

IN THE COURT OF SPECIAL JUDGE, ASSAM, GUWAHATI

**Present : Sri M. Ali, AJS,
Special Judge, Assam,
Guwahati.**

SPECIAL CASE NO. 10/2006

**STATE OF ASSAM
VS.
DIMBESWAR BORA**

..... Accused Person

**Date of hearing : 23.07.2007
21.08.2007
20.09.2007
23.10.2007
20.11.2007
22.01.2008
22.02.2008
29.12.2008
25.03.2009
27.04.2009
21.05.2009
16.09.2009**

**Date of statement of accused : 08.07.2010
28.07.2011**

**Date of argument : 08.08.2011
12.08.2011**

Date of Judgement : 19.09.2011

**Advocate for prosecution : Sri G. Sarma,
Ld. Special P.P. for the State of Assam.**

**Advocates for defence : Sri. Z. Alam,
Ld. advocates.**

J U D G M E N T

1. The prosecution case as unfolded at the trial is that on 03.04.2001 Sri Kamaleswar Dutta, Dy. SP, Vigilance & Anti Corruption, Assam lodged an ejarah with the Officer in Charge of

ACB PS, Guwahati stating that in course of enquiry V&AC RE No. 47(10)97 the then Managing Director (MD) of Assam Urban Water Supply and Sewerage (herein after called AUWSS Board) during his tenure from 04.11.1995 to 03.06.1997 violating the norms and procedure purchased a bulk of AC pressure pipes without inviting quotation and thereby caused heavy loss to the exchequer. After his retirement his successor Sri Dimbeswar Bora during his tenure from 17.07.1997 to 30.09.1997 making criminal conspiracy with the suppliers and others purchased AC pressure pipes of different dia amounting to Rs. 81,17,882/- at much higher rates by violating existing procedure and thereby caused loss of Rs. 56,79,125/- to the Exchequer. Not only that accused Dimbeswar Bora purchased double armoured flexible Hose pipe amounting to Rs. 51.32 lakh without inviting tenders from M/S Powertech, Guwahati and M/S HKB Industries, Guwahati owned by his son Sri Hemanta Kr. Bora at very high rate for his personal benefit. On the basis of this ejarah ACB PS case No. 4/2001 was registered and during investigation large number of official documents were seized and statement of witnesses was recorded. Accused Kamal Ch. Borthakur expired during investigation of the case. On completion of investigation accused Dimbeswar Bora was chargesheeted u/s. 420/471 IPC R/W Section 13(2) PC Act. Accordingly, cognizance was taken under those provision against the accused person. On his appearance before the court the charge under the above noted sections were framed to which he pleaded not guilty and claimed to be tried. In course of the trial the prosecution has examined altogether 20 witnesses in support of its case and the accused person was examined u/s. 313 Cr. PC. In support of his defence plea no witness is examined by the accused person.

2. POINTS FOR DETERMINATION-

- (i) Whether the accused person during his tenure of Managing Director of AUWSS Board violating the norms and procedure of purchase cheated the govt. by purchasing flexible Hose pipe /

AC pressure pipe and thereby committed the offence u/s. 420 IPC ?

- (ii) Whether the accused person during his above noted tenure as Managing Director of AUWSS Board fraudulently used certain documents as genuine which he knew at the relevant time within the meaning of Section 471 IPC ?**
- (iii) Whether the accused person during his said period as MD, AUWSS Board fraudulently misappropriated Rs. 51.32 lakh by placing orders to M/S Power Tech, Guwahati and M/S HKB Industries owned by his son Sri Hemanta Kr. Bora without inviting quotation and tenders thereby committed the offence u/s. 13(1)(c) and (d) / 13(2) PC Act, 1988 ?**
- (iv) Whether the accused person during that period acquired huge movable and immovable property worth Rs. 22,86,942/- which was disproportionate to his known source of income ?**

3. REASON FOR DECISION-

I have heard the argument put forward by the Ld. Special P.P. and the Ld. defence advocate and compared their submission with the material on record. If we go through the evidence of 20 prosecution witnesses we would see that the prosecution has examined four sets of witnesses. The first set includes technical men of AUWSS Board. They are PW-1 Deep Bora Asstt. Engineer, PW6 Kitish Kalita Asstt. Engineer, PW-7 Santanu Sarma Sectional Asstt., PW-8 Apurba Deka Asstt. Engineer, PW-15 Satyabrata Sarma Executive Engineer and PW-18 Mohibur Rahman Jr. Engineer. The second set is consisted of non technical men- PW-2 Birinchi Borgohain LDA, PW-3 Bharati Dhunia Account Asstt., PW-4 Smti Joytri Das UDA, PW-5 Safikur Rahman Finance and Accounts Officer, PW-11 Haripada Dey Auditor, PW-12 Promod Ch. Sarma LDA and PW-13 Dinesh Ch. Das UDA of that board. The third set of witnesses is comprised of investigating police officer and the complainant. They are PW-9 Munindra Nath Sarma Inspector of Police, PW-10 Maneswar Bora ASI, PW-14

Kamaleswar Dutta Inspector of Police (complainant of the case), PW-19 Bhula Nath Bhuyan and PW-20 Sarbananda Gohain Inspector of Police V&AC. The two PWD Engineers namely Asstt. Executive Engineer PW-16 Dilip Bora and Addl. Chief Engineer PW-17 R.C. Kalita who are examined to prove the evaluation report of the immovable property of the accused person belong to the 4th set. For the sake of convenience and brevity I will discuss the relevant portion of their evidence side by side.

