

MISC. CASE NO. 2 OF 2023

Ref : COMPLAINT CASE NO. 1 OF 2023

21.11.2023

1. Vide our order dated 09.06.2023 passed in the present Complaint i.e. Complaint Case No. 1 of 2023, we already made our considered view that there exists a prima facie case for conducting a Preliminary Inquiry in respect of the 102 Schemes of the Minor Irrigation Department, Manipur. Relevant portions i.e. para nos. 4 to 6 of our order dated 09.06.2023 are quoted hereunder :

"4. ... We have perused the expenditure statement annexed in the present complaint running from page 7 to 15 and also the photographs annexed to the complaint running from page nos. 17 to 33. We also have taken into consideration the allegations and assertions made by the complainant supported by documents and also the submission of the complainant that most of the 102 Minor Irrigation Schemes were not executed but the Commissioner/Secretary (Minor Irrigation), the Executive Engineers concerned and other subordinate staffs such as Assistant Engineers, Section Officers including the contractors had misappropriated the fund for the said 102 Minor Irrigation Schemes without executing the said schemes thereby indulging in corrupt practices.

5. Section 53 of the Manipur Lokayukta Act, 2014 read as follows:

"53. The Lokayukta shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed."

Therefore, the period of 7 (seven) years is to be counted from the date on which the offence, mentioned in the complaint, is alleged to have been committed. It is clear that as on 26.10.2022, 102 Minor Irrigation Schemes, for which the

present complaint is filed, is not completed and is continuing. As per established procedure, schemes would be said to have been completed only on submission of all Utilization Certificates (UCs) along with a Completion Certificate (CC). Even if, 26.10.2022, on which the instalment amount of Rs. 20 crore had been sanctioned for the project, is taken as the date for completion of the project, the period of 7 (seven) years is not completed on the date of filing of the present complaint inasmuch as the present complaint was filed on 02.05.2023. However, we are not making any final decision as to whether the present complaint is barred by limitation as provided under Section 53 of the Manipur Lokayukta Act, 2014 at this stage. The final decision regarding the limitation of the present complaint will be decided after getting the Preliminary Inquiry Report. At the present stage, we are of the prima facie view that the present complaint is not barred by limitation. It is made clear that opportunity of being heard before deciding the question of limitation would be provided to the respondents against whom the Preliminary Inquiry Report is submitted. It is well settled position of law that one cannot decide his own case i.e. Nemo debetesse judex in propria [Reference : Financial Commissioner (Taxation vs. Punjab & Ors. (1996 9 SCC 281)].

6. We are not making any finding regarding the complaint, however, at this stage our concern is as to whether there exists a prima facie case for preliminary inquiry or not. On such consideration, we are of the considered view that there is prima facie case for conducting a Preliminary Inquiry."

2. In our order dated 09.06.2023, we made clear observation that the allegations and assertions made for misappropriation of funds for the said Schemes of the Minor Irrigation Department, Manipur is not confined only in respect of the erection of dams in the Minor Division No. 4 and it is for the whole 102 Minor Irrigation Schemes under the Minor Irrigation Department, Manipur.

3. On the prayer of the Director (Inquiry), Manipur Lokayukta for constitution of a Technical Team for assisting the Inquiry Officer of the present Case in the course of conducting Preliminary Inquiry in respect of the said 102 Schemes, the present Misc. Case has been registered vide our order dated 08.11.2023 passed in the present Misc. Case. Vide our order dated 08.11.2023 passed in the present Misc. Case, we directed the departments of PWD, IFCD, PHED and CADA to provide list of Engineers (Civil) for the purpose of constituting the Technical Team. In pursuant of our order dated 08.11.2023, the Chief Engineer, PWD, Manipur under letter being No. CE/2564/Lokayukta/2023/890 dated 17th November, 2023, the Chief Engineer, Water Resources Department, Manipur under letter being No. CE/WR/6-15/2023-24 dated 14th November, 2023, the Chief Engineer, PHED, Govt. of Manipur under letter being No. CE/PHE/5-626/2022/2393 dated 14th November, 2023 and the Additional Chief Engineer, Command Area Development Department (CADA), Manipur have submitted list of Engineers for consideration in constituting the Technical Team.

4. We have considered the said lists of Engineers and after consideration of the said lists and also the law and order situation prevailing in the different districts of the State of Manipur, are of the considered view that separate Technical Team is required to be constituted for the said Schemes located in different District of the State of Manipur. The Team so constituted is to assist the Inquiry Officer of the present case in ascertaining as to whether the works has been properly executed or not. Accordingly, we constitute the following Technical Teams:

A. **For the Valley Districts of Manipur i.e. Imphal East, Imphal West, Bishnupur, Thoubal and Kakching:**

(i) Shri Y. Bijendro Singh, EE/TPD-IV, Water Resources Department, Manipur.

