

SWARAJ ABHIYAN - (IV)

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v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 857 of 2015)

MAY 13, 2016

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[MADAN B. LOKUR AND N.V. RAMANA, JJ.]

*Public interest litigation – Issues as regards relief for crop loss, establishing fodder banks, crop loan re-structuring or restructuring bank loans – Prevailing drought or drought like situation – Prayer that the relief or subsidy extremely low and only where crop loss is 33% and above, relief subsidy to be adequate and to be given timely – Also sought effective management of the Fodder Banks in the drought affected areas and establishment of Fodder Banks where no such bank established; and deferment of arrears and restructuring of loans for the drought affected farmers – Held: Quantum of monetary relief given to a farmer is a matter of policy – Issues regarding establishing fodder banks or restructuring bank loans is to be decided by expert, even then there is likely to be difference of opinion between the experts – In view thereof, there cannot be any judicially manageable standards for determining issues of policy and it would be hazardous if not dangerous for the Court to venture into such areas in which the court lacks expertise – Implementation of the economic and fiscal policy or policy impacting on drought effected persons and its monitoring to be seen – In the process thereof, Union of India and State Governments to set up committees or ombudsmen to see the faithful implementation of the polices – Issuance of direction to the concerned authorities in Union of India, State Governments and Reserve Bank of India and other banks to religiously implement their policies – As regards, appointment of Court Commissioners to oversee the implementation of various directions issued, there is no need for now – Applying the principle of continuing mandamus, petition ought not be disposed of but should be kept pending to ensure that the directions that have been given are complied with by the Government of India as well as the State Governments – Direction to Union of India to file a status report stating the action taken by the Government of India*

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A *on the various directions – Doctrines/principles – Principle of continuing mandamus – Constitution of India – Art. 32.*

*Constitution of India – Mandamus – Principle of continuing mandamus – Held: Is an integral part of our constitutional jurisprudence – In many public interest petitions, this Court has*

B *continued to monitor the implementation of its orders and monitor the investigations into alleged offences where there has been some apparent resistance by the Government of India.*

*Essar Steels Ltd. v. Union of India* 2016 (4) SCALE

267 : MANU/SC/0431/2016; *Centre for Public Interest*

C *Litigation v. Union of India* 2016 (3) SCALE 712 : MANU/SC/0372/2016; *M.P. Oil Extraction v. State of Madhya Pradesh* (1997) 7 SCC 592 : 1997 (1) Suppl.

SCR 671; *Villianur Iyarkkai Padukappu Maiyam v.*

*Union of India* (2009) 7 SCC 561 : 2009 (9) SCR 225;

*Peerless General Finance and Investment Co. Ltd. v.*

D *Reserve Bank of India* (1992) 2 SCC 343 : 1992 (1) SCR 406 – referred to.

#### Case Law Reference

2016 (4) SCALE 267                      referred to              Para 22

E 2016 (3) SCALE 712                      referred to              Para 23

1997 (1) Suppl. SCR 671                  referred to              Para 23

2009 (9) SCR 225                          referred to              Para 23

1992 (1) SCR 406                          referred to              Para 23

F CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 857 of 2015.

Under Article 32 of the Constitution of India.

G Prashant Bhushan, Rohit Kr. Singh, Govind Jee, O. Kuttan, Advs., for the Petitioner.

P.S. Narasimha, Tushar Mehta, ASGs, Ajit Kumar Sinha, Sr. Adv., Anil Grover, Irshad Ahmad, AAGs, Mukul Singh, Irhan George, Ajay Sharma, Sridhar Potaraju, B.K. Satija, Neeraj Kumar Sharma, Guntur Prabhakar, Ms. Perna Singh, Gopal Singh, Manish Kumar, A.P. Mayee, Ms. Shashi Juneja, A. Selvin Raja, Ms. Hemantika Wahi, Kabir Hathi,

