

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18792 of 2014

Smt. Meena, Wife of Mahesh Prasad Singh, Resident of Kasturba Niwas, Bijay Nagar (Hanuman Nagar), New Bye Pass, P.S.- Patrakar Nagar, Town and District- Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. The Secretary, Urban Development & Housing Department, Govt. of Bihar, New Secretariat, Patna.
3. The Chief Executive Officer-cum-Municipal Commissioner, Patna Municipal Corporation, Patna.
4. The Collector, Patna
5. The Managing Director, Bihar Rajya Pool Nirman Nigam Limited.
6. The Executive Engineer, Division-F Patna Municipal Corporation, Patna
7. The Transport Commissioner, Department of Transport, Govt. of Bihar, Patna
8. The District Transport Officer, Patna, District- Patna, Bihar

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Dronacharya, Advocate
For the State	:	Ms. Shilpa Singh, G.A.12
		Mr. Ranjan Kumar, AC to GA-12
For the BRPNNL	:	Mr. R.K. Priyadarshi, Advocate
For the P.M.C.	:	Mr. Prasoon Sinha, Advocate
		Mr. Sanjay Prakash Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 09-04-2019

Heard learned counsel for the parties.

2. This writ application has been preferred for issuance of a writ in the nature of mandamus commanding the respondent authorities to forbear from constructing a Dharam Kanta (Weighing Machine) in front of Plot No. D-26 to D-30 of Transport Nagar over a plot allotted for



construction of Petrol Pump on South-East corner and according to the petitioner the Dharam Kanta was being installed by encroaching about 23 feets of the Road width opposite to Plot No. D-26 to D-30.

3. By filing I.A. No. 1 of 2019, petitioner has brought to the notice of this court that during pendency of the writ application despite knowledge on the part of the respondent authorities particularly the Bihar Rajya Pul Nirman Nigam Limited (Respondent No. 5) two Dharam Kantas (Weighing Machines) have been constructed during the period November-December 2015. This fact is also mentioned in the counter affidavit filed on behalf of Respondent No. 5.

4. It appears that on 17.03.2016, when this matter came for consideration before this court, it was noticed from the submissions of Mr. Sanjay Prakash Verma, learned counsel appearing on behalf of Patna Municipal Corporation that the establishment of the weighbridge at Transport Nagar without obtaining “no objection” from the Patna Municipal Corporation was illegal, in fact, it was the submission of the Patna Municipal Corporation that



installation without obtaining no objection was illegal, hence appropriate steps are being taken in this connection.

5. Taking note of the aforesaid submissions of learned counsel representing the Patna Municipal Corporation, this court directed the Corporation to place it's stand clearly by way of an affidavit as to the steps taken for restoring the plot in question to it's original position. Subsequently the matter was adjourned and then it was taken up on 21.04.2016, when the Commissioner, Department of Transport as well as the District Transport Officer were added as party respondents. A short adjournment was granted to them to ascertain the correct position regarding handing over of the Dharam Kanta to the Transport Department and whether it would be the responsibility of the Bihar Rajya Pul Nirman Nigam Limited to remove the same or it would be the Transport Department to carry out the same in case the Municipal Corporation directs for it's removal.

6. On 03.01.2019, when the matter was taken up, once again this court passed the following order:

"It appears from the records that earlier



following the order passed by this Court on 17.03.2016, the then Municipal Commissioner, Patna Municipal Corporation had issued Letter bearing No.4709 dated 13.04.2016 to the Managing Director, Bihar Rajya Pool Nirman Nigam Limited calling upon him to remove the Weighing Machine which were installed in front of the plot of the petitioner (D-29). It is evident from the said letter which is Annexure R7/E on the record that Patna Municipal Corporation had not granted the required No Objection Certificate for installation of the Weighing Machine at the location in question.

Learned counsel representing the Patna Municipal Corporation is unable to answer as to what action has been taken by the Municipal Corporation since writing of the said letter for removal of the Weighing Machine if it has been installed without seeking necessary permission or no objection as the case may be from the Patna Municipal Corporation. Let an affidavit to this effect be filed within two weeks from today.

Learned counsel for the petitioner is granted leave to file an application seeking amendment of the writ application within the said period.

List this matter on 17th January, 2019.”

7. After the aforesaid order was passed, on 21.02.2019, once again the matter was to be adjourned, as it was found that the Patna Municipal Corporation had not responded. At the same time, it was also noticed that Bihar Rajya Pul Nirman Nigam Limited was also maintaining



complete silence and instead of informing this court about what action has been taken by the Corporation, they only tried to justify the installation of Weighing Machine and handing over the same to the Transport Department. The matter was adjourned to obtain a response from the Patna Municipal Corporation. Opportunities were also granted to the Bihar Rajya Pul Nirman Nigam Limited (Respondent No. 5) to submit its response failing which this court would consider imposing cost.

