

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.459 of 2011

IN

Civil Writ Jurisdiction Case No. 4140 of 2006

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Sambhawi Construction, Gangjala Saharsa through its Proprietor Ranjan Kumar Singh, S/o Pushkar Prasad Singh, R/o Mohalla - Biratganj, Gokool Chalk, P.O. + P.S. + District - Saharsa

.... Petitioner

Versus

1. The State of Bihar
2. Sri V. Jai Shankar, Commissioner-cum-Secretary Water Resources Department Government of Bihar, Patna
3. Sri S.N. Das, Deputy Secretary of the Government Water Resources Department, Government of Bihar, Patna
4. Sri Shankar Ram, Chief Engineer, Water Resources Department, Birpur, Supaul
5. Chief Engineer Water Resources Department, Muzaffarpur
6. Binay Sharma, S/o Late Suresh Chandra Singh, R/o Village + P.O. Kanchanpur, P.S. Bihata, District - Patna

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Sharda Nand Mishra, Advocate
For the State	:	Mr. Amarendra Kumar, AC to AAG-3
For the Respondent	:	Mr. Praveen Kumar, Advocate
		Mr. Vinay Sharma (in person)
Amicus Curiae	:	Mr. R.N. Shukla, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

C.A.V. JUDGMENT

Date: 30 -10-2015

This review petition has been filed in the light of the liberty granted by the Division Bench under order No. 9 dated 03.02.2011, passed in L.P.A. No. 1165 of 2009 to review part of the order dated 21.07.2006, passed by this Court in C.W.J.C. No. 4140 of 2006 directing the State Government to not only look into the matter and take appropriate remedial measures to recover the amount

unauthorisedly paid to the review petitioner but also to take both civil and criminal action against those responsible for such payment.

2. This Court under order dated 21.07.2006 held that the flood fighting claim of the review petitioner for the year 2002 was considered by the departmental authorities including the then Hon'ble Minister, Water Resources Department, Government of Bihar on 02.08.2003 and rejected with reference to Government circular bearing letter No. 949 dated 11.05.2002, could not have been subsequently allowed, paid to the petitioner without seeking review of the order of the State Government dated 02.08.2003 rejecting the said claim, asked the State Government to look into the matter and take appropriate remedial measures not only to recover the amount unauthorisedly paid to the review petitioner but also to take both civil and criminal action against those responsible for such payment.

3. Notwithstanding the aforesaid factual position petitioner is seeking review of the aforesaid order passed by this Court on the ground that petitioner-firm having successfully executed the flood fighting work entrusted to it by the Western Embankment Division may not be allowed to suffer for failure of the authorities of the division not to maintain the records of flood fighting work conducted in the division at the relevant time, particularly by the



review petitioner in accordance with the rules required for such purpose. The definite case of the petitioner is that he having executed the flood fighting work successfully cannot be asked to suffer for the failure of the authorities not to maintain the records and on that ground payment made to him for executing the flood fighting work cannot be recovered as the said payment was made pursuant to the direction of the writ Court contained in order No. 2 dated 18.05.2005, passed in C.W.J.C. No. 15455 of 2004 to respondent Nos. 3, 5 to consider the representation of the petitioner filed for payment of amount due towards execution of the flood fighting work performed between 30.07.2002 to 07.09.2002 amounting to Rs. 14,12,534/- paid to it.

4. In response to the review petition concerned Executive Engineer filed counter affidavit on behalf of Respondent No. 4, Chief Engineer, Water Resources Department, Birpur, Supaul and stated in Paragraph 8 that after exercising departmental procedure payment of Rs. 12,16,455/- was made to the petitioner under cheque dated 27.02.2006 enclosed with letter No. 149 dated 28.02.2006, Annexure-H to the review petition. In Paragraph 14 of the counter affidavit Executive Engineer further stated that the action has been taken to recover the aforesaid amount from the review petitioner in



compliance of the order of the High Court dated 21.07.2006 by filing money suit in the court of Civil Judge, Class-I, Supaul as well as by lodging First Information Report in Birpur Police Station by Executive Engineer, Western Embankment Division, Kunauli at Birpur under letter No. 361 dated 16.06.2008 in compliance of the order of the Water Resources Department contained in letter No. 394 dated 22.05.2008, Annexure-A series.

5. In view of the submissions made in the review petition and the counter affidavit filed on behalf of Chief Engineer, Water Resources Department, Birpur, Supaul, Respondent No. 4 through the concerned Executive Engineer this Court asked AAG-3 to produce the records and permitted the counsel for the review petitioner as also respondent No. 6 and Sri R.N. Shukla, Advocate appointed Amicus Curiae by this Court to peruse the records and with the assistance of learned counsel for the parties as also Sri Shukla formulated following nine questions of fact under order No. 16 dated 14.01.2015:

- i. To indicate the name of the officers against whom civil, criminal action as well as departmental proceeding was initiated and the present status of the action taken against the officers.*
- ii. To indicate the name of officers involved in*

the decision making process to allow the controversial payment to the review petitioner.

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- iii. *To indicate the reason as to why order refusing payment to the review petitioner passed by Sri Vinay Sharma, the then Executive Engineer (Respondent No. 6) was set aside by the Departmental Commissioner.*
 - iv. *To explain the difference in date-wise measurement entered in the measurement book, those reported on the date through wireless as also in delayed fortnightly report sent in Form-24 as also the basis on which actual work done could be assessed by the Liability Committee headed by the then Chief Engineer, Birpur.*
 - v. *To explain that the Chief Engineer, Birpur as Chairman of the Liability Committee requested for approval of his recommendation for payment by the Government then why was it not approved and fund allocated for payment without prior approval.*
 - vi. *To indicate as to why eight hourly shift Engineers' Team deputed for execution of work at the review petitioner's site did not record measurement in the records, such as, M.B. or site order book or crate laying registers and Incharge of the shift did not check the same. To further indicate whether*

measurement entered by any other person could be relied upon.

