
(2010) 10 SC CK 0036

In the Supreme Court Of India

Case No : Civil Appeal No. 1834 of 2002

All Sikkim Youth Association and Another

APPELLANT

Vs

H.R. Subba and Others

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Constitution of India, 1950 — Article 136, 14
Sikkim Public Works Code, 2009 — Rule 245

Citation : (2010) 11 JT 104 : (2010) 12 SCC 694 : (2011) 1 SCC(Cri) 759 :
(2010) 9 UJ 4513

Hon'ble Judges : Deepak Verma, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : K. Swami and Prabhu Swami, for the Appellant; J.L. Gupta, Harish Chandra and A. Mariarputham, Annam D.N. Rao, Neelam Jain, Shweta Verma, A.K. Sharma for P. Parmeswaran, Aruna Mathur, for Arputham, Aruna and Co. and Ashok Mathur, for the Respondent

Final Decision : Allowed

Judgement

Dalveer Bhandari, J.—This appeal is directed against the judgment and order dated 19.10.2001 passed in Civil Writ Petition No. 17 of 2001 by the High Court of Sikkim at Gangtok.

2. The All Sikkim Youth Forum, a registered body, filed a writ petition in public interest in the High Court. This appeal was based on a news item which was published in the 'Sikkim Observer', a National Hill Weekly, from 13th to 17th November, 2000 under the title 'Transparency and Accountability-I'. In the news item it was published that according to well placed sources the Public Works Department (Roads and Bridges), Sikkim had submitted a report to the Finance Commission showing a financial liability of more than Rs. 60 crores. Sensing some foul play in the matter, the then Chief Minister of Sikkim had ordered for a thorough probe into the matter. A Committee was formed for this purpose. The Committee completed its investigation into the matter and submitted a report to the State Government. Surprisingly, the liabilities came down to Rs. 40 crores

from Rs. 60 crores, showing a difference of Rs. 20 crores.

3. It was also mentioned in the writ petition that a news item was also published in another news-weekly 'Sikkimese' in its Gangtok Edition from 22nd to 28th November, 2000. In this article it was published that the Sikkim Public Works Department had indiscriminately defied the Rules and that there had been grave irregularities by the Public Works Department in repair of roads and bridges.

4. It was further mentioned in the writ petition that in the "Weekend Review" under the title "Finance Department stumbles upon Roads and Bridges excesses" an article was published. It was stated in the article that the report revealed that Roads and Bridges department of Public Works Department had committed to 350 percent in excess of outlay and it would take four years to clear the dues.

5. The press reports, in general, had indicated and suggested departure from the established norms and deviations in procedure had occurred on account of corruption.

6. The officers of the Finance and Revenue departments had been named in the writ petition. In the writ petition it was stated that the petition was not aimed at any individual or set of persons and was not filed with any ulterior motive. The petition was genuinely filed in the larger public interest.

7. In the writ petition it was also stated that the report received by the appellants was in 5 chapters. Chapter 1 dealt with the introduction. Chapter 2 dealt with the administrative set-up of the department. Chapter 3 dealt with the liabilities projected-its general analysis. It also dealt with the South West circle comprised of the Jorethang Sub Division, the Namchi Sub Division, the Geyzing Sub Division, the Kaluk Sub division, the Ravangala Sub Division. There was reference to the North East Circle comprising of the Singtam Sub Division, the Mangan Sub Division, Sub Division IV, Station Sub Division and Pakyong Sub Division. Chapter 4 dealt with stores/stocks materials while Chapter 5 dealt with temporary advance. It was further stated in the writ petition that on verification of the cash book and other relevant records of the said Roads and Bridges Department it was found that a whopping sum exceeding Rs. 3.41 crores was outstanding against the following departmental officials as on 29.02.2000.

Sl. No.

Name

Designation

Plan

Non-Plan

Total

1.

H.R. Subba

A.E.

4539373.00

3919092.00

8458465.00

2.

B.K. Rai

A.E.

1318451.00

3489045.00

4807490.00

3.

S.B. Subba

A.E.

3014016.00

652895.00

3666911.00

4.

L.D. Lamtha

A.E.

1435025.00

1834112.00

3269137.00

5.

C.V. Basnett

A.E.

