

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9034 of 2014

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Gautam Kumar Mishra, Son of Late Sri Kameshwar Mishra, Resident of
Village and P.O.- Purshottampur, P.S. Maniyari District- Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction
Department, Government of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Government of
Bihar, Patna
3. The Chief Engineer, Road Construction Department, Government of
Bihar, Patna
4. Executive Engineer, Road Division No.- 1, Muzaffarpur
5. The District Magistrate, Muzaffarpur
6. The Bharat Petroleum Corporation Limited through its Chairman
7. Territory Manager, (Retail) BPCL Barauni Top N.H. 31, at and P.O.
Papraur, District- Begusarai
8. Engineer in Chief Cum Additional Commissioner cum Special Secretary,
Road Construction Department, Government of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner	:	M/s. Jitendra Kishore Verma, Anjani Kumar, Ritwik Kumar, Advocates
For the State	:	Mr. Gopal Krishna, A.C. to S.C. IX
For the B.P.C. L.	:	Mr. Madhuresh Prasad, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 02-04-2015

Heard learned counsel for the petitioner, the State and
the Bharat Petroleum Corporation.

Through this writ application, the petitioner seeks
quashing of Annexure 9 which is a letter no.4875 dated 13.09.2011
and the demand raised vide Annexure 3 for grant of no objection
which is a letter no.211 dated 10.02.2014 issued by the Executive

Engineer, Road Division No.1, Muzaffarpur.

It is submitted that Bharat Petroleum Corporation, on behalf of the petitioner, had submitted an application for no objection to the respondent no.5, the District Magistrate, Muzaffarpur, however, respondent no.4 has issued the impugned Annexure 3 making demand of Salami and annual rent which comes to a sum of Rs.5,70000/- for five years.

Learned counsel for the petitioner submits that the same has been issued on the basis of Annexure 9 which has been communicated by the Engineer-in-Chief to all the concerned stating therein that the Salami and rental would be fixed on the basis of earlier circulars dated 01.05.1956 and 15.02.1989. Learned counsel submits that it is clear from the circular dated 01.05.1956 and 15.02.1989 that it is for the purpose of settlement/leasing out the land for installation of petrol pump and, thus, the same would not be applicable in the case of the petitioner since he is establishing petrol pump on his own land and he only wants no objection from the State Government which would definitely include the use of part of the flank of the road for the purpose of ingress and egress from the petrol pump to the road. Learned counsel submits that the petitioner does not want the lease of that part of the flank as he has not any interest in getting it on lease and then close it by erecting boundary wall as the



flank is available for the public to use freely without any cost. That apart, he submits that a recommendation was made on 16.06.2012 by the Committee concerned containing the Chief Engineer of the Road Construction Department and other six officials setting out that for utilization of the flank as approach to the retail outlet of petrol pump Rs.2 lacs should be taken for 15 years. If the retail outlet is being proposed on the State highway or Corporation or Municipality road for major district road, it would be Rs.2 lacs, for the major district road and rural road it would be Rs.1.50 lacs lump sum amount whereas for other roads of the district or rural roads it should be Rs.1 lacs.

Identical matter came to be considered by a Co-ordinate Bench of this Court in C.W.J.C. No.19741 of 2012. The writ petition was disposed of on 09.05.2013 vide Annexure 6. It appears from bare perusal of the aforesaid decision that the letter dated 13.09.2011, as contained in Annexure 9 to this writ petition, which indicates that on the basis of circular of 1956 and 1989 the Salami has to be fixed, was noticed by this Court and the Principal Secretary, Road Construction Department was directed to file affidavit in the facts and circumstances of the case. Learned Single Judge has also noticed that the amount charged by the Government of India for the said purpose is less than the amount charged by the Department and



considering the same a meeting was held on 16.06.2012 under the Chairmanship of the Engineer-in-Chief to rationalize the issue. Aforesaid document has been brought as Annexure 5 to the present writ petition and it was brought on record as Annexure C in the counter affidavit. Learned Single Judge has also noticed that keeping the aforesaid in view, a final decision was expected to come in this regard expeditiously. In such a situation and on a consideration of the entire facts and circumstances of the case, the writ petition was disposed of directing the respondents to issue 'No Objection Certificate' to the petitioner provisionally on payment of Rs.1.5 lacs as per the recommendation dated 16.06.2012 subject to any final decision to be taken in this regard by the respondents. It was further made clear that if such decision is taken to enhance the amount beyond Rs.1.5 lacs and change of mode of payment, then it will be open to the petitioner to challenge the same in appropriate proceeding including another writ petition.

In such background, this writ application has been filed for quashing the demand raised.

However, surprisingly the respondent no.4 has stated in his counter affidavit that the order passed by this Court in C.W.J.C. No.19741 of 2012 is not at all relevant in the present matter but learned counsel appearing for the State has not been able to justify



such statement as he is not in a position to show that the aforesaid case was on some other footing. It appears that the statement has been made in the counter affidavit in irresponsible manner and such action is deprecated. Not only that, it appears from Annexure 7 that in compliance of the direction of this Court, the same Executive Engineer, Road Division No.1, Muzaffarpur has written a letter to the District Magistrate, Muzaffarpur communicating him that 'No Objection Certificate' has been issued by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department. Learned counsel submits that the aforesaid decision has been taken by the Engineer-in-Chief in compliance of the direction as contained in the order dated 09.05.2013 passed in C.W.J.C. No.19741 of 2012.

In the aforementioned facts and circumstances of the case, this writ petition is being disposed of in terms of the order dated 09.05.2013 passed in C.W.J.C. No.19741 of 2012 directing the District Magistrate to issue 'No Objection Certificate' within a period of two weeks from the deposit of an amount of Rs.1.5 lacs by the petitioner before the respondent no.4, Executive Engineer, Road Division No.1, Muzaffarpur, who is directed to receive the same from the petitioner as and when tendered. This is also made clear that this would be provisional arrangement till any final decision is taken in

view of the recommendation dated 16.06.2012, as contained in Annexure 5, as it is nowhere stated in the counter affidavit that such decision has already been taken by the competent authority. It is further made clear that if a final decision is taken to enhance the amount beyond Rs.1.5 lacs to the category of major district road and for making change in the mode of payment then it will be open to the petitioner to challenge the same in appropriate proceeding.

(Dr. Ravi Ranjan, J)

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