- 4. According to the complainant (PW-14) Sri Kamaleswar Dutta on 02.04.2001 while he was serving as Dy. SP, V&AC he lodged one FIR against accused K.C. Borthakur and Dimbeswar Bora both Managing Director of AUWSS Board on the basis of the report of regular enquiry No. 47(10)97 conducted by him. Ext. 57 is the FIR and Ext. 57(1) is his signature. Accused K. C. Borthakur (since diseased) during his tenure as Managing Director misused govt. money amounting to Rs. 56,79,125/- while accused Dimbeswar Bora during his period from 17.07.97 to 30.09.97 as Managing Director misused govt. money amounting to Rs. 51.32 lakhs. In his cross examination he has stated that accused Dimbeswar Bora misused the govt. money by allowing high rates to the suppliers by violating the norms and procedure of purchase.**
- 5. PW-1 Sri Deep Bora, Asstt. Engineer has stated that in 1997 accused Dimbeswar Bora was serving as MD of AUWSS Board and during his tenure Hose pipes / AC pressure pipes worth Rs. 54 lakhs were purchased without any requirement and without inviting tenders. Those goods were supplied by M/S Modern Tubes, M/S Silver Stiks and M/S HKB Industries. Sri Hemanta Kr. Bora son of Dimbeswar Bora was the proprietor of M/S HKB Industries. He has also stated that as per official procedure before purchasing Hose pipe and AC pressure pipe requirements of those material are to be processed through SDO, Executive Engineer, Chief Engineer and finally to the Managing Director.**

6. PW-2 Sri Birinchi Borgohain LDA has stated that while he was serving in the account section two bills (Exts. 1 and 2) were submitted by M/S MB Traders amounting to Rs. 47,60,049/-. This witness is declared hostile by the prosecution when he failed to support the prosecution case and it was suggested to him that he stated before the IO that Sri Hemanta Kr. Bora son of MD Dimbeswar Bora, Utpal Bhattacharjee, Madarya Borthakur and Basanta Kalita supplied the major portion of AC pipes and CI pipes and other materials. In cross examination he has stated that Exts. 1 & 2 do not bear the signature of Managing Director. PW-3 Smti Bharati Dhunia, Account Asstt. of AUWSS Board is the seizure witness of four cashbooks. Ext. 6 is the cashbook for the period from 19.12.95 to 31.03.96. Ext. 7 is the cashbook for the period from 01.04.96 to 31.03.97. Ext. 8 is the cashbook for the period from 01.04.97 to 06.08.97. Ext. 9 is the cashbook for the period from 07.08.97 to 24.10.97. Ext. 10 is the charge taking over letter of Managing Director K.C. Borthakur and Ext. 11 is the charge taking over letter of Managing Director Dimbeswar Bora. PW-4 Smti. Joytri Das LDA is the seizure witness of Exts. 3,5 to 11, PW-5 Sri Safikur Rahman, Finance and Account Officer is also a seizure witness of Exts. 3, 5 to 11. His evidence relates to procedure of passing the bills in his office. PW-11 Sri Haripada Dey, Internal Auditor of AUWSS Board is a seizure witness and according to him on 19.01.2004 the IO seized 41 number of documents vide Ext. 19 from him, Exts. 20 to 40 are Measurement Books. Ext. 41 is the file regarding supply of AC pressure pipes, Ext. 42 is the voucher guard file. Ext. 43 is the supply order, Ext. 44 is a file No. CE/UWS-971/98. Ext. 45 is the AG inspection report, Ext. 46 is the bill dtd. 20.11.1996. Ext. 47 is the bill dtd. 05.10.1996, Ext. 48 is the bill dtd. 14.06.1996, Ext. 49 is the bill dtd. 05.10.1996, Ext. 50 is the bill dtd. 20.11.1996, Ext. 51 is the bill dtd. 01.09.1997. Ext. 52 is the bill dtd. 01.09.1997, Ext. 53 is the bill dtd. 06.02.1998, Ext. 54 is the voucher guard file, Ext. 55 is also voucher guard file. PW-12 Sri Kumud Ch. Barman LD Asstt. of

AUWSS Board is a seizure witness of the documents Exts. 20 to 55 from PW-11 Haripada Dey.

