

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13101 of 2023

Sanjay Mehta Son of late Triveni Mehta, Resident of village- Patraha, Mehta Tola, P.O.- Maldiha, P.S. Kothi, Dist.- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Public Health Engineering Department, Bihar, Patna.
2. The Chief Secretary, Public Health Engineering Department, Bihar, Patna.
3. The Zonal Chief Engineer, Public Health Engineering Department Purnea Zone, Purnea.
4. The Section Engineer, Public Health Engineering Department Purnea Circle, Purnea.
5. The Section Engineer, Public Health Engineering Department Saharsa Circle, Saharsa.
6. The Executive Engineer, Public Health Engineering Department Purnea.
7. The Executive Engineer, Public Health Engineering Department Saharsa
8. The Executive Engineer, Public Health Engineering Department Katihar.
9. The Executive Engineer, Public Health Engineering Department, Araria.
10. The Executive Engineer, Public Health Engineering Kishanganj.
11. The Executive Engineer, Public Health Engineering Department Supaul.
12. The Executive Engineer, Public Health Engineering Department Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms.Alka Verma, Advocate
For the Respondent/s : Mr.P.K. Shahi (AG)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-02-2024

The petitioner, styles himself to be a public spirited person and has filed the above writ petition for a direction to take appropriate action against the irregularities occasioned in the implementation of 'Har Ghar Nal Ka Jal Yojna'. The



petitioner also seeks enquiry against 'the people involved in the mass scam'; the contractors, engineers and other concerned officers. The enquiry according to the petitioner has to be into the process of bidding, tendering and awarding contracts. The petitioner claims that he had filed an earlier writ petition CWJC No. 1106 of 2022, disposed of on 04.02.2022, giving him an opportunity to file a representation before the appropriate authorities.

2. The Chief Engineer, Purnia is said to have disposed of his representation after constituting a committee and after inspection of the tenders. The Chief Engineer according to him found glaring irregularities in the allotment of work to the various contractors as is evident from Annexure-1 and 1A series. The petitioner, then produced a series of applications filed by the petitioner. There are also allegations made about one Maa Mundeshwari Dream Homes Pvt. Ltd., a company which got a tender in Araria; which entity has not been implemented in the present writ petition. Reliance was placed on the various representations made by different people and the reports in newspapers, to further the prayer of an enquiry into the implementation of the scheme introduced in the State of Bihar.

3. A detailed counter affidavit has been placed on



record by the Executive Engineer, Purnea. At the outset, we have to notice that the petitioner has not produced the order in the earlier writ petition disposed of on 04.02.2022 and only extracted the various observations in the said judgment which are not made on any specific finding and are only in the nature of relegating the petitioner to the authority before whom he was granted the liberty to file a representation. In fact, the judgment has been extracted in the counter affidavit at Paragraph 17, wherein we notice that the Division Bench even at the earlier instance was not inclined to entertain a Public Interest Litigation on the basis of the submissions made by learned counsel for the petitioner. It was specifically recorded that after hearing the matter for some time, when the Bench was not agreeable with the submissions, the learned counsel for the petitioner on instructions from the petitioner sought for a mere direction to the authority to consider and decide a representation, which it was stated would be filed within a further period of four weeks.

4. We have been told that a committee was constituted on a representation made by the petitioner and despite his being called to participate in the proceedings of the Committee, he stoutly refused so to do by a communication which is also produced in the writ petition. This clearly indicates



that the petitioner is more motivated by the publicity he would obtain by the writ petition and not by the spirit of public interest, he avowedly asserts himself to have. Without participating in the enquiry initiated by himself, he chose to file another PIL on the very same subject without disclosing his non-cooperation in the enquiry.

5. We see from the counter affidavit that even before the filing of the representation by the petitioner, the Chief Engineer, PH Zone, Purnea in compliance with the order passed by this Court constituted a committee, consisting of Chief Engineer, PH Zone, Purnea as Chairman and all the Superintendent Engineers of the concerned circle and Executive Engineers of the concerned division as members. The members were directed to submit an enquiry report within one week; which, along with the constitution, is evident from Annexure-R-2 to R12/C.

6. The Chief Engineer, PH Zone, Purnea, who was scheduled to retire on 30.04.2023, passed an order dated 28.04.2023 and it was noticed that there were certain irregularities in the process of tender with respect to 'Har Ghar Nal Ka Jal' scheme. The allegation of forged earnest money deposits having been submitted noticed by the Chief Engineer



was found to have been acted upon by the department and the agreements executed cancelled. Though there was a committee constituted, the enquiry report dated 28.04.2023 did not bear the signature of the members and, especially noticing the fact that the report was prepared by the officer just before his retirement, as submitted by the learned Government Advocate, a three men committee, constituting of three senior officials of the department was constituted as per Annexure-R-2.

