

GAHC040014122023



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

Case No. : PIL/18/2023

Sunday Bagang and 3 Ors.

S/o Samo Bagang, R/o Jayang Bagang, Chayang Tajo, East Kameng District, Seppa,
A.P. Phone 8730966340

2: Ram Bagang

Age:

Occupation :

S/o Lt. Tama Bagang

R/o Chayang Tajo

East Kameng District

Seppa

A.P.

3: Pritom Yangfo

Age:

Occupation :

S/o Tamang Yangfo

R/o Village Yangfo

Chayang Tajo

East Kameng District

Seppa

A.P.

4: Smti Rebika Rebe

Age:

Occupation :

W/o Kompu Dolo

R/o Village Rebe

Chayang Tajo

East Kameng District

Seppa

A.P

VERSUS

THE UNION OF INDIA and 14 Ors.
represented by the Ministry of Road Transport Highways and Highways, (MorTH),
Transport Bhawan, 1, Parliament Street, New Delhi, GOI 110001 2:The Secretary
Age: 0
Occupation :
North Eastern Council NEC
DIPR

NEC Secretariat
Nongrim
Hills
Shillong-793003

3:The Ministry of Development of North Eastern Region
Age: 0
Occupation :
Vigyan Bhawan Annex
Maulana Azad Road New Delhi-110011

4:The Chief Secretary
Age: 0
Occupation :
Civil Secretary
Civil Secretariat

GoAP
Itanagar
A.P

5:The Principal Secretary
Age: 0
Occupation :
PWD
Civil Secretariat
GoAP
Itanagar
A.P

6:The Director General of Police (DGP)
Age: 0
Occupation :

PHQ
Itanagar
Govt. of Arunachal Pradesh.

7:The Principal Secretary

Age: 0
Occupation :
Vigilance
Civil Secretariat
GoAP
Itanagar
A.P

8:The Chief Engineer

Age: 0
Occupation :
PWD
WZ Mowb II
Itanagar
GoAP
A.P

9:The Commissioner

Age: 0
Occupation :
PWD
Govt. Of Arunachal Pradesh
Civil Secretariat
Itanagar
A.P

10:The Superintendent Engineer (SE)

Age: 0
Occupation :
PWD
Bobia
Sagalee Circle
Papum Pare
A.P

11:The Executive Engineer

Age: 0
Occupation :
PWD
Chayang Tajo Division

Dist. East Kameng
A.P

12:The Deputy Commissioner cum District Chief Vigilance Officer
Age: 0
Occupation :
East Kameng District
A.P

13:M/s Gammon India Limited
Age: 0
Occupation :
Gammon
House

Veer
Savarkar Marg
PO Box No.
9129
Prabhadevi
Mumbai.

14:M/s Gammon Engineers and Contractors Private Limited
Age: 0
Occupation :
Zonal Office

Veer
House

Gammon
Savarkar Marg
PO Box No.
9129
Prabhadevi
Mumbai.

15:The DRB Infrastructure Pvt Ltd
Age: 0
Occupation :
Independent Bungalow Situated at Plot
No. 10. HIG HUDA Layout

Adjacent to NMDC Guest
House

Road No. 2
Banjara
Hills
Hyderabad
Telangana
State - 50003

Advocate for the Petitioner : Madan Mili, Sonam Tsomo, k N Maling, D Tatum, Tali Umbey, T Siga, Chanya Bangsia

Advocate for the Respondent : GA (AP), Karyom Dabi, 2 R Borah, D Mazumdar, Sr. Advocate, Tapi Omo, DSGI, Marto Kato

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 17.09.2024
(K. R. Surana, J)

Heard Ms. S. Tsomo, learned counsel for the petitioners. Also heard Mr. N. Ratan, learned Additional Advocate General for the State respondents.

2. The learned Additional Advocate General has referred to Status reports dated 01.07.2024 and 10.09.2024 to explain the cause of delay.

3. The relevant portion of the said two Status Report dated 01.07.2024 and 10.09.2024 are quoted hereinbelow:

“STATUS REPORT (dated 01.07.2024)

Sub - PIL No.18(AP)/2023, filed by Sunday Bagang & 3 Ors-Vrs-The state of A.P & Ors.

IN THE MATTER OF PIL MENTIONED IN ABOVE SUBJECT:

I on behalf of state respondent No. 8, 10, 11 in Reply to PIL No.18(AP)/2023 filed by the

petitioners.

