

A SWARAJ ABHIYAN (V)

v.

UNION OF INDIA & ORS.

(Writ Petition (C) No. 857 of 2015)

B JULY 21, 2017

[MADAN B. LOKUR AND N. V. RAMANA , JJ.]

National Food Security Act, 2013:

C *ss.14, 15, 16, 28 and 29 – Implementation of – By the State Governments – Sought by filing writ petition u/Art. 32 of Constitution – Held: The Act, a social justice and social welfare legislation, is not being implemented as it should be – Centre, States and the Union Territories are required to ensure a transparent and accountable Grievance Redressal Mechanism through notified rules and designate appropriate and independent officials as the District Grievance Redressal Officers – While it is theoretically possible to have a statutory commission or body, function as a State Food Commission, but there might be several practical difficulties in the actual working of one statutory commission performing two functions under two different statutes – Therefore, the Centre is directed to commend to the States and Union Territories to constitute and establish a fully functional State Food Commission – Another body or Commission can be appointed as State Food Commission only when it is absolutely necessary and unavoidable and as a last resort – The requirement of social audit is salutary as mandated by s.28 – Therefore, Centre to ensure establishing of social audit machinery – Vigilance Committees as mandated by s.29, have not been set up, and hence the Centre is directed to commend to the States and Union Territories to constitute and establish a functioning Vigilance Committee – Constitution of India – Arts. 32 and 256.*

G Issuing directions, the Court

HELD:

Per Madan B. Lokur, J.

1. The draft Model Rules circulated by the Central Government need serious consideration by the State

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Governments and Union Territories. As advised by the Central Government, the grievance redressal machinery should be independent and its functioning should be transparent. As long as this is achieved, it hardly matters that some officer of the Government is appointed as the District Grievance Redressal Officer. However, as emphasized in the letter dated 14th March, 2017 of the Central Government, it would be appropriate if an officer dealing with delivery of entitlements under the National Food Security Act (NFS Act) is not appointed or designated as the District Grievance Redressal Officer since he or she might not be able to entertain a complaint against his or her own functioning. In view of the circulation of the draft Model Rules, it is now really up to the Central Government and the Governments of the States and Union Territories to ensure that a transparent and accountable Grievance Redressal Mechanism is put in place through notified rules so that the advantages of the NFS Act can be passed on to those who need the benefit of this social welfare legislation. [Para 30][352-D-G]

2. Even after prodding by the Central Government and prodding by Supreme Court, many of the State Governments have not yet established a working State Food Commission, this is a clear indication that there is hardly any commitment to the implementation of the NFS Act. In the letter dated 14th March, 2017 it has been mentioned that the States and Union Territories intending to designate any existing statutory commission to function as the State Food Commission should ensure that the provisions of Section 16 of the NFS Act are complied with. While it is theoretically possible to have a statutory commission or body, function as a State Food Commission, provided that statutory commission or body is constituted and established in accordance with the provisions of Section 16 of the NFS Act, there might be several practical difficulties in the actual working of one statutory commission performing two disparate functions under two different statutes. This is more than likely to compromise the efficiency of that statutory commission or body with the result that the beneficiaries of the multifarious functions of the statutory commission or body would suffer at both ends. This is hardly conducive to good administration and reduces the importance of

A a basic right to wholesome and nutritious food particularly for women and children which is really the objective of the NFS Act. The importance of the State Food Commission cannot be minimized by the State Government if the NFS Act is to be faithfully implemented. [Paras 32, 33 and 34][353-B-G]

B 3. Working Group on Developing Social Audit Standards had prepared its Report and developed the protocol for conducting a social audit in consultation with the Comptroller and Auditor General of India in the context of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 ('the MGNREG Act'). The social audit standards have been framed
C with the support of certain fundamental principles. The draft Report is exhaustive and it has been accepted by the Central Government and social audits under the MGNREG Act are being conducted in accordance with the guidelines laid down as well as the statutory rules framed under the provisions of the MGNREG
D Act. The requirement of a social audit is undoubtedly salutary and since it has been accepted by the Central Government as well as by the Comptroller and Auditor General of India, there is no reason why it should not be put in place in so far as the NFS Act is concerned, particularly since a social audit is mandated under Section 28 of the NFS Act. [Paras 36, 37 and 38][354-C, F; 355-B-C]
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F 4. There is a necessity to set up Vigilance Committees under s.29 of the NFS Act and the fact that they have not been set up in spite of the passage of four years after the enactment of the NFS Act is yet another indication of the lack of the concern shown by the State Governments and the Union Territories to respect a law enacted by Parliament. It is important that each State Government and Union Territory realizes and appreciates their statutory and constitutional obligations and ensures that the will of Parliament which enacted the NFS Act, is given full effect to in letter and spirit. If the State Governments and Union Territories
G decide that they do not wish to abide by a law enacted by Parliament for the benefit of the people, perhaps some other solution may have to be found. Therefore, for the present, the Court is not inclined to appoint any Food Commissioner or Ombudsman to oversee the functioning and implementation of
H the NFS Act. [Paras 40, 41][356-A-C]

