

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH
NAHARLAGUN

WP(C)117(AP)2010

1. **Shri Sipl Bagang, Chairperson**
Zilla Parishad, Son of Sri Gungnia Bagang,
Permanent resident of Jayang-Bagang, P.O - Chayang Tajo
District – East Kameng, Arunachal Pradesh.
2. **Smtl. Meku Yangfo, ZPM,**
W/o Shri Tawa Yangfo,
Permanent resident of Loto Yangfo village, P.O.- Chayang Tajo
District – East Kameng, Arunachal Pradesh, presently residing at 'F' Sector,
Naharlagun, P.O. – Naharlagun, District – Papum Pare, Arunachal Pradesh.
3. **Smtl. Yaro Yangfo, ASM,**
W/o Shri Apo Yangfo,
Permanent resident of Tarawa Yangfo village, P.O.- Chayang Tajo
District – East Kameng, Arunachal Pradesh.
4. **Shri Bora Tajo, ASM,**
S/o Late Sampa Tajo,
Permanent resident of Tajo village, P.O.- Chayang Tajo
District – East Kameng, Arunachal Pradesh
5. **Shri Tadu Yangfo, ASM,**
S/o Late Tamar Yangfo,
Permanent resident of Hara-Yangfo village, P.O.- Chayang Tajo
District – East Kameng, Arunachal Pradesh.
6. **Shri Dani Tajo, ASM,**
S/o Late Rapa Tajo,
Permanent resident of Domdila Tajo village, P.O - Chayang Tajo
District -- East Kameng, Arunachal Pradesh.
7. **Shri Chungma Bagang, ASM,**
S/o Late Tanyang Bagang,
Permanent resident of Namchar Bagang village, P.O.- Chayang Tajo
District – East Kameng, Arunachal Pradesh
8. **Shri Tame Bagang, ASM,**
S/o late Singda Bagang
Permanent resident of Kese Bagang village, P.O.- Chayang Tajo
District -- East Kameng, Arunachal Pradesh.
9. **Shri Niklar Yangfo, ASM,**
S/o Late Sama Yangfo,
Permanent resident of Yangfo village, P.O.- Chayang Tajo
District -- East Kameng, Arunachal Pradesh.

10. **Smtl. Mefang Killo, ASM,**
W/o Shri S. Killo,
Permanent resident of Killo village, P O - Chayang Tajo
District - East Kameng, Arunachal Pradesh.
11. **Smtl. Roye Bagang, ASM,**
W/o Shri Chungma Bagang,
Permanent resident of Lachang Bagang village, P.O.- Chayang Tajo
District - East Kameng, Arunachal Pradesh.
12. **Smtl. Byani Tajo, ASM,**
W/o Shri Kome Tajo,
Permanent resident of Chayang Tajo Town, P.O - Chayang Tajo
District - East Kameng, Arunachal Pradesh.
13. **Shri Taram Soja, ASM,**
S/o Shri Dombing Soja,
Permanent resident of Sangchu- Sollung village, P.O.- Chayang Tajo
District - East Kameng, Arunachal Pradesh.
14. **Shri Nidak Yakli, ASM,**
S/o Late Chule Yakli,
Permanent resident of Yakli village, P.O.- Chayang Tajo
District - East Kameng, Arunachal Pradesh.
15. **Shri Tame Saria, ASM,**
S/o Shri G. Saria,
Permanent resident of Saria village, P O - Chayang Tajo
District - East Kameng, Arunachal Pradesh.
16. **Shri Fakung Mangfi, ASM,**
S/o Shri Kussan Mangfa,
Permanent resident of Nari Camp village, P O - Chayang Tajo
District - East Kameng, Arunachal Pradesh.

..... *Petitioners*

- *Versus* -

1. The State of Arunachal Pradesh(represented through the Secretary, Planning),
Government of Arunachal Pradesh, Itanagar.
2. The Deputy Commissioner, East Kameng District, Seppa, Arunachal Pradesh.
3. The District Planning Officer, East Kameng District, Seppa, Arunachal Pradesh.
4. The Executive Engineer, RWD, Seppa Division, P.O.- Seppa, East Kameng
District, Arunachal Pradesh.
5. The Block Development Officer, Chayang Tajo CD-Block, P.O.- Chayang Tajo
District - East Kameng, Arunachal Pradesh.
6. The Assistant Engineer, RWD, ct Sub Division, P.O.- Chayang Tajo District - East
Kameng, Arunachal Pradesh.

