

(2001) 02 GUJ CK 0051

In the Gujarat High Court

Case No : Special Civil Application No. 844 of 2001

Bipinchandra J. Divan and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-02-2001

Acts Referred:

Constitution of India, 1950 — Article 129, 21, 226, 283, 38
Protection of Human Rights Act, 1993 — Section 12(b)

Citation : AIR 2002 Guj 99 : (2001) 21 GLH 623 : (2001) 2 GLR 1394

Hon'ble Judges : D.M. Dharmadhikari, C.J.; P.B. Majmudar, J

Bench : Division Bench

Advocate : Harish Salve, Solicitor General, Akshay Mehta and M.R. Shah, N.D. Nanavati and Mihir Thakore for Singhi and Co, for the Appellant; S.N. Shelat, General and A.D. Oza, Government Pleader, for the Respondent

Judgement

D.M. Dharmadhikari, C.J.—On the morning of 26th January 2001, an earthquake of a high magnitude, more than 7 on Richter Scale, shook whole of Gujarat and more devastatingly of its entire Kutch district, leaving thousands dead, injured, crippled, orphaned and homeless. The Government was unprepared to meet such unforeseen natural calamity and still finds it difficult through its inadequate machinery to carry out the stupendous task of rescue, relief and rehabilitation of the quake victims.

2. In such calamity and adversity, the entire Nation has shown compassion and co-operation by extending help and providing relief material in kind and cash to the victims. It is a divine wrath, but turned into blessing in the sense that in facing the calamity the helping hands extended by people all over the world in the shape of help and support has united the people and brought to surface the inherent virtues and qualities of human being. There has been an exemplary display of fellowship, co-operation, mutual help and love from all over the world regardless of class, caste, creed and cultural differences. Not only from within the Nation, but from all over the world from different countries, Governments, social service organisations and individuals relief material in the form of tents,

clothes, medicines, construction items, for erecting homes, rescue machines etc. have landed by ship, airplanes and other modes of transport. All kinds of relief material is throughout pouring in from different parts of the world.

3. Calamity is a leveller -- rich and poor, strong and weak, all are suffering alike. The fall-out of earthquake is the flow of generosity for help to the victims from the country and all over the world. So much of relief material and money has been received that its management and distribution pose an uphill task to the Government. In the past few days, after the earthquake hit Gujarat in the morning of 26-1-2001, every one in the country has witnessed the power of the people. Selfless service of several religious and social organisations have shown what benevolent effect religion can have on the lives of common man. The selfless service without desire for appreciation or publicity by religious groups and social activities have given great comfort to the victims and satisfaction to all right thinking men.

4. In the background of the above scenario of devastation and destruction causing tremendous loss of life and property of the people, five prominent citizens, representing different walks of life (retired Chief Justice of this Court, eminent lawyers, industrialists, artists, social activists) have brought this petition in public interest seeking intervention of this Court to ensure speedy and effective relief to quake victims. The petition is founded on newspapers and media reports that the Government has failed to meet the situation arising from the calamity and has no adequate infrastructure to satisfactorily perform the stupendous task of providing relief and rehabilitation to the quake victims.

5. In the petition, apprehensions have been raised and doubts expressed that the tremendous quantity of relief material and money received as contribution from different bodies, organisations and persons for the quake victims and which is likely to be received in future may not be properly utilised leaving the victims high and dry.

6. The main reliefs claimed are issuance of directions to Government to set up independent committee or commission manned by experts in different fields who may be found competent in quake relief management operations. It is prayed that such independent committee or commission of experts should be entrusted the relief materials and the relief fund to ensure their proper utilisation for the victims and to avoid their diversion, misappropriation and loss.

