

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR BENCH

WRIT APPEAL NO.26(AP) OF 2008

1. The State of Arunachal Pradesh,
Through the Chief Secretary Government
Of Arunachal Pradesh, Itanagar.
2. The Circle Officer-Cum-Block Development Officer,
Pakke Kessang C. D. Block P.O. Pakke-Kessang,
District- East Kameng, Arunachal Pradesh.
3. The Director of Health Services,
Government of Arunachal Pradesh,
Naharlagun.

... APPELLANTS

-Versus-

1. Shri Jarjo Tana,
S/o Shri Hare Tana,
R/o Upper Seijusa,
P.O. & P.S.-Seijusa,
District- East Kameng,
Arunachal Pradesh.

... RESPONDENT NO. 1
PETITIONER IN WRIT PETITION

2. Shri Siggi Kino,
C/o Shri Tech Henu- MLA,
12-Pakke-Kessang (ST),
P.O.- Seijusa, District- East Kameng,
Arunachal Pradesh.

...RESPONDENT No. 2 IN WRIT APPEAL
RESPONDENT No. 4 IN WRIT PETITION

3. The Secretary,
Rural Development,
Government of Arunachal Pradesh,
Itanagar.

...PROFORMA RESPONDENT NO. 1 IN WRIT APPEAL

RESPONDENT NO. 2 IN WRIT PETITION

4. The Project Director,
District Rural Development Agency (DRDA),
Seppa, P.O. – Seppa, District- East Kameng,
Arunachal Pradesh.

...PROFORMA RESPONDENT NO. 2 IN WRIT APPEAL
RESPONDENT NO. 5 IN WRIT PETITION

5. The Executive Engineer,
Rural Works Department,
Seppa RWD, Division, Seppa,
District- East Kameng,
Arunachal Pradesh.

...PROFORMA RESPONDENT NO. 3 IN WRIT APPEAL
RESPONDENT NO. 8 IN WRIT PETITION

6. Shri Techhi Hemu, MLA,
12-Pakke-Kessang (ST),
Assembly Constituency,
P.O.-Seijusa, District-East Kameng,
Arunachal Pradesh.

...PROFORMA RESPONDENT NO. 4 IN WRIT APPEAL
RESPONDENT NO. 7 IN WRIT PETITIONAND**WRIT APPEAL NO.27(AP) OF 2008**

1. Shri Sigggi Kino,
S/o- Pabe Kino,
C/o Shri Techhi Henu- MLA,
12-Pakke-Kessang (ST),
P.O.- Seijusa, District- East Kameng,
Arunachal Pradesh.

... RESPONDENT NO. 4 IN WP(C) NO. 146(AP)/2007

2. Mrs. Yamne Tok,
W/o Sri Ronke Tok,
R/o Village: Bali,
Post Office: Seijusa,
Police Station: Seijusa,
District: East Kameng,
Arunachal Pradesh.

...RESPONDENT NO. 8 IN WP(C) No. 150(AP)/2007
...WRIT APPELLANTS.

3. The Director of Health Services,
Government of Arunachal Pradesh,
Naharlagun.

... APPELLANTS

-Versus-

1. Shri Jarjo Tana,
S/o Shri Hare Tana,
R/o Upper Seijusa,
P.O. & P.S.-Seijusa,
District- East Kameng,
Arunachal Pradesh.
2. Shri Gunja Langlang,
S/o Shri Tech Henu- MLA,
12-Pakke-Kessang (ST),
Assembly Constituency,
P.O.- Seijusa,
District- East Kameng,
Arunachal Pradesh.
3. Shri Rafe Dawe,
S/o Sri Dachu Dawe,
R/o- Upper Seijusa,
P.O.- Seijusa,
District- East Kameng,
Arunachal Pradesh.
4. The State of Arunachal Pradesh,
Through the Chief Secretary Government
Of Arunachal Pradesh, Itanagar,
Arunachal Pradesh.
5. The Secretary,
Rural Development,
Government of Arunachal Pradesh,
Itanagar.
6. The Secretary (Education),
Government of Arunachal Pradesh,

Itanagar, Arunachal Pradesh.

7. The Director of School Education,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh.
8. The Director of Health Services,
Government of Arunachal Pradesh,
Naharlagun.
9. The Project Director,
District Rural Development Agency (DRDA),
Seppa, P.O. – Seppa, District- East Kameng,
Arunachal Pradesh.
10. The Block Development Officer,
CD Block, East Kameng District,
Pakke Kessang, Arunachal Pradesh.
11. The Executive Engineer,
Rural Works Department,
Seppa RWD, Division, Seppa,
District- East Kameng,
Arunachal Pradesh.
12. Shri Techhi Hemu, MLA,
12-Pakke-Kessang (ST),
Assembly Constituency,
P.O.-Seijusa, District-East Kameng,
Arunachal Pradesh.

...RESPONDENTS.

P R E S E N T

HON'BLE THE CHIEF JUSTICE MR. MADAN B. LOKUR
HON'BLE MR. JUSTICE B.D.AGARWAL

For the appellants	:	Mr. R.H.Nabam, Sr.Government Advocate, Mr. J. Hussain
For the Respondents	:	Mr. T.Son, Advocate,ad
Date of hearing	:	17.02.2011
Date of Judgment and order	:	22.02.2011

JUDGMENT AND ORDER(CAV)

(B.D.Agarwal, J.)

