative to prevent the dropout of children due to this pandemic.

31. At this stage, it is also essential to take note of the action plans implemented by other countries, to use them as guidance to try and model the same in the State of Bihar to a feasible extent.

32. The learned amicus curiae has apprised the Court of the United Kingdom model for providing the school meals during the corona virus outbreak. The Government of United Kingdom has launched a voucher scheme which allows children access to meals during this period. They were allotted £15 a week, with vouchers redeemable at all supermarkets. What is peculiar in this system is that the government recognizes that the children and the families would not be able to purchase meals in bulk, increasing the cost of supplies. The vouchers provided, therefore exceed the cost of free school meals.

33. The learned amicus curiae also put on record a report titled *School Nutrition Program*⁶demonstrating the alternate arrangements made by the Government of Canada to continue school nutrition while students learn at home. The government is offering funding to non-profit organizations to help bring the nutrition program outside school walls. In this manner, it has tried to split the burden of the state

⁶Government of Alberta, 'School Nutrition Program' available at <<https://www.alberta.ca/school-nutrition-program.aspx>>.



machinery with the non-profits, to ensure that the children do not suffer.

34. On a perusal of the steps taken across the world to ensure continued education during the pandemic, we find that the most common way of providing education has been through remote learning. Remote learning has been practised through the internet, televisions, and radio across multiple countries. However, access to these technologies is low and limited in middle-income countries. Therefore, it is also essential to bring on record, the remote learning techniques being used by other countries in the region. Similar to the State of Bihar, populations in these countries have limited and unequal access to online platforms of learning and connectivity. The UNICEF, in its data factsheet titled *Unequal access to remote schooling amid Covid-19 threatens to deepen global learning crisis - An overview of South Asia*⁷, highlights the steps made by neighbouring countries towards ensuring access to remote learning during the pandemic.

35. In Bhutan, the Ministry of Education has launched an e-learning program that can be accessed through television as well as on YouTube. As the main source for accessing the internet in Bhutan is through mobile phones, the government has partnered with

⁷UNICEF 'Unequal access to remote schooling amid Covid-19 threatens to deepen global learning crisis - An overview of South Asia' (5 June 2020) Media Factsheet, available at <<https://www.unicef.org/rosa/sites/unicef.org/files/2020/06/Media%20Fact%20Sheet%3A%20Unequal%20access%20to%20remote%20schooling.pdf>>



different telecoms to provide additional data for students. Teachers are using social media platforms to read out specific chapters to the students and assign questions to respond to. Further, the State has partnered with UNICEF, for printing and distribution of self-instructional material to students who cannot be reached by other means of communication.

36. The Government of Bangladesh has simultaneously adopted multiple platforms - television, radio, internet, mobile phones and home-based learning, to maximize the reach and engagement of children.

37. It is therefore being emphasized that it is essential that states do not rely on a singular mode of remote learning like online platforms and television, but rather ensure that they also engage other ways to continue the education of children across the country.

38. It is only through continuous engagement of students through remote and distant learning that the State can control and minimize the number of dropouts once schools reopen.

39. Children are the wealth of this nation. Our failure, or delay in acting on the present situation could lead to incorrigible long-term consequences on the health, development, and general well-being of our children. Malnutrition in young children leads to chronic health diseases in the long term, as well as runs the risk



of underdevelopment of the mind along with the body. Other than the detrimental increase in illiteracy in the country, increased dropout rates of children would also lead to a consequent increase in the instances of child labour, rag-picking, child marriages of girls, and other forms of exploitation.

Directions of the Court

40. Having perused and considered the submissions made by both the learned Advocate General and learned amicus curiae, and gathered an overall picture of the prevailing hardships and imminent danger which the pandemic poses for children, we believe that it shall be of utmost importance for the State functionaries to have a workable arrangement for the children.

41. We further take note of the landmark decision by Hon'ble Justice Kuldip Singh, in the case of **Mohini Jain v. State of Karnataka, (1992) 3 SCC 666**, when the Hon'ble Supreme Court held that:

“12. ...The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education...”

42. In light of the above, we direct for the State to consider, enforcing, to the extent possible:

a. Continue schemes like the Mid Day Meal Scheme and the Sarwa Shiksha Scheme to provide meals



or ration as feasible along with textbooks and notebooks to government school students.

b. Ensure that statutory benefits under the Food Security Act are disbursed in a timely manner, and updated records are maintained for the same.

c. Monitor the nutritional health of children by leveraging the reach of Anganwadi workers, who can keep track of children's growth by recording the weight and height of children at regular intervals.

d. Work with the experts to procure and prepare digital lectures for students of all classes and age-groups.

e. Enhance the role of Anganwadi and NGO workers in every district, to help spread the message of the importance of continuing education via remote learning platforms. Parents to be educated, for ensuring the child's continuous engagement in education during the pandemic.

f. Install community-level television sets and distribution of radio sets, ensuring the increase of reach of remote learning platforms. Perhaps, at the community level, small batches of children can be shown lectures on televisions, while maintaining social distancing norms.

g. With mobile handset penetration and telephone penetration in the State of Bihar being greater than Television and radio set penetration, the concerned authorities to consider, devising and implementing an



action plan to utilize these mediums. To ensure engagement, consider expanding the possibility of waiver of telecom charges on the mobile handset or telephone being used for accessing educational programmes.

h. Use Telecom/digital infrastructure to mark the daily attendance of students. A call placed on the designated toll-free number may be programmed to record the daily attendance of the concerned student.

i. Organize a robust “Back to School” campaign in the wake of this pandemic, to ensure that a minimal dropout rate is achieved.

j. Further, workshops and training for teachers ought to be provided to ensure that they are well equipped in dealing with post-pandemic psychosocial needs of children.

43. The above directions, if implemented well, have the potential to provide immediate relief to more than 1 crore 19 Lakh school going children across the State, also tuned to establish long term machinery which shall support their development and care. We have no doubt that any elementary issues of data protection owing to the monitoring that may arise, would be dealt with adequately by the authorities.

44. Petition stands disposed off in the terms mentioned above with liberty to any public-spirited



citizen to take up the matter before the appropriate forum, including approaching this Court.

45. We place on record with appreciation, the fairness of the learned Advocate General and learned Additional Solicitor General. Also Ms. Chhaya Kirti, the learned amicus curiae to have ably assisted the Court in arriving at a just decision.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C. Jha/-

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