

# **IN THE GAUHATI HIGH COURT**

**(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

## **ITANAGAR PERMANENT BENCH**

### **(NAHARLAGUN)**

#### **1. WA 8 (AP)/2019**

1. The State of Arunachal Pradesh, through the Secretary, Civil Supply Department, Government of Arunachal Pradesh, Itanagar.
2. The Director of Civil Supply, Govt. of Arunachal Pradesh, Naharlagun.
3. The Deputy Commissioner, Changlang District, Changlang, Arunachal Pradesh.
4. The District Supply Officer, Changlang District, Changlang, Arunachal Pradesh.

...**APPELLANTS**

***-versus-***

M/s Phuplu Singpho Miao, Proprietor – Mrs Phuplu Singpho, resident of Miao, District Changlang, Arunachal Pradesh.

...**RESPONDENT**

#### **2. IA (C) 41 (AP)/2019**

1. The State of Arunachal Pradesh, through the Secretary, Civil Supply Department, Government of Arunachal Pradesh, Itanagar.
2. The Director of Civil Supply, Govt. of Arunachal Pradesh, Naharlagun.

3. The Deputy Commissioner,  
Changlang District, Changlang,  
Arunachal Pradesh.
4. The District Supply Officer,  
Changlang District, Changlang,  
Arunachal Pradesh.

...**APPLICANTS**

***-versus-***

M/s Phuplu Singpho Miao, Proprietor – Mrs Phuplu Singpho,  
resident of Miao, District Changlang, Arunachal Pradesh.

... **RESPONDENT**

**3. WA 9 (AP)/2019**

1. The State of Arunachal Pradesh, through the  
Secretary, Civil Supply Department,  
Government of Arunachal Pradesh,  
Itanagar.
2. The Director of Civil Supply,  
Govt. of Arunachal Pradesh,  
Naharlagun.
3. The Deputy Commissioner,  
Upper Siang District, Yingkiong,  
Arunachal Pradesh.
4. The District Supply Officer,  
Upper Siang District, Yingkiong,  
Arunachal Pradesh.

...**APPELLANTS**

***-versus-***

M/s Meena Engineering, represented by its Proprietor – Sri Nikh  
Kamin, Son of Late Nikh Khopi, Resident of 'D' Sector,  
Naharlagun, PO & PS Naharlagun, Papumpare District,  
Arunachal Pradesh.

... **RESPONDENT**

#### **4. I.A.(C) 42 (AP)/2019**

1. The State of Arunachal Pradesh, through the Secretary, Civil Supply Department, Government of Arunachal Pradesh, Itanagar.
2. The Director of Civil Supply, Govt. of Arunachal Pradesh, Naharlagun.
3. The Deputy Commissioner, Upper Siang District, Yingkiong, Arunachal Pradesh.
4. The District Supply Officer, Upper Siang District, Yingkiong, Arunachal Pradesh.

**...APPLICANTS**

***-versus-***

M/s Meena Engineering, represented by its Proprietor – Sri Nikh Kamin, Son of Late Nikh Khopi, Resident of 'D' Sector, Naharlagun, PO & PS Naharlagun, Papumpare District, Arunachal Pradesh.

**... RESPONDENT**

#### **5. I.A. (C) 43 (AP)/2019**

1. The State of Arunachal Pradesh, through the Secretary, Civil Supply Department, Government of Arunachal Pradesh, Itanagar.
2. The Director of Civil Supply, Govt. of Arunachal Pradesh, Naharlagun.
3. The Deputy Commissioner, Upper Siang District, Yingkiong, Arunachal Pradesh.
4. The District Supply Officer, Upper Siang District, Yingkiong,

Arunachal Pradesh.

...**APPLICANTS**

***-versus-***

M/s Meena Engineering, represented by its Proprietor – Sri Nikh Kamin, Son of Late Nikh Khopi, Resident of 'D' Sector, Naharlagun, PO & PS Naharlagun, Papumpare District, Arunachal Pradesh.

