

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)**

WP (C) 387 (AP) 2014

- 1. Shri Dagmo Loya**
S/O Shri Tindak Loya,
Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.
- 2. Shri Pagli Loyi**
Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.
- 3. Shri Gekir Loyi**
Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.
- 4. Shri Hogmor Loyi**
Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.
- 5. Shri Tojum Loyi**
Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.
- 6. Shri Kirdo Loya**
Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.
- 7. Shri Duter Loyi**
Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.
- 8. Shri Dojiv Loyi**
Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

9. Shri Dugmo Loya

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

10. Shri Reter Loya

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

11. Shri Migdo Loya

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

12. Shri Nyamo Loya

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

13. Shri Liyor Loyi

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

14. Shri Kimek Loyi

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

15. Shri Lidam Lomi

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

16. Shri Hoggam Loyi

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

17. Shri Gedo Loyi

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

18. Shri Hijum Loya

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

19. Shri Gumba Loyi

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

20. Shri Jili Loyi

Permanent resident of Kabu village
PO/PS Aalo, West Siang District,
Arunachal Pradesh.

.....Petitioners

-Versus-

1. The State of Arunachal Pradesh, represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Secretary, Department of Water Resources Development, Govt. of A.P., Itanagar.
3. The Deputy Commissioner, West Siang District, Aalo, Arunachal Pradesh.
4. The Executive Engineer, Department of Water Resources Development, West Siang District, Basar, Arunachal Pradesh.
5. The Director, Assistant Engineer, Department of Water Resources Development, Aalo Division, West Siang District, Aalo, Arunachal Pradesh.

.....Respondents

By Advocates:

For the Petitioners:

Mr. K. Jini
Mr. D. Kamduk
Mr. T. T. Tara.
Mr. D. Loyi
Mr. G. Ngomdir
Mr. G. Bam
Ms. S. Ketan

For the Respondents:

Ms. Goter Ete, Additional Senior Government Advocate

:::BEFORE:::
HON'BLE JUSTICE MRS. RUMI KUMARI PHUKAN

Date of hearing : **29.09.2015**
Date of Judgment & Order : **16.10.2015**

JUDGMENT & ORDER (CAV)

I have heard Mr. Kento Jini, learned counsel for the petitioners as well as Ms. Goter Ete, learned Addl. Senior Government Advocate, for all the respondents.

2. The petitioners, hereinbefore, except petitioners No. 2, 6 & 7, are the farmers/ owners of Wet Rice Cultivation(WRC) fields, which are situated at Libuk area of Kabu Village, and it has been claimed that the said WRC fields are their only source of livelihood. For irrigation, they were using the only source of water, i.e. a water canal "Libuk Nallah" since many decades. The main source of water for the said canal is situated at "Dilik Area" of Kabu village, approximately 2KMs away from their WRC fields and the said canal/nallah passes nearby the BRTF road which stretches from Aalo to Kaying. The said canal was constructed by the petitioners' forefathers by spending huge amount of money, way back in 1950.

3. It is the case of the petitioners that in the year 2012, 44 Border Road Task Force (BRTF) had undertaken the work for construction wrk of "Double Lane Highway" replacing the said Aalo to Kaying road. While making construction, the BRTF workers completely damaged the "Libuk Nallah". Sensing upon the seriousness of the matter regarding the said canal, the BRTF authorities sanctioned and deposited an amount of Rs. 12,87,000/- only, to the Department of Water Resources Development, Aalo Division, on 23.08.2013, being a executing department, for restoration of the damaged irrigation canal. The petitioners beg to state that to cultivate the said WRC field the petitioners need to take water from Libuk Nallah/canal for their said WRC field. With no other source of irrigating their WRC fields, the petitioners have submitted a representation before the appropriate authority of WRD, Aalo Division, for immediate construction of the said water canal/nallah before the onset of cultivation season. The petitioners have contended

that due to lackadaisical attitude of the Department concerned, the work has not been completed within reasonable period, as a result of which, they failed to cultivate their WRC fields in 2013. Situated thus, the petitioners submitted a representation before the Deputy Commissioner, Aalo (Respondent No. 3) on 12.05.2014, praying for a direction for early completion of the said water canal/nallah as well as for payment of compensation for the losses suffered by them. Accordingly, a Show-Cause Notice was issued by respondent No. 3, Aalo, to the Respondent No. 4, on 19.05.2014. It is contended by the petitioners that the said Respondent No. 4 wilfully evaded the said show cause notice and thereby failed to execute the construction of said water canal/nallah, consequent to which, they again failed to cultivate their WRC fields consecutively for the year 2014 and suffered huge losses. Thus, the petitioners made another representation 30.05.2014 before respondent No. 3 praying for initiation of legal action against respondents Nos. 4 & 5, with further prayer for an order directing the Department of Water Resources Development to pay compensation amounting to Rs. 1,00,000/- each to the petitioners to buy foodgrains for the season to support their family members. Subsequently, the petitioners served a pleader notice on 18.06.2014 upon the respondent No. 4, to pay compensation amount of Rs 1,00,000/- each to the petitioners within 3 months. But the said respondent No. 4 did not pay any heed to the said pleader notice. In pursuance to the aforesaid complaint dated 30.06.2015, the respondent No. 3, vide order dated 18.06.2014 directed Shri Jili Loyi, one of the petitioners to appear before the office of Deputy Commissioner, Aalo on 25.06.2014, as representative of the petitioners, to hear the matter related to the said LIBUK NALLAH. Accordingly, upon appearance of Shri Jili Loyi, the DC, Aalo had assured to take prompt action for redressal of the grievances of the petitioners.

