

CASE NO.:
Appeal (civil) 2681 of 2007

PETITIONER:
KRANTI

RESPONDENT:
UNION OF INDIA & ORS

DATE OF JUDGMENT: 16/05/2007

BENCH:
C.K. Thakker & Altamas Kabir

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NO. 2681 OF 2007
(Arising out of S.L.P.(c) No. 4716/2006)

ALTAMAS KABIR, J.

Leave granted.

2. The magnitude of the problem created by the Tsunami which hit the Andaman and Nicobar Islands on 26th December, 2004, and the disaster left in its aftermath, is difficult to imagine and its effects continue to subsist and haunt the islanders even today.

3. The Special Leave Petition filed against the judgment and order passed by the Division Bench of the Circuit Bench of the Calcutta High Court at Port Blair on 16th January, 2006, in Writ Petition No. 205 of 2005 recounts the various problems that were being faced by the Islanders in the wake of the Tsunami and the steps that could be taken to mitigate their sufferings.

4. Since it was not possible to conclude the hearing of the appeal itself, we heard the parties on the question of grant of interim relief till such time as the appeal could be finally heard and disposed of.

5. Appearing in support of the appeal, Mr. Colin Gonsalves urged that on account of the Tsunami which hit the islands, extensive damage had been caused to the shelters and livelihood of the islanders and in particular those inhabiting the Nicobar group of islands. According to him, some of the major problems included scarcity of potable drinking water, lack of medical facilities for treatment of diseases which had broken out after the Tsunami, lack of food and shelter and destruction of the means of livelihood of the inhabitants of the islands whose main occupation was fishing and agriculture. Mr. Gonsalves urged that there was no dearth of funds for carrying out the work of rehabilitation, but the same were not being utilized in a proper manner. He urged that although there were about 2000 applications pending before the permanent Lok Adalat at Port Blair, not more than 100 of such applications had been disposed of. He urged that since sessions of the Lok Adalats were confined to Port Blair, many of the affected people were unable to approach the Lok Adalat for necessary compensation having regard to the geographical lay out of the islands. Mr. Gonsalves emphasized the fact that inter island transport was scarce and the time taken to come from the Nicobar chain of islands to Port Blair took about a week of travel time. He urged that in order to provide

proper relief to the persons actually affected by the Tsunami, it was incumbent that Lok Adalats be held on those islands which had been severely affected by the Tsunami.

6. According to Mr. Gonsalves, the next acute problem was housing and that the design of the shelters which were to be provided by way of rehabilitation was entirely unsuitable for the islands where the salinity in the atmosphere was extremely high. From reports prepared by a team named "Integrated Design", a part of the Tata Institute of Social Sciences (TISS) and Habitat International Coalition, Mr. Gonsalves pointed out that steel, iron and tin and other materials such as ceramic tiles were intended to be brought from the mainland to be used in the construction of the houses to be provided as part of the rehabilitation programme. He urged that such a design was entirely unsuitable for the islands where the percentage of salinity was extremely high. He urged that the steel work under the ground level would come directly in contact with saline moisture while those above ground would soon be corroded and would after some time damage the structures and reduce them to environmental hazards.

7. Mr. Gonsalves urged that there was sufficient timber available for construction of traditional shelters suitable for the islands by the islanders themselves on account of the large number of trees which had been uprooted during the Tsunami. This would not only reduce the costs but make the rehabilitation process more meaningful and of lasting benefit to the persons affected by the Tsunami without destroying the ecology and environment of the islands. However, in the structures which had already been constructed directions should be given to complete the flooring as the monsoons were almost due.

8. Furthermore, the cost of labour which would otherwise be paid to contractors, would be available to the islanders themselves. Mr. Gonsalves also urged that the maintenance of the structures proposed to be constructed would be extremely high and would be beyond the capacity of those for whom they were meant, making the entire scheme an exercise in futility.

