

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22847 of 2018

=====

M/s Alectra Construction Ltd. through it's Director Shri Dhananjay Kumar,
New Colony, Dharampur, Samastipur – 848101.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Shchayee Bhawan, Patna.
2. The Engineer-in-chief, Water Resources Department, Bihar, Sichayee Bhawan, Patna.
3. The Chief Engineer, Flood Control, Water Resources Department, Sichayee Bhawan, Patna.
4. The Superintendent Engineer, Flood Control, Circle, Samastipur.
5. The Executive Engineer, Flood Control Division, Rosera, Distt. Samastipur.
6. Assistant Engineer, Flood Control Division, Rosera Distt. Samastipur.

... .. Respondents

With
Civil Writ Jurisdiction Case No. 23030 of 2018

=====

M/s Alectra Construction Ltd. through its Director, Shri Dhananjay Kumar,
New Colony, Dharampur, Ward No- 3, Samastipur.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Water Resource Department, Govt. of Bihar, Sichayee Bhawan, Patna.
2. The Engineer-in- Chief, Water Resources Department, Bihar, Sichayee Bhawan, Patna.
3. The Chief Engineer, Flood Control, Water Resources Department, Samastipur.
4. The Superintendent Engineer, Flood Control, Circle, Samastipur.
5. The Executive Engineer, Flood Control Division, Samastipur.
6. Assistant Engineer, Flood Control Division, Samastipur.

... .. Respondents

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 22847 of 2018)

For the Petitioner/s : Mrs.Kumari Rashmi, Advocate
Mr. Suresh Pd. Singh, No.1, Advocate
For the Respondent/s : Mr.Vinay Kumar Pandey, A.C. to G.A.2

(In Civil Writ Jurisdiction Case No. 23030 of 2018)

For the Petitioner/s : Mrs.Kumari Rashmi, Advocate
Mr. Suresh Pd. Singh, No.1, Advocate
For the Respondent/s : Mr. Vinay Kumar Pandey, A.C. to G.A.2

=====



CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 23-07-2019

Heard learned counsel for the petitioner and learned counsel representing the State.

Pleadings in this case is complete and as prayed at the bar the case has been heard for final disposal.

Petitioner, in this case, initially moved for quashing of the letter no. 3371 dated 04.09.2018 (Annexure '14' & Annexure '15' in both the writ petitions) by which he has been debarred from participating in any future tenders by respondent no. 2.

In CWJC No. 22847/2018, it is the case of the petitioner that after entering into an agreement bearing no. 02/SBD17-18 dated 13.02.2018 which was awarded for raising, strengthening and Puccakaran of Road from Km. 85 to 98 on the left bank of Burhi Gandhak River, and in CWJC No. 23030/2018 agreement No. 03/SBD2017-18 dated 21.03.2018 for Puccikaran from Km. 129.70 to 147.00 Silaut to Birauli on right embankment of the Burhi Gandhak river, he took all steps to complete the work on time but because of total non-cooperation on the part of the



department it could not become possible to complete the work within the given time. A plea has been taken that it is the respondents who had prepared a faulty DPR, fixed the rate of BOQ on that basis for lifting the stone chips from Sheikhpura Railway Station by rail rack, invited bid by issuing NIT, executed agreement keeping in dark to the petitioner that there was no rail rack available since November 2017 i.e. even from before the NIT. The petitioner made request to the respondents to permit him for lifting the stone chips by road through truck by granting lead for carriage the same was not allowed. Hence, the execution of the work was delayed.

In the writ application the petitioner has made a statement that when the Chief Engineer vide his letter no. 1824 dated 23.05.2018 called upon the petitioner to explain the reason for the delay of execution of work, the petitioner explained the reasons for the delay and also submitted a detail representation on 31.05.2018 narrating the entire facts and circumstances leading to the delay of work. He also informed the Chief Engineer that even the machineries and advances were not given to him. A copy of the explanation



of the petitioner dated 31.05.2018 is part of Annexure '10' series to the writ application. Petitioner has claimed in various paragraphs that he was making aware the authority of the Water Resources Department that there was no rack available at Sheikhpura Railway Station and this fact was even got confirmed by the Chief Engineer, but, then, in order to save his skin and those of the subordinates he issued letter no. 152 dated 08.06.2018 to execute the work at any cost saying that the demanded lead for procuring stone chips from road is not proper.

In these circumstances, learned counsel for the petitioner submits that the order of debarment as contained in Annexure '14' is wholly arbitrary and is liable to be set aside. It is also submitted that prior to passing of the debarment order (Annexure '14') no notice to show cause was given to the petitioner.