1218933.00

1321757.00

2540690.00

6.

M.K. Subba

A.E.

1008192.00

1184673.00

2192865.00

7.

G. Lachungpa

A.E.

304471.00

1883666.00

2188137.00

8.

P.K. Bhujel

A.E.

1354484.00

297453.00

1651937.00

9.

D.C. Rai

A.E.

0.00

1039577.00

1039577.00

10.

Mohan Gurung

A.E.

370634.00

475374.00

846008.00

11.

M.B. Gurung

D.E.

325000.00

417908.00

742908.00

12.

B.P. Kharel

A.E.

232923.00

261681.00

494604.00

13.

B.K. Tamang

A.E.

220007.00

260771.00

480778.00

14.

Tensung Lepcha

A.E.

12271.00

333820.00

346091.00

15.

M.K. Pradhan

A.E.

0.00

236802.00

236802.00

16.

T.P. Sangderpa

A.E.

0.00

230981.00

230981.00

17.

S. Dadul

D.E.

166193.00

48921.00

215114.00

18.

Raju Rai

A.E.

48995.00

80497.00

129492.00

19.

S.T. Bhutia

A.E.

14720.00

104798.00

119518.00

20.

Yongendra Sharma

A.E.

0.00

104430.00

104430.00

21.

Raju Basnett

A.E.

0.00

100000.00

100000.00

22.

L.N. Sharma

J.E.

0.00

50258.00

50258.00

23.

Charanjit Singh

A.E.

0.00

44672.00

44672.00

24.

D.B. Rai

D.E.

28000.00

0.00

28000.00

25.

P.N. Sherpa

A.E.

25000.00

0.00

25000.00

26.

G.T. Dungal

A.E.

0.00

17515.00

17515.00

27.

T.P. Karki

A.E.

0.00

6672.00

6672.00

28.

Neeraj Pradhan

A.E.

4324.00

0.00

4324.00

29.

M.K. Mukhia

A.E.

0.00

100.00

100.00

30.

Unidentified

-

39264.00

12832.00

52096.00

Grant Total

15680276.00

18410302.00

34090578.00

8. In the writ petition it was also incorporated that advances drawn since 1994, 1995 onwards were outstanding against the officers and the department was kept on adding further advances without insisting on the adjustment of the amount earlier advanced to them.

9. The grievance of the appellants in the writ petition was that all the officers mentioned in Chapter 5 were heading responsible posts in the Public Works Department and other Departments in the state. No action had been taken as recommended in the report for recovery of the amounts totaling to Rs. 3.41 crores approximately outstanding as on 29.2.2000. No disciplinary proceedings had been initiated against these officials. No criminal action as to the misuse and abuse of power had been initiated. The appellants submitted that most of these officials had acquired assets disproportionate to their known sources of income and it was only by a proper investigation by an independent investigating agency that the exact quantum of assets disproportionate to their known sources of income could be ascertained, warranting initiation of proceedings under the Prevention of Corruption Act, besides Departmental Disciplinary Proceedings.

10. It was lastly submitted in the writ petition that the citizens of the State of Sikkim had a constitutional guarantee to be governed by the rule of law and the funds of the State should be prudently utilized according to the norms. Arbitrary, whimsical and capricious acts of high officials in the administration of the State resulting in a fraud on the State exchequer, would result in violation of their fundamental rights guaranteed under Article 14 of the Constitution. The citizens of the State of Sikkim were also entitled to a life of dignity and a loss to the State exchequer would deprive them of access to developmental programmes, welfare measures aimed at protecting their fundamental rights and other constitutional rights.

11. In the writ petition the appellants had also prayed that the Court may direct an investigation by a competent investigating agency such as the Central Bureau of Investigation or the Central Vigilance Commission to investigate into the acts of commission or omission of the officials mentioned in Chapter 5 of the Report of the Finance Department, Government of Sikkim on the Public Works Department, Roads and Bridges. The appellants further prayed that appropriate steps may be taken for recovery of the amount.

12. In pursuance to the notice of the High Court in the writ petition, counter affidavit was filed by the respondents, which revealed that the advances shown against each of the individual officers being respondents No. 1 to 27, as outstanding had in fact been already utilized for the purpose for which it was advanced. It was also stated in the counter affidavit that allegation of lapse or

irregularity had been categorically denied.

