

**(2015) 06 PAT CK 0011**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 9939 of 2012

Ashok Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 26-06-2015

**Acts Referred:**

**Citation :** (2015) 3 PLJR 265

**Hon'ble Judges :** L. Narasimha Reddy, C.J.;Sudhir Singh, J

**Bench :** Division Bench

**Advocate :** Abhinav Shrivastava and Surya Prakash Singh, for the Appellant; L. Nageshwar Rao, Senior Advocate and Lalit Kishor, PAAG, Advocates for the Respondent

**Final Decision :** Disposed off

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## Judgement

L. Narasimha Reddy, C.J.

1. The petitioner is a Post Doctoral Fellow, in the Department of History, Patna University. He filed this writ petition in public interest, with a prayer to restrain the respondents from constructing the world level museum at Patna, with huge financial allocation.

2. On coming to know that the State of Bihar is proposing to construct a world class museum at a prime locality by demolishing large number of structures, the petitioner made a representation on 05.12.2011 to the Chief Minister, with a request to stop the project and utilize the amount for civil amenities. He stated that when information was sought by him about the details of the project, evasive reply was given, and in that view of the matter, he made another representation on 17.04.2012. Thereafter he filed this writ petition.

3. The principal grounds urged by the petitioner are that a) the financial resources of the State of Bihar are limited, and they cannot be utilized for construction of international museum, b) there are well established and famous museums in the State at various places, and even while subjecting them to gross

negligence, starving them from funds, the State is proposing to spend hundreds of crores on construction of international museum, and c) that the existing museum at Patna can be upgraded to world class with little expenditure. He pleaded that there are not bonafides in the entire issue, and contends that the project was not in the public interest, but is intended to serve interests of a selected few.

4. The writ petition was admitted on 05.09.2012 and the interim relief was denied. Thereafter, it was listed for hearing on 05.02.2015. A counter affidavit was filed by the Executive Engineer of the Building Construction Department, without addressing any of the questions raised by the petitioner. The matter was adjourned to by two weeks, and thereafter counter affidavits were filed by the Department of Art and Culture. It is stated that the State of Bihar is adorned with several historical structures, and they can be exhibited as museum of international standards, which would attract large number of tourists, particularly from the foreign countries, and that in turn would help the State to earn revenue. The project is said to have been estimated at about Rs. 500 crores. The manner in which the contracts were awarded to various agencies and their particulars are stated. The plea of the petitioners that the project is not in the public interest, and that there is no transparency in the entire work is denied.

5. Sri Abhinav Shrivastava, learned counsel for the petitioner submits that the State of Bihar is adorned with several monuments spread over various places, and in the city of Patna itself excellent museums were constructed during the British period. He submits that the museums constructed at various places as well as the historical structures spread over centuries and millennia were subjected to gross negligence, and instead of maintaining them properly, the State thought it fit to spend huge amount of about Rs. 500 crores for construction of museum at a time when it was proclaimed from every platform that the financial condition of the State is fragile and it is unable to satisfy the basic necessities or demands of the people due to paucity of funds.

6. He contends that whether one goes by the parameters of safety, the use of the land, traffic, or the judicious spending of the limited resources, the project is misconceived and is contrary to public interest. Learned counsel submits that the State has demolished large number of Government buildings for making the site which is almost abutting the High Court, and that is not at all suitable from the point of view of crowd management, or other aspects. He contends that when, on the one hand, the Government did not think it fit to provide at least basic facilities to the existing monuments and museums though they are attracting visitors, and, on the other hand, thought it fit to spend huge amount for new museum and to award the contract to international agencies. He contends that any museum would attract the crowds on account of valuable things stored therein, and in the instant case, the effort is to construct the buildings only by spending hundreds of crores, for storing certain artifacts and relics, which are already available. By making reference to various documents, learned counsel

submits that the award of contract was not at all transparent, and the action of the Government deserves to be deprecated.

7. The arguments on behalf of the State were advanced by Sri L. Nageshwar Rao, learned senior counsel, and are supplemented by the learned Principal Additional Advocate General. It is pleaded that the writ petition itself is not maintainable since no public interest is involved. They contend that the project was prepared in consultation with the agencies of international repute and the contracts were awarded by floating global tenders. By citing various judgments of the Hon'ble Supreme Court, the learned counsel points out that interference by this Court in matter of this nature is not warranted. It is also pleaded that existing museums and other relics in the State would be taken care of.

