

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16152 of 2015

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1. M/s Shri Laxmipati Balajee Construction, a partnership firm constituted under the Indian Partnership Act, having its office at MIG.290, Kankarbagh Patna - 800008, through its working partner, Anup Kumar.

.... Petitioner/s

Versus

1. The State of Bihar.
 2. Superintendent Engineer, Rural Works Department, Works Division, Masaurhi, Patna.
 3. The Executive Engineer, Rural Works Department, Works Division Masaurhi, Patna.
 4. The Assistant Engineer, Rural Works Department, Works Division Masaurhi, Patna.
- Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Singh, Adv.
Mr. Apurv Harsit, Adv.
For the Respondent/s : Mr. Ramadhar Singh, G.P.25
Mr. Aniruddh Kumar Singh, A.C. to G.P.25

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
C.A.V. JUDGMENT
Date: 29-03-2017

The petitioner prays for quashing of the order of the Executive Engineer, Rural Works Division, Masaurhi whereby the respondents while initiating proceedings for recession of contract under Clause 52.2(a)(c)(e) and (h) of the Standard Bid Document has ordered for forfeiture of the security deposit and the earnest money while also holding an amount of Rs. 19,13,871/- recoverable from the petitioner



and directing him to deposit the same. Alongside a recommendation has been made for black listing the petitioner. Although a copy of the order put to challenge is impugned at Annexure-8 but the same is incomplete and a complete copy thereof has been placed on record vide Annexure-G to the counter affidavit filed on behalf of the State which order bears Memo No. 1308 dated 9.12.2014.

Mr. Sanjay Singh learned counsel has appeared on behalf of the petitioner while the State is represented by learned State counsel.

Facts of the case briefly stated is that the petitioner and the respondent No.3 i.e. the Executive Engineer, Rural Works Department entered into an agreement on 29.1.2013 for execution of work relatable to construction and maintenance of road i.e T09 to Chakjohara Road under the Prime Minister Gramin Sarak Yojana (hereinafter referred to as the 'PMGSY') under Pakage BR-26R-295. A copy of the agreement bearing SBD No. 43/12-13 is placed at Annexure-1 and the date of commencement of the work is mentioned as 4.2.2013 with its completion on 14.12.2013. According to the petitioner, although under the agreement, the petitioner was required to commence the work with effect from February, 2013 but there was huge protest and obstruction from the local villagers and though the petitioner did commence his work as per the schedule but owing to the disturbances created by the local villagers, the work could not



gather speed and it is only in December 2013 that the issue was resolved and accordingly the Assistant Engineer informed the petitioner vide letter dated 5.2.2014 that the road has been made encroachment free and that he should submit his revised action plan. These facts stands confirmed from the communication present at Annexure-2 and 2/A. According to the petitioner, an inspection report was submitted by the National Quality Management and in so far as the road in question is concerned which appears at Serial No. 8, the grading have been given as 'satisfactory', as manifest from Annexure-3.

Mr. Sanjay Singh has referred to the information present at running page 83 to submit that even while the protest was going on, the petitioner had done substantial construction work.

In between, a notice was received by the petitioner bearing No. 149 dated 24.1.2014 regarding the slow progress and the petitioner was directed to submit a revised plan within three days. This notice dated 24.1.2014 at Annexure-4 was followed by the notice present at Annexure-2/A which is dated 5.2.2014. There is nothing on record to demonstrate any reply by the petitioner. Perhaps, nothing was done by the petitioner that another notice was issued bearing No. 656 dated 7.6.2014 informing him that although the road had been made encroachment free in December, 2013 itself and



though a period of 6 months have lapsed but the work has not yet been completed rather your work is closed since last six months. The petitioner was directed to complete the work by 30th June 2014, otherwise final measurement would be carried out. The petitioner filed a reply present at Annexure-5 on 26.6.2014 giving reasons for the slow progress and also gave an undertaking that he shall try to expedite the work. The petitioner was thereafter confronted with another notice dated 8.7.2014. The petitioner responded to the notice dated 8.7.2014 vide his letter dated 16.7.2014 present at running page 108 needing some more time for completion of the work. The notice dated 8.7.2014 was followed by a notice No. 814 dated 18.7.2014 whereby the petitioner was informed that during inspection the progress was found 'Nil' and thus proceeding for cancellation has been initiated and thus he should ensure his presence for recording the final measurement for cancellation of agreement. The said notice has been placed on record vide Annexure-D to the counter affidavit and which is followed by another notice No. 884 dated 31.7.2004 whereby the petitioner was charged of not being present at the time of final measurement. He was thus directed to be present in the office on 5.8.2014 to put his signature on the measurement book. A copy of the notice dated 31.7.2014 is present at Annexure-6 and which is followed by some more notices enclosed alongwith. The petitioner



filed his reply to the notices referred to above, a copy of which is at Annexure-7 and which is followed by the order impugned at Annexure-8, the complete copy of which is annexed at Annexure-G. The petitioner feeling aggrieved is before this Court.