13. The appellants in this appeal were concerned with Chapter 5 relating to temporary advances, these respondents had also dealt specifically with the said part of the allegation. The other allegations being of a general character had been denied.

14. In the counter affidavit it was also stated that in order to understand the matter in its proper perspective, it was necessary to explain what an advance is, under the prevailing system of the department and when the advance drawn was considered adjusted. The Assistant Engineers or the Divisional Engineers in the absence of the Assistant Engineer drew money for payment of monthly wages of labour force or supervisors who were employed throughout the year for regular maintenance of roads or for the wages of labour force and supervisors who were engaged to complete a particular project.

15. The money was drawn on the basis of acquaintance roll that gives the number of labourers/supervisors, the number of days for which the work was done and rates of wages payable to them. Money was also drawn as advance for purchase of materials immediately required for carrying out urgent works like repair of bridges which needed immediate attention and opening of roads closed by damages that occurred during monsoon.

16. The most of the advanced amounts drawn, as explained above, was for the payment of wages of labour force and supervisors. They were considered as temporary advance as 10 per the prevailing system of the Department. After disbursement of the payment to the drawees, the detailed account along with the paid acquaintance roll was submitted to the Accounts Section of the Department. The Accounts Section, on receipt of the details, examined the same and finally booked the expenditure on the proper debit head and removed the amount from the list of advance given to the Assistant Engineers or the Divisional Engineers. Till the expenditure was booked in the proper debit head, the amount drawn remained to be shown as outstanding against the name of the officer, even though the accounts may have been already rendered by the officer concerned. If the budgetary provision was not available in the particular financial year, the expenditure was debited to the budgetary provision of the succeeding year and the advance shown against the name of the particular officer would remain till that time, even though he had submitted the accounts and paid acquaintance roll.

17. The reports, as extracted in the paragraph under reply, revealed that the advance money shown as outstanding as on 29.02.2000 against the names of the officers who had been impleaded as respondents No. 1 to 28 is Rs. 3.41 crores. Out of the total amount of Rs. 3.41 crores, the amount under Plan was Rs. 1.57 crores. The bulk of this amount could not be adjusted during the financial year 1999-2000 because of the cut in the plan allocation of funds for the financial year 1999- 2000. This cut in the allocation was corroborated by the

letter written by the then Principal Chief Engineer-cum-Secretary, Roads & Bridges on 17.03.2000 addressed to the Principal Secretary, Finance Department vide letter No. 2 [67]Gen/R&B/96-97/245 dated 17.03.2000.

18. In the case of non-plan, the budgetary provision was extremely inadequate. Bulk of this could be adjusted only after 31.3.2000 for the same reason as in the case of plan. The road length was increasing every year. The cost of maintenance of roads had also increased. Over and above, there was unprecedented down pour during the monsoon of the year 1999. Therefore, to meet the demand for restoration works and maintenance works of the roads, the requirement of funds was much more than the funds allocated in the year 1999-2000 i.e. Rs. 8.00 crores.

19. In such circumstances, the adjustment of these advances could be effected only in the year 2000-2001 that was after 31.03.2000 and most of the advances were adjusted after 31.3.2000, in a few cases the advances shown as unadjusted pertains to past years. In these cases it was found that the officers had submitted the vouchers and details of accounts and the Accounts Division also had made entries in the cash book. But, in the register, where the advance was recorded, the necessary corrections in the entries were not made. That is why the advance shown against the officers continued to be shown as outstanding. In such cases, though there was no actual advance outstanding, the advance was shown as outstanding against the officers erroneously.

20. In some cases the officers had submitted the vouchers and obtained receipts from the cash section. However, they remained unadjusted inadvertently. Such cases are very few and there accounts had reconciled later on after due verification. In fact, all the advances against all the respondents-officers had been settled.

21. Detailed verification of the accounts and paid acquaintance rolls were submitted by the officers concerned from time to time and taking into account the budgetary sanctions available in the financial year 2000-2001 etc. the advances had been, as stated above, duly booked to the relevant budget heads. It was stated that there were no outstanding advances against any officer.

