

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR
&
THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR**

Wednesday, the 30th day of October 2024 / 8th Karthika, 1946

WP(C) NO. 28509 OF 2024

PETITIONER:

**IN RE: PREVENTION AND MANAGEMENT OF NATURAL DISASTERS IN KERALA,
HIGH COURT OF KERALA, PIN -682031**

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001
2. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE INDIRA PARYAVARAN BHAWAN JORBAGH ROAD, NEW DELHI, PIN-110003
3. THE SECRETARY, DEPARTMENT OF MINING AND GEOLOGY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001
4. THE DIRECTOR, DIRECTORATE OF MINING AND GEOLOGY, KESAVADASAPURAM, PATTOM PALACE P.O., THIRUVANANTHAPURAM, PIN-695004
5. THE SECRETARY, MINISTRY OF MINES SHASTRI BHAWAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI, PIN -110001
6. THE STATE POLICE CHIEF, KERALA STATE POLICE HEAD QUARTERS, VAZHUTHACAUD, THIRUVANANTHAPURAM, PIN-695010
7. THE COMMISSIONER (*CORRECTED), OFFICE OF THE KERALA STATE DISASTER MANAGEMENT AUTHORITY, OBSERVATORY HILLS, VIKHAS BHAVAN P.O , THIRUVANANTHAPURAM * R7 CORRECTED AS (THE KERALA STATE DISASTER MANAGEMENT AUTHORITY, VIKAS BHAVAN P.O., NANTHANCODE, THIRUVANANTHAPURAM, KERALA, 695033, REPRESENTED BY ITS MEMBER SECRETARY AS PER ORDER DATED 09/08/2024 IN WP(C)), PIN-695033
8. THE SECRETARY, NATIONAL DISASTER MANAGEMENT AUTHORITY, NDMA BHAWAN, A-1, SAFDARJUNG ENCLAVE, NEW DELHI, PIN-110029
9. JAMES VADAKKAN, MANAGING TRUSTEE, CENTRE FOR CONSUMER EDUCATION KP 6/699 VADAKKAN BUILDINGS, MUNDANGAL.P.O, PALA, KOTTAYAM, PIN-686575
10. GEOLOGICAL SURVEY OF INDIA, REPRESENTED BY ITS DEPUTY DIRECTOR GENERAL, HAVING ITS LOCAL OFFICE AT 4TH FLOOR, C BLOCK, KENDRIYA BHAVAN, SEAPORT-AIRPORT ROAD, KAKKANAD, KOCHI, KERALA 68203.
11. NATIONAL CENTRE FOR EARTH SCIENCE STUDY, REPRESENTED BY THE DIRECTOR, AAKKULAM, THIRUVANANTHAPURAM, POST BOX NO.7250, KERALA-695011.
12. THE SURVEY OF INDIA, REPRESENTED BY THE SURVEYOR GENERAL OF INDIA, OFFICE OF THE SURVEYOR GENERAL OF INDIA, HATHIBARKALA ESTATE, DEHRADUN-248001
13. THE STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY (SEIAA) KERALA, K.S.R.T.C BUS TERMINAL COMPLEX, 4TH FLOOR, THAMPANOR, THIRUVANANTHAPURAM - 695 001

