

(2003) 10 GAU CK 0006

In the Gauhati High Court

Case No : Writ Petition (Civil) No's. 47, 51, 53, 54, 55, 72, 77, 79, 80, 113, 116, 117 (K) , 2630, 2835, 2888, 2889, 3340, 3442 and 3454 of 2003

Zentilo and Others

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 17-10-2003

Acts Referred:

Citation : (2004) GLT 532 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : T. Koza, A. Zho, A. Azhimomi, Yangerwati, N.K. Luikham and L.I. Sema, for the Appellant; L.S. Jamir, for the Respondent

Judgement

B. Lamare, J.—Heard Mr. T. Koza, Mr. Ashipri Zho, Mr. A. Zhimomi, Mr. Yangerwati, Mr. N.K. Luikham and Mr. L.I. Sema, learned Counsel for the Petitioners. Also heard Mr. L.S. Jamir, learned Addl. Sr. Govt. Advocate on behalf of the Respondents.

2. All these cases are taken up together as they relates to the funds allotted to fee respective District Planning and Development Boards (for short DPDB) in the concerned Districts and therefore the same questions of facts and law are to be decided.

3. Briefly stated the case is that the State Govt. in the Department of Planning and coordination introduced the District Plan Fund (DPF for short). Under this scheme, in every financial year funds are allocated to the District Planning and Development Board (DPDB) for utilisation in the Assembly Constituencies falling within fee District. The proposals for allotment of funds are to be made by the DPDB to the state Planning Board and after approval of the State Planning Board is obtained, fee work orders are issued to fee beneficiaries. The execution of fee works is monitored by DPDB and fee works are to be supervised by fee Implementing Committee appointed in every District and after completion of fee works fee Implementing Committee shall submit its report by issuing formal

completion certificate.

4. The case of the Petitioners is that the works were allotted to them by the respective DPDB as per work orders annexed to fee writ petitions. On receipt of the work orders, the Petitioners have completed the works and submitted verification certificate issued by fee Implementing Committee, but the payment was not made to fee Petitioners by the Respondents. The Petitioners, therefore, were compelled to file the present writ petitions for a direction from this Court to make payments of all the works allotted to them as per the work orders.

5. The Respondents on the other side contended that the Secretary to fee Govt. of Nagaland, Planning and Co-ordination Department (Planning Branch) by letter dated 11.3.2003 has informed the DPDB that on 6.3.2003 the Council of Ministers have decided that the scheme under fee District Planning and Development Fund for the year 2002-2003 shall be physically verified on the basis of the completion certificate submitted by the respective DPDB in the District. It was also informed that verification Committee shall be constituted by the DPDB of the respective District with 2 (two) Govt. nominees to verify the works and thereafter the payment can be released by the DPDB. It is also stated that on the basis of the said decision, fee Verification Committee was constituted district-wise. The Verification Committee thereafter submitted its report on 25.3.2003 after detailed verifications of the schemes whereby it was stated that the Implementing Committee have received complaints from the Chairman and Gaon Buras of the respective areas that the works were not completed/started by the beneficiaries. On the basis of the said report of the Verification Committee, the State Govt. has decided to recast the entire schemes in respect of the works which were not started/completed by the beneficiaries as per the work orders.

6. The Petitioners in W.P. (C) No. 113(K) 2003 are the beneficiaries under the scheme for the year 2002-2003 for Kohima district. They were issued work orders on 5.12.2002 for carrying out different works under Horticulture, Poultry, Piggery, Vegetable Farm, Public Well, Aforestation and Land Development by the DPDB. On receipt of the work orders, the Petitioners have started implementing the works by investing huge amount of money from their own sources and the works were duly executed as per the work orders. The Petitioners, thereafter submitted their claims to the DPDB for making necessary payment, but their bills were not paid by the Respondents.

7. The Petitioners in W.P. (C) No. 80(K) 2003 (W.P. (C) No. 3442/2003) were allotted work orders in respect of Assembly Constituency, 4th Ghaspani-I and they were issued work orders by the DPDB for Carrying out specified works in favour of number of beneficiaries including the Petitioners. On the basis of the said work orders, the works were completed by the Petitioners and duly verified and certified by the Implementing Committee appointed in this behalf, but their bills were not paid by the Respondents.

8. The Petitioners in W.P. (C) No. 79(K)/2003/W.P. (C) No. 3340/2003) were issued work orders by the Chairman of DPDB, Dimapur District as per the work orders annexed to the writ petition. They have completed their works and submitted their bills alongwith verification certificate certifying that the works have been physically verified and found to have been completed and full payment may be released to the Petitioners, but in their case also the bills were not paid.

9. The Petitioners in W.P(C) No. 77(K)/2003 were issued work orders by the Chairman of the DPDB, Tuensang District as per work orders annexed to the writ petition. The works were duly executed by the Petitioners, but payment was not made to the Petitioners by the Respondents.

