
(2015) 08 GAU CK 0051
In the Gauhati High Court
Case No : W.P.(C) (Takn Up) No. 1267 of 2010
In Re: State of Arunachal Pradesh and Ors.

Date of Decision : 21-08-2015

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d)(i), 17, 21

Citation : (2015) 4 GLT 165

Hon'ble Judges : K. Sreedhar Rao, Actg. C.J. and Prasanta Kumar Saikia, J.

Bench : Division Bench

Advocate : S. Banik, Amicus Curiae, for the Appellant; R. Thomas, AG, K. Ete, Addl. AG, G. Deka, GA, A.C. Buragohain, SC, B.C. Das, A.C. Borbora, Senior Advocate, D.N. Bhattacharjee, R. Borbora, P. Goswami, M.G. Singh, R. Sharma, A.K. Saikia, R.K. Pradhan, J. Majumdar, M. Dev, N.S. Thakuria, P. Deb, S. Nag and M. Bora, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, Actg. C.J.

Pleadings.

1. One Nabam Tagam filed this Public Interest Litigation (PIL) in particular against the respondent No. 7 who was the then Minister of Public Works Department and Urban Development, Arunachal Pradesh alleging the criminal misconduct and misfeasance and malfeasance in the capacity as PWD Minister. The request to withdraw the PIL was rejected and petitioner was fined Rs. 10,000/- by order dated 16th February, 2010 in Misc. Case 347/2010 and the registry was directed to register the PIL as a suo motu writ petition. In paragraph 4 of the petition the acts of misconduct have been stated as under:

"(i) the contract for construction of low cost housing for safai karmachari and for the people living below poverty line at Itanagar, Arunachal Pradesh for Rs. 3,06,06,667.74 was awarded to one M/s. N.E. Agency at the behest of the Respondent No. 7, Mr. Nabam Tuki, the Hon'ble Minister, PWD & UD in gross violation of the norms and procedures required to be followed in awarding such contract. It be stated herein that the said agency has no EPF license, labour

license, contractor registration in CPWD or Railway, MES, NBCC etc. As required for being eligible for entering into such contract. The said M/s. N.E. Agency is owned by Smti Nabam Yani Respondent No. 8 wife of the Hon''ble Minister i.e. Respondent No. 7 as mentioned above.

It may be mentioned herein that the petitioner has obtained from RU-01 containing Certificate of Registration issued under the Arunachal Pradesh Goods Act, 2005, in respect of M/s. N.E. Agency wherein though the name of the proprietor is not mentioned but the photograph pasted in the said form is of Smti Nabam Yani wife of Mr. Nabam Tuki, Minister and the petitioner recognizes the said photograph of Mr. Nabam Yani.

(ii) The aforesaid agency, namely, M/s. N.E. Agency owned by Smti Nabam Yani wife of the Hon''ble Mr. Nabam Tuki was further awarded with another contract for construction of staff quarters for KV Rohtak for Rs. 53,28,038 at the behest of Hon''ble Minister Mr. Nabam Tuki, Respondent No. 7 vide letter dated 15.12.05. The said contract was again awarded without following any norms and procedures.

(iii) The contract of House Keeping & Catering Service of newly constructed Arunachal House at the Chanakya Puri, New Delhi was awarded to an agency namely, M/s. Jumsi Enterprise, owned by Smti Nabam Aka, Respondent No. 10, who is the sister-in-law of Nabam Tuki Hon''ble Minister (PWD & UD), Arunachal Pradesh, at the instance of the Hon''ble Minister, Mr. Nabam Tuki, the value of which runs into crores of rupees. The said contract was allotted vide U.O. No. MPWD-13/2004-05, dtd. 16.11.05 without following any norms for awarding such contract

(iv) The contract for construction/raising boundary wall at Kendriya Vidlaya at Salt Lake, Kolkata for Rs. 13,81,093/- lacs vide letter No. SECC/Cont-2(A)/2005-06/3478, dtd. 15/12/- 5 without floating the required NIT was awarded to M/s. Jusmi Enterprise. The said agency as mentioned above is owned by Sri Naba Aka sister-in-law of Hon''ble Minister (PWD & UD), Arunachal Pradesh the Respondent No. 7 by totally violating the required procedure for awarding contract on non-competitive amount.

The petitioner respectfully states that Kendriya Vidalaya Sangathan appears to have entrusted "the construction job of its organization to PWD, Itanagar and the PWD, Itanagar is allotting construction works of Kendriya Vidyalaya from Shillong to Calcutta and Rohtak in Harayana at will. Some of these works have also been awarded at the behest of Minister of his relatives which are as follows.

(v) The contract for construction of Regional Office Building for Kendriya Vidalaya Sangathan at Salt Lake, Kolkata for Rs. 26,90,913/- was awarded to an agency, namely, M/s. Engineers Cooperative Society Ltd. It may be stated herein that inspite of best efforts on the part of the petitioner, the said firm could not be located in the State of Arunachal Pradesh. However, according to the available information, the said contract has been accepted by Smt. Nabam Aka,

Respondent No. 10, who is the sister-in-law of Minister, Mr. Nabam Tuki, Respondent No. 7.

(vi) The contract for campus development & remodelling of primary class room was awarded to an agency, namely, M/s. JCA Construction Ltd. vide 65 numbers of works orders, which are filed separately. The said firm also could not be located by the Petitioner in spite of best possible efforts. The said contract is similarly accepted by Mrs. Nabam Aka as mentioned above at the instance of the Hon"ble Minister.

(vii) The contract for the construction of residential building for Kendriya Vidyalaya at Umroi Cantt. Shillong Ph-II for Rs. 1,23,82,490/- without floating the required NIT/NIQ was awarded at the instance of the said Hon"ble Minister to M/s. Mary Associates, owned by Mrs. Nabam Mary, who is sister-in-law of Sri Nabam tuki, Respondent No. 7.

(viii) That the contract work relating to development of the parking places at Nirjuli and Naharlagun are undertaken by the Urban Development Department, Itanagar, at an estimated cost of 61.43 lacs and 260.00 lacs respectively. The first phase of the development of said parking places have been awarded to M/s. Mary Associates owned by Smti Nabam Mary, the sister-in-law of Mr. Nabam Tuki, the Hon"ble Minister of PWD at the cost of 27.64 and 78 lacs respectively.

(ix) The contract for District Sports Complex at Yupia, Dist. Papum Pare, Arunachal Pradesh at the cost of Rs. 2,03,83,300/- crores was awarded to M/s. Assam Arunachal Agency owned by Sri Nabam Tagam. It may be stated herein that Sri Nabam Tagam is the younger brother of Sri Nabam Tuki Hon"ble Minister (PWD & UD) and the said contract was awarded, without following any norms and procedures and has been done on only at the behest of said Minister, vide a Memorandum of Understanding, (shortly MOU between the Government and the said Agency namely M/s. Assam Arunachal Agency dated 25th day of Jan, 05.

(x) The first phase of the contract for Guest House at Nirjuli for Rs. 38.66 lacs out of total 128.86 lacs the said contract was awarded to M/s. Durga Motors owned by Sri Taba Laj, who is the younger brother of the sister-in-law of the Hon"ble Minister (PWD & UD) respondent No. 8. The said contract was awarded without floating NIT/NIQ at the influence of the Hon"ble Minister (PWD & UD), Arunachal Pradesh.

(xi) A work order of Rs. 6.50 crores was awarded to M/s. Delhi Traders operated by Smti Nabam Aka, sister-in-law of Hon"ble Minister (PWD & UD), Arunachal Pradesh under the Shawabiman Schemes of the Horticulture Dept. This work order was awarded at the influence of Minister (PWD & UD), it may be stated herein that under the aforesaid Scheme, the beneficiaries should be the unemployed educated youths."

The contention that while helping his kith and kin the respondent No. 7 was writing letters to several departments to favour his kith and kin in granting

contracts. It is stated that the contract works are required to be awarded according to the guidelines of CPWD Manual and tenders have to be invited before awarding the contract. The respondent No. 7 has grossly abused the power of his office in enriching himself and his relatives. It is said that M/s. N.E. Agency, M/s. Jumsi Enterprise, M/s. Mary Associates and M/S Assam Arunachal Agency are owned by respondent No. 7's kith and kin. The petitioner therefore prayed for mandamus directing a CBI inquiry into the allegations made in the petition and to take all possible consequential action as may be deemed fit and proper in the facts and circumstances of the case.

Affidavit -in-opposition by Bijoy Talukdar

2. One Bijoy Talukdar, Officer on Special Duty in Arunachal Bhavan in New Delhi has sworn an affidavit in the matter denying the allegations made in sub-para (iii) of paragraph 4 of the petition to the effect that the tenders were called for housekeeping and catering service at the newly-constructed Arunachal House at Chanakya Puri in New Delhi. Quotations were received from four firms namely M/ S Jumsi Enterprise, M/S Silver Millennium 2000, M/S Hi-lander Housekeeping Services and M"S Kleen Tech Agencies. Tender papers were scrutinized by Resident Commissioner, Arunachal Pradesh. The tender of M/S Jumsi Enterprise was found lowest for running Front Office and House Keeping of the new Arunachal House, therefore, the said tender was accepted. In respect of Catering Services at the new Arunachal House, there was no quotation submitted. Later on, M/S Jumsi Enterprises submitted an application to grant the contract, accordingly, the contract has been granted to M/S Jumsi Enterprises. It is the allegation that M/S Jumsi Enterprises is owned by respondent No. 10, namely, Smti Nabam Aka, the sister-in-law of respondent No. 7 is said to be not in knowledge of the deponent. In the affidavit, it is categorically stated that there is no mala fide in awarding the contract to M/S Jumsi Enterprises and that all the required codal formalities have been complied with before granting the contract. The allegation that the contract works run into runs into crores of rupees is denied as false. The deponent, along with the affidavit, has produced all the documents relating to grant of contract of Front Office, House Keeping, Catering and Security Services on contract basis in respect of Arunachal House, New Delhi. The said documents are produced as Annexure-A1, which is of 18 pages. The typed copy of the said Annexure-A1 is also produced.