8. The petitioner is an academician of considerable accomplishment. The objection raised by him for the construction of international museum at Patna through the writ petition is three folds. The first is that at a time when the Government is not able to provide even basic civil amenities in the city like Patna, spending of hundreds of crores for construction of a museum is not in a public interest. The second is that the State has neglected to maintain the museums that are already existing. The third is that the Government is not transparent in its functioning, and his efforts to know the details of about the matter did not yield any tangible results.

9. It has already been mentioned that the initial response of the State was lukewarm. Obviously, because this Court did not pass any interim order, the State proceeded with the work and did not care to file any counter affidavit, worth its name. It is only when the matter was taken up for final hearing, and when this Court expressed its total dis-satisfaction about the indifference on the part of the Government, that one after the other, the counter affidavits were filed.

10. The construction of a museum can certainly be appreciated if there is no mechanism to keep the people informed about the importance of the relics of the concerned area. Glory of Bihar is spread over thousands of years. It includes not only the events in Hinduism spirituality, but also those of Buddhism, Jainism, Sikhism and Islam. Over the past centuries the concerned Rulers made arrangements for preservation of monuments and relics. The petitioner filed a list of such monuments/sites as Annexure-1. As many as 71 museums or similar establishments existing in various parts of the State and the capital city are listed therein. Annexure-2 contains the list of 31 protected monuments, declared as such by the State.

11. On coming to know that the Government is contemplating a project of museum which was estimated at Rs. 280 crores at that time, representation, being Annexure-3, signed by several eminent persons was made with a request to utilize that amount for meeting the basic amenities of the Patna city or other parts of the State. However that did not evoke any response. Another representation, i.e. Annexure-4 dated 06.02.2012, signed by quite large number

of eminent persons was submitted. It is important to note that an application was made by the petitioner, with a request to furnish information about the project, but a reply was given by the Public Information Officer stating that the matter does not come within his purview. Thereafter, a representation was made to get the matter enquired into.

12. The first counter affidavit was filed by the Executive Engineer of the Building Construction Department. It is so cryptic and brief that reproduction thereof does not add to the length of the judgment. It reads as under:

"2. That I have been authorised to swear this counter affidavit on behalf of Respondent Building Construction Department.

3. That a World Class Museum is Mega Project of Art, Culture and Youth Welfare Department, Government of Bihar.

4. That the Consultant of this Project is Fumihikio + Maki and Associates, Hillside West Building C, 13-4, Hichiyama-Cho, Shibuya-Ku, Tokyo- 150-0035, Japan, and Resident Architect is OPOLIS, 201, Sebastian Classic, Sunder Nagar Lane# 3, Mumbai-400098.

5. That the tender for construction was awarded to M/S Larsen and Turbo Company on 3 of July 2013.

6. That total cost of the project is Rs. 498.49 Crores and the time of completion is March, 2015. Further, due to some intervening circumstances, there is some delay in completion but out of 10 blocks, the completion of 3 blocks is at final stage and the same will be inaugurated in July, 2015, the remaining blocks constructions are also at advance stage and expected to be completed at the earliest. The works of different natures are also progressing fast.

7. That I have read and understood the contents of this counter affidavit.

8. That the statements made in paragraph Nos. 1, 2, 3, 5 and 6 are true to my knowledge and those made in paragraph Nos. 4 are true to my information derived from the records of this case which I believe to be true and the rest are by way of submission before this Hon"ble Court."

13. This Court was, in fact, shocked to see the manner in which the State responded. It was at the request made by the Principal Additional Advocate General, the matter was adjourned and on the next date of hearing, the Joint Secretary, Department of Art and Culture and Youth filed the counter affidavit. Even this was brief, and bereft of any details, worth their name. None of the concerns of the petitioner were adverted to, much less addressed. Thereafter, the Secretary of the Department filed a counter affidavit furnishing all the details. Since, it is public interest litigation, it is felt appropriate to go by the facts furnished in the counter affidavit, without any detailed scrutiny.

14. That the existing museum at Patna was subjected to gross negligence is evident from the counter affidavit itself. The reason for not improving, as pleaded

by them is that the museum is 90 years old; the building has too many rooms and windows; and is not suitable for developing ideal galleries.

