

## COMPLAINT CASE NO. 6 OF 2021

04.04.2023

1. After the conclusion of hearing of the present case and kept in CAV, while preparing the judgment and order, it has been come to our notice the Office Memorandum being No. 22/202/2018- (Hills) dated 09.11.2018 issued by the Department of Tribal Affairs & Hills, Government of Manipur. For easy reference, the said Office Memorandum dated 09.11.2018 is reproduced hereunder:

**“GOVERNMENT OF MANIPUR  
SECRETARIATE: HILLS DEPARTMENT**

**OFFICE MEMORANDUM  
Imphal, the 9<sup>th</sup> November, 2018**

**Subject: Implementation/execution 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 the State Finance Commission and Central Finance Commission.**

1. **The Autonomous District Councils shall be responsible for identification, planning and implementation of projects/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 Report 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 Affairs & 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 Officers/Sub-Treasury Officer, Manipur*
9. *Guard file."*

2. At present, we are very much concern with para no. 4 of the Office Memorandum dated 09.11.2018 – “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.” 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), the Governor of Manipur hereby makes the following rules. These rules may be called “The Manipur (Hill Areas) District Councils Rules, 1972.” The Government of Manipur in exercise of the power conferred by Clause (X) of Sub-Section (2) of Section 51 of the Manipur (Hill Areas) District Councils Act, 1971 framed the Rules namely, “The Manipur Grant-in-aid to Autonomous District Councils Rules, 1981” (hereinafter

referred to 'Rules of 1981'). The present case is concerned with the Grant-in-aid under 14<sup>th</sup> Finance Commission and under State Finance Commission during the year 2015-2020. Rule 15 of the Rules of 1981 clearly provides the power to give necessary direction by the Government of Manipur regarding spending of Grant-in-aid by the Councils. Rule 15 of the Rules of 1981 is reproduced hereunder:

**"15. The grant-in-aid shall be spent by the Councils in accordance with provisions of the Manipur (Hill Areas) District Councils Acts, 1971 and Manipur (Hill Areas) District Councils Rules, 1972 or in accordance with any directive that may be given by the Government of Manipur without prejudice to the aforesaid Act and Rules."**

3. It is well settled law that Executive instruction cannot be issued in derogatory to the Act and Rules but Executive instruction could be issued in supplementing the Act and Rules where there are grey areas in the Act and Rules. Therefore, it is well settled law that Executive instruction cannot be issued in violation of the Act and Rules. Hence, the said directions of the Government of Manipur in the form of Office Memorandum dated 09.11.2018 more particularly para no. 4 cannot be in derogation of the relevant Act and Rules but in supplementary of the Act and Rules. Rule 13 of the Rules of 1981 also provides that grants-in-aid shall be governed by the provisions of the rules 148 to 153 of General Financial Rules, 1963 as amended from time to time and other Orders issued thereunder by the Government of Manipur without prejudice to the Manipur (Hill Areas) District Councils Act, 1971 and the Manipur (Hill Areas) District Councils Rules, 1972. Rule 95 of the Manipur (Hill Areas) District Councils Rules, 1972 mandates that there shall be tenders for the work more than Rs. 5000/- and also the Rule 97 of the Manipur (Hill Areas) District Councils Rules, 1972 further provides that all the CPWD Code, rules and regulation which are applicable for a work undertaken by the Government shall be deemed to be applicable in the case of a work undertaken by the Councils.

4. From the records, it appears that para no. 4 of the Office Memorandum dated 09.11.2018 issued by the Department of Tribal Affairs & Hills, Government of Manipur is not clear, more particularly, - "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.” We are of the considered view that Government of Manipur is not oblivious of the power and jurisdiction to issue the Executive instruction and the manner of issuing the executive instruction and also the limit of power in issuing the executive instruction. It is well settled law that executive instruction cannot be issued in derogation or infraction of the Act and Rules.

5. In the above context, we are seeking clarification regarding para no. 4 of the Office Memorandum dated 09.11.2018 issued by the Department of Tribal Affairs & Hills, Government of Manipur from the Government of Manipur. Deputy Registrar, Manipur Lokayukta is directed to seek clarification in this regard by writing a letter to the Administrative Secretary (Tribal Affairs & Hills), Government of Manipur. Deputy Registrar, Manipur Lokayukta is further directed to enclose a copy of this order while writing the letter for clarification to the Administrative Secretary (Tribal Affairs & Hills), Government of Manipur.

6. It is made clear that the Administrative Secretary (Tribal Affairs & Hills), Government of Manipur shall furnish the clarification seek for within 14 (fourteen) days from the receipt of the said letter of Deputy Registrar, Manipur Lokayukta.

7. Await clarification from the Administrative Secretary (Tribal Affairs & Hills), Government of Manipur.

Sd/-  
**MEMBER**

Sd/-  
**CHAIRPERSON**