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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 24th June, 2021

+ W.P.(C) 7553/2015

8 HAJARA & ORS.

..... Petitioners

Through:

versus

GOVERNMENT OF INDIA

..... Respondent

Through: Mr. Kirtiman Singh, CGSC
for UOI with Mr. Waize Ali
Noor, Advocate
Mr. A.S. Chandhiok, Senior
Advocate as amicus curiae
with Ms. Neelam Deol,
Advocate

+ FAO 265/2014 & CM Appls. 39547/2019, 18352/2021

4 UNION OF INDIA

..... Appellant

Through: Mr. Jagjit Singh, Senior
Standing Counsel for
Railways with Mr. Preet
Singh, Ms. Shipra Shukla and
Mr. Vipin Chaudhary,
Advocates

versus

KIRAN KANOJIA

..... Respondent

Through: Ms. Punam Kumari, Advocate
along with respondent in
person.

+ FAO 403/2017

5 KIRAN KANOJIA

..... Appellant

Through: Ms. Punam Kumari, Advocate
along with appellant in
person.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Jagjit Singh, Senior
Standing Counsel for
Railways with Mr. Preet
Singh, Ms. Shipra Shukla and
Mr. Vipin Chaudhary,
Advocates

+ FAO 22/2015

6 GEETA DEVI

..... Appellant

Through:
versus

UNION OF INDIA

..... Respondent

Through: Mr. A.S. Chandhiok, Senior
Advocate as amicus curiae
with Ms. Neelam Deol,
Advocate

+ RFA 457/2017

7 CEMENT CORPORATION
OF INDIA LTD.

..... Appellant

Through: Mr. Manish Mohan and
Ms. Manisha Saroha,
Advocates

versus

MOHAN SINGH

..... Respondent

Through: Ms. Shanta Devi Raman,
Advocate
Mr. A.S. Chandhiok, Senior
Advocate as amicus curiae
with Ms. Neelam Deol,
Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. In all these cases, the Government raised false claims/ defenses before this Court which is a matter of grave concern. All these cases shocked the conscience of this Court. It appears that the false claims are raised with impunity because there is no accountability of any Government officer for raising the false claims and Courts seldom take any action against the person concerned for raising false claims/ defences.
2. This Court is of the *prima facie* view that whenever a false claim is raised by the Government, it causes immense injustice to the litigant seeking justice; it also puts unnecessary burden on the Court and the Government also suffers but the concerned officer who has raised the false claim, does not suffer any action. If the facts given by the officers are found to be false/incorrect by the Court, the Government shall consider taking action and the copy of the judgment be kept in the ACR file of the officer. This will ensure that the officer is held accountable for the actions taken by him in the

Court case. State of Sikkim has already framed the Rules for holding its officers accountable for the lapses in the handling of the Court cases, which are reproduced in para 3 below. There is a need to incorporate similar Rules by the Central Government as well as by the GNCTD.

3. The State of Sikkim has enacted *Conduct of the Government Litigation Rules, 2000*. Chapter-IV titled ‘*Civil Suit and Other Civil Proceedings*’ contains Rule 5 which deals with accountability of the officer handling the case, whereas Rule 18 deals with Fixation of Accountability

“Rule 5 - Accountability –

If any case is decided against the State Government and the failure of the case is due to inept and negligent handling of the case, the officer of the department who is engaged in handling the litigation on behalf of the department shall be held accountable.

xxx xxx xxx

Rule 18 - Fixation of Accountability -

If any lapses occur on the part of any agency of the prosecution, resulting in failure of cases, appropriate severe action shall be taken against him or her for such lapses”

(Emphasis supplied)

4. The State of Haryana has framed *State of Haryana Litigation Policy – 2010* to bring visible, enduring qualitative and quantitative improvement in the manner in which litigation is perceived, managed and conducted in the State. The national concern of pendency and delays in Courts needs to be reduced proactively. It states that the objective is to transform Government into an efficient and responsible litigant so that it manages and conducts litigation in

coordinated and time bound manner; ensure that good cases are won and bad cases not pursued needlessly and to reduce overall government litigation load in Courts thereby providing relief to the judiciary. It further states that the objective is to provide for a substantive mechanism which would *inter-alia* serve to monitor and control the implementation of the Policy, enforce accountability on and provide clarifications, to the implementers and stakeholders of the policy and to consider changes in the policy, depending on its performance and effectiveness.

5. As per *Legal Information Management & Briefing System* (LIMBS) which is a web-based portal developed by Department of Legal Affairs, Ministry of Law & Justice for monitoring and handling of various Court cases of Government Departments and Ministries 4,79,236 cases of Government, 2055 cases for compliance and 975 cases of contempt were pending as on June 08, 2021. Finance Ministry has highest number of 1,17,808 cases, whereas Railways has 2nd highest pendency with 99,030 cases.

6. Before discussing further, it would be appropriate to record the relevant facts of these cases.

Hajara v. Government of India, W.P.(C) 7533/2015

7. On 26th November, 2013 at about 12.18 A.M. a goods train broke at the dead end of the railway track of Old Delhi Railway Station and hit the boundary wall of the railway station whereupon the boundary wall collapsed which resulted in the death of three people who were sleeping on the pavement outside the boundary wall of the railway station. Two, out of the three dead persons, could

not be identified whereas the third dead person was identified as Shahnawaz.

