

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

MC[WP(C)] No. 171 of 2026 in  
WP(C) No. 237 of 2026

Date of Decision: 05.06.2026

Shri. Shemphang Kharsati.  
Son of Shri. L. Mawrie,  
Resident of Mawryngkneng,  
East Khasi Hills District, Meghalaya

**.... Applicant**

**Versus**

1. State of Meghalaya  
Represented by the Chief Secretary  
of the Government of Meghalaya
2. The Joint Secretary  
to the Government of Meghalaya,  
District Council affairs Department
3. The Deputy Commissioner,  
East Khasi Hills District, Shillong
4. The Block Development Officer/Executive Magistrate  
Mawryngkneng C & RD Block  
East Khasi Hills District
5. The Officer-in-charge  
Diengpasoh Police Station  
East Khasi Hills District, Meghalaya
6. Khasi Hills Autonomous District Council, Shillong  
Represented by its Secretary to the Executive Committee.

**.... Opposite parties**

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

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|-----|------------------------------------------------------|--------|
| i)  | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press:           | Yes/No |
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**Appearance:**

|                                 |   |                                                                                                                                                            |
|---------------------------------|---|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/Appellant(s) | : | Mr. M.L. Nongpiur, Adv.<br>Ms. R. Fancon, Adv. vice<br>Dr. N. Mozika, Sr. Adv.                                                                             |
| For the Respondent(s)           | : | Mr. N.D. Chullai, AAG with<br>Mr. E.R. Chyne, GA for R 1-5.<br>Mr. H. L. Shangreiso, Sr. Adv. with<br>Mr. T. Dkhar, Adv.<br>Mr. W. Khongsni, Adv. for R 6. |

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**JUDGMENT AND ORDER (ORAL)**

1. Heard Mr. M.L. Nongpiur, learned counsel for the applicant, who has submitted that the applicant being aggrieved and dissatisfied with the office order dated EKJ.20/4/2016/VoL.II-A/72 dated 27.05.2026 passed by the Deputy Commissioner, East Khasi Hills District/respondent No. 3 herein by which order, the toll gate/check gate run by the applicant which is situated at Mawryngkneng-Mawkhanu, East Khasi Hills District, meant for the purpose of checking of illegal trading by non-tribal commercial transport operators has been closed, has now approached this Court with this writ application, inter alia, with a prayer to set aside and quash the said order dated 27.05.2026 and related order dated 09.02.2026.

2. The learned counsel has also submitted that on the said writ application being admitted by this Court, notice of which have been received and acknowledged by all the respondents, the prayer made in this Misc. Application is for stay of the operation of the said impugned order dated 27.05.2026. The learned counsel further submits that the applicant being duly empowered to run the said toll gate/check gate in accordance with the provision of “**The United Khasi Jaintia Hills District, (Trading by Non-Tribals) Regulation, 1954**”, and being appointed as an agent in that regard by the Khasi Hills Autonomous District Council/respondent No. 6 to run the said check gate/toll gate for the period of 12 months w.e.f. 08.01.2022 to 08.01.2023 and the appointment being extended w.e.f. 09.01.2025 till 09.01.2028, the action of the relevant respondent authorities qua the impugned office order, has caused significant financial loss to the applicant, and as such, if the said impugned order is not stayed by this Court pending final hearing of the main petition, the applicant shall suffer irreparable loss and injury.

3. Pointing to the purport of the impugned order wherein the rationale for closure of the check gate/toll gate of the applicant by the respondent authorities is that the said gate is situated on the National Highway, as such, the relevant provision of law has been violated, the learned counsel has maintained that the said check gate apparently is situated at the distance of 25 meters away from the National Highway and does not in any manner disturb the free flow of

traffic, therefore, the action of the respondent No. 3 is completely arbitrary, illegal and discriminatory as far as the applicant is concerned.

