

Item No. 06

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 86/2020

(With report dated 24.09.2020)

Gyan Prakash

Applicant

Versus

Ministry of Environment, Forest &  
Climate Change

Respondent

Date of hearing: 20.11.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s): Mr. Gyan Prakash, Applicant in person

Respondent(s): Mr. Satyalipsu Ray, Advocate for MoEF&CC

**ORDER**

1. This application has been filed to highlight the non-utilization of more than Rs. 800 crore meant towards Environment Relief Fund under the Public Liabilities Insurance Act, 1991 (PLI Act, 1991) for victims of accidents in the process of handling hazardous substances.

2. We may briefly refer to the background and scheme of the Act. The Act was enacted for provided immediate relief to persons affected by accident in handling hazardous substance, as shown by the long title.

The statement of objects and reasons for the Act are as follows:-

*“The growth of hazardous industries, processes and operations in India has been accompanied by the growing risks from accidents not only to the workmen employed in such undertakings, but also innocent members of the public who may be in the vicinity. Such accidents lead to death and injury to human beings and other living*

*beings and damage private and public properties. Very often, the majorities of the people affected are from the economically weaker sections and suffer great hardships because of delayed relief and compensation. While workers and employees of hazardous installations are protected under separate laws, members of the public are not assured of any relief except through long legal processes. Industrial units seldom have the willingness to readily compensate the victims of accidents and the only remedy now available for the victims is to go through prolonged litigation in a Court of Law. Some units may not have the financial resources to provide even minimum relief.*

*It is felt essential, therefore, to provide for mandatory public liability insurance for installations handling hazardous substances to provide minimum relief to the victims. Such insurance apart from safeguarding the interests of the victims of accidents would also provide cover and enable the industry to discharge its liability to settle large claims arising out of major accidents. If the objective of providing immediate relief is to be achieved, the mandatory public liability insurance should be on the principle of "no fault", liability as it is limited to only relief on a limited scale. However, availability of immediate relief would not prevent the victims to go to courts for claiming larger compensation."*

3. The Act provides for establishing an environment relief fund under Section 7 A to be vested in the authority specified by the Central Government. The amount is to be utilized in terms of award made by the Collector under Section 7 on any application by the victims. As per Section 6, the source of fund is the insurance premium to be paid by the owner handling any hazardous substance and liability to give relief is created under Section 3 on death or injury to any person or an accident involving hazardous substance. Section 5 provides for publication of an accident by the Collector and to invite applications from the victims. Rules lay down the procedure for giving effect to the Act. A scheme has been notified on 04.11.2008 under Section 7 A. The scheme provides that United India Insurance Company Ltd. shall be the Fund Manager for five years who shall open an account in a nationalized bank and credit the amount of premium received as well as the amount awarded by the

National Environment Tribunal (Now NGT). The relief fund is to be operated under para 5 and disbursement is under para 7 of the scheme in favour of the victims on the direction of the Collector. The Act is mentioned in Schedule I to the NGT Act, 2010 being one of the Acts in relation to which substantial questions of environment are to be determined by the NGT. Under Section 24 of the NGT Act, the amount of compensation under order of the Tribunal can be credited to the environment relief fund to be utilised for the victims of accidents of the nature mentioned earlier.

4. On 01.06.2020, considering the grievance that the funds are lying unutilized as the Collectors do not publish the accidents and victims are not aware of the remedies and relief available, the Tribunal sought a response from the MoEF&CC and also the plan for utilization of Environment Relief Fund. Accordingly, an affidavit has been filed on behalf of the MoEF&CC as follows:-

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7. *It is submitted that the Toxic substance regulation in India is largely a response to the Bhopal gas tragedy that occurred in December, 1984. The judicial response to Bhopal tragedy was Supreme Court judgment in the Shriram Gas Leak Case (M.C. Mehta Vs. UOI & Ors: WP(C) No. 12739 of 1985), where the Hon'ble court articulated a new standard of "Absolute / No-fault Liability". The plight of the victim in the aftermath of Bhopal also underscored the need for a simple compensation regime that would assure a subsistence for chemicals accident victims and their dependents.*
8. *The Ministry had notified the Public Liability Insurance Act, 1991, vide dated 23.01.1991 and the same was amended in 1992. The said Act was published to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any Hazardous Substance and for matters connected therewith or incidental thereto. Further the Ministry Notified Public Liability Insurance Rules, 1991 vide dated 15th May, 1991. A copy of the Rules dated 15th May, 1991 is annexed herein as Annexure A.*
9. *It is submitted that in exercise of the powers conferred by section 7A of the Public Liability Insurance Act, 1992, the*

Central Government made the Environment Relief Fund Scheme, 2008. A copy of the said Scheme is annexed herewith as Annexure-C.

