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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5489/2015**

HIGHWAY ENGINEERING CONSULTANTS Petitioner

Through: Mr. Sachin Datta, Sr. Advocate with Mr.
Arvind Nayar and Ms. Nandadevi Deka,
Advocates

versus

**NATIONAL HIGHWAY AUTHORITY OF INDIA
AND ANR.**

..... Respondents

Through: Ms. Meenakshi Sood, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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27.05.2015

CM No.9862/2015 (Exemption)

1. Allowed subject to just exceptions.

W.P.(C) 5489/2015 and CM No.9861/2015 (stay)

2. By this petition, a challenge is laid to order dated 10.12.2014. By this order, the petitioner has been debarred from participating directly or indirectly in any work which may be tendered by the respondent.

3. Ms. Sood, who appears on behalf of the respondent informs me that the impugned order dated 10.12.2014 is predicted on a report of the Committee dated 13.11.2014 which comprised of 3 CGMs of the respondent herein.

3.1 The peculiarity of the impugned order, is that, while it imposes an interminable ban on the petitioner, the Committee's report dated 13.11.2014, recommends a ban for a period of 5 years in terms of clause 2.1.10 (c) of the RFP.

3.2 Obviously, the issuing authority which is one, Mr. R.K. Rathee, GM(CM-III) has gone way beyond what was recommended by the Committee.

3.3 That apart, it is the argument of the petitioner that Mr. R.K. Rathee participated in the deliberations before the Committee which, in a sense, led to a stiffer punishment being imposed on the petitioner.

3.4 The petitioner, however, does not dispute the fact that one of its erstwhile partners submitted a fake experience certificate. It is submitted on behalf of the petitioner that it was the doing of an erstwhile partner, and furthermore, the said certificate did not have much relevance with regard to the matter involving qualification under the tender in issue.

3.5 I tend to disagree with this submission of the learned counsel for the petitioner. The petitioner cannot have fake experience certificate being furnished under its watch and then, advance such a flippant argument.

3.6 Having said so, there is some merit in the petitioner's contention with regard to the quantum of punishment imposed, especially, in the circumstances that there is a discrepancy between what is stated in the Committee's report, and that, which is indicted in the impugned order.

4. At this stage, Ms. Sood says that she does not wish to file a counter affidavit, and that, the submissions which have emerged from the record be taken into account. I have heard Ms Sood. The learned counsel says that court should go by the report of the committee qua the punishment imposed. I am afraid that cannot be done as the committee's report is only an opinion. The decision is contained in the impugned order.

5. As noticed above by me, the aforesaid facts are not in dispute. Therefore, the impugned order dated 10.12.2014, is set aside. The respondent, however, will be free to pass a fresh order in the matter.

6. With the aforesaid observations in place, the captioned petition and the pending application are disposed of.

RAJIV SHAKDHER, J

MAY 27, 2015

Yg

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