

HIGH COURT OF AZAD JAMMU & KASHMIR
MIRPUR CIRCUIT

Writ Petition No. 555/2019.
Date of Institution 22.10.2019.
Date of Decision 30.01.2020.

1. Sheikh Adil Masood, Advocate, High Court of Azad Jammu & Kashmir, Mirpur.
2. Yasir Mehmood, Advocate, Member District Bar Association, Mirpur.
3. Khawaja Afaq Ahmed, Advocate, Member District Bar Association, Mirpur.
4. Sheikh Arif Naseem S/o Sheikh Muhammad Hussain Naseem, R/o Mian Muhammad Town Bankhuraman, Tehsil and District Mirpur.
5. Ehtasham Majeed S/o Majeed Ahmed, R/o Nangi Sector B/5, Mirpur.
6. Ramzan Chughtai, Member Press Club Mirpur.
7. Inhabitants of Mirpur through
8. Sheikh Fazal Hassain R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
9. Muhammad Riaz R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
10. Syed Said Hussain Shah R/o Chak Meri Afzalpur, Tehsil & District Mirpur.
11. Muhammad Jamil R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
12. Mussarat Hussain Shah, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
13. Raja Aftab, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
14. Muhammad Nazir, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
15. Syed Razaq Hussain Shah, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
16. Mahroof Hussain R/o Pindi Suberwar, Tehsil and District Mirpur.
17. Amjad Mehmood, R/o Chak Meri Afzalpur Tehsil & District Mirpur.

18. Abdus Salam R/o Chak Meri Afzalpur Tehsil and District Mirpur.
19. Muhammad Yaqoob, R/o Chak Meri Afzalpur Tehsil & District Mirpur.
20. Zafar Iqbal, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
21. Muhammad Yaqoob, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
22. Muhammad Sadiq, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
23. Tariq Mehmood, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
24. Chudhary Abdul Hameed , R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
25. Majid Hussain, R/o Chak Meri Chahian, Tehsil and District Mirpur.
26. Muhammad Sadiq, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
27. Muhammad Saeed, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
28. Raja Muhammad Shafiq, Pindi Suberwal, Tehsil and District Mirpur.
29. Muhammad Taj, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
30. Said Muhammad, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
31. Asjid Hussain Shah, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
32. Zaheer Tariq, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
33. Kousar Tanveer, R/o Chak Seri, Tehsil and District Mirpur.
34. Aqeel Anjum R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
35. Muhammad Sharif, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
36. Shabir Hussain Mughal, R/o Chak Meri Afzalpur, Tehsil and District Mirpur.
37. Mudasar Shah R/o Sector F-2, Mirpur.
38. Mirza Muhammad Shabir S/o Mirza Waz, R/o House No.122, Sector F-2, Mirpur.
39. Abdul Razaq Hussain Shah S/o Ali Haider Shah, Sector F-2, Mirpur.
40. Muhammad Shaban S/o Laldin, R/o Sector F-2, Mirpur.

41. Tufail Hussain S/o Muhammad Siddique, R/o Janyaz, Mirpur, (petitioners No.37 to 41 impleaded as petitioners on application).

Petitioners

VERSUS

1. Azad Jammu & Kashmir Government through its Chief Secretary, Azad Government of the State of Jammu & Kashmir, Muzaffarabad.
2. Board of Revenue, Azad Jammu & Kashmir through Chairman AJK Board of Revenue.
3. Relief Commissioner/Commissioner, Mirpur Division, Mirpur.
4. Deputy Commissioner/District Magistrate, Mirpur.
5. Assistant Commissioner, Mirpur.
6. Deputy Commissioner/District Magistrate, Bhimber.
7. Assistant Commissioner Bhimber.
8. Health Department through Secretary Health, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.
9. District Health Officer, Mirpur.
10. Medical Superintendent Divisional Headquarter Teaching Hospital Mirpur.
11. Medical Superintendent, New City Teaching Hospital, New City Mirpur.
12. Department of Animal Husbandry through Secretary of Animal Husbandry having his office at Muzaffarabad.
13. Electricity Department through Secretary Electricity having his office at Muzaffarabad.
14. Superintendent Engineer Electricity Mirpur Division Mirpur.
15. SDO Electricity Mirpur.
16. Communication and Works Department through Secretary Communication and Works having his office at Muzaffarabad.