7. Smti. Karya Bagang, (MLA), W/o Shri Tara Bagang, 9th ct (ST) Assembly Constituency, presently residing at Lekhi village, near Government M.E. School, P.O.- Naharlagun, District- Papum Pare, A.P.
8. Shri Tara Bagang, S/o Late Tada Bagang, presently residing at Lekhi village, near Government M.E. School, P.O.- Naharlagun, A.P.

.....*Respondents*

Advocates for the petitioners :-

Mr. T. Son
Mr. A. Rebe
Mr. D. Maldam

Advocate for the respondents :-

Mr. R. H. Nabam, Senior Government Advocate
Mr. Tony Pertin
Mr. A. K. Singh
Mr. S. Tapin

P R E S E N T

THE HON'BLE MR. JUSTICE P. K. MUSAHARY

Date of hearing :- 17.08.2010

Date of Judgment & order :- 15.09.2010

JUDGMENT AND ORDER(CAV)

Heard Mr. T. Son, learned counsel for the petitioners. Also heard Mr. R. H. Nabam, learned Senior Govt. Advocate, appearing for State respondents No. 1-6 and Mr. Tony Pertin, learned counsel appearing for private respondents No. 7 and 8.

2. This application has been filed under Article 226 of the Constitution of India questioning the action taken by the respondent authorities towards Implementation of schemes under Border Area Development Programme(hereinafter referred to as 'BADP' in short). The instant petitioners are permanent residents of Chayang Tajo in the district of East Kameng, Arunachal Pradesh, and they are elected

members of Zilla Parishad/Anchal Samity of Chayang Tajo. Amongst them, the petitioner No. 1 is the Chairperson of Zilla Parishad as well as the Chairman of District Planning Committee (hereinafter referred to as 'D.P.C.' in short) constituted for Implementation of BADP in the district of East Kameng. The petitioner No. 2 is a lady Zilla Parishad Member of Sawa Circle which is situated in the remotest part of East Kameng District. The present petitioners, are, therefore, concerned with the Implementation of the above schemes as well as the development of areas bordering China. The District Planning Officer (hereinafter referred to as 'DPO' in short) of East Kameng District, by his letter dated 05.03.2010 directed the Block Development Officer (BDO), CD Block, Chayang Tajo, to prepare and submit estimate under BADP for the year 2009-10. Accordingly, as many as 29 schemes were listed for the year 2009-10 for which necessary funds have been earmarked and approved by the State Government. A meeting of the BADP Scheme was held on 14.03.2010 in the office chamber of BDO, Chayang Tajo, under the chairmanship of Sri Pama Bagang, BDO, Chayang Tajo, wherein, the members of the local Panchayat Raj Institutions (PRIs), after a threadbare discussion, unanimously decided that the Zilla Parishad Members of Chayang Tajo and Sawa Circle would provide and forward the names of eligible contractors in consultation with other PRIs to the BDO, Chayang Tajo, for distribution of works. In compliance to the aforesaid decision, the Chairperson of East Kameng Zilla Parishad, Seppa, submitted the names of eligible contractors for both BADP-9-Chayang Tajo and BADP-4-Sawa Circle before the BDO concerned on 16.03.2010 and 15.03.2010 respectively. In the mean time, administrative approval and

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expenditure sanction was accorded by the Deputy Commissioner, East Kameng District, Seppa, vide his order dated 22.03.2010, for the BADP schemes. Accordingly, works under the aforesaid BADP schemes were allotted and distributed by the BDO, Chayang Tajo. The said BDO with the help of technical staff from the Rural Engineering Department, who were posted under his disposal, prepared the estimates and submitted the project profiles. The BDO, Chayang Tajo, was the sole executing agency for execution of BADP schemes. In violation of standing guidelines of 2008, Issued by the central government, the respondent D.P.O., East Kameng District, Seppa, requested the Executive Engineer, RWD, Seppa Division, to execute the works under BADP, as executing agency, vide his letter dated 06.04.2010 (Annexure-4 to the writ petition). By the time, the aforesaid letter dated 06.04.2010 was issued, the contractors who were selected by the PRIs and were allotted works, have almost executed the works and they were due for payment of bills. The aforesaid contractors have been denied payment of their bills due to sudden change in the executing agency. The said change in the executing agency has been made suddenly at the instance and behest of private respondents No. 7 and 8 to serve their personal interests and thereby, affected the public interest in the matter of implementation of BADP schemes. The petitioners, being the public representatives, have demanded, relief(s) as under:

