

The original RAA case against the two former ministers

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September 9, 2023

The Anti Corruption Commission (ACC) case against the two former ministers Dorji Choden and Namgay Dorji are based on an RAA report.

ACC is seeking a restitution of Nu 10 mn from Empire Construction contractor for the 2.5km rocky stretch of Dzongkhalum and has charged the two former ministers and the former MoWHS Secretary Phuntsho Wangdi with Abuse of Function under the ACC Act for direct award of work of the 2.75 km Nobding-Dungdungnesa road widening project to Empire Construction at Nu 39.40 mn.

However, not much else is known about the ACC case. However, the ACC case is based on a 2019 Audit Report that this paper has accessed.

The case all started with the Audit Report on the 'Northern East-West Highway project.' Given the size of the project the RAA issued different reports based on different sections handled by different regional offices.

One of them was on the works done by the Lobeysa Regional Office.

The Mangdechu Hydroelectric Project Authority (MHPA) had requested Department of Roads (DoR) to carry out critical widening works as deposit works especially at the cliff of Dzongkhalum.

The Regional Office, Trongsa awarded the contract to Empire Construction through open tender at a cost of Nu.39.40 mn for widening of approximately 2.5km of rocky stretch and other related construction activities.

The agreement was signed on 24th April 2015 with contract duration of 16 months ending by 16th July 2016.

The formation cutting was to be completed by end of December 2015 to enable MHPA to transport heavy Electro-mechanical equipment to commission the project, however, the contractor was behind schedule on this.

During the visit of the Finance Minister Namgay Dorji on 28th September 2015, MHPA and JPCL reported along with other numerous complaints in the past that, there is huge risk to the lives of people and commuters as a result of unprofessional widening techniques adopted by the contractor which is proved by emitting flying boulders into the JP colony located about 300m away due to uncontrolled blasting by the contractor.

Due to indiscriminate pushing of muck to the valley side, the stream could change and effect the JP colony in times to come.

It was said the contractor will in no way complete the Formation Cutting works in December 2015 due to “inexperience and poor technology adopted by the contractor”.

Based on the directive of the Finance Minister the meeting of the MoWHS secretary, MHPA and contractor was held on 3rd October 2015 and here the MHPA said delay would cause a loss of Nu 22 mn a day for the project which the contractor would have to bear.

After extensive deliberation, it was decided that the works will be handed over back to MHPA.

Since the contractor still had time left, one of the conditions to hand back the work was that as support by the Government, the Secretary informed the contractor that they will be given the equivalent value of work elsewhere due to the fact that they have not failed the contract, but due to safety issues by not being able to put in place safety measures at the level of international standards to which the contractor agreed.

The contractor would be paid for the work executed so far.

The ministry said that the work estimate by the MHPA for the above works was purely on the basis of assumption without any detailed survey works and work was expected to be executed by way of half tunneling method with average height of cut of hardly 10m.

On the Regional Office’s instruction, the contractor had tried to do a type of half tunneling excavation but they could not do it due to high risk and lack of requisite experience and resources. Due to above facts, the contractor had to resort to conventional cutting.

It was also mentioned that as the Bhutanese contractors lack capability of doing half tunneling works, the contractor had adopted full cutting technique as high as 100m height of cut to get the required road width due to vertical to almost negative slope of existing terrain.

The RAA, however, did not accept the above explanation and said the contractor was made aware of the rocky terrain and execution by way of half tunneling method and the timeline, and that the contractor did not have experience to execute the works as per approved technical method of execution and resorted to conventional methods.

Here, Namgay Dorji said that while the contractor attempted half tunneling there were geological surprises in the slope as it kept sliding down something like in Punatsangchu I, and so the conventional method had to be used. He said in fact further head a bridge was destroyed twice due to such slides. He also said heavy rains did not help matters as the slides got worse.

RAA said the requirements imposed by MHPA were basically for the safety of the lives of people and commuters and to ensure completion of formation cutting works within end of December 2015 as delays could cost the MHPA millions of Ngultrums per day. The ground of difficult terrain and continuous rainfall was not justified as such aspects are foreseen and known to the Department of Roads and Contractor.

RAA’s main issue here is that the contractor was found compensated with a total payment of Nu. 40.98 mn for works executed against the contract cost of Nu. 39.40 mn despite the failure to complete 70% of the works.

Here Dorji Choden said that RAA’s observation would be fair if half tunneling could be done at a 10-meter height, but due to the instability of the slope the contractor had to cut 50 to 100 meters above and so even

the 30 percent work exceeded the total contract value. She said that in fact the remaining works was tendered by MHPA for Nu 50 mn.

She said that legally the contractor still had 10 months to complete the entire project and he assured he could finish the entire work by the end of it and the contractor was well within his legal rights to drag them to arbitration which would have delayed not only the road but also the entire MHPA project with a loss of Nu 22 mn a day.

She said that to get around this and to get him to give up his Dzongkhalum work voluntarily without any legal battle and delays to the MHPA project, he was assured he would directly be given another work of a similar size without bidding.

The ministry then gave a 2.75 km road widening work at Nobding-Dungdungnesa directly based on the proposal submitted by the MoWHS Minister and cleared by the Ministry of Finance.

The work was given at the departmental estimate amounting to Nu. 39.39 mn.

The RAA objected to the direct award of work saying given the inefficiency and slow progress of work, poor workmanship, technical capacity issues as well as lack of due diligence and professionalism on the part of contractor posing threat to safety of structures and commuters in Dzongkhalum the direct award of Contract at inflated contract amount is indicative of extension of undue favour to the contractor.

RAA also said that Contractor was already compensated with Nu.40.98 mn against the contract amount of Nu.39.40 mn at Dzongkhalum despite completing just about 30% of the contract works and not meeting the formation cutting deadline of MHPA.

RAA said that the department's analyzed rates for the 2.75 km Nobding-Dungdungnesa was much higher than the rates quoted by winning contractors including Empire Construction itself for a nearby stretch.

For example, under the department's analyzed rates the rate for Granular Sub base (GSB) was Nu 3,027 and for Wet Mix Macadam (WMM) it was Nu 3,000 for Nobding-Dungdungnesa but, while bidding for a similar stretch nearby Empire Construction himself bid 1,500 for GSB and Nu 2,000 for WMM.

Similarly, 14 other contractors had all bid lower in other works than the department's estimated rates for the direct award to Empire.

It said a result the total financial loss to the government and benefit to the contractor by way of direct awarding amounted to Nu.15.86 mn.

Here Dorji Choden said it is not a fair comparison as the RAA is comparing a department estimate to quoted rates by contractors as contractors will always bid lower.

Namgay Dorji said the Abuse of Function charge for direct award of work does not apply as the Public Finance Act under section 105 states that MoF on good grounds can approve a departure from MoF regulation or instruction.

He also said under section 4.2.5.2 (g) of the then procurement rules direct work can be given during urgency.

He said that when the Amochu flood happened he used the same powers to allow the Phuentsholing Thromde to directly award works to stop the flood and build embankments.

He said that during COVID-19 the government would have also used these emergency procurement powers to procure essential vaccines and other equipment.

Namgay Dorji said the emergency here was the need to complete the MHPA project on time and also the geological nature of the slope at the site.

Both the former ministers denied any family and personal links with the construction company.