5. It is quite clear that the NFS Act, a social justice and social welfare legislation, is not being implemented as it should be. Therefore, in keeping with the constitutional obligation, following directions need to be issued for the effective implementation of the NFS Act. The Secretary in the Ministry concerned of the Government of India with the concerned Secretaries of all the State Governments and Union Territories to take stock of the implementation of the NFS Act and brainstorm over-finding ways and means to effectively implement the provisions of the NFS Act in letter and spirit. The Secretary in the Ministry concerned of the Government of India should emphatically request and commend to every State Government and Union Territory to notify appropriate rules for a Grievance Redressal Mechanism under the provisions of the NFS Act and designate appropriate and independent officials as the District Grievance Redressal Officer within a fixed time-frame and in any case within this year. Adequate publicity should be given to the appointment and designation of District Grievance Redressal Officers. The Secretary in the Ministry concerned of the Government of India will emphatically request and commend to the State Governments and Union Territories to constitute, establish and make fully functional State Food Commission before the end of the year. It would not be appropriate to appoint another statutory commission or body to function as the State Food Commission unless it is absolutely necessary and completely unavoidable and only as a last resort. The Secretary in the Ministry concerned of the Government of India will emphatically commend and request every State Government and Union Territory to constitute and establish a functioning Vigilance Committee in terms of Section 29 of the NFS Act before the end of the year for the purposes of carrying out the duties and responsibilities mentioned in that Section. The Secretary in the Ministry concerned of the Government of India will ensure that the social audit machinery postulated by Section 28 of the NFS Act and which is already in place in so far as the MGNREG Act is concerned is established at the earliest with appropriate modifications to enable every State Government and Union Territory so that a periodic social audit is conducted and the NFS Act is purposefully implemented for the benefit of the people. [Para 42][356-E-H; 357-A-H; 358-A-B]

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A *People's Union for Civil Liberties (PDS Matters) v. Union of India and ors.* (2013) 2 SCC 688 – referred to.

Per N. V. Ramana, J. (Concurring and Supplementing)

B 1. The National Food Security Act was made in furtherance of India's commitment to multilateral treaties and this Court's persistence to alleviate the condition of rampant malnutrition prevalent in the country. The unique feature of this Act is that the Centre has decentralized the regulatory aspects within the Act by empowering the institutions at the bottom of the pyramid. Section 38 of the Act gives power to the Central Government to give binding directions to the State Governments. [Para 6][362-B-C]

Swaraj Abhiyan (II) v. Union of India and ors. AIR 2016 SC 2953 – referred to.

D 2. For the success of the Act, it required co-operation at three levels. At every stage of decision making, the Central Government has a very important role to play and has been envisaged as a check on the working of the State Governments. This Act elaborates on the nature of federalism as a functional arrangement for co-operative action. In order to ensure uniformity for enforcement of such an Act, consultation needs to be carried out between various State Governments, individually as well as collectively, with the Union for effective implementation of the Act. [Para 7][362-E-F]

F 3. State enforcement of Union laws usually gives rise to difficult questions concerning the sustainability of co-operative federalism which have been accepted as core constitutional ethos. Each and every provision of the Constitution would inevitably point that India has divided sovereignty in the form of Centre on one hand and States on the other. Each power house is independent in its own terms. The constitutional scheme invariably leads to the conclusion that at times these institutions meet and interact at various levels to achieve the cherished constitutional goal of co-operative federalism. [Paras 8, 9][362-F-G; 363-F]

Jindal Stainless Steel v. State of Haryana AIR 2016 SC 5617 – followed.

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4. The Constitutional set-up mandates that Centre is not powerless. Further, it is not proper on the part of the States to ignore the plight of the common man in enforcing such important legislations, more so when such legislation is a welfare legislation. For now a meaningful dialogue between the Centre and the State should resolve the issues which have emerged in this case in the spirit of co-operative federalism. Record indicates that a combined effort, both by Centre and states, needs to be taken for effective implementation of the Act especially in the drought affected areas so as to save people from abject poverty and poor quality of life. States should take up this matter with much more seriousness and implement the Act in its true letter and spirit. [Para 10] 363-G-H; 364-A-B]

Case Law Reference

In the Judgment of Madan B. Lokur, J.

(2013) 2 SCC 688 referred to - Para 10 D

In the Judgment of N. V. Ramana, J.

AIR 2016 SC 2953 referred to Para 6

AIR 2016 SC 5617 followed Para 8

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 857 of 2015. E

Under Article 32 of the Constitution of India.

Tushar Mehta, ASG., D. K. Thakur, Anil Grover, S.S. Shamsbery, AAGs., Ms. V. Mohana, Ajit Kumar Sinha, Jaideep Gupta, Sr. Advs., Prashant Bhushan, Rohit Kr. Singh, Omanakuttan K.K., T. Sudhakar, Rajiv Nanda, Mukul Singh, Ajay Sharma, Raj Bahadur, R. R. Rajesh, Ajay Kumar Singh, G.S. Makker, Mukesh Kumar Maroria, Ms. Diksha Rai, Neeraj Kumar Sharma, Ms. Supriya Juneja, Kuldeep S. Parihar, H.S. Parihar, Guntur Prabhakar, Gopal Singh, Manish Kumar, Aniruddha P. Mayee, A. Selvin Raja, Ms. Hemantika Wahi, Ms. Jesal Wahi, Ms. Mamta Singh, Varinder Kumar Sharma, Dr. Monika Gusain, Ms. Noopur Singhal, Karunesh Kumar Shukla, Tapesh Kumar Singh, Mohd. Waquas, Aditya Pratap Singh, V.N. Raghupathy, C. D. Singh, Ms. Sakshi Kakkar, Avi Pandey, Ms. Shivali Chaudhary, Mahaling Pandarge, Nishant R. Katneshwarkar, Sibho Sankar Mishra, Amit Sharma, Ms. Ruchi Kohli, H

A B. Balaji, S. Kumar, S. Udaya Kumar Sagar, Mrityunjai Singh, Vinay Garg, Upendra Mishra, Uday Singh, Rajiv Nanda, Raja Chatterjee, Chanchal Kr. Ganguli, V. G. Pragasam, S. Prabu Ramasubramanian, Advs. for the appearing parties.

