

ENFORCING RIGHT TO PUBLIC SERVICE IN WEST BENGAL

- Soumya Dwivedi*

ABSTRACT

The West Bengal Right to Public Service (WBRPS) Act is an important step in strengthening and improving the public service delivery mechanism. The Act professes to address the growing demand of the citizens for improving public service, reducing corruption through imposing penalty on service providers for defaulting and imposing time frame for delivery of service and aim at universalisation of public service. This paper analyzes the West Bengal Act and its implementation policies by the Government.

INTRODUCTION

Directive Principles of State Policy¹ as laid down in Part IV of the Constitution of India, though non-justiciable, are important guidelines to the State². The Conceptual framework of DPSP asserts that India is a 'welfare state'. A welfare state means a concept of government where the state plays a central role in the protection and promotion of the economic and social welfare of its citizens. In other words, the Constitutional goals as envisaged in the Directive Principles of State Policy state that everyone should receive the benefits provided by the Government. There should not be any delay in reaching this. However, since the first 50 years of the Constitution, the thinkers and members of the civil society felt that all is not well in delivery of government services to the citizens. Hence, several governments devised certain strategies to see that the programmes, benefits etc. of the Government reach to the poorest of the poor.

IMPROVING SERVICE DELIVERY

A new governance model which originally started in OECD countries particularly in Great Britain dealing with John Major Government in 1991, put 'citizens' at the heart of governance i.e. 'citizen centric' rather than the earlier bureaucratic centric model of governance. The new model aimed to remove the inadequacies of the public service delivery as was prevalent at that time and laid

* Student, National Law University, Jodhpur. She may be reached at soumyad97@gmail.com.

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¹ Directive Principles of State Policy has been borrowed from the Irish Constitution.

² Article 12, The Constitution of India, 1949. 'State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India'.

emphasis on quality and time bound delivery of services, transparency, accountability, timely redressal of grievances and involving citizens in participative governance with the enhancing of citizens satisfaction.

The public service delivery system in India became synonymous with inefficiency and slothfulness. In many official reports including the 2nd Administrative Reforms Commission 2008, a large number of states highlighted the inadequacy in the public service delivery in other countries. The Commission, in its 12th report, entitled ‘citizen centric administration: the heart of governance’, in chapter 7, paragraph 7.2.2 has stated as follows:

‘The basic principle of grievance redressal system is that if the promised level of service delivered is not achieved or if a right of a citizen is not honoured then the citizen should be able to take recourse to a mechanism to have the grievance redressed. This mechanism should be well popularized, easy to use, prompt and above all, citizens must have faith that they will get justice from it.’ The paragraph which follows goes on to further observe, ‘...our country needs a public service, which is capable, innovative and forward looking’.

The Right to Public Service Act is one such of the many initiatives in the recent times .The enactment of such legislation by Indian states was an acknowledgement of the unsatisfactory nature of public service delivery system in the country. The Act by specifying entitlement of the citizens and creating a system of punishment and reward marked a significant departure of the government to impose penalties on its officials for non-delivery or untimely delivery of services to the citizens.

The West Bengal Government came forward by way of enacting the Right to Public Services Act, 2013. While it is too early to evaluate the efficacy of the West Bengal Right to Public Service Act and its long term impact on improving service delivery, a preliminary appraisal of its implementation may throw light on its efficacy in the long run.

SALIENT FEATURES OF THE WEST BENGAL GOVERNMENT ENACTED RIGHT TO PUBLIC SERVICES ACT, 2013

The West Bengal Right to Public Service (WBRPS) Act is an important step in strengthening and improving the public service delivery mechanism. The Act professes to address the growing demand of the citizens for improving public service, reducing corruption through imposing penalty on service providers for defaulting and imposing time frame for delivery of service and aim at universalisation of public service.

The Act covers all departments, directorates and the subordinate offices, local bodies, authorities, corporations and State public sector undertakings. All such public authorities are mandated to designate an officer responsible for providing the specific service. They shall also designate an Appeal Officer and a Review Officer. A citizen can approach the designated officer for obtaining the service and can file an appeal before the Appeal Officer in case of default or delay in providing the public service. The Act also provides for constitution of a State Public Service Delivery Commission.

If the citizen is not provided the specific service within the prescribed time period, the provision of penalty against the designated officer has been provided in the Act. Similarly, the Act also provides for cash incentive and certificate of appreciation to the government employees for providing service within due time.

Section 3 of the Act provides that every eligible person shall have the right to obtain Public Services in accordance with the provision of this Act.