4. Finding no response to the complaint dated 30.06.2014 from the respondent No. 3 and pleader notice dated 18.06.2014 from the respondent No. 4, the petitioners again made a complaint dated 15.07.2014 before the respondent No. 3 against respondent Nos. 4 & 5 for non-completion of the said canal/nallah for which they suffered huge losses. Hence, the petitioners prayed for a direction

for payment of adequate compensation for the losses incurred by the petitioners. Situated thus, respondent No. 3, this time, took the matter very seriously and issued order dated 18.07.2014 whereby the said respondent No. 4 was directed to appear before the respondent No. 3 on 23.07.2014 in connection with the NALLAH, in question, as per approved specification without deviation and further directed to complete the works as soon as possible. However, the executing agency has not taken any steps for speedy completion of the said work. Despite orders dated 18.07.2014 & 25.08.2014 issued by the Deputy Commissioner, Aalo, to respondent No. 4 to expedite the work concerned, the respondent neither took any necessary action in compliance nor they took any steps to address the grievances of the petitioner. Finally, the petitioners submitted a representation on 02.09.2014 before the District Disaster Management Officer(DDMO), Aalo, for assessment of the losses suffered by them for non-cultivation of their respective WRC fields during two consecutive agricultural seasons of 2013 & 14, who, vide order dated 03.09.2014 forwarded the matter to the District Agricultural Officer(DAO), Aalo. The said DAO vide order dated 10.09.2014 had constituted the Committee consists of 5(five) members to verify and assess the loss incurred by them due to non-cultivation of their WRC fields. Accordingly, the said Committee conducted site verification and physical measurement survey of the WRC fields on 12.09.2014 and assessed/estimated the losses incurred by the owners of the said WRC fields due to non-availability of irrigation canal, to the tune of Rs. 13,54,320 /-.

5. The petitioners begs to state that after the survey & assessment report of losses incurred by the petitioners in terms of money amounting to Rs 13, 54, 320/-. The petitioners thereafter submitted a representation drawing the attention of respondent No. 2, for solving their problems. But the authorities concerned did not pay any attention to their representation, till date. The petitioners thus served a pleader notice on 08.10.2014, under section 80 of the Civil Procedure Code, 1908, to the respondent no. 2 but the same also did not bear any fruitful result. Hence, the instant petition.

6. It is the contention of the petitioners that they are not against any developmental activities, but since majority of the petitioners are agricultural farmers and depend on farming for their livelihood therefore, when the aforesaid water canal/nallah(which was the sole source of irrigation for their said WRC field) was damaged by the BRTF workers while widening Aalo-Kaying road, they did not raise any protest but feeling the gravity of the situation, the GREF authorities immediately sanctioned the amount for re-construction of the same. Thereafter, the Department of Water Resources Development, the executing agency, was directed to carry-out the work before the onset of agricultural season 2013. But, because of failure on the part of the respondent No. 4 to execute the work, in question, the petitioners failed to cultivate their WRC fields for 2 (two) consecutive times i.e. 2013 and 2014; and they incurred huge losses and suffered by the petitioners, which It is the contention of the petitioners that had the executing Department constructed the canal earnestly, it would have taken 2 months to complete the said Nallah, which is only 1½ KM in length. However, as of date, the construction work of the said water canal/nallah is yet to be completed. The said water canal/nallah was developed/constructed by petitioners' forefathers on their own, by spending huge amount of money so as to irrigate their said WRC fields. For the last so many decades, the said water canal/nallah was serving the petitioners and their families as a lifeline in their lives. Since the said nallah is the lifeline of the petitioners, and their families are facing starvation like situation, therefore, the Court may be pleased to interfere in the matter.

7. The unresponsive attitude of the authorities concerned is highly discriminatory and arbitrary and as such, they are liable to pay compensation for the losses incurred by the petitioners. The said act of the respondent authorities is violation of right to live with dignity and is a clear violation of Article 21 of the Constitution of India. Therefore, it is an obligation upon the state to secure to the citizens an adequate means of livelihood and to protect the dignity of the petitioners as such the respondents are liable to pay compensation.

