

(2017) 05 SC CK 0013

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 444 of 2013

Gaurav Kumar Bansal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-05-2017

Acts Referred:

Citation : (2017) 5 JT 567 : (2017) 6 Scale 1 : (2017) 6 SCC 730

Hon'ble Judges : Madan B. Lokur, J;Deepak Gupta, J

Bench : Division Bench

Advocate : In-Person, for the Petitioner

Final Decision : Disposed Of

Judgement

Madan B. Lokur, J.—These two writ petitions were filed under Article 32 of the Constitution consequent upon the unprecedented flood and landslide disaster that occurred in Uttarakhand in 2013. Undoubtedly the disaster led to widespread damage to life, limb and property and according to the petitioners, the adverse impact of the disaster could have been mitigated had there been effective implementation of the Disaster Management Act, 2005 (for short 'the Act') and adequate preparedness by the State Government of Uttarakhand. It was alleged in the writ petitions that many of the other States were also not fully prepared to deal with a disaster and therefore necessary directions ought to be given by this Court for proper implementation of the Act.

2. This Court took up the petitions in public interest and required responses to be filed by the State Governments. However, as per the normal practice, the State Governments were lax and extremely slow in filing affidavits. The Union Government was also a little slow in ensuring that the Act is implemented in letter and spirit. Resultantly and apparently on the prodding of this Court, the Union Government took some positive action and on 25th February, 2016 a communication was sent to the Chief Secretaries of all the States by the Joint Secretary (Policy and Plan) of the National Disaster Management Authority (for

short 'the NDMA')). Through this letter, the NDMA required the Chief Secretaries of all the States to frame minimum standards of relief for victims of disaster. This Court also required the Chief Secretaries to formulate (among other things) guidelines on minimum standards of relief for food, water, sanitation, medical cover to be provided to persons affected by a disaster and also special provisions to be made for widows and orphans. Unsurprisingly, there was again some laxity in complying with the directions of this Court.

3. On 5th April, 2016 it was brought to the notice of this Court that Section 11 of the Act requires the drawing up of a National Plan for disaster management in consultation with State Governments and expert bodies or organizations in the field of disaster management. It was brought out that while there is a policy document but the National Plan has not yet been finalized.

4. It was also brought out that under Section 23 of the Act, each State is required to formulate a State Plan for disaster management and under Section 31 of the Act each district is required to formulate a plan for disaster management. It is unfortunate that more than 10 years after the passage of the Act by Parliament, many of the States had not taken adequate steps to ensure that the requirements under the Act were complied with and disaster management plan formulated.

5. To make matters worse, we were informed on 14th September, 2016 that some States particularly Himachal Pradesh, Kerala, Maharashtra, Meghalaya, Uttar Pradesh and West Bengal had not yet responded to communications sent by the NDMA. Eventually, however, it appears that all the State Governments have woken up to their statutory duties and have formulated appropriate plans.

6. In the hearing held on 28th April, 2017 it was brought to our notice by learned counsel appearing for the NDMA that a National Advisory Committee has since been constituted under Section 7 of the Act by a notification dated 18th November, 2016 and the Committee has a tenure of two years. Similarly, under Section 8 of the Act a National Executive Committee has also been constituted by a notification issued on 27th September, 2006 and that it is a continuing Committee in terms of the provisions of the Act.

7. It was further pointed out that a National Plan has been approved and placed on the website of the NDMA in terms of Section 11 of the Act and the guidelines for minimum standards of relief under Section 12 of the Act have also been placed on the website of the NDMA.

8. In further compliance with the provisions of the Act, a State Disaster Management Authority has been constituted in all the States and Union Territories under Section 14 of the Act and a State Executive Committee mandated under Section 20 of the Act has been constituted except in the Union Territory of Chandigarh.

9. It was pointed out by the petitioner appearing in person that an Advisory

Committee had not been constituted by the State Disaster Management Authority under Section 17 of the Act and that necessary directions should be given in this regard. Section 17 of the Act reads as follows:-

17. Constitution of advisory committee by the State Authority—(1) A State Authority may, as and when it considers necessary, constitute an advisory committee, consisting of experts in the field of disaster management and having practical experience of disaster management to make recommendations on different aspects of disaster management.

(2) The members of the advisory committee shall be paid such allowances as may be prescribed by the State Government."

10. On a plain reading of the above provision, we find that there is no mandate making obligatory the establishment of an Advisory Committee. It is really for the State Disaster Management Authority to constitute one or more Advisory Committee as and when it becomes necessary to do so on different aspects of disaster management. Consequently, on the plain language of Section 17 of the Act it is not possible for us to give any direction as prayed for by the petitioner.

11. As far as the preparation of the State Plan under Section 23 of the Act is concerned, we have been informed by learned counsel for the NDMA that all States except Andhra Pradesh and Telangana have prepared a State Disaster Management Plan which is very much in place.

12. As far as the districts are concerned, it is stated that the District Disaster Management Authority has been constituted in every district under Section 25 of the Act and out of 684 districts in the country, a District Disaster Management Plan is in place in 615 districts while it is under process in the remaining districts.

13. On a review of the steps that have been taken by the NDMA, we are of opinion that there has been sufficient compliance with the provisions of the Act and it is not necessary for us to issue any particular directions. All we need say is that it is absolutely necessary for the NDMA constituted at the national level and the State Disaster Management Authority at the State level to be ever vigilant and ensure that if any unfortunate disaster strikes there should be total preparedness and that minimum standards of relief are provided to all concerned. However, it would be advisable for the NDMA to regularly publish its Annual Report (the last one on our record is of 2013-14), to review and update all plans on the basis of experiences and to make its website ndma.gov.in multilingual so that all concerned may benefit.

14. With these observations, we dispose of the writ petitions while acknowledging the efforts put in by the petitioners in bringing into focus the necessity of implementing the statute that might affect any one at any time.

15. The writ petitions are disposed of.