Affidavit-in-opposition by Smti. Sumeda

3. One Smti Sumedha, working as Deputy Secretary to the Government of Arunachal Pradesh, Urban Development and Housing Department, has filed an affidavit with regard to the allegations made in Sub-Paragraph (i) of Paragraph 4, which relates to award of contract of low cost housing for Safai Karmachari and for the people living below poverty line at Itanagar. In this regard, it is said in the affidavit that Hindustan Prefab Limited (in short, "HPL"), a Government of India undertaking was dealing with the said project, it was a scheme of Central Government where the Arunachal Pradesh Government, much less the PWD and

Urban Housing Department of Arunachal Pradesh Government, had any role in the matter. It is said that the contract works have been successfully completed and the Union Minister for Housing and Urban Poverty Alleviation, Government of India inaugurated the completed project and handed over the same to the Department of Urban Development and Housing, Government of Arunachal Pradesh, therefore, the allegations in Paragraph 4(i) are denied as false and baseless. Along with the affidavit, the latter No. K-11019/10/2003-UPA-I of Government of India, Ministry of Housing & Urban Poverty Alleviation, Nirman Bhawan, New Delhi, dated 29.09.2008 and the notifications, issued by Lt. Governor, Arunachal Pradesh, dated 16.08.1978 are produced.

Affidavit-in-opposition by Sri. Takar Riba

4. One Sri Takar Riba, Under Secretary to the Government of Arunachal Pradesh, Public Works Department, has filed an affidavit on behalf of respondent Nos. 1 and 2. It said in the affidavit that the petitioner is a busybody and in previous WP(C) 104(AP) of 2006, he had made similar frivolous allegations that the contract has been awarded without floating tender. The contention in the writ petition was rejected by the learned Single Judge and held that there is no arbitrariness in awarding the contract and dismissed the petition. In WA 94 of 2006, the Division Bench of this Court imposed cost of Rs. 5,000/- on the petitioner for filing the petition without any basis and on frivolous ground. It is said that the cost of Rs. 5,000/- imposed has also been recovered from the petitioner. In that view, it is stated that the petitioner has suppressed the orders passed against him in WA 94 of 2006 and for such suppression of facts, the petition is to be dismissed with exemplary costs.

5. With regard to the award of contracts, it is stated that the Arunachal Pradesh has a unique and peculiar geographical and social structure. Because of the inner line permit, the outsiders cannot freely come in and do any business or carry on any works. The State of Arunachal Pradesh comprises of tribal population, who are poor and illiterate. The majority of population suffers from unemployment. It is, therefore, to help the youth, the contract works are granted departmentally to the deserving youth in the State. It is said that the petitioner was also awarded the contract works and he has been the beneficiary of the schemes and policies of the Government.

6. With regard to the allegation in Paragraph 4(i), it is said that the construction of Low Cost Housing for Safai Karmacharies and for the people living below poverty line at Itanagar, was floated by Urban Development Department, Government of India and that the Members of Urban Development of Arunachal Pradesh had nothing to do with the implementation of the scheme or in awarding contracts. It was Central Government Scheme executed by the Government of India through its agency.

7. In Paragraph 10 of the affidavit, the deponent states that M/S Engineers' Cooperative Society is a Kolkata based firm registered with the Registrar of

Cooperative Societies, Kolkata under the Government of West Bengal in 1971. The said firm had qualified engineers and they had knowledge of the ground situations in the State of Arunachal Pradesh and had the skills in dealing with the local people, therefore, the contract was awarded to them and that the contract has successfully been implemented.

8. The allegation that M/S Engineers" Cooperative Society has nexus with respondent No. 10, namely, Smti Nabam Aka, sister-in-law of Nabam Tuki, is denied as false. It is also stated that there is no material to show that Smti Nabami Aka is related to the Hon''ble Minister, PWD, Government of Arunachal Pradesh.

9. The allegation that Paragraph 4(vii) in the petition are denied as vague and false. It is said that Kendriya Vidlaya Sangathan (KVS) approached the Government of Arunachal Pradesh, PWD, for repairing and remodeling the KVS centres at Santragachi and Bamangachi. The PWD though it fit to entrust the work to a local firm at Kolkata and accordingly for repairing and remodeling work was allotted to M/S JCA Construction. The allegation that M/S JCA Construction has nexus with respondent No. 10 is denied as false.

10. The affidavit averments disclose that the local contractors were preferred to execute the works, who fulfill the requirement of CPWD Manual. The KVS approached the\\ Department for construction of residential building at Umroi Cantt-Shillong, Meghalaya The first phase of the work orders were issued in favour of two firms, namely, M/s. Jaiswal & Co., Umroi, Shillong and M/s. Marry Associates. The firm M/s. Marry Associates has already completed the first phase successfully. The second phase of works have been allotted to the firm at the rates of the Department, therefore, the allegation that the work order was issued at the instance of respondent No. 7, is denied as false and baseless.

11. With regard to the construction of residential quarters, phase-I and phase-II, by the other works of KVS school building campus development are executed by the Department through the other contractor, the petitioner has deliberately suppressed the full details of the facts and details of the facts related to award of contract to other and has only skewed version to mislead the Court.

12. With regard to the letters of recommendations given by respondent No. 7, it is said that because he being the people"s representative, many people approach him and therefore he would make recommendations, however, not with any direction to infringe the law and rules. The financial powers of the Executive Engineer, Superintending Engineer and Chief Engineer to sanction works falls upto the value of Rs. 10,000/-, Rs. 50,000/- and Rs. 3,00,000/- respectively as stated by the petitioner is false. It is said that the Executive Engineer is authorized to sanction works upto the value of Rs. 1,00,000/- each.

13. It is said that the socio economic condition of the tribal population in Arunachal Pradesh is unique and different from other parts of the country and there is no system of registration of contractors in Arunachal Pradesh therefore

the Department adopts policy to analyze and work out reasonable rate of each item of works while awarding the contract and under the direct supervision and guidance of the engineers get the work executed. In case the works requires highly technical expertise and use of machineries, the works are awarded to eligible contractors after inviting tenders. The contract works given to the contractors have been completed within the time frame and at the rates and cost specified by the Department. There is no illegality committed in any manner to call for any investigation by CBI. The petitioner along with affidavit has produced the copy of the order passed in WP(C) 104(AP)/2006 and the order passed in WA 94/2006. The Annexure-C1 consists of the construction works carried out are produced.

14. The allegation that the respondent No. 7 as PWD and UD Minister has abused his office and committed irregularities in awarding contract to the kith and kin is denied as false. Hence, pray for dismissal of the petition with exemplary cost.

Affidavit-in-opposition to the petition by Tadar Appa for Respondent No. 6

15. One Tadar Appa, Assistant Director, Sports and Youth Affairs, has filed an affidavit denying the allegations made in the petition regarding the contract works for construction of District Sports Complex at Yupia. The allegations are made that the petitioner has filed WP(C) 104(AP) of 2006. The writ petition was dismissed and in Writ Appeal, this Court dismissed the appeal on the ground that it is frivolous and levied cost of Rs. 5000/-. The said cost has also been realised from the petitioner. In view of the tainted background, it is said that the petitioner has no locus to file the PIL.

16. The State of Arunachal has a peculiar geographical and social structure and outsider cannot come to the State without inner line permit. Therefore, in the interest of the unemployed youths of the State, the contract works are given to eligible unemployed youths on the basis of merit and suitability.

17. The work of construction of District Sports Complex at Yupia, was taken up by one Nabam Ribia, Member of Parliament with the condition that 25% of the total estimated cost would be borne by the State Government and 75% of the cost would be borne by the Central Government and project would be completed within two years. The total estimated cost was Rs. 2,03,83,300/-. The amounts were sanctioned by the State and the Union of India. The petition is filed without making Union of India a party and therefore is untenable. It is stated that the complex is almost complete, the petitioner has no locus to challenge the same.

18. With regard to allegations in para 6, it is stated that respondent No. 7 being a people's representative, many people will approach him for favour and he would recommend their cases without however infringing the law.

19. It is stated that the construction of the Sports Complex is time bound and if the construction is not completed within the time period, funds would have elapse. Therefore, NIT was not floated in view of the urgent nature of the works

to be executed. The petitioner along with affidavit has produced the status report of the construction of the complex.

Affidavit -in-opposition to the petition by Respondent No. 7

20. Respondent No. 7 has filed affidavit denying the allegations in the petition made against him. Respondent No. 7 contends that petitioner is a tainted person and has the habit of filing frivolous cases. WP(C) 104(AP)/2006 was dismissed wherein he made false allegation of awarding contracts without complying legal formalities. Writ Appeal 94/2006 is also dismissed and the Court imposed cost of Rs. 5000/- and directed to recover the cost from the petitioner. Accordingly, the same has been recovered from the petitioner. It is stated that the petitioner is a busy body and claims to be General Secretary of the Contractors' Association and a political worker associated with the Students Youth Wing of the Indian National Congress.

21. The petitioner had on earlier occasion in PIL 68/2006, made allegation that the works of construction of Nirjuli-Sagalee Road was awarded without calling any tender. The work of construction of car parking was of Rs. 1.367 crores and was allotted to Nabam Hari, the younger brother of respondent No. 7. The work of construction of stadium was allotted to another brother of respondent No. 7, Nabam Tagam and the work of construction of Arunachal Bhawan in New Delhi was allotted to the wife of respondent No. 7, Nabam Yani. The said allegations were false and ultimately the petitioner has withdrawn the said PIL on 07.11.2006. It is said that the present petition is filed with political motive and political consideration. The petitioner after issuance of notice in the case addressed a letter to the President of the Indian National Congress to take action against him and colluded with the local unit of the BJP, put pressure on him to resign.

