

**NATIONAL HUMAN RIGHTS COMMISSION  
SARDAR PATEL BHAWAN  
NEW DELHI**

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**Case No. 37/3/97-LD  
Dated: 17 January, 2003**

Name of the Complainant: : Shri Chaturanan Mishra

**CORAM**

**Justice Shri J.S. Verma, Chairperson  
Justice Sujata V. Manohar  
Shri Virendra Dayal, Member**

**PROCEEDINGS**

**Background**

The Commission has been dealing with this matter since December 1996 when reports of starvation deaths in the KBK Districts of Orissa were brought to its notice by Shri Chaturanan Mishra, then Union Minister for Agriculture. The issue was also raised in Writ Petition (Civil) No. 42/97 filed before the Supreme Court of India on 23 December 1996 by the Indian Council of Legal Aid and Advice and Others. On learning that the Commission had taken cognizance of this matter, the Supreme Court made the following observation in its Order dated 26 July 1997:

“In view of the fact that the National Human Rights Commission is seized of the matter and is expected to give its report after an enquiry made at the spot, it would be appropriate to await the report.

Learned Counsel for the petitioner submitted that some interim directions are required to be given in the meantime. If that be so, the petitioner is permitted to approach the National Human Rights Commission with its suggestion. So far as this Court is concerned, the matter would be considered even for this purpose on receiving the report of the National Human Rights Commission.

We also consider it appropriate to require the Union of India to appear before the National Human Rights Commission to assist the Commission in such manner as the Commission may require for the purpose of completion of the task of the Commission. The learned Addl. Solicitor General undertakes to ensure prompt steps being taken for this purpose.”

Earlier, in its Order dated 28 April 1997, the Supreme Court had observed that “The learned Advocate General stated that all directions given by the NHRC even when they are of an interim nature, would be promptly complied with by the State Government.”

Pursuant to the Orders of the Supreme Court, the Indian Council of Legal Aid and Advice filed a petition before the Commission on 1 September 1997 making a number of suggestions in regard to interim reliefs to the affected population.

In the light of the communications that it had received, the Commission deputed a team of officers, comprising the Secretary General and the Director General (Investigation), to visit the affected areas for an on-the-spot enquiry into the reports of deaths by starvation. The team visited the districts of Nuapada, Kalahandi and Bolangir on 12-14 December 1996, their supporting staff staying in the area until 17 December 1996 to gather further data. In its report dated 2 January 1997, the team asserted that because of the very high level of deprivation existing in the area, along with extensive crop damage, mal-nourishment, inadequate income levels and insufficient out-reach of relief measures, the possibility of deaths having taken place due to prolonged mal-nutrition and hunger compounded by disease could not be ruled out. Indeed, out of 21 deaths investigated, 17 were attributable to such causes.

After considering the report carefully, the Commission therefore called for the comments of the State Government and of the Union Minister for Agriculture on that report. Upon receiving and reflecting upon the responses that were received, the Commission considered it appropriate to conduct in-depth hearings on this entire matter, with the full involvement of all parties concerned. In deciding to proceed in this manner, the Commission had in mind the need to lift the consideration of this matter out of the adversarial and contentious cul-de-sac in which it might otherwise be trapped and to transform it, instead, into a participative and constructive endeavour designed to develop a package of measures that could bring about perceptible improvement in the lives of the affected population in the KBK districts.

The Commission accordingly held 11 hearings between 2 September 1997 and 29 January 1998, in the course of which it examined, inter-alia, economic theories relating to starvation and famine, the economic, social and environmental history of Orissa and the KBK districts in particular - over the past decade, the codes and criteria governing the conduct and reaction of the State Government and the Centre to situations such as those obtaining in the KBK Districts and, above all, the practical measures that could be taken in the interim, for a period of two years - with subsequent dovetailing into long term plans - to end the scourge of deprivation, malnutrition and cyclical starvation in the KBK Districts.

