

IN THE COURT OF SPECIAL JUDGE ANTI-CORRUPTION JAMMU

CNR No. : JKJM010003842022
File No. : 361/Ikhtatami/2022
D.O.I : 07-02-2022
D.O.O : 13-08-2024

UT of J&K through P/S ACB, Jammu

Versus

Nemo

Case FIR No. 04/2020 P/S VOJ (ACB), Jammu, U/Secs 5 (1) (c) 5 (1) (d) r/w 5 (2), J&K PC Act, 2006, 120-B, RPC.

Coram :

Tahir Khurshid Raina
(UID No. JK00055)

ORDER

INTRODUCTION

1. *Benjamin Franklin, the proponent of Electricity and Thomas Alva Edison, the proponent of Electric Bulb, are the two illustrious figures in the world history of Science and Technology who have contributed immensely in illuminating the world in its true sense, not only when the dusk sets in, but by wonderfully changing the course of human existence and developments on planet earth. Such a deep impact electricity has on the human survival that sans electricity, even in the broad day light, the existence of humanity will get jeopardized and the pace of development with which the human life is moving will come to a*

grinding halt. The converse of it is that, more the electricity, more shining the human survival.

2. India, as a nation, is of course in its race to become the prosperous and developed nation of the world. To achieve this lofty target, every existing house in the length and breadth of this vast and versatile country has to get illuminated on account of electricity connections and the households to get connected to the world. In furtherance of this noble objective to be achieved, the Government of India in 2017, launched a systematically designed scheme called “**Pradhan Mantri Sahaj Bijli Har Ghar Yojana- Saubhagya**”, focusing on last mile connectivity and electricity connections to all the un electrified households in the country, which was regarded as the world’s acclaimed universal electrification initiative of the Government of India, (GOI). The major goals to be achieved through this scheme were –

- ***Reduced environmental degradation by ruling out the use of kerosene for lightening purposes.***
- ***Improved Educational services.***
- ***Improved Health services.***
- ***Improvement in Communication.***
- ***Improvement in Public Safety and quality of life, primarily for women.***
- ***Increased Employment Opportunities.***
- ***Increased Economic activities.***

3. Now, with this preface, let’s address the subject matter of the instant closure report (Ikhtatami), based on the investigation relating to the allegations of ***double drawal and misappropriation of funds*** by the Executing Agency of the Saubhagya Scheme - the Jammu & Kashmir Power Development

Department, (JKPDD) (*now JKPDCCL*), in the course of its execution in the year 2018, in the erstwhile State of Jammu & Kashmir. The said scheme was later closed by the Government on 31st of March, 2019. Fact remains that a closure report (ikhtitami) has been filed by the Anti-Corruption Bureau (ACB), Jammu, in this regard, as in its estimation, the allegations levelled remained unproved. It's in this context, this court has to decide about the said closure report, based on the material on record.

CONSPECTUS OF THE CASE

4. A *Preliminary Enquiry (PE)* got conducted to look into the allegations against the officers and officials of JKPDD (*now JKPDCCL*), for having made double drawals and misappropriation of more than Rs 500 crores while implementing the centrally sponsored "SAUBHAGYA" Scheme. During the course of PE, it came to fore that said scheme was based on an amount of Rs 1750.00 cores to be utilized for electrification of 188578 un-electrified households in 22 districts of erstwhile J&K State. However, finally as per the DPR, which got uploaded on the "SAUBHAGYA" Portal, the cost of the project was estimated to be Rs 1080.25 crores. The project was scheduled to be culminated in December, 2018. In the PE, in context of the execution of the scheme in district Doda, some lapses were noticed in the implementation of the scheme which in its preliminary estimate were found to have caused loss of around Rs 1,23,95,442/-. A reasonable apprehension was also shown that there might be an increase in the said amount. It was also found that a *Project Monitoring Agency (PMA) viz., M/S Rodic Consultant Private Limited New Delhi*, was engaged

by the Government to oversee the implementation of the scheme. However, on account of its detached and casual approach in inspecting the work and also on account of being in hand in glove with the **Executing Agency JKPDD (now JKPDCI)**, a huge loss to the State Exchequer has been caused.

5. Based on the said PE report, an FIR bearing No. 04/2020 got registered at P/S ACB, Jammu, against the five officers/officials of the PDD and **PMA (RODIC Consultancy)**, namely, (i) **Manhar Gupta (the then Chief Engineer Project Wing Jammu) S/o Late Sh. A.R Gupta R/o 168, Sec-D, Sainik Colony, Jammu;** (ii) **Umesh Parihar (the then Superintending Engineer, EM&RE Circle, Doda) S/o Late Sh. M.R Parihar R/o F-53, Karan Nagar, Jammu;** (iii) **Asgar Hussain (the then Superintending Engineer Circle Doda) S/o Late Sh. Ghulam Mustafa Ishrat R/o Ishrat Manzil Kishtwar;** (iv) **Tasaduq Hussain Sheikh (the then Executive Engineer EM&RE Division Doda) S/o Sh. Gh. Mustafa Sheikh R/o Village Khalu, BPO Bhalra, Tehsil Bhaderwah, District Doda;** & (v) **Surinder Kumar Koul (the then Advisor RODIC Consultant Private Limited New Delhi) S/o Sh. Som Nath Koul R/o 132-F, Krishna Villas, Marble Enclave Extension Sec-4, Trikuta Nagar, Jammu,** for commission of offences U/Ss 5(1) (c), 5(1) (d) r/w section 5(2) of J&K PC Act Svt. 2006 and Section 120-B, RPC. As reflected from the closure report, the investigation of the case was initially entrusted to Inspector Vikram Sharma, IO of ACB, JSK Wing vide entrustment order No. SSP/ACB-J/FIR/20/9/ACBJ dated 05-03-2020, issued by SSsP, ACB JSK Wing. Later, Director, ACB, J&K split up investigation of the case and entrusted probe of the matter to the concerned branch SSsP vide order issued endorsement No.

ACB-FIR-04/2020-J-7506-10 dated 12-05-2020. Vide an evenly dated order issued under endorsement No. ACB-FIR-04/2020-J-7511-14, the Director ACB, J&K, designated Inspector Bandeshwar Singh of ACB JSK Wing, Inspector Raj Kumar Koul of ACB PR Wing and Inspector Bhushan Singh Manhas of ACB UR Wing as part IOs of the case. Prior to this, the investigation of case came to be transferred from JSK Wing to DKR Wing of ACB by the Director ACB, vide order issued under endorsement No. ACB-FIR-04/2020-4422-24 dated 10-03-2020.

6. During the course of investigation, it was found that the said scheme "SAUBHAGYA" was approved by the Ministry of Power, Government of India, vide office memorandum dated 11-10-2017 and in this regard the Ministry of Power also issued operational guidelines for implementation of the said scheme. As per the guidelines, it was the Rural Electrification Corporation Limited (REC), which was to act as the Nodal Agency for implementation of the scheme.