22. In the affidavit it is stated that the economy of Arunachal Pradesh is in a state of transition from primitive economy to a modern day economy and as a result of such transition employment opportunities are diminishing. Therefore to help the unemployed youth contract works are awarded to them without any Discrimination or bias.

23. With regard to the allegations made in para 4, in para 19 of the affidavit the following averments are made:

"19. That the averments made in paragraph 4 of the petition are denied by the deponent. It is denied that contracts running into crores are being awarded at the behest of the Minister of PED (UD) abusing his official position, to his close relatives without following the codal formalities. No contract works was allotted to any of his relatives at his behest as alleged in the writ petition.

After obtaining a copy of the writ petition the deponent made an enquiry as regards the allegations contained therein. The deponent would also rely upon the affidavits to be filed/filed by the State respondents. In addition to the same, the

deponent stated the following with regard to the allegation made in paragraph-4.

(i) As regards the allegation made in paragraph 4 of the petition:

The firm M/s. NE Agency has been in existence and doing business before the deponent became the PWD Minister. The contract for construction of low cost housing for Safai Karmachari and for the people living below poverty line at Itanagar was obtained by M/s. NE Agency after participating in a tender process initiated by M/s. Hindustan Prefeb Limited, a Government of India Enterprise, and was entrusted the work by the Minister of Urban Employment and Poverty Alleviation of the Government of India. The said contract was not awarded at the instance of the deponent.

(ii) As regards the allegation made in paragraph 4(ii) of the petition:--

The said work was allotted to M/s. NE Agency on the basis of their past performance and an experience of 15 years. Tenders were not floated as the PWD does not have the procedure of registration of the contractors and in the event of open tender the local entrepreneurs would have been deprived. The work has been completed and the staff quarters have been handed over to Kendriya Vidyalaya authorities to their full satisfaction. The work was not allotted at the instance of the deponent and he had no role to play in the allotment of work.

(iii) As regards the allegations made in paragraph 4(iii) of the petition:--

The owner of M/s. Jumsi Enterprise, Smt. Nabam Aka approached the Chief Minister for allowing her to take up the catering and house keeping works in the newly constructed Arunachal Bhawan in New Delhi. On the recommendation of the Chief Minister, the work was allotted to M/s. Jumsi Enterprise. Similarly House Keeping and catering work in existing Arunachal Bhawan was also to some other contractor in the similar manner.

(iv) As regards the allegation made in paragraph 4(iv) of the petition:

The work of construction of boundary wall at Kendriya Vidyalaya at Salt Lake at Kolkata was awarded to M/s. Jumsi Enterprise after the department was approached by the individual contractor. As the work is a minor work, it was allotted at the sanctioned rate after verifying the capability of the firm. The work was not allotted at the instance of the deponent.

(v) As regards the allegations made in paragraph 4(v) of the petition:

The firm M/s. Engineering Co-operative Society is a registered co-operative society under the Government of West Bengal and the work was allotted within the sanctioned rate. The said work was not allotted to Smti Nabam Aka as alleged in the writ petition.

(vi) As regards the allegations made in paragraph 4(vi) of the petition:

The deponent on verification has found that the firm M/s. JCA Construction is a

local firm from Kolkata and the work was allotted as the said firm has the necessary experience and qualification and the work was allotted within the sanctioned rate. The said work was not allotted to Smti Nabam Aka as alleged in the writ petition.

(vii) As regards the allegations made in paragraph 4(vii) of the petition:

The work of construction of residential building for Kendriya Vidyalaya at Umroi Cantt was allotted to M/s. Mary Associates on their application as there was no other contender for the said work. The said contractor had adequate experience and was found capable of executing the work and the work was allotted within the sanctioned rate. The work has been duly completed to the satisfaction of the Kendriya Vidyalaya authorities. The work was not allotted at the instance of the deponent as alleged in the writ petition.

(viii) As regards the allegations made in paragraph 4(viii) of the petition:

The work of construction of the parking place at Nirjuli and Naharlagun was distributed amongst contractors namely, M/s. Mary Associates, M/s. M & M Associates, M/s. Donyi Polo Steel and Industries, M/s. Tame Enterprise, M/s. Bright Motors, M/s. T.K. Enterprise, M/s. Taka Associates, Shri M. Jomoh, Shri T. Sonam, Shri T.M. Tariang etc. The work orders were issued against the respective applications of the contractors on the basis of their qualification, experience and capabilities. The work orders were not issued at the instance of the deponent.

(ix) As regards the allegations made in paragraph 4(ix) of the petition:

The construction of District Sports Complex at Yupia is a time bound project sponsored by the Government of India. The State Government is required to spend at least 50% of the total cost of the project. The work of construction was awarded to a local reputed entrepreneur after verification of his qualification and capability. The work was allotted by the Sport Ministry and the deponent has no role to play in the award of the said contract. The deponent on enquiry has come to know that the contractor had invested 25% of the total cost of the project and the payment is to be made after completion of the work and that as per the information obtained by the deponent 90% of the work is almost complete.

(x) As regards the allegations made in paragraph 4(x) of the petition:

The construction of the Guest House at Nirjuli has been distributed to 7 contractors, namely, M/s. Donyi Polo Steel and Industries, M/s. Takar Enterprises, M/s. RY ZJ Enterprise, M/s. Dewan House, M/s. M&M Enterprise, Shri T. Sonam and Shri Tana Janil, Shri Taba Laj had purchased a plot of land measuring 2500 sq meters from one Tana Tanil and donated the land to the Government for construction of the guest house. In lieu of such donation, a part of the contract was also allotted to Sri Taba Laj. The work was not allotted at the instance of the deponent.

(xi) As regards the allegations made in paragraph 4(xi) of the petition:

The work of supply of planting materials of various fruit saplings was given to M/s. Delhi Traders by the Director of Horticulture, Government of Arunachal Pradesh. The said work was not allotted at the instance of the deponent. The deponent had verified and ascertained that M/s. Delhi Traders is not connected with Smti Nabam Aka."

24. With regard to the allegations made in para 5, it is stated that the respondent No. 7 does not have any bank account in his name or in the name of his wife. The allegation that he kept a huge amount in the bank account is false. The allegation that he has acquired a number of immovable properties after becoming Minister in the year 1995 is denied as false. The allegation that M/s. N.E. Agency is owned by his relatives is denied as false. The said Firm is doing business and has been in existence even before he became PWD minister. None of contract works have been awarded at his instance. In view of the reasons stated in the affidavit, it is prayed that the petition be dismissed.

Petitioner's reply affidavit dated 15th March. 2007

25. The petitioner has filed an affidavit-in-reply dated 15th March, 2007 to the counter affidavit of respondent No. 7 denying the allegations made against him about his previous antecedents and political and corrupt motives attributed in filing the petition.

26. With regard to M/s. NE Agency it is stated that Nabam Yani wife of respondent No. 7 was not eligible to get the contract works for construction of low cost housing for safai karmachari as she did not possess the required EPF licence, labour licence, contractor's licence in CPWD of Railway, MES and NBCC therefore she is not eligible to receive any contract.

27. With regard to construction of staff quarters for KVS Rohtak it is stated that the contract was awarded to M/s. NE Agency owned by the wife of respondent No. 7 without inviting tenders. Rohtak is a district in Haryana and the question of local entrepreneurs of Arunachal Pradesh does not arise.

28. The house keeping and catering services of newly constructed Arunachal Bhawan was granted at the behest of respondent No. 7 to M/s. Jumsi Enterprise owned by Smti Nabam Aka, sister-in-law of the PWD minister. So also, the boundary wall of KVS Salt Lake, Kolkata, was awarded without any tender process. In the work order for construction of the Regional Office Building, KVS, Salt Lake, Kolkata, bears the signature of Smti Nabam Aka, sister-in-law of respondent No. 7. Therefore, the said Firm is run by Smti Nabam Aka. It is said that only CBI investigation would establish the corrupt activities in awarding the contract to M/s. Engineers Cooperative Societies Ltd. and JCA Construction Ltd., which has nexus with Nabam Aka (respondent 10) and the sister-in-law of respondent No. 7.

29. The construction of residential building for Kendriya Vidyalaya, Umroi Cantonment, Shillong, was not allotted through any tender process and the firm

which owned the contract is owned by the sister-in-law of an Hon''ble Minister. Work orders for development of parking places at Nirjuli and Naharlagun were issued in favour of M/s. Mary Enterprise, owned by Smti Nabam Mary, sister-in-law of Hon''ble Minister and granted without calling any tender. The construction of Sports Complex at Yupia is allotted to M/s. Assam Arunachal Agency without calling any tender.

30. The Guest House at Nirjuli was constructed at Government land and not owned by Tana Tanil as contended by respondent No. 7. It is stated that Smti Nabam Aka is associated with Delhi Traders and the address of Delhi Traders is fictitious and the address of Directorate Complex has only office buildings and staff quarters of horticulture department and no private firms have their offices in the Directorate complex.

31. The averments made in the affidavit of respondent No. 7 that he has issued the recommendation letter to the authorities to help recommending the contract works without infringing the code or formalities and on the basis of such recommendation letter, contracts have been granted without inviting tenders is denied. In para 35 of the reply affidavit, the following averments are made to show the nexus of each of the relative of respondent No. 7 with the company, which is as follows:

"35. That with regard to the statements made in para 25 of the affidavit in opposition, the deponent brings before this Court the firms to whom the contract works were allotted at the behest of the Hon''ble Minister without following the laid down rules and procedures together with its owners,

M/s. NE Agency owned by Smti Nabam Yani, wife of respondent No. 7.

M/s. Jumsi Enterprise owned by Smti Nabam Aka, sister-in-law of respondent No. 7

M/s. Mary Associates owned by Nabam Mary, sister-in-law of respondent No. 7.

