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

Reserved on: 16th August, 2023
Pronounced on: 22nd September, 2023

\+ FAO 265/2014, CM APPL. 39547/2019

UNION OF INDIA ..... Appellant

Through: Mr. Kirtiman Singh, Mr. Waize Ali Noor and Mr. Madhav Bajaj, Advocates for UOI.
Mr. Manish Mohan, CGSC with Mr. Jatin Teotia, Advocates.

versus

MS. KIRAN KANOJIA ..... Respondent

Through: Ms. Punam Kumari, Advocate.
Mr. A.S. Chandhiok, Senior Advocate [Amicus Curiae] along with Mr. Tarranjit Singh Sawhney and Ms. Alka Singh, Advocates.

\+ FAO 22/2015, CM APPLs. 4501/2015, 37835/2019, 786/2020

GEETA DEVI ..... Appellant

Through: Mr. Yogesh Swaroop, Mr. Kapil Kishor Kaushik and Mr. Md. Asif, Advocates

versus

UNION OF INDIA ..... Respondent

Through: Mr. Kirtiman Singh, Mr. Waize Ali Noor and Mr. Madhav Bajaj, Advocates for UOI.
Mr. Durgam Nandrajog, Panel Counsel-GNCTD with Mr. Jatin Dua, Advocate with Mr. Kartar Singh, SI with Mr. Anuj, ASI- PS, Old Delhi Railway Station.
Mr. A.S. Chandhiok, Senior Advocate [Amicus Curiae] along with

Mr. Tarranjit Singh Sawhney and
Ms. Alka Singh, Advocates.
Mr. Manish Mohan, CGSC with
Mr. Jatin Teotia, Advocates.

\+ W.P.(C) 7553/2015

HAJARA & ORS ..... Petitioners

Through:

versus

GOVERNMENT OF INDIA ..... Respondent

Through: Mr. Om Prakash, Mr. Chandresh Pratap, Ms. Swati Mishra and
Mr. Nitish Pande, Advocates for UOI.
Mr. Durgam Nandrajog, Panel Counsel-GNCTD with Mr. Jatin Dua, Advocate with Mr. Kartar Singh, SI with Mr. Anuj, ASI- PS, Old Delhi Railway Station.
Mr. Kirtiman Singh, Mr. Waize Ali Noor and Mr. Madhav Bajaj, Advocates for UOI.
Mr. A.S. Chandhiok, Senior Advocate [Amicus Curiae] along with
Mr. Tarranjit Singh Sawhney and
Ms. Alka Singh, Advocates.
Mr. Manish Mohan, CGSC with
Mr. Jatin Teotia, Advocates.

\+ FAO 403/2017

KIRAN KANOJIA ..... Appellant

Through:

versus

UNION OF INDIA ..... Respondent

Through: Mr. Kirtiman Singh, Mr. Waize Ali Noor and Mr. Madhav Bajaj,

Advocates for UOI.
Mr. A.S. Chandhiok, Senior Advocate [Amicus Curiae] along with
Mr. Tarranjit Singh Sawhney and
Ms. Alka Singh, Advocates.
Mr. Manish Mohan, CGSC with
Mr. Jatin Teotia, Advocates.

\+ RFA 457/2017

M/S CEMENT CORPORATION OF INDIA LTD ..... Appellant

Through: Mr. Manish Mohan, CGSC with Mr. Jatin Teotia, Advocates.
Mr. Kirtiman Singh, Mr. Waize Ali Noor and Mr. Madhav Bajaj, Advocates for UOI.

versus

MOHAN SINGH ..... Respondent

Through: Mr. A.S. Chandhiok, Senior Advocate [Amicus Curiae] along with Mr. Tarranjit Singh Sawhney and Ms. Alka Singh, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. These batch of appeals, stem from orders passed by the Railway Claims Tribunal as also the Trial Court *qua* a property dispute involving the Cement Corporation of India Limited, a public service undertaking. While deciding the matters on merits, this Court was deeply anguished by the approach adopted by the Indian Railways and Cement Corporation in their

defence. Specifically, the fact that they resorted to unfounded arguments and false assertions raised serious concern, sufficient to agitate judicial conscience. This led to a judgment on 24th June, 2021, by the learned Single Judge, which raises a cautionary flag on the disconcerting practice of frivolous claims or defences being advanced by the Government in legal proceedings — a trend that has the potential to adversely impact the very foundation of our legal system. In light of these concerns, the learned Single Judge reclassified these petitions as public interest litigation (PILs) and referred them to this bench for a focused examination of issues concerning Government's accountability and the lack of a 'National Litigation Policy'.

