

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 02.05.2023

% **Judgment delivered on: 22.05.2023**

+ **W.P.(C) 11992/2019**

ANAND Petitioner

Through: Petitioner in person.

versus

GOVERNMENT OF NCT OF DELHI AND ANR..... Respondents

Through: Mr. Sameer Vashisht, ASC with
Ms.Avni Singh, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioner before this Court, a practicing advocate, has filed the present petition challenging the constitutional validity of order dated 18.03.2015 passed by the Secretary, Revenue and Divisional Commissioner, Revenue in the matter of recruitment of civil defence volunteers. The Petitioner has prayed for the following reliefs:

“A. Issue appropriate writ/order/direction declaring sub clause (I) to clause 3 of order no. F.NO.T.A35(77)/CD/2011/5632-45, DATED 18.03.2015, passed by SH. ASHWANI KUMAR, SECRETARY(REVENUE) & DIVISIONAL COMMISSIONER

(REVENUE), GOVERNMENT OF NCT OF DELHI, to the extent making "resident of delhi" as a necessary condition precedent to become eligible for being a Civil Defense Corp as invalid/ void being inconsistent to the Parent Act and regulation made therein and ultra vires & unconstitutional the Constitution of India.

B. Pass any other order as may be deem fit by this Hon'ble court in the facts and circumstances of the case."

2. The facts of the case reveal that The Civil Defence Act, 1968 was enacted after the Chinese invasion of our country in 1962. It was felt that in order to minimize loss of life, to maintain continuity of prohibition and to restore quickly the disrupted civil services, civil defence measures should be adopted in places which were the most likely targets of enemy attack.

3. The Act provides for maintenance of Civil Defence Services in the States and Union Territories and it came into force on 10.07.1968. Section 4 and Section 5 of the Act which deals with constitution of civil defence corps and appointment of members and officers reads as under:

"4. Constitution of Civil Defence Corps.—(1) The State Government may constitute, for any area within the State, a body of persons to be called the Civil Defence Corps (hereinafter referred to as the "Corps") and may appoint a person, not being, in its opinion, below the rank of a District Magistrate (to be known as the "Controller") to command such Corps:

Provided that if there is in existence in any area in a State, immediately before the commencement of this Act in that area, an organisation which, in the opinion of the State Government, may be entrusted with the functions of the Corps, the State Government may, instead of constituting a separate Corps for such area, call upon that organisation to take over or discharge the functions of the Corps in that area, and thereupon such

organisation shall be deemed, for the purposes of this Act, to be the Corps for that area.

(2) The State Government may, for the purpose of co-ordinating the activities of the Controllers within the State, appoint a Director of Civil Defence and every Controller shall comply with the directions given by such Director.

5. Appointment of members and officers.—(1) The State Government may appoint as members of the Corps persons who are fit and willing to serve as such and the Controller may appoint any member so appointed to such office or command in the Corps, as such member is, in the opinion of the Controller, fit to hold.

(2) Every person appointed to be a member of the Corps shall be given a certificate of membership in such form as may be prescribed. ”

4. The Central Government in exercise of powers conferred by Section 3 of the Civil Defence Act, 1968 has framed Rules which deal with various contingencies in case of an emergency and otherwise also and in exercise of powers conferred under Rule 9, the Central Government has framed Civil Defence Regulations, 1968 which deal with appointment of civil defence volunteers. Regulation 4, 5 and 6 of the Regulations read as under:

“4. Manner of application.- (1) Every person eligible for appointment under regulation 3 shall be required to apply in Form “A” and also present himself for interview before the competent authority.

(2) Every candidate shall be required to produce a certificate from his employer agreeing to spare his service for training and duty, when so required.

(3) The Controller may, for advising him in the selection of candidates, constitute a Selection Committee which shall

consist of such number of members and such persons as the Controller may determine and appoint.

(4) All candidates shall be required to undergo training and pass examinations prescribed by the competent authority.

5. Enrolment.- (1) A candidate who has been accepted for appointment to the Corps shall be formally enrolled in such manner as the Controller may, by order, determine and at the time of enrolment shall make an oath or affirmation according to Form "B" before such officer as the Controller may, by order, appoint.

