

2023 LiveLaw (SC) 630 : 2023 INSC 701

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ABHAY S. OKA; J., SANJAY KAROL; J.**

August 11, 2023

CIVIL APPEAL NO.5049 OF 2023 (Arising out of Special Leave Petition (C) No. 478 of 2022)

Union of India & Ors. versus K. Pushpavanam & Ors.

Law of Torts – High Court’s direction to introduce a law dealing with “Liability in Tort” – Held, as far as the law of torts and liability thereunder of the State is concerned, the law regarding the liability of the State and individuals has been gradually evolved by Courts. Some aspects of it find place in statutes already in force. It is a debatable issue whether the law of torts and especially liabilities under the law of torts should be codified by a legislation. A writ court cannot direct the Government to consider introducing a particular bill before the House of Legislature within a time frame. Therefore, the first direction issued under the impugned judgment was unwarranted. (Para 8)

Law Commissions - Constitutional or Statutory status – Held, when a litigant seeks a writ of mandamus, he must show a right existing in his favour and the corresponding obligation of the State to ensure that the litigant is able to exercise the said right. There is no right vested in the applicant to claim that the Law Commission set up by the Central Government should be given constitutional or statutory status. Law Commissions have already functioned and submitted reports. Whether Law Commission should be given a status under the Constitution or under a Statute is a major policy decision to be taken by the Central Government. It is only the Central Government which can take a call on this issue. Therefore, the 2nd direction was uncalled for. (Para 9)

Recommendations of Constitutional Courts - High Court’s direction to appoint a "Nodal Officer" to note down the Courts' recommendations to bring to the knowledge of the Policy Makers – Held, whether a nodal officer should be appointed or not, is a matter to be decided by the Central Government. The Court cannot compel the Central Government to appoint a nodal officer. All the departments of the Government have adequate notice of the judgments of Constitutional Courts in which recommendations are made for the amendment of any legislation. Therefore, the 5th direction is unwarranted. (Para 11)

Law Commission - Requisition for grant of funds – Held, the Central Government will consider such requisition at the earliest considering the importance of the tasks assigned to the Law Commission. The Central Government must ensure that the Law Commission does not become ineffective on account of lack of funds. (Para 13)

Legislation - No Constitutional Court can issue a writ of mandamus to a legislature to enact a law on a particular subject in a particular manner. The Court may, at the highest, record its opinion or recommendation on the necessity of either amending the existing law or coming out with a new law. (Para 12)

(Arising out of impugned final judgment and order dated 17-08-2021 in WPMD No. 16274/2020 passed by the High Court of Judicature at Madras, Bench at Madurai)

For Appellant(s) Mr. Tushar Mehta, Solicitor General Mrs. Aishwarya Bhati, A.S.G. Mr. Rajat Nair, Adv. Mr. Anmol Chandan, Adv. Mr. Navanajay Mahapatra, Adv. Ms. Aakanksha Kaul, Adv. Mr. Arvind Kumar Sharma, AOR

For Respondent(s) Ms. Haripriya Padmanabhan, Adv. Mr. S. Prabu Ramasubramanian, Adv. Mr. Raghunatha Sethupathy B, AOR Mr. Bharathimohan M, Adv. Ms. Priya R, Adv. Mr. S. Sabari Bala Pandian, Adv. Ms. Tanya Shrivastava, Adv. Mr. Avinash Kumar, Adv.

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. Leave granted.

2. This appeal takes exception to the judgment and order dated 17th August 2021 passed by the High Court of Madras at Madurai Bench in a writ petition filed by the first respondent. A petition was filed by the first respondent seeking a writ of mandamus in the following terms:

“.....Therefore I most respectfully pray that this Hon'ble Court may be pleased to direct the Respondent No.1 to appoint the Chairman and other members of the 22nd Law Commission constituted through the notification in number F. No.A-45012/1/2018-Admn. III (LA) dated 21.02.2020 in accordance with law within the time stipulated by this Hon'ble Court.

Therefore I most respectfully pray that this Hon'ble Court may be pleased to issue writ of mandamus or any other Writ or direction or order in nature of writ, directing the respondents, to propose a comprehensive legislation in the field of 'Torts and State Liability' as per the directions of Hon'ble Supreme Court of India in "MCD V. Uphaar Tragedy Victims Assn (2011) 14 SCC 481" and "Vadadora Municipal Corporation V. Purshotam v Murjani and Others (2014) 16 SCC 14" in accordance with law within the lime stipulated by this Hon'ble Court.....”