2. In the aforementioned judgment, the Court meticulously recorded the comprehensive submissions made by Mr. A.S. Chandhiok, Senior Advocate and *Amicus Curiae*, thereby obviating the need for repetition. Nonetheless, it is worth noting, that Mr. Chandhiok has adeptly encapsulated the scope of the issue, highlighting Government's seemingly indifferent attitude leading to unchecked proliferation of frivolous litigation.

3. The overwhelming majority of cases currently clogging the judicial system involve either the Central Government, State Governments, or public sector undertakings (PSUs). In a pivotal move to tackle this pressing issue, the Ministry of Law and Justice, Government of India, convened a national consultation on 24th and 25th October, 2009, specifically aimed at mitigating judicial delay and reducing backlogs of cases. This led to the formulation of the "National Litigation Policy, 2010" (*hereinafter referred to as the* "***2010 Policy***"). Regrettably, this well-conceived policy is yet to witness its implementation. The absence of a litigation strategy has also been in focus in the judgments of the Supreme Court. These judgments have

consistently emphasized on the crucial importance of a 'National Litigation Policy' and articulated concern over the inefficiency and wastage of resources attributable to the Government's current approach. For instance, in ***Union of India v. Prithwi Singh***,[1] the Supreme Court remarked on the Union of India's apparent disregard for the 2010 Policy and, in effect, the justice delivery system. The Court observed that the 2010 Policy was under review and there were plans for introducing "National Litigation Policy, 2015". However, definitive timelines regarding its finalization and subsequent implementation were conspicuously absent. Simultaneously, the Court held that the Union of India overlooked crucial steps in the "Action Plan to Reduce Government Litigation" ("***Action Plan***") formulated on 13th June 2017. This plan emphasizes that appeals should only be filed in cases which touch upon significant policy matters and vexatious litigation should be promptly withdrawn. Further, in a prior judgment in ***Urban Improvement Trust, Bikaner v. Mohan Lal***,[2] the Supreme Court highlighted the pivotal role of legal officers in government entities in perpetuating unnecessary litigation. It underscored the imperative for State Governments and statutory authorities to act decisively in eradicating vexatious litigation, in line with the Central Government's policy on the matter.

4. At the core of these judicial observations lies a persistent call for a comprehensive 'National Litigation Policy', which would mandate a cohesive approach by both the Central and State Governments, as well as PSUs, in initiating and prosecuting legal matters.

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[1] (2018) 16 SCC 363.
[2] (2010) 1 SCC 512.

5. The Law Commission of India has also deliberated, on this pressing issue, as reflected in its 126th Report on 'Government and Public Sector Undertaking Litigation Policy and Strategies'. The report underscored the urgent need for a cohesive litigation policy designed not only to alleviate the burden on the judiciary but to also minimize the exorbitant cost associated with legal proceedings. This sentiment is resonated in the report[3] of the 13th Finance Commission for 2010-2015, which raises an alarm about the sheer volume of cases where the government is a party, thereby exacerbating the existing backlog of cases. The report urges both the Central and State Governments to adopt a concentrated litigation strategy and spotlights the "National Litigation Policy", which was in draft stage at that juncture. The proposed policy was envisioned to achieve several objectives, including the withdrawal of frivolous cases and the inception of Empowered Committees dedicated to curtailing unnecessary litigation. In tandem with this, it was recommended that State Governments should also formulate policies that synchronize seamlessly with this national directive.