7. As discerned from the closure report and the record attached thereto, for a fair and effective implementation of the scheme, the services of the **Project Monitoring Agency (PMA)** were also utilized and in this regard, after proper notification/tendering, M/S RODIC Consultant Private Limited was engaged as PMA. Accordingly, a contract agreement was signed between the Power Development Department, J&K and the M/S RODIC Consultants vide agreement No. H661294 dated 14-06-20018. As per the allotment and NIT notice, the term of engagement of PMA was for 18 months and scope of the work of said consultancy included - design Engineering, Field

Inspection during execution, Quality Control, Inspection, Testing, Monitoring and over all contract administration, including hand holding of the project from concept to commissioning upto final execution of "SAUBHAGYA" scheme. The services to be delivered by the PMA, inter alia, included – "To recommend the claim of JKPDD for fund release from Nodal Agency and the recommendation is to be supported by a report on expenditure, progress and constraints, if any, for timely completion of the project."

8. As per the terms of the contract between the Chief Engineers, Commercial and Survey Wing, JKPDD, and the RODIC Consultant, executed on 14-06-2018, and as per the **letter of Award dated 27-04-2018**, which was treated as the part of the contract as mentioned in the contract itself, the Rodic Consultancy had to start its work within 30 days from the date of receipt of issue of letter of Award. Therefore, as date of the contract was 14-06-2018, the Rodic Consultancy was supposed to be in the field prior to the month of June to do all that was supposed to be done by it as put in the letter of Award dated 27-04-2018.

9. The star conditions cast upon the RODIC Consultancy as PMA, which define its "**scope**" of functioning, as quoted in the final report, included :-

- **Uploading of final DPRs after receiving it from JKPDD.**
- **Preparation of Tender Document for JKPDD.**
- **Assisting JKPDD in awarding contracts/work.**

- *Assisting JKPDD in preparation of detailed work implementation schedule in association with contractor.*
- *Coordination and monitoring of project implementation activities and monitoring of receipt and issue of materials.*
- *Identification of anticipated bottle necks in project implementation and preparation of remedial action plan in consultation with utilities and contractors.*
- *Recommend the claim of JKPDD for fund release from Nodal Agency.*
- *The recommendation was to be supported by a report on expenditure, progress and constraints if any for timely completion of project.*
- *Submitting a report to Nodal Agency regarding project completion and expenditure incurred along with recommendation in accordance with the guidelines.*
- *To assist JKPDD in supervision of flow of funds in dedicated bank accounts of projects.*

Besides, PMA was to establish its offices including development of requisite man-power and other

requisite infrastructure on field and at state level to ensure smooth implementation, monitoring and to redress grievances of public and public representatives of the project areas.

10. As further discerned from the closure report, for fair and effective implementation of all the Centrally Sponsored Schemes, including “Saubhagya”, a Standard Operating Procedure (SOP) for making payment under Public Finance Management Estimate (PFMC) was also approved by the PDD department vide a Circular dated PDD/VII/Plan/12/2017-2018 dated 03-07-2018. Of all the clauses of the Circular, the most relevant are reproduced here under:

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5. *The PMA concerned as per the scope and the Executive Engineer concerned shall verify the bills technically and financially. The Executive Engineer shall also verify the calculations, deductions, bill of quantities and financial aspects viz-a-viz LOA, Junior Engineer, Assistant Engineer, Assistant Executive Engineer, Assistant Accounts Officer, Divisional clerk shall be responsible for correctness of BOQ, calculations and deductions along with the concerned Executive Engineer. Any variation in quantities/bills shall be got approved from competent authority before submitting to the Superintending Engineer. The verification process shall be completed at the level of Executive Engineer. Duly verified bills complete in all respects shall be*

submitted to the designated Superintending Engineer for uploading the same on PFMS.

6. *The designated Superintending Engineers of Project Wings, S&O Wings and EM&RE Wings shall be the “Data Operators”. They shall register various vendors/Executive Agencies. They shall upload the bills on PFMS portal after proper scrutiny.*

7. *The Chief Engineers of Project Wing and S&O Wing shall be the “Approvers” for the bills after conducting proper scrutiny. For the bills of works which have been assigned to EM&RE Wings for implementation, the respective Chief Engineers of Project Wing shall be the “Approvers” in respective divisions of Jammu and Kashmir.*

8. *Director Finance shall after consultation with Director Planning, generate the advice for payment. Signed hard copy of the advice shall be sent to the bank for payment. The funds from the account maintained by the Director Finance shall be transmitted to bank accounts of the vendors/executing agencies through PFMS. The vendor would be spending the funds as a last node.*

11. The said guidelines were having the mandatory status to be followed in letter and spirit by the concerned Agencies during the course of execution of the “**Saubhagya Scheme**”, being the Centrally Sponsored Scheme, as observed in the closure report as well.

12. For proper implementation of the “**SAUBHAGYA**”, a meeting of the **Techno-Economic Committee (TEC)** was also held

on 17-07-2018, wherein district-wise cost of the scheme was discussed and TEC was accorded an amount of Rs 112372.43 lacs for execution of the scheme in the State with some important conditions like -“TEC” shall not absolve the Executing Agency of adhering to financial codes, technical specification, legal and safety norms, the respective Chief Engineers of various wings of J&K, PDD shall provide feasibility certificate of distribution and transmission capacity to accommodate the additional load, besides, also certifying that works cleared by the TEC are not covered under any other state or central sponsored programmes.

13. As put in the closure report, for implementation of this dream project, the meeting of the **State Level Standing Committee (SLSC)** was held on 05-09-2018 under the chairmanship of the then Chief Secretary of the State wherein the objective of the scheme was deliberated upon and it was resolved to achieve universal household electrification by providing last mile connectivity and electricity connection to all the households in the rural and urban areas of J&K State by 30-12-2018 through financial assistance to Power Development Department, from Government of India (GOI). However, in view of limited working season, especially in far-flung and snowbound areas, the Government had fixed an ambitious target of completion of 100% house-hold electrification by 30-11-2018.

14. As the date of completion of the scheme was extended by the Administrative Department, JKPDD, upto 31-03-2019, an important Circular was issued thereafter on 24-04-2019. The relevant extracts of the same are re-produced as under :-

“1. Claims for only those works, which have been completed before 31st of March, 2019 within the approved DPR, fulfilling 100% parameters/guidelines envisaged in the Saubhagya scheme shall be considered.

2. The Executive Engineers concerned shall certify each bill processed under Saubhagya that no material is lying unused in the field or in the stores and the bill has been processed for only completed works.

3. Any material procured but not consumed in the execution of works under Saubhagya before 31st of March, 2019 or material procured after 31st of March, 2019 (the closure date of the scheme) shall not be debited to the Government Exchequer and shall be the responsibility of the procuring authority. Advance warnings have been given in this regard from time to time in various meetings to all the concerned officers/officials.

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15 It is also reflected from the order (supra) that the JKPDD got the FIRST PRIZE in the country under the special category states for achieving the targets of 100% household electrification in the State, well in advance.