I Shri Ojing Pajing aged about 48years, S/o Shri Tagang Pajing presently serving as Executive Engineer in the Department of PWD, Govt. of A.P, do hereby submit the latest progress report of work "Construction and Improvement of the Seppa to Chayangtajo road(81.0Km)" in East Kameng District of A.P und state as follows:

1. That the copy of Court order of Hon'ble Court hearing being PIL No.18(AP)/2023 has been received through Govt. Advocate, vide letter no. Dir/Lit/AP/2024/528 Dated Yupia the 08/05/2024 and the state respondents have gone through it and understood the content thereof and I have been duly authorized by aforesaid official respondents and competent to submit the progress report of construction work on their behalf.

BRIEF REPORT ON PROGRESS OF WORK ON ONGOING SEPPA- CHAYANGTAJO ROAD (81.0KM) AS ON DATE.

The project Construction and Improvement of Seppa-Chayangtajo road (81.0Km) in East Kameng District A.P which was under M/s Gammon India Ltd Mumbai, commenced in 2009 was targeted to complete by 2012. However, the same was re-awarded to M/s Gammon Engineers and contractor private Ltd, Mumbai and subsequently engaged sublet the work to M/s DRB Infrastructure Pvt Ltd Hyderabad as sub-contractor (Terminated) with Target date of completion in 2017 and 2018 respectively. The upto date progress of work as April 2024 is 85%

The few vital reasons for delays in timely completion of the project are highlighted as belows:-

- 1. Law & order issues at site.*
- 2. Land Acquisition problems at site.*
- 3. Disputed in quarry site.*
- 4. Adverse Climate conditions heavy rainfalls/Remoteness of the area having only 6months working period annually.*
- 5. Holding project works in 2015 in want of cost revisions.*
- 6. Delay in drawing of extended agreement in 2017.*
- 7. Complaints and litigation by District based union or organizations*
- 8. SIC investigation into the project etc..*

This Project the Construction and Improvement of Seppa-Chayangtajo road (81.0Km) is

still under the investigation of SIC Itanagar which has also affect the smooth execution of work due to seizure of relevant documents pertaining to the project compounded by above mentioned delaying factors that subsequently slowed down the progress of works in the past few years however the balance works was restarted in last September 2023 and updated progress of work is separately shown for Central funding(NEC) and State Funding(Special Package for Restoration of flood damaged works) in Table- I und Table-II.

1. PROGRESS REPORT OF WORK UNDER NEC FUNDING AS ON JUNE 2024: -

TABLE-I							
Sl. No	Scope of works as per sanctioned		Achievement as on March '2024		Work balance as on April 2024		Remark
	Physical Scope	Sanctioned amount (Rs in Lac)	Physical	Fin (Rs in Lac)	Phy	Fin (Rs in Lac)	
1	J/Clearance 81.360 Km	17252.00	81.360	15247.38	-	2004.62	Over all progress of work is 80%
	Formation Cutting 5.618 Km		5.618		-		
	Widening 81.360 Km		81.360		-		
	Subgrade 81.360 Km		81.360		-		
	GSB 81.360 Km		81.360		-		
	PAVEMENT: -				-		
	WBM (I) 81.360 Km		81.360		-		
	WBM (II) 81.360 Km		81.360		-		
	WBM (III) 81.360 Km		81.360		-		
	Black Topping 81.360 Km		35.615		45.745		
	Total	17252.00		15247.38		2004.62	

As shown in the Table -I, the overall physical progress of the project funded under NEC fund with project cost of Rs 17252.00 Lakhs is 80% completed and except there is physical work balance of Blacktopping-45.745Km including Re-Metalling of 18.0km stretch road length worn out by annual monsoon flood and rain water every year and financial balance of Rs 2004.62

Lakhs which is yet to be released by the NEC. In this connection it needs to mention that the PWD department Chayangtajo Division had targeted to complete the balance work physically and financially in last financial year ending March 2024 but due to non-released of balance fund by the NEC the balance work couldn't be completed in the stipulated targeted date.

