

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12182 of 2016

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M/s Sincon Infrastructure Pvt. Ltd., a Company incorporated under the Indian Companies Act, 1956 having its Registered Office at LG- 1-2, Majestic Plaza, West Boring Canal Road, Patna-1, through one of its Director Sri Vaihal Kumar son of Sri Kartik Kumar resident of Majestic Plaza, West Boring Canal Road, Patna-1

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
3. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna
4. The Chief Engineer, North Bihar Wing, Road Construction Department, of Bihar, Patna.
5. The Superintending Engineer, Road Construction Department. Road Bihar Circle, Saharsa
6. The Executive Engineer, Road Construction Department, Road Division, Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad
Mr. B.Choudhary, Advocates
For the State : Mr. Rajesh Kumar, AC to GP-III

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

5 24-10-2016 As many as three adjournments had been granted since 1.9.2016 to the respondents to file their counter affidavits but the same is not yet forthcoming.

Learned counsel for the State again prays for time to file the counter affidavit which prayer is rejected.

The petitioner has challenged in this writ petition the impugned order dated 6.7.2016 by which the petitioner has



been declared defaulter and debarred from participating in any future tender.

The petitioner is a registered Class-I contractor and pursuant to a notice inviting tender it was finally awarded the work of construction/improvement-cum-output and performance based road assets maintenance work for Bihariganj-Yogiraj Road from Km. 0 to 13.15 in the year 2014-15. The work of construction/improvement had to be completed within a period of 18 months i.e., till November, 2016 and the work of performance based road maintenance had to be done for 60 months with a further defect liability period of 2 months for which an agreement dated 22.5.2015 was also executed.

It is submitted by learned counsel for the petitioner that the delay in the completion of the work was not so much due to the fault of the petitioner, rather it was due to default of the departmental officials as the petitioner had informed by letter dated 24.9.2015 itself that on account of flood and water-logging, the diversion of Mirza Chouki Bridge was abandoned and therefore the GSB and WMM materials could not be brought to the site from Mirza Chouki and the Railway is also not permitting the materials to be downloaded at Madhepura Railway Rake point, therefore the request was made to allow the petitioner



to move the materials from Siliguri instead of Mirza Chouki. The petitioner undertook not to make any claim with respect to freight differences before the Executive Engineer but he took nearly six months time to get permission from the Chief Engineer by his letter dated 21.3.2016.

It is stated by learned counsel for the petitioner that the petitioner has proceeded at a very fast pace to complete the work and it is expected that despite the above hindrance, the petitioner would complete the work by the middle of December, 2016 which is not too much beyond the time fixed for completion.

Since no counter affidavit could be filed on behalf of the State despite repeated adjournments granted by the Court, it is to be assumed that the respondents do not controvert the stand of the petitioner. If as a matter of fact, if what is stated by the petitioner is correct, then the petitioner is not much behind the schedule despite six months time having been lost on account of the inaction of the respondents.

Learned counsel for the petitioner relies upon the decision of this Court in the case of NCC Limited Vs. The State of Bihar and Ors: 2013 (1) PLJR 952, in which this Court had held that if there is delay and default on the part of the



respondent- officials then it is not open to them to take such action having civil consequences upon the contractors and in such circumstances they can only act on the facts and issues to be decided by an independent adjudicatory body, whether a Court or an Arbitral Tribunal.

For the aforesaid reasons, the order dated 6.7.2016 appears to be contrary to law laid down by this Court in NCC case (supra). It is therefore quashed.

The writ application is, accordingly, allowed.

(Ramesh Kumar Datta, J)

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