- (i) Not to alter/modify and change the order dated 05.03.2010 whereby the BDO concerned was made the project executing agency, to implement BADP schemes for the year 2009-10.

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- (II) To revoke/cancel/set aside and quash the letter dated 06.04.2010 whereby the Executive Engineer, RWD Division, Seppa, has been made the executing agency for implementation of BADP schemes at the behest of private respondents No. 7 and 8.
- (III) To direct the State respondents No. 2 and 3 to allow the BDO, Chayang Tajo, to act as project executing agency for implementation of BADP schemes and not to obstruct/disturb the smooth implementation of the said schemes.
- (IV) To direct the State respondents No. 2 and 3 not to stop the ongoing works awarded by the BDO, Chayang Tajo, as per communication dated 05.03.2010(Annexure-1 to the writ petition).
- (V) To direct the State respondents to adhere to guidelines of 2008 issued by the Central Government.
- (VI) To direct the State respondents No. 4 and 5 not to award any work order in favour of contractors as recommended by private respondents No. 7 and 8.
- (VII) To direct the State respondent No. 2 viz. Deputy Commissioner, East Kameng District, Seppa, to dispose of the representation of the petitioners submitted before him on 29.03.2010 (Annexure-6 to the writ petition).

3. Mr. T. Son, learned counsel for the petitioners, submits that the respondent authorities have no authority to change the executing agency from the BDO, Chayang Tajo to Executive Engineer, RWD, Seppa, unless the standing *guidelines of 2008* issued by the Central Government for Implementation of BADP schemes, are modified or changed. According to the learned counsel, the sudden change in the executing agency has been made by the D.P.O., East Kameng District, Seppa, vide his letter dated 06.04.2010 (Annexure-4 to the writ petition) against the public interest and to serve the private interests of respondents No. 7 and 8 and as such, he submits that the letter dated 06.04.2010 is liable to be cancelled or revoked forthwith. The learned counsel also submits that the contractors who have been enlisted as per the suggestions of elected representatives of the PRIs should be allowed to complete the works allotted to them and be paid their bills.

4. The State respondents No. 2 & 3, 4 & 6 and 5, have filed their separate counter affidavits.

The respondents No. 2 and 3, in their counter affidavit, stated that the aforesaid BADP schemes were undertaken and approved by the respondent Deputy Commissioner, East Kameng District, Seppa, and due administrative approval and expenditure sanction were also accorded. In the said counter affidavit, it was stated that the RWD Division, Seppa, has the technical competency for smooth and better implementation of the BADP schemes. The concerned respondent authorities have also denied the allegations of

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violation of central government's *guidelines of 2008* and also irregularities in the allotment of works to the contractors selected/enlisted as per the suggestion of elected representatives of the local PRIs. The respondent authorities have further denied the claim of the petitioners that the aforesaid contractors have executed or are executing the works and for that, they are entitled to payment of bills.

In the counter affidavit of respondent No. 5(BDO, Chayang Tajo), it has been specifically stated in paragraph-5 that his office received administrative approval and expenditure sanction orders, only for 2(two) BADP schemes for the financial year 2009-10 from the State Government vide Orders No. DPO/BADP-1/2009-10 dated 23.03.2010 for Rs. 7.2 lakhs and No. PD/BADP/Scheme-24/2009-10 dated 15.03.2010 for Rs. 23.88 lakhs respectively, for implementation of the said BADP schemes by him. In paragraph-5 of the said counter affidavit, it is also stated that except for the above cited 2(two) BADP schemes, no other work order was issued to the said contractors against the schemes for which necessary sanctions are yet to be received. It is further stated that the office of the BDO, Chayang Tajo, issued work orders only after receipt of specific instructions or sanction orders from the Deputy Commissioner, East Kameng District, Seppa, or Secretary, Planning, Government of Arunachal Pradesh, Itanagar.

