(2019) 08 GAU CK 0035

In the Gauhati High Court

Case No : Public Interest Litigation No. 87 Of 2013

Longkiri Timung APPELLANT

Vs

State Of Assam And 4 Ors RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 GAU CK 0035

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : S U Ahmed

Final Decision : Disposed Off

Judgement

Manish Choudhury, J

1. Heard Mr. M. Sarania, learned Counsel for the petitioner. Also heard Mr. T.C. Chutia, learned Government Advocate, Assam as well as Ms. S. Kemprai, learned Standing Counsel, Karbi Anglong Autonomous Council (KAAC), appearing for the respondents.

2. This Public Interest Litigation (PIL), under Article 226 of the Constitution of India, is filed by the petitioner contending, inter-alia, that there was improper utilization and misappropriation of public money under the Member of Parliament Local Area Development (MPLAD) Scheme for the period from 2006-2007 to 2011-2012 in respect of Diphu Parliamentary Constituency. It is the case of the petitioner that during the period from 2006-2007 to 2011-2012, an amount of Rs. 15 crores had been sanctioned under the MPLAD Scheme for the Diphu Parliamentary Constituency in the name of implementation and execution of a number of works under the Scheme of which the Deputy Commissioner of Karbi Anglong district is the drawing and disbursing authority of the funds.

3. It is projected by the petitioner, a social activist, that he having gone through the related website to know about the works purportedly executed by the District

Authority from the funds sanctioned under the MPLAD Scheme, had noticed that all those works were shown to be completely executed and the money in respect of each of the works had been disbursed on production of utilization certificate for those works. Genuine doubts having arisen about such execution of the works, the petitioner himself made spot verification in respect of some of the works stated to be executed with funds sanctioned under the Scheme, more particularly, 49 nos. of works of the Scheme pertaining to Lumbajong Development Block under the Diphu Parliamentary Constituency in which the Project Director, DRDA, Diphu and the Block Development Officer, Lumbajong Development Block were part of the executing authority to ascertain the genuineness of the report, as displayed in the website. Further case of the petitioner is that the information as regards proper execution of those works was false and there was misappropriation of funds in execution of those works. To that effect, a complaint dated 03.10.2012 and a pleader's notice dated 27.04.2013 were lodged before the Commissioner & Secretary to the Government of Assam, Political & Home (Anti-Corruption & Vigilance) Department for taking necessary action against the erring officials and to initiate an enquiry to find out about the actual execution of works. When no discernible action appeared to have been taken by the State respondents, the petitioner stated to have filed this PIL with the prayers, inter-alia, for a direction to cause investigation/inquiry regarding the anomalies occurred in respect of execution of works under the MPLAD Scheme and utilization of the funds under the Scheme during the period from 2006-2007 to 2012-2013 in respect of Diphu Parliamentary Constituency and to submit an inquiry report before this Court and after such submission, to hand over the investigation to an agency as well as to take necessary steps against the erring officials and to recover the amounts so misappropriated.

4. On 11.11.2013, the respondents were directed to file a detailed affidavit specifying, inter-alia, the amounts sanctioned for the works to be done under the Scheme and as to whether it was spent and if so, amounts and the manner in which the same were spent, etc. On 13.07.2015, it was submitted by the learned State Counsel that in respect of the Diphu Parliamentary Constituency, a report was received and the allegations made in the petition were substantiated by the inquiry report. The Government had also initiated inquiries to find out irregularities, if any, in rest of the constituencies as regards misappropriation of funds. It was submitted that after the reports were secured, action would be initiated comprehensively against the erring officials. This Court, on that day, directed that in order to secure an efficient and effective inquiry, the Upalokayukta, Assam would supervise the inquiries so conducted and would, thereafter, submit a report before this Court. Apart from an affidavit dated 30.04.2015, the Deputy Commissioner, Karbi Anglong had filed another affidavit on 24.05.2016 enclosing therewith an inquiry report wherein the findings as regards execution of 49 nos. of works and utilization of funds under the MPLAD Scheme in the Lumbajong Development Block, Manja were recorded. No affidavit

on behalf of the State Government has been filed either indicating results of the inquiries in rest of the constituencies or actions, if any, initiated against any erring officials.

5. It will be appropriate to take note of the object and purport of the MPLAD Scheme before consideration of the findings recorded in the said inquiry report.

