

(2018) 07 UK CK 0022

In the Uttarakhand High Court

Case No : Special Appeal No. 466 of 2018

M/s Krishna Motors

APPELLANT

Vs

Union Govt. of India and another

RESPONDENT

Date of Decision : 05-07-2018

Acts Referred:

Arbitration Act, 1996 — Section 20, 30, 33
Land Acquisition Act 1894 — Section 18
Constitution of India, 1950 — Article 226

Citation : (2018) 07 UK CK 0022

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : B.B. Sharma, Chetan Joshi

Final Decision : Dismissed

Judgement

SHARAD KUMAR SHARMA, J.

K.M. JOSEPH, C.J. (Oral)

This is a writ petition filed in public interest. The relief sought in the writ petition are as follows:

1. A. Allow the present Writ;

B. Issue a Writ, order or direction in the nature of Mandamus directing the Respondents to take proper and expedite steps to remove debris, boulders

and artificial lake which is forming in Gangotri Glacier at the mouth of Gaumukh to prevent any disaster from taking place.

C. Any other order(s) as may be deemed fit in the interest of justice.

2. This writ petition was filed on 08.12.2017. The complaint projected in the writ petition, in brief, is as follows:

On 24.10.2017 and 28.10.2017 news was published/telecasted on India TV News

Channel and other print media regarding the formation of a lake in Gangotri Glacier like Chorabari Glacier in Kedarnath. The report, INTER ALIA, suggests that a lake in Gangotri Glacier is showing signs of a horrific disaster one like that of Kedarnath. If the lake forming at the mouth of Gaumukh takes shape as per predictions, its size would become four times bigger than the lake of Chaurabari Glacier, which had caused the Kedarnath disaster.

This revelation came to light recently after a team of scientists from the Wadia Institute of Himalayan Geology returned from the trek of Gaumukh

Glacier after their research studies. The report further goes on to show that this is the same Institute, which had rather warned in the same way

before the Kedarnath disaster, in 2004, that is almost a good 9 years before the tragedy actually struck at Kedarnath in the year 2013. It is further

stated in the report that the lake had started forming at Gaumukh Glacier after the floods in July this year; the lake started taking shape after a 3

meters high pile of debris collected at the mouth of the stream due to the flood and at the moment the lake is about 4 meters deep. Catastrophe is also

warned of in future in the report. Petitioner made Annexure No. 2 representation complaining inaction before the respondents.

3. A short counter affidavit is filed on behalf of the State of Uttarakhand. It is necessary to notice paragraph no. 4 of the same. The same reads as

follows:

“4. That necessary to bring to the kind notice of this Honâble Court that the matter with regard to the writ petition submitted by the petitioner

was brought to the notice of the State Government through an input received from Subsidiary Intelligence Bureau (SIB). The input stated that,

“According to an input from a sister agency, the recent satellite imagery indicates that the Bhagirathi river course has been impacted due to pile-up

of debris from a massive landslide which has altered the course of the river. The debris from landslide is spread to a distance of approximately 1500 m

downstream and approximately 250 m across the Bhagirathi valley. The debris is piled up to a height of approximately 30m at the mouth of the glacier.

Due to debris, the Bhagirathi river, which earlier used to flow straight, has now shifted course and started flowing from right side of the Gangotri

Glacier Snout (steep end of the glacier). In case of future landslide in the area,

the further pile-up of debris may obstruct the flow of river water and a large volume of water can accumulate in the form of lake which further can create a threat of flash floods in downstream areasâ??.

Copy of the input received is being annexed herewith and marked as Annexure SCA-1 to this affidavit.â??

It is further stated that a Technical Committee was constituted by the State Government. State Government had arranged helicopters to assist the

Technical Committee in assessing the area but due to bad weather and extremely low visibility, the Technical Committee could not assess the area on

12th and 13th December, 2017. It is necessary to notice the composition of the Technical Committee. It consisted of the Executive Director, Disaster

Mitigation and Management Centre, Dehradun; Dr. Vikram Gupta, Scientist, Wadia Institute of Himalayan Geology, Dehradun and; D.S.

Kachhawaha, S.S.O. (Planning), Irrigation Department, Dehradun. Based on the aerial observations, the Technical Committee, in its Report, submitted

to the State Government, denied existence of any lake in the Gaumukh area and reported the flow of Bhagirathi to be normal. The Technical

Committee, in its Report, also ruled out existence of any threat and had yet precautionarily recommended detailed field investigations after melting of

fresh snow in May â?" June, 2018.