7. On behalf of the Central Government and the State Government learned Additional Solicitor General and Advocate General have raised preliminary objections. They have strongly opposed the allegations made in the petition and the reliefs claimed. It is submitted that neither the Constitution nor any law permits Judiciary to take over the work of the Executive which is being carried on with the help of elected representatives of the people. It is submitted that the legitimate duty and work of the Executive cannot be directed to be handed over to a commission or committee set up by the Court. It is contended that the

allegations of slackness and inefficiency levelled against the Government in the petition are baseless and are an outcome of unfounded prejudice and distrust in Government machinery. It is submitted that the contributions received in cash and kind constitute the Government Fund and the two Governments through duly formed committees for management of quake relief are committed to utilise them for quake victims. The receipt and expenditure in relation to the relief to the quake victims and towards their rehabilitation would be subject to statutory audit. It is claimed that the Government machinery is fully geared to effectively undertake the relief and rehabilitation operations in which help and assistance of technical experts in Geology, Seismic Science, Structural Engineers, Building Experts, Medical men. Psychologists would be obtained. In the work of the Government, help of other various governmental and non-governmental organisations in various fields like science, technology of social science will be obtained. The Government would involve them in a systematic manner. It is emphatically stated that this Court should refrain from supplanting the Government machinery by any regulatory commission or super committee. The submission made is that grant of any such direction or relief to the petitioners in this so-called public interest litigation would indirectly harm public interest by demoralising the Government officials and members of staff in the Government who are actively and sincerely engaged in relief and rehabilitation operations.

8. The first and foremost question that has been raised on behalf of the two Government is regarding jurisdiction of this Court to intervene in a matter like the present one, seeking directions for effective steps for disaster management.

9. We are conscious of our limitations as a constitutional Court. Our power to issue writs under Art. 226 of the Constitution of India for enforcement of constitutional or legal rights or for any other allied purpose are not uncanalised.

10. The duties of the Government or the Court on occurrence of a disaster or natural calamity of this magnitude are not statutorily regulated. In fact, there is complete lack of any legislation in this field. Article 21 of the Constitution of India which guarantees to every citizen protection of his life and personal liberty, is repository of all important human rights which are essential for a person or a citizen. When there is a natural calamity like earthquakes, floods, fire, cyclones and similar natural hazards the State as guardian of the people is obliged to provide help, assistance and support to the victims of such natural calamities to help them to save their lives.

11. From Art. 21 of the Constitution the Supreme Court has deduced an affirmative obligation to preserve human life. There is no parallel to the present colossal natural calamity as in India. In order to protect human rights as part of right flowing from Art. 21, the Supreme Court has enforced obligations of the Government, such as providing medical staff to the Hospital Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, and awarding compensation for illegal detention of the prisoner for long period after his acquittal Rudul Sah Vs. State of Bihar and Another, .

12. The obligation of the State to protect life is reorganised by directing providing of proper medical attention to every citizen, (See Pt. Parmanand Katara Vs. Union of India (UOI) and Others, . In Joint Women's Programme Vs. State of Rajasthan and Others, , the Court directed setting up of "Special Dowry Cell" to investigate into dowry deaths. In President, Association of Allottees of Requisition Premises, Bombay Vs. State of Maharashtra, , the Supreme Court required the Government to prepare a scheme for construction of houses for Government servants who were sought to be displaced as a result of the Government policy of requisition of requisitioned premises. For the same purpose of protection of human rights in Rakesh Chand Narain Vs. State of Bihar, the State Government was directed to raise the daily diet allocation to supply adequate drinking water, mattresses and blankets and medical services etc. to patients in the Government Mental Hospital. In fact, Supreme Court has been, case after case, enforcing economic, social and cultural rights as recognised in international covenant of 1996. In this, the Supreme Court is prompted by the philosophy of social justice or social rights. In doing so, the Supreme Court has been even enforcing directive principles of State policy. This was so done because with the amendment of the preamble of the Constitution "social justice" is an objective for the Government to achieve. Whatever may be the precise content of "social justice", it is held to include recognition of the needs of weaker section of the community as "human being". This need is more urgent where a large sections of people have been seriously affected by natural calamity like earthquake and their homes and life is totally shattered (See Sadharam Bansal Vs. Pulin Behari Sarkar and Others, , Paras 29-30, 68, 70 and 73). We have, therefore, support from host of case-law of the Supreme Court for taking a view that to humans affected by calamity the State is obliged to provide help, assistance and support, so that they may be able to save their lives. This right of assistance in calamity has to be treated as an enforceable right. Such affected persons, as a result of the calamity, are rendered helpless and handicapped. Help and corrective action sought for them through service-spirited organisations or section of people cannot be thwarted, but the same deserves to be encouraged.