M/s. Durga Motors, Proprietor, Taba Laj, younger brother of sister-in-law of respondent No. 7.

M/s. Assam Arunachal Agency, proprietor, Nabam Tagam, brother of respondent No. 7.

M/s. Jusi Acqua Pure run by Nabam Aka, sister-in-law of respondent No. 7.

M/s. Engineers Cooperative Society, run by Smti Nabam Aka, sister-in-law of respondent No. 7.

Delhi Traders, run by Smti Nabam Aka, sister-in-law of the respondent No. 7."

Additional affidavit of the petitioner dated 13.03.2008

32. In the additional affidavit, filed by the petitioner, dated 13.03.2008, the petitioner has produced the copies of the deposit slips of the UCO Bank.

Respondent No. 7 with the help of UCO Bank authorities, replaced his photograph with that of his brother Nabam Tagam. However, as the account was operated by respondent No. 7, the signature in the account opening form could not be changed. SB Account No. 4819 opened in UCO Bank, Itanagar on 19.02.2003 has photograph of respondent No. 7 but with the signature of respondent No. 7. This account would reveal that initially it was opened in the name of respondent No. 7 but subsequently name of respondent No. 7 was struck off and in that place, T. Nabam's name was written in the bank account. The deposit slip of the UCO Bank is produced.

Reply affidavit of respondent No. 7 dated 22nd April 2008

33. Respondent No. 7, in reply to the affidavit, dated 22nd April, 2008, has filed a reply affidavit. In para 5, the following averments are made:

"5. That the statements made in paragraph 3 of the additional affidavit are baseless and concocted and same is vehemently denied. The deponent in this context categorically stated and submits as follows:

(a) The deponent never opened nor maintained any account in UCO bank, Itanagar, and denies the authenticity of the documents annexed as Annexure-1 to the additional affidavit. The deponent has never been account holder of the Account No. 4819 of UCO Bank Itanagar as alleged.

(b) The deponent respectfully prays that the petitioner may be directed by the Hon''ble Court to produce the original of the aforesaid Annexure-1 and to disclose before the Hon''ble Court as to how the petitioner obtained this bank document.

(c) The deponent states that the signature stated to be that of the deponent in the additional affidavit by the petitioner does not belong to the deponent. The deponent never dealt with the said account No. 4819 of UCO Bank, Itanagar, in any manner whatsoever as its account holder as alleged. The deponent categorically states that the signature appearing in the Annexure-1 is not his signature.

Hence, question of tempering the Bank documents does not arise at all as alleged by the petitioner. The deponent therefore has serious apprehension that the petitioner in his endeavour to put forward the present PIL has fabricated and forged the purported official documents namely Annexure-1 so as to level malicious and unfounded allegation against the deponent in the nature of opening of Bank Account in a nationalised Bank."

Reply affidavit of respondent No. 11 dated 22nd July 2008

34. The petitioner in reply has filed an affidavit, dated 22.07.2008. In para 5, the following averments are made:

"That the statements made in para 3 of the affidavit are baseless and as such denied. The deponent begs to state that he made an application on 19.02.2003

to the UCO Bank, Itanagar Branch for opening of a Savings Bank Account and the Bank after verification and completion of the formalities opened a Savings Bank Account No. 4819 on 19.02.2003 in the name of the deponent as T. Nabam and issue a Passbook accordingly to him on the same day. It may be stated that T. Nabam stands for Tagam Nabam where Tagam is the name and Nabam is the surname. It may further be stated that Nabam Tagam or T. Nabam (Tagam Nabam) denotes the same person i.e., the deponent. It is stated that the photograph and the signature appearing in Annexure-1 of the additional affidavit are that of the deponent reflecting opening of the Bank Account in his name. It is stated that the said Savings Bank Account No. 4819 in the UCO Bank, Itanagar Branch, was closed down on 05.01.2004. Therefore, the allegation of replacing the photograph of respondent No. 7 with that of the deponent during the pendency of the PIL is absolutely ill founded and baseless."

Petitioner's affidavit-in-reply dated 8th August 2008

35. The petitioner again on 08.08.2008, filed an affidavit. In para 5, the petitioner has made the following averments:

"5. That the statements made in paragraph 5 of the so-called affidavit-in-reply filed by respondent No. 11 are false, fabricated and are denied. The statements made in paragraph 3 of the additional affidavit is being reiterated. The name of respondent No. 11 is Shri Nabam Tagam and not Shri T. Nabam. Similarly, the name of respondent No. 7 is Shri Nabam Tuki and not Shri T. Nabam. It is strange as to why the account was opened in the name of T. Nabam which is not used either by the respondent No. 7 or the respondent No. 11. Respondent No. 11 has not explained as to why, while opening the account he has written T. Nabam and not his full name Nabam Tagam as he normally uses. The only reason that can be legitimately understood is that the respondent No. 7 and 11 tried to conceal the real identity of the Account Holder in collusion with the Bank. It is a fit case therefore that this Hon'ble Court may call for the cheques/deposit slips through which amounts were received and disbursed from the account together with the records of the accounts including the document annexed as Annexure-1 to the Additional Affidavit filed by the deponent."

Affidavit of P.K. Ghosal. Chief Manager. UCO Bank dated 11.07.2008

36. One P.K. Ghosal, Chief Manager, UCO Bank, Itanagar Branch, has filed affidavit, dated 11th July, 2008 and 27th August, 2008. In the affidavit of 11th July, 2008, in para 5, 6, 7 to 10, the following averments are made:

"5. That the statements made in paragraph 3 of the additional affidavit is not correct and self contradictory, it seems that the petitioner is himself confused and brought allegation against the Bank just to defame the name and fame of the reputed bank. The deponent categorically and specifically denies the statements made in paragraph 3 as incorrect, baseless, ill-founded, concocted and fabricated. It is categorically denied that during the pendency of the PIL the respondent No. 7 with the help of the authorities respondent Bank has replaced

his photograph with that of his brother Shri Nabam Tagam and also that the name of Shri Nabam Tuki was struck off from the account and name of Sri T. Nabam was written.

6. It is stated that as per the records of the Bank, Shri T. Nabam applied through an application to the respondent Bank with a request to open a Saving Bank Account with the UCO Bank, Itanagar Branch on 19.02.2003 and on being allowed after completing all the formalities the SB Account No. 4819 was opened in the name of T. Nabam on 19.02.2003 as it reveals from the records of the Bank and thereafter a pass book was issued to Shri T. Nabam from the respondent Bank on the same date. It is further stated in the fixed deposit slip which is with the record of the Bank the deposit against the SB Account No. 4819 on 19.02.2003 was made in the name of T. Nabam. And from the date of the opening of the account till the date of its closing on 5.1.2004, the operation of the said account has been done by T. Nabam only. It is also stated that from the computer generated statement of Accounts of SB Account No. 4819 between 19.02.03 to 5.01.2004 it reveals that the same account is maintained by T. Nabam.

7. It is pertinent to mention here that during the operation of account of Mr. T. Nabam from 19.03.03 to 05.01.04 seven cheques were issued by him.

8. It is stated that the said Bank account being No. 4819 was closed on 05.01.2004 and on further perusal of the records of the Bank it has come to the notice of the deponent that no account has ever been opened by Shri Nabam Tuki at UCO Bank, Itanagar.

9. That in the above mentioned facts and circumstances the deponent categorically and specifically denies the allegation levelled against the respondent Bank as false, concocted, fabricated, baseless and contrary to the records of the Bank.

10. That the petitioner begs to refer no comment as regard to the statements made in paragraph 4 of the additional affidavit.

However, the deponent categorically states that the allegation made in the additional affidavit is contrary to the records of the Bank and the same is not borne out of the records of the Bank."

Affidavit of P.K. Ghosal, Chief Manager. UCO Bank dated 27.08.2008.

37. In the affidavit of 27th August, 2008, in para 5 to 9 the following averments are made:

"5. That regarding the statement made in para 4 of the affidavit-in-reply, the deponent Bank is highly concerned and strongly denies the allegation that Bank has helped respondent No. 7 in money laundering and demand strict proof to it. Further the Bank has not denied the documents annexed as Annexure-1. It is stated that the Annexure-1 annexed in the additional affidavit filed by the

petitioner is only the specimen signature card relating to the subject account. The bank has already annexed the Account opening form in its affidavit in opposition as Annexure-1.

6. That with regard to the statement made in para 5 of the affidavit-in-reply, it is stated that the Bank has nothing to do with the name and controversies the record of operation of any Bank account is supported with documentary evidences and bank only knows a customer whose name is T. Nabam.

It is further clarified that initial deposit is not at all mandatory, the Bank account can be safely opened on receipt of any amount in any form like cheque/draft etc.

7. That the deponent begs to state that the Bank has already produced the relative transfer voucher of 25 lakhs from Savings Account to fixed deposit account of Sri T. Nabam as supporting documentary evidence in the affidavit-in-opposition vide its Annexure-3.

8. That with regard to the statements made in para 6 it is stated that since the bank is concerned with the record of documents containing the signature of Mr. T. Nabam it has no further comment

9. That with regard to the allegation made in para 7 of the affidavit-in-reply the bank has already made it clear through its affidavit-in-op-position which was based on the available documentary evidence."

Rejoinder Affidavit of the Petitioner, dated 05.01.2009

38. The petitioner has filed rejoinder affidavit dated 5th January, 2009. In para 2 to 6 following averments have been made:

"2. That, I have been served with a copy of the affidavit-in-opposition filed by Respondent No. 11 against Misc. Case No. 2366/2008 filed in the aforesaid PIL. I have gone through the said affidavit and having understood the contents thereof, I make my replies as hereunder. Except for what is specifically admitted in the present affidavit, all other statements and contentions made in the affidavit filed by Respondent No. 11 may be taken to have been denied by the deponent.

3. That the statements made in paragraph 1, 2 and 3 being matters of record are admitted to the extent borne out by the said record.