FACTUAL DETAILS

16. During the course of investigation, in the very first instance, the record pertaining to the implementation of the scheme in Electric EM & RE Divisions of Batote, Doda and Kishtwar was obtained and seized from the concerned quarters and seizure memos were prepared which were made part of the record. Later, same were submitted to the Engineering Wing of the ACB for detail scrutiny and report. At the same time, the IOs, alongwith Engineering Wing of ACB, also made spot inspections at the randomly selected sites under "SAUBHAGYA" scheme of various Electric Divisions of Jammu province, including Doda, Batote, Kishtwar, Ramban, Parade(Jammu), Gandhi Nagar, Rehari (Jammu), Vijaypur (Samba), Kathua, Udhampur-Reasi, Rajouri and Poonch.

On my survey of the closure report and the record submitted alongwith the report, what stands revealed in context of various Electric Divisions of Jammu province is briefly put as under for reference:-

ELECTRIC DIVISION DODA

17. As on 26-12-2020, excess material in the shape of poles, transformers, diesel generator, Honda generator, line material was found lying which remained unutilized on 31-03-2019, whereas dead line fixed for completion of the project under the "SAUBHAGYA" scheme was 31-03-2019. Thus the cost of the extra-material procured and extra CGST/SGST/Income tax paid to the vendor under SAUBHAGYA scheme amount to Rs 1,93,13,139/-.

18. One star incriminating fact noticed during the spot inspections in district Doda related to the transformer at Khellani. It was found that 63KVA level-2 transformer was installed during the execution of "SAUBHAGYA" scheme. Though as per the challan form, the said transformer of the cost of Rs 1,15,500/-, was purchased and installed. However, the report is silent as to where was the damaged transformer stated to be installed under the SAUBHAGYA scheme but instead the old transformer was found in place. This fact ought to have been given genuine reason to the IO for investigation of the matter in context of the allegation of double drawal, but the issue has remained un-investigated, as to whether any such transformer was in fact, purchased and installed or not. What about its quality, why it got damaged so early if it is presumed that same was purchased and installed under the Saubhagya Scheme. Though it was not the whole allegation to be addressed, but gave an insight into the allegations of double drawal, mis-appropriation and quality compromise by the Executing Agency.

19. Finally, as per the report of the Engineering wing of the ACB in context of district Doda, the total loss calculated was found to be Rs 1,93,13,139.00. It is also observed in the report (supra) that the concerned Executive Engineer has given Utility Certificate (UC) that no material is lying unused in field or store, though as per the report of the ACB, the unutilized material costing Rs 1,93,13,139/- was quite present in the store. It is also observed that the cost of the scheme exceeded Rs 3.09 crores. It is also observed in the report that no quality monitoring record was placed across the file which was required to be done by M/S RODIC as per the terms of the contract and allotment.

It is further revealed in the report that the bills, amounting to Rs 8,27,90,951/- pertaining to SICOP, and bills, amounting to Rs 9,21,0671/- pertaining to PMM, were not certified by the RODIC but still the payment was made.

ELECTRIC DIVISION BATOTE

20. EW-4051 dated 29-03-2021, pertaining to Electric EM &RE Division Batote, has revealed about the excess material procured and the cost of the said excess material under the SAUBHAGYA scheme was assessed to be Rs 141.64 lakhs. It is further revealed that total claims of SICOP amounted to Rs 1554.27 lacs. However, the Rodic (PMA) has certified vouchers amounting to Rs 274.03 lacs and vouchers/bills of Rs 1280.24 lacs were not certified by the Rodic, but the payment of the same was made.

Similarly, against the total claims of P & MM amounting to Rs 358.89 lacs, the Rodic (PMA) certified the vouchers amounting to Rs 178.75 lacs and voucher/bills amounting to Rs 180.32 lacs were not certified by the Rodic (RMA) but the payment of the same was made.

One important lapse was noticed on the spot by the team. It is revealed that items like *bottoming of individual poles, SAUBHAGYA logo, painting of poles, danger plates and anti climbing devices, have not been installed which were mandatory to be put in place.*

ELECTRIC DIVISION – KISHTWAR

21. Vide No. EW-3978, dated 03-03-2021, unutilized material was found lying in store of the Division. The cost of the

said excess material, procured under the SAUBHAGYA Scheme was assessed to be Rs 363.22 lakhs.

As further revealed in the final report, out of the total claims of SICOP, amounting to Rs 1215.99 lacs, the RODIC had certified vouchers, amounting to Rs 293.72 lacs, only but the whole payment was made. Similarly, against the total claims of P & MM, amounting to Rs 270.00 lacs, the RODIC had certified vouchers amounting to Rs 82-94 lacs and vouchers/bills amounting to Rs 187.14, were not certified by the Rodic but the payment of the scheme was made.

In context of raising and processing of bills/vouchers and the payments made thereon, what stands observed in the closure report is as under:

“...The bills/vouchers were to be physically, financially and technically checked by M/S RODIC Consultants Private Limited who was the designated as Project Monitoring Agency (PMA) for the Scheme but the officers/officials of concerned Electric Divisions have violated guidelines of Saubhagya Scheme by not submitting majority of bills under the said scheme to M/S Rodic Consultants Pvt. Ltd. (PMA) i.e, M/S Rodic Consultants Pvt. Ltd. which was mandatory. The Superintending Engineer of the concerned Circle & Chief Engineer Project wing Jammu have also violated guidelines of Saubhagya Scheme by uploading/approving majority of bills on the PFMS portal without the signatures of the PMA and without conducting proper scrutiny...”

22. It was in this context that around 17 officers and officials of the JKPDD of said district were found to have

committed this lapse as observed in the closure report and the IO of the case has recommended **Departmental Action (DA)** against them.

ELECTRIC DIVISION, PARADE, JAMMU

23. Vide No. EW-3809, excess quantity of material was found unutilized in the store. The cost of excess material, procured under Saubhagya Scheme, was assessed to be Rs 45,33,357/-. During spot inspection of various sites in the jurisdiction of ED-I, Parade, Jammu, it was observed that some items like Energy- meter in some locations, bottoming of individual poles and DTR Station poles, SABHAGYA LOGO, had not been marked/installed which was mandatory as per the Saubhagya guidelines. Moreso, as per the scrutiny of the bills/vouchers, it is revealed that majority of the bills have been uploaded on the PFMS portal without the clarification/authentication/signatures of M/S Rodic Consultants, as observed in the closure report.

Gandhi Nagar

24. Vide No. EW-3704 dated 01-09-2020 & EW-3808 dated 17-12-2020, it is recorded in the final report that during spot inspection of the various sites in the jurisdiction of ED-II, Gandhi Nagar, Jammu, it has been observed that some items like Energy meter, bottoming of individual poles except DTR station poles, Saubhagya Logo, danger plates and anti climbing devices have not been installed which were mandatory to be put in place as per the requirement of the Saubhagya scheme. Some short comings were also noticed i.e., some poles erected in the

paddy field were found inclined due to water-logging, the conductor/cables were not stretched/tightened properly.

