

ITEM NO.301

COURT NO.3

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 880/2020

DR. JOE JOSEPH & ORS.

Petitioner(s)

VERSUS

STATE OF TAMIL NADU & ORS.

Respondent(s)

IA No. 34931/2021 - APPLICATION FOR PERMISSION
 IA No. 115585/2020 - APPLICATION FOR PERMISSION
 IA No. 79129/2020 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 163559/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 161983/2021 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 159153/2021 - INTERVENTION APPLICATION
 IA No. 165569/2021 - INTERVENTION/IMPLEADMENT
 IA No. 159084/2021 - INTERVENTION/IMPLEADMENT
 IA No. 1136/2022 - INTERVENTION/IMPLEADMENT)

WITH

SLP(C) No. 3924/2021 (XI-A)
 (FOR ADMISSION and I.R. and IA No.32597/2021-EXEMPTION FROM FILING
 C/C OF THE IMPUGNED JUDGMENT)

W.P.(C) No. 771/2021 (PIL-W)
 (FOR ADMISSION .)

W.P.(C) No. 1225/2021 (PIL-W)
 (FOR ADMISSION and IA No.144692/2021-EXEMPTION FROM FILING O.T. and
 IA No.144691/2021-APPROPRIATE ORDERS/DIRECTIONS.)

W.P.(C) No. 86/2022 (X)
 (FOR ADMISSION and IA No.18290/2022-EX-PARTE AD-INTERIM RELIEF and
 IA No.18291/2022-APPLICATION FOR EXEMPTION FROM FILING ORIGINAL
 VAKALATNAMA/OTHER DOCUMENT)

Date : 08-04-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
 HON'BLE MR. JUSTICE ABHAY S. OKA
 HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Parties :

Mr. Tushar Mehta, SG
 Ms. Aishwarya Bhati, ASG
 Mr. Sanjay Jain, ASG
 Ms. Shradha Deshmukh, Adv.
 Ms. Manisha Chava, Adv.
 Mr. Rajat Nair, Adv.

Ms. Vanshaja Shukla, Adv.
Mr. Arvind Kumar Sharma, AOR

Mr. Jaideep Gupta, Sr. Adv.
Mr. G. Prakash, AOR
Mr. Jishnu M.L., Adv.
Ms. Priyanka Prakash, Adv.
Ms. Beena Prakash, Adv.
Mr. Anoop R., Adv.

Mr. Shekhar Naphade, Sr. Adv.
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Ms. Aishwarya Dhasi, Adv.
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Mr. Wills Mathews, Adv.
Mr. Mathen Joseph, Adv.
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Mr. Amlendu Kumar Akhilesh Kumar Jha, Adv.
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 Mr. Naresh Kumar, AOR

Mr. Satish Murthi, Adv.
 Ms. Uma Devi. M, AOR

Mr. C.R. Jayasukin, Adv.
 Ms. Divya Mishra, Adv.
 Ms. Suresh Kumari, Adv.
 Mr. Narender Kumar Verma, AOR
 Ms. Smitha Pandey, Adv.

Mr. Manoj V. George, Adv.
 Mr. Zulfiker Ali P. S, AOR
 Ms. Shilpa Liza George, Adv.
 Mr. Faisal M. Aboobacker, Adv.
 Ms. Lakshmi Sree P., Adv.
 Mr. Augustine Peter, Adv.
 Ms. Akriti Jai, Adv.

Mr. N. Subramaniyan, Adv.
 Mr. Pranav Sachdeva, AOR
 Mr. Jatin Bhardwaj, Adv.
 Ms. Neha Rathi, Adv

Mr. Prabu Ramasubramanian, Adv.
 Mr. Raghunatha Sethupathy B., Adv.
 Ms. Priya R., Adv.
 Mr. K. Paari Vendhan, AOR

**UPON hearing the counsel the Court made the following
 O R D E R**

1. During the pendency of these matters, a new law has been enacted by the Parliament titled "the Dam Safety Act, 2021¹", which has received assent of the President on 13.12.2021 and has been notified vide gazette dated 14.12.2021. As per the note filed by respondent No. 3, the appointed date for coming into force of the 2021 Act has been specified as 30.12.2021.

¹ for short, "the 2021 Act"

2. The 2021 Act deals with subjects which are broadly matters in issue in the present petitions such as surveillance, inspection, operation and maintenance of the Mullaperiyar Dam including for prevention of dam failure related disasters.

3. The 2021 Act predicates that multi-tier institutional mechanism be established for providing institutional mechanism to ensure the safe functioning of the concerned dam(s) and for matters connected therewith or incidental thereto. Section 5 mandates constitution of National Committee who is required to discharge functions delineated in Section 6 of the 2021 Act. For the purposes of surveillance, inspection, operation and maintenance of the dams such as Mullaperiyar Dam, which is the subject matter in these proceedings, the responsibility is fastened upon the National Dam Safety Authority² established under Section 8 of the 2021 Act. The functions of the Authority so established have been spelt out in Section 9 of the 2021 Act. Further, by virtue of the first proviso to Section 24(1) of the Act, the National Dam Safety Authority has also to act as the State Dam Safety Organisation for the purposes of this Act and to perform all duties and functions in relation to dam safety as relates the Dam in question.

4. Suffice it to observe that the sweep of the 2021 Act is very wide and comprehensive, as it focusses on

² for short, "NDSA"

all aspects regarding the safety of specified dams across the country, including the Mullaperiyar Dam. It also provides for objective standards for ensuring proper maintenance and institutional mechanism for safe functioning of the concerned dams and for matters connected therewith.