2. PROGRESS REPORT OF WORK UNDER STATE FUNDING (SPECIAL PACKAGE) AS ON 30TH JUNE '2024

	TABLE-II								
Sl. No	Scope of works as per sanctioned			Total Achievement as on March '2024		Work balance as on April 2024		Remark	
					Physical	Fin	Phy	Fin	
	Physical Scope			Fin					
1	J/Clearance Km	59.142	Hect.	1992.00	59.142	180.00	0.00		To be completed in 2 Months subjected to fair weather condition
	WIDENIN G	1.380	Km		1.380		0.00		
	WBM (I)	10.620	Km		10.620		0.00		
	WBM (II)	20.630	Km		20.630		0.00		
	WBM (III)	35.070	Km		35.070		0.00		
	Black Topping Km	16.360	Km		10.50.00		5.86		
Total				1992.00		1992.00			

As shown in the Table -II, the Physical progress of the project (Restoration of Flood Damaged work Phase I and II) funded under State fund with project cost of Rs 1292.00 Lakhs + 700.00 Lakhs = Rs 1992.00 Lakhs was targeted in March 2024 the overall physical progress of the project is 90% completed till date, the work is progressing smoothly and all scope of works were successfully completed except Black Topping work which was hindrance by frequent rainfall in the area has so far completed upto 10.50Km out of 16.36 Km scope provision as such there is balance in BT work-5.86Km which is under progress and targeted to be completed by September 2024 subjected to fair weather condition of the site. Monsoon Rainfall is still continuing at site hampering the progress of BT works.

STATUS REPORT (dated 10.09.2024)

"BRIEF WORK STATUS REPORT OF SEPPA-CHAYANGTAJO ROAD (81.0KM AS ON
10TH SEPTEMBER 2024

Sub:- PIL No.18(AP)/2023, filed by Sunday Bagang & 3 Ors-Vrs-The state of A.P & Ors.

The work of the project namely "Construction and Improvement of Seppa-Chayangtajo road (81.0Km) in East Kameng District A.P" was smoothly progressing under the contractor M/s Gammon Engineers and contractor private Ltd, Mumbai, till the advent of this year monsoon season which lasted from May to last week of August 2024. In this connection it is elucidate that due to heavy and continuous torrential rainfall during the monsoon season the carpeting work of said road was badly affected, as the work standard guidelines strictly says that the carpeting work cannot be carried out in muddy and wet road surfaces. Furthermore, the flash flood occurred on 30th June 2024 in Kameng River have entered into the Stone Crusher plant and Bitumen Mixing Plant located at Marjingla quarry in the bank of Kameng River.

This flash flood not only washed out the huge quantities of construction materials such as stone aggregates, chips and bitumen barrels stacking at the site of Plant, kept ready for used in ongoing Carpeting work but it also affected the structure of the stone Crusher plant and Bitumen Mixing Plant. Thus, causing huge damaged and created unavoidable circumstance to the department that ultimately resulted into halt of work progress.

However, the plants is under repairing the departments have already initiated the repairing and maintenance work of the damaged part of the Crusher plant and Bitumen Plant at Marjingla to make it serviceable for immediate resumption of construction work of Seppa-Chayangtajo Road. As such the department spearheaded under Chayangtajo Division is preparing hard to resume the construction work from 1 week of October 2024 subjected to fair weather condition of the road."

- 4.** It appears from the petition of this Public Interest Litigation (PIL) that a project of "Construction and improvement of Seppa-Chayangtajo road (81.0 Km) in East Kameng District" was tendered and the work was sanctioned on 15.02.2007 and 12.12.2006, respectively, and the notice to proceed with the work was issued on

16.12.2008. It appears that time for completion of work was extended from time to time. It is also projected in the Status Report dated 01.07.2024 that owing to certain anomalies in the work, several F.I.R(s) were filed, which led to investigation by the Special Investigation Cell (SIC) and it is also projected that several Officers, who were involved with the concerned work were arrested. It also appears that for substantial time, the progress of the work was stalled and it was also projected that the Sub Contractor engaged by the Principal Contractor had been terminated.

5. It also appears from the said Status Report that part of work is funded by the Government of India through the North Eastern Council (NEC) and a part of the work is also funded by the State.

6. From the contents of Table -I, appended to the Status Report, as on March, 2024, the physical achievement appears to be 100% in all respect except Black Topping and the balance work as on April, 2024 in respect of Black Topping is 45.745 Km and the overall progress of work is 80% under NEC funding. Moreover, if the road length is 81.0 Km, it appears that out of funds from NEC and the State, there is a substantial over-lapping of work.