It is also revealed that out of excess line material procured amounting to Rs 17,00,186/-, the material of Rs 13,65,017 was still lying unutilized in the store.

Further, as per the scrutiny of the bills/vouchers, it is revealed that a majority of the bills has been uploaded on the PFMS portal without the certification/signatures of the M/S Rodic Consultants Pvt. Ltd., which was mandatorily required as per SOP issued by the JKPDD.

Electric Division-II Rehari, Jammu

25. Vide No. EW-3810 dated 17-12-2020, excess and unutilized material in the form of poles, costing Rs 14,97,502, 18 number of transformers costing Rs 16,18,198 and line material worth Rs 4,52,974 was lying unutilized in the store. Moreover, the scrutiny of the bills/vouchers revealed that a majority of the bills/vouchers was uploaded on the PFMS portal without the certification/signatures of the M/S Rodic Consultants, as put in the final report.

Electric Division-Vijaypur, Samba

26. Vide No.-EW-3811 dated 17-12-2020, excess material costing to Rs 71,31,055/- was procured. Scrutiny of the bills/vouchers revealed that majority of the bills was uploaded on the PFMS portal without the certification/authentication of the M/S Rodic Consultants.

Electric Division-Kathua

27. Vide No.-EW-3812 dated 17-12-2020, based on the statement of the Executive Engineer EM & RE Division, Kathua, excess material, costing Rs 676361/-, was procured against the total procurement cost of Rs 20,25,75,000/-. However, the excess material got utilized in other schemes. Moreover, the scrutiny of the bills/vouchers revealed that a majority of the bills was uploaded on the PFMS portal without the certification/signatures of the M/S Rodic Consultants Pvt. Ltd., which was in violation of the circular (Supra).

28. In context of uploading of bills without authentication and verification by the Rodic and without any verification by the respective SE (**Data Operator**) and the Chief Engineer (**Approver**), in this regard, the investigating agency has observed as under in the closure report as such:-

“All these officers were supposed to know the mandatory provisions of SOP/Guidelines and follow procedure properly as the copy of the Circular has been kept to all concerned. In the light of the Circular, the duty of the Chief Engineer (Projects) Jammu was to scrutinize the bills uploaded by Superintending Engineer, EM & RE Circle Jammu and Kathua but he failed to do so as majority of bills were uploaded on the PFMS portal without the signature/certificate of the PMA i.e. M/s Rodic Consultants Pvt. Ltd. which was mandatory as per the circular mentioned above. Similarly, the Superintending Engineers, EM & RE Circle Jammu and Kathua who were authorized as “Data Operator” of their respective circles failed to scrutinize the bills and as such uploaded the bills on the PFMS

Portal without the required certification with regard to the technical and financial check-up by the PMA i.e. M/S Rodic Consultants Pvt. Ltd. The concerned Executive Engineers/AOs of Divisions of Jammu, Samba and Kathua did not send the bills/vouchers for technical and financial check-up by the PMA i.e. M/S Rodic Consultants Pvt. Ltd which was mandatory as per the above mentioned Circular. As such, a Regular Departmental Action has been recommended against the concerned Chief Engineer (Project) Jammu Superintending Engineers of concerned Circles, Executive Engineers, AEs (stores), JEs (Stores) and AOs of concerned Electric Divisions”.

ELECTRIC DIVISION UDHAMPUR AND REASI.

29. In reference to the spot inspection of the Electric Divisions of the said districts by the Engineering team of the ACB, following facts are noticed and revealed in the final report:-

- The unutilized material was lying at Electric Division store Reasi/Sites, whereas Utilization Certificate (UC) was wrongly issued by the concerned authorities, which clearly indicated that UC amounting to Rs 9374027 were wrongly issued by the then concerned Executive Engineer of ED Reasi for the utilized material which was still lying unutilized in the stores.
- PMA, Rodic Consultant Pvt. Ltd. has authenticated Utility Certificates (UCs) against the bills amounting to Rs 9245852/- for the unutilized material which is still lying unutilized at site/stores.

- The Superintending Engineer of the concerned circle and the Chief Engineer Project Wing Jammu have also violated guidelines of Saubhagya scheme by uploading/approving majority of bills on the PFMS portal without the signatures/certificates of the PMA and also without conducting proper scrutiny.
- The cost of unutilized material lying with the department as per record made available by XEN, M & RE Division Reasi is Rs 795.04 lacs which is loss to the scheme as per the standard guidelines.

However, astonishingly, inspite of all said stark lapses noticed, the ACB has made observation that Departmental Action (DA) has been recommended against the Chief-Engineer (Project Wing) Jammu, Superintending Engineers, Executive Engineers, AEEs (Stores), JEs (Stores) and AAOs of concerned Electric Division.

EM & RE DIVISIONS RAJOURI AND POONCH

30. As per the summary of the various reports on record pertaining to said districts, excess material was procured under the Saubhagya scheme which was found unutilized in stores after closure of the scheme on 31-03-2019. However, ***Utility Certificates*** were found to be given by the Executing Engineers concerned. It was also found that on many of the vouchers, relating to purchase and procurement of the material from SICOP, PMM etc. the Rodic had not certified the same but still

they stood processed on the portal, bills were passed and payments were made.

31. About the PMA, Rodic, the ACB Engineering Wing has made strong observations on account of its poor role in discharge of its responsibilities. Moreso, it has failed to provide the documentary proof whereby to verify that whether the number of Personnel mandated under letter of award were actually deputed by the PMA. The Rodic's negligent monitoring of the real time procurement of the material by not timely raising the red flags to the Executive Engineers of the concerned divisions of JPDCL, thereby resulting into the purchase of excess material than that of actually required. A reference is also made to some of the communications of the Rodic's like of 03-10-2018. However, it has been commented on the said communications of the Rodic that they were quite vague, as they do not pointed out the names of specific divisions where poor quality poles were seen by the PMA officials. Secondly, the scope of PMA also included quality monitoring in which, apart from the Field Quality Inspection of ongoing/completed works, the PMA had also to conduct inspection of factory and joint inspection alongwith the PDD Representatives of material at site on sample (10% basis). Since the PMA had pointed out the poor quality of poles have been received/lifted, it should also have ensured that the said material does not get used at site and get replaced by the standard material. Had the PMA executed its mandated job of inspection of material and thereby rectifying the lacunas, the issue of poor quality material used at the sites would not have arrived at in the first place. It is further opined in the reports that PMA has only revealed the deficiencies with regard to cement

bottoming, muffing, planting depth of poles, straightening of poles, guys, channel size etc. However, it was also its responsibility to have got the deficiencies rectified by making sure that no claims/bills pertaining to those sites gets entertained, unless the executed work meets the standard approved drawings.