The Judgments of the Court were delivered by

B **MADAN B. LOKUR, J.** 1. Our Constitution provides a simple answer to one disturbing question that has arisen in this case: What can the Government of India do to require the State Governments and Union Territories to make functional those bodies and authorities that are mandated by a law passed by Parliament (such as the National Food Security Act, 2013)? The answer to this is provided in Article 256 of our Constitution – perhaps a forgotten provision – which reads as follows:

C “256. **Obligation of States and the Union** – The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.”

D In other words, the Government of India cannot plead helplessness in requiring State Governments to implement parliamentary laws.

E Another question that arises is : What remedy does a citizen of India have if the Government of India does not issue such a direction and the State Government or the Union Territory does not implement a law passed by Parliament?

F 2. These two questions arise in the context of the seriousness with which the National Food Security Act, 2013 - a welfare legislation – is and should be implemented.

G 3. Initially the National Food Security Ordinance, 2013 was promulgated by the President on 5th July, 2013. Thereafter, the National Food Security Bill, 2013 was introduced in Parliament with, amongst others, the following objectives:

H “(k) impose obligation upon the State Governments to put in place an internal grievance redressal mechanism which may include call centers, help lines, designation of nodal officers, or such other mechanism as may be prescribed by the respective Governments; and for expeditious and effective redressal of grievances of the

aggrieved person in matters relating to distribution of entitled foodgrains or meals under Chapter II of the proposed legislation, a District Grievance Redressal Officer, with requisite staff, to be appointed by the State Government for each District, to enforce these entitlements and investigate and redress grievances; A

(l) make provision for State Food Commission to be constituted by every State Government for the purpose of monitoring and review of implementation of the proposed legislation; B

(o) conduct or cause to be conducted by every local authority, or any other authority or body, as may be authorized by the State Government, periodic social audits on the functioning of fair price shops. Targeted Public Distribution System and other welfare schemes, and cause to publicise its findings and take necessary action, in such manner as may be prescribed by the State Government;" C

4. The National Food Security Bill was passed by both Houses of Parliament and received the assent of the President on 10th September, 2013. Almost four years have gone by but the authorities and bodies mandated to be set up under the National Food Security Act, 2013 (for short 'the NFS Act') have not yet been made functional in some States. This is despite the fact that Section 14 of the NFS Act requires that "Every State Government **shall** put in place an internal grievance redressal mechanism...." D E

5. Similarly, Section 15 of the NFS Act provides that "The State Government **shall** appoint or designate, for each district, an officer to be the District Grievance Redressal Officer....." F

6. Section 16 of the NFS Act provides that "Every State Government **shall**, by notification, constitute a State Food Commission....." F

7. Section 28 of the NFS Act provides that "Every local authority, or any other authority or body, as may be authorized by the State Government, **shall** conduct or cause to be conducted periodic social audits....." G

8. Similarly Section 29 of the NFS Act provides that "For ensuring transparency and proper functioning of the Targeted Public Distribution System and accountability of the functionaries in such system, every H

A State Government **shall** set up Vigilance Committees.....”

9. The provisions in the NFS Act mentioned above are mandatory and yet almost four years down the line they have not been fully implemented by some States.

B 10. Food security is undoubtedly extremely important and as observed by this Court in *People’s Union for Civil Liberties (PDS Matters) v. Union of India and ors.*¹ “Mere schemes without any implementation are of no use.” Similarly, one may ask what use is a law passed by Parliament if State Governments and Union Territories do not implement it at all, let alone implement it in letter and spirit.

C 11. These questions have been troubling us since this matter was listed on 24th October, 2016 subsequent to our order dated 13th May, 2016 in *Swaraj Abhiyan (II)*. We had expected the concerned State Governments to implement the provisions of the NFS Act with all due seriousness since it is a social welfare legislation enacted by Parliament.

D 12. Unfortunately, during the hearing we were informed by learned counsel for the petitioner that Section 15 and Section 16 of the NFS Act were not being complied with by the State Governments in letter and spirit.

E 13. In so far as Section 15 of the NFS Act is concerned this mandates the State Government to appoint or designate, for each district, an officer to be the District Grievance Redressal Officer for expeditious and effective redressal of grievances of aggrieved persons in matters relating to the distribution of entitled foodgrains or meals under Chapter II of the NFS Act and to enforce the entitlements under the said Act.

F 14. We were informed that no rules had been framed as required by Section 15 of the NFS Act for the appointment or designation of the District Grievance Redressal Officer nor had any qualifications been prescribed for the appointment of such officers. All that had been done by the State Governments was that some officials were given additional responsibility as a District Grievance Redressal Officer. However, since those very officers were in charge of implementation of the NFS Act, designating them as District Grievance Redressal Officers to whom grievances could be addressed against them did not serve any purpose at all. We suggested to the learned Attorney General that since the

H ¹ (2013) 2 SCC 688

States before us did not seem to be fully on board with regard to the implementation of a law enacted by Parliament, an extremely unfortunate situation had arisen. To get over this stalemate created by the State Governments it might be appropriate for the Central Government to consider framing Model Rules under Section 15 of the NFS Act so that it would make things easier for the State Governments and also give some teeth to the law enacted by Parliament.

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15. In so far as Section 16 of the NFS Act is concerned this mandates the State Government to constitute a State Food Commission for the purpose of monitoring and review of implementation of the NFS Act.

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16. We were informed that some of the State Governments had appointed the Consumer Disputes Redressal Commission constituted under the provisions of the Consumer Protection Act, 1986 as the State Food Commission under Section 16 of the NFS Act. We were of the view that this was unsatisfactory and not in consonance with the provisions of the law particularly the letter and spirit of the NFS Act. We therefore suggested to the learned Attorney General to frame Model Rules under Section 16 of the NFS Act also for the reasons mentioned above.