17. Home Department through Secretary Home Department having his office at Muzaffarabad.
18. Food Department through Secretary Food having its office at Muzaffarabad.
19. Social Welfare Department through Secretary Social Welfare Department having its office at Muzaffarabad.
20. Finance Department through its Secretary Finance, having his office at Muzaffarabad.
21. Telephone and Telegraph Department through Secretary Telephone and Telecommunication having his office at Muzaffarabad.
22. Public Health Engineering Department through Secretary Public Health Engineering Department having his office at Muzaffarabad.
23. Superintendent Engineering Public Health Mirpur Division, Mirpur.

Respondents

WRIT PETITION UNDER ARTICLE 44 OF THE AZAD JAMMU & KASHMIR INTERIM CONSTITUTION, 1974.

Before: **Justice Muhammad Sheraz Kiani, J.**
Justice Chaudhary Muhammad Muneer, J.

DIVISION BENCH

PRESENT:

M/s. Sheikh Masood Iqbal, Ch. Khalid Rasheed, Ch. Ashref Ayaz and Sheikh Adil Masood, Advocates for the petitioners.
Mr. Asghar Ali Malik, Advocate for the respondents.
Mst. Fozia Saleem, Law Officer for Health Department.

JUDGMENT

(Justice Muhammad Sheraz Kiani, J.) The captioned writ petition has been addressed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, whereby, the petitioners have sought a direction to the respondents, to perform their duties in accordance with the Azad Jammu & Kashmir Natural Calamities (Prevention and Relief) Act 1976. The petitioners have also challenged the validity and legality of the utility bills, issued by the respondents and have sought a direction to the respondents, to remit the utility bills of the people of the affected areas of Earthquake of 2019.

2. Precise facts culminating into filing of the instant writ petition are that petitioners are 1st class subjects of the State of Azad Jammu & Kashmir and hail from District Mirpur and Bhimber. It has been stated that the petitioners were

affected badly by earthquake of 24.09.2019, due to which, buildings and other properties stood destroyed & collapsed, hence, the respondents No.1, (AJ&K Government) declared three Union Councils of District Bhimber, namely; Panjeri, Kasgumma, Akber-abad and Tehsil Mirpur, as natural calamities affected area and appointed respondent No.3, (Commissioner Mirpur Division) vide notification dated 01.10.2019, as Relief Commissioner, Under the AJ&K Natural Calamities(Prevention & Relief) Act, 1976. It has been maintained that 40 persons died and 300 were badly injured, due to said earthquake. It is alleged that respondent No.3 vide order dated 14.10.2019 constituted a committee of Engineers for demolishing of the damaged buildings without any compensation, whereas, respondent No.5, (Assistant Commissioner/SDM, Mirpur imposed ban on maintenance of the building U/S 144

Cr. PC vide order dated 05.10.2019. The petitioners have claimed that respondent No.3 is bound under Section 4(2)(a) to (j) of the Act, to maintain and provide the immediate relief to the victims of the calamities and respondents No.1 to 3 are bound to remit in whole, the Government dues payable by any person, or in respect of any property affected by the calamities but respondents did not remit the electricity bills or any other sort of utility bills. In this regard a letter has also been written by the President Chamber of Commerce & Industry to respondent No.3 on 17.10.2019, wherein, it has been stated that under Section 11 of the Act, and rule 6 of Rules, 2006, respondents are bound to constitute a relief committee, however, the same has not been constituted nor any relief has been provided in the affected area. Under Rule 7 of the said

rules, respondent No.3 is bound to coordinate and communicate with National and International NGOs for providing facilities to the affectees, however, respondents No.3 and 4 failed to perform their duties and providing relief to the affected people. The Deputy Commissioner is bound to provide safe area/place in an emergency to the displaced population from the affected areas under rule 9 of the said rules but the same has not been done. He is also under legal obligation to assess the damages and loss caused by the calamities and compensate them and also acquire the affected buildings. The respondents are also bound to allocate the relief fund, to provide free food to the affected persons and fodder for cattle after the disaster. The petitioners have alleged that Health Department, Animal Husbandry Department, Electricity Department, Communication & Works

Department, Home Department, Police, Civil Defence, Food Department, Social Welfare Department, Finance Department, Information Department, Board of Revenue, Telephone & Telegraph Department, Public Health Engineering Department and Local Government & Rural Development Department also failed to discharge their duties properly, therefore, by accepting the instant writ petition, a direction be issued to the respondents to do the needful and perform their duties under law.