8. Counter affidavit on behalf of State Respondent No. 3/Deputy Commissioner, West Siang District, Aalo, has been filed, in this matter. In the said counter affidavit, it has been averred that upon receipt of the complaint from the petitioners on 12.05.2014 against the executing officers of the Water Resources Department, Aalo Division, the Respondent No. 3 issued Show-Cause Notice on 09.05.2014 directing the Respondent No. 4 viz. Executive Engineer, Water Resources Department, Basar, to clarify within 7 days as to the delay in execution of the construction of Libuk Nallah. According to the Respondent No. 3, the said Respondent No. 4 did not respond to the said Notice. Furthermore, upon receipt of the petitioners' representation dated 30.05.2014, for compensation; the Respondent No. 3, vide order dated 18.06.2014, directed the petitioners to appear before him for redressal of their grievances. That apart, the Respondent No. 3 had directed the Respondent No. 4 (Executive Engineer, Water Resources Department, Basar) to expedite the works as per approved specification, without deviation. It has been categorically contended by Respondent No. 3 that he did not receive any pleader notice from the petitioners and the same has been made to Respondent No. 4 only. According to him, upon receipt of the petitioners' complaint dated 16.07.2014, the Respondent No. 3 issued a Notice dated 18.07.2014 directing the Executive Engineer(Respondent No. 4) to appear on 23.07.2014 along with all relevant documents as well as photographs pertaining to Libuk Nallah. Situated thus, the Respondent No. 3 has prayed that the petitioners have not been able to make-out a case and therefore, the instant writ petition may be dismissed.

9. In the short counter-affidavit filed by Respondent No. 4/Executive Engineer, Water Resources Department, Basar; it has been contended that the draft issued by the General Reserve Engineering Force(GREF) authorities amounting to Rs. 12,87,602/- for restoration work of the said Irrigation Channel/ Nallah was received by his office on 23.09.2013. According to him, the widening work of the road by BRTF had just started at the said location during the period. Hence, the Department concerned could not take-up the execution of the restoration work till January, 2014, awaiting completion of widening of road. In the said area, the agricultural season for transplantation of seedlings is done in the

months from April to August, which is a usual practice; and hence, non-cultivation of WRC fields by the farmers/petitioners during the year 2013-14 could not be alleged against the said Department.

10. It is also the case of the said Respondent No. 4 that in response to the Show-Cause Notice issued by the Respondent No. 3/Deputy Commissioner, Aalo, he had submitted reply on 26.05.2014, wherein, it has been clearly stated that execution of the work, in question, was going as per schedule and the damaged channel was restored except laying of hume pipe. Consequently, water for irrigation was released through the restored channel for cultivation, subsequent to which, one Sri Binre Loyi of the said area, cultivated his WRC field whereas the rest of the farmers(petitioners) did not cultivate their WRC fields, intentionally. According to the Respondent No. 4, the work, in question, has been completed in all respects, before its scheduled date of completion and the same has, in fact, been commissioned for its intended purpose. Hence, according to the said Respondent No. 4, this writ petition lacks merit and the same may be dismissed by the Court.

11. That apart, it is also seen that the said respondent authorities have filed their counter affidavits, and made various sorts of averments, without placing any supporting documents. It need not be stressed that in writ proceedings before the High Court, necessary documents/papers in support of their respective contentions will have to be placed/produced before the Court, for effective and proper adjudication of the matter. Making mere averments will not suffice the pleadings of the parties in writ proceedings.

12. It is further seen that the General Reserve Engineering Force(GREF) authorities had already provided an amount of Rs. 12,87,602/- to the District Administration, more specifically to the Water Resources Department, Government of Arunachal Pradesh, Aalo Division, on 23.08.2013, for re-construction of the damaged water canal/nallah for irrigation purposes of the suffering petitioners. To

that effect, Cheque No. 379751 dated 20.08.2013 (Annexure-1 to the writ petition) has been referred to by the learned counsel for the petitioners.

13. Situated thus, the Respondent No. 3(Deputy Commissioner, West Siang District, Aalo), taking into note the discrepancies/lapses committed by Respondent No. 4(Executive Engineer, Water Resources Department, Basar), had issued Show-Cause Notice to the said Respondent No. 4. Furthermore, upon receipt of a complaint made by one of the petitioners regarding huge agricultural loss because of non-farming in their WRC fields, in 2013 and 2014, respectively; a committee was set-up by the District Agriculture Officer, West Siang District, Aalo, comprising of various officials of the said Department, for assessment of loss and compensation thereof. Upon survey, physical verification and measurements, made by the constituted committee, an amount of Rs. 13,54,320/- has been assessed by them, for payment of compensation to the petitioners by the Department concerned.