In the counter affidavit of State respondents No. 4 and 6, it has been stated, *inter alia*, that in the *guidelines of 2008*, there is no provision for issuing work orders before sanction is obtained from the

concerned authorities. The respondent authorities No. 4 and 6, have also stated that no work order was issued for execution of the works to the said contractors as claimed by the petitioners.

5. It is significant to note that the petitioners by filing an additional affidavit on 10.05.2010, brought on record a *Minutes of Meeting on BADP schemes of Chayang Tajo CD/IRD Block held on 14.03.2010* and also a list of the contractors' name forwarded and submitted by the Chairperson, East Kameng Zilla Parishad, Seppa, to the BDO, Chayang Tajo, but they have failed to produce/furnish the work orders issued by the respondent BDO or any other authority in favour of the aforesaid contractors although a claim was made that the said contractors were awarded work orders. The details of the works claimed to have been executed by the contractors have not been furnished/appended to the additional affidavit. The guidelines on the basis of which the petitioners are insisting that it is only the BDO concerned who can be made executing agency for implementation of BADP schemes and no other Department/Agency can be appointed or entrusted as the executing agency, have not been shown/produced. At the same time, the petitioners have not denied that the RWD Division, Seppa, is lacking in technical expertise in executing/ implementing the said BADP schemes. It is not explained or understood as to how, by entrusting the RWD Division, Seppa, as executing agency, is affecting or going to affect the Implementation of BADP schemes in question and thereby going to work against the public interest. There is no denial of the fact that the RWD is a Works Department of the Government specially created for implementation of development

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works/schemes in the rural areas for which It has been provided with sufficient staff, both technical and non-technical. It has not been brought to the notice of this court that there is any objection from the members of the public of the area concerned to the action of the Government in entrusting the RWD as an executing agency for implementation of the BADP schemes.

6. I have gone through the official records as produced by Mr. R. H. Nabam, learned Senior Govt. Advocate, Arunachal Pradesh. For the purpose of disposal of this case, it would be proper and suffice, if the following correspondences and orders, are referred to :

(i) Letter No. DPO/BADP-1/2008-09 dated 01.07.2009 written by the respondent Deputy Commissioner, East Kameng District, Seppa, to the Secretary, Planning, Government of Arunachal Pradesh, Itanagar, whereby proposals for the schemes under BADP for the year 2009-10 as finalized by the District Level Screening Committee was submitted to the Government. It may be noted that as many as 29 BADP schemes were enlisted/recommended in the said letter.

(ii) Letter No. PD/BADP-94/2008-09 dated 13.02.2010 Issued by the respondent Secretary (Planning), Government of Arunachal Pradesh, Itanagar, whereby the Government's approval for placement of Rs. 32,90,50,000/- being SCA under 1st installment of BADP

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fund for the year 2009-10 at the disposal of respective Deputy Commissioners for implementation of approved BADP schemes, was communicated.

(iii) Order No. DPO/BADP-1/2009-10 dated 23.03.2010 issued by the respondent Deputy Commissioner, East Kameng District, Seppa, whereby administrative approval and expenditure sanction was accorded *for implementation of Rangbung Plantation at Sollung villages under BADP in respect of Chayang Tajo Block during the financial year 2009-10 to an amount not exceeding Rs. 7,20,000/-*. It has been specifically mentioned in the said order that the above sanctioned schemes shall be executed by the BDO, CD Block, Chayang Tajo, through DRDA, Seppa, by observing all local codal formalities and terms and conditions laid down therein. The administrative approval and expenditure sanction was also accorded by the Secretary(Planning), Government of Arunachal Pradesh, Itanagar, *for construction of link road from Chayang Tajo Road to Police Station at Chayang Tajo under Chayang Tajo CD Block in East Kameng District through BDO, Chayang Tajo, at an estimated cost not exceeding Rs. 24.00 Lakhs as Special Central Assistance(SCA) under BADP during 2008-09*. The said order was communicated vide No. PD/BADP-Scheme/2009-10 dated 15.03.2010.