4. That Respondent No. 11, Shri Nabam Tagam has filed the aforesaid Affidavit-in-opposition after this Hon"ble Court passed an order on 2.12.2008 wherein your Lordships observed that Respondent No. 11 did not chose to file an Affidavit-in-opposition to the present Miscellaneous Application. Your Lordships also noted the submissions made by the Counsel appearing on behalf of the 11th Respondent that the said Respondent is the holder of the Account No. 4819 in UCO Bank. In the said Affidavit-in-opposition, the 11th Respondent has made certain statements on facts which require to be addressed by the petitioner for proper adjudication of the aforesaid PIL.

5. That the statements made in paragraph 4 of the Affidavit-in-opposition filed by the 11th Respondent are denied and those made in paragraph 3 of the Miscellaneous Application are reiterated. The petitioner emphatically denies that the signature appearing in Annexure-1 to the Additional Affidavit dated 13.03.2008 filed by the petitioner is that of the 11th Respondent and reiterates that the signature appearing in Annexure-1 of the Additional Affidavit referred to above is that of Respondent No. 7, Shri Nabam Tuki, the Minister, PWD and Urban Development. It is very interesting to note that for the first time, the 11th Respondent has tried to copy look alike signature appearing on Annexure- 1 to the Additional Affidavit on the Affidavit-in-opposition under reply and it is needless to say that he has miserably failed to copy the said signature. The documents on record of the present PIL bearing the signature of the 11th Respondent establishes beyond doubt that the specimen signature in the Account Opening form etc. of Account No. 4819 do not belong to 11th Respondent but the said signature tallies with the signature of the Minister, Shri Nabam Tuki, 7th Respondent. In fact when requested by the Advocate General, Arunachal Pradesh, Your Lordships compared the signature of 11th Respondent on record with those on the Account Opening Form and observed that the same are distinctly different. The 11th Respondent by trying to copy the signature on the Account Opening Form in the present Affidavit is making all efforts to mislead and create confusion with intent to avoid the issues and to save his brother, the 7th Respondent.

The petitioner stoutly denies the averment made by the 11th Respondent that an amount of Rs. 30 Lacs was taken as a loan from Mrs. Ponung Osik, wife of Dr. NN Osik and the cheque so given by her was deposited in Account No. 4819 of the 11th Respondent. Further it is also denied that the Account No. 4660 is a joint Account of Dr. NN Osik and Mrs. Ponung Osik, wife of Dr. NN Osik. It is reiterated that an amount of Rs. 30 lacs was paid by Dr. NN Osik, the then Director, Civil Supplies and Consumer Affairs to the 7th Respondent who was at the relevant time, the Minister, Civil Supplies and Consumer Affairs.

The 11th Respondent has lied on oath knowing fully well that as on 19.02.2003, when an amount of Rs. 30 lacs was paid to the Minister, vide Cheque No. 344372, the account bearing No. 4660 was not a joint account but it was the personal account of the then Director, Civil Supplies, Dr. NN Osik. Further the claim of the 11th Respondent stands negated by an investigation conducted by the Police in FIR No. 6/2005 under the Prevention of Corruption Act, 1988 that the 11th Respondent took loan from Mrs. Ponung Osik, wife of Dr. NN Osik. It is stated that a bare perusal of the two Charge Sheets submitted by the Police reveal that the Account No. 4660 was converted into a Joint Account in the name of Dr. NN Osik and his wife, Mrs. Ponung Osik only on 4.11.2004 and therefore the claim of the 11th Respondent that the transaction of 30 lacs on 19.02.2003 was from a joint account No. 4660 referred to above are wholly incorrect, false and motivated.

6. That the 11th Respondent has further claimed in paragraph No. 4 under reply that he has borrowed a sum of Rs. 30 lacs from Mrs. Ponung Osik, wife of Dr. NN Osik, which is again false and motivated. Dr. NN Osik has explained during the aforesaid investigation that an amount of Rs. 2.89 Crores transacted in his personal account from 4.10.2002 to 1.07.2004 was borrowed by him from various persons in the name of his wife. This was done to rebut the allegations of possession of disproportionate assets outside his known source of income. The 11th Respondent knows all these facts and yet he has sworn false statements in paragraph 4 of the aforesaid Affidavit-in-opposition out of his knowledge knowing fully well that the statements that he is making are false, concocted and an afterthought. It is therefore a fit case for launching prosecution against 11th Respondent for perjury."

Order sheet of the case file

39. The members of the Gauhati High Court Bar Association passed resolutions on 7.8.2015 which are as follows:

"(1) The Notification No. 38, dated 4th August, 2015, issued by the Registrar (Judicial), Gauhati High Court, which reads "Hon"ble the Chief Justice (Acting) has been pleased to appoint Mr. B.D. Konwar, Sr. Advocate, Guahati High Court, as Amicus Curiae in all the Public Interest Litigations (PIL) except in the PILs filed by him" should be revoked/withdrawn forthwith.

(2) All the PILs pending before the Division Bench consisting of Hon"ble Chief Justice (Acting) and Justice P.K.. Saikia should be transferred to any other Division Bench of the Hon"ble Gauhati High Court forthwith.

(3) The Court No. 1 & 2 of the Hon"ble Gauhati High Court (Old Block) should be restored to its original form in its old glory within 15(fifteen)days.

It was further resolved that failing to comply with the aforesaid resolutions, the General Body will take to resort to HUNGER STRIKE."

40. The following communication was sent on 12th August, 2015 to the President of the Bar Association.

"Memo No. HC/XLII/134/2015/HCI

dated 12th of August, 2015.

Sri Apurba Kr Sarma President Gauhati High Court Bar Association.

Respected Sir,

I have received your letter dated 7th August, 2015 along with the resolutions passed at the meeting.

The first resolution pertains to withdrawing the appointment of Sri B.D. Konwar, Sr. Advocate, as amicus curiae in all public interest litigations. In this respect I would like to state that on 6.8.2015 about 25 lawyers along Sri AK

Bhattacharyya, Sr. Advocate, called on me at my chamber around 1.45 PM and they expressed their resentment in a rather inappropriate manner for appointing senior advocate Sri BD Konwar as amicus curiae in all public interest litigations. I told them that in most of the PILs the petitioner remains absent when the case is called over and also in some suo motu petitions the assistance of an amicus curiae is felt therefore I told that Sri BD Konwar is appointed as amicus curiae.

I have no personal interest in his appointment. Since Sri Konwar was appearing in several PILs therefore I thought that he could be appointed as amicus curiae. I also told them that I would modify the order. On 7.8.2015 when you and other office bearers came to my chamber at 10.45 AM I told the same thing that I am going to withdraw the notification but however I requested you to consider in your meeting the inappropriate behaviour of some of the lawyers in making the request on 6.8.2015.

It is no doubt that in public interest litigations a counsel represents petitioner. But many a time the counsel for the petitioner remain absent or there may not be effective assistance. However I find that on case-to-case basis if the Court needs, an amicus curiae would be appointed to assist the Court as in several cases earlier. I have issued necessary notification withdrawing the appointment of Sri BD Konwar, Sr. Advocate, as amicus curiae in all public interest litigations.

The second resolution states that I should transfer all PILs pending before the Division Bench consisting of me and Justice PK Saikia to any other Division Bench, forthwith. I would say that the request is inappropriate. The Supreme Court in State of Rajasthan Vs. Prakash Chand and Others, has elucidated the powers of the Chief Justice regarding the roster management. The Supreme Court further in State of Uttaranchal Vs. Balwant Singh Chauhal and Others, has directed the High Courts to frame rules regarding the PILs. The Gauhati High Court has accordingly framed the rules. Under the said rules the Chief Justice is endowed the powers of roster management. The request made in resolution 2 would amount to interference in the course of justice and tends to obstruct the administration of justice. Therefore the resolution No. 2 passed unanimously be reconsidered.

The third resolution pertains to restoration of the original glory of the court halls 1 and 2. I state that nothing has been done which offends the dignity or glory of the court halls. In fact the court hall No. 1 was being used for storage purpose after shifting of the High Court to the new building. It is only for temporary period that some cubicles are set up to facilitate the commissioners to record evidence in court hall No. 1. The court hall No. 2 is being used as translation room of the High Court by the order of my predecessor. I do not see that such utilisation of the court hall No. 1 and court hall No. 2 would tarnish the glory or majesty of the court halls. In fact all the court halls have to be treated with same respect and solemnity. One of the court halls is spared for ladies' room. I do not think that utilising the court hall No. 1 for recording evidence temporarily by the commissioners and using as translators' room would dent the glory and dignity

of the court hall in any manner.

The threat of hunger strike is given. I think such a hasty action would not be proper and would degrade the dignity and majesty of the institution of the Bench and the Bar. The resolution No. 2 and 3 may be reconsidered in the larger interests of the institution.

With regards,"

41. The office-bearers of the Association wanted to have a personal audience with the Chief Justice (Acting). Consequently a meeting was held with the Chief Justice (Acting) and brother Judges along with the members of the Bar to discuss the issue on 12.8.2015 at 1.30 PM.

42. Similarly on the request of the office-bearers of the Association a meeting was held on 17.8.2015 at 10.00 AM with the Chief Justice (Acting) along with the brother Judges. Shri A.C. Buragohain, Advocate General, Senior Advocates Shri N. Dutta, Shri D.P. Chaliha, Shri A.K. Bhattacharyya, Shri K.N. Choudhury, Shri H.R.A. Choudhury and Shri G.N. Sahewalla also attended the meeting. The matter was discussed. A request was made to defer the sitting of the Courts till 2.00 PM. According to the request the Courts were held at 2 PM but the advocates remained absent.

