

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT  
BOMBAY**

**(CIVIL APPELLATE JURISDICTION)**

(Rule 4(e) of the Bombay High Court Public Court Interest  
Litigation Rules, 2010)

**PUBLIC INTEREST LITIGATION No.:CJ-LD-VC-16- 2020**

**District Aurangabad/Raigarh**

**In the Matter of:**

Nikita Narayan Gore &Anrs. ....

Petitioners

**Versus**

Union of India &Ors. ....

Respondents

**Counter Affidavit**

**(On behalf of Answering Respondent No. 1,  
Ministry of Health and Family Welfare, Union of  
India).**

I, Dilip Kumar Sahu, son of Late Chandrabhan Sahu, aged about 47 years, working as Under Secretary in the Ministry of Health and Family Welfare (MoHFW), Government of India duly authorized and competent to file these Comments:-

1. That, in my official capacity and on the basis of documents made available and perused by me during the discharge of my official duties, I am well aware of the facts and circumstances of the case and have understood the contents thereof.
2. That, I am authorized and competent to file Comments on behalf of the Answering RespondentNo. 1(MoHFW).

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3. That, liberty is further craved in making such other and further submissions/filing Additional Affidavit as may be required in the facts of the case subsequently or as may be directed by this Hon'ble Court

4. **Scheme for Promotion of Menstrual Hygiene among Adolescent Girls :-**

Public Health and Hospitals being a State Subject, the primary responsibility of providing healthcare services in the State is that of respective State Government. However, under National Health Mission (NHM), support is provided to the States /UTs to strengthen their health care systems including procurement of items and drugs based on the proposals received from the States in their Programme Implementation Plans (PIPs). These PIPs are appraised in the National Programme Coordination Committee (NPCC) meetings and approvals are accorded to States/ UTs in the form of Record of Proceedings (RoPs).

National Health Mission provides technical and financial assistance to States based on their proposals as mentioned above. National Health Mission fund sharing pattern is 60:40 between Central Government and most of the States and UTs with legislature. For the States of Himachal, Jammu & Kashmir, Laddakh, Uttarakhand and North-Eastern States, the sharing pattern is 90:10 between Central Government and these States. For UTs without legislature the funding pattern is 100% Central share.

Ministry of Health and Family Welfare has been supporting the implementation of the Scheme for Promotion of Menstrual Hygiene among adolescent girls in the age group of 10-19 years as part of the Reproductive Child Health since 2011.

  
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Since 2015-16, the procurement of sanitary napkins is being supported by National Health Mission through State Programme Implementation Plan (PIP) based on the proposals received from the States. States/UTs have decentralized procurement of sanitary napkins through a competitive bidding process ensuring quality standards.

A total of more than Rs128 crore have been approved to 20 States/ UTs for the scheme in the last 2 years. In an additional 9 States, the scheme is supported through State budget whereas in two of the States there has been a mixed funding approach of NHM and State funds.

**The major objectives of the scheme are as follows:**

- To increase awareness among adolescent girls on Menstrual Hygiene.
- To increase access to and use of high quality sanitary napkins by adolescent girls.
- To ensure safe disposal of sanitary napkins in an environmentally friendly manner.

The Operational Guidelines issued by Government of India for implementation of the Scheme are placed hereto as **Annexure R-1/1**. Sanitary napkins are provided to the adolescent girls at a subsidized rate.

Teachers and FLHW-ANMs, ASHA worker and AWWs are oriented appropriately on menstrual hygiene management .

Communication material targeting the adolescent girls, gatekeepers, influencers and community at large has been developed by MoHFW, other partner Ministries, States, Development Partners s and NGOs.

  
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Safe disposal of sanitary napkins is an integral part of the programme, particularly given the consequences for the environment. Following methods are being used for safe disposal of sanitary napkins:

- Community Level: At the community level, deep pit burial or burning are two options considered.
- School Level: Schools may have incinerators installed as per Central Pollution Control Board - May 2018.

**Menstrual Hygiene Scheme (MHS) progress in Maharashtra:-**

State of Maharashtra has been getting approvals in their Record of Proceedings (RoP) under National Health Mission since 2015-16. State has received approvals of a total of Rs. 1575.42 Lakh during last three financial years (2018-19 to 2020-21) in their State Record of Proceedings (RoP) under National Health Mission. The procurement of the sanitary napkins has been completed by the State for funds approved in RoP of 2016-17 and 2017-18 and napkins have been distributed as per the scheme guidelines. Procurement for the funds approved in 2018-19 onwards is under process.

5. That, the Answering Respondent no. 1 humbly submits that the Ministry of Health and Family Welfare (MoHFW) has issued **Guidance Note on Provision of RMNCAH+N services during and post COVID 19 pandemic**. The same has already been annexed as **Annexure R-1/2**.

