

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.11794 of 2019**

Prof. ( Dr. ) Ramakar Jha S/o Late Dr. Kameshwar Jha Chair Professor,  
Department of Civil Engineering, National Institute of Technology Patna,  
Ashok Rajpath, Patna-800005 (Bihar), Resident of House No. 68, Road No.  
16, East Indrapuri, P.O.-Keshri Nagar, P.S.-Rajeev Nagar, District-Patna, Pin  
Code-800024 (Bihar)

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Human Resources Development Department of Higher Education, Government of India, Shastri Bhawan, New Delhi-110001
2. The Director cum Chairman Board of Governor (BOG), National Institute of Technology, Patna, Ashok Rajpath, Patna-800005 (Bihar)
3. The Registrar National Institute of Technology, Patna, Ashok Rajpath, Patna-800005 (Bihar)

... .. Respondent/s

**Appearance :**

|                      |   |                                             |
|----------------------|---|---------------------------------------------|
| For the Petitioner/s | : | Mr.Munna Pd Dixit (M.P. Dixit)              |
| For the U.O.I.       | : | Mr. Sujeet Kumar Sinha, CGC                 |
| For the NIT          | : | Mr. Y. V. Giri, Sr. Adv.<br>Mr. Sanjay Giri |

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**

**ORAL JUDGMENT**

**Date : 09-09-2021**

The present writ application has been filed by the petitioner for issuance of a writ commanding the respondents to issue confirmation order in favour of the petitioner for the post of Professor in the Department of Civil Engineering, at National Institute of Technology (in short, “NIT”), Patna, which carries the pay scale of PB-4 (Rs. 37,400/- to Rs. 67,000/-) with academic



grade pay of Rs. 10,500/- and further to grant consequential promotion to the post of Professor in the Higher Administrative Grade in the pay scale of Rs. 67,000/- to Rs. 79,000/-, with academic grade pay of Rs. 12,000/-.

2. Learned Counsel for the petitioner, at the outset, submits that during the pendency of the present writ application, the Vigilance Clearance Certificate has been given by the Registrar, NIT, Rourkela, vide certificate, dated 09.07.2021, and the same has been communicated to the Registrar, NIT, Patna, vide letter, dated 09.07.2021 itself. Accordingly, learned Counsel for the petitioner seeks permission to withdraw this writ application.

3. Mr. Y. V. Giri, learned Senior Counsel, appearing on behalf of the respondent nos. 2 and 3-NIT, Patna, submits that respondents have got no objection if the petitioner is permitted to withdraw this writ application. However, learned Senior Counsel submits that the interlocutory application, being I. A. No. 02 of 2020 filed by the NIT, Patna, may also be decided while allowing the withdrawal of the writ application, which the respondent nos. 2 and 3 have filed for initiating the proceeding against the petitioner under Section 340 of the Code of Criminal Procedure, 1973, for furnishing misleading information on affidavit before this Court in the present case, whereby and whereunder the petitioner has also



defamed the respondents-institution and this Court may direct for lodging of a complaint against the petitioner under Section 195 (1) (b) of the Code of Criminal Procedure, 1973. Learned Senior Counsel further submits that the petitioner has suppressed the fact regarding pendency of vigilance case inasmuch as in reply to the statements made in the counter affidavit filed by the respondents-NIT in the present case, regarding pendency of Vigilance Case No. 19584 of 2014, dated 01.09.2014, at NIT, Rourkela, the petitioner, in his reply/rejoinder, stated that no proceeding of any kind is pending against him and even though, the respondents are not issuing the confirmation order for the post of Professor.

4. Learned Senior Counsel further submits that the petitioner has also withheld the information about his appearance in another interview on the same date, i.e. on 10.11.2019, for the post of “Dr. Rajendra Prasad, Chair Professor for Water Resources” at NIT, Patna and has deliberately not disclosed this information, which amounts to suppression of facts. Accordingly, the submission is that the petitioner has tried to mislead this Court and has also defamed the respondents-Institution by misleading statement.

