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SUPREME COURT STAYS CONSTRUCTION ACTIVITIES IN UNION TERRITORIES AND STATES UNTIL A SOLID WASTE MANAGEMENT POLICY HAS BEEN FRAMED

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A division bench of the Supreme Court of India (Court), comprising of Justice Madan Lokur and Justice S. Abdul Nazeer, has, In Re: Outrage as Parents End Life After Child's Dengue (SMW (c) No. 1 of 2015), stayed all construction activities in certain Union Territories (UTs) and States until a solid waste management policy has been framed as required under Rule 11 of the Solid Waste Management Rules, 2016 (SWMR 2016).

Background

On 16 September 2015, the Supreme Court took *suo moto* cognizance of an incident based on a newspaper report titled "Outrage as parents end life after child's dengue death" (Suo Moto PIL), published in a national daily. The newspaper reported about the suicide of a couple who were bereaved by the loss of their son due to dengue. This report led to widespread outrage across the country and condemnation of the municipal authorities, who had failed to take effective steps to dispose of solid waste. The accumulation of solid waste was believed to be one of the primary reasons for the outbreak of vector-borne diseases like dengue.

During this period, the Central Government, vide notification S.O. 1357(E) dated 8 April 2016, in exercise of the powers conferred by Sections 3, 6 and 25 of the Environment (Protection) Act, 1986 and in supersession of the Municipal Solid Waste (Management and Handling) Rules, 2000, notified the SWMR 2016.

Rule 11 of the SWMR 2016 mandates all UTs and States to prepare a state policy and solid waste management strategy (Policy) in consultation with stakeholders including representatives of waste pickers, self-help groups and similar groups working in the field of waste management. The Policy is required to be consistent with the SWMR 2016, the national policy on solid waste management and the national urban sanitation policy of the Ministry of Urban Development, Government of India. Every UT and State was required to have in place such a Policy within a period of 1 year from 8 April 2016.

Since registering the Suo Moto PIL, the Court has been hearing the matter on priority and has passed orders to resolve the problem of poor solid waste management. In the process, the Court was also made aware of the vast amounts of poorly disposed garbage in and around New Delhi.

Taking cognizance, the Court, vide its order dated 10 July 2018, recorded its discontent in the following words:

"The Solid Waste Management Rules came into force on or about 08.04.2016. We are two years down the line but we are shocked to know that more than two-third of the States / UTs in the country have not yet complied with the basic requirement of the Solid Waste Management Rules, 2016..The tragedy is that more than two-third of the States / UTs in the country have neither bothered to comply with the orders passed by the Court nor bothered to comply with the directions given by the MoEF, Government of India. This is not only a tragic state of affairs but a shocking state of affairs particularly, since solid waste management is a huge problem in this country." [emphasis supplied]

The Court imposed cost on the UTs and States that failed to comply with the orders passed by the Court and the directions issued by the Government of India with regard to disposal of solid waste.

Supreme Court's Order

The Court while expressing its anguish at the UTs and States for not following its previous orders and the mandate of the SWMR 2016, has stayed all constructions activities in UTs and States where a Policy has not been framed pursuant to Rule 11 of the SWMR 2016. The Court has also stated that:

"In case the States have the interest of the people in mind and cleanliness and sanitation, they should frame a Policy in terms of the Solid Waste Management Rules so that the States remain clean. The attitude of the States/Union Territories in not yet framing a Policy even after two years is pathetic, to say the least." [emphasis supplied]

Comment

More than two third of all UTs and States have not framed a Policy as required under the SWMR 2016. Pursuant to this order, the Court has stayed all construction activities in the non-compliant UTs and States. Since the present order is applicable to all construction activities, it is highly probable that the private parties like developers will approach the court for reconsideration of the order and for vacation of stay.

Although, it may look like the Court's decision to stay all construction activities for default of the executive wing of UTs and State is misplaced, such an order was perhaps in need of the hour to nudge the concerned parties in implementing the SWMR 2016 in its true sense.

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