(2) Members of the following forces or services are not ordinarily eligible for enrolment in a Civil Defence Corps:-

(i) Armed Forces of the Union;

(ii) Police Force;

(iii) Fire Services;

(iv) Territorial Army or Auxiliary Forces of any of the Defence Services;

(v) Civilian personnel employed in connection with the Armed Forces of the Union.

(3) This regulation shall not apply to Government servants who are specifically deputed for whole-time or part-time Civil Defence duties by the Heads of organization or services concerned.

6. Organisation.- (1) The Controller may divide Corps into such number of sections consisting of such number of person as he may consider necessary and appropriate and appoint a person(hereinafter called the Officer-in-Charge) to command each such Section.

(2) The duties of the Officer-in-Charge shall be such as the Controller may by order prescribe from time to time.

(3) The Controller may appoint a Deputy to assist any Officer-in-Charge.

(4) The Controller shall, subject to such general or special orders as may be issued by the competent authority in this behalf from time to time, appoint all other staff required to man the service and may delegate such powers of appointment to any Officer-in-Charge.”

5. Section 2 (b) of the Civil Defence Regulations, 1968 defines Competent Authority as under:

“2

(b) “competent authority” means the State Government or any person appointed by the State Government to exercise the powers of a competent authority under any provision of these regulations.”

6. Form A appended to the Rules is reproduced as under:

“FORM “A”

[See Regulation 4(1)]

Application for enrolment as a member of the Civil Defence Services

- 1. Name in full (in Block letters)*
- 2. Father’s/ husband’s name.*
- 3. Date of birth*
- 4. Nationality*
- 5. Permanent address*
- 6. Occupation and present address*
- 7. Name and address of present employer*

8. *Educational qualifications*

9. *Languages known (to read/ write/ speak)*

10. *Are you a member of the following–*

(i) *Defence Forces (Army/Navy/Air Force) or any of their reserves;*

(ii) *Territorial Army or any other auxiliary force of Defence services;*

(iii) *Civilian cadre of Armed Forces of the Union, subject to Naval, Army or Air Force law, other than “Casual employees”;*

(iv) *Police Service;*

(v) *Fire Services.*

11. *Are you an ex-service person? If so, give particulars.*

12. *Do you belong to the National Volunteers Force? If so give particulars.*

13. *Have you any previous experience in Civil Defence Corps? If so, give particulars, including date.*

14. *Have you any preference for any particular section of Civil Defence Corps? If so, state the section.*

15. *Have you any special qualifications for enrolment in the section chosen by you? If so, give details.*

16. *In case of preference for service in Mobile Columns or ambulance trains, are you prepared to serve anywhere in India, should an emergency arise?*

17. *For how many hours and so what days of the week will you be available for Civil Defence duty (for part-time volunteers only).*

18. *Do you have any conveyance (bicycle, motor car, motor cycle) etc?*

19. *Are you suffering from any communicable diseases? If so, give particulars.*
20. *Did you have small pox? If so, when*
21. *Have you been vaccinated? If so, when*
22. *Have you been inoculated for cholera/ typhoid/ T.B etc? If so, when*
23. *Do you know First Aid/ motor driving?*
24. *Signature of applicant.*

DECLARATION

1. *I have read the “Civil Defence Regulations, 1968”.*
2. *As far as I know. I am physically fit to render efficient service as a member of the Corps.*
3. *If my application is accepted, I am prepared to service as a whole-time/ part- time member of the Corps, i.e., to undergo the appropriate training and, in the event of any emergency occurring whilst I remain a member of the Corps, to carry out my obligations a a member thereof.*
4. *I undertake:-*
 - (i) *to carry out my duties in the Civil Defence Corps in accordance with the instructions and orders issued by the authorities concerned;*
 - (ii) *to return, when I cease to be a member of the Corps, any articles of uniforms, badge or other personal equipment issued to me; and*
 - (iii) *to abide by the regulations of the Corps.*

Place:
the applicant

Signature of

Date:

