

Show me the person, I will show you the rule

Summary transfer of West Bengal Chief Secretary to the Centre

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On May 31, 2021, the Union Ministry of Home Affairs (MHA) is reported to have served a show-cause notice on the former West Bengal Chief Secretary, Alapan Bandopadhyay, for not attending a meeting chaired by the Prime Minister, under a stringent provision of the Disaster Management Act that entails imprisonment up to two years. Bandopadhyay had been found fault with “for refusing to comply with lawful direction of the Central government in violation of Section 51(b) of the Disaster Management Act, 2005.” “The officer has been asked to reply within three days to the notice.” (<https://thewire.in/politics/home-ministry-mha-west-bengal-chief-secretary-disaster-management-act-alapan-bandopadhyay-mamata-banerjee>).

Meanwhile, the Centre also took the extraordinary step of recalling Bandopadhyay from the State, before he chose to opt for retirement.

According to Section 51 (b), “*Whosoever refuses to comply with any direction given by or on behalf of the central government or the state government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both.*”

“*And if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years...*”

The Union Home Secretary is the chairman of the National Executive Committee (NEC) under the Disaster Management Act (DMA), which is currently in force with special reference to the COVID-19 pandemic until June 30. Therefore, MHA is empowered to invoke its authority under the law to proceed against anyone violating its directions.

The DMA provides for two disaster management authorities, one at the national level, known as the National Disaster Management Authority (NDMA) headed by the Prime Minister, and another at the State level, known as the State Disaster Management Authority (SDMA) headed by the Chief Minister. With specific reference to W.Bengal, the NDMA and the SDMA are concerned equally with two separate disasters, one arising from Covid and another arising from the Yaas cyclone.

Under the DMA, as already indicated, the Union Home Secretary chairs the National Executive Committee (NEC). The State Chief Secretary chairs the State Executive Committee (SEC). If the Union Home Secretary is concerned about Covid and Yass disasters in W.Bengal, the Chief Secretary is equally, if not more, concerned about the same two disasters, as they affect the State directly. Both the MHA and the State government are expected to work with a common purpose and in the same direction. Their common goal is to ensure the welfare of the people of the State.

Section 51(b) of the DMA refers to disobedience in respect of an order issued either by the NEC or the SEC. Strangely, in the instant case of W. Bengal, it is the NEC show-causing the SEC! It is ironic that the Union Home Secretary as the chairperson of the NEC should issue a show-cause notice to the Chief Secretary who is the chairman of the SEC, for not attending a review meeting chaired by the Prime Minister, who is the chairman of the NDMA. The intent of Section 51(b) is to confer authority on both the NEC and the SEC to enforce the directions issued under the DMA for doing good to the people of W.Bengal, not for the purpose of one authority exercising its power against the other. It was the people of that State who were in urgent need of help. Is it appropriate for the NEC to ignore the main beneficiaries, that is, the people of the State, and, instead, invoke the provisions of Section 51(b) for settling an individual score? Does it not amount to defeating the legislative intent of the DMA?

From the point of view of official courtesy, perhaps the State's Chief Secretary should have called on the Prime Minister, preferably attended his review meeting or seek exemption on grounds of cyclone emergency. Had the intentions on both the sides been purely apolitical, such an approach would have helped the State. By not doing it, the Chief Secretary had breached a well established convention. However, from the point of view of legality of the Centre's action, there are some basic questions to be addressed.

Did the Chief Secretary “wilfully” disobey the order purported to have been issued by the Union Home Secretary under the DMA, with the intent of neutralising the National Disaster Management Authority's efforts to provide cyclone relief, thereby endangering the lives of the people of West Bengal? The answer to this question is certainly a firm “NO”, as by no stretch of imagination, at a time like this, the Chief Secretary of a State could be expected to sit back and relax, even if he wanted to. He is usually flooded with the problems faced by the cyclone-affected people across the State. There is an imminent threat of inundation of low-lying areas. The people affected need to be rescued. There is also the threat of diseases like cholera affecting the people in water-logged areas. The cyclone must have disrupted both transport and communications in the State. To meet these

contingencies, it is the Chief Secretary who has the pivotal responsibility to coordinate the activities of the different wings of the government to resolve the problems quickly. When both the Chief Minister of W.Bengal and the State Chief Secretary were fully immersed in tackling the widespread damage caused by the Yaas cyclone on the one hand and the Covid crisis on the other, to what extent an accusation of “wilful disrespect” on their part is justified?

The Chief Secretary could argue that he was acting under the directions of the Chief Minister who is also the chairperson of the State Disaster Management Authority and that he was fully immersed in urgent disaster relief work that necessitated his presence elsewhere. It is a plausible argument the Centre should consider carefully.

During the tidal wave havoc in 1977 in Andhra Pradesh, J Vengala Rao, the then Chief Minister, who was respected for his no-nonsense attitude, encouraged officers to attend to relief work, rather than dancing attendance on him. Rare are such leaders. Gone are those days!

When extraordinary powers are sought to be invoked by the MHA under the provisions of the DMA, the least one would expect from that Ministry is to use that authority to promote the larger welfare of the people, not getting bogged down in a hair-splitting exercise to serve a narrow end.