15. Any person having basic understanding about the museums or archeological structures would know that it is the age of the building or the monuments and relics stored therein, that adds to its richness. It was not even mentioned that the Patna Museum which is 100 years by now, has suffered any structural defects or has become not suitable to displaying the relics. The allegation made by the petitioner that the museums are subjected to gross negligence and important relics were missing, remains un-rebutted. The present state of affairs is that the museum is said to be handled by persons through out sourcing and the structures as well as the monuments are subjected to gross negligence. Another plea of the petitioner that there is adequate scope of expansion of the Patna museum was not adverted to, at all. The decision to construct a world class museum is said to have been approved on 26.11.2009 and that was followed by selection of consultant for preparation of a master plan by issuing advertisement in April, 2010. In response to certain queries made by this Court, the respondents furnished the details.

16. It is important to note that the work of consultancy and preparation of master plan was awarded to M/s. Lord Cultural Resources, Toronto (Canda) through a letter of award dated 31.05.2011. The amount of Rs. 4,30,00,000/- quoted by the agency as the "total contract fee" was accepted and the manner of payment was also indicated. The letter of award dated 31.05.2011 reads as under:

"Let. No. ...189 Govt. of Bihar Dept. of Art, Culture and Youth

(Registered/Speed Post)

From

Dr. K.P. Ramaiah Principal Secretary to the Govt.

To

Mr. Barry Lord President, Lord Cultural Resources, 1300 Yonge Street, Suite 400 Toronto (Canada)

KIND ATTN: Ms. Batul Raaj Mehta, Consultant, Lord Cultural Resources, Mumbai

Subject: Appointment of consultant for Master Plan for a world class museum in Patna on Evolution of the History and Civilization of the Indian Subcontinent.

Patna, Dated-3/May, 2011

Letter of Award

1) We refer to your Proposal dated 03 May 2010 including the financial proposal in response to your Request for Proposal (RFP) document dated April 2010 and subsequent Corrigendum thereto.

The capitalized terms used herein shall have the same meaning as set forth in the draft contract Agreement to be executed in pursuance of the RFP document and this Letter of Award.

2) We are pleased to inform you that your above referred Proposal including the financial proposal has been accepted by the Procurement Committee of Department of Art, Culture and Youth, Government of Bihar and you are being issued this Letter of Award subject to the following terms and conditions:

a) As per your financial proposal dated 28 April, 2010, the total contract Fee amount for the Project shall be Rs. 4,30,00,000.00 (Rupees four crores thirty lakhs only) and the aforesaid amount shall be payable in accordance with the provisions of the RFP document and the corrigendum thereto.

b) You shall provide the following within three weeks of the receipt of this "Letter of Award":--

i. Performance Security of Rs. 21,50,000 crores (Rupees twenty one lakhs fifty thousand only) in the form of an Unconditional and Irrevocable Bank Guarantee in local currency issued by a scheduled bank in India and payable at Patna. The Performance Security shall be in favour of "Department of Art, Culture and Youth". The format in which the Bank Guarantee is to be submitted, is enclosed herewith.

ii. You are requested to furnish all legal documents submitted with your proposal issued outside India duly embossed by Indian embassy in those respective countries.

iii. As per the comments received from the Advocate General of Bihar on the draft contract agreement clause 8.3.1 and 8.3.2 will now be read as follows.

"Any Dispute which is not resolved amicably by conciliation, as provided in Clause 8.3, shall be finally decided by reference to arbitration by the provisions of Bihar Public Works Contracts Disputes Arbitration Tribunal Act 2008 and regulations thereunder. The venue of such arbitration shall be Patna, and the language of arbitration proceedings shall be English.

Clause 8.3.2 will stand deleted

iv. As per the comments received from the Finance Department, Government of Bihar on the schedule of payment, the following payment schedule will now be considered.

c) You shall sign the Contract Agreement with Department of Art, Culture and Youth, Government of Bihar (DACY) in accordance with the terms and conditions of the RFP document dated 2 April, 2010 and Corrigendum thereto issued subsequently.

d) You shall comply with all the terms and conditions of the RFP document dated 2 April, 2010 and Corrigendum thereto issued subsequently.

It may also kindly be noted that in the event you fail to comply with any one or more of the terms and conditions mentioned in the RFP document and the Corrigendum thereto issued subsequently within the time period and in the manner prescribed therein, we, in addition to all other rights and remedies that may be available to us under the provisions of the RFP document (and the Corrigendum thereto) and the applicable laws, shall be at absolute liberty and freedom to treat your Proposal as rejected and deal with the captioned Project as we may deem fit in our absolute discretion.

As per the requirement of clause 4.11.2 of Section I of the RFP document, you are requested to convey your acceptance by returning the copy of this Letter of Award duly signed by your authorized representative within seven days from the date of its receipt.

