

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2829 of 2016

In
Civil Writ Jurisdiction Case No. 9143 of 2016

=====

M/s Patna Offset Press & Anr

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

=====

with

Miscellaneous Jurisdiction Case No.2815 of 2016

IN
Civil Writ Jurisdiction Case No. 9143 of 2016

=====

M/s Patna Offset Press & Anr

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

=====

Appearance :

(In MJC No.2829 of 2016)

For the Petitioner/s : Mr. Y.V. Giri, Senior Advocate
Mr. Binod Kumar Singh

For Bihar State Tex Book: Mr. P.K. Shahi, Senior Advocate
Mr. Nikesh Kumar

For Respondent No.10 : Mr. Vikas Kumar

For Bihar Education Project: Mr. Girijesh Kumar

For the State : Mr. Subhash Prasad Singh, G.A.III
Mr. Dilip Kumar, A.C. to G.A.III

(In MJC No.2815 of 2016)

For the Petitioner/s : Mr. Vikas Kumar

For Writ Petitioner Mr. Y.V. Giri, Senior Advocate
Mr. Binod Kumar Singh

For Bihar State Tex Book: Mr. P.K. Shahi, Senior Advocate
Mr. Nikesh Kumar

For Bihar Education Project: Mr. Girijesh Kumar

For the State : Mr. Subhash Prasad Singh, G.A.III
Mr. Dilip Kumar, A.C. to G.A.III

=====

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA

ORAL ORDER

3 22-08-2016 Heard learned counsels for the parties.

Both the applications have been filed for
clarification/modification of the order dated 27.07.2016 passed by

this Court in C.W.J.C. No.9143 of 2016.

It is stated in the application that after the order dated 27.07.2016 aforesaid passed by this Court, the writ petitioner filed a representation dated 04.08.2016 and insisted that it is entitled to all its payments as well as left over work of phase 3 and 4 incorporated in his previous work order, which has already been terminated by the Corporation by the impugned order dated 13.04.2016. It is submitted that the same is on account of the word “the impugned orders are set aside.”

It is submitted by learned counsel for the applicant-Corporation that it was not at all intended to set aside the different orders of the Corporation passed under the contract, by which the bank guarantee of the petitioner had been seized and the private respondent Nos. 10 and 11 had been given the contract of left out work of the petitioner's agreement, rather from the order dated 27.07.2016 itself it is evident that it has been noted by the Court that several grounds have been raised by learned counsel for the petitioners against the impugned orders stating that the same are arbitrary and not in accord with the law laid down by the Apex Court in the various decisions with regard to issuance of a proper notice indicating the punishment therein as also non-application of mind to the reply to the show cause filed. Thus, essentially this court was concerned with the fact that the order of debarment had



been passed without complying with the principles of natural justice as also on the basis of findings recorded by the respondent Corporation and therefore after holding that the impugned orders are set aside, it was also held that so far as the question of debarment is concerned, it shall be open to the Respondent-Corporation to proceed afresh with regard to the same in accordance with law on the basis of the findings given by the learned Arbitrator. It is submitted that the parties had agreed to go for arbitration in view of there being an arbitration clause and during the period of arbitration the debarment would have no effect on the petitioner but so far as the other claims in issue were concerned, which arose under the contract, in terms of the provisions of the Arbitration and Conciliation (Amendment) Act, 2015 the matter has to go to an independent Arbitrator and he may pass an appropriate order thereon.

It is further submitted that this Court had, after referring the matter to the Arbitrator, also held in clear terms that it shall be open to the parties to make any prayer before the learned Arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and he may pass appropriate order thereon during the pendency of the arbitration.

Thus, there was no occasion for this Court to set aside anything apart from the order of debarment and none of the issues

had been considered on merit, for which an order could be passed.

Learned counsel for the writ petitioner has sought to argue that an application for clarification/modification of the matter is not maintainable and the order should be clarified or modified only if some mistake or error occurs but not otherwise on merit.

This Court is unable to accept the submission of learned counsel for the writ petitioner for the simple reason that the order was not itself an order passed on the merits of the case, except to set aside the order of debarment since it had not been passed on the basis of any finding recorded by an independent adjudicator, whether a Court or an Arbitral Tribunal, and this Court intended to only quash the debarment order and left open to the respondent authorities of the Text Book Corporation to proceed with the same only on the basis of findings given by the learned Arbitrator.

It is further clear from the order dated 27.07.2016 that only that aspect of the matter had been pressed and considered by this Court with regard to the order of punishment, i.e., debarment, passed by the respondents and no other aspect of the matter was considered in the said order and it cannot be said that any part of the order is on the merits of the case between the parties. If that be so, there would be no occasion to refer the matter to the Arbitrator and the intention of this Court was that so far as the matters arising out of the terms and conditions of the contract are concerned, the

same should be settled on the basis of arbitration as agreed between the parties themselves on account of the existence of an arbitration clause.

In the aforesaid view of the matter, the order dated 27.07.2016 passed in C.W.J.C. No.9143 of 2016 is modified/clarified to the extent that the general reference to setting aside of the impugned order should be treated as a reference to setting aside the order of debarment as a punishment inflicted by the respondents and all other issues between the parties are to be settled by the learned Arbitrator, who may also pass appropriate interim order, as stated in the said order itself.

It is pointed out by learned counsel for the Corporation that the writ petitioner has not yet approached the Arbitrator in the matter. Let all the parties appear before the learned Arbitrator on 09.09.2016 at a time as may be suitable to the learned Arbitrator.

Both the applications are, accordingly, disposed of.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

U			
---	--	--	--