

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7174 OF 2021

Ganpat Dharma Mengal & others. ..Petitioners.
Versus
Tehsildar Office, Murbad and Others. ..Respondents.

Kranti L.C. i/b Kaustubh Gidh and Dipika Shani for the Petitioner.
Mrs. A. S. Purav, AGP for the Respondent-State.

CORAM : PRASANNA B. VARALE &
MADHAV J. JAMDAR, JJ.

Date : **October 29, 2021.**

P. C. :

1. It is disheartening situation for us when we the fortunates are eagerly awaiting as the festive season is approaching and the festival of lights would spread joy and happiness in the society throughout the State or the whole nation, here are the few petitioners who are the members of the marginalised section in general and tribals in particular who have approached this Court on a grievance that they are deprived of the basic requirement of human life, i.e., food, only on account that the State machinery is not technically equipped to give them the benefits flowing from the scheme formulated and floated by the Union of India and to be implemented and executed by the respective States. The reason, as we have stated, for deprivation of distribution of foodgrain to these petitioners is that their Aadhaar Card is not linked with the system and secondly in view of the Government circular dated 13th October 2016

for receiving the benefits of public distribution system, it is a prerequisite that Aadhaar card of each member of the family who is enlisted in the ration card must have been linked in the RCMS system / portal.

2. The Petitioners are the residents of the tribal area of Thane district, namely taluka Murbad. It would be necessary for us to refer to certain facts such as that the Union of India formulated the scheme, namely, the National Food Security Act, 2013 with a laudable object as it is stated in the Act to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto. Section 3 of the said Act deals with the provisions for food security. It would be necessary to refer to certain provisions of this section and it reads thus :

“3(1) Right to receive foodgrains at subsidised prices by persons belonging to eligible households under Targeted Public Distribution System :

(1) Every person belonging to priority households, identified under sub-section (1) of section 10, shall be entitled to receive five kilograms of foodgrains per person per month at subsidised prices specified in Schedule I from the State Government under the Targeted Public Distribution System:

Provided that the households covered under Antyodaya Anna Yojana shall, to such extent as may be specified by the Central Government for each State in the said scheme, be entitled to thirty-five kilograms of foodgrains per household per month at the prices specified in Schedule I:

Provided further that if annual allocation of foodgrains to any State under the Act is less than the average annual off take of foodgrains for last three years under normal Targeted Public Distribution System, the same shall be protected at prices as may be determined by the Central Government and the State shall be allocated foodgrains as specified in Schedule IV.

Explanation.—For the purpose of this section, the "Antyodaya Anna" Yojana means, the scheme by the said name launched by the Central Government on the 25th day of December, 2000; and as modified from time to time.

(2) The entitlements of the persons belonging to the eligible households referred to in sub-section (1) at subsidised prices shall extend up to seventy-five per cent. of the rural population and up to fifty per cent. of the urban population.

(3) Subject to sub-section (1), the State Government may provide to the persons belonging to eligible households, wheat flour in lieu of the entitled quantity of foodgrains in accordance with such guidelines as may be specified by the Central Government."

3. Now, on the basis of the said Act, the State of Maharashtra issued Government Resolution dated 13th October 2016 under the caption "Furnishing of District-wise Updated Target And Action to be taken therefor under the National Food Security Act, 2013". The decision of the State Government further states that

१) लाभार्थी निवड करताना लक्ष्य निर्धारित सार्वजनिक वितरण व्यवस्थेचा लाभ घेण्यासाठी प्रत्येक शिधापत्रिकाधारकांचे "आधार सिडींग करणे अनिवार्य" राहिल.

२) नवीन लाभार्थ्यांची निवड करताना कोणत्याही परिस्थितीत दि. ३०.०९.२०१६ नंतरच्या

शिधापत्रिकांचा विचार करण्यात येऊ नये.

4. Now, these particular requirements in the GR dated 13th October 2016 are clearly in contrast and stark opposition to the notification issued by the Central Government dated 8th February 2017. This notification clearly states that for identification of the beneficiary, Aadhaar Card is one of the criteria and the perusal of notification shows that for identifying the beneficiary the Aadhaar card is not the sole criteria. There is another document on which the beneficiary can rely upon to receive the benefits of the scheme and that is "ration card" issued by the State of Union Territory Administration, Food Department.

5. Clause (5) of the notification further makes it very clear that notwithstanding anything in above paragraphs, any member of eligible household listed in the Ration Card shall be entitled to receive the entire quantity of entitled subsidised food grains or Cash Transfer of Food Subsidy under NFSA, if any one member of the household in the Ration Card fulfils the identification conditions mentioned in above clauses, in case Aadhaar number is not yet assigned to all such members of the household.

6. It would be useful for our purpose to refer to relevant and

very important observations of the Hon'ble the Apex Court in the matter of *K. S. Puttaswamy v/s. Union of India (2019) 1 SCC 1* popularly known as "*Aadhaar Card Judgment*". The apex Court in this judgment observed that dignity is an integral element of natural law and an inalienable constitutional construct. To lead a dignified life is a constitutional assurance to an individual. Even the scheme floated under the National Food Security Act aims at an object to provide the foodgrain to the weaker section of the society in conformity with the object which we have already stated and referred to.

