IN THE HIGH COURT OF MANIPUR
AT IMPHAL
W.P. (C) No. 451 of 2019

Shri Brahmacharimayum Achou Sharma, aged about 85 years, S/o (L) B. Gourahari Sharma, resident of Bamon Kampu Awang Leikai, P.O. Singjamei, P.S. Irilbung, District, Imphal East, Manipur – 795008.

… Petitioner

-Versus-

1. The State of Manipur through the Chief Secretary-cum-Secretary (Power), Govt. of Manipur, Secretariat South Block, P.O. & P.S. Imphal, District Imphal West, Manipur – 795001.
2. The Manipur State Power Distribution Company Limited (MPSDCL) represented by its Managing Director, 3rd Floor, Secured Building, 2nd M.R. Gate, North A.O.C., P.O. Imphal, P.S. City, District, Imphal East, Manipur – 795001.
3. The Deputy General Manager, IED-III, MSPDCL, Kakwa near Singjamei Police Station, P.O. & P.S. Singjamei, District Imphal West, Manipur - 795008

… Respondents

With

W.P. (C) No. 1070 of 2018

Shri Ningthoujam Achouba Singh, aged about 48 years, S/o N. Maimu Singh of Keirao Langdum B.P.O. & P.S. Irilbung, District Imphal East, Imphal Manipur – 795005 Proprietor Ningthoujam Achouba Singh & Bros, Keirao.

… Petitioner

-Versus-

1. The State of Manipur represented by the Commissioner/ Secretary/Principal Secretary (Power Dept.) Govt. of Manipur, Babupara Secretariat, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
2. The Managing Director, Manipur State Power Distribution Company Ltd. (MPSDCL) Manipur, Secure Building opposite

D.M. University, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

3. The General Manager, the then Superintending Engineer (Elect.), Electrical Circle – No. 1. Electricity Department, Keishampat, Manipur P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

4. The Deputy General Manager, IED-II, Lamphel Manipur State Power Distribution Company Limited (MSPDCL), Lamphel, P.O. & P.S. Lamphel, Imphal West District, Manipur – 795004.

… Respondents

With

W.P. (C) No. 1131 of 2018

1. ***Smt. Laitonjam Bineshori Devi,***, aged about 58 years, W/o H. Iboyaima Singh of Singjamei Mayenbam Leikai, Lamphelpat Sub-Division, Imphal West – 795008.

2. Shri Nahakpam Hitler Singh, aged about 38, S/o Nahakpam Kunjeshore Singh, 52 – Soibam Leikai Ayangpalli Road, Imphal West, Manipur – 795001.

3. Smt. Ningshen Shingmi Jajo, aged about 41 years, W/o Ningshen Wungreishang, Ningchou Village, Ningchou, Grihang, Ukhrul, Kamjong Chassad Sub-Division, Manipur – 795145.

4. Shri Ngangom Borton Singh, aged about 31 years, S/o Ngangom Shyamkishore Singh of Wangkhei Pukhrambam Leirak, Porompat Sub-Division, Imphal East, Manipur – 795005.

5. Miss Warisha, aged about 30 years, D/o Mr. Mdatawar Rahmam of Lilong, P.O. Lilong Haoreibi Leikai, Thoubal, Manipur – 795130.

… Petitioners

-Versus-

1. The State of Manipur represented by the Commissioner/ Secretary (Power) Govt. of Manipur at Secretariat Building, Babupara, P.O. & P.S. - Imphal West, Manipur – 795001.

2. The General Manager (F&A) MSDPCL, 3rd Floor, New Directorate Building, Near 2nd M.R. Gate, Imphal Dimapur Road, Imphal – 795001.
3. The Managing Director, MSDPCL, 3rd Floor, New Directorate Building, Near 2nd M.R. Gate, Imphal Dimapur Road, Imphal – 795001.
4. The Deputy General Manager, Tamenglong Division, MSPDCL, Tamenglong District Head Quarter, Manipur – 795141.