7. PW-13 Dinesh Ch. Das, UD Asstt. of AUWSS Board has stated that on 19.01.2004 police seized the documents Exts. 20 to 55 from PW-11 Sri Haripada Dey in his presence. He has also stated that while he was serving under accused Dimbeswar Bora, MD he was asked by him to pay Rs. 70 lakhs to his son, but the amount could not be paid as there was no ceiling for that amount. He has also stated that a sum of Rs. 36,000/- was paid by the accused person for water connection in his own residence from board fund.
8. After going through evidence of non technical witnesses (PW-2, 3, 4, 5, 11 & 12) it is seen that they have stated nothing against the accused person as their evidence relates to seizure of documents from their office. Though PW-13 Dinesh Ch. Das UDA has stated that the accused person spent a sum of Rs. 36,000/- from the board fund for water connection of his private residence, but in his cross he has stated that the bill amount of Rs. 36,905/- was for several connection including the water connection of accused.
9. PW-6 Sri Kitish Kalita, Asstt. Engineer has stated that since 1995 he was in charge of Zoo Road Water Supply Scheme and according to him supplying materials of the board is processed through Asstt. Engineer, SDO, Executive Engineer and finally the bills are passed by the MD. PW-7 Sri Santanu Sarma, Sectional Asstt. has stated that in 1997 while Dimbeswar Bora was serving as MD of AUWSS Board he worked under him and as In charge of Store he received materials and then released as per direction of Executive Engineer. PW-8, Apurba Deka, Asstt. Engineer has stated about the procedure for passing the supply order. He has stated nothing against the accused person.
10. PW-15 Sri Satyabrata Sarma retired Superintending Engineer has stated that in 1996 he joined as Executive Engineer of AUWSS Board and promoted to Superintending Engineer. While accused

Dimbeswar Bora was serving as MD he had to work under him in 1997.

His evidence in his words -

When Mr. Dimbeswar Bora was working as Managing Director I was serving as Executive/ Suptd. Engineer. Starting from Design to implimentation I am to give advice to Managing Director on Technical aspect. The Managing Director is to accept my advice if there is no objection from others.....Generally we are required to purchase GI/CI/DC/PVC and AC Pressure pipes/Host pipes for maintenance. As per procedure we are to invite tenders and comparative statement are to be prepared. After acceptance of rates and as per requirements orders are placed. Managing Director of the Board is the responsible person for acceptance of rates. So far I know some hose pipes were purchased without observing the procedure and without inviting tenders and quotations.....During the tenure of accused Dimbeswar Bora I came to know that some procurement of Hose pipes was made without inviting tenders and some payment was also made. Mr. D. Bezbaruah the then AEE has directly put up the matter before the Managing Director without my knowledge.....All the materials for three schemes namely Goalpara Water Supply Scheme, Jorhat Water Supply Scheme and Zoo Road Water Supply Scheme were purchased at Guwahati, without any requirement. The materials are still lying in the Boghorbari store-yard without any use. Sri Hemanta Bora is the son of accused Sri Dimbeswar Bora and Sri Hemanta Bora is the proprietor of M/S HKB Industries.....Without any quotation supply was made by HKB Industries and orders and payment was made. As per procedure Sectional officer is to maintain the store stock book, and he is to verify the supply materials regarding quality and quantity of the materials. Mr. Santanu Sharma was working as Sectional Asstt. but he was entrusted by the Managing Director to receive the materials for the store by violating the norms. One Deep Bora was also working as Sectional Officer but he was not in the charge of store.....

- 11. PW-9 Sri Munindra Nath Sarma Inspector of Police V&AC has stated that on 12.10.2001 Inspector Sri Sarbananda Gohain had seized**

original final progress report submitted by DSP Kamaleswar Dutta vide Ext. 14 in his presence. The Ext. 15 is the progress report containing 12 sheets of typed paper. On 3.1.2003 police Inspector Sarbananda Gohain seized 4 numbers of document vide Ext. 16. Ext. 17 is the DA statement of accused consisting 22 sheets. Ext. 18 is the evaluation report of the building of accused Dimbeswar Bora containing 8 sheets of typed paper. PW-10 Sri Maneswar Bora ASI of V&AC has stated that on 03.01.2004 Inspector of V&AC seized 4 Nos. of documents vide Ext. 16 in his presence. Ext. 18 is the evaluation report of accused. Ext. 17 is the declaration of assets of accused Dimbeswar Bora.