. It would be again useful for us to refer to the further observations of the Hon'ble Apex Court and it reads those "the experience of living with chronic hunger; recurring uncertainty about the availability of food; debt bondage; low and highly underpaid work; self-denial; and sacrifice of other survival needs, being discriminated against are instances of the loss of dignity for the marginalised." The Apex Court also observed that the beneficial schemes are not charity or doles. The Apex Court further observed in clear and unambiguous words that technology shall not be a rider for implementation of the scheme and reads thus "Our quest for technology should be oblivious to the country's real problems; social exclusion, impoverishment and marginalisation. The Aadhar project suffers from crucial design flaws which impact upon

its structural probity. Structural design in delivering welfare entitlements must be compliant with structural due process, to be in accord with Articles 14 and 21.”

. Then it is further observed by the Hon’ble the Apex Court that the deployment of technology must factor in the available of technological resources in every part of the design of the coverage area and the prevailing levels of literacy and awareness. Above all, the design of the project will be compliant with structural due process only if it is responsive to deficiencies, accountable to the beneficiaries and places the burden of ensuring that the benefits reach the marginalised on the State and its agencies.

7. On the backdrop of the scheme under the Food Security Act, its object, the judgment of the Hon’ble Apex Court if we peruse the communication dated 17th September 2021 whereby it was informed that the Petitioner – Ganpat, who is at serial no.1, would not be entitled to receive foodgrains. Though Ganpat is having Aadhaar as well as ration card, as the Aadhaar card is not linked with the portal or system.

The copy of ration card wherein the name of Petitioner No. 2 Prakash is mentioned is placed on record at page no.149 and the name of Petitioner No.2 finds place in communication dated 11th October 2021,

placed on record at Exhibit-R1 page-160 at serial no.1. By communication dated 11th October 2021, the similar ground is assigned for non distribution of the foodgrain, i.e., Aadhaar Card not being linked with the portal. The Petitioners have approached the authority, particularly the Tahsildar and Executive Magistrate of Murbad through an Association , namely, Shramik Mukti Sanghtana raising the grievance of not receiving the foodgrains and the President of said association informed vide the communication dated 17th September 2021 Exhibit Q-1 page no.150 that availing the benefits under the public distribution system, the linking of Aadhaar with portal of each member enlisted in the ration card is a prerequisite and then it is informed that the names of the members who have approach to Tahsildar through the organisation, their Aadhaar cards are not linked up in RCMS system, as such the authorities are unable to distribute the foodgrain to them.

8. It would not be out of place to state that there are as many as 85 persons who have approached the Tahsildar, Murbad raising the grievance of non receiving the foodgrains under the public distribution system and the list of those persons is placed on record at page no.151, duly signed by the Tahsildar, Murbad.

9. Our attention was invited to the various representations

submitted to the district authorities requesting them to distribute the foodgrains under the public distribution system taking recourse to the national food security act. We may refer to one of such representation dated 20th August 2021, which is placed at page no. 170. It clearly states that these are the tribal persons. They are the beneficiaries of scheme framed by the central government and the state government and they are expecting the regular distribution of foodgrains to them and particularly for the festival season.

10. Assuming the importance of issue, we requested the learned AGP to seek instructions and make statement before us. Learned AGP, on instructions, submitted that the reason for non distribution of foodgrains to some persons is that their Aadhaar card is linked to a different place than the residence of these persons. Now, the practice being followed for linking of Aadhaar card is the ration-card holder goes to the ration-shop and requests the shop-owner to link his ration card or aadhaar card in the system. Taking the case of the Petitioners and alike, these are the tribal persons and majority of these persons are not literate as such they rely on the action taken by the respective ration shop owner and in such case if a mistake is committed by shop owner, the same cannot be the reason for denial of food grains to the ration card holder under the benevolent schemes.

11. At the cost of repetition, we state that the policy under the National Food Security Act refers to the Aadhaar Card as one of the mode for identifying the person and further the notification dated 8th February 2017 makes the position very clear in clause 5.

12. It may not be out of place to mention that the same notification dated 8th February 2017 is issued in pursuance of the provisions of section 7 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

13. Though the grievance is raised by three petitioners before this Court, it can be safely said that the persons enlisted in the list at page no. 151 to 158 (duly signed by Tahsildar, Murbad) and the persons enlisted in the list at page no.173 to 187 are similarly circumstanced with the Petitioners. As we are unable to find any logic, reason or rational for denying the benefits of distribution of foodgrains to the Petitioners and alike persons raising certain technical ground by the Respondent authorities, by way of interim direction we direct the Respondent nos. 1, 2 and 3 to distribute the foodgrains to the Petitioners and similarly circumstanced persons - the tribal beneficiaries of Murbad taluka under the public distribution scheme as well as the provisions of the National

Food Security Act and the Pradhan Mantri Garib Kalyan Anna Yojana. The Respondents are at liberty to verify the rationcards of the Petitioners and the similarly circumstanced tribal persons. We further direct Respondent Nos.1 and 2 to distribute the foodgrains to the tribal persons before **4th November 2021** and Respondent No.3- Collector Thane shall implement, supervise the distribution and shall assure that the order of this Court is duly complied with within the stipulated period.

14. All concerned to act upon an authenticated copy of this order issued by the Registry of this Court. Learned AGP to forthwith communicate this order to Respondent Nos. 1, 2 and 3. learned AGP may communicate the order orally and need not wait for the authenticated copy of the order.

15. Stand over to 1st December 2021 for further consideration. Learned AGP is permitted to file reply before the next date.

[Madhav J. Jamdar, J.]

[Prasanna B. Varale, J.]