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17. On 1st December, 2016 the learned Attorney General informed us that the Secretary in the Ministry of Food and Public Distribution pursuant to an order passed by us on 28th October, 2016 held a meeting on 9th November, 2016. The Minutes of that meeting were placed before us. Paragraph 6 of the Minutes state, *inter alia*, as follows:

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“..... As regards SFC [State Food Commission], she stated that ideally State Governments should set up independent Commission as per provisions of the Act and make Rules prescribing method and terms & conditions of appointment of Chairperson and Members of the Commission, its powers, procedures and periodicity of its meeting (at least once in six months), procedure for hearing appeals and timelines for their disposal. However, the Act also provides flexibility to State Governments for designating some existing Commission to act as SFC and many States have opted for this flexibility. In such scenario also, State Government should frame Rules to be followed by the designated Commissions in its role as SFC. Further, Chairman and such Member (s) of the designated Commission who will specifically perform the functions

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A of SFC should be clearly indicated, and such Commission should be provided additional staff to handle the additional work.”

18. It was noted that the NFS Act provides some flexibility to the State Governments in designating an existing Commission to act as the State Food Commission. It was noted that many of the State Governments had opted for this flexibility. We expressed the view that while flexibility was certainly provided by the NFS Act, the constitution of the State Food Commission must nevertheless meet the requirements of the law and its members must meet the eligibility criteria. In other words it is not as if any statutory body or authority could be given additional charge as a State Food Commission even though the members of that statutory body or authority did not meet the requirements of Section 16 of the NFS Act.

19. We also expressed the view that it would be more appropriate if a State Food Commission is constituted under Section 16 of the Act with the necessary expertise and qualifications to function as such. We expressed the view that it would be appropriate if the State Food Commission is constituted at the earliest.

20. Unfortunately, our expectations were belied in as much as when this matter was taken up on 22nd March, 2017 we noted with regret that generally speaking the provisions of the NFS Act had not been faithfully and sincerely implemented by the State Governments before us. With regard to the implementation of Section 16 of the NFS Act we were informed that the State Food Commission had not yet been appointed. We noted that on an earlier occasion we were informed that many State Governments had appointed the Consumer Redressal Commission constituted under the Consumer Protection Act, 1986 as the State Food Commission under Section 16 of the NFS Act. We had heard the learned Attorney General in this regard and had expressed the view that giving “additional charge” to the Consumer Disputes Redressal Commission to function as the State Food Commission under Section 16 of the NFS Act appeared incongruous. This is because the qualifications required for both the bodies were quite different but that apart we found it odd that the Consumer Disputes Redressal Commission which performs judicial or quasi-judicial functions should be asked to perform administrative and quasi-judicial functions as a State Food Commission under the NFS Act.

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21. We drew attention to our order dated 24th October, 2016 and the fact that we had heard the learned Attorney General and the learned Additional Solicitor General and learned counsel for the States before we had passed the order on 24th October, 2016. A

22. We were informed during the course of hearing on 22nd March, 2017 that many of the State Governments have in fact framed the necessary rules and that the Central Government had also prepared Model Rules and circulated them to the State Governments. Notwithstanding this and even though considerable time had elapsed a State Food Commission has not yet been constituted in the following States: B

1. Madhya Pradesh C

2. Karnataka

3. Andhra Pradesh

4. Telangana D

5. Maharashtra

6. Gujarat

7. Jharkhand

8. Bihar E

9. Haryana

10. Chhattisgarh

23. As far as the State of Haryana is concerned we were informed that although the State Food Commission had been constituted, it had not been provided with any infrastructure, office space or budget and it was apparently requested not to perform any function with the result that it was compelled to approach the Punjab and Haryana High Court for relief. F

24. Since it appeared that the State Governments were not at all inclined to implement the provisions of a law enacted by Parliament for the benefit of the people of the country, we were compelled and constrained to require the presence of the Chief Secretaries of the above mentioned States to inform us whether the law passed by Parliament is intended to be implemented by the State Governments or not. We also G

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A required the concerned Chief Secretaries to ensure the appointment of the State Food Commission in accordance with the provisions of the Act, assuming the State Governments would be willing to implement the law enacted by Parliament. We also required details of the appointment of independent District Grievance Redressal Officers under Section 15 of the NFS Act, that is to say persons independent of those against whom complaints are made and persons who are not subordinate to the officers against whom complaints are made. We further required the concerned Chief Secretaries to inform us whether any social audit had been conducted under the provisions of Section 28 of the Act which reads as follows:

C **“Conduct of social audit –** (1) Every local authority, or any other authority or body, as may be authorized by the State Government, shall conduct or cause to be conducted, periodic social audits on the functioning or fair price shops, Targeted Public Distribution System and other welfare schemes, and cause to publicise its findings and take necessary action, in such manner as may be prescribed by the State Government.

D (2) The Central Government may, if it considers necessary, conduct or cause to be conducted social audit through independent agencies having experience in conduct of such audits.”

E 25. On 26th April, 2017 most of the Chief Secretaries appeared in Court and some had genuine reasons for not appearing. On our asking, we were informed about the constitution, establishment and appointment of the State Food Commission as follows:

- F 1. Madhya Pradesh – Appointments not made.
 2. Andhra Pradesh – Appointments not made.
 3. Telangana – Appointments made.
 4. Maharashtra – Appointments made but no member belonging to any Scheduled Caste or Scheduled Tribe has been appointed.
- G 5. Gujarat – Appointments made.
 6. Jharkhand – Appointments made.
 7. Bihar – Appointments made but there are still two vacancies.
 8. Chhattisgarh – Appointments made.

