
(2009) 09 JH CK 0054
In the Jharkhand High Court

Om Prakash Gupta

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Citation : (2009) 09 JH CK 0054

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mrs. Ritu Kumar at length and perused the application for review of the order passed in W.P. (PIL) No. 803 of 2009. For better appreciation and for disclosing our minds, the said order is quoted hereing below:

We take judicial notice of the number of Public Interest Litigations filed in this Court complaining that Jharkhand State is flooded with deferent type of scams. One of those Bitumen scam, for which the instant Public Interest Litigation has been filed. It has been brought to aw notice that in the matter of procurement of Bitumen there is large scale if regularities and pointed not less than 100 crores of Rupees by the Engineers, Contractors and other persons having vested Interest. It is Mated that the Chief Engineer of various Zones have found various irregularities In the matter of procurement of Bitumen.

2. In paragraph No. 11 of the Writ Petition various irregularities have been pointed out which reads as under:

That it is further stated that, the case or Kandra Saraikela road and Adityapur-Kandra road is and to this Bitumen purchase scam, and the respondent No. 6 and 7 have found the following irregularities.

These two roads in Jamshedpur (Industrial area) have been taken up by the State Govt. for widening and strengthening at the total cost of 36 crores but unfortunately maximum money has been looted by the contractor-politicians-

engineers of the Staff.

In fact, the irregularities are serious in nature:

(a) It is found that, the contractors have utilized invoices for the purchase of Bitumen, has not at all issued to them by the engineers.

(b) It is found that the authority letter for lifting bitumen was issued only for 2,500 M.T. by the department and the estimate was only for 5000 M.T., but surprisingly the utilization was shown for the 5,83421 M.T. much more than the estimate quantity.

(c) The excess utilization shown by the contractor-engineer is doubtful, hike and meant for embezzlement of money).

(d) The main source of embezzlement's utilization of invoices which is meant for Orissa has been shown to have been utilized in Jharkhand.

3. The petitioner has annexed a letter bearing Memo No. Finance/A.G. (L.P.)-29/07-215 dated 22.11.2008 issued by Secretary, Finance, Govt. of Jharkhand addressed to the Secretary Road Construction Department informing about the embezzlement of money. The letter of the Secretary Finance reads as under:

Presak,

Rajbala Verma, Sarkar Ke Suchib

Seva Me,

Sachiv, Path Nirman Bhivag, Jharkhand, Ranchi

Mishay: Path Nirman Ke liye Bituman Procurement in Jalsaji, aniyamitata avam Rashi ka gaban.

Mahasay,

Mahakhakar (Lekha Pariksha) ke dwara Procurement of Bitumen for Road works karya me vitya aniyamitata, rashi gaban avam jalsaj sambandhi ek vistrit onkekshan kandika ke madhyam, se path nirman bhivag ko prativedan preshit kiya gaya hai. Eske mikhya bindu nimnankit hai:

1. In 15 divisions, Rs. 6.74 crore was paid as cost of bitumen against 308 invoice poops in support of purchase of 3,824.199 MT bitumen.

2. Rupees 36.86 lakh was paid, to a contractor against 22 invoices bearing Identical invoice code in support of purchase of 199.694 MT bitumen for utilization in two works executed under two divisions.

3. A contractor was paid Rs. 29.60 lakh against 17 take invoices issued to another contractor. Further, the invitee code appearing on five copies were stated to be issued for sale of kerosene oil.

4. Two contractors under the same division, engaged in two work, were paid Rs. 20.16 lakh on submission of 16 invoices bearing identical invoice code. However, concerned oil company confirmed non-issue of invoice bearing that particular code.

5. In nine divisions, Rs. 2.26 crore was paid as cost of 10674.167 MT bitumen against 119 invoices bearing different alpha-numeric codes not consistent with coding system prevalent in IOCL.

6. Rupees 6.15 crore was paid, against reported procurement of 3296.94 MT bitumen against 352 invoices bearing customer and product codes different from those used by HPCL.