14. THE COASTAL ZONE MANAGEMENT AUTHORITY, THAMPANOR, KSRTC BUILDING, 4TH FLOOR, OVERBRIDGE, THAMPANOR, THIRUVANANTHAPURAM, ADDL. R10-R14 ARE IMPEADED AS PER ORDER DATED 09.08.2024 IN WP(C)KERALA 695001.
15. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF ROAD TRANSPORT AND HIGHWAYS, TRANSPORT BHAWAN, 1, PARLIAMENT STREET, NEW DELHI-110001.
16. NATIONAL HIGHWAY AUTHORITY OF INDIA, G 5 & 6, SECTOR 10, DWARAKA, NEW DELHI - 110075, REPRESENTED BY ITS CHAIRMAN
17. CENTRAL WATER COMMISSION, 3RD FLOOR, (SOUTH, SEWA BHAVAN, RK PURAM, SECTOR-1, NEW DELHI - 110066, REPRESENTED BY ITS SECRETARY.
18. INDIAN NATIONAL CENTRE FOR OCEAN INFORMATION SERVICES (INCOIS), "OCEAN VALLEY", PARAGATHI NAGAR (BO), NIZAMPET(SO), HYDERABAD - 500090, TELANGANA, INDIA, REPRESENTED BY ITS DIRECTOR.
19. NATIONAL REMOTE SENSING CENTRE, DEPARTMENT OF SPACE, GOVERNMENT OF INDIA, HYDERABAD - 500037, TELANGANA, ADDL.R15 -R19 ARE IMPEADED AS PER ORDER DATED 16.08.2024 IN WP(C).
20. THE KERALA STATE LEGAL SERVICES AUTHORITY, REPRESENTED BY ITS MEMBER SECRETARY, HIGH COURT COMPOUND, ERNAKULAM, 682031 IS IMPEADED AS ADDL.R20 AS PER ORDER DATED 04.10.24 IN WP(C) 28509/24
21. THE ELECTION COMMISSION OF INDIA, REPRESENTED BY THE PRINCIPAL SECRETARY, NIRVACHAL SADAN, ASHOKA ROAD, NEW DELHI - 110001. (IMPEADED SUO MOTU AS ADDL.R21 AS PER ORDER DATED 25.10.2024 IN WP(C)28509/2024)
22. SAYIR A, (SOUGHT TO BE IMPEADED), AGED 45 YEARS, C/O ABDUL RAHIM A ADATHODI MUNDAKAI, VELLARIMALA, WAYANAD.
23. HAMZA T, (SOUGHT TO BE IMPEADED), AGED 55, S/O SAIDALI, THAZHETHODY, MEPADI P.O, WAYANAD, KERALA.
24. BIBIN K AUGASTIAN (SOUGHT TO BE IMPEADED), AGED 29, S/O AUGUSTY, KODIYANKUNNIL, THONICHAL, NALLOORNAD P.O, WAYANAD.

Writ Petition (Civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to 1) to call for the records leading to ext-p8. 2) to direct the 8th respondent to call for the records leading to the order ext-p8, call for the records of the parties and then to conduct a site inspection and verify the village records, and after obtaining all the said records, to measure the properties and then to submit a report, with the plan and the resurvey details, to denote as to the extent of property that the 7th respondent has, 3) to see it that no further constructions are perpetrated by the 7th respondent, in the disputed property unless the controversy stands resolved, pending consideration of the above writ petition in the interest of justice.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 25-10-2024 and upon hearing the arguments of M/S IN RE: PREVENTION AND MANAGEMENT OF NATURAL DISASTERS IN KERALA, (Party-In-Person) Advocates for the petitioners, M/S. GOVERNMENT PLEADER, SRI. K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL, SHRI.C.E.UNNIKRISHNAN SPL. G.P TO A.G, ADVOCATE GENERAL

OFFICE KERALA, SHRI.V.MANU, SENIOR G.P., for R1 to R7 and M/S. JOHNSON MANAYANI & BENHUR JOSEPH MANAYANI, Advocate for R9, SRI. SUVIN R MENON, CENTRAL GOVERNMENT COUNSEL, for R10, SRI. ACHUTH KRISHNAN R, CENTRAL GOVERNMENT COUNSEL for R12, SRI.PRAKASH M.P., STANDING COUNSEL,KCZMA, for R14, SRI. V.RAMKUMAR NAMBIAR, Advocate for R20, SRI. DEEPU LAL MOHAN,STANDING COUNSEL,for R21, M/S. P.A.MOHAMMED SHAH, RENOY VINCENT, SHAHIR SHOWKATH ALI, CHELSON CHEMBARATHY, MUHAMED JUNAID V., ADITH KRISHNAN.U., SHERIN SHERIYAR, NANDA SURENDRAN & SAHAL SHAJAHAN, Advocate for R22 and of SRI. P.A.MOHAMMED SHAH, Advocate for R23 & R24, the court passed the following:



DR. A.K.JAYASANKARAN NAMBIAR, J.
&
K.V. JAYAKUMAR., J.

W.P.(C).NO.28509 OF 2024

Dated this the 30th day of October, 2024

ORDER

Dr. A.K. Jayasankaran Nambiar, J.