In its Proceedings of 17 February 1998, the Commission set out the concrete interim measures that were required to be undertaken, specifying their details in terms of location, time-frames and quantitative targets, the manner of their implementation and the monitoring mechanism that should

be set in place in order to ensure the efficiency, integrity and accountability of the efforts that must be made. A practical programme of interim measures was thus evolved and agreed upon by all the parties concerned in a cooperative effort that involve the petitioners, the State Government and the Central Government working together under the guidance and auspices of the Commission. That programme covered the following matters:

- (i) Rural Water Supply Schemes;
- (ii) Public Health Care;
- (iii) Social Security Schemes, which included Old age/Widow/Disability Pension Schemes, Emergency Feeding Programme, Supplementary Nutrition Programme and the Public Distribution System;
- (iv) Water and Soil Conservation Measures.
- (v) Rural Development Schemes, such as the Jawahar Rozgar Yojana, Indira Awas Yojana, Million Wells Scheme, Employment Assurance Scheme etc. The benefits of these schemes were to be maximized by linking them consciously to employment generating projects.

The Commission also requested the State Government to constitute a Committee to examine all aspects of the Land Reform question in the KBK Districts.

The Commission asserted that the key to effective implementation of programmes, however well conceived, was their proper monitoring and that this should enhance efficiency, transparency and accountability. The Commission thus recommended the constitution of a State Level Monitoring Committee headed by the Chief Secretary to guide and supervise the overall effort. The Commission also appointed Shri Chaman Lal as its Special Rapporteur for the KBK Districts in order to keep itself fully informed of all

developments in respect of these districts and to interact on its behalf with the concerned authorities whether at the State, District or other levels.

The Commission, with the help of its Special Rapporteur, has been monitoring the situation in the KBK Districts, on a continuing basis since early 1998. It has, in particular, concentrated on the execution of the interim measures outlined above, examining the quarterly Performance Appraisal Reports relating to the achievement of physical and financial targets. Throughout this period, the working of the Commission has been greatly facilitated by the efforts of its Special Rapporteur who visited the KBK districts on Eight occasions in order to inspect the situation on the ground and to verify the accuracy of the reports submitted to the Commission by the State Govt. for the verification of these reports on ground. The detailed reports submitted by the Special Rapporteur have been considered by the Commission, together with the response of the State Government on the points made by the Special Rapporteur in 12 hearings of the Commission held between the dates April 1998 and October 2002. On each occasion, specific directions were given as required. This monitoring has continued until the visit of the Special Rapporteur to KBK Distt. in November 2001.

### **Hearing of 10 October 2002**

In a hearing on 10.10.2002, the Commission considered the following:

- (i) The presentation by Shri Chaman Lal, Special Rapporteur, on his report dated 24.12.2001 relating to his visit to the KBK Districts from 14-22 November 2001;
- (ii) The compliance report dated 4.5.02 submitted by the Government of Orissa with regard to the points raised in the above mentioned report of the Special Rapporteur;
- (iii) The suggestions made by Shri Sanjay Parikh, Counsel for the petitioners, vide his letter dated 7 October 2002, regarding the Long Term Plan/Scheme to alleviate poverty in Orissa;
- (iv) A submission by Dr. Amrita Rangasami on the nature of the constitutional right involved in the present case and the apparent inconsistency with that right of the response of the State Government;

At the conclusion of the hearing, the Commission directed the State Government to submit a comprehensive reply covering all the above points by the end of November 2002 (subsequently extended up to 14 December 2002).

Additionally, Shri Jayant Das, Senior Advocate for the Government of Orissa, was requested to organise a meeting jointly with the Chief Secretary and other concerned officers of the Government of Orissa, together with Shri Chaman Lal, Shri Sanjay Parikh and Dr. Rangasami with a view to facilitating a consensus on as many as issues as possible.

Pursuant to the above directions, a meeting was held under the Chairmanship of the Chief Secretary, Government of Orissa in Bhubaneswar on 5 December 2002, which was attended by Shri Chaman Lal, Shri Jayant Das and Dr. Rangasami and the concerned State Government officials. A comprehensive reply of the Government of Orissa formulated on the basis of the deliberations of the above meeting was received by the Commission on 16 December 2002.

### **Hearing of 7 January 2003**

The hearing was attended by the Counsel for the Petitioners, for the Government of Orissa and for the Government of India, Dr. A. Rangasami, Director, CSAR, Shri Srinibas Rath, Development Commissioner, Orissa, Shri R. Jamuda, Secretary Revenue, Government of Orissa and Shri N.C.S. Negi, Deputy Secretary, Ministry of Agriculture, Government of India.