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Ms. Puja Singh, Ms. Noopur Singhal, Manan, Dr. Monika Gusain, Tapesh Kumar Singh, Kumar Anurag Singh, Mohd. Waquas, Shashank Singh, V. N. Raghupathy, C. D. Singh, Ms. Sylona Mohapatra, Udit Arora, Nishant R. Katneshwarkar, Sibho Sankar Mishra, Umakant Mishra, S. Udaya Kumar Sagar, Krishna Kumar Singh, Upendra Mishra, Vinay Garg, Advs., for the Respondents. A

The Judgment of the Court was delivered by B

**MADAN B. LOKUR, J.** 1. In three earlier decisions concerning the prevailing drought or drought-like situation, we had stressed the obligation of the Government of India complying with all the provisions of the laws enacted by Parliament, namely, the Disaster Management Act, 2005, the National Food Security Act, 2013 and the Mahatma Gandhi National Rural Employment Guarantee Act, 2005. This will, of necessity, require establishing and constituting bodies and authorities provided for by law and making available the necessary finances for implementing and abiding by the law. The State cannot say that it is not bound to follow the law and cannot adhere to statutory provisions enacted by Parliament and create a smokescreen of a lack of finances or some other cover-up. The rule of law binds everyone, including the State. C

2. In this decision, we concern ourselves with the remaining substantive issues raised by the petitioner Swaraj Abhiyan. D

#### **Relief for Crop Loss** E

3. The grievance of Swaraj Abhiyan is that the 'Crop Input Advance' or the 'Agricultural Input Subsidy' offered by the Government of India is far too low and in the event of a drought, the monetary relief (compensation or *ex gratia*) received by a farmer does not even cover the cost of cultivation of crops. Reference is made to the cost of cultivation of some principal crops in India relating to 2015-16 (average 2010-11 to 2012-13) obtained from the Comprehensive Scheme for Studying the Cost of Cultivation of Principal Crops in India by the Directorate of Economics and Statistics in the Ministry of Agriculture. By way of illustration, it has been pointed out that in respect of some Kharif crops such as paddy, the cost per hectare is Rs. 42,441; for maize it is Rs. 31,492 per hectare; for jowar it is Rs. 27,292 per hectare; for bajra it is Rs. 19,558 per hectare. F

4. According to the petitioner, in terms of the norms of assistance G

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A from the States Disaster Response Fund (SDRF) and the National  
 Disaster Response Fund (NDRF) the input subsidy where the crop loss  
 is 33% and above for agriculture crops, horticulture crops and annual  
 plantation crops is Rs. 6,800/- per hectare in rainfed areas and restricted  
 to sown areas; Rs.13,500/- per hectare in assured irrigated areas, subject  
 B to minimum assistance not less than Rs. 1,000 and restricted to sown  
 areas. Reference in this regard is made to a letter dated 8<sup>th</sup> April, 2015  
 issued by the Ministry of Home Affairs (Disaster Management Division).  
 This is said to be clearly insufficient.

C 5. On these broad facts, the first prayer made by the petitioner is  
 that the relief or subsidy is extremely low and only where the crop loss  
 is 33% and above. The amount should be realistic and there is no reason  
 why an arbitrary figure of 33% of crop loss should be fixed. It is submitted  
 that the subsidy is a safety net for farmers in times of distress and  
 therefore the compensation should be far more realistic in the event of a  
 failed crop.

D 6. The second prayer is connected with the first prayer and is to  
 the effect that farmers should be given immediate relief for crop loss for  
 the year 2015-16. The relief or subsidy should not be only adequate but  
 should also be given timely with the entire process being transparent so  
 that there is no allegation of corruption.

E 7. In response, the Union of India submits that under Section 46  
 of the Disaster Management Act, 2005, the Central Government has  
 constituted a National Disaster Response Fund (NDRF) for meeting  
 any threatening disaster situation or disaster. This is exclusively for the  
 purposes of alleviating the adverse impact of a disaster. Similarly, under  
 F Section 48 of the Disaster Management Act, the State Governments  
 have constituted a fund called the State Disaster Response Fund (SDRF).

