

Govt, dept liable to pay damages in bridge collapse

A bridge is expected to last for several decades, withstanding the vagaries and vicissitudes of the weather including the monsoon. If the bridge collapses in less than a decade, causing death or injury to passengers, is the government responsible for it? Is the government liable to compensate the loss of life? Has the local body, which may be entrusted with the maintenance of the bridge, any liability?

These are the vital questions considered by a Division Bench of the Kerala High Court, consisting of Justice K G Balakrishnan and Justice K Narayana Kurup, in Appeal Suit No 563 of 1994.

The Kumbala Bridge, Kasargode District, built in 1983, collapsed in 1991, causing the death of one, Darkas Kottan, 38, a mason. The Subordinate Judge, Hosdurg, awarded Rs 2 lakh as compensation to the legal heirs of Kottan and made the local panchayat liable to pay the same. The panchayat challenged this.

The Bench held that both the state government and the panchayat were equally liable for the payment of damages and directed payment in the ratio 50:50.

Eight years is too short in the lifespan of a bridge which is intended to last several decades without being damaged or washed away in the wind or rain. And yet, that is what exactly that took place in the case.

The evidence established that the stones on the abutment of the bridge started withering away in two years of its construction. This by itself is proof that proper care and caution had not been exercised by the department during construction. The withering away of the stones was the direct cause of the collapse of the bridge.

The monsoon might have played havoc, but the lapses on the part of the department in not taking proper care in the construction was the proximate and

immediate cause for the collapse of the bridge. The government and the department cannot get away without being held liable for the damages by simply saying that the collapse of the bridge was purely due to natural calamities, "an act of God," which is beyond the control of human beings.

They are presumed to intend and know the natural and probable consequences of their acts and they should be held liable for such consequences whether they, in fact, contemplated them or not. In executing the construction of the bridge in a slipshod way, they acted negligently and failed to act honestly and in good faith. They are not protected by the application of the doctrine of Act of God.

Public money, expected to be spent for productive purposes, cannot be allowed to be frittered

guilty of abdication of its statutory duty. In such a situation, the panchayat cannot take refuge under the principle of Act of God and escape from legal liability.

Mere ravages of weather or monsoon may not by itself amount to Act of God unless the fury of nature is of such a degree or dimension that no human foresight can provide against it and of which human prudence is not bound to recognise the possibility.

That is not the case here. Apart from the heavy rains that lashed the district there was no tornado or cyclone in the area causing extensive damage leaving a trail of destruction on a large scale. In Kerala, the fury of the monsoon is a common phenomenon.

A defence based on the doctrine of Act of God, if permitted

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away in this fashion by negligent execution of roads, bridges and so on. Hence, the erring officers concerned have to be taken to task to make good the loss.

The panchayat also cannot absolve itself from its liability. No doubt, the panchayat had no role in the construction of the bridge. But as soon as its construction was over, the bridge was handed over to the panchayat and, thereafter, the panchayat was responsible for the timely maintenance and proper upkeep of the bridge.

Under Section 57 of the Panchayat Act 1960, it is mandatory that the panchayat make repairs and maintain all public roads in the panchayat (other than the national highways, state highways, or district roads) and of all bridges, culverts, causeways, and so on.

So there was a statutory duty imposed on the panchayat to repair and maintain the Kumbala Bridge.

The executive engineer of the panchayat had conceded that no repair or maintenance had been done and, as a result, the bridge was in a state of utter disrepair. The panchayat is, therefore,

to be raised casually, will lead to catastrophic consequences. No road or bridge in the State will be safe for public use as the perpetrators of negligence can get away pleading Act of God as a valid excuse.

Poll plea must be speedily disposed

UNDER Article 226 of the Constitution, the High Court has the power to issue writs while under Article 227, it has the power of superintendence over other courts and tribunals.

The jurisdiction under these Articles is separate and independent. The power of superintendence is not confined to administrative superintendence only, but includes the power of judicial revision, even in cases where no appeal or revision lies before the High Court under ordinary law.

The power under Article 226 would be available for exercise when there is an application by the aggrieved party. On the other hand, the power under Article