10. It is submitted that under section 7A of the PLI Act, the Government has powers to set up the Environment Relief Fund (ERF). A Fund has been accordingly established by the Central Government under the scheme which is called Environment Relief Fund vide notification G.S.R. No. 768(E) dated 4th November, 2008(F/E). The Section 7A reads as follows:
  - i. The Central Government may, by notification in the official Gazette, establish a fund to be known as the Environment Relief Fund.
  - ii. The Relief Fund shall be utilized for paying, in accordance with the provisions of this Act and the scheme, relief under the award made by the Collector under section 7.
  - iii. The Central Government may, by notification in the Official Gazette, make a scheme specifying the authority in which the relief fund shall vest, the manner in which the fund shall be administered the form and the manner in which money shall be drawn from the Relief Fund and for all other matters connected with or incidental to the administration of the Relief Fund and the payment of relief there from.”
11. **It is submitted that, the Hon’ble NGT has directed MoEF&CC to file its response stating whether unutilized amount of Rs 574 Crores as alleged is available and if so, what is the plan of action to utilize the amount in accordance with the mandate of law. However, as per the information provided by the Fund Manager (UIICL), the total deposits in ERF as on 31.03.2020, is of Rs. 881 crores (approx.).**
12. It is submitted that the Act provides for 3rd party insurance for immediate relief on “no fault” principle. Section 3(1) of PLI Act 1991, covers death or injury to any person other than workman (General) Public or damage to property resulting from an accident while handling hazardous substance.
13. It is submitted that the Rule 4 (1) of the PLI Act 1991, mandate every owner to take out, before he starts handling hazardous substances (179 Chemicals and flammable substances), one or more insurance policies whereby he is insured against liability to give relief. Provided that any owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies as soon as may be and in any case within a period of one year from such commencement.
14. That the Rule 4 (2) of the PLI Act 1991, mandate that every owner shall get the insurance policy, referred to in subsection

*(1), renewed from time to time before the expiry of the period of validity thereof so that the insurance policies may remain in force throughout the period during which such handling is continued.*

15. *That section 5 of the PLI Act 1991, mandate the verification and publication of accident by collector, whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence of such accident and cause publicity to be given in such manner as he deems fit for inviting applications under sub-section (1) of section 6.*
16. *That the section 6 of the PLI Act 1991, mandate application for claim for relief. (1) The application for claim for relief may be made (a) by the person who has sustained the injury; (b) by the owner of the property to which the damage has been caused; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be. Provided that where all the legal representatives of the deceased have not joined in any such application for relief, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.*
  - (2) *Every application under sub-section (1) shall be made to the Collector and shall be in such form, contain such particulars and shall be accompanied by such documents as may be prescribed.*
  - (3) *No application for relief shall be entertained unless it is made within five years of the occurrence of the accident.*
17. *That section 7 (1) of the PLI Act 1991, mandate that on receipt of an application under sub-section (1) of section 6, the Collector shall after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid. The Collector shall have all the powers of Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Collector shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).*
18. *It is submitted that, a claim for relief can be claimed through the authority referred above in Para 15, The applicant who are eligible to make application for claim for relief is referred in para 16 and the procedure to claim the fund is mentioned in Para 17.*

*It is pertinent to mention herein that the funds available in ERF cannot be used for any other purposes as mentioned in para 15, 16 and 17.*

19. *That section 10 of the PLI Act 1991, mandate power of entry and inspection; Any person, authorised by the Central Government in this behalf, shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place, premises or vehicle, where hazardous substance is handled for the purpose of determining whether any provisions of this Act or of any rule or of any direction given under this Act is being or has been complied with and such owner is bound to render all assistance to such person.*
20. *That section 11 of the PLI Act 1991, mandate power of search and seizure; (1) If a person, authorised by the Central Government in this behalf, has reason to believe that handling of any hazardous substance is taking place in any place premises or vehicle, in contravention of sub-section (1) of section 4, he may enter into and search such place, premises or vehicle for such handling of hazardous substance.*
  - (2) *Where, as a result of any search under sub-section (1) any handling of hazardous substance has been found in relation to which contravention of sub-section (1) of section 4 has taken place, he may seize such hazardous substance and other things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act: Provided that where it is not practicable to seize any such substance or thing he may serve on the owner an order that the owner shall not remove, part with, or otherwise deal with, the hazardous substance and such other things except with the previous permission of that person.*
  - (3) *He may, if he has reason to believe that it is expedient so to do to prevent an accident dispose of the hazardous substance seized under sub-section (2) immediately in such manner as he may deem fit.*
  - (4) *All expenses incurred by him in the disposal of hazardous substances under sub-section (3) shall be recoverable from the owner as arrears of land revenue or of public demand.*
21. *That section 12 of the PLI Act 1991, mandate power to give directions; Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in exercise of its powers and performance of its functions under this Act, issue such directions in writing as it may deem fit for the purposes of this Act to any owner or any person, officer, authority or agency and such owner, person, officer, authority or agency shall be bound to comply with such directions.*
22. *That section 13 of the PLI Act 1991, mandate power to make application to courts for restraining owner from handling*

