

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2981 of 2015

M/s Gangotri Enterprises Ltd. having its registered office in B-158, Sector-A, Mahanagar, Lucknow-226006, Uttar Pradesh, through its DGM (P) Shri Anurag Sharma aged about 37 years, S/o Shri O.P. Sharma resident of C-2629, Rajaji Puram Awas Vikas Colony, P.S. -Rajaji Puram, District- Lucknow.

.... Petitioner/s

Versus

1. The State of Bihar, through its Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Secretary, Road Construction Department, Bihar, Patna.
3. The Engineer-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Chief Engineer, National Highways Wings, Road Construction Department Government of Bihar, Patna.
5. The Executive Engineer, National Highway, Division, District- Motihari.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr. Advocate

Mr. Ashis Giri, Advocate

For the Respondent/s : Mrs. Kumari Amrita- GP3

Mr. M.K.Upadhyay, AC to GP-3

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 27-07-2016

Heard learned counsel for the petitioner and learned Government Pleader No. 3 for the State.

The petitioner seeks quashing of the order dated 25.7.2014 passed by the Respondent no. 5, Executive Engineer, National Highway Division, Motihari by which he has debarred the petitioner for indefinite period of time.

The short facts of the case are that the petitioner on

the basis of a tender invited had been given a work of widening and strengthening of existing intermediate lane to double lane carriageway in KM 0.00 to KM 25.00 of NH-2B in Bihar under the Special Project Scheme through the letter of acceptance dated 03.08.2011 followed by agreement dated 24.08.2011.

It is the admitted position that the Project was obstructed on account of hindrance by the existence of 359 trees for which permission of cutting the trees had to be given by the Forest Department; further 290 electric poles had to be shifted by the State Electricity Board 6 encroachments had to be removed and 2 temples had to be rehabilitated and one drawing of minor bridge was needed for constructing the minor bridge measuring 2 meter x 5.8 meter.

According to the petitioner, the said obstruction was not removed by the authorities of the State Government and the petitioner had to pray for extension of time. Instead of doing the same by letter dated 05.07.2014 of the Executive Engineer, the petitioner was informed that he had not made sufficient progress and he was directed to make progress and clear the work otherwise damage would be charged and he would be debarred from participating in future tender. Thereafter by letter dated 10.07.2014 of the Executive Engineer, again a warning was issued to the petitioner to submit three months plan of work and take steps for



bringing the materials for which the petitioner by his letter dated 10.07.2014 replied that utilities in the form of electric poles, pipelines and local encroachments and temples coming in the way have not been removed as yet. It was stated that 352 trees were removed on 24.12.2013 but the remaining premises had not been removed till date. The petitioner further stated that the quarry for stone grit had been approved from Pakur which is nearly 550 KMs. from the site of work and the material was being transported by rail and average time per rake was nearly 7-8 days from the date of order to the date of receipt of material on the site and only 4-5 rakes were available per month which amounts to nearly 1000 cum of stone grit per month and the material was transported from rail yard to site by trucks which required additional time. Further, for the reasons stated by the petitioner and the delay in payment of running bills etc. it was asserted that the delay was beyond the control of the petitioner and there had been no lapse on the part of the petitioner; hence, extension up-to 30.6.2015 was sought. Upon the said reply the impugned order dated 25.7.2014 has been passed by the Executive Engineer stating that the petitioner has failed to submit explanation as was sought by letter dated 10.07.2014 and he has not made any progress in the work for the last two months. Accordingly, under the relevant Clause of the SBD, the petitioner has been debarred.



Learned counsel for the petitioner submits that the order of debarment is bad for the reason as it is not an order which is based on material. Apart from the same he submits that the respondents could not ignore the delay which has been caused on account of their lapses laying the entire blame on the petitioner and, therefore, passing order of debarment is contrary to law laid down by this Court in the case of M/s. NCC Ltd. Vs. The State of Bihar & Ors.: 2013(1) PLJR 952.

Learned counsel for the State has sought to rely upon the letter dated 10.7.2014 stating that the shifting had been done much earlier and there was no obstruction.

The rival stand of the parties makes it clear that there is a genuine dispute with regard to the liability of each of them resulting in delay in the execution of the work and in such circumstances it was not open to the authorities of the State to sit in judgment over their own cause. The impugned order of debarment is thus contrary to law in the light of what has been held by this Court in NCC case (supra). It has been clearly held in the said judgment that the facts have to be first adjudicated by an independent authority, whether the Court or Arbitral Tribunal and not by one of the parties to the contract.

The impugned order of debarment dated 25.07.2014

is, accordingly, quashed and the writ application is allowed. It shall be open to the respondents to take steps for debarment after the issues are independently adjudicated, in accordance with law.

(Ramesh Kumar Datta, J)

S.Pandey/-

AFR/NAFR	
CAV DATE	
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