

GOA HUMAN RIGHTS COMMISSION
PANAJI –GOA

Proceeding No. 237/2013

INQUIRY REPORT

The background on the basis of which this suo motu proceeding was initiated is as follows:-

It was reported in newspapers that the Hon'ble Supreme Court of India had passed an Order that Aadhaar Card cannot be insisted as pre-condition for obtaining the benefits from the Government. In spite of such direction, it came to the notice of the Commission that the concerned authorities were insisting upon Aadhaar Card for payment of subsidies to the domestic consumers of cooking gas.

2. Accordingly, notices were issued on 01/11/2013 calling upon the Director of Civil Supplies, Panaji – Goa and the Secretary, Ministry of Petroleum & Natural Gas, Central Government, New Delhi to respond to the following questions.

- (i) Whether benefit of subsidy to domestic gas consumers is available even without Aadhaar Card and if so, the modalities for the same.*
- (ii) Whether the Bank Account once linked for availing such subsidy can be changed to any other Bank Account?*
- (iii) Whether the domestic gas consumers who have purchased "gas" before linking to Bank Account can avail the benefit of subsidy in respect to previous purchases within the permissible limit?*

3. In its reply Respondent No.1 stated that the State government had no role to play in the matter for payment of subsidy to the domestic consumers of cooking gas. An Affidavit by way of reply was filed on behalf of the Secretary, Ministry of Petroleum and Natural Gas representing the Union of India. In such Affidavit, a preliminary objection was raised by the Union of India to the effect that Writ Petition (Civil) No. 494/2012 was pending before the Hon'ble Supreme Court of India and "... all issues raised by this Hon'ble Commission are being examined by the Hon'ble Supreme Court" and "..... it would not be appropriate nor desirable for this Hon'ble Commission to simultaneously take up the issue which is at large before the Hon'ble Supreme Court."

4. Without prejudice to the above contention Respondent No.2 also highlighted the following objections:

i. “.... the matter relating to modalities of receiving subsidy for domestic gas consumers does not infringe any human right and thus is not within the jurisdiction of the Hon’ble Commission”.

ii. “..... The State is well within its rights to ensure adequate safe guards prior to giving subsidy to ensure the bonafide of the recipients. Aadhaar based DBTL scheme is an efficacious mechanism to do so.

5. The Union of India also stated that an application for impleadment had been filed on behalf of the Ministry of Petroleum and further application has been filed for clarification/modification of the order dated 23/09/2013 in Writ Petition (Civil)494/2012. In para-6 of the Affidavit filed before this Commission, the Union of India without prejudice to the above, responded to the queries raised by this Commission as follows:

a) Whether benefit of subsidy to domestic gas consumers is available even without Aadhar Card, and if so the modalities for the same?

Under the scheme formulated the consumer has to link his Aadhar number with his LPG Consumer Number as well as to his bank account for the subsidised cylinder as per the consumer’s entitlement in those districts where the DBTL Scheme has been implemented. A grace period of 3 months has been given from the date of implementation of the Scheme in DBTL district during which the consumer who has not linked his Aadhar number to the LPG/Bank data base will keep on getting LPG cylinder at subsidised rate. After the end of the grace period, all LPG consumers will be getting LPG at market price and subsidy will be transferred to only Aadhar linked bank account. Aadhar number is not required for receiving LPG cylinders at market price.

b) Whether Bank Account once linked for availing such subsidy can be changed to any other Bank Account?

It is stated that it is possible to change the Bank Account once linked for availing such subsidy to any other Bank Account. Such accounts are shared with banks by National Payments Corporation of India (NPCI) using the Move-In/Move Out reports.

c) Whether domestic gas consumers who have purchased “gas” before the linking to the Bank Account can avail the benefit of subsidy in respect to previous purchases within the permissible limit?