13. The doctrine of *parens patriae* was applied by the Supreme Court in the case of Charan Lal Sahu Vs. Union of India, (the Bhopal Gas leak tragedy case) by upholding the legislation whereby the Central Government claimed a right to represent victims of Bhopal Gas Leakage Disaster in the pending cases for compensation. As in the case of Charanlal Sahu (*supra*) the doctrine of *parens patriae* can more appropriately be applied to the case of victims of earthquake disaster like the present one which occurred in Gujarat and is the subject of public interest litigation before us. The doctrine has been explained by Supreme Court relying on several Indian and English decisions. The concept in jurisprudence of doctrine of *parens patriae* is that the State has the inherent power and authority to provide protection to the person and property of persons non-sui juris such as minor, insane and incompetent persons like those rendered helpless due to earthquake disaster. "*Parens patriae*" has been literally explained

to mean "the father of the country" and is used to designate the State referring to its sovereign power of guardianship for persons under disability. Parens patriae jurisdiction, it has been explained is the right of sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have no rightful protector. Conceptually, the parens patriae is theory of obligation of the State to protect and take into custody the rights and privileges of its citizens for discharging its obligations. The Constitution makes it imperative for the State to secure to its citizens rights guaranteed by Constitution and where the citizens are not in a position to assert and claim their rights, the State can be activated and approached to effectively come upon the scene and protect the human rights of victims of a disaster. The Supreme Court has held that the Preamble of the Constitution read with Directive Principles in Arts. 38, 39 and 39A enjoins the State to take up this responsibility. It is the protective measure to which the Social Welfare State is committed.

14. The functions of a State governed by Constitution and Rule of Law are to take necessary remedial measures as parent and guardian of the citizens of the country to help and support helpless victims of a massive disaster. This is the obligation of the State which is enforceable by the victims or public-spirited organisations on their behalf by way of collective action like the present public interest litigation.

15. The second question is whether any directions or writs to the State are required to be issued on the facts disclosed by the petitioners collected from several press and media reports of alleged mismanagement in overcoming the situation arising out of calamity.

16. At this stage, we wish to make it very clear that we do not at all appreciate the stand taken on behalf of the petitioners that the allegations of failures and lapses on the part of the Government deserve substitution of the Government machinery by setting up a committee or commission like a super imposed authority by the Court. Several allegations made against Government and its machinery may have some basis on media report. But, it would not be in public interest to take over the work of the Government machinery and hand it over to a committee or a commission to be set up by the Court. The allegations of failure and incapacity of the Government machinery show a prejudice and distrust in the elected Government. The paradox in a democratic society is that the people expect too much from the elected Government and its executive and at the same time show utmost distrust in it and its functionaries. It is too early to attribute any failure to the Government machinery and show distrust in its capability to meet the situation which has arisen out of the disaster. The petitioners could have been careful enough not to take any stand as would have a demoralising effect on host of officers, members of the staff and workers in the government machinery who are actively involved in the relief and rehabilitation operations. Obviously, the country was totally unprepared for a calamity of this dimension, but there is no cause to distrust capabilities of Government machinery to handle

the situation. It is in gesture of co-operation that the petitioners by proposed amendment sought deletion of certain paragraphs which contained objectionable allegation against the Government.

17. The situation is not such where Government machinery has to be substituted or supplanted, but it demands that it has to be supplemented by people through their various social service organisations. Participation of the people to get over a crisis of such magnitude should be welcome to the Government and deserves to be encouraged by it. We find sufficient justification in the request made on behalf of the quake victims that the Government machinery should allow active effective participation to the people through scientific and technical experts in various fields who are ready and willing to offer their services. Their participation is also justified to ensure proper use of the funds and relief material received from all over the world. The participation of people and service organisations is also desirable as rehabilitation programmes are likely to take a few years looking to the scale of devastation and destruction in the earthquake. Almost all towns and villages of Kutch district have been razed to the ground and many houses and buildings in other towns and cities like Jamnagar, Rajkot and Ahmedabad are severely damaged making life of residents hazardous,

