

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 14425 of 2015
Date of Decision: 28.01.2016

M/s Marc Technocrats Pvt. Ltd.

..Petitioner

versus

State of Haryana and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.**

Present : Mr. V.K.Jindal, Senior Advocate with
Mr. Amandeep Sheoran, Advocate, for the petitioner.

Mr. Rahul Dev Singh, Deputy Advocate General, Haryana,
for the respondents.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Petitioner has sought a writ of certiorari to quash an order dated 01.08.2014 by which the respondents have debarred the petitioner from further tendering with Haryana State Roads and Bridges Development Corporation Ltd. (HSRBDC) and PWD (B&R) Department for two years.

2. An agreement dated 28.04.2008 was entered into between the parties by which the petitioner was appointed as a consultant for the preparation of a 'Detail Project Report' (DPR) in respect of various roads in Jhajjar District, Haryana. The petitioner prepared the DPR and forwarded the same to the respondents. The petitioner also forwarded a supplementary appraisal report. 90% of the payment was released by the respondents on 24.07.2008. The balance payment was released on 19.08.2008 after the final preparation of the DPR.

3. Respondent No.4-Haryana State Roads and Bridges Development Corporation Ltd. (HSRBDC) by a letter dated 01.07.2010

stated that in various reaches where the petitioner has proposed widening/strengthening of the road at the existing level in the DPR, the road has been raised and reconstructed due to adverse site conditions. The petitioner was requested to bring the details on the basis of which it was proposed to widen/strengthen at the same level alongwith other details.

4. By a letter dated 23.02.2010 respondent No.5-HSRBDC stated that it had been observed that there were a number of changes in the DPR submitted by the petitioner during the time of appraisal and the final DPR thereby increasing the cost of the final DPRs. The petitioner was called upon to submit an explanation within 15 days the reasons for the difference between the DPRs at the time of appraisal and the final DPRs failing which action would be taken as per the terms and conditions of the agreement. A copy of this letter was tendered by the respondents in Court.

5. The petitioner submitted a detailed reply to this letter by its letter dated 04.09.2010. Various technical aspects are referred to in this letter. It is not necessary to refer to the various technical aspects adverted to. It is, however, important to note that the petitioner stated that before compiling the DPRs, the facts and investigation reports were provided to the Executive Engineer as well as to the Superintending Engineer, Jhajjar who had themselves visited the site and decided the proposed treatment alongwith the petitioner. It was also stated that a proposal was prepared and forwarded to the CRRI and Engineers India Ltd. (EIL) for appraisal. These organizations in turn appraised the report with minor amendments. After the appraisal the DNIT was prepared by respondent No.5 as per their requirement. Respondent No.5 modified the treatment proposed. The petitioner stated that no queries had been raised at the relevant time.

6. It is important to note that respondent No.5 responded to this letter after almost 2½ years by its letter dated 22.03.2013. Respondent No.5 stated that it had considered that letter and according to it the petitioner did not try to assess the site appropriately and had relied upon samples at regular intervals for determining the design parameters. The petitioner made no attempts to co-relate sample results with past performance and did not try to examine various alternatives to select the appropriate one but proceeded to pick one alternative and converted that into the DPR. Respondent No.5 stated that there was sufficient ground to debar the petitioner but with a view to meet the requirements of justice granted the petitioner an opportunity to show cause within 14 days why it should not be debarred from tendering for two years. Two reminders dated 11.04.2013 and 08.07.2013 in this regard were also sent by the 5th respondent.

7. The petitioner by its letter dated 12.07.2013 once again submitted a detailed reply. The petitioner in fact mentioned the names of the Executive Engineer as well as the Superintending Engineer.

8. Ultimately, the impugned order dated 01.08.2014 was passed without affording the petitioner an opportunity of being heard. Paragraph-(i) of the impugned letter merely repeats the show cause notice. Paragraphs-(ii) to (v) of the order read as under:-

“(ii) That the DPR was appraised by CRRI and EIL is of no advantage to the Consultant because of the deficiency in respect of design of sampling scheme and interpreting the sample results against past performance of the road. If site performance is not reported or reported incorrectly in the documents then the appraisal authority could not spot the errors made in the DPR. That is why it is only when the client officers visited the site before/during execution that could find out the errors in the DPR and had to adopt alternative execution strategy.

- (iii) Due to inaccurate DPR prepared by you, L-2 became L-1 at the final stage causing a financial implication of about Rs. 3.52 crores.
- (iv) Your submission that report (DPR) is as per codal requirement and standard test procedure stated in relevant IRC code does not hold good. It is also duty of the DPR consultant to collect all relevant information (linked HFL etc.) and decide the provisions accordingly as per relevant IRC code. You had failed to effectively collect the field data which had resulted in changes in scope in some reaches from widening and strengthening to raising/reconstruction.
- (v) The contention that the provision in the DPR were made in consultation with Executive Engineer, Provincial Division, Jhajjar and SE Jhajjar also does not hold good. The provision in the DPR should be strictly on-merit i.e. as per site requirement confirming to codal rules framed in this regard. Any information gathered as a part of discussion with officials of the department does not give a shelter to the Consultant to put responsibility of preparation of incorrect DPR on the PWD (B&R) department.

As the deficiencies in the DPR are of very serious nature and ordinarily deductions would have been made from the consultancies already paid and cancellation of other consultancies already awarded would have been effected but keeping in view the facts to allow you to improve upon your working and thus taking a lenient view it has been decided to debar you for further tendering in HSRDC and Department of PWD (B&R) for a period of two years.”

9. We will for the purpose of this judgment assume that it is not always necessary to afford a party an opportunity of being heard even if it is proposed to debar it. However, in the facts and circumstances of this case, the rules of natural justice warranted the respondents affording the petitioner an opportunity of being heard. In any event, they warranted the respondents affording the petitioner an opportunity of dealing with the findings/allegations made against it in the final order, many of which do not find place in the show cause notice. The second and third sentences of

paragraph-(ii) of the impugned order merely make a general observation regarding how the DPR is to be prepared. In paragraph-(iii) it is alleged that the DPR was inaccurate without furnishing any reasons for the same. Moreover, the alleged inaccuracy and the causes for the same were not even set out in the show cause notices. Pausing here we must mention that Mr. Jindal, learned senior counsel appearing on behalf of the petitioner contended that the same were not show cause notices. We will, however, presume that they are. It would make no difference. Paragraph-(iv) of the order alleges that the petitioner had failed to effectively collect the field data. Here again there is nothing to indicate the nature of the failure. The least that the respondents ought to have done was to indicate the nature of the failure in the show cause notices to enable the petitioner to deal with the same. Assuming that the failure has been alleged in the show cause notices the reasons for holding that there was failure are absent. Added to this is the fact, that the impugned order does not deal with the various technical aspects raised by the petitioner in its replies dated 04.09.2010 and 12.07.2013.

10. In fact in this case it was necessary for the respondents to have afforded the petitioner an opportunity of meeting all these allegations as the show cause notices were issued four years after the work had been completed. The respondents did not take the trouble of consulting their own Engineers two of whom even have been named in the reply to the notices.

11. In the circumstances, the petition is allowed and the impugned order is quashed and set-aside.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

28.01.2016

‘ravinder’

(ARUN PALLI)
JUDGE