9. Mr. Gonsalves then submitted that although most of the fishermen have lost their boats in the Tsunami, the same have not all been replaced and even those which have been replaced are unsuitable for fishing being made of fibre glass. Mr. Gonsalves submitted that fishermen of the islands were used to their traditional boats which were suitable for the kind of fishing engaged in by them. Apart from their practical value to the fishermen, such boats called "hoodies" were made out of the trunk of the Paduak tree and were not required to be registered under the law involving payment of taxes and other charges, whereas the said rules were applicable to fibre glass boats. Connected with the aforesaid problem, is also the problem of absence of cold storages. Mr. Gonsalves urged that the two cold storages which had been installed at Campbell Bay and at Car Nicobar had been destroyed by the Tsunami and unless they were replaced, the fisher folk would not have any means of preserving their catch.

10. Mr. Gonsalves then referred to the destruction of agricultural lands by intrusion of saline water which had made it impossible for cultivation. To cure the salinity and make those lands which could be reclaimed suitable once again for cultivation would take between six to ten years. According to Mr. Gonsalves, about 10,000 hectares of agricultural land which was used for paddy cultivation lies submerged under sea water even till today. Out of this amount of land, it appears that about 4500 hectares are not

reclaimable for paddy cultivation and may only be fit for coconut plantation.

11. It was submitted that it is these persons, who had a claim to be compensated and their matters were pending before the Lok Adalats of which a small number is said to have been decided.

12. The next problem which according to Mr. Gonsalves required immediate consideration was the employment guarantee which had been given by the Administration to provide a job for one member of the Tsunami affected families. According to Mr. Gonsalves, this scheme was based on the decision to employ local people in the construction process, but although the tribals are willing to construct their own houses in the traditional manner, contracts were being given to contractors from the mainland who bring in their own labour and materials thereby depriving the local inhabitants of the benefits of the scheme.

13. The next three problems referred to by Mr. Gonsalves in respect of which immediate action was required to be taken are perhaps the most important of all the problems. They relate to lack of drinking water, health facilities and shortage of food. With regard to the shortage of drinking water, it was suggested that since the monsoon was around the corner, appropriate directions could be given to the local administration to arrange for preservation of the rain water by means of rain water harvesting and construction of ponds, where the rain water could be collected and used. As far as the lack of health facilities was concerned, it was submitted that Campbell Bay, which has a population of about 6000 people, has only one male Doctor. There is no Lady Doctor to treat women patients and when the only doctor available goes on leave there is no replacement. It was suggested that the Administration should take immediate steps to arrange for more Doctors who if necessary could be air-lifted to the different islands in emergent situations. It was also suggested that serious attempts should be made to provide a Lady Doctor at Campbell Bay for the same purpose.

14. According to Mr. Gonsalves, there was urgent need to continue to provide dry rations to the Tsunami-affected people. Mr. Gonsalves submitted that although dry rations had been provided to Tsunami-affected families which had been identified, such supply was for a time bound period within which time such families had not been able to rehabilitate themselves. It was submitted that it was necessary to continue to provide dry rations as was being done to the Tsunami-affected families, till such time as the affected families were able to support themselves.

15. In conclusion, Mr. Gonsalves submitted that ordinarily the families in question were being provided with two cylinders of gas since replacement of empty cylinders take a long time in the islands. He submitted that currently only one cylinder is being supplied causing the families to remain without gas for long periods. He urged that the system of providing two cylinders should be restored.

16. Appearing on behalf of the Lt. Governor of the Islands and the Local Administration, Mr. T.S. Doabia submitted that steps had been taken by the Administration on war footing to provide relief to those who had been devastated by the Tsunami. He urged that having regard to the geographical placing of the Islands the process of rehabilitation have taken considerable time, but the Administration did not lack a sense of urgency in rehabilitating the Tsunami-affected families. Mr. Doabia submitted that there were certain things which were beyond the control of the authorities, such as the placing of more doctors and a Lady Doctor at Campbell Bay, but earnest

efforts were being made to address the problem.

17. Regarding the nature of houses being provided for rehabilitation, Mr. Doabia submitted that the design had been approved by experts, both local and central, belonging to the Public Works Department and also the representatives of the islanders themselves who were of the view that the same would prove to be better than the traditional houses of the islanders which were mainly made of wood. Mr. Doabia, however, submitted that the matter could be re-examined in respect of the houses which are yet to be built, but as far as those which had been fully constructed, the same could not be abandoned but would have to be utilized. Regarding completion of the flooring of the houses already constructed Mr. Doabia assured the Court that instructions would be given to the local administration to complete the same as early as possible.