- vii. To indicate whether nomination of the contractor in the present case was approved by the Government, if yes, then the date thereof as well as date of sanction of estimate.*
- viii. To explain the stock and site accounts of materials received and used at the site and whether maintained properly.*
- ix. To indicate synopsis of date-wise events chronologically.*

and directed Respondent no.2, Principal Secretary to answer the nine queries by swearing affidavit personally.

6. In response to the aforesaid order dated 14.01.2015 Principal Secretary of the Department affirmed affidavit dated 20.02.2015, which was filed in the Registry on 25.02.2015, in Paragraphs 4, 5 whereof it has been stated that in response to the query made in Paragraph 1 of the order eight erring field officers have been identified in the light of the order of the writ Court dated 21.07.2007 for criminal action, namely, Hari Prasad Das, Chief Engineer, Water Resources Department, Birpur, Surendra Kumar Agrawal, Superintending Engineer, Barrage Circle, Birpur, Gopal Ram Rajak, Executive Engineer, Western Embankment Division, Kunauli at Birpur, Arvind Kumar Singh, Assistant Engineer, Western



Embankment Division, Kunauli at Birpur, Madan Mohan Dwivedi, Assistant Engineer, Western Embankment Division, Kunauli at Birpur, Durga Prasad Pandey, Junior Engineer, Western Embankment Division, Kunauli at Birpur, Rajendra Prasad Singh, Junior Engineer, Western Embankment Division, Kunauli at Birpur, Vinay Sharma, Executive Engineer, Western Embankment Division, Kunauli at Birpur and in compliance of the departmental letter contained in letter No. 394 dated 22.05.2008 First Information Report has been lodged against the aforesaid eight officers on 16.06.2008 vide Birpur P.S. Case No. 88/08, Annexure-C to the affidavit and the said case as per the report of the Assistant Prosecution Officer is pending in the court of S.D.J.M., Birpur for appearance of the accused persons. Later, in compliance of the order of the High Court dated 22.09.2008/ 16.10.2008, passed in M.J.C. No. 2023 of 2006 name of Sri Vinay Sharma, Executive Engineer was expunged from the First Information Report vide departmental letter No. 890 dated 06.11.2008, copy whereof has also been annexed along with the First Information Report, Annexure-C. In Paragraph 6 (i), (ii), (iii), (iv), (v) of the affidavit Principal Secretary of the Department has given the present status of departmental proceeding initiated against Hari Prasad Das, Chief Engineer, Surendra Kumar Agrawal, Superintending Engineer,



Gopal Ram Rajak, Executive Engineer, Vinay Sharma Executive Engineer, Arvind Kumar Singh, Madan Mohan Dwivedi, Durga Prasad Pandey and Rajendra Prasad Singh. In Paragraph 6 (v) Principal Secretary further stated that the departmental proceeding initiated against Arvind Kumar Singh, Madan Mohan Dwivedi, Durga Prasad Pandey and Rajendra Prasad Singh has been concluded vide notification dated 05.11.2014 exonerating them from the charges levelled against them. In Paragraph 7 of the affidavit Principal Secretary of the Department stated that M/s Vinay Sharma, S.A. Kabir both Executive Engineer, Baiju Prasad Singh, Technical Advisor, Flying Squad Circle, Patna, C.P. Singh, Superintending Engineer, Flying Squad Circle, Patna, Hari Sharan Singh, Superintending Engineer, Flood Control and Monitoring Circle, Patna, Rajesh Kumar, Superintending Engineer, Barrage Circle, Birpur, Shankar Ram, Chief Engineer, Water Resources Department, Birpur all officers of the Liability Committee were involved in the decision making process to allow payment to the review petitioner. In the same paragraph Principal Secretary further stated that M/s Devi Rajak, Engineer-in-Chief, Water Resources Department, Bihar, Patna, V. Jaishankar, Commissioner-cum-Secretary, Water Resources Department, Bihar, Patna, G.S. Kang, Chief Secretary, Government of Bihar-cum-



Advisor to the Governor, Bihar (during President Rule) were not found to be controversial in making payment to the review petitioner by the departmental authorities after due scrutiny of the claim in compliance of the order dated 18.05.2005, passed in C.W.J.C. No. 15455 of 2004, no action was required to be taken against the officers who were involved in the decision making process. In Paragraph 8 Principal Secretary replied to the query made in Paragraph 3 of the order and stated that in compliance of the order dated 18.05.2005, passed in C.W.J.C. No. 15455 of 2004 claim of the review petitioner was examined by the Liability Committee as well as the higher authorities of the Department and the order refusing payment to the review petitioner passed by Sri Vinay Sharma, the then Executive Engineer was found to be erroneous, the same was set aside by the Departmental Commissioner and communicated under letter No. 3926 dated 30.09.2005. In the same paragraph Principal Secretary further stated that it was Sri Vinay Sharma who made demand for allotment of fund vide letter No. 463 dated 28.05.2005 for making payment to the review petitioner but later he refused to make payment to the petitioner by passing reasoned order vide letter No. 820 dated 23.09.2005, which was set aside after due scrutiny of the matter. Both the reasoned orders passed by the Departmental Commissioner dated



