RIGHT TO FOOD:
An Inquiry into the Public Distribution System in Mumbai

Report of the Indian People’s Tribunal on Environment and Human Rights.

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Tribunal Headed by:
Justice H. Suresh (Retired)
Bombay High Court
Participating Organizations:

This Tribunal was possible through the support of:
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Safai Majdur Sangh
Safai Kamgar Parivartan Sangh
Satark Nagarik Sanghatan
Vidyarthi Bharti
Youth for Voluntary Action [YUVA]
Yuva Sarkar

and

Human Rights Law Network
The India People’s Tribunal would like to thank the many people without whom this project would not have been possible. We would like to thank all of the organizations who have contributed through their sponsorship of this program, whose names are listed on the previous page. In particular, our sincere gratitude is extended to Sumit Wajale, Laxminarayan Dasari, Reshma Jagtap, Hyder Imam, Munnaappa, Gorakh Awadh, Simpreet Singh, Jayshree Mehrale, Shabbir Deshmukh, Kalpana Kalam, and Chris Lamannil, who all played crucial roles in planning, orchestrating and leading the event.

Our goal at the IPT is to look at issues from the perspective of the people; without the voices of our community and expert witnesses this would not have been possible. We owe them our gratitude for making this inquiry possible.

Our panelists have been similarly crucial to the successful running of this tribunal. Our sincere thanks to Justice Suresh Hosbet, Ramesh Padhey, Shanta Ranade, and Pratima Joshi for contributing their time and energy.

We would like to thank the Human Rights Law Network, whose text *Right to Food*, fourth edition, provided the basis for the Introduction of this report. *Right to Food*, 4th ed contains a cogent and comprehensible overview of the movement written by Colin Gonsalves, and a considerable collection of Supreme Court Orders and Commission reports. Both of these were essential in writing the subsequent introduction to this booklet.
Profile of Panelists

Justice H. Suresh
Retd. Judge, Bombay High Court

Justice Suresh was born in Hosbet, Karnataka. He completed his B.A. from Mangalore, after which he completed his M.A. from Belgaum and did his LL.M. from the University of Bombay. In 1967 he was appointed as the government pleader and in 1968 he took up office as a Judge of the Bombay City Civil Court. Justice Suresh took an early retirement in 1980 from the Bombay City Civil Court, and practised as an advocate of the Bombay High Court. In 1986 he was elevated to the High court at Bombay. He held this position with honour until his retirement in July 1991.

He has headed various commissions investigating human rights violations. In December 1991, he was appointed along with fellow High Court Justice Tiwatia to investigate into the Kaveri Riots in Bangalore. Justice Suresh and Justice Daud under took the task of investigating the causes of the Bombay riots, and spent extensive time meeting with those who had been affected by the disturbances in the course of that investigation. The ‘People’s Verdict’, one of the few unbiased and detailed reports on the riots, was the result of their dedicated efforts. Justice H. Suresh is also author of various editorials and articles on human rights.

Ramesh Padhey
Economist

Ramesh Padhey is a well-known Economist based in Mumbai, and does freelance work with various newspapers.

Shanta Ranade
Sr. Activist and Founder member of Bharatiya Mahila Federation

Shanta Ranade is a Senior Activist and founding member of Bharatiya Mahila Federation. Today, she heads the Maharashtra unit of the said federation. She is actively involved in various human rights movements and social activism.

Pratima Joshi
Sr. Correspondent Maharashtra Times

Pratima Joshi is a well-known and well-respected journalist in the State of Maharashtra. She works for the Maharashtra Times as a senior Correspondent.
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Part One:
Introduction and Documents
The Indian State’s apparent resolve to control inflation and ensure food security to its people manifests itself in the direct procurement from farmers reciprocated with a seemingly efficient Public Distribution System (PDS). The PDS was set up in the early forties, and it subsequently evolved into perhaps the largest distribution system in the world, having about 4.99 Lakh Fair Price Shops (FPS). This system has been charged with addressing the needs of over 330 million families nutritionally at risk.

Though now relegated to a supplementary role, the PDS continues to be an important component of the State’s strategy to combat hunger. The last two decades have seen strident measures by the state to dismantle the PDS to give effect to its agenda of privatisation and free markets. Interventions from Indian Civil Society have attempted to impede this free fall, through a series of PILs and Court orders.

Though the state recognises and has encouraged displacement of its people to its cities, it has failed to provide for even minimal food security to this shifting population. Successive Food Commissioners, in their reports to the Supreme Court, have indicted State Governments for steadfastly eroding the number of those eligible for food security in cities, all in direct contravention of various Orders of the Supreme Court. This is but the tip of the iceberg. So-called ‘fair-price shops’ have continued to charge above and beyond the fixed price, and have continued to release food grains into the black market, distribute substandard grains, make false entries, and intimidate intended beneficiaries. On the whole, the PDS is reflective of an entrenched graft system, violating Rules and Court Orders with impunity in the face of an apathetic and indifferent bureaucracy.

Yet arguments abound that despite its wide scope, mismanagement of the PDS has led to a massive increase in operational cost and to market distortion. This argument is in line with the various states’ common resolve to dismantle the PDS.

In light of the above, grass-roots organisations struggling to ensure food security for the people of Mumbai have requested the IPT to conduct an enquiry into the functioning of the PDS in Mumbai.

