**Before**

**Manipur Lokayukta**

*3rd Floor, Directorate Complex, 2nd M.R., North AOC, Imphal*

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**Complaint Case No. 3 of 2021**

*In the matter between:*

Shri Kiudiyang Riamei S/o Late Keisongbui, resident of Greenland, Ward No. 2, Tamenglong District, Manipur.

… *Complainant*

1. Shri Namsinrei Panmei, ADC Chairman, Tamenglong;

2. Shri Micah Panmei, ADC Member, Tamenglong;

3. Shri Kajaigai Gangmei the then CEO, Tamenglong;

4. Shri Lalsang (Work agency), of Vangchengphai Village, Tousem Sub-Division Tamenglong District, Manipur;

5. Shri Pouchunlung (Work agency) of Ward No. 1 Council Colony Tamenglong, PS-Tamenglong, Tamenglong District, Manipur;

6. Shri Athon (Work agency) of Azuram Village, Tousem Sub-Division Tamenglong District, Manipur;

7. Shri Chumgaigong (Work agency) of Ward No. 1, Council Colony Tamenglong, PS- Tamenglong, Tamenglong District, Manipur.

….. *Respondents/Opposite Parties*

**B e f o r e**

***Mr. Justice T. Nandakumar Singh, Hon’ble Chairperson***

***Mr. Ameising Luikham, Hon’ble Member***

For the Complainant : In Person

For the Respondents: Shri Gunedhor M. Advocate,

Shri S. Dijeswor, Advocate

Shri A. Arunkumar, Advocate

Shri N. Bipin, Advocate

Shri S. Gunabanta, Advocate

R.K. Kulajit, Advocate

 *- for Respondent Nos. 1 and 2.*

 *Respondent Nos. 3 in person.*

 Shri Ahanthem Golly, Sr. Advocate

 Shri H. Suraj, Advocate

 *- for Respondent Nos.4, 5, 6 & 7.*

**Date of order : 03.02.2023**

Judgment and Order

[1] Heard the Complainant, Shri Kiudiyang Riamei; Shri M. Gunedhor, learned counsel, Shri S. Dijeswar Singh and Shri A. Arunkumar, learned counsel appeared on behalf of Respondent Nos. 1 and 2; Shri Niraj Bobby Paonam, learned counsel appeared on behalf of Respondent No. 3; and Shri A. Golly, learned counsel and Shri H. Suraj, learned counsel appeared on behalf of Respondent Nos. 4, 5, 6 and 7.

[2] The present complaint i.e. Complaint Case No. 3 of 2021 was filed by the Complainant, Shri Kiudiyang Riamei against Shri Mica Panmei, Former Member of Autonomous District Council, Tamenglong alleging that fund under 3rd State Finance Commission, 14th Finance Commission and 15th Finance Commission Awards for developmental works of 8-Chramram (Saramba) DCC under Autonomous District Council Tamenglong of about 1.5 crores of rupees were misappropriated by Shri Mica Panmei, former Executive Member ADC Tamenglong and his men (workers). It is further alleged that the work orders for execution of the said developmental works were issued to the agencies nominated by Shri Mica Panmei and other councilors and that without executing the works the sanction amount more than 1.1 crores of rupees had been withdrawn and they committed offences punishable under Section 403, 420 IPC read with Section 13 of the Prevention of Corruption Act, 1988.

[3] The Manipur Lokayukta under the order dated 01.03.2021, after consideration of the material available at that stage, was of the view that there exists a prima facie case for conducting a Preliminary Inquiry and accordingly, decided for conducting a Preliminary Inquiry against the Respondent(s) and directed the Director (Inquiry), Manipur Lokayukta to conduct a Preliminary Inquiry and submit the report within the period provided under Section 20 of the Manipur Lokayukta Act, 2014 and Manipur Lokayukta Rules, 2018.

[4] The Inquiry Officer, in compliance with the requirement under Section 20 (2) of the Manipur Lokayukta Act, 2014, called comments on the allegations made in the complaint and material information, documents collected in the Preliminary Inquiry from the public servants and competent authority; and after obtaining their comments, the Inquiry Officer had submitted the Preliminary Inquiry Report to Manipur Lokayukta through the Director (Inquiry), Manipur Lokayukta. The Director (Inquiry), Manipur Lokayukta under his letter being No.3/ML/DIR (INQ)/2021 dated 6th January, 2022 submitted the Preliminary Inquiry Report along with forwarding letter of the Inquiry Officer attached to Manipur Lokayukta, Shri P. Shanker Singh, MPS. The Preliminary Inquiry Report was submitted against 7 (seven) officials/individuals and they were made Respondents in the present complaint. The names of the said 7 (seven) officials/individuals are as under:

 i) ADC Chairman, Shri Namsinrei Panmei;

 ii) ADC Member, Shri Micah Panmei;

 iii) the then CEO, Shri Kajaigai Gangmei;

 iv) Shri Lalsang (Work Agency);

 v) Shri Pouchunlung (Work Agency);

 vi) Shri Athon (Work Agency); and

 vii) Shri Chungaigong (Work Agency).

[5] Under our order dated 29.06.2022, we after careful perusal of the Preliminary Inquiry Report and materials available in the record more particularly the documents i.e. written comments and others and documents annexed to the Preliminary Inquiry Report, made a considered view that notice is required to be issued for consideration as to whether there is a prima facie case for committing the offences punishable under Section 13 PC Act, 120-B/34 IPC and under Section 5 of the Manipur Public Servants’ Personal Liability Act, 2006 by the above mentioned 7 (seven) Respondents and accordingly directed the Deputy Registrar, Manipur Lokayukta to issue notice to the Complainant as well as to the Respondents for appearance on 18.07.2022 and they were supplied with a copy of the Preliminary Inquiry Report. The purpose of passing our order dated 29.06.2022 for issuing notice in compliance with the provisions under Section 20 (3) of the Manipur Lokayukta Act, 2014 is for giving an opportunity of being heard to the Respondents and also the complainant for deciding as to whether there exists a prima facie case and proceed with one or more of the following actions i.e.

(a) investigation by any agency;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under section 47.