6. The announcement of the MPLAD Scheme was made by the then Prime Minister of India on 23.12.1993. It was formulated for enabling the Members of Parliament (MP) to identify and recommend works of developmental nature in their local areas, with emphasis on creation of durable community assets based on the locally felt needs. It has been emphasised that there is greater need to develop areas inhabited by Scheduled Castes and Scheduled Tribes in order to give special attention for infrastructure development of such areas. The MPLAD Scheme has annual allotments and a set of Guidelines has been issued, with modifications from time to time, for effective implementation and execution of the works.

7. As per the Guidelines, formulated for implementation and execution of the works under the MPLAD Scheme and revised from time to time, an MP has to recommend an eligible work on his letter head and under his signature in the prescribed format to the District Authority. When the District Authority considers that a recommended work cannot be executed due to some reason, the District Authority shall have to inform the reason(s) to the MP concerned, under intimation to the Government of India and the State Government as early as possible, but not later than 45 days from the date of receipt of the proposal. It is the District Authority who has to identify the implementing agency capable of executing the eligible work qualitatively, timely and satisfactorily. The District Authority must follow the established work scrutiny - technical, work estimation, tendering and administrative procedure of the State Government concerned in the matter of work execution and shall be responsible for timely and effective implementation of such works. It is further provided that the District Authority may sanction works as per the recommendation of the MP but the release of funds will be regulated as specified in the Guidelines.

8. The decision making powers in regard to technical, financial and administrative sanction to be accorded under the Scheme, vest in the district level functionaries. The District Authority has been provided with the full powers to get the works technically approved and the estimates prepared by the competent district authorities before according the final administrative sanction and approval. On the issue of work sanction order, it is for the District Authority to ensure that the details of the work sanctioned are entered in the Input Format prescribed for the purpose and uploaded in the MPLAD Scheme website. Any work completed under the Scheme, immediately after its completion, must be put to public use. For greater public awareness, for all works executed under the MPLAD Scheme, a plaque indicating the cost involved, the commencement, completion and inauguration date and the name of the MP sponsoring the project

should be permanently erected at the place of the work. List of all completed and ongoing works with MPLAD Scheme funds should, inter-alia, also be displayed at the District Authority office and posted in the website for information of the general public. All citizens have the right to information of any aspect of the MPLAD Scheme and the works recommended/sanctioned/executed under it. The minimum amount sanctioned under the MPLAD Scheme for any project or work should normally not be less than Rs. 1 lakh.

9. The Guidelines have also provided the manner of release of funds and its management. From the year 1994-1995, the Parliament had allotted Rs. 1 crore per annum per MP Constituency. The amount was stepped up to Rs. 2 crores from 1998-1999 and since 2011-2012, it has become Rs. 5 crores. The District Authority is required to release the fund to the implementing agency in accordance with the State Government rules/Guidelines applicable for the purpose. The District Authority and Implementing Agency are required to maintain accounts of MPLAD Scheme funds, MP-wise, and the cash books and other books of accounts are to be maintained as per the State Government procedure. On completion of a work, the Implementing Agency shall have to finalise the accounts for that work and shall furnish a work completion report and utilisation certificate to the District Authority concerned. They are to properly maintain MPLAD Scheme accounts. The District Authority has to furnish utilisation certificate every year in the prescribed form, as stipulated in the Guidelines, to the State Government as well as the concerned Ministry in the Government of India. These accounts and utilisation certificate are to be audited by the Charter Accountants/the Local Fund Auditors/any statutory auditor, as per the State Government procedure. The State Government is required to engage the Auditors for each District Authority on the basis of the recommendation of the Accountant General of the State concerned. The District Authority is also required to submit the audited accounts, report and certificates, for every year to the State Government and also to the concerned Ministry in the Government of India. It is incumbent on the part of the Nodal Department of the State Government to carry out third party inspection - physical audit and quality check of the works under the MPLAD Scheme in their respective State and the manner in which such inspection is to be carried out has been laid down in the Guidelines.

10. For the purposes of fund release and management, accounting procedure and monitoring, the Guidelines have clearly laid down the procedure and the roles are also assigned to the Central Government, the State Government, the District Authority and the Implementing Agencies for monitoring. A copy of the Guidelines on MPLAD Scheme, published by the Government of India in the Ministry of Statistic and Programme Implementation in November, 2005, has been placed on record. It appears apt to reproduce the relevant portions, from the said Guidelines, of the accounting procedure and the roles of the aforesaid authorities hereunder :-

5. Accounting Procedure

5.1 The District Authority and Implementing Agency shall maintain accounts of MPLADS funds, MP-wise. Cash Book and other Books of Accounts shall be maintained as per the State/UT Government procedure. MPLADS funds received by the District Authority from the Government of India and the Implementing Agencies receiving the funds from the District Authority shall be kept only in Savings Bank Account of a nationalized Bank. Only one Account shall be maintained per MP. Deposit of MPLADS funds by the District Authority and Implementing Agencies in the State/UT Government Treasury accounts is prohibited.