… Respondents

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Petitioners	::	Mr. Kh. Tarunkumar, Advocate; Ms. Babita Th., Advocate & Mr. S. Thoi Thoi Meitei, Advocate
For the Respondents	::	Mrs. Momota Devi Oinam, Addl. AG
Date of Hearing	::	**03-02-2020**
Date of Judgment & Order	::	**10-02-2020**

JUDGMENT AND ORDER

[1] Heard Shri Tarunkumar, learned Advocate appearing for the petitioner in WP(C) No.451 of 2019; Ms. Babita Th. learned Advocate appearing for the petitioner in WP(C) No.1070 of 2018; Shri S. Thoi Thoi Meitei, learned Advocate appearing for the petitioners in WP(C) No.1131 of 2018 and Mrs. Momota Devi Oinam, learned Addl. AG appearing for the respondents.

[2] Since the above writ petitions have arisen out of a similar set of facts, the same are being disposed of by this common judgment and order.

W.P. (C) No. 451 of 2019

[3.1] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to release the outstanding amount of Rs.5,48,680/- (Rupees five lakh forty-eight thousand six hundred and eighty) payable to the petitioner within a stipulated period.

[3.2] According to the petitioner, he is a senior citizen and the owner of one diesel jeep bearing registration No. MN01 9501. On 29-03-2003, the Executive Engineer (Elect.), Division No.III, Electricity Department, Government of Manipur (hereinafter referred to as "**the Executive Engineer**") wrote a letter to the petitioner requesting him to lend his jeep for a period of 6 (six) months with effect from 01-01-2003 to 31-06-2003 along with a driver under the terms and conditions mentioned therein. The petitioner was requested to lend his jeep @ Rs. 430/- per day during the aforesaid period and the total amount of hiring the jeep was mentioned as Rs.77,830/- (Rupees seventy-seven thousand eight hundred and thirty). The said letter was written with the approval of the Chief Engineer (Power), Government of Manipur. Similar letters were written by the Executive Engineer on 07-06-2004, 14-06-2004 for the periods from 01-07-2003 to 30-09-2003 and 01-10-2003 to 31-12-2003 respectively and in continuation to the aforesaid letters, the Executive Engineer wrote letters dated 12-04-2006 for various periods from 01-04-2005 to 31-05-2005, 01-06-2005 to 31-07-2005, 01-08-2005 to

30-09-2005, 01-10-2005 to 30-11-2005, 01-12-2005 to 31-01-2006, 01-02-2006 to 31-03-2006, 01-04-2006 to 30-06-2006. Lastly, on 23-12-2006, the Executive Engineer wrote a letter to the petitioner for the period from 01-07-2006 to 31-03-2007.

[3.3] Thereafter, the concerned Assistant Engineer prepared the relevant bills for the aforesaid periods during which the petitioner's jeep was hired and utilized by the Electricity Department in its Electrical Division No.III for its official purpose. All the said bills prepared by the concerned Assistant Engineer were duly verified and were found to be correct. The necessary amounts of rupees for every period of hiring the vehicle of the petitioner were clearly reflected in all the bills prepared by the concerned Assistant Engineer and it was clearly stated therein that the vehicle of the petitioner was utilized by the Electricity Department, Government of Manipur.

[3.4] On 17-05-2014, the Joint Secretary (Power), Government of Manipur issued an order whereby the Electricity Department, Manipur was unbundled into 2 (two) successor companies-(i) Manipur State Power Company Limited (MSPCL) and (ii) Manipur State Power Distribution Company Limited (MSPDCL) with effect from 01-02-2014. The division wherein the jeep of the petitioner was utilized for the official purpose of the Electricity Department felt under the jurisdiction of EE/IED-III of the Manipur State Power Distribution Company Limited. Later on,

the post of Executive Engineer in the Electricity Department, Manipur had been re-designated/renamed as the Deputy General Manager.