6. At this juncture, it is imperative to acknowledge the Central Government's initiative in the form of the Legal Information Management and Briefing System (*hereinafter referred to as* "***LIMBS***"), a tool designed to modernize and oversee litigation activities. Tailor-made to suit the government's unique requirements, LIMBS offers real-time insights into the status of cases across various ministries. The platform serves not merely as a comprehensive dashboard for monitoring ongoing litigation but also as a catalyst for uniformity. It underscores the need for prompt administrative

[3] Volume 1, December, 2009.

actions and scrupulous management of litigation. Current LIMBS data indicates that approximately 6,00,000 cases involving the Central Government remain pending. While this data lacks a holistic view of the pending litigation concerning PSUs, State Governments, and other public authorities, the voluminous tally of Central Government cases alone serves as a resounding wake-up call. It accentuates the dire need for a thoughtful, equitable, and effective litigation strategy — a strategy committed to the principles of justice while recognizing the pivotal role of governmental and public authorities.

7. Guidelines/ codes of conduct in government departments/ bodies, especially when it concerns litigation, is crucial. Drawing from a recent press release issued by the Ministry of Law and Justice titled 'National Litigation Policy',[4] it is brought to light that the Central Government is, indeed, attentive to the matter. Per the press release, the Union Minister of Law and Justice conveyed to the Lok Sabha that a litigation policy was under serious contemplation. Further delve into the press release reveals a suite of measures being employed by various ministries and departments to taper the avalanche of court cases. Illustratively, the Railways, which has often been at the centre of multiple litigation proceedings, has deployed a streamlined litigation management process. This involves meticulous monitoring of pending and new cases, periodic consultations with their panel of empanelled advocates, and ensuring that necessary documents are promptly furnished to facilitate effective representation. It also highlights that clear monetary thresholds for filing appeals have been delineated,

[4] Available at https://pib.gov.in/PressReleasePage.aspx?PRID=1782618.dated, dated 17th December 2021.

particularly for regulatory bodies like the CBDT and the CBIC. Also, in a commendable endeavour to mitigate disputes and expedite resolutions, the mechanism of "Administrative Mechanism for Resolution of Disputes" (AMRD) was framed, applicable to disputes apart from taxation disputes, involving government departments/ organisations and instrumentalities i.e., Central Public Sector Enterprises (*hereinafter* "***CPSEs***"), Boards, Authorities, etc. Further, the "Administrative Mechanism for Resolution of CPSE Disputes" (AMCRD) was inaugurated on 22nd May, 2018, to specifically resolve commercial disputes between CPSEs *inter-se* and against government departments/ organisations.

8. At the same time, we must also note the proactive measures adopted by the Haryana and Sikkim, as evidenced by Haryana's 'State of Haryana Litigation Policy, 2010' and Sikkim's 'Conduct of Government Litigation Rules, 2000.' These policies function as valuable blueprints in the realm of litigation strategy. Adding to this discussion, it is noteworthy that an array of other states, including but not limited to Rajasthan, Punjab, Gujarat, Himachal Pradesh, Madhya Pradesh, Kerala, Tripura, Mizoram, Maharashtra, have also risen to the occasion and formulated similar policies. Their efforts to conceptualize and disseminate focused litigation policies signify a growing awareness and evolving sensibility toward this vital legal arena.

9. While these initiatives noted above are laudable, they further highlight the compelling necessity for a comprehensive, unified litigation policy. Such a policy should transcend mere symptom relief, aiming instead to tackle the root cause that give rise to inefficient and excessive litigation. The piecemeal efforts of individual departments and ministries only serve to

amplify this necessity for an integrated policy framework, one that assures a uniform, efficient, and accountable litigation strategy across the entire government branches and departments. A recent development of significance warrants our attention. On 15th December, 2022, the Union Minister of Law and Justice, Government of India, while responding to inquiries about the implementation status of the 2010 Policy,[5] divulged pertinent insights from the government's internal discussions. It was conveyed that the Committee of Secretaries (CoS) had, after thorough debate, concluded that the pervasive issue of increasing litigation may be effectively tackled not through a 'National Litigation Policy', but by the crafting of clear, streamlined, and easily understandable guidelines. This approach would perhaps foster quicker comprehension and adaptability, ultimately catalysing a more impactful reduction in government litigation. As it stands, the formulation of these specialized guidelines appears to be an ongoing endeavour. While the Union Minister hinted at the development of these 'guidelines,' their scope, timelines of drafting and their eventual implementation, remain uncertain.