Shri Chaman Lal gave a brief account of the meeting held in Bhubaneswar and presented the summary of the comprehensive reply furnished by the Government of Orissa in response to the directions issued by the Commission on 10 October 2002.

Shri Sanjay Parikh, Counsel for the Petitioners outlined his ideas on the monitoring mechanism that was needed in the State to oversee the Revised Long-Term Action Plan (RLTAP) for the development of the KBK region..

Dr. Rangasami, in her submission, expressed satisfaction with the outcome of the meeting held at Bhubaneswar. She explained that a

paradigm shift was required, both conceptually and administratively to deal with the situation and the provision of relief in areas affected by long term destitution and natural calamities.

In the light of the submissions and presentations made in the hearing of 7 January 2003, The Commission would now like to make the following recommendations:

### **Rural Water Supply and Sanitation (RWSS)**

The Commission has noted with satisfaction the 100% achievement of the target of providing one tubewell for 250 population in all the KBK districts and the introduction of the Self Employed Mechanics (SEM) scheme in all the 80 blocks of the region. The Commission expects the authorities concerned to ensure the efficient functioning and success of this innovative scheme. The work of the mechanics has to be supervised and guided by the Department Engineers, tools and spares have to be stocked in all the needed locations in adequate quantity, the regular and timely payment of wages to these workers must be ensured. There should be a monthly review of the functioning of this scheme at the District Level and a quarterly review by the State Level Monitoring Committee so that difficulties and bottlenecks, if any, encountered in its operation are detected and addressed well in time.

### **Primary Health Care**

The Commission reiterates its earlier directions that vacancies of Medical Officers in KBK Districts should never be allowed to exceed 20%

of the sanctioned strength. The Commission finds that only 165 doctors have joined out of a total of 246 additional doctors posted to KBK Districts. Necessary steps should be taken to make the remaining doctors join the new posts. Despite the categorisation of para-medical staff as part of the district cadre, vacancies of pharmacists and staff nurse have continued at some places. Shortage of health workers (male) is being felt in every district. The Commission trusts that the assurances given in the reply to Government will be implemented with sincerity.

The Commission is concerned that diarrhoea has re-emerged as a major killer in the districts of Kalahandi, Koraput, Rayagada, Bolangir, Sonepur and Nuapada. The Government reply admits that the situation is alarming in the districts of Koraput and Rayagada where more deaths have occurred in the year 2002 in comparison with the figures of the previous year. There is no doubt that a number of deaths have remained unreported and unrecorded. Although a slight improvement has been noticed in the districts of Sonepur, Kalahandi, Bolangir and Nuapada, the situation is still far from satisfactory. The failure of the Government to effectively tackle the re-emergence of diarrhoea speaks poorly the standard of the Primary Health Care provided to the rural areas of these districts. The State Level Monitoring Committee should look into the matter and order effective measures to counter this entirely avoidable cause of death.

The Government reply admits the rampant occurrence and heavy incidence of malaria as a serious hazard in Orissa. Indeed, it states that Orissa accounts for over 20% of the malaria cases and 46% of malaria deaths in the entire country. 210 out of a total of 314 CD blocks of the State

have been identified as high risk blocks. Since the State Government is not able to tackle this problem effectively due to its poor resource position, it has requested the Ministry of Health and Family Welfare, Government of India, vide letter No. 28516 dated 16 August 2002, to grant 100% assistance for malaria control activities in the KBK districts as is being done in the North Eastern States. The Commission supports this request and recommends the Government of India accords the necessary sanction.

Mobile Health Units (MHUs) have been established and are functioning in all the 80 blocks of the KBK region. The Special Rapporteur has recommended the establishment of an additional MHU in Kosagmunda Block of Navrangpur for providing proper health care to 9 Gram Panchayats (GPs) of the block which remain cut-off for 9 months in a year without any medical cover. The Government reply states that a proposal of the Chief Administrator, KBK Project, for the establishment of 8 additional MHUs, including the one at Kosagmunda mentioned by the Special Rapporteur, is under consideration. The deficiency pointed out by the Special Rapporteur should be removed immediately.

