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(2014) 03 JH CK 0041

Jharkhand High Court

Case No: W.P. (PIL) No. 5004 of 2011

Sudhir Mahato — APPELLANT

Vs

The State of Jharkhand — RESPONDENT

Date of Decision: March 13, 2014

Acts Referred:

- National Highways Act, 1956 - Section 5

Citation: (2014) 2 JLJR 462

Hon'ble Judges: R. Banumathi, C.J; S. Chandrashekhar, J

Bench: Division Bench

Advocate: Jagannath Mahato, Advocate for the Appellant; Mokhar Khan for the U.O.I., Mr. A. Allam for the State and Ms. Sweety Topno for the Respondent No. 8, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

R. Banumathi, C.J.

This Public Interest Litigation has been filed seeking a direction upon the respondents for construction/repair of NH-32 (Tata-Dhanbad Road) near Raghunathpur Village and also between Chandil-Tantibandh to Lingdih Village. The road of N.H. 32 (Tata-Dhanbad Road) has been totally damaged near Raghunathpur Village and between Chandil-Tantibandh Village to Lingdih Village. The persons of the locality represented repeatedly before the authorities concerned and when no step was taken for construction/repair of the aforesaid road by the respondents, the petitioner, who claims himself to be a social worker, has filed this Public interest Litigation.

2. The respondent No. 2-Executive Engineer, N.H. Division, Jamshedpur in the counter-affidavit admitted that the said portion of NH-32 is in poor condition and further stated that National Highways being the property of Central Government, estimates of all the works except ordinary repairs etc. is sanctioned by the Ministry

of Road Transport and Highways, New Delhi.

3. After filing of the counter-affidavit by the respondent No. 2, an Interlocutory Application being I.A. No. 2378 of 2012 was filed by the petitioner for impleading Secretary, Department of Road Transport Highway, Government of India, New Delhi which was allowed vide order dated 7.2.2013 and Secretary, Department of Road Transport and Highways, Government of India, New Delhi and also National Highway Authority of India were impleaded as party respondent Nos. 6 and 7 respectively.

4. On being impleaded as party, respondent No. 7 National Highways Authority of India filed its counter-affidavit stating therein that responsibility for development and maintenance of national highways has been mentioned in Section 5 of the National Highways Act, 1956, which reads as under:--

Section 5. Responsibility for development and maintenance of national highways.--It shall be the responsibility of the Central Government to develop and maintain all National Highways but the Central Government may, by notification in the official gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.

5. In the counter-affidavit, it was further stated that it is necessary to bring on record the material facts viz., at present the Central Government has assigned the function of development/maintenance of the stretch of NH-32 from Km. 134.430 to Km. 153.705 in Seraikela District of Jharkhand to State Government of Jharkhand through its agency. It is further stated that till date the aforesaid stretch of NH-32 has not been transferred by the Central Government to this respondent by publication of Official Gazette notification u/s 5 of the Act. It was lastly stated that this respondent is not a necessary party in this writ petition as the work of construction has been assigned to the State of Jharkhand.

6. Pursuant to the order passed by this Court on 23.8.2013 and the specific statement made by respondent No. 7 in its counter-affidavit dated 10.4.2013, a supplementary affidavit was filed on behalf of respondent-Engineer-in-Chief, R.C.D., Government of Jharkhand on 18.9.2013, in which, it is stated that the National Highways are property of the Central Government, Ministry of Road Transport and Highways, Government of India. All roads other than that of National Highways in the States fall within the jurisdiction of respective State Government Ministry and it undertakes maintenance and construction of National Highways in the State through State Government with Central funds or through National Highways Authority, of India under National Highways Division Development Project (NHDP). It is further stated that Ministry of Road Transport and Highways, Government of India

has sanctioned two schemes between Kms. 135 to 152 of NH-32, the stretches mentioned in the instant case. Lastly, it is stated that Project is yet to be awarded by NHAI.

7. In pursuance to the order passed by this Court on 19.9.2013, the respondent-Road Construction Department, Government of Jharkhand has filed a supplementary counter-affidavit dated 28.10.2013 annexing the colour photographs, as ordered by this Court. In the said supplementary counter-affidavit, it is stated that the State Government has been assigned construction/maintenance of NH-32 that lies in the State of Jharkhand. In furtherance of the order passed by this Court dated 19.9.2013, the respondent in its counter-affidavit has submitted the status report as under:--

Status of the works in NH-32:

Ministry of Road Transport & Highways, Government of India has sanctioned two schemes between Km. 135 to 152 of NH-32, the stretches mentioned in the instant case:

The two schemes and their status are as follows:--

(i) Periodic Renewal (PR) in Km. 135 to 146 of NH-32 has been sanctioned under Job No. TA-032-JHR-2012-13-140 on 4.6.2012. Original sanctioned amount being Rs. 516.75 lacs. One valid bid was received on the 4th call on 19.1.2013. Revised cost estimate amounting to Rs. 611.42 lacs based on rate in the 4th bid was formulated and sent to Ministry of Road Transport and Highways, GOl for approval by the Chief Engineer, National Highways, Jharkhand dated 9.2.2013.