Mr. Sanjay Singh , learned counsel has appeared on behalf of the petitioner along with Mr. Apurva Harshit learned Advocate on Record while State is represented by learned State counsel Mr. Ramadhar Singh, G.P.25.

There is no dispute on facts discussed hereinabove. There is again no dispute that the work remains incomplete and in so far as the issue of default is concerned, there cannot be a dispute that although initially there was some kind of obstruction faced by the petitioner in expediting the work but since after December, 2013, even this issue was resolved as manifest from Annexure 2A which is a letter dated 5.2.2014 of the Assistant Engineer. The obstruction whatsoever thus was removed. Now with effect from January, 2014 until the passing of the impugned order on 9.12.2014, the petitioner had full 12 months to complete the work but he has failed in the same. Mr. Sanjay Singh has very laboriously taken this Court through the inspection report present at Annexure-3 to demonstrate the quality work being executed by the petitioner but that is history for Annexure-3 is a report dated 20.10.2013 i.e. while the petitioner was facing the obstruction but



since after the resolution of the dispute that had surfaced in between the local villagers and the executing agency, the petitioner had a full year to himself to complete the work but he has failed in the same. On merits, thus the petitioner has no case and no amount of explanation can justify the non completion of work by the petitioner in the 12 months beginning January, 2014 until the issuance of the impugned order on 9.12.2014.

Mr. Sanjay Singh has invited the attention of this Court to an affidavit filed on behalf of the petitioner on 9.2.2016 to submit that notwithstanding the dispute at hand, the petitioner has offered to complete the work as per the contract within a period of six months from the date the respondents would allow the petitioner. The offer made by the petitioner was considered by the respondents and a supplementary counter affidavit has been filed which in paragraph 4 rejects such offer in view of the failure of the petitioner to complete the work in time.

The issue is that should the writ petition be dismissed in view of such uncontested position existing and may be the stand of the respondents as canvassed by the State counsel, would have persuaded this Court to shut the doors for the petitioner in view of his casual approach but the developments placed at record by the petitioner through supplementary affidavit would demonstrate that no less than



four attempts have been made by the State to advertise the work by calling tenders but it has not resulted in a finalisation. The work remains incomplete and repeated advertisements inviting tender has given no fruitful result. The last of the affidavits filed by the petitioner on 18.1.2017 encloses a tender notice stated to be published on 16.1.2017 and according to the petitioner even the 4th tender is likely meet similar fate as the earlier tenders. It is three months since tender was published however the results are not known and whether anyone has come forward to take up the left over job.

In the circumstances so discussed and in case the 4th tender issued by the respondents dated 16.1.2017, a copy of which has been placed on record vide Annexure-16 to the supplementary affidavit filed on behalf of the petitioner on 18.1.2017, has drawn in favour of any willing applicant, there can be no interference therewith and the quest of the petitioner would come to an end but in case even the 4th round exercise has not given a fruitful result in favour of the department then in my opinion and as requested by the petitioner in paragraph 2 of the affidavit filed on 9.2.2016 asking for grant of six months time for completion of the pending work and even though the respondents have objected to such request but in the larger interest of the matter and considering that substantial money has been invested in the work, I am of the opinion that the petitioner be granted six months



time for completion of the work and until such time, the order of cancellation impugned at Annexure-8 to the writ petition/ Annexure-G to the counter affidavit, may be kept in abeyance. Should the petitioner fail in completion of the work in six months time as per his undertaking before this Court, the interim protection granted to the petitioner shall stand recalled and the respondents more particularly, the respondent no.3 shall be at liberty to enforce the order put to challenge herein.

This Court, in the peculiar circumstances of the case as discussed, would thus direct the respondent No.3 i.e. the Executive Engineer, Rural Works Department that in case the 4th round exercise of inviting tender for completion of the work in question through the notice inviting tender present at Annexure-16 to the supplementary affidavit filed on 18.1.2017 has not resulted in award of tender in favour of any applicant, then the petitioner as per his undertaking before this Court, be allowed to complete the work within a period of six months, as per the terms and conditions and the rate entered into between the parties vide Annexure-1 and in case the petitioner would fail in his undertaking, the respondents shall be within their jurisdiction to proceed for enforcement of the order dated 9.12.2014 put to question before this court, vide Annexure-8



to the writ petition/Annexure-G to the counter affidavit, but until such time, keep the said order in abeyance.

The writ petition is disposed of subject to the conditions stipulated above.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	AFR
CAV DATE	25.01.2017
Uploading Date	04.04.2017
Transmission Date	NA

