

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12032 of 2016

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Ravi Shankar Singh S/o Late Satyendra Singh Resident of village - Tilauti,
P.S. Haspura, District - Aurangabad

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Government of Bihar, Rural Works Department, Bisheshwaraiya Bhawan, Bailey Road, Patna
2. The Chief Engineer, Rural Works Department, Bisheshwaraiya Bhawan, Bailey Road, Patna
3. The Superintending Engineer, Rural Works Department, Works Division, Tekari, District Gaya
4. The Executive Engineer, Rural Works Department, Works Division, Tekari, District Gaya
5. The Project Manager, Rural Works Department, Works Division, Tekari, District Gaya

.... Respondents

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with

Civil Writ Jurisdiction Case No.11573 of 2016

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Sanjay Kumar S/O Surendra Singh, resident of Mohalla- Krishna Nagar,
P.S- Aurangabad, District- Aurangabad.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Government of Bihar, Rural Works Department, Bisheshwaraiya Bhawan, Bailey Road, Patna.
2. The Chief Engineer, Rural Works Department, Bisheshwaraiya Bhawan, Bailey Road, Patna.
3. The Superintending Engineer, Rural Works Department, Works Division, Tekari, District- Gaya.
4. The Executive Engineer, Rural Works Department, Works Division, Tekari, District- Gaya.
5. The Project Manager, Rural Works Department, Works Division, Tekari, District- Gaya.

.... Respondents

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Appearance :

(In CWJC No.12032 of 2016)

For the Petitioner/s : Mr. Ravindra Kumar Sinha, Advocate

For the Respondent/s : Mr. Kinkar Kumar, S.C. 9 with
Mr. Zaki Haider, AC to S.C. 9

(In CWJC No.11573 of 2016)

For the Petitioner/s : Mr. Ravindra Kumar Sinha, Advocate

For the Respondent/s : Mr. Syed Hussain Majeed, AC to S.C.6

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL ORDER

3 27-09-2016 Heard learned counsel for the petitioners and learned counsels for the State in both the cases.

The petitioners seek quashing of the order dated 22.6.2016 passed by the Engineer-in-Chief, Rural Works Department, Government of Bihar by which the petitioners have been declared defaulters and debarred from participating in future tenders.

The petitioner in CWJC No. 12032 of 2016 was awarded a contract for construction of road and C.D. works with maintenance for package 12, PMGSY-118, length 6.659 km. The work was commenced on 7.8.2014 and to be completed by 6.9.2015.

It is the stand of the petitioner that progress of work could not be made for the reason that the moram, stone chips and metal, etc. were not available in the district of Gaya because the mines had closed down, for which the petitioner wrote to the respondent authorities and in turn the Executive Engineer wrote to the Superintending Engineer, who also wrote to the Engineer-in-Chief seeking direction for making available the said items from another place. It is stated that no action was forthcoming from the side of the respondents and ultimately the order of debarment was

passed on 22.6.2016.

So far as CWJC No. 11573 of 2016 is concerned, the same also stands on similar footing but relates to another contract under package 12, PMGSY-119 and for the same reasons there had been delay and order of debarment dated 22.6.2016 was passed.

According to the petitioners they have at present completed 80% of the work in the respective packages.

Learned counsel for the petitioners submits that in the present cases there is delay and laches on the part of the respondents resulting in non-completion of the work in time, as no order has been passed by them on the representation of the petitioners. It is thus submitted that the case of the petitioners is covered by the decision of this Court in the case of M/s. NCC Ltd. vs. The State of Bihar and others : 2013(1) PLJR 952.

Learned counsels for the State seek to rely upon the statements made in the counter affidavits that the petitioners are guilty in not completing the work within time and even after the time for completion of the works and submit that the order of debarment has rightly been passed as the show causes of the petitioners were not satisfactory.

From a perusal of the counter affidavits it appears that

nothing has been stated therein with regard to the non-availability of stone chips, etc. and inaction of the respondents with regard to the change of the lead for obtaining the same.

In the above circumstances, the matters are squarely covered by the decision in NCC case (supra) and it was not open to the respondents being party to the contract to have unilaterally decided the matter on their own holding that the petitioners are defaulters when the petitioners have alleged liability and fault on the part of the State authorities in the matter.

For the aforesaid reasons, the writ applications are allowed. The impugned order dated 22.6.2016, in so far as it concerns the petitioners is quashed.

(Ramesh Kumar Datta, J)

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