

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7026 of 2018

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Ashok Kumar, son of Sri Sheo Ghahan Ram, resident of Mohalla- Dharhara,
P.S.- Ara, District- Bhojpur.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Rural Works Department, Govt. of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Vinod Kanth, Senior Advocate Mr. Prabhu Nath Pathak, Advocate
For the Respondent/s	:	Mr. Dharendra Kumar, A.C. to A.A.G.-6

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 18-07-2019

Heard learned counsel for the petitioner and
learned counsel for the State.

2. In this case, an Interlocutory Application vide I.A. No.4934 of 2018 has been filed by the petitioner, bringing on record the final order dated 23.05.2018, after approval of the Cabinet of the Government of Bihar, whereby and whereunder the punishment of reduction of the pay in the lower scale has been inflicted upon the petitioner.

Accordingly, this Interlocutory Application is allowed and the averments made in this Interlocutory Application will be treated to be the part of the main writ



petition.

3. In the present case, the petitioner is challenging the notification vide memo no.193 dated 23.01.2018 as well as notification vide memo no.1149 dated 23.05.2018, both the orders have been passed by the Under Secretary, Rural Works Department, Government of Bihar, Patna, whereby and whereunder the punishment of reduction of pay in the lower scale of the Executive Engineer has been awarded to the petitioner.

4. The petitioner, at the relevant time, was posted as Executive Engineer at Nawada. A bridge was to be constructed over Korihari River, in terms of the policy decision, the petitioner has sought Detailed Project Report (D.P.R.) from Flexicon Engineering and Planners Private Limited. The Agency on making proper examination from different angles and on assessment of expected possible hydraulic pressure, which is likely to be created during flood season on account of flow of the water, suggested the construction of the bridge in a dimension of 3 x 22 mtrs. costing Rs.349.560 lakhs, in turn D.P.R. was sent to the National Institute of Technology, Patna, for its examination and approval, which was approved by the National Institute of Technology, Patna. In the meantime, the



Executive Engineer of Sheikhpura submitted the specification of the construction of the bridge over the said river and the said Executive Engineer has also obtained a Detailed Project Report from another Agency, namely, Shambhavi Techno Solution Private Limited, which in its report suggested the specification of bridge in a dimension of 2 x 16.5 mtr. for Rs.209.92 lakhs. After receipt of this D.P.R. from Shambhavi Techno Solution Private Limited, the petitioner was put under suspension vide memo no.1204 dated 06.04.2016 on account of submitting the D.P.R. prepared by Flexicon Engineering and Planners Private Limited, which is in higher resolution. Later on, it was followed by memo no.1240 dated 06.04.2016 issued by the Joint Secretary, Rural Works Department, Government of Bihar, Patna, serving the copy of the charge-sheet, wherein it has been alleged that the D.P.R. submitted by the petitioner of Flexicon Engineering and Planners Private Limited, recommended construction of bridge in higher resolution than the D.P.R. of Shambhavi Techno Solution Private Limited submitted by the Executive Engineer, Sheikhpura, followed by initiation of work, is causing a serious financial loss to the State, which *prima facie* constitute a serious misconduct. The Chief Engineer was appointed as Enquiry Officer, whereafter, the petitioner



submitted his reply to the Chief Engineer and has explained that as in terms of the guidelines he has obtained the D.P.R. from the Flexicon Engineering and Planners Private Limited, which was verified and approved by the National Institute of Technology, Patna, as also by the Technical Committee, comprising of Chief Engineer, so the petitioner has taken plea that he has not committed any misconduct nor he has intended to cause any financial loss to the State. Further said that in view of the stand taken by the petitioner, no *prima facie* case is made out against him, requested for dropping the proceeding.

5. The Chief Engineer, also sought explanation from the Flexicon Engineering and Planners Private Limited to justify the report. The said Agency, in turn, filed a detailed reply, explained thoroughly the said D.P.R. for construction of bridge of that size. It will be relevant to quote certain portion of the reply submitted by the Flexicon Engineering and Planners Private Limited, which is as follows:-

“ It may be noted that the bridge site falls in the flood prone zone and the surrounding area is agricultural in nature. The HFL is 100.866 m and the lowest bed level is 94.618 m with a bank to bank distance of 30m (approx). The alignment cross the stream at 10 degree skew. In addition to that, river takes a sharp right angled bend after immediate



crossing of the road alignment. As a result, both the banks may be eroded for the reverse force of flow of water which is already visible at site. Hence, it will be wise to choose the abutment position inside the river bank (sufficiently away from the flowing water) as much as possible to avoid damages due to erosion of soil near abutment location.