10. The narrative put forth by the Union of India raises probing questions about the earnestness and efficacy of existing governmental frameworks in addressing pending government litigation. In a forthright admission, Mr. Kirtiman Singh, CGSC, has informed us that no formal 'National Litigation Policy' is currently operative within the Government's administrative ambit. He further conceded that the much-heralded 2010 Policy remains, regretfully, unimplemented. Drawing attention to prior legal proceedings,

[5] Available at: https://legalaffairs.gov.in/sites/default/files/AU1076.pdf.

Mr. Singh highlighted that a writ petition had been previously filed, calling for the enforcement of the 2010 Policy, which was summarily dismissed by this Court.[6] Mr. Singh's submission painted a disheartening picture. He confirmed that the *status quo* persists, with no discernible change since the judgment rendered on 24th June, 2021. In summary, as it stands today, there is no operative 'National Litigation Policy' or 'Guidelines'.

11. In consideration of the foregoing, we have engaged in thorough deliberation on this pressing matter, pondering on the appropriate course of action. While aware of the expansive jurisdiction conferred upon us by Article 226 of the Constitution of India, we also recognise certain inherent constraints that must be respected. Specifically, the realm of policy formulation and implementation, exemplified here by the notion of a 'National Litigation Policy,' largely falls within the purview of the executive and legislative branches. It is a well-established principle of law that judicial bodies, notwithstanding their pivotal roles in safeguarding and interpreting the law, should exercise restraint in assuming the roles of policy-makers or legislators through their rulings. Despite the undeniable significance of such a policy and the glaring gap left by its absence, we find it prudent to refrain from overstepping our judicial mandate by attempting to create such a policy *via* judicial guidelines. But it must be noted that while we are not inclined to encroach into this domain, particularly since the formulation of 'guidelines' appears to be under active consideration, our circumspection should not be misconstrued as apathy.

12. The self-imposed limitations on the scope of this Court's jurisdiction,

[6] Dr. N. Bhaskara Rao and Anr. v. Union of India and Anr., W.P.(C) 10790/2020, decided on 18th March, 2021.

will not constrain us from emphasising the overarching issue of accountability in litigation which demands undiminished focus, thoughtful action and reform on the part of the Union of India. It is our solemn duty to impress upon the Union of India the critical need to act decisively, whether through the issuance of clear & uniform guidelines to various departments or the formalization of a comprehensive 'National Litigation Policy'. The goal extends beyond merely alleviating the extensive backlog that overshadows our judiciary; it is about reinvigorating public trust in the mechanisms of justice. As aptly put by the Supreme Court in ***Prithwi Singh***:

> *"12. The real question is: when will the Rip Van Winkleism stop and the Union of India wake up to its duties and responsibilities to the justice delivery system?"*

13. The judiciary is inundated with cases, of which many can be described as frivolous, and sometimes even laden with false assertions. While imposing costs can serve in balancing the scales for private parties, as an effective deterrent mechanism, it does little to fix the systemic issues at play when Government is at fault. It is deeply unsettling to witness government entities, whose primary mandate should be the promotion of social welfare, to be embroiled in frivolous litigation. Such conduct not only squanders taxpayers' money but also undermines the very interests of the citizens these entities are meant to serve. Costs in such cases are transferred onto the public exchequer, thereby ultimately penalizing taxpayers instead of the individuals who initiated the irresponsibly framed legal action or contested a case on frivolous grounds. This underscores a pressing need for a more strategic approach, one that is grounded in the principles of accountability and responsibility.