The Indian People’s Tribunal on Environment and Human Rights (IPT) was constituted in 1993 with a people’s mandate to investigate gross human rights violations. The IPT is particularly concerned about cases that affect large segments of urban and rural poor, especially those that and endanger lives and livelihoods. The IPT is a four-part body consisting of a panel of retired judges and academics, an advisory board of eminent people from and around the country, a network of supporters of grassroots struggle organisations, lawyers and other individual members and secretariats in various states of India, including the national secretariat in Mumbai.

The Tribunal’s Mandate is to assess the PDS from the people’s perspective in order to evaluate the system’s overall functioning with emphasis on the Quantity and Quality of food Grains, Pricing and the Grievance Redressal Mechanism, in the light of the State Governments Resolution and Supreme Courts Orders.
The tribunal is focused on the following issues regarding the Public Distribution System in urban Mumbai:

1. Functioning and transparency of Fair Price Shops (Ration Shops)
2. Price for food grains distributed by Fair Price Shops
3. Quality of food grains distributed by Fair Price Shops
4. Quantity of food grains distributed by Fair Price Shops
5. Grievance redressal mechanism

The Panel will be of Ramesh Padhey, Smt Shanta Ranade, Smt Pratima Joshi and will be chaired by Justice H. Suresh (Retd. Justice, Bombay High Court).
Right to Food—A Legal Background

In 1991, when the Honorable Supreme Court of India passed its judgment in the famous “Right to Food PIL,” it referenced Article 21 of the Indian Constitution, which ensures the right to lead a meaningful, complete and dignified life as a fundamental right guaranteed to all citizens. In this judgment, the Court affirmed the undeniable fact that a dignified life is something more than surviving or an animal existence. Food security—access to an adequate and balanced diet—is an essential component of any dignified life.

Article 47 of the Constitution directs that ‘The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.” Consistent with this idea, over the next two years, the Court began to monitor the implementation of the ‘Right to Food,’ and at least on paper, expanded the categories of people to whom the Government should guarantee food security to include ever-larger segments of society. In numerous Orders and Judgments over a period of several years, the Court elaborated a number of targeted initiatives aimed at ensuring food security to specific groups of people whom they have judged to be particularly vulnerable to hunger and starvation.

This process began when a group of activists, organized as the People’s Union for Civil Liberties, filed a petition to the Supreme Court that the state of Rajasthan be compelled to invoke emergency responses intended for famines to counter endemic hunger in parts of the state. The image presented by the PUCL was that of a village in Rajasthan, in which villagers were able to eat only every other day, while nearby Food Corporation of India godowns overflowed with grain. This grain was improperly stored, leaving it open to consumption by rats and mold. The petition also charged that the FCI was holding a surplus of the necessary grain, and that this surplus was being wasted by rot. The case, which would come to be known colloquially as the ‘Right to Food’ act, submitted that the state’s Famine Code should be engaged. As Hon’ble Supreme Court Justices Sabharwal and Sema put it in their Interim Order:

Plenty of food is available, but distribution of the same amongst the very poor and the destitute is non-existent leading to malnutrition, starvation, and other related problems. The anxiety of the Court is to see that the poor and destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government—whether Central or the State.

The Court would continue to express similar sentiments over the next several years, as implementation of this process occurred at a snail’s pace. In response to the PUCL’s Public Interest Litigation (PIL), the judges notified the complainants that they should amend the petition to include all of the states as petitioners. Then, with the historic Order of 23 August 2001, they ordered that the State had a responsibility to provide aid for “the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating

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2 See, for example, the Order made by the Court on 21 November 2001 with regard to this same petition. They list such schemes as Targeted Public Distribution Scheme (TPDS), Antyodaya Anna Yojana (AAY), Mid-Day Meal Scheme (MDMs), National Old Age Pension Scheme (NOAPS), Anna Poorna Scheme, and others.
women and destitute children.”

By arguing that the Central and State Governments have an obligation to care for the destitute members of society, they were in essence establishing a Right to Food for all Indians—since anybody who lacks food security is by definition destitute.

The Supreme Court has not only affirmed this ruling in the recent past; it has kept close watch on the various entities that they have given the mandate to ensure that hunger and starvation are eliminated. The Court has occasionally ordered that the States submit affidavits showing their compliance with the Court’s various schemes. Unfortunately, as the Court quickly realized, it was difficult to quickly force change upon an entrenched system that left Crores of people without regular access to quality food.

The Public Distribution System

If the Government is sincere in its desire to provide Food Security to every Indian, the Public Distribution System must surely play a key role in the realization of that ambition. Every year, farmers sell their grain to the Food Corporation of India (FCI), a Government of India entity that serves to regulate food prices and maintain a buffer stock in the event of a crisis. Much of this grain is transferred to Fair-Price Shops (FPS) according to the PDS, from where the grain is further distributed to qualifying individuals and families. Since 1997, the scheme has been modified as the TPBL (Targeted Public Distribution System), so labeled because qualification for subsidized food since that time has largely been based on a newly-instituted poverty line. Families judged to be below the poverty line (BPL) are typically entitled to a monthly ration of 35 kgs grain as well as kerosene each month at highly subsidized rates. Additionally, 200 million of the 500 million people who are participants in TPDS also qualify for the Antyodaya Anna Yojana, another scheme that entitles them to the same rations at even more highly subsidized prices. Furthermore, those families deemed APL are able to buy grain, but the subsidy is much less generous. Because of the often arbitrary distinction between families judged to be APL and BPL, many APL families are as poor or even poorer than BPL families. These families are often unable to afford the APL prices under the TPDS.