8. The police registered FIR No. 265/2013 at P.S. Old Delhi Railway Station under Section 304A IPC. The police later filed the chargesheet against four employees of Railways in which the charges were framed by the Court. The Railways conducted an enquiry against the four employees who were held guilty and minor punishment was imposed on them.

9. The widow and the children of late Shahnawaz filed an application for compensation of Rs. 4 lakhs before the Railway Claims Tribunal which was vehemently contested by the Railways on the ground that there was no '*untoward incident*' under Section 123(c) of the Railways Act and therefore, the claimants were not entitled to any compensation under Section 124A of the Railways Act.

10. Vide judgment dated 28th October, 2014, the Railway Claims Tribunal accepted the Railways objection and dismissed the claim petition.

11. The petitioner, thereafter, invoked the writ jurisdiction of this Court to claim compensation for death of Shahnawaz.

12. On 23rd March, 2016, this Court requisitioned the original record of enquiry conducted by Railways as well as the record of FIR No.265/2013 under Section 304A IPC.

13. On 31st May, 2016, Railways produced the original record of the enquiry. Delhi Police produced the record of the FIR on 09th August, 2016.

14. The record produced by Railways contained a hand-written note dated 31st March, 2016 of Senior Divisional Operational Manager (Coaching) in which it was recorded that the DGM (Law) advised him to minimize the damage and contest the case despite being on weak legs. DGM (Law) further instructed to make an attempt to avoid the FIR being followed up by the High Court and the role of Government of NCT of Delhi should be eliminated. The note further recorded that the action has been taken on the said advice.

15. The aforesaid noting in the Railway record shocked the conscience of this Court and notice was issued to the officers. This Court appointed Mr. A.S. Chandhiok, learned senior counsel as amicus curiae to assist this Court on 31st May, 2016. Learned amicus curiae submitted comprehensive submissions and the relevant judgments before this Court.

16. Vide judgment dated 17th April, 2017, this Court awarded compensation of Rs.18 lakh along with interest @ 9% per annum to the petitioners. Railways complied with the said judgment and deposited Rs.20,81,540/- which was disbursed to the petitioners on 21st July, 2017.

17. On 26th May, 2017, DGM (Law) and Senior Division Operational Manager of Railways regretted the notings made in the official records whereupon notice dated 09th August, 2016 was discharged.

18. Learned amicus curiae has given comprehensive suggestions for directing the Government to frame a policy for holding the government officials for raising false claims before the Court.

Union of India v. Kiran Kanojia, FAO 265/2014 & Kiran Kanojia v. Union of India, FAO 403/2017

19. These appeals relate to a girl named Kiran Kanojia, daughter of a washerman, resident of a *jhuggi* at Faridabad. An NGO extended educational support to Kiran who completed her BCA and was employed in Infosys in Hyderabad. On 24th December, 2011, she was returning from Hyderabad by *Andhra Pradesh Sampark Kranti Express* to meet her parents. She was sitting on the lower berth near the gate when the train was passing slowly through Palwal station. A thief snatched her bag containing valuables and dragged her towards the gate of the coach and in the meanwhile, the accomplice of the thief pushed her from behind because of which she fell down from the train and her left leg got entangled in the footboard of the coach. Both the thieves ran away with the bag. Kiran cried loudly due to the pain whereupon passengers pulled the chain of the train and the train stopped. Kiran was pulled up in the train and the train moved to Old Faridabad Railway Station where the Railway officers and the police were present. Kiran was taken in a police jeep to Escort Fortis Hospital, Faridabad where her left leg was amputated below knee on 24th December, 2011. She was discharged on 05th January, 2012 and was again admitted for another surgery on 21st January, 2012 for debridement skin grafting. She

remained hospitalized from 21st January, 2012 to 27th February, 2012.

20. Kiran filed an application for compensation before the Railway Claims Tribunal which was vehemently contested by Railways on various grounds *inter alia* that she was not travelling in the train as alleged; even if she was travelling, there was no incident as alleged; even if there was an incident, she did not suffer any injury; even if there was injury there was no amputation and so on. Railways even disputed the reserved ticket with PNR Number, coach and berth of Kiran.

21. In view of the false defences raised by the Railways, Kiran had to lead evidence and after contesting, an award was passed on 25th April, 2014 whereby compensation of Rs.3 lakh was awarded to Kiran.

22. Railways challenged the award of compensation of Rs.3 lakh before this Court. During the course of hearing dated 11th August, 2017, this Court noted that false claims were raised before the Railway Claims Tribunal whereupon this Court directed the DGM (Law), Northern Railway to disclose on affidavit the names of the officers who dealt with this matter and raised a false defence. The affidavit dated 16th March, 2018 was filed in which three names of the officers were disclosed who had all retired from the service. Railway tendered an unconditional written apology on affidavit on 22nd May, 2018.