[6] The Respondents have filed their comments to the Preliminary Inquiry Report and also their written arguments. The Complainant as well as the Respondents was heard at length on a number of sittings of the Manipur Lokayukta in the present complaint. Manipur Lokayukta also had taken extreme care so that the Respondents as well as the Complaint would have the ample opportunity to put up their case before us. Since the present judgment and order is not the final judgment and order for the offences alleged to have been committed by the Respondent as per the Preliminary Inquiry Report, very detailed discussion to the extent as to whether prosecution have proved the prosecution case beyond reasonable doubt against the Respondents or not is not required.

[7] The 8-Chramram (Saramba) DCC under Autonomous District Council Tamenglong comprises of 11 villages namely, (i) Azuram, (ii) Chramram, (iii) Thiulon, (iv) Vanchengphai, (v) Taolopangjang, (vi) Impa-Nkang, (vii) Atengba, (viii) Impaningdi, (ix) Charinapang, (x) Chingkao and (xi) New Chingkao. The funds for which allegation is made for misappropriation are under the 3rd State Finance Commission, 14th Finance Commission and 15th Finance Commission. Guidelines for implementation of the Finance Commission Award were issued by the Ministry of Finance for each Finance Commission:-

(i) Guidelines issued by Ministry of Finance for the 13th Finance Commission vide No. 12(2)FCD/2010 dated 23rd September, 2010.

(ii) Guidelines for release of Grants to ‘Excluded Areas’ i.e. areas not covered under Part IX & IXA of the Constitution under the 14th Finance Commission vide Office Memorandum No. 13(34)/FFC/FCD/2017-18 dated 20.10.2017. In page 3 of this OM, under the paragraph heading “Structure”, it is stated that:

 “At district level, Autonomous District Councils (ADC) shall constitute a committee who will be responsible for identification, planning and implementation of projects/works under Schedule VI Areas. However, in Non-Schedule VI Areas, designated agency ADCs/Council or any other administrative structure available in the excluded areas perform the same functions as mentioned for Schedule VI Areas.”

[7.1] The, Additional Chief Secretary (Tribal Affairs & Hills), Government of Manipur issued an Office Memorandum being No. 22/202/2018- (HILLS) dated 09.11.2018 for the subject – Implementation/execution of work under State Fund, State Finance Commission and Central Finance Commission Grant to 6 ADC, Manipur. For easy reference, the OM dated 09.11.2018 is reproduced hereunder :

**“GOVERNMENT OF MANIPUR**

**SECRETARIAT: HILLS DEPARTMENT**

**OFFICE MEMORANDUM**

**Imphal, the 9th November, 2018**

**Subject: Implementation/executive of work under State Fund, State Finance Commission and Central Finance Commission Grant to 6 ADC, Manipur.**

**No. 22/202/2018- (HILLS): Having felt the need to utilize the fund granted from the State Fund, State Finance Commission and Central Finance Commission in a rational way and to achieve optimal welfare of hill people, it is crucial to streamline effective method of implementation of the grant in the line of the guideline of State Finance Commission and Central Finance Commission.**

**1. The Autonomous District Council shall be responsible for identification, planning and implementation of project/works for creation of durable community assets based on locally felt needs.**

**2. The Autonomous District Councils shall submit identified works/projects to the Government for approval.**

**3. In no case, Autonomous District Councils shall change the identified and approved works/projects without prior approval of the Government.**

**4. The Autonomous District Councils, as usual, shall have the flexibility to select appropriate Agency/Individual from the local areas through which the work shall be executed under the supervision of respective technical staff of the Councils.**

**5. The Senior-most Technical Officer, PWD of respective Autonomous District Councils shall perform all duties, responsibilities and function as the Executive Engineer and shall have technical sanctioning power not exceeding Rs. 50(fifty) lakh.**

**6. The Autonomous District Councils shall maintain proper Register for the funds allocated to Agencies/Individuals. All Agencies/Individuals who execute works/projects shall promptly submit Completion Repot so that the Councils may submit utilization Certificate to the Government on time.**

**7. This O.M shall be strictly adhered to for the time being in force.**

**Sd/-**

**(Letkhogin Haokip)**

**Additional Chief Secretary(Tribal Affair & Hills)**

**Government of Manipur**

**Copy to:**

1. **Secretary to Her Excellency, Governor of Manipur, Raj Bhavan, Imphal**
2. **PPS to Hon’ble Dy. Chief Minister, Manipur**
3. **PPS to Hon’ble Minister (TA&H), Manipur**
4. **PS to all Hon’ble Chairman, ADC (CDL, SPTI, TML, CCPUR, KPI,UKl), Manipur**
5. **Accountant General, Manipur**
6. **Director (Ptg & Sty), Manipur for publication in the Manipur Gazette (Extraordinary)**
7. **All Chief Executive Officer, ADC(CDL,SPTI, TML, CCPUR,KPI,UKL),Manipur**
8. **All Treasury Officer/Sub-Treasury Officer, Manipur**
9. **Guard file.”**

[8] The Addl. Secretary (Tribal Affairs & Hills), Government of Manipur issued an Office Memorandum being No. 19/8/2021-Hills (FC) dated 29.11.2021 for the subject – Mode of release of fund in 6 (six) Autonomous District Councils. For easy reference, the OM dated 29.11.2021 is reproduced hereunder :

**“GOVERNMENT OF MANIPUR**

**SECRETARIAT: HILLS DEPARTMENT**

**OFFICE MEMORANDUM**

**Imphal, the 29th November, 2021**

**Subject: Mode of release of fund in 6(six)
Autonomous District Councils.**

**No. 19/8/2021-Hills(FC): All Autonomous District Councils shall adopt 70:30 mode of release of fund for all the civil works to the Agencies in respect of State Grant-in-aid, State Finance Commission(SFC) and Central Commission (CFC) Award.**

**2. The mode of release of funds should be strictly followed by all the Chief Executive Officers of 6 (six) Autonomous District Councils.**