12. PW-19 Sri Bhula Nath Bhuyan Inspector of Police V&AC has stated that on 23.09.2001 he was entrusted to investigate the ACB PS Case No. 4/01 u/s. 13(2) PC Act and during investigation he searched the house of accused Dimbeswar Bora in presence of witnesses and seized 34 items vide Ext. 59. On the same day the articles from Sl. No. 8 to 34 were given to the custody of accused Dimbeswar Bora. Ext. 60 is the Post Office SB account No. 850816 in the name of accused Dimbeswar Bora. Ext. 61 is the passbook of SB account No. 20126 in the name of accused Dimbeswar Bora. Ext. 62 is the cheque book of United Commercial Bank in the name of accused Dimbeswar Bora. Ext. 63 is the SB account No. 4155 of Co-operative City Bank in the name of accused Dimbeswar Bora. Ext. 64 is the Chequebook in the name of Dimbeswar Bora under SB account No. 20126/2N of Assam Co-operative Apex Bank. Ext. 65 is the SB account No. 5944 in the name of accused Dimbeswar Bora of United Commercial Bank. Ext. 6 is the copy of the sale deed executed by accused Dimbeswar Bora to purchase 2 katha land. He has also stated that in course of investigation of the case he made an inventory of the goods found in the house of accused Dimbeswar Bora vide Ext. 67.

13. According to PW-20 Sri Sarbananda Gohain (IO) on 3.4.2001 he was entrusted with the investigation of the case and on 2.7.2001 he seized (1) File No. UWS/637/94/Pt-I (Ext. 69) regarding purchase of AC

pressure pipes during the tenure of Sri K C Borthakur, (2) File No. UWS/637/94/Pt-II (Ext. 70) regarding purchase of AC pressure pipes during the tenure of Sri Dimbeswar Bora,(3) File No. UWS/816/96 (Ext.71) regarding supply of Hose pipes and (4) File No. 816/96/Pt-II (Ext. 72) regarding supply of Hose pipes. He has also stated that on 01.10.2001 he seized original file No. UWS/816/96/Pt-I (Ext. C) vide seizure list Ext. 73. On 04.07.2001 he seized four documents – Stockbook No. 1, Stockbook No. 1(A), Stockbook No. 3 and File Index Register No. 3. (Exts. 58, 75, 58 & 76) regarding receipt of material. These documents were seized vide Ext. 74. On 11.10.2001 he seized original file No. 637/94 (Ext. 12) regarding purchase of AC pressure pipes, original file No. 541/94 (Ext. 13) regarding procurement of paper. All these documents were seized vide Ext. 4. On 06.07.2001 he seized bills in the name of M/S Satpal Industries (Ext. 78), M/S MB traders (Ext. 79), M/S Trade and Allied Agencies (Ext. 80), M/S Silver Strick Marketing (Ext. 81), M/S Modern Tube (Ext. 82), M/S DGMA Enterprise (Ext. 83), M/S Luit Freezers (Ext. 84), M/S Santanu Enterprise (Ext. 85), M/S Santanu Enterprise (Ext. 86), M/S Hindustan Trade and Syndicate (Ext. 87), M/S TNR Enterprise (Ext. 88). He also seized the progress report of regular enquiry vide Ext. 14. Ext. 16 is the seizure list of four documents. Ext. 89 is the declaration of assets and liabilities of K C Borthakur. Ext. 90 is the evaluation report of another house of K C Borthakur. On 04.08.2001 he seized 7 documents namely cashbook for the period from 2.4.94 to 18.12.95, cashbook for the period from 19.12.95 to 31.3.96, cashbook for the period from 1.4.96 to 31.3.97, cashbook for the period from 1.4.97 to 6.8.97, cashbook for the period from 7.8.97 to 24.10.97, charge taking over and charge handing over from the office of Managing Director of AUWSS Board. All these documents were seized vide Ext. 3. On 28.9.2001 he seized three documents – application for opening bank account, forwarding letter of Pan market, specimen signature card. These documents were seized vide Ext. 3. On 28.9.2001 he seized application for opening SB account, specimen card along with photograph and two thanks giving letter. All

these documents were seized vide Ext. 93. On completion of investigation he filed chargesheet vide Ext. 94 against accused Dimbeswar Bora u/s 420/471 IPC r/w section 13(1)/13(2) PC Act. During his cross examination one file was exhibited vide Ext. C that shows that on 13.8.97 the accused asked the concerned Engineer to find out the actual requirement of Hose pipes for the different water supply schemes and to place the work orders. During cross one of the govt. letter dtd. 16.7.97 regarding posting of accused as Managing Director is also exhibited vide Ext. D. Ext. E is the signature of the then OC, V&AC Sri J H Ahmed. One tender is also exhibited vide Ext. F.

14. In the forgoing paras I have already stated that there are 4 sets of witnesses examined by the prosecution. The evidence of non technical witnesses – (PW-2, PW-3, PW-4, PW-5, PW-11, PW-12 and PW-13) relates to the seizure of official documents and the procedure in passing bill of the suppliers. According to PW-1 Sri Deep Bora, Asstt. Engineer, in 1997 accused Dimbeswar Bora while serving as Managing Director of AUWSS Board purchased Hose pipes and AC pressure pipes worth Rs. 54 lakhs without any requirement and without any tender. PW-15 Sri Satyabrata Sarma, EE of AUWSS Board has also stated that Hose pipes were purchased without inviting tenders and without any requirements. As directed by the accused person the Asstt Executive Engineer Sri D. Bezbaruah directly put up the requirement file before the Managing Director without his knowledge and the said Hose pipes and AC pipes were still lying in the Bagarbari store yard without any use. He has also stated that Sri Hemanta Kr. Bora who is the son of accused Dimbeswar Bora and the proprietor of M/S HKB Industries supplied all these pipes.