10. The Petitioners in W.P. (C) No. 53(K)/2003/W.P. (C) No. 2835/2003) were issued work orders by the Chairman of the DPDB, Wokha District on 28.11.2002 and the works were to be completed within 60 days from the date of issue of the work orders. The Petitioners have completed the works as per the work orders and verification certificate was also issued by the Implementing Committee, but the payment was not made to the Petitioners.

11. The Petitioners in W.P. (C) No. 47(K) 2003 were also issued work orders by the Chairman, DPDB, Wokha on 25.11.2002. The works were duly completed by the Petitioners and also verification certificate was issued to the Petitioners, but their bills were not paid by the Respondents.

12. The Petitioners in W.P. (C) No. 55(K) 2003/W.P. (C) No. 2889/2003 were issued work orders on 28.11.2002 by the Chairman of the DPDB, Zunheboto and the works were successfully completed by the Petitioners, but payment has not been made to than till date.

13. The Petitioner in W.P. (C) No. 51(K) 2003/W.P. (C) No. 2630/2003 were issued work orders on 30.11.2002 and 2.12.2002 for carrying out the works specified in the work orders by the Chairman of the DPDB. Zunheboto. The works were completed by the Petitioners and completion certificate was also issued in their favour; but the payment has not been made to the Petitioners till date.

14. The Petitioners in W.P. (C) No. 54(K) 2003/W.P. (C) No. 2888/2003 were also issued work orders by the Chairman, DPDB, Zunheboto for the works specified in the work orders and the works were completed by the Petitioners and verification certificate was also submitted after the works were physically verified, but no payment has been made to the Petitioners.

15. The Petitioners in W.P. (C) No. 117(K) 2003 were issued work orders by the Chairman, DPDB, Phek by order dated 22.11.2002. The works were duly completed by the Petitioners by investing their own money from different sources, but the payment has not been made to the Petitioners till date.

16. The Petitioners in W.P. (C) No. 116(K) 2003 were also issued work orders on 22.11.2002 by the Chairman of DPDB, Phek for various projects. On receipt of

the work orders, the Petitioners have started the works and invested huge amount of money from their own sources and the works were fully executed as prescribed in the work orders. However, the Petitioners have not been paid for the works done by them till date.

17. The Petitioners in W.P. (C) No. 105(K) 2003 were also issued work orders on 22.11.2002 by the Chairman, DPDB, Phek for various schemes under District Plan. On receipt of work orders, the Petitioners have started the work and the work was in good progress. The Petitioners also invested their own money from their own source and also the works were fully executed as specified in the work orders, but the payment has not been made to the Petitioners.

18. The Petitioners in W.P. (C) No. 72(K)/2003/W.P. (C) No. 3454/2003 were also issued work orders on 22.11.2002 by the Chairman, DPDB, Phek. On receipt of the work orders, the Petitioners started work, but suddenly their work orders were cancelled by the Respondent No. 3, Deputy Commissioner and Chairman, DPDB, Phek vide order dated 7.4.2003.

19. Upon hearing learned Counsel appearing for the parties and on perusal of records, it is seen that the State Government in order to develop the various parts of the state evenly, the Planning and Co-ordination Department of the State used to allot funds to each Legislative Assembly Constituency for carrying out developmental works of the respective schemes specified in the sanction order provided under District Plan scheme. The District Planning and Development Board(DPDB) is the controlling authority in respect of the District Plan relating to each Constituency falling within the District The DPDB also constituted an Implementing Committee to supervise the works allotted for each Assembly Constituency in the District. The DPDB is headed by the Deputy Commissioner of the District as the Chairman.

20. For implementing the scheme, the DPDB is required to send proposals to the State Planning Board for each Constituency falling within the District. On receipt of the proposals from the DPDB, the State Planning Board will examine the matter and accord expenditure approval for each scheme. Thereafter the work orders were issued by the Deputy Commissioner as Chairman of the DPDB. In the instant cases, it is not disputed that the work orders were issued to the Petitioners. However, the contention of the state Respondents is that the Petitioners have not started/completed the works and the completion certificate issued does not bear the signature of the Chairman of the respective DPDB. It is also stated that in order to assess the actual progress of the completion of the works allotted to the Petitioners a verification committee was constituted to have physical verification of all the schemes allotted to each Petitioner and therefore the State Planning Board decided that all the works/schemes allotted to the Petitioners will have to be physically verified before making the payment.

21. Records produced by the learned Govt. Advocate shows that the council of Ministers in its meeting held on 6.3.2003 has decided as follows:

Extract from the Minutes of the meeting of Council of Minister held on 6.3.2003

The council decided that the Deputy Commissioners be instructed to get the District Plan works verified through a Committee of the District Planning and Development Board associating two Government nominees in each DPDB and the verification report discussed in a special meeting of the District Planning and Development Board in which the elected Legislators are members. This should be completed by 21st of March 2003. District Planning Fund should be released on the basis of such verification and endorsement of District Planning and Development Board.