22. Out of Rs. 3.41 crores, only an advance of Rs. 32750 [Rs.12987 under Non-plan + Rs. 19763 under Plan] which could not be assigned to anyone was indicated. As the previous advances taken by different drawees got adjusted, new advances were drawn and, therefore, at no point of time the total advance got adjusted to zero level and therefore, this amount of advance that could not be assigned to anyone remained undetected. This amount obviously had rolled over from past many years. Efforts were being made to reconcile this. The department had kept the record of total amount of money which was outstanding against the officers at the end of the every month and periodic adjustments were being made regularly. It was stated that all the advances against the respondents had been accounted for.

23. In view of the above, it was submitted that the allegation that the officers concerned had misappropriated the amount or that it was to be recovered from them was incorrect and the relief sought in this regard was misconceived, mala fide and motivated.

24. It is pertinent to mention here that before the High Court Chief Secretary and Finance Secretary had filed affidavits and gave details of the entire expenditure of Rs. 3,40,57,582/- and liability of the only unidentified amount of Rs. 32,990/- could not be established against any person.

25. The High Court had carefully examined the averments made in the writ petition and the counter affidavits. The High Court, after carefully considering the affidavits of the Chief Secretary and the Finance Secretary and the report of the Inspection Committee, came to a clear conclusion that in the facts and circumstances it was not necessary to refer the matter for investigation by the Central Bureau of Investigation or Central Vigilance Commission and the writ petition filed by the appellants was dismissed by the High Court.

26. The appellants, aggrieved by the impugned judgment of the High Court, had approached this Court under Article 136 of the Constitution.

27. In pursuance to the court notices counter affidavits have been filed by the respondents. The averments of the appeal had been denied in the counter affidavit. In the counter affidavits it was mentioned that in the instant case there was no misappropriation of any funds and there was no culpable conduct on the part of any one and the writ petition was rightly dismissed by the High Court.

28. The inspection team, on the direction of the High Court, had thoroughly examined the entire matter and did not find any misappropriation of funds. It was also stated in the counter affidavit that the enquiry by the inspection team was an independent and impartial inquiry. In the counter affidavit it was also denied that there has been any loss to the State exchequer which had deprived the appellants access to the development programmes, welfare measures aimed at protecting their fundamental rights of the Constitution. According to the impugned judgment the writ petition filed in the High Court by the appellant was devoid of any merit and was dismissed. The appellants being dissatisfied with the impugned judgment approached this Court.

29. This Court in order to ensure probity and transparency in the functioning of the government examined the matter in great detail. We have also carefully examined the Sikkim Financial Rules, 1979. In the instant case the appellants could not point out any breach of the Sikkim Financial Rules, 1979 or misappropriation of funds by the respondents.

30. It may be pertinent to mention here that the Government of Sikkim, Roads and Bridges Department had revised the Code and now Sikkim Public Works Code, 2009 has been introduced.

31. The relevant Rule 245 of the Sikkim Public Works Code, 2009 reads as under:

245. The following are the important initial accounts to maintain by the Assistant Engineer.

1. Cash Book:

The Assistant Engineers/Divisional Engineers should maintain cash book in Form 1 in accordance with the instructions contained in Chapter VI. The Assistant Engineer should also see that the accounts of all the imprest holders are received and incorporated in the cash book before it is closed for the account month concerned. Immediately, after the cash book of a month has been closed the cash balance i.e. report should be prepared and sent to the Division Office/circle Office.

The officer should satisfy themselves before signing the cash book that the entries are correct and as a further precaution, the total of the cash column on both sides should be expressed in words in their own hand. It is also permissible for officers to maintain two alternative cash books one being submitted in original to the Division Office/ Circle Office at the end of the month and the other being used in the following month.

2. Temporary Advance Accounts

In case where the Assistant Engineer takes cash from the Division Office for making payment to persons stationed elsewhere, the amount so taken out should be accounted for as a temporary advance against his name in the cash book and account should be rendered to the Division before drawl of next temporary advance.

32. In our view, by the Sikkim Public Works Code, 2009 greater transparency has been introduced.

33. We have carefully considered the averments, submissions of the counsel appearing for the parties and the relevant rules. In our considered opinion, no interference is called for. The appeal, being devoid of any merit, is accordingly dismissed, leaving the parties to bear their own costs.