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9. Karnataka (informed on 27th April, 2017) – Constituted and established. However, the affidavit of the Chief Secretary states that appointments have not yet been made. A

10. Haryana – Matter is pending in the Punjab and Haryana High Court.

26. This compliance with the NFS Act is pathetic to say the least and it is in this background that we are required to consider this case. B

27. It was submitted by learned counsel for the petitioner that in so far as the appointment of a District Grievance Redressal Officer is concerned, an independent person should be appointed and not the District Collector or the Deputy Commissioner of the district. The reason advanced by learned counsel was that these officers are already extremely busy, they may not be able to address the grievance of the people within their district and are directly concerned with the implementation of the NFS Act. As such, they might not be independent enough to deal with the grievances. C D

28. In this context, our attention was drawn to a letter dated 14th March, 2017 sent by the Economic Advisor in the Ministry of Consumer Affairs, Food and Public Distribution addressed to the Principal Secretary/ Secretary, Department of Food and Civil Supplies of all the States and Union Territories. In this letter, attention was drawn to the necessity of establishing a Grievance Redressal Mechanism under the NFS Act and the draft Model Rules circulated on 21st November, 2016. A request was made to keep the directions issued by this Court in mind while framing the rules which could differ from the draft Model Rules prepared by the Central Government. For guidance a copy of the rules notified by the State Government of Tripura were enclosed. E F

29. In the letter, it was stated inter alia as follows:-

“4. While taking further action to (i) notify rules on GRM (ii) appoint DGRO and (iii) constitute State Food Commission, following may be kept in view: G

(a) In order to maintain transparency and independence of the grievance redressal machinery, it must be ensured that no officer of the Government dealing with delivery of entitlements under the Act is designated/appointed as DGRO.

- A (b) The States/UTs which have already designated an existing statutory commission to function as State Food Commission should review the matter to ensure that its constitution is in accordance with the provisions of Section 16 of the Act.
- B (c) The States/UTs intending to designate any existing statutory commission to function as State Food Commission should ensure that as mandated by Hon'ble Supreme Court, the constitution of existing commission is in accordance with the provisions of Section 16 of the Act.
- C (d) Keeping in view the State specific requirements and the broad provisions of Model Rules on GRM, the State Governments/UT Administrations may finalize their own Rules and notify the same in consultation with the State Legal Department, and in accordance with the provisions of Section 40 of the Act.”

D 30. In our view, the draft Model Rules circulated by the Central Government need serious consideration by the State Governments before us as well as by other State Governments and Union Territories. As advised by the Central Government, the grievance redressal machinery should be independent and its functioning should be transparent. As long as this is achieved, it hardly matters that some officer of the government is appointed as the District Grievance Redressal Officer.

E However, as emphasized in the letter dated 14th March, 2017 it would be appropriate if an officer dealing with delivery of entitlements under the NFS Act is not appointed or designated as the District Grievance Redressal Officer since he or she might not be able to entertain a complaint against his or her own functioning. In view of the circulation of the draft

F Model Rules, it is now really up to the Central Government and the Governments of the States and Union Territories to ensure that a transparent and accountable Grievance Redressal Mechanism is put in place through notified rules so that the advantages of the NFS Act can be passed on to those who need the benefit of this social welfare legislation.

G 31. With regard to the constitution and establishment of the State Food Commission, it was submitted by learned counsel for the petitioner that it is unfortunate that even though the NFS Act has been in force for about four years, only a few of the State Governments before us had taken its provisions seriously. It is a pity that legislation enacted by

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Parliament for the benefit of the people should be kept on the backburner by some of the State Governments before us. It was submitted that this apathy is all pervasive and there are other State Governments and Union Territories that have not taken the provisions of the NFS Act seriously enough for their implementation. A

32. We are in general agreement with learned counsel for the petitioner and the fact that even after prodding by the Central Government and our prodding, many of the State Governments have not yet established a working State Food Commission, this is a clear indication that there is hardly any commitment to the implementation of the NFS Act. B

33. In the letter dated 14th March, 2017 referred to above, it has been mentioned that the States and Union Territories intending to designate any existing statutory commission to function as the State Food Commission should ensure that the provisions of Section 16 of the NFS Act are complied with. In our opinion, while it is theoretically possible to have a statutory commission or body function as a State Food Commission, provided that statutory commission or body is constituted and established in accordance with the provisions of Section 16 of the NFS Act, there might be several practical difficulties in the actual working of one statutory commission performing two disparate functions under two different statutes. This is more than likely to compromise the efficiency of that statutory commission or body with the result that the beneficiaries of the multifarious functions of the statutory commission or body would suffer at both ends. This is hardly conducive to good administration and reduces the importance of a basic right to wholesome and nutritious food particularly for women and children which is really the objective of the NFS Act. C
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34. The importance of the State Food Commission cannot be minimized by the State Government if the NFS Act is to be faithfully implemented. In this regard, we are pained to read in the affidavit filed by the State of Haryana that there is hardly any work for the State Food Commission. With such an attitude, it is very unlikely that any progress will ever be made either by the State of Haryana or the State Food Commission in Haryana in the matter of food security. One can only feel sorry for the people in Haryana. G

35. In so far as conducting a social audit is concerned, this is H

A provided for in Section 28 of the NFS Act and was strongly recommended by learned counsel for the petitioner.

36. It was pointed out by learned counsel and there was general agreement with his submission on behalf of the Central Government that the draft Report of the Working Group on Developing Social Audit Standards, which has been accepted by the Central Government, should be implemented with necessary modifications in so far as the NFS Act is concerned. The reason for the modifications is that the Working Group had prepared its Report and developed the protocol for conducting a social audit in consultation with the Comptroller and Auditor General of India in the context of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short 'the MGNREG Act'). In terms of the draft Report the overall arrangement is as follows:-

“1. Social audit is to be conducted every 6 months by Gram Sabhas.