G 8. The 14<sup>th</sup> Finance Commission has recommended an allocation  
 of Rs. 61,219 crores as the aggregate corpus for the SDRF for the  
 period 2015-20. The norms for providing financial assistance have been  
 revised on 8<sup>th</sup> April, 2015 (as mentioned above) and the Agricultural  
 Input Subsidy that was earlier Rs. 4,500 per hectare with the crop loss  
 being 50% and above has since been revised upward by an order dated  
 8<sup>th</sup> April, 2015 to Rs. 6,800 per hectare where a crop loss is 33% and  
 above in respect of rainfed areas. Similarly, there has been an upward  
 revision in respect of irrigated areas and perennial areas. It is therefore

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submitted that adequate provision has been made in this regard and the State Governments, even in the drought affected States, are entitled to utilize the funds available in terms of the norms laid down. A

9. It is further submitted that in addition to the amount recommended by the 14<sup>th</sup> Finance Commission towards the SDRF, the Government of India has also approved a sum of about Rs. 12,774 crores from the NDRF to the State Governments in the grip of drought. This amount is also considerably enhanced from the amount made available in previous years. B

10. It is further submitted that the norms are not a compensatory measure but are a measure of immediate relief. Therefore, to require payment of the exact amount of subsidy as determined by the Directorate of Economics and Statistics in the Ministry of Agriculture would not be appropriate. C

11. With regard to the funds in the NDRF, it is submitted that the basis of the fund is the estimated tax revenue collection in the form of National Calamity Contingency Duty imposed on Union Excise and Customs and releases are made to the State Governments by the Ministry of Finance of the Government of India from this provision. D

### **Fodder Banks**

12. The grievance of the petitioner in this regard is that even though a Fodder Bank has been established under the Centrally Sponsored Fodder and Feed Development Scheme and the National Mission for Protein Supplements for the areas notified as drought affected in 2012, the benefits under this Scheme and Mission have not been extended to all drought affected areas in the country for the year 2015-16 and 2016-17. It is prayed that the Scheme and Mission be extended to all drought affected areas and there should be no financial cap on support for this component. It is further submitted that in anticipation of drought the Union of India had issued a detailed Advisory on 12<sup>th</sup> September, 2012 and that should be implemented in letter and spirit. E F

13. The purpose of the Fodder Bank is to meet the requirement of livestock in areas notified as drought affected. Fodder Banks are expected to facilitate procurement and storage of fodder from surplus areas or areas where rainfall is satisfactory and this fodder can be than distributed to cattle camps and deficient areas. To reduce the cost of G

A establishment of a Fodder Bank, it appears to have been recommended that low capacity tractor mountable fodder block machine should be used as far as feasible.

B 14. The prayer of the petitioner in this respect is for the effective management of the Fodder Banks in the drought affected areas and for the establishment of Fodder Banks where no such bank has been established in a drought affected area.

C 15. The response of the Union of India is that apart from the above-mentioned Scheme and Mission, the Department of Animal Husbandry, Dairying and Fisheries is implementing the National Live Stock Mission and one of the sub-missions of this Mission is feed and fodder development. The State Governments can avail financial assistance under the sub-mission.

D 16. In addition, the Central Government has approved an Additional Fodder Development Programme as a special scheme of the Rashtriya Krishi Vikas Yojna for the year 2015-16 to mitigate the adverse impact of drought in drought affected districts/blocks of the country. Funds have been allocated for this purpose to various States as per the cost norms.

#### **Crop Loan Re-structuring and Relief**

E 17. In this regard, the submission of the petitioner is that deferment of arrears and re-structuring of loans is an important aspect of relief for the drought affected farmers and necessary directions should be given to Rural and Cooperative Non-Scheduled Banks, Scheduled Banks including Nationalized Banks etc. to abide by the guidelines issued by the Reserve Bank of India. The State Level Bankers Committees have considerable discretion in the matter of deferment of arrears and re-structuring of loans with the result that re-structuring has not taken place as per the guidelines in several States. The prayer of the petitioner therefore is to have a more realistic deferment of arrears and re-structuring of loans by all the concerned banks, particularly in respect of farmers in drought affected areas.