Re: Report Nos.1 & 8 of the Amicus Curiae

The *Amicus Curiae* has submitted Report No.1(A) pointing out aspects that were flagged in Report Nos.1 and 8 that remain unaddressed in the responses filed by the respondents concerned. The details are as follows:

Sl. No.	Suggestion	Response from respondent
1	Consider the possibility and necessity of including additional subject experts in the NDMA and SDMA	Union and State Government to respond (Respondents No.1 and 2)
2	Preparation of disaster management plan as contemplated for each departments in the Union and State Government as is statutorily mandated under 37 of the Disaster Management Act.	Union and State Government to respond (Respondents No.1 and 2)
3	Ensure in the annual budget funds for disaster management in each department for carrying out the activities and programs set out in respective department as mandated under Sec 38 of the Act.	Union and State Government is to respond (Respondents No.1 and 2)
4	The construction of public buildings to be after satisfying the check list as recommended in the annual report submitted by the State Disaster Management Authority	State Government to respond (Respondent No.1)
5	Necessary changes in the Kerala panchayat and	State Government to

	building rules for addressing the possibility of earthquakes in view of the recommendation of the Disaster Management Authority which is mandatory under Sec 64 of the Disaster Management Authority.	respond.
6	Self-certification by the concerned department and local self-government institutions, before sanctioning of the construction of building or construction project for or regulated by the State Government as mandated under Annexure 1 Circular dated 18.12.2023.	State Government to respond.
7	Disaster management plan and implementation of effective steps to prevent landslips in construction of National Highways in the State of Kerala	National Highway Authority of India to respond (Respondent No.16)
8	National Disaster Management Authority to sanction amounts from NDRF for the relief and rehabilitation efforts in consultation with the 1 st respondent State of Kerala, 2 nd respondent Union of India and 7 th respondent the Kerala State Disaster Management Authority.	National Disaster Management Authority to respond (Respondent No.8)
9	Sanction amounts from PMRF in consultation with the 1 st respondent towards the reliefs and rehabilitation.	Union of India to respond (Respondent No.2)

The response of the State Government to the unaddressed issues flagged by the *Amicus Curiae* has since been filed by the 7th respondent and states as follows:

“2. SI.No.1 - Possibility and necessity of including additional subject experts in SDMA: In response to the Report No. 1 of learned Amicus Curiae, vide Paragraph 2 of the Statement filed by R7 on 23.8.2024, the following was submitted for the consideration of Hon'ble court. “Earlier Report No. 1 dated 14.08.2024 was also filed wherein it was submitted that the Disaster Management Authorities at the National, State and District Levels do not have significant number of experts. Here it may be submitted that Section 14(2) (b) of the Disaster Management Act, 2005 reads “other members, not exceeding eight, to be nominated by the Chairperson of the State Authority”, which shows that the matter is the discretion of the Chairperson of the State Disaster Management Authority. Kerala State Disaster Management Authority has professionals working as Hazard Analysts, Sectoral Specialists and Local Self Government Disaster Management Plan Coordinators”.

3. SI.No.2 - Presentation of Disaster management Plan of Departments: In response to the Report No.1 of learned Amicus Curiae, vide Paragraph 4, in page 5 of the Statement filed by R7 on 23.8.2024, the following was

submitted for the consideration of Hon'ble court. "To enable Departments of the State to prepare and submit departmental disaster management plans trainings have been carried out since 14.12.2018 continuously for 15 departments which has formed virtual cadre for disaster management created vide GO (Rt) No.902/2022/DMD/ dated 24.12.2022. The process of preparing departmental disaster management plan is ongoing in these departments".

4. Sl.No.3 - Ensure annual budget funds for disaster management in each department: A detailed reply will be furnished on 8.11.2024.

5. Sl.No.4 - Construction of public buildings to be after satisfying the check list as recommended in the annual report submitted by the State Disaster Management Authority: This Hon'ble Court in WP(C) No.41159/2022 directed the Government to issue the check list as a circular. Accordingly, the Government vide Circular No.DMBI/82/2023/DMD dated 18-12-2022 issued the "Standardization of the process of integrating the measures for prevention of disaster and mitigation" (<https://sdma.kerala.gov.in/wp-content/uploads/2024/01/Circular-DMB1-82-Natural-Disaster-Impact-Assesment-Checklist.pdf>). The circular states the following in the last paragraph. "The directions issued under Section 22(2)(h) of Disaster Management Act, 2005 as given in the Kerala State Disaster Management Plan for strict compliance by all departments and local self-governments are hereby reiterated. All authorities will ensure that annexure 11 of the Kerala State Disaster Management Plan in the detailed project report as a self-certification by the Department/Local Self-Government are implemented without fail.