Revised cost estimate is under consideration in the Ministry.

In the meanwhile stretch between Km. 135 to 146 is being maintained through ordinary repair.

(ii) Periodic Renewal (PR) in Km. 147 to 152 of NH-32 is in progress under Job No. TA-032-JHR-201213-141 MoRT & H approved above Revised cost estimate on 31.5.2013 following which work order was issued and the work in Km. 147 to 152 is now in progress.

That water bound macadam work has been done in Km. 147, 148, 149 and Km. 152. Bituminous work will be taken up after rains stop. Schedule date of completion is 5.1.2014.

That Km. 135, 137, 140, 142, 145 to 152 are in fair condition Km. 136, 138, 141, 143 and 144 were not in good condition but have now been made motorable through ordinary repair.

8. It is further stated that the National Highways are property of the Central Government and all works related to National Highways other than ordinary repair

are sanctioned by the Ministry of Road Transport and Highways (MoRT & H), Government of India and payments thereof are also made by them. In all such cases the role of State Government is limited as supervisory in nature.

9. A counter-affidavit has been filed by respondent Ministry of Road Transport & Highways (MoRT & H), Government of India, wherein it is stated that MoRT & H is primarily responsible for development and maintenance of National Highways in the country and the works of National Highways are carried out through the agencies namely State Public Works Department (PWDS), National Highways Authority of India (NHAI) and Border Roads Organization (BRO) by MoRT & H. It is further stated that some of the National Highways including NH-32 Jharkhand have been entrusted to Government of Jharkhand and the Government of Jharkhand is responsible for preparation of estimate, inviting tenders, appointing contractors, supervising and exercising necessary quality control for National Highway works in accordance with the guidelines and procedure prescribed by MoRT & H for National Highways. It is further stated that following the above procedure the work has been awarded to the contractors.

10. Pursuant to the order and direction passed by this Court on 25.11.2013, by which, the respondent-Principal Secretary, Road Construction Department, Government of Jharkhand was directed to point out within what least possible time the National Highway in question can be constructed, an affidavit has been filed by the respondent-Principal Secretary, Road Construction Department, Government of Jharkhand, wherein it is stated that the State Government has been assigned the job of maintenance by Periodic Renewal (PR) of NH-32 by the Ministry of Road Transport and Highways, Government of India. It is further stated that an agreement has been executed for Periodic Renewal work in Kms. 147 to 152 of NH-32 on 6.8.2013 and as per agreement schedule, the date of completion of work is 5.1.2014 but due to heavy rains in the months of September and October, 2013, the work in question is expected to be completed by March, 2014. It is further submitted that work in Kms. 135 to 146 was sanctioned by MoRT & H, Government of India on 4.6.2012, for which single valid bid was received on 4th call on 19.1.2013, on which Revised Cost Estimate was sent to MoRT & H by Chief Engineer, National Highways, Jharkhand vide letter dated 9.2.2013 and it was sanctioned by the MoRT & H after eight months on 25.10.2013. It is further stated that accordingly Executive Engineer, National Highways Division, Chaibasa sent letter on 25.11.2013 to the successful bidder. It is further submitted that the said bidder-M/s. Leading Construction has expressed its inability to execute and impleadment the agreement stating the reason vide its letter dated 26.11.2013 that there has been further deterioration in condition of road after submission of tender and sanction of Revised Cost Estimate. It is stated that in view of above, the respondent-Department has agreed to survey for estimation of deterioration and thereafter the said bidder-M/s. Leading Construction has agreed to execute the agreement and started the work, which is to be completed by June, 2014.

11. By order dated 3rd December, 2013, this Court, on submission of learned counsels appearing for both the parties that the condition of National Highway No. 33 is equally in worst condition, has enlarged the scope of this Public Interest Litigation and directed the respondents to file status report about the condition of the road of National Highway No. 33 (From Barhi to Bahragoda). The learned counsel appearing for the State submitted that the construction of National Highway No. 33 is not in the hands of State Government and it is being monitored by National Highways Authority of India, Project Implementation Unit at Ranchi, therefore, it was directed to implead National Highways Authority of India, Project Implementation Unit at Ranchi as party respondent No. 8.