H 18. In response, it is stated by the Union of India that the Reserve Bank of India has issued a Master Circular on 1<sup>st</sup> July, 2015 (updated up to 21<sup>st</sup> August, 2015) while NABARD has issued a circular on 26<sup>th</sup> August, 2015 addressed to all Cooperative Banks and Regional Rural

Banks recommending a moratorium of one year in re-structuring the loans of borrowers affected by a natural calamity. However, over-due loans are not included since they are not attributed to a natural calamity. Notwithstanding this, there is no prohibition on any bank from re-structuring any loan including any over-due loan subject to the guidelines of the Reserve Bank of India and in accordance with their internal policy guidelines.

**Discussion and conclusions**

19. It is quite apparent from the submissions made and the reliefs claimed that essentially the concerns raised pertain to policy, whether economic and fiscal policy or policy impacting on drought effected persons. We are certainly not equipped to commend the view expressed by the petitioner or the view expressed by the State on issues of this nature. It is really for experts in the field to take a call, for example, on what percentage of crop loss deserves to be addressed, whether the crop loss should be 33% and above or 50% and above. The quantum of monetary relief to be given to a farmer is again a matter of policy.

20. Similarly, issues regarding establishing fodder banks or restructuring bank loans, the extent to which restructuring should be carried out are all issues that are required to be decided by experts. Even then, within the community of experts, there are likely to be differences of opinion. While one set of experts might fix crop loss for relief at 50% another set of experts might consider the crop loss for relief above or below 50%. This being the position, there cannot be any judicially manageable standards for determining issues of policy and it would be hazardous if not dangerous for us to venture into such areas when we lack the expertise to do so.

21. This Court has, on several occasions, dealt with issues of policy whether having an economic and fiscal flavour or even mundane matters of policy including, for example, transfer of government servants from one place to another. This Court has not interfered in such matters unless the policy is demonstrably perverse.

22. Fairly recently, in *Essar Steels Ltd. v. Union of India*<sup>1</sup> this Court summed up the position in law as follows:

“Broadly, a policy decision is subject to judicial review on the following grounds:

<sup>1</sup> 2016 (4) SCALE 267 = MANU/SC/0431/2016

- A (a) if it is unconstitutional;  
 (b) if it is de’hors the provisions of the Act and the Regulations;  
 (c) if the delegatee has acted beyond its power of delegation;  
 B (d) if the executive policy is contrary to the statutory or a larger policy.”

23. There are several decisions to the same effect including, for example, another recent decision of this Court *Centre for Public Interest Litigation v. Union of India*<sup>2</sup> and some earlier decisions such as *M.P. Oil Extraction v. State of Madhya Pradesh*<sup>3</sup>, *Villianur Iyarkkai Padukappu Maiyam v. Union of India*<sup>4</sup> and of course the Constitution Bench decision in *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India*<sup>5</sup>. For the present purposes, the summation provided in *Essar Steels* is quite clear:

- D “Executive policies are usually enacted after much deliberation by the Government. Therefore, it would not be appropriate for this Court to question the wisdom of the same, unless it is demonstrated by the aggrieved persons that the said policy has been enacted in an arbitrary, unreasonable or *mala fide* manner, or that it offends the provisions of the Constitution of India.”  
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24. Therefore, the issues raised by the petitioner should actually be looked at from the point of view of implementation of a policy and monitoring its implementation. In our opinion, in the process of implementation and monitoring, what is important is for the Union of  
 F India and the State Governments to set up watch-dog committees or ombudsmen to see that the polices framed are faithfully implemented. There is little utility in knee-jerk reactions and stumbling along from one situation to another.