D 2. Financial audit of accounts of panchayats and State Employment Guarantee Fund is to be conducted annually by Directors of Local Fund Audit/chartered accountants who send account together with audit certificates to State Governments.

E 3. The accounts of MGNREG Act Schemes, as certified, together with the audit report on them are sent to the Central Government which causes them to be tabled in each House of Parliament.

4. A copy is also sent by State Governments to CAG who audits the schemes periodically as per his independent judgment and powers under CAG's (DPC) Act, 1971 read with provisions of Section 24 of the MGNREG Act, 2005.”

F 37. The social audit standards have been framed with the support of certain fundamental principles as is apparent from paragraph 1.6 of the draft Report which reads as follows:-

G “These social audit standards have been framed with the support provided by the fundamental principles of Public Sector Auditing (ISSAI 100) and the operational guidelines for coordination and cooperation between SAIs and internal auditors in the public sector (ISSAI 9150), issued by INTOSAI. The national legal framework has been borne in mind, especially taking into account provisions of MGNREG Act 2005, MGNREG Audit of Scheme Rules 2011, Local Fund Audit Acts of the State Governments and CAG's

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(DPC) Act, 1971 along with the Regulations, 2007 notified by CAG.” A

38. The draft Report is exhaustive and we were informed that it has been accepted by the Central Government and social audits under the MGNREG Act are being conducted in accordance with the guidelines laid down as well as the statutory rules framed under the provisions of the MGNREG Act. The requirement of a social audit is undoubtedly salutary and since it has been accepted by the Central Government as well as by the Comptroller and Auditor General of India, we see no reason why it should not be put in place in so far as the NFS Act is concerned, particularly since a social audit is mandated under Section 28 of the NFS Act. B C

39. It was brought to our notice by learned counsel for the petitioner that Section 29 of the NFS Act requires setting up of Vigilance Committees for ensuring transparency and proper functioning of the Targeted Public Distribution System and accountability of the functionaries in such system. Section 29 of the NFS Act reads as follows:- D

“Setting up of Vigilance Committees – (1) For ensuring transparency and proper functioning of the Targeted Public Distribution System and accountability of the functionaries in such system, every State Government shall set-up Vigilance Committees as specified in the Public Distribution System (Control) Order, 2001 made under the Essential Commodities Act, 1955 (10 of 1955), as amended from time to time, at the State, District, Block and fair price shop levels consisting of such persons, as may be prescribed by the State Government giving due representation to the local authorities, the Scheduled Castes, the Scheduled Tribes, women and destitute persons or persons with disability. E F

(2) The Vigilance Committees shall perform the following functions, namely:-

(a) regularly supervise the implementation of all schemes under this Act; G

(b) inform the District Grievance Redressal Officer, in writing, of any violation of the provisions of this Act; and

(c) inform the District Grievance Redressal Officer, in writing, of any malpractice or misappropriation of funds found by it.” H

A 40. There can hardly be any doubt that there is a necessity to set
up Vigilance Committees under the NFS Act and the fact that they have
not been set up in spite of the passage of four years after the enactment
of the NFS Act is yet another indication of the lack of the concern
shown by the State Governments and the Union Territories to respect a
B law enacted by Parliament.

 41. Learned counsel for the petitioner insisted that we appoint
Food Commissioners or Ombudsman who would oversee the functioning
and implementation of the NFS Act since the State Governments before
us and indeed other State Governments and Union Territories were not
C implementing the provisions of the NFS Act. For the present, we are
not inclined to appoint any Food Commissioner or Ombudsman to oversee
the functioning and implementation of the NFS Act. In our opinion, it is
more important that each State Government and Union Territory realizes
and appreciates their statutory and constitutional obligations and ensures
that the will of Parliament which enacted the National Food Security
D Act, 2013 is given full effect to in letter and spirit. If the State
Governments and Union Territories decide that they do not wish to abide
by a law enacted by Parliament for the benefit of the people, perhaps
some other solution may have to be found but we hope that no State
Government or Union Territory disregards the will of Parliament.

E 42. In view of our discussion above, it is quite clear that the NFS
Act, a social justice and social welfare legislation, is not being implemented
as it should be. That is the bane of our society and therefore, in keeping
with our constitutional obligation we are of opinion that the following
directions need to be issued for the effective implementation of the
National Food Security Act, 2013:

F 1. The Secretary in the Ministry of Consumer Affairs, Food and
Public Distribution of the Government of India should convene
one or more meetings on or before 31st August, 2017 of the
concerned Secretaries of all the State Governments and Union
Territories to take stock of the implementation of the NFS Act
and brainstorm over finding ways and means to effectively
G implement the provisions of the NFS Act in letter and spirit. A
law enacted by Parliament as a part of its social justice obligation
must be given its due respect and must be implemented faithfully
and sincerely and positively before the end of this year.

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2. The Secretary in the Ministry of Consumer Affairs, Food and Public Distribution of the Government of India should emphatically request and commend to every State Government and Union Territory to notify appropriate rules for a Grievance Redressal Mechanism under the provisions of the NFS Act and designate appropriate and independent officials as the District Grievance Redressal Officer within a fixed time frame and in any case within this year. Adequate publicity should be given to the appointment and designation of District Grievance Redressal Officers so that any aggrieved person can approach them without any fear and with the expectation that the grievance will be redressed.
3. The Secretary in the Ministry of Consumer Affairs, Food and Public Distribution of the Government of India will emphatically request and commend to the State Governments and Union Territories to constitute, establish and make fully functional a State Food Commission under the provisions of the NFS Act before the end of the year. The NFS Act specifies a very large number of functions that a State Food Commission is required to perform - there is no dearth of work for the State Food Commission. Therefore the said Secretary should require the Chief Secretary to ensure that adequate arrangements are made by each State Government and Union Territory to provide adequate infrastructure, staff and other facilities for the meaningful functioning of the State Food Commission including preparation of annual reports required to be laid before the State Legislature. In our opinion, it would not be appropriate for reasons that we have already indicated to appoint another statutory commission or body to function as the State Food Commission unless it is absolutely necessary and completely unavoidable and only as a last resort.
4. The Secretary in the Ministry of Consumer Affairs, Food and Public Distribution of the Government of India will emphatically commend and request every State Government and Union Territory to constitute and establish a functioning Vigilance Committee in terms of Section 29 of the NFS Act before the end of the year for the purposes of carrying out the duties and responsibilities mentioned in that Section.