14. Notwithstanding such clear findings/recommendations made by the Committee concerned, the matter, at hand, is languishing till date, without any headway. It is ironic to see that neither the State Respondents could show any documents to support their contentions that the said canal/nallah has been reconstructed, nor, they have made any effort to act upon the recommendations made by the said Committee for making payment of compensation to the petitioners against the losses suffered by them. It is also hard to believe that the petitioners, being active farmers of their locality, would refrain themselves, from doing cultivation in their WRC fields. In the State of Arunachal Pradesh, the main source of occupation of a rustic villager is agricultural farming. Therefore, this Court cannot believe the contention of the said respondents that the petitioners are not cultivating their WRC fields, on their own sweet will.

15. The respondent No. 3 viz. Deputy Commissioner, Aalo, has discharged his duty in due manner and all his efforts to get the work done by the respondent No. 4 viz. Executive Engineer of WRD, Basar, have failed. The respondent No. 3,

therefore, cannot be held responsible for non-completion of the work. But respondent No. 4 is found liable alongwith WRD, for the loss incurred by the petitioners, as assessed by the Committee, for non-completion of Nallah in time. The stand taken by the respondent No. 4 in his reply cannot be accepted that construction of Nallah was made in time because it is a vague statement without mentioning the date and time, etc., when it was completed. He never bothered to respond and reply to the directions given by the respondent No. 3 and till filing of this case, the nallah was not made. The respondent No. 4 failed to refute the allegation of the petitioner as well as respondent No. 3 that he duly responded to the grievances of the petitioner. The respondent No. 4 failed to place any documents that he replied to respond to the respondent No. 3. No such letter as mentioned in the averment, has been annexed. Again to prove that one person by name Sri Binre Loya has started cultivation, no such person has sworn any affidavit, in support of such contention.

16. It is admitted by the petitioners that the canal/nallah has been damaged by broadening of the existing Along-Kaying road carried out by the General Reserve Engineering Force(GREF) authorities. However, instead of mitigating the sufferings of the petitioners, whose lives revolve around agricultural farming, all through the year; in their WRC fields, respondent authorities have tried to establish that they were doing justice to their responsibilities and duties towards the general public. They have played with the sentiments of the petitioners by indulging in blame game, which cannot be appreciated by this Court, at all, in the attending facts and circumstances of the case.

17. The grievance raised by the petitioners is found to be genuine and the learned counsel for the petitioners, has also contended that the reconstruction of said nallah could have been completed by the respondent No. 4 within a period of 2 months but due to his negligence, the same was not executed.

18. There is also sufficient force in the submissions of the learned counsel for the petitioners that Respondents No. 3 and 4 did neither rebutted any of the

averments made by the petitioners nor they have challenged the findings of the Committee formed by the Department of Agriculture, Government of Arunachal Pradesh, especially by the Office of the District Agriculture Officer, West Siang District, Aalo, which assessed the loss incurred by the properties due to non-farming in their WRC fields, and which is liable to be compensated with.

19. I have considered the aspects of the matter from all perspectives. The contention of Respondent No. 4 that re-construction of nallah, has been completed within time, is found to be without basis as various communications made by the Respondent No. 3 speaks of the languishing of the matter that inspite of repeated reminders and Show-Cause Notice issued to the Respondent No. 4, the construction work, in question, was not completed till filing of this writ petition.

20. It is evident from the materials on record that the BRTF authorities have sanctioned an amount in the month of August, 2013, to compensate the loss caused to the nallah during construction of the road, in question, and prior to that, the petitioners were already deprived of their yearly income because of non-farming in their agricultural land and until the end of year 2014, the petitioner could not have cultivated the land which is the main source of income for lack of proper facilities, and the same has resulted serious loss to the petitioners for these 2 successive years and the said amount has been assessed by the office of the District Agriculture Officer, Aalo, which is very much, on record. The said report of the Committee was not challenged by the respondent authorities nor the same can be discarded for any other reasons whatsoever. By that time, even if the nallah has been re-constructed by the Respondent No. 4, fact remains that there was lot of sufferings caused to the petitioners who are solely dependent upon their agricultural land for their day-to-day affairs. Accordingly, it is found by this Court and eventually hold that the petitioners are liable to be compensated with, as prayed for.

21. Situated thus, the respondent authorities i.e. Water Resources Department, Government of Arunachal Pradesh, is hereby directed to pay the compensation amount so assessed by the office of the District Agriculture Officer, Aalo, to the tune of Rs. 13,54,320/-, equally, to the present petitioners altogether, 20 in nos., on or before 31st of December, 2015.

22. With the above directions, this writ petition stands disposed of.

Bhask

JUDGE