Geeta Devi v. Union of India, FAO 22 of 2015

23. In *Geeta Devi v. Union of India*, this Court noted that false claims have been raised in *Kiran Kanojia case*. This Court considered the need of accountability of Government officer(s) in Court cases. It was suggested by the *Amicus Curiae* that Railways should appoint a designated Law officer by name who shall take a decision and if it is found that he raised false claims, the adverse entry be made in his ACR record. This Court constituted a Committee on 02nd August, 2017 to consider framing the policy in respect of the legal cases of Railways before Railway Claims Tribunal. The relevant portion of the order dated 02nd August, 2017 is reproduced hereunder:

“3. *FAO 265/2014 titled Union of India vs. Kiran Kanojia is listed before this Court today. That case relates to a girl named Kiran Kanojia, daughter of a washerman named Bhikha Kanojia and resident of a jhuggi in Faridabad, who was picked up by a NGO who helped her in education whereupon she completed her BCA and got employment in Infosys at Hyderabad. After joining, she was coming back from Hyderabad to meet her parents by Andhra Pradesh Sampark Kranti Express, Train No.12707 (Coach No.S-5, Berth No.68 was holding valid ticket bearing PNR No.4654499444 reserved through Tatkal). She was sitting on the lower berth near the gate and the train was passing slowly through Palwal station when a boy snatched her bag containing the valuables and she was dragged with the bag towards the gate of the coach. In the meantime, the accomplice of the thief pushed her from behind due to which Kiran fell down from the train and her left leg got entangled with the footboard of the coach. Both the thieves ran away with the bag. Kiran was crying loudly due to the pain whereupon some passenger pulled the chain and the train stopped. One elderly person got down*

and tied Kiran's leg with a cloth and made her lie down from the train and she was taken out at Old Faridabad Railway Station where the T.T. of Railways took her to Escort Fortis Hospital, Faridabad in the police jeep where her left leg was amputated at below knee level on 24th December, 2011 and she was discharged on 05th January, 2012. She underwent another surgery on 21st January, 2012 for de-bridgement, skin grafting and plaster application. She remained hospitalised from 21st January, 2012 to 27th February, 2017.

4. *Kiran filed an application for compensation before the Railway Claims Tribunal which was contested by Railways inter alia on the following grounds: -*

- (i) The applicant was not holding any valid pass or ticket issued by Railway administration and was not travelling in the train as alleged and, therefore, is not a passenger within the meaning of Section 2(29) of the Railways Act.*
- (ii) The alleged incident is not covered under Sections 123, 124 and 124A of the Railways Act and therefore, the applicant is not entitled to any compensation under the law.*
- (iii) The application is totally vague as it does not disclose the full particulars of the incident.*
- (iv) The applicant has not suffered any financial loss or any kind of loss on account of the alleged injuries in the alleged untoward incident and is, therefore, not entitled to any compensation.*
- (v) The applicant's claim is exorbitant, imaginary and without any basis.*
- (vi) Even otherwise, the application is wholly misconceived, groundless and unsustainable in law.*
- (vii) The applicant has no legal or valid cause of action against the respondent and as such, the application is bad and deserves dismissal.*
- (viii) The application is totally baseless, false and it is a fit case where the Hon'ble Tribunal should exercise the jurisdiction vested under the law and dismiss the*

- application while imposing costs on the applicant.*
- (ix) *The Hon'ble Tribunal has no territorial jurisdiction to entertain and try the present application.*
- (x) *It is denied that the applicant was travelling from Secundrabad to Nizamuddin by A.P. Sampark Kranti Express and was sitting on the lower berth next to the exit gate while the train was passing slowly through Palwal Railway Station, one unknown gunda boy snatched her bag which contained her railway ticket and valuable and she was dragged towards the exit gate because of the force of snatching the bag or the other gunda boy pushed her from behind and thus she fell down out of the train and those boys jumped out of the train and both of them ran away with the bag as alleged. It is wrong and denied that the left leg of the applicant was badly injured because of its being entangled with the foot rest of the train and later on same night her left leg below the knee was amputated in Fortis Escorts Hospital, Faridabad. It is wrong and denied that the alleged incident had taken place on 24th December, 2011 near Palwal Railway Station as alleged. All such and other allegations are false and frivolous even to the own knowledge of the petitioner and there is no iota of truth therein.*
- (xi) *It is wrong and denied that the applicant was travelling with Tatkal reserved ticket dated 23rd December, 2011 booked on 22nd December, 2011 from Lingampaly Railway Station PNR 465499444 by sleeper class coach S-5 Berth 68.*
- (xii) *It is wrong and denied that the left leg of the applicant was amputated below knee on 24th December, 2011 or debridement and skin grafting was on 21st January, 2012 in Fortis Escorts Hospital by doctor Anuj Dogra or she remained under treatment from 24th December, 2011 to 05th January, 2012 and 21st January, 2012 to 27th*

November, 2012 as alleged. It is wrong and denied that because of amputation of left leg below knee causes problem in walking and working or because of having been pushed out of train and snatching of her bag cash Rs.20,000/- and gold chain worth Rs.32,749/- and other personal articles amounting to Rs.7,000/- were lost or total costs of alleged lost goods comes to Rs.59,749/-.

