

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17571 of 2014

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Rajesh Chandra Jha son of Dinesh Chandra Jha, resident of village/Mohalla-Siyaramnagar, Bikhanpur, P.S.- Ishakchak, District- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. The Commissioner cum Secretary, Road Construction Department, Govt. of Bihar, Visheshwariya Bhawan, Bailey Road, Patna
3. The Engineer in Chief, Road Construction Department, Government of Bihar, Visheshwariya Bhawan, Bailey Road, Patna
4. The District Magistrate, Bhagalpur
5. The Superintending Engineer, P.W.D., Bhagalpur
6. The Executive Engineer, P.W.D. Bhagalpur
7. The Chairman, National Highway Authority of India, New Delhi (struck off as per order dated 17.09.2015)
8. Sri Chhotelal Prasad, Executive Engineer, Retired
9. Sri Mokhtar Nath Ram, Superintending Engineer, Retired
10. Sri Deo Narayan Prasad, Chief Engineer, Retired
11. Sri Kedar Baitha, Chief Engineer, Retired
12. Sri Vibhakar Kumar, Junior Engineer in the office of Executive Engineer, N.H. Division, Bhagalpur
13. Sri Shambhu Kumar, Assistant Engineer, in the office of Road Division, Sheohar
14. Sri Ajay Kumar Pandey, Assistant Engineer, in the office of N.H. Division, Bhagalpur
15. Sri Lal Mohan Prajapati, Executive Engineer, Road Division, Samastipur
16. Sri Satyendra Narayan Singh, Superintending Engineer, Vigilance Department, Patna
17. Sri Ramkakant Prasad, Superintending Engineer, Bridge Design, CDO, Road Construction Department, Bihar, Patna
18. Badal Yuvraj Construction Private Limited, through its proprietor, resident of Saraswati Niketan, Road No. 9, Rajiv Nagar, Patna-800024
19. The Director General of Vigilance, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Swapnil Kumar Singh, Advocate
For the Respondent/s : Mr. P.N.Shahi-A.A.G. 6

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 23-11-2020

Petitioner has prayed for following reliefs : -

“That this writ application is being filed by way of public interest litigation for direction upon the respondent concern not to make construction of elevated PCC cemented roads consequently the plinth level of houses situated along with the road stood lowered and due to raising the heights of the road, the people of locality caused immense inconvenience and the authority did not bother to take action even after brought to the notice by the petitioner and/or pass such other order/orders as your lordships may deem fits and proper with facts and circumstances of the case.”

In our considered view, no fresh writ petition would lie to enforce an order passed by this Court in a writ petition. The remedy may lie in the already disposed of matter, but certainly not by way of a separate writ petition.

Be that as it may, we notice that in the present petition, on 13th of February, 2017 the following order was passed:-

“This case amply demonstrates the usefulness of pro bono litigations. It exposes the unholy nexus between the private contractors and various Departments and Agencies of the Government to the detriment of the citizens.

Through the main town of Bhagalpur, runs NH 80 marked as kilometers 129 to 135. It has very heavy vehicular traffic right through the centre of Bhagalpur town.



It was in terrible shape which rendered it virtually not motorable. After several years of deliberation between the State Government and the Central Government, it was decided to virtually reconstruct the said part of National Highway. Apparently, it took time because notwithstanding it was National Highway, the road passed through and was the arterial road for the citizens of Bhagalpur constructed within the Bhagalpur Municipal Corporation. Whether the local Corporation or the State or the Centre, who had to take the responsibility and bear the expenses, delayed the matter. Ultimately when all these things were sorted out, a tender was issued not only for the construction of the widened National Highway in that patch but realizing that at various places, there was substantial water accumulation and stagnation, additional drainage in part thereof had to be constructed. The tender was a composite tender for the drainage and expansion and construction of the road as a composite road project. Upon tender being issued, we assume that the tenderers visited the site. This contractor, who is now arrayed as respondent No 18, tendered obviously with his eyes wide open as to the scope of work to be done under this contract. His tender, being the lowest, was accepted.

As noted above, it was a composite tender for road widening and its construction as also the drainages as an adjunct to the road. For the process of road widening and construction of drainage, public utilities, which were earlier there, were required to be removed. We assume everyone saw and everyone was aware of it. Tender did not provide for any additional expense for removal or shifting of utilities. While filing the tender, the Contractor also did not seek any additional cost in that regard nor was the execution of the tender conditioned upon removal of utilities. To us, prima facie the reason was obvious. Once the road and the drains had to be constructed, it became obviously the obligation of the utilities to remove their structures to facilitate the work and that part of expense was to be born by the utilities themselves. The structures were the electric poles, the transformer installation and such other objects. Everyone entered into the contract for execution of the said work with their eyes open and their concepts very clear. What followed prima facie shows the unholy nexus. The agreement was executed on 23 of February, 2013 and it clearly specified that the date of completion of the entire work was 22.05.2014. The contractor sends a letter dated 15.03.2013 pointing out