43. On 12.8.2015 the Association passed the following resolution.

"Resolutions: The meeting unanimously resolved as follows:--

Today's Emergent Executive Committee Meeting unanimously resolved that in the event of failure to comply with the resolution No. 1 and 2 of the Emergent Extra-Ordinary General Meeting dated 07.08.2015, which was communicated to the Hon'ble Chief Justice(Acting) on the same day, the Learned Members of the Gauhati High Court Bar Association will sit in HUNGER STRIKE at the premises of Gauhati High Court(New Block) as resolved by the General Body Meeting held on 07.08.2015".

44. On 13.8.2015 the Association passed the following resolutions.

"Resolutions: The meeting unanimously resolved as follows:--

(1) The Emergent Extra-Ordinary General Meeting of the Gauhati High Court Bar Association expressed resentment on use of the word "Inappropriate manner" and "inappropriate behaviour" without mentioning exact words allegedly used by the delegation on 06.08.2015 in the letter dated 12.08.2015 received from Hon'ble Chief Justice(Acting), Gauhati High Court addressed to the President of the Gauhati High Court Bar Association.

(2) The General Body Meeting decided to stand by the Resolutions No. 2 & 3 adopted in its Emergent Extra-Ordinary General Meeting of the Gauhati High Court Bar Association dated 07.08.2015 and further resolved that in the event of failure to comply with the said Resolution No. 2 dated 07.08.2015, the Learned

Members of the Gauhati High Court Bar Association will be compelled to abstain from appearing before the Court of Hon''ble Chief Justice(Acting), Gauhati High Court.

(3) The meeting decided to send a delegation to meet the Hon''ble Chief Justice of India to appraise his Lordship of the resolution adopted by the General Body Meeting dated 07.08.2015 as well as resolutions adopted on 13.08.2015".

45. On 17.8.2015 the Association passed the following resolution:

"Sub: Abstaining all the Courts including the Court of Hon''ble Chief Justice (Acting), Gauhati High Court.

Sir,

I have the honour to inform you the following few lines for conveying the decision of the Emergent Extra-Ordinary General Meeting of the Gauhati High Court Bar Association held today at 12:50 p.m.

The Gauhati High Court Bar Association by its resolution taken in the Emergent Extra-ordinary General Meeting decided to abstain from all the Courts today i.e. 17.08.2015 from 02:00 P.M. to 04:30 P.M. It also further resolved that the Learned Members of the Gauhati High Court Bar Association will abstain from the Court of Hon''ble Chief Justice (Acting), Gauhati High Court on and from 17.08.2015 till he retires.

The copies of the resolutions would be sent to you by tomorrow to place before the Hon''ble Judges."

46. One Debojyoti Bora, Deputy Resident Commissioner of Arunachal Pradesh at Guwahati was present before this Court. He sought time for the respondent No. 1. One Takar Riba, Under Secretary to the govt. of Arunachal Pradesh, PWD Department, had filed an affidavit on behalf of the State respondents 1 and 2. The stand of the government is disclosed in the affidavit. The request for adjournment on behalf of the first respondent appears to be unnecessary and untenable.

Submissions of the Counsel

47. On 29.7.2015 one Sri S Banik was appointed as amicus curiae and at his request the case was fixed on 30.7.2015 on which date Sri Arup Borbora, senior advocate for the respondent 7 submitted arguments stating that the transactions of granting contract works are of the year 2004-05. The contract works have been successfully completed. It is almost 10 years since that the case does not require any judicial cognizance and submitted that the petition is to be dismissed.

48. The case was posted on 4.8.2015 on which date one Sri Krishnamani, the senior advocate appeared for the respondent 11. He submitted arguments to the effect that Arunachal Pradesh is a tribal State, people are illiterate and the bureaucracy and the administration is also not attuned with the modern

procedure of democracy because of the peculiar geographical position and social conditions many a time contract works are given without calling tenders and there is no mala fide in such actions. The contract works have been successfully completed. Mere infraction of not issuing NTT does not constitute any serious infraction of law which calls for investigation by the CBI.

49. Learned Advocate-General of Arunachal Pradesh Sri Ranji Thomas has almost on similar lines argued that Arunachal Pradesh is a tribal State and there is lot of unemployment. The people are not very much educated. The tender process if initiated would be difficult for the people to follow and to generate employment for the youth. Sometimes contract works are issued without tenders and that should not be suspiciously attributed with corrupt motives.

50. Smt. M Dev appeared for respondent 9. Sri Arup Borbora, learned senior counsel appeared for respondent 7 on 30.7.2000 and argued on the ground of delay and laches. On 4.8.2015 Sri PK Goswami, learned senior counsel along with Sri Arup Borbora appeared for the respondent 7 and at the request of all the parties the case was posted on 20.8.2015 for making final submissions if any in the matter.

51. The counsel who appeared on the previous date have remained absent today. Each of the facts in issue relating to corruption has been elaborately and in detail dealt with in the pleadings by way of averments in the petition, affidavits, counter affidavits and reply affidavit of the concerned parties. The averments in the petition, affidavits and counter affidavits extracted supra would disclose that on the question of each fact in issue the concerned parties have understood their case and submitted their rival contentions. The pleadings which consist of the petition, averments in the affidavits and the reply affidavits substantially constitute the arguments and counter arguments of the parties concerned. In the oral arguments submitted by the counsel for respondents it is sought to be explained that adherence to inviting tenders in the State of Arunachal Pradesh is impractical because of its socio-geographical conditions. In so far as respondent 9 is concerned, her counter affidavit in a detailed and elaborate manner describes her stand in the matter and answers the allegations regarding the contracts entrusted to her.

52. The Court is conscious of the fact that the arguments in the case are not formally completed by the parties. The pleadings placed in the shape of affidavits, reply affidavits etc. and in the arguments submitted there has been no convincing answer to the admission of incriminating facts made in the affidavits of respondent 7, 9 and other deponents. The contract works of Kendriya Vidyalaya at Rohtak, Shillong and Salt Lake in Kolkata, the contract of development of parking places at Nirjuli and Naharlagun and the contract for construction of a guest house at Nirjuli, the value of each of the works is ranging between Rs. 53 lakhs to a couple of crores, have been awarded by the PWD and UD Department to the close kith and kin of respondent 7 who was the Minister of the particular Department without inviting tenders is admitted by the respondent

7 and 9 and also by the other deponents in their affidavits.

Opinion

53. The gist of the allegations made in para 4(i) and (ii) of para 4 of the petition indicts the respondent 7 in granting contracts for construction of low cost houses for safai karmacharies at Itanagar and construction of staff quarters of Kendriya Vidyalaya at Rohtak to M/s. NE Agency which is said to be owned by respondent 1 who is wife of the respondent 7. In this regard the allegations are made that the respondent 7 has abused his official position and secured pecuniary gains to his wife by illegal and dishonest means without inviting tenders in respect of Kendriya Vidyalaya Project.

54. In reply the Under Secretary to the PW and UD departments have filed affidavits denying the allegations of undue favour being shown. It is said that in so far as low cost housing scheme for safai karmacharies is concerned it is a scheme of the Central Government and the Hindustan Prefab Limited is the nodal agency and which awarded contracts and got the contract works executed. It is further said that State PWD and UD departments had no role to play in awarding contracts and getting the works executed. The fact that NE Agency is owned by respondent 9 is not denied. However, the allegations that M/s. NE Agency does not have labour licence and contractor registration is stoutly denied by the concerned respondents.

55. The grant of contract of construction of staff quarters at Kendriya Vidyalaya at Rohtak to M/s. NE Agency is not in dispute. The affidavit of the respondent 9 says that the contract was granted without inviting tenders. The value of the project is Rs. 53,28,038. It is her contention that there was open invitation to all contractors and she applied and she was granted the contract. The thrust of the defence in the affidavit of respondent No. 9 and affidavits of other respondents disclose that in most of the cases tenders are not invited to help the local unemployed youths. In so far as Rohtak in Haryana is concerned the excuse of avoiding tender formalities for helping local unemployed youths does not arise since the contract is not executed in Arunachal Pradesh and if there was a wide publicity by calling tenders there would have been a greater participation of the local unemployed youths. It is also admitted that Kendriya Vidyalaya Sangathan had entrusted all its works to the PW and UD department of Arunachal Pradesh. It is also admitted in the affidavits of the respondents that the small nature of contract works were being allotted through the department to the local unemployed youths. If the contract work requires expertise and huge amount the tender process was being followed. Whether the nature of cost estimate is in accordance with the nature of work is to be found out. The value of the contract work is Rs. 53 lakhs and odd which is a substantive value therefore the award of contract to respondent 9 gives rise to a serious doubt about the integrity of the transaction and as well the integrity of the respondent 7 and 9. In the given situation, granting contract to the respondent 9 without tenders becomes a criminal misconduct amounting to offences under Section 13(1)(d)(i) and (ii) of

the Prevention of Corruption Act 1988.

56. With regard to construction of low cost housing of safai karmacharis in Itanagar it is the contention that it is a scheme floated by the Central Government and HPL is the nodal agency and the Central Government called for tenders and gave the contracts in which the respondent 9 was the successful bidder and she has successfully completed the contract works. It is stated that the Government of Arunachal Pradesh had no role in the project and it was exclusively handled by HPL. The HPL was not a party before the Court

57. This Court was not convinced about the reasons given in the reply affidavits by the respondents therefore passed the following order.

"Before Hon"ble The Chief Justice Mr. Madan B. Lokur The Hon"ble Mr. Justice U.B. Saha

16.09.2010 Madan B. Lokur. C.J.

"Registry should put the file in order and correctly paginate both the sets. If necessary, the papers may be put in more than one file cover.

One of the allegations made in the writ petition is that a contract for construction of Low Cost Housing for Safai Karmacharis and for people living below the Poverty Line at Itanagar, Arunachal Pradesh has been awarded for more than a sum of Rs. 3 crores to one M/S NE Agency at the behest of Mr. Nabam Tuki, Minister for PWD AND UD. The beneficiary of the contract is M/S NE Agency which is allegedly owned by the wife or the Minister, i.e. Smt. Nabam Yani, respondent No. 9.