4. The State Government, in view of the difficulty in physically monitoring the area, it is stated, had requested the National Remote Sensing Centre

(NRSC), Hyderabad of the Indian Space Research Organization, Government of India to monitor the situation on the basis of satellite imageries of the

region. Responding to the request of the State Government, NRSC, based on the analysis of the high resolution satellite of CARTOSAT of 24th

November, 2017, has communicated a report (Annexure No. SCA-5). The satellite imageries of 24th November, 2017 shows existence of a lake close

to the snout of Gangotri glacier; based on the analysis of the satellite imagery, NRSC, in its report, has assessed the area of the lake to be 0.38

hectares with volume of impounded water to be approximately 8550 cubic meters. Based on the analysis, NRSC has deduced that in an event of

sudden breach of the lake would result in peak flow of 50 m³/sec only. It is alleged that the report clearly states that the quantum of flow is found to

be very low (50 m³/sec) and, therefore, no threat is thereby posed by this lake.

Realizing the seriousness of the threat, that blockade of river could pose, the District Magistrate has also constituted and dispatched a multi-departmental team of 12 members to undertake ground survey of the area and report on the situation. The said team undertook detailed survey of the area and, in its report, the team has ruled out existence of any lake or ongoing landslide activity in the area. The State Government has also constituted a Committee, by the proceedings dated 15.12.2017, of experts from various State and Central Government Agencies under the Chairmanship of the Additional Secretary, Disaster Management, Government of Uttarakhand. The Committee convened its meeting on 19.12.2017 and reviewed the reports on this matter received from the Technical Committee. The Committee, after detailed deliberations, ruled out the possibility of immediate threat of any kind and recommended that field investigations be carried out after melting of fresh snow in the summer season of 2018. It is further stated that, according to NRSC reports, the lake formed by the temporary blockade was in existence till 24th November, 2017. The lake was, however, not observed both in ground and aerial survey carried out between 14th -16th December, 2017; it is, therefore, likely that the landslide barrier has been eroded by the river action.

5. The petitioner, thereafter, filed a supplementary affidavit dated 10.01.2018. Therein, he, INTER ALIA, states as follows:

The impact of global warming is already visible in the Himalaya. As per the Glacier Expert Committee's report of year 2007, the 30.2 km long Gangotri Glacier is receding rapidly with the rate of retreat during the period 1962-1991 being about 20 m/yr. The enhanced rate of retreat is attributed to the increased anthropogenic interventions; over the last 25 years, Gangotri glacier has retreated more than 850 meters, with a recession of 76 meters from 1996 to 1999 alone. The snout of the Gangotri glacier-gaumukh from where the Ganga emerges has been so impacted by debris falling from nearby areas that it has altered the river's course due to massive landslide at snout of Gaumukh glacier in July, 2017. Petitioner relies on the status report and the images to advance his case. He would submit that the debris and the boulders being deposited is a serious threat. Petitioner refers to the Kedarnath tragedy to support his case also that State may take safety measures before a catastrophe strikes in future.

6. The supplementary affidavit has been responded to by the State Government. It is necessary to notice the following paragraphs:

6. The contents of Para No. 9 are not admitted as stated and hence denied. In this matter the attention of this Honâble Court is drawn to the

fact that the matter as stated in the Supplementary Affidavit of the Petitioner pertains to generation of debris and blockade of river by the same in high

altitude area, i.e. Gaumukh. In this regard it is most humbly submitted that (i) mass wastage is an important landscape building process in the

mountainous areas and is driven primarily by the gravitational force of the earth that is fundamental and works on all objects, (ii) no landform is a

permanent feature on the surface of earth and various earth processes work in continuity to modify these, (iii) erosion in the glacial areas is extreme in

nature and major portion of the river borne material of glacial rivers is attributed to it, (iv) mass wastage in the glacial areas largely takes place due to

thawing and freezing of water due to high diurnal temperature range. Meltwater enters the fractures and joints in the rocks during the day time and

expands while freezing during the night. Expansion of water as it freezes exerts enormous force on the rock mass and as a consequence rocks are

shattered and dislodged, (v) under the influence of gravity the shattered rock mass and debris moves down slope and ultimately reaches the valley

floor, (vi) mass wastage, i.e. decomposition and rolling down of rocks is a common feature in the high altitude areas and diversion or deflection of

streams and rivers due to this is a normal consequence of this, (vii) rock mass generated in the Higher Himalayan region due to fragmentation of rocks

is largely angular and is generally devoid of finer particles (sand, silt and clay) and therefore blockade of streams or rivers does not result in creation

of permanent lakes, and (viii) with increase of hydrostatic pressure together with downward erosion by stream or river the barrier is gradually cut into

by flowing water and removed with the passage of time.