5. As regards the Mullaperiyar Dam, this Court vide its judgment titled as "***State of Tamil Nadu Vs. State of Kerala & Anr.***"³ had constituted a Supervisory Committee, consisting of three members, namely, one representative from the Central Water Commission and one representative each from the two States - Tamil Nadu and Kerala. That Committee has been functioning satisfactorily since then and discharging the task assigned to it, as mentioned in paras 229 and 230 of the reported decision.

6. However, after coming into force of the 2021 Act, a statutory dispensation needs to be put in place. We have been informed that a temporary structure of NDSA has been created by the Central Water Commission (CWC) under the Ministry of Jal Shakti, Government of India vide letter No. T-20/2/2021-DSM DTE/158-61 dated 30.03.2022. The establishment of a regular structure in the form of NDSA with all essential organisational and logistical facilities at its disposal is likely to take some more time. It would be desirable that the regular NDSA is put in place, which can

immediately take over the task of surveillance, inspection, operation and maintenance of the Mullaperiyar Dam and discharge the functions in that regard, as specified in Section 9 of the Act, as also, exercise all enabling powers invested in it under the 2021 Act. Until such time, we may have to continue with the present arrangement, as specified in the reported decision, namely, the Supervisory Committee discharging the task assigned to it in terms of direction given by this Court. At the same time, it may be in larger public interests to strengthen the Supervisory Committee, both in regard to its composition, as well as, scope of its functions to be brought in conformity with the provisions and powers of NDSA, as specified in the 2021 Act.

7. As certain issues have been raised in the present set of writ petitions/special leave petition/Applications, including by the locals residing in the downstream areas of the Dam in question, we deem it appropriate to accede to the suggestion given by the State parties to strengthen the Supervisory Committee until the regular NDSA becomes functional in terms of Section 8 of the 2021 Act, so that until such time, the reconstituted Supervisory Committee would be in a position to discharge all the functions and also exercise all the powers which otherwise are required to be exercised by the NDSA for ensuring safety of the

Mullaperiyar Dam, as also, prevention of dam failure related disasters.

8. For the purpose of strengthening the existing Supervisory Committee, we also accede to the suggestions given by the party-States that two technical experts be made part of the existing Supervisory Committee, one each from the State of Kerala and State of Tamil Nadu, who must be well-versed in dam management, reservoir operation, instrumentation, etc.

9. The party-States shall nominate their technical expert(s) not later than two weeks from today.

10. The reconstituted Supervisory Committee in terms of this order passed in exercise of our plenary powers under Article 142 of the Constitution, as aforesaid, shall in addition to complying with the directions given in the reported decision, also discharge all the functions of the NDSA delineated in Section 9 of the 2021 Act and also in the same manner exercise all its (NDSA's) powers for enforcement of the directions given by it from time to time.

11. It is stated by the learned counsel for the State of Tamil Nadu that there are certain pending works. It will be open for the State of Tamil Nadu to invite attention of the reconstituted committee to those pending works. We have no manner of doubt that the Supervisory Committee will examine that request

appropriately and take such decision, as may be necessary.

12. In other words, until the regular NDSA becomes functional, the Supervisory Committee, as reconstituted in terms of this order, shall be accountable for all matters relating to safety of the Dam including referred to in the 2021 Act and discharge the functions of NDSA specified in Section 9 of the 2021 Act.

13. We direct the concerned Ministry of the Government of India to extend all logistical assistance to the Supervisory Committee, to enable it to effectively discharge its functions and to exercise powers in terms of this order.

14. Needless to mention that the reconstituted Supervisory Committee will decide all outstanding matters related to Mullaperiyar Dam's safety and conduct a safety review afresh. For this purpose, it may frame terms of reference in accordance with the provisions of the 2021 Act.

15. In case of any operational issues arising during the execution of directions given by the Supervisory Committee, the Chief Secretary of the concerned State shall be personally responsible to ensure that every direction given by the Supervisory Committee (including of setting apart necessary funds or providing logistical assistance) is taken to its logical end without any exception.

16. In other words, the party-States must extend complete cooperation for ensuring that the directions given by the Supervisory Committee from time to time for the purpose of maintenance of the Mullaperiyar Dam and its safety, are complied with in prescribed time. Failure to do so will not only invite appropriate action for having violated the directions of this Court, but all concerned would be liable to be proceeded with under the 2021 Act. We say so because the Supervisory Committee, in terms of this order, is deemed to be discharging all the functions and powers of the NDSA until a regular NDSA becomes functional under the 2021 Act and more so, orders of this Court in that regard.

17. We express a sanguine hope that the competent authority may take appropriate steps to ensure that the regular NDSA under the 2021 Act is established at the earliest, as it cannot brook delay.

18. The Supervisory Committee may also entertain the representations or suggestions given by the locals and after examining the same in time bound manner, take appropriate measures, as may be advised.

19. We clarify that in absence of nomination of expert member by the State party, the Supervisory Committee shall be free to continue to discharge the task already assigned to it by this Court and also under the 2021 Act.

20. As aforesaid, this is only an interim arrangement until the “regular NDSA” under the 2021 Act becomes fully functional.

21. The matters be notified on 11.05.2022 for submitting compliance-cum-status report by the Supervisory Committee and for consideration of other reliefs.

22. In case of any exigency before the next date of hearing, it will be open to the parties/Supervisory Committee to approach this Court by way of a formal application in that regard.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER

(Signed reportable order is placed on the file.)