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**PARA WISE REPLY**

1. That, Part A of the Petition is formal in nature, hence needs no comments from the Answering Respondent No. 1.

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2. That, Part B of the Petition relates to the particulars of the Petitioners, hence no comments are required from the Answering Respondent No. 1.
3. That, Part C of the Petition is about the particulars of the Respondents, which is formal in nature, hence no comments are required from the Answering Respondent No. 1.
4. That, Part D of the Petition is about the declaration and undertaking by the Petitioners, which is formal in nature, hence no comments are required from the Answering Respondent No. 1.
5. That, Part E, para 1 & 2 of Petition is matter of fact, hence no comments are required from the Answering Respondent No. 1.
6. That, in reply to averments contained in Para 3 of the Writ Petition, it is submitted that the MHFW - Government of India has since, vide its D.O. Letter No. 1762075/2020-Imm Dated 24<sup>th</sup> May 2020 issued guidelines to the States regarding continuation of essential services under RMNCHA components for all those in need. A Copy of the said letter from GoI to the States and the guidelines has already been attached at **ANNEXURE R-1/2**.
7. That contents of para 4 of Petition relate to a matter of fact, hence no comments are required from the Answering Respondent No. 1.
8. That, the Answering Respondent humbly submits that the Petitioners in Para 5 have mentioned the order of the Madras High Court which is matter of record, hence need no reply from the Answering Respondent No. 1.

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9. That a perusal of para 6 of the WP would indicate that the Petitioner has imagined a hypothetical concept without any base, reasoning and logic.
10. That, the Answering Respondent No. 1 humbly submits that in paras 7-19 the Writ Petition, the Petitioners have mentioned the different aspects of Menstruation which are factual in nature, hence necessitate no comments from the Answering Respondent No. 1.
11. That, in reply to the averments contained in to the para No. 20 of the writ petition, it is submitted that the Govt. of India has worked for the Menstrual Hygiene Scheme (MHS). In this regard Ministry of Drinking Water and Sanitation (MDWS) has issued the Guidelines for MHS. Rest of the content of the para 20 of the petition are matter of fact, hence no comments by the Answering Respondent No. 1.
12. That, in reply to the averments contained in para 21 of the Writ Petition, is submitted that the MoHFW-Government of India has since issued study material for ASHA training with respect to Menstrual Hygiene. A Copy of the same is placed at **ANNEXURE R-1/3**.
13. That, the averments contained in para 22 of the WP need no reply being matters of record.
14. That, the contents of Para 23 of the Petition are regarding the traditional aspect of the menstruation and menstrual hygiene which is matter of fact, hence need no reply from Answering Respondent No. 1.

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15. That the averments contained in Para 24 and 25 of the WP need no reply from the answering respondent being matter of record.
17. That, in reply to the averments contained in Para 26 of the WP , it is submitted that the study referred in the said para was carried out in the State of Haryana covering about 40-50 rural adolescent girls in the Rural Training Centre under PGI, Chandigarh in 2016. The drawbacks related to the Scheme launched by GoI were made known to the Govt., where after the implementation plan of the Scheme was changed to decentralised procurement at State level 2015 onwards.
18. That, in reply to the averments contained in Para 27 of Writ petition, it is submitted that the initial plan of MHS implementation was to cover only 25% of the rural adolescent girls in select districts. Once established, it was to have expanded. The various hiccups discovered during the initial phase were a learning for the Government paving way towards decentralisation of the entire scheme as per State's proposals received in their PIPs annually.
19. That, para 28 of the petition pertains to the Ministry of Drinking Water and Sanitation, MDWS (Respondent No. 3) hence needs no comments from Answering Respondent No. 1.
20. That, para 29 of the petition pertains to the Ministry of Drinking Water and Sanitation, MDWS(Respondent No. 3) hence needs no comments from Answering Respondent No. 1.



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21.

That, Para 30 of the petition pertains to the Ministry of Human Resource Development, MHRD,

(Respondent No. 4) hence needs no comments from Answering Respondent No. 1.

22. That, in reply to the averments contained in Para 31 of the Writ Petition, it is submitted that healthy and fruitful living of girls and women is under the ambit of various Ministries. That's the reason that Menstrual Hygiene Interventions are covered by different Ministries. From procurement of napkins and training of ASHAs/teachers/AWW by Health, to building toilets by MDWS, to educating young girls about menstruation by MHRD, to community awareness and support of women through MWCD etc
23. That, para 32 does not pertain to the Answering Respondent No. 1 (MoHFW), hence needs no comments from the answering respondent No. 1.
24. That, Para 33,34,35,36 of the petition pertains to the State Govt. of Maharashtra, hence needs no comments from Answering Respondent No. 1.
25. That in reply to para 37 of the Writ Petition, it is submitted that the answering respondent agrees with the findings of the NFHS4. It is submitted that some States do implement their own schemes using State funds, wither alone or in conjunction with the support from Govt of India.
26. That in reply to the averments contained in Para 38 of the Writ Petition, it is submitted that MoHFW-Govt. of India has been implementing MHS since 2011, with partial success. The aim was to create awareness regarding menstrual hygiene, provide sanitary napkins and information about disposal, primarily among rural girls. Due to the various issues relating to the central procurement and distribution to Blocks,

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this scheme was decentralised to support State level procurement and distribution as per State's decision. State proposes in its PIP for covering the planned beneficiaries under the Scheme and is supported by GoI.

