**(2011) 01 PAT CK 0062**

**In the Patna High Court**

**Case No :** C.W.J.C. No. 9920 of 2010

Prithviraj Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

**Date of Decision :** 04-01-2011

**Acts Referred:**

**Citation :** (2011) 01 PAT CK 0062

**Final Decision :** Allowed

# Judgement

S.N. Hussain, J.—This writ petition has been filed challenging memo No. 191 dated 26.3.2010 (Annexure-13) sent by the Superintending Engineer, National Highway Circle, Road Construction Department, Purnia (Respondent No. 3) to the Chief Engineer, National Highway Wing, Road Construction Department, Patna (Respondent No. 2) recommending cancellation of agreement for collection of tolls and directing the Petitioner to stop collection of tolls and also challenging letter No. 423 dated 27.3.2010 (Annexure-14) by which the Executive Engineer, National Highway Division, Road Construction Department, Purnia (Respondent No. 4) directed the Petitioner to stop collection of toll tax forthwith and for other ancillary reliefs.

2. Learned Counsel for the Petitioner claimed that an agreement for collection of toll, for H.L. Bridge (Purnia By-pass) over river Kari-Kosi in KM 404 of N.H. 31, was entered into between the Petitioner and the Government of Bihar (Respondent No, 1) represented by its Executive Engineer (Respondent No. 4) on 26.9.2007 (Annexure-1) after due approval from the Government of Bihar and accordingly letter dated 26.9.2007 (Annexure-2) was issued by the said authority to the Petitioner. The agreement was for the period 27.9.2007 to 26.9.2008 and the amount fixed for that period was Rs. 2,62,71,500.00 out of which Rs. 1,75,14,335.00 was deposited by the Petitioner and the remaining amount of Rs. 87,57,165.00 was to be deposited within three months from the date of taking over the right of toll collection. It was further claimed that the Petitioner started the work of toll collection from 27.9.2007 for which the receipts issued by the

Executive Engineer, were used and counterfoils thereof were regularly deposited in the office of the Division.

3. It was also averred by learned Counsel for the Petitioner that the Chief Engineer (Respondent No. 2) was going to retire on 29.2.2008 and for reasons best known to him, on that very date i.e. 29.2.2008 he passed his order (Annexure-3) unilaterally cancelling the agreement, forfeiting the security amount and directing to institute criminal case also, whereafter Petitioner''s collection of toll tax was stopped. Against the aforesaid orders of the authorities, the Petitioner moved this Court vide C.W.J.C. No. 5109 of 2008 and after hearing the parties the said writ petition was allowed by a Bench of this Court vide order dated 4.3.2008 (Annexure-5) finding the impugned orders of the authorities to be without jurisdiction, arbitrary and unreasonable.

4. Thereafter the Petitioner approached the authorities alongwith the aforesaid order of this Court requesting them to allow him to collect the tolls for the remaining period in view of the specific orders of the High Court, whereafter the Superintending Engineer (Respondent No. 3) sent letter on 26.7.2008 (Annexure-6) requesting the Chief Engineer (Respondent-2) to give direction for compliance of the High Court''s order but the authorities failed to heed to Petitioner''s request and did not comply the said order of the High Court and hence, the Petitioner was constrained to file a contempt petition in the year 2009, but the same was later withdrawn by the Petitioner pursuant to the assurance given by the Respondents for compliance of the High Court''s order and accordingly, the Chief Engineer (Respondent-2) issued order dated 6.10.2009 (Annexure-7) allowing the Petitioner to collect tolls for the remaining 198 days in view of the agreement as well as the order of the High Court.

5. In spite of the aforesaid order, the Executive Engineer (Respondent No. 4) sent letter dated 8.10.2009 (Annexure-8) to the Petitioner directing him to deposit Rs. 87,57,165/- plus interest at the rate of 12% per annum within three days holding that only thereafter the Petitioner shall be allowed to collect the tolls for the rest 198 days. Under the said compulsion, the Petitioner deposited Rs. 30 lacs as the first instalment of the balance amount with interest on 12.11.2009 and only thereafter the Executive Engineer (Respondent No. 4) allowed him to collect the tolls from 13.11.2009. It is also stated that the Petitioner having suffered huge loss due to the arbitrary and mala fide action of the Respondents, could arrange only Rs. 21,75,000.00 for the second instalment, which he deposited on 14.12.2009 and which was accepted by the Respondents.