The HFL is almost 1.5m (approx) higher than both the bank, Sub-flow towards the river bank exists and additional linear water is required beyond the river bank to carry the additional discharge due to sub-flow. The enclosed hydraulic calculation has been carried out considering the sub-flow as per Cl-No: 5.7, SP-13:2004 (Page-19).

The river flow is also restricted by a bund in the D/S which leads to back flow in the stream increasing discharge volume.

The hydraulic calculation also shows that the site requires 82.3m long regime width. Though, IRC allows constricting 33% of its regime width, considering the skewness off the site, meandering nature of the stream, presence of bent, possibility of sub-flow, we have decided to put the ban inside the bank with a restriction 25% in regime width and chosen a span arrangement of 3x22m.

In Hydrology, U/S Discharge is 288.36 cum/sec, Bridge Site Discharge is 283.57 cum/sec & D.S Discharge is 293.77 cum/sec. Calculated slope is 0.001. Spilway of Water Line during Flood (HFL Line) is 90 m.



COMMENT ON HYDROLOGY PREPARATION BY
OTHER CONSULTANT:-

Calculated discharge at 250 m U/S = 74.995 cum/sec (Cross Sectional Area 107.530 sqm, Wetted Perimeter 44.012 m) Bridge Site = 101.739 cum/sec (Cross Sectional Area 129.387 sqm. Wetted Perimeter 44.277 m) & 250 m D/S = 49.259 cum/sec (Cross Sectional Area 85.212, Wetted Perimeter 46.153 m. It shows that the U/S discharge is 1.5 times & Bridge Site discharge in 2 times more than D/S discharge. The above data are self explanatory. As per site condition, there is no such sub-section at downstream side. Survey drawing of the location is attached herewith to understand the actual scenario.

Secondly, as per cross-section; both the bank overtop in HFL condition which has been also reflected from the Hydrology prepared by us. As per the Data submitted by them HFL is 101.250 m and Bed Level is 96.949 m. Spillway of Water Line during Flood (HFL Line) is 89 m. Though the bank overtopped during flood as per their submitted data but zero overtopping has been considered for discharge calculation. As a result, in Hydraulic Calculation, 40 m width only taken in account (from HFL line) instead of 89m. Less than half water way consider in HFL condition both in U/S Bridge Site and D.S. which badly reduces the minimum required linear waterway. From engineering point of view it is not justified at all. If we calculate the discharge as per HFL line shown in C.S submitted by the other consultant, then U/S. Bridge site & D/S discharge are 163.86 cum/sec (Cross-Sectional Area



117.99 sqm. Wetted Perimeter 52.37 m), 366.39 cum/sec (Cross sectional Area 254.67 sqm. Wetted Perimeter 107.21 M) and 120.45 cum/sec (Cross Sectional Area 107.60 sqm. Wetted Perimeter 65.99 sqm) respectively. In that case, Maximum Discharge is 366.39 cum/sec (where as Maximum & Design Discharge is 293.77 cum/sec proposed by us) and Design Discharge is 245.80 cum/sec (as per clause 6.2.1 of IRC SP 13:2004 – Page No.21 Max Design Discharge = Highest or 1.5 times of next highest discharge whichever is less) which create negative impact on Bridge length as proposed by them. According to that, calculated regime width is 75.26 m and minimum required linear waterway is 50.424 m. (after maximum restriction of 33% of regime width, as per consultant also restricted 33% regime width as per their submitted hydrology where mentioned regime width is 48.416 m) which is not only much higher than the Bridge length proposed by the other consultant but also higher than the consider regime width i.e. 48.416 m.

Now, if we look after the bed slop considered by the consultant is 0.00018. But as per the Cross-Section submitted by the consultant it is 0.0008. Different Bed Level in U/S, Bridge Site & D.S are 96.605, 96.949 & 97.004 respectively, which itself very much surprising for the flowing of water from U/S to D/S.”