3. Before the writ petition filed by the first respondent was taken up for final hearing, following queries were made by the High Court to the respondents in the writ petition (appellants herein). The said queries read thus :-

“(a) In how many judgments, the Constitutional Courts have recommended for enactment of new laws or amendments of the existing Acts, so far?

(b) How many orders have been acted upon and suitable Acts/Rules and amendments to the existing Acts, have been done so far and what are all the new Acts/Rules and the amendments made so far?

(c) How many judgments are being acted upon and suitable Acts/ Amendments are in the process of enactment?

(d) When will the Parliament will bring a comprehensive suitable legislation in the field of 'Torts and State Liability' for violation of fundamental rights of the citizens at the hands of the State and its officials?

(e) Whether the Central and State Governments are having appropriate Wings to note down the judgments/orders of the Constitutional Courts, wherein suggestions for enacting new Acts or amendments have been enacted/proposed or recommended?

(f) If there is no such Wing, when such Wing will be established to bring those suggestions to the higher-ups or policy makers to act upon suggestions given by Courts?

(g) When does the Central Government appoint Chairman and Members of 22nd Law Commission of India?”

4. After hearing the parties, by the impugned judgment, the Court issued the following directions:

(1) This Court directs the Government to consider introducing a bill, similar to which has been introduced in the year 1965 viz., "Liability in Tort" bill introduced in 1965 and

re-introduced 1967 and got lapsed due to dissolution of Parliament during 1970, taking into account the present scenario, within a period of six months.

(2) There shall be a direction to the Central Government to take a decision with regard to the suggestion for making Law Commission either as a statutory body or constitutional body within a period of six months.

(3) The Central Government shall allot more funds to the Law Commission for research and more infrastructures to Law Commission of India at the earliest.

(4) The Respondents shall appoint the

Chairman and Members of Law

Commission of India within three months from the date of receipt of a copy of this order, failing which Respondents 1 & 3 shall appear before this Court.

(5) The Respondents shall appoint a "Nodal Officer", who is well qualified in law, in each department, to note down the Courts' recommendations to bring to the knowledge of the Policy-Makers of each department by way of periodical reports within a period of six months from the date of receipt of copy of this order, so that policy decision would be taken."

SUBMISSIONS

5. Ms. Aishwarya Bhati, learned ASG urged in support of the Civil Appeal that the High Court has issued a writ of mandamus which in substance directs the legislature to legislate in a particular manner. Her submission is that a writ court cannot compel the Central Government to take a decision on the question whether the Law Commission appointed by it should be conferred the status of either a constitutional body or a legislative body. She pointed out that as far as the 4th direction in the impugned judgment is concerned, the 22nd Law Commission has been constituted by a notification dated 9th November 2022 by appointing a retired Chief Justice of a High Court as the Chairperson and other members. Learned ASG pointed out that a compliance affidavit annexing a copy of the notification is filed on record.

6. The learned counsel appearing for the first respondent submitted that in fact, the first direction issued by the High Court does not compel the legislature to legislate on the subject of "Liability in Tort". It only directs consideration of the prayer made by the first respondent to enact such a law. Learned counsel further submitted that even the 2nd direction does not issue any writ of mandamus directing the legislature to legislate in a particular manner. Learned counsel relying upon various decisions submitted that the Constitutional Courts have always recommended that either a legislation should be made on a particular subject or the existing legislation should be amended. The power of the Constitutional Court to make such recommendation has been consistently exercised by this Court. He gave illustrations in the form of several reported judgments of this Court. He submitted that if nodal officers, as directed in the 5th direction are appointed, it will facilitate the Central Government to effectively consider recommendations made by the Constitutional Courts on the issue of legislations. Therefore, the 5th direction cannot be faulted with. The learned counsel submitted that all five directions issued under the impugned judgment do not transgress the limits on exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. He pointed out that according to the appellants, the 4th direction has been complied with. He relied upon several decisions of this Court in support of his submissions.

OUR VIEW

7. We have given careful consideration to the submissions. The first respondent urged that it is necessary for the legislature to introduce a law dealing with “Liability in Tort”. On the basis of the prayer made by the first respondent, a direction has been issued to the Central Government to consider of introducing of a bill on the subject, and outer limit of six months has been fixed by the High Court.

