

Parivartan

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Dated: 18.02.04

To
Dr N C Saxena,
Commissioner of the Supreme Court,
New Delhi.

Sir,

We wish to bring the following issues to your kind notice.

1. Access to lists of beneficiaries and distribution records :

Though there are a number of orders and laws, which provide for access to these records, however, in practice, the people are still unable to access them.

SC orders:

SC order dated 28.11.01 states as under:

In order to ensure transparency in selection of beneficiaries and their access to these schemes, the Gram Panchayats will also display a list of all beneficiaries under the various schemes. Copies of the schemes and the list of beneficiaries shall be made available by the Gram Panchayats to members of public for inspection.

SC order dated 8.5.02 states as under:

The Gram Sabhas are empowered to monitor the implementation of various schemes and have access to relevant information relating to, inter alia, selection of beneficiaries and disbursement of benefits.

Letter dated 16.9.03 issued by the Commissioners to the Chief Secretaries of all State Governments very clearly stated:

Each State/ UT government must ensure that the list of beneficiaries are publicly displayed. In urban/ municipal areas or other areas where there are no gram panchayats, the State/ UT governments must delegate the responsibility of publishing and distributing of the lists to a suitable office/ agency. It must also ensure that there is public access to, including the right of inspection of, the lists of beneficiaries and FPS and KOD stock registers, inspection books, sale registers, card registers, cash memos and other relevant documents. Certified photocopies must also be made available to any person who asks for them and is willing to pay the actual photocopying charges. This is essential in order to ensure transparency and encourage social audits, as ordered by the Hon'ble Supreme Court.

Actual Position:

In response to the above letter of the Commissioners, the Food Commissioner of Delhi wrote back that people already enjoy right to access these records in Delhi under the Delhi Right to Information Act.

But in practice, the people are facing a number of problems in accessing records under the Delhi Right to Information Act:

1. The fee prescribed in the Rules to the Act is very high. It is Rs 25 as application fee and Rs 5 per page of information provided. So, if a person holding Antodaya card applies for one page of information, he has to pay Rs 30, the amount for which he would get 15 Kgs of wheat! The information under the Act is very expensive and a poor person just cannot afford it.
2. A number of ration dealers have challenged in Delhi High Court that the Government cannot provide these records to the people under Delhi Right to Information Act. Accepting their contention, Delhi High Court has granted an interim stay in a number of areas in Delhi till the disposal of this case. The people in these areas cannot access records now. Unfortunately, the counsel for Delhi Government is not arguing the case at all. A perusal of the counter affidavit filed by him gives an impression of total submission by him before the ration dealers. Strangely, the counsel has not even brought the orders of the SC to the notice of the Delhi HC.

Further, the lists of beneficiaries are not made available to the people even on specific requests. They have not been widely displayed as required by Hon'ble SC. Whenever people approach the concerned authorities, the lists are not showed to them. Those who wish to obtain copies of lists are asked to apply under the Delhi Right to Information Act and pay at the rate of Rs 5 per page, which is very high.

Our requests:

1. The Commissioners may like to write a letter to the Chief Secretary calling for all the records including copies of affidavits, counter affidavits and rejoinders related to all the cases filed by ration dealers in Delhi High Court. After perusing the records, the Commissioners may like to direct the State government to direct its counsel to defend citizens' right to information and also to bring various orders of the SC to the notice of the Delhi HC.
2. The Commissioners may like to bring these stay orders to the notice of the SC and seek suitable directions from the SC.
3. In response to the letter written by the Food Commissioner, the Commissioners may like to direct the Delhi Government to provide information to the people at an application fee of not more than Rs 5 and to charge photocopying charges not exceeding Re 1 per page.
4. The Commissioners may like to direct the Delhi Government to make the lists available to anyone at Re 1 per page and also to display them widely.
5. The Commissioners may like to make visits to a few field offices to ascertain for themselves whether the lists have been displayed or not and whether complaints registers, as required by the SC, are being maintained by them or not.

Public Distribution System (Control) Order, 2001:

The order states as under:

A fair price shop owner shall provide the relevant extracts of the records maintained by him to the beneficiary on payment of the prescribed fee.

Actual position:

The Food Department passed an order in the month of January 2004 implementing the above provision. The order states as under

The beneficiaries of ration card holders of Targeted PDS categories comprising BPL, Annapurna & Antodaya ration cards can inspect records related to them such as stock register, sales register and ration card register at the FPS free of cost without any fee/ charges. They shall have to deposit the photocopying charges @ Rs 5 per page for all the documents, which may be required by them.