7. The reason assigned for delay as provided in the Status Report dated 01.07.2024, is first, law-and-order situation at site. However, the details of the law-and-order situation, including F.I.R. registered for the law-and-order situation are not disclosed. The Second ground of delay is land acquisition problem at site. The Court fails to understand that if there is a law-and-order situation and land acquisition problem at site, how except for black topping, 100% progress is achieved. The third ground relates to disputes in quarry site. For this, no certificate has been produced by the Government Agency, who has leased out or put to sale the concerned quarry site. The Status Report also does not disclose which quarry site is earmarked for providing

stones and material for the project. With such vague ground, even a dispute at an unconnected quarry site can form a ground for delay. The fourth ground is adverse climatic condition, heavy rainfall and remoteness of the area having only 6 (six) months working period annually. No material is available to disclose as to whether or not the contractor, before accepting the tender work, had visited the site and had acquainted itself with the conditions at site. The fifth ground for delay is holding project works in 2015 in want of cost revisions. To support this, the authorities have not produced any supporting materials and if there is a dispute with regard to cost revisions, how does the respondent authorities plan to complete the balance work, is not disclosed. The sixth ground is delay in drawing of extended agreement in 2017. No supporting materials are produced as to how without an agreement or extension thereof, the contractor is showing progress of work. The seventh ground is complaints and litigation of District based Union or organizations. This ground is also not supported by any documents and copy of Court orders, if any, which have led to delay on account of litigation. No materials are disclosed as to whether the State respondents have moved the concerned Court under Section 20-A of the Specific Relief Act, 1963, which prohibits public projects and works to be stalled. The eighth ground relates to SIC investigation into the project etc. There are no materials to show that why a project should be stalled merely because some agency is investigating into the matter.

8. Another reason assigned for the delay is that the delay occurred in smooth execution of the work due to seizure of relevant documents pertaining to the project. This ground is also not supported by any order of the Court or by Investigating Agencies, refusing to part with the copy of the seized documents, which has affected in work adversely. If the authorities do not have the wisdom to seek copies of seized documents from the investigating agencies, there would never be progress of work for

which sanction was granted in the year, 2006 & 2007 and we are now coming towards the nearly end of year 2024.

9. In view of the above, the Court is constrained to form an opinion that materials have been deliberately suppressed to prevent the Court from being acquainted with the entire facts and situation on ground.

10. Therefore, the Court is constrained to issue a notice to the Executive Engineer, Chayangtajo Division, PWD, to show cause as to why the Court should not take a view that insufficient materials are produced with the Status Report in order to misled the Court and to prevent the Court from being acquainted with facts and situation on ground.

11. The Executive Engineer, Chayangtajo Division, PWD, shall take notice that if the Court is not satisfied with the grounds assigned and no appropriate disclosures are made, the Court may contemplate registration of a *suo moto* contempt proceeding against the concerned authorities of the State including the author of the Status Reports for deliberate suppression of material facts.

12. The State respondent is also put to notice to inform the Court that for execution of a project which was sanctioned in 2006, what is the quantum of cost estimation that has happened till date and as to whether while granting extension of the period for completion of contract, the extensions were granted without cost escalation or with cost escalation, and what was the original estimated cost and the present cost.

13. The PWD authorities shall also inform the Court as to whether the North East Council or any other agency in the Government of India has agreed to share the revised estimated cost for the completion of the work and what is the plan of the

State for funding the balance work if fund of from the Government of India is not forthcoming.

14. The respondents shall also produce a copy of the updated bar chart in respect of the work in question, showing the various milestones and indicating how much delay has been caused in achieving the milestone.

15. The learned Additional Advocate General shall send a downloaded copy of this order to the respondent authorities including the Executive Engineer, Chayangtajo Division, PWD, which would construe as a notice to respond to show cause notice.

16. The learned Additional Advocate General shall also obtain copies of the records maintained by the Disaster Management Department in respect of the area where the work is going on and where the Crusher Plant and Bitumen Mixing Plant located at Marjingla quarry is situated, specifically showing the record of flood or any flood related damage in the area.

17. Status reports dated 01.07.2022 and 10.09.2024, produced by the learned Additional Advocate General are made a part of the record.

18. On the prayer made by the learned Additional Advocate General, list the matter on 22.10.2024.

JUDGE

JUDGE

Comparing Assistant