6. However, vide letter dated 17.12.2009 (Annexure-9) the Executive Engineer (Respondent No. 4) directed the Petitioner to deposit the remaining amount of Rs. 37,85,557.00 by draft within three days failing which legal action was threatened to be taken against him. The Petitioner any how managed the balance amount of second instalment i.e. Rs. 8,25,000.00 and deposited it on 22.12.2009, but could not immediately manage the amount of last (third) instalment of Rs. 29,60,557.00 within the time allowed by the said authority and

 

hence a show cause was issued to the Petitioner by the Superintending Engineer (Respondent No. 3) on 4.1.2010 whereafter the Petitioner approached the Chief Engineer (Respondent No. 2) who vide memo dated 9.2.2010 (Annexure-10) allowed the Petitioner to deposit the said balance amount by 20.2.2010 but the Petitioner could manage only Rs. 10 lacs, which he deposited on 18.2.2010 as part of the third instalment and also sent an application to the Chief Engineer (Respondent No. 2) dated 182.2010 (Annexure-11) requesting him to allow him time till 15.4.2010 to deposit the remaining amount of Rs. 19,60,557.00. Thereafter time till 25.3.2010 was allowed by the said authority and on that date, Petitioner deposited a further amount of Rs. 10 lacs and sent letter dated 25.3.2010 (Annexure-12) to the Executive Engineer (Respondent No. 4) requesting 4 days time till 29.3.2010 to deposit the remaining amount of Rs. 9,60,557.00. This application was rejected by the Executive Engineer on 27.3.2010.

7. It is also asserted by learned Counsel for the Petitioner that the Superintending Engineer (Respondent No. 3) sent letter dated 26.3.2010 (Annexure-13) to the Chief Engineer recommending cancellation of Petitioner''s agreement and directing the Executing Engineer (Respondent No. 4) to stop Petitioner''s toll collection from 28.3.2010. In view of the aforesaid letter, the Executive Engineer (Respondent No. 4) sent letter dated 27.3.2010 (Annexure-14) to the Petitioner directing him to stop toll collection as per the agreement from 28.3.2010. These orders of the authorities are under challenge in the instant writ petition.

8. Learned Counsel for the Petitioner argued that the order of the Superintending Engineer (Respondent No. 3) dated 26.3.2010 (Annexure-13) and consequential order of the Executive Engineer (Respondent No. 4) dated 27.3.2010 (Annexure-14) have been issued on the ground of certain allegations, which were absolutely baseless and non-existent and no enquiry with respect thereto had been ever held. He further claimed that the actions of the authorities were arbitrary and absurd as their ulterior motive was apparent from the fact that the Petitioner had sought time only up to 29.3.2010 to deposit the balance amount of Rs. 9,60,557.00 but the authorities stopped collection of tolls by the Petitioner from 28.3.2010. It is also stated that as per the terms and conditions of the agreement toll tax was being collected by the Petitioner on the rates fixed and the receipts issued by the Road Construction Department and if on inspection any irregularity is found, Schedule-2 of the agreement provides the remedy and penalties, which were completely ignored by the Respondents, who were bent upon taking harshest action against the Petitioner i.e. cancellation of agreement, forfeiture of security amount and institution of criminal case which not only showed their mala fide and prejudice towards the Petitioner, but also proved that the authorities had violated Petitioner''s fundamental rights envisaged under Articles 14, 19(1)(g), 21 and 300A of the Constitution of India.

9. On the other hand, learned Counsel for the Respondents vehemently opposed

 

the contentions of learned Counsel for the Petitioner, and submitted that the authorities were very lenient towards Petitioner and granted him more than sufficient opportunities to deposit the remaining amount. He further stated that total dues was Rs. 89,60,557.00, out of which Rs. 30 lacs was deposited by the Petitioner on 12.11.2009 as first instalment whereafter the second instalment fell due on 27.11.2009 and the third instalment was to be deposited by 12.12.2009, but the Petitioner deposited the second instalment in two parts on 14.12.2009 and 22.12.2009 which was much beyond the time granted. He further stated that even the third instalment was not deposited as only Rs. 10 lacs was deposited by the Petitioner on 18.2.2010 and on his request time till 25.3.2010 was allowed by the authorities to deposit the remaining amount, but by that date he deposited only Rs, 10 lacs, whereas Rs. 9,60,557.00 still remained unpaid after 25.3.2010 and hence the authorities were quite justified in canceling the agreement on 26.3.2010.