8. A supplementary counter affidavit has been filed on behalf of the respondent no. 5, in which, it is stated that aforesaid weigh bridge (Dharam Kanta) was constructed to regulate the traffic system on Mahatma Gandhi Setu and to take care of the decaying situation of the aforesaid due to heavy traffic particularly by overloaded truck. It is further stated that this construction was directed from high level committee in the interest of Public at large under the Chairmanship of Hon'ble the Chief Minister, Bihar. A copy of the decision which is said to have been taken by the high level committee has not been brought on record.



9. It is further submitted that during construction of the weighbridge the answering respondent has sought for grant of no objection and to inspect the work which may be found from Annexure - 'E' to the supplementary counter affidavit.

10. A copy of the Minutes of the review meeting which is said to have been held under the Chairmanship of Hon'ble the then Minister, Road Construction Department, Government of Bihar, has also been brought on record in which it is stated that steps are being taken to obtain no objection certificate.

11. It is further stated that on 14.01.2019, office of the answering respondent received a letter written by the Town Commissioner, Patna Municipal Corporation by which the Managing Director of the Bihar Rajya Pul Nirman Nigam has been requested to remove the weighing machine within a period of 10 days which was replied by the Senior Project Engineer informing the Town Commissioner, Patna saying that the answering respondent was only an executing agent and after construction of work the same was handed over to the nominated officer of the



Transport Department on 29.12.2015 and since then they are in complete control over the weighing machine, hence correspondence is required to be made with the Transport Office, Patna. In ultimate analysis, the respondent no. 5 has come out with a stand that respondent no. 5 is no more a relevant party in the present case and no cause of action survive against them. The submission is also made that the name of the Bihar Rajya Pul Nirman Nigam Limited may be expunged.

12. Respondent nos. 7 & 8 have also filed a counter affidavit in this case. They have taken a stand that these respondents had only approved and sanctioned the estimate and on the request of the Bihar Rajya Pul Nirman Nigam Limited to take charge of the weighbridge they authorized the District Transport Officer to take charge of the weighbridge and accordingly District Transport Officer has taken charge.

13. In paragraph '13' of the counter affidavit it is specifically stated that it was the obligation of the Pul Nirman Nigam to obtain no objection and complete all other formalities before the construction of the weighbridge.



14. In the aforesaid background now a fresh affidavit has come on behalf of the Patna Municipal Corporation by way of 4th Supplementary Counter Affidavit which has been sworn by the Estate Officer of the Corporation. In paragraph '10' of the counter affidavit following statements have been made:

"10. That it is respectfully submitted that as the Transport Department, Patna has not removed the Weighing Machine as such vide letter no. 4564 dated 08.04.2019, the Municipal Commissioner, Patna Municipal Corporation, Patna constituted a team and directed them to remove the Weighing Machine by 15.04.2019 and submit compliance report in this regard."

15. After hearing learned counsel for the parties and on perusal of the records, it appears that the Patna Municipal Corporation has now constituted a team to remove the weighing machine by 15.04.2019. According to them the Bihar State Bridge Construction Corporation Limited had not obtained 'No Objection Certificate' before construction of the Weighbridge. The pleadings available on



the record particularly on behalf of the Bihar State Bridge Construction Corporation Limited, on the one hand and the respondent no. 7 & 8 on the other hand are clearly showing that both of them are shifting the responsibility upon each other. However, it is the stand of respondent nos. 7 & 8 that the Bihar Bridge Construction Corporation had to obtain the no objection certificate and there is no denial of the same.

16. In view of the development so far, this court is now not required to take upon itself an exercise to adjudicate as to who was responsible to obtain the no objection certificate when it is the categorical stand of respondent no. 7 & 8 that the Pool Nirman Nigam was responsible to obtain the 'No Objection Certificate'. The Patna Municipal Corporation has already made its stand clear in paragraph 10 of the 4th supplementary counter affidavit. In terms of its own statement Municipal Corporation shall submit a compliance report after removal of the weighing machine by 15.04.2019.

17. This writ application, thus, stands disposed of taking note of the stand of the corporation as indicated hereinabove.



18. The Municipal Corporation must abide by its own undertaking and submit a compliance report in this regard to Registry of this court within two weeks from today. The report so received in Registry shall be kept on record.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.04.2019
Transmission Date	