The Special Rapporteur has pointed out the need for the opening of 5 additional Primary Health Sub centres in district Koraput and 2 in district Sonepur. The Government reply indicates that a proposal for establishing 152 additional Sub-Centres in the KBK districts which takes care of this matter, has been pending with the Government of India for sanction since 1998. This proposal is based on the requirements of the KBK districts as per 1991 Census. As there has been a further increase in population since then, the purpose is fully justified. The Commission accordingly recommends the

Government of India to accord the necessary sanction to this proposal at the earliest.

### **Social Security Schemes**

The Commission had taken immediate cognizance of the observation of the Special Rapporteur, made in December 2002 that there had been an unjustifiable reduction in the scale of rice from 6 kg. to 5 kg. per month per beneficiary under the Emergency Feeding Programme throughout the KBK region. It had ordered the restoration of the original scale. The Commission noted that appropriate action was taken in Koraput, Nawrangpur, Kalahandi, Nuapada, Bolangir and Sonepur w.e.f. January 2002. However, the restoration of its scale was affected in Malkangiri from February 2002 and in Nuapada from March 2002. The delay in the latter two districts is regrettable, especially as it concerns food security programme, meant for the most vulnerable groups.

The Commission has considered the explanation offered by the Women and Child Development Department regarding the interruption in SNP and Mid Day Meal (MDM) Programmes. It is hoped that with the transfer of the responsibility for lifting MDM stock from the Civil Supplies Department to the District Social Welfare Officers, such interruptions would not be allowed to recur. The Commission is of the view that this can be ensured only through effective monitoring by the Women and Child Development Department. The Commission has emphasized a number of times the importance of the careful planning of the stocking of foodgrains to ensure that the Food Security Programmes such as Emergency Feeding, SNP

and MDM are not allowed to suffer even a slightest interruption. It is unfortunate that despite the assurances given by the Government from time to time, and once personally by the Chief Secretary of Orissa in his appearance before the Commission, such interruptions have taken place. The Commission expects the Chief Secretary, who heads the State Level Monitoring Committee, to view such lapses with seriousness.

The Commission's directions regarding the extension of PDS benefits to the tribal population of Omerkot Block living in the encroached forest villages is still pending. It is seen from the Government reply that following the completion of joint verification of 50% of the encroached forest land, a proposal has been forwarded to the Government of India for the regularisation of 679.608 hectares of pre-1980 encroachments in forest areas as revenue villages. Acceptance of this proposal by according approval u/s 2 of the Forest (Conservation) Act 1980 would benefit 504 families (SCs-24, STs-424 and others 546) with a total population of 2704. The Secretary, Environment and Forests, Government of India is requested to accord the approval sought by the State Government, which is in accordance with their policy of regularising pre-1980 encroachments on forest land. The joint verification of the remaining pre-1980 encroachments should also be completed early and a proposal for regularisation of the affected villages should be sent to the Government of India.

### **Soil Conservation Programme**

The Commission has been stressing the importance of the Soil Conservation Programme and Watershed Management Schemes which aim

at tackling the problem of low productivity, lack of irrigation, a receding water table and soil erosion. These programmes are being executed under departmental schemes such as NWDPRA, IWDP, DPAP and also under the Employment Assurance Scheme (EAS) of the Rural Development Department. The reports of the Special Rapporteur have invariably been critical of the performance of departmental works. He was repeatedly given to understand by the District authorities that these programmes are suffering because of shortage of funds. The Government reply, however, admits that “the utilisation of funds in this programme is far from satisfactory. An amount of Rs. 7.60 crores allocated from 1998-99 to 2001-02 has remained unutilised as of 12 December 2002. In addition, a further allocation of Rs. 7.50 crores has been made during the year 2002-03 for this programme.” It is regrettable that these programmes are not being executed in accordance with the plans even though funds are available. The participation of the intended beneficiaries in the execution of these programmes is of paramount importance. The assurances given by the Government that these programmes are now being executed under the revised ‘Sahbhagita’ Guidelines do not seem to have been given effect on the ground. The State Level Monitoring Committees should give special attention to these works in view of their long-term importance.

The Commission has noted with satisfaction the progress in execution of the Watershed Management Schemes and the Government’s decision to undertake the completion of the water harvesting structure by converging funds available under schemes like SJRY, EAS and FFWP. The Government reply shows that the Collector-cum-Mission leaders have been advised to identify such projects immediately and complete them either

under the Food for Work Programme or out of the special Central assistance for the Watershed Development Programme in the KBK districts. 69 such incomplete structures have been taken up for completion or renovation by the Soil Conservation Department in Nuapada, 58 in Kalahandi, 748 in Bolangir and 415 in Sonepur. The adopted course of action, which appears to be ad hoc in nature, calls for thorough monitoring by the State Level Committee.