5. On 21st November, 2012, the learned Tribunal rejected the objection of territorial jurisdiction and framed the issues and directed the applicant to lead evidence whereupon the applicant filed her evidence by way of affidavit on 04th December, 2012.
6. Vide award dated 25th April, 2014, learned Claims Tribunal awarded compensation of Rs.3 lakh which is under challenge before this Court in FAO 265/2014.
7. This Court is of the prima facie view that there is no litigation policy of the Railways in respect of Railway claims cases and standard defences are raised in all the matters. There appears to be no prescribed mechanism to ascertain where their claim is genuine claim or not. Had there been any application of mind at any stage, the Railways authorities would have gracefully assisted the Railway Claims Tribunal to expeditiously pass the order.
8. Mr. Anoop J. Bhambhani, learned amicus curiae, suggests that the Committee appointed by this Court be directed to consider the present litigation policy of the Railways and if there is no such policy, a fair policy be framed by the Committee appointed by this Court with provision of accountability. Learned amicus curiae further suggests that whenever an application for compensation is filed, the Railways should appoint a designated officer by name, who should apply his mind and pass a reasoned decision as has been directed by this Court in the Modified Claims Tribunal Agreed Procedure formulated by this Court in **Rajesh Tyagi v. Jaibir Tyagi**, FAO 842/2003 vide order dated 12th December, 2014. Reference be made to para 19 of the Modified Claims Tribunal Agreed Procedure which

is reproduced hereunder:

“19. Duty of the Insurance Company to appoint a Designated Officer within 10 days of the receipt of the copy of DAR

Upon receipt of copy of the DAR, the Insurance Company shall appoint a Designated Officer within 10 days. The Designated Officer shall be responsible for dealing / processing of that case and to pass a reasoned decision in writing with respect to the amount payable to the claimants in accordance with law.”

9. *Learned amicus curiae further submits that the designated officer appointed by name in motor accident claim cases remains responsible for the decision taken by him and if the Claims Tribunal later finds that the designated officer had raised a false claim, the Claims Tribunal is competent to recommend an adverse entry in the service record of the officer.* Reference be made to para 29 of the Modified Claims Tribunal Agreed Procedure which is reproduced hereunder:

“29. Claims Tribunal shall deal with the compliance of the provisions in the award

In order to implement the new provisions for payment of compensation to the victim of the road accident within 90 days to 120 days of the accident, in true letter and spirit, the Claims Tribunal shall deal with the compliance of the new provisions in the award, especially as to whether there has been any delay or deficiency on the part of the Investigating Officer of the Police and/or the Designated Officer of the Insurance Company. In the event of any delay or deficiency on the part of the Investigating Officer of the Police, the Claims Tribunal may consider recommending adverse entry to be made in the service record of the concerned officer. In case of delay or deficiency on the part of the Designated Officer of the Insurance Company, the Claims Tribunal may consider recommending adverse entry to be made in

the service record of the concerned officer or impose cost/penal interest to be recovered from the salary of the officer in default. The format of the check list of the issues required to be dealt with by the Claims Tribunal in its award shall be in Form IV.”

10. *This Court is satisfied that it would be appropriate for the Committee appointed by this Court to consider the litigation policy of Railways with respect to the cases before the Railway Claims Tribunal. Joint Secretary, Centre-State, Ministry of Home Affairs; Mr. Kailash Prasad Yadav, Registrar, Railway Claims Tribunal; DIG, MAC, Railway Board and Ms. Punam Kumari, Advocate are added as members in the Committee.*
11. *The Committee shall consider the present litigation policy of Railways with respect to cases of death/injury of passengers in train accidents. Railways shall place the litigation policy, if any, as well as the data with respect to the number of pending cases before the Committee.*
12. *Mr. Anup J. Bhambhani, learned amicus curiae (sic) shall convene the meeting in this month.*
13. *List for considering the report of the Committee on 15th September, 2017 at 2.30 p.m.”*

(Emphasis Supplied)

M/s Cement Corporation of India Ltd. vs Mohan Singh, RFA No.457/2017

24. In this case, Cement Corporation of India took a property on lease in Nehru Place on rent for three years by rent agreement dated 01st March, 2008. In the meantime, the owner sold the property and the purchaser intimated the same to the Cement Corporation whereupon the Cement Corporation paid the rent to the purchaser. The rent was revised from time to time. The owner terminated the lease by notice dated 28th August, 2010 and upon failure of the Cement Corporation of India to vacate the said property, the owner instituted a suit for possession, recovery of rent and mesne profits.

25. Cement Corporation contested the suit on various grounds *inter alia* that the respondent was not the owner; lease was perpetual; respondent has no right to terminate; no notice of termination was received and there are two separate tenancies with rent was Rs.2,581.94 each i.e. below Rs.3,500/- and Cement Corporation is protected by Delhi Rent Control Act. The Trial Court rejected all the defences and passed the decree for possession and recovery of rent and mesne profits. The Cement Corporation challenged the judgment before this Court on the same defence as agitated before the Trial Court.

26. Vide order dated 17th May, 2017, this Court noted that Cement Corporation had raised false claims before this Court which is an offence under Section 209 IPC. This Court notified the Cement Corporation as to why action be not initiated against them for raising false claims.

