

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10367 of 2021

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Shapoorji Pallonji And Company Private Limited, A Company registered under the Companies Act, 1956 having its Registered office at 70, Nagindas Master Road, Fort Mumbai - 400023, Maharashtra, India, having its Regional Office at PS Srijan Corporate Park, Tower 1-7th Floor, Plot G-2, Block – GP, Sector -V, Salt Lake- Kolkata - 700091 and local office at 4th Floor, 402 Sita Usha Square Apartment, Main Road, Patna - 800020 through its Manager, Business Development Utpal Raj, Son of Raj Bindu Prasad age about 29 years, Male resident of Manoj Kumar Nata Tola, PS Kazi Mohammadpur, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary Building Construction Department, Government of Bihar, Patna.
2. The Engineer in Chief, Building Construction Department, Government of Bihar, Patna.
3. The Executive Engineer, Construction Division No. 1, Building Construction Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Senior Advocate
For the State : Mr. Mahendra Prasaad Verma (Adv.), AC to SC 20

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 25-08-2021

The matter has been heard *via* video-conferencing.

2. Heard Mr. Mrigank Mauli, learned senior counsel for the petitioner and Mr. Mahendra Prasad Verma, learned Assistant Counsel to Standing Counsel 20 for the State.



3. The petitioner has moved the Court for the following reliefs:

“a. For issuance of writ in the nature of Certiorari quashing the order dated 01.04.2021 passed by Respondent No. 3 whereunder the petitioner company has been “Debarred” for indefinite period (Annexure P/18) for alleged slow progress in work - ignoring the fact that the respondents have themselves failed to fulfil the reciprocal promise.

b. For holding that the holding that the Respondents having failed to fulfil their reciprocal obligation and are as such under obligation to fulfil their part of obligation and conditions under the contract as numerated in petitioner’s letter dated 05.05.2020, 13.07.2020, 24.07.2020 and 15.02.2021- before the respondents can ask the petitioner to show commensurate progress in work.

c. For any other relief or reliefs which the petitioners may be found entitled to in the facts and circumstances of the case.”

4. On 29.07.2021, learned counsel for the petitioner had taken a categorical stand that the entire works would be completed as per specification and the agreement by 30th June, 2022. On the said stand, learned counsel for the State had responded by stating that the same should be completed by the end of the current financial year i.e., 31st March, 2022.

5. In this backdrop, the Court had adjourned the matter, for facilitating a meeting at the highest level between the two sides, with consent, for 12th August, 2021.

6. Affidavits have been filed, both on behalf of the



petitioner as also the State, in which the agreement arrived at in the meeting held on 12th August, 2021, between the Senior Director, Operations of the petitioner and the Secretary, Building Construction Department, Government of Bihar, along with their respective teams, has been brought on record. In a nut shell, it was agreed that the petitioner would complete the entire work, as per the specifications, within the specified different timelines, but finally, all works would be completed by June, 2022.

7. At this stage, the Court would take note of a rather disturbing fact. At paragraph no. 27 of the main petition, it has been pleaded that all the left-over works shall be completed by March, 2022. Thereafter, during the hearing on 29.07.2021, learned counsel for the petitioner had taken a categorical stand that the remaining works would be completed latest by 30th June, 2022, extending the time by which the commitment was given in the petition for completion, by 3 months. Yet, on such stand, after noting that learned counsel for the State had indicated that the work should be completed by 31st March, 2022, the Court had, accordingly, directed for a meeting between the two sides at the highest level, as recorded hereinabove. What prevailed with this Court, in directing such



exercise, was, at that stage, the apparently reasonable offer made by the petitioner, as well as the larger public interest.

8. In the supplementary counter affidavit filed on behalf of the State, at paragraph no. 6, the following is stated:

“6. That, the scheduled meeting with the petitioner company was arranged on 12th August 2021 at 11.00 am in the office of Secretary, Building Construction Department under the chairmanship of Secretary, Building Construction Department. It was agreed between both the parties that the petitioner company will complete the project in all respect by 30th June 2022 in accordance with contents of para 2 of Minutes of meeting signed by the members present at this meeting.