[3.5] As the respondents failed to release the outstanding amount in respect of various bills of the petitioner for utilizing his diesel jeep for the periods mentioned in the bills, the petitioner submitted a representation dated 08-10-2018 to the Commissioner (Power), Government of Manipur stating that the aforesaid bills for an amount of Rs.5,48,680/- (Rupees five lakh forty-eight thousand six hundred and eighty) were lying unpaid. Despite the receipt of the said representation being submitted by the petitioner, the concerned authority did not take up any positive step to clear the outstanding bills of the petitioner. Being aggrieved by the inaction on the part of the respondents, the instant writ petition has been filed by the petitioner.

[3.6] No counter affidavit has been filed on behalf of the respondents and therefore, the averments made in the writ petition shall be deemed to have been admitted by them in terms of the decisions rendered by the Hon'ble Supreme Court.

W.P. (C) No. 1070 of 2018

[4.1] By the instant writ petition, the petitioner has prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the order dated 20-06-2018 issued by the Managing Director, MSDCL and also for issuing a writ of mandamus or any other appropriate writ to direct the respondents to make payment of the amount of Rs.1,61,250/-

(Rupees one lakh sixty-one thousand two hundred and fifty) payable to him.

[4.2] According to the petitioner, he is a physically disabled person and the legal owner of the diesel jeep bearing registration No.MN02-5555, on the basis of which the petitioner earned his livelihood. The Chief Engineer (Power), Government of Manipur allowed the officers of the Electricity Department, Manipur including the Executive Engineer, Imphal Electrical Division No.II, Lamphel (hereinafter referred as "**the Executive Engineer**") to hire vehicles for their official purposes and accordingly, the Executive Engineer hired the diesel jeep of the petitioner for the period from 22-10-2005 to 31-10-2006 @ Rs.420/- per day with due approval from the higher authority under different orders issued from time to time as per the detailed mentioned therein.

[4.3] The petitioner presented 5 (five) bills on 21-09-2006 to the Executive Engineer for payment of his bills for an amount of Rs. 1,61,250/- payable to him for hiring his vehicle but the Executive Engineer did not take any interest for making payment of the said amount. Consequently, the petitioner approached the Commissioner (Power), Government of Manipur on 02-07-2013 requesting him to issue necessary instructions to the Executive Engineer for making payments thereof. The Commissioner (Power), Government of Manipur issued an instruction dated 18-07-2013 to the Chief Engineer (Power), Manipur to examine the claims of the petitioner and to take necessary action in

respect thereof. On receipt of the said letter dated 18-07-2013, the OSD (Legal), Office of the Chief Engineer (Power), Manipur sent a letter dated 25-10-2013 to the Executive Engineer to examine and take necessary action accordingly. The Executive Engineer, who actually utilized the vehicle of the petitioner, submitted a letter dated 19-11-2013 to the OSD (Legal), Electricity Department stating that his office had utilized the vehicle with effect from 22-10-2005 to 31-10-2006 and that the claims of the petitioner were genuine ones.

[4.4] Before the aforesaid bills of the petitioner were cleared, the Electricity Department, Manipur was unbundled and corporatized into successor entities-(a) Manipur State Power Company Limited (MSPCL) and (b) Manipur State Power Distribution Company Limited (MSPDCL) with effect from 01-02-2014 and the assets and liabilities of the Department of Electricity were transferred to the said companies.

[4.5] The Department of Electricity wrote a letter dated 07-08-2014 instructing the Managing Director, MSPDCL/MSPCL to examine properly all such claims and the payments thereof be considered by the Company. Since the bills of the petitioner were not cleared by the respondents, he filed WP(C) No.341 of 2017 which was disposed of on 10-11-2017 with the direction that the claim of the petitioner be verified by the Chief Engineer and on completion of the verification, if the amount was found payable, the same should be released in favour of the petitioner in order of seniority. As the respondents did not pay any heed towards

compliance with the said order dated 10-11-2017, the petitioner filed a Cont. Case(C) No.55 of 2018 on 17-05-2018. When the contempt case came up on 16-07-2018, a copy of the order dated 20-06-2018 was placed before the Hon'ble Court with the submission that the order of the Court had been complied with. Although it was submitted on behalf of the petitioner that the order of the Court had not been complied with, the Hon'ble Court was pleased to pass an order dated 16-07-2018 with liberty to approach this Court, if there was any further grievance.

