

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13600 of 2015

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1. M/s Singh Construction Pvt. Ltd., through its Managing Director Shailesh Kumar Singh son of Late Baleshwar Singh, resident of New Satpura Colony, Post Office Lane, Aghoriya Bazar, Muzaffarpur, P.S. Kazi Mohammadpur, District-Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Road Construction Department, Govt. of Bihar, Patna
2. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Director, Road Construction Department, Government of Bihar
3. The Chief Engineer, North Bihar Road Construction Department, Darbhanga
4. The Superintending Engineer, Road Circle, Muzaffarpur
5. The Executive Engineer, R.C.D., Road Division No. 1, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy, Adv.

For the Respondent/s : Mr. A.K. Choudhary, AAG13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-07-2016

Heard learned counsel for the parties.

The petitioner is aggrieved by the order of the Executive Engineer, Road Construction Department Road Division-I, Muzaffarpur as contained in letter No. 1017 dated 19.6.2014, a copy of which is impugned at Annexure-1 to the writ petition and whereby the petitioner has been debarred from participating in any future tender inter alia on grounds that the petitioner has failed to execute the work allotted to him for construction of road running in between Kanti to Raghighat on NH 28 in between 0 to 8.6 kilometers.

The facts regarding allotment of contract to the petitioner for



the widening and strengthening of the road in question under the scheme funded by the National Bank for Rural Development is not in dispute. It is also not in dispute that the petitioner has failed in execution of the contract in its entirety as per the work order rather the dispute is as regarding quantum of work executed by the petitioner. While it is the opinion of the Executive Engineer, respondent no.5 that less than 80% of the work has been executed by the petitioner, he disputes this position. Be that as it may, the fact remains that it is in the light of the opinion so formed by the Executive Engineer that he has proceeded to debar the petitioner in future tenders.

This matter has engaged this Court on a number of days and several rounds of affidavits have been filed but considering the nature of dispute raised that this Court by order passed on 23.6.2016 required an affidavit by the Executive Engineer, after carrying out fresh measurement in presence of the petitioner. It is following the directions of this Court passed on 23.6.2016, that a fresh measurement was carried out and which has been placed on record vide a supplementary counter affidavit filed by the Executive Engineer who in paragraph 7 and 8 of the counter affidavit has admitted that of the total 8.6 kilometers of the work allotted to the petitioner, only 7.25 kilometers was found complete as on 27.6.2016. The Executive Engineer while admitting that due to local hindrance a stretch of 0.635

kilometers could not be completed and of the remaining stretch of 715 meters, although the petitioner has completed three out of the four layers of the road but the top layer i.e. bitumen cover remains incomplete until date. A measurement report is also placed on record.

Mr. Jitendra Kumar Roy learned counsel appearing for the petitioner while filing a rejoinder has referred to a letter addressed to the Executive Engineer by the petitioner dated 8.7.2016 to submit that even the work remaining in the stretch of 715 meters i.e. laying down of the bitumen top is complete. He submits that although this part is complete but has not been entered in the measurement book. He however submits that the Executive Engineer be appropriately directed to satisfy himself on the factual position and pass appropriate orders.

Having heard learned counsel for the parties and considering that there is a dispute subsisting, in so far as 715 meters of the road is concerned, inasmuch as while the affidavit of the Executive Engineer shows that the 4th layer has not been laid down, this aspect is being contested by the petitioner, the matter is to be addressed by the Executive Engineer because the petitioner cannot be debarred for the 635 meters which admittedly is due to the local hindrance of the people. However in case the 4th layer of the remaining stretch of 715 meters remains incomplete as mentioned in the supplementary counter

affidavit then the petitioner would be under an obligation to complete the work. The Executive Engineer needs to satisfy himself on the issue of 715 meters and in case the 4th layer of the 715 meters is complete as stated by the petitioner then he shall be under an obligation to revoke the debarment order which cannot be allowed to continue on account of non completion of 635 meters which as per the own acceptance of the respondents, is due to local hindrance. Considering the nature of penalty imposed an early decision preferably within 4 weeks from the date of receipt/production of a copy of the order would be appreciated.

The writ petition is accordingly disposed of.

(Jyoti Saran, J)

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