5.2. The District Authority shall also maintain different head wise list of works executed (Head and Code of Works may be seen in Anne IV E) in an Asset Register for all the MPLADS works created in the district and the Constituency for which the MPLADS funds were received.

5.3. On completion of a work, the Implementing Agency shall quickly finalize the accounts for that work and shall furnish a work completion report and utilization certificate and return the un-utilized balance (savings) and interest amount within 30 days to the District Authority concerned. The model work completion report is at Annex-VII. The District Authority and the Implementing Agency would arrange to transfer the asset to the User Agency without any delay. The User Agency should take it on its books for normal operation and maintenance.

5.4 The District Authority and Implementing Agencies will properly maintain MPLADS accounts. District Authority will furnish Utilization Certificate every year in the form prescribed in the Guidelines (Annex-VIII) to the State Government and the Ministry of Statistics and Programme Implementation. These accounts and Utilization Certificates will be audited by the Chartered Accountants or the Local Fund Auditors or any Statutory Auditors as per the State/UT Government procedure. The Auditors should be engaged by the State/UT Government for each District Authority on the basis of the recommendation of the Accountant General of the State/UT concerned. The District Authority will submit for every year the audited accounts, report and certificates to the State Government and the Ministry of Statistics and Programme Implementation. The normal audit procedures would apply under the Scheme for auditing the accounts of the District Authority and Implementing Agencies. In addition, the Comptroller and Auditor General of India will undertake test audit and send reports to the District Authorities, the State Government and the Ministry of Statistics and Programme Implementation.

5.5 The Audit Report should be prepared MP wise and should inter alia cover the following aspects: (i) number of Savings/other Bank Accounts being maintained by the District Administration and the Implementing Agencies; (ii) if any fund held in fixed deposits (fixed deposits are not permissible); (iii) whether interest accrued in Savings Account has been taken as receipt and utilized for the Project; (iv) delay, if any, in crediting the Accounts of the District Authority and the Implementing Agencies by the receiving Bank- if so, the period of delay; (v)

Whether Bank reconciliation in respect of Cash Book balance and Pass Book balance is being done every month: (vi) the Bank reconciliation should also cover interest accruals. The Bank reconciliation statement as on 31st March should be attached to the Audit Report; (vii) Proper maintenance of Cash Book by the District Authority and Implementing Agencies; (viii) Cheques issued but not encashed as on 31st March as per Bank reconciliation; (ix) Actual expenditure incurred out of advances to the Implementing Agencies; and closing balances with them; (x) Diversion of funds, works prohibited and inadmissible items of expenditure. (The details along with the views of District Authority in each case shall form part of the audit report for the District Authority to get such audit objection settled and follow up audit in succeeding year); and (xi) Utilization of earmarked fund for SC and ST areas.

5.6. Audit Certificate furnished by the Chartered Accounts shall be submitted for every year by the District Authority along with replies to each of the audit objection on or before 30th September of the succeeding year. It will be the responsibility of the District Authority to ensure that all audit objections are settled forth with. The Implementing Agencies are to submit works completion report and associated fund utilization report to the District Authority. The Chartered Accountants will audit all such reports and records and furnish their certificate in a model Audit Certificate prescribed in these Guidelines (Annex-IX). The audit fee may be paid under contingency expenses as per item iv (b) of paragraph 4.17."

6. Monitoring

6.2: Role of the Central Government

(I) The Ministry of Statistics and Programme Implementation shall monitor the overall position of funds released, cost of works sanctioned, funds spent etc.

(ii) the Ministry will monitor the receipt of Completion Reports, Utilization Certificates, and Audit Certificate from the District Authorities.

(iii) the Ministry will bring out Annual Report on the implementation of MPLADS including the facts relating to physical and financial progress.

(iv) The Ministry will, hold meetings in the States and also at the Centre at least once in a year to review the implementation of the MPLAD Scheme.

(v) The Ministry shall provide training materials for conducting training of district officers, on MPLADS as and when these are organized by the State Government.

(vi) The Ministry has developed the software on monitoring of MPLADS works and will operationalise through State-Governments, UT Administrations and District Authorities.

(vii) The Ministry will review the utilization of funds by the District Authorities in SC and ST areas.