This form duly completed should be submitted to:-

Name and address of Enrolling Authority-----

FOR OFFICIAL USE

Recommendations of the Head of Corps/ Staff officer concerned

Admitted to (Corps, etc.) and Allotted to (post No. etc.)-----

Signature-----

Signature-----

Designation-----

Designation-----

Date-----

Date-----”

7. The present Public Interest Litigation has been filed challenging the constitutional validity of sub-clause (1) to Clause 3 of Order No. F.NO.TA.35(77)/CD/2011/5632-45 dated 18.03.2015 passed by the Divisional Commissioner to the extent it makes “*resident of Delhi*” as a necessary condition to become eligible for being a civil defence corps and that it is mandatory that a candidate for enrolment of Civil Defence volunteer has to be a resident of Delhi. The order dated 18.03.2015 issued by the Secretary, Revenue and Divisional Commissioner is reproduced as under:

**“GOVT. OF N.C.T OF DELHI
OFFICE OF THE DIVISIONAL COMMISSIONER
REVENUE DEPARTMENT
5. SHAM NATH MARG. DELHI-110054**

F.NO.TA.35(77)/CD/2011/5632-45

DATED: 18/03/2015

CDSONO. 1/2015

ORDER

SUB:- STANDING ORDER ON ENROLLMENT OF CIVIL DEFENCE VOLUNTEERS

1. *Civil Defence Volunteer/Corps are expected to be the first responders in case of disaster situations or hostile enemy attacks. It is important that citizens interested in joining the Corps have high integrity, motivation and commitment to the service of the society and nation on volunteer basis. The process of enrollment should be simple and IT enabled so as to facilitate enrollment of volunteers within a shortest possible time.*

2. *The Divisional Commissioner, Delhi/Controller, Civil Defence or any other officer authorized by the Govt. of NCT Delhi shall be the competent authority to approve enrollment of Civil Defence Volunteers under his respective jurisdiction.*

3. *Eligibility criteria:-*

(1) *Residence;- He/She shall be a citizen of India or a subject of Bhutan or of Nepal **and should be a resident of Delhi** Having any one of the Following documents. Voter identity Card/ Aadhar Card/ Passport/Driving License/ Bank Pass Book/ any other employment Identity Card issued by Govt. Authority, with a photograph.*

(ii) *Age:- He/She should be of 18 years of above, provided that this age limit may be relaxed with the discretion of the Controller up to a maximum of 3 years in Civil Defence. There is no maximum age limit for enrollment.*

(iii) *Educational Qualification He/She shall have passed at least Primary standard, and This condition may be relaxed by the Controller at his discretion. The educational qualification shall be as follows:-*

(a) *House Fire Party (Member): Primary standard
(5th class)*

(b) *Sector Warden to Post Warden Middle & above:
Middle & above*

(c) *Dy. Divisional Warden & all above: Matric & above*

(iv) *Health;- A person shall not be entitled to be appointed to the Corps Unless He/She is found to be physically fit, mentally alert and also with normal vision/Corrected vision after wearing spectacles.*

(v) *NOG:- Aspirants who is in employment shall be required to produce a "No Objection Certificate" from his/her employer agreeing to spare his/her services for training and duty, whenever required.*

(VI) *Serving members of the following forces or services are not eligible for enrollment:*

i) Armed Forces of the Union.

ii) Police Force:

iii) Fire Services:

iv) Territorial Army or Auxiliary Forces of any of the Defence Services:

v) Civilian personnel employed in connection with the Armed Forces of the union.

A retired defence person will however be allowed to be enrolled as the member of civil defence corps. Any past services in the National Volunteer Force and in the Armed Force of the Union shall be a special qualification for enrollment.

4. How to Apply;- Applicant has to fill up prescribed Form A' and submit the same along with copy of self attested documents such as 04 passport size photographs, any residential proof as mentioned above in 3(1), copies of proof of educational qualification and NOC from employer. Police verification form duly filled up will also be submitted. However, in case of govt. employee or public sector employee, the condition of police verification may not be insisted upon. In

case of renewal of tenure, such verification may be waived off in suitable cases.