30.09.2005 and the order dated 23.09.2005 passed by Sri Vinay Sharma, the Executive Engineer have been annexed as Annexure-D. In Paragraph 9 of the affidavit Principal Secretary answered the query made in Paragraph (iv) of the order and stated that from comparative perusal of the measurement entered in the measurement book, the work done report sent through wireless and fortnightly report in Form-24, there appears little difference which is due to error in transmission made by a low grade and non-technical employee who worked as wireless operator. The said difference, however, was placed before the Liability Committee which recommended that lowest value of the work entered in Form-24 after scrutiny will be the admissible amount for payment and that amount comes to Rs. 13.114 lacs. In Paragraph 10 of the affidavit Principal Secretary answered the query made in Paragraph (v) of the order and stated that review petitioner filed contempt petition, which was pending in which respondents filed show cause informing the Court that funds have been allocated under letter No. 398 dated 17.09.2005 for payment of pending claims with regard to flood fighting work with direction to Sri Vinay Sharma under letter No. 2276 dated 17.09.2005 to pass reasoned order after examining Form-24 as to whether the payment claimed by the petitioner is to be made or not. Both the letters dated 17.09.2005



allocating fund for payment of pending claim for flood fighting work and direction to Sri Vinay Sharma to pass reasoned order is annexed with the affidavit as Annexure-E. In Paragraph 11 of the affidavit Principal Secretary answered the query made in Paragraph (vi) of the order and stated that as per the order of Chief Engineer, Water Resources Department, Birpur contained in letter No. 2731 dated 30.07.2002 and letter No. 3064 dated 24.08.2002 eight hourly shift engineers' team deputed for execution of flood fighting work at the review petitioner's site was not directed to record measurement in the M.B., the Incharge of the shift was also not directed to check any such entry, rather eight hourly shift engineers and the Incharge were directed to send the details of work executed in every shift to the higher authorities. The measurement of the work was entered in the M.B. by the concerned Junior Engineer who was regularly posted in the said section, as such, it cannot be said that the entry made by him is not reliable. Copy of letters dated 30.07.2002, 24.08.2002 is annexed with the affidavit as Annexure-F. In Paragraph 12 of the affidavit Principal Secretary answered the query made in Paragraph (vii) of the order and stated that nomination for the work executed on 30/ 31.07.2002 was approved by the Superintending Engineer, Barrage Circle, Birpur on 29.08.2005. Remaining five nominations



were approved by the Department under letter No. 2276 dated 17.09.2005. Post facto sanction of estimate of flood fighting work at spur 2.25 kilometer for Rs. 22,60,371/- and at spur 9.00 kilometer for Rs. 25,66,940/- was accorded on 04.09.2005. In Paragraph 13 of the affidavit Principal Secretary answered the query made in Paragraph (viii) of the order and stated that the details of stock and site account is not available in the field office since the same were damaged in the flood of Koshi in the year 2008. In Paragraph 14 of the affidavit Principal Secretary in compliance of the direction contained in Paragraph (ix) of the order furnished synopsis of date-wise events chronologically and stated in :

- (i) *Year 2002 : Review petitioner nominated to execute flood fighting work at 2.25 kilometer and 9.00 kilometer spur of Western Koshi Embankment.*
- (ii) *Year 2004 : Review petitioner filed C.W.J.C. No. 15455 of 2004 praying inter alia for payment of the aforesaid work.*
- (iii) *18.05.2005 : The aforesaid writ petition was disposed of directing the respondents to consider and dispose of the representation of the petitioner and to pay the admitted dues within six weeks.*
- (iv) *28.05.2005 : The Executive Engineer requested the higher authorities for release*

of fund of Rs. 14.21 lacs for making payment to the petitioner.

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- (v) *13.08.2005 : Reasoned order passed at departmental level directing the Chief Engineer to place the matter before the Liability Committee.*
 - (vi) *Year 2005 : Petitioner filed contempt petition bearing M.J.C. No. 1746 of 2005 alleging non-compliance of order dated 18.05.2005.*
 - (vii) *15.09.2005 : Liability Committee considered the matter and made its recommendation.*
 - (viii) *17.09.2005 : Fund allocated after approval of the recommendation and Executive Engineer was directed to pass reasoned order with regard to claim of the petitioner.*
 - (ix) *23.09.2005 : The Executive Engineer passed reasoned order rejecting the claim of the petitioner on certain grounds.*
 - (x) *30.09.2005 : Order of the Executive Engineer set aside by the Department.*
 - (xi) *22.11.2005 : Meeting of Special Liability Committee was held which approved the admitted dues of Rs. 13.114 lacs of the petitioner.*
 - (xii) *23.11.2005 : The Chief Engineer was directed to pass reasoned order for payment to the petitioner.*
 - (xiii) *25.11.2005 : The Chief Engineer passed*

reasoned order directing the Executive Engineer to ensure payment to the petitioner.

- (xiv) 28.02.2006 : The Executive Engineer made payment of Rs. 13.114 lacs to the petitioner.*
- (xv) 17.03.2006 : The Executive Engineer Sri Vinay Sharma was put under suspension for causing unnecessary delay in making payment to the petitioner.*
- (xvi) 21.07.2006 : Order of suspension of Sri Vinay Sharma quashed by the High Court in C.W.J.C. No. 4140 of 2006 and direction issued to initiate civil, criminal action and departmental proceeding against all responsible for making payment to the petitioner.*
- (xvii) 16.08.2008 : Birpur P.S. Case No. 88/08 was registered against the concerned engineers.*
- (xviii) Year 2009 : Money suit was filed against the petitioner for recovery of the excess payment.*
- (xix) Year 2011 : Petitioner filed the present review petition for review of aforesaid order dated 21.07.2006.*

In support of the synopsis Principal Secretary annexed the proceedings of the Special Liability Committee dated 15.09.2005, 22.11.2005 as Annexure-G. Reasoned order passed by

Chief Engineer dated 25.11.2005, though claimed to have been annexed with the affidavit, has not been placed with the same.

