

**SPECIAL REPORT OF THE COMMISSIONERS TO THE HONOURABLE SUPREME
COURT**

(A follow-up to the Fourth Report submitted in August 2003, with advice for immediate orders)

The four reports submitted earlier aimed at evaluating the implementation of food and employment related schemes and of the Honourable Court's orders. We wish to reiterate our earlier concern that the right to food cannot become a reality till due recognition is given to the crucial link between it and the right to work as well as the right to information.

This special report follows a series of meetings held with government, as directed by the Hon'ble Court. Many agreements have been reached, such as the discontinuation of grain exports and a ban on the use of labour-displacing machines on public works. **However, some of the orders of the Honourable Court have not been complied with.** The most flagrant cases of non-compliance are discussed below.

1 Mid-day Meal Scheme

- 1.1 There is much evidence of the benefits provided by cooked meals both in terms of higher enrolment rates and better nutritional status of children (including that of the girl child). It was in this view that the Honourable Court ordered all the states to provide cooked meals in all government and government aided primary schools.

- 1.2 However recent reports show that the midday meal scheme has not been started at all in the states of Bihar, Uttar Pradesh and Uttaranchal. Some states like Jharkhand and Orissa have interpreted an earlier order of the Court¹ directing them to start the scheme in at least one fourth of the districts, to justify the non-implementation in the entire state. Still other states like West Bengal have implemented the scheme in a few blocks and within these, only in a few schools. Further communication reveals that little effort is being taken to ensure that the coverage is universalised to cover all eligible schools.

- 1.3 We have also been informed that in Mizoram, parents are being asked to contribute towards the costs of mid-day meals. Government orders to this effect appear to have

¹Order dated 8 May 2003, whereby the bench directed Jharkhand and others to implement the scheme in at-least one fourth of the districts.

been issued, asking teachers to extract payments or donations from parents to meet the costs of fuel and utensils.

In this light we advise the Honourable Court to:

- A. Direct the states that are yet to initiate cooked mid-day meals in primary schools as well as those that have implemented it partially to comply with the order of November 28, 2001.
- B. Issue clarificatory orders that the order dated 8 May 2003 permitting partial implementation was only a temporary measure and the intention is to ensure universal coverage of all government and government-assisted primary schools with midday meal scheme immediately.
- C. Direct that the conversion costs needed to provide a hot nutritious meal are not recovered in any form or percentage from the parents of the children enrolled in these schools.

2 Antyodaya Anna Yojana

- 2.1 In the last few months an attempt was made to ascertain the degree to which the interim order directing the Government of India to issue additional Antyodaya cards to identified priority groups has been complied with.
- 2.2 We find however that the guidelines issued by the Governments in this regard are flawed in two respects. This in turn fails to make these priority groups particularly the primitive tribal groups (PTG's) eligible as a 'matter of right', as recommended by the petitioner and directed by the Court². First, they explicitly require BPL status as a pre requisite for eligibility to receive benefits under the expanded programme thereby ensuring that Antyodaya cards are only issued from among existing BPL cardholders. In order to ensure that the poorest are issued cards it is important that individuals from the priority groups be given Antyodaya cards even if they have been inadvertently or wrongfully excluded from the BPL lists.³ Orders to this effect have already been issued in West Bengal.

² In the order of 8 May, 2003

³ This was also agreed upon in a recent meeting convened by the Department of Food and Public Distribution. This meeting, held in New Delhi on 19 September 2003, was called to discuss the recommendations made by the Commissioners in their fourth report.

- 2.3 Second, the governments of many states have interpreted the order incorrectly to mean that the number of Antyodaya cards issued in each district should simply be increase from 15% of the existing BPL cards to 23%. Such an automatic increase does not allow for differing numbers between districts of the priority groups mentioned in the order. The result is that in areas of intense poverty, where the need for cards is greater, only a small proportion of the vulnerable households are covered. This problem was found, for instance, in villages of Dahi block in Madhya Pradesh and Lakhanpur block in Chattisgarh. Persons representing the commissioners came across many destitute households belonging to the PTG's of Bharia and Hill Korwa respectively who had not been issued Antyodaya cards.
- 2.4 Thirdly, in all states other than MP, Chattisgarh, Rajasthan, Sikkim and Nagaland the process of identification is yet to be completed.