15. The evidence of these two technical witnesses shows that accused Dimbeswar Bora while serving as Managing Director of AUWSS Board purchased huge quantities of Hose pipes and AC pressure pipes without any requirement. During cross examination of PW-15 the relevant file of procuring Hose pipes and AC pressure pipes has been exhibited as Ext. C to prove that accused person had ordered

to supply Hose pipes and other materials as per requirement given by Asstt. Executive Engineer vide Ext. C(2). In this note the then Asstt. Executive Engineer placed the requirement of various pipes for Goalpara Water Supply Scheme, Jorhat Water Supply Scheme and Zoo Road Water Supply Scheme on the basis of discussion with the Executive Engineers of the concerned division. According to PW-1 and PW-15 the requirement of AC pressure pipes and Hose pipes are to be processed through SDO, Asstt. Executive Engineer, Executive Engineer, Suptd. Engineer and finally to the Managing Director. On perusal of Ext. C it is seen that on 12.8.97 M/S HKB Industries, Roopnagar, Guwahati filed one application before the Managing Director intending to supply Hose pipes of different pressure which is marked as CX-1 by the court. On 11.8.97 M/S Powertech filed another application for supplying cast iron/ductile iron pipe and Hose pipe of different categories. This application is enclosed with the rate of those materials. These two applications (CX-1 and CX-2) were put up before the Managing Director on 13.08.97 by the Asstt. Executive Engineer and after going through the note he passed the order first to find out the actual requirement of Hose pipes for Jorhat WSS, Zoo Road WSS and Goalpara WSS and then to place the order in favour of these firms at approved and accepted rate. As directed the Asstt. Executive Engineer placed the requirement of those three water supply schemes on the same day. On 14.08.97 the draft supply order in favour of M/S Powertech and M/S HKB Industries for supplying double armured flexible Hose of 22 kg pressure was put up before the MD and on the same day it was approved. The contents of Ext. C shows that the accused person gave order to M/S Powertech and M/S HKB Industries to supply those materials without inviting any tenders. This process was completed within two days without getting any requirement from the Executive Engineers of Goalpara WSS, Jorhat WSS and Zoo Road WSS. On 14.10.97 the Executive Engineer of AUWSS Board, Dhubri Division informed the Managing Director vide Ext. CX-3 that as 300 MM dia meter Hose pipe are presently in use and since the static lead in

the leaned season does not normally exceed 100 M 22 KG pressure pipe is not required. On 16.10.97 the Executive Engineer of AUWSS Board, Jorhat had also informed vide Ext. CX-4 that Hose of 250 MM dia and 300 MM dia with 22 KG are not necessary for use in their water supply scheme. These two documents show that there was no requirement of 22 KG Hose pipes in their water supply scheme.

16. As per contents of the file (Ext. 72) notice inviting quotation dtd. 22.07.1997 was issued by Managing Director Dimbeswar Bora fixing 3 PM of 11.08.1997 for receiving tenders. In response to this tender four firms namely M/S Bojrang Steel and pipes, M/S Universal Traders, M/S Powertech and M/S HKB Industries filed tenders with their rates. After making comparative statement the MD vide order dtd. 12.08.1997 declined to accept the tender on the ground that the rates quoted was found to be higher than approved rate of the board.
17. During cross examination of PW-15 Sri Satyabrata Sarma the accused person exhibited the minutes of departmental committee meeting held on 31.07.97 in the office chamber of Secretary UAD vide Ext. B. In this departmental committee meeting the target of revenue collection of Rs. 50 lakhs by the end of September 1997 was fixed. On perusal of Ext. B it is seen that departmental committee decided that technical sanction for all the new schemes as envisaged in the plan for the year 1997-98 shall be obtained from Chief Engineer, Public Health Engineering Deptt. till posting of a Chief Engineer in AUWSS Board. Thus the Ext. B shows that technical sanction for all the new schemes for the year 1997-98 was to be obtained from the Chief Engineer, PHE department, but the accused person as it appears from the Ext. C got the requirement of materials for those schemes from Asstt. Executive Engineer of the Board.
18. As per evidence of PW-2, PW-3 and PW-4 Ext. 9 is the cashbook of AUWSS Board, Guwahati for the year 1997. The entry dtd. 25.09.1997 (page No. 50 which is marked as Ext. 9X by the court) shows that a sum of Rs. 12 Lakhs was paid to M/S HKB Industries for supply of dia pipes as part payment out of Rs. 14,66,054/-. The entry dtd.