5. *Application form;- Applicant may download application form (Form A) from Revenue Department/Districts website or get it DM Offices free of cost.*

6. *Submission of Application form;- Applicant has to submit filled up Form-A to the respective Deputy Controller/Sub Divisional Magistrate where the applicant resides only during office hours on all week days under acknowledgement.*

7. *Online Filing of application;- He/Sbe can also apply online by visiting the website of revenue Department. Applicant may also submit be application online through e- District portal.*

8. *Police Verification;- Applicants, who is found otherwise fit, will be eligible for enrollment as Civil Defence Volunteer after verification of his character and antecedents by police. Anyone with criminal background and doubtful integrity would not be enrolled as a member of this organization under any circumstances.*

The police verification process in respect of applicants, who applied for enrollment, will be carried out by the respective Deputy Controller /SDM of the sub-division. If any charges are levied by police authority for police verification. It will be paid by the applicant.

9. *Tenure An applicant shall be enrolled as volunteer/member of the Corps intially, for tenure of three years, which may be extended each time by a further period of three years by following the due process.*

10. *Mandatory Civil Defence Basic Training Course:- All aspirants have to undergo Civil Defence Basic Training Course after enrollment within a period of 90 days from the date of enrollment, falling which enrollment shall automatically stand cancelled. This training will be conducted in each district/*

regional training centre either on weekends or weekdays. Completion of mandatory CD Basic Training Course will be pre-requisite for call out duty of volunteer. However Ex-Servicemen, NCC CERTIFICATE holders and scout certificate holder need not undergo CD Basic Training Course.

11. Issue of identity Cards;-

1. On enrollment a Civil Defence Volunteer will be issued an enrollment number and a membership certificates. Identity Cards will be issued to only those members, who complete their Civil Defence Basic Training Course.

2. The identity Cards to the Civil Defence Volunteers of all ranks will be issued centrally under the signature of S.S.O. (C.D.)/S.O. (C.D).

3. It will be the responsibility of the District concerned to ensure that all identity Cards are prepared and handed over to the concerned C.D. Volunteers/Wardens on the final day of Civil Defence Basic Training Course as far as possible.

4. The District Office concerned will maintain a proper record of I-Cards issued to C.D. Volunteers of all ranks. In case of any renewal/torn out condition, identity Card would be submitted to District Office under proper receipt. New I-Card will then be provided within a period of 15 days positively. Any loss of I-card should be reported to respective District Office/police Immediately.

While applying for duplicate I-card, the Civil Defence Volunteer shall also submit a copy of non-cognizable complaint filed with police.

5. A member of the corps after discharge/completion of tenure shall return the Identity Cards issued to him to the Controller without fall.

12. Web-based Data Base There will a centralized database of all CD volunteers. It will contain all personal particulars such as name, father/husband's name, address,

Aadhar no., Mobile no, email address, DOB, Educational qualification, physical attributes (height,weight, chest). Work experience, special skills, training, call duty details. There will be facility for online filing of enrollment form add its disposal, further the database will also contain details of vital resources such as vehicles and equipments, etc, and their location, mapped on a GIS. This will help in making resources available at a short notice during any disaster. Efforts will be made to keep the database in public domain and user access for specified users.

*(Ashwani Kumar)
Secretary (Revenue) &
Divisional Commissioner”*

(Emphasis supplied)

8. The Petitioner has vehemently argued before this Court that the conditions of being a resident of Delhi does not find a place under the Civil Defence Act, 1968, Civil Defence Rules, 1968 and the Civil Defence Regulations, 1968 and any person can be a civil defence volunteer in Delhi. It has also been argued before this Court that the Commissioner does not enjoy any power to issue such a circular as the Commissioner is not the competent authority under the Civil Defence Regulations, 1968 and by confining the recruitment process only to the residents of Delhi, the respondents are violating the Fundamental Rights guaranteed to the citizens of the country. It has further been argued that the order of the Divisional Commissioner is violative of Articles 14,16 and 21 of the Constitution of India.