27. That, Para 39,40,41 of the petition pertains to the Ministry of Consumer Affairs, Food and Public Distribution, MoCAFPD (Respondent No. 7) hence necessitates no comments from the Answering Respondent No. 1.
28. That, Para 42 of the petition pertains to the Ministry of Human Resource & Development hence needs no comments from the answering respondent No.1
29. That, Para 43 of the petition pertains to the Ministry of Drinking Water and Sanitation, MoDWS (Respondent No. 3) hence needs no comments from Answering Respondent No. 1.
30. That, Para 44 of the petition pertains to the Ministry of Human Resource Development, MoHRD, (Respondent No. 4) hence needs no comments from Answering Respondent No. 1.
31. That, Para 45 of the petition pertains to the Ministry of Drinking Water and Sanitation, MoDWS (Respondent No. 3) hence needs no comments from Answering Respondent No. 1.
32. That, Para 46,47 does not pertain to the Answering Respondent No. 1 (MoHFW), hence needs no comments.

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33. That, in reply to the averments contained in para 48 of WP , it is submitted that as already stated in

preceding para 12, the MoHFW has been issuing study material and literature to the ASHA Workers, educating them and calling upon them to sensitize the masses about the need of maintaining menstrual hygiene , and the process is ongoing.

34. That in reply to the averments contained in para 49 of the Writ Petition, it is submitted that the same refer to a virtual seminar on MHM in schools carried out, 6 years ago, in the year 2014. Much water has flown since then and there has been a regular emphasis from the MoHFW on improving the MHM ,and the Ministry is making earnest efforts towards the same. DO Letter no M 12015/103/2010-MCH dated 4<sup>th</sup> March 2016 to all States is attached supporting decentralised procurement by States; placed at **ANNEXURE R-1/4**

35. That, in reply to Para 50 of the Writ Petition, it is submitted that Public Health and Hospitals is a State subject. The primary responsibility of providing healthcare services in the State is that of respective State Government. However, under National Health Mission (NHM), support is provided to the States /UTs to strengthen their health care systems including procurement of items and drugs based on the proposals received from the States in their Programme Implementation Plans (PIPs). These PIPs are appraised in the National Programme Coordination Committee (NPCC) meetings and approvals are accorded to States/ UTs in the form of Record of Proceedings (RoPs).

36. That in reply to Para 51 of the Writ Petition, it is submitted that the Ministry of Health and Family Welfare has been implementing the Scheme for Promotion of Menstrual Hygiene among adolescent

  
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girls in the age group of 10-19 years as part of the Reproductive Child Health since 2011. Since 2015-16, the procurement of sanitary napkins is being supported by National Health Mission through State Programme Implementation Plan (PIP) route based on the proposals received from the States. States/UTs have decentralized procurement of sanitary napkins through a competitive bidding process ensuring quality standards.

37. That, Para 52 of the petition pertains to the Ministry of Drinking Water and Sanitation, MoDWS (Respondent No. 3) hence needs no comments from Answering Respondent No. 1.

38. That the averments contained in Para 53 of the Writ Petition are not admitted as stated. It is submitted that the Answering Respondent No. 1 humbly submits that the Petitioners have made a sweeping allegation that the government machineries were not working properly during the lockdown. The allegation is made in a bald and reckless manner and is therefore denied. It is submitted that besides taking care of the nation in fighting the pandemic, as the Nodal Department, the ministry has during the lockdown issued **Guidance Note on Provision of RMNCAH+N services during and post COVID 19 pandemic**, which has already been annexed as **Annexure R-1/2**.

39. That, the averments contained in Para 54, 55, 56, 57, 58, 59 are a part of pleading and formal in nature, hence no comments from Answering Respondent No. 1.

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That, with regard to the prayer of the Petitioners that the "sanitary pad/napkin" must be included in the

schedule of essential commodity under the Essential Commodity Act, 1955, the Answering Respondent No. 1 most humbly submit that the decision to bring sanitary napkins under the essential commodities may be done after understanding the current market scenario; the demand supply gap, if any; also keeping in mind the various options of brands, quality, specification, costing and preferences of the beneficiaries .The decision should be taken after due consultative process under the Ministry of Consumer Affairs ensuring involvement of all stakeholders and that there is no adverse effect on the beneficiaries and at the same time it fulfils the intent of the petitioner.

41. **PRAYER**

Under the above circumstances, it is most respectfully submitted that the Hon'ble High Court may graciously be pleased to admit this Counter Affidavit filed on behalf of the Answering Respondent No. 1 (Union of India, Ministry of Health and Family Welfare).

DEPONENT

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