32. However, with regard to the payments made during the course of execution of the scheme viz-a-viz the mandate of the Government Circular 03-07-2018, the observations made in this regard, as contained in the final report, are as under :-

“...However, the Circular issued by PDD vide No. PDD-VII/Plan/12/2017-18 dated 03-07-2018 required Project Monitoring Agency (PMA) as per scope and Executive Engineer concerned shall verify the bills technically and financially. These guidelines were mandatory to follow but XENs, AEEs (stores)/T.O to XEN concerned Superintending Engineers of Circle who have been designated as “Data Operator” also uploaded the bills on PFMS portal without scrutiny that the bills have not been vetted by PMA. Chief Engineer, Projects Wing as designated “Approver” also approved these bills without the vetting of RODIC. All these officers were supposed to know the mandatory provisions of SOP/Guidelines and follow procedure properly as the Copy of the Circular has been kept to all concerned...”

33. In view of these incriminating facts, as emerged during the course of investigation before the Investigating Agency, the following officers/officials of Electric Department, J&K, were found to have committed procedural lapses by not following the

SOPs/Guidelines of the Saubhagya scheme as put in the closure report :-

1. **Shri Manhar Gupta** S/o Late A.R Vaid R/o H.No. 168, Sector-D, Sainik Colony, Jammu, the then Chief Engineer, Projects, Wing, JPDCL, Jammu.

2. **Shri Umesh Parihar** S/o Late Shri M.R Parihar R/o F-53 Karan Nagar, Jammu, the then Superintending Engineer EM & re Circle Doda, JKPDD. (Now retired)

3. **Shri Asgar Hussain** S/o Late Shri Ghulam Mustafa Ishrat R/o Ishrat Manzil, Kishtwar, the then Superintending Engineer, Circle Doda, JKPDD. (Now retired)

4. **Shri Tasaduq Hussain Sheikh** S/o Sh. Ghulam Mustafa Sheikh R/o Village Khalu, BPO Bhaira, Tehsil Bholderwah, District, Doda, the then Executive Engineer EM & RE, Division Doda, JKPDD.

5. **Surinder Kumar Koul**, the then Advisor RODIC Consultant Private Limited New Delhi S/o Shri Som Nath Koul R/o 132-F, Krishna Villas, Marble Enclave, Extension Sec-4, Trikuta Nagar, Jammu and others.

34. **However, as to whether these lapses amount to a crime or a mere violation of some SOPs, entailing Departmental Action (DA), will be dealt with separately to reach to a fair conclusion.**

OBSERVATIONS OF THE COURT

35. On the basis of the aforesaid facts, as revealed in the preceding discussion and on the basis of the perusal of the record of the case, as submitted by the ACB, alongwith the instant closure report, I like to make the following observations on the subject :-

(i) Some complaints were lodged to ACB, Jammu, and to the Governor office against the execution of the said scheme in the erstwhile State of Jammu & Kashmir, wherein, the primary allegations against the officers/officials of JKPDD Department were of misappropriation of Rs 500 crores of public money involved in the execution of the said scheme and also of double drawal by the said officers/officials. However, at the very outset, I state that of my whole survey of the closure report and the records, I have not found the allegations of the double drawals to have been specifically addressed during the course of investigation. It was quite significant to have investigated this allegation, for this stark reason that before the start of "**Saubhagya Scheme**", three other Central schemes, like **PMDP- Rural, DDUGJY and RGGVY-II**, relating to the electrification of the households were already in operation in the State. In this context, the mandatory requirement of the "**Saubhagya**" scheme, to have put **logo** of Saubhagya or Saubhagya name plates, on the material procured was quite indispensable. Had this requirement been complied with, the work done under this scheme

would have got tangibly distinguished from the work done under any other scheme. This issue gets further fortified from the **Circular dated 08-04-2019**, issued by the Administrative Department JKPDD, whereby a report was sought from the Chief Engineers to work - out the quantum of work executed under various other schemes like PMDP- Rural, DDUGJY, RGGVY-II, during the period of "Saubhagya" scheme, which was required to be separated from the work executed under Saubhagya.

(ii) However, it has clearly come in the Closure Report that no such logo/name plate of **"Saubhagya"** was found installed at any such site or on the material procured and installed, if any, under the **"Saubhagya"** scheme. The Investigating Agency, however, has not recorded the reasons of not getting the said logo installed by the Executing Agency as was mandated under the **"Saubhagya"** scheme. Apart, if the Executing Agency, as reflected from the record and the closure report, had procured excess of material for execution of the scheme, then what prevented it from installing the **"Saubhagya logo"** on the said procured material when logo would not have cost much, rather minimal as compared to the cost of the excess material procured and remained unutilized. As no reason is on record, it can be safely inferred in the facts and circumstances of the case that either some work is done in name only under the Saubhagya Scheme or if done, was not of any quality to be

showcased and the bills were raised for the work done under the Saubhagya Scheme. Even the PMA (Rodric) has not seriously raised this issue as was expected and required from it in terms of the duty cast upon it as envisaged in the contract and the letter of Award etc. Thus, the issue of allegations of double drawal remained obscure and could not get unveiled during the course of investigation, for the reasons best known to the Investigating Agency.

(iii) During the course of investigation by the ACB, relevant records from various Electric Divisions of Jammu province were seized and thereafter scrutinized by the Engineer Wing of the ACB. It has been prominently revealed in the closure report that majority of vouchers/bills raised by the Executing Agency have not been routed through Project Monitoring Agency (PMA), the Rodic Consultancy, which was the mandatory requirement of the execution of the scheme on ground **(For reference Clause 5 of the Circular dated 03-07-2018)**. Even some of the bills were partly verified and certified by the Rodic, but still the Executive Engineers PDD of the concerned Electric Divisions, forwarded all the claimed bills to the Superintending Engineers concerned who, while acting as the **“Data Operators”**, uploaded the same on PFMS Portal without proper scrutiny. The bills got processed and payments were made without any verification at any level as required by the Government Circular (supra). Further, the Chief

Engineer of the Project Wing, who was the “**Approver**” of the bills, without doing the proper scrutiny of the bills as required by the order (supra), finally approved the bills. With the result, majority of said vouchers/bills got uploaded, processed, passed and payments made in serious violation of the mandate of the scheme and the Circular.

(iv) However, it is also mentioned in the closure report that the PMA wrote to the Nodal Officer Saubhagya (Chief Engineer M & RE Wing) vide letter No. RODIC/Jammu/Power/Saubhagya-JK/179 dated 21-01-2019, mentioning that bills were being raised and the payments were being made to **Project Implementing Agency (PIA)** without proper authentication by the **RODIC (PMA)**.

(v) A strong adverse inference can be drawn against the PMA, (Rodic), which was supposed to raise the red flag at the relevant time when the violations were first noticed and not at the fag end of the execution of the same, when the maximum payments were already made without its certification and authentication. The Rodic seems to have remained conveniently silent on this violation being sustained un- checked. I have not found any cogent explanation in this regard from the Rodic except of a reference to this delayed communication (supra) on the record, seem to have been created, just to have an escape route from any liability, if fixed tomorrow at any stage against the Rodic. However, not raising the concern by

the Rodic, as was supposed to be raised by it at the relevant time, is not possible unless of some illegal considerations to have exchanged between the Executing Agency and the Rodic.