8. As far as the law of torts and liability thereunder of the State is concerned, the law regarding the liability of the State and individuals has been gradually evolved by Courts. Some aspects of it find place in statutes already in force. It is a debatable issue whether the law of torts and especially liabilities under the law of torts should be codified by a legislation. A writ court cannot direct the Government to consider introducing a particular bill before the House of Legislature within a time frame. Therefore, the first direction issued under the impugned judgment was unwarranted.

9. As regards the 2nd direction, it must be remembered that when a litigant seeks a writ of mandamus, he must show a right existing in his favour and the corresponding obligation of the State to ensure that the litigant is able to exercise the said right. There is no right vested in the applicant to claim that the Law Commission set up by the Central Government should be given constitutional or statutory status. 21 Law Commissions have already functioned and submitted reports. Whether Law Commission should be given a status under the Constitution or under a Statute is a major policy decision to be taken by the Central Government. It is only the Central Government which can take a call on this issue. Therefore, the 2nd direction was uncalled for.

10. As regards the 3rd direction, the prayer was pre-mature as when the writ petition was filed, 22nd Law Commission was not even constituted. Now, it has been constituted under the notification dated 9th November 2022. We have perused the notification dated 21st February 2020 under which the Central Government decided to constitute 22nd Law Commission. We have carefully perused the terms of reference of the 22nd Law Commission. The terms of Reference are very wide which expect the Law Commission to make recommendations on various important aspects such as identification of obsolete laws, and identification of laws which are not in harmony with existing climate of economic liberalisation. Another function is to suggest amendments to the existing laws. One of the important functions is to examine the laws which affect the poor and to carry out post-audit for socio-economic legislations. Another duty entrusted to the Law Commission is to revise Central Acts of general importance so as to simplify them and remove anomalies, ambiguities and inequities. Clause 9 of the said notification provides that the Commission may develop a partnership network with reputed Law Universities/Law Schools and policy research institutions in the country and abroad. Clause 10 empowers the Commission to engage consultants/legal consultants for specific projects depending on the nature and urgency. There cannot be any doubt that if such vast functions are to be discharged by the 22nd Law Commission, it will require adequate monetary support in the form of grants. Unless adequate funds are provided, the Law Commission will not be able to discharge its functions. As and when the requisition is sent by the 22nd Law Commission for requisitioning funds, the Central Government will have to consider the said proposal and ensure that the Law Commission does not become ineffective on account of its failure to sanction adequate funds.

11. As regards the 5th direction, whether a nodal officer should be appointed or not, is a matter to be decided by the Central Government. The Court cannot compel the Central Government to appoint a nodal officer. All the departments of the Government have

adequate notice of the judgments of Constitutional Courts in which recommendations are made for the amendment of any legislation. Therefore, the 5th direction is unwarranted.

12. The law regarding power of the writ court to issue a mandate to the legislature to legislate is well settled. No Constitutional Court can issue a writ of mandamus to a legislature to enact a law on a particular subject in a particular manner. The Court may, at the highest, record its opinion or recommendation on the necessity of either amending the existing law or coming out with a new law. The law has been laid down in this behalf in several decisions including a decision of this Court in the case of **Supreme Court Employees' Welfare Association v. Union of India & Anr.**¹ and **State of Jammu and Kashmir v. A.R. Zakki and others**² The only exception is where the Court finds that unless a rule making power is exercised, the legislation cannot be effectively implemented.

13. In the light of the aforesaid discussion, we pass the following order :-

- a. Directions 1, 2 and 5 are quashed and set aside. However, the Central Government will treat the said directions as recommendations made by the Court;
- b. As and when the 22nd Law Commission submits the requisition for grant of funds, the Central Government will consider such requisition at the earliest considering the importance of the tasks assigned to the Law Commission. The Central Government must ensure that the Law Commission does not become ineffective on account of lack of funds;
- c. The 4th direction has been already worked out, as discussed above;
- d. The impugned judgment and order is modified on above terms and the writ petition filed by the first respondent stands disposed of accordingly; and
- e. Civil Appeal is, accordingly, allowed. There will be no order as to costs.

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¹ (1989) 4 SCC 187

² (1992) Supp (1) SCC 548