Both the writ appeals are being disposed of by this common judgment since the appeals are arising out of the same set of facts and also against one and the same judgment dated 24.8.2007, passed by a learned Single Judge in WP(C) Nos. 146(AP) and 150(AP) of 2007. By this impugned Judgment, the learned Single Judge has directed the Project Director, District Rural Development Agency (DRDA), Seppa and Block Development Officer, Pakke-Kessang to clear the bills of the writ petitioners, after verification of the works done by them.

2. Being aggrieved by the said direction the State of Arunachal Pradesh and the private respondents, namely, Sri Siggie Kino and Smt Yumne Tok have filed the aforesaid writ appeals. Be it mentioned here that that the State Appeal is essentially against the Judgment in WP(C) No. 146 (AP) of 2007 and not against the other writ petition.

3. We have heard Sri R.H.Nabam, learned Senior Govt. Advocate for the appellant in W.A.No.26 (AP) of 2008 and Sri J. Hussain, and learned counsel appearing for the appellant in W.A. 27(A) /2008. Also heard Mr. T.Son, learned counsel appearing for the respondents/writ petitioners.

4. The writ petitioners filed the writ petitions basically seeking a writ in the nature of mandamus so as to direct the Circle Officer-cum-BDO, Pakke Kessang, CD Block not to entertain false and fake bills submitted by the appellants Sri Siggie Kino and Smt Yumne Tok and also, *inter-alia*, to direct the State Respondents not to change the executing agency of the works since they had already executed the works, as per

the orders of Assistant Engineer, RWD. On the other hand, it was the case of private respondent in the writ petitions that since Assistant Engineer, RWD had no authority to issue work orders the Government had decided to authorize the BDO to issue appropriate work orders. Accordingly the BDO issued the work orders in favour of the said respondents/appellants.

5. Pleadings of both the parties in the writ petition reveal that with a view to develop the infrastructure in the health and school sector the Govt. had asked the concerned Departments to prepare schemes. Accordingly, the Executive Engineer, Rural Works Department, Seppa prepared Project Reports for improvement of Health Centre and school building at Seijusa, Pakke Kessang at an estimated cost of Rs.20 lacs each.

6. Finally the Finance Department sanctioned a sum of Rs.18,00,000/- (Rupees Eighteen lacs only) against each project and the fund was placed with the Chief Engineer, RWD. In anticipation of the allotment of fund the Assistant Engineer, PWD, Seijusa issued work orders in favour of the writ petitioners for construction of a post mortem building in the PHC at Seijusa and a school building for Government Higher Secondary School at Seijusa. In view of the said work orders the writ petitioners had executed their respective works.

7. As noted earlier, the appellants are disputing the fact of allotment of work orders in favour of the writ petitioners. According to the appellants since Rural Works Department was busy in executing the works of Bharat Nirman Projects the Government had changed the executing agency of the construction of post mortem building and the said responsibility was withdrawn from RWD and given to the District Rural Development Officer/BDO. In support of the said

contention, learned counsel for the appellants referred to a Note, given by the Minister (Health and Family Welfare) to the Director of Health Services on 31.1.2007, wherein the Hon'ble Minister suggested that the construction work in PHC, Pakke Kessang should be handed over to BDO for speedy and smooth execution of the same. Parallely the MLA of the Constituency also submitted a Note to the Hon'ble Chief Minister on 14.3.2007 requesting him not to change the executing agency and the Hon'ble Chief Minister agreed with the MLA and ordered that the work shall be executed by RWD.

8. The above apart, from the affidavits of the appellants in WA No. 27 of 2008, it appears that the BDO, Seppa, had allotted the work of post mortem building to Sri Siggie Kino only for a sum of Rs. 2,00,000/- (Rupees two lacs) and the work of school building to Smt Yumne Tok for a sum of Rs. 4,00,000/- (Rupees four lacs) only against the sanctioned fund of Rs. 18,00,000/- (Rupees Eighteen lacs) for each project. Besides this, one certificate from the Senior Medical Officer (PHC), Seijusa, is also available on record to prove that the post mortem building was completed by the writ petitioner, Sri Jarjo Tana. However, there is no such specific completion report of the work by the appellants. It is true that the District Medical Officer, Seppa, has issued a certificate stating that the post mortem building was constructed by the BDO, Seijusa. But, there is no corresponding certificate from the BDO that the post mortem building was done by the appellant, Sri Siggie Kino. Strangely, there is no completion certificate with regard to the school building. At the same time, the BDO has stated in his affidavit that the letter from the Executive Engineer, RWD, not to change the executing agency, was received lately and before that he had already issued work orders to the appellants (contractors). However, this statement is not enough to disturb the Judgment of the learned Single Judge in absence of specific

certificate of completion reports of the post mortem and school building by the private appellants, in addition to the confusion about the value of the work orders.

9. At any rate, the crux of the appeals is whether the writ petitioners were at all given the construction works and whether they had successfully executed the same. Strangely, official respondents are not denying these claims in their respective affidavits and this silence of the State respondents is also going in support of the writ petitioners.

10. In view of the aforesaid facts, we do not find any fault in the judgment of the learned Single Judge, whereby it has been directed that the writ petitioner is entitled to be paid for the works done by him. In the result, both the writ appeals stand dismissed. However, in the facts and circumstances of the case, we do not propose any cost. At this stage, it may be mentioned here that vide order dated 24.9.2010, this court had directed the State Appellants to deposit a sum of Rs.2 lacs in the Registry. If the said money has been deposited in the Registry it shall be paid to the writ petitioner, namely Jarjo Tana, on proper identification and after obtaining proper receipt and the said amount shall be adjusted in the final bill.

JUDGE

CHIEF JUSTICE