In its numerous rulings, the SC has expressed utmost concern that BPL families in particular receive relief immediately, and has directed numerous orders that the PDS system be made to work especially for these people.

The PDS, by far the largest foodgrain distribution system in the world, would appear at first glance to provide inclusive relief for those most in need of assistance. However, the system masks a host of entrenched interests that divert funds and grains from those whom the system is meant to benefit. One look below the surface reveals a well-oiled machine of graft and greed that is endemic throughout the PDS. Blame is distributed through all levels of the PDS bureaucracy.

According to an interim order dated 12th July, 2006 the Supreme Court established the Central Vigilance Committee (CVC), to which it gave a mandate to monitor the implementation of the PDS. They did so because successive inquiries conducted by the High-Level Commission on Longterm Grain Policy had all included harsh condemnations of how the PDS was being implemented. The Seventh Commissioner’s report labelled the PDS:

One of the worst performing schemes amongst those being monitored. All the evidence, from the field reports, observations by the Commissioners; team during field visits as well as the evaluations of the Planning Commission of the

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1 23.7.2001 Order of SC in WP 196/2001
2 Seventh Report of the Commissioners to the SC, in Right to Food, p. 272
3 Seventh Report of the Commissioners to the SC, in Right to Food, p. 272
4 28-11-2001 Order of SC in WP 196/2001
Government of India seem to support this view. Large-scale corruption, improper targeting, faulty design, leakages at all levels and weak monitoring have ensured that the TPDS has not achieved the potential that it had.\(^6\)

This particular edition of the Commissioner’s report did not delve too deeply into the specific problems of the PDS and TPDS—that is, of course, apart from its condemnation of the system as a whole. However, they began their analysis of why the scheme had failed to live up to its potential by questioning the fundamental assumption of the TPDS: that the poverty line accurately captures those who are truly needy of aid. They note that the poverty line has set a daily income of Rs 17 as the poverty line cutoff point, and at an even smaller Rs11 per day in rural areas. The Commissioners suggest that these cutoffs are exceedingly and arbitrarily low, and “leave a large proportion of the deserving poor outside the safety net.”\(^9\) The Commission noted that the poverty line had only increased a pitiable 9.1% in the sixteen years between 1990 and 2006. In this report, the Commissioners suggested that the scope of the BPL programme should be at least doubled.

Furthermore, the Commissioners pointed out in a subsequent report, BPL certification requires proof of two years’ residence in the same locality. In an age of massive migration from rural areas to cities, in which many of the most needy lack a residence altogether, this requirement categorically excludes large segments of the urban poor from BPL certification.\(^10\)

In its reports to the Supreme Court, the Commissioners have thoroughly implicated the Government of India for having set such impossibly low benchmarks for their poverty line, and further requirements in the TPDS system also contribute to the programme’s inefficacy. However, the Crores of needy people who are denied coverage due to the technical definition of poverty only begins to cover all those who are denied the Right to Food that the Supreme Court has repeatedly reaffirmed. Let us look further into some of the specific problems that plague the PDS.

**PDS - Problems of Implementation**

For the individuals who rely on the PDS to secure their daily nutrition, the shortcomings of this system are most visibly and tangibly manifested through the often open corruption, greed and dishonesty of the operators of the Fair-Price Shops. Experience shows that FPS operators often siphon grain from the PDS allotments, selling this grain instead on the lucrative black market for a handsome personal profit. In order to make grain available for trade in black, the FPS operators must withhold some of the required grain from those for whom it is intended. Across India, FPS owners have employed a multitude of strategies for accomplishing just this disenfranchisement.

In its Interim Order on 23 July 2001, the Supreme Court sought to immediately strike down one of the FPS owners’ primary methods for keeping PDS grains from ration card-holders by instructing the States to ensure that PDS shops would open and remain in operation.\(^11\) It is a well-known strategy of FPS owners to maintain only irregular hours, thus increasing the difficulty of individuals attempting to purchase the grains. In tandem with this, the shops often require that BPL families purchase the entirety of their months’ ration at once, even though these poor families are likely not to be able to afford the entire sum at any one time. Charges have also been made that shop owners often intimidate people coming for their rations, and rarely make complaint registers available when asked for them.

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\(^6\) Seventh Report of the Commissioners to SC, in *Right to Food*, p. 272-3  
\(^7\) Eighth Report of the Commissioners to SC, in *Right to Food*, p. 367  
\(^8\) 23.7.2001 Judgment in case WPC 196/2001, SC
In addition to practices that could be generously called manipulative, charges against FPS owners commonly involve direct fraud. The testimonies that follow in this booklet outline shocking illegal practices on behalf of FPS vendors. These illegal practices include falsifying the register in which purchases are recorded, selling BPL ration cards on the black market, giving out less grain than the required amount, and asking for bribes above the fixed price in exchange for rations.