There is no appearance on behalf of respondent No. 9.

It has been pointed out, by 7 reference to the affidavit dated 26th February, 2007 filed by Mr. Nabam Tuki that the contract for construction of Low Cost Housing for Safai Karmacharis and for people living below the Poverty Line to M/ S Hindustan Prefeb Limited, a Government of India Enterprise and the Agency was entrusted the work by the Minister of Urban Employment and Poverty Alleviation of the Government of India. The work was not awarded at the instance of the deponent.

Our attention has also been drawn to the affidavit of Sri Takar Riba filed on 5th February, 2007 wherein it is stated that in the matter of implementation of the said scheme of Low Cost Housing, the Urban Development Department of the Government of Arunachal Pradesh has nothing to do as the said scheme was wholly a Central Government scheme being executed by the Government of India through its agency, namely M/S Hindustan Prefeb Limited(HPL).

It is further stated that neither the Department of Urban Development nor the Ministry of PWD and UD of the Government of Arunachal Pradesh has anything to do in connection with the award of work to M/S NE Agency or any other constructor for construction of Low Cost Housing for Safai Karmacharis and for

people living below the Poverty Line at Itanagar, Arunachal Pradesh.

We find that M/S Hindustan Prefeb Limited is not a party to the proceedings.

Under the circumstances, we issue notice to M/S Hindustan Prefeb Limited to inform us on affidavit the details about the persons who had bid for the contract in question i.e. the Low Cost Housing for Safai Karmacharis and for people living below the Poverty Line at Itanagar, Arunachal Pradesh.

The notice is made returnable on 11.11.2010.

We are not fully satisfied with the averments made in both the affidavits placed before us inasmuch as it is not very clear whether any official of the Government of Arunachal Pradesh is at all involved in the execution or implementation of the contract. We would like to have a specific affidavit in this regard from the State of Arunachal Pradesh and also a specific affidavit indicating the ownership of the land on which the Low Cost Housing is being constructed.

The affidavit should be filed by the State of Arunachal Pradesh within three weeks with an advance copy to the learned Amicus Curiae.

List this matter for further proceedings on 11.11.2010.

The Registry will, in the meanwhile, ensure that the case filed is properly maintained in accordance with the index already prepared by the learned Amicus Curiae".

58. The HPL is served with notice and remained unrepresented. In view of the observations made by this Court in the above said order the contention of the respondents that there is no foul play in the transaction cannot be accepted and this Court has not exculpated the respondent 7 and 9. In that view a detailed investigation is required.

59. In para 4 of the affidavit there is an allegation that the contract of housekeeping services of newly constructed Arunachal House in Chanakya Puri was given to M/s. Jusmi Enterprise owned by Smti Nabam Aka, who is the sister-in-law of the respondent 7. In this regard one Bijoy Talukdar, officer on special duty at Arunachal Bhawan has sworn an affidavit and he has also produced documents to show that there are four quotations including that of M/s. Jusmi Enterprise. The quotation of M/s. Jusmi Enterprise being the lowest the contract was given to her for front office and house keeping. With regard to catering there was no quotation submitted by any body. M/s. Jusmi Enterprise said to have later made request for granting catering services and it has been accordingly allowed. It is also stated that the quotation was scrutinised by the Resident Commissioner and other members before awarding the contract The material discloses that apart from M/s. Jusmi Enterprise, one Silver Millennium 2000, M/s. Hi-lander Housekeeping Services and M/s. Kleen Tech Agencies have also submitted tenders. The material discloses that it is the respondent 7 who finally approved and granted the contract to M/s. Jusmi Enterprise. Later on without calling

tenders, the contract was given to M/s. Jusmi Enterprise. The bona fide and identities of Silver Millennium 2000, M/s. Hi-lander Housekeeping Services and M/s. Kleen Tech Agencies are not on record. It is not known whether the said firms really exist or fictitious. The fact remains that the respondent 7 has favoured his sister-in-law (respondent 10). Therefore the genuineness and identities of the other tenderers require to be probed. The averment of a subordinate officer of government of Arunachal Pradesh cannot be taken as sacrosanct to conclude that the tenders received were genuine and the entire transaction is bona fide therefore this aspect of the matter requires investigation.

60. The other allegation that M/s. Jusmi Enterprise was awarded contract of constructing a boundary wall of Kendriya Vidyalaya at Salt Lake and the said contract is given by PWD and UD department of the Arunachal Pradesh and without floating tenders. The contract is obviously given to respondent 10 who is the sister-in-law of respondent 7, without calling tenders.

61. There is an allegation that the construction of regional office building of Kendriya Vidyalaya Sangathan at Salt Lake in Kolkata has been given to M/s. Engineers Cooperative Society Ltd., so also the contract for campus development and re-modelling of primary class rooms was given to JCA Construction Ltd., which was given 65 work orders. In this regard an allegation is made that the respondent 10 has nexus with M/s. Engineers Cooperative Society Ltd. Per contra the concerned respondents state that M/s. Engineers Cooperative Society Ltd. is a society registered under the West Bengal Cooperative Societies Act and M/s. Engineers Cooperative Society Ltd. is also a reputed company and the respondent 10 has nexus with it. The petitioner on the other hand states that the averment is genuine and states that it is the respondent 10 who signed the contract documents and received the work orders. When the matter becomes a disputed fact it is very much necessary that a thorough investigation is needed.

62. There is an allegation that the construction of the residential building for Kendriya Vidyalaya at Shillong Phase II for Rs. 1,23,82,490/- was given to M/s. Mary Associates owned by Nabam Mary/respondent 8 who is the sister-in-law of the respondent 7. It is also on record that tenders were not called for. The defence plea is that the works have been successfully executed and that there is no foul play in awarding the contract. As stated above the Kendriya Vidyalaya Sangathan had entrusted the construction works to PW and UD department of Arunachal Pradesh which is headed by respondent 7 as a minister and the beneficiary of the contract is his sister in law. The contract is awarded without tenders. Therefore award of contracts becomes a doubtful and suspicious circumstance giving rise to an inference of oblique consideration and criminal misconduct amounting to offences under Section 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988.

63. Similarly the development of parking places at Nirjuli and Naharlagun undertaken by the UD department, the contract value of which is Rs. 61.43 lakh and 27.64 lakh and 78 lakh respectively. It is awarded to M/s. Mary Associates

which is owned Smt. Nabam Mary/respondent 8, sister in law of the respondent 7, Nabam Tuki. The grant of contract to a person who is a close relative of the respondent gives rise to illegal and oblique considerations suggesting the abuse of official position by respondent 7 and criminal misconduct amounting to offences under Section 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988.

64. There is an allegation that the district sports complex at Yupia at a cost of Rs. 2,03,83,300/- was awarded to M/s. Assam Arunachal Agency owned by Nabam Tangam, the younger brother of respondent 7. In this regard the counter contention of the respondents disclose that it was a project undertaken by the Member of Parliament where under 25 per cent was given by the State and 75 by the Central Government. The project was a time bound project to be completed within two years otherwise there was a danger of lapse of funds therefore without floating the tenders the contract has been given and successfully the project is completed. It may be that the transaction in question may come under a different Ministry but nonetheless the transaction requires a thorough investigation where the kith and kin of the respondent 7 are involved in getting lucrative contract works.

65. There is an allegation that the first phase of the contract for the guest house at Nirjuli for Rs. 38.66 lakh out of a total of Rs. 128.86 lakh is awarded to M/s. Durga Motors owned by Sri Taba Laj who is the younger brother of the sister in law of the respondent 7 and the said contract is awarded without floating tenders. In this regard there is no convincing explanation to exculpate the respondent 7 from the accusation of committing offences under Section 13(1)(d) (i) and (ii) of the Prevention of Corruption Act, 1988.

66. There is an allegation that the work order for Rs. 1,11,62,500/- was awarded to M/s. Delhi Traders operated by the respondent 10 under the swaviman scheme. The affidavits filed by the respondents and in particular one Satyabrata Home, Deputy Director, Horticulture, government of Arunachal Pradesh state that M/s. Delhi Traders is owned by one Shri Larbin Nasi and Smti Nabam Aka has no nexus with Delhi Traders. The supply order was to the tune of Rs. 1,11,62,500/- and not Rs. 6.5 crore as stated. It is stated that there was no influence yielded on him by awarding the contract. The award of contract to respondent 7 has become a disputed fact which requires investigation.

67. With regard to the UCO Bank account this Court on 2.12.2008 after considering the affidavits of the parties including that of the Chief Manager of UCO Bank at Itanagar and the bank records, passed the following order.

"Hon"ble The Chief Justice Mr. J. Chelameswar The Hon"ble Mr. Justice I.A. Ansari
02.12.2008 (Chelameswar, CJ)

Pursuant to the order dated 28.8.08 the respondent Nos. 14 and 15, the officers of the United Commercial Bank Branch Office at Itanagar, Arunachal Pradesh

have produced the records.

In the instant misc case, i.e. MC No. 2366/08 there is an averment that a pay slip dated 19.2.03, (a Xerox copy of which is annexed to the petition) showing that there was a transfer of an amount of Rs. 30,00,000/- (Rupees thirty lacs to S/B A/C No. 4819 of the above mentioned branch by debiting to the S/B A/C No. 4660 of the same branch. It is further averred that the above mentioned S/B A/C No. 4660 is an account which belongs to one Mr. NN Baishya, who was the Director of Civil Supplies and Consumer Affairs at the point of time relevant for the enquiry in the main writ petition, and the 7th respondent herein was the Minister of Civil Supplies and Consumer Affairs. It is further averred in the petition that the above mentioned A/C No. 4819 was opened in a pseudonymous name T Nabam - with an intention to conceal the identify of the account holder. Therefore, it is prayed in the petition that the bank be directed to produce the original records, the description of which is contained in the petition.