... **RESPONDENT**

**6. WA 10 (AP)/2019**

1. The State of Arunachal Pradesh, through the Secretary, Civil Supply Department, Government of Arunachal Pradesh, Itanagar.
2. The Director of Civil Supply, Govt. of Arunachal Pradesh, Naharlagun.
3. The Deputy Commissioner, Changlang District, Changlang, Arunachal Pradesh.
4. The District Supply Officer, Changlang District, Changlang, Arunachal Pradesh.

...**APPELLANTS**

***-versus-***

M/s Phosum Khimhun, Proprietor – Shri Phusum Khimhun, Resident of village Khimiyang, P.O. Khimiyong, PS – Chaglang, District – Changlang, Arunachal Pradesh.

... **RESPONDENT**

**7. I.A. (C)44 (AP)/2019**

1. The State of Arunachal Pradesh, through the Secretary, Civil Supply Department,

Government of Arunachal Pradesh,  
Itanagar.

2. The Director of Civil Supply,  
Govt. of Arunachal Pradesh,  
Naharlagun.
3. The Deputy Commissioner,  
Changlang District, Changlang,  
Arunachal Pradesh.
4. The District Supply Officer,  
Changlang District, Changlang,  
Arunachal Pradesh.

...**APPLICANTS**

***-versus-***

M/s Phosum Khimhun, Proprietor – Shri Phusum Khimhun,  
Resident of village Khimiyang, P.O. Khimiyong, PS – Chaglang,  
District – Changlang, Arunachal Pradesh.

... **RESPONDENT**

**8. I.A. (C)45 (AP)/2019**

1. The State of Arunachal Pradesh, through the  
Secretary, Civil Supply Department,  
Government of Arunachal Pradesh,  
Itanagar.
2. The Director of Civil Supply,  
Govt. of Arunachal Pradesh,  
Naharlagun.
3. The Deputy Commissioner,  
Tirap District, Arunachal Pradesh.
4. The District Supply Officer,  
Tirap District, Arunachal Pradesh.

...**APPLICANTS**

***-versus-***

M/s Phosum Khimhun, Proprietor – Shri Phusum Khimhun,  
Resident of village Khimiyang, P.O. Khimiyong, PS – Chaglang,  
District – Changlang, Arunachal Pradesh.

... **RESPONDENT**

**9. WA 11(AP)/2019**

1. The State of Arunachal Pradesh, through the Secretary, Civil Supply Department, Government of Arunachal Pradesh, Itanagar.
2. The Director of Civil Supply, Govt. of Arunachal Pradesh, Naharlagun.
3. The Deputy Commissioner, Tirap District, Arunachal Pradesh.
4. The District Supply Officer, Tirap District, Arunachal Pradesh.

... **APPELLANTS**

***-versus-***

M/s Wangham Associate, Khonsa, Proprietor – Shri Dingham Wangham, R/o Longding, P.O. & P.S. Longding, Tirap District, Arunachal Pradesh.

... **RESPONDENT**

**10. I.A. (C) 47(AP)/2019**

1. The State of Arunachal Pradesh, through the Secretary, Civil Supply Department, Government of Arunachal Pradesh, Itanagar.
2. The Director of Civil Supply, Govt. of Arunachal Pradesh, Naharlagun.
3. The Deputy Commissioner, Tirap District, Arunachal Pradesh.
4. The District Supply Officer, Tirap District, Arunachal Pradesh.

... **APPLICANTS**

***-versus-***

M/s Wangham Associate, Khonsa, Proprietor – Shri Dhingham Wangham, R/o Longding, P.O. & P.S. Longding, Tirap District, Arunachal Pradesh.