18. The donations and contributions in cash and kind have been received by the Government wholeheartedly and spontaneously by various sections of the society and people in India and abroad. These donations and contributions in cash and kind are not parts of the recognised Revenue or Fund of the State or the Centre as envisaged in the Constitution. The contributions and donations constitute a fund raised by people all over the world with specific aim to extend help and support to the quake victims. Such donations and contributions are in the hands of Government in the nature of a trust. As we have held above being "parens patriae" the State has an obligation and duty to help and support the quake victims. Obligation of the State may arise from Constitution, Statute, contract or quasi-contracts from torts. Obligations which do not fall in any of the categories has been described by Salmond on Jurisprudence, 12th Edition by P.J. Fitzgerald at pp 127 as "Innominate Obligations". This obligation is explained as "a recognition of final and residuary laws having no comprehensive and distinctive title. In this obligation is included the obligations of trustee towards their beneficiaries a specie, indeed, which would be sufficiently important and distinct to be classed separately as co-ordinate with the others mentioned above, namely, in that of property". The principle of trusteeship in the light of obligation of State as guardian and parent of its citizens can have application in the present case. The contributions and donations in cash and kind are with the Government in trust with it for their use for the victims. Such relationship of trusteeship has to be inferred for the purpose or object of protecting the rights and interests of persons who being seriously afflicted by a calamity are unable effectively to protect themselves. See the following observations on this concept of legal relationship of trust discussed in Salmond on Jurisdiction in 12th Edition by Fitzgerald at page. 48.

"In the second place, similar protection is required for the property of those who lie under some incapacity in respect of the administration of it, such as infancy, lunacy or absence. (We may add : "those rendered helpless by earthquake"). Thirdly, it is expedient that property in which large numbers of persons are interested in common should be vested in trustees. The complexities and difficulties which arise from co-ownership become so great, so soon as the number of co- owners ceases to be small, that it is essential to avoid them; and one of the most effective devices for this purpose is that scheme of duplicate ownership which we term a trust."

The learned author in the same work on Jurisprudence on discussing function and purpose of law makes the following comment which is very relevant for the purpose of this case :-

"Now, justice operates at two different levels. As "distributive justice", it works to ensure a fair division of social benefits and burdens among the members of a community. The function of the Courts is chiefly that of applying justice in its corrective sense. In a just system of law, then, we shall expect to find on the one hand rules aiming to procure and equality of distribution, and on the other specific rules relating to the application of corrective justice by the Courts."

19. In our opinion, therefore, all those donors and contributors who have extended help in cash and kind to the victims have enforceable right, in a representative capacity to seek directions to the Government to ensure that the relief and rehabilitation material meant for quake victims reaches them in time and hour of need. For the same purpose, they can claim a right to demand account of receipt and expenditure of such relief and rehabilitation material in cash and kind.

20. On behalf of the State and the Central Government the claim for creation of a separate fund and its proper accounting to ensure proper help to the quake victims is opposed by saying that whatever monies by way of contributions and donations the Government has received goes either to the Consolidated or Contingency Fund of India in accordance with Art. 283 of the Constitution and is subjected to statutory audit through the Comptroller and Auditor General of India under Art. 129 of the Constitution.

21. No doubt, the executive organ of the Government which has received the donations and contributions from the Indian Citizens is a branch of elected representatives of the people of India. But contributions and donations have also been received from various foreign nationals and organisations. For proper maintenance and expenditure from such fund created by contributions and donations from all over the world, participation of victims and of their contributors and donors for their benefit, if not a must, is desirable. This is necessary as the Government machinery is geared up and has to be helped to work for protection of life of quake victims.

22. The Court has been informed that the Central Government as well as the

State Government have already set up big and smaller committees representing various sections of the society as special committees for relief and rehabilitation operations to be undertaken for the quake victims. It is also stated on behalf of the two Governments that the committee or committees so set up in accordance with their objectives will involve through their smaller committees several nongovernmental organisations and bodies with technical experts in various fields like geo-science, engineering, medical and other subjects relating to earthquake and monitoring of relief and rehabilitative operations for quake victims. The request made on behalf of the quake victims, donors and contributors of setting up of an independent committee to partially or fully participate or take over the work of the Government machinery and to supervise or oversee the work of the Government has been stiffly opposed on behalf of the two Governments.