12. Pursuant to that order, the respondent No. 8-National Highways Authority of India, Project implementation Unit at Ranchi filed its counter-affidavit dated 7.12.2013, wherein it is stated that National Highways Authority of India is the nodal executing agency under Ministry of Road Transport and Highways, Government of India and is responsible for up-gradation of 4-laning of NH-33 from Barhi to Bahragora (Km. 00.00 to Km. 335.00) in the State of Jharkhand. It is further stated that although NH-33 is entirely within the State of Jharkhand, but this respondent is only responsible for maintenance and upgradation of Barhi to Mahulia (Km. 00.00 to Km. 277.50) and the same has been divided in three segments:--

(i) Barhi-Hazaribagh Section of NH-33 (Km. 00.00 to Km. 40.50).

(ii) Hazaribag-Ranchi Section of NH-33 (Km. 40.50 to Km. 114.00).

(iii) Ranchi-Mahulia Section of NH-33 (Km 114.00 to Km. 277.50).

13. With respect to first segment i.e. Barhi-Hazaribagh Section, it is stated that primarily the work was awarded to M/s. Abhijeet Hazaribagh Toll Road Ltd. but in the midst of the work, on account of contractual default on the part of the Concessionaire, the work has been awarded to M/s. Narayan Construction, Hazaribagh on 23.11.2013 and it is stated till date, 50% pot holes work has been completed. So far as second segment, i.e. Hazaribagh-Ranchi Section, it is stated out of 73.799 Km. 4-laning, work of 72 Km. is completed and work of about 1.7 Km. is going and rest work of 100 meters is yet to be handed over to the respondent-NHAI by the State Government under Ramgarh Bypass, which is because of non-relocation of Masjid at Kankebar. So far as third segment i.e. Ranchi-Mahulia Section, the up-gradation work has been awarded to M/s. Ranchi Expressways Ltd. and several instructions have been issued to the Concessionaire to expedite maintenance of existing lane of Project Highway and the same has been now expedited by the Concessionaire.

14. Again, on direction of this Court dated 9th December, 2013 to respondent No. 8 to file progress report, supplementary counter-affidavit has been filed by respondent No. 8. It is stated that maintenance work of Barhi-Hazaribagh Section is complete and all the pot holes have been filled up and the Project Highway is now

traffic worthy and safe for operation. So far as second segment, i.e. Hazaribagh-Ranchi Section of NH-33, is concerned it is stated that up-gradation work of 72 Km. 4-laning out of 73.999 Km. is completed and work of 250 meters has been withheld because of protest made by local people who are stated to force the Concessionaire to stop construction and construct a Kali Mandir on newly constructed road adjacent to Masjid. However, it is submitted that maintenance has never been any issue in existing lane of Project Highway. So far as third segment i.e. Ranchi Mahulia Section is concerned, it is stated that maintenance work has been now completed.

15. In so far as the N.H.-32 is concerned, it is stated on behalf of State of Jharkhand that the State of Jharkhand has been assigned for job of maintenance by Periodic Renewal (PR) of N.H.-32 that lies in the State of Jharkhand in between Kms. 135 to 152 in two stretches (i) Kms. 135 to 146 and (ii) Kms. 147 to 152 by the Ministry of Road Transport and Highways, Government of India. It is further stated that the agreement has been executed for Periodic Renewal work in the Kms. 147 to 152 of N.H.-32 on 6.8.2013 and as per agreement, scheduled date of completion was 5.1.2014, but the work was hampered due to heavy rain in the month of September and October, it is further stated that in view of this, the work which was to be completed by March, 2014 has now been completed on 31.1.2014. It is further stated that in the case of the job of Periodic Renewal (PR) work in Kms. 135 to 146, the Ministry of Road, Transport and Highways had also sanctioned the Revised Cost Estimate after eight months on 25.10.2013 and it is stated that the completion of said work is expected by June, 2014 and the work is still in progress.

16. In so far as the N.H.-33 is concerned, the National Highways Authority has filed its supplementary counter-affidavit stating that the maintenance of 163.500 Kms. stretch (Km. 114.000 to Km. 277.500) has been completed on 31.1.2014 and since then because of the heavy traffic, new pot holes are developing and the same is being attended once in a week or within ten days time. In paragraph No. 10 of the supplementary counter-affidavit, it is further stated that strengthening of existing stretch from Km. 139.00 (Rampur in Ranchi District) to Km. 277.500 (Mahulia which is nearly 30 Km. away from Jamshedpur towards Bahragora in East Singhbhum District) is to be done in near future once new two lanes is constructed and ready for operation. The stipulated date of completion of the project is 4.6.2015.

17. Having regard to the supplementary counter-affidavit filed by the National Highways Authority and State of Jharkhand, this writ petition is disposed of directing the respondents to ensure the proper maintenance/construction of NH-32 and NH-33 within the stipulated time. Subsequently, I.A. No. 8592 of 2013 is also disposed of.