9. Learned counsel has argued before this Court that the Divisional Commissioner does not have the power to amend the Regulations, and it is

only the Central Government which is competent to make the Rules and Regulations keeping in view Section 9 of the Civil Defence Act, 1968.

10. A reply has been filed in the matter and it has been stated on affidavit that Section 4(1) and Section 4(2) of the Civil Defence Act, 1968 provides for constitution of Civil Defence Corps and an officer of the rank of District Magistrate can be appointed as controller and the State Government shall appoint a Director for coordinating the activities of the controller within the State.

11. It has been further stated that vide notification dated 05.03.2009 issued by the Government of Delhi, in exercise of powers conferred by Section 4 read with clause (f) of Section 2 of the Civil Defence Act, 1968, the Lieutenant Governor of National Capital Territory of Delhi has designated the Divisional Commissioner, Government of National Capital Territory of Delhi to be the commanding and controlling authority for all purposes and for the purposes of the Act and the Rules made thereunder in the National Capital Territory of Delhi.

12. It has been further stated that subsequently vide notification dated 18.08.2015, the Divisional Commissioner, Delhi has been appointed as Director, Civil Defence by the Lieutenant Governor and, therefore, the Divisional Commissioner has full jurisdiction in respect of the matters pertaining to Civil Defence Corps, Delhi and the Director has introduced the eligibility condition in respect of enrollment under the Civil Defence Corps. It has been stated that the duties discharged by civil defence corps are relating to emergency situations for protection of persons and properties

against the hostile attacks and disaster management and the civil defence volunteers are the “first responder” to the actions which can only be performed only by those persons who are ordinarily residents in the local areas and, therefore, a clause was inserted in the order impugned that a person should be a resident of Delhi.

13. Heard learned counsel for the parties and perused the record. The matter is being disposed of at the admission stage itself with the consent of the parties.

14. The Civil Defence Act, 1968 was enacted, as already stated earlier, to cater to the need of the Government in case of emergency of various kinds.

15. Section 3 of the Civil Defence Act, 1968 empowers the Central Government to make Rules for securing civil defence and the same reads as under:

“3. Power to make rules for civil defence.—(1) The Central Government may, for securing civil defence, by notification, make rules providing for all or any of the following matters, namely:—

(a) preventing the prosecution of any work likely to prejudice civil defence;

(b) instruction of members of the public regarding civil defence and their equipment for the purposes of such defence;

(c) provision, storage and maintenance of commodities and things required for civil defence;

(d) prohibiting or regulating traffic, and the use of vessels, buoys, lights and signals in ports and territorial, tidal and inland waters;

- (e) control of lights and sounds;*
- (f) protection of life and property by taking fire prevention and other measures;*
- (g) securing of any buildings, premises or other structures from being readily recognisable in the event of a hostile attack;*
- (h) for the prevention of danger to life or property, the demolition, destruction or rendering useless, of any building, premises or other structures or any other property;*
- (i) prohibiting or regulating the possession, use or disposal of—*
 - (i) explosives, inflammable substances, corrosive and other dangerous substances or articles, arms and ammunition;*
 - (ii) vessels;*
 - (iii) wireless telegraphic apparatus;*
 - (iv) aircraft; and*
 - (v) photographic and signalling apparatus and any means of recording information;*
- (j) evacuation of areas and the removal of property or animals therefrom;*
- (k) accommodation in any area of persons evacuated from another area and the regulation of the conduct of evacuated persons accommodated in such area;*
- (l) billeting of evacuated person or persons authorised to perform functions under this Act;*
- (m) salvage of damaged buildings, structures and property and disposal of the dead;*
- (n) seizure and custody or destruction of injured, unclaimed or dangerous animals;*
- (o) ensuring the safety of—*

(i) ports, dockyards, lighthouses, lightships, aerodromes and facilities associated with aerial navigation;

(ii) railways, tramways, roads, bridges, canals and all other means of transport by land or water;

(iii) telegraphs, post offices, signalling apparatus and all other means of communication;

(iv) sources and systems of water supply, works for the supply of water, gas or electricity and all other works for public purposes;