7. The three men committee specifically requested the petitioner to appear before the committee to present his case, in the light of the reports submitted by the Chief Engineer, PH Zone, Purnea which he relies on even before this Court. However, in response to the aforesaid summons, the petitioner refused to appear by Annexure- R-2 to 12E and it was for the department to take a decision and there is no reason for the petitioner to participate in the proceedings of the committee. The recalcitrant attitude displayed by the petitioner belies the contention of the petitioner that the writ petition was filed only in public interest. If that was his motivation, he would have definitely participated in the committee meeting which was constituted to look into the findings of the Chief Engineer and apprise the committee of his contention. In fact, when the Writ



Court has specifically relegated him to the departmental authorities; the Writ Court having declined to entertain the Public Interest Litigation, it was more obligatory on the part of the petitioner to have participated in the meeting of the committee. Having not participated in the meeting, the petitioner has again attempted to file a Public Interest Litigation, which we deprecate in the strongest of terms.

8. We leave the above aspect for a moment to further look into the findings of the three men committee, as revealed from the counter affidavit. The committee's report is annexed as R-2 to 12/F. The Chief Engineer-in-Chief-cum-Special Secretary, PHED himself had inspected the work of the scheme in the various blocks of Baisi Block, Chairaiya and Amour Talbadi all coming within the Baisa Panchayat and found that the scheme is operational and no complaints have been raised by the villagers. The Chief Engineer had reviewed the ten agreements of six divisions to find that the majority of the tenders were executed without the consent of District Accounts Officer in the technical and financial bid. It was found by the regional committee that as per the report of the Executive Engineers of the three divisions of Supaul, Saharsa and Madhepura, the concerned District Accounts Officer has marked



his signature. In the tenders where the signature did not appear, show-cause notices were issued.

9. Insofar as the single bid/ tenders having been accepted, the three men committee clearly found that the Chief Engineer, PH Zone, Purnea has misconstrued and misinterpreted the amended provision in Para 2(vi) of Departmental Resolution No. 2083 dated 30.06.2019. The said provision clearly permitted a single bid to be accepted if approved by an Officer superior to the Competent Authority. It was found that in order to achieve the target of completion of the scheme, certain tenders were accepted in the absence of signature of the District Accounts Officer more by reason of the non-cooperation of the District Accounts Officer in the finalization of tender. However, in none of the tenders, there was loss caused to the Government, since the awards were made for amounts which were equivalent or less than the estimated cost/BOQ. It was found that complete transparency was maintained by the Executive Engineers in the tendering process and all the tenders were invited through e-procurement, in accordance with the rules and by publication of notices in daily newspapers.

10. It has been found that the work was executed in areas where the procurement of drinking water was scarce and



its quality was not good. The progress and implementation of the work is reviewed and monitored by the field officer regularly and insofar as quality assurance and quality control, the Public Health Engineering Department has notified the quality monitoring system vide Resolution No. 848 dated 25.04.2018. A three tier structure for quality monitoring has also been set up and monitoring formats were developed and circulated. An online reporting system has also been developed as State MIS and officers were trained to report on real time basis. It was pointed out that without even awaiting the representation, the department had immediately taken action and the petitioner, despite being invited to participate in the deliberations had not cooperated in the proceedings.

11. We see that the petitioner has filed a reply to the counter affidavit, producing as Annexure-9; voluminous documents, the report of the Chief Engineer, Purnea Division with annexures. In fact, it was to examine the veracity of the report, prepared by an officer on the verge of his retirement that a three men committee was appointed. Even without a direction from this Court, the petitioner was asked to participate; which the petitioner refused. The petitioner cannot take the proceedings before this Court under Article 226, especially a



PIL as an adversary proceeding. It has to be reiterated that even at the earlier instance, this Court was not inclined to entertain the Public Interest Litigation and relegated the petitioner to the authorities; obviously by reason of examination of facts necessitated. It would have been ideal for the petitioner to participate in the enquiry conducted by the three men committee, wherein he would have had the opportunity to place the facts before the Committee as found in the enquiry report. We cannot allow the petitioner to again contest the findings of the committee by way of a reply affidavit filed before this Court. As we noticed above, the writ petition is more publicity induced, than in public interest.

12. Considering the fact that despite inviting an order for consideration of representation, the petitioner had failed to cooperate with such consideration made, the petitioner is imposed with cost of Rs. 10,000 which shall be paid to the Bihar State Legal Services Authority. The petitioner shall pay the said amount within a period of one month, and if not, the Bihar State Legal Services Authority shall be entitled to proceed for recovery by taking measures similar to recovery of arrears due on land through the District Magistrate, in which event the petitioner shall be liable for the charges incurred for making



such recovery, which have to be recovered and remitted to the State.

13. The writ petition stands dismissed with exemplary costs as above.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.02.2024
Transmission Date	