4. The learned counsel has also submitted that this Court in a similar and almost identical case, in MC[WP(C)] No. 130 of 2022 in WP(C) No. 273 of 2022 vide order dated 03.08.2022, has issued a stay on the operation of the impugned order under consideration therein, which order is identical to the impugned order herein that is, by which order the check gate/toll gate of the petitioner therein which was alleged to have been erected/setup on the National Highway has been closed down, and that such order, have not been assailed in appeal till date.

5. The learned counsel has further submitted that the said order dated 03.08.2022 (supra) squarely covers the case of the applicant herein, as such, this Court on similar consideration may be pleased to pass necessary orders and to stay the operation of the impugned office order (27.05.2026) till disposal of the main petition.

6. Mr. N. D. Chullai, learned AAG along with Mr. E.R. Chyne, learned GA has strenuously opposed the prayer made by the applicant for grant of stay primarily on the ground that the said check gate/toll gate of the applicant has been erected without any sanction of law and nowhere in The United Khasi Jaintia Hills District, (Trading by Non-Tribals) Regulation, 1954 is available a

provision to setup check gate/toll gates on the National Highway, State Highway, major district roads.

7. It is also the submission of the learned AAG that the case of the applicant as far as the existence or erection of the said check gate/toll gate is concerned, on an earlier occasion, the applicant herein has present a representation dated 05.12.2025 to justify setting up of the said check gate/toll gate and the respondent No. 3 in a reasoned and speaking order dated 09.02.2026 has disposed of the said representation holding that the KHADC does not have the right to establish or operate check post and consequently, it also does not have the right to appoint the applicant as lessee/agent for the said purpose.

8. The learned AAG went on to submit that admittedly, the said check gate/toll gate has been setup/effectuated at Mawryngkneng-Mawkhanu on the National Highway which connects Assam-Ri-Bhoi District in Meghalaya and onwards to Assam, though it has been said that it is situated about 25 meters away from the National Highway, and in this regard, the provision of Section 23, 24, 25 and 28 of the Control of National Highway Land and Traffic Act, 2002, has been referred to, wherein, it has been specifically spelled out that all land on the National Highway are deemed to be land of the Central Government and that erection of any structure on the National Highway is prohibited. In this connection, the judgment of the Supreme Court reported in 2026 SCC Online 646 – **In Re: Phalodi Accident v. National Highway Authority of India and**

**Ors.**, has been referred particularly para 4 (C) and (E) wherein, the Supreme Court has held that construction/operation of any commercial structure within the Right of Way (RoW) of any National Highway is prohibited and that District Magistrate are to ensure that encroachment on such land are removed immediately. It was also held that National Highway land would cover 40 meters (residential) and 75 meters (commercial) from the mid-point of any National Highway, the admitted position being that the check gate/toll gate of the applicant is situated about 25 meters from the National Highway, the same would therefore fall within the prohibited parameters, submits the learned AAG.

9. In view of the settled position of law, the applicant not being entitled to any final relief, therefore, if the impugned order is stayed at this juncture, it would amount to final relief being granted to the applicant, as such, it is prayed that this application be dismissed as devoid of merits.

10. Mr. H.L. Shangreiso, learned Sr. counsel/Special Counsel assisted by Mr. T. Dkhar, learned counsel for the respondent No. 6/KHADC has submitted that under the National Highway Act, the power over the land situated within the National Highway rest with the Central Government, and the State Government has no authority in this regard, the reliance of the learned AAG in the authority of the case of Phalodi Accident (*supra*) is not relevant to the issue in hand.

11. The learned Special Counsel has also referred to the order dated 03.08.2022 (*supra*) and has submitted that the ratio of that order still hold the

field, since such order has not been disturbed till date, though this order under the circumstances, relates to jurisdiction of the Jaintia Hills Autonomous District Council, however, both the JHADC and the KHADC functions under the umbrella of the Sixth Schedule of the Constitution of India, the situation being similar and identical, the State Government cannot take a different stand, one as regard Jaintia Hills and the other as regard Khasi Hills.

