IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3038 of 2015

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M/s Saj Infracon Project India Limited through its Managing Director namely Akhilesh Kumar Jaiswal Son of Late Ram Narayan Lal resident of S - 401, Udaygiri Apartment, Budh Marg, Patna, P.S. Kotwali, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna
2. The Road Maintenance Cell, Road Construction Department, Government of Bihar, Visheshwariya Bhawan, Baily Road, Patna
3. The Engineer - in - Chief, Road Construction Department, Government of Bihar, Patna
4. The Chief Engineer North Bihar Section Road Construction Department, Darbhanga
5. The Superintending Engineer, Saran Road Circle, Hajipur
6. The Executive Engineer, Road Construction Department, Road Division, Chapra

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr. Advocate
Mr. Suresh Prasad Singh No.1

For the State : Mr. S.D.Yadav, AAG-9

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 10-08-2016

I.A. No. 4623 of 2015:

The interlocutory application has been filed for amending the writ application so as to quash the order dated 22.4.2015 issued by the respondent no.6, the Executive Engineer, Road Construction Division, Chhapra by which he has terminated the agreement entered into with the petitioner.

On a consideration of the facts and circumstances of the case, the prayer for amendment is allowed.

I.A. No. 4623 of 2015 is, accordingly, disposed of.

Heard learned counsel for the petitioner and learned Additional Advocate General No. 9 for the State.

The writ application has been filed for quashing of the order dated 9.12.2014 passed by the Executive Engineer by which he has declared the petitioner defaulter and debarred the petitioner from participating in future tender. The petitioner has further challenged the order dated 22.4.2015 by which the agreement of the petitioner has been terminated and the advance security deposit were forfeited with the further direction that amount of compensation shall be recovered from the petitioner after calculating the same and any kind of due amount shall also be forfeited.

The petitioner after participating in tender process was granted long term output performance based road maintenance work for the road under package No. 40/OPRMC/RCD under RCD Road Visisin, Chhapra which contains as many as 21 roads for a total length of 180 kms for which agreement was entered into on 29.1.2014 for an amount of Rs. 35,36,37,748/-.

Under the said contract the petitioner was required to maintain the roads for a period of five years. After taking over the work out of the 21 roads as many as 16 roads were found to be under the Defect Liability Period of various contractors who had constructed the said roads from March, 2015 till June 2016 and thus the petitioner would have been required to maintain the said roads after it was handed over on completion of the Defect Free Period of the said contract.

It is the stand of the petitioner that the actual position of the road construction was much worse than as shown in the tender and the petitioner accordingly, by its letter dated 17.9.2014 informed the respondents about it. Upon inspection the stand of the petitioner was found to be correct by the officers in field and, as a matter of fact, with respect to one of the roads being the Chapra-Marhaura road having a distance of 18 Kms. it was found that the road was practically non-existent and required to be constructed at a cost of approximately Rs. 31 crores.

Be that as it may, the correspondences between the petitioner and departments and officers continued as a result of which the maintenance of the road suffered, according to the respondents, whereas according to the petitioner so far as the roads under the Defect Liability Period were concerned of different contractors, it was the duty of the respondents to have handed over the road in a good condition so that the petitioner would continue to maintain the same, but instead of getting the work done by the concerned contractors with regard to 16 roads in question, the respondent-officials continued to maintain pressure upon the petitioner to take up the work of reconstructing the roads at various points and not only just maintaining it. Ultimately, by the impugned order dated 9.12.2014 the petitioner was declared defaulter and debarred from participating in any further tender. Thereafter by the impugned order dated 22.4.2015 the contract has also been terminated and the advance amount of security deposit has been forfeited apart from other liability imposed upon the petitioner.

So far as the declaration of defaulter and debarring of the petitioner from participating in future tenders is concerned, learned Senior counsel for the petitioner submits that the matter is squarely covered by the decision of this Court in the case of M/s. N.C.C.Limited Vs. The State of Bihar & ors.: 2013(1) PLJR 952, in which it had been held that where there are allegations of default on the part of the respondent-officials of the State Government also and the delay cannot be straightway held to be only on account of the contractor, then it is not open to the State Government and its officials to sit in judgment in the matter and adjudicate the same and on the basis of such adjudication declare the petitioner defaulter and debar it from future contracts or blacklist the contractor.

In the present matter, the statements made in the counter affidavit do not contradict the stand of the petitioner that it was a case where there may have been serious lapses on the part of the officials of the State Government which required independent adjudication by competent authority, either a Court or an arbitral Tribunal, but without having such independent adjudication on facts the petitioner has been imposed the liability of being declared defaulter and debarred from future tender. Thus, the matter is squarely covered by the decision of the NCC Limited (supra).

So far as the question of termination of contract is concerned, it is the clear stand of the petitioner that the agreement has been cancelled without issuing any show cause notice to the petitioner and thus in complete violation of the principles of natural justice and in the said circumstances, it was not open to the respondent-Executive Engineer to have either terminated the contract or forfeited the advance amount of security deposit and imposed other penalty.

Neither from the two impugned orders nor from the counter affidavit it can be made out that a show cause notice was issued to the petitioner and the respondent no. 6 has passed the order after considering the reply of the petitioner. In the said circumstances, the order of termination dated 22.2.2015 cannot stand and it is, accordingly, quashed.

Normally, with the quashing of the impugned order the matter would have gone back to the respondents to issue a show cause notice to the petitioner and thereafter to proceed in accordance with law after complying with the principles of natural justice. However, learned Additional Advocate General No. 9 submits that the State Government is not interested in penalizing the petitioner rather it has concern about the extreme bad condition of the roads which are languishing for lack of maintenance for more than one and half years even after the debarment order had been passed and the same requires to be urgently taken care of. He submits that the respondents would be satisfied if the respondents are permitted to close the contract and issue a fresh tender in which all including the petitioner would be eligible to participate.

Learned counsel for the petitioner after taking instructions from his client, who is present in Court, does not object if the said procedure is followed.

In the aforesaid facts and circumstances, the impugned order dated 9.12.2014 and 22.4.2015 are quashed and the consequential order invoking the Bank Guarantee is also set aside and in terms of the above-stated consent of the parties, the respondent shall close the contract of the petitioner without imposing any penalty or liability upon it. The respondents are, consequently, directed to pay the admitted dues of the petitioner within a period of three months from today for which it shall be open to the petitioner to file its claim before the respondents within a period of two weeks from today and in case any part of the claim of the petitioner is rejected, the same shall be done by a speaking order and it shall be open to the petitioner to pursue the matter before the appropriate forum.

The writ application is disposed of with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

S.Pandey/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.9.2016
Transmission Date	