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- A 5. The Secretary in the Ministry of Consumer Affairs, Food and Public Distribution of the Government of India will ensure that the social audit machinery postulated by Section 28 of the NFS Act and which is already in place in so far as the MGNREG Act is concerned is established at the earliest with appropriate modifications to enable every State Government and Union Territory so that a periodic social audit is conducted and the NFS Act is purposefully implemented for the benefit of the people.
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C N. V. RAMANA, J. 1. I have had the privilege of going through the judgment of my learned brother, Justice Madan B. Lokur. In the facts and circumstances of this case, I agree with the conclusions and directions. However considering the larger constitutional question relating to non-compliance of laws by the States, I feel it necessary to add on certain aspects which are involved in this case.

D 2. As enforcement determines the distance between the law in text and law in action, therefore what concerns us, in this case, is the implementation of National Food Security Act, 2013 [*hereinafter* 'Act' *for brevity*] by various State Governments.

E 3. Broadly we are concerned with five areas in which certain State Governments have been found deficient in implementing the Act, they are-

- F 1. Formulation of Rules under Section 40 of the Act for effective implementation.
- F 2. Constitution of District Grievance Redressal Officer [*hereinafter* 'DGRO' *for brevity*] under Section 15 of the Act.
- G 3. Constitution of Food Commission under Section 16 of the Act.
- G 4. Conducting 'Social Audit' under Section 28 of the Act.
- G 5. Constitution of Vigilance Committee under Section 29 of the Act.

H 4. Before we deal with various aspects it would be necessary to notice the status of implementation by some of the States in the above mentioned areas. The table given below indicates the status of implementation of the Act as revealed from the record-

Table No. 1 – Table indicating the implementation of the Act.

STATE	DATE OF IMPLEMENTATION OF THE ACT	STATUS OF RULES	STATUS CONCERNING SECTION 15 (DGRO)	STATUS CONCERNING SECTION 16 (STATE FOOD COMMISSION)	STATUS CONCERNING SECTION 28 (SOCIAL AUDIT)	STATUS CONCERNING SECTION 29 (GRIEVANCE COMMITTEE)
ANDHRA PRADESH	Not available on record	Formulated from 18.04.2017	Joint Collector-II and Additional District magistrate of the District is designated as the District Grievance Redressal Officer (DGRO) under Rule 6 of the Andhra Pradesh Food Security Rules, 2017	Not appointed. A notification has been issued constituting the State Food Commission under Section 16 of the National Food Security Act, 2013, vide G.O.MS No. 6, Consumer Affairs, Food & Civil Supplies Department dated:- 12.04.2017.	Social audit of Fair Price shops and targeted PDS has been entrusted to SSAAT, Department of Rural Development.	Needs to be reconstituted in terms of Rule 9 of the Andhra Pradesh Food Security Rules, 2017
BIHAR	Not available on record	Formulated in 2014.	Vide order 432 dt.23.01.2014, a separate DGRO (above the level of Addl. Collector) is in places	Constituted State Food Commission as a separate entity vide notification no. 386 dt. 21.02.2014. Currently post of Chairman is vacant.	Not in place.	Not available on record
CHHATTISGARH	Not available on record	Not framed	Appointed Chief Executive Officers, Panchayat in 27 districts on 22.03.2017.	Constituted Commission vide notification dt.13.12.2016. Chairman and five members were appointed on 31.03.2017.	No rules are notified or social audit in terms of Section 28 is being carried out.	Not available on record

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Not available on record	That the Government has decided to give the social audit to Gujarat Social Audit Society.	Constituted Commission <i>vide</i> Notification No. GTH 2017 PDS 10.2016.1667/C 1 dt.21.03.2017 and appointed the Chairman and members.	Earlier had appointed District Supply Officer as DGRO <i>vide</i> GTH-2016/1/PDS.10.2016/151/C 1 dt.27.01.2016. Further revised and appointed Residential Additional Collector (Additional District magistrate) as DGRO	Not framed	01.04.2016	GUJARAT	
Not constituted	None conducted so far	<i>Sub judice</i> before the High Court Earlier additional charge was given to Right to Service Commission.	That the State Government has already designated all the deputy Commissioners as District Grievance Redressal Officer <i>vide</i> Notification dated 03.10.2013.	Not framed	Not available on record	HARYANA	
Not available on record	Gram Sabha for rural areas and Nagar Palika (Urban Local Body) for urban areas have been entrusted for Social Audit	State Food Commission under Section 16 of the Act was constituted <i>vide</i> Memo No.kha.pra.-1 ja.wi.pra(ra.kha.su.ra.kha.aa.)7-5.2014-1632 1633 dt.13.04.2017. Further the Government has appointed Chairman and other five members.	Addl. Collector is designated as District Grievance Redressal Officer (DGRO)	Formulated on December, 2015	August, 2015	JHARKHAND	