7. Respondent No. 6 Sri Vinay Sharma filed counter affidavit dated 17.03.2015 on 18.03.2015 raising preliminary objection about the maintainability of the review petition in view of the fact that the review petitioner was not necessary party in C.W.J.C. No. 4140 of 2006, as in the said petition Respondent No. 6 had challenged his suspension order bearing Memo No. 262 dated 17.05.2006, Annexure-22 to the said writ petition on the ground that he has not violated the order dated 18.05.2005, passed in C.W.J.C. No. 15455 of 2004 filed by the review petitioner as well as the orders passed by his superior authorities for compliance of the order dated 18.05.2005. Respondent No. 6 stated in Paragraph 6 of the counter affidavit that perusal of the order of the High Court dated 18.05.2005 would show that this Court had directed Respondent No. 3 Secretary, Water Resources Department and Respondent No. 5 Chief Engineer, Water Resources Department, Birpur to consider and dispose of the representation of the review petitioner filed before them within one month and to pay his admitted dues within six weeks from the date of representation. In Paragraph 7 of the counter affidavit Respondent No. 6 stated that in the name of the order of the High Court dated



18.05.2005 the State authorities passed the buck, attempted to hold him responsible for non-compliance of the said order which forced him to approach the High Court in C.W.J.C. No. 4140 of 2006. In Paragraph 8 Respondent No. 6 stated that in course of hearing of C.W.J.C. No. 4140 of 2006 this Court considered the documents placed on record by him as also by the respondent authorities and having considered those documents recorded the finding that the flood fighting claim of the different divisions including that of Western Embankment Division where review petitioner is said to have worked in 2002 was considered by the departmental authorities including the then Hon'ble Minister on 02.08.2003 and rejected with reference to Government circular letter No. 949 dated 11.05.2002, Annexure-9 to C.W.J.C. No. 4140 of 2006 and thereafter request to review the said order was also rejected under the notes of the then Departmental Commissioner Sri V. Jai Shankar dated 08.01.2004. In Paragraph 9 Respondent No. 6 stated that the flood fighting claim of the year 2002, which stood already rejected by the State Government in the year 2003, could not have been paid without seeking review of the orders of the State Government which had rejected the claim initially in the year 2003 and in that view of the matter the High Court directed the State Government to look into the matter and to take



remedial measures not only to recover the amount unauthorisedly paid but also to take both civil and criminal action against those found responsible for such payment, as stated in Paragraphs 12 to 14 of the counter affidavit of Respondent No. 2 (Sri V. Jai Shankar, the then Secretary, Water Resources Department) itself. In Paragraphs 10, 11 of the counter affidavit Respondent No. 6 stated that the above findings and direction of the Court made under order dated 21.07.2006, passed in C.W.J.C. No. 4140 of 2006 is general in nature and not only against the review petitioner. According to Respondent No. 6 the State Government was directed to take both civil and criminal action against those who were to be found responsible for making payment against the claim already rejected by the Government in the year 2003, 2004. In view of the facts stated in Paragraphs 1 to 12 of the counter affidavit Respondent No. 6 submitted in Paragraph 13 of the counter affidavit that it is the State Government which decided to take civil and criminal action against the erring official by lodging First Information Report as well as the departmental proceeding on the one hand and by filing Civil Suit No. 03/09 before the civil Judge, Senior Division-I, Supaul for recovery of the amount unauthorisedly received by the review petitioner and further submitted that if review petitioner is aggrieved by the action



taken by the authorities of the State Government under whose connivance the review petitioner succeeded in receiving the unauthorized payment of Rs. 13,11,400/- and in that background further submitted in Paragraph 14 that the present review petition is not maintainable as according to Respondent No. 6 review petitioner was not a necessary party in C.W.J.C. No. 4140 of 2006. In Paragraph 15 of the counter affidavit Respondent No. 6 stated that in so called compliance of the direction of the High Court contained in Paragraph 9 of order dated 21.07.2006, passed in C.W.J.C. No. 4140 of 2006 the departmental authorities lodged First Information Report against Respondent No. 6 also by intentionally misinterpreting the direction of the High Court in order to harass Respondent No. 6 for not cooperating in making fraudulent, unauthorized payment to the review petitioner. In the same paragraph Respondent No. 6 also stated quoting the order of the High Court dated 22.09.2008, passed in M.J.C. No. 2023 of 2006 that it is the High Court which compelled the authorities to withdraw the departmental instruction to lodge First Information Report against him. The aforesaid order of the High Court dated 22.09.2008 has been annexed with the counter affidavit as Annexure-B/1. In Paragraphs 16, 17 of the counter affidavit Respondent No. 6 quoting paragraph from order dated 11.08.2011,



passed in C.W.J.C. No. 2946 of 2009 stated that in purported compliance of the directions contained in Paragraph 9 of order dated 21.07.2006 the departmental authorities also initiated departmental proceeding against him after his superannuation under Rule 43B of the Bihar Pension Rules under resolution bearing Memo No. 400 dated 22.05.2008 which was quashed. In Paragraphs 18, 19 of the counter affidavit Respondent No. 6 stated that the State authorities did not take any action against those responsible for making illegal payment to the review petitioner and clearly ignored the directions of this Court contained in order dated 21.07.2006. In Paragraphs 20, 21 of the counter affidavit Respondent No. 6 submitted with reference to the circular issued by the Government in the Cabinet Vigilance Department that the flood fighting work is emergency work, which is executed continuously without any break just as fire extinguishing work until the situation is overcome. In the same paragraph Respondent No. 6 also stated that flood fighting work is done in three shifts of eight hour each by a team of engineers consisting of Junior, Assistant engineer and headed by Executive Engineer. The measurement of site order book is entered by the Junior Engineer, which is checked 100% by both Assistant and Executive Engineer of each shift and then only payment made on the basis of such



