

**DR. N. C. SAXENA, COMMISSIONER AND
HARSH MANDER, SPECIAL COMMISSIONER OF THE SUPREME COURT
IN THE CASE: PUCL v. UOI & Ors. WRIT PETITION (Civil) No. 196 of 2001**

April 5th, 2010

To
The Registrar
Supreme Court of India
New Delhi

Subject: Response to Application of Government of Maharashtra (IA No.90) for directions regarding granting of ad-interim ex-parte relief in order to hand over Fair Price Shops in Maharashtra to Self Help Groups.

Dear Sir,

We would like to bring to your notice that the Government of Maharashtra has filed an IA (No.90) seeking specific directions from the Honorable Supreme Court to permit the implementation of the Government Resolution dated 3.11.2007 seeking to hand over fair price shops (FPS) handling food grains and kerosene oil to Women's Self Help Groups and Mahila Mandals. The All Maharashtra Fair Price Shopkeeper & Kerosene Dealer Federation in CWP 303 of 2008 had challenged the decision of the Government of Maharashtra to hand over the fair price shops to Self Help Groups. The Nagpur High Court delivered the final judgment on 15.6.2009 asking the State of Maharashtra to seek necessary clarification from the Honorable Supreme Court, within two months, in the matter CWP 196/ 2001 (PUCL v. UoI and others) on the procedure of issuance of fresh Fair Price Shop licences. The Government of Maharashtra is constrained to ensure that no fresh fair price shop and kerosene retail licenses should be issued.

The State of Maharashtra has pleaded before this Honorable Court that the prohibition contained in the High Court order "*has been causing tremendous inconvenience to the public at large., as in some case, new Fair Price Shops and /or Retail Kerosene licenses are required urgently as some of the old one have been closed down for various reasons and therein as a stop gap arrangement existing ration card holders are attached to the other Fair Price Shops.*"

**DR. N. C. SAXENA, COMMISSIONER AND
HARSH MANDER, SPECIAL COMMISSIONER OF THE SUPREME COURT
IN THE CASE: PUCL v. UOI & Ors. WRIT PETITION (Civil) No. 196 of 2001**

In view of the facts that have been presented in I.A. (No. 90) by the State of Maharashtra, it is pertinent to go into the details of both the Government resolutions (dated 3.1.06 and 3.11.07) and comprehend fully the letter and spirit of these two resolutions.

We would at the outset like to state that we completely endorse and fully support the decision of the Government of Maharashtra to hand over the Fair Price Shops and Kerosene retail dealerships to Self Help Groups and other local bodies. The de-privatisation of the network of private dealers who have a stranglehold over the Public Distribution System is a necessary, though not sufficient condition, for reforming the PDS. We have raised this issue in our various reports of the Commissioners, submitted to the Supreme Court including the Fifth and Sixth reports. This is also the view strongly endorsed by the Central Vigilance Committee headed by Justice (retd.) D.P.Wadhwa in his reports.

Government of Maharashtra decided to de-private the PDS network, cancel all existing FPS shops and dealers and hand over the operation of these shops to Self Help Groups. This was done in view of the fact that the study by the Programme Evaluation Organisation (PEO) of the Planning Commission had pointed out that nearly 35% of the food grains meant for the poor were in fact diverted by the FPS dealers. The State of Maharashtra had taken into cognizance our recommendations as Commissioners to support this view. Maharashtra has a network of 50,000 Fair Price Shops and 50,000 Kerosene License holders which are currently being operated by private traders.

Consequently the Government of Maharashtra vide Government Resolution No.PDS-1005/C.F.2075/CS-28 dated 3.1.2006 resolved to eliminate all private dealerships and hand them over to SHGs in three phases.

The first stage of de-privatisation was to take place in 68 talukas in the tribal areas of the state. In the second stage, which was to be taken up in the second year of the implementation, all the Fair Price Shops and Retail Kerosene licenses were to be handed over to the Self-Help Groups. A very detailed plan of action was drawn up which had many commendable features. These features included, inter-alia:

**DR. N. C. SAXENA, COMMISSIONER AND
HARSH MANDER, SPECIAL COMMISSIONER OF THE SUPREME COURT
IN THE CASE: PUCL v. UOI & Ors. WRIT PETITION (Civil) No. 196 of 2001**

1. Taking the concurrence of the Mahila Gram Sabha or the appropriate urban local body before the fair price shop was handed over to the identified SHG.
2. Construction of buildings in all rural and urban areas for the running of the PDS shops.
3. Trainings of the women's self-help groups by the State Administrative Training Academy (YASHADA) in Pune in order to raise their skills in managing these shops.
4. The review of the implementation of this policy was to be undertaken by a State Level High Powered Committee chaired by the Chief Minister which also had 5 cabinet ministers including the Deputy Chief Minister, the Chief Secretary and other senior officials.