There are 508 on-going projects under the EAS in the KBK districts with an outlay of Rs. 109.09 crores. The Government reply shows that, so far, the Government of India have released Rs. 42.83 crores and the Government of Orissa have added Rs. 12.75 crores as the matching State share. Thus, the total assistance released is Rs. 55.58 crores. Obviously, a number of projects under EAS are lying incomplete because the State Government has not been able to provide the matching share that is required by it, or satisfy the Central Government about the utilisation of money received. This situation needs to be remedied.

### **Rural Development Programme**

The Commission recommends that while the allotment of targets and funds under Rural Development Schemes, such as the JGSY, EAS, IAY, SJGSY should be for the whole year, the performance appraisal and monitoring should continue to be made on quarterly basis as has been evolved by the Commission. This will ensure progressive utilisation of funds and orderly attainment of targets and avoid the rush of expenditure

with consequent loss in the quality of work towards the end of the financial year.

### **Afforestation**

The Commission has noted with satisfaction that the funds were released well in time in 2001-2002 and in the current year, and the plantation activities under LTAP with people's participation are continuing smoothly with the Conservator of Forests, Koraput Circle as the Nodal Officer for implementation and monitoring in KBK. As regards the release of foodgrains under the World Food Programme in 2001-02, the coverage was 43.8% of the total mandays generated in 2001-02. The figures for the current year are 25%. The Government reply, however, shows that additional stocks of food have been received. The food component must be raised in order to ensure willing participation of the community in this endeavour. Special efforts will have to be made to sustain the interest of the Village Suraksha Samitis until they start getting the benefits of the plantations.

The Commission compliments the Orissa Government for transferring the ownership of 68 NTFP items to Gram Panchayats (GPs). The Special Rapporteur has reported that due to a lack of interest on the part of the GPs and inability of the District Collectors to enforce the Minimum Procurement Price, the tribals are yet to derive the full benefits of this progressive scheme. The successful implementation of the scheme also calls for changes in the Sales Tax Act, Excise Laws, Orissa Gram Panchayats Act and Forest Laws and Transit Rules. The State-level Monitoring Committee should review the

actual operation of this scheme and evaluate its impact on the lives of the primary gatherers of NTFP items.

### **Land Reforms**

The Commission is happy to learn that the amendment of Regulation 2 of 1956 has since been given the assent of the President and the amended regulation has been published in the extraordinary issue of the Orissa Gazette on 9 September 2002. It is hoped that similar steps to amend the Orissa Land Regulation Act 1960 to ban completely the transfer of tribal land to non-tribals on similar lines will now be initiated as promised earlier.

The Commission has taken note of the repeated instructions issued by the Revenue Department to the District Collectors to detect cases of land alienation and take necessary action to restore land to the original owners and correct the Record of Rights. The Government has now constituted Task Forces at the Sub-Divisional-level for this purpose. However, the report of the Special Rapporteur does not present a satisfactory picture of the actual implementation of these instructions. Considering the crucial role of Land issues in the phenomenon of poverty and deprivation in the region, the matter deserves serious attention from the State Level Monitoring Committee. The Commission would also like to see systematic action being taken on the comprehensive recommendations made by the Expert Committee on Land Reforms.

### **Distress Sale of Paddy**

The Commission has learnt of the hardships of the farmers of some of the districts of KBK, especially Nuapada and Sonapur, who have been agitating over the demand of the minimum support price of paddy. After considering the report of the Special Rapporteur and the response of the Government, the Commission requests the Government of India to direct the FCI to examine the possibility of purchasing paddy directly from farmers in these Districts. The recent decision of the FCI to open 20 Purchase Centres in six districts of Orissa, including 3 in Sonapur in the current kharif year 2003, is encouraging. The Commission requests the FCI to take steps to increase the capacity of godowns in the KBK Districts. The Orissa State Agricultural Marketing Board should establish additional Regulated Market Centres to meet the demands of the increasing rice production in the KBK districts.

