

(2016) 04 SC CK 0051

In the Supreme Court Of India

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

Gaurav Kumar Bansal

APPELLANT

Vs

Union of India and Ors.

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Constitution of India, 1950 — Article 32
Disaster Management Act, 2005 — Section 23, 31

Citation : (2016) 3 Scale 637

Hon'ble Judges : Dipak Misra; Shiva Kirti Singh, JJ.

Bench : Division Bench

Advocate : Ms. V. Mohana, Sr. Adv, R.R. Rajesh, Rajat Kumar, Ajay Singh, Avinash Sharma, Dhruv Sheoran, Ms. Sushma Suri, A. Deb Kumar, B. Krishna Prasad, Aniruddha P. Mayee, A. Selvin Raja, G.N. Reddy, Riku Sarma, Ms. Vartika Sahay, (for M/s Corporate Law Group), Ms. Jesal Wahi, Ms. Hemantika Wahi, Ms. Rachana Srivastava, Ms. Monika, Pawan Upadhyay, Sarvjit Pratap Singh, Ms. Sharmila Upadhyay, V.N. Raghupathy, Lagnesh Mishra, Parikshit P. Angadi, Mishra Saurabh, Mohd. Waquas, Shashank Singh, Suryanarayana Singh, Ms. Pragati Neekhara, Nikilesh Ramachandran, Niraj Jha, Saurab Mishra, Sapam Biswajit Meitei, Ms. L. Thongam, Z.H. Isaac Haiding, Ashok Kumar Singh, Ms. Sunita Sharma, Shadman Ali, S.S. Rawat, D.S. Mahra, Anit Grover, Ms. Noopur Singhal, Sanjay Kr. Visen, B. Balaji, Muthuvel Palani, Sanchar Anand, AAG, Apoorv Singhal, Kuldip Singh, K.V. Jagdishvaran, Mrs. G. Indira, V.G. Pragasam, Prabu Ramasubramanian, S. Udaya Kumar Sagar, Krishna Kumar Singh, Gopal Singh, Shivam Singh, K. Enatoli Sema, Edward Belho, Amit Kumar Singh, S.S. Shamsheery, AAG, Amit Sharma, Ishu Prayas, Ms. Ruchi Kohli, Ranjan Mukherjee, K.V. Kharlyngdoh, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1. On 26th February, 2016, this Court referred to the letter dated 25th February, 2016, written by the Joint Secretary (Policy and Plan) of the National Disaster Management Authority (N.D.M.A.) to the Chief Secretaries of all the States requiring them to frame minimum standards of relief for victims of disaster. Paragraphs 2 and 3 of the said letter were reproduced in the order and the Chief

Secretaries of each of the States were directed to comply with the said letter within three weeks and submit their responses to the Union of India apart from filing the same before this Court. Additionally, a direction was issued to file affidavit with regard to the compliance of Sections 23 and 31 of the Disaster Management Act, 2005, (for short, "the Act").

2. It is submitted by the petitioner, who is appearing in-person, that he has received copies of the affidavits from the States of Assam, Jharkhand, Madhya Pradesh, Haryana and Manipur. From the office report, it is demonstrable that nine States/Union Territory, namely, Tamil Nadu, Madhya Pradesh, Haryana, Bihar, Assam, Jharkhand, Chhattisgarh, Manipur and Union Territory of Puducherry, have filed their respective responses. Learned counsel for the other States undertake to file the response within four weeks hence. The copies thereof shall also be sent to the N.D.M.A. so that appropriate steps can be taken.

3. At this juncture, the petitioner would submit that as per Section 11 of the Act, a "National Plan" is to be drawn up by the National Executive Committee, but the same has not yet been done. Section 11 of the Act reads as follows:-

"11. National Plan.- (1) There shall be drawn up a plan for disaster management for the whole of the country to be called the National Plan

(2) The National Plan shall be prepared by the National Executive Committee having regard to the National Policy and in consultation with the State Governments and expert bodies or organisations in the field of disaster management to be approved by the National Authority.

(3) The National Plan shall include-

(a) measures to be taken for the prevention of disasters, or the mitigation of their effects;

(b) measures to be taken for the integration of mitigation measures in the development plans;

(c) measures to be taken for preparedness and capacity building to effectively respond to any threatening disaster situations or disaster;

(d) roles and responsibilities of different Ministries or Departments of the Government of India in respect of measures specified in clauses (a), (b) and (c).