6. The Enquiry Officer after quoting certain portions of the stand taken by the Flexicon Engineering and Planners Private Limited, has arrived to a finding that Flexicon



Engineering and Planners Private Limited after critical examination of technical nuance including possible hydraulic pressure and other elements such as (i) Spilway of water line (width) during flood (ii) Bed Slope (iii) Cross-Sectional area calculation of water line (width) (iv) Over topping of water line in HFL (v) Bed slope and Bed level (vi) Difference of error in discharge calculation (vii) Difference of discharging of Rigime width (viii) Restriction of Rigime width and (ix) Difference of Regime width and difference of span of bridge. After proper verification, the size of the bridge was proposed in a dimension of 3 x 22 mtr.

7. It has also been recorded in the inquiry report that the Chief Engineer had issued the notice to Shambhavi Techno Solution Private Limited, but they did not turn up to explain and justify their D.P.R. It has also been mentioned that as the Flexicon Engineering and Planners Private Limited has explained the elements they have taken for preparation of this D.P.R., cannot be said to be wrong in any way that too it has been approved by the National Institute of Technology, Patna as well as the Technical Committee. The Enquiry Officer found himself astonished that the D.P.R. prepared by Flexicon Engineering and Planners Private Limited and Shambhavi



Techno Solution Private Limited have been approved by the National Institute of Technology, Patna.

8. After considering the aforesaid fact, the Enquiry Officer recorded that charge of misconduct has not been proved against the petitioner, accordingly he was exonerated. Whereupon, the petitioner was served a letter contained in memo no. 2790 dated 08.09.2017 issued by the Special Executive Officer, showing that the Disciplinary Authority is not satisfied with the reasons assigned by the Enquiry Officer, but in the said letter nowhere the reasons for his disagreement in accepting the D.P.R. of Flexicon Engineering and Planners Private Limited has been recorded, only recorded that the proposal of construction of bridge of the dimension suggested by the Flexicon Engineering and Planners Private Limited submitted is higher than the D.P.R. of Shambhavi Techno Solution Private Limited submitted by the Executive Engineer, Sheikhpura. When two D.P.Rs. were available, in such circumstance, the same should have been sent to the third neutral person to give his opinion after critical examination about correctness and fairness of the D.P.R., whereafter the decision should have been taken, but in the present case, it has not been done in the aforesaid manner and the Special



Executive Officer did not record the reason for his disagreement with the inquiry report. Reliance can be place to the decision of the Hon'ble Supreme Court rendered in the case of ***Punjab National Bank vs. Kunj Bihari Mishra*** reported in **1998 (7) SCC 84** and that has been followed in ***Yoginath D. Bagde vs. State of Maharastra and Anr.*** reported in **(1999) 7 SCC 739**. In both the judgments, the Hon'ble Supreme Court has held that the Disciplinary Authority while differing with the inquiry report must record his reasons of disagreement, but in the present case, that has not been done.

9. After receipt of the second show-cause, the petitioner has filed a detailed reply, but that has not been considered by the Disciplinary Authority, without proper consideration and without giving any reason why the explanation of the petitioner is not acceptable to the Disciplinary Authority, in a mechanical manner the order of punishment has been passed, thereby recorded the punishment of reduction of the pay in the lower scale to the prejudice of the petitioner.

10. This Court could have remanded the matter to the competent authority for fresh consideration, but this Court is not remanding the matter for the simple reason that the Flexicon



Engineering and Planners Private Limited has appeared in the proceeding and submitted its reply and justified his D.P.R. by well reasoned submission dealing with different technical aspects of the matter, at the same time, another Agency did not respond nor both the D.P.Rs. were sent to any expert to give comment on both the D.P.Rs. submitted by two different agencies. So, this Court is of the view that the respondents have completely committed wrong in initiation of proceeding against the petitioner as there are two D.P.Rs., no one has given comment with regard to correctness of the D.P.Rs. of two different agencies.

11. In this view of the matter, this writ petition is allowed. Consequently, the notification contained in memo no.193 dated 23.01.2018 as well as notification contained in memo no.1149 dated 23.05.2018 passed by the Under Secretary, Rural Works Department, Government of Bihar, Patna, are quashed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	30.07.2019
Transmission Date	