The subsidy being on the basis of a scheme the consumer is required to fulfil the requirements of the scheme and only thereupon will the consumer be entitled to avail of the benefits. Unless a consumer complies with the required formalities, no claim can be made by such consumer to avail the benefit of subsidy. As mentioned above, during the grace period the LPG consumer continues to get LPG at subsidized rates even though he has not linked his Aadhar to LPG/Bank. However, after the end of the grace period he has to link his Aadhar number to LPG/Bank data base failing which such consumer will not be entitled to nor get subsidy and instead will get cylinders at the market price. However, whenever the LPG consumer links the Aadhar number to the LPG/Bank data base, subsidy will be transferred to his Bank account with prospective effect for the balance entitlement of LPG cylinders when they are consumed.

6. In course of hearing which took place on 09/01/2014 learned Asst. Solicitor General appearing for the Union of India also submitted that in view of the provisions contained in Section 29 of the Protection of Human Rights Act, 1993, the Goa State Human Rights Commission has no jurisdiction to deal with any matter pertaining to the Central Government.

7. From the stand taken by the Union of India and the submissions made in course of the oral hearing, the following undisputed factual scenario emerges.

Notwithstanding the order passed by the Hon'ble Supreme Court to the following effect "..... in the meanwhile no person should suffer for not getting the Aadhar Card inspite of the fact that some authority had issued a Circular making it mandatory", the Ministry of Petroleum and Natural Gas is insisting upon possession of Aadhar Card and linking of such Aadhar Card with the bank account and the domestic consumer connection for disbursement of subsidy to the domestic consumers of cooking gas in several areas of the country including Goa and the domestic consumers in Goa who are yet to get Aadhar Identity Card and those domestic consumers who even though in possession of Aadhar Identity Card are yet to connect their Aadhar Cards to the bank account and the domestic gas connection are being deprived of the subsidy in respect of consumption of cooking gas within permissible limit. It is not in dispute that as per the policy decision taken by the Ministry of Petroleum and Natural Gas, a domestic consumer of cooking gas is entitled to receive subsidy in respect of consumption of cooking gas upto 9 cylinders in a year. From the above, it is apparent that the order of the Supreme Court dated 23/09/2013 in Writ Petition is being flouted by the Ministry of Petroleum and Natural Gas in as much as such Ministry is insisting on linking of the Aadhaar Card for disbursement of the subsidy.

8. It is no doubt true that an application has been filed by the Ministry of Petroleum and Natural Gas to modify/clarify the order dated 23/09/2013. However, till such order is modified/clarified there cannot be any iota of doubt that such order of the Hon'ble Supreme Court is required to be implemented in letter and spirit by all concerned including the Ministry of Petroleum and Natural Gas. The Ministry should not have violated such order with impunity by insisting upon linking of Aadhar Card as the sole basis for obtaining the benefit of subsidy in the matter of consumption of cooking gas within the permissible limit of 9 cylinders per annum.

9. In the above context, the objection now raised before the Goa Human Rights Commission to the effect that since the matter is pending before the Hon'ble Supreme Court, the present proceeding before the Goa Human Rights Commission should be dropped is to be examined. The present proceeding which has been initiated suo motu by the Goa Human Rights Commission is with a view to ascertain whether the order of the Supreme Court is being complied with or not and not with a view to examine the question of legal basis of Aadhar Card or the wisdom and the necessity of mind boggling investment made by the Central Government for issuance of Aadhar Card. This Commission only intends to reflect the deep concern of the common man on the street in all parts of India including the State of Goa regarding the non-implementation of the clear direction of the Hon'ble Supreme Court.

10. This Commission feels that the technical objection raised by the Union of India to the effect that "a modality of receiving subsidy for domestic gas consumers does not infringe any human right and it is not within the jurisdiction of the Commission" goes only to show the apathy of the Union of India towards thousands of genuine consumers of domestic cooking gas many of whom either because of lack of proper advice or because of ignorance and even poverty are yet to obtain Aadhar Card or to link the Aadhar Card with the domestic gas connection and bank account. From the reply of the Union of India, it is apparent that there are still many domestic cooking gas consumers who are yet to obtain Aadhar Card and yet to link the Aadhar Card with the domestic gas connection and the bank account.

