

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18202 of 2022

Ashish Kumar

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 7191 of 2023

Birendra Kumar

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 2924 of 2025

Rajeev Ranjan Kumar

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 18202 of 2022)

For the Petitioner : Mr. Raghvendra Kumar, Advocate
For the State : Mr. P.K. Shahi, Advocate General
Mr. Vikas Kumar, A.C. to A.G.

(In Civil Writ Jurisdiction Case No. 7191 of 2023)

For the Petitioner : Mr. Rajiv Ranjan Kumar Pandey, Advocate
Mr. Kritya Nand Jha, Advocate
For the State : Mr. P.K. Shahi, Advocate General
Mr. Vikas Kumar, A.C. to A.G.



For the MoRTH : Dr. Krishna Nandan Singh, Sr. Advocate
Mr. Sriram Krishna, Advocate
Mr. Amarjeet, Advocate
Ms. Iti Suman, Advocate
(In Civil Writ Jurisdiction Case No. 2924 of 2025)
For the Petitioner : Mr. Ravindra Kumar, Advocate
Mr. Amish Kumar, Advocate
Mr. Ishaan Raj, Advocate
For the State : Mr. P.K. Shahi, Advocate General
Mr. Vikas Kumar, A.C. to A.G.
For the P.M.C. : Mr. Prasoon Sinha, Sr. Advocate
Mr. Prabhat Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

27 27-04-2026 In terms of our previous order, supplementary counter affidavit has been filed on behalf of respondent no. 4 by one Mr. Vijay Kumar, Under Secretary, Road Construction Department, Bihar, Patna, in which it is stated as follows:-

“5. That it is humbly submitted that the Road Construction Department has formulated the SOP regarding raising the height of the Road and Construction of drain and circulated it under Letter No. 386 dated 19.01.2026.

6. That it has been mentioned in the SOP that detailed typographical survey of the area is to be conducted, nothing existing road levels, Building plinths etc. and drainage pattern in the area.

7. That the survey data is to be issued for drafting the profile of the road to be constructed/upgraded. The profile should be such that it does not raise the level of Road unnecessarily.

8. That adequate drainage facilities should be provided to prevent water logging in the area.

9. That in congested/market area rigid pavement instead of flexible pavement is to be provided with adequate drain.

10. That the milling of existing bituminous layer is to be carried out before laying new layer. Service roads with integrated drain is to be constructed parallel to



the main carriageway.

11. That the raised footpaths and proper access ramps is to be provisioned in the market area depending on availability of ROW.

12. That the use of Cement Treated Base (CTB) and white topping over damaged flexible pavement is to be encouraged.

13. That rising of road level arbitrarily without approval of the department is prohibited. Such practices which obstruct the access to adjacent properties have to be avoided.”

2. Learned counsel for the petitioners submitted that similar matters were before this Court in C.W.J.C No. 4839 of 2010 (Deepak Mukherjee & Ors Vrs. State of Bihar & Ors) along with C.W.J.C No. 14831 of 2009 (Jawahar Lal & Ors Vrs. State of Bihar & Ors) and these two writ petitions were disposed of by a common order dated 19.04.2010.

3. The learned Court after hearing learned counsel for the respective parties, including the Engineer-in-Chief of Road Construction Department and Chief Engineer of Urban Development Department, has been pleased to give the following suggestions quoted hereinbelow:-

“We proceed to record the agreed suggestions which are to be carried out:

(i) The roads that have been constructed till today by raising the heights shall not be disturbed but appropriate method shall be adopted by taking recourse to scientific and sophisticated device as a consequence of which the rain water does not enter into the houses of the house owners and inhabitants of the area and no inconvenience is caused.

(ii) When we have said scientific and sophisticated method that would include adequate



drainage system which would not cause any inconvenience by introduction of such a system.

(iii) All the authorities, namely, Road Construction Department, Urban Development Department, Public Works Department and the Municipal Corporation shall work in harmony and develop the pilot project by identifying such roads where either the Cold Recycling Method or Hot Recycling Method are to be introduced to ensure that the height of the roads are not increased. The said exercise of identification for incorporation in the pilot project in either of the modes shall be completed by 20th of June, 2010 positively.