We look forward to an early compliance of the above-mentioned requirements by you and commencement of work on the project site.

(Dr. K.P. Ramaiah) Principal Secretary to the Govt.

Memo No. 189.../

Patna, Dated- 31 May, 2011

Cc to Ms Batul Raj Mehata, Consultant, 108, Marine Chambers, New Marine Lines, Mumbai- 400 020 for information and necessary action.

(Dr. K.P. Ramaiah) Principal Secretary to the Govt."

17. However, in the counter affidavit filed on 18.02.2015 it is mentioned that the same agency i.e. M/s. Lords Cultural Resources (LCR) was appointed as consultant for preparing master plan and its allied components was awarded the contracts worth Rs. 22,17,20,733/- and was paid a sum of Rs. 14,85,28,816/-. The relevant particulars read as under:

"Agreement value of and payment made to M/S Lords Cultural Resources (LCR) as consultant for preparing Master Plan and its allied components.

18. This is, in addition to about Rs. 10,00,00/- for database set up. However, for awarding none of these works, tenders were invited.

19. Even after M/s. Lords Cultural Resources was appointed for the entire project, in the manner referred to above some more consultants such as Maki and Opolis Mumbai, M/s. Kingsmn Fairtech, the Fabrications Agency India, and M/s. Lopage Design were awarded contracts worth Rs. 41,28,00,000/-, Rs. 31,36,82,100/- and Rs. 2,65,87,764 respectively. The construction contract was awarded to M/s. L and T. Chennai at Rs. 280 crores. In other words, for construction of buildings worth Rs. 280 crores, the Government spent about Rs. 220 crores towards consultancy and other such activities.

20. To our specific question as to whether tenders were called before the consultancy works were allotted, there is no specific answer. It is relevant to

mention that not a single rupee of this amount is spent for the land of 17 1/2 acres which would cost about a thousand crores, nor does the amount represent the cost of any monument or object to be displayed. It was only for awarding the contract worth Rs. 4,30,00,000/-, the tenders were invited. Thereafter, the contracts running into hundreds of crores were awarded to consultants, otherwise than through inviting tenders. The whole episode demonstrates that emphasis was more about entrustment of work to certain agencies than to serve the genuine interest of the State.

21. The cost of the project, in the words of the respondents themselves, is as under:

"12. That with regard to the statement made in paragraph No. 4 of the writ application, it is stated that the statement made by the petitioner is not true and it is stated that the estimated cost of Rs. 370 crore for the construction of Bihar Museum is not true. In fact, initially an amount of Rs. 400 Crores was approved for the purpose which subsequently has been revised to Rs. 498 Crores."

22. Patna High Court is flooded with public interest litigations for the past more than a decade complaining, if not crying, about the absence of basic amenities, blocking of drainages, existence of stinking garbage, making illegal constructions, frequent traffic jam, directions issued by this Court to prevent water logging on account of canal being filled with garbage, or debris hardly become effective. The State is unable to protect the important places like hospitals, medical colleges, and universities from encroachments. The Supreme Court and this Court have to interfere and even after series of orders are passed, the situation did not improve at least to the ordinary level let alone optimum level. The situation can be better understood by taking note of the fact that Patna, which is said to be the oldest city after Varanasi, does not have any functional traffic signals.

23. It is a matter of common knowledge that even the projects like National Highways are being entrusted to private agencies on build, operate and transfer or other similar arrangements, wherein the private agencies are required to spend the amount and then recover the same by operating the facility. The objective is to ensure that the limited resources of the State are made available for other important purposes to benefit the people, particularly, the poor. Similar practices are adopted for other important projects meant for public benefit. The construction of a museum by spending such huge amount that too when such facilities are already existing, cannot be said to be a matter of immediate necessity or public concern. Even from what is spelt out in the counter affidavit, the objective of constructing a museum is to attract foreign visitors and tourists. This, at a time when the basic facilities such as roads, sanitation, schools, hospitals in the State of Bihar, are in miserable condition and generating frustration and pity, if not anger. The amount of 500 crores, if utilized properly could have provided permanent shelters for lakhs of people or Medical and Educational services to the people of the State.

