

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4933 of 2016

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M/s. B. D. Construction through its partner Mr. Gajraj Kumar, Son of Late Dinkar Sharma, Resident of Mohalla- Garhper Harihar Niketan, P.S.+P.O.- Biharsharif, District- Nalanda, Pin- 803101.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna-15.
2. The Engineer-in-Chief cum Additional Commissioner cum Special Secretary, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna-15.
3. The Chief Engineer-2, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Patna-15.
4. The Superintending Engineer, Rural Works Department, Works Circle, Munger.
5. The Executive Engineer, Rural Works Department, Work Division, Lakhisarai.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Advocate with
Mr. Manish Sahay, Advocate

For the Respondent/s : Mr. Anirban Kundu, S.C. 24 with
Mr. Sudhanshu Shekhar, AC to S.C.24

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

2 08-08-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the letter dated 4.1.2016 issued by the Engineer-in-Chief, Rural Works Department, Government of Bihar, by which the petitioner has been declared defaulter and debarred from participating in future tenders. The name of the petitioner appears at Serial No.39 of the debarment list.



Further prayer has been made for quashing of the rescinding order dated 4.1.2016 issued by the Executive Engineer by which he has rescinded the contract of the petitioner but learned counsel for the petitioner does not press the said relief stating that he would take recourse to appropriate remedies before the appropriate forum for the same. The petitioner is permitted to press the said matter before appropriate forum, including Bihar State Public Works Arbitration Tribunal, as may be advised.

Further prayer of the petitioner is to pay the remaining amount for the work done to the extent of Rs.7,91,000/-, as per the petitioner, and also to pay the security deposit and the deducted amount under the head of 'Time Extension'.

The petitioner after a tender process was allotted work for construction and five years maintenance of road from Sibdih Lakhna-Balonza Mushahri Path for the year 2011-12 for value of Rs.81,08,183/-. The work under the contract was to start from 18.2.2012 and to be completed by 17.8.2012 on approximately 1.7 kilometres of road. According to the petitioner the work could not be completed within time because the respondents had failed to hand over the entire working site during the agreement period and even thereafter since the working site was disturbed due to encroachment.



It is the further case of the petitioner that admittedly the working site was Naxal affected area and during the course of execution of work the staff of the petitioner were threatened by the Naxalites and one of its staff was kidnapped and was later on released, for which Kajra P.S. Case No. 36 of 2013 dated 3.8.2013 was registered. It is also the stand that the respondents had also lodged in this connection Kajra P.S. Case No. 876 of 2013 and thus admitted position was that threats were being made by the Naxalites. The respondents claimed to have written several letters with respect to the same to the Superintendent of Police and the District Magistrate, Lakhisarai dated 10.2.2014 and 15.3.2014 but the same did not lead to any result. The further reason for non-completion of work is stated to be the lack of regular payment to the petitioner of the running account bills. On 23.9.2015 the Chief Engineer asked the petitioner to explain as to why it should not be debarred from participating in future tenders on account of failure to complete the work in time. The petitioner replied to the same on 1.10.2015 stating the aforesaid reasons. However, by the general letter dated 4.1.2016 the petitioner was declared defaulter and debarred from taking part in future tenders on account of failure to complete the work in question.

Learned counsel for the petitioner submits that the case



of the petitioner is squarely covered by a decision of this Court in the case of M/s. NCC Ltd. vs. The State of Bihar & Ors. : 2013(1) PLJR 952 in which this Court had held that where there are genuine allegations of failure or default on the part of the State respondents, then in such case it is not open to the State respondents to sit in judgment over the matter and unilaterally decide against the contractor and debar it, rather they can only take action on the dispute being adjudicated by an independent forum, whether a court or an arbitral tribunal, and the debarment order was, accordingly, quashed.

Learned counsel for the State has sought to rely upon the statements made in the counter affidavit regarding the letters, etc. after the period of completion of work. However, there is no statement in the counter affidavit that after the allotment was made the working site was free from any encroachment or effort was made to make the site secure enough for the petitioner to complete the work despite the interference by the Naxalites, which fact is borne out by the two FIRs., one of them by the respondents themselves.

In the said circumstances, the respondents themselves being at fault in not removing the encroachment and taking appropriate steps, it is not open to them to lay the entire blame

upon the petitioner without getting the dispute adjudicated by the appropriate forum. In the said circumstances, the decision of this Court in NCC Ltd. (supra) is squarely applicable in this case.

Learned counsel for the petitioner points out that it is admitted in the counter affidavit that an amount of Rs.7,42,979/- is payable to the petitioner and the same has not been paid on account of non-submission of MN Forms and the absence of Quality Control Report. It is submitted that MN Form has no connection with making payment of the admitted amount, which is meant for refund of royalty paid by the petitioner and the same cannot be a ground for not making the admitted payment. It is also submitted that the respondents cannot rely upon their own fault in not providing the Quality Control Report in time for denying the admitted payment to the petitioner.

In the said circumstances, although the petitioner claims Rs.7,91,000/- but since Rs.7,42,979/- has been admitted in the counter affidavit as payable to the petitioner, the respondents are clearly obliged to pay the same.

The writ application is, accordingly, allowed. The impugned order contained in letter No.09 Anu dated 4.1.2016 issued by the Engineer-in-Chief, in so far as it concerns the petitioner, is quashed and it is directed that any action of

debarment against the petitioner can only be taken on adjudication of the dispute before an appropriate forum, whether in a court or an arbitral tribunal. It is further directed that the respondents shall pay the admitted amount of Rs.7,42,979/- to the petitioner within a period of three months from today, subject to the Quality Control Report which they may obtain within the said period and even upon failure to obtain the same, the said amount shall be paid to the petitioner at the first instance. So far as the remaining amount is concerned, it shall be open to the petitioner to agitate the claim before appropriate forum and similarly for other claims, if any, arising out of the said contract the petitioner is given liberty to pursue the same before the appropriate forum in appropriate proceedings.

(Ramesh Kumar Datta, J)

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