(ii) Shri M. Borchand Singh, EE/TPD-VI, Water Resources Department, Manipur.

B. **For the Ukhrul District of Manipur :**

(i) Mr. Garnish Kashung, Executive Engineer, Ukhrul, PWD, Manipur.

(ii) Mr. Wotrami Marchang, EE/IID, Water Resources Department, Manipur.

C. **For the Churachandpur District of Manipur :**

(i) Mr. John Thanglienmang, Executive Engineer, Churachandpur PHE Division, PHED, Manipur.

(ii) Mr. V. Jamkhamang, Executive Engineer, Churachandpur Division, PWD, Manipur.

D. **For the Tamenglong District of Manipur :**

(i) Mr. Jr. Durtoidam Chiru, Executive Engineer, Tamenglong PHE Division, PHED, Manipur.

(ii) Mrs. Tolerance Saka, EE/IMD-II, Water Resources Department, Manipur.

F. **For the Senapati District of Manipur :**

(i) Mr. Mathew Golmei, Executive Engineer, Senapati Division, PWD, Manipur.

(ii) Mr. S. Lohrii Mao, Executive Engineer, Senapati PHE Division, PHED, Manipur.

5. It is also made clear that the Technical Team will be provided with a checklist, which is indicative in nature and not exhaustive allowing liberty to the Technical Team to give their views/comment freely, for which spot inspection is to be carried out and also for providing their technical opinion. The checklist will be provided by the

Inquiry Officer of the present case. Further, as required by the Inquiry Officer, the particular Technical team will be required to assist the Inquiry Officer in the course of conducting the spot inspection.

6. It is no longer res intergra that investigation into a crime is the prerogative of the police and the judiciary should keep out all the areas of investigation. The investigating officer is the arm of law and plays a pivotal role in dispensation of criminal justice and maintenance of law and order. Enough power is therefore given to the police officer in the area of investigating process and granting them the court latitude to exercise its discretionary power to make a successful investigation. It is left to the Inquiry Officer of the present Preliminary Inquiry to decide as to the type of assistance required from the Technical Team.

7. In the above factual matrix, we invoking our jurisdiction under Section 28 of the Manipur Lokayukta Act, 2014 utilise the service of the Technical Team in the Preliminary Inquiry of the present case. For easy reference Section 28 of the Manipur Lokayukta Act, 2014 is reproduced hereunder:

"28. (1) The Lokayukta may, for the purpose of conducting any preliminary inquiry or investigation, utilize the services of any officer or organization or investigation agency of the State Government.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organization or agency whose services are utilized under sub-section (1) may, subject to the direction and control of the Lokayukta,--

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organization or agency whose services are utilized under sub-section (2) shall inquire or, as the case may be, investigation into any matter

pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokayukta within such period as may be specified by it in this behalf.”

8. It may be pertinent to make an observation here that the work of the Engineers for assisting the Inquiry Officer in the technical matter mentioned above will not be heavy and also will not be a long engagement. The date(s) of meeting with the Inquiry Officer will be intimated later on by the Director (Inquiry), Manipur Lokayukta.

9. Deputy Registrar, Manipur Lokayukta is directed to furnish a copy of this order for necessary compliance to:

- (i) Chief Engineer, PWD, Manipur;
- (ii) Chief Engineer, Water Resources Department, Manipur;
- (iii) Chief Engineer, PHED, Govt. of Manipur;
- (iv) Addl. Chief Engineer, Command Area Development Department, Manipur;
- (v) Shri Y. Bijendro Singh, EE/TPD-IV, Water Resources Department, Manipur;
- (vi) Shri M. Borchand Singh, EE/TPD-VI, Water Resources Department, Manipur;
- (vii) Mr. Wotrami Marchang, EE/IID, Water Resources Department, Manipur;
- (viii) Mrs. Tolerance Saka, EE/IMD-II, Water Resources Department, Manipur;
- (ix) Mr. Garnish Kashung, Executive Engineer, Ukhrul, PWD, Manipur;
- (x) Mr. V. Jamkhamang, Executive Engineer, Churachandpur Division, PWD, Manipur;
- (xi) Mr. John Thanglienmang, Executive Engineer, Churachandpur PHE Division, PHED, Manipur;
- (xii) Mr. Jr. Durtoidam Chiru, Executive Engineer, Tamenglong PHE Division, PHED, Manipur.

And also to :

- (i) Director (Inquiry), Manipur Lokayukta; and
- (ii) Shri Kh. Duneshwor Singh, MPS, Inquiry Officer.

10. Misc. Case is disposed of accordingly.

Sd/-
MEMBER

Sd/-
CHAIRPERSON