

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6293 of 2016

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1. M/s Alectra Construction Ltd. through its director, Mr. Dhananjay Kumar
New Colony, Dharampur, Ward No.3, Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction
Department, Govt. of Bihar, Bishwashraiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-chief, RCD, Govt. of Bihar, Bishwashraiya Bhawan,
Bailey Road, Patna.
3. The Chief Engineer, RCD, North Bihar at Patna, Govt. of Bihar,
Bishwashraiya Bhawan, Bailey Road, Patna.
4. The Superintendent Engineer, RCD, Road Circle, Muzaffarpur.
5. Executive Engineer, RCD, Road Division, Muzaffarpur-1.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suresh Prasad Singh No.1
Mr. Raj Kishore Prasad
Ms. Kumari Rashami

For the Respondent/s : Mr. Sunil Kumar Mandal, S.C.3
Mr. Bipin Kumar, A.C. to S.C.3

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA
ORAL ORDER

4 26-09-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks quashing of the order dated
20.02.2016 issued by the Executive Engineer, Road Construction
Department, Road Division, Muzaffarpur, by which the petitioner
has been declared defaulter and debarred from participating in
future tenders.

The petitioner was given a contract work for widening
and strengthening of road, Turki Chowk (N.H.77) to Pakki Sarai



Chowk via Madhaul, Kerma, Susta & Kachchi Pakki (19.25) for the year 2012-13 under the NABARD Scheme, by the Road Construction Department, pursuant to emerging as a successful tenderer after the tender process. The work was to commence on 19.01.2013 and to be completed by 18.01.2015. Soon after the award of contract, the petitioner had to face several problems in proceeding with the construction work which he intimated to the respondent Executive Engineer which included in the beginning the removal of the electric poles and transformer as also encroachment. A reference was also made to the fact that the local villagers had made obstruction on the ground that the government road, according to them, was only 3.65 meter wide and rest was their raiyati land which was informed by the petitioner vide letter dated 13.06.2013 and that aspect of the matter has been accepted by the Executive Engineer vide his letter dated 16.05.2015, wherein the petitioner has been informed about the permission given by the Engineer-in-Chief to reduce the carriage way for approximately 5.5 meter instead of 7 meter. It is pointed out by learned counsel for the petitioner that the same is several months after the original date fixed for completion of the work. Learned counsel also submits that the petitioner also informed the respondents by the said letter dated 13.06.2013 that the part of the



road was earlier under the Rural Works Department of which the work had been done by another contractor and he kept the work of the petitioner pending under defect liability period as per his contract. A complaint was also made regarding the non-availability of the materials. By a series of letters, the petitioner continued to inform the respondents about the troubles that were being faced by the petitioner including the cutting of Airtel and W.T.T.L BSNL underground cables. The JCB and Tractor of the petitioner had also been carried away, for which the petitioner had informed the respondents and the Superintending Engineer also wrote to the District Magistrate in that regard by letter dated 16.06.2014. Various other issues arose for which the respondents themselves did not take immediate measures which has resulted in the delay of the work.

In view of the aforesaid facts, it is submitted by learned counsel for the petitioner that the order of debarment is clearly contrary to the law laid down by this court in the case of M/s. NCC Ltd. vs. The State of Bihar and others: 2013 (1) PLJR 952 wherein it has been held that it is not open to the respondents to themselves sit in judgment over the matter when there are allegations of default against them and pass the order of debarment. Such issue can only be decided by adjudicatory forum,



i.e., a Court or an Arbitral Tribunal.

Learned counsel for the State although has sought to rely upon the counter affidavit filed on behalf of the State-respondents that the performance of the petitioner was poor but he is unable to show as to how the respondent authorities could themselves have acted in the matter contrary to the principle that has been decided in N.C.C.'s case (supra).

In the aforesaid view of the matter, the writ application is allowed and the impugned order dated 20.02.2016 debarring the petitioner is quashed. However, it shall be open to the respondents to take action in accordance with law after the matter is adjudicated by an independent adjudicatory body.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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