The fate of the averments made in the writ petition and the question whether the relief as sought for in the writ petition is to be granted or not, to a large extent depends upon the establishment of the averments made in the present petition.

The 11th respondent in the present petition, who is admittedly the brother of the 7th respondent, did not chose to file an affidavit in opposition to the present petition. Mr. DN Bhattacharyya, learned counsel appearing on behalf of the 11th respondent on the basis of an affidavit on 22-7-08 claims that the 11th respondent is the holder of the account bearing No. 4819 in the above mentioned bank.

The original records as summoned by this court referred to earlier are placed before this court by Mrs. S Nag. Though no supporting affidavit is filed while producing the original records it is stated by the learned counsel appearing for the Bank that the respondent Nos. 14 and 15 that one of the documents whose production is sought by the petitioner, i.e. the Savings Account Opening Slip dated 19-2-03 is missing from the bank records. It is to be mentioned herein at the cost of repetition, that from the Xerox copy filed by the petitioner of the above mentioned pay slip it appears to be a pay slip which is referable to the transfer of the above mentioned amount of Rs. 30,00,000/-.

Apart from that the original document titled Savings Bank Account Opening Form dated 19.2.03 is placed before this court by the respondent Nos. 14 and 15. From the form it appears that the account is stated to have been opened by one Mr. T Nabam. It is to be recorded here that except mentioning the name T Nabam in the form no further information giving the details of the identification of said T Nabam, i.e., father's name, address either office or residence nothing is disclosed in the said form. As per the form, which is prepared in accordance with the norms of the banking, it appears that a new customer is required to be introduced to the bank. Though it is not very clear from the document we presume that such an introduction is required to be by somebody who is already

known to the officers of the bank otherwise the purpose of introduction itself becomes meaningless. Against the column where the signature of the introducer is required, from the document it appears that the Manager of the bank himself signed, as it is obvious from the signature of the officer in the same form. Whether such a procedure is a mere irregularity or it also amounts to illegality is a question with which we are not concerned at present.

Along with the said form a card titled Specimen Signature Card is annexed to which a photograph is stappled. The learned counsel for the respondent No. 11 admits that the photograph is that of the 11th respondent. It can be seen from the card against the column where the name of the customer is required to be inscribed, initially some name was written and scored off (we do not at this stage propose to decide what exactly was written and scored off) but later it is written as T Nabam and two specimen signatures allegedly of the said T Nabam are affixed to the said card.

Mrs. S. Nag, learned counsel for the respondent Nos. 14 and 15 also placed before this court two letters one dated 5.9.08 written by one Mr. PK Ghoshal, the Chief Manager, UCO Bank, Itanagar addressed to one Mr. SA Hazarika, Chief Officer, Kolkata Zonal Office the relevant portion of which reads as follows:--

"As directed by the Hon'ble High Court to produce all Books of Accounts relating to above account on 25.09.08 you are hereby requested to clarify the under noted two points.

a) Correction made in specimen signature card duly signed by you on 19.02.03 for Savings Account No. 4819(photocopy enclosed).

b) Inadvertent Recording of the name of Mr. Nabam Tuki on 19.02.03 in the Account Opening Register of our Bank.

Kindly note that the above clarification will be essential to produce before the High Court along with all other available records, as directed".

In response to the above letter the addressee allegedly wrote back by a letter purportedly written on 9.9.08, but shown as to have been written on 9.9.09, which is obviously a mistake because the date has not yet reached. The substance of the said letter is that the signatory of the said letter was the officer who opened the above mentioned account No. 4819 and according to the author of the said letter the Account Opening Form was signed by Mr. T Nabam in his presence. More important is that according to the author of the said letter that name of Mr. Nabam Tuki, respondent No. 7 herein, was inadvertently recorded in the Account Opening Register as he is the brother of T Nabam, who opened the account and, therefore, the entry should be ignored. Further he makes a categorical statement that the account was introduced by Mr. Nabam Tuki, that is the respondent No. 7.

It is obvious from the facts narrated so far and in the background of the serious allegations made in the present petition there appears to be too many mistakes

advertent or inadvertent in the process.

Apart from the affidavit of the 11th respondent dated 22.7.08, which contains the signature subscribed before the Oath Commissioner of this court and the signature of the Account Opening Form referred to earlier purported to be the signature of the account holder are distinctly different. Therefore, we are of the opinion that this entire episode requires a further probe into the matter but as regards the nature of the probe and the appropriate authority to examine the entire controversy is required to be settled. In this contest Mr. N Dutta, learned Advocate General, Arunachal Pradesh prays that the matter be taken on 10.12.2008 to enable him to examine the matter.

We direct that the records of the bank provided today be kept in a sealed cover in the custody of the Registry of this court. It is prayed by the learned counsel for the various parties that they may be permitted to inspect the records placed before this court today. Prayer is granted.

Any one of the learned counsel appearing for any of the parties is permitted to have an inspection of the records on making an appropriate application to the Registrar(Judicial). However, such inspection shall be strictly in the presence of the Registrar(Judl) and also all the counsel appearing in this matter for the various parties or their nominees.

List the matter on 10.12.2008".

68. The order passed by the previous Bench of this Court makes it explicitly clear that the transactions require a probe and investigation. The observations in the order do not exculpate the respondent 7. Therefore there has been a complete concluded opinion by the previous bench of this Court in this aspect of the matter.

69. The facts and the materials found in the pleadings which are in the nature of petition averments, affidavits-in-opposition, rejoinder affidavits and reply-affidavits clinchingly disclose a categorical admission of certain facts relating to grant of contracts to the kith and kin of respondent 7 without inviting tenders. The said material prima facie disclose that the respondent No. 7 has abused his official position as a Minister in awarding contracts to his wife, sister-in-law, brother and other near relatives without calling tenders.

70. The counsel who appeared on the previous date have remained absent today. Each of the facts in issue relating to corruption has been elaborately and in detail dealt with in the pleadings by way of averments in the petition, affidavits counter affidavits and reply affidavit of the concerned parties. The averments in the petition, affidavits and counter affidavits extracted supra would disclose that on the question of each fact in issue the concerned parties have understood their case and submitted their rival contentions. The pleadings which consist of the petition, averments in the affidavits and the reply affidavits substantially constitute the arguments and counter arguments of the parties concerned. In the oral arguments submitted by the counsel for respondents it is sought to be

explained that adherence to inviting tenders in the State of Arunachal Pradesh is impractical because of its socio-geographical conditions. In so far as respondent 9 is concerned, her counter affidavit in a detailed and elaborate manner describes her stand in the matter and answers the allegations regarding the contracts entrusted to her.

71. The Court is conscious of the fact that the arguments in the case is not formally completed by the parties. The pleadings placed in the shape of affidavits, reply affidavits etc. and in the arguments submitted there has been no convincing answer to the admission of incriminating facts made in the affidavits of respondent 7, 9 and other deponents. The contract works of Kendriya Vidyalaya at Rohtak, Shillong and Salt Lake in Kolkata, the contract of development of parking places at Nirjuli and Naharlagun and the contract for construction of a guest house at Nirjuli, the value of each of the works is ranging between Rs. 53 lakhs to a couple of crores, have been awarded by the PWD and UD Department to the close kith and kin of respondent 7 who was the Minister of the particular Department without inviting tenders is admitted by the respondent 7 and 9 and also by the other deponents in their affidavits.

72. The Supreme Court in *Faddi Vs. The State of Madhya Pradesh*, has made the following observations:

"Admissions are admissible in evidence under s. 21 of the Act. Section 17 defines an admission to be a statement, oral and documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to s. 21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in s. 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him."

73. The Supreme Court in *Hanumant Vs. The State of Madhya Pradesh*, has made the following observation:

"..... It is settled law that an admission made by a person whether amounting to a confession or not cannot be spilt up and part of it used against him. An admission must be used either as a whole or not at all. If the statement of the accused is used as whole, it completely demolishes the prosecution case and, if it is not used at all, then there remains no material on the record from which any inference could be drawn that the letter was not written on the date it bears."

74. In view of the ratio laid down by the Supreme Court in the above decisions the categorical admission of facts in the pleadings of the respondents 7, 9 and other deponents would bind them as a formidable and impregnable incriminating material. In the oral arguments also it was argued that because of illiteracy and peculiar geographical and social conditions the adherence to the requirements of

calling tenders was not being followed. If the contracts had been awarded to some third parties the said explanation could have gained some weight but the contracts have been awarded to the close relatives of respondent 7 therefore any amount of skillful formal oral arguments cannot be effective to efface or overcome the admitted incriminating facts by the concerned parties and it would be an exercise in futility hence the arguments are taken as closed and the case posted for judgment.

75. The said conduct of respondent 7 prima facie amounts to commission of offences under Section 13(1)(d)(i) , (ii) and (iii) of the Prevention of Corruption Act, 1988 constitute distinct and different offences, which reads as follows:

"13. Criminal misconduct by a public servant

.....

if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.--For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

76. The offences under Section 13(1)(d)(i) , (ii) and (iii) of the Prevention of Corruption Act, 1988 constitute distinct and different offences. The favour shown to each of the kith and kin also amounts to distinct and different offences. It is therefore directed that the Central Bureau of Investigation (CBI) to register a case and conduct investigation against the alleged misconduct of the respondent No. 7 and the persons who have abetted the commission of the said offences. The CBI is directed to take the case records and the documents of this case in their custody from the Registry of this Court for the purpose of investigation. The trial judiciary in Arunachal Pradesh is at a nascent stage. The complicated case of

this nature and importance cannot be handled by the trial Courts in Arunachal Pradesh. Therefore the CBI is directed to file an FIR and the Final Report before the jurisdictional Special Court at Guwahati, under the Prevention of Corruption Act, 1988 and who shall try and dispose of the case in accordance with law.

The petition is allowed in the terms indicated above.