Recognizing that fraud at the lowest level of distribution could effectively exclude many people from receiving their entitlements, the SC followed up their Interim Order of 23 July, 2001 with another Order that elaborated specific threats against FPS owners. In this order, the SC laid out an entire list of offenses that would be cause for termination of a FPS license. The directives listed therein directly addressed nearly all of the common allegations against the FPS owners. However, as the 2006 CVC report made clear, the Order has not succeeded in changing the behaviour of FPS licensees to any significant extent. Of course, such blatant fraud could not take place without at least the tacit consent of local law enforcement. Policemen, so often an instrument through which the rich subjugate the poor, live up to their reputation in the case of the PDS, as the CVC Report affirms.

Fraud and corruption also takes place at the level of State government, by both the state itself and by the government bodies and councils that have been given the task of implementing the PDS. In numerous judgments, the Supreme Court has expressed its extreme disappointment with the fact that funds received by the States are far greater than the states actually spend on these programs. In its self-appointed role of monitor of the implementation of the Right to Food, the Court has on multiple occasions charged all states to account for discrepancies between these numbers. Once again, these discrepancies have largely gone unredressed.

A charge leveled specifically against FCI is that the grains distributed through the PDS are of inferior quality, especially compared to the grains that are collected by the FCI under government programs. The Supreme Court has also acknowledged this potential problem, and once again sought to specifically address it through a Court Order, writing:

“We direct the Union of India and the FCI to ensure provision of fair average quality grain for the [Mid-Day Meal Scheme] on time. The States/Union Territories and the FCI are directed to join inspection of foodgrains. If the foodgrain is found, on joint inspection, not to be of fair average quality, it will be replaced by the FCI prior to lifting.”

In spite of this directive, which in this context was directed specifically at grain targeted for one particular scheme, but PDS beneficiaries have also claimed a right to good-quality grain. However, given that the FCI has been documented to improperly store the grain that it stockpiles, there seems to be an impossible proposition.

The charges elaborated here are by no means comprehensive. The following pages of this booklet record the proceedings at the Indian People’s Tribunal on Human Rights and Environment on the Public Distribution System, and cast light on how these and other problems affect poor people in the city of Mumbai. They provide a vivid look into the specific problems of the PDS from a variety of angles. First comes a schedule of events from the day of the event, 14 March 2010. Next, excerpted highlights from the dispositions given by witnesses on the day of the tribunal itself. Finally, the tribunal panel’s judgment and suggestions for further change.

12 2.5.2002 Order (WPC 196/2001).
14 See, for instance, the SC Order of 10 August 2004 (WPC 196/2001), or any of numerous others printed in Right to Food
15 A Right to Food scheme charged to providing a hot meal to all schoolchildren each day
IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 196 OF 2001

People’s Union for Civil Liberties … Petitioner (s)
-Versus-
Union of India & Ors. … Respondent (s)
Date: 23/07/2001 This Petition was called on for hearing today.

UPON hearing counsel the Court made the following Order

Counsel for the petitioner is permitted to file a fresh application for interim relief. A copy of the same be given to the counsel for the Union of India as well as to the counsel for the States and for the Food Corporation of India. Learned Attorney General states that this should not be regarded as an adversarial litigation and it is a matter of concern for all. In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems. Reply affidavits be filed within two weeks by the States and the Union of India as well as the Food Corporation of India. 

( In the meantime, we are sure that the responsible Governments will act for the benefit of their people. By way of an interim order, we direct the States to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made. Leave is granted to the petitioner to implead other States also as parties to this petition. On such an application being filed today, notice to issue to them. List the matter for further consideration on 20th August, 2001.

(D.P. WALIA) (S.L. GOYAL)
Court Master Court Master
2. Supreme Court Order dated 2/5/2003 (selections)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.196 OF 2001

People’s Union for Civil Liberties … Petitioner (s)
-Versus-
Union of India & Ors. … Respondent (s)

Date : 2/5/03 This Petition was called on for hearing today.

UPON hearing counsel the Court made the following Order

In this petition that was filed little more than two years back various issues have been framed many of which may have a direct and important relevance to the very existence of poor people; their right to life and the right of food of those who can ill-afford to provide to their families two meals day. There misfortune becomes further grave during the times of famines and drought. The petitioner has sought directions for enforcement of Famine Code. The petitioner seeks immediate release of surplus food-grains lying in the stocks of Union of India for drought affected areas. Directions are also sought requiring the Government to frame fresh schemes of Public Distribution for Scientific and Reasonable Distribution of food-grains. In order that any meaningful and immediate relief is given by the Central Government and the State Government without any delay various applications have been filed by the petitioner. Considering the importance of the matter particularly in relation to those who are Below Poverty Line (BPL) an order was made by this Hon’ble Court on 3rd March, 2003 requiring the respondents to file replies to the applications and place on record the requisite materials, while adjourning the case to the 8th April, 2003. In respect of the directions that the Central Government shall formulate the scheme to extend the benefits of the Antyodaya Anna Yojana (AYY) to destitute section of the population, learned Attorney General stated on the last date of hearing which was on 3rd March, 2003 that for the budget for the year 2003-2004 a provision has been made for it. Despite the order of this Court the document has not been placed on record. The approach of Government is more distressing since this matter which was to come up on 8th April, 2002, has come up today after nearly four weeks of the scheduled date but neither the documents have been filed nor other aspects required to be dealt with in the last order have been adverted to. In I.A.25 one of the grievance that has been made is that names of various persons have been removed from BPL arbitrarily. In I.A.26 it has been highlighted that the allocation made for supply of grain in lieu of the labour of BPL family has been recommended to be reduced from 10 kgs. per day per household to 5 kgs. and for 10 days in every month till June, 2003. In terms of the last order the specific instructions were required to be obtained on the relevant schemes mentioned in I.A.26 including in the matter of reduction of supply of the grain and the number of days. In I.A.26 directions sought against Union of India are to release 20 million tones food-grains, at the very minimum, free of cost every year for the Food-for-Work Programmes besides other reliefs. Response from Government was sought within three weeks.