measurement recorded in measurement book. In the same paragraph Respondent No. 6 further stated that no other document, namely, wireless message, Form-24, photographs, local enquiry can be authentic basis for calculating the quantity for making payment as these are nothing but informative in nature. In Paragraph 22 of the counter affidavit Respondent No. 6 stated that in the case of review petitioner the measurement/ site order book was not entered by the concerned Junior Engineer of the team executing the flood fighting work and further it has also not been checked by the Assistant, Executive Engineer. In Paragraph 23 Respondent No. 6 stated that on receiving the High Court's order dated 18.05.2005 from the review petitioner bereft of any representation he under letter No. 463 dated 28.05.2005 furnished detailed information about the so called flood fighting work performed by the review petitioner in the year 2002 on spur(s) at 2.25 kilometer and 9.00 kilometer of Western Embankment of Koshi river and stated in Paragraph 7 of the said letter that the measurement entered from pages 25 to 65 in M.B. No. 1394 by Junior Engineer Sri Durga Prasad Pandey has not at all been checked by Assistant Engineer Sri Arvind Kumar Singh and the Executive Engineer Sri Gopal Ram Rajak. Similarly in Paragraph 8 of letter dated 28.05.2005 it has been stated that the measurement entered by



Sri Rajendra Prasad Junior Engineer from pages 1 to 8 of M.B. No. 1422 has not at all been checked by Assistant Engineer Sri Madan Mohan Dwivedi and the Executive Engineer Sri Gopal Ram Rajak. In the same paragraph Respondent No. 6 further stated that the aforesaid two informations are sufficient to outright reject the claim of the review petitioner in view of the instructions of the Cabinet Vigilance Department referred to in Paragraph 20 of the counter affidavit. In the same paragraph Respondent No. 6 also stated that in Form-24 issued in connection with both the measurement books i.e. 1394, 1422 it has been stated that the measurement has been checked 100% by Assistant Engineer and 25-30% by the Executive Engineer. Respondent No. 6 annexed his letter dated 28.05.2005 as Annexure-R6-E to the counter affidavit. In Paragraph 24 of the counter affidavit Respondent No. 6 stated that the departmental authorities knowingly overlooked the aforesaid important aspect with a view to make payment to the review petitioner and other contractors and adopting a wrong path constituted Adeyata Samiti (Acceptance Committee), Dayitwa Samiti (Liability Committee) etc. for considering the claim of review petitioner and others and manipulating the records the Liability Committee came out with favourable recommendation in favour of review petitioner in its meeting held from 13.09.2005 to



15.09.2005 on the basis of the informatory documents, such as, wireless message, Form 24 etc. for making payment to the review petitioner on the basis of the entries made in Form-24. In the same paragraph Respondent No. 6 asserted malice against the members of both the aforesaid committees i.e. Superintending Engineer, Barrage Circle, Birpur Sri Rajesh Kumar, Chief Engineer, Water Resources Department, Birpur Sri Shankar Ram, Superintending Engineer, Flood Monitoring Circle Sri Hari Sharan Singh with his Executive Engineer Md. S.A. Kabir, Superintending Engineer, Flying Squad Circle Late C.P. Singh as they connived with Engineer-in-Chief, North Sri Devi Rajak and the then Secretary, Water Resources Department Sri V. Jai Shankar as none of them took trouble to see the basic records, such as, entries made in the measurement book, site order book, which Respondent No. 6 was ready to produce in the meeting. Respondent No. 6 has annexed the proceeding of the Liability Committee held between 13.09.2005 to 15.09.2005 as Annexure-R6-F. In Paragraph 25 of the counter affidavit Respondent No. 6 stated that the department asked him under letter No. 2276 dated 17.09.2005 to pass reasoned order as to whether to make payment or not to the review petitioner stating that five numbers of nomination proposals has been sanctioned after three years and



allotment of Rs. 13.114 lacs has been made for payment to the contractor under letter No. 398 dated 17.09.2005 in view of the limited time available for responding before the High Court. In the same paragraph Respondent No. 6 stated that sanction of five numbers of nomination after three years itself indicate corruption in the department as the execution of flood fighting work was begun only after making agreement with the contractor, which in turn was made only after sanction of nomination in the emergency work. In the same paragraph Respondent No. 6 further stated that it is also questionable that on what basis the department calculated Rs.13.114 lacs for allotment. Letter Nos. 2276, 398 both dated 17.09.2005 has been annexed as Annexures-R6-G, R6-H to the counter affidavit. In Paragraph 26 of the counter affidavit Respondent No. 6 stated that he passed reasoned order contained in letter No. 820 dated 23.09.2005 in compliance of the instructions of the department contained in letter No. 2276 dated 17.09.2005 drawing inference that entries made in Form-24 is not supported by the basic documents, namely, approved estimate, agreement, entries in the measurement book not been verified by Assistant/ Executive Engineer it may not be appropriate to make payment on the basis of the entries made in Form-24. In Paragraphs 27, 28, 29 of the counter affidavit Respondent No. 6