27. On 07th August, 2017, the Cement Corporation handed over the possession. Cement Corporation also paid the arrears of rent and mesne profits on 12th September, 2017.

28. On 19th September, 2017, Cement Corporation regretted raising false claims before the Trial Court as well as this Court. It was further submitted that Cement Corporation has streamlined the procedure for handling of legal cases.

Submissions of Mr. A.S. Chandhiok on Accountability in Government litigation

29. This Court should take judicial notice of the fact that Government of India, State Governments and Public Sector

Undertakings are involved in more than 50% of the litigations pending in the Courts and are the biggest litigants. Experience shows that indifference of the Governments has been compelling the citizens in search of reliefs and thus, the Governments / Public Sector Undertakings enjoy the distinction of being the largest litigants in the Courts involving a big draw on public exchequer.

30. **Justice Krishna Iyer** in **Dilbag Rai v. Union of India**, AIR 1974 SC 130 took note of the absence of Litigation Policy and also commented upon the callous resistance to an action by Railways against their own employee. The Supreme Court observed as under:

“24. The judgement just delivered has my full concurrence but I feel impelled to make a few observations not only on merits but on the Governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country, the State is the largest litigant today and huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of state activity and responsibility it is unfair to expect final sense and sensibility in its litigation policy, the essence of which, in the present case, has led the railways callously and cantankerously to resist an action by its own employee, a small man, by arguing a mere technical plea which has been pursued right upto the summit court here and has been negated in the judgement justice pronounced.”

31. In **State of Punjab v. Geeta Iron & Brass Works Ltd.**, 1978

(1) SCC 68, the Supreme Court made the following remarks:

“We like to emphasise that Governments must be made accountable by Parliamentary social audit for wasteful litigative expenditure inflicted on the community by inaction...An opportunity for settling the dispute

through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in Court. We are constrained to make these observations because much of the litigation in which Governments are involved adds the case load accumulation in Courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in Courts of cases which deserve to be attended to."

32. In 126th Report of the Law Commission on "Government and Public Sector Undertakings Litigation Policies and Strategies" published in the year 1988, the Law Commission expressed the need of having a Litigation Policy to bring down the load on the Court system to save the public money and the judicial time besides expenses on the judicial set up. The relevant portion of the Law Commission Report is reproduced hereunder:

"1.9. The present Law Commission charged with a duty to recommend basic reforms in legal justice system was requested by its terms of reference to devise 'the desirability of formulation of the norms which the Government and public sector undertakings should follow in the settlement of disputes including a review of the present system for conduct of litigation on behalf of the Government and such undertakings. The very term of reference equates public sector with Government in the matter of litigation and seeks to distinguish both from individuals and private sector undertakings who indulge in litigation times without number. This subsumes that the Government and public sector undertakings must

have their own litigation policy and strategies and they must be devised with a view to encouraging avoidance of litigation and settlement of disputes by alternative methods. Litigation is generally believed to be an unproductive investment both in time and money. Public sector undertakings and the Government have to conserve the resources, determine priorities of expenditure by a judicious approach so that unproductive litigation does not eat away a large chunk of the scarce resources, smothering socially beneficial schemes for want of financial assistance. This cannot be done unless litigation policies and strategies, both by public sector undertakings and Government are worked out keeping in view the end that litigation has to be avoided at all costs. More the litigation, more the courts and, apart from the litigation costs which the State and public sector undertakings bear, the State has also to bear the expenses on setting up courts, providing personnel for manning judicial posts and other incidental expenses on staff, books, buildings, libraries, et. al. Avoid litigation or reduce it at any cost which would bring down the load on the court system, inevitably resulting in reduction of expenses of judicial set up.

1.10. The purpose of this report is to lay down broad guidelines on litigation policies and strategies of the public sector undertakings and the Government with a view to reducing litigation, saving avoidable costs on unproductive litigation, releasing the energies of officers held up in court work, reducing load on court system and thus realize the promise of Article 39A of the Constitution.”

33. Thirteenth Finance Commission, 2010 –2015 in Volume I of Report of December, 2009 noted that improvement of justice delivery system is a critical component. In context of the facts of abovementioned cases, it noted that the Government is the single largest litigant in the country and very large number of pending cases where either a State Government or the Central Government is

a party, which significantly adds to the burden of arrears. It further noted the necessity of all State Governments frame state litigation policies aimed at responsible litigation. It further noted that policy will include steps for reviewing the existing cases and wherever necessary, withdrawing cases identified as frivolous and vexatious and setting up of Empowered Committees to eliminate unnecessary litigation. States could formulate their State Litigation Policy based upon the National Litigation Policy. The relevant portion of Volume I of the Report of Thirteenth Finance Commission, 2010–2015 is reproduced hereunder:

“Improving Justice Delivery

The improvement of justice delivery is a critical component of the initiative to ensure better outputs and outcomes. This can be done by supporting the judiciary, while simultaneously strengthening the capacity of the law enforcement arm. We discuss here the support required to improve judicial outcomes. There are over 3 crore cases pending in various courts in the country today. At the very least, current filings need to be disposed off, to prevent accumulation of arrears. The enormous delay in disposal of cases results not only in immense hardship, including those borne by the large number of under-trials, but also hinders economic development.