25.09.1997 (page No. 51 which is marked as 9Y by the court) shows that a sum of Rs. 12 lakhs was paid to M/S Powertech for supplying of 250, 300 MM dia meter pipes as part payment out of Rs. 14,80,592/-. The entry dtd. 29.09.1997 (page No. 56 which is marked as 9Z by the court) shows that a sum of Rs. 8 lakhs was paid to HKB Industries. The entry dtd. 29.09.1997 (page No. 56 which is marked as 9ZZ by the court) shows that a sum of Rs. 12 lakhs was paid to HKB.

19. To sum up the entire oral and documentary evidence adduced by the prosecution is carefully scrutinized and it transpires that accused Dimbeswar Bora was appointed as MD of AUWSS Board vide notification dtd. 16.07.1997 (Ext. D) by the govt. of Assam. On 17.07.1997 he took charge of Managing Director of the said board from his predecessor /relived officer Sri B M Mazumdar vide Ext. 11. Admittedly he got retirement on superannuation on 30.09.1997. Thus he remained in that post for 76 days. On 31.07.1997 a departmental meeting on the plan of Assam Urban Water Supply Scheme was held in the office chamber of Secretary to the Govt. of Assam, Municipal Administration as it appears from Ext. B. All the 8 members of the board including Managing Director Sri Dimbeswar Bora were present in that meeting. The meeting decided and approved the amount of Rs. 1074 lakhs for various water supply schemes of Assam. In that meeting the target of revenue collection was fixed at Rs. 50 lakhs by the end of September 1997. It was also decided that the technical sanction should be obtained for all the new scheme as envisaged in the plan for the year 1997-98 from the Chief Engineer Public Health Engineering Deptt. till posting of the Chief Engineer of the board. The Ext. 72 shows that the then Managing Director Dimbeswar Bora invited quotation dtd. 22.07.1997 for supplying double armoured flexible Hose pipes 22 kg pressure heavy duty, sand and gravel Hose, manufactured to relevant BIS fixing 3 PM of 11.08.1997 for receiving tenders. In response of this tenders four firms namely M/S Bojrang Steel and Pipes, M/S Universe and Traders, M/S Powertech and M/S HKB Industries filed tenders with their rates. There is nothing in this record to show that the notice

inviting quotation was published in any news paper. After making comparative statement the said Managing Director vide order dtd. 12.08.1997 declined to accept the tenders on the ground that the rates quoted was found to be higher than the approved rate of the board. On perusal of the Ext. C it is seen that on 11.08.1997 M/S Powertech filed one application for supplying cast iron / ductile iron pipes and Hose pipes of different categories with the rate of those materials. On 12.08.1997 M/S HKB Industries, Roopnagar filed one application before the Managing Director intending to supply Hose pipes of different pressures. These two applications (marked as CX-1 and CX-2 by the court) were put up before the accused Managing Director on 13.08.1997 by the Asstt. Executive Engineer and after going through the note he passed the order to seek actual requirement of Hose pipe for Jorhat WSS, Goalpara WSS and Zoo Road WSS. Thereafter the Asstt. Executive Engineer placed the requirement of those three water supply schemes on the same day and on 14.08.1997 the order was passed in favour of M/S Powertech and M/S HKB Industries for supplying double armoured flexible Hose pipes of 22 KG pressure. The contents of Ext. C shows that the accused person before giving the supply order to these two firms did not invite any tenders and the whole process was completed within two days without getting any information of the requirement from the Executive Engineer of Goalpara WSS, Zoo Road WSS and Jorhat WSS. On 14.10.97 the Executive Engineer of Goalpara WSS informed the Managing Director vide Ext. CX-3 that no such Hose pipes were required in that WSS. On 16.10.97 the Executive Engineer of Jorhat WSS also informed the Managing Director vide Ext. CX-4 that no such Hose pipes were required in that WSS. In the forgoing paras we have already found from cashbook for the period from 07.08.1997 to 24.10.1997 that a sum of Rs. 32 lakhs was paid to M/S HKB Industries belonging to the son of the accused Sri Hemanta Kr. Bora and another sum of Rs. 12 lakhs was paid to M/S Powertech by the end of September 1997 within the period from 25.09.1997 to

29.09.97 and on 30.09.97 the accused person retired from service on superannuation.

20. Herein this case charge was framed against the accused person u/s 420/471 IPC R/W Section 13(1)(c)(d)and (e) PC Act. In order to appreciate with the correct position of law let me quote the provisions of Section 13 PC Act in extenso -

Criminal misconduct by a public servant-(1) A public servant is said to commit the offence of criminal misconduct, -

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or

(d) if he, -

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources property disproportionate to his known sources of income.

