

**Dilip Kumar Singh Vs. Road Construction**

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**Court :** Jharkhand

**Decided On :** Dec-19-2017

**Appellant :** Dilip Kumar Singh

**Respondent :** Road Construction

**Advocate for Def. :** Mr. Shailesh Kumar Singh

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 6314 of 2016 with W.P. (S) No. 4056 of 2016 ... Dilip Kumar Singh s/o Late Yogendra Narayan Singh, Resident of Village and P.O. :- Ora Bagicha, P.S. :- Dharhara, Dist:- Munger (Bihar) at present posted and working as Junior Engineer, NREP, Deoghar, at + PO + PS + Dist - Deoghar (Jharkhand). ... Petitioner in WPS631416 Paras Kumar, Son of Late Ram Janam Singh residing at Narayan Niwas, Moh.-Morabadi, P.O. + P.S.-Morabadi, Distt.-Ranchi (Jharkhand). Petitioner in WPS405616 -V e r s u s- 1. The State of Jharkhand through its Chief Secretary, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

2. The Secretary, Road Construction Department, Govt. of Jharkhand, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

3. The Secretary, Rural Works Department, Govt. of Jharkhand, Project Bhawan, P.O.- Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

4. The Secretary-cum-Commissioner, Department of Ministerial Secretariat and vigilance, Govt. of Jharkhand, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

5. The Chief Engineer, Department of Ministerial Secretariat and vigilance, Govt. of Jharkhand, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

6. Rajiv Verma, Executive Engineer, Department of Ministerial Secretariat and vigilance, Govt. of Jharkhand, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

7. Dwarika Prasad, Assistant Engineer, Department of Ministerial Secretariat and vigilance, Govt. of Jharkhand, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

8. Vijay Kumar Singh, Junior Engineer, Department of Ministerial Secretariat and vigilance, Govt. of Jharkhand, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

9. The Additional Director General of Police, Anti Corruption Bureau, Kanke Road, P.O.-Kanke, P.S.-Gonda, District-Ranchi (Jharkhand).

10. The Superintendent of Police, Anti Corruption Bureau, Kanke Road, P.O.-Kanke, P.S.-Gonda, District-Ranchi (Jharkhand).

11. The Dy. Superintendent of Police, Anti Corruption Bureau, Dumka, P.O. & P.S.- Dumka, Dist:-Dumka. . ... Respondents in WPS631416 1. The State of Jharkhand through its Chief Secretary, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

2. The Secretary, Road Construction Department, Govt. of Jharkhand, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

3. The Secretary, Department of Ministerial Secretariat and vigilance, Govt. of Jharkhand, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

4. The Chief Engineer, Department of Ministerial Secretariat and vigilance, Govt. of Jharkhand, Project Bhawan, P.O.-Dhurwa, P.S.-Jagarnathpur, District-Ranchi (Jharkhand).

5. The Additional Director General of Police, Anti Corruption Bureau, Kanke Road, P.O.-Kanke, P.S.-Gonda, District-Ranchi (Jharkhand). 2 6. The Superintendent of Police, Anti Corruption Bureau, Kanke Road, P.O.-Kanke, P.S.- Gonda, District-Ranchi (Jharkhand).

7. The Dy. Superintendent of Police, Anti Corruption Bureau, Kanke Road, P.O.-Kanke, P.S.-Gonda, District-Ranchi (Jharkhand). . ... Respondents in WPS405616 ... CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ... For the Petitioners : Mr. Anil Kumar Sinha, Sr. Advocate and Mr. Krishna Murari, Advocate. For the Respondents-ACB : Mr. Shailesh Kumar Singh, Advocate For the Respondent-State : Md. Shadab-bin-haque, J.C to G.P I and Mr. Dhananjay Kumar Dubey, Sr. S.C. I. and Mrs. Neelam Tiwary, JC to Sr. S.C. I ... C.A.V. On: - 04.07.2017 Delivered On: - 19/12/2017 Per Pramath Patnaik, J.

In the aforesaid writ applications, prayer has been made for quashing the ex parte Enquiry Report, dated 02.09.2016 (Annexure-1), prepared and submitted under the joint signatures of the respondent nos. 6 to 8 so far it relates to petitioners with respect to the construction of the road work in 2007 from Kankhapra to Satpahari in the District of Deoghar, whereby after more than 8-9 years of execution of the said Road work on mechanical and physical verification of the same, loss amount of Rs.8,23,728/- has been sought to be saddled on the concerned Executive Engineer, Assistant Engineer, Contractor including the petitioners, who was posted as the Junior Engineer and have contributed to the work as such, while posted in R.E.O., Division, Deoghar. Further prayer has been made to declare and hold that the petitioner cannot be held responsible for any deficiency/irregularity if any, which has been reported behind the back of the petitioner and further prayer has been made to declare the exercise of so-called verification/spot enquiry of rural roads, executed more than 8 to 9 years back, being wholly without jurisdiction.