xxx xxx xxx

Conditionality: The government is the single largest litigant in the country today. There are a very large number of pending cases where either a State Government or the Central Government is a party, which significantly add to the burden of arrears. It is necessary that all State Governments frame state litigation policies aimed at responsible litigation. The Central Government is planning to put in place a National Litigation Policy shortly. It is proposed that this policy will include steps for: (i) reviewing the existing cases and wherever necessary, withdrawing cases identified as

frivolous and vexatious; (ii) *formulating norms for defending cases as well as for filing appeals and (iii) **setting up of Empowered Committees to eliminate unnecessary litigation.*** States could formulate their State Litigation Policy based upon the National Litigation Policy. The grants will be provided in five equal annual instalments. The details of state-wise eligibility for these grants are placed in Annex 12.12. A state will be eligible to draw down instalments only if it puts in place a State Litigation Policy. Such a policy must be put in place by the State Government before the end of a fiscal year to be eligible to draw down the instalment for the succeeding fiscal years. This condition will not apply to the first annual instalment (2010-11) which can be drawn down without the policy in place. A state will thereafter be entitled to the grants only prospectively after framing its policy.”

(Emphasis Supplied)

34. Keeping in view 126th Law Commission's Report, and the observations made by the Supreme Court *inter-alia* in the above two judgements, the Government of India took steps to have a National Consultation with intent to have a view of all the stakeholders as to how to reduce the pendency and delays. Ministry of Law & Justice held a “National Consultation” for strengthening the judiciary towards reducing pendency and delays on 24th and 25th October, 2009 and had taken the opinion of all stakeholders to best tackle the problem. Resolution was presented post the said consultation and a National Litigation Policy, 2010 was formulated with a view to ensure conduct of responsible litigation by the Central Government and also urged the State Governments to evolve similar Policies.

35. On 23rd June, 2010, the Central Government launched a National Litigation Policy which was uploaded on the website of the

Law Ministry and was circulated vide Office Memorandum dated 29th -30th June, 2010. Relevant portion of the office memorandum is reproduced hereunder:

*“No.44(03)/2010-Judl.
Government of India
Ministry of Law & Justice
Department of Legal Affairs
Judicial Section*

*New Delhi dated the 29th/30th June, 2010
Office Memorandum*

Subject: National Litigation Policy, 2010.

The Resolution presented by Union Minister for Law & Justice in ‘National Consultation for strengthening the Judiciary towards reducing pendency and delays’ which was held on 24th and 25th Oct, 2009 acknowledged the initiative undertaken by the Govt. of India to frame a National Litigation Policy with a view to ensure conduct of responsible litigation by the Central Govt. and also urged every State Govt. to evolve similar policies.

To implement the said Resolution, Govt. of India have launched ‘National Litigation Policy’ on 23rd June, 2010. The text of the policy has been uploaded in the website of this Department www.lawmin.nic.in/legal.htm.

The purpose underlying the said policy is to reduce government litigation in Courts so that valuable court time would be spent in resolving other pending cases so as to achieve the goal in the national legal mission to reduce average pendency time from 15 years to 3 years.

To make the said policy successful, all stakeholders will have to play their part – the Ministry of Law & Justice, heads of various Departments, Law Officers and Govt. Counsel and individual officers concerned with litigation.

The details of Empowered Committee at the national level and Empowered Committees at the regional level as envisaged in Para 4 (D) of Chapter II of the policy would be communicated to all concerned in due course.

The Nodal Officers to be appointed by the Ministries/ Departments in pursuance of para 4 (B) of Chapter II have an important role to play in the overall and specific implementation of this policy. All Ministries/Departments are requested to nominate nodal officer to meet the requirements of the Policy.

In the said policy, guidelines have also been given regarding following:

- | | | |
|-------|---|--------------------|
| (i) | <i>Adjournments</i> | <i>Chapter III</i> |
| (ii) | <i>Pleadings/Counters</i> | <i>Chapter IV</i> |
| (iii) | <i>Filing of appeals</i> | <i>Chapter V</i> |
| (iv) | <i>Limitation: Delayed Appeals</i> | <i>Chapter VI</i> |
| (v) | <i>Alternative Dispute Resolution
Arbitration</i> | <i>Chapter VII</i> |

All the concerned are requested to go through the contents of the policy carefully and take necessary actions to implement the same in letter and spirit.

All the Chief Secretaries of the States and Administrators of Union Territories are also requested to take appropriate steps to frame a State Litigation Policy to deal with State Litigation.