(vi) The Executive Engineers, when confronted by the Investigating Agency with regard to raising of the bills without certification/authentication by the PMA (Rodic), have categorically stated in their replies on record that they were absolutely having no knowledge about said requirement to be complied with for raising and processing the bills of the work executed under Saubhagya. **That, they came to know of it only when Chief Engineer, Project Wing, Jammu, vide communication dated 11-05-2019, had issued the following instructions to be complied with like - Get the bills/claims of the executed work certified/checked and authenticated by M/S Rodic physically, financially and technically, that the said claim is well within the approved DPR, that the work has been completed before 31st of March, 2019 and no material is lying unused at site or in store.**

(vii) A very pertinent question arises that if the Executing Agency, from the level of the Executing Engineers to the Chief Engineers, was not in the knowledge of the requirement of the certification from PMA on the bills/vouchers for their final passage, as falsely claimed by them in their replies which is part of the record and they got the knowledge of it only on issuance of an Order/Communication of the Chief

Engineer, Project Wing, dated 11-05-2019 i.e., after closure of the scheme, then how come they got certification of the Rodic on some bills as reflected from the record, which were even raised prior to that of 31st of March, 2019 and payments were made.

(viii) In this context, I called the IO of the case to explain this issue and the explanation which he gave in this regard was quite startling. As per IO, after issuance of the Government order 24-04-2019, whereby the Government demanded UCs from all the Executive Engineers, followed by the order dated 11-05-2019, issued by the Chief Engineer, Project Wing, Jammu, whereby the certification of Rodic was also made necessary for sustaining the bills on the PFMS portal, the Executive Engineers in connivance with the Rodic then created the **Utility Certificates (UCs)**, attached them with bills, got them certified from Rodic and uploaded them afresh to get these bills processed, passed and payments were made. This fact also stands fortified by the replies on record of some of the **Rodic Consultants** and of the officers of the **Executing Agency (PDD)**.

(ix) Thus, the Executing Agency, JKPDCCL, which includes Executive Engineers, Superintending Engineers and Chief Engineers, as recognized under the Circular dated 03-07-2018, in connivance with Rodic, created **false documents** like – **Utility Certificates** of various Electronic Divisions, mentioning therein that the entire material stands utilized and

nothing is left in store, which was quite contrary to the factual position on ground as mentioned in the catena of reports of the Engineering Wing of the ACB on record. Thus UCs were clubbed with the bills as reflected from the record, got them certified by the Rodic, and the bills got processed and passed on the portal and payments were made.

(x) This is how the compliance was shown by the Executing Agency and the Rodic to the orders (supra), which clearly constitutes criminality on the face of the record i.e. of creating false evidence and using that for getting the claim processed on the portal for the payments to be made.

(xi) What further exposes the stand of the Executing Agency about its claim of having no knowledge of the requirement of PMA certification on bills is concerned and which is rightly rejected by the Investigating Agency as well for the very simple reason that the Circular dated 03-07-2018, issued by the Government of Jammu and Kashmir had clearly mandated the relevant authorities of the Executing Agency of the Saubhagya to have got the bills/vouchers physically checked, verified and authenticated by the PMA, so far as the payments to be made under all Centrally Sponsored Schemes are concerned, including that of Saubhagya. Therefore, if Executing Agency had any doubt in this regard, it should have got it cleared from the Government or

from the Rodic, at the very inception of the execution of the scheme.

(xii) More so, if during the course of execution of the scheme, the bills were being raised without the authentication of the PMA, then why the Chief Engineer Project Wing, Jammu (*approver*) remained silent to the issue and did not stop the processing of the bills on portal well in time to have avoided this serious breach of the guidelines and the Government Circular in this regard. It looks that he allowed this all to happen and then after closure of the scheme and release of maximum payments by virtue of uncertified vouchers, created a documentary evidence of his escape route from any liability by issuing an order dated 11-05-2019, directing the Executive and Superintending Engineers to comply with the guidelines with regard to authentication of bills by PMA. Had the **“Approver”** (Chief Engineer Project Wing) been honest to the implementation of the Circular (*supra*), he should not have waited for the violation to continue with impunity during the execution of the scheme and after its closure, and on one fine morning, arose from the deep slumbers and conveyed his concern to the officers on field to follow the guidelines. But more importantly is that even while conveying his concern by virtue of his communication 11-05-2019, he is categorical in his ***direction to the “future raising of the bills to be certified by the Rodic”.***

(xiii) Here, it is quite apposite to mention that the authentication/certification of the said vouchers by the Rodic had a lofty purpose to be achieved. It was to ensure proper procurement of the material, its quality, quantity, actual requirement and finally its actual and appropriate use on the ground at the relevant time and then only to authenticate the bills of the work done. But once Rodic is not signatory to all sort of bills at the relevant time, it clearly means Rodic was not on the ground, as is fairly opined by the Engineering Wing of the ACB in its various reports on record. Thus, what is safely inferred is that the Rodic was not acting as a watch dog of the execution of the scheme on ground as was enjoined upon it and later, after issuance of the communication of the Chief Engineer dated 11-05-2019, and the Government order dated 24-04-2019, came on the scene and authenticated the bills and Utility Certificates, illegally, for sustaining the claim of the Executing Agency based on the said bills. This is how Rodic became part of this sham game plan, orchestrated for sustaining the bills and the payments, whereby the entire public money involved in this scheme got finally utilized in this illegal fashion.

(xiv) When the PMA (Rodic), which was primarily meant to vouch for the proper implementation of scheme and proper utilization of the funds involved in the scheme, is itself in the dock, how come one acknowledges that the scheme has got executed on

the ground in its true sense. More so, when both PMA and PIA are found to be in hand in glove in creating false evidence, it clearly means, that the execution of the scheme on ground was a hoax, amounting to brazen misappropriation of the public money involved in it.

36. Thus in the facts and circumstances of the case, as stand unfolded, it gets crystal clear that the Executing Agency, JKPDC, deliberately and intentionally avoided the PMA Certification, by bringing the PMA on board, may be on account of some illegal considerations, and this is how the proper utilization of the huge public money involved in the welfare scheme, prima facie seems to be compromised by all the concerned Agencies. On this premise, violation of PMA Certification, authentication and verification does not amount to a mere violation of a guideline but amounts to criminal misconduct by the public servants as defined under the Prevention of Corruption, Act, 2006.

EXCESS/UNUTILIZED MATERIAL

37. It is a stark reality that excess material was found lying in the stores and sites even after closing of the scheme on 31-03-2019. Why the excess material on ground was lying? Why the Executing Agency and the Rodic procured the excess material without taking into the following factors into consideration, like - the time span meant for executing the scheme, the exact requirement based on proper assessment of the target area and the households therein, the weather situation, the mountainous and tough terrain of the target areas etc. At the same time, it exposes the **Rodic Consultants,**

which was to act as a watch dog, a guide, a supervisor and a hand-holder, right from concept to culmination of the scheme.

