

W. P. (PIL) No. 05 OF 2016

PETITIONER
ADVOCATE (S)
FOR ----- Mr. B. R. Pradhan, Senior Advocate, Amicus Curiae
with Ms. Tshering Palmoo Bhutia, Amicus Curiae.

RESPONDENT
ADVOCATE (S)
FOR -----

**W. P. (PIL) No. 05/2016
In RE: DEBACLE IN UPPER DZONGU**

BEFORE

**MR. JUSTICE SATISH K. AGNIHOTRI, CJ &
MRS. JUSTICE MEENAKSHI MADAN RAI, J.**

06. 27.10.16 Present: Mr. B. R. Pradhan, Senior Advocate (*Amicus Curiae*)
(Agnihotri, CJ) with Ms. Tshering Palmoo Bhutia, Advocate for the
Petitioner.

Mr. Karma Thinlay, Sr. Govt. Advocate with Ms.
Pollin Rai, Assistant Government Advocate for the
State.

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On 06.09.2016, considering the entire aspect of the
matter, we directed as under:

"We have considered the suggestions made by learned
Amicus Curiae and also the steps taken by the
authorities. We appreciate the immediate steps taken
by the authorities, however, much is required to be
done. Accordingly, as requested, we grant four weeks'
time to the State Government to consider the
suggestions made by the *Amicus Curiae* and submit a
detailed report indicating the steps taken by them for
permanent rehabilitation and also granting other
incidental reliefs, which are necessary for good living."

In response thereto, the Chief Secretary filed an
Affidavit, enclosing certain Reports without applying his
mind on the suggestions made by the learned *Amicus*
Curiae, as directed by us to examine and file a detailed
Report.

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On 05.10.2016, this Court, having examined various Reports filed by different Expert Bodies, passed the following order:

"On perusal of various Reports submitted by the National Disaster Management Authority (NDMA), National Hydroelectric Power Corporation Limited (NHPC), Central Water Commission (CWC), Department of Mines, Minerals and Geology, Government of Sikkim, Shri B.D. Patni, Ex-Chief Geologist (NHPC), Freeland Geological Consultant, all the expert bodies have unanimously recommended emptying the lake at the earliest. The Reports were received by the State Government in the first week of September, 2016. The Government is taking its own time to take a decision in the matter.

On perusal of the Report dated 03-09-2016 of the NHPC, we notice that the NHPC has reported that there is a well populated town named 'Dikchu', about 20 kms. downstream. The travel time for high water wave is expected to be less than 30 minutes which may not give time to the population to take steps and will result in loss of life and property.

The Central Water Commission (CWC) in its report has suggested that the stability of the landslide dam is not reliable and the lake is to be emptied at the earliest.

The National Disaster Management Authority (NDMA), in its Report has made the following recommendations: -

"8.0 Recommendations :

1. An immediate intervention is required to mitigate the probable risk of flash flood in Teesta River valley which falls in typical geo-tectonically active area.
2. All necessary precautionary measures should be taken up by State Government before and during period of intervention.
3. The volume of debris material accumulated at landslide site and cutting of slope from surrounding upstream and downstream valley due to sudden surge of water release may also be considered by CWC in dam break scenario of artificial dam in future."

In such a situation, the State Government is obliged to consider the reports and recommendation at the earliest and take a decision immediately since almost four weeks have already passed after receipt of reports from various authorities, but till date no decision appears to have been taken by the Government.

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The Government Authorities are directed to take requisite steps to ensure that the persons living in Dikchu and other towns downstream be informed in advance about any lurking danger and remedial measures may be taken to ensure that nothing untoward occurs.

List on 27-10-2016."

No response is filed till date.

Mr. Karma Thinlay Namgyal, Learned Senior Government Advocate appearing for the Respondents, seeks for one week time and is granted to file the Affidavit. We must make it clear that a direction to the Chief Secretary to file an Affidavit after examining the suggestions made by the learned *Amicus Curiae* is with a purpose that the Chief Secretary, being the Head of the State, representing the State Government, is required to apply his mind and file proper Affidavit, not by way of a covering letter, as it is done in the Affidavit dated 04.10.2016.

Call on 09.11.2016.

sd
Judge
27.10.2016

sd
Chief Justice
27.10.2016

jk/ds **Index : Yes / No**
 Internet : Yes / No