

GAHC010201352023



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

Case No. : I.A.(Civil)/2841/2023

JUNIAL JIDUNG, G.B.AND 2 ORS.
S/O LT. PURNACHAN JIDUNG, VILL. KHAILIMDISA, HAFLONG, P.O. and P.S.
MAIBONG, DIST- DIMA HASAO, ASSAM

2: SORUN HOJAI
G.B.
S/O LT. BISHU HOJAI
VILL. DIDAODIP
HAFLONG
P.O. and P.S. MAIBONG
DIST- DIMA HASAO
ASSAM

3: DEBEN PHONGIO
G.B.
S/O LT. THAIKEDAU PHONGLO
VILL. LONGKHOR
HAFLONG
DIST- DIMA HASAO
ASSA

VERSUS

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA and 8 ORS.
G-5 and 6, SECTOR -10, DWARKA, NEW DELHI-110075

2:THE NATIONAL HIGHWAYS AUTHORITY OF INDIA
REGIONAL OFFICE- HENGRABARI
BORBORI BORTILLA
VIP ROAD
NEAR PRATIKSHA HOSPITAL
GHY-36

3:THE PROJECT DIRECTOR

NHAI
PIU- SILCHAR
H/NO.328
1ST FLOOR
COLLEGE ROAD
AMBICA PATTY
SILCHAR-788004

4:THE DIMA HASAO AUTONOMOUS COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY(N)
DIMA HASAO AUTONOMOUS COUNCIL
HAFLONG.

5:THE SECRETARY
REVENUE
DIMA HASAO AUTONOMOUS COUNCIL
HAFLONG
ASSAM

6:THE ADDL. DY. COMMISSIONER
DIMA HASAO DISTRICT
HAFLONG
ASSAM

7:THE SUB DIVISIONAL OFFICER CIVIL
MAIBANG
DIMA HASAO DISTRICT
HAFLONG
ASSAM

8:THE SETTLEMENT OFFICER
DIMA HASAO AUTONOMOUS COUNCIL
HAFLONG
ASSAM
AN ASSESSOR OF L.A.and WORKS FOR THE STRETCHED FROM NUTON
LAMPU TO BORO WAPU

9:THE DIVISIONAL COMMISSIONER
HILLS and BARAK VALLEY DIVISION
DISPUR
GHY-

For the Petitioner(s) : Ms. J. Bezbaruah, Advocate

For the Respondent(s) : Mr. R. K. D. Choudhury, Deputy SGI
: Mr. S. Dutta, Standing Counsel
: Mr. C. Baruah, CGC

: Mr. T. R. Gogoi, Standing Counsel

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 05.03.2024

1. The instant Interlocutory Application has been filed seeking a correction to the judgment and order dated 23.05.2023 passed in WP(C) No.6414/2013 insofar as referring the dispute to the Divisional Commissioner, Central Assam Division.
2. It has been brought to light that in view of the post of Divisional Commissioner having been abolished, there was no Arbitrator as was appointed by the Central Government to decide the said arbitration dispute. In view of filing of the instant application, this Court vide various orders had asked both the Central Government as well as the State Government to take appropriate steps so that the mandate of the provisions of Section 3G(5) of the National Highways Act, 1856 is given full effect.
3. Today, Mr. R. K. D. Choudhury, the learned Deputy S.G.I. appearing on behalf of the Ministry of Road Transport and Highways has placed before this Court a notification dated 21.02.2024 wherein it reveals that the Officer with the designation of Special Secretary to the Government of Assam had been designated as the Arbitrator for the purpose of Section 3G(5) of the National Highways Act, 1956. The said notification which was placed before this Court is kept on record and marked with the letter "X".

4. Taking into account the above, this Court therefore modifies the judgment and order dated 23.05.2023 passed in WP(C) No.6414/2013 to the extent that the reference so directed to be made to the Divisional Commissioner, Central Assam Division shall mean the Special Secretary to the Government of Assam as appointed vide notification dated 21.02.2024.

5. With above observations and directions, the instant Interlocutory Application stands disposed of.

6. Before parting with the records, this Court however finds it very relevant to observe that there are huge numbers of references which are to be decided by the Arbitrator in terms with Section 3G(5) of the National Highways Act, 1956. Delay in disposal of the said Reference would entail accumulation of interest, if the compensation amount is enhanced than the amount which have been awarded. Apart from that, this Court also takes note of Section 3G(6) of the National Highways Act, 1956 which categorically mandates that the arbitration is to be carried in terms with the provisions of Arbitration and Conciliation Act, 1996 meaning thereby Section 29A of the said Act of 1996 would come into play and the consequential effect thereof would be that there is a period which the Arbitrator has to decide the reference and failure to do so would terminate the mandate of the Arbitrator statutorily. In such circumstances, there would further delay in the proceedings and consequent sufferings of the "persons interested". Under such circumstances, this Court is of the opinion that both the Central Government and the State Government has to take an appropriate decision so that the Arbitration proceedings which are to be carried out in terms with Section 3G(5) of the National Highways Act, 1956 are decided seamlessly at the earliest by appointing more Special Secretaries to the Government of Assam, if

so necessary.

7. This Court also finds it relevant to take note of the submission of Mr. C. Baruah, the learned counsel appearing on behalf of the National Highway Authorities of India who submitted that the Special Secretary who would be taking up the Arbitration Proceedings has to have a dedicated Secretariat/establishment dealing solely for the purpose of deciding the References. He submitted that the Arbitration References which at present, are in huge numbers and cannot be decided by a stop gap arrangement inasmuch as there would be a delay in deciding those arbitration references. He further submitted that Special Secretary, Government of Assam is required to dedicate his Office to the disposal of the Arbitration References. Under such circumstances, he therefore submitted that there should be a proper establishment/Secretariat for the Special Secretary from the Government of Assam only to deal with these arbitration proceedings.

8. This Court have given an anxious consideration to the said submission and this Court is of the opinion that taking into account the enormous amount of pendency of Arbitration References, the State of Assam in consultation with Government of India is required to do the needful so that the arbitration proceedings referred to the Special Secretary to the Government of Assam is decided giving due opportunities to both the parties at the earliest and for that purpose, the said Officer would be required to be provided with proper infrastructure which this Court feels that the State of Assam shall do the needful in due time in consultation with the Ministry of Road and Transport, Government of India.

9. A copy of this order be served upon Mr. R. K. D. Choudhury, the learned

Deputy S.G.I and Mr. S. Dutta, the learned Standing counsel, Revenue Department by the Registry for needful compliance.

JUDGE

Comparing Assistant