18. As far as the problem of replacement of damaged boats are concerned, Mr. Doabia submitted that many of the traditional boats had been replaced by fibre glass boats at the option of the islanders themselves, but in the case of boats which are yet to be replaced a further option could be taken from the affected fishermen. According to Mr. Doabia, the fishermen have already been provided with nets to enable them to commence fishing, which was their livelihood.

19. On the question of supply of drinking water, Mr. Doabia pointed out that in the islands there were only a few rivers which could not be relied upon for supply of fresh water. On the other hand, the people of the islands depended mainly on wells and ground water harvesting. According to him the local administration had undertaken a programme to clean out and recharge the wells which had been affected by the Tsunami. However, the local administration was willing to abide by any instructions that may be given in this regard to make potable drinking water available to the Tsunami-affected families. With regard to the continuance of dry rations, Mr. Doabia submitted that by virtue of the interim order passed in this matter, the supply of dry rations was being continued, but some of the families were no longer in need of such rations. In this regard also Mr. Doabia submitted that the local administration would have no hesitation to continue to provide such relief in terms of the interim order passed by this Court.

20. The submissions made on behalf of the appellant and the Local Government indicate that although the work of rehabilitation of the Tsunami victims has been taken up in all earnest, there is still a good deal which is required to be done to ameliorate the misery of the victims.

21. Each of the problems elaborated by Mr. Gonsalves needs to be dealt with to enable the victims of the Tsunami families to cope with the disaster. The monsoons are due at any time to add to the misery of those who were rendered homeless by the Tsunami. Spread of diseases is a serious threat as also the spectrum of hunger.

22. In these circumstances we feel that the following interim directions may be given till the appeal itself can be taken up for hearing on wider issues, namely :-

(i) The Local Administration under the guidance of the Lt. Governor shall take immediate steps to arrange for rain water harvesting and construction of cemented tanks for capturing rain water during the monsoons for later use by the inhabitants of the different islands. In addition, immediate steps should also be taken to clean out the existing wells which had been polluted by the Tsunami and to recharge the

same, so that the monsoonal rains can be fully utilized. If necessary, fresh wells may also be dug to augment the existing supply of water.

(ii) The dry rations being supplied to the Tsunami affected families be continued till the month of October 2007 or until the appeal is finally disposed of, whichever is earlier. While distributing the free rations the local administration may after holding an enquiry discontinue such supply to those families which were no longer in need of such help.

The Administration may also consider, providing two cylinders of cooking gas in place of one cylinder as is being currently supplied.

(iii) The fishermen who are still to receive replacement for the loss of their fishing boats should be provided with such replacement as quickly as possible after obtaining fresh options from them as to the type of boat which they would like to have.

(iv) The Local Administration should arrange for the setting up of the cold-storages at Campbell Bay and Car Nicobar.

(v) Rethinking should be undertaken with regard to the design of the shelters to be provided to the victims of the Tsunami upon considering the climatic conditions in the Islands. The possibility of construction of houses/huts in the traditional manner and design, using climate-friendly material, such as timber, should be explored.

(vi) The Local Administration should seriously consider the placement of more doctors, including a lady doctor in Campbell Bay and Car Nicobar, whose services could also be utilized in the other inhabited Islands where there are no medical facilities.

(vii) The State Legal Services Authority of the Islands in collaboration with the High Court Legal Services Authority of the Circuit Bench of the Calcutta High Court at Port Blair may consider the possibility of holding Lok Adalats in Tsunami affected Islands, both in the Andaman chain of Islands, such as Havelock, Neil, Mayabunder, Diglipur and in the Nicobar chain such as Campbell Bay, Kamorta, Teressa, Katchal, Hut Bay and Car Nicobar Islands to dispose of the cases which are pending in respect of compensation and for disposing of fresh claims, if any, in that regard.

(viii) In respect of persons whose agricultural lands remain submerged with sea water and are yet to receive compensation, the Local Administration may consider providing a job for one member of the family in keeping with the assurances given earlier.

Let the appeal be listed for final hearing in the second week of August, 2007 on a non-miscellaneous day.