5. Learned Counsel for the petitioner, referring to paragraphs 3, 4, 5 and 7 of I. A. No. 02 of 2020 submits that the



interlocutory application is totally misleading and is based upon misconceived facts. He vehemently argued that neither any departmental proceeding nor any criminal proceeding nor any vigilance case has been instituted against the petitioner till date and in fact one Dr. P. K. Bhunya, the then scientist of National institute of hydrology, Roorkee, had lodged a complaint before the Central Vigilance Commission in the year 2013 when the petitioner was serving at NIT, Rourkela, as Professor, which was enquired into by the competent committee, who found no infirmity on the part of the petitioner and submitted status report, vide order, dated 30.08.2016, but the vigilance section of the Ministry asked the NIT, Rourkela, to send its factual report and accordingly, the factual report, dated 25.09.2018, was sent through, letter, dated 25.09.2018, which is part of Annexure 12 of the rejoinder affidavit, dated 05.08.2019, but the respondent nos. 2 and 3 withheld the said status report, dated 30.08.2016 and the factual report, dated 25.09.2018, purposely and they have brought only the covering letter, dated 25.09.2018 through Annexure D to their counter affidavit. Hence, respondent nos. 2 and 3 are liable for prosecution for deliberately withholding the documents and also for giving incorrect fact.



6. He also submits that the respondent nos. 2 and 3 have wrongly mentioned Vigilance Case No. 19584 of 2014, dated 01.09.2014, which was never registered against the petitioner, and, therefore, the respondents may be put to strict proof for this. He further submits that respondent nos. 2, in paragraphs 8 and 12 of their counter affidavit, have made contradictory statements and further the document enclosed with the supplementary counter affidavit also does not disclose about any vigilance case against the petitioner and the same only speaks about the complaint and there is vast difference between complaint and pendency of vigilance case. Referring to Annexures P/1 and P/2 to the reply to the I. A. No. 02 of 2020, he submits that the certificate/letter, dated 09.07.2021, issued by the NIT, Rourkela, clearly show that no vigilance case or disciplinary proceeding was either pending or contemplated against the petitioner.

7. Learned Senior Counsel, referring to the rejoinder to the reply of the petitioner, submits that the complaint, which was filed against the petitioner before the Central Vigilance Commission, remained pending for further action, including enquiry, investigation, which has concluded on 16.11.2020 and submits that whether this is a complaint pending for enquiry or investigation, it can be said to be a vigilance case pending against



the petitioner and there is not much difference in the eyes of law between the enquiry or investigation.

8. I have heard learned Counsel for the parties and have carefully gone through the materials on record.

9. Before taking any action under Section 340 of the Code of Criminal Procedure, 1973, formation of *prima facie* opinion that a person charged has intentionally given false evidence is a condition precedent and the existence of *mens rea* or criminal intention behind the act complained of will have to be examined and considered before initiating any action under Section 340 of the Code of Criminal Procedure, 1973.

10. From perusal of the statements made by the petitioner, it appears that the petitioner has categorically stated in his reply to the I. A. No. 02 of 2020, that no vigilance case was pending against him and only a complaint was filed by one Dr. P. K. Bhunya, the then scientist of National Institute of Hydrology, Roorkee, while he was posted as Professor, NIT, Rourkela, and the same was subsequently dropped. According to the petitioner, the pendency of a complaint cannot be treated as pendency of a vigilance case against the petitioner.

11. In the case of **Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another**, reported in (2005) 4 SCC



**370**, in relation to the scope of Section 340 of the Code of Criminal Procedure, 1973, the Constitution Bench of the Supreme Court, in paragraph 23, has held as follows:

“23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words “court is of opinion that it is expedient in the interests of justice”. This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such



circumstances, the court may not consider it expedient in the interest of justice to make a complaint.”

**12.** In the case of **Iqbal Singh Marwah** (supra), the Supreme Court has held that as per the language of Section 340 of the Code of Criminal Procedure, 1973, the Court is not bound to make a complaint as the section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." The said words shows that such a course would be adopted only if the interest of justice requires and not in every case. It was further held that this expediency would normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice.

**13.** In view of the aforesaid discussion, upon law and the fact, I come to the conclusion that there is no deliberate and conscious effort on the part of the petitioner to misguide this Court while making such statement or filing the affidavit so as to interfere in the administration of justice and it is not expedient in the interest of justice to initiate a proceeding, under Section 340 of the Code of Criminal Procedure, 1973, against the petitioner.



14. Accordingly, I. A. No. 02 of 2020, filed by respondent nos. 2 and 3, for initiating a proceeding under Section 340 of the Code of Criminal Procedure, 1973, is dismissed.

15. However, the prayer of the petitioner for withdrawal of the writ application is allowed.

16. This writ application is dismissed as withdrawn.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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| AFR/NAFR          | AFR        |
| CAV DATE          | N/A        |
| Uploading Date    | 17-09-2021 |
| Transmission Date | N/A        |