Para 2 of Minutes of Meeting reads as under:

“Representation of Contractor Company SPCPL presented pictorial progress of the project and submitted that Outdoor sports field, Indoor sports hall, Hostel area, Residential area and eternal developments will be completed by June 2022 and stadium area will be completed by Dec 2022.

This was found unacceptable by the Building Construction Department as the contractor company has submitted in Hon’ble Court to complete the work by June 2022.

However, as per the discussion in the meeting, SPCPL, representative agreed to accelerate and complete the balance work as per the following scheme below:

a. Complete of Lawn Tennis, Volleyball and Handball facility, Football practice field, Director’s building, Deputy Director’s Building, ESS Hall area, ESS Residential area by 31st December, 2021.

b. Completion of Hockey field, Swimming pool, Football Field campus; Athletic track, Basketball Court, Main Receiving Substation, Transit Hostel, Girls Hostel, Dining Hall, Water Treatment Plant, Sewage Treatment Plant, Academic and



*Administration Building by 31st March 2022.
c. Completion of Hall 5D, Hall 5E, Hall 5A, Hall
5F and Hall 5B, Boys Hostel, Staff quarter III,
Coaches suites, Staff quarter IV, Driver and
Player facility, Cricket Stadium-General stand
west and east, Reverse Pavilion and Pavilion and
all other remaining works by 30th June 2022.”*

9. The Court finds the conduct of the petitioner to be highly objectionable. Statements made by counsel to the Court, of course, on instructions, are not to be taken lightly. Whereas, in the writ petition, it was averred that the entire outstanding works would be completed by March, 2022, the categorical stand before the Court by learned counsel for the petitioner on 29.07.2021 was that the work would be completed by 30th June, 2022. As both came of the petitioner's own volition, without any indication by the Court or the State, the Court was persuaded to refer the matter for discussion between the parties and thereafter, such exercise was undertaken. The Court would especially take note of the fact that in the order dated 29.07.2021, at paragraph no. 7, the following was highlighted:

“7. The Court would pause here to indicate that the Court has not expressed any opinion on the merits or as to on what terms and conditions, the parties should agree. The same is left to the parties to work out among themselves in which the Court would not interfere. However, the Court would only indicate that as per the stand of the petitioner itself, they are ready to complete the entire work,



as per the specifications and the terms of the agreement, latest by 30th June, 2022. ”

10. From the aforesaid sequence, it is clear that the petitioner has not been fair to the Court and also its intention appears to lack *bona fide*. Before this Court, a categorical stand was taken, initially that the entire works would be completed by March, 2022 and thereafter, that it would be completed by 30th June, 2022. However, still, in the representation submitted to the Secretary, Building Construction Department, time was sought for completion of all works by December, 2022. The Court is constrained to observe that the petitioner has tried to take undue advantage of the indulgence shown by the Court; tersely stated, it is a misrepresentation before the Court, viewed in the light of its stand, initially *vide* the petition that it would complete the entire works by March, 2022 and thereafter, before the Court on 29.07.2021 that it would complete the work by June, 2022. However, when it came to actually working out an arrangement with the State, the petitioner's stand underwent yet another change and time was sought till December, 2022 i.e., a further period of six months from what had been indicated on 29.07.2021.

11. Thus, the Court finds that the petitioner was taking a chance before the Court by showing that within a



reasonable period of roughly a year, the works would be completed whereas its intention was to get leverage and, further, take a chance before the authorities by asking for more time till December, 2022. The Court deprecates such brazen attempt to overreach the order of the Court and also misuse the process of the Court. The petitioner, purportedly a company of repute, indulging in such practice needs to be dealt with in all seriousness by the Court.

12. In view thereof, the Court was of the opinion that imposition of heavy costs was called for, against the petitioner. However, by way of extraordinary indulgence, upon the prayer of the learned senior counsel for the petitioner, this Court refrains from doing so. It is expected that the petitioner would abjure from such conduct in future.

13. When the Court