

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9149 of 2016

=====

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. DRA- S & P (JV) 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 Wing), Aurangabad.
5. The Executive Engineer, Department of Road Construction, N.H. Division, Aurangabad.
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

=====

Appearance :

For the Petitioner/s : Mr. Gautam Kejriwal, Advocate with
M/S Jahid Hussain & Mohit Agrawal, Advs.

For the Respondent/s : Mr. Harish Kumar, G.P. 8

=====

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

4 05-10-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the minutes of the meeting dated 8.4.2016 and the order dated 28.4.2016 communicated by the Chief Engineer, Department of Road Construction, NH Division, Bihar, Patna by which the joint venture of the petitioner along with other company were directed to be declared disqualified in the technical bid in future in the light

of Clause 4.8 of the standard bidding document.

The simple submission of learned counsel for the petitioner is that although the petitioner had participated in the said meeting held on 8.4.2016 but the same cannot be a reason for debarment of the petitioner as no show cause notice of debarment was issued and for which the petitioner could not file its reply. It is submitted that the delay in the completion of the work had occurred on account of various defaults of the respondent authorities themselves which included non-completion of the land acquisition over which the work had to be done as also non-removal of electrical poles from the site of work.

Learned counsel for the petitioner further submits that in view of the aforesaid facts, the case is squarely covered by the decision of this Court in the case of M/s. NCC Ltd. vs. The State of Bihar & Ors. : 2013(1) PLJR 952, in which it was laid down that in case of default on the side of the Governmental Authorities also, it is not open to them to sit in judgment over the matter and pass an order of debarment.

Learned counsel for the State, on the other hand, points out the delay that has been caused by the petitioner in completion of the work. However, he is unable to say as to why the present matter is not covered by the NCC case (supra).

The present matter is not only squarely covered by the NCC case and the respondents in order to pass the order declaring the petitioner defaulter and debarring it from participating in future tenders ought to have referred the matter for examination of the facts in question to an independent body, whether a court of law or an Arbitral Tribunal, but the same has evidently not been done.

In the said circumstances, the writ application is allowed. The impugned minutes of the meeting dated 8.4.2016 as per Memo dated 28.4.2016 are quashed in so far as they concern the petitioner. It shall be open to the respondents to take appropriate steps for debarment of the petitioner, if so advised, by proceeding afresh in accordance with law and as observed by this Court in this order.

(Ramesh Kumar Datta, J)

spal/-

U			
---	--	--	--