2. The petitioner in W.P. (S) No. 6314 of 2016, who was initially appointed on the post of the Junior Engineer in the year 1998, was posted in NREP Division, Gopalganj under Rural Development Department where the petitioner in W.P. (S) 4056 of 2016 was initially appointed on the post of Assistant Engineer of the Road Construction Department, Bihar and in due course after posting at various places in various capacities, they were transferred in R.E.O. Division, Deoghar as Junior 3 Engineer in the year 2006 and as In-charge of Executive Engineer in the year 2007 respectively. While being posted there, certain works of rural roads were carried out under the said division, out of the State Sponsored Scheme including the Road in question, namely, Kankhapra main road to Satpahari via Pinjra Sihati Road, for which, due tender etc. was floated and the construction of the said road was carried out successfully at the relevant time strictly in terms with the sanctioned estimate and other prescribed stipulations thereunder. Since the road in question fell under the jurisdiction of the petitioner, who was the Junior Engineer, have supervised the work followed by preparation of measurement books etc. strictly in terms with scheduled quality and quantity, which was duly supervised by the Executive Engineer and the Superintending Engineers, besides all the Officers of the NABARD etc. and after due satisfaction, bills were being passed and payments were being released in favour of the Contractors. On the basis of a complaint made to the Government in the year 2009, with respect to construction of road in question, the Secretary, Rural Works Department referred the matter to the Secretary, Ministerial Secretariat and Vigilance, Govt. of Jharkhand vide letter dated-20.02.2009 for vigilance enquiry of roads constructed under the Deoghar Division, in the tenure of In-charge, Executive Engineer, i.e. the petitioner in W.P. (S) No. 4056 of 2016. Thereafter, one team was constituted under the then Superintending Engineer, Vigilance namely Sri Sohan Seth to be carried out in supervision of Dy. S.P., Vigilance, Jharia, Kujur, which conducted physical enquiry of the roads including to that of the road in question between 15.04.2009 to 22.04.2009, but, since no adverse was found, no report was submitted, as such, but out of vengeance, the respondents have constituted three different Committees vide letter dated 28.04.2014, which ultimately conducted the impugned physical enquiry and prepared the report dated 02.09.2016, which is impugned in these writ applications.

3. In the supplementary affidavit on behalf of the petitioner, dated 11.05.2017, it has been stated and submitted that vide letter dated 03.05.2017, the D.I.G., Anti Corruption Bureau has written a letter to the Secretary, Rural Works Department seeking formal opinion with respect to lodging the F.I.R. against the petitioner and others after taking substantive decision to lodge the same as per Annexure-SA-1. It has further been stated that on perusal of the aforesaid letter, it would be evident that the same has been issued with reference to Cabinet Vigilance Circular, dated 07.08.2015, wherein, a detailed guideline for conducting the preliminary enquiry and purported action thereof has been defined and the relevant extract of which has been annexed as Annexure-7 to I.A. No. 2631 of 2017. It has further been reiterated that even as per the aforesaid circular/guidelines before taking any decision over the preliminary enquiry report (Annexure-1 to the writ petition), the respondents Vigilance Bureau/Anti Corruption Bureau was under obligation to issue show cause notice to the petitioner and all other alleged persons affording an opportunity of explanation, but without issuing such notice/show cause in terms of Clause 21 (V), the aforesaid decision dated 03.05.2017 has been taken.

4. Being aggrieved and dissatisfied with the ex parte enquiry report, dated 02.09.2016, the petitioner in the aforesaid writ applications have been constrained to knock the door of this Court under Article 226 of the Constitution of India for redressal of their grievances.

5. Learned counsel for the petitioners has submitted with vehemence that the impugned action on the part of the respondents in resorting to spot verification-cum-inquiry proceeding with respect to rural roads work executed more than 8 to 9 years back during their tenure, is absolutely arbitrary, non-est, mala fide and illegal. Learned counsel for the petitioner further submitted that the impugned enquiry is without jurisdiction and the whole action is further barred by Defect Liability Limitation, since as per the binding terms of N.I.T. No. 03/2006-07 and statutory contract/Agreement thereof; there is defect liability period of five years only, which would be manifest from Clause-26 of N.I.T. and Clause-16 of the Agreement. It has been further submitted that after expiry of Defect Liability period of five years, the Roads were duly inspected by the concerned Dumka Circle and