**3. This O.M. shall come into force with immediate effect.**

**Sd/-**

**(D.K. Thangboi)**

**Addl. Secretary (Tribal Affairs & Hills),**

**Government of Manipur.**

**Copy to:**

1. **PPS to Hon’ble Minister (Tribal Affair & Hills), Manipur**
2. **Caretaker Chairman, ADC, CCp, Chandel, Tml, Kpi, Spti & Ukl.**
3. **PS to Addl. Chief Secretary (Tribal Affair & Hills), Govt. of Manipur**
4. **Director, (Tribal Affair & Hills), Manipur.**
5. **Deputy Commissioner, CCP, Chandel, Tml, Kpi, Spti & Ukl.**
6. **Chief Executive Officer of ADC, CCp, Chandel, Tml, Kpi, Spti & Ukl.**
7. **Office copy/Guard file.”**

[9] The Governor of Manipur in exercise of the powers conferred by Section 51 read with Section 53 of the Manipur (Hill Areas) District Councils Act, 1971 (76 of 1971) makes Rules called “The Manipur (Hill Areas) District Councils Rules, 1972 (hereinafter referred to as “Rule 1972”). The Government of Manipur, Planning & Development Department vide No. SPL. O(R)R/DC/72 dated 13th March, 1972 notified the Rule 1972 and was published in the Manipur Gazette Extraordinary No. 162-E-116 Imphal, Monday, March 13 1972. Rule 86 (2) B of the Rule 1972 clearly provides the write off of stores and tools and plants belonging to the Engineering Department. It is provided that in regard to stores and tools and plants belonging to the Engineering Department, the provisions of C.P.W.D. Code shall continue to apply until the State Government issues its own P.W.D. Code in which case the latter shall become applicable to the Council for the purpose of this rule.

[9.1] Rule 93 of the Rule 1972 provides that ‘No work to be executed without proper sanction”. No work shall be executed on behalf of the Council until detailed estimate of the cost has been prepared in the prescribed Form together with the necessary plans, and technical sanction thereto has been accorded by a competent Engineering Officer where the cost does not exceed Rs. 50,000/- and the Governor where the cost exceeds Rs. 50,000/- subject to the provisions of rule 110, the expenditure sanction for all works shall be accorded by the Council.

[9.2] Rule 95 of the Rule 1972 provides that no tender shall be called for if the work is undertaken by the Council departmentally.

[9.3] Under Rule 97 of the Rule 1972 it is provided that the provisions of C.P.W.D. Codes etc. will be applicable for the works undertaken by the District Councils. For easy reference Rule 86, Rule 90, Rule, 91, Rule 93, Rule 95, Rule, 96 and Rule 97 of the Rule 1972 are reproduced hereunder:

**“86. Write off of unserviceable goods, stores, livestock etc. other then stores, and tools and plants belonging to the Engineering Department:- (1) Stores, articles and other goods and livestock, other than stores and tools belonging to the Engineering Department, which are reported surplus or unserviceable, may be disposed of by sale or otherwise under the orders of –**

**(2) Each order declaring stores, articles and other goods and livestock, as obsolete, surplus or unserviceable shall record the full reasons for condemning them and how the condemned stores, articles or goods or livestock are to be disposed of, that is to say, by sale, public auction or otherwise. The Chief Executive Officer should further record full particulars regarding all condemned stores, articles goods, and livestock in suitable lists from which their disposal can be watched.**

**B. Write off of stores and tools and plants belonging to the Engineering Department: In regard to stores and tools and plants belonging to the Engineering Department, the provisions of C.P.W.D. Code shall continue to apply until the State Government issues its own P.W.D. Code in which case the latter shall become applicable to the Council for the purposes of this rule.**

**90. General Instructions:- (i) The detailed procedure to be observed in dealing with the transaction relating to the Council and in keeping and rendering accounts of such transactions shall, consistently with the provisions in these Rules, be prescribed by the Governor in consultation with the Accountant General concerned and embodied in an Account Code.**

**(ii) Audit:- The Account of the Councils shall be subject to the Audit of the Accountant General. The Councils may have its own internal audit organization also. The account of the Council shall also be open for audit by the Internal Audit wing of the State Government.**

**91. Administrative approval for works:- (1) No original work shall be undertaken on behalf of the Council until administrative approval has been accorded to the work by the Chairman, in the case of a work not exceeding Rs. 5,000/- in value and subject to the provisions of rule 93 by the Council in all other cases.**

**(2) The Chairman or the Council, as the case may be, shall not accord administrative approval to any work unless estimates and plans have been approved by the authority specified in these rules.**

**(3) Before according such administrative approval to any work, the Chairman, the Council or the Governor as the case may be, satisfy himself or itself that:-**

**(a) funds for the execution of the work are available, and**

**(b) funds are likely to be forthcoming annually for maintenance after completion of the work.**

**93. No work to be executed without proper sanction:- No work shall be executed on behalf of the Council until detailed estimate of the cost has been prepared in the prescribed Form together with the necessary plans, and technical sanction thereto has been accorded by a competent Engineer Officer where the cost does not exceed Rs. 50,000/- and by the Governor where the cost exceeds Rs. 50,000/- subject to the provision of rule 110, the expenditure sanction for all works shall be accorded by the Council.**

**95. Tenders:- (1) No tender shall be called for if the work is undertaken by the Council departmentally.**

**(2) Subject to the provision of sub rule (1) no work exceeding Rs. 5,000/- in value shall be allotted except on the basis of tender.**

**(3) All tenders shall be opened by the Chief Executive Officer or by any other officer authorized by the Council in this behalf and thereafter the tenders shall be accepted by the following authorities: -**

**(i) Tenders upto Rs. 5,000/- and Assistant Engineer.**

**(ii) Tenders upto Rs. 50,000/- and Executive Engineer.**

**(iii) In all other cases, Council with previous approval of the Governor.**

**(4) Where no tender is received in spite of calls, the work shall be allotted by the Council on the basis of negotiation and with the previous approval of the Governor where the cost exceeds Rs. 50,000/-**

**Provided that before invoking this sub-rule tenders shall have been called for at least twice after giving, on each occasion, notice of not less than three weeks.**