- G 25. Ad hoc measures really do not serve any purpose and eventually the consequence of an ad hoc reaction tends to travel to this Court for a response. The one possible solution appears to be for the Union of India

<sup>2</sup> 2016 (3) SCALE 712 = MANU/SC/0372/2016

<sup>3</sup> (1997) 7 SCC 592

<sup>4</sup> (2009) 7 SCC 561

H <sup>5</sup> (1992) 2 SCC 343

and the States to set up their respective watch-dog committees that will specialize in certain disciplines for the purposes of implementation and monitoring the schemes and policies framed by the Union of India and the State Governments. A policy might be acceptable and worthy, but often it is the effective implementation and monitoring that is lacking. A

26. Under the circumstances, we are inclined to issue only one direction in respect of the three issues raised by the petitioner which is to direct the concerned authorities in the Union of India, the State Governments and the Reserve Bank of India and other banks to religiously implement their policies since they are ultimately intended for the benefit of the people of our country and not for the benefit of any stranger. B  
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#### **Court Commissioners**

27. Learned counsel for the petitioner insists on the appointment of Court Commissioners to oversee the implementation of the various directions issued by us. Reference is made by learned counsel to what is commonly called the Right to Food Campaign which resulted in the appointment of Commissioners by this Court to report on the functioning and improvement of the public distribution system. Some useful and valuable suggestions were certainly given by the Court Commissioners and which were implemented under the directions of this Court. Learned counsel for the petitioner submits that it is necessary for us to direct the appointment of Court Commissioners so that the provisions of the various statutes under consideration are faithfully implemented and the various schemes framed by the Government of India and the State Governments are implemented in their true spirit. D  
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28. Learned Additional Solicitor General vehemently opposes this plea on the ground that the appointment would serve no useful purpose. He submits that it is not as if the officers in the Government of India are not doing their work. While there may be some laxity or slackness on occasion but that cannot be generalized to necessitate some external authorities to monitor the functions of the officers of the State. He submits that there are internal checks within the administration which ensure that governance is carried out for the welfare of the people and in a transparent and accountable manner. F  
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29. We have given our consideration to the submissions made by learned counsel for the petitioner and the learned Additional Solicitor H

- A General and find that the system of in-house checks has already been statutorily recognized for all the issues that we have dealt with in this case. For example, the Disaster Management Act, 2005 constitutes authorities and bodies like the National Disaster Management Authority, the National Executive Committee etc. to ensure that the Act is faithfully implemented and measures taken are reviewed and monitored from time to time. Similarly, the National Food Security Act, 2013 and the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 also mandate the constitution and establishment of bodies and authorities under the statute to review and monitor the implementation of the statute and the schemes or programs thereunder.

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- C 30. It is another matter altogether that some provisions of these statutes have been converted into a dead letter and various authorities under these statutes have not yet been constituted compelling us to comment on the failure of the Executive branch of the Government of India and the State Governments to faithfully implement the law enacted by Parliament. We have also given directions in this regard and we certainly expect a favourable response to the directions issued and their compliance. For the present, therefore, we do not see the need for the appointment of any Court Commissioner.

### **Continuing mandamus**

- E 31. We are firmly of the view that the principle of continuing mandamus is now an integral part of our constitutional jurisprudence. There are any number of public interest petitions in which this Court has continued to monitor the implementation of its orders and on occasion monitor investigations into alleged offences where there has been some apparent stonewalling by the Government of India. A few years ago, one of us had occasion to advert to the requirement of a continuing mandamus as a part of our jurisprudence.<sup>6</sup> It is not necessary to repeat the views expressed therein.

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- G 32. Under these circumstances, we agree with learned counsel for the petitioner that this petition ought not be disposed of but should be kept pending and the possibility of a continuing mandamus being issued ought to be kept open to ensure that the directions that have been given are complied with by the Government of India as well as the State Governments.

H <sup>6</sup> Manohar Lal Sharma v. Union of India. (2014) 2 SCC 532

33. We adjourn this case to 1<sup>st</sup> August, 2016 at 2.00 p.m. and A  
direct the Union of India to file a status report on or before 25<sup>th</sup> July,  
2016 stating the action taken by the Government of India on the various  
directions that we have given in this case on different dates.

Nidhi Jain

Matter adjourned. B