(4) The National Plan shall be reviewed and updated annually.

(5) Appropriate provisions shall be made by the Central Government for financing the measures to be carried out under the National Plan.

(6) Copies of the National Plan referred to in sub-sections (2) and (4) shall be made available to the Ministries or Departments of the Government of India and such Ministries or Departments shall draw up their own plans in accordance with the National Plan."

Ms. V. Mohana, learned senior counsel appearing for the Union of India, would submit that there is a policy, but the plan has not yet been finalized. After obtaining instructions, she has submitted that the National Plan shall be drawn up regard being had to Section 11 of the Act within eight weeks hence.

4. The petitioner has also put forth his grievance with regard to non-compliance of Section 23 of the Act. Section 23 deals with the State Plan. It reads as follows:-

"23 State Plan.- (1) There shall be a plan for disaster management for every State to be called the State Disaster Management Plan.

(2) The State Plan shall be prepared by the State Executive Committee having regard to the guidelines laid down by the National Authority and after such consultation with local authorities, district authorities and the people's representatives as the State Executive Committee may deem fit.

(3) The State Plan prepared by the State Executive Committee under sub-section (2) shall be approved by the State Authority.

(4) The State Plan shall include,-

(a) the vulnerability of different parts of the State to different forms of disasters;

(b) the measures to be adopted for prevention and mitigation of disasters;

(c) the manner in which the mitigation measures shall be integrated with the development plans and projects;

(d) the capacity-building and preparedness measures to be taken.

(e) the roles and responsibilities of each Department of the Government of the State in relation to the measures specified in clauses (b), (c) and (d) above;

(f) the roles and responsibilities of different Departments of the Government of the State in responding to any threatening disaster situation or disaster;

(5) The State Plan shall be reviewed and updated annually.

(6) Appropriate provisions shall be made by the State Government for financing for the measures to be carried out under the State Plan.

(7) Copies of the State Plan referred to in sub-sections (2) and (5) shall be made available to the Departments of the Government of the State and such Departments shall draw up their own plans in accordance with the State Plan."

5. Learned counsel appearing for the Union of India, after receipt of the communication/reply from State authorities, shall file an affidavit of the competent authority stating whether there is any approved plan by the State.

8. At this juncture, our attention has been drawn to Section 31 which deals with District Plan. We have been apprised in course of hearing that most of the

districts in the country have the District Plan, but some do not have. Regard being had to the same, we direct the N.D.M.A. to communicate to the concerned Chief Secretaries of the States where the districts in respect of which the plans have not been drawn up and to see to it that the plans are drawn up as stipulated under Section 31 of the Act. Let the copies of the affidavit to be filed by the States be served on the learned counsel for the N.D.M.A. so that the learned counsel can coordinate accordingly.

I.A. No.1 of 2015

Mr. Gaurav Kumar Bansal, the petitioner appearing in-person, would submit that if the dictionary clause pertinent to disaster is taken into consideration, the subsequent affects of disaster are required to be dealt with in a planned manner. It is urged by him that the aftermath of disaster results in death, destruction, misery and trauma and the affected victims really get into unacceptable miserable situation. The petitioner would contend that there are many States which suffer from disaster as defined under the Act, that, eventually, leads to economic disaster which would include disaster in the sphere of agriculture. On these averments, a prayer is made for formulation of a concrete National Plan to deal with the post disaster situation that has social and economical impact, especially in respect of the people who belong to socially extremely vulnerable sections including agriculturists.

7. Issue notice on the interlocutory application to the Union of India and the States.

8. A copy of the interlocutory application be served on the learned counsel for the States within a week hence. Response to the same shall be filed within six weeks hence.

9. The learned counsel for the States are permitted to approach the Registry of this Court to obtain the copies of the writ petition and other documents, if they need, as there is a grievance that copies thereof are not served in quite promptitude. We have so directed as the present writ petition by no stretch of imagination can be treated as adversarial litigation and, in fact, there has to be cooperation from the Union of India, as well as from the other States.

10. Let the matter be listed on 20th July, 2016.