(v) vessels, aircraft, transport vehicles as defined in the Motor Vehicles Act, 1939 (4 of 1939), and rolling stocks of railways and tramways;

(vi) warehouses and all other places used or intended to be used for storage purposes;

(vii) mines, oilfields, factories or industrial or commercial undertakings generally, or any mine, oilfield, factory or industrial or commercial undertaking in particular;

(viii) laboratories and institutions where scientific or technological research or training is conducted or imparted;

(ix) all works and structures being part of, or connected with, anything earlier mentioned in this clause; and

(x) any other place or thing used or intended to be used for the purposes of Government or a local authority or a semi-Government or autonomous organisation, the protection of which is considered necessary or expedient for securing civil defence;

(p) control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water supply;

(q) precautionary measures, which the Government or any department thereof or any local authority, members of police force, fire brigade and members of any other service or authority employed primarily for purposes other than civil

defence purposes should be required to take within their respective jurisdictions or with respect to any personnel employed by them;

(r) preventing or controlling any use of uniforms, whether official or otherwise, or flags or official decorations like medals, badges or other insignia or anything similar thereto, the wearing of which is calculated to deceive or to prejudice civil defence;

(s) precautions to be taken or action to be taken by persons or authorities with a view to protecting or acquainting the general public or any members thereof against the dangers involved in any apprehended hostile attack;

(t) requiring the owner or occupier of any building, structure or premises to make or carry out such arrangements as may be necessary for the purposes of detection and prevention of fire;

(u) taking of specified measures for dealing with outbreaks of fire;

(v) directing that, subject to any specified exemption, no person present in any specified area shall, between such hours as may be specified, be out of doors except under the authority of a written permit granted by a specified authority or person;

(w) (i) prohibiting the printing and publication of any newspaper, news-sheet, book or other document containing matters prejudicial to civil defence;

(ii) demanding security from any press used for the purpose of printing or publishing, and forfeiting the copies of, any newspaper, news-sheet, book or other document containing any of the matters referred to in sub-clause (i);

(x) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient, and removal of persons from such areas;

(y) requiring any person or class of persons to comply with any scheme of civil defence;

(z) any other provision which may be necessary for the purposes of civil defence.

(2) Any rule made under sub-section (1) may provide that orders with regard to the matters specified therein may be made by the State Government.

(3) Any rule made under sub-section (1) may provide that a contravention thereof or any order made thereunder shall be punishable with fine which may extend to five hundred rupees, and where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such contravention continues.”

16. The main aim and object of the Civil Defence Act, 1968 is to cater to the immediate need in case any unseen event takes place by providing immediate relief in the locality and, in those circumstances the necessity also arose for constituting a civil defence service.

17. The volunteers in case of emergency play a great role and the Civil Defence Act, 1968 read with the Regulations provides for enrolment of civil defence volunteers.

18. The notification dated 18.03.2015 which is impugned in the present Writ Petition was issued for enrolment of civil defence volunteers in Delhi by the competent authority i.e. the Divisional Commissioner.

19. The Civil Defence Act, 1968 and the Rules framed thereunder make it very clear that the Civil Defence volunteers/ corps are expected to be the first responders in case of disaster situation or hostile enemy attack.

20. In the considered opinion of this Court, as the civil defence volunteers are the first responders in case of disaster situations, a volunteer residing in

the same locality or in a neighboring locality will certainly be able to respond immediately as and when directed by the Divisional Commissioner. He is well aware of the geography of the area, the local need of the area, the logistic support available in the area and, therefore, the Divisional Commissioner, while issuing the impugned order dated 18.03.2015 under the eligibility criteria has inserted a condition that a person for enrolling himself as civil defence volunteer should be a citizen of India or a subject of Bhutan or of Nepal and should be a resident of Delhi, having any one of the following documents:

- i. Voter identity Card
- ii. Aadhar Card
- iii. Passport/Driving License
- iv. Bank Pass Book
- v. Any other employment Identity Card issued by Govt. Authority, with a photograph.