Sd/-

(D.R. Meena)

Law Secretary

To

- 1) All Ministries/Departments of Government of India*
- 2) All Chief Secretaries of States/Administrators of UTs.*
- 3) All Law Officers (by name)*
- 4) Incharge, Central Agency Section,
Incharge Lit. (HC) Section and
Incharge, Lit. (LC) Section*
- 5) All Incharge of Branch Secretaries and
all incharge of Litigation in High Courts/
CATs/Subordinate Courts*
- 6) All Officers/Sections of Department of Legal Affairs*
- 7) NIC Cell to upload the OM in the website under a new
head 'Circulars pertaining to National Litigation Policy'."*

*with the request
to bring the
contents of the
OM to the
notice of all
counsel borne
on the Panel*

36. Thereafter in 2014-15, the Policy was sought to be reviewed and a new Litigation Policy, 2015 was sought to be formulated. The same has been observed by the Supreme Court in *Union of India v. Pirthwi Singh*, (2018) 16 SCC 363 that, “the website of the Department of Justice shows that the National Litigation Policy, 2010 is being reviewed and formulation of the National Litigation Policy, 2015 is under consideration. When this will be finalized is anybody's guess. There is also an Action Plan to Reduce Government Litigation which was formulated on 13th June, 2017.”

37. The aim of the National Litigation Policy is to transform the Government into an efficient and responsible litigant. The core issue involved in the Court cases need to be focused and the same have to be managed and conducted in a cohesive, coordinated and time bound manner with the aim to reduce government litigation in Courts. All substantial questions of law in relation to special Economic Laws in view of the changing scenario and economic activity so as to achieve the goal in the national Legal Mission.

38. The National Litigation Policy should imbibe into it the compulsory mediation process by the Government. India has, as its dynamic doctrine, economic democracy sans which critical democracy is chimerical. As a matter of fact, the Supreme Court has observed that even constitutional problems cannot be studied in a socio-economic vacuum, since socio culture changes are the change of the new values and slogging of old legal thought will be part of the process of the new equity loaded legality. The Judge is a social scientist in the role as a constitutional invigilator.

39. Same is the position with respect to in absence of an effective grievance-resolution mechanism and the Government and its instrumentalities fight their own employees even on technical pleas as observed by the Supreme Court quoted above. In ***Urban Improvement Trust, Bikaner v. Mohan Lal***, (2010) 1 SCC 512, the Supreme Court observed that:

“It is a matter of concern that such frivolous and unjust litigations by Governments and statutory authorities are on the increase. Statutory authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and high-handed manner. They cannot behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers are brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.” (para 5)
...“Unwarranted litigation by Governments and statutory authorities basically stems from the two general baseless assumptions by their officers.

They are:

- (i) All claims against the Government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.
- (ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the court and secure a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of Governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision-making, or worse, of improper motives for any decision-making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision-making to courts and tribunals. (para 10)

10. The objectives of the Litigation Policy inter alia should incorporate the following:

- (i) To ensure the Government is transformed from a compulsive litigation to an efficient and responsible litigant.
- (ii) Litigation is not resorted to or opposed for the sake of opposition and for the sake of litigation.
- (iii) Attempt to resolve the matter must be made compulsory for all its disputes and differences whether by Mediation or otherwise between the Government and the citizen or any other entity of any nature whatsoever.

11. The National Government Policy, 2010 inter alia had laid down or provides what Efficient Litigant means:

- Focusing on the core issues involve in the litigation and addressing of them honestly and squarely
- Managing and conducting litigation only when it is absolutely necessary and that too in a cohesive and coordinated manner.
- Unless the stakes in the matter are extremely law high or substantial questions of law are involved which only can be adjudicated upon by Hon'ble Court, resort to Alternative Dispute Resolution must be made.

12. The said policy also defines what Responsible Litigant means:

- That the litigation has not been resorted to for the sake of litigation
- False pleas and technical points are not taken and must be discouraged at all costs.
- The factual examination must be done by the person who has knowledge of the facts and he must place on record the correct facts with all relevant documents and then a law officer or a legal expert standing counsel may examine the same on the basis of the settled principles of law.

13. The Policy of 2010 also incorporates that the Government must be ceased to be a compulsive litigant. The philosophy that matters must be let to the Hon'ble Court must be discarded. The easy approach, "let the Court decide" must be eschewed and condemned.

14. The policy also underlined a need to reduce the number of cases and the government litigant and to bring down an average pendency of cases from 15 years to 3 years.

15. The policy also envisages that Nodal Officers would be appointed by heads of the Departments so that the policy is well implemented.

16. Accountability has been incorporated stating it to be of utmost importance and that too at various levels; at the level of officers, Incharge of litigation, those responsible for defending cases, all the lawyers concerned and Nodal Officers. The Policy envisages constitution of Empowerment Committees to monitor the implementation of the policy including accountability and responsibility fixed on the Nodal Officers and Heads of the Departments that all relevant data is sent to the Empowerment Committee. The Empowered Committee at the national was to be chaired by the Attorney General of India with Additional Secretary. Four Regional Empowerment Committees were constituted to be chaired by the then Attorney General of India nominated by the Ministry of Law & Justice

17. The regional Empowerment Committees were to send monthly reports to the National Empowerment Committees which in turn were to be submitted to the Ministry of Law and Justice.....The Empowerment Committee was also to deal with suggestions and complaints including that of litigations and the government department and take appropriate decisions in relation thereto. The Policy also envisages training programs, seminars and workshops with an effort to cultivate and instill values for effective government representation.