If the material was procured without its consultation by the Executing Agency, it was a serious intentional lapse committed by the Executing Agency which caused loss to the scheme and the State exchequer and the Rodic should have strongly opposed the move at the very inception. And if it was procured by the consultation of the Rodic, it reflects its rank inefficiency, amounting to cause an intentional loss to the scheme. So, both ways Rodic cannot get absolved of the liability of procurement of excess material which caused loss to the scheme and the public exchequer. ***However, what would have been the status of this unutilized material on ground, in the light of the Utilization Certificates (UCs) given by the Executive Engineers and accepted by the Government, if this blatant lapse would not have seen the light of the day by virtue of a Preliminary Enquiry conducted by the ACB. The consequence is obvious.***

U-TURN OF THE GOVERNMENT.

38. As stands sufficiently addressed in the foregoing paras about the sham and illegal compliance of the Government order dated 24-04-2019 and that of the Chief Engineer, Project Wing, Jammu, dated 11-05-2019, by the Executing Agency on the ground, the Government, however, did not take action against the procuring authorities as mandated in the order (supra) and all sort of payments were made by the Government based on the bills created by the false evidence. However, on **25-06-2019, based on some Source Information Report (SIR)**, the ACB Doda, Camp Office, Jammu, recommended **Preliminary Enquiry (PE)**

into the alleged mis-appropriation of **Rs 500 crores of Saubhagya Scheme** in the State of Jammu & Kashmir. On **27-06-2019**, it was commenced by the ACB, Jammu. What is ex-facie inferred that when PE started picking up and reaching out to the areas where this scheme was claimed to have been implemented by the Executing Agency and the things started getting unfolded on the ground, the Executing Agency and the Government seemed to have got perturbed about this unexpected situation, having potential to expose the execution of the scheme on the ground and **even the credibility of the "FIRST PRIZE", received by the JKPDD from GOI by putting claim of successful execution of the Saubhagya Scheme, that too, well before the closing date of the Scheme on 31st of March, 2019, seemed to be at stake.** Thus, what looks to be, that the Government of Jammu & Kashmir, Power Development Department, the Executing Agency and the PMA, to avoid any such piquant situation which may expose the whole tall claim of successful execution of the Saubhagya Scheme, immediately called the meeting of **SLSC** on 16-09-2019, wherein it was resolved that 100% household electrification on-grid and off-grid in the State had been achieved at a total work done cost of Rs 678.80 crore. SLSC approved the revised DPR (based upon actual work done) of total cost of Rs 678.80 crore. In addition, matter should be taken up with the Ministry of Power, Government of India, for funding the amount of Rs 55.29 crore (the cost of unutilized material). The unutilized material shall be consumed by taking-up the execution under the State plan. It was followed by another meeting of SLSC on 21st of October, 2019, wherein it was further resolved that unutilized material, amounting to Rs

55.29 crores, shall now be utilized for creation of additional infrastructure under Saubhagya Scheme.

39. This is how the mandate of the earlier Government order dated **24-04-2019** got diluted to the hilt by the Government itself whereby it was ordered that **“any material procured but not consumed before 31st March, 2019, shall not be debited to the Government exchequer and shall be the responsibility of the procuring authority”**. Accordingly, no action was taken in this regard and this is how the Government seems to have taken a **U-turn**, just to shield the authorities responsible for causing loss to the scheme and thus frustrated the ongoing enquiry and investigation by the ACB in this regard. And of course it did yield the results to the Government and to the Executing Agency and the PMA as the IO of the case, inspite of narrating all the incriminating facts in the closure report, finally took recourse to the said order of the Government and condoned the criminality committed by all the relevant executing agencies as that of the mere violation of the Government guidelines, with no loss to the State Exchequer and thus recommended a Departmental Action (DA) against the errant public servants of the JKPDD and the Rodic Consultancy and culminated the investigation into the instant closure report.

40. Even I enquired from the Ld. APP of the court about the fate of the said so-called recommendations of the ACB to the Government viz-a-viz Departmental Action (DA). The response of the APP was that no such action was taken by the Government. Though the pure criminality cannot be treated as mere violation of the guidelines, inviting Departmental Action, as recommended by the IO, but, even that is not taken by the

Government against the accused public servants till date. However, if pendency of the Closure Report, if presumed to be, was an excuse in not initiating the Departmental Action as recommended by IO, that is completely a wrong approach as the settled law on the point is that **Departmental proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.** But, in reality, the Government has consciously not taken any Departmental Action (DA) against the accused for the simple reason that ***they all seem to be on the "same page"***.

COMPLAINTS ON RECORD

41. While perusing the record, I found few complaints on record, addressed to the office of his Excellency, the Governor of Jammu & Kashmir, and to the ACB. In one of the complaints from District Kishtwar carrying a particular name and address of the complainant, it was alleged therein that PDD officials electrified some far-flung areas of the Kishtwar by installing generators and took photographs in this regard. However, after March 2019, the generators were shifted by the said officials of the PDD to their respective homes and now the areas are without electricity. But amazingly IO could not find any such complaint in the said record and hence no investigation in this regard was conducted.

42. In another complaint from a denizen of village Sheikhpura, Doda, with his full address given thereon, it was alleged therein that mis-appropriations had been committed by the PDD department in the execution of the Saubhagya scheme.

He has stated therein that he even approached PDD officials at Doda under the RTI to know about the details of the Saubhagya scheme. However, same was denied to him with an assurance given by the Executive Engineer PDD Doda that within one month's time the project will be completed and the electricity supply shall be provided to the complainant and other inhabitants of the said village. However, the investigation is silent on the issue. This complaint is also the part of the record, but IO could not lay hand on it during the course of investigation.

43. It was legally and ethically enjoined upon the IO to have taken note of these complaints during the course of investigation as the complaints were part of the record and the investigation in the case was with regard to misappropriation of the public money involved in the "**Saubhagya**". Therefore, IO ought to have summoned the said complainants and recorded their statements U/Sec 161, Cr.P.C or got their statements recorded u/sec 164-A, Cr.P.C and should have drawn his satisfaction, based on the investigation in this regard. However, IO, for the reasons best known to him, remained conveniently blind to these complaints on record and ignored the same.

44. While these complaints, which are part of the record remained un-noticed to the IO of the case, **but on the other hand a complaint sent by a political leader, forwarded by the DO letter of the Advisor to the Governor, and sent to ACB against the investigation being done, alleged to have caused harassment to the PDD Engineers, who have executed the Saubhagya Scheme successfully, was given an extraordinary weight by the ACB that it got circulated among all the IOs of**

the case and the SSsP, ACB, of all the Wings of Jammu province, for according due consideration.

45. This is how the IO of the case came to the conclusion that if some violations had taken place, they were just low profile violations of the guidelines for which he finally recommended Departmental Action (DA) against the officers/officials of the PDD and this is how the investigation in the alleged fraud of huge public money coupled with criminality on the face of the record was culminated into the instant Closure Report.