22. After the above decision made by the Council of Ministers, the State Planning Board held a meeting on 25.3.2003 and in resolution No. 1 and 2 had decided as follows:

1. It was agreed that projects which were reported as completed and projects which were reported as under progress/implementation would require to be considered for release of funds. It was however, noted that in the case of Mon and Tuensang DPB Verification Report, the entire projects under the DPF were reported as completed. In such a situation, since the report appeared to be doubtful, these verification report would require re-verification by the DPDB.

2. It was decided that all cases where the projects have not been implemented/started/identified with location etc. the work orders would be immediately cancelled. It was further noted by the SPB that the stipulated time for implementation/completion ranged from 30 to 60 days. It was also observed that work orders issued after the 11th of January, 2003 would also not be valid since it was in violation of the Election Code of Conduct and therefore they were to be reviewed.

23. Thereafter the Development Commissioner, Nagaland, Respondent No. 2 issued Office Memorandum dated 25.3.2003 conveying the decision of the State Planning Board which was also held on 25.3.2003.

24. Records also shows that another meeting of the State Planning Board was held on 29.3.2003 and in resolution No. 1 and 2 with regard to the District Plan, it was decided as follows:

Minutes of The State Planning Board Meeting held on 29th March 2003 at the Conference Hall of Chief Minister.

The State Planning Board meeting was held on 29th March 2003 under the Chairmanship of Chief Minister, Nagaland. The detailed list of the members present is appended.

The meeting discussed in detailed the various issues related to implementation of schemes under District Plan, Annual Plan 2003-04, Border Area Development Programme, Backward Area Development Further and recommendation of schemes under the Non-lapsable Central Pool of Resources for consideration

during 2002-03. The following decisions were taken:

I. DISTRICT PLAN

1. The SPB accepted the recommendation of the DC/DPDB Phek and Zunheboto in respect of verification and recasting of the District Plan Schemes for the year 2002-03 which have been done as directed by the State Planning Board. The schemes may be accordingly sanctioned and the funds drawn and paid after the completion of the works.

2. The State Planning Board further decided that the District Plan funds in respect of the remaining Districts and Sub-Divisions be drawn "sector wise" as proposed by the Planning Department (Annexure-I). The schemes under the sectors will accordingly be recast(except the completed and ongoing schemes) by the DPDB/SDPDB and submitted to the SPB for approval and necessary action.

25. From the above decisions of the Council of Ministers and the resolutions passed by the State Planning Board, it is seen that the state has decided to have a proper-verification of all the schemes/works allotted under the District Planning and Development Fund(DPDF). Therefore the questions to be seen is whether the works were actually carried out by the Petitioners as per the work orders allotted to them. To arrive at a decision for this matter, a proper physical verification of all the schemes/projects under each District concerned in these petitions have to be properly examined and physically verified on the spot. This is purely a question of facts to be decided after proper physical verification of all the projects/works involved in these writ petitions. Moreover, from the affidavit in opposition filed by the Respondents, it is seen that the Respondents have stated that only very few schemes sanctioned under the DPDF for the year 2002-2003 were satisfactorily executed. The DPDF, therefore, in pursuance of the said decisions of the State Planning Board decided to cancel those works which were not executed/started/identified with location etc. and also to recast the schemes in lieu of those cancelled ones. Therefore, since the claim of the Petitioners is disputed by the Respondents, the only course left is to have an enquiry into the entire matter by a Committee.

26. For the aforesaid reasons I dispose of these writ petitions with the following directions:

(i) That a Committee headed by the Financial Commissioner, Govt. of Nagaland as Chairman and the Secretary, Planning and Co-ordination Deptt. and Joint Secretary, Department of Justice and Law, Govt. of Nagaland be constituted to enquire into the entire matter as discussed above.

(ii) The Petitioners shall submit a copy of their respective writ petitions alongwith the annexures to the Chairman of the Committee within a period of one month from today. On receipt of the petitions from the Petitioners, the Committee shall appoint 2 (two) officers, not below the rank of Deputy Secretary to the Govt. of Nagaland to have a physical verification of all the projects/schemes involved in

these writ petitions and that the said officers shall submit their report to the Committee as early as possible preferably within a period of 2 (two) months from the date the work is entrusted to them.

(iii) That on receipt of the report from the said officers appointed by the committee, the committee shall examine and consider all the projects/schemes allotted to the Petitioners and thereafter pass reasoned and appropriate orders with regard to the claim of each of the Petitioners in these writ petitions. The entire process shall be completed within 2 (two) months from the date of receipt of the report from the 2 officers appointed by the Committee.

With the above directions, these writ petitions are disposed of.

I pass no order as to the costs.

Interim order, if any, stands vacated.