

(2013) 05 PAT CK 0049
In the Patna High Court
Case No : CWJC No. 1664 of 2012

Prashant Kumar and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Citation : (2013) 2 PLJR 984

Hon'ble Judges : Shivaji Pandey, J; Navin Sinha, J

Bench : Division Bench

Advocate : Ashok Kumar, for the Appellant; P.N. Sahi, for the Respondent

Final Decision : Disposed Off

Judgement

Navin Sinha, J.—The District Magistrate, Patna and the Executive Engineer, New Capital Division, Road Construction Department, Patna, are present in person. We have heard Counsel for the petitioners and the learned Additional Advocate General-14 on behalf of the State. We also permitted the District Magistrate, Patna and the Executive Engineer to address us.

2. The issue raised in this Public Interest Litigation was with regard to construction of elevated PCC cemented roads alleging that consequently the plinth level of houses situated along the road stood lowered and were going to be adversely affected by water accumulation more particularly in monsoon. Our attention was invited to 2010 (3) PLJR 998 (Deepak Mukherji vs.. State of Bihar) (DB) prohibiting construction of elevated PCC cemented roads. CWJC No. 14831 of 2009 (Jawahar Lal & Ors vs. State of Bihar) has already followed the same by the Division Bench also.

3. The Division Bench gave elaborate directions in eight different sub-heads at paragraph 5. We also consider it appropriate to extract paragraph 6 with regard to the conclusions of the Division Bench arrived at on basis of and in presence of technical personnel of the State Government:--

6. We may hasten to add, the aforesaid terms and conditions have been recorded on the concession given by the learned Advocate General, Engineer-in-Chief of Road Construction Department and the Chief Engineer of Urban Development Department and the learned Counsel appearing for the petitioners.

4. Sitting in coordinate jurisdiction the conclusions of the Division Bench binds us in judicial discipline. Nothing has been urged before us whatsoever to suggest reconsideration by a larger Bench.

5. It is no more in controversy before us that the PCC cemented road in question was in fact being constructed in violation of the orders of the Division Bench with elevated height of approximately 10 inches. The District Magistrate informed us that no sooner his attention was invited to the issue alongwith the order of the Division Bench he sent necessary request to the concerned authorities of the State Government. He informs us in person that the works have now been stopped. The Division Bench in paragraph 5(v) authorised the District Magistrate to look into the grievance with promptitude and take appropriate action by bringing it to the notice of the experts. We clarify that the Division Bench did not restrain the District Magistrate from appropriate action awaiting action by the concerned at leisure. We clarify that upon satisfaction that the PCC cemented road was being constructed contrary to the orders of the Division Bench, the District Magistrate is required first to enforce his authority by immediately stopping the works and then bring it to the attention of the concerned.

6. In so far as the present constructions raised in violation of the orders of the Division Bench are concerned, we are of the opinion that the Government vests powers in its officers in trust to discharge it in the best interest of the Government. Surely, the Government does not vest this power in trust to violate Court orders. If there is a violation of a Court's order, liability has to be individual and not institutional normally. No abnormal situation has been pointed out to us. We therefore direct the Principal Secretary, Urban Development Department, to hold an enquiry with regard to the present elevated PCC cemented construction in light of the order of the Division Bench and fix individual responsibility. The financial loss occasioned to the Government by dismantling of the works done to the extent of violation of the Division Bench orders cannot be saddled with the Government alone. After prima facie fixation of responsibility in the enquiry the Principal Secretary, Department of Urban Development, will give a hearing to the concerned and then pass a reasoned and speaking order on this aspect.

7. No further construction of PCC cemented road shall be made at the present location mentioned in the writ application

8. The facts as have emerged in the present case compel us to give further directions that the order of the Division Bench in the case of Deepak Mukherji (supra) has to be implemented throughout the State and every District Magistrate shall possess the same powers and duty as we have clarified the

order of the Division Bench with regard to the District Magistrate, Patna.

9. We may clarify that our order following the earlier Division Bench is restricted in its operation to the construction of PCC cemented roads raising height of the road above the plinth level of the surrounding houses.

10. The submission that in absence of such elevated roads under the existing drainage system water logging may occur, does not impress us. The authorities cannot resort to short cut quick fix solutions contrary to law for overcoming damage to roads due to water logging, which itself is occasioned due to lack of adequate urbanised civic planning of which drainage is but an integral part. Experience to the residents of the capital city has shown that such elevated PCC cemented roads create more misery than they attempt to solve for those whose plinth level consequently falls significantly lower to the elevated PCC cemented road constructed later.

11. We request learned Additional Advocate General-14 to furnish to the Registrar General of the Court by tomorrow a list of e-mail address of all the District Magistrates in the State of Bihar so that this order may be communicated to all of them through e-mail by the Court immediately.

12. Issues of deliberate disobedience of Court orders may arise if a citizen has to approach this Court again for the same relief invoking the contempt jurisdiction. The writ application stands disposed.