MADHYA PRADESH	Not available on record	Draft Rules Formulated from 07.04.2017	Not constituted	Not constituted. Notification bearing No. F-7-35-2013-XXIX-I calling for appointment of the Commission on 11.04.2017.	A notification (Notification bearing No. F-6-2017-XXIX-1) to implement Social Audit in terms of Section 28 of the Act was issued on 03.04.2017.	Not Constituted
MAHARASHTRA	Not available on record	Not framed	Additional Collectors who are not concerned with PDS have been appointed as DGRO vide Notification dt.07.04.2017	Separate commission is constituted vide Notification dt.11.04.2017, wherein earlier State Consumer Commission was designated. Appointment are to be done.	Vide Government Resolution dt.30.07.2016, Social audit is in place.	Not available on record
TELANGANA	Oct., 2015	Formulated from 25.02.2016	Joint Collector of district under Rule 4 of Telangana Food Security Rules, 2015	State Food Commission under Section 16 of the Act was constituted vide G.O.Ms. No.2, (CS.I-CCS) dt.10.04.2017 and subsequently constituted. Further the Government has appointed Chairman, five members and Smt. G. Jamuna, Addl. Secretary to Government (Non-cadre), PR&RD Dept. as member secretary for period of two years.	Social audit of Fair Price shops and targeted PDS has been entrusted to SSAAT-TS under the MGNREGA platform.	Vigilance committee set-up under Rule 10 of Telangana Food Security Rules, 2015, wherein the District collector is to be the Chairman, Chairperson, Zilla Parishad to be Co-Chairman, Joint-collector to be the Vice-Chairman. District Supply Officer shall be the convener and other existing members there shall be other members as per the National Food Security Act.

A 5. It is apparent from the above tabulated data that various State Governments seem to be not so prompt in implementing the Act in its true letter and spirit. Therefore the question for adjudication is, what is the remedy for Union Government as well as the citizens against non-implementing States?

B 6. The Act was made in furtherance of India's commitment to multilateral treaties and this Court's persistence to alleviate the condition of rampant malnutrition prevalent in the country. In *Swaraj Abhiyan (II)*¹ this Court explained the need and importance of this enactment for India. The unique feature of this Act is that the Center has de-centralized the regulatory aspects within the Act by empowering the institutions at the bottom of the pyramid. It would be important to reproduce Section 38 of the Act which gives power to the Central Government to give binding directions to the State Governments in the following manner-

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D The Central Government may, from time to time, give such directions, as it may consider necessary, to the State Governments for the effective implementation of the provisions of this Act and the State Governments shall comply with such directions.

E 7. One thing which stands out from a plain reading of the Act is that for its success it requires co-operation at three levels. It is to be noted that at every stage of decision making the Central Government has a very important role to play and has been envisaged as a check on the working of the State Governments. This Act elaborates on the nature of federalism as a functional arrangement for co-operative action. In order to ensure uniformity for enforcement of such an Act, consultation needs to be carried out between various State Governments, individually as well as collectively, with the Union for effective implementation of the Act.

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G 8. It is to be noted that State enforcement of Union laws usually gives rise to difficult questions concerning the sustainability of co-operative federalism, which we have accepted as our core constitutional ethos. In *Jindal Stainless Steel v. State of Haryana*², a nine judge bench of this Court has reiterated the principles of co-operative federalism in India in the following manner-

'185. The Union and the States are co-equal in the Indian

¹ *Swaraj Abhiyan (II) v. Union of India and otr.*, AIR 2016 SC 2953

² AIR 2016 SC 5617

Federal structure. Our framers created a unique federal structure which cannot be abridged in a sentence or two. The nature of our federalism can only be studied having a thorough understanding of all the provisions of the Constitution. Confirmation that the Union and States are co-equals in the Indian federal structure. can be found in the speeches of Hon'ble P.S. Deshmukh, Shri T. T. Krishnamachari and Hon'ble Dr. B. R. Ambedkar before the Constituent Assembly. Common philosophy which runs through our Constitution is that both Center and States have been vested with the substantial powers which are necessary to preserve our unique federation with clear demarcation of power. Calling India as quasi-federal might not be advisable as our features are unique and quite different from other Countries like United States of America etc. Courts in India should strive to preserve this unique balance which our framers envisaged, any interference into this balancing act would be detrimental for grand vision proscribed by our makers. Amphibious nature of our federalism has been even noted by the Sarkaria Commission Report on Center-State relationship. **Co-operative federalism envisaged under our Constitution is a result of pick and choose policy which our framers abstracted from the wisdom of working experience of other Constitutions'**

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(emphasis supplied)

9. The principle of federalism as present in India cannot be explained in a sentence or two; rather a detailed study of the each and every provision of the Constitution would inevitably point that India has divided sovereignty in the form of Center on one hand and States on the other. Each power house is independent in its own terms. The constitutional scheme invariably leads to the conclusion that at times these institutions meet and interact at various levels to achieve the cherished constitutional goal of co-operative federalism.

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10. It is to be noted that our Constitutional set-up mandates that Center is not powerless which is apparent from various Articles of the Constitution. Further, it is not proper on the part of the States to ignore the plight of the common man in enforcing such important legislations, more so when such legislation is a welfare legislation. From the table provided above we have seen more breaches than compliance which

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- A compelled us to call the Chief Secretaries of all the States to appear before us. I am of the opinion that for now a meaningful dialogue between the Center and the State should resolve the issues which have emerged in this case in the spirit of co-operative federalism. Record indicates that a combined effort, both by Center and States, needs to be taken for effective implementation of the Act especially in the draught affected areas so as to save people from abject poverty and poor quality of life.
- B States should take up this matter with much more seriousness and implement the Act in its true letter and spirit.

Kalpana K. Tripathy

Directions issued.