11. Use of cooking gas, as a mode of cooking instead of more conventional means such as firewood or kerosene or electricity has become the accepted mode of cooking even among the poor below the poverty line in view of convenience and easier accessibility. It is evident that use of other medium such as firewood or kerosene would cause more hazards to the environment as compared to use of

cooking gas. Use of cooking gas as medium of cooking is encouraged by all concerned including the Government. The policy of subsidizing supply of cooking gas to the domestic consumer is in fact policy of the Central Government aimed at encouraging such mode of cooking rather than the conventional cooking mode such as firewood or kerosene. It cannot be disputed that many of the domestic consumers of cooking gas belong to poorer sections of the Society. The non-disbursement of the subsidy to such poorer and illiterate section of the Society would defeat the very purpose of subsidizing the supply of cooking gas to the domestic consumer. In order to avoid leakage in payment of subsidy to the bonafide domestic consumer, the disbursement through the bank account may be welcome measure but to insist that such disbursement through the bank can be made only after Aadhar Card is linked with the bank as well as domestic gas consumption membership does not appear to be sound and practical as many of the genuine domestic consumers are yet to get Aadhar Card and yet to link the same with their bank account. In this connection it is to be remembered that as per the present banking norms, no person can open any bank account without the bank being satisfied about the identity and residence of such person. If any fraud is committed by any particular consumer/customer it is always open to the concerned authorities to take stringent action including initiating of criminal proceedings.

12. There is no dispute with the proposition that no person can claim as a matter of legal right, any subsidy to be given by the Government. However, when the Government itself lays down the policy relating to grant of subsidy, all persons should be treated equally and no person should be deprived of the right to get subsidy in accordance with the Government policy on the basis of some artificial discriminatory instructions applied selectively in certain areas. To that extent, the right of domestic consumers of cooking gas to be treated equally is a fundamental right and it can be said that the violation of such right would be the violation of human right. Any person in order to survive is required to cook and eat and obviously has very legitimate expectation of being treated fairly. Moreover, as indicated earlier, the purpose of the present inquiry is to find out whether the order of the Hon'ble Supreme Court of India which is binding on all the authorities of India in view of Article-141 of the Constitution of India is being followed or not. In this context, it is to be remembered that it is almost impossible for every common man in India to bring to the notice of the Hon'ble Supreme Court that its order is not being followed by the Governmental agencies. It is obviously within the domain of the Hon'ble Supreme Court to take appropriate

action as inspite of its order to the effect “no person should suffer for not getting Aadhar Card” many poor people are suffering as they have been deprived of the right of getting the subsidy on the ground that they do not possess Aadhar Card.

13. To insist on possession of Aadhar Card inspite of the direction of the Hon’ble Supreme Court cannot be justified by the Union of India on the basis of certain mere technicalities relating to lack of jurisdiction of the State Human Rights Commission. Moreover, this matter is being inquired into by the Goa State Human Rights Commission as a spokesperson for the thousands of genuine domestic consumers of cooking gas many of whom belong to poorer section of the society. In the considered opinion of this Commission, the Union Government should have made bonafide efforts to implement the direction of the Hon’ble Supreme Court of India by paying the subsidy to the domestic gas consumer through the bank account without insisting on possession and linking of Aadhar Card. Moreover, the Union of India should have also disbursed such subsidy to the domestic consumer of cooking gas within the permissible limit of 9 cylinders per annum, retrospectively notwithstanding the fact that the Aadhar Card has been linked subsequently to the bank account. This apparently would be a simple task in as much as the distributors of gas are in possession of relevant data relating to issuance of gas to the domestic gas consumers.

14. The learned Assistant Solicitor General appearing for the Union of India in course of his oral submission, referred to Section-29 of the Protection of Human Rights Act, 1993 and submitted that in view of the above provision, there is no jurisdiction conferred on the State Human Right Commission to call for a report from the Central Government or any other authority or organisation subordinate to Central Government and therefore the present proceeding should be dropped.