... **RESPONDENT**

**::BEFORE::**

**HON'BLE MR JUSTICE KALYAN RAI SURANA  
HON'BLE MR JUSTICE SANJAY KUMAR MEDHI**

**Advocates for the Appellants-State\_:** Shri K. Ete, learned Sr. Addl. Advocate General, A.P.

Ms. P. Pangu, Jr. Govt. Advocate.

**Advocates for the private respondent (petitioners):** Shri R. Saikia.

**25.09.2019**

**(S. K. Medhi, J)**

**JUDGMENT AND ORDER (ORAL)**

All these appeals and Interlocutory Applications being identical in nature, the same are taken up for disposal by this Common Judgment and Order.

**2.** The State is in appeal against a Judgment and Order dated 17.11.2017 in WP (C) 638 (AP) 2017, WP (C) 639 (AP) 2017, WP (C) 640 (AP) 2017 and WP (C) 641 (AP) 2017 by which the learned Single Judge had concurred with an earlier Judgment and Order, dated 25.11.2017, passed in WP (C) 628 (AP) 2016 as the facts were same. It was further directed that the State should obtain the original copy of the bills of the respondent herein and pay the same. It is further directed that since the matter involved huge amount of money, the payments should be made expeditiously as further delay would caused further loss by way of interest.

**3.** We have heard Shri K. Ete, the learned Sr. Addl. Advocate General assisted by Ms. P. Pangu, the learned State counsel representing the appellant-State.

4. We have also heard Shri R. Saikia, the learned counsel for the private respondents (petitioners).

5. The brief facts of the case may be narrated as follows:-

6. The writ petitioners are contractors who had carried out supply works of Food Articles floated by the Food Corporation of India. In the said works, there was a clause of payment of Hills Transport Subsidy. Since the amount was not being paid to the Contractors, writ petitions were instituted.

7. One of the writ petition in this regard, namely, WP (C) 463 (AP)2009 was initially disposed of vide an order dated 02.12.2009 by this Court directing consideration of the claim of the petitioner in terms of the judgment of the Full Court rendered in the case of *Tamsher Ali & Ors.vs-State of Assam* and others, reported in 2008 (4) GLT 1 (FB). The said decision was followed in a number of other writ petitions against which the FCI preferred the Writ Appeal No.138/2010 along with other Writ Appeals. The learned Division Bench disposed of the said vide order dated 30.04.2010 setting aside the earlier order dated 02.12.2009 and directed to provide opportunity to the FCI.

8. Thereafter, the matter was heard on such remand and this Court vide the Judgment and Order dated 08.10.2010 allowed the writ petition by directing the State respondents to make the payments to the writ petitioners. It may be mentioned that the work in question was not denied and the same has been recorded by this Court in Paragraph No.-11 of the Judgment, the relevant part of which is extracted hereinbelow:-

*“....."None of the respondents i.e., the FCI or the State Government has denied the transportation of food grains by the petitioner but the dispute is that who would be required to pay the amount and at what stage.”*

9. The aforesaid Judgment and Order dated 08.10.2010 was the subject matter of challenge by the FCI in WA 17 (AP) 2011. However, when the Appeal was taken up for consideration, it was pointed out

that the case was covered by another decision dated 18.03.2011 of the learned Division Bench in WP (C) 242 (AP) 2010 which had attained finality.

**10.** It may be mentioned that in view of the aforesaid position, the petitioners in those cases were given with the relief.

**11.** Based on the aforesaid cases, the present writ petitions were filed by the similarly situated persons.

**12.** The learned Single Judge vide the impugned Judgment and Order dated 17.11.2017 had allowed the four writ petitions in terms of the Judgment and Order dated 25.01.2017 passed in WP (C) 628 (AP) 2016 which has been quoted in Paragraph-4 of the said Judgment and the same is as follows:-

*"4...Mr. Saikia, learned counsel, submits that these batch of writ petitions are covered by the Judgment and Order, dated 25.01.2017, passed by this Court in WP (C) 628 (AP) 2016. It is submitted by Mr. R. Saikia that in that case also, the petitioner's claim was for payment of pending bills for transportation of various PDS items from FCI Godowns situated at different places of Assam to different location in the state of Arunachal Pradesh.*