### **Long Term Measures**

In its proceedings dated 17 February 1998, the Commission has noted that its directions would “concentrate primarily on interim measures, leaving for subsequent consideration as may be needed the views of the Commission on long term issues.” The Commission has stated that the Government of India has already taken up a long-term development project for the KBK region.

In this connection, the Government of Orissa had originally launched a 7 year Long Term Plan in 1995-96 for accelerating the pace of

development in the KBK Districts. In 1998, the Government of India advised the Government of Orissa to prepare a Revised Long Term Action Plan. The RLTAAP was accordingly prepared to cover the period from 1998-99 to 2006-07 with three objectives in view: drought proofing, development saturation and poverty alleviation, and improvement in quality of life of the people in this region.

The RLTAAP focuses on the 11 key sectors of Rural Development: Agriculture, Horticulture, Watershed Development, Afforestation, Rural Employment, Irrigation, , Health, Emergency Feeding, Rural Drinking Water Supply, Rural Connectivity; and Welfare of SCs/STs.

The financial outlay (Rs. 6251.08 crore) would include both normal flow of funds under the Central Plan (CP) and Centrally Sponsored Projects (CSP) and special funds in the form of additional/special Central assistance received from the Government of India.

The Government of Orissa has set up a Special Area Development Project KBK with a senior officer designated as the Chief Administrator, with headquarter at Koraput. The Chief Administrator is in overall charge of supervision and monitoring of the projects implemented under the RLTAAP in the KBK Districts. There is also a Project Level Committee (PLC) under the Chairmanship of the Chief Secretary and the State Level Committee (SLC) under the Chairmanship of the Chief Minister.

### **Monitoring**

The Commission's views on the importance of monitoring, set-out in its proceedings of 17 February 1998, assume additional validity and significance in relation to the proper implementation of the Long Term Action Plan. The Commission hopes that the State Level Monitoring Committee will meet more often, at least once every three months, to guide and monitor the work of various Departments involved in the execution of the development programmes.

The Commission endorses the suggestion made by Shri Sanjay Parikh, Counsel for the Petitioners, that the Special Area KBK Project should provide for District-Level Committees which could be made directly responsible for the execution of programmes allotted by the Chief Administrator. It is heartening to note that the State Government has responded positively to this idea and the Government reply contains a commitment in this regard. Shri Parikh has further suggested that the Performance Appraisal Reports of the Districts should be made public and the Chief Administrator should hold public hearings every six months, in each of the KBK districts by rotation. This will inject openness and transparency into the implementation of the long-term measures and add the accountability dimension to the exercise. The Commission also accepts Shri Parikh's suggestion that the salient features of all the developmental programmes together with information about the achievement of physical and financial targets, should be shared with the public at the District and Block levels by a suitable display mechanism. Information should also be disseminated to the public through booklets and handouts from time to time. This will ensure that the people's right to information is respected and will also contribute to the process of their empowerment.

The Commission takes this occasion to endorse the recommendations made in the 106<sup>th</sup> Report of the Rajya Sabha Committee regarding the periodical review of the execution of RLTA by a Committee of Secretaries to Government of India under the Chairmanship of the Cabinet Secretary. In addition, the Commission has noted that there is a consensus among all the parties concerned including the State Government, that NHRC should continue to be involved in the overall monitoring of the programmes. The purpose of this monitoring can be achieved by associating the Special Rapporteur of the Commission with the quarterly meetings of the State Level Committee, and his continued visits to the selected districts of the region.

The following requests made by the Counsel for the Government of Orissa will be forwarded to the Union Government for ensuring more effective implementation of the RLTA:

- i) RLTA should be made an integral part of the 10<sup>th</sup> Plan document and accorded formal approval in its entirety.
- ii) Year-wise availability of funds should be indicated for the entire 10<sup>th</sup> Plan period and funds should be released well in advance in order to obviate the ad hoc nature of the current arrangements.

### **Special Category Status**

The Counsel for the State of Orissa has sought the Commission's intervention in respect of the request of the State Government made to the

Government of India, that Orissa should be declared a Special Category State in view of its poverty, chronic backwardness, weak Tax Base and the serious debt trap that it faces. The Commission is informed that the issue is still under the consideration of the Government of India. Without taking a position in respect of Orissa as a whole, the Commission would recommend as a minimum, that the KBK region of Orissa should be considered for Special Category Status in view of the persistent problems of chronic destitution, hunger, ill-health, poverty and unemployment affecting much of its population.