6. Sl.No.5 - Necessary changes in the Kerala Panchayath/Municipal Building Rules for addressing the possibility of earthquakes in view of the recommendations of the SDMA which is mandatory under Section 64 of the Disaster Management Act, 2005: As it involves legislative changes, a status report will be furnished to Hon'ble Court on 8-11-2024.

7. Sl.No.6 - Self certification by the concerned department and local self-government institutions: This Hon'ble Court in WP(C).No.41159/2022 directed the Government to issue the check list as a circular. Accordingly, the Government vide Circular No.DMBI/82/2023/DMD dated 18-12-2022 issued the "Standardization of the process of integrating the measures for prevention of disaster and mitigation" (<https://sdma.kerala.gov.in/wp-content/uploads/2024/01/Circular-DMB1-82-Natural-Disaster-Impact-Assessment-Checklist.pdf>) The circular states the following in the last paragraph "The directions issued under Section 22 (2) (h) of Disaster Management Act, 2005 as given in the Kerala State Disaster Management Plan for strict compliance by all departments and local self-governments are hereby reiterated. All authorities will ensure that annexure 11 of the Kerala State Disaster Management Plan in the detailed project report as a self-certification by the Department/Local Self-Government are implemented without fail".

As respondent Nos.2, 8 and 16 are yet to file their response in the matter, they are directed to file additional affidavits addressing the aspects yet to be addressed by them, positively by the next date of hearing.

Re: Report No.3 of the Amicus Curiae

By our order dated 23.08.2024, we had sought the response of the 2nd respondent Union of India on the suggestion of the *Amicus Curiae* regarding the constitution of an Environmental Relief Fund under Section 7(7A) of the Public Liability Insurance Act, 1991.

2. Through a statement filed by the Senior Panel Counsel on behalf of the 2nd respondent, it is stated as follows in relation to the above suggestion of the *Amicus Curiae*:

"17. In Point 3 of Report No.3, *Amicus Curiae* submitted the following to the Hon'ble Court

"Hence it is submitted that the 2nd respondent Union of India may be directed to submit the possibility of constitution of an environment Relief under Sec.7 (7A) of the Public Liability Insurance Act 1991."

In this regard, it is most respectfully 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. That, 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.

18. It is further submitted that the Ministry had notified S.O. No. 227 (E) dated 24th March 1992, which states that the applicability of the Public Liability Insurance 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 said notification. A true copy of the said Notification S.O. No. 227 (E) dated 24th March 1992, issued by the Ministry of Environment, Forest and Climate Change is produced herewith and marked as Annexure R2(f).

19. That in exercise of the powers conferred by section 7A of the Public Liability Insurance Act, 1991, an Environment Relief Fund (ERF) has been established by the Central Government under the scheme which is called Environment Relief Fund Scheme, 2008 vide notification GSR No. 768(E) dated 4th November, 2008. A copy of the said Scheme is annexed herewith as Annexure R2(g). Section 7A of the Public Liability Insurance Act, 1991, reads as follows:

“(1) The Central Government may, by notification in the official Gazette, establish a fund to be known as the Environment Relief Fund.

(1A) There shall be credited to the Relief Fund established under subsection (1)- [as amended vide No. 32 of Jan Vishwas Act, 2023,) the amount as prescribed in sub-section (2C) of section 4; the amount of penalty imposed under this Act; the interest or other income received out of investments made from the Fund; and any other amount from such sources, as may be prescribed.

(2) 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.

(3) 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.”

That, an owner unless exempted under sub-section (3) of section 4 of the Act, 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.

20. That the Public Liability Insurance Act provides for 3rd party insurance for immediate relief on "no fault" principle. That, Section 3(1) of Public Liability Insurance Act 1991, covers death or injury to any person (other than workman) or damage to property resulting from an accident while handling hazardous substance."

3. Through Report No.3 (A) submitted by the *Amicus Curiae*, we are now informed that there have been discussions held across the country to explore the possibility of introducing Risk Insurance Schemes to cover natural disasters of the kind dealt with in the cases before us. The details of various programs and initiatives are enumerated in the report. The question that needs to be asked is whether the time has come for the State of Kerala to implement a parametric insurance scheme in collaboration with the Union of India and other stakeholders including private insurance companies to tide over the financial constraints perceived by the State in the immediate aftermath of natural disasters ?