In times of disaster, a narrow interpretation of the provisions of the DMA would be counter-productive. All those empowered under the DMA should collectively respect the spirit of the Act, rather than quibbling on technicalities, for settling individual scores and fulfilling individual egos. The provisions of the DMA exist for facilitating people-centric approaches. Had such an approach been adopted, there would not have been an occasion for the kind of an unseemly conflict situation that has arisen in the case of W.Bengal.

The next issue is whether the Centre could recall Alapan Bandopadhyay summarily under the IAS (Cadre) Rules, without prior consultation with the State. The State's consent is a requirement under the Rules, but the Centre, which was in a great hurry, had apparently not cared to seek such consent. Even assuming that the Rules permit the Centre to overrule the State, such authority cannot be exercised in an arbitrary and a non-transparent manner. The Centre should have stated the exceptional reasons for the recall, prior to issuing the order.

Usually, officers are recalled by the Centre when their services are urgently needed by the latter. In the instant case, the Centre does not appear to have thought of this, as Bandopadhyay had not been

given any special posting at the Centre. When the State was reeling under two major crises, would it serve the public interest to uproot a senior officer from the State and send him to the Centre without any specific task assigned to him? It does not stand to reason.

One needs to look at this from the broader perspective of the delicate federal relationship that exists between the Centre and the States. If one goes through the proceedings of the Constituent Assembly, it becomes amply evident that those who drafted the Constitution never visualised a situation in which the Centre conducts itself in an authoritarian manner, crossing the implicit *lakshman rekha* of federalism, as envisaged by them at that time. Those who respect the spirit of the Constitution should cast aside their political egos and work in unison with the States to promote the welfare of the people.

The Covid crisis:

MHA seems to have double standards in invoking its powers under DMA, as is evident from the manner in which it chose to assume a passive role, when politicians of all hues blatantly violated the directions the Ministry issued to contain the spread of the Covid virus, thereby escalating the adverse impact of the crisis.

The MHA issued directions, vide its communication No. 40-3/2020-DM-IA dated 23-3-2021, under Section 10(2)(1) of the same DMA to enforce “Covid appropriate behaviour” in order to contain the spread of the deadly virus.

“Covid appropriate behaviour” includes social distancing, wearing of masks, prohibition of large assemblies of people and so on. Those who violate the directions are liable to be proceeded against in accordance with Sections 51-60 of the DMA and Section 188 of the Indian Penal Code (IPC). The intent of MHA's directions is clear as Covid inappropriate behaviour would accelerate the spread of the virus, causing large-scale impairment of health and loss of life. Further, the penal provisions of Sections 269 and 270 of the IPC (“***spreading infectious disease endangering human life***”) would also get attracted, when anyone directly or indirectly, contributes to spreading the virus among the people.

At the time of the elections held recently in the five States, namely, Assam, W. Bengal,

Pondicherry, T. Nadu and Kerala, the Election Commission of India (ECI) had also issued elaborate instructions to the political parties, vide 4/2021/SDR/Vol I dated 9-4-2021, in consonance with MHA's directions, to comply strictly with the COVID protocols. In the concluding para of the said instructions, the Commission had cautioned the political parties that "the Commission, in case of breach, will not hesitate in banning public meetings, rallies etc., of the defaulting candidates/ star campaigners, political leaders without any further reference".

Despite all this, the senior leaders of most political parties, including the high and the mighty at the Centre, nonchalantly conducted huge election rallies in all the five States, openly violating the directions issued by the MHA under the Disaster Management Act, thereby creating enormous scope for spreading Covid far and wide, throwing caution to the winds. The ECI remained a mute spectator till it was forced to act in the face of intense criticism. In the normal course, since all citizens are equal before the law, one would have expected the leaders who violated the DMA directions in this case to be proceeded against both under the DMA and the relevant sections of the IPC. Unfortunately, not a single regulatory authority in the country, including the MHA and the ECI, had chosen to act. Are these leaders immune to the rule of law?

In particular, the provisions of Section 51(b) of the DMA, invoked in the case of Bandopadhyay, apply equally to all those political leaders who organised the election rallies, as they too violated the lawful directions issued under the Act, endangering the lives of the people. There is no valid reason as to why the provisions of that Section had not been invoked by the MHA for taking action against the errant political leaders.

Has not the MHA adopted double standards in applying the penal provisions of the DMA?

In one case, the MHA has chosen to invoke all its might under Section 51(b) of the DMA to find fault with Alapan Bandopadhyay, the individual occupying the office of the Chief Secretary of W. Bengal for "defying" an order "deemed" to have been issued for attending a meeting, when he could claim that he too was engaged in disaster relief work, like anyone else.

In the other case relating to political assemblies, when the high and the mighty openly and callously defied the directions issued under the same DMA and blatantly chose to violate the Covid protocol, the same MHA had chosen not to revoke Section 51(b) and the other provisions of the DMA and

remained unmoved. Can there be such a discrimination in the application of the DMA?

Defiance of the DMA directions by the senior political leaders during election rallies accelerated the spread of Covid, leading to extensive loss of life. On the other hand, Bandopadhyay, as the senior-most civil servant in the State, was busy attending to cyclone relief work for the people. Recalling him to the Centre would neither benefit W.Bengal nor the Centre, at a time like this.

This raises serious concerns about the way the concept of “equality before law”, which lies at the core of our Constitution, is implemented in practice.

While an individual can perhaps seek relief against unfair application of the law to himself/herself, how can a citizen seek relief against condoning the more influential and punishing the less influential? There are no ready answers to this!