The term 'eligible person' is defined in section 2(e) as 'a person who is eligible for services notified by the State Government.' Similarly, 'right to service' as defined in section 2(j) means 'right to obtain the service within the stipulated time limit as specified in section 4 of this Act.' Also, the term 'service' is defined in section 2(k) as 'any service notified by the State Government under section 3 of this Act.'

The Act provides for the appointment of Designated Officer, Appellate Officer and Reviewing Officer. The 'Designated Officer' has been defined in section 2(d). Section 4 of the Act provides that the Designated Officer shall provide all the services notified under section 3 of the Act to the eligible person within the stipulated time limit. Section 5(2) casts upon the responsibility to the Designated Officer that on receipt of an application to either provide service or reject the application. In the event of rejection of an application by the Designated Officer, he shall have to record the reasons for not providing the services in writing and intimate to the applicant.

Section 6 of the Act provides for appeal to the Appellate Officer against the orders of the Designated Officer within 30 days from the date of rejection of application or the expiry of the stipulated time limit. Section 6(3) provides for a second appeal to the Reviewing Officer against decision of the Appellate Officer within 60 days from the date on which the Appellate Officer takes the decision. Under section 6(6), the Appellate Officer and the Reviewing Officer while deciding an appeal, are vested in power of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of

- (a) requiring the production and inspection of document
- (b) issuing summons for hearing to the Designated Officer and appellant, and
- (c) any other matter which may be prescribed.

The penal provisions are provided under section 7 of the Act. Section 7(1)(a) provides that if the Reviewing Officer is of the opinion that the Designated Officer has failed to provide services without sufficient and reasonable cause, then a penalty of not less than Rs. 250 and not more than Rs. 1000 can be imposed. Section 7(b) provides that the Reviewing Officer may impose a penalty of Rs. 250 per day on the Designated Officer which shall not exceeds Rs. 1000, if he is of the opinion that the Designated Officer has caused delay in providing services. Similarly, section 7(b)(2) provides that the Reviewing Officer can impose a penalty on the Appellate Officer of not less than Rs. 250 and not more than Rs. 1000 if the Appellate Officer has failed to decide the appeal within the stipulated time limit without any sufficient and reasonable cause. The Act also provides the Reviewing Officer to recommend disciplinary action against the Designated Officer or the Appellate Officer under the Service Rules if he is satisfied that they have failed to discharge the duties assigned to them under the Act.

Section 11 of the Act provides for displaying the services and the time limit locally on the website for information of the public. Section 12 of the Act empowers the State Government to constitute a commission to be called the West Bengal Right to Public Service Commission.

OPERATIONALISATION OF THE WBRPS ACT

The Act was notified in 2013. After the notification, 23 out of 63 departments have issued notifications specifying list of services which are to be provided to the citizens in a time bound manner.

The services which have been notified by the 23 departments of the State Government pertain to birth and death certificates, marriage registration certificate, issuance of construction and other licenses with regard to construction of cold storage/warehouses, issuance of caste certificate, registration of cooperative societies, issuance of manufacturer/dealership licenses by the Controller, Directorate of Legal Metrology, environmental clearance for establishment of industries in the red/orange/green zones, other environmental clearance under different environmental laws. Issuance of fire licenses under the West Bengal Fire Services Act, 1950; issuance of fire safety certificates, distribution of biometric card/fishermen ID card to fishermen, accreditation certificate for fish seed/hatchery, registration and transfer of fishing vessels, issue of new/duplicate ration

card, issuance of disability certificate, issuance of PCPNDT licenses, inspection for new degree colleges. Issuance of licenses by the Home Department under Private Security Agencies Act, 2005: issuance of copy of FIR to the informant, renewal of police license for shops, eating houses under the Calcutta Police Act, 1886, renewal of cinema licenses. Registration and grant of licenses under the Factories Act, 1948 by the Labour Department: issuance of provisional order of boiler, issuance of certified copy of Record-of-Right by the Land Department, approval of the building plan by the urban and rural local bodies, registration of vehicles and issue of registration certificate by the Transport Department, grant of driving license and many other such certificates.

The respective notification issued by the different departments of the State Government have clearly specified the services and the time lines within which the services could be provided to the applicant citizen. In order to give further emphasis on the importance of delivery of time bound services and to the public services act, the State of West Bengal constituted the West Bengal Right to Public Service Commission in December 2015 with one Chief Commissioner and one Commissioner.