15. To consider the above submission, it is necessary to notice the relevant provisions in the Act. The provisions contained in the Protection of Human Rights Act, 1993 are obviously beneficial provisions to effectuate valuable fundamental rights as contemplated in Article-14 and Article-21 particularly and also to effectuate different international conventions and charters relating to Protection of Human Rights and as such should be liberally construed with a view to effectuate the legislative intention rather than stifle the human rights by an overly narrow interpretation.

16. Section-12 occurring in Chapter III relates to functions and powers of the Commission which as per the definition as contained in Section-2 (c) means the National Human Rights Commission constituted under Section-3. Section-13 (2) empowers the Commission to require any person to furnish information on matters useful or relevant to the subject of inquiry. Section-17 which occurs in Chapter-IV relating to procedure is extracted hereunder.

Section 17:- The Commission while inquiring into the complaints of violations of human rights may –

- (i) *call for the information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:*

Provided

- (a) *If the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;*
- (b) *If, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;*
- (ii) *Without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.*

Section-18 envisages the steps which may be taken during or upon completion of inquiry by the Commission.

17. State Human Right Commission may be constituted under Section-21 of the Act occurring in Chapter V. The jurisdiction of State Human Rights Commission is outlined by providing Section-21 (5) which is extracted hereunder;

A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution.

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter.

Section-29 makes certain provisions relating to National Human Rights Commission applicable to State Commission by providing “the provisions of Section-9, 10, 12, 13, 14, 15, 16, 17 and 18” shall apply to the State Commission and shall have effect subject to the following modifications namely (a) xxxxx omitted, (b) xxxxx omitted, (c) in Section-12 clause (f) shall be omitted, (d) in Section-17 in clause (i), the words “Central government or any” shall be omitted.

18. The effect of Section-29 (c) is that the function and powers of the National Human Rights Commission as envisaged in Section-12 (f) to the effect “study treaties and other international instruments on human rights and make recording for their effective implementation” is not available and applicable to the State Human Rights Commission but all other functions and powers of the National Human Rights Commission as envisaged in Section-12 except 12 (f) are available to the State Human Rights Commission. However, jurisdiction of the State Human Rights Commission is circumscribed by virtue to Section-21 (5) which provides that “a State Commission may inquire into the violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the 7th Schedule of the Constitution” In other words, the State Commission does not have any jurisdiction to inquire into the violation of human rights in respect of matters relatable to the entries enumerated in List I in the 7th Schedule that is to say in respect of matters relatable to the Union list. Section-12 (a) empowers National Human Right Commission or the State Human Rights Commission as the case may be to inquire suo motu or on a petition presented to by a victim or any person on his behalf into the complaint of violation of human rights or abetment thereof or negligence in the prevention of such violation by a public servant. Section-12 (b) empowers the National Human Rights Commission or the State Human Rights Commission as the case may be to intervene in any proceeding involving any allegation on violation of human rights pending before the court with the approval of such court. Section-12 (d) empowers the National Human Rights Commission or the State Human Rights Commission as the case may be to review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation. Section-12 (j) empowers the National Human Rights Commission or the State Human Rights Commission as the case may be to perform such other functions as it may consider necessary for the promotion of human rights. A combined and harmonious reading of Section-12, 21 and 29 makes it clear that the State Human Rights Commission can inquire either suo motu or on the basis of petition into any of the aspects envisaged in Section-12 except Section-12 (f) provided it is in respect of matters relatable to any of the entries enumerated in List II and List III in the 7th Schedule of the Constitution.

19. It is axiomatic that such inquiry must pertain to matters within the geographical territory of the State concerned. If in any given case any violation of human right takes place within the geographical territory of the State by a public servant employed even by the Central Government, the State Commission may have jurisdiction to inquire into the such alleged violation of human rights provided the matter relates to List II and List III of the 7th Schedule of the Constitution. For example, if an Income Tax Officer posted in a particular State violates the human right of any inhabitant of that State by assaulting him, the State Human Rights Commission would have the jurisdiction to inquire into such violation because the public servant concerned has committed an offence within the territory of the State and the matter comes within Entry 1 relating to Criminal Law in 7th Schedule of List III. It is no doubt true that in such an eventuality, the National Human Rights Commission would also have the jurisdiction to inquire into the matter. If National Human Rights Commission is in seisin of such a matter then the State Commission shall not inquire into the matter as contemplated in Section-21 (5) proviso.