Explanation – For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

21. The accused person was also charged for acquiring huge movable and immovable properties worth Rs. 22,86,942/- disproportionate to his known source of income u/s. 13(1)(e) PC Act. During investigation PW- 19 Sri Bhulanath Bhuyan had seized 34 articles which includes cash Rs. 1,39,660/- and gold ornaments weighing 17 tolas 2 anas which were given in the custody of the accused person by the PW-19 without any order from the court for which a complaint u/s. 217 IPC was already filed against the said I.O. Except these articles the I.O did not collect any evidence that shows that the accused person had acquired pecuniary resources or property disproportionate to his known source of income within the meaning of section 13(1)(e) PC Act.

22. A bare reading of Sub-Section (c) shows that to constitute the offence the accused must have dishonestly or fraudulently misappropriated or otherwise converted to his own use any property

entrusted to him or under his control or allowed any other person to do so. The term of dishonestly and fraudulently did not mean exactly the same thing. A dishonest act may not necessarily be a fraudulent act. In case of fraudulent act things are deceite or intention to deveite. So an act could not be fraudulent though it is dishonest. The definition of criminal misconduct under this clause contains expressly a proposition as to a state of mind. It is not necessary or possible in every case to say in precise manner the accused had dealt with or misappropriate the money.

23. In the case in hand the accused person while serving as MD of AUWSS Board was entrusted with a sum of Rs. 1074 lakhs for implementation of various water supply schemes of Assam for the year 1997-98 and he was to take technical sanction from the Chief Engineer, PHE department. But instead of taking the said sanction from the Chief Engineer, PHE department he decided to take it from an Asstt. Executive Engineer of that board and without inviting tenders by publishing in any local daily, he acted as per request made by two firms M/S Powertech and M/S HKB Industries the latter belonging to his own son Hemanta Kr. Bora. Though there was no requirement of these materials in the water supply schemes of Guwahati, Goalpara and Jorhat, all these things were done by him in a hurry because he was to retire from service on 30.09.97. By paying Rs. 32 lakhs to M/S HKB Industries belonging to his son Hemanta Kr. Bora he converted the said amount for his own use entrusted to him by the govt. of Assam. By paying Rs. 12 lakhs to M/S Powertech he allowed that proprietor of the firm to misappropriate the said amount entrusted to him by the govt. of Assam within the meaning of Section 13(1)(c) PC Act. All these things were done in the last week of his service period from 25.09.97 to 29.09.97. I do not find any materials against the accused person u/s. 420/471 IPC R/W Section 13(1)(e) PC Act. Accordingly he is found guilty u/s. 13(1)(c) PC Act, 1988.

24. The accused person in reply to the questions on sentence has stated that he is innocent and he retired from service in 1997. According to him he is now 74 years old. He has also stated that before becoming Managing Director of Assam Urban Water Supply Scheme Board he was Joint Secretary of Municipal Administration Deptt. Govt. of Assam.

25. Transparency International in its recent report has estimated that Indians spend Rs. 28000 crores every year by way of bribes. During last several decade the country has seen the execution of various five year plans involving huge expenditure by the govt. for various nation building projects. Bribery and graft by public officers is one of the most organised crime which is characterised as white colour crime. Though our country did make progress but a big chunk of money earmarked for developmental projects has been pocketed by the corrupt officers, political leaders, businessmen, contractors, middlemen etc. The vicious forces of corruption have also started plaguing the very mechanism created to control it. The primary objective of criminal justice system is to prevent and detect deviant behaviour to evaluate its extent and then to adjudicate the damage by prescribing suitable quantum of punishment. These measures are necessary to provide certain safeguards to ensure that citizens are protected and their human right are not infringed.

26. In the case in hand the accused person before becoming Managing Director of Assam Urban Water Supply Scheme Board he was Joint Secretary of Municipal Administration Deptt. Govt. of Assam. As per evidence he was appointed as Managing Director of Assam Urban Water Supply Scheme Board for 76 days of the last leg of his career of 34 years of services . Because of his hankering after wealth he wanted to pocket a considerable amount out of Rs. 10,74,00,000/- entrusted to him by the Govt. of Assam. He was to retire from service on 30.09.1997. Obviously he was in a hurry he made the payment of Rs. 44 lakhs from the public exchequer during the period

from 25.09.1997 to 29.09.1997. The lion's share of Rs. 32 lakhs was paid to his own son Sri Hemanta Kr. Bora proprietor of M/S HKB Industries and Rs. 12 lakhs to the proprietor of M/S Powertech. This is a typical act of looting the exchequer by public servant. Because of this type of betrayal by public servants the majority of the urban people of Assam are not getting the potable water even after 64 years of independence.

27. As we know that the more significant an institution is the more vigorously the society reacts to the behaviour which violates its norms. An unambiguous message is to be sent not only to the accused person but also to the probable offenders. The corruption which is believed to have penetrated into every sphere of society is one of the most talked about subjects today. The 2G Spectrum Scandal, Commonwealth Game Scandal and one thousand crores North Cachar Hills corruption case of Assam are first page news items of all dailies. Now we are all aware of the national conscience ignited by the anti corruption campaign.

