

GAHC010166912020



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

Case No. : PIL/77/2020

JAHIR UDDIN LASKAR AND ANR
S/O- LT. HARUS ALI LASKAR, P.O. TANTOO, P.S. LALA, DIST.-
HAILAKANDI, ASSAM, PIN- 788163

2: AFJAL HUSSAIN TAPADAR
S/O- LT. MOHIBUR RAHMAN TAPADAR
VILL- PALOICHERRA PART-II
P.O. SULTANICHERRA
P.S. RAMNATHPUR
DIST.- HAILAKANDI
ASSAM
PIN- 78816

VERSUS

THE STATE OF ASSAM AND 14 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, PANCHAYAT
AND RURAL DEVELOPMENT DEPTT., DISPUR, GHY-6

2:COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
ASSAM
JURIPAR PANJABARI
GHY-37

3:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF HOME AFFAIRS
DISPUR GHY-6

4:DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
ASSAM
JURIPAR PANJABARI
GHY-37

5:PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
HAILAKANDI
DIST.- HAILAKANDI
ASSAM PIN- 788151

6:DY. COMMISSIONER
HAILAKANDI
P.O. AND P.S. HAILAKANDI
DIST.- HAILAKANDI
ASSAM PIN- 788151

7:THE CHIEF EXECUTIVE OFFICER
ZILLA PARISHAD
HAILAKANDI
P.O. AND P.S. HAILAKANDI
DIST.- HAILAKANDI
ASSAM PIN- 788151

8:BLOCK DEVELOPMENT OFFICER
SOUTH HAILAKANDI DEV. BLOCK
MANIPUR
DIST.- HAILAKANDI
ASSAM PIN- 788165

9:SUPERINTENDENT OF POLICE
HAILAKANDI
DIST.- HAILAKANDI
ASSAM PIN- 788151

10:OFFICER-IN-CHARGE
KATLICHERRA P.S.
DIST.- HAILAKANDI
ASSAM PIN- 788151

11:JAMES AIND
ACS
C/O- THE CIRCLE OFFICER
I/C SDO (C) KATLICHERRA
DIST.- HAILAKANDI
ASSAM PIN- 788151

12:ANJANA PAUL
C/O- BLOCK DEVELOPMENT OFFICER
BORJALENGA DEV. BLOCK
DIST.- CACHAR
ASSAM PIN- 788003

13:RUPAK DEV
JUNIOR ENGINEER
O/O BORKHOLA DEVELOPMENT BLOCK
BORKHOLA BAZAR
DIST.- CACHAR
ASSAM
PIN- 788110

14:MUZAIDUL ISLAM LASKAR
JUNIOR ASSTT. (PRI) OF SOUTH HAILAKANDI DEVELOPMENT BLOCK
CUM I/C ACCOUNTANT
SOUTH HAILAKANDI DEV. BLOCK
DIST.- HAILAKANDI
ASSAM
PIN- 788165

15:DEEPAK RANJAN DEB
JUNIOR ENGINEER
O/O RANGAPARA DEV. BLOCK
RANGAPARA
DIST.- SONITOUR
ASSAM
PIN- 78550

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : SC, PNRD

BEFORE

**HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN**

O R D E R

20.02.2023

(A.M. Bujor Barua, J)

Heard Ms. D Dutta, learned counsel for the petitioners, Mr. K Konwar, learned Additional Advocate General for the respondents No. 1, 2, 4, 5 and 8 being the authorities in the P&RD and Ms. M Bhattacharjee, learned Additional Senior Government Advocate for the respondents No. 3, 6, 9 and 10 being the authorities in the Home Department and Deputy Commissioner, Hailakandi.

2. By this Public Interest Litigation (in short PIL) petition, the petitioners have raised allegation of irregularities and illegalities in the disbursement of funds while undertaking works under the MGNREGA funds approximately amounting to Rs. 1, 50, 00, 000/- i.e. Rs. 1 crore 50 lakhs. The petitioners also enclose certain list of schemes including amounts that were earmarked for such schemes to raise the allegation of misappropriation of money in respect of such allegation.