This government resolution was a very progressive step and in the right direction. It was in line with the reforms undertaken by State Governments like Chhattisgarh who had successfully implemented the de-privatisation of the PDS network.

Unfortunately, the Government of Maharashtra does not seem to have had the political resolve to undertake these reforms and succumbed to pressures from various lobbies to drastically reduce the scope of these reforms and restrict them to the point, that they would have little impact on the corruption in the system.

The Government of Maharashtra therefore issued another Government resolution (No.PDS 1005/ CR2075/CS 28) dated 3.11.2007. It is pertinent to note that the reasons stated for diluting the provision of the resolution of 3.1.2006 is, inter-alia, "***several MLAs also demanded for reconsideration of the decision regarding cancellation of existing Fair Price Shop and retail Kerosene Licenses***". This clearly points to the fact that extraneous political considerations have played a part in the decision of the Maharashtra Government to go back on the proposed reforms. The resolution of 3.11.2006 therefore sought to retain all existing shops and hand over those shops/ licenses to the Self Help Groups only "*for those licenses which are cancelled as of now or which would be cancelled henceforth*". This resolution would ensure status quo so far

**DR. N. C. SAXENA, COMMISSIONER AND
HARSH MANDER, SPECIAL COMMISSIONER OF THE SUPREME COURT
IN THE CASE: PUCL v. UOI & Ors. WRIT PETITION (Civil) No. 196 of 2001**

as the private dealers are concerned and would provide little relief to the consumers who are the poorest sections of society.

We would like to bring to the notice of the Honorable Court that most of the reports on the PDS have pointed out that the system suffers from political interference at all levels and the fact that the Maharashtra Government chose to dilute the implementation of a progressive government order succumbing to political pressure reflects the deep malaise in the system.

It is therefore our considered opinion that the relief that has been sought by the Maharashtra Government should be granted subject to the condition that the State Government follows in letter and spirit the government resolution No.PDS-1005/C.F.2075/CS-28 dated 3.1.2006 and submits an undertaking before this Honorable Court that all the provisions of the said GR will be followed.

A time bound plan must be presented to the Commissioners for replacement of all the Fair Price Shops/ Kerosene Licenses within a period of two years as envisaged in the Government Resolution dated 3.1.2006.

In those instances where Women's Self Help Groups are not available, the State Government may also consider handing over these shops, in consultation with the Gram Sabha/ appropriate urban local body, to Primary Agricultural Credit Society (PACS), Large Area Multi-purpose Societies (LAMPS) and Gram Panchayats directly. Additionally, there should be an annual social audit of all these shops and their licenses renewed only if the social audit finds the performance of the shops satisfactory.

We would like to bring to the notice of this Honorable Court that there has been no clear directions from this Court on the specific question raised by the High Court on which is most appropriate agency to run Fair Price Shop/ Kerosene dealership. However, the Court had requested Justice Wadhwa to make comprehensive recommendations regarding the PDS, which inter alia, also looks into the modalities of the best agency to run the Fair Price Shops. Justice Wadhwa has cited, inter alia, the order of preference in the Report on Bihar as follows:

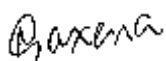
**DR. N. C. SAXENA, COMMISSIONER AND
HARSH MANDER, SPECIAL COMMISSIONER OF THE SUPREME COURT
IN THE CASE: PUCL v. UOI & Ors. WRIT PETITION (Civil) No. 196 of 2001**

- a) Self Help Group
- b) Gram Panchayat
- c) Co-operative Society
- d) Women / Co-operative Society run by women
- e) Ex-Army Co-operative Society
- f) Handicapped

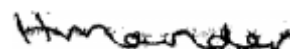
The Report also cites that preference should be given to the applicant who is resident of concerned panchayat or ward.

The Commissioners concur with the view taken by the Central Vigilance Committee, especially in the light of positive experiences of states like Chhattisgarh which have de-privatised their Fair Price Shops and handed it to Gram Panchayats, local bodies, PACS, MACS, LAMPS and SHGs and would request appropriate directions for the entire country.

Sincerely Yours,



Dr. N.C. Saxena



Harsh Mander