



Serial No.34
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 207 of 2023

Date of Decision : 18.11.2024

M/s. Capital Enterprise, Jhalupara
 East Khasi Hills District, Shillong.

...Petitioner

-Versus-

1. Union of India represented by the
 Secretary to the Government of India,
 Ministry of Home Affairs, North Block,
 New Delhi – 110001.
2. Executive Engineer (Civil)
 FTR HQ BSF SHillong.
3. D C (Works)/Executive Engineer (Civil)
 FTR HQ BSF Shillong.

...Respondents

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge

Appearance:

For the Petitioner/Applicant(s) : Mr. H.L.Shangreiso, Sr. Adv. with
 Ms. M.Hjong, Adv

For the Respondent(s) : Dr. N.Mozika, DSGI with
 Ms. L.M.D.Marak, Adv.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: _ | Yes/No |



JUDGMENT AND ORDER (ORAL)

1. The petitioner which is a proprietorship firm, was awarded with the work for installation of a deep tube well at the BSF Campus, Umpling, Shillong, on 11-08-2022, with the scheduled time for completion of 60 days from the date of commencement. The site was then handed over to the petitioner firm on 14-12-2022. It appears that after the work had commenced, certain issues arose with regard to implementation of the same, which according to the respondents, inspite of requests for proper implementation, was due to the unprofessional approach of the petitioner and also the use of inferior quality of casing pipes, which were not found to be as per the specifications of the tender conditions. The performance of the petitioner, as per the respondents being below the benchmark and disappointing, the work was then rescinded by the competent technical authority on 30-06-2023, in accordance with Clause 3 of the general conditions of the contract, which also resulted in the forfeiture of the performance guarantee deposited by the petitioner firm.

2. The respondents also by an order dated 27-06-2023, debarred the petitioner firm, from participating in the tenders of BSF Meghalaya Frontier and Command Headquarters, for a period of three years due to the poor performance, inordinate delay and lack of interest in execution of the work by the petitioner firm. The petitioner firm being aggrieved with this



debarment order which has affected its business activities, is therefore before this Court seeking the quashing of the said order and also for release of arrear bills as admissible.

3. Mr. H.L.Shangreiso, learned Sr. counsel assisted by Ms. M.Hajong, learned counsel appearing for the petitioner submits that adequate opportunity was never afforded to the petitioner to repel the debarment order, and that in fact the petitioner had taken all steps to complete the work on time. Learned Sr. counsel further submits that on the notices with regard to the progress of work, replies had been submitted and extension was also provided by the respondents to complete the work, but however, instead of just terminating the contract, the action of the respondents in debarring the petitioner, which amounts to black listing is arbitrary and discriminatory and as such, the impugned order deserves to be interfered with by this Court in exercise of powers under Article 226 of the Constitution.

4. Dr. N.Mozika, learned DSGI assisted by Ms. L.M.D.Marak on behalf of the respondents, has submitted that action was resorted to by the respondents, in view of the fact that inspite of the completion time being limited only to 60 days, on the slow progress of work, the first show cause notice under Clause 3 of the agreement had been issued as far back as on 10-01-2023 and the second show cause was also issued on 16-02-



2023, which was followed by a letter dated 24-02-2023 directing for completion of the work. Learned DSGI further submits that inspite of the repeated letters addressed to the petitioner to expedite the process, as there was no progress, a third show cause dated 20-04-2023 was issued to the petitioner, but however, by another letter on 02-05-2023, the petitioner was allowed one more opportunity to complete the bore well by 08-05-2023, which was not complied with. He therefore, submits that the action of the respondents in rescinding the contract vide the communication dated 30-06-2023, which was a final action under Clause 3 of the agreement, and the order of debarment was perfectly justified in the facts and circumstances of the case.

5. I have heard learned Sr. counsels for the parties and also perused the materials as placed before this Court. As submitted, without reiterating the facts, the writ petitioner in the execution of the contract, due to certain personal difficulties failed to execute the same within the time provided. A perusal of Clause 3 of the general conditions of the contract by which the contract was terminated and the petitioner imposed with the penalty of debarment is perused, and for the sake of convenience is reproduced herein below:

‘Article 3: Consequences of Breach



Without prejudice to any right that may be available to the Principal / Owner under law or the Contract or its established policies and laid down procedures, the Principal / Owner shall have the following rights in case of breach of this Integrity Pact by the Bidder(s) / Contractor(s) and the Bidder / Contractor accepts and undertakes to respect and uphold the Principal / Owner's absolute right.

*1) If the Bidder(s) / Contractor(s), either before award or during execution of Contract has committed a transgression through a violation of Article 2 above or in any other form, such as to put his reliability or credibility in question, the Principal / Owner after giving 14 days' notice to the contractor shall have powers to disqualify the Bidder(s) / Contractor(s) from the Tender process or terminate / determine the Contract. If already executed or exclude the Bidder / Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of transgression and determined by the Principal / Owner. **Such exclusion may be forever or for a limited period as decided by the Principal / Owner.**"*

6. As observed earlier, the work was to be of a duration of 60 days and the site was handed over to the writ petitioner on 14-12-2022, meaning that if the contract had been diligently executed, the same should have been completed on 14-02-2023. However, it is noted that on the slow progress of the work, the respondents from 10-01-2023 itself, had been issuing repeated reminders and also show cause notices to the writ petitioner, which as per the submission of learned DSGI, was due to acute scarcity of water in the BSF Campus. The facts as they pertain therefore,



which are undisputed is that the petitioner for whatever reasons, had failed to execute the contract within the stipulated time and as such, as per the general conditions of contract, was liable for such transgression. Though reasons have been given in the writ petition, as to why the contract could not be completed on time, this Court is not inclined to examine the same, as these are in the realm of disputed facts.

7. The only issue that this Court will examine, is whether the infliction of debarment by the respondents upon the writ petitioner in the circumstances is justified, or whether the same can be held to be arbitrary and punitive. Coming back to Clause 3 as quoted above, though the same has invested the respondents with powers to terminate / determine the contract, and also the power to exclude the contractor from future contract processes, in the instant case, debarment has been ordered in a contract as noted earlier, which had overrun its schedule and which should have been completed on 14-02-2023. The trail of communications by the respondents, no doubt reflects the urgency of the project and the deficiency of the contractor in executing the same. However, on examination of the show cause notices, especially after the third show cause dated 20-04-2023, whereby action was proposed to be taken under Clause 3 of the agreement, it is seen that the respondents, by a subsequent letter dated 02-05-2023, had again allowed the petitioner extended time to complete the work. This



in the considered view of this Court has watered down the effect of show cause notices of the respondents with regard to the completion time line as also the action proposed to be taken and the order of debarment therefore is seen to be disproportionate and arbitrary.

8. As it has now been informed that after cancellation of the contract, the same has been re-tendered and allotted to a third party, who has also since commenced the work, whatever reliefs the petitioner is entitled will be confined only with regard to the debarment notice and not to the continuance of the project.

9. As such, accordingly, the debarment notice dated 27-06-2023 is hereby set aside and quashed and consequently, as fairly submitted by learned DSGI, the petitioner will be at liberty to remove whatever materials lying in the premises belonging to the petitioner, such as pipes etc. within 15 days from the date of this order. For any further grievances, the petitioner is at liberty to agitate the same before an appropriate forum and to seek civil law remedy.

10. As ordered above, matter stands disposed of.

Judge