20. Section-17 relied upon by the learned Assistant Solicitor General pertains to procedures to be adopted and does not whittle down the ambit of functions and powers of the State Commission as provided in Section-12 read with Section-21 and Section-29. Section-17 itself envisages that the National Human Right Commission while inquiring into the complaints of violation of human rights may call for the information or report from the Central Government or any State Government or any other authority or organisation subordinate by it. The proviso envisage that if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own. On the other hand, proviso (b) contemplates that if on receipt of information or report the Commission is satisfied that no further inquiry is required, it may not proceed with the complaint and inform the complainant accordingly. Similarly, the Commission if on receipt of information or report is satisfied that action has been initiated or taken by the concerned Government, it may not proceed with the complaint and inform the Complainant accordingly. However, Section-17 (ii) lays down that if the Commission considers necessary it can initiate an inquiry without prejudice to anything contained in clause-I. In other words, Section-17 provides certain procedural aspects for holding inquiry efficiently but it does not curtail the ambit of functions and powers envisaged in Section-12 particularly when a suo motu inquiry is conducted by the Commission. Section-17 itself makes it clear that the procedure contemplated in Section-17 (i) can be resorted to by the Commission while inquiring into the complaint. In the given case where

complaint is filed, before proceeding further, discretion is given to the Commission to call for information or report from the Central Government or State Government or any other authority as the case may be. The effect of Section-29 is that the State Commission while inquiring into the complaint of violation of human rights by Central Government or any other authority subordinate of such Central Government is not required to call for information or report from the Central Government. However, the restriction as envisaged under Section-29 could not be applicable where the inquiry is suo motu. The State Commission can initiate or continue an inquiry only if it is satisfied that the violation of human right is in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution.

21. The present proceeding is relating to the matter relatable to entry 34 of List III (concurrent list) price control. The question of amount to be paid by the domestic consumer of cooking gas is essentially the matter relating to "price control of such commodity". The policy of the Central Government regarding amount to be paid by the consumer in pith and substance would come within the expression "price control" as envisaged in entry 34 of List III rather than under the Entry 53 – that is regulation and development of oil fields and mineral oil resources, petroleum and petroleum products, other liquids and substances declared by Parliament by law to be dangerously inflammable contained in List I of the Union List of the 7th Schedule.

22. For the above reasons, this Commission recommends as follows:

- i) Insistence on possession of Aadhar Identity Card as a condition precedent for getting the subsidy for consumption of domestic cooking gas within the permissible limit of 9 cylinders notwithstanding the direction of the Supreme Court to the contrary, amounts to gross violation of the order of the Hon'ble Supreme Court and this aspect is required to be brought to the notice of the Hon'ble Supreme Court by forwarding a copy of this report to the Registry of the Hon'ble Supreme Court of India to be considered by the Hon'ble Supreme Court, if found appropriate and proper.
- ii) The Ministry of Petroleum should make efforts to disburse subsidy to the bonafide domestic consumers of cooking gas within the permissible limit of 9 cylinders through the banks concerned without insisting on possession of Aadhar Card and linking of such Aadhar Card.

- iii) Such benefit of disbursement should be made even retrospectively to all domestic consumers of cooking gas within the permissible limit of 9 cylinders per annum, atleast from 23/09/2013 when order was passed by the Hon'ble Supreme Court.

Date: 05/02/2014

Place: Panaji - Goa

Sd/-
(Justice P. K. Misra)
Chairperson
Goa Human Rights Commission

Sd/-
(A. D. Salkar)
Member
Goa Human Rights Commission

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