

01.12.2020

Item no. 5-9
(Daily.List)

AB/SDE

Through Video Conference

WPA 6139 of 2020

with

IA CAN 1 of 2020

(Old CAN 4415 of 2020)

Sri Khayrul Anam Seikh

Vs.

State of West Bengal & Ors.

with

WPA 5480 of 2020

with

IA CAN 1 of 2020

(Old CAN 3184 of 2020)

Arjun Singh

Vs.

State of West Bengal & Ors.

with

WPA 6426 of 2020

with

IA CAN 1 of 2020

(Old CAN 5051 of 2020)

Dakshin 24 Pargana Zela Krishak Samity & Ors.

Vs.

State of West Bengal & Ors.

With

WPA 6920 of 2020

with

IA CAN 1 of 2020

Md. Abdul Maleque Molla & Ors.

Vs.

State of West Bengal & Ors.

With

WPA 7561 of 2020

with

IA CAN 1 of 2020

Md. Mohasin Haque

Vs.

State of West Bengal & Ors.

Mr. Samim Ahammed,

Mr. Arka Maity,

Ms. S. Bhattacharya

... For the Petitioner in WPA 6426 of 2020

Mr. Arindam Jana,

Mr. Siddhartha Mondal,

Mr. Sudipta Dasgupta

... For the petitioner in WPA 7561 of 2020

Mr. Noor Islam Seikh
Mr. Shamik Bagchi
... For the petitioner in WPA 6139 of 2020

Mr. Vikash Singh
... For the petitioner in WPA 5480 of 2020

Mr. S. S. Mondal,
Mr. S. Chatterjee
... For the petitioner in WPA 6920 of 2020

Mr. Sirsanya Bandyopadhyay,
Mr. A. K. Nag ...For the State

Mr. Y.J. Dastoor, Id. ASG
Mr. Arijit Majumder... For the UOI

On 25.11.2020, upon hearing learned Advocates for the parties, we had minuted the following order :

“Learned Advocate for the petitioner, learned Advocate General and learned Additional Solicitor General will make their comprehensive submissions in this matter since this is an issue which cannot be delayed for long.

Erroneous channeling of funds for Amphan relief and also diversion of funds from Amphan relief schemes including the MGNREGA scheme are highlighted by the writ petitioners. We are clear in our mind that there cannot be comprehensive adjudication on the judicial platform touching the factual details and the mishandling of funds, if any. We see that the powers of the Comptroller and Auditor General of India and the Accountant General of the State of West Bengal in the backdrop of the relevant Constitutional and statutory provisions which regulate their functioning may provide adequate room for the Union and the State Governments to effectively audit, assess and regulate the flow of funds and also assess the performance and result of the funds which have been pushed under the

canopy of Amphan relief. Public funds meant for use in such a situation cannot be utilized except in strict conformity with the principles governing the distribution of State funds in times of need. This principle also emanates out of the Directive Principles of State policy which provide the guidelines for governance of this Nation.

Learned counsel for the petitioner in WPA 5480 of 2020 submits that the names of the beneficiaries ought to be made available in public domain to ensure transparency in the distribution of Amphan relief.

Learned counsel for the petitioner in WPA 6426 of 2020 submits that it is the bounden duty of the Government to upload the Scheme which was formulated for providing relief to the victims of Amphan.

We, therefore, expect all parties concerned to effectively make their submissions on the next date of hearing.

Let the matter be posed on 01.12.2020.”

These writ petitions, instituted in public interest, project multi-faceted complaints regarding the different modalities of providing succour to those who are affected by Amphan in the State of West Bengal. Therefore, we deem it appropriate to decide all these matters in one go.

Hearing learned Additional Solicitor General, learned Counsel for the State Government and different learned Advocates appearing for the different writ petitioners, we are of the view that for comprehensively carrying out all the directions, which we would issue hereunder, the Comptroller & Auditor General of India is a necessary party to these writ petitions. Therefore, we implead the Comptroller & Auditor General of India as an additional respondent in all the writ petitions, who will be bound by the directions issued hereunder.

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In the wake of various sufferings of the people of West Bengal as a result of Amphan, the Central Government rolled out schemes, which were intended to support the people of West Bengal. We notice that there were such support and facilities provided for people who suffered Amphan in other States as well.

The complaints of the different petitioners are that the State Government through its officers had made unauthorized and illegitimate pick and choose of persons to whom the benefits were doled out and that the Amphan schemes were not operated in the manner as envisaged either by the Union of India or the State Government.

It is the further contention of the petitioners that there is no transparency in the so-called distribution of Amphan relief and there is no material available in the public domain in terms of the provisions of the Right to Information Act or otherwise, which would enable the citizenry to access information regarding the identity of the persons to whom such benefits have been provided.

It is submitted that as a necessary corollary, it follows that a large number of people, who were true and real victims of Amphan, have suffered also the loss of support by way of relief schemes.

The Comptroller and Auditor General of India has the necessary constitutional, statutory and administrative sanction, power and authority to conduct such inquiry as is necessary to ensure that there is financial audit and performance audit of the utilization of the Amphan relief either extended by the Central Government and operationalized through the

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State Government or otherwise and ensure that there is an appropriate audit report of the performance as well as accounts. This will pave way for the competent authority, either in the Central Government or the State Government or at both levels or at both ends, to decide the next course of action that should be taken in case of any fault being traced by the audit process of the Comptroller and Auditor General of India as regards performance and also regarding accounts. In terms of the existing laws, the Comptroller and Auditor General of India may have its responsibilities carried out through appropriate authority as may be delegated by it in terms of the constitutional and statutory provisions. We leave it open to the Comptroller and Auditor General of India and its office to take a comprehensive look at all the issues and carry out such audit, as is found necessary, to ensure that there is performance audit and financial audit of the Amphan related issues.

Having regard to the questions involved and the probable volume of work, we request the Comptroller and Auditor General of India to conclude the exercise we have directed above within an outer limit of three months from the date of receipt of a copy of this order. It will be open to the Comptroller and Auditor General of India and its office to issue such directions, as may be found necessary, to any authority to ensure that this order is meaningfully implemented and the result of the audit is also carried out to its hilt to ensure that no funds are abused in the name of Amphan and that there is requisite performance of the various schemes rolled out for the Amphan victims.

We clarify that in the event the Comptroller and Auditor General of India requires further

clarifications or directions from this Court, it will be open to that authority to mention these writ petitions before this Court for that purpose.

We are sure that the authorities of the State of West Bengal and its government will appropriately cooperate with the office of the Comptroller and Auditor General of India, as may be required by that office.

It is also pointed out on behalf of the petitioners that the list of Amphan relief beneficiaries shown on the website of the State Government does not reflect the true state of affairs. Obviously, this is also a matter which falls within the domain of consideration of the Comptroller and Auditor General of India.

We further clarify that the directions issued hereinabove and the disposal of these writ petitions will not stand in the way of the State Government or any other authority to carry on with distribution of Amphan relief.

Needless to say that the parties to these writ petitions will be at liberty to place further materials, as may be relevant, for consideration, in the office of the Comptroller and Auditor General of India.

It is submitted by learned Additional Solicitor General that there is an error in the cause title of the order dated 25.11.2020. We, accordingly, correct that order by substituting the number of the writ petition as WPA 5480 of 2020 instead of WPA 5180 of 2020.

Since no affidavits have been called for or considered, the allegations contained in the writ

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petitions shall be deemed not to be admitted by the respondents.

All the writ petitions along with the connected interlocutory applications stand disposed of.

(Thottathil B. Radhakrishnan, C.J.)

(Arijit Banerjee, J.)