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Mr. R. H. Nabam, learned Senior Govt. Advocate, submits that only these 2(two) schemes have been implemented through BDO, Chayang Tajo, as the executing agency and the aforesaid funds were placed at his disposal. He further submits that the aforesaid 2(two) schemes are being executed by the present petitioner No. 1 as per the work orders issued by the BDO, Chayang Tajo.

(iv) For the rest of the schemes for the financial year 2009-10, the executing agency has been changed from BDO, Chayang Tajo, to RWD, Seppa Divison, for speedy development of the border areas for which necessary funds have been placed at the disposal of Chief Engineer, RWD, Government of Arunachal Pradesh, Itanagar, vide the respondent No. 2's (Deputy Commissioner, East Kameng District, Seppa) order under Memo No. DPO/BADP-2/2009-10 dated 22.03.2010.

(v) Letter No. PD/BADP-11/2008-09 dated 13.04.2010 issued by the respondent Secretary (Planning), Government of Arunachal Pradesh, Itanagar, whereby clarification has been made that Deputy Commissioner concerned is the final authority in the matter of selection of the schemes on priority basis considering relative importance of the schemes. It has also been mentioned that the MLAs and PRI members may recommend their

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schemes/proposals for final selection and recommendation of BADP schemes from the district concerned. It is further mentioned therein that the implementation of the BADP schemes can be done only through the Government Departments/Agencies as selected by the Deputy Commissioner depending on the proposals/schemes. Moreover, it is provided that engagement of contractors/suppliers would be done by the implementing agency depending on requirement and after due observance of codal formalities.

7. For better appreciation, the aforesaid letter dated 13.04.2010, is extracted, hereunder :

**"GOVERNMENT OF ARUNACHAL PRADESH,
PLANNING DEPARTMENT
ITANAGAR**

No. PD/BADP-11/2008-09 Dated Itanagar the 13th April, 2010

To,

**The Deputy Commissioner,
East Kameng District,
Seppa,
Arunachal Pradesh.**

Sub : Submission of Schemes under BADP for the year 2010-11.

Ref : Letter No. DPO/BADP-1/2008-09 dated 6/4/2010.

Sir,

Inviting a reference to your above referred letter on the subject mentioned above, this is to inform you that the BADP schemes are to be selected in consultation with the elected members i.e. MLAs and PRI members from the village level. However, the final selection of schemes will be done by the DC at the District HQ on

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priority basis considering the relative importance of the schemes. The PRI and Elected Members i.e. MLAs may recommend their schemes/proposals but the DC is the authority for final selection and recommendation of BADP schemes from the District.

The implementation of BADP schemes can be done only through the Government Departments/Agency as selected at your end and depending on the proposal. The engagement of contractors/suppliers will be done by the implementing agency depending on the requirement and after observance of codal formalities.

***Yours faithfully
Sd/-
(Ankur Garg)
Secretary Planning"***

8. It is observed that the instant petitioners have not challenged the aforesaid letter dated 13.04.2010 whereby the Deputy Commissioners have been given authority for taking up schemes and implementation of the approved schemes through various Government Departments/Agency as selected by the concerned Deputy Commissioner. It appears that the respondent authorities have been taking the impugned action by virtue of aforesaid letter dated 13.04.2010 and as such, the action taken so far by them, cannot be questioned as illegal or unauthorized until and unless, the said letter dated 13.04.2010 is cancelled or revoked. It has become abundantly clear that except for the aforesaid 2(two) works as stated above in item No. (iii) of paragraph No. 6, the respondent authorities did not issue any work order in favour of any contractor and as such, whatever works are being executed by the contractors as selected by the respondent BDO, Chayang Tajo, and other authorities, on the suggestion of members of PRIs, have no authority to execute the

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works. Even if the aforesaid contractors have executed any work under the aforesaid schemes, they would not be entitled to receive any bill amount.

9. In view of the foregoing discussions and observations, no relief, as sought for by the present petitioners, could be granted to them. Resultantly, the instant writ petition is found devoid of merit and accordingly, it is liable to be dismissed. It is so dismissed. There shall, however, be no order as to costs.


JUDGE

Bikash