

Two former PDP ministers' candidature doubtful with no Audit Clearance over road case

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The People's Democratic Party (PDP) may lose two of its senior candidates in the form of former minister Dorji Choden, who headed the Ministry of Works and Human Settlement and Namgay Dorji who headed the Finance Ministry.

The two former ministers are charged in an abuse of function case by the Anti Corruption Commission (ACC) based on an audit case forwarded to them in June 2020.

The ACC is seeking a restitution of Nu 10 mn from the Nu 40.98 mn paid to the Empire Construction contractor for doing only 30 percent of the works on the 2.5km rocky stretch of Dzongkhalum awarded to the company on competitive bidding.

Dorji Choden here has said that the Mangdechu Project had underestimated the works as they wanted a 10-meter-high cutting with half tunneling, but the unstable slope meant 100 meters' height had to be cut and so the 30 percent of the works cost was more than 100 percent of the works estimated amount.

Since the company was falling behind the formation cutting schedule that could delay the start of the MHPA project, the Ministry of Works and Human Settlement and the contractor mutually decided to terminate the contract in October 2015. The contractor who had around 10 months still left agreed to give up the work on the assurance he would be given another work of similar value directly without bidding.

Then in lieu of the work that was surrendered the then MoWHS Minister Dorji Choden proposed for the direct award of work of the 2.75 km Nobding-Dungdungnesa road widening project to Empire Construction at Nu 39.40 mn. The former Finance Minister Namgay Dorji who looks after procurement rules approved this direct bid.

Here the ACC has charged the two former ministers and also the former MoWHS Secretary Phuntsho Wangdi with abuse of function under section 59 of the ACC Act for the direct award of the work. This is a misdemeanor charge.

Namgay Dorji said that section 105 of the Public Finance Act and section 4.2.5.2 (g) of the then Procurement Rules both allow for direct award of work in such urgent cases.

A source in the Royal Audit Authority (RAA) said that once the audit memo originates from the RAA an audit clearance is not given until the issue is resolved. The only way for the former ministers to get the audit clearance is if the OAG and ACC agree to drop the case or if a court says they are innocent.

An audit clearance is a mandatory document required by the Election Commission of Bhutan (ECB) to register a candidate for the national assembly elections.

However, Namgay Dorji here said that in the 2021 Local Government Elections the audit clearance of nine LG candidates had been rejected based on ongoing ACC cases against them, but later it was reinstated.

He said the same standards should apply to him and Dorji Choden as they are not proven to be guilty or convicted.

At the moment, the PDP has not discussed the issue of what will happen if the two candidates cannot contest and if there can be back up candidates given that a political party cannot contest without all 47 candidates.

The PDP President Dasho Tshering Tobgay said, “We don’t need a back up plan because both are former ministers and they are innocent. They discharged their duties to the best of their ability in the interest of the country and people. If anything they did their duty as expected of them.”

Currently the PDP’s main line of argument is that the two former ministers were never informed about the audit memo and were not given a chance to thus reply and attempt to clear the memo.

To this effect PDP wrote to the RAA asking for a chance to explain their side on the memo with the main basis that the two former ministers never knew.

A senior RAA official told this paper that the Audit exit meetings were held in 2018 when the ministers were still in office.

Dorji Choden also acknowledged this and said that while meetings were held then the discussions were at the ministry, Department and Regional Office level and there was no talk of ministers being held directly accountable.

The senior RAA official said that RAA has nothing to do with the fixing of accountability as the accountability on the former ministers and former MoWHS secretary Phuntsho Wangdi were fixed by the Ministry of Works and Human Settlement before the report was issued in 29 May 2019.

The MoWHS fixed the accountability on the two former ministers based on a signed statement by the regional Chief Engineer.

The RAA which has the power to overrule such fixing of accountability if it is not correct did not object to the fixing of such accountability and accepted it.

The official said section 192 of the Audit Rules and Regulations says, ‘Accountability statement duly signed by the head of the audited entity shall be furnished to the Authority within the stipulated timeframe.’

On the issue of the two former ministers not being made aware the senior RAA official said here again as per the Audit Rule section 195 it is the job of the head of the audited agency to intimate all concerned individuals who are held accountable immediately upon receipt of the audit report.

The RAA official said the report is normally issued to the head of the agency which in this case is the MoWHS Minister Dorji Tshering.

This reporter attempted to contact the minister three times and even messaged him but there was no response.

Copies of the report were also given to the MoWHS Secretary, Finance Secretary, Director of Department of Roads, Director of Directorate of Services and Chief Engineer of the Regional Office (*see separate story on the Audit report on Pg 1*).

The PDP President said, “Its normal that RAA will have observations which is quite common but their observations are theirs and those against whom the observations are made are always given a chance to explain themselves. In this case we need to ask why weren’t the two ministers given an opportunity to explain themselves. RAA gives the right to reply in all cases but it was not given here as the observation was kept away from the ministers who were not even aware about it.”

Namgay Dorji said that a copy of the RAA report sent to the MoWHS should have been sent to the Ministry of Finance but despite it being such big ministry no one even informed him via phone call or letter on such an observation.

Namgay Dorji said that if they had been made aware about the findings by RAA or the two ministries in 2019 then they could have replied with all the necessary documents and evidence and if necessary even engaged in legal proceedings but he said the timing now is very awkward as it comes just two months away from the election period.

He said if the RAA is saying that the head of MoWHS which is the minister should have informed them then they will approach the minister asking for a chance to explain the memo.

While the RAA issued the report to the then MoWHS on 29 May 2019 it decided to forward the issue to the ACC a year later in June 2020.

The senior RAA official said that once the report was issued on 29 May 2019 that is not the end of it as the agency is still given a chance to respond and also file an action taken report within three months.

The RAA official said that there was a dialogue and several meetings between MoWHS and RAA over the period of a year and in the end it was decided that 8 cases on the Northern East West Highway Project including the above case would be sent to the ACC.

After the case was sent to the ACC in June 2020 its completed investigation report was sent around two weeks ago to the OAG leading to an outcry from PDP on the sudden nature of the case and the timing. This even lead to a press release from the party alleging politicization over the timing of the case.

This paper tried several times to contact various senior ACC officials to get their response on how the case investigation took the time it di, but there was no response.

However, the senior RAA official said that ACC may have taken time on the case due to it coinciding with the many COVID-19 lockdowns followed by a high attrition rate after it.

The ACC had questioned the two ministers in March 2023 but both ministers said they were asked every general questions and had no idea that they were the subject of the investigation.

Dorji Choden said she thought the ACC was investigating some road corruption case and they were only seeking her input due to her supervisory accountability as the then minister.