**96. Revised administrative approval:- If the detailed estimates of any project when prepared, exceed the amount administratively approved by 10 per cent, or more, or if it becomes apparent during the execution of any work that the amount administratively approved will be exceeded by 10 per cent or more owing to increase of rates or other causes, the revised administrative approval of the competent authority to the increased expenditure shall be obtained without delay. Similarly, revised administrative approval shall be obtained to important modifications of the proposal originally approved, even though the cost thereof may be covered by saving on other items.**

**97. Applications of C.P.W.D. Codes etc. :- For all other purposes not provided for in the Act or these rules, the provisions of all the codes, Rules and regulations, which are applicable for a work undertaken by the Government of Manipur shall be deemed to be applicable in the case of a work undertaken by the Council.”**

[10] The Standard Operating Procedures (SOPs) for CPWD Works Manual are to be read in conjunction with the provisions of CPWD Works Manual, 2019. Relevant portions of Chapter 5 (Contract Management) of the CPWD Works Manual 2019 are reproduced hereunder:

**5.6.4 Responsibility for Quality of Work**

 **The officer who records/test checks the measurements for an item of work will be responsible for the quality, quantity/ measurements and dimensional accuracy of that item of work. In respect of all works, the responsibility of various officers for checking of materials and workmanship of items of works shall be as given in SOP 5/10. The T/S Authority shall be responsible for the overall quality of work.**

**5.12 Measurement of Work**

 **All measurements are to be done as per provisions of GCC and abstract of schedule of measurements and payments are to be entered through PFMS portal of CPWD using E-MB module.**

**5.12.1 In Case Physical Measurement Books are Used**

 **The procedures on operation of MB i.e. writing of MB, Recording of measurement, Movement of MB, Transfer of MB, Review of MB, Loss of MB etc. are given in SOP 5/20.**

**5.12.3 Measurements for Inadmissible Items**

 **Items claimed by the contractor which in the wisdom of the Engineer in Charge are not admissible for payment, measurements should be recorded without prejudice for record purposes only under heading “Inadmissible items claimed but not included in the payment” so that in case it is subsequently decided to admit the contractor’s claims in DRC/Arbitrations/Court proceedings, there should be no difficulty in determining the quantities of such work done.**

**5.12.5 Advance Payments for Work Done and Measurement/Not Measured**

 **Advance payments can be made to the contractoron a running account bill form for the work done and measurements submitted by him, but not checked, on receipt of an application from the contractor for financial aid in the shape of part payment. It can be paid by the Engineer in Charge as a lump-sum advance payment on Hand Receipt Form 28, subject to the conditions given in SOP 5/22.**

**SOP NO. 5/10 Responsibility of Officers for Quality of Work (Refer Para 5.6.4)**

**1. To ensure that materials duly approved are used in the work, samples of various materials are approved by the Engineer in Charge and by NIT approving authority not below the rank of SE for projects above the powers of EE.**

**2. Wherever necessary the above mentioned authorities approve the sources for respective materials.**

**3. Approved samples of materials are signed by the approving authority and the contractor and preserved till the end of the project.**

**4. Samples of various materials, fittings are approved well in advance and displayed at sites of works with make and name of the manufacturer/supplier.**

**5. The material non-conforming to specifications are promptly rejected and removed from site.**

**6. It is incumbent upon the Engineer in Charge to keep a watch over regular testing of materials before making payment at the stage of each running bill. For this purpose, a proforma as per Annexure-54 is prescribed.**

**7. Samples for tests are taken mostly by the Junior Engineers, or some by the Assistant Engineers.**

**8. Samples for 10% of mandatory tests are collected by the Engineer in Charges. 10% of the field tests are got done by the Engineer in Charges in their presence.**

**9. A Guard file is maintained at all work sites, containing copies of all inspection reports to-date.**

**10. Site Order book, Record of test., etc. are put up for entries and reviewed by the inspecting officers**

**11. The inspecting officers of the rank of Superintending Engineer and above not only confine themselves to review of progress, coordination and general matters, but also inspect the work from quality Assurance aspects.**

**12. The Engineer in Charge invariably reviews and signs the guard file of earlier inspections, Site Order Book, Register of tests carried out etc.**

**13. Checklist**

**(i) As and when any important item is taken up for execution, the Junior Engineer/Assistant Engineer should go through the specifications and invariably make a checklist.**

**(ii) This Checklist is got approved from the Engineer in Charged, and is shown to the inspecting officers.**

**(iii) The important items inter-alia include foundation work, including reinforcement and shuttering, brickwork, cast-in-situ mosaic flooring, doors & windows, plumbing, including water supply pipe lines, roof treatment, earth filling etc. which are a few illustrative items for checklist purposes.**

**(iv) Sample checklists for items of concrete for raft, columns/beams/slabs, water supply lines, brickwork and plastering are given in Annexure- 26 for guidance.**

**14. To avoid dampness and leakage, the Engineer in Charges ensures that necessary tests are carried out for proper slopes of canopies, chajjas, terracing, drainage and sanitary works before these are covered/concealed, and also ensure rectification of defects noticed.**

**15. The Engineer in Charge ensure availability of the required test equipments for field tests, as well as an updated copy of specifications, copies of agreement at sites of works.**

**16. In respect of all works, the responsibility of various officers for checking of materials and workmanship is given in Annexure- 27**

**SOP NO. 5/20: Physical Measurement Books (Refer Para 5.12.1)**

**1. The payments to contractors and others for the work done or other services rendered are made on the basis of measurements recorded in the Measurement Book.**

**2. The measurement book is the basis of all accounts of quantities whether of works done by Contractors or by labourers employed departmentally, or materials received. It is so written that the transactions are readily traceable.**

**3. These books are considered as very important accounts records and maintained very carefully and accurately as these may have to be produced as evidence in a court of law, if and when required.**

**4. All the measurement Books belonging to a Division, are numbered serially. A register is maintained in from CPWA 92 showing the serial number of each book.**

**5. A similar register is maintained in the Sub-Divisional Office showing the names of persons, i.e. Assistant Engineer/Junior Engineer, to whom the Measurement Books are issued.**