stated that his reasoned order dated 23.09.2005 was set aside by the Departmental Commissioner under his letter No. 3926 dated 30.09.2005 with further direction to Respondent No. 6 to pass another reasoned order in favour of review petitioner and in compliance thereto he passed reasoned order contained in letter Nos. 858, 859 both dated 06.10.2005 reiterating his order dated 23.09.2005 which has not yet been cancelled by the department and the Government. In Paragraph 29 Respondent No. 6 further stated that the contents of the aforesaid two reasoned orders dated 06.10.2005 infuriated, made them wild with anger and they proposed severe action against him in abusive language, as would appear from their notice in File No. 10/mu-01(vi)-35/2005. Letter Nos. 858, 859 both dated 06.10.2005 has been annexed with the counter affidavit as Annexures-R6-K and R6-L. In Paragraph 30 of the counter affidavit Respondent No. 6 stated that the then Departmental Commissioner Sri V. Jai Shankar asked Engineer-in-Chief, North to look into the original papers, documents, to summon special meeting of Liability Committee and to submit proposal for payment if there is any evidence of work done available on record. Aforesaid fact is also evident from the notes of Sri V. Jai Shankar dated 16.11.2005 in File No. 10/mu-01(vi)-35/2005 at page 40. In Paragraph 31 of the counter affidavit



Respondent No. 6 stated that in compliance of the instructions of the then Departmental Commissioner a special meeting of the Liability Committee was convened to examine the original documents, such as, measurement book, site order book, shift register etc. in order to reach a definite conclusion whether there exists any document of work having been done. In the same paragraph Respondent No. 6 further stated that all the members of the Liability Committee in its meeting held on 22.11.2005 decided unanimously to adhere to its earlier decision taken on 15.09.2005 to make payment even without going through the original documents as it could not be made available before the Committee by the documents producing officer (Respondent No. 6) who could not be present in the meeting due to sad demise of his mother. Proceedings of the Liability Committee dated 22.11.2005 has been annexed as Annexure-R6-M to the counter affidavit. In Paragraph 32 of the counter affidavit Respondent No. 6 stated that in connection with C.W.J.C. No. 7994 of 2004 the then Departmental Secretary Sri V. Jai Shankar put up note in File No. 10/mu-1(B)-01/04 addressed to the then Chief Secretary-cum-Advisor Sri G.S. Kang that payment for the flood fighting works of 2002, 2003 and 2004 be made for fully executed work after concerned Chief Engineer is satisfied about the execution of work,



which note was approved by the Chief Secretary under his note dated 03.06.2005. Both the proposal and the acceptance note dated 02, 03.06.2005 has been annexed with the counter affidavit as Annexures-R6-N and R6-O. In Paragraph 33 of the counter affidavit Respondent No. 6 stated that the aforesaid notes put up by the Departmental Secretary dated 02.06.2005 and its approval granted by the Chief Secretary-cum-Advisor on 03.06.2005 is in teeth of the advise rendered by the Advocate General dated 30.03.2005/ 01.04.2005, which has been annexed as Annexure-R6-P to the counter affidavit. In Paragraphs 36, 37 of the counter affidavit Respondent No. 6 stated that the Departmental Secretary Sri V. Jai Shankar himself did not take any decision to make payment to the review petitioner in the light of the submissions of the Liability Committee which was his duty and responsibility as per the direction of the High Court contained in order dated 18.05.2005, passed in C.W.J.C. No. 18455 of 2004 and violating the order he asked the Chief Engineer, Water Resources Department, Birpur to pass reasoned order in the light of the minutes dated 22.11.2005 of the Special Liability Committee under departmental letter No. 4018 dated 23.11.2005. In compliance of the department dated 23.11.2005 Chief Engineer, Birpur passed reasoned order contained in letter No. 4852



dated 25.11.2005 asking Respondent No. 6 to make payment of Rs. 13.114 lacs to the review petitioner giving no reasons therein, further the Chief Engineer diluted his own order by seeking departmental approval which was never granted and hence payment of Rs. 13.114 lacs to the review petitioner is unauthorized payment. In Paragraph 39 of the counter affidavit Respondent No. 6 stated that he also sought departmental approval of the reasoned order dated 25.11.2005 under his letter No. 973 dated 10.12.2005 and kept waiting for departmental approval for more than three months but meanwhile was forced to make payment to the review petitioner as he was not only threatened about his service but also about his life and lives of his family members. Copy of letter No. 973 dated 10.12.2005 has been annexed as Annexure-R6-S to the counter affidavit.

8. From paragraph 40 onwards, Respondent no.6 has stated in his counter affidavit, with reference to Annexure-R6-T, his own letter dated 12.03.2006 addressed to the Departmental Commissioner and others, copy whereof was also given to the Private, Principal Secretary of the Hon'ble Departmental Minister, Chief Minister, Bihar respectively that a sum of Rs. 12,16,455=00 was paid to the review petitioner towards execution of flood fighting work executed between 30.07.2002 – 07.09.2002 in the year 2006,

which is wholly illegal as request for such payment stood rejected by the then Hon'ble Departmental Minister under order dated 02.08.2003 and the said order having not been reviewed by the successor-in-office of the Hon'ble Departmental Minister, the amount of Rs. 12,16,455=00 could not have been paid. In this connection, he also submitted that in spite of direction of the High Court to take both civil and criminal action against those who are responsible for such payment, no action has been taken as Departmental Principal Secretary under his note dated 17.10.2007, Annexure-R6-W projected that such payment was made after due enquiry by the Departmental Authorities with approval from Finance Department and Chief Secretary-cum-Advisor under President's Rule. For ready reference, extracts from the note dated 17.10.2007 is quoted hereinbelow:

“3- प्रथम बिन्दु का अनुपालन कर दिया गया तथा दूसरे बिन्दु के अनुपालन में संवेदक के भुगतान से सम्बन्धित तथ्यों की जांच हेतु अभियंता प्रमुख (उत्तर) की अध्यक्षता में तीन सदस्यीय समिति का गठन किया गया जिसमें अध्यक्ष के अतिरिक्त दो अन्य सदस्य मुख्य अभियंता स्तर के हैं। समिति द्वारा सभी बिन्दुओं पर विचारोपरान्त

प्रतिवेदन दिया गया जिसमें स्पष्ट किया गया है कि संवेदक सांभवी कंस्ट्रक्शन को भुगतान करने का निर्णय विभागीय स्तर पर सभी बिन्दुओं को पूरी छानबीन करके वित्त विभाग एवं मुख्य सचिव-सह-परामर्शी (राज्य में राष्ट्रपति शासन लागू रहने के कारण) द्वारा दिए गए स्वीकृत्यादेश के आलोक में दिया गया है।”

It is further asserted by Respondent no. 6 that neither the Departmental Principal Secretary nor the authorities of the Finance Department nor the then Chief Secretary-cum-Advisor under President's Rule ever reviewed the order of the then Hon'ble Departmental Minister dated 02.08.2003 rejecting the request of the review petitioner for such payment. He further submitted that even the Departmental Commissioner also did not review his own order dated 08.01.2004 whereunder request to review the order dated 02.08.2003 was rejected. In the teeth of both the aforesaid orders dated 02.08.2003 and 08.01.2004, all those Departmental Authorities, who have been instrumental in the release of the amount are also responsible along with the Members of the Special Liability



Committee and others who authorized such payment. In this connection, he also submitted that paragraph 3 of the note dated 17.10.2007, Annexure-R6-W of the Departmental Principal Secretary is factually incorrect as no positive order stating that review petitioner executed flood fighting work at the relevant time and payments have been made to the review petitioner after due enquiry by the Department with approval from the Finance Department and Chief Secretary-cum-Advisor under President's Rule is on record.

9. In response to the counter affidavit of Respondent no.6, Respondent no.2 has filed 2nd supplementary counter affidavit and stated in paragraph 9 that he has already discussed in paragraph 11 of the supplementary counter affidavit that it is wrong to state that Junior Engineer who entered measurement of work in the Measurement Book are not associated with flood fighting work. In fact, Junior Engineer, who is Engineer-in-charge of the site, makes arrangement for supply of materials, labourers etc. for the work. As per the prevalent rule, he has to enter measurement of work in the Measurement Book, as he is regularly posted there whereas Shift Engineer are deputed at the work site only for the limited period of flood fighting work.

10. Review petitioner filed supplementary affidavit on



29.04.2015, in paragraph 3 whereof reference was made to the proceedings taken in the meeting dated 30.08.2005 presided over by the Chief Engineer, Water Resources Department, Birpur in connection with the execution of flood fighting work of 2002 from which it appeared that in the relevant Measurement Book entries were made but were not counter-signed by the then Assistant, Executive Engineer and decision was taken to obtain their signature. In paragraph 3 of the reply, review petitioner, however, stated that Respondent no.6 did not obtain post facto signature from the then Assistant, Executive Engineer on the Measurement Book and for failure of Respondent no.6 to obtain post facto signature, recoveries cannot be made from review petitioner. In paragraph 4 of the rejoinder affidavit, review petitioner referred to the instructions of the Department contained in Letter No. 1865 dated 28.08.2002, Annexure-L, perusal whereof indicates that necessary detailed information duly counter-signed by the Assistant, Executive Engineer concerned, relevant departmental instruction issued in connection with execution of flood fighting work was not being furnished though general information about the execution of flood fighting work was being given. In the rejoinder affidavit, review petitioner annexed letter of the Chief Engineer, Water Resources Department, Birpur,



bearing No. 3816 dated 01.11.2002, Annexure-M series whereunder form 24 received from Executive Engineer, Western Embankment Division, Kunauli, Nirmali, Eastern Embankment Division, Birpur and Head Works Division, Birpur for the period between 15.06.2002 – 15.10.2002 were forwarded to Superintending Engineer, Flood Control Planning and Monitoring Circle and with reference to the said form 24, it is submitted that review petitioner did execute the flood fighting work at the relevant time.

11. Respondent no.2 has filed 3rd supplementary counter affidavit on 20.05.2015 through Sri Vijay Kumar Singh, Executive Engineer, Western Embankment Division, Kunauli, Birpur placing on record the photocopy of form 17 issued in connection with flood fighting work in the year 2002, wireless report for the period between 30.07.2002 – 08.09.2002, form 24 for the period 16.07.2002 – 31.07.2002, 01.08.2002 – 15.08.2002, 16.08.2002 – 31.08.2002 and 01.09.2002 – 15.09.2002 as Annexures- H, I and J respectively and submitted that though Measurement Book, Site Order Book were not counter-signed by the site Assistant, Executive Engineer in each shift, yet from contemporaneous form which may be informatory in nature, it does appear that flood fighting work at the relevant time was executed by the review petitioner.