Deoghar Division Officers' i.e. by Superintending Engineer and the Executive Engineer in 2012 and being satisfied with the construction and condition of Road, the Security and Earnest Money kept reserved, had been also released in favour of the Contractor. Learned counsel has further submitted that Clause 21 (viii) of the circular No. 1623, dated 07.08.2015, (Annexure-7 to I.A.) of the Cabinet Vigilance postulates that preliminary enquiry shall be concluded within three months, but the subject preliminary enquiry once concluded has been sought to be reopened after nine years and therefore, the same exercise is in utter violation of the principles of natural justice and on that score alone, the enquiry report in question, is a nullity and non-est in the eyes of law. In support of his contentions, learned counsel for the petitioners has referred to the decision of the Hon'ble Apex Court rendered in the case of SMD Kiran Pasha Vs. Govt. Of Andhra Pradesh & Ors. as reported in (1990) 1 SCC328 6. A counter affidavit has been filed on behalf of the respondents raising the question of maintainability of the writ application in absence of supporting facts and circumstances. With regard to statements made in paragraphs 6 to 16, it has been submitted in the counter affidavit that preliminary enquiry, vide no. 03/09, dated 07.03.2009 was instituted on the direction of the then Director General of Police, Vigilance Bureau, Ranchi in the light of letter dated 03.03.2009, issued by the then Vigilance Commissioner, Cabinet (Vigilance) Department, Government of Jharkhand, Ranchi against the petitioner Paras Kumar and Rajdeo Singh, Assistant Engineer-cum-in-charge Executive Engineer, Rural Work Department, Pakur for committing irregularities in the construction of five roads constructed in the District of Deoghar and roads in Pakur. Thereafter, the then Enquiry Officer enquired into the matter and took several steps for thorough physical verification of the said irregularities and also took steps for obtaining the related documents. It has further been stated that physical inspection of the said roads was conducted by the Technical Examination Cell, Cabinet (Vigilance) Department, Government of Jharkhand, Ranchi on 14.06.16, 15.06.16 and 16.06.2016 respectively in the presence of Anti Corruption Bureau Official and the enquiry report dated 02.09.2016 (Annexure-I) of the Technical Examination cell has been obtained. It has further been stated that the construction work of one road in the year 2007 from village Kankhapra to Satpahari was carried out under the supervision of the petitioner, Dilip Kumar

Singh, Junior Engineer, Rural Engineering Organization (REO) Division, Deoghar. It has further been stated that the enquiry report of the Technical Examination Cell (Annexure-I) comprising expert Engineers have found the petitioner in W.P. (S) No. 6314 of 2016 guilty in construction of aforesaid work to the tune of several lakhs. The report of the Technical Cell is being examined by the Anti Corruption Bureau officials. It has further been stated that the grounds taken by the petitioner in W.P. (S) No. 6314 of 2016 is thoroughly misconceived and the writ petition is liable to be dismissed in limine.

7. Mr. Shailesh Kumar Singh, learned counsel for the Respondents- Vigilance during the course of hearing apart from reiterating the submissions made in the counter affidavit, has submitted that the respondents nos. 6 to 8, who have been impleaded by name, no notice has been issued to them, therefore, in the absence of notice to the respondent nos. 6 to 8, no allegation of mala fide could be proved. Learned counsel for the Vigilance has further submitted that the writ petition is presumptive and based on assumptions and the judgment cited by the learned counsel for the petitioners rendered in the case of SMD Kiran Pasha (supra) is not applicable and moreover, this Court is not supposed to entertain these writ applications at this stage, since it is too premature to entertain such writ applications.

8. After hearing the learned counsel for the respective parties and on perusal of the records, this Court is not inclined to interfere and accede to the prayer of the petitioners due to the following facts and reasons : - (i) Admittedly, the aforesaid writ applications have been filed for quashing the enquiry report, dated 02.09.2016, whereby some deficiencies and irregularities have been found in the said report, basing on which the respondents have moved to take coercive action by lodging F.I.R. as well as other consequential action. If on the basis of the said inquiry report, any F.I.R. is lodged, then the petitioners could have the remedy to challenge the same before the appropriate Forum. So far as the enquiry report dated 02.09.2016 is concerned, indisputably, no departmental proceeding has since been initiated basing on the impugned enquiry report and unless any disciplinary proceeding is initiated and the petitioners are subjected to any evil or civil consequences, this Court under apprehension/presumption of the petitioners

ought not to interfere in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, because it is too early, rather premature to tinker with the enquiry report dated 02.09.2016, 7 unless, the rights of the petitioners being Government servants are adversely affected by any evil or civil consequences. Though, this Court would not like to interfere with the consequential action on the impugned enquiry report, but, if any future action would be taken by the respondents on the basis of the Vigilance Circular No. 1623, dated 07.08.2015, annexed as Annexure-7 to the I.A. No. 2631 of 2017, the petitioners shall be afforded reasonable opportunity, as enshrined in the aforesaid Circular, therefore, in the fitness of things without dwelling upon the nitty-gritty of the factual and legal aspects on the impugned enquiry report, interest of justice would be met, if a direction is issued to the respondents to take action in the event any action would be proposed to be taken basing on the enquiry report, the same be done after affording reasonable opportunity of hearing to the petitioners and in accordance with law.

9. With the aforesaid direction, these writ petitions stand disposed of. (Pramath Patnaik, J.) APK

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