(viii) The Ministry will review the audit objections and issues arising out of the Audit and Utilization Certificates.

(ix) The Ministry will release the unreleased MPLADS funds as per paragraph 4.11.

6.3: Role of the State/UT Government:

(I) The Nodal Department will be responsible for coordination with the Ministry and proper and effective supervision of the MPLADS implementation in the State. To this effect a committee under the Chairmanship of the Chief Secretary/ Development Commissioner/Additional Chief Secretary should review MPLADS implementation progress with the District Authorities and MPs at least once in a year. The Nodal Department Secretary and other Administrative Department Secretaries should also participate in such meetings.

(ii) The State/UTs in which Divisional Commissioner arrangements exist, the Divisional Commissioner should be empowered to review the MPLADS implementation progress and guide the District Authorities.

(iii) The State/UT Government will review (a) the utilization of funds by the District Authority in SC and ST areas; and (b) the audit objections and issues arising out of the audit and utilization certificates.

(iv) The State/UT Government, by specific order, shall empower the District Authorities and other District functionaries technical and administrative powers for implementation of MPLADS.

(v) The State UT Government may make arrangements for training of district officers concerned with the implementation of the MPLADS.

(vi) The State/UT Government may authorize its officers not below the rank of Deputy Secretary/Executive Engineer to inspect MPLADS works as and when they make official field visits. It may also check and review the number of MPLADS works inspected by the District Authorities.

(vii) The State/UT Government shall, in consultation with Accountant General of the State/UT, engage the Auditor for auditing of MPLADS accounts of each District Authority.

(viii) The State/UT Government shall hoist data on MPLADS implementation in the state on their web sites.

(ix) The State/UT Government shall distribute the unspent balance of Rajya Sabha MPs as stipulated in paragraph 4.8.

6.4: Role of the District Authority: - The District Authority's role has been outlined in different paragraphs of the Guidelines. Here the District Authority's role on coordination and supervision is being indicated.

(i) The District Authority would be responsible for overall coordination and supervision of the works under the scheme at the district level, and inspect at least 10% of the works under implementation every year. The District Authority should involve the MPs in the inspections of projects to the extent feasible.

(ii) The District Authority shall enforce the provisions made in the Paragraph 2.5 on the earmarked 15% and 7.5% of funding for MPLADS works in the SC and ST areas respectively.

(iii) The District Authority shall maintain the work-registers indicating the position of each work recommended by the MPs and shall furnish work details along with a photograph each work costing Rs. 5 lakh or more, to the Ministry in the prescribed format for web hoisting.

(iv) The District Authority shall also maintain a register of all the assets created with the Scheme funds and subsequently transferred to the user Agencies.

(v) The District Authority will inspect all works executed by/for societies and trusts under MPLADS and ensure that the agreement conditions are being complied with. In case of violation of any of the provisions of the agreement, action as per the agreement shall be taken by the District Authority.

(vi) The District Authority shall review every month MPLADS works implementation with the Implementing Agencies. The District Authority shall invite the MPs concerned to such review meetings.

(vii) The District Authority shall be responsible to settle audit objections raised in the audits.

(viii) The Nodal District Authority shall submit Monthly Progress Report to the Government of India, State/UT Government and the MP concerned for each MP separately in the format available at Annex-VI on or before 10th of the succeeding month. With regard to the execution of works in the SC and ST areas, physical and financial details shall be furnished in part IV and V of format available at Annex-VI.

(ix) As per paragraph 4.8, the Nodal District Authority shall report to the State/ UT Government about the unspent balance of the elected Rajya Sabha MP concerned. He shall also report to the Government of India the details as per paragraph 4.9 and 4.10.

6.5: Role of the Implementing Agencies: -

(i) It will be the responsibility of the officers of the Implementing Agencies to regularly visit the works spots to ensure that the works are progressing satisfactorily as per the prescribed procedure and specifications and the time schedule.

(ii) The Implementing Agencies shall furnish physical and financial progress of each work to the District Authority every month with a copy to the concerned State Department. The Implementing Agencies should provide the report also in the soft format.

(iii) The Implementing Agencies shall furnish completion report/certificates and utilization certificates to the District Authority within one month of completion of the works.

(iv) The Implementing Agencies shall also refund to the District Authority the savings (balance amounts) including interest if any, at their disposal within one month and close the Bank Account opened for the purpose.