Declining request for filing of replies we have heard learned counsel since it is necessary to consider issuing certain directions without any further delay with a view to provide some ad hoc interim relief to a class which deserves a sympathetic approach. We have heard Mr. Colin Gonsalves, learned counsel for the petitioner, Mr. Mukul Rohtagi, learned Additional Solicitor
General for Union of India, besides Mr. B.B. Singh, for State of Bihar, Mr. Ashok Srivastava, for State of U.P. and Ms. Indra Sawhney, for Food Corporation of India.

This Court in various orders passed in the last two years has expressed its deep concern and it has been observed, in one of the orders, that what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existing leading to mal-nutrition, starvation and other related problems. The anxiety of the Court is to see that poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government-whether Central or the State. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.

Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which inter alia provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

In the light of the aforesaid, we are of the view that for the time being for the months of May, June and July, 2003, it is necessary to issue certain directions so that some temporary relief is available to those, who deserve is the most.

Our attention has been drawn to the Famine Code (Annexure Petitioners/ Appellants herein-VIII). That Famine Code, we are informed, is the one formulated by State of Rajasthan and similar Codes have been formulated by other States. A perusal of this Famine Code shows that first three chapters deal with the steps to be taken as preventive measure before the famine and drought and Chapter IV onward deal with declaration of distress and commencement of relief setting out in detail the reliefs and the officers responsible thereof. One of the reliefs claimed in the petition is for enforcement of the Famine Code. Learned Additional Solicitor General submitted that the Famine Codes were formulated long time back and many of the aspects have been dealt with under various schemes that have been formulated later like Sampoorna Grain Rozgar Yojana (SGRY). This should not present any difficulty in implementing the Famine Code for the time being. Under the circumstances, we direct the implementation of the Famine Code for the period May, June and July, 2003 as and when and where situation may call for it, subject to the condition that if in subsequent schemes the relief to be provided and preventive measures to be undertaken, during famine and drought, are better than the one stipulated by the Famine Code, the same may be implemented instead of Famine Code...

...Our attention has also been drawn to the Report of the High Level Committee on Long-Term Grain Policy-July, 2002. A detailed reference to report has been made in I.A.25. That Committee was constituted by Department of Food and Public Distribution, Ministry of Consumer Affairs and Food and Public Distribution, Union of India. In the summary and recommendation the Report inter alia states that an importantly social and security measure in the context is provision for employment on public works. While a food component can and could be part of such employment generation in the short run or in periods of local food shortages in long run, employment generation should be distinct from the food delivery system.
This should not, however, undermine the importance of employment and income generation in eliminating hunger and malnutrition. The Report further states that no long run policy can be effective unless present imbalances, specifically, the large excess holding of public stocks, the Report has outlined a two year Plan of Action which includes immediate steps to lower procurement inflows on the one hand, and to raise outflows, on the other hand, by several means including a large Food for Work programme, a revitalized universal PDS and other grain-based welfare schemes. It has also recommended a major food-based employment programme for the short run. In ultimate, the recommendation of the said committee is that the present SGRY scheme should be expanded and at least doubled (emphasis supplied). It says that this implies doubling grain allocation from 5 to 10 million tonnes, and also an increase in the cash allocation to States by at least 5000 crores.

The prayer of the petitioner, in fact, is for allocation of 20 million tonnes though, according to it, the requirement is of 40 million tonnes. The High Level Committee was appointed by the Government of India. It gave its Report in July, 2002. Ten months have passed. We do not know what consideration the report has received if at all it has been considered by the Government. We may also note that the Report has further mentioned that currently, about half of the food subsidy is being spent on holding stocks in excess of the buffer stock levels necessary for food security. As these stocks are reduced to normal levels, very large fiscal resources of around Rs.10,000 crores annual will become available...

...It is necessary to issue immediate directions to evolve a system whereby eligible BPL families, which may not be on BPL list, are so included as also regarding the ration shops and other outlets remaining open and giving deliveries of food-grains to those, who are on the list and hold the requisite cards. For the present, we are not going into the question whether only 41% of the poorest households are on BPL list. We may note that in May last year an order was passed that the respondents shall ensure that the ration shops remain open throughout the month during fixed hours and the details of which shall be displayed in the notice board.

To facilitate the supply of the grain, we issue the following directions :-

(1) 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.

(2) Permit the BPL household to buy the ration in instalments.

(3) Wide publicity shall be given so as to make BPL families aware of their entitlement of food-grains...

Sd/..................J (Y.K.SABHARWAL)

Sd/..................J (H.K.SEMA)

New Delhi, May 2, 2003.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.196 OF 2001

People’s Union for Civil Liberties … Petitioner (s)
-Versus-
Union of India & Ors. … Respondent (s)

Date : 14/3/03 This Petition was called on for hearing today.