3. The writ petition has been resisted by the respondents by filing written statement, wherein, it has been stated that order dated 14.10.2019 has been issued for preparing list to dismantle the affected buildings, whereas, the decision pertaining to compensation is still pending. It has been maintained that there is no ban on rehabilitation

/reconstruction work, subject to prior obtaining of NOC. The Relief Commissioner of the Azad Govt. of the State of Jammu & Kashmir is empowered to remit all or partial amounts of the utility bills under Section 4(2)(J) of the Act, 1976, however, no notification has ever been issued in this regard, so far. The respondent have admitted that the electricity bills in Muzaffarabad and other affected areas were deferred in January, 2006, due to earthquake of 08.10.2005 and later on, the same were remitted. It has been stated that during and after the earthquake of 24.09.2019, the Health Department established a control Room in DHO Office by declaring health emergency in district Mirpur and 03 mobile teams were immediately moved to the affected areas. In addition to public, private NGOs ambulances, Pak Army teams, also participated in rescue

operation and provided health facilities in 01 Rural Health Centre, 07 Basic Health Units, 03 Civil dispensaries and 05 First Aid posts. Health Camps have also been organized at Sahang Naka, Sahang Kikri, Jatlari, Pindi Suberwal and Jangian. Moreover, 12 teams of vaccinators also operated in the affected areas. It has been stated that with the collaboration of NGOs and Municipal Corporation anti-dengue activities were carried out in 12 villages. It has further been stated that total injured person are reported as 1228 and admitted in various hospitals, 222 were refereed to various hospital 69, persons died and 40 permanent disabilities were reported.

4. The Public Works Department, Division Mirpur has also submitted its estimate for repair/maintenance pertaining to the Council Employees Residential Colony at

Mirpur as Rs.1,40,80,901/- and for rough cost of Broad Casting House Radio Station, Mirpur as Rs.9,78,06,900/-. Livestock Dairy Development Department, District Mirpur has also submitted its report pertaining to livestock damages.

5. Sh. Masood Iqbal, Advocate, the learned counsel for the petitioners, while reiterating the facts and grounds enumerated in the writ petition, contended that after the earthquake of 24.09.2019, it was enjoined upon the respondents, specially, the Relief Commissioner to provide prompt relief to the affectees but they failed to discharge their duties, enshrined under the the Azad Jammu & Kashmir Natural Calamities (Prevention and Relief) Act, 1976 and Rules, made thereunder. He repeated the legal role and duties of each and every Department of the State and contended

that none of the Government official was seen in the affected areas, while discharging the requisite official duties, properly. Neither any relief has been provided to the affectees except payment of compensation to the heirs of the martyred persons nor any Notification in this regard has been issued by the respondent No.3, (Relief Commissioner) who is responsible for conduct of all the rehabilitation process. Having addressed the Court at a great length, the learned counsel submitted that no Notification regarding remission of the utility bills and the loans has been issued by the Relief Commissioner as was done in Muzaffarabad and other affected areas after the earthquake of 2005. It is discriminatory treatment with the affected people of recent earthquake, he added and requested for a direction to the respondents to perform their duties

under law. He further maintained that instead of remission of the utility bills and other loans, the respondents have imposed new taxes/fees upon different medical tests in the Health Department and the already imposed taxes/fees have been increased, which is glare violation of the Act and oppressive. The learned counsel submitted and craved for a direction to the respondents to act according to the Relief Act and rules, made thereunder.

6. Ch. Khalid Rashid, Ch. Ashref Ayaz, Advocates also owned and adopted the arguments raised on behalf of Sh. Masood Iqbal and prayed for acceptance of the writ petition and sought direction to the respondents for performing their duties, in accordance with the Act, 1976.