11. The Hon'ble Supreme Court had the occasion to consider and decide on the constitutionality of the MPLAD Scheme when the same was challenged in a batch of petitions before it. A Constitution Bench in Bhim Singh vs. Union of India and others, reported in (2010) 5 SCC 538, has held that the MPLAD Scheme is valid and intra-vires of the Constitution. It has been observed that the Scheme falls within the meaning of "public purpose" aiming for the fulfilment of the development and welfare of the State, as reflected in the Directive Principles of the State Policy enshrined in Part IV of the Constitution of India.

12. After an examination of the Scheme, the Hon'ble Supreme Court has observed that though the MPs have been given a seemingly executive function, their role is limited to "recommending" works and actual implementation is done by the local authorities. The Guidelines formulated for implementation of the Scheme has provided for the procedure to be followed. As per the Guidelines, the District Authority, in particular, has been entrusted with the absolute authority to discharge upon the feasibility of works recommended, assess the fund required for execution of work, implementation of works by engaging an Implementing Agency, supervision of work and ensure financial transparency by providing audit certificate and utilization certificate. Thus, it is held that the pivotal role in implementation and execution of the MPLAD Scheme is played by the District Authority along with others. As the MP's role is recommendatory in nature, the entire execution has been entrusted to the District Authority which belongs to the executive organ. The responsibility to furnish completion certificate, audit certificate and utilization certificate for each work is on the District Authority and in case of default in those respects, the result is non-release of further funds. As there are checks and balances, provided in the Guidelines, it is for the District Authority while controlling and implementing the works, to strictly adhere to the Guidelines of the Scheme.

13. Taking into consideration the objectives behind formulation and introduction of the MPLAD Scheme and the Guidelines, so framed, for proper and effective implementation and execution of the works under the Scheme the aim of which is to ensure transparency and accountability, the findings contained in the inquiry report in respect of works implemented and executed under the Scheme are to be looked into. As in this petition the petitioner has confined his allegations of improper execution and utilization of funds in respect of 49 nos. of works stated to be executed within the Lumbajong Development Block under the Diphu

Parliamentary Constituency and the inquiry was also caused in respect of execution and utilization of funds of only in respect of those 49 nos. of works, thus, recording the findings in the inquiry report which is placed before this Court, the observations in respect of those works are duly taken note of.

14. The Diphu Parliamentary Constituency covers the entire area of the two hill districts of Assam viz. Karbi Anglong and Dima Hasao. The areas under the Diphu Parliamentary Constituency are declared to be Tribal Areas under the purview of the Sixth Schedule of the Constitution of India.

15. From the affidavit filed by the Deputy Commissioner, Karbi Anglong, it transpires that pursuant to a letter dated 05.01.2013 of the Secretary to the Government of Assam, Panchayat & Rural Development Department in respect of the allegations of misappropriation of fund pertaining to the MPLAD Scheme for the years 2006-2007 to 2011-2012 relating to Diphu Parliamentary Constituency, the Deputy Commissioner by his letter dated 22.02.2013 directed an inquiry to be conducted by the Additional Deputy Commissioner (Development), Karbi Anglong, Diphu in respect of 29 schemes implemented through the Block Development Officer, Lumbajong Development Block, Manja and the Project Director, DRDA, Diphu and 20 Schemes implemented through the DRDA during the years under reference. In the said affidavit, it is further mentioned that the Government of Assam in the Political (Vigilance Cell) Department by its letter dated 12.11.2013 had asked for the details from the Deputy Commissioner, Karbi Anglong as regards alleged misappropriation. As mentioned above, this Court by order dated 13.07.2015 had directed the Upalokayukta, Assam to supervise the enquiry and to submit a report before this Court. From a letter dated 30.11.2015 of the Deputy Commissioner, Karbi Anglong, a copy of which is placed by the learned State Counsel on record, it is seen that an inquiry was caused through the Sub-Divisional Officer (Sadar), Diphu in respect of implementation of the afore-mentioned 49 works i.e. the subject-matter of this PIL, and thereafter, a report containing the findings was submitted, which the Deputy Commissioner had forwarded to the State Government in the Home & Political Department. The inquiry report received from the Deputy Commissioner, Karbi Anglong was also forwarded to the office of the Upalokayukta, Assam by the Home & Political Department, Government of Assam by its letter dated 18.04.2016. The said inquiry report, submitted by the Sub-Divisional Officer (Sadar), Diphu has, in turn, been forwarded by the Secretary-cum-Registrar, Upalokayukta, Assam to the Registry of this Court with a forwarding letter dated 12.11.2018.

16. A perusal of the inquiry report shows that Upalokayukta personally visited some of the locations where the works under MPLAD Scheme were allegedly implemented, with the SDO (S), Diphu from 29.08.2015 to 02.09.2015.

