

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8500 of 2015

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1. Kishore Kumar Son of Sudhir Narayan Singh Resident of Village -
Rauta, P.S. - Sorbazar, District - Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Road Construction Department, Bihar, Patna.
4. The Engineer-in-Chief, Road Construction Department, Bihar, Patna.
5. The Chief Engineer Communication North Bihar, Darbhanga.
6. The Superintending Engineer, Road Construction Department, Road Circle, Saharsa.
7. The Superintending Engineer, Path Nirman Bibhag Path Anchal, Saharsa.
8. The Chief Engineer, Communication North Bihar Wing, RCD, Saharsa.
9. The Executive Engineer, RCD, Road Division, Saharsa
10. The Commissioner, Kosi Division, Saharsa
11. The District Magistrate, Saharsa
12. The Principal Secretary, Rural Works Department, Bihar, Patna
13. The Superintending Engineer, Kosi Circle, Rural Works Department, Saharsa
14. The Executive Engineer, Saharsa Division, Rural Works Department, Saharsa
15. Chief Engineer, Rural Work Department, Govt. of Bihar, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No.11289 of 2015

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1. M/s Ghanshyam Lal through its Managing Partner G.L. Madhogaria @
Ghanshyam Lal Madhogaria, Son of Late Laxmi Narayan Madhogaria,
Resident of Simrahi Bazar, P.O.- Simrahi Bazar, P.S.- Raghapur, District-
Supaul.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna.
2. The Secretary, Road Construction Department, Visheshwaraiya Bhawan, Bailey Road, Patna.
3. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Road Construction Department, Visheshwaraiya Bhawan, Bailey Road, Patna.
4. The Chief Engineer, Communication, North Bihar Section, Road Construction Department, Darbhanga.
5. The Superintending Engineer, Road Construction Department, Road Circle, Saharsa.
6. The Executive Engineer, Road Construction Department, Road Division, Saharsa.

.... Respondent/s

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Appearance :

(In CWJC No.8500 of 2015)

For the Petitioner/s : Mr. Bindhyachal Singh, Sr. Advocate
With Mr. Satya Prakash

For the Respondent/s : Mr. Roy Shivajee Nath, AAG-3

(In CWJC No.11289 of 2015)

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate
With Mr. Lal Babu Singh

For the Respondent/s : Mr. Sanjay Pandey- GP-21

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

10 09-12-2015

These two applications, filed under Article 226 of the Constitution of India, have been heard together with the consent of the parties inasmuch as as both the cases relate to construction of Road approximately 16 Km. in length called "Routa-Sonbarsa- Kachahari Path" and are being disposed of by the present common order.

2. We have heard Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioner in CWJC No. 8500 of 2015 filed in the nature of public interest litigation, and Mr. Tej Bahadur Singh, learned Senior counsel, appearing



on behalf of the petitioner in CWJC No. 11289 of 2015. We have also heard Mr. Roy Shivaji Nath, learned Additional Advocate General No.3, and Mr. Sanjay Pandey, learned G.P-21, appearing on behalf of the respondent State.

3. CWJC No. 8500 of 2015 has been filed, in the nature of public interest litigation, seeking a direction to the respondents State of Bihar to proceed and complete with the construction/improvement work of the said Road, under Works Division, Saharsa, for which tender was invited vide NIT No. RCD/Saharsa/03/14-15, dated 27.01.2015.

4. From the pleadings on record including the supplementary counter affidavit filed on behalf of the Engineer-in-Chief, Road Construction Department, Government of Bihar (Respondent No.4) and the Executive Engineer, Road Construction Department, Road Division, Saharsa (Respondent No.9), it transpires that the road, in question, belonged to Rural Works Department of



the State of Bihar. Out of the total length of Road i.e. 15.984 Km., Rural Works Department had transferred to the Road Construction Department 14.05 Km for construction/improvement/repair of Road. The rest 1.934 Km of the Road, thus, remained with the Rural Works Department. The Road Construction Department, however, through NIT, dated 27.01.2015, had invited tenders for construction/improvement of the total length of the road, which included that part also, which had remained with the Rural Works Department, the same having not been transferred to Road Construction Department.

5. M/s Ghanshyam Lal, which claims to be a Contractor, registered with the Road Construction Department, (hereinafter referred to as the 'Contractor') participated in the tender process. However, since the remaining part of the road was not transferred by the Rural Works Department to the Road Construction Department, the administrative sanction, earlier granted for



construction of the Road, was decided to be kept in abeyance by letter, dated 28.05.2015, issued under the signature of Chief Engineer-cum-Special Secretary, Road Construction Department, as directed by the competent authority.

6. It is to be kept in mind that the administrative sanction for construction of the road, in question, was the basis for issuance of NIT, dated 27.01.2015, which covered the entire length of the road including the part, which had remained under the control of the Rural Works Department and not transferred to the Road Construction Department. Later on, the Departmental Tender Committee decided to cancel the tender itself, because of the administrative approval having been kept in abeyance. This made the Contractor, through its Managing Partner, prefer an application, under Article 226 of the Constitution of India, before this Court, seeking quashing of the decision of the Department to keep in abeyance the administrative sanction of the construction work, in question, (as



contained in letter, dated 28.05.2015) and subsequent letter, dated 16.06.2015, whereby the Department cancelled the tender itself giving rise to CWJC No. 11289 of 2015. It is not in dispute that the tender process was not finalized nor was any agreement entered into between the said Contractor and the Road Construction Department for the said work nor was any work order issued in favour of the Contractor.

