

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14034 of 2018

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M/s Ujjain Engicon India Pvt. Ltd. Having its registered office at H.I.G.7HF-7/30 Bahadurpur Housing Colony, Kankarbagh, Patna through its Authorised Signatory Awanish Pathak, S/o Baidyanath Pathak r/o Kamalnath Nagar, Ward 23, Nea Sant Mickal School, P.S. Bettiah, District-West Champaran.

... .. Petitioner/s

Versus

- 1.The State Of Bihar through Principal Secretary, Water Resources Department, Govt. of Bihar, Patna
2. The Principal Secretary, Water Resource Department, Govt. of Bihar, Patna
- 3.Engineer in Chief (Headquarters), Water Resource Department, Govt. of Bihar, Patna
4. Engineer in chief (Irrigation Creation), Water Resource Department, Govt. of Bihar, Patna
5. Chief Engineer (Irrigation Creation), Water Resource Department, Govt. of Bihar, Motihari
6. Superintending Engineer, Tirhut Canal Zone, Water Resource Department, Bettiah
7. Superintending Engineer, Water Resource Department, Motihari
8. Executive Engineer, Done Canal Division, Water Resource Department, Ramnagar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harsh Singh,Adv.

For the Respondent/s : Mr. Vikash Kumar -Sc11, Adv.

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

2 20-07-2018 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

Petitioner seeks quashing of Memo no. 2237 dated 15.06.2018, Annexure 18, by which the petitioner has been declared defaulter and debarred from participation in future tenders. The petitioner was allotted through N.I.T. No. 01SBD/2017-18 for work of reconstruction of wing wall of CD



at RD-147.00 of DBC, restoration of U/S left side wing wall at RD 160.60 at C/R of DBC, restoration of D/S/bed protection at 163.70 of DBC and reconstruction of SLR bridge at 164.00 of DBC by virtue of agreement dated 25.01.2018. The work had to be completed by 30.06.2018. It is alleged that the progress of the work was slow for which the petitioner was given show cause by Letter No. 1865 dated 26.05.2018, which was not replied. It has also been stated in the impugned order that till 09.06.2018, 25 % of the work has been done, as such, the petitioner was declared defaulter and debarred from participation of future contracts.

Learned counsel for the petitioner submits that during the execution of the said work DS bed protection at 163.70 DS developed fissure which caused difficulties, which was brought to the notice of the authorities and the petitioner vide Letter dated 23.03.2018 was given two additional works for reconstruction of wing walls at 163.70 and was asked to relocate the work of 164 to be extended by 10 meters more and another additional work was allotted vide letter dated 13.04.2018 for installation of sheet pile on the damaged portion of DS 164. The petitioner vide Annexure 8 requested for designs, enhanced payments and extension of time for completion of the said



additional work. In spite of that no notice was ever given to the petitioner as mentioned by letter no. 1865 dated 26.05.2018 and the impugned order has been passed without notice and the petitioner has been declared defaulter and debarred from participation of the future tenders.

Petitioner has filed I.A. No. 5326 of 2018 stating therein that a tender has been invited By the Bihar State Road Development Corporation which is a technical bid which is Annexure 21 of his I.A. but because of the impugned order he is unable to participate in the said tender. In this connection, petitioner relies upon a judgment of this Court in the case of **M/s NCC Ltd. Versus The State of Bihar and others, since reported in 2013(1) PLJR 952**, especially paragraphs 16 and 26 stating therein that the petitioners have been declared defaulters by alleging breach of contractual work on their part and being liable and at fault for slow progress of work as compared to what was required under the contract. This liability and fault on their part as raised by the authorities of the State cannot be permitted as such matters involves liability on the part of the State officials also especially so when three additional works were allotted to the petitioners during the course of the pendency of the work order and agreement. He submits that the



State and its authorities cannot declare a contractor defaulter and debar him from future tenders, which could only be done from a proper adjudicatory forum or a Arbitral Tribunal as the State authorities cannot assume the role of Arbitrators. This proposition has been relied and followed in the case of **Satyendra Kumar and Co. Pvt. Ltd. Vs The State of Bihar and others reported in 2017 (3) PLJR 919.**

Petitioner has filed a supplementary affidavit that his matter has been considered and the Executive Engineer has written to the Superintending Engineer by Letter No. 1148 dated 16.07.2018 as contained in Annexure 23 to permit the petitioner to complete the work and release the petitioner from debarment, which has been communicated by the Superintending Engineer to the Chief Engineer, Water Resources Department vide Letter No. 613 dated 17.07.2018, which is Annexure 24 and the Chief Engineer vide his Letter No. 1958 dated 17.07.2018 has communicated to the Engineer-in-Chief (Headquarters), Water Resources Department. He submits that the matter is already under consideration by the Engineer-in-Chief (Headquarters), Water Resources Department as such the impugned letter dated 15.06.2018 vide Memo no. 2237 as contained in Annexure 18 be quashed.



Learned counsel for the State, however, opposes the prayer stating therein since the matter is related to contractual obligation and default on the part of the petitioner and subsequent debarment, can be adjudicated before the Arbitral Tribunal.

Considering the submissions of the parties and that the matter is already under active consideration before the Engineer-in-Chief (Headquarters), Water Resources Department let the petitioner proceed with the work Memo No. 2237 dated 15.06.2018, Annexure 18 is quashed.

Parties may approach the Arbitral Tribunal for settlement of their dispute, if it is still survives.

Writ application along with I.A No. 5326 of 2018 is allowed.

(Nilu Agrawal, J)

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