[4.6] On perusal of the order dated 20-06-2018 issued by the Managing Director, MSPDCL, it is seen to have revealed that the Managing Director, MSPDCL treated the case of the petitioner as a contract work executed by him under the Engineering Department and therefore, it was considered in terms of the guidelines formulated in Jatin Pathak's case which is absolutely incorrect. The case of the petitioner is entirely different and therefore, the guidelines laid down in Jatin Pathak's case ought not to have been applied by the respondents. Being aggrieved by the said order dated 20-06-2018, the instant writ petition has been filed by the petitioner.

[5] An affidavit-in-opposition has been filed by the respondent No.2 stating that the orders for hiring the jeep were issued by the then Executive Engineer but no approval of the competent authority was obtained by him. No documents were submitted by the Executive Engineer for utilization of the vehicle viz. verified bills, log book counter

signed by the then Executive Engineer. The utilization of the petitioner's vehicle is questionable and as such, it cannot be said to have been utilized lawfully. The Superintending Engineer is not the competent authority who can give approval for hiring vehicles. A committee was constituted vide order dated 27-02-2018 for examination of the genuineness of the claims/ liabilities with respect to WP(C) No.341 of 2017 and the order dated 20-06-2018 was issued pursuant to the report of the Committee. The claims of the petitioner had been rejected in terms of the guidelines formulated in Jatin Pathak's case. The work order was issued without following due process of law. The administrative approval was accorded by the Superintending Engineer who is not the competent authority to give approval for hiring vehicles.

In the rejoinder filed by the petitioner, it has been stated that the averments made in the counter affidavit that the orders for hiring the jeep were without approval, are totally wrong and misleading as is evident from the documents filed along with the writ petition as Annexure-P/4 (Colly.). The then Executive Engineer reported to the Office of the Chief Engineer on 19-11-2013 that the petitioner's vehicle was used for the period from 22-10-2005 to 21-10-2006. The log book of the vehicle for the aforesaid period was duly countersigned by the officials of the Executive Engineer. The claim of the petitioner is for payment of bills for hiring his vehicle but is neither for construction work nor of supplying items. Since the hiring of the vehicle has been admitted, it is the officials of the concerned Department to obtain financial/ expenditure sanction.

W.P. (C) No. 1131 of 2018

[6.1] By the instant writ petition, the petitioners have prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to clear their liabilities as per the communication dated 05-08-2017 addressed to the petitioners.

[6.2] According to the petitioners, they are the bonafide and law abiding citizens of the country. On 30-04-2016, the Manipur State Power Distribution Company Limited through its Deputy General Manager, Tamenglong Division entered into agreements with the petitioners for hiring their vehicles with effect from 01-05-2016 to 31-10-2016 for a period of 6 (six) months. The petitioner Nos. 1,2,3 & 5 are the owners of the vehicles as mentioned in para 3 of the writ petition, while the petitioner No.4 is the son of Smt. Late L. Prabhabati Devi with whom the agreement dated 30-04-2018 was signed and she is being represented by the petitioner No.4 as legal representative.

[6.3] As per the communication letter dated 05-08-2017, the detailed liabilities of hiring the vehicles belonging to the petitioners have been stated therein. The outstanding liabilities payable to the petitioners are stated in detail at para 6 of the writ petition. In spite of the repeated requests being made by the petitioners, the respondents have failed to make payment of the amounts for hiring their vehicles. The respondents have intentionally and willfully evaded payment by giving empty assurance verbally which prompted the petitioners to submit a

representation dated 22-11-2018 but the respondents did not pay any heed thereto. Being aggrieved by the inaction on the part of the respondents, the petitioners have filed the instant writ petition praying for payment of amounts of Rs.2,37,600/-; Rs.2,37,600/-.; Rs.2,37,600/-; Rs.39,000/- and Rs.2,47,500/- respectively to them.