17. It is seen, from a perusal of the inquiry report, that most of the works, out of the 49 works, pertain to construction of community fisheries. A few works were of construction of water harvesting tanks, etc. It is, however, noticed that save and except the names of the beneficiaries and the villages where the particular

works were to be implemented, no other details about the beneficiaries/user agencies and the works were available with the enquiry report. The approval and sanction was accorded for each work of community fishery/water harvesting tank, etc. in favour of individual proposer/applicant. No proposal/application in writing for approval and sanction from such proposer/applicant was available in the inquiry report. The Member of Parliament appeared to have accorded his approval and sanction against the name of the proposer/applicant and the proposed work mentioning only the sanctioned limit along with the implementing agencies, which were not as per the format prescribed in the Guidelines. It further transpires that after such approval and sanction by the Member of Parliament, the Deputy Commissioner used to direct the Project Director, DRDA, Karbi Anglong and the concerned Block Development Officer to submit plans and estimates in respect of the recommended schemes along with technical feasibility reports, land status reports and the person(s) who would maintain the works after the implementation. Though plans and estimates, the names of the implementing agency like the DRDA, the names of implementing officials, etc. in respect of some of the works of community fisheries/water harvesting tanks, etc. are available in the inquiry report, no feasibility report and land status report are seen in the inquiry report. Thus, it is not possible to infer about the technical feasibility of the works that were being sought to be implemented under the MPLAD Scheme. No findings were recorded as to whether the works of community fisheries/water harvesting tanks, etc. were executed in lands belonging to any individual proposer/applicant or in lands wherefrom the benefits were to be derived by the community as a whole. The same bears relevance in view of the fact that the works were approved/sanctioned in favour of individual proposer/applicant and not in favour of any society/trust/association of persons/ NGO, etc.

18. During the enquiry, the SDO(S) stated to have recorded the statements of some of the Junior Engineers entrusted with the duties to execute the works. Such statements were to the effect that the labourers engaged to do the works were not professionals and they as Junior Engineers, were duty bound to engage the labours from the localities where the particular work was to be done. The group leaders of the labourers were selected by the named beneficiaries of the Member of Parliament and the Deputy Commissioner and they used to work according to their own sweet will and therefore, the volume of work could not be achieved up to the volume estimated.

19. The inquiry report indicated that on field verification, it was found that the works of community fisheries and water harvesting tanks were not tallying with the plans and estimates in terms of length and breadth. It was observed that the length and breadth of each community fishery was shorter than the estimated length and breadth and the implementing officials had, however, paid the entire money as labour payments in full, as per the estimates, to the group leaders of the labourers purported to be engaged for the works. It is also noticed that even at the time of inspection caused immediately after completion of construction of

a number of community fisheries, the dimensions in terms of length, breadth, depth and volume were found to be lesser that the initial estimates. In respect of 13 nos. of community fisheries, the inquiry report mentioned that nothing was found wherefrom it could be stated that the works were actually executed and it was observed that the entire money appeared to have been misused by the implementing officials i.e. the Block Development Officer and the Junior Engineer after withdrawal of the money from the banks and showing to be spent in the cash books. In general, the payments were shown to be made by the concerned Junior Engineers to the concerned group leaders of the particular work in some acknowledgement receipts, which were undated. It is reported that the funds for each work was received and withdrawn from the bank by the implementing officials like the Block Development Officer and the wage component of each work was disbursed by the concerned Junior Engineer only to the group leader. Nothing is available in the inquiry report nor it is revealed from the statements of the Junior Engineers and the group leaders about the details of the labourers who were engaged by them to do the works. No acquaintance roll was available in the record containing the signatures of the labourers acknowledging receipt of wages.

Nothing is mentioned in this regard in the statements of the Junior Engineers and the group leaders, recorded by the SDO(S). It is worthwhile to note that almost entire amount sanctioned for the works like community fishery/water harvesting tank comprised of the wage component as these works are only labour-intensive.