23. The contributions and donations for relief to quake victims received from India and from abroad may form part of the Consolidated or Contingent Fund of India subject to audit by the Comptroller and Auditor General of India, but looking to the nature of relief and rehabilitation operations, for safe custody of such fund and maintenance of account of its receipt and expenditure, a periodical check by audit is necessary. It cannot be safely left to a post-audit procedure in the manner laid down in the constitution and in various laws framed thereunder. We consider it necessary that the fund specifically raised by Government and donors and contributors for quake relief and rehabilitation work should be in safe custody and subject to periodical audit to ensure proper utilisation of the funds and material. Leaving it to the ordinary procedure of audit and making Government answerable to the Parliament or State Legislature only after utilisation of the Fund would not achieve the aim of ensuring proper utilisation of funds and material to the quake victims in time.

24. We have already observed above that there is no cause to show any distrust in the Government machinery. On the contrary, we have found that there is a constitutional and legal obligation on the State and its different organs to take care of victims of the earthquake being in the position of a guardian or parent of the people of the country. It would not, therefore, be proper to impose any super committee or commission to oversee the work and performance of the Government machinery. That would indirectly cause obstruction and embarrassment to them in their work. However, as has been held above, the relief material in cash and kind received by donations and contributions from all over the world is a fund or property in trust with the Government to be utilised only for the quake victims. We have also held that for the same reason the donors and contributors as also the quake victims in a collective action through public-spirited citizens have a right to claim participation in the utilisation of the fund for the relief and rehabilitation operations. The participation of the people representing the donors and contributors and the quake victims should, therefore, be welcomed by the two Government instead of opposing it. The Government should welcome help to tide over the crisis of an unprecedented

magnitude for which the Government has to mobilise technical expertise and augment its resources. How best, therefore, effective participation of people including those representing the donors and contributors and the earthquake victims, is to be achieved is the most difficult question before us. The Court inherently lacks knowledge and expertise on such a subject of quake relief management operations. With the limited knowledge of the Court derived from the assistance of parties before us participation of people representing donors and contributors and quake victims can best be achieved by permitting their participation in a representative way on the committee or committees set up by the Government for quake relief management operations. What appeals to us is the concept of "ombudsman" meaning "tribune of the people". Prof. H.W.R. Wade and C. F. Forsyth in their authoritative work on Administrative Law, 7th Edition explain the nature and function of ombudsman as tribune of people, thus :-

"Ombudsman is a Scandinavian word meaning officer or commissioner. In its special sense, it means a commissioner who has the duty of investigating and reporting to Parliament on citizens' complaints against the government. An ombudsman requires no legal powers except powers of inquiry. In particular, he is in no sense a Court of Appeal and he cannot alter or reverse any government decision. His effectiveness derives entirely from his power to focus public and parliamentary attention upon citizens' grievances. But publicity based on impartial inquiry is a powerful lever. Where a complaint is found to be justified, an ombudsman can often persuade a government department to modify a decision or pay compensation in cases where the complainant unaided would get no satisfaction. For the department knows that a public report will be made and that it will be unable to conceal the facts from Parliament and the press. The consciousness of the ombudsman's vigilance has a healthy effect on the whole administration, making it more sensitive to public opinion and to the demands of fairness.

The essence of the ombudsman's technique is to receive the complaint informally, to enter the government department, to speak to the officials and read the files, and to find out exactly who did what and why. No formal procedure is involved at any stage, nor is any legal sanction in question. The system can be adopted with short and simple legislation, or even merely administratively, and countries with written constitutions have no need to amend them. This ready adaptability is another of the reasons for the ombudsman's world-wide appeal."

25. We are conceiving the participation and co-operation of a body like "ombudsman" as for a stupendous task like long range management of relief and rehabilitation operations such a mechanism is necessary. The mechanism would be adjunct to the existing Government mechanism. The ombudsman in its status and function is different from a commission constituted under Commission of Enquiry Act or fact-finding commission. Its two main functions would be to

redress the genuine grievances of earthquake victims and donors and contributors of relief material and funds. Its other function would be to legitimise the work of the governmental agencies where complaints and investigations are found to be unwarranted. The ombudsman will co-ordinate its activities to help and support the Government agencies and would enable the civil servants accused of maladministration to clear their names. Ombudsman would thus work as an institution for rectifying complaints made by individuals and organisations and to advise the Government and its agencies against the maladministration. In work of such nature of providing relief and rehabilitation to quake victims, administrative lapse or lapses are likely to happen and they may not constitute an illegal behaviour but such lapses require immediate attention and are worthy of rectification. The ombudsman would provide a free and thorough means of redress for grievances. The ombudsman would strike a balance ensuring that the citizens are not maltreated on the one hand and on the other hand making demands on the administration which exacerbates some of the problems being complained about. In evolving this institution of ombudsman to co-ordinate with and help and support to the Governmental agencies in their long range task of relief and rehabilitation to quake victims, we are guided by similar institutions working in Britain and other foreign countries of which critical study is found in "Introduction to Administrative Law" by Peter Cane, 3rd Edition pp. 314-329.