7. Much before filing of CWJC No. 11289 of 2015, a writ application, under Article 226 of the Constitution of India, in the nature of public interest litigation, came to be instituted, giving rise to CWJC No. 8500 of 2015 seeking, *inter alia*, following directions:-

(i) For issuance of writ in the nature of mandamus or any other appropriate writ for commanding the respondents to proceed with the construction/improvement-cum-output and performance based Road assets maintenance work in Rouda Sonbarsa, Kachahari Road 3 Km first

to 16(p) again (15.9 Km) under work division, Saharsa and to complete the same within the time frame pursuant to the notice inviting tender vide NIT No. RCD/Saharsa/03/14-15 dated 27.01.2015 by the Road Construction Department office of the Executive Engineer Road Division, Saharsa.

(ii) For issuance of writ in the nature of mandamus or any other appropriate writ for restraining the respondents from creating any technical objections or hurdles in completion of the construction of the aforesaid road and also communicate them to remove the technical objections and difficulties in completion of the construction of the aforesaid road pursuant to the tender notice dated 27.10.2015."

8. We need not go into the developments, which took place from the date of institution of the writ application in the nature of public interest litigation. Suffice it to point out that a supplementary and second supplementary



counter affidavits have been filed on behalf of the Engineer-in-Chief, Road Construction Department, Bihar (respondent No.4) and Executive Engineer, RCD, Road division, Saharsa, stating therein that in view of order, dated 12.10.2015, passed by this Court in the present proceeding, the said Department has modified the earlier administrative approval as regards construction of the Road vide office order No. 10121(SWE), dated 30.10.2015, for Rs. 3610.99 lakhs only, which is confined to the length of road actually transferred to the Road Construction Department by the Rural Works Department.

9. Mr. Roy Shivaji Nath, learned Additional Advocate General No.3, appearing on behalf of the State of Bihar, has submitted, with reference to the modified administrative sanction order, dated 30.10.2015, that earlier administrative sanction was granted for 15.95 Km for a sum of Rs. 3806.81 lakhs. Since the modified administrative sanction is confined to

14.05 Km, 3610.99 has been allocated for the said work.

10. Mr. Bindhyachal Singh, learned counsel, appearing on behalf of the petitioner in CWJC No. 8500 of 2015, has submitted that the respondents are unnecessarily delaying the process of construction of the road on one technical ground or the other, which is causing much inconvenience to the residents of area in question. He has submitted that the road, in question, provides connectivity to the residents of approximately 100 villages with state Highways and Sonbarsa Railway Station and cater, thus, the needs of a large number of people.

11. In response to the said submission, Mr. Roy Shivaji Nath, learned Additional Advocate General, has submitted that the tender notice has already been sent for publication and the tender documents will be available on the Departmental's Web Site from 23.12.2015. He has assured this Court that steps, thereafter,



would be taken expeditiously to finalize of the tender process in terms of the notice inviting tender. He has also submitted that in terms of the notice inviting tender, the construction work shall be completed within 16 months, which is going to be mentioned in the NIT itself.

12. In view of the stand taken on behalf of the respondents State of Bihar, we close the public interest litigation, i.e. CWJC No. 8500 of 2015, on the assurance given by the State that this time, the respondents shall proceed to complete the work, in question, expeditiously and with earnestness, keeping in mind the public interest inasmuch as delay has been causing great inconvenient every day to the people of the locality concerned.

13. As regards the merit of claim raised by the Contractor, who is the petitioner of CWJC No. 11289 of 2015, we do not find any reason to interfere with the decision of the Road Construction Department by which administrative



sanction of the work, in question, was kept in abeyance and, subsequent cancellation of the tender notice itself vide letter, dated 28.05.2015 and 16.06.2015, respectively for the apparent reason that tender notice, inviting tender, was published by the Road Construction Department on the basis of administrative sanction of the work with respect to such length of the road, which was not, in fact, transferred to the Road Construction Department. Secondly, merely because the petitioner participated in the tender process, no enforceable legal right is created in him for grant of relief as sought for in the writ application filed under Article 226 of the Constitution of India.

14. Mr. Tej Bahadur Singh, learned Senior counsel appearing on behalf of the petitioner In CWJC No. 11289 of 2015, has strenuously contended that the petitioner is ready to execute the work as per the modified administrative sanction with the reduced fund

allocated for the said work. We are afraid, this Court, in a proceeding under Article 226 of the Constitution of India, can not even consider grant of any such relief in the facts and circumstances of the present case. The petitioner of CWJC No. 11289 of 2015 will certainly have the liberty to participate in the fresh tender process in terms of the fresh notice inviting tender.

15. With the above observations made and conclusions drawn, both the applications stand disposed of.

(I.A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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