28. Given the prevailing situation in our country and magnitude of the offence committed by this accused person he is not entitled to be dealt with leniency. Hence accused person Dimbeswar Bora former Joint Secretary of Govt. of Assam and Managing Director of Assam Urban Water Supply Scheme Board is convicted u/s. 13(1)(c)/13(2) Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment of five years with fine of rupees two lakhs in default to undergo rigorous imprisonment for 1 ½ (one and half) year. The period of detention if any, during investigation or trial shall be set off against the period of imprisonment. The seized articles are to be returned to the person from whom seized.

Special Judge, Assam,
Guwahati

Appendix

Exhibited by Spl. PP -

1. Ext. 1 – Bill
2. Ext. 2- Copy of bill
3. Ext. 3 - Seizure memo
4. Ext. 4 – Seizure memo
5. Exts. 5 to 9 – Cashbook
6. Exts 10 & 11 – Taking and handing over charge
7. Exts. 12 & 13 – Files
8. Ext. 14- Seizure memo
9. Ext. 15 – Progress report
10. Ext. 16 – Seizure memo
11. Ext. 17 – D A statement
12. Ext. 18 - Letter with evaluation report
13. Ext. 19 – Seizure memo
14. Exts. 20 to 26 – Measurement Book
15. Exts. 27 & 28 – Cashbooks
16. Ext. 29- Voucher
17. Exts. 30 to 34 – Cashbooks
18. Ext. 35 – Bill Register
19. Exts. 36 to 40 – Measurement Books
20. Ext. 41- File
21. Ext. 42 – Vouchers
22. Ext. 43 – Supply order
23. Ext. 44 – File
24. Ext. 45- Certified copy of AG inspection report
25. Ext. 46 Bill No. 82(S)
26. Ext. 47 – Bill No. 61(S)
27. Ext. 48 – Bill No.
28. Ext. 49 – Bill No. 62(S)
29. Ext. 50 – Bill No. 81(S)
30. Ext. 51 – Bill No. 25(S)

31. Ext. 52 – Bill No.
32. Ext. 53 – Bill No. 49(S)
33. Ext. 54 & 55 – Vouchers Guard files.
34. Ext. 56 - FIR
35. Ext. 57 – Proforma FIR
36. Ext. 58 – Stock register
37. Ext. 59 – Seizure memo
38. Ext. 60 & 61 – Passbooks
39. Ext. 62 – Chequebook
40. Ext. 63 – Passbook
41. Ext. 64 – Chequebook
42. Ext. 65 – Passbook
43. Ext. 66 – Saled deed
44. Ext. 67 – Inventory
45. Ext. 68 – Seizure memo
46. Ext. 69 to 72 – Files
47. Exts. 73 & 74 – Seizure memo
48. Ext. 75 – Stockbook
49. Ext. 76 – Index register
50. Ext. 77 – Seizure memo
51. Ext. 78 to 88 – Documents
52. Ext. 89 – Declaration of assets and liabilities of KC Borthakur
53. Ext. 90 – Evaluation report of KC Borthakur
54. Ext. 91 Search and Seizure memo
55. Ext. 92 & 93 – Seizure memo
56. Ext. 94 – Chargesheet

Exhibited by the defence -

1. Ext. A – RE No. 47(10)97
2. Ext. B – Minutes
3. Ext. C – File
4. Ext. D – Photocopy of notification dtd. 16.7.97
5. Ext. E – Signature of J. Ahmed
6. Ext. F – Tender

Exhibited by the Court -

- 1. Ext. CX 1- Application of M/S Powertech**
- 2. Ext. CX2 – Application of M/S HKB Industries**
- 3. Ext. CX3 – Letter of EE Goalpara WSS**
- 4. Ext. CX4- Letter of EE Jorhat WSS**
- 5. Ext. 9X – Entry dtd. 25.09.97 of M/S HKB Industries**
- 6. Ext. 9Y – Entry dtd. 25.09.97 of M/S Powertech**
- 7. Ext. 9Z – Entry dtd. 29.09.97 of M/S HKB Industries**
- 8. Ext. 9ZZ – Entry dtd. 29.09.97 of M/S HKB**

**Special Judge, Assam,
Guwahati**

INTHE COURT OF SPECIAL JUDGE, ASSAM, GUWAHATI

Spl. Case No. 10/06

Questions on sentence of accused Dimbeswar Bora -

Q. 1- In this case you are found guilty committing the offence u/s. 13(1)(c)/13(2) PC act which is punishable up to seven years rigorous imprisonment and fine. Do you have anything to say on sentence ?

Ans. I am innocent. Now I am 73 years old. I have rendered 34 years unblamable services.

Q. 2. What post you are holding before becoming the Managing Director of AUWSS Board ?

Ans. I was holding the post of Joint Secretary Municipal Administrative Deptt. and before that I was holding the post of Managing Director of Nagaon Cooperative Sugar Mill.