12. This Court having heard the learned counsel for the parties, the same being given due consideration, at this point of time, is confronted only with the issue of whether the operation of the impugned order has to be put on hold pending final disposal of the writ petition.

13. Facts as has been pointed out through the submission of the learned counsels for the parties need not be reiterated except, if so required. However, what could be seen is that the applicant apparently on being duly authorised by the respondent No. 6/KHADC has set up a check gate/toll gate for the purpose of detection of illegal trading by non-tribals commercial transport operators, this toll gate/check gate according to the impugned order dated 27.05.2026 is said to be located near Mawkhanu Petrol pump and near Mawkhanu market.

14. The said impugned office order dated 27.05.2026 speaks of a “zero tolerance” towards existence of any illegal collection of toll/check gate or forcible collection from traffic plying along the National Highways, State

Highways and major District roads of East Khasi Hills District, accordingly, the said toll gate/check gate of the applicant was closed down.

15. The applicant while assailing the said office order, has maintained that he is duly authorised to run the said check gate/toll gate and secondly, that the same is located about 25 meters from the National highway, and as such, cannot be said to have been erected or set up on the National Highway.

16. The State respondent has disagreed with this contention and has asserted that the law does not permit the KHADC to allow setting up of such check gate/toll gate and the fact that the said check gate /toll gate has been setup or erected on the National Highway, the provision of the Control of National Highway (Land and Traffic) Act, 2002 has been violated by the applicant. Therefore, the action of the respondent No. 3 while issuing the said impugned order cannot be faulted.

17. The KHADC/respondent No. 6 has also supported the contention raised by the applicant and has defended its action in allowing the applicant to setup/erected the said check gate/toll gate maintaining that it is well within its right under the provisions of the Sixth Schedule under the constitution to do so.

18. It is the further contention of the KHADC/respondent No. 6 that the reliance of the learned AAG on the provisions of the Control of National Highway (Land and Traffic) Act, 2002 in the context of the impugned order is misplaced, inasmuch as, if the argument that the check gate/toll gate set up by

the applicant is on the National Highway, it is incumbent on the part of the National Highway authority to object to the same and the State Government has no part in such matter. Therefore, the contention of the learned AAG in this regard has to be discarded.

19. What is apparent is that the issue of locus of the petitioner has to be decided as to whether he was duly authorised under valid provisions of law to setup check gate/toll gate in the said area, vis-à-vis, the authority of the KHADC to give permission for such action.

20. The issue would indeed be a matter of consideration when the main petition is finally heard after exchange of pleadings. However, prima facie, without clearly ascertaining the fact that the applicant has set up the said check gate/toll gate on the National Highway, the same has not been denied by the respondent authorities, as such, the balance of convenience lies with the applicant.

21. The authority in the case of *In Re: Phalodi Accident* (supra) relied upon by the learned AAG, though relevant, however since it has not been ascertained as to whether the said check gate/toll gate of the applicant occupies that portion of land belonging or is within the control or authority of the National Highway Authority of India, the implication of the said judgment cannot be applied to the case of the applicant at this juncture.

22. As was observed at para 29 in the order dated 03.08.2022 (supra) since no formal complaint or objection has been filed by the National Highway Authority Administration, as to the setting up of the said check gate/toll gate of the applicant, this question is left open for consideration at the final hearing.

23. This Court is of the opinion that this issue is yet to be settled, and as such, the applicant cannot be deprived of the benefit of his appointment to set up the said check gate/toll gate at this point of time.

24. It is also observed that the applicant will indeed suffer huge and irreplaceable loss and injury if stay is not granted, considering the fact that he has been allowed to run the said check gate/toll gate till the year 2025.

25. Consequently, this application is hereby allowed, pending disposal of the main writ petition, the impugned office order dated 27.05.2026 issued by the Deputy Commissioner, East Khasi hills District/respondent No. 3 is hereby stayed.

26. Misc. Case disposed of. No costs.

**Judge**

Meghalaya  
05.06.2026  
"Khrav"