**6. Recording of measurements**

**A. Entries at commencement of measurements**

 **Each set of measurements to be recorded should commence with entries stating:**

**In the case of bills for works done:**

**Full name of work as given in the agreements/estimate.**

**Location of work.**

**Name of contractor.**

**Number and date of agreement.**

**Date of written order to commence work.**

**Date of actual completion of work.**

**Date of recording measurements.**

**Reference to previous measurements.**

**In the case of bills for supply of materials;**

**Name of supplier.**

**Number and date of supply order/agreement.**

**Purpose of supply in one of the following forms as applicable to the case:**

**(i) Stock (for all supplies for stock purposes).**

**(ii) “Purchase” for direct issue to the work(full name of the work as given in the estimate is mentioned).**

**(iii) “Purchase” for (full name of work as given in estimate) for issue to contractor ….. on….. :**

**Date of written order to commence the supply.**

**Date of actual supply.**

**Date of recording measurements.**

**B. Writing of abstract**

 **(i) A suitable abstract should then be prepared which should collect in the case of measurements for works done.**

**C. Nomenclature of item**

 **(i) In case of extra/substituted item of work that is not covered in the agreement, the full nomenclature is reproduced in the Measurement Book and the bill form.**

 **(ii) The full nomenclature of the items is adopted in preparing abstract of final bill in the Measurement Book and also in the bill form for final bills.**

**D. Cross reference in case of running account bill**

 **If the measurements are taken in connection with a running contract, a reference to the last set of measurements, if any, is given.**

**E. Recording of date of completion**

 **(i) If the entire job or contract has been completed, the date of completion is duly recorded.**

 **(ii) If the measurements taken are the first set of measurements on a running account, or the first and final measurements, this fact is suitably noted against the entries in the Measurement Book, and in the latter case, the actual date of completion is recorded.**

**F. Neat recording of measurements**

**All measurements are recorded neatly in the Measurement Book.**

**G. Signature of the contractor**

 **The signature of the contractor or his/her authorized representative is obtained in the Measurement Book for each set of measurements.**

**H. Measurements in ink**

 **The measurements is recorded in ink.**

**I. Making corrections in measurements**

 **(i) No entry is erased or overwritten. If a mistake is made, it is corrected by crossing out the incorrect words or figures and inserting the correction. The correction thus made is initiated and dated by the officer recording/checking measurements.**

 **(ii) When any measurements are cancelled or disallowed these must be endorsed by the dated initials of the Officer ordering the cancellation or by a reference to his/her orders, initiated by the Officer who made the measurements, the reasons for cancellation being also recorded.**

**J. Page number**

 **(i) The pages of the Measurement Books are machine numbered.**

 **(ii) Entries are recorded continuously and no blank page left or torn out. Any pages or space if left out blank inadvertently is cancelled by diagonal lines, the cancellation being attested and dated.**

**K. Recorded of measurements only by authorized persons**

 **All items of work in a project irrespective of their cost is measured and recorded by the Junior Engineer-in-charge of the work. It is, however, open to the Assistant Engineer or the Engineer in Charge to record measurements for any particular item of work himself.**

**L. Measurement of repetitive works**

 **In case of works of repetitive type, detailed measurements of 20% of the total number of units, subject to a minimum of 20 units, need only be recorded.**

**M. Certification of measurements**

 **The person recording the measurement should record a dated certificate “Measured by me” over his/her full signature in the Measurement Book.**

**11. Preparation of bill**

 **(i) On completion of the abstract, the Measurement Book is submitted to the Sub-Divisional Officer, who after carrying out his/her test check should enter the word “Check and bill” with his/her dated initials. The Sub-Divisional Clerk should then check the calculation of quantities in the abstract, and the bill in case of work carried out by contract, and should then place the Measurement Book and the bill before the Sub-Divisional Officer who, after comparing the two, should sign the bill and the Measurement Book at the end of the abstract.**

 **(ii) All corrections made by the clerical staff is in red ink.**

[11] The list of the approved works and work agency for different schemes in 8-Chramram (Saramba) DCC under Autonomous District Council Tamenglong are listed in the Table 3 of the Preliminary Inquiry Report and we have inserted the sanctioned amount of the work in the said Table No. 3. Table No. 3 is quoted hereunder:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Sl.****No.** | **Works** | **Works Order No.** | **Work Agency** | **ADC Member Chairman nominating the work agency** | **Sanctioned amount****(in Rs.)** |
| **15th FC 20-21 SCHEME** |  |
| **1** | **Construction of Irrigation canal at Makru Azuram** | **3/TADC/engg 15th FC/20/8/20** | **Chungaigong** | **Micah Panmei** | **10 lakhs** |
| **2** | **construction of rain water harvesting water tank at Thuilon** | **3/TADC/engg 3rd SFC(tied)/20/8/20** | **Chungaigong** | **Micah Panmei** | **10 lakhs** |
| **3RD SFC 18-19 Scheme** |  |
| **3** | **Construction of Public Toilet at Taolopangjang Thuilon Pt IV** | **45/TADC Engg 3rd FC/28/01/2019** | **AG Kungleng** |  | **4 lakhs** |
| **14th FC 17-18 Scheme** |  |
| **4** | **Construction/ Imprvment of IVR from Makru Bridge point to Azuram** | **59/TADC-Engg 14th FC/25/9/2018** | **Josha** | **Namsinrei Panmei** | **5 lakhs** |
| **5** | **Construction of Slab Culvert over Joujipangthok Stream, Azuram** | **3/TADC-Engg/SC/25/9/2018** | **Athuan** | **Namsinrei Panmei** | **5 lakhs** |
| **6** | **Construction/ Improvement of IVR from Saramba Playground to Achingtiang** | **9/TADC- Engg 14th FC/25/9/2018** | **Zingamlung** | **Micah Panmei** | **5 lakhs** |
| **7** | **Construction/ Improvement of IVR from Khumtiang (Thuilon) to WW II crash site.** | **57/TADC- Engg 14th FC/ 25/9/2018** | **Pouchunglung** | **Micah Panmei** | **10 lakhs** |
| **8** | **Construction/ Improvement of IVR from Taolobuttiang to Thuilon Namgong** | **85/TADC Engg 14th FC/ 25/9/2018** | **Pouchunglung** |  | **5 lakhs** |
| **9** | **Construction/ Improvement of Inter village footpath from Impah Ningdi to Thuilon Namthan** | **30/TADC Engg 14th FC footpath/ 25/9/2018** | **Pouchunglung** | **Micah Panmei** | **10 lakhs** |
| **10** | **Construction of water tank at J Pabram Village** | **15/TADC Engg/wt 25/9/2018** | **George Hangloi** | **Micah Panmei** | **5 lakhs** |
| **11** | **Contruction of Public Toilet @ Vanchengphai Village** | **13/TADC Engg toilet/25/9/2018** | **Lalsang** |  | **5 lakhs** |
| **12** | **Construction/ Improvement of Inter village footpath from Atengba to Longchai** | **1/TADC Engg 14th FC footpath/25/9/2018** | **Akhon Gonmei** |  | **4 lakhs** |
| **13** | **Contruction/ Improvement of IVR from Youth office to Playground Chingkao** | **75/TADC Engg 14th FC/25/9/2018** | **Sangai** | **Namsinrei Panmei** | **5 lakhs** |
| **14** | **Construction/improvement of IVR from Chingkao to Makru Bridge Point** | **82/TADC Engg 14th FC/25/9/2018** | **Athuan** | **Namsinrei Panmei** | **5 lakhs** |
| **3rd SFC 17-18 Scheme** |  |
| **15** | **Construction of Public Toilet @ Vanchengphai Village** | **16/104/TADC Engg/19/10/2018** | **Pouchunlung** | **Micah Panmei** | **5 lakhs** |
| **16** | **Construction/Improvement of Inter village road from J Pabram to Thuilon Namthan** | **6/104/TADC Engg/ 19/2/2018** | **Pousangliu** | **Micah Panmei**  | **7 lakhs** |