EVALUATION OF THE WBRTPS ACT

Notwithstanding the initial apathy and resistance by a section of bureaucracy to frustrate the objective of the Act, a fair degree of seriousness is being attached to the implementation of the Act due to considerable political backing that the initiative has received from the political leadership. The Chief Minister of the State has in order to create awareness among the general public about their entitlement under the Act has given a local name 'Somayer Sathi', which means 'a companion of time' to the entire range of services to be provided to the citizens in a time bound manner. A fair amount of standardization of the process of providing different public services to the citizens has been achieved by different departments so that there is a standard operating procedure for delivery of different services. Coupled with it, it has through business process reengineering for different services, streamlined the processes which has gone a long way in checking inefficiencies and preventing delays in the delivery of services. Further the most important positive outcome of the new legislation has been the comprehensive e-governance in various areas of public services viz. land (Bhuchitra), property registration (Nathikaran), tax (e-Sahaj) , fire and environmental clearances, building plan, etc. through application of modern ICT tools including a web-enabled citizen friendly service. Business process reengineering has been done to cut down unnecessary procedures and hence avoidable delays in the delivery the public services. The reduction of manual interface

between the citizens and the public officials has greatly reduced corruption and harassment associated with delivery of public services.

While the WBRTPS Act has greatly enhanced the level of public services and show signs of positive outcomes, the implementation of the Act has not gathered the required momentum despite a strong political will. One of the major reasons is the lack of awareness among the citizens about the entitlements under the Act. This is more acute in rural areas. The lack of proper infrastructure and poor connectivity which is essential for delivery of online services also remains one of the major bottlenecks. In addition the general apathy among the government officials about the Act and overall need to provide time bound services remains one of the major challenges. A change in attitude and mind-set of the officialdom is prerequisite for the success of the Act.

Since the introduction of this Act and the constitution of the Commission no study has been done to assess the impact of the Act on the delivery of services. As per the available records, no appeal has been filed by any applicant under the Act alleging non-delivery of services within the stipulated time by the Designated Officer. It may wrongly lead us to presume that the notified services are being delivered by different Designated Officers of the departments within the notified time. The actual situation may be quite different. There may be an absolute lack of awareness among the public and hence their ignorance to assert the right for time bound delivery of services as enacted under the Act. This impression draws strength from the fact that out of 50 departments only 23 departments have till now issued notification despite Commission's request to all the departments to notify the services under the Act. Moreover, all the notifications issued by the departments are in English despite persuasion from the Commission to issue such notification in vernacular Bengali and other languages such as Hindi and Nepali. The use of IT for better dissemination and citizen friendly access to different department of the Government through development of mobile friendly App or through Tathya Mitra Kendras has to extend to all departments.

The Commission has also in its early review of the functioning of the WBRPS Act pointed out certain infirmities and drawbacks. It was pointed out that only 23 out of 50 departments have issued notification notifying the list of services and timelines for delivery of the services. Those departments which have issued notifications have done so in English and not in vernacular Bengali which is severely limited the dissemination of the rights of citizens to the common people. The use of IT is crucial for informing the citizens about their rights to access public service. The State Government is yet to fully utilise the modern IT tools like mobile apps, Tathya Mitra (common service centre), directly increase the feasibility of the Government to the citizens. There is a lack of

acceptability of the Act in the state bureaucracy as they make them accountable to the citizens and expose them to penalties in case of delay or default.

A COMPARATIVE STUDY WITH KARNATAKA

Since its inception, many states have so far enacted the RTPS Act which primarily mandates to provide public services within a stipulated time frame and imposing penalty on officials who failed to do so. A close reading of the state Acts reflects that the basic legal provisions adopted individually by each state have a fair amount of commonness covering services which are covered under the Act, time frame for each service, penalty for non-compliance, a governing structure and appellate authority and penal and provisions.³ The timelines and hierarchal structure in the state Acts are more or less the same. Provisions for appeal, revision, penalty and compensation, bar of jurisdiction of courts etc. are also uniform across the state Acts. There are significant differences in the provision of amount of penalty fixed and compensation, use of ICT, number of services covered etc.⁴ For the purpose of this study, the Karnataka Right to Public Services Act has been adjudged as the best practice and has been taken for as reference for comparison with the West Bengal Act and its implementation

The Karnataka Act

The Karnataka model is called the Sakala model. 'Sakala' in Kannada means 'in time'. This was launched on 2nd April 2012 to implement The Karnataka Guarantee of Services to Citizens Act 2011. It covers almost 334 public services. Within this short span of time, this ISO 9001 certified initiative has already received recognition in the form of a Google Innovator Award, a National e-Governance Award, and the D L Shah Award from the Quality Council of India⁵ It claims of delivering 96 per cent of services ahead of time, thus reducing average time taken to deliver services, and 98 percent reliability standards with full transparency about working and relevant information. The provisions of this model besides guaranteeing time bound services and compensating at INR 20 per day upto INR 500 per application, a mandatory display of whom to contact and procedure to follow on display boards, a computerized acknowledgement number, availability of online

³ Dr. Sindhu Thulaseedharan, 'Right to Public Services in India- a new legal scenario', (2013) 55:1, Journal of Indian Law Institute 62,63.