18. Post pandemic 2020 the Bench and the Bar has responded to the new era. Now the National Litigation Policy must also encourage though not substituting to e-filing, Video Conferencing so that wherever it is possible and advisable physical appearance can be dispensed with. This would save precious time of the officers of the Government who otherwise had to travel down to the Court to assist the lawyers and would also help maintain the resources of the Government.

19. IT Support through present LIMB system of monitoring to be continued but the Updation must be done every fortnight or every month.

20. The subject matter of this very appeal i.e. WP(C) 7553/2015 of this Hon'ble Court speaks volumes on the conduct of the officers/law officers seeking to raise the pleas both technical and otherwise which to their knowledge was not correct. This Hon'ble Court has already commented on the same. To avoid such instances, it is imperative to have a National Litigation Policy which should also be a guideline for the States and Union Territories to follow and to ensure that there is a uniformity in the policy of the Government, State or Central including the Public Sector Undertakings in their passing of the orders, institution of cases, defending the same and so on and so forth."

40. The presentation 'Action Plan to Reduce Government Litigation, Ministry of Law and Justice' dated 13th June, 2017 by

Department of Justice is available at <https://doj.gov.in/sites/default/files/action%20plan.pdf>.

41. The objective of the meeting noted that it is for considering steps that have been taken by the different departments to reduce pendency. The relevant portions of the said presentation is reproduced hereunder:

“As per the information available on the LIMBS website, as on June 12, 2017, 1,35,060 government cases (increased from 1,33,059 since last meeting on June 8, 2017) and 369 contempt cases were pending.

Railways with 66,685 cases pending has the highest number of pending cases- 10,464 cases are pending for more than 10 years.

xxx xxx xxx

*Best Practices of Some Ministries/Departments
DRDO/Defence Ministry - Ministry of Defence had constituted an expert committee in 2015 to monitor the cases and to analyse and propose changes to reduce litigation in service matters. Monthly monitoring of cases. Introduction of mediation at the prelitigation stage. Guidelines have been issued to the organisations/ autonomous bodies with a view to reduce litigation and contempt cases. Service headquarters have been designated certain powers and they have been empowered to take swift action in service matters.*

CBDT/Ministry of Finance - Income Tax Business Application- all the appeals are now filed online-no manual intervention. Determined Monetary Threshold for Filing of Appeals. A Collegiums of two CCIT has been formed and on their recommendations the pending appeals which are considered irrelevant are being withdrawn from the High Courts. Central Committee to Decide on Settled Issues In this regard circulars have been issued to the officers directing them to withdraw cases/appeals if it involves the issues identified by the committee and that no further appeal are filed on the same. Notices/circulars have been issued for

providing information on the same to general public. For the pending Appeal a two pronged approach is being followed: Based on the methods adopted 325 Cases of 100 crores and above were addresses and were disposed in the last 6-7 months.

CBEC/Ministry of Finance - Threshold Limit Defined for Filing of Appeals (exception a challenge made on the constitutional validity of any legislative provision or against any circular/notification of the Department) Pre SCN (Show Cause Notice) Consultation Settlement Commission Authority of Advanced Ruling: Public Limited Companies, Public Sector Undertaking, Joint Venture, Limited Legal Partnerships can approach the authority for seeking ruling in their dispute/cases. Such rulings are applicable to concerned party and commissioner of appeal. A limit of 70 cases has to be decided by the Department for disposal by the commissioner of appeal per month. Dedicated Panel of Advocates Planning to formulate more policies for fixing monetary limits for commissioner of appeals on the same terms as those set for CESTAT .”

42. Mr. Kirtiman Singh, learned Central Government Standing Counsel submits that there is no litigation policy of the Government at present. It is further submitted that the National Litigation Policy, 2010 was never implemented. It is further submitted that a writ petition for implementation of National Litigation Policy was rejected by this Court.

43. This Court is of the view that the directions with respect to the *Accountability in Government litigation* are in the nature of PIL and therefore, it would be appropriate to list this matter before the PIL Bench.

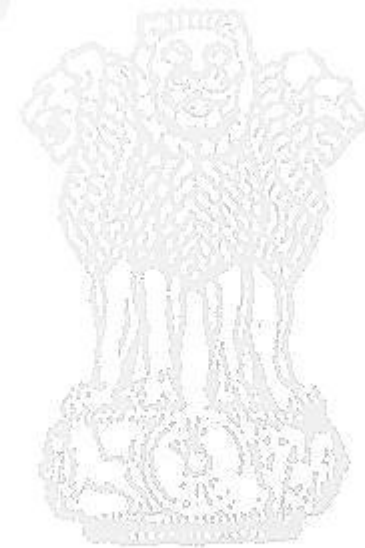
44. Subject to the orders of Hon'ble the Chief Justice, list this matter before Division Bench on 15th July, 2021.

45. It is further clarified that all these cases have already been decided on merits and therefore, need not be listed again before this Court.

46. This Court appreciates the very valuable assistance and comprehensive research done by Mr. A.S. Chandhiok, learned amicus curiae and Mr. Akshay Chowdhary, Law Researcher attached to this Court.

JUNE 24, 2021
ak/ds/dk

J.R. MIDHA, J.



नित्यमेव जयते