12. In view of the pleadings filed by the parties, I have considered the submission made in support of the review petition as also the submission of Respondent nos. 2, 6. The flood fighting work is said to have been executed by the review petitioner during the period between 30.07.2002 – 07.09.2002. Request for making payment was rejected by the Hon'ble Departmental Minister under order dated 02.08.2003. Request to review the order dated 02.08.2003 stood rejected at the level of the then Principal Secretary of the Department itself under order dated 08.01.2004. There is nothing in the departmental record to suggest that the successor competent authority ever passed any positive order recalling the order dated 02.08.2003 passed by the then Hon'ble Departmental Minister or order dated 08.01.2004 passed by the then Principal Secretary, Water Resources Department, yet after direction from the High Court was received under order no. 2 dated 18.05.2005 passed in CWJC No. 15455 of 2004 to consider the representation of the petitioner dated 07.04.2004 filed before Commissioner and Secretary, Water Resources Department and 14.04.2004 filed before Chief Engineer, Water Resources Department, Birpur for payment of flood fighting dues for the work executed during the period between 30.07.2002 – 07.09.2002, allotment was made suppressing the fact that request for



such payment has already been rejected at the level of the Government and there is no occasion to release the amount, as such, in my opinion, the then Departmental Authorities from top to bottom engaged in release of the allotment appear to be responsible for the unauthorized release and payment to the review petitioner. The contemporaneous informatory records i.e. form 17, 24 and wireless report annexed with the 3rd supplementary counter affidavit filed on behalf of Respondent no.2 were also available at the time when Hon'ble Departmental Minister and Principal Secretary of the Department passed orders dated 02.08.2003 and 08.01.2004 rejecting the claim of the review petitioner for such payment, as they did not think it appropriate to order for such payment to the review petitioner for the reason that the Measurement Book, Site Order Book and other statutory documents were not counter-signed by the eight-hourly Shift Engineers, as is required of them in compliance to the relevant instructions of the Department and reiterated under Departmental Letter Nos. 949 dated 01.05.2002 and 1865 dated 28.08.2002, Annexure-L to the supplementary affidavit filed on behalf of the review petitioner. Request of the review petitioner for such payment having been rejected at the level of the Government, instruction making allotment of amount for payment to the review petitioner was



required to have been issued after obtaining orders from the Government. From the records it does not appear that allotment of amount for payment to the review petitioner was made after seeking approval from the Government. It appears that the amount has been released for payment to the review petitioner suppressing the Government orders and those responsible for such release also appear to be hand-in-glove with other field officers for unauthorized, unauthenticated payment except Respondent No. 6 and his subordinates who were coerced to make said payment to the review petitioner and action is called for against both sets of people responsible for suppressing the Government orders dated 02.08.2003, 08.01.2004 and ensuring release of the amount.

13. Perusal of the Irrigation Hand Book published by the Water Resources Department also indicates that thereunder relevant circulars of the Government have been compiled which requires flood fighting work to be executed continuously round the clock in eight-hourly shift and Junior Engineer of each shift is required to enter the measurement to be 100% counter-signed by the Assistant, Executive Engineer of each shift, but from paragraph 11 of the supplementary counter affidavit filed by Principal Secretary whereunder he has answered query (iv) made under order no. 16



dated 14.01.2015 and referred to Chief Engineer, Water Resources Department, Birpur Letter Nos. 2731, 3064 dated 30.07.2002 and 24.08.2002 respectively instructing the shift Engineers deputed at the site of the review petitioner to only send the details of work executed in their presence to higher authorities and not to counter-sign, the same is also responsible for misdirecting his subordinates shift incharge not to check and verify the executed flood fighting work and maintain the records as per the Government instructions.

14. In the circumstances, the then Chief Engineer, Water Resources Department, Birpur who issued Letter Nos. 2731, 3064 dated 30.07.2002, 24.08.2002 respectively as also those responsible in the Department to suppress the orders dated 02.08.2003, 08.01.2004 and to make allotment for payment to the review petitioner, including those who applied pressure for such release and payment from behind the curtain on Respondent No. 6 and the Members of the Special Liability Committee who recommended for such payment also appear to be prima facie responsible along with those who have already been named as accused in Birpur P.S. Case No. 88 of 2008.

15. If execution of flood fighting work in the State has to be carried out honestly and faithfully, Birpur P.S. Case No. 88 of



2008 is required to be taken to its logical end. For the present, it is not making any progress. Present Departmental Principal Secretary is called upon to obtain Government order for investigation of the aforesaid case by the Cabinet Vigilance Bureau or any other independent agency so that appropriate final form is submitted in the case within a reasonable time, not exceeding three months.

16. Before parting with this order, I would like to observe that there is no basis for the observations made in paragraph 3 of note dated 17.10.2007, Annexure-R6-W whereunder it is stated that payments have been made to the review petitioner after due enquiry by the Department with approval from Finance Department and Chief Secretary-cum-Advisor under President's Rule but no such positive order of the Departmental Authorities and that of Finance Department and the then Chief Secretary-cum-Advisor is on record. In this connection, I may indicate that in order to verify the pleadings made by the parties, I requested the State counsel to furnish the records, which he has furnished and with the assistance of the learned counsel for the parties, including Amicus curiae, the same has been examined and there is no such order available on record whereunder the order of the then Hon'ble Departmental Minister dated 02.08.2003 and Departmental Commissioner dated 08.01.2004 was reviewed and

recalled by any subsequent positive order of competent authority.

17. In view of my discussion above, I do not find any merit in the review petition, which is dismissed with hope and trust that the direction issued above shall be complied with in public interest for ensuring execution of flood fighting work in accordance with the Government instructions contained in Irrigation Hand Book as also other instructions issued from time to time so that measurement taken during execution of flood fighting work is noted in the Measurement Book as per the instructions of the Government by the Shift Junior Engineer and duly counter-signed by the Shift Assistant, Executive Engineer.

18. I record my appreciation for Sri R.N. Shukla, learned Amicus Curiae, who enabled me to wade through the voluminous departmental files with pains taking assistance to understand the relevance of the different minutes in its true perspective.

(V.N. Sinha, J.)

Arjun /P.K.P./Rajesh
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