

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9159 of 2016

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M/s. S & P Infrastructure Developers Pvt. Ltd., a registered Company having its registered office at N 07, New Delhi House, 27, Barkhamba Road, New Delhi 110001 being member of M/s BLA- S & P (IV) through its authorized representative Sri Shatrudhan Mishra, S/o Late Mr. Ambika Mishra resident of House No.29, Village Bhuhulwa Deeh, Post- Jharmahui, District- West Champaran.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Department of Road Construction, Govt. of Bihar, Patna.
2. The Engineer in Chief, Department of Road Construction, Govt. of Bihar, Patna.
3. The Chief Engineer, Department of Road Construction (NH Wing), Bihar, Patna.
4. The Superintending Engineer, Department of Road Construction NH Circle, Purnea.
5. The Executive Engineer, Department of Road Construction, N.H. Division, Purnea.
6. The Advisor to the Department of Road Construction, Govt. of Bihar, Patna.
7. The Union of India through the Regional Officer, Ministry of Road Transport and Highways, Govt. of India, Delhi.
8. The Secretary, Department of Road Construction, Bihar Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Gautam Kejriwal, Advocate with Mr. Jahid Hussain, Advocate

For the State : Mr. Rajesh Kumar, AC to G.P.3

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

4 05-10-2016 I.A.No.7465 of 2016

The interlocutory application has been filed for amendment of the prayer so as to challenge the impugned order dated 1.7.2016 issued by the Executive Engineer, Department of Road Construction, N.H. Division, Purnea by which the petitioner has been debarred from participating in future tenders and for the consequential reliefs.

In the facts and circumstances of the case, the prayer for amending the relief is allowed.

I.A. No. 7465 of 2016 is, accordingly, disposed of.

Heard learned counsel for the petitioner and learned counsel for the State.

Pursuant to an NIT the petitioner was awarded a contract for widening and strengthening existing Single/Intermediate lane to 2-lane from Km. 30.35 to 54.40 of NH-81 in Bihar under Special Project Zone for which LOI was issued on 3.8.2011. The date of commencement of the work was 28.8.2011 and its completion was to take place by 27.8.2013.

It is the stand of the petitioner that apart from the other defects there was land acquisition issue and the land was accordingly not handed over to the petitioner and the said situation continues even today and admittedly by the other side even till now 0.5 Km. of land has not been acquired. It is submitted that on that count prayer for extension of time was made and the Executive Engineer along with by Assistant Engineer and Junior Engineer on 25.6.2015 had recommended for extension of the time period stating various reasons for the same, which apart from the land acquisition issue also referred to the Design and Drawing being supplied as late as on 24.1.2013 as per which the BOQ on different heads has been increased in which variation had already been submitted for approval. Pursuant to the same, extension was made till 30.6.2016. In the meantime, in a meeting of the Department in which apart from the Principal Secretary, the Advisor to the Government, who is a retired Secretary, was also present, advising not to accept the plea of the petitioner it was directed that the petitioner be debarred and thereafter show cause notice was issued by the Executive Engineer and the petitioner by the impugned order dated 1.7.2016 has been declared defaulter and debarred from participating in future tenders.

Learned counsel for the petitioner submits that this is not a case where delay has been caused on account of the petitioner alone rather the respondents are equally responsible for the same,

which fact is admitted on the basis of the documents which are on the record. It is further submitted by learned counsel that the petitioner has now completed 90.11% of the work and even in the debarment order 72% of the work is shown to have been completed.

In support of the aforesaid stand, learned counsel for the petitioner relies upon an order of this Court dated 1.5.2013 passed in CWJC No. 8457 of 2013 (M/s. Nandita Construction vs. The State of Bihar & Ors.) in which relying upon the earlier decision of this Court in the case of M/s. NCC Ltd. vs. The State of Bihar & Ors. : 2013(1) PLJR 952 it was held that it is not open in such type of circumstances where there are allegations of delay being caused by the respondent authorities also to act unilaterally in the matter and pass an order of debarment unless the fact in question has been adjudicated by an independent adjudicatory body, whether a court of law or an Arbitral Tribunal.

On a consideration of the facts and circumstances of the case and the materials on the record, this Court is of the view that the present matter is also covered by the decision in the case of M/s. NCC Ltd. (supra).

The writ application is, accordingly, allowed. The order of debarment dated 1.7.2016 is quashed with liberty to the respondents to proceed afresh in the matter but only after the facts in issue are adjudicated by an independent body, whether a court or an Arbitral Tribunal.

(Ramesh Kumar Datta, J)

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