3. In course of the proceeding, an additional affidavit dated 28.09.2022 had been filed by the Superintendent of Police, Hailakandi. Paragraphs 3 and 4 of the said affidavit are extracted below:-

“3. That the deponent begs to state that on 04/03/2020 the complainant James Aind, BDO, South Hailakandi Development Block PS-Katlicherra, Dist- Hailakandi lodged a written FIR at Katlicherra PS to the effect that the in-charge block accountant of South Hailakandi Development Block Muzahidul Islam Laskar has misappropriated the Govt. fund without guidelines. On 14/01/2020 he made a payment of rupees 17 lakhs (approximate) to the supplier namely Anisol Alom Laskar without doing the requisite amount of work in the field. The accused also used complainant's dongle for making the unauthorized payment without any information to the complainant. The payment has been made for the scheme "Construction of road start from Kathaltoli Timukha to Banglabasha" with work code 0422005/RC/159078 under Baruncherra- Kukicherra GP. The materials were not supplied and only minimal work was done. He kept the authority in dark and did the work whimsically.

4. That the deponent further begs to state that on receipt of the information, the above noted case was registered and investigated into. During investigation, PO visited the place of occurrence and rough sketch map of the P.O. was drawn. The complainant was examined and recorded his statement U/S- 161 CrPC. The following witnesses were examined and their statements were recorded U/S- 161 CrPC at the PO.

1. Sri Sadananda Pandey. S/O- Lt Ramkrishna Pandey.

Vill.- Kathaltoli, PS- Katlicherra, Dist- Hailakandi.

2. Sri Nandalal Ree. S/O- Lt RamkrishnaRee.

Vill.- Kathaltoli, PS- Katlicherra, Dist- Hailakandi.

3. Sri Rupak Kairi. S/O- Janak Kairi.

Vill.- Kathaltoli, PS- Katlicherra, Dist- Hailakandi.

4. Smt. Aradhana Roy @ Rekha Roy (Anchalik Panchayat Member)

W/O- Ashok Kr. Roy.

Vill.- Niskar Bosti, PS- Katlicherra, Dist- Hailakandi.

On examination of the above noted witnesses, they stated that no materials were supplied by supplier for the construction of road from Kathaltoli Timukha to Banglabasha, only grass and weeds were removed by JCB. They came to know that the accountant of South Hailakandi Development block and supplier mutually withdrew sanctioned amount without supplying materials and misappropriated the govt fund.

During investigation the following documents pertaining to the scheme was seized in connection with this case:-

1. Sanctioned letter of scheme "construction of road start from Kathaltoli Timukha to Banglabasha" sanctioned no- DRDH- 131/ADM-Sanc/SHDB/MGNREGA/2014-15 dated 27/01/2018.

2. Plan and estimate, name of work :- construction of road start from Kathaltoli Timukha to Banglabasha under MGNREGA for the year 2015-16, scheme id no- 042200500ZRC001/228.

3. Upto date expenditure statement of the scheme as per MIS.

4. GP allotment order of AE and JE vide memo no – DRDH- 889/JE/2011/160/2588-2593 dated 12-02-2018.

5. Online material bill of the scheme, work name – construction of road start from Kathaltoli Timukha to Banglabasha, work code- 0422005/RC/159078.

The following employees of South Hailakandi Development block were examined and recorded their statement U/S- 161 CrPC.