that various utilities have to be removed and moved. There appears to be little urgency expressed in the matter nor any party honestly and earnestly pursued this matter. The contractor then allegedly completed the road part and abandoned the drainage part. Neither the Engineers and the officers of the National Highway Division nor the Road Construction Department of Government of Bihar took any step to get the drainage to be constructed. To the contrary, we are amazed on the date of completion of contract being 22.05.2014, as noticed above, the Executive Engineer, National Highway Division, Bhagalpur issued vide letter No 368 dated 22.05.2014 a certificate to the contractor certifying that by 20.05.2014 the work had been completed which, to his knowledge and to everybody's knowledge, was a blatant lie for the drainage works had not even begun. It is obvious that this certificate was issued fraudulently to facilitate transfer of funds appertaining to the contract from the Central Government to the State Government to the ultimate beneficiary, the contractor. This is clearly criminal attitude. Having received the completion certificate and having received the payments for the work done, allegedly to the extent done, everyone was satisfied. There is not a single communication from the Central Government (NH authorities), State Government or even the district authorities calling upon the contractor to complete the work. To the contrary, when this pro bono action was brought, cover up actions were taken. The authorities now point out that in the tender, there was no provision made for financial expenses in regard to shifting and relocating the utilities meaning thereby that a mistake had been committed. Prima facie, we are of the view that there was no mistake inasmuch as we have already noted above that the structures of public utility had to be removed, resited by the utilities themselves but correspondences, as a matter of cover up, have been created that it would bear substantial cost. No one has brought on record anything to show that either during the contract period, any one took any step to resite or remove the utilities. No one thought it urgent enough for obvious reason that no one expected the work to be done while work completion certificate was issued only to facilitate wrongful payments. We have advisedly and earnestly used the word *wrongful* for in absence of this completion certificate, funds would not have been released for payment to the contractor. All the officials concerned were hand in glove.



The result was there was acute water logging in the vicinity. Houses of people in the vicinity got flooded with no source of water exit. We must, at this stage, note that the State Engineers admitted that there used to be water logging in these residential houses nearby because of the road and non-construction of the drainage but that used to clear off in 4 to 5 hours as if that was of no consequence. Insensitivity of the officers and their corrupt motive is writ large. If the residence of the District Magistrate gets water logged for 4 to 5 hours a day, the team of Engineers would be made to work overnight to permanently rectify the situation but when the interest of the ordinary citizens are involved, who are the tax payers, no efforts are made by the Engineers. The result is that we are in the year 2017, three years from the end of the contract period, and there is no drainage work worth its name. The contractor now wants a fresh tender to be issued. The Department now prepares a fresh estimate for moving the utilities or a cover up only to justify non-performance, non-execution of the contract and justify the payments made. This is deplorable. Over the last four years, no one had paid any attention to the inconvenience of the citizens, non-implementation of the contract merely because the contractor, on a false certificate issued by the Executive Engineer of completion of contract, received his payments. Prima facie, we are of the view that it is a fit case in which State must consider taking appropriate action under the Bihar Prevention of Specified Corrupt Practices Act, 1983 against all the officials of the National Highway and the State involved in this contract.

Let a copy of this order be sent to the State Vigilance Bureau for further action.

In the meantime, put up this matter under the same heading on Monday next (20.02.2017) to enable the State and the National Highway Authority of India, who is respondent No 7, and the District Magistrate, Bhagalpur to file comprehensive counter affidavits especially in regard to the counter affidavit filed by the private contractor, respondent No 18.”

Shri Pushkar Narayan Sahi, learned Additional Advocate General No. 10 invites our attention to a subsequent order dated 17th of February, 2020.



We notice that the State has initiated departmental proceedings against the delinquent employees. As such, we see no reason to keep the present proceedings pending and dispose it of with the following directions:

(a) departmental proceedings against the delinquent employees shall positively be completed within a period of three months from today;

(b) action against the contractor for breach of terms of the agreement, if any, shall also be taken and concluded within next three months;

(c) liberty reserved to the petitioner to initiate appropriate proceedings in the already disposed of matter being C.W.J.C. No. 4839 of 2010 titled as Deepak Mukherjee and Ors. Vs. The State of Bihar & Ors.;

(d) liberty reserved to the petitioner or any other public spirited person to highlight the grievances, if any with regard to incomplete construction or part maintenance of the National Highway No. 80 [Tilkamanjhi to Aerodrome Road], before the appropriate authorities or this Court by way of a separate petition;

(e). Interlocutory Application(s), if any, also



stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	02.12.2020
Transmission Date	