An affidavit has been filed by the respondent No.2 wherein it has not been denied that the vehicles were hired from the petitioners but it has been stated that the petitioners did not submit/ enclose relevant documents like Registration Certificate (RC) Book of the vehicles recorded in their names. The petitioners have not enclosed a copy of the agreement for hiring the vehicle No. MNA-2992. It has further been stated that the amount payable to the petitioner No.5 for hiring his vehicle from 01-05-2017 to 08-08-2016 was calculated as Rs.2,13,333/- as per the agreement dated 30-04-2016. The liability statement submitted by the concerned DGM cannot be treated as genuine and it needs to be examined by a Committee which was constituted on 28-11-2018.

[7] During the course of hearing the learned counsels appearing for the petitioners have submitted that the common issue involved herein is covered by the judgment and order dated 16-07-2019 passed by this Court in ***WP(C) No.705 of 2018, Kh. Sylvester Vs. State of Manipur & ors.,*** the relevant paragraphs of which read as under:

> *"**[5]** On perusal of the materials on records, it is seen that the petitioner's jeep was hired on the strength of the various letters, filed herewith as Annexure-A/1(Colly.), written by the Executive*

Engineers who were in-charge of the Electrical Division-III with copy endorsed to the Chief Engineer. They were expected to know their duties and functions and were to follow the relevant rules in the discharge of their duties. It is not in dispute that the petitioner's jeep was hired by the Power Department through their Executive Engineers and all that the respondents and in particular, the respondent No.2 have stated, is that the works orders were issued without the prior permission of the authority concerned. The aforesaid letters were written by them and therefore, it is they who can be said to have violated the rules. There is no material on record to show that it is the petitioner who is responsible for the irregularity or illegality committed by the Executive Engineers. There is no allegation of collusion with the Executive Engineers which can be attributed to the petitioner.

[6] *From the materials on record, it may be noted that the fact that a total sum of Rs.2,50,000/- was paid to the petitioner in the year, 2006 & 2009, has shown that the authority concerned was aware of the petitioner's jeep being hired by the Executive Engineers. In the affidavit filed by the respondent No.2, it has been admitted that the approval was granted in respect of two work orders dated 17-02-2009 and 23-03-2009 and if that be so, the respondents cannot be permitted to take the plea that no approval was granted in respect of the remaining work orders. It is hard to believe that the Chief Engineer to whom the copies of the said letters were endorsed, did not know anything about the transaction. It could have warned the Executive Engineers from acting in that manner when the copies of the said letters were received by it. But the Chief Engineer failed to do that and cannot now take the advantage of its own mistake. The respondents appear to have not taken any action against the Executive Engineers who are responsible for such irregular*

or illegal contracts as alleged and reflected in their various letters prescribing the terms and conditions. The State Government being an institution ought to act fairly and reasonably. The manner in which the State Government had taken undue advantage of the service rendered by the petitioner, an innocent citizen, by abusing and misusing their official power, is unreasonable being violative of the provisions of Article 14 of the Constitution of India. Keeping in mind the peculiar facts and circumstances of the present case, this Court is of the view that the petitioner cannot be penalized for no fault of his and therefore, the respondents are liable to pay the amount outstanding payable, to the petitioner and after the outstanding bill being cleared by the respondents, it is open to them to take appropriate action against the Executive Engineers to recover the said amount.