26. Before formulating our directions some comments from us are called for as there has been serious debate between the petitioners representing the cause of earthquake victims, donors and contributors on the one hand and the Governmental agencies on the other, on the question of the jurisdiction and role of judiciary in such a mass catastrophe. We would like to recall and associate ourselves with the observations of Sir John Donaldson M. R. in *R. v. Lancashire CC ex p. Huddleston* 1986 (2) ALLER 941 945 :

"Notwithstanding that the Courts have for centuries exercised a limited supervisory jurisdiction by means of the prerogative writs, the wider remedy of judicial review and the evolution of what is, in effect, a specialist administrative or public law Court is a post-war development. This development has created a new relationship between the Courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration.

With very few exceptions, all public authorities conscientiously seek to discharge their duties strictly in accordance with public law and in general they succeed. But, it must be recognised that complete success by all authorities at all times is a quite unattainable goal. Errors will occur despite the best of endeavours. The Courts, for their part, must and do respect the fact that it is not for them to intervene in the administrative field, unless there is a reason to inquire whether a particular authority has been successful in its endeavours. The Courts must and do recognise that, where errors have, or are alleged to have occurred, it by no means follows that the authority is to be criticised. Administrative law and

administrative power should be friends and not enemies.

The contribution that the law can and should make is creative rather than destructive.

27. So far as the petitioners as eminent citizens in different walks of life are concerned their sincere efforts in the interest of quake victims and general public has to be appreciated. They have brought a just cause justifying some intervention by the Court. To the opposition and the stand taken on behalf of the two Governments the remarks of the Apex Court are apt :

"to deny activism to the Courts is to nullify the judicial process and to negate justice. Nature abhors a vacuum - take away judicial activism and tyranny will step in to fill the vacant place."

28. The petitioners have espoused the cause of the helpless quake victims and of the people all over the world who have shown generosity by sending help and support unprecedented in history.

29. Natural calamity indirectly has created National unity and helped in international peace and harmony. Instead of thinking of balance of power between the three organs of the State -- Legislature, Executive and Judiciary -- it is hoped that such calamities would provide an opportunity of creation of a harmonious relationship between the three organs with effective participation of the people to whom the Constitution is committed to extend protection of "life" and "personal liberty".

30. In the course of hearing on behalf of the petitioners a proposal has been moved mentioning the names of high dignitaries and technical experts in quake disaster management and rehabilitation operations. The names suggested are eminent people from Indian Institute of Management, Gujarat Institute of Development Research, Vivekanand Research Training Institute, Kuchchh Mahila Vikas Sangathan, Gujarat Sankat Nivaran Samiti and Social Workers and Religious Representation from Swaminaryan Sect. The petitioners also expressed desire to include in their proposal a few eminent medical men. The suggestion made on behalf of the petitioners is that these dignitaries with high officials in the Government like the Union Home Minister, Chief Minister or Minister of Cabinet Rank and I.A.S. Officials should constitute a high-power Disaster Management Committee to ensure best possible help and relief to the victims in rehabilitation.

31. On behalf of the Central Government, the Solicitor General and on behalf of the State the Advocate General informed this Court that already active deliberations are on in the joint meetings of the State and Central Cabinets to constitute such a high-power Disaster Management Committee and decision has tentatively been taken that top-most people in different technical fields connected with disaster management would be actively associated directly or through their consultation committees. On behalf of the two Governments

request was made to wait for reasonable time for placing on record the formally constituted Disaster Management Committee or Authority which is in contemplation of the Government. For the above purpose, we have granted a reasonable time to the party to again address the Court on the next date of hearing.

32. Everyday, however, is precious, so far as relief operations to the quake victims are concerned. It is, therefore, necessary to make an interim order.