[11.1] The approved works do not speak of the detailed estimate of the cost, necessary plan and technical sanction. From the perusal of the approved plans, it is completely in dark, except the name of the plan, as to what are the specification, plan and technical sanction. Rule 93 of the Rule 1972 clearly provides that no work is to be executed without proper sanction. It is also clear from the Preliminary Inquiry Report as well as from the records available that there was no compliance of Rules 91, 93 and 95 read with Rule 97 of Rule 1972 and the CPWD Works Manual and SOPs inasmuch as no tender was called for execution of the work. It is clear from the record as well as from the Preliminary Inquiry Report that the work orders for execution of the works were issued to the Work Agencies nominated by the Chairman of the ADC Tamenglong and Members of the ADC Tamenglong. The work orders were issued in complete infraction of the said Rules of Rule 1972 and the CEO, Shri Kajaigai Gangmei (Respondent No. 3) had utterly failed to discharge his official duties in the manner provided under the Manipur (Hill Areas) District Council Rules, 1972, Government Office Memorandums discussed above etc. The work orders were issued by the Chief Executive Officer to the work agencies for execution of the work does not state any specification, plan, materials to be used and size of the work to be executed. The works order further provides that 70% advance payment shall be made against the work from sanction in order to carry out the said works, but in some of the work orders it was mentioned that advance payment against the work from sanction amount shall be made after completion of 50 % of the works as per specification given. However, it is found that the advance payments have been made in full i.e. 100% of the sanctioned amount. It is also found that as one of the conditions of the work order, it is mentioned that the schedule of quality and specifications of the work shall be strictly followed to keep the quality of the work but there was no specification, plan and technical sanction while sanctioning the approved work in violation of Rule 93 of the Rule 1972 and also there was complete violation of Rules 91 and 95 of the Rule 1972 in awarding/issuing the work orders to the work agencies nominated by the Chairman and Members of ADC Tamenglong. As paradigm, two work orders issued to the Respondent Nos. 5 and 6 respectively are quoted hereunder:

**“DISTRICT COUNCIL ADMINISTRATION,**

**AUTONOMOUS DISTRICT COUNCIL, TAMENGLONG**

**No. 105/TD-Engg/14 FC/2017-18 Tamenglong, the 25the Sept 2018**

**From: The Chief Executive Officer,**

 **Autonomous District Council, Tamenglong.**

**To, Shri,/Smt./M/S,.**

**Subject: WORK ORDER**

 **D/Sir**

 **You are hereby assigned to execute the under mentioned work on the condition laid down below in collaboration with PWD section of Autonomous District Council, Tamenglong.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Sl. No.**  | **Name of work** | **Estimated cost** | **Work order Amount** | **Time allowed** |
| **1** | **Improvement/Construction of IVR from Taolobuty tiang to Thiulon Namgong under 14th Finance Commission Award** | **Rs. 5,00,000/-** | **Rs. 5,00,000/-** | **2 (Two) Months.** |
| **(Rupees Five lakh) only.**  |

**TERMS AND CONDITION**

**1. The above work should be completed on or before 25th November 2018 as per specification given in the approved plan and estimate.**

**2. The schedule of quantity and specifications of the work enclosed herewith should be strictly followed to keep the quality of the work.**

**3. The work should be started immediately on receipt of this order after signing the agreement; failing which the work order may be cancelled and the same may be assigned to any other interested agency.**

**4. 70% advance payments will be made against the work from sanction in order to carry out the works.**

**5. Final bill will be paid only after completion of the work satisfactorily.**

**6. Pre work sit Photo is to be submitted before starting of the work.**

**7. Photographs of the work may be made in every stage of the work in progress and submitted to the undersigned.**

**Sd/-**

**EXECUTIVE ENGINEER CHIEF EXECUTIVE OFFICER**

**AUTONOMOUS DISTRICT COUNCIL, AUTONOMOUS DISTRICT COUNCIL,**

**TAMENGLONG. TAMENGLONG.**

**AGREEMENT**

**I/We do hereby agree to abide by the above terms and conditions and will refund any sum/amount drawn by me if I/We fail to execute and complete the work within the stipulated time.**