1. Sri Mrinal Kanti Dasgupta (LDA). S/O- Lt. Mrityunjay Dasgupta. South Hailakandi Dev. Block.

2. Suwabor Rahman Barlaskar.(AE). S/O- Lt. Fazlur Rahman Borlaskar. South Hailakandi Dev. Block.

On examination of the witnesses and scrutiny of the seized documents, it is seen that the name of the sanctioned scheme is "construction of road starts from Kathaltoli Timukha to Banglabasha under Baruncherra- Kukichherra GP" and the work type was bitumen top road for community. The sanctioned amount against the scheme was 41 lakhs out of which Rs. 27,65,564 was paid i.e., Rs. 10,70,228 for job card work and Rs- 16,95,336/- for material supply works. The work was shown physically completed on 10/01/2020. Job card works were completed and payment were made by following procedures but the payment of Rs.- 16,95,336/- was made for material works without any supply work by the development block accountant Muzahidul Islam Laskar to

the supplier Md. Anisol Alom Laskar. It had also come to light that the then accountant Muzahidul Islam Laskar had not submitted the materials bill, supply order, requisition and MB of materials to the authority. In this connection the BDO South Hailakandi Development block issued an order to accountant Muzahidul Islam Laskar vide letter No. SHDB/190/SECURITY/PART-1/2015-16/66/2818 dated 16/03/2020 to hand over the dangle of the accountant "Muzahidul Islam Laskar", measurement book of which material payment made, supply bill, supply order against the material supplied, MR for skilled and semi skilled labour if any and material issue and received requisition but the alleged accused Muzahidul Islam Laskar did not hand over the same. Further the bank statement of account number 36874397244 of supplier Anisol Alom Laskar in the SBI, Katlicherra Branch was taken out and on examination of the bank statement, it is seen that Rs.60,67,064/- was deposited in this account in total on 14/01/2020 by 34 numbers of transactions. The supplier Anisol Alom Laskar transferred that money to different account and only Rs. 737/- was there as balance amount in his account.

The prime accused, i.e., the FIR named accused MD Muzahidul Islam Laskar, son of Lt. Wazid Ali Laskar of Vill- Sahabad Pt-I, PS- Lala, Dist- Hailakandi was arrested on 28/12/2020 and forwarded into judicial custody. Another accused (the supplier) MD Anisol Alom Laskar son of Ala Uddin Laskar of Vill.- Rongpur Pt -8 PS – KTC , Dist- Hailakandi was granted interim bail by the hon'ble Guwahati High Court vide Order dated 02-02-2021 and accordingly he appeared at the Katlicherra PS and he was arrested after interrogation and subsequently released on bail as per order of this Hon'ble Court.

The Hon'ble Guwahati High Court during the course hearing of the pre-arrest bail of MD Anisol Islam Laskar, passed an order on 15-12- 2021 in connection with Case No. AB/3509/2021, directing the officer in- charge of Katlicherra PS/ the Investigating Officer to verify the documents/ invoices which the accused relied before the Hon'ble Court that he supplied the materials as per supply order issued by the BDO, South Hailakandi Development Block which he filed in support of his plea before the Hon'ble Court. Accordingly as per direction of the Hon'ble Gauhati High Court, the same was enquired and a written report was obtained from the present BDO, South Hailakandi Development Block wherein he stated that the photocopy of the supply order by the block regarding material requisition cannot be verified as original bills of the said scheme "construction of road start from Kathaltoli Timukha to Banglabasha" MGNREGA 2016-17, Baruncherra-Kukicherra GP is not available with the office.

It is to be mentioned here that there is no material found regarding certification by the technical person on the overleaf of the photocopied bills. Further it is to be mentioned that the requisition order by technical person for supply of materials is also not available with the office. Hence it could not be ascertained that the materials have been supplied and received for the said scheme. In this connection the present BDO Sri Pranabananda Dowerah was examined and recorded his statement US-161 CrPC. He stated in his statement

that when a supplier supply materials to any scheme, the materials are received by the concerned site engineer (the Technical Person of the scheme) and he writes on the overleaf of the invoices as "received in good condition". But in the invoices which was submitted by the accused Anisol Alom Laskar and sent by the Hon'ble Guwahati High Court for verification, there was no such certification by the concerned site engineer and it reflects that the materials mentioned in the invoices were not supplied by Anisol Alom Laskar and was not received officially.

The pre-arrest bail of the accused MD Anisol Alom Laskar was rejected by the Hon'ble Guwahati High Court vide order dated 24/01/2022 in connection with Case No AB/3509/2021. After rejection of the pre arrest bail by the Hon'ble Guwahati High Court of MD Anisol Alom Laskar, several attempts have been made to nab him but he is absconding since then. In this connection technical efforts are on to locate him.