This order suffers from following problems:

1. The order requires the people to obtain records directly from the ration dealers. This would never happen. The people do not get proper ration. How can we expect them to be able to obtain records from ration dealers? Hence, this order cannot be implemented.
2. The fee of Rs 5 per page is very high.
3. The order grants right of access only to beneficiaries and limits their right to access records related to them only.

Our request:

Since this order merely states what is provided in the PDS (Control) Order, legally, it cannot be challenged on any account. However, the fee under this order should be reduced to Re 1 per page.

But if the fee under the Delhi Right to Information is brought down as requested above, this may also not be required and we can ignore this order.

2. Appellate mechanism:

PDS (Control) Order 2001 states as under:

Any person aggrieved by an order of the designated authority denying the issue or renewal of a ration card or cancellation of the ration card may appeal to the appellate authority within thirty days of the date of receipt of the order.

Actual position:

About 7 lakh people in Delhi applied for cards. Out of them, only about 4 lakh people were issued cards. The government claims that the cards were issued on the basis of some survey carried out by their inspectors of each household. However, in practice, people have informed that this survey was not carried out properly. A number of deserving people did not get cards. At the same time, a number of undeserving people were issued cards. The people who did not get cards would like to file appeals as provided above. However, they have not been informed of the reasons for rejection. No orders were passed against them, which could be appealed against. In these circumstances, the people are not able to file appeals.

Our request:

The Commissioners may like to bring this to the notice of the SC and seek suitable directions to all State governments that speaking orders should be passed in each case where an applicant is denied a card.

3. Grievance redressal mechanism:

SC order dated 8.5.02 states as under:

On a complaint being made to the Chief Executive Officer of the Zilla Panchayat (CEO)/ Collector regarding non-compliance of the orders of this Court, the concerned CEO/ Collector shall record the salient features of the complaint in a register maintained for this purpose, acknowledge receipt of the complaint and forthwith secure compliance with this Court's orders.

The CEO/ Collector of all the districts in the States and territories shall scrutinize the action taken by all the implementing agencies within their jurisdiction to ensure compliance with this Court's orders and report to the Chief Secretary.

The responsibility for implementation of the order of this Court shall be that of the CEO/ Collector. The Chief Secretary will ensure compliance with the order of this Court.

SC order dated 2.5.03 states as under:

Licensees, who

- (a) do not keep their shops open throughout the month during the stipulated period,*
- (b) fail to provide grain to BPL families strictly at BPL rates and no higher,*
- (c) keep the cards of BPL households with them,*
- (d) make false entries in the BPL cards,*
- (e) engage in black marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/ organizations,*

shall make themselves liable for cancellation of their licenses. The concerned authorities/ functionaries would not show any laxity on the subject.... What we have stated above in regard to BPL cardholders for effective supply of grains to them, would equally apply for those, who are on AAY list.

Actual position:

The above violations mentioned by the SC is more a rule than exception. Still, almost no action is taken by the Department on any complaint made by the people. Parivartan is in possession of a number of such complaints made by the people. However, in no case, the license was cancelled. Most of the offices do not have any complaint register as directed by the SC. Even if an office has a register, no entries are made in the same.

Our Request:

- The Commissioners may like to issue suitable directions to the Delhi Government to implement the orders of SC for maintenance of a complaint register. Any complaint received by the Department

should be compulsorily entered into that register. Every complaint should be given a number. The register should be personally monitored by the Deputy Commissioner (Food) of that area. A grievance should be treated as settled only when the complainant signs on the register to that effect.

- In addition to redressing a grievance and providing immediate relief to a complainant, action should also be taken against the concerned official or ration dealer in each case of complaint as per directions of the SC and as per the provisions of Essential Commodities Act.
- People do not know whom to approach for a particular type of grievance. The Department should clearly provide who would be ultimately responsible for redressal of which type of grievance and in how much time. It should also be provided what action would be taken against that official if these time limits are not adhered to.

4. Furnishing of records by ration dealers to the Department:

PDS (Control) Order 2001 states as under:

The responsibilities and duties of fair price shop owners shall include furnishing of copies of specified documents, namely, ration card register, stock register, sale register to the office of the Gram Panchayat or Nagar Palika or Vigilance Committee or any other body authorized by state governments for the purpose.

Actual position:

The licensees are required to submit their records every month or every fortnight in some states. However, in states like Delhi, they do not have to submit their records. This gives them an excuse to say that their records have got lost in theft or some accident, whenever someone seeks to obtain copies of their records.

Our request:

The Commissioners may like to direct every state Government that they should strictly observe the above provision of the Control Order. The licensees should be required to submit their records to the designated authority every month and they should not be able to lift their supplies for the next period if they do not submit their records for the last period.

With best regards

Yours sincerely,

(Arvind Kejriwal)