7. Mr. Asghar Ali Malik, Advocate, the learned counsel appearing on behalf of

the respondents, raised a preliminary objection regarding the maintainability of the writ petition and contended that no Notification or order has been passed by the respondents, so far, therefore, the writ petition is premature and the petitioners can avail the constitutional remedy, only, if any adverse action is taken. The heirs of the martyrs of the disaster have been compensated and the other claims have been submitted to the relevant authorities, however, all steps of rehabilitation of the affectees shall be taken after provision of the requisite funds, he submitted. With regard to provision of health and first aid facilities, the learned counsel while referring to the lists, provided by the Health Department, contended that various mobile units were constituted and the health facilities have been provided to the affectees, at their door

step. He further argued that the Electricity is purchased from the private power companies and it would cause a huge loss to the electricity Department, if all the people of affected areas are exempted from payment of dues. The outstanding amount of Commercial units is in millions, which pertains to the period much before the earthquake and the concerned consumers deliberately defaulted them without any reason, he added.

8. Mst. Fozia Saleem, Advocate, the Legal Officer for the Health Department, repeated the stance taken in the written statement and submitted that the writ petition is premature and the respondents have discharged their duties effectively and have not committed any negligence.

9. We have heard the learned counsel for the parties, perused the record made

available by the parties and given our anxious thought to the controversy.

10. As the controversy in hand revolves around the Azad Jammu & Kashmir Natural Calamities (Prevention and Relief) Act, 1976 and rules, made thereunder, particularly, section 4(2) of the Act, therefore, we would like to reproduce the relevant provision, which reads as under:-

“4. Prevention and Relief.- (1) Subject to the other provisions of this Act and of the Rules made thereunder, the Relief Commissioner shall, with respect to the calamity affected area, take such steps as he may deem necessary in order to maintain, order, prevent, check or control the calamity or reduce the extent and severity thereof or to provide immediate relief to the victims of the calamity in the calamity affected area.

(2) In particular and without prejudice to the generality of the powers conferred by the preceding subsection, the Relief Commissioner shall have power within the calamity affected area,-

- (a) to evacuate or segregate population;
- (b) To requisition bul-dozers, tractors, motor-vehicles, carts, carriage boats and other means of transport by air, land or water, and beasts of burden.
- (C) To require the residence to declare surplus stocks of food, fodder, firewood, clothing and beddings and to requisition all or any of these articles;
- (d) To requisition buildings materials;
- (e) To requisition any building or land;

(f) To demolish any building or other structure;

(g) To conscript labor;

(h) To direct any person to abstain from a certain act or to take certain order with regard to certain property in his possession or under his management and after approval of government

(i) to acquire any land;

(j) to remit in whole or part any government dues payable by any person or in respect of any property affected by the calamity.

Provided that with respect to the powers conferred under Clauses (b),(c),(d),(e),(f),(g),(h) & (i) of this sub-section the person owning the article, beasts of burden, building or land which is requisitioned or acquired, or the building or other structure which is demolished, or the person directed to abstain from an act or to take any order with regard to any property and the persons conscripted to work as Laborers shall be entitled to reasonable compensation as may be claimable under any law for the time being in force, or if no such law exists as is applicable to the case, then as prescribed by rules under this Act, and such compensation shall be paid within one year from the day it falls due

(underlining is for emphasis)

Under the above provision of law, the nature and details of the duties/ functions of the Government functionaries, particularly, that of the Relief Commissioner have been described.

11. The appointment of the Relief Commissioner is the first step towards the rehabilitation of the affectees. The Relief Commissioner has been vested with

vast powers to be exercised during and after any such disaster. In the instant case, the Relief Commissioner, on Court notice, also appeared before the Court and submitted that he has not exercised his powers, so far, firstly for lack of funds and secondly, by adopting careful manner by corresponding with the Government. In this regard, this Court would like to observe that the Relief Commissioner, under law, has to perform his functions, according to the need/demands of the affectees, independently, without adopting any method alien to law and provision of funds is the responsibility of the Government/Finance Division and under Law he is also responsible for raising funds on local and even on international basis, he has to coordinate and liaison with all Departments, agencies, NGOs, International Organizations, International NGOs, so as to, ensure

provision of rescue, relief and rehabilitation facilities to all affectees (Rule 7) but he could not bring anything on record that if he coordinated with any such Organization or made any attempt/communication for any such relief or Rehabilitation work. Under rule 13 a relief Fund shall be established by the commissioner and all the Government and open grants shall be at the disposal of the Commissioner, which shall be utilized by him for compensation, grant in aid, for repair and construction of the houses damaged or collapsed, other transport and miscellaneous expenditure, but nothing has been done so far, except compensation to the families of the persons who died, therefore, this argument of the learned Commissioner cannot be termed more than a lame excuse rather it can be held a grave negligence on his part, as he has not been left with tied

hands in-spite of having powers, as vested in him under Section 4 ibid and referred rules but in the instant case, he has shown himself as a helpless, compelled and powerless officer, which is highly regrettable.