7. A contractor was paid Rs. 8.42 crore for procurement of 4898.08 MT bitumen against invoices issued in the name of another contractor. Further payment was also made against re-print and original copies of same, invoices.

8. Transporter's assessee's, crossed, reprint and photo copies of invoices, thought not admissibly, were admitted by EEs and Rs. 15.02 crore was paid.

9. Departments did not develop a suitable internal control mechanism to monitor mandatory checks to exercise at divisional level.

Bavdiya sahmata honge ki mahalekhakar ke prativedan me bahut hi gambhir vitya animitata prativedit ki gayi hai. Sambavta bhavag ke dwara bishay vastu par mat gathit kar liya gaya hoga aur prathamik rup se vishay astu ki chan-bin, janch bhi kar li gay hogi. Is sambandh me nimnankit karwai awasyak hai:

1. Prativedit animitatyon, Jalsali, rasi gavan ke liye doshi bayaktiyo ke virudh kanuni karwai. Eske liye nigrani janch shreskar hogi.

2. Dosi vayaktiyo ke virudh anusasantamak karwai ke liye nimyamanusar prasasinik karwai, vibhagiye karwai adee.

3. Is prakar ke jalsaji, vitya animitata rokne ke liye Corrective measures ke liye vibhag dwara Modus Operandi ke sambandh me vistrut vivechana kar aspasta dishanirdesh avam paripatra nirgat kiya jana avam sabhi pramandalo ko mahalekhakar ke dwara prativedit Bitumen sambandhi jalsaji, vitya animitiya ke alok me suchit kar diya jay.

Vishwashajan

Sd/- (Rajbla Verma) Sarkar Ke Sachib.

4. In paragraph No. 17 it is stated that the Bitumen scam was brought to the notice of the Principal Secretary to the Rural Works Department by the Deputy Secretary, Road Construction Department in December 2008 but nothing was done.

5. The respondents have filed a perfunctory counter-affidavit and surprisingly affidavit was sworn by the Junior most Officer i.e. the Under Secretary, Road

Construction Department. The allegations made in various paragraph of the Writ Petition has neither been denied or disputed nor any legal action has been taken. The only statement made in the counter affidavit is that Principal Secretary to the rural Works Department was requested to look into the irregularities pertaining to division under his charge so that names of the officers in these irregularities are spot out for taking appropriate action by the Road Construction Department. But the fact remains that no action has been taken.

6. After having learned Counsel for the parties and considering the materials on record particularly later of the Finance Secretary to the Road Construction Department, we come to the conclusion that materials does disclose a prima facie case calling for an investigation by C.B.I., or any other similar agency. We further found that the respondents are not serials in the matter and it is a fit case where C.B.I., is directed to enquire into them matter.

7. It has not been deputed by the learned Counsel for the State that the roads being a National High Way or the roads maintained by the Road Construction Department, the condition of the roads are very worst and in most of the places, there is no road at all. For this not only the contractor but also public officers are responsible. It has become necessary to find out who are responsible for the precarious condition of the roads in the State of Jharkhand.

8. Having come to a prima facie conclusion of mis-appropriation and embezzlement of public money we direct the Central Bureau Investigation to enquire and investigate into the matter fixing responsibility upon the persons and submit a report with a period of three months from today.

9. Let a copy of this order be furnished over to the counsel appearing for the C.B.I.

2. Mrs. Kumar firstly argued on behalf of petitioner that the order for investigation by C.B.I. has been passed by this Court on the basis of letter of the Finance Commissioner who has disclosed illegality and irregularity committed by the Road Construction Department. Learned Counsel further submitted that construction of repair of the village roads done by the petitioner are monitored at different stages right from in the Executive Engineer and also by Independent State Level Agency.

3. It has not been disputed that the construction/repair of the village roads are done by Rural Engineer Department.

4. We, therefore, cannot express our opinion with regard to illegality committed by the Road Construction Department or Rural Engineering Department. It is for the Central Bureau of Investigation to investigate into the matter in accordance with law.

5. For the reasons aforesaid, we do not find any reason to review, the petition, which is accordingly dismissed.