Learned counsel for the petitioner submits that from the impugned order it will appear that the explanation submitted by the petitioner earlier were not at all considered and in one line conclusion was drawn that the petitioner had not taken any interest in completion of work, and it is, thus,



submitted that it is a case of non-consideration of the materials available on the record and in the given facts and circumstances the order of debarment is wholly without jurisdiction. It is submitted that because of such debarment the petitioner has been deprived of participating in any other tender in future.

By fling Interlocutory Application being I.A. No. 01/2019 the petitioner has sought to challenge the rescindment of contract which has been done during the pendency of the writ application.

Learned counsel for the State has opposed the writ application, as according to him the order of debarment has been passed because the petitioner defaulted in completion of work within the given period. It is submitted that in terms of Clause 30 of the NIT the bidder must be satisfied himself with site condition by visiting the site before uploading the tender and after uploading the tender no claim will be entertained for the same. According to the respondents in the clause of NIT connected with bill of quantity and carriage materials it is very clearly mentioned that stone chips will be carried from Sheikhpura to Karpurigram



through Railway. It is alleged that in fact the petitioner company neither started the work nor deployed any materials, man power and machinery despite several request and instruction of the department and he had taken a lame excuse for delay in completion of work.

Having heard learned counsel for the petitioner and State, this court is of the considered opinion that so far as the Interlocutory Application bearing I.A. No. 01/2019 which has been filed by the petitioner seeking to challenge the order by which the contract in question has been rescinded needs to be disposed of by giving only liberty to the petitioner to seek his remedy against the rescindment of contract in terms of the provisions of SBD under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Act of 1996”). It is not in dispute that in the SBD there is a provision for resolution of disputes by seeking recourse to an arbitral tribunal to be appointed in accordance with the provisions of the Act of 1996.

This court would however entertain the writ application as against the order of debarment (Annexure ‘14’). This court finds that the petitioner had explained to



the respondent authorities the reasons for non-completion of work. He had raised at least two issues for consideration, the first was that when the NIT was floated a defective DPR was made fixing the rate of BOQ for lifting the stone chips by Rail without verifying that there was no rail rack available at Sheikhpura Railway Station. The second submission of the petitioner was that he had not been provided the mobilization advance in want of funds. The respondent authorities in their counter affidavit has not denied the fact that at Sheikhpura Railway Station no rail rack was available, the statement of the petitioner that even the Chief Engineer had got verified this fact has not been denied in the counter affidavit. This court is of the view that even the another ground that mobilization advance was not made available to the petitioner was required to be considered by the authorities before passing the impugned order as contained in Annexure '14'.

This court is not making any comment on the plea of the respondents based on Clause 30 of the NIT stating that the petitioner was responsible to find out the site conditions before uploading the tender only because the



court is of the view that the plea of the petitioner and the counter plea of the respondents in this regard may be looked into on merit in course of resolution of the disputes by the learned Arbitral Tribunal and any comment at this stage by this court may reflect an opinion on the merit of the contention.

This court is however of the opinion that non-consideration of the pleas raised by the petitioner and debarring him declaring a defaulter without giving any reasons and without differing with the plea of the petitioner is liable to be held arbitrary and cannot be said to be a fair play in action. The respondent authorities must realize that the order of debarment has got a civil consequence and before passing the same the plea of the petitioner would be required to be examined particularly when it was being specifically pleaded by the petitioner that no rail rack was available at Sheikhpura and this was not taken care of while floating the tender. For all these reasons Annexure '14' (in CWJC No. 22847/2018) & Annexure '15' (in CWJC No. 23030/2018) cannot sustain the test of twin principles of constitution that the 'relevance' and 'reasons' which are



enshrined in Article 14 of the Constitution of India. Annexure '14' & Annexure '15' are, thus, set aside with liberty to the respondent authorities, if so advised, to pass a fresh reasoned order in accordance with law.

Learned counsel for the petitioner has drawn the attention of this court towards Annexure 'I/6' (in CWJC No. 22847/2018) and Annexure 'I/3' (in CWJC No. 23030/2018) which is the xerox copy of the measurement book containing the details of actual measurement and the bills which have been passed but payments have not been made thereof. It is stated that against a total bill of Rs. 1,21,51,875/- the petitioner had been made available only Rs. 25,00,000/- citing the limit of available funds (in both the writ applications). It is one of the contentions of learned counsel for the petitioner that on the one hand the respondents did not give the mobilization advance, they did not even paid the running bills of the petitioner citing funds constraints and at the same time the petitioner is being debarred alleging his failure to complete the work. In the opinion of this court it will be an additional fact to be looked into by the respondent authorities if they proceed to



pass a fresh order.

The writ applications stand disposed off accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	31.07.2019
Transmission Date	

