

05.04.2023
Court No. 19
Item no.08
CP

WPA No. 3517 of 2023

Pulakesh Bajpayee
Vs.
The State of West Bengal & Ors.

Mr. Piyus Chaturbedi
Mr. Pulakesh Bajpayee
.....for the petitioner.

Mr. Malay Singh
Mr. B. Tripathi
.....for the State.

Despite service, none appears on behalf of the panchayat authorities.

This is the second occasion when the panchayat authorities have not appeared, despite service. Three notices have been issued and the panchayat authorities have received the same.

A report prepared by the Block Development Officer, Nowda Development Block, upon holding an independent enquiry in the matter has been filed. The following findings have been arrived at:

“ Findings about the construction of the cover drain:

The alleged drain has not been constructed from Babon Pandey's house; instead its starting point is Tandra Pandey's house, which is located at a distance of approximately 60 meters from the proposed starting point (Babon Pandey's house). The end point of the cover drain is Nadir Dhar.

Findings about the construction of the pucca road:

The alleged road has been constructed from main road, but the end point is not

upto Bholanath Bajpayee's house, instead the road has ended near Tandra Pandey's house, located 58 meters (approximately) ahead of Bholanath Bajpayee house."

The original of the report is before the court and the same is taken on record.

The report indicates that the works which were sanctioned, namely, construction of concrete road at Ullaspur from pucca road to Bholanath Bajpayee house under Raipur G.P. under Nowda Panchayat Samity and construction of (Cover) Drain from Babon Pandey's house to Nadir Dhar at Ullashpur Sansad-VI under Raipur GP under 15th CFC(Tied) 2020-21, were not completed in terms of the approval given and in terms of the work order, but completion certificates have been issued by the pradhan.

The cover drain was constructed from Tandra Pandey's house instead of Babon Pandey's house which was at a distance of 60 metres from the proposed starting point. As a result of such irregularity in the starting point of the construction of the drain, the petitioner and other similar situated persons whose houses are situated in the area have been deprived. Full payment was however made for execution of the work.

Similarly, with regard to the construction of the main road, instead of ending the at the house of Bholanath Bajpayee, the road ended near Tandra

Pandey's house which is 58 metres ahead of Bholanath Bajpayee's house. This has also affected the right of ingress and egress of some of the persons in the locality including the petitioner. Further allegation is that Tandra Pandey is a sitting member of the gram panchayat.

The illegalities of the gram panchayat can be summarized as hereunder:

- a) The work was not completed as per the work order and the approval.
- b) The execution of the work has deprived deserving citizens of the locality.
- c) There are deviations from the works allotted as per the tender and the completion certificate given by the pradhan is an attempt to legalize an otherwise incomplete work. Such completion certificate led to full payment, which amounts to misuse and misappropriation of funds sanctioned by the State for the aforementioned works which were actually not completed.

The money chain also is required to be followed as admittedly, the work was not completed but the entire money was paid to the contractor by the gram panchayat as reflected in the completion certificate. However the truth and the actual state of affairs would require a deeper probe by a higher authority.

Under such circumstances, the Commissioner Directorate of Panchayats and Rural Development, Government of West Bengal, shall cause an enquiry with regard to the aforementioned illegalities and take necessary steps to ensure that the inhabitants who have been deprived of proper sanitation and user of a public road, do not suffer any further and the works are completed. If necessary, the expenses for the remaining work should be paid from the panchayat's own contingency fund or should be borne by the person/persons who may be found to be responsible for such illegality.

The Commissioner shall cause an enquiry independently and take necessary steps as permitted by law upon compliance of the principles of natural justice. If the Commissioner arrives at a, *prima facie*, conclusion that the *pradhan* and other members of the gram panchayat may have abused the powers under the statute, proceedings shall be initiated in accordance with law.

The finding of this court is restricted to the incomplete work of the drain and the road as also the illegality committed by the gram panchayat in granting the completion certificate despite the works not having been completed.

The other issues of payment of the entire money to the contractor, fixing the responsibility and

the abuse of power by the panchayat authorities, are left open to be decided by the Commissioner.

It is expected that the remaining portion of the work should be completed within a period of three months from the date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)