⁴ Mathur Tina, 'Right to Public Service – A Comparative perspective of Implementation of Guarantee of Public Services in select states of India', Centre for Organization Development, Feb. 2012.

⁵ Shalini Rajneesh, 'Guarantee of Services of Citizens: A case study of Karnataka', (2013) IX, The Indian Journal of Public administration, 28.

application status and SMS alerts for the same. The initiative has also come up with an Android App, the link to download which is easily available on the website's homepage, thus making good governance more accessible. All information is available bilingually and reports are made available on public portals, the default/delay rate of this model is a mere 2 percent which also they attribute to 'technical hiccups' due to connectivity problems. There are online debate forums in place, as are help desks and feedback mechanisms. With an objective of making procedures less cumbersome, the state has done away with affidavits in general and domicile certificates for housing, and accepts self-declarations. It has made provisions to obtain suo moto birth certificates at government hospitals and reduced passport verification time from 90 to 20 days, thus making efforts in the best interest and convenience of the citizens. The Sakala software, designed by expert IT professionals, auto-generates a GSC (Guarantee of Service Citizen) acknowledgement number. This is a unique 15 digit number which is used to prioritise requests as Appeal 1 and Appeal 2, and is also used by the citizen to track status of his request. Presence of a mobile interface and SMS facility along with a call centre number enables the model to be functional in each corner of the state quite efficiently.

THE WAY FORWARD

The success of Karnataka RTPS to empower the citizens in accessing public service in a time-bound manner has proved the skeptics wrong that it is yet another futile piece of legislation. Many important lessons emerge from the model for states like West Bengal where WBRTPS is yet in the stage of infancy. The most important of them is that merely having legislation is not enough. It may be a good beginning but a well thought out strategy has to be put in place to effectively use it as a tool to deliver the desired outcomes. The other crucial learning emanating from it is that extensive use of IT in providing service through back-end computerization and web-enabled IT interface for the citizens is sine quo non for better service delivery. The IT model is not mere computerization of the existing systems but involves an elaborate and complex business process re-engineering. On one hand while it ensures efficiency in delivery of service by doing away with manual interface, on the other hand it reduces rent-seeking by officials and hence avoidable harassment of the citizens at the hands of public officials. Secondly, the citizens have to be made aware of the rights. An enlightened and empowered citizen is the key to success of the objectives of the act. It is the educated citizen who will demand for better and timely public service. The West Bengal Government has to focus on a two pronged strategy – firstly focus on back-end computerization of all the important services and make them available to citizens in the nook and corner of the state through Tathya Mitra Kendra

and innovative tools like mobile based Apps and secondly to educate and empower them about their rights to demand time-bound services so that there is pressure of the public on the public systems to deliver services. All the notifications and other procedures should be in vernacular Bengali, Nepali and Hindi to make it easier for the citizens to access those services. All the departments should be encouraged to notify the services and the implementation of the Act should be reviewed at regular intervals. A quarterly status report should be published in the public domain. This will not only galvanize the public officials to act but also educates public to question the public authority.

CONCLUSION

The legislation of right to public services in the state of West Bengal for timely delivery of public services by different government departments and consequent empowering of the citizens demand access to services in a time bound manner is undoubtedly an important piece of legislation. However, a study of its implementation drives home the point that merely having legislation is not an end in itself. While most of the acts have similar provisions, but the difference in implementation is due to the strategy adopted by states to ensure the implementation of the provisions of the act. The Karnataka model provides an insight into the two main critical elements for success. Firstly, an extensive use of modern IT tools and unhindered access to the citizens to the web-enabled applications which are hosted in the public domain with the objective of removing manual interface between the citizens and the government and secondly, to empower and educate the citizens through awareness about their rights to demand time bound services. A well-informed and empowered citizen having hassle-free access to online services coupled with systems of punishment and reward as provided in the right to public service acts will go a long way in ensuring time-bound delivery of services. Another important lesson emanating from Karnataka is that while the provision for penalty and reward will make frontline employees accord higher priority to time- bound service, the actual delivery on time will happen when legislation is accompanied by complementary governance reforms that build systems and capability for timely delivery as a matter of routine.

In West Bengal , the remaining departments should be encouraged to come under the ambit of the act through suitable notifications, focus more on extensive use of IT-enabled applications for reducing manual interface between the citizens and public officials, thus ensuring higher efficiency, more comprehensive use of tatha mitra kendra, mobile-friendly apps, print and electronic media for creating awareness among the citizens about their rights to demand time-bound services and remedial action in case of default by the public officials in delivering those services.