46 CONCLUSIONS DRAWN

- The execution of the “Saubhagya Scheme” prima-facie seems to have not been carried out as envisioned, desired and designed by the Government of India (GOI). All the mandatory SOPs, as envisaged in the Saubhagya schemes and in various Circulars, issued from time to time by the Government of Jammu and Kashmir, prima-facie seem to have been observed, by all the relevant authorities, more in breach than in compliance. The Executing Agency (JKPDCL), the Project Monitoring Agency (PMA), and even the Government seem to be on same page so far as the shabby and illegal execution of Saubhagya scheme on ground is concerned. Rodic and the PDD officers and officials, through their criminal conspiracy, fabricated false evidence by way of creating Utility Certificates and

bills, endorsed by the Rodics without its requisite authentication as per the actual work executed on the ground at the relevant time as was mandatorily required. These bills were uploaded and sustained on the PFMS portal, leading to the release of payments in favour of the beneficiaries. Such an illegal action could only have been orchestrated successfully if all these entities-Rodic, Executing Agency, and the Government were in collusion on account of some illegal considerations, which amounts to **criminal misconduct under the PC, Act, 2006.**

- Therefore, in the light of glaring incriminating facts on the record, all the said Agencies are criminally liable for commission of offences like misappropriation of public money, creating and using of false evidence and criminal conspiracy read with the offence of criminal misconduct as defined under the Prevention of Corruption Act, 2006.

47. Accordingly, this court rejects the instant closure report which has exonerated the concerned public servants, involved in the execution of Saubhagya Scheme in Jammu province, from any criminal liability and only recommended Departmental Action (DA) against them to the Government for committing some low profile violations of the guidelines. Let this message go to such Investigating Agencies which want to

treat the court as the dumping ground of their sham and motivated investigations, to simply get a seal of endorsement on them, that though there is a symbolic band on the eyes of goddess of justice, but judge sitting in the court is not blind. He will see the material placed on record with open eyes and judicial mind to reach to his own conclusions.

DIRECTIONS OF THIS COURT

48. Though, this court is well within its powers even to take cognizance of the offences seem to have been committed by the accused and proceed against them, based on the instant closure report filed by the ACB. However, on account of lack of some technical evidence on record, which the IO has conveniently not collected, this court just defers the cognizance and directs the Investigating Agency to place the following evidence on record by virtue of further investigation, to be done in the case as mandated U/Sec 156 (3) r/w Sec 173/8 Cr.P.C, enabling this court to proceed against the accused on account of their criminality on record. The steps to be taken by the ACB during further investigation in this regard are as under :-

(i) Collect the specimen/admitted signatures of all the officers/officials of the JKPDD who have signed on the Utility Certificates and send it to FSL for the expert opinion and FSL is further directed to do the needful with all promptitude.

(ii) Enlist all the concerned who have created and used these documents at all levels and got

released the payments. Their full details be collected and placed on record with their specific roles they played.

(iii) Collect the details of all the bills authenticated by the Rodic by attaching said UCs for payments based on the said bills. Also get the details of the representatives of the Rodic who have signed on such bills. Their specimen signatures be taken and sent to FSL for expert opinion. Also collect the details of bills which were not certified by the PMA and the payment made.

(iv) The statements of all the complainants be recorded under section 161 Cr.P.C and be placed on record. Also, if possible, investigate in context of their allegations.

(v) To investigate as to who were the people engaged by the Rodic in the field who monitored the execution, and record their statements in context of working of PMA and the Executing Agency on the ground.

(vi) Record the statements of all the Engineers who remained associated with the ACB and are signatory to the reports on record. Also record the statements of the staff which was accompanying them during the spot visits of various Electric Divisions.

(vii) Record the statements of the officials who were Incharge of the stores where the excess material were found lying and also of those who were associated in the execution of the scheme on ground.

(viii) Record the statements of said witnesses who will state about the process of tendering, quality of material procured and their utilization on the spot.

(ix) Deliver a questionnaire to the concerned authorities of the Administrative Department of JKPDD who were posted there at the relevant time to know from them as to why they failed to check the violations/misappropriation at the very first instance and allowed to sustain them which has severely affected the execution of scheme on the ground and caused loss to the public money.

(x) That why the concerned authorities took the U-turn and did not take action as contemplated in the Government order dated 25-04-2019, against the executing authorities, responsible for lying of excess/unutilized material of huge cost in the store and sites and created false Utility Certificates for sustaining their claims.

(xi) Why they started the scheme so late in the State as compared to other States and closed the same on 31st of March, 2019, when lot of excess and

unutilized material was lying in the stores and sites in various Electric Divisions of the Jammu province. More so when the scheme was still in execution, material was lying unutilized, then on what basis they submitted their claim before the Government of India that the Saubhagya Scheme has achieved its target of 100% electrification upto the last mile of the State of Jammu and Kashmir.

(xii) Whether the Administrative Department got any documentary evidence in this regard from Executing Agency and PMA before submitting any such claim to the Government of India. If yes, who were the officers who were signatory to such certificates of successful completion of the scheme and based thereon they have set their claim before the GOI and got the first prize. If there is any such evidence, the same be seized through a seizure memo.

(xiii) Why the Government did not take Departmental Action against the errant officers/officials of the JKPDD as recommended by the IO of the case in the instant closure report.

All these questions are just illustrative and not exhaustive in nature and IO is at liberty to frame any other question/questions to be put to said authorities who were then at the helm of affairs, as required for the fair investigation to be done. The

role of all such officers at the administrative level be investigated and placed on record, along with the conclusions drawn of the same.

49. *Last but not the least, to address with all seriousness, the completely un-addressed allegation of double drawal in the earlier investigation which will also expose the execution of any work done under Saubhagya on the ground as per the DPR. Let it be done 'not' on the house to house basis, which will be a time taking exercise, rather on randomly basis, a sudden and surprise check of few areas of different Electric divisions of Jammu province, just to draw a fair conclusion as to whether Saubhagya Scheme was really executed on ground and to which extent the allegations of the double drawal sustains .*

50. *Besides, the investigating agency will be at liberty to address all such issues which will help the court to navigate successfully in the quest of justice to prevail to its fullest in the case. Let the further investigation, as directed, be conducted through a **SPECIAL INVESTIGATION TEAM (SIT)**, to be headed by an officer of an impeccable integrity, of the level of an SSP. The SIT, constituted by the Director ACB J&K, forthwith and copy of the order regarding constitution of the SIT be submitted to the court instantly. Let the copy of this order be served to the Director ACB, J&K, for compliance, through Ld. APP of this court.*

51. The further investigation be completed within a period of two months. During the course of further investigation, SIT shall be at liberty to take any document from the record of the

case already submitted by the ACB in this court on laying a special motion in this regard.

52. Let the status reports of the further investigation be filed before the court on fortnightly basis.

Put up the matter for further considerations on

14-10-2024.

Announced
13-08-2024

(Tahir Khurshid Raina)
Special Judge Anti- Corruption
Jammu