24. Even if the State wanted such a facility to come up, it could have entrusted the same to an intending agency that can finance the project and recover the amount from the generated revenue. However, it thought it fit to allocate 17 acres of prime land between the Secretariat and the Patna High Court by forcibly evicting several Government establishments and spending Rs. 500 crores public money. Lack of transparency in the award of contract is already demonstrated, from what is stated in the counter affidavit itself. The existing century old museum was treated as almost useless just because it is not new or attractive. The decision makers were attracted mostly by modernity of the building of the museum than what is available to be preserved and displayed in it. Even as a commercial venture, the project would be an utter failure.

25. It is a matter of common knowledge that the airport at Patna is in primitive condition. There is no hope that it would be developed in the near future, because the State is not prepared to provide land. In contrast, the Airport in Ranchi, the capital of Jharkhand, carved out of Bihar recently, recorded phenomenal development. The roads to the monuments and museums situated in various parts of the State are only to be experienced. The planners also lost sight of the fact that a monument becomes attractive mostly on account of location, representing the history of that place and when shifted to a fabulous building; it becomes just a show piece bereft of any historical importance.

26. On behalf of the State, reliance is placed upon several judgments of the Supreme Court such as Narmada Bachao Andolan Vs. Union of India and Others, AIR 2000 SC 3751 : (2000) 2 JT 6 Supp : (2000) 7 SCALE 34 : (2000) 10 SCC 664 : (2000) 4 SCR 94 Supp : (2000) AIRSCW 4809 : (2000) 7 Supreme 264 ; BALCO Employees Union (Regd.) Vs. Union of India and Others, AIR 2002 SC 350 : (2002) 108 CompCas 193 : (2002) 1 CompLJ 205 : (2001) 10 JT 466 : (2002) 1 LLJ 550 : (2001) 8 SCALE 541 : (2002) 2 SCC 333 : (2002) 35 SCL 182 : (2002) 2 SCT 12 : (2001) AIRSCW 5135 : (2001) 8 Supreme 660 ; Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, (2003) 7 JT 312 : (2003) 6 SCALE 401 : (2003) 7 SCC 546 : (2003) 2 SCR 619 Supp ; Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, AIR 2011 SC 1989 : (2011) 6 JT 379 : (2011) 5 SCALE 624 : (2011) 7 SCC 639 : (2011) 3 UJ 1977 : (2011) AIRSCW 4473 ; S. Subramaniam Balaji Vs. The Government of Tamil Nadu and Others, (2013) 8 AD 1 : (2013) 4 CTC 290 : (2013) 10 JT 153 : (2013) 3 RCR(Civil) 867 : (2013) 8 SCALE 249 : (2013) 9 SCC 659 ; Jal Mahal Resorts P. Ltd. Vs. K.P. Sharma and Others, (2014) AIRSCW 6720 : (2014) 7 JT 134 : (2014) 7 SCALE 336 : (2014) 8 SCC 804 ; State of Karnataka Vs. Arun Kumar Agarwal and Others, AIR 2000 SC 411 : (1999) 9 JT 618 : (1999) 7 SCALE 441 : (2000) 1 SCC 210 : (1999) 5 SCR 278 Supp : (1999) AIRSCW 4556 : (1999) 10 Supreme 215 ; Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, AIR 2002 SC 2225 : (2002) CriLJ 2942 : (2002) 1 JT 286 Supp : (2002) 4 SCALE 455 : (2002) 5 SCC 521 : (2002) 2 SCT 1090 : (2002) AIRSCW 2333 : (2002) 4 Supreme 91 ; Mahadaji Scindia Smarak Samiti, Gwalior Vs. State of M.P. and

others, (1980) J LJ 900 ; and Suo motu - In Re: Preservation of Antiquities involved in Criminal Trials, AIR 1999 Ori 53 .

27. We are conscious of the principles laid down by the Supreme Court. Though the facts of the case were sufficient to stall the project at the initial stage, even if one is guided by those principles, the question of stalling the project does not arise since the construction is said to be nearing completion. At the same time, we cannot remain oblivious to the gross illegality on the part of the State, not only taking up the project by wasting limited public resources, but also in awarding the contract in a manner which is far from transparent.

28. We, therefore, dispose of the writ petition holding that the project of construction of world class museum in Patna at the cost of about Rs. Five hundred crores in a prime land of 17 1/2 acres between the Secretariat and the Patna High Court is not at all in public interest and that the manner in which the contracts of consultancy etc. were awarded is far from transparent and objective. However, we are not intending to stall the project which is nearing completion. We direct that in case the museum becomes unviable, the building and other infrastructure shall not be alienated to private firms, but shall be utilized for public institutions or purposes.