UPON hearing counsel the Court made the following Order

Counsel for the parties state that a settlement has been arrived at between the petitioner and Ministry of Rural Development and the Ministry of Consumer Affairs, Food and Public Distribution, Government of India.

The terms of which are as follows:

“1. Food grain allocations by the Central Government to beneficiaries under TPDS will be continued to be made at the present to States on the basis of Planning commission estimates of 1993-94 poverty rations, which is at 36% applied to the population projections of the Registrar General of India as on 1.3.2000 or on the basis of families identified and issued ration cards by the State Government whichever is less.

2. The survey methodology for the next BPL census will be designed by the Ministry of Rural Development in consultation with the Supreme Court Commissioners in the right to food matter Case No. 196/2001 along with other sections of the society latest by the beginning of the XI Five Year Plan.

3. Provisions will be made to allow new names to be added and ineligible names deleted from the BPL List 2002 on a continuous basis during the period that the list will be applicable.”

In view of the afore-stated settlement arrived at between the parties, counsel for the petitioner states that additional affidavit, as directed by this Court on 15.12.2005 is not required to be filed.

Counsel for the parties further state that I.A. Nos.25, 26, 31, 32, 48 and 53 may be disposed of in terms of the settlement arrived at between the parties. Ordered accordingly.

The stay order dated 5th May 2003 is vacated.

Adjourned by four weeks.

(Parveen Kr. Chawla) (Kanwal Singh)
Court Master Court Master
4. Supreme Court Order dated 12/7/2006

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.196 OF 2001

People's Union for Civil Liberties … Petitioner (s)
-Versus-
Union of India & Ors. … Respondent (s)

Date: 12/7/03 This Petition was called on for hearing today.

UPON hearing counsel the Court made the following Order

Delay condoned.

For intervention is allowed.

After having heard learned counsel for the parties, we find that there is practically no monitoring over the sums allotted for the Public Distribution System (in short PDS) by the Central Government, and its utilisation. The amount involved, we are told, is in the neighbourhood of Rupees Thirty Thousand Crores annually.

Certain suggestions have been given by Mr. Colin Gonsalves, learned senior counsel, as to the modalities to be adopted in such cases. At the present stage, we feel it would be necessary to constitute a Central Vigilance Committee, headed by a retired Judge of this Court to be assisted by Dr. M.C. Saxena, the Commissioner earlier appointed by this Court. We request Mr. Justice D.P. Wadhwa to head the Committee.

The Committee shall look into the maladies which are affecting the proper functioning of the system, and also suggest remedial measures. For this purpose, the Committee shall, amongst other things, focus on:

a) The mode of appointment of the dealers,
b) The ideal commission or the rates payable to the dealers, and
c) Modalities as to how the Committees already in place, can function better.
d) Modes as to how there can be transparency in allotment of the food stock to be sold at the shops.

While dealing with the question of the mode of appointment, the Committee shall also suggest as to a transparent mode in the selection of the dealers. The Committee shall also indicate as to how more effective action can be taken on the report of the Vigilance Committees already appointed. It goes without saying that the same shall be in addition to the legal remedies available to any citizen in setting law into motion. We request the Committee to give its report within a period of four months so that further instructions/directions can be given.

The Committee would invite suggestions from general public, organizations and would consider the suggestions, if any received, in the proper perspective.

We are giving this unusual direction in view of the almost accepted fact that large scale corruption is involved and there is hardly any remedial step taken to put an end to this. The ultimate victim is the poor citizen who is deprived of his legitimate entitlement of food grains. The Public Distribution System is intended to ensure that a citizen gets the food grains at a reasonable price keeping in view his economic standards.
The expenses including honorarium to the Chairman and the Member Convener and other financial involvements of the Committee shall be borne by the Food Ministry of the Central Government. The honorarium shall be same as the pay and allowances of a sitting Judge of this Court and a Joint Secretary of the Union of India. The necessary infrastructure shall be provided by the concerned Ministry within three weeks from today. This direction is initially given for the Government of Delhi to be followed on All India basis.

We find that the grievance made in this petition can be considered by the authorities in the light of orders to be passed in the connected matters, if occasion so arises. This special leave petition is, accordingly, disposed of.

(Neena Verma)  
Court Master

(Vijay Aggarwal)  
Court Master

GOVERNMENT OF MAHARASHTRA
Food, Civil Supplies & Consumer Protection Deptt
Mantralaya Annex, Mumbai: 400032
Date: 21st June, 2002


--GOVERNMENT CIRCULAR--

In pursuance to provision made in Chapter 18(3) (b) of Maharashtra Food Grain Rationing Distribution (Ilnd) Regulation 1966 as also in Chapter 18(2) (d) of Maharashtra Schedule Commodity (Distribution Regulation) Regulations 1975 there is an order for exhibiting opening time table of shop on notice board by every shop keeper of Reasonable Rate / Rationing shop. Similarly, the order is also passed in paragraph no.12 in Govt. Decision, Food, Civil Supplies and Consumer Protection Department’s circular no. Saviyya-1091/2424/ Case no.6178/CS-28 dated 12th November 1991 that the Reasonable Rate / Rationing Shops should keep open in time decided by Government. Even then it is noticed that at some places the reasonable rate /rationing shop do not open in time. For this reason all concerns have been instructed in circular dated 21st February 2002 the timing of opening the reasonable rate / rationing shop for convenience of Rationing Card Holders.

