

THE HIGH COURT OF SIKKIM : GANGTOK
(CIVIL EXTRAORDINARY JURISDICTION)

DIVISION BENCH: HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

W.P.(PIL) No. 03/2023

Mani Kumar Subba,
S/o Late Shri C.S.Subba,
R/o Development Area,
Gangtok-737101.

... Petitioner

-VERSUS-

1. State of Sikkim,
Through Chief Secretary,
Government of Sikkim,
Tashiling Secretariat,
Gangtok-737101.
2. Home Department,
Through the Secretary,
Government of Sikkim,
Tashiling Secretariat,
Gangtok-737101.
3. Land Revenue and Disaster Management,
Through the Secretary,
Government of Sikkim,
Tashiling Secretariat,
Gangtok-737101.
4. Power Department,
Through the Secretary,
Government of Sikkim,
Tashiling Secretariat,
Gangtok-737101.
5. Sikkim Urja Limited,
A Government Undertaking Company,
Registered Office at B2/1A Safdarjung Enclave,
Africa Avenue,
New Delhi-110029.
6. The Union of India,
Through the Home Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001.
7. Sadar Police Station,
Gangtok.
Through the SHO,
Gangtok-737101.

... Respondents

Appearance:

For Petitioner : Mr. Satpal Singh, Mr. V.S. Dubey and Mr. Yam Kumar Subba, Advocates.

For Respondents No. 1 to 4 and 7 : Mr. Zangpo Sherpa, Addl. Advocate General with Mr. Sujan Sunwar, Asst. Govt. Advocate.

For Respondent No.6 : Ms. Sangita Pradhan, Deputy Solicitor General of India with Ms. Natasha Pradhan and Ms. Purnima Subba, Advocates.

For Respondent No.5 : None.

Date : 07/12/2023

JUDGMENT : (per the Hon'ble, the Chief Justice)

1. This writ petition has been filed as a "Public Interest Litigation" by one Mani Kumar Subba. In paragraph 2, Mani Kumar Subba has described himself as follows:-

"2. That the petitioner is a citizen of India, resident of the State of Sikkim and the petitioner being involved in public life and has been involving in awareness of protocols issued by the Government of India for containing Covid-19 pandemic to the people of Sikkim and has also filed Writ Petition (PIL) on Covid-19 Management before this Hon'ble Court."

2. The purport of filing the instant writ petition is primarily based on the natural disaster, which happened on the intervening night of 3rd and 4th of October, 2023, resulting in loss of lives and properties due to massive flooding of the river Teesta, which was probably caused by a glacial lake outburst that occurred in the upper reaches of the Himalayas.

3. According to the learned Advocate for the writ petitioner — referring to paragraph 19 of the writ petition — this disaster could have been prevented if a State Committee on dam safety was constituted within a period of 180 days from the date of commencement of the Dam Safety Act, 2021, which came into effect from 14th December, 2021. However, the principal prayer in the writ petition has been set out in prayer 'a', which is reproduced hereinbelow:-

"a. Issue a writ of mandamus or any other appropriate writ thereby directing the Respondent No. 6 to initiate independent Investigation monitored by this Hon'ble

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Court into the deliberate non-compliance of mandatory provisions of the Disaster Management Act, 2005, deliberately not taking any preventive measures and mitigation despite the clear classification of the South Lhonak Lake and Chungthang as High GLOFs hazard and non-compliance of the mandatory provisions of the Dam Safety Act, 2021 due to which, huge damages and loss are caused to the widespread properties and lives including destruction of the Teesta Stage III Dam.”

4. During the course of hearing of the matter, learned Advocate representing the writ petitioner has also drawn our attention to paragraph 13 of the writ petition, which reads as follows:-

“13. That the Respondent Nos. 1, 2 & 3 are duty bound to review and update the State Disaster Management Plan in accordance with the National Disaster Management Plan, November, 2019, National Disaster Authority Guidelines Management of GLOFs, October, 2020 and in consultation with the local authorities, district Authorities and the people’s representative as the same is warranted by the Section 23 of the Disaster Management Act, 2005. However, the State Respondents have not reviewed and updated its State Disaster Management Plan in accordance with the National Disaster Management Plan, November, 2019 and the National Disaster Authority Guidelines Management of GLOFs, October, 2020.”

5. In response to the submissions advanced by the learned Advocate for the writ petitioner, it is submitted by the learned Additional Advocate General appearing for the State of Sikkim that the State government has already constituted a committee with cabinet approval on 17th October, 2023, to look into the issues centering around this natural disaster. It is further submitted by the learned Additional Advocate General that the writ petitioner has not stated in paragraph 2 or anywhere else in the writ petition that he is actually a member of a political party and this writ petition is essentially a “politically interest litigation” and as such, this Court ought not entertain it on this ground alone.

6. The learned Deputy Solicitor General of India submitted that since the State government has already constituted a committee to look into the matter, the Union of India will be awaiting for a report from the Committee and thereafter decide on its further course of action.

7. Having heard the learned Advocates for the parties, we are of the view that since a committee has been constituted by the State Government with cabinet approval on 17th October, 2023, to look into the issues centering around this natural disaster, there is no need for any intervention by this Court. Without even going into the issue as to whether the writ petitioner belongs to any political party or this writ petition is actually a litigation filed with political interest, one aspect of this matter, however, has not escaped our attention. The petitioner in

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paragraph 19 of the writ petition has stated that in terms of the relevant provision of the Dam Safety Act of 2021, a State Committee on dam safety was required to be constituted within a period of 180 days from the date of commencement of the said Act of 2021 and reconstituted every three years thereafter. The Dam Safety Act, 2021, as stated earlier, came into effect on 14th December, 2021. The period of 180 days (i.e., six months), therefore, expired sometime in June, 2022. If the writ petitioner was so seriously interested to highlight the non-constitution of the State Committee on dam safety, which, according to the learned Advocate for the writ petitioner could have prevented the natural disaster from happening — a contention, which by itself is preposterous — why did the writ petitioner wait till the natural disaster struck the State of Sikkim on the intervening night of 3rd and 4th of October, 2023 and only thereafter file the writ petition on 05th December, 2023. This is unascertainable from the pleadings.

8. We are, therefore, of the view that if indeed the writ petitioner was so concerned with public interest — especially with regard to the State Committee on dam safety not being constituted within 180 days from the date of commencement of the Dam Safety Act of 2021 — he ought to have approached this Court immediately after expiry of the said period of 180 days (i.e., six months) from the date of its coming into effect (i.e., 14th December, 2021), instead of waiting till 05th December, 2023, for the purpose of filing the writ petition as a “Public Interest Litigation”, once the natural disaster struck on the intervening night of 3rd and 4th of October, 2023.

9. For reasons stated above, we are of the view that this writ petition — filed as a Public Interest Litigation — is thoroughly devoid of any merit and is liable to be summarily dismissed and is accordingly dismissed.

(Meenakshi Madan Rai)
Judge

(Biswanath Somadder)
Chief Justice