In the light of the above, we advise the Honourable Court to:

- A. Direct the Government of India and State Governments to issue revised guidelines ensuring that the possession of a BPL card is not a necessary eligibility criterion for inclusion in the expanded Antyodaya programme.
- B. Direct the States to ensure that the inclusion of priority groups is done as a matter of right, as per the orders of the Court.
- C. Direct that the cards must be issued within four weeks to all primitive tribes and within eight weeks for other priority groups, for those states that are yet to complete the process of identification and distribution of cards.
- D. Direct the Government of India to ensure that grain allocations under Antyodaya Anna Yojana are raised as may be required for the implementation of these directions.

3 Annapurna and NSAP

- 3.1 The Annapurna scheme, from being a centrally sponsored one was transferred to the State Plan wef 2002-2003. Since then a number of States including MP, Karnataka, Haryana, Punjab, Arunachal Pradesh, Assam, Chattisgarh, Gujarat, Kerala, Manipur,

Nagaland, UP and Uttaranchal⁴ have discontinued the scheme, in many cases without providing any alternative. In both the districts of Sheopur and Dhar in MP, our investigators met many elderly persons who were dependent on the Annapurna benefits for their survival but had been abruptly deprived of it since March 2003. Moreover this had been done without providing for any other alternative arrangement. This had been brought to the attention of the state government in July 2003 but field visits made in November showed that no heed had been paid to the Commissioners recommendation that these benefits not be withdrawn.

In the light of the above we advise the Honourable Court to:

- A. Direct that no scheme covered by the orders of the court (including the National Old Age Pension Scheme and the National Family Benefit Scheme and in particular Annapurna) be discontinued or restricted in any way without the prior approval of the court. If any of the schemes have already been discontinued, the States should reintroduce them with retrospective effect.
- B. Direct states, which contend that allocations under Annapurna are not required, since the entire eligible population has been covered under the national and state pension schemes, to establish before the Court that this indeed reflects the situation at the ground level. Adequate proof must be furnished and submitted to the court that no one in the state wishes to get benefits under this scheme.
- C. Direct the GoI to make full allocation for NSAP in its budget. At present against a requirement of more than Rs 1400 crores, only Rs 680 crores is being provided, resulting in huge backlog of non-payment in the states.

4 Moving towards an Employment Guarantee

- 4.1 We have mentioned earlier the inextricable link between the right to work and the right to food. The Government of India has in the past also recognised this by conceiving of and announcing the implementation of Jaya Prakash Narayan Employment Guarantee Yojana (JPEGY) in the budget of 2002 - 03 (Budget speech of the Finance Minister, February 2002) more than a year and a half ago. In particular the programme clearly lays down that any individual in the selected districts, should

⁴ Grains are allotted by the Department of Food and Public Distribution on receipt of demand from the states. The mentioned states have not been allotted grain under the programme for the year 2002-2003

be able to get employment at the legal minimum wage within one fortnight of registration, and should be eligible for compensation if employment is not thus provided. However nothing has been done since the budget announcement.

We therefore advise the Honourable Court to:

- A. Direct the Government of India to implement the Jaya Prakash Narayan Employment Guarantee Yojana in the identified 131 backward districts forthwith and in any case not later than one month from the date of the order.