10. It is also claimed by learned Counsel for the Respondents that time petition was filed on 27.3.2010 but by that date impugned order had already been passed on 26.3.2010 by the Superintending Engineer (Respondent No. 3). Hence, he averred that default being admitted the cancellation of agreement was valid on that ground only, even if the other grounds fall and for that purpose no notice or enquiry was required as is apparent from Clause 2 of the Agreement. He further relies upon a decision of the Apex Court in case of Pimpri Chinchwad Municipal Corporation and Others Vs. Gayatri Construction Company and Another, .

11. Although learned Counsel for the Respondents has also claimed that the Petitioner was not justified in filing this writ petition as he had an alternative remedy of filing appeal before the Chief Engineer, but considering the fact that earlier the Petitioner had moved this Court vide C.W.J.C. No. 5109 of 2008 which was entertained and allowed by a Bench of this Court vide order dated 26.7.2008, whereafter the impugned action was taken by the authorities and also considering the fact that the agreement was by the Government of Bihar through the Executive Engineer and had to be cancelled by the Government of Bihar itself, this Court finds that there was no occasion for the Petitioner to file an appeal before the Chief Engineer and he has rightly filed this writ petition.

12. From the arguments of learned Counsel for the parties as well the materials on record, it is quite apparent that the impugned orders were passed against the Petitioner on two grounds; firstly, that the Petitioner did not deposit the remaining part of the third instalment i.e. Rs. 9,60,557.00 by the date fixed i.e. 25.3.2010 and secondly, that there were certain allegations levelled against the Petitioner which were assumed to be proved.

13. So far as the first ground is concerned, it is an admitted fact that the total consideration for the agreement was Rs. 2,62,71,500.00 out of which Rs. 1,75,14,335/- was paid by the Petitioner at the time of agreement itself and only Rs. 87,57,165.00 remained due, which was also paid with interest by the

 

Petitioner within the last date fixed by the authorities themselves i.e. 25.3.2010, except Rs. 9,60,557.00 for payment of which only four days time was requested by the Petitioner . Clause 2 of the Agreement dated 26.9.2007 (Annexure-1) clearly provided that in case of default of payment of the instalment alongwith interest within seven days from the due date, the Government of Bihar will be at liberty to cancel the agreement with immediate effect. Hence, the authorities themselves having extended the date of payment till 25.3.2010 the said date was due date for the payment of remaining amount of Rs. 9,60,557.00 and only when the said amount would not be deposited within seven days from 25.3.2010 the agreement could have been cancelled by the Government of Bihar and not before it. In the said circumstances, there was no occasion for the authorities to recommend cancellation of the agreement on 26.3.2010 and directing the Petitioner to stop collection of tolls without waiting for the required seven days to expire. In any view of the matter the Petitioner had requested only four days time to deposit the said remaining amount but without heeding to the said request and without waiting for the completion of time as per agreement, the authorities should not have passed the impugned order nor they should have legally taken any action against the Petitioner.

14. So far as the second ground is concerned, neither any charge is mentioned against the Petitioner nor any irregularity has been enumerated in the impugned orders which might have been found against the Petitioner. Furthermore, admittedly neither any notice had been sent to the Petitioner with respect to the aforesaid charges and allegation of irregularities nor any opportunity has been provided to the Petitioner to contest the said allegations and hence, the impugned orders and actions of the authorities cannot be sustained in law and this Court has no option but to interfere as a matter of judi-cial review. Accordingly, the case law relied upon by learned Counsel for the Respondent in case of Pimpri Chinchwad Municipal Corporation and Ors. v. Gayatri Construction Co. and Anr. (supra) is not applicable to the facts and circumstances of this case.

15. The impugned orders and the actions of the authorities having been found to be illegal on both the grounds, the said orders are hereby quashed and this writ petition is allowed. If the Petitioner deposits the remaining amount of Rs. 9,60,557.00 before the Executive Engineer (Respondent No. 4) within one week from the date of this order alongwith interest at the rate of 12% per annum from 25.3.2010 till the date of payment, the Respondents authorities shall allow the Petitioner to collect the tolls from the place in question for the period which is remaining, as admittedly no third party interest has been created as yet.