### **Commendation**

The continuous monitoring of the situation in the KBK districts has enabled the Commission to identify certain district Collectors in this region who have shown exceptional zeal, ability and devotion to duty over the past three years. The Commission would like to take this opportunity to record its appreciation of the performance of the following: Shri P.K. Jena, Collector Kalahandi; Shri S.B. Sahu, Collector Nuapada and Collector Kalahandi; Shri Hemant Sharma, Collector Kalahandi; Shri C.S. Kumar, Collector Malkangiri and Collector Bolangir; Shri D.K. Singh, Collector Rayagada; Shri B.S. Sethi, Collector Sonepur, Collector Rayagada; Shri S.K. Sarangi, Collector Nawarangpur and Collector Bolangir; Smt. A. Sarangi, Collector Koraput; Shri Madhusudan Padhi, Collector Bolangir.

## **Right to Food**

Throughout the hearing in respect of this case, the petitioner Dr. Amrita Rangasami, Director, Centre for the Study of Administration of Relief (CSAR), has been raising the fundamental issue of the nature of right involved in a situation in which deaths occur as a result of starvation or prolonged mal-nutrition. She has asserted that there is a dichotomy between the Constitution of India and the Relief Manuals and Codes of India which govern relief administration. She has argued that while the Constitution recognises the Right to Food as an integral part of the Fundamental Right to Life, the Manuals and Codes are, more or less, a replication of the Model Famine Code of 1910 under which relief is administered as an act of benevolence on the part of the State and the status of the 'beneficiary' continues to be that of a recipient of State charity.

The Commission has considered Dr. Rangasami's submission most carefully. Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The expression 'Life' in this Article, has been judicially interpreted to mean a life with human dignity and not mere survival or animal existence. In the light of this, the State is obliged to provide for all those minimum requirements which must be satisfied in order to enable a person to live with human dignity, such as education, health care, just and humane conditions of work, protection against exploitation etc. In the view of the Commission, the Right to Food is inherent to a life with dignity, and Article 21 should be read with Articles 39(a) and 47 to understand the nature of the obligations of the State in order to ensure the effective realisation of this right. Article 39(a) of the Constitution,

enunciated as one of the Directive Principles, fundamental in the governance of the country, requires the State to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people as a primary responsibility. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfilment of the obligations of the State set out in Articles 39(a) and 47. The reading of Article 21 together with Articles 39(a) and 47, places the issue of food security in the correct perspective, thus making the Right to Food a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution. The requirements of the Constitution preceded, and are consonant with, the obligations of the State under the 1966 International Covenant of the Economic, Social and Cultural Rights to which India is a party. That Covenant, in Article 11, expressly recognises the right of everyone to an adequate standard of living, including adequate food.

It follows, therefore, that there is a fundamental right to be free from hunger. Starvation constitutes a gross denial and violation of this right. As starvation deaths reported from some pockets of the country are now invariably the consequence of misgovernance resulting from acts of omission and commission on the part of public servants, they are of direct concern to the Commission under the provisions of the Protection of Human Rights Act, 1993.

Persons living in conditions of poverty and hunger in areas such as the KBK districts have often been found to be suffering from prolonged hunger

and mal-nutrition. Even when their deaths cannot, in a strictly clinical terms, be related to starvation, the tragic reality remains that they often die of prolonged mal-nutrition and the continuum of distress which has, inter-alia, rendered them unable to withstand common diseases such as malaria and diarrhoea. The situation is all the more painful in view of the fact that granaries of the Food Corporation of India are overflowing – a matter that is, at present, under consideration of the Supreme Court.

The Commission, therefore, agrees with Dr. Rangasami's view that the present practice of insisting on mortality as a proof of starvation is wrong and needs to be set aside. In the view of the Commission, therefore, there are obvious policy implications as far as the obligations of the State are concerned. The Right to Food implies the right to food at appropriate nutritional levels. It also implies that the quantum of relief to those in distress must meet those levels in order to ensure that the Right to Food is actually secured, and does not remain a theoretical concept.

The Commission also agrees with the petitioner that destitution and the continuum of distress should be viewed as the necessary conditions for the prevalence of starvation. There is thus a concomitant need for a paradigm shift in public policies and the Relief Codes in this respect.