8. It is further submitted that in Para No. 9 the Petitioner has raised the issue of the Respondent not making any comment on the removal of boulders

and debris from the river bed. In this regard the attention of the Honâble Court is drawn to the very fact that (i) the field investigations facilitated

by the Respondent involved experts of the field and the teams sent to the area have observed no blockade or lake in the Gaumukh area and the same

is submitted in the Counter Affidavit of the Respondent submitted in this Court on 05-01-2018, (ii) in case there exist some large boulders on the river

bed near Gaumukh, as put forth by the Petitioner, these are not causing any harm or posing any potential danger. Presence of large boulders and

debris is commonplace, particularly in the rivers and streams of the Higher Himalaya and does not warrant any action, (iii) it is not possible to remove

large boulders accumulated on the river bed manually, (iv) mechanized mining in the environmentally highly sensitive zone of Gaumukh for the removal

of boulders would be more of a threat to the Gangotri glacier.

10. It is most humbly submitted that in Para No. 10 the Petitioner has made very serious allegations that warrant attention of the Honâ??ble High

Court. The Petitioner has claimed that the NASA had warned of the outburst of Chorabari lake 25 days in advance and inadequate response on the

part of Respondent No. 1 caused death of numerous persons. Honâ??ble Court is requested to order the petitioner to produce the copy of the Report

before the Honâ??ble Court with evidence of the same having been submitted to Respondent No. 1 or any other competent authority in India.

Leveling such serious allegation based upon some newspaper report and pleading action n the same is an attempt to waste precious time of the

Honâ??ble Court and warrants serious punitive action so as to discourage similar action in future.â??

7. Thereafter, the petitioner has also filed additional supplementary affidavit on 26.06.2018.

8. We heard Mr. Ajay Gautam, Petitioner in person as also Mr. Shashank Upadhyay, learned Amicus Curiae. We also heard Mr. Pradeep Joshi,

learned Standing Counsel on behalf of the State of Uttarakhand/respondent no. 1 and Mr. V.K. Kapruwan, learned Standing Counsel on behalf of the

Union of India/respondent no. 2.

9. We have noticed the apprehension of the petitioner. We have already noticed the stand of the State Government, through its pleadings, both in the

original short counter affidavit and also in the supplementary affidavit. The first thing we must notice is that this is a matter, which requires

considerable scientific expertise and analysis is required to appreciate the scope and contours of the problem. The second aspect, which we must

notice is that Public Interest Litigation, is primarily premised on inaction on the

part of the State Government. Having regard to these aspects, if we appreciate the question, which is raised, we notice that the respondents are already alerted and actively engaged with the problem and Committees have been constituted and they are already engaged in the task of study. In fact, the learned Amicus Curiae would point out that efforts must be coordinated with the Wadia Institute of Himalayan Geology. We notice that in the Committee itself, a Scientist from the said Institute is already a member and they are seized of the matter. Therefore, we would think that it may not be necessary for us at this stage to issue any positive directions.

However, noticing the stand of the respondents-State itself to the effect that through its Committee, after the summer melting of the snow, inspection must further be conducted, as pointed out in the earlier reports; and not being posted with the fact as to whether any such exercise has been conducted, we need to only direct that the same be done, if it has not been done already; and further that all that is necessary must be done in coordination with any other authority be it Indian Space Research Organization or the Wadia Institute of Himalayan Geology, so that what can be prevented be prevented and what is to be done be done to take preventive remedial measures, if required, at an appropriate time. Accordingly, we dispose of the writ petition as follows:

The respondents will continue to keep vigil and keep revisiting the matter from time to time; do all that is needful so that any kind of disaster or untoward incident is averted. Coordination with the Indian Space Research Organization or any other such body including the Wadia Institute of Himalayan Geology, if necessary, from time to time, must be done by the respondents. A report regarding what is being done and of the prevailing condition shall be made by the first respondent every three months to this Court for its scrutiny, until the Court dispenses with the same. The first such report will be positively submitted before this Court on or before 31.08.2018. We further direct that if the exercise, which was to be done after the melting of the snow has not been done, the same will be done before the said report, which is directed to be submitted by us before 31.08.2018.

Further reports are to be submitted within three months positively from the date of submitting the first report.