21. It is nobody's case that a resident of some other State cannot be enrolled as a civil defence volunteer. If a person from some other State is residing in Delhi holding any of the documents required can certainly become a civil defence volunteer in Delhi. The order dated 18.03.2015 also does not provide for producing a domicile certificate for treating a person to be a resident of Delhi. The order dated 18.03.2015 can, therefore, never be said to be violative of Articles 14,16 and 21 of the Constitution of India as argued before this Court.

22. The Lieutenant Governor of Delhi vide notification dated 18.08.2015 has appointed the Divisional Commissioner as Director, Civil Defence and, therefore, the Divisional Commissioner who is the Director, Civil Defence has rightly issued the impugned order dated 18.03.2015 in respect of enrolment of Civil Defence volunteers.

23. The Hon'ble Supreme Court in the case of ***S.K. Mukherjee v. Union of India and Another***, (1994) 5 SCC 498, in paragraph 9 has held as under:

“9. From the abridged facts it is evident that rules and regulations can be framed by the Central Government alone under the provisions of the Act. Such regulations under Section 9(2)(b) can inter alia relate to conditions of service. But there is no dispute that the Act could be brought into force by different States from different dates, so however, that such date shall not be earlier to the date on which the Defence of India Act, 1962 would expire. Even according to the petitioner the Act was brought into effect from 10-7-1968. However, the Order No. 4729-HCD dated 24-7-1965 appointing the petitioner to the temporary post of Staff Officer-cum-Instructor in the Directorate of Civil Defence, West Bengal, being earlier to 10-7-1968, there can be no doubt that the petitioner's appointment was de hors the Act. Section 4(1) provides for the constitution of the Civil Defence Corps by the State concerned but the proviso to that sub-section says that if in any State there is in existence an organisation which can be entrusted the functions of the Corps, the State Government may instead of constituting a separate Corps, call upon the said organisation to take over and discharge the functions of the Corps whereupon such organisation shall be deemed to be the Corps for the area. Section 4(2) empowers the State Government to appoint a Director of Civil Defence to coordinate the activities of the Controllers within the State. Under Section 5(1) it is the State Government which is empowered to appoint members of the Corps. Thus the constitution of the Civil Defence Corps, the

appointment of the Controller and the appointments of members/officers of the Corps is with the State Government. Section 17 provides for the delegation of the powers of the State Government/Controller to an officer of the State Government of the rank specified in the said provision. Even so, it is indeed true that the rules and regulations have to be made by the Central Government in view of the clear language of Sections 3 and 9 of the Act. The regulations may inter alia regulate the conditions of service of members of any or all the Corps. Regulation 8 of the Civil Defence Regulations, 1968, extracted earlier, bear on the service conditions of the members of the Corps. On a plain reading of this regulation it becomes immediately obvious that members of the Corps are expected to render service in a voluntary and honorary capacity but if the State Government so desires it may authorise payment of duty allowance in consultation with the Central Government to a member of the Corps called on duty. Clause (2) which begins with a non obstante clause empowers the Central Government to declare any appointment or class of appointments as paid appointments whereupon the incumbent shall be entitled to the conditions of service as regards pay, leave, etc., as the State Government may by order, prescribe. Here again the power of prescribing the service conditions as to pay, leave, etc., rests with the State Government and not the Central Government. Therefore, the petitioner's contention that the service conditions as to pay, leave, etc., cannot be stipulated by the State Government is clearly misconceived. That function has clearly been entrusted to the State Government on a plain reading of Regulation 8 extracted hereinabove. If that be so, and we think it is so, no writ can issue (assuming there is jurisdiction to issue such a writ) to the Central Government as prayed in prayer (A) nor can a prohibitory order of the type prayed in prayer (B) issue to the State of West Bengal. We are afraid the petitioner has been labouring under a misconception that it is only the Central Government and not the State Government which can prescribe the salary, allowances, leave, etc., in view of Section 9(2), but in so thinking he has totally overlooked Regulation 8. We say so because in his petition, affidavits as well as written

submissions, no emphasis is laid on Regulation 8. The Central Government's action in complying with court's orders in relation to MCEF can never offer a ground for contending that there has been discrimination and a violation of the equality clause in Article 14 of the Constitution.”