20. The first and foremost concern, as expressed by the petitioner, is that the MPLAD Scheme is a Plan Scheme fully funded by the Government of India and, thus, the money to be spent are public money. It is, therefore, in controvertible that the amounts shown to be spent under the Scheme must be spent for the benefit of the public. From the inquiry report, it is clearly established that the 49 nos. of works shown to be implemented and executed with the funds under the MPLAD Scheme under the Diphu Parliamentary Constituency, were not implemented and executed as per the norms laid down in the Guidelines. The nature of the works shown to be implemented and executed are dubious and the beneficiaries likely to be benefited from the said works are not definitively identifiable. Furthermore, the public officials entrusted with the task and responsibility of implementation and execution of the works under the Scheme did not perform their respective roles assigned to them under the Guidelines. It is ex-facie apparent, from the inquiry report, that there was delinquency on the part of the concerned officials and the officials responsible for such improper implementation and execution of the works and for misutilization/ misappropriation of the funds should be duly proceeded with. The submissions so made have received due consideration of this Court as the concerns expressed by the petitioner cannot be said to be unfounded.

21. It is noticed that the role of the MP in the MPLAD Scheme is recommendatory in nature and he has to recommend works of developmental nature with

emphasis on creation of durable community assets of national priorities. After such recommendation, it is for the District Authority who is, generally, the District Collector/District Magistrate/Deputy Commissioner, to implement the works. The District Authority has to make the selection of an appropriate implementing agency through which a particular work, recommended by an MP, would be executed. Such selection of the implementing agency shall be undertaken in accordance with the State Government roles/guidelines applicable for the purpose. Where the District Authority finds that a recommended work cannot be executed due to some reasons which can also include the reason that the particular work does not come under the permissible items, the same has to be informed to the MP concerned. The Guidelines of November, 2005 have indicated the works permissible to be undertaken under the Scheme as well as the list of works prohibited. From a scrutiny of the list of permissible works, though not exhaustive, it is clearly discernible that the purport and object of any of those works to be undertaken should be for creation of durable community assets and infrastructure, with a greater need to develop areas inhabited by people of Scheduled Tribes, which is the case in respect of Diphu Parliamentary Constituency. As has been noticed above, the maximum number of works, out of the 49 works, recommended under the Scheme by the MP was purportedly for construction of community fisheries/water harvesting tanks. Neither community fishery nor water harvesting tanks has been specifically included in the list of permissible items, indicated in the Guidelines. There was no indication, as noticed above, that the works of community fisheries/water harvesting tanks, etc., allegedly implemented and executed, were in lands wherefrom the public in general would be benefitted. Rather, the report goes to show that the proposer/ applicant were individuals and not communities as a whole. It is, thus, not deductible that benefits from such works, with the use of public money, have been percolated to the needy communities. Before execution of such works, apart from the plans and estimates, the District Authority has to ensure that there would be creation of durable community assets by obtaining feasibility report for such work and land status report so as to exclude the possibility of creation of assets for individual or family benefits. Asset creation for individual/ family benefits is clearly prohibited under the MPLAD Scheme. The findings in the inquiry report does not indicate that the assets, if any, were created for the benefits of the communities. That apart, the photographs submitted with the inquiry report do not go to show that such community assets have really been created on community lands. There is no indication in the report that any plaque indicating the cost involved, the commencement, completion and inauguration date and the name of the MP sponsoring the project has been permanently erected at the place of the work. In the absence of such plaque, it is not easily possible for the communities who should be the beneficiaries, to identify such work and to derive any benefit therefrom. The Guidelines have provided that the District Authority should get in advance a firm commitment about the operation, upkeep and maintenance of the proposed asset from the user agency concerned before execution of the work is sanctioned. During field verification, it was revealed that the actual dimension of most of the so-called community fisheries/ water harvesting tanks could not be ascertained effectively for mud, etc. but the Guidelines have provided that as soon as a work under the Scheme is completed, it should be put to public use. Nothing has been placed by any of the State respondents that they had obtained a firm commitment from the user agency, albeit the proposer/applicant, for operation, upkeep and maintenance of the proposed assets, be it community fisheries/water harvesting tank, before the execution of the works were sanctioned. Thus, it is clear that the community assets, if so created, have clearly suffered from lack of operation, upkeep and maintenances. It is, therefore, apparent that the District Authority had fallen short of its duties and responsibilities leaving a lot to be desired.

22. Though the State Government is a party-respondent in the instant PIL, no affidavit has been filed on its behalf for this Court to come to a definite conclusion as to whether the State Government including the Nodal Department, has discharged the role assigned to it under the Guidelines.