2. However, in one of public litigation writ (Writ Petition No.196/2001) Hon’ble Supreme Court has given direction during the hearing of writ that to take precaution the reasonable rate/rationing shop shall remain open in whole month as also to exhibit time table of opening shop along with other details on board of shop.

3. It is therefore directed to all Additional District Collector, and Controller, Rationing, Mumbai to intimate all shop keepers of reasonable rate / rationing shops to keep open their shops whole month and to exhibit opening time table on their notice board and accordingly give instructions to all field officers/ employees to keep watch on action under their field jurisdiction and failure to observe these instructions, penal action be taken against defaulter shop keeper. The report of action taken by you requires submitting immediately to the government.

Issued as per order and in name of Governor of Maharashtra.

Sd/-
(P.J.Jadhav)
Desk Officer
Food, Civil Supplies & Consumer Protection Deptt.

To,
All Divisional Commissioner.

GOVERNMENT OF MAHARASHTRA
Food, Civil Supplies & Consumer Protection Deptt
Mantralaya Annex, Mumbai: 400032
Date: 5th July, 2002

2) Govt. Corrigendum Food, Civil Supplies & Consumer Protection Deptt No:PDS-1091/Case No.6122/Part-2/C.S.-28
dated 9th Nov.1994
4) Govt. Circular Food, Civic Supplies & Consumer Protection Deptt No:PDS-1095/Case No.6122/Part-2/C.S.28
dated 31st October, 1996.
dated 16th July, 1999.
dated 26th April,2000.

:: CIRCULAR ::

As per government circular of above sr. no.1 to 4, the detail order has been given to exhibit food grain specimen in sealed polythene bags in reasonable rate shops. Similarly vide above circular at Sr. No.5 of a set of circulars about orders issued from time to time by government have been sent and have instructed for enforcing these orders strictly. Thereafter as per above sr.no 6 and 7 of government circular the instructions have been given to implement earlier orders strictly.

2. The Government has received complaints about not exhibiting food grains samples in sealed packed polythene bags in rationing shops. Similarly objection has been taken in report of Controller & Accountant General of Audit of India. While taking into account above situation, it is directed to implement the order of government strictly for exhibiting food grains samples in polythene bags. (For your immediate reference the copies of government circular of above Sr. no.1 to 3 are attached herewith). It is expected that reasonable rate/authorized rationing shop keepers shall observe at the orders mentioned in above circular no.1 to 7 as also it is
directed to all concern officers/employees to take precaution that necessary polythene bags and other articles necessary for it shall be provided to them.

Issued as per order and in name of Governor of Maharashtra.

Sd/-
(P.J.Jadhav)
Desk Officer
Food, Civil Supplies & Consumer Protection Deptt.

To,
1) All Divisional Commissioner
2) All Dist.Collector/All Additional Dist. Collector (excluding Mumbai Urban & Suburban Dist)
3) Controller Rationing, Mumbai
4) Director, Civil Supplies (Goa), Mumbai
5) Financial Consultant & Dy, Secretary, Food, Civil Supplies and Consumer Protection Deptt.
6) Dy. Director, Civil Supplies, Office of Supply Commissioner, Mumbai
7) All Dist. Supply Officer
8) All Food Grain Distribution Officer
9) Dy. Director (Statistic ),Food, Civil Supplies And Consumer Protection Dept.
10) Personal Secretary to Hon. Minister, Food, Civil Supplies and consumer Protection Deptt.
11) Personal Secretary to Hon. Minister for State, Food, Civil Supplies and consumer Protection Deptt.
12) All Officers/ Offices, Food, Civil Supplies and consumer Protection Deptt.
13) Managing Director, Maharashtra Co-oprative Adivasi Development Corporation, Nasik
14) File copy ( Office Civil Supplies 28)
GOVERNMENT OF MAHARASHTRA
Food, Civil Supplies & Consumer Protection Deptt
Mantralaya Annex, Mumbai: 400032
Date: 15th June, 2004

READ: 1) Govt. Decision: Food, Civil Supplies &
Consumer Protection Deptt No:Civil
Distribution System,-1091/Case No.5978/
FCS-28 dated 20th Feb,1993
2) Govt. Decision: Food, Civil Supplies &
Consumer Protection Deptt No:Civil
Distribution System,-1000/2350/Case
No.198/2000/CS-28 dated 20th Feb,1993

GOVERNMENT DECISION:

The government vide reference dated 17th April 2003 has taken decision to give permission for sale of 11 types of wheat and rice as also sugar, edible oil, palm oil from rationing shop in open market which is different and easily identifiable than kind of wheat and rice (kind and type) distributed from public distribution system from reasonable rate /rationing shops. Now the State Government has taken decision to give permission for sale of legume, pulses, jaggery and ground nuts from reasonable rate / rationing shop along with above mentioned articles which usually sale in open market.

2. This permission is being granted on temporary basis and same shall be changed from time to time in accordance with amendment carry out from time to time in nature of public distribution system.

Issued as per order and in name of Governor of Maharashtra.