**Witness:**

 **Sd/-**

**Signature: Sd/-**

**Designation:**

**Name &Address:”**

**“DISTRICT COUNCIL ADMINISTRATION,**

**AUTONOMOUS DISTRICT COUNCIL, TAMENGLONG**

**No. 105/TD-Engg/14 FC/2017-18 Tamenglong, the 25the Sept 2018**

**From: The Chief Executive Officer,**

 **Autonomous District Council, Tamenglong.**

**To,**

**Shri. Athon**

**Subject: WORK ORDER**

 **D/Sir,**

 **You are hereby assigned to execute the under mentioned work on the condition laid down below in collaboration with PWD section of Autonomous District Council, Tamenglong.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Sl. No.**  | **Name of work** | **Estimated cost** | **Work order Amount** | **Time allowed** |
| **1** | **Const of IVR between Chingkao to Makru bridge point** | **Rs. 5,00,000/-** | **Rs. 5,00,000/-** | **2 (Two) Months.** |
| **(Rupees Five lakh) only.**  |

**TERMS AND CONDITION**

**1. The above work should be completed on or before 25/11/2018 as per specification given in the approved plan and estimate.**

**2. The schedule of quantity and specifications of the work enclosed herewith should be strictly followed to keep the quality of the work.**

**3. The work should be started immediately on receipt of this order after signing the agreement; failing which the work order may be cancelled and the same may be assigned to any other interested agency.**

**4. Payment/advance payments against the work from sanction amount shall be made only after completion of 50% of the work as per specification given.**

**5. Final bill will be paid only after completion of the work satisfactorily.**

**6. Pre work sit Photo is to be submitted before starting of the work.**

**7. Photographs of the work may be made in every stage of the work in progress and submitted to the undersigned.**

**EXECUTIVE ENGINEER CHIEF EXECUTIVE OFFICER**

**AUTONOMOUS DISTRICT COUNCIL, AUTONOMOUS DISTRICT COUNCIL,**

**TAMENGLONG. TAMENGLONG.**

**AGREEMENT**

**I/We do hereby agree to abide by the above terms and conditions and will refund any sum/amount drawn by me if I/We fail to execute and complete the work within the stipulated time.**

**Witness:**

**Signature:**

**Designation:**

**Name &Address:”**

[12] In the course of the Preliminary Inquiry, it is also clear that the amount of the work to be executed by the work agencies mentioned in the work orders were paid in full as advance payment i.e. in other words whole amount of the works were paid in full as advance payment before execution of the works.

[13] The Technical Inspection Team constituted under the order of Manipur Lokayukta after conducting the spot inspection submitted a report (available at page 93 to 98 of the Preliminary Inquiry Report). On perusal of the said report of the Technical Inspection Team, it appears that there are some technical lapses as follows:

 i) All the payments in the MBs are in the form of advance payments.

ii) No measurement of work is recorded in the MBs which makes it doubtful if the works have been executed or not.

 iii) No final bills are prepared in the MBs.

iv) No deduction of Labour Cess, GST and Agency Charge is shown in the MBs.

[13.1] The Technical Inspection Team also inspected the works pertaining to 15th Finance Commission 2020 -21 and submitted a report at page nos. 99 to 100 of the Preliminary Inquiry Report stating that the following technical lapses :

 i) All the payments in the MBs are in the form of advance payments.

ii) No measurement of work is recorded in the MBs which makes it doubtful if the works have been executed or not.

 iii) No final bills are prepared in the MBs.

[13.2] The Preliminary Inquiry Report further submits that there is duplication of work projects more particularly Construction of Road from “T04 to Impaningdi” under Tousem block of Tamenglong District, which has already been executed under the PMGSY Road project under work order No. 5/16/2017-MSRRDA/E-Tender/Ph-XI(B-I, 2017-18)/MN0 7129/TML-03 dated 31.10.2018 awarded to M/s HVS Construction Materials Pvt. Ltd., Special Class Contractor. Relevant portion of the Agreement under the said work order dated 30.10.2018 to M/s HVS Construction Materials Pvt. Ltd. Read as follows:-

