

(2020) 01 CAL CK 0191
In the Calcutta High Court

Case No : Writ Petitions (WP) No. 15506 (W) Of 2019

Paribesh Academy For Environment Awakening

APPELLANT

Vs

Kolkata Metro Railway Corporation Limited & Ors

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Citation : (2020) 01 CAL CK 0191

Hon'ble Judges : Thottathil B. Radhakrishnan, C.J;Arijit Banerjee, J

Bench : Division Bench

Advocate : Ritzu Ghosal, Sourabh Mitra, Jishnu Saha, Ranjan Bachawat, D. Mondal, Jishnu Chowdhury, Sreya Basu Mallick, Ankit Dey, Kishore Dutta, T. M. Siddiqui, Nilotpal, Alope Ghosh, Arijit Dey

Judgement

Read order dated 20.12.2019 which will stand appended to this order as well.

We have heard certain submissions made by the learned Advocate General for the State of West Bengal, learned counsel for the petitioner and learned senior counsel for the KMRCL.

This writ petition relates to issues connected with the project of KMRCL which faced a disaster. KMRCL had come forward with a report by a team of experts, the expertise of the members of which team is relied on by KMRCL for management of the issues which have cropped up and also for controlling the future work of the making of the tunnel and allied matters. Those experts are also present in Court today.

However, we are of the prima facie view that it is not for the judiciary to take a first call on the acceptability or otherwise of the report of the experts since the evaluation of their report and even the credentials of the experts relied on by KMRCL are not matters of which we will take any notice as of now. Therefore, through the order dated 20.12.2019 we wanted the State Government and the State Disaster Management Authority to place their views on the contents of the said report, having particular regard to the provisions of the Disaster

Management Act, 2005.

The concept of the term 'disaster' as well as the definition of 'disaster management' and the sweep of the entire activity of perceiving disaster, preventing disaster, controlling disaster and also tackling situations of disaster which unfortunately may have happened, are matters which are sought to be addressed through a comprehensive mechanism through the different entities and authorities constituted under the Disaster Management Act, 2005. We see that the said legislation provides for the structure of the disaster management activities of India by having a National Disaster Management Authority and State Disaster Management Authority at different stages trickling down to the Disaster Management Authority at the District levels. The flow of authority and, therefore, the responsibility is so designed that the primary policy making is done at the national level and the operation of the policy will have to trickle down through the State Authorities and ultimately operationalised through the District Authorities who will have the ground control where any unfortunate event is likely to happen or has happened. This modality of management of disaster and preventing disaster is the object sought to be achieved by the Disaster Management Act, 2005.

Today, the State Government has placed before us its report through the Principal Secretary, Disaster Management & Civil Defence Department, Government of West Bengal, fundamentally throwing their hands up in despair by pleading that the State Government and the State Disaster Management Authority do not have the ability and the acumen to audit the feasibility of the report given by the experts. The report is kept with the record. It is also suggested by the learned Advocate General that having regard to the schemes of different provisions of the Act, the National Disaster Management Authority, in particular, the Disaster Management sector of the India Railways through the Ministry of Railways of the Government of India would have a pivotal as well as a better role to play in taking the final call on the issues in hand.

We are, however, of the view that large amount of public funds have already gone into the project. It is not in the interest of the exchequer of this nation to permit such money to turn down to be a complete waste unless it becomes inexcusably liable to be dumped in any larger interest of the community living in the area. We also note that any delay in further carrying out the project will not only stagnate an important programme for mobility of citizens in the metropolitan area but would also adversely affect the investment already made in that sector. We, therefore, expect the competent authority for the Union of India, be it the National Disaster Management Authority or the Disaster Management Authority or Cell in the Ministry of Railways or any other relevant department of the Government of India to come forward with their views at the earliest point of time. It would always be open to the Ministry of Railways or KMRCL to get the views of any other Ministry which has specified control over the disaster management sector in terms of the provisions of the Disaster

Management Act, 2005. It would also be appropriate if such institutions of national governance interact, if necessary, with the experts whom KMRCL are depending upon to push forward the present project. On the whole, we are of the view that the matter needs to be resolved, having regard to the various facets of technical management as well as other aspects including disaster management.

For the aforesaid reasons, we hereby direct the Government of India, in particular, the Ministry of Railways to place their views in the matter at the earliest and in any event on or before the next date of hearing, having regard to the urgency to take a final call on further proceeding with the project. We are told that KMRCL, for all intents and purposes, is an extended limb of the Indian Railways and is also governed by the said Ministry. It is, therefore, submitted on behalf of the KMRCL that KMRCL itself would take up the matter with the competent authority in the Indian Railways and have the response placed before the Court at the earliest and, in any event, on or before the next date of hearing. Let this be done.

Let the matter be posted on February 7, 2020.