23. The findings in the inquiry report are to the effect that in some of the cases, the funds were received and withdrawn from the bank by the Block Development Officer and the payment of money was made to the labourers and others by the Junior Engineer as part of the implementing agency. Though as per the versions of the officials entrusted with the responsibilities to implement and execute the works that 49 nos. of works, being labour-intensive, were undertaken for the purpose of creation of wage man-days also for poverty alleviation in the rural areas, such claim appears unsatisfactory in view of non maintenance of acquittance rolls/payment registers reflecting that wages had in fact been received by the labourers in view of the fact that only some undated receipts acknowledging payment by the group leaders only from the concerned Junior Engineer were available. A combined reading of the accounting procedure laid down in the Guidelines vis-à-vis the manner in which the amounts were disbursed in respect of the 49 nos. of works, under reference, clearly goes to show that there was no adherence to the procedure laid down in the Guidelines in so far as withdrawal and disbursal of the funds were concerned. In respect of 13 nos. of works, there are findings to the effect that the funds were misappropriated without actually executing the works.

24. Mr. T.C. Chutia, learned State counsel, during the hearing, has placed on record a communication bearing No. PLA(V)347/2013/260 dated 04.12.2018 of the Additional Secretary to the Government of Assam, Political (Vigilance Cell) Department, written to him, to highlight the fact that due to the pendency of this PIL no action has been initiated on the inquiry report whereas there is a need of vigilance inquiry for taking follow up action. There is contemplation to initiate regular inquiry through the Directorate of Vigilance & Anti-Corruption against the erring officials and the matter should be taken up seeking orders for taking action under the Prevention of Corruption Act, 1988, as amended, and other relevant provisions of law.

25. As has been noted above, a detailed set of Guidelines are available for effective implementation and execution of the works under the MPLAD Scheme to ensure objectivity and transparency in the whole process and that the benefits be available to the general public, more particularly, to the people belonging to the Schedule Tribes and Schedule Castes through providing certain basis facilities with emphasis on the creation of durable community assets based on the locally felt needs. The Guidelines on the MPLAD Scheme have been updated and revised, from time to time, for improved, timely and rule-bound implementation of the Scheme incorporating some more provisions apart from, more or less, retaining the provisions from the earlier Guidelines, as have been extracted above. As has been observed by the Hon'ble Supreme Court in Bhim Singh (supra) that there are enough checks and balances provided in the Guidelines and the same are to be strictly adhered to by the concerned District Authorities. However, the materials on record of the case portray an abysmally dismal picture. The stark reality on the ground in the instant case is that guidelines had been flouted with disdain and salutary checks and balances contemplated under the Guidelines are given a complete go bye. Provisions for checks and balances in the Guidelines are one thing and adherence to the checks and balances is a completely different aspect. If there is no adherence to the Guidelines including proper monitoring at every stage and every level, mere allotment of funds and execution of works for the sake of execution of works, like in the instant case, will not bring the desired results with benefits percolating down to the targeted groups.

26. It is relevant to mention that the petitioner in the instant PIL, filed in the year 2013, has highlighted the anomalies that occurred in respect of 49 nos. of works pertaining to the period from 2006-2007 to 2011-2012 due to improper utilization of funds under the MPLAD Scheme allotted to the MP of Diphu Parliamentary Constituency for those years. By the time the instant PIL was filed, the allotted funds under the Scheme for the years had been shown to be utilized, withdrawn and disbursed for the works indicated. The funds are non-lapsable in nature and the funds if any, left, in the district can be carried forward for utilization in the subsequent years. Therefore, at this distance of time, we refrain from making any direction for recovery of whatever funds that had been shown to be spent and disbursed during the said period for the works in question. Thus, the direction to strictly adhere to and comply with the Guidelines can only be made for the ongoing works and the works, obviously permissible under the Scheme, to be undertaken henceforth under the MPLAD Scheme, which we accordingly do. We further observe that the authorities to whom the duties and responsibilities have been entrusted and assigned in the Guidelines, shall scrupulously follow and adhere to the same and the public, in general, and the inhabitants of the Parliamentary Constituency, in particular, shall be made aware of all the works undertaken for implementation under the MPLAD Scheme with the use of public money through all modes of publicity indicated in the Guidelines. Having noticed the omissions and commissions in respect of

implementation and execution of the works under the MPLAD Scheme in the instant case, we direct that there should be strict adherence to the Guidelines in implementation, monitoring and execution with regard to all the ongoing works and the future works to be undertaken under the MPLAD Scheme in all Parliamentary Constituencies in the State of Assam.

27. In so far as the actions contemplated to be initiated by the State respondents against the erring officials on the basis of the inquiry report are concerned, as indicated in the communication bearing No. PLA(V)347/2013/260 dated 04.12.2018 placed on record, it is provided that necessary action as provided under the law, shall be initiated against the erring officials expeditiously.

28. With the above observations and directions, this PIL is disposed of. No cost.