24. The Hon'ble Supreme Court in the aforesaid case has held that the power of prescribing the service conditions as to pay, leave etc. rests with the State Government and not with the Central Government. It has been stated that State Government cannot be prohibited from prescribing service conditions of such employees.

25. In the present case, the impugned notification relates to civil defence volunteers and as already stated earlier, the civil defence volunteer in case of any disaster or hostile enemy attack, are expected to be the first responders. Hence, the eligibility clause that a person should be resident of Delhi can never be said to be violative of any Constitutional right guaranteed to the Petitioner or to any citizen of India.

26. Learned Counsel for the Respondent has also placed reliance upon a judgment delivered by a Division Bench of Allahabad High Court in ***K.S. Srivastava and Others v. State of U.P. and others***, 1982 SCC OnLine All 1159. The aforesaid case though was arising out of transfer of civil defence employees from the civil defence office to another city, the issue of exercising the power by the State Government has been considered in paragraph 19 of the aforesaid judgment and the same reads as under:

“19. Mr. Bhatnagar submitted that Civil Defence is a legislative topic mentioned in List I of the Seventh Schedule of the Constitution. Hence Parliament had exclusive jurisdiction

to legislate in respect of it. It was not open to Parliament to delegate any power or function in relation to Civil Defence to a State Government or its officers. The argument has no substance. Art. 258(2) of the Constitution provides:—

“(2) A law made by Parliament which applies in any State n???ay (sic may), notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.””

27. In the aforesaid case, the argument that the State Government does not have the power to transfer was negatived by the Division Bench of Allahabad High Court and, therefore, in light of the aforesaid finding, this Court is of the opinion that the power has been rightly exercised by the Divisional Commissioner who was certainly competent to issue such an office order in the matter of enrolment of civil defence volunteers.

28. In the case of *State of West Bengal & Anr. v. Chirantan Sarkar*, 2000 SCC Online Cal 180, it has been held in paragraph 11 as under:

“11. The question as to whether the service conditions of the members of Civil Defence Corps can be fixed by the State Government or not came for consideration before the Hon'ble Supreme Court of India in S.K. Mukherjee v. Union of India, reported in AIR 1994 SC 2485, wherein it was held that the State Government is authorised and empowered to lay down service conditions in respect of the members of Corps.”

29. The aforesaid judgment makes it very clear that the State Government is the competent authority to lay down the service conditions in respect of the members of the corps.

30. Regulation 16 of the Civil Defence Regulations, 1968 reads as under:

“16. Power to competent authority as regards preventing the contravention of regulations, etc.- The competent authority may take, or cause to be taken, such steps and use, or cause to be used, such force as may, in the opinion of such authority, be reasonably necessary for preventing the contravention of, or securing the observance of, these regulations or any order issued thereunder.”

31. The aforesaid Regulation specifically empowers the competent authority to take appropriate steps as deemed fit and reasonably necessary for preventing the contravention of, or securing the observance of the Regulations as prescribed or any order issued thereunder. Therefore, in the considered opinion of this Court, the competent authority was justified in issuing the impugned order dated 18.03.2015. This Court is of the opinion that while enrolling a person as a civil defence volunteer, the authorities are certainly competent to issue necessary directions in respect of the place of residence of a candidate. A person who is residing in South India does not know the geography of Delhi and if recruited as civil defence volunteer, and in case of emergency he will get lost in Delhi instead of reaching to the place where emergency has occurred.

32. The authorities were justified by including a condition in respect of residence and even if a person from any part of the country is residing in Delhi and is holding one of the documents referred in the order can certainly become civil defence volunteer. Thus, by no stretch of imagination, it can be held that the condition in regard to place of residence is violative of Articles 14, 16 and 21 of the Constitution of India as has been argued before this Court.

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33. This Court does not find any reason to interfere with the order issued by the Divisional Commissioner and no case for interference with the same is made out. The writ petition is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

MAY 22, 2023

N.Khanna

भारत्यमेव जयते