12. As far the objection of the learned counsel for the respondents that no action has been taken so far and the petition is premature, is concerned. It is to be observed that the Relief Commissioner was summoned, who, appeared before the Court and stated that he is in contact with the Government for provision of funds and sought 6 months time for the purpose. He was told by the Court that provision of relief after a disaster/calamity is not a development or routine project, which may require years for approval rather it is an emergent duty, required prompt action as

it lies in the sole domain of the Commissioner. He was given a (10) days time for issuance of Notification as he thinks appropriate but he has not submitted the compliance report so far, rather no Notification has been issued in this regard, therefore, it shall be presumed that he has refused to issue the Notification. In other words, he has failed to do what was permitted by law. In such circumstances, it cannot be held that the writ petition is not maintainable. The writ of mandamus is meant to direct a Government official or functionary to do, what he/it is obliged to do under law and restrain from doing what he/it is prohibited to do under law, so, it cannot be said that if nothing has been done by a Government functionary, the writ cannot be issued. It is, by now, well settled principle of law that usually, the Courts are not supposed to

intervene in the Administrative business of the Government functionaries but when, it is brought in the notice of the Court that any of the Government functionary is performing its duties, beyond its jurisdiction, arbitrarily, with mala-fide intention or not performing his duties, as ordained by the relevant Law, the High Court is vested with vast powers to intervene, direct and compel the said authority to perform its functions under law. In the instant case, when, the Relief Commissioner has not performed his duties nor he has exercised his powers under the relevant Act, this Court has ample powers to compel him to do, what he is obliged to do under law. This view of the Court finds support from a case titled 'Muhammad Bashir v. Abdul Karim and others, reported as PLD 2004 Supreme Court 271], wherein, a larger bench of

the Hon'ble apex Court of Pakistan, in para # 12, at page 283 of the report, it has been observed as under:-

"12.
 There is no cavil with the proposition that 'so long as statutory bodies and executive authorities act without fraud and bona-fide within the powers conferred on them by the Statute, the judiciary cannot interfere with them. There is ample power vested in the High Court to issue directions to an executive authority when such an authority is not exercising its power bona fide for the purpose contemplated by the law or is influenced by extraneous and irrelevant considerations. Where a statutory functionary acts mala fide or in a partial, unjust and oppressive manner, the High Court in the exercise of its writ jurisdiction has ample power to grant relief to the aggrieved party.' (East and West Steamship Co. V. Pakistan PLD 1958 SC (Pak). 41). In our considered view, technicalities cannot prevent High Court from exercising its constitutional jurisdiction and affording relief which otherwise respondents is found entitled to receive.'

In light the above dictum of the Hon'ble apex court of Pakistan and Article 44 of the Interim Constitution, 1974 this objection of the learned counsel for the respondents, being without substance, stands repelled.

13. It is to be observed that the people of the affected area of Mirpur and Bhimber have lost their lives, houses and other properties, cattle etc. as had happened in the Earthquake of 2005. The copies of different orders, available on file reveal that after the Earthquake of 2005, the utility bills were remitted for a period of (3) months. The relevant portion of the relief note/letter, by the Ministry of Water and Power, Government of Pakistan, Islamabad, dated 28.10.2005 is usefully reproduced, herein below:-

'I take this opportunity to inform you that Minister for

Water and Power while addressing the National Assembly on 14.10.2005 announced following relief measured for the earthquake hit areas.

(a) Electricity bills for the month of September, 2005 will be deferred till January, 2006 in the earthquake hit areas.

(b) Electricity for the month of October, November and December, 2005 electricity will be provided free of cost in the earthquake hit areas and no electricity bills will be charged."