As directed in the supervision note, the technical persons related to the scheme i.e., construction of road start from Kathaltoli Timukha to Banglabasha, (1) Sri Dipak Ranjan Deb, JE, (2) Amaz Uddin Barbhuiya, AE, (3) Sri Ashok Kumar Nunia, AE, and (4) Gias Uddin Laskar, AE, have been interrogated and their statement U/S- 161 CrPC were recorded. It is learnt from them that they were entrusted to execute earth work only i.e., earth filling, cutting etc and job card in the scheme. Accordingly they submitted MR and measurement book to the authority of the earth work and job card work which were done by them and later on payment made to the job card holder. This was verified in the office of the BDO South Hailakandi Development block and found no anomaly in respect of earth work and job card work. They also stated that during carrying out earth work and job card work in the scheme, no materials were supplied by any supplier. On the other hand, the online portal in the office of the BDO, South Hailakandi Development Block was checked and it was found that only the bills against which Rs-16,95,336 /- was paid for materials supplied to MD Anisol Alom Laskar was uploaded along with the Master Rolls. But no bill in the form of hard copy was found in the office of the BDO, South Hailakandi Development Block for which RS- 16,95,336/- was paid except the Master Rolls. In this connection it is learnt from the present BDO that the bills which were uploaded in the online portal for payment of material supply in the scheme are fake.

During course of investigation, it is well established that the accused MD Muzahidul Islam Laskar (former in-charge accountant of South Hailakandi Development Block) had made payment of Rs. 16,95,336/- to supplier MD Anisol Alom Laskar without supplying materials for the scheme "Construction of road start from Kathaltoli Timukha to Banglabasha" using the dongle of then BDO (Complainant) without following due procedure and both of them misappropriated the entire amount of Govt. fund by means of cheating and forgery. The investigation of the case is in advanced stage and within a short period of time FF will be submitted."

4. A reading of the averments made in paragraphs 3 and 4 of the additional affidavit filed on 28.09.2022 makes it discernible that in respect of the allegation of irregularities/misappropriation of funds in the disbursement of the MNREGA in the Hailakandi district, certain steps had been taken by the respondent authorities. Further, a charge-sheet No. 194/2022 corresponding to FIR No. 66/2020 had also been brought on record before the Court that in respect of Md. Muzahidul Islam Laskar, son of Wajid Ali Laskar, a charge sheet under sections 120(B)/420/406/ 468/401 of the IPC had been filed. The charge-sheet also shows Md. Anisul Alam Laskar son of Ahaduddin Laskar to be an absconder and the informant/complainant is shown to be James Aind, Block Development Officer of South Hailakandi development block.

5. As necessary enquiry had been made resulting in registration of criminal case, where charge-sheet had been filed, we are of the view that as per the materials placed in this PIL petition, no further adjudication is required. Accordingly, the PIL petition stands closed.

6. It is expected that the criminal proceeding initiated as per charge sheet No. 194/2022 in the Court of the learned Chief Judicial Magistrate, Hailakandi would be brought to its logical end.

7. Mr. K Konwar, learned Additional Advocate General, Assam appearing for the P&RD states that even the informant James Aind, the Block Development Officer of South Hailakandi development block had been departmentally proceeded and at present the proceeding against him is still pending. It is stated that in respect of some of the contractual employees who were found involved in the irregularities were also proceeded through their respective departments and the departmental proceedings against them had been concluded in the meantime. Certain proceedings had also been initiated against some of the

regular employees, who were found involved in the irregularities and against those persons, proceedings are pending.

8. We expect that the respective departmental proceedings that have been initiated, be also brought to its logical end at the earliest.

9. If the petitioners have any further material on any further irregularities or illegality that may be committed, liberty remains with the petitioners to approach again.

Let a copy of the charge-sheet No. 194/2022 be kept on record.

JUDGE

JUDGE

Comparing Assistant