33. Thus, having concluded, in our considered opinion, the following directions are extremely expedient and necessary in public interest and in the interest of earthquake victims and donors and contributors of relief materials and money :-

(1) In order to help and co-operate the Government agencies for ensuring timely relief through relief material, cash and compensation money, we consider it fit to associate District Judge in each district, who is ex-officio Chairman of District Legal Services Authority constituted under the Legal Services Authorities Act, as Ombudsman in his district. As we have held above, the role of Ombudsman is not to supervise or oversee the relief and rehabilitation operations of the Governmental agencies, but he would receive complaints and grievances of the quake victims, and after necessary investigation with the assistance of Legal Services Authorities and N.G.Os., bring them to the notice of the government officials and agencies in charge of relief and rehabilitation programmes. It is expected that every Chairman of the District Legal Services Committee, as Ombudsman, will act in full co-operation with and support from the Governmental, Non-Governmental Agencies and various officials and members of the staff working with them. It is left to the discretion of the District Legal Services Committee to constitute Consultative Committee or Committees of persons from different fields to help and guide them in the work of relief and rehabilitation operations. They can seek co-operation of medical men, engineers, educationists, lawyers, social workers and students. In case of any serious difficulty or grievance, it would be open to the District Chairman to bring it to the notice of the Gujarat State Legal Services Authority, through its Secretary for taking up the issue through the Authority with the Government.

(2) So far as the prayer for creation of separate Fund for quake victims based on the contributions and donations of various governmental and nongovernmental organisations and individuals is concerned, a separate Fund is directed to be opened by the Authority specially constituted for Disaster Management Operations. The account of the receipt and expenditure of the relief material in cash and kind shall be duly maintained by the Authority specially set up by the government for the purpose. The account of the receipt and expenditure so maintained shall be subjected to periodical inspection and audit by nominee of the Comptroller and Auditor General of India, to whom a copy of this order shall be sent for necessary action. It would be open to the Comptroller and Auditor General of India to depute his officers or team quarterly or half yearly or yearly to monitor the receipt and expenditure in relief work for the quake victims. The

account so maintained and duly audited will be open to inspection by public in accordance with the procedure to be laid down for the purpose by the Comptroller and Auditor General of India.

(3) A copy of this Order shall also be sent to the Secretary of State Legal Services Authority, Gujarat, for issuing necessary instructions in the light of this order to all the District Judges-cum-District Chairmen of Legal Services Authority to act as ombudsman in the work of distribution of relief materials in cash and kind. He would through its Legal Aid Cells help the Governmental and non-governmental agencies and individuals in relief and rehabilitation work for the earthquake victims.

(4) A copy of this Order shall also be sent to the Secretary General of National Human Rights Commission for necessary action and intervention, if necessary, in redressing the complaints of violation of human rights in accordance with the provisions of Section 12(b) of the Protection of Human Rights Act.

(5) So far as care of orphaned children, as a result of earthquake is concerned, there is already complete legislation and infrastructure available through Juvenile Welfare Board and Juvenile Courts under the provisions of Juvenile Justice Act, 1986. The State Government is directed to forthwith mobilise and activate the various statutory Authorities under the said Act to immediately take care of orphaned and destitute children.

(6) The additional work which is entrusted to and expected from the Legal Services Authorities from State to Taluka level would require help and financial support from the Government and its agencies. We, therefore, direct that the Government shall extend necessary financial support in that behalf to the State Legal Services Authority to obtain their maximum co-operation in the stupendous task of relief and rehabilitation operations undertaken by the Government.

(7) The petitioners can associate themselves or through service organisations in helping the authorities and agencies to whom we have issued directions for ensuring relief and rehabilitation of the quake victims.

(8) The Registrar of High Court of Gujarat shall forthwith send copies of this Order to the respondents and all the District Judges in the State to mobilise the work entrusted to them by this Order through the special cells constituted for the purpose of providing legal aid and relief to the quake victims.

(9) The Registrar of High Court shall take steps to give wide publicity to the Order and directions made by us above, so that all concerned including the quake victims and their relatives are made aware of mechanisms and agencies available to them for relief and rehabilitation.

34. We would like to conclude with a hope that the petitioners with the help of individuals and service organisations and all agencies and authorities to whom we have issued directions will work in spirit of co-operation between them with one single aim of providing relief, remedy and rehabilitation to earthquake

victims within the quickest possible time.

35. Directions issued.