*At this stage, it may be relevant to produce the operative portion of the Judgment and Order, dated 25.01.2017, hereunder:-*

*"...It is the submission of the learned counsel for the State respondent that the State Govt. is unable to pay the bills of the petitioner for two reasons, firstly, they are unable to verify the original bills and secondly, the State is not in a financial condition to make payment of the bills. The submission of the learned counsel for the State Govt. that they are unable to pay the bills because the original bills could not be verified, cannot be accepted in view of the letter dated 22.06.2016 of the learned Advocate General of the State. In the said letter, the learned Advocate General of the State had opined that at this distant point of time, the Department cannot take the plea of absence of original bills in implementing the Court orders. With regard to the second submission, that the State is*

*unable to make payments because of paucity of funds in the State, the same can also be not accepted on its own as from time to time various amounts are being paid to the other Carriage contractors, who also have a similar claim like that of the writ petitioners.*

*In view of the above, this writ petition is disposed of with a direction that the respondent authorities would take up the issue of payment of the pending bills of the present petitioner as per their claim and also by taking into consideration the opinion of the learned Advocate General of the State and also the Departmental orders of approval, if any, and pass appropriate orders on the same within a period of 2 months from the date of receipt of the certified copy of this order.*

*Upon considering the same, if the Department does not have any appropriate reason for not making the payment, the required claims be paid to the petitioner, preferably within a period of 4 months from passing of the order. If the Department is of the view that there are certain financial constraints, the possibility to make the payment in 2 or 3 instalments can also be explored.*

*While passing the necessary order as directed by this Court, the respondent authorities will also take note of the submission made in Para-9 of the affidavit-in-opposition filed on behalf of respondent Nos.1 to 4 filed on 25.01.2017.*

*In terms of the above, this writ petition stands disposed of.”*

**13.** Shri Ete, the learned Sr. Addl. Advocate General, Arunachal Pradesh fairly submits that though various grounds have been taken in the appeal, the basis on which the petitions were allowed had attained finality. It is, however, submitted that the issue of apportionment any payments to be made by FCI to the State Government are subject matter of dispute which are presently under adjudication.

**14.** On the other hand, Shri Saikia, the learned counsel for the private respondents (petitioners) submits that there is hardly any scope for preferring appeal against the impugned Judgment and Order as the same is based on earlier orders of this Court which have attained finality. It is further submitted that the supply has not been denied and that the Cabinet Sub-Committee of the State Government are recommended that the State would provide sufficient funds to the Department of Food and Civil Supplies for clearing the bills of the Contractors.

15. The rival contentions of the learned counsels have been carefully considered.

16. It appears from the facts and circumstances as narrated above that the present appeal was preferred more as a formality rather than with any substance. When the impugned Judgment and Order dated 17.11.2017 is based on orders passed on identical facts and circumstances in earlier writ petitions which have attained finality and the parties in those writ petitions have got the relief, the State respondents cannot question the payments which are entitled to the writ petitioners and directed to be released by the learned Single Judge. Moreover, public interest is also served inasmuch as, the work of supply in question has not also been denied and rather the Cabinet Sub-Committee of the State had directed expeditious payments of the bills.

17. It is a settled law that in an intra Court Appeal, unless the view taken by the learned Single Judge is absolutely unreasonable or perverse, the learned Division Bench would not alter the view only because of availability of another possible view. In this connection we may gainfully refer to the case of the *Management of Narendra & Company Private Limited Vs. Workmen of Narendra & Company*. In the instant case, not to talk of any perversity or infirmity, the impugned Judgment and Order appears to be most reasonable and in order.

In view of the above, the instant Appeals and the connected Interlocutory Applications stands dismissed.

We make no order as to cost (s).

**JUDGE**

**JUDGE**

*talom*