4. Through a statement filed by the 7th respondent today on behalf of the State Government, it has been stated as follows:

"2. Considering the increasing impact of disasters and climate change, the Government of Kerala decided to study the possibility of the risk transfer mechanism for disaster financing in the State, to be prepared against the financial shocks that impact the State due to such events.

3. The Government have constituted a committee as per order G.O. (Rt) No.256/2021/DMD dated 20/02/2021 (Annexure I) with the following members:

- a) Dr. K. Ravi Raman, Member, Kerala State Planning Board:
Chairperson
- b) Dr. A. Kowsigan IAS, Commissioner Disaster Management,
KSDMA

- c) Shri. Gokul G. R. IAS, Officer on Special Duty (in-charge of Secretary, Resources), Government of Kerala.
- d) Shri. G. Srinivasan, Director, National Insurance Academy, Pune.
- e) Professor Ajit Dayanandan, College of Business & Public Policy, University of Alaska, USA
- f) Dr. Steward Doss, Associate Professor, National Insurance Academy, Pune.
- g) Dr. L. Anitha Kumari, Associate Professor, Gulati Institute of Finance and Taxation, Thiruvananthapuram.

4. The terms of reference of the committee were:

- a) To assess the disaster risk exposures and existing risk financing mechanisms in the State.
- b) Examine pros and cons and describe disaster risk financing strategies including insurance / reinsurance solutions and alternative mechanisms.
- c) Develop a sustainable disaster risk financing structure after the evaluation of various sources of risk financing options and fund-raising methods for disaster risk protection in the State.
- d) Suggest the necessary supervisory and regulatory guidelines for the effective implementation of disaster risk financing strategy.
- e) Suggest measures to develop a comprehensive disaster risk financing framework with necessary administrative and technological structures for effective delivery in the short and long terms.

5. The committee submitted its report on 30.6.2021.

6. Based on the report, the Government decided to engage a Consultancy to 'Develop State Disaster Risk Financing Strategy', and the same was awarded to M/S Risk Management Solutions India Pvt. Ltd and National Insurance Academy (NIA) vide GO (Rt) No.490/2023/P&EA dated 27-12-2023. Vide GO (Rt) No.186/2024/P&EA dated 24-5-2024 a committee for evaluating deliverables from the consultants was constituted. The final report is expected by February 2025.

7. One of the major deliverables of the consultancy is "Component 4 : Design of parametric indices for financial transactions with focus on housing sector and Government Buildings - A report presenting (i) the methodology for the design of prototype (first generation and second generation) parametric risk transfer products for each major peril; and (ii) the proposed prototype parametric risk transfer products".

8. The office of State Disaster Management Authority will examine the final report and advise the Government on appropriate steps in a time bound manner."

The learned Advocate General therefore suggests that we await the final report of the Committee.

Re: Report No.11 of the Amicus Curiae

Through the aforesaid report filed on 28.10.2024, the *Amicus Curiae* has suggested issuing a direction to the 2nd respondent Union of India and the 8th respondent National Disaster Management Authority to declare the landslide of 30.09.2024 at Mudakkai and Chooralmala in Wayanad District as falling under the L3 category. The report indicates that the categorization of natural disasters by the NDMA is usually in line with the categorization done by the United Nations Office of Disaster Risk Reduction [UNISDR, 2009], and if so, taking note of the lives lost in Wayanad, apart from the loss to livestock, crop, land and property, together with destruction of roads and bridges, the categorization of the natural disaster must inevitably be as L3. It is pointed out that in the event of categorization of the natural disaster as L3, there will be an enhancement in the relief measures that are made available to the State.

2. The aspects pointed out in Report No.11 have in fact already engaged the attention of this Court on an earlier occasion, and we were informed by Sri.A.R.L.Sundaresan, the learned senior panel counsel appearing for the Union of India that the decision of a High Level Committee on the said aspect is expected within two weeks. Under the

said circumstances, we feel it would be prudent to await the decision of the said Committee before issuing any further direction in the matter.

Post on 15.11.2024.

**Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

prp/30/10/24



**Sd/-
K.V. JAYAKUMAR
JUDGE**