**“PRADHAN MANTRI GRAM SADAK YOJANA (PMGSY) – PHASE – Xl (B-I, 2017-18)**

**AGREEMENT NO: No.5/16/2017-MSRRDA /Ph-XI (B-1, 2017-18)/MN0 7129/TML/AGT/-**

**Dated: 31/10/2018**

**Work Order No. 5/16/2017-MSRRDA/E-Tender/Ph-XI(B-I,2017-18)/MN0 7129/TML-03**

**Dated: Imphal the 30th October,2018**

**PACKAGE NO: No. MN0 7129**

**(i) NAME OF THE WORK :Construction of Road from “T04 to Impaningdi” under Tousem block of Tamenglong District**

**(ii) AGENCY/NAME OF CONTRACTOR : M/S HVS Construction Materials Pvt. Ltd. Special Class Contractor**

**(iii). a) SANCTION AMOUNT (Construction) : Rs. 2,098.37 Lakh**

 **b) SANCTION AMOUNT (Maintenance) : Rs. 190.76 Lakh**

**SANCTIONED AMOUNT (Total) : Rs. 2289.13 Lakh**

**(iv) a) ESTIMATED AMOUNT (Construction) : Rs. 2044.95 Lakh**

 **b) ESTIMATED AMOUNT (Maintenance) : Rs. 245,39 Lakh**

**ESTIMATED AMOUNT (Total) : Rs. 2290.34 Lakh**

**(v) a) TENDERED AMOUNT (Construction) : Rs. 17,89,96,391.94**

 **b) TENDERED AMOUNT (Maintenance) : Rs. 2,45,39,384.80**

**TENDERED AMOUNT (Total) : Rs. 20,35,35,776.74**

**(vi) TIME ALLOWED : 18(eighteen) months**

**(vii) DATE OF COMMENCEMENT : 6/11/2018**

**(viii) STIPULATED DATE OF COMPLETION : 5-5-2020**

***Certified that this agreement contains ( )***

***Pages/leaves excluding cover pages.***

**Sd/-**

**(M/s HVS Construction Materials Pvt. Ltd.)**

**Sd/-**

**Executive Engineer PIU-II Tamenglong**

**Sd/-**

**Chief Engineer/EO**

**Manipur State Rural Roads**

**Development Agency, Manipur**

**Sd/-**

**CONTRACTOR**

**Administrative Manager**

**HVS Construction Material Pvt. Ltd.”**

[14] The learned counsels appearing for the Respondents and also the Respondent in their written statements cannot even deny the lapses mentioned above viz. lapses in issuing the work orders and also in payment of the bills for the works alleged to have been executed. The learned counsels appearing for the Respondents in the course of hearing basing on the records could not deny that there was no Tender before issuing the work orders, no procedure have been followed for approving the works, work orders have been issued for the works without preparation of the detailed estimates of the cost, without technical aspects, without necessary plans and also without mentioning the material components of the works and the payment of the works have been made without measurements. The relevant portions of the Rules of 1972, CPWD Works Manual, necessary SOPs of the CPWD Works Manual and Government Office Memorandum mentioned above are not followed as per the materials available on the record. However, we are not giving any final finding in the present judgment and order. The only submissions from the side of the Respondents are that the proposed works under dispute have been executed, but this fact is highly disputed by the complainant and the report of the Preliminary Inquiry Report is otherwise.

[15] It will be beneficial for us to refer to the decision of Apex Court in **Bishna alias Bhiswabed Mahato & Ors. Vs. State of West Bengal AIR 2006 SC 302).** Relevant portion i.e. para 47 of the AIR in Bishna’s case (Supra) read as follows:

**“47. The First Information Report, it is well settle, need not be encyclopaedia of the events. It is not necessary that all the relevant and irrelevant facts in details should be stated therein.......”**

[15.1] The Apex Court in **R. Venkarkrishna vs. Central Bureau of Investigation (2009) 11 SCC 737**  held that the Criminal case can be set in motion by anybody. Further, the Apex Court in **Maharastra vs. Sayed Mohammed Massod and Anr. (2009) 8 SCC 787** held that materials collected during preliminary investigations are relevant for investigation.

[16] For the foregoing discussion, we are of the considered view that there are enough materials for coming to the decision that there exists prima facie case for investigation. Accordingly, we pass the following orders by invoking our jurisdiction under Sections 20 (3), 28 and 32 of the Manipur Lokayukta Act, 2014 :

1. Register a Criminal Case i.e. FIR taking the Preliminary Inquiry Report of the Inquiry Officer who conducted the preliminary inquiry as Ejahar for the purpose of registration of FIR Case. For Registration of FIR Case, we have decided, for convenience, that the case should be registered at the Crime Branch Police Station, Imphal.
2. Director General of Police, Manipur shall ensure the registration of the FIR Case, as indicated above, shall be done immediately on the receipt of this order; and for registration of the case at the Crime Branch Police Station, Imphal under our order, no further approval of any authority of the Police Department or Government of Manipur will be required.
3. We invoking our power and jurisdiction provide under Section 28 of the Manipur Lokayukta Act, 2014, we have decided to utilise the service of Shri Manoj Prabhakar Murali, IPS, SDPO, Bishnupur, Bishnupur District, Manipur, after careful consideration of the input from the Director (Inquiry), Manipur Lokayukta under his letter No. 6/ML/DIR(INQ)/2021/608 dated 30.01.2023 to the Chairperson, Manipur Lokayukta. The Investigating Officer, Shri Manoj Prabhakar Murali, IPS while conducting the investigation will not be under the supervision of his senior officer of his department or the station where the present case is to be registered. It is also made clear that the Investigating Officer shall conduct the investigation with full co-ordination with the Director (Inquiry), Manipur Lokayukta. Entrusting the investigation of the present case to Shri Manoj Prabhakar Murali, IPS will be in addition to his normal duty wherever he is posted without disturbing his posting and as such entrustment of the present case for investigation will not amount to new transfer and posting.
4. The Investigating Officer, Shri Manoj Prabhakar Murali, IPS shall take necessary action to complete the investigation of the present case within 6 (six) months from the date of registration of the case at the Crime Branch Police Station, Imphal. It is also made clear that the Investigating Officer while investigating the present case will not be under the supervision of his senior officer of his department or the station where the present case is to be registered, and it is for the purpose of maintaining the sanctity of Manipur Lokayukta and for not interfering with the proceeding of the case before the Manipur Lokayukta. Inquiry and investigation are parts of the proceeding of the case filed before Manipur Lokayukta.

F) Chief Secretary, Government of Manipur and Director General of Police, Manipur shall ensure that the place of posting of the assigned Investigating Officer of this case may not be disturbed without the prior notice to the Manipur Lokayukta.

G. A general recommendation is made herein, not necessarily related to this particular complaint case but to all other Complaint cases also before Manipur Lokayukta regarding the omissions and commissions, lapses and violations indicating ignorance, negligence, lack of updation and awareness of various Acts, Rules, Manuals, SOPs, instructions, FR/SR, Guidelines etc. and duties and functions, power, authority mainly of executives and functionaries including engineers and elected representatives of local bodies (Autonomous District Councils, Municipalities/Nagarpalikas) for the State Government to consider imparting refresher courses/workshop to such public servants for proper understanding of various Acts, Rules, Manuals, SOPs, instructions, FR/SR, Guidelines etc. relevant for them for implementation of various programmes, schemes, awards, etc. sanctioned by the Central and State Governments/Central authorities with a view to streamline implementation of various Government activities. The Chief Secretary, Government of Manipur may, in consultation with department concerned/training institutions work out a detailed training programme and implement the same. A copy of the training programme may be shared with the Manipur Lokayukta.

[17] Deputy Registrar, Manipur Lokayukta is directed to send a copy of this order to:

 i) the Chief Secretary, Government of Manipur;

 ii) the Director General of Police, Manipur;

 iii) the S.P., Crime Branch, Government of Manipur.

iv) Shri Manoj Prabhakar Murali, IPS, SDPO, Bishnupur, Bishnupur District, Manipur; for information and necessary prompt action and to the

 v) Parties of the present case, for information.

[18] Await investigation report.

*Sd/- Sd/-*

**Member Chairperson**