[7] *In view of the above and for the reasons stated herein above, the instant writ petition is allowed and consequently, the impugned order dated 17-03-2018 is quashed and set aside with the direction that the outstanding amount of Rs.14,23,499/- due payable to the petitioner, shall be paid to him within three months from today and in the event of the respondents having failed to pay the said amount within the said time, the said sum of Rs. 14,23,499/- will accrue interest @ 8% per annum. The principal amount with interest thereon shall be paid to the petitioner within three months thereafter from the date of expiry of the earlier three months as directed by this Court. There shall be no order as to costs.***"**

[8] Facts of Shri Kh. Sylvester case are not exactly the same with that of the present cases but are identical for the reason that in the present cases also, the vehicles of the petitioners were hired by the

Executive Engineers, for the periods mentioned therein, who failed to make payments thereof to them and therefore, the contentions of the learned counsel appearing for the petitioners have some force and merit. On perusal of the pleadings, it is seen that the respondents have not seriously disputed the fact that the vehicles of the petitioners were hired by the Executive Engineer. Some objections which have been raised by the respondents, are nothing but afterthoughts to deny the payment of bills. So far as the WP(C) No.451 of 2019 is concerned, since no counter has been filed on behalf of the respondents, the averments made therein have been deemed to have been admitted by them. In WP(C) No.1070 of 2018, the hiring of the petitioner's vehicle was not denied and the main contention is that the administrative approval was not obtained from the competent authority. But the contention appears to have no merit at all for the reason that on perusal of the documents filed along with writ petition, it is seen that the Executive Engineer was allowed by the Chief Engineer (Power), Manipur for hiring the vehicle of the petitioner. Even assuming for the sake of argument that the approval was not obtained by the Executive Engineer, the Chief Engineer (Power), Manipur could have taken action against the Executive Engineer, the moment he came to know about such hiring without authority because copies of the orders were endorsed to him. In other words, the Chief Engineer (Power), Manipur was aware of it but failed to take appropriate action. Since the Chief Engineer (Power), Manipur having failed to prevent its subordinate officers from hiring vehicles, without prior approval, by taking timely action

against them, cannot take the advantage of his own failure and that too, after a lapse of some years. In WP(C) No.1131 of 2018, the objections appears to be that copies of the agreement, the registration certificate etc. were not furnished by the petitioners. These documents could have been obtained by the respondents from them at the time of hiring the vehicles and nothing prevented the respondents from doing that. The objections were raised when the payments were to be made by the respondents which are unfortunate and the Chief Engineer (Power), Manipur appeared to have become wiser, when the issue for payment of the amount arose. From the facts of these cases, the modus operandi of the Electricity Department has surfaced. The respondents and in particular, the Chief Engineer (Power), Manipur appears to have a wrong notion that they could extract the services from the petitioners and after having enjoyed the services rendered by the petitioners, they could run away from the responsibility of making payments and that the petitioners would not be able to do anything in this regard. This wrong notion as well as the callous attitude of the officials of the respondents is highly unfortunate, objectionable and unfair which may warrant disciplinary proceedings against them. The State Government being an institution, ought to act fairly and reasonably and its officials cannot take the opportunity of their official positions to their own advantage. No material has been brought on record by the respondents to show that action has ever been taken by them against such errant officials for their lapses. Considering the submissions of the learned counsels appearing for the

parties and having perused the materials placed on record, this Court is of the view that the issue involved herein is covered by the earlier judgment and order dated 16-07-2019 passed by this Court in Shri **Kh. Sylvester** case (supra) and that the instant writ petitions can be disposed of in terms thereof.

[9] For the reasons stated hereinabove, the instant writ petitions are allowed with the direction that the respondents and in particular, the respondent, Managing Director, MSPDCL shall clear the bills of the petitioners and make the payments thereof within a period of three months from today, failing which the amounts claimed by the petitioners shall accrue interest @8% per annum from the date of the expiry of three months till the date of payment. Consequently, the order dated 20-06-2018 issued by the Managing Director, MSDCL impugned in WP(C) No.1070 of 2018 stands quashed and set aside. However, it is open to the State Government to recover the said amounts from the erring officers after an enquiry being held against them. There shall be no order as to costs.

JUDGE

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WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.02.10 16:16:05 +05'30'