20.01.2021
item No.
42-45
Ct. No.1
AD & Saswata

WPA 6139 of 2020
with
IA NO: CAN 1 of 2020 (Old CAN 4415 of 2020)
with
CAN 2 of 2020
Sri Khayrul Anam Seikh
Vs.
State of West Bengal & Ors.
with
WPA 5480 of 2020
with
IA NO: CAN 1 of 2020 (Old CAN 3184 of 2020)
with
CAN 2 of 2021
Arjun Singh
Vs.
State of West Bengal & Ors.
with
WPA 6426 of 2020
with
IA NO: CAN 1 of 2020 (Old CAN 5051 of 2020)
with
CAN 2 of 2020
Dakshin 24 Pargana Jela Krishak Samity & Ors.
Vs.
State of West Bengal & Ors.
with
WPA 7561 of 2020
with
IA NO: CAN 1 of 2020
with
CAN 2 of 2020
Md. Mohasin Haque
Vs.
State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya
Mr. Samim Ahammed
Mr. Arko Maity
Ms. S. Bhattacharya
... For the Petitioners in
WPA 6426 of 2020

Mr. Arindam Jana
Mr. Siddhartha Shankar Mondal
Mr. Sudipta Dasgupta
Mr. Saptarshi Banerjee
... 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. Kishore Dutta, Ld. AG
Mr. Abhratosh Majumdar, Ld. AAG
Mr. Sirsanya Bandopadhyay
Mr. Sayan Sinha
… For the State

Mr. Y.J. Dastoor, ld. ASG
Mr. Arijit Majumder
… for the UOI

These applications are filed by the State of West Bengal seeking recalling/modification/ clarification of the order dated December 1, 2020, in a bunch of writ applications in which the primary complaint was as to erroneous channeling of funds meant for Amphan relief and also diversion of funds earmarked for Amphan relief schemes including the MGNREGA Scheme and allied matters.

When those matters came up for hearing on 25.11.2020, this Court had minuted an order *inter alia* to the following effect:

> "
>
> *……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.*
> *……………………”*

It was also recorded then that the writ petitioners had also complained about non-disclosure of the names of the beneficiaries of the schemes in public domain and this impinges upon the requirement to ensure transparency in the distribution of Amphan relief. We also noted that there was a submission that the State Government has the bounden duty to upload the scheme formulated for providing relief to the victims of Amphan. Thereafter, when the writ petitions were taken up on 01.12.2020, the order sought to be cancelled/modified/clarified was issued essentially noticing that the comprehensive consideration of the allegations as to misuse of funds could be better addressed by requisite financial and performance audit under the aegis of the Comptroller and Auditor General of India. We may here and now record that the said order was passed after hearing requisite submissions, though not in detail, because the attempt was only to pave way for requisite audit and not to adjudicate on any issues being raised either by the writ petitioners or the State Government or the Central Government. That order, *inter alia,* reads as follows:

> *"..................*
>
> *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 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.

…………….” (Emphasis supplied)

Learned Advocate General assisted by learned Additional Advocate General argued in support of the present applications by contending that the utilization certificates of funds could not be insisted upon before the end of the financial year and that even after funds were released by the Central Government earlier, further funds have been released and such release of funds would not have been done with concurrence of the Finance Ministry and the Ministry of Home Affairs unless the Union of India was satisfied of requisite and proper utilization of funds already released. We are dealing with funds which were flowing into the State through different mechanisms including the authorities under the Disaster Management Act. The National Disaster Management Fund and the State Disaster Management Fund and the modalities of movement of fund amounts spreading out through the National fund and the State fund are governed by the guidelines and orders issued from time to time by the competent authorities in the Government of India. Learned Advocate General also argued that the question of financial audit as has been ordered through the orders sought to be modified, could be carried forward only upon availability of utilization certificates and making requisite accounting by the State Government, before audit.

Per contra, learned Additional Solicitor General representing the office of the Comptroller and Auditor General of India and the Union of India submitted that the concept of utilization certificate is as regards the Authority which may release further funds for a particular project or projects on the basis of being satisfied that funds already released are shown to have been utilized. He points out that the directions contained in the order sought to be vacated/modified/clarified contains a direction as regards financial audit and performance audit for utilization of the Amphan relief either extended by the Central Government and operationalised through the State Government or otherwise, to ensure that there is an appropriate audit report on the performance as well as the accounts. He, therefore, says that due certification of the expenditure either with the support of utilization certificates or otherwise is not necessary to enable the Comptroller and Auditor General of India to continue with audit, be it financial audit or performance audit.

At the outset, we may refer to the order sought to be vacated/modified to reaffirm that what has been directed thereby, is financial audit and performance audit of the utilization of

Amphan relief either extended by the Central Government and operationalised through the State Government or otherwise. This can be seen pointedly from that part of the order for which we have supplied emphasis while quoting it above.

The question whether utilization certificate is *sine qua non* for going ahead with performance audit or financial audit is a matter best left to the auditors and the audit team under the Comptroller and Auditor General of India. As mentioned by the Bench in the order dated 25.11.2020 and also in the order that is sought to be vacated/modified, it will not be appropriate to treat such issues at the first instance by adjudication on the judicial table unless ultimately it becomes necessary after the competent authority dealing with audit speaks on it.

We are, therefore, of the view that there is no error apparent on the face of the order sought to be vacated/modified and what has been directed thereby is something which will achieve due audit of performance as well as accounts.

Coming to the issue of the time frame which has been fixed, we may notice that while this Court had required the audit to be completed by the Comptroller and Auditor General of India within an outer limit of three months from the date of receipt of a copy of the order, it will be open to the Comptroller and Auditor General of India to provide such feasible time frame as may be necessary to enable the State Government to provide such details and papers as are necessary for the purpose of audit. We may here recall that through the order sought to be modified/clarified, we had also recorded that the Comptroller and Auditor General of India may require further clarifications or directions from this Court, if it is found necessary and required for that office to carry forward the directions contained in the order sought to be clarified/modified.

While the State Government authorities cannot expect an unduly large time frame to facilitate the process of audit, be it a performance audit or an audit of accounts, they will be entitled to seek the indulgence of the Comptroller and Auditor General of India for such larger time frame to produce any particular document or documents as may be necessary in the course of audit. The Comptroller and Auditor General of India acceding to such request, will not in any manner be considered to be defiance of the time bound directions given in the order sought to be clarified/modified. However, the Comptroller and Auditor General of India will do the needful to complete the audit as directed, within a reasonable time. We clarify that the time limit fixed in the order is only to be treated as a directory guideline for the Comptroller and Auditor General of India and not otherwise.

These applications are ordered accordingly.

Since, we have not called for any affidavits in respect of the modification applications, the averments made therein shall be deemed not to be admitted by the other parties.

Accordingly, all the connected applications are disposed of.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)