(underlining is our)

14. When the people/affectees of the earthquake of 2019 are in similar condition, having similar losses and suffering, there is no reason to disallow the relief of remission of the utility bills, for atleast (3) months to them, as law strictly prohibits a discriminatory treatment to these State Subjects, standing on similar or same footings. The proposition came under the consideration of the Apex Court in case

titled, 'Azad Government of the State of Jammu & Kashmir through Chief Secretary and another v. Abdul Kabeer Qureshi and 51 others, 1995 PLC (C.S) 46. At page 56 of the report, it was observed by the apex Court as under:-

'It is evident from the above paragraph of the Notification that it does not indicate as to why the employees of the Civil Secretariat, President Secretariat, Prime Minister's Secretariat and the Azad Jammu & Kashmir Legislative Assembly Secretariat have been given preference over the respondents, who, as has been held by the High Court, have to perform, if not more, at least, equally onerous duties as civil servants. There appears to be no rationale whatsoever to give a preferential treatment to the employees of Secretariats mentioned in the Notification and, thus, the classification made cannot be regarded as reasonable.'

15. Although, through Notification dated 01.10.2019, Mirpur Tehsil and 3 union councils of District Bhimber have been declared as earthquake affected areas

but it is in the notice of the Court that all the inhabitants, living in these areas, each and every person was not affected rather the persons entered in the lists of the relevant authorities suffered different life and property damages. It has also been brought in our notice that some of the commercial units of the area have deliberately stopped the payment of arrears of the utility bills, pertaining to the period, much before the earthquake. It has been stated before us that no commercial unit was damaged to that extent, that it may not start its business again and has become non-functional. So, it may not be in the interest of justice to provide an excuse to such people to run away from their duties/to pay bills according to the law of the land and the Relief Commissioner may check case to case and if any commercial unit is found, too

destroyed to restart its business or damaged and included in the affectees' list by the Administration, obviously, would be entitled with the registered affectees at par in terms of relief.

16. It has also been stated before the Court from the respondents' side that although, whole tehsil Mirpur and (3) union councils of District Bhimber have been declared as affected area but most of the buildings in the area remained unaffected, i.e even a single window was not broken by the earthquake nor any human casualty took place in most of the units, so, to provide relief to unaffected people of the whole area might cause huge damage/loss to the public exchequer. So, the Relief Commissioner is not compelled to provide relief to the un-affected people rather the relief be provided to the affected people,

(injured, house damages, damaged commercial units, cattle damages etc.) entered in the lists, prepared by the Administration of the Districts. If any affected person could not be entered in these lists, he can apply for his entry in the concerned list of the affected persons before the authorities.

17. The learned counsel for the petitioners has put main emphasis on the point that under Section 4(2)(J) of the Act, the Relief Commissioner is bound to remit in whole or part any Government dues payable by any person or in respect of any property affected by the calamity, which has not been done by him deliberately and negligently. It is an admitted fact that after the earthquake of 2005, the affectees of Muzaffarabad District and other areas were benefited with the remission of the dues. It is

also on record that different loans were also remitted, although, it is the discretion of the Relief Commissioner, to some extent, in view of the nature of calamity, he can order remission of the dues but at the same time, the law does not permit the exercise of discretionary powers in an arbitrary, capricious, oppressive, unfair and discriminatory manner. The Relief Commissioner has shown his helplessness in the open Court. He was also granted a (10) days time to discharge his duties under law and pass an appropriate order under the abovementioned provisions of law. The given time has already elapsed but no compliance report has been submitted by him. Such negligence and indifferent attitude on the part of a high profile Government official is sufficient to conclude that he is not intended to perform his duties or to issue the requisite Notification of

remission of the utility bills and to extend other rehabilitation facilities to the affectees. Therefore, we would like to observe that at minimum, the Relief Commissioner shall give relief to the real affectees of remission of utility bills of (3) months; October to December, 2019 to the real listed affectees, as was given to the affectees of the earthquake of 2005.

18. The State and its functionaries are fully responsible to provide every sought of relief, (enlisted in the Act, 1976), to the affectees of any natural calamity/ disaster and any negligence or indifferent attitude on their part or to make the condition of the affected people more worse, which may lead to further ruin is not warranted by law.

19. The crux of the above detailed discussion is that we accept the instant

writ petition and direct the Relief Commissioner to issue Notification under Section 4(2)(J) of the Act, 1976, in the light of above observations, regarding remission of dues/utility bills; (electricity, gas, Water etc.), forthwith, not later than (10) days. The respondent-Government and particularly, the Secretary Finance is also directed to arrange the funds, and manage proper rehabilitation of the affectees at the earliest. The concerned officials (Government Departments) will comply the order in their respective spheres.

Mirpur Circuit
30.01.2020.

JUDGE JUDGE

Approved for reporting.

JUDGE JUDGE