( J.R.Mejari )
Deputy Secretary
Food, Civil Supplies and
Consumer Protection Department

To,
1) Secretary to Hon’ble Governor
2) Principal Secretary to Hon’ble Chief Minister
3) Secretary to Hon’ble Dy. Chief Minister
4. Government of Maharashtra Circular 30/8/05

GOVERNMENT OF MAHARASHTRA
Food, Civil Supplies & Consumer Protection Deptt.
No: ECA-1005/Case No.43/CS-33
Mantralaya Annex, Mubai: 400032
Date: 30th August, 2005

READ: 1) Govt. Circular No.ECA-1703/830/Case
No.236/CS-23 dated 05th August, 2003
2) Govt. Circular No.Saviyya-2004/Case
No.1732/CS-28 dated 19th April, 2005

-- GOVERNMENT CIRCULAR --

1. The enforcement of procedure of Essential Commodity Act 1955 has been passed by Central Government. The implementation of this Act is made through out the State. In section 3 of Essential Commodity Act 1955 the special power has been entrusted to Central and State Government for enacting various licences/regulations with a view to make easily availability of essential commodity in market. Accordingly the criminal case is lodged for breach of section 3 of this Act against those person / societies who do not observe the provisions of various licences/regulations. Such offences as per provision in licence order the authorized officer/ employees in supply team can be lodged. Similarly as per provisions made in this Act, the Police can also raid if mismanagement is found in police investigation and after seeing breach of section 3 of Essential Commodity Act 1955 can file offence against such person/society. If breach of section 3 of this Act is committed and after lodging offence and completing investigation, the case can also be filed in the Court of Law. If offence proved in such cases then as provided in section 7 of Essential Commodity Act 1955 the Court can impose Jail punishment and other punishments.

2. While enforcing the Essential Commodity Act, if Supply Team found breach of section 3 or order of licence /Regulation register serious nature of offence on errant. While doing so, the Supply Team after inspection confiscate the items and thereafter register offence of criminal nature with police. Thereafter the Collector has power in disposing the confiscated goods by supply team along with van as per provisions made in section 6(3) of the Essential Commodity Act, 1955. In some of the cases, the police themselves file criminal case with regard to mismanagement of essential commodity found in investigation and send proposal for disposing confiscated goods under provision of section 6(a) of this Act to the concerned Collector. The Collector carries scrutiny of such proposal received to them. If need arise the District Collector has power to carry re inspection. As per provision of section 6(b) of this Act, it is binding to send Shaw Cause Notice to concern by Dist. Collector. Accordingly, the concern require to call for hearing and it is binding as per this Act and principle of natural justice to hear the person concern. In this way, the District Collector shall give show cause notice and after hearing the concern, the Dist. Collector shall take decision how to dispose the confiscated essential goods. The Collector at the time of taking decision of disposal can take decision to deposit the essential goods to the government. At the time of taking decision of confiscation to government, these items as per provision of section 6(a)(2) through Public Distribution System by supplying at the rate of public distribution system, the amount so receive can order to deposit such amount to the government. Similarly the seized goods can be sold thorough
public auction and amount so received through sale can be ordered to deposit to government. Some times on certain terms and conditions the Dist. Collector can return the essential commodities to concern person. In such time, at the time of returning such goods Collector do not take any kind of hypothecation (for eg. Bank guarantee, cash amount etc.). Similarly in most of such cases, the police do not submit their report in time of disposal of such goods to District Collector. Hence decision as per section 6(a) does not take in time. In such cases, the concern people succeed in getting possession of such goods directly by adopting process of Court. In fact as per provision of section 6(d) of this act, restrictions have been brought on other authorities in giving any decision except Dist Collector and in Appeal matter, the government shall take its decision.

With a view to avoid such cases, it is necessary to take precaution as per following by all concern field officers and for this purpose the instructions are being given as per following:-

(a) **Divisional Action to be initiated from side of Supply Department**:- With a view to curb restrict embezzlement and sale of black marketing of commodity mentioned in section 2(b) of Essential Commodity Act, the Central and State Government have entrusted power by section 3 of said Act to enact various type of rules, regulations, orders and licence for sale, regularize and distribution of such articles. The main motto of this Act is to stop embezzlement and make availability of these articles easily With this objective, the supply system require to enforce regularly these various licences, regulations / control, orders etc. For this purpose the supplying system require to take action as per following:-

1. The supply unit shall carry out regular checking and inspection from time to time of various licences, permissions (eg. Rationing shop/ kerosene, sugar, Nafta, Petrol pump etc.) in their district.

2. To conduct sudden raid campaign for checking and inspection.

3. if it is seen or observed in inspection that embezzlement of essential commodities are being sold out then it is necessary to inspect and check in prescribed manner, execute the panchnana accordingly and confiscate the essential commodities. The disposal of such confiscated commodities shall be made as per provision of section 6(a) of Essential Commodity Act.

4. While taking action as per above (3), the suspension / cancellation of licence shall be made as per rule.

5. Prior to disposing confiscated goods as per section 6(a) of Essential Commodity Act 1955, it is necessary to issue ‘show cause’ notice and listen to his submissions. In this way action should be taken on priority and within prescribed time limit. Probably dispose such cases within period of 15 days.

6. The proposal for disposing goods as per section 6(a) mostly comes late from side of police after registration of offence. Similarly the Dist. Collector by taking action as per section 6(b) possibly dispose the case within 15 days.

7. Most of officers without taking hypothecation against goods for disposing confiscated goods as per section 6(a) or release it on paltry hypothecation. Their action is contrary to primary objective of this Act hence at the time of disposing this goods possibly take bank