14. It is also critical to discern between the actions of individual government officers and the government as an institution when it comes to filing or contesting frivolous or legally untenable cases. In this regard, in ***Urban Improvement Trust***, the Supreme Court noted as under:

> "*10. 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.*"

15. There appears to be a troubling ethos among government officers: a belief that false claims can be advanced with impunity. These actions not only perpetrate injustice upon genuine litigants but also place undue burden on both the judiciary and the government. The officials responsible for raising these frivolous claims often escape without any consequences, fuelled by the absence of mechanisms for accountability for such misconduct. This stark lack of accountability, which carries significant public implications, amplifies the urgency for systemic reform to prevent such instances from recurring. While the immediate fault may lie with the officers who take ethically or legally questionable decisions, it is important to recognize that they operate within an institutional framework. Indeed, far

too often, institutions altogether are branded as erring or irresponsible due to the lapses of a few individuals. However, this should not be viewed as an excuse to absolve the government of all responsibility. On the contrary, it places an even greater onus on the government to institute robust systems of checks, balances, and training that guide individual actions more responsibly. The essence of good governance lies not just in holding individuals accountable, but in creating an environment where unnecessary litigation is avoided. It is against this backdrop that the call for a 'National Litigation Policy' and/ or uniform guidelines for governments, departments, and ministries – gains urgency. Such policy/ guidelines should articulate the parameters for initiating or contesting legal actions on behalf of the government. It should not only aim to prevent frivolous litigation but also set forth mechanisms to hold officers accountable for their decision.

16. There is thus an urgent need for a system that prevents unnecessary litigation by engaging in an audit of the decision-making process which leads to such litigation. The checks and balances should, at outset, involve mandatory consultations between the concerned officers of the government body/ organisation and legal experts towards ensuring that cases involving well-settled issues are not sought to be relitigated. Next, a peer-review mechanism should be established where decisions, to contest cases prior to its commencement and filing of appeals, are scrutinized by a committee of experts within the government body/ organisation, comprising of members/ officers who are well-versed with the matter at hand. These experts could also be tasked with periodically reviewing past decisions to identify patterns of irresponsible litigation, thereby ensuring that lessons are learned and applied in future cases. Apart from that, a mechanism should be established

to put up instances of negligence/ laxity on account of officers in-charge, discovered in such review of decisions, for consideration by the senior-most officers of the concerned government body/ organisation and suitable action should be initiated against the erring officers for the same. Ongoing cases should also be reviewed periodically to sift out meaningless litigation. Mandatory training sessions should be organised for officers involved in the process of initiating and managing litigation, especially on avoiding adjournments and delay. An adaptable and evolving policy is the need of the hour, so as to ensure that emerging best practices in justice delivery, are utilised. This would ensure that the participation of the government in the judicial process is more sagacious and streamlined.

17. While the Union Minister has indicated that guidelines and policies are under preparation, it is imperative to note that the government need not wait for formal documentation to instil an ethos of accountability and reduce unnecessary litigation. Even the most meticulous policies will serve little purpose if they remain confined to paper. Effective governance doesn't always stem from formalized guidelines; often, it arises from a cultural shift within an institution. Therefore, nothing precludes the government from embracing the principles we have suggested here. These practices can serve as an interim framework and should be adopted as precursors to formulation of formal policy after due deliberation with experts/ stakeholders. After all, the essence of any policy lies in its implementation; a well-drafted policy is merely the blueprint, the actual structure comes to life only when the tenor it promotes is adopted and internalized within the governing body.

18. The government, as the largest litigant in the country, bears an intrinsic responsibility — a duty that goes beyond traditional roles. It is

expected to be a beacon of propriety, setting precedents in litigation ethics, fairness, and judicious use of resources. An effective litigation policy or guideline is not merely an administrative tool; it is a powerful statement of intent, reflecting the government's unwavering commitment to the rule of law, equity, and justice.

19. In this era of rapid technological and social change, where global best practices are constantly evolving and expectations of citizens are on the rise, it is paramount for the government to not just react, but to be proactive, adaptive, and forward-thinking. More than a decade has passed since the discussion on the issue of a litigation policy commenced and it is unclear as to when the proposed framework or guidelines will be in place. The government must prepare a time-bound action plan for implementation of the 'National Litigation Policy' or the guidelines that are under contemplation.

20. Registry is directed to communicate a copy of this judgment to the Secretary, Ministry of Law & Justice, Government of India, for necessary action. Further, it is also felt appropriate to also transmit a copy of this judgment to Secretary, Department of Law, Justice & Legislative Affairs, Government of NCT of Delhi, for due consideration.

21. With the above directions, the present matters are closed. Files be consigned to the record rooms.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

SEPTEMBER 22, 2023/*nk*