Dr. Rangasami acknowledges that the State of Orissa has revised the objective of relief administration to mean the elimination of destitution. However, it has not made the paradigm shift from the domain of benevolence to that of the right of a citizen. She has argued that the Govt. of India's current conceptualization of calamity as well as the season of its

prevalence, has limited relief to the short term only. In contrast, a human rights approach to food and nutrition, would imply that the beneficiaries of relief measures should be recognised as “claim holders”. Viewed from this perspective, the prevalence of distress-conditions threatening starvation constitutes an injury requiring the imposition of a penalty on the State. The penalty would be claimed for the affected groups as a whole rather than on the basis of individual claims. The Commission finds much merit in this view. Indeed, it is of the opinion that the remedy provided under Article 32 of the Constitution applies to groups no less than to individuals.

Dr. Rangasami has accordingly suggested the amendment of paragraphs 163, 164, 168B and 169 of the Orissa Relief Code in order to bring that Code in line with the Constitution of India. She has specifically proposed that it be reformulated to accomplish the following:

- (i) a paradigm shift from the domain of Benevolence to that of Right;
- (ii) a change from the assessment of harvest to the assessment of hunger;
- (iii) a shift in the timing of State-intervention to the hunger season; and
- (iv) a devising of the terms of cognizance for starvation and destitution.

The Commission is informed that the State Government has constituted a Committee headed by the Agricultural Production Commissioner (APC) and other officers as well as non-official members to

discuss and deliberate on the suggestions made by Dr. Rangasami on amendment of the Orissa Relief Code.

Given the views of the Commission as explained above, it would like to see rapid progress in the work of the Committee and it would also like to be kept informed of its efforts. The outcome of these efforts could have far-reaching and positive consequences both for Orissa and, based on its example, the rest of the country.

Dr. Rangasami has also suggested the following for the consideration of the Government of India:

- (i) The need to revise the present criteria used to determine the relief that is provided - she has proposed that the 'basket' of relief provided should be prescribed in terms of adequate nutritional requirements and not in fixed monetary terms. This would ensure automatic revision of the outlays required to keep pace with rising costs.
- (ii) The devising of the criteria for the provision of assistance to small farmers in a manner that it is linked to the elimination of destitution and the halting of distress migration, distress sale of crops, labour and land, and protection against impoverishment.

The Commission sees much value in these suggestions which implicitly raise serious questions regarding the quantum of resources realistically required for Calamity Relief and the method of their utilisation. The Commission, therefore, requests Dr. Rangasami to develop these ideas further and to provide the Commission with a paper on this subject so that the views of the Government of India can be obtained on them.

In concluding these Proceedings, the Commission would like to observe that they are being held at a time when, universally, there is a demand that every effort be made by the State and by civil society to eradicate the poverty and hunger that constitute an affront to the dignity and worth of the human person. First and foremost among the United Nations Millennium Development Goals (MDG) is the pledge made by all Heads of State and Government to halve, by the year 2015, the proportion of the world's poor and of people who suffer from hunger. Given the circumstances of our country, India has a special responsibility in this regard. The prevalence of extreme poverty and hunger is unconscionable in this day and age, for not only does it militate against respect for human rights, but it also undermines the prospects of peace and harmony within a State. For all of these reasons, the Commission will continue to be deeply involved with the issues raised in these hearings in the period ahead.

The Commission would like, once again, to place on record its deep appreciation of the most able and constructive contribution that it has received throughout the hearing of this matter from the learned counsels appearing before it: Shri Sanjay Parikh for the petitioner, Shri Jayant Das and Shri Raj Kumar Mehta for the State Government of Orissa, and Shri Ajay Kumar Vali for the Union of India. The Commission also reiterates its gratitude to Dr. Amrita Rangasami, Director, CSAR for the insights and thoughts she has brought to bear to the consideration of this matter by the Commission.

A copy of these Proceedings may be forwarded to the Registrar General of the Supreme Court of India for being placed before the court in Writ Petition (Civil) No.42/97, pursuant to orders therein dated 28 April 1997 and 26 July 1997.

**(Justice J.S. Verma)**  
**Chairperson**

**(Justice Sujata V. Manohar)**  
**Member**

**(Virendra Dayal)**  
**Member**