5 Integrated Child Development Services (ICDS)⁵

- 5.1 It may be recalled that in an order dated 28 November 2001, the Hon'ble Court had directed all states to ensure that there is an Anganwadi centre in "every settlement". The intention of the order was to provide universal access to ICDS. However, the Department of Women and Child Welfare has admitted in a recent meeting, that orders aimed at compliance with this directive have not been issued. Further, the Department maintains that due to financial constraints it is unable to cover "each child, pregnant & nursing mother and adolescent girl" under the scheme as directed by the Supreme Court⁶. Requests made by the Department for enhanced financial allocations have been turned down.
- 5.2 The response of the Department indicates that the Supreme Court Orders have been interpreted within the existing guidelines, rather than as directions that go beyond the same. This is the rationale used for not universalising the scheme either in terms of reaching every "settlement" or in terms of covering "each" beneficiary (child within the age group of 0-6, pregnant and nursing mother, adolescent girls).
- 5.3 The net result is that only 3.4 crore children are getting the benefit of supplementary nutrition under ICDS. This is nowhere near the number of children in the relevant age group (over 15 crores), or the numbers that are malnourished (8.5 crore), or even the numbers belonging to families below the poverty line (6 crores). The percentage of adolescent girls being covered is much less as the scheme for them has not been

as per the information received from FCI as on 26.6.2003

⁵ The content in this section is largely drawn from a meeting convened by the Department of Women and Child Welfare, held at New Delhi on 25 November 2003. The meeting was called to discuss the recommendations made by the Commissioners regarding the ICDS programme as well as analyze to what extent the Hon'ble Courts orders have been complied with.

⁶ Dated 28th November 2001.

operationalised for all Anganwadi centres. The coverage of settlements is also not complete. At present for around 14 lakh habitations, there are only 6.05 lakh reporting Anganwadi centres. Thus the present coverage of the scheme is clearly insufficient to meet the needs of all those who require it.

We may add that 3.4 crore is the theoretical entitlement, actual coverage is much less, as the states do not provide sufficient funds to meet the cost of nutrition.

In the light of the above we advise the Honourable Court to:

- A. Issue clarificatory orders that the term “ settlement” as used in the Order dated 28 November 2003 pertains to a cluster of households within a village. The order must not be interpreted by the Department, as only operationalizing the present number of sanctioned ICDS projects.
- B. Issue orders that the ICDS services be extended to every child, pregnant and lactating mother and adolescent girl, as directed in the order dated 28 November 2003. The services must not be restricted to disadvantaged families or to a predetermined number identified and given to the states.

6 The Right to Information

- 6.1 Documents pertaining to food and employment related schemes are still being routinely denied to the public, and even to the Commissioners investigation teams. Despite the necessary authority, open access to information and records dealing with these schemes is still not readily attainable. The non-accessibility can be on account of continued absence of the concerned authority and thereby his non-availability to those who require his services, blanket refusal to provide the information as well as the phenomenon of prohibitive pricing. A case in point is the price charged for photocopying muster rolls in Madhya Pradesh, which at a steep Rs 20 per page is ten times more than that charged for photocopying one page of most other documents. Two letters addressed to the Chief Secretary of the state by the Commissioners have not even received a response let alone any action. A recent trip to Dhar district of MP several months after the letters were sent has confirmed that no order revising the price has been issued, as was requested by the commissioners.

6.2 Letters have also been sent to all the state governments requesting that documents related to the PDS including the list of beneficiaries and the stock register be made public. Though several state governments have issued standard orders in this regard, actual implementation of these orders at the ground level is not carried out. In November 2003 the Commissioners representatives visited the district of Dhar in MP. Despite having the required authority and thereby being promised the relevant information none was forthcoming. It appears that there is little accountability on not providing the information. Measures must therefore be taken to ensure that information and documents are available at a cost effective and time bound manner.

In light of the above, we advise the Honourable Court to:

- A. Direct that all documents pertaining to food and employment schemes, including those mentioned in the interim order of 28 November 2001, should be treated as public documents, open to public scrutiny and accessible for consultation by any individual at any time. In cases where an application is made for a copy of these documents, certified photocopies should be provided within one week of the application. The charge for the photocopies should be no greater than the cost of photocopying and in any case no higher than Rs. one per page.
- B. Direct the States and the Government of India to submit an affidavit clarifying the procedure required to apply for these documents, and the available redressal mechanisms when records are not provided on time. This should explicitly include measures to be undertaken on account of refusal to accept complaints and letters of application in addition to required action that must be taken against any official found to be guilty of repeated inaction.
- C. Direct the GoI to bring into force the Right to Information Act passed by Parliament and to issue rules and procedure pertaining to the Act.