*hazardous substances; (1) If the Central Government or any person authorised by that Government in this behalf has reason to believe that any owner has been handling any hazardous substance in contravention of any of the provisions of this Act, that Government or, as the case may be, that person may make an application to a Court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate first class for restraining such owner from such handling.*

23. *That section 14 (1) of the PLI Act 1991, mandate penalty for contravention of sub-section (1) or subsection (2) of section 4 or failure to comply with directions under section 12.*

*(1) Whoever contravenes any of the provisions of 1[sub-section (1), sub-section (2), sub-section (2A) or sub-section (2C)] of section 4 or fails to comply with any directions issued under section 12, he shall be punishable imprisonment for a term which shall not be less than one year and six months but which may extend to six years, or with fine which shall not be less than one lakh rupees, or with both.*

*(2) Whoever, having already been convicted of an offence under sub-section (1), is convicted for the second offence or any offence subsequent to the second offence, he shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than one lakh rupees.*

24. *It is submitted that, further this Ministry had notified S.O. No. 227 (E) dated 24th March 1992, **the applicability of the Act is presently limited to only 179 hazardous chemicals, a class of Flammable Substances, criteria of which has been prescribed in Part 2 of the Table given in the Rules. These units are called Major Accident Hazard Units (MAH Units). A copy of the said Notification is annexed herein as Annexure-C.***

25. *It is submitted that under section 7A of the PLI Act, the Government has powers to set up the Environment Relief Fund (ERF). A Fund has been accordingly established by the Central Government under the scheme which is called Environment Relief Fund vide notification G.S.R. No. 768(E) dated 4th November, 2008(F/E). The Section 7A. reads as follows:*

*iv. The Central Government may, by notification in the official Gazette, establish a fund to be known as the Environment Relief Fund.*

*iv. The Relief Fund shall be utilized for paying, in accordance with the provisions of this Act and the scheme, relief under the award made by the Collector under section 7.*

v. *vi. The Central Government may, by notification in the Official Gazette, make a scheme specifying the authority in which the relief fund shall vest, the manner in which the fund shall be administered the form and the manner in which money shall be drawn from the Relief Fund and for all other matters connected with or incidental to the administration of the Relief Fund and the payment of relief there from.”*

26. *That, the MAH units shall contribute an amount equal to the amount of premium of the insurance policy to the Environment Relief Fund (ERF) to be created by the Central Government. The contribution shall be payable to the insurer only (two cheques of equal amounts) who in turn shall remit the amount to the ERF. **The ERF is for the eventuality where the immediate liability claims are more than the insurance amount. In such cases the claims beyond the insurance amount shall be paid through ERF and in case the award exceeds the total of the amount of insurance and ERF, the amount which falls short of shall be met by the owner. No limit has been prescribed for the claims money to be provided through ERF.”***

5. We have heard the applicant in person and learned counsel appearing for MoEF&CC.

6. Though it is acknowledged that an amount of Rs. 881 Crores has been deposited till 31.03.2020 with the Fund Manager, United India Insurance Company Ltd., there is no information whether any amount has been utilized. According to the applicant in person who has retired from the Central Government service, Ministry of Defence and is conversant with the issue, the fund is lying unutilized. The purpose for which law was enacted is not being achieved. The victims are suffering on account of ignorance and even Collectors who are required to publish information are not doing so. The applicant has filed *W.P (Civil) No. 1093 of 2019* in the Hon’ble Supreme Court for enforcing the Act which is said to be pending.

7. We find it to be travesty of justice that even after 29 years of the enactment of a laudable welfare legislation and inspite of deposit of huge



amount meant for the needy victims, the amount remains unutilized to the detriment of the victims for whose benefit the law was enacted. There is thus urgent need for bridging gaps in existence and enforcement of such law by all concerned. The MoEF being nodal Ministry may look into this aspect and take necessary action. Industrial chemical accidents lead to injury to workers and fatalities. There is need to link Liability Risk Policies to be taken by the industries under the PLI Act, 1991 with the consent conditions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as Environment (Protection) Act, 1986 and the Rules. SPCBs and PCCs may ensure that industries required to take policies under PLI Act, 1991 are not granted with Consents under the Water and Air Acts and the Authorization under Environment (Protection) Rules, 1986 till such a policy is obtained.

8. We also request the National Legal Service Authority and the State Legal Service Authorities, constituted under the Legal Service Authority Act, 1987, for assistance to the victims of injustice to access justice to look into the matter and take such action as may be found appropriate at their end.

The application is disposed of.

A copy of this order be forwarded to the MoEF&CC, NALSA, State Legal Services Authorities and Collectors of all the Districts in the country by email.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

November 20, 2020  
Original Application No. 86/2020  
(Earlier I.A. No. 154/2020)  
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