

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 27th June, 2018

**DIVISION BENCH : THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CHIEF JUSTICE
THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

WP(PIL) No.05 of 2016

In Re : Debacle in Upper Dzongu

Appearance

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Ms. Mali Sharma and Mr. Suraj Chhetri, Advocates as Amici Curiae.

Mr. Karma Thinlay, Senior Government Advocate with Mr. Thinlay Dorjee Bhutia, Government Advocate, Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Government Advocates for the State.

Dr. (Mrs.) Doma T. Bhutia, Advocate as Intervenors.

O R D E R (ORAL)

S. K. Agnihotri, CJ

1. On 13-08-2018, at around 01.30 p.m., a landslide of colossal proportions occurred at Upper Dzongu, North Sikkim, leading to the creation of a natural dam in the Kanaka river, thereby blocking its natural flow. One village came to be submerged while several wards were marooned. In the light of the said situation this Court took up the matter suo motu on 17-08-2016 with the observation that the judiciary is under an obligation to extend social justice to the people of the area. The matter was registered as a Public Interest Litigation (PIL).

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2. Notice was issued to the Chief Secretary, Government of Sikkim and the District Collector, North Sikkim, to submit a status report indicating steps taken by them for relief and rehabilitation in extending necessary help to affected people of that area. Necessary status reports came to be filed by the Chief Secretary while Learned Amicus Curiae put forth suggestions with regard to provisions for immediate coordinated action for rescue, relief and rehabilitation, installation of telephone booths at appropriate places for regular communication, provision for medical facilities and gratuitous relief for all the concerned persons where the calamity had befallen. Learned Amicus Curiae also suggested that in view of the damage caused to the Passingdong Senior Secondary School by the landslide, a provision be made to re-start the school at an appropriate place so that the children of the locality who are already admitted in the school do not suffer or their academic session go to waste. That a long term solution be found for access to the area particularly access to the other side of the dam.

3. The Secretary-cum-State Relief Commissioner, Land Revenue & Disaster Management Department (LR&DM Department), Government of Sikkim, reported verbally in the Court that immediate steps were taken to provide shelter, food and medicines to the affected inhabitants of the area. A part of the land in question has been acquired by the Government and the owners of the houses thereon have been allotted plots and houses elsewhere while temporary shelter homes have also been provided by the

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Government which has taken a decision to provide permanent shelters.

4. Subsequent reports which followed, *inter alia*, detailed that the National Disaster Management Authority (NDMA), National Hydroelectric Power Corporation Limited (NHPC), Central Water Commission (CWC), Department of Mines, Minerals and Geology, Government of Sikkim, Ex-Chief Geologist, NHPC, all expert bodies, had unanimously recommended emptying the lake at the earliest. This Court in terms of the said recommendations of the expert bodies directed the Government authorities to take remedial measure to ensure that nothing untoward occurs and to ensure that the people living in Dikchu and other towns downstream were informed in advance of any lurking danger.

5. In response thereto, by an Affidavit dated 08-10-2016, the Chief Secretary stated that the public of the area had raised a demand to retain the lake and the Government had decided to observe the situation for some more time and take necessary steps in accordance with the recommendations of the expert bodies. It is was informed that several precautionary measures have been taken, viz., by regularly monitoring the water level at the river Kanaka on an hourly basis at two locations downstream of the lake. An alarm system had been installed by the NHPC Stage V authorities at Phidang, upstream to Dikchu in order to alert the public in advance in case of likelihood of breach of dam. All the downstream Police Outposts had been alerted and sensitized about the situation as also the Panchayat and public residing downstream. That as and when

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the dam was to be breached all safety recommendations contained in the various reports including that of NDMA would be complied with. The State Government was granted time to examine the recommendations made by the expert organisation and take into consideration the impending danger if the lake was not emptied at the earliest.

6. The Government thereafter constituted a Committee comprising of Senior Officers of the Government up to the level of the Additional Chief Secretary and five other Officers of the rank of Secretary to consider remedial measures. This Court directed the Committee to examine all the difficulties faced by the people living in and around the areas. Pursuant thereon, the Committee constituted a Task Force comprising of eight Government Officials of various ranks which would be responsible for execution of the Action Plan under the supervision of the Committee. The Task Force was constituted vide Notification No.01/Home/2017 dated 24-01-2017 and was handed over the responsibility of preparation of an Action Plan for carrying out controlled breaching of the dam at the earliest along with associated activities and appropriate mitigation measures as well as execution of the Action Plan under its supervision. The State Government also submitted a report with regard to allotment of residential accommodation to persons who had lost their houses, while some persons whose houses were destroyed in the landslip were already allotted houses, while others had been provided with a house in the past under the Government Housing Schemes. So far as the setting up of the destroyed Primary School was concerned,

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steps were initiated for identifying land for construction of the new building. The road network and restoration of connectivity was also progressing.

7. Compensation handed over to the victims was detailed in the Affidavit dated 04-10-2016 which included compensation from the National Disaster Relief Fund (NDRF) and the Chief Minister's Relief Fund (CMRF). For the time being the school was being run in a three room '*pucca*' structure and land was being identified by the District Collectorate, North Sikkim for allocation to the Human Resource Development Department (RMDD), Government of Sikkim, for the purposes of building a school.

8. In the interim an Application being I.A. No.01 of 2017 was filed by Panchayat of Upper Dzongu level representing the people therefrom, seeking a direction to preserve the lake formed due to the landslide or in the alternative to complete the construction of the road from Mantam to Kayem and also to construct a Bridge from Kayem to Sebem before breaching the dam.

9. Over the months, the Task Force undertook the task of controlled blasting for draining the artificial lake. So far as the construction of Bridge is concerned, the LR&DM Department undertook to furnish technical details about the possibility of constructing a Suspension Bridge to accommodate one vehicle in place of the Foot Bridge which was proposed then. It was brought to the notice of this Court that the Government had taken a decision to establish a two lane permanent RCC Bridge connecting the people

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living on the other side of the lake for which a sum of Rs.49,05,75,000/- (Rupees forty-nine crores, five lakhs and seventy-five thousand) only, have been sanctioned. In the meanwhile, a Suspension Foot Bridge would be installed to facilitate the movement of goods and basic necessities to people who stranded on the other side of the lake. On 25-04-2018 the State Government in its Affidavit submitted that the Suspension Foot Bridge would be completed by the end of May, 2018, while financial bid was being examined for the two lane RCC Bridge, the technical evaluation being completed.

10. Today, it is submitted before this Court that the Suspension Foot Bridge is now complete and is being used by people for their daily thoroughfare, installation of wire mesh on the sideways of the Bridge would be completed in two weeks. That, tender process for construction of two lane RCC Bridge is completed and the process of award of work is underway. The Amici Curiae submit that total completion of the Suspension Bridge including painting would take about one month, however, he concedes that presently the Bridge is ready for use.

11. In view of the aforesaid circumstances, we are of the considered opinion that necessary directions given by this Court pertaining to relief and rehabilitation measures of affected people of the landslide area including construction of Bridges have been complied with.

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12. Nothing further remains for adjudication and hence, the matter stands disposed of with liberty granted to the Learned Amici Curiae to approach this Court, if and when the need so arises.

Sd/-
(Satish K. Agnihotri)
Chief Justice
27-06-2018

Sd/-
(Meenakshi Madan Rai)
Judge
27-06-2018

Approved for reporting : **No**

Internet : **Yes**