

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 917 of 2006**

- Dev Ratan Tarak, aged about 58 years, S/o Late Shri Sukhilal Tarak, Sub Engineer Office of Chief engineer M.R.P. (Mahanadi Reservoir Project), Raipur, Dist : Raipur (C.G.) [R/o Behind M.M.I. Hospital, Near Muskan Residency Lalpur, Raipur (C.G.)]

---- **Petitioner****Versus**

1. State Of Chhattisgarh, Through The Secretary Water Resources Department Mantralay at D.K.S. Bhawan, Raipur (C.G.)
2. The Engineer in Chief, Water Resources Department, Raipur (C.G.)
3. The Chief Engineer, Mahanadi Project, Water Resource Department, Chhattisgarh, Raipur (C.G.)
4. The Executive Engineer, Water Management Division No.1 Raipur (C.G.)

---- **Respondents**

For Petitioner	: Shri Rakesh Anthony, Advocate
For Respondent/State	: Shri Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****15/04/2015**

1. Petitioner is assailing the order dated 28/11/2005 and 02/01/2006 Annexures P/16 and P/17 respectively, issued by the office of Engineer in Chief under the signature of Executive Engineer, Water Resources Department, Chhattisgarh, Raipur directing recovery of Rs.1.81 Lacs from the petitioner for causing loss to the State Government on account of theft of foot bridge which was in his possession/charge as Sub Engineer of Mandhar, Water Resources Sub Division No.3, Raipur.
2. While the petitioner was posted in the said sub division, he obtained charge of the said foot bridge on 18/02/1999 as per Annexure-R/1. During inspection by the petitioner, foot bridge was not found at its place on 26/03/1999. Petitioner

informed the concerned Police vide Annexure P/4 mentioning that a foot bridge weighing 5 tonnes consisting of 5 pieces of iron sheet and 4 pillars is not available on the spot near chain No.440, Mandhar Branch Canal, village Baktara. The foot bridge could not be recovered by the Police. A show cause notice was issued to the petitioner on 09/08/1999 (Annexure-P/6) seeking his explanation in the matter to which the petitioner replied stating that 25th March 1999 was the date of 'Ramnavami' festival as also Sunday and two contingency paid Watchmen were engaged for keeping the vigil of foot bridge, however, the same has been stolen by anti social elements for which the petitioner is not responsible.

3. Another notice was issued to the petitioner on 04/01/2001 directing him to disclose the name of the Watchmen; whether the said Watchmen were present at the time of occurrence and what is their version regarding the incident. Statement of the Watchmen was submitted vide Annexure P/10 wherein they have stated that the foot bridge is an article which could not be lifted by less than 15-20 persons, therefore, if they would have remained present at the time of occurrence, their life would have been endangered. They also stated that they could not attend duties because of 'Ramnavami' festival and theft happened on the same night.

4. Petitioner along with 3 other persons namely Sub Divisional Officer Shri S.N. Choubey and two Watchmen were issued show cause notice on 22/04/2002 (Annexure P/12) for recovery of the amount to which the petitioner submitted his reply, however, the order of recovery has been passed against the petitioner alone and not from the others.

5. Learned counsel for the petitioner would submit that the document filed by the State (Annexure R/4 and R/5) would itself demonstrate that recovery was proposed against many persons including the Sub Divisional Officer, Executive Engineer and Superintendent Engineer, however, the recovery has been directed only against the petitioner, therefore, it is violative of Article 14 of the Constitution. He would submit that for commission of theft, petitioner cannot be held responsible.

6. Per contra, learned State counsel would submit that under the Works Department Manual, it was the petitioner's duty to take care of the materials at site and petitioner has failed to discharge his duties and thus he has caused loss to the exchequer and the impugned order is fully justified.

7. The material available on record would indicate that the foot bridge weighed about 4-5 tonnes. It was impossible to remove the foot bridge within a short span of time, therefore, if the removal/theft of the foot bridge from the spot has taken much time, it was for the petitioner to have maintained vigil through the Watchmen as the foot bridge was in his control and possession vide Annexure R/1 dated 18/02/1999. Under the Works Department Manual (Annexure-R/2), the Sub Engineer is responsible for maintaining material at site, account in respect of the material received by him for works, road metal returns, T. & P. account, furniture and crockery accounts of circuit houses, rest houses etc., store accounts and submit the same to Assistant Engineer every month. (This is one of the very important duties of the Sub Engineer), make adequate security arrangements for safety against loss or damages.

8. From the provisions contained in the Works Department Manual, it would clearly appear that primarily it is the responsibility and duty of the petitioner to make adequate security arrangement for safety against loss or damage and to maintain the material at site. The documents available do not show that petitioner maintained adequate security arrangement. The Watchmen who have spoken in favour of petitioner have made evasive and imaginary reply. The Watchmen were under direct control and supervision of the petitioner. It appears, the Sub Divisional Officer, Executive Engineer and Superintendent Engineer were not proceeded because under the Works Department Manual, it does not come within their duties and responsibility to make adequate security arrangement for safety against loss or damages nor they are responsible for the material at site. Any action against them could not have been sustained or supported within the provision of Works Department Manual. Even otherwise, Article 14 would come into play only when the petitioner alone is singled out even though other persons were responsible, however, when under Works Department Manual, other persons were not responsible or liable for the loss, their exoneration would not furnish a ground to the petitioner to press the doctrine of equality.

9. In the considered opinion of this Court, since principles of natural justice have been duly followed before passing the impugned order, this Court cannot sit over the said order as an appellate Court in exercise of power under Article 226 of the Constitution and to substitute the satisfaction of the authorities which arises from the provisions of Works Department Manual, to set-aside the impugned order.

10. In the matter of ***B.K. Muniraju v. State of Karnataka, (2008) 4 SCC 451*** it

has been held in para 22 :-

“22. It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.”

11. For the foregoing, this Court does not find any substance in this writ petition, which fails and is hereby dismissed.

J U D G E