(iv) Till new methods are taken recourse to for the purpose of construction of the road appropriate and adequate measures shall be taken by constructing the roads in such a manner that the height of the roads are not increased ordinarily beyond the Plinth area and under no circumstances cause any inconvenience to the inhabitants of the locality.

(v) Wherever the height of the road is increased as a result of which inhabitants are affected, they are at liberty to bring it to the notice of the Collector-cum-District Magistrate of the District who shall look into the same in quite promptitude and take appropriate action by bringing it to the notice of the experts.

(vi) The notice inviting tender for repair, maintenance and construction of work shall carry the stipulations which have been incorporated herein so that the contractors who are assigned the work do not behave in their own manner creating inconvenience and disturb the life pattern of the citizens by increasing the height of the roads.

(vii) Any contractor, who would deviate from the stipulations, shall be visited with the order of rescission of the contract and face such other penal consequence which shall be provided in the contract.

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. Learned counsel for the petitioners further submitted that in spite of previous order passed by this Court so also the SOP formulated, there has been deviation all the time and the contractors are flouting the SOP and the road heights have increased and the engineers who are supposed to monitor the roads are not doing the needful to control such activities of the contractors and ultimately by rising of the heights of the roads, the people are suffering.

5. There is no dispute that increasing the height of roads during repair or reconstruction, commonly known as resurfacing without milling, creates significant problems for residential and commercial infrastructure. This practice, often done to avoid the cost of remaining old layers, leads to water-logging and accelerates structural damage to building. When roads are raised above the level of surrounding houses, it causes the rainwater and sewage to flow back into houses and shops, damaging property and spreading diseases. The plinth levels of houses and shops become significantly lower than the road surface over time. The steep gradient created between the elevated road and entrance to the properties makes it difficult for the residents to enter into their houses particularly for the vehicles. Contractors should scrape off the old, damaged layer



(milling) before laying a new layer to maintain the original height.

We expect that the Road Construction Department, Urban Development Department, Public Works Department, Municipal Corporations including the Rural Works Department shall follow the SOP which has been annexed to the supplementary counter affidavit filed on behalf of respondent no. 4 and annexed as Annexure-R-4/A in its letter and spirit and should ensure that road construction adheres to engineering standards and the roads are not raised unscientifically. Whosoever breaches the SOP in any manner shall be held accountable and as per the previous order of this Court dated 19.04.2010 passed in two writ petitions, the concerned contractor deviating from the stipulation shall be visited with the order of rescission of the contract and face penal consequence. There should be a clear provision in the contract to that effect and the engineers who are supposed to monitor the work of the contractors shall also be held accountable, if deviation is made from the stipulation by the contractor. Since in the SOP, it is clearly mentioned not to raise the road levels arbitrarily, and without documented approval and not to neglect the drainage during maintenance afterwards and to avoid the



construction practices that obstruct the access to adjacent properties and also to follow the approved roads strictly, it is expected that all the authorities including the contractor shall work in tandem to see that the SOP is observed in its letter and spirit and strict adherence is made to the SOP during the project execution. In view of the order dated 19.04.2010 of this Court passed in the aforesaid two writ petitions, if anyone brings to the notice of the Collector cum District Magistrate of the concerned district regarding the heightening of the road arbitrarily and without documented approval, then the same shall be looked into in quite promptitude and necessary follow up action shall be taken.

6. The order passed today shall be brought to the notice of the persons who are residing in a particular locality where road construction activities are going on by the authority concerned by putting boards for their awareness, so that in case of any deviation, the public will bring it to the notice of the concerned Collector-cum- District Magistrate, as observed above.

7. On the next date, the learned counsel for the State shall apprise this Court as to whether any such complaint has been received by the Collector-cum-District Magistrate of any



district regarding the deviation, if any, made by the contractors in raising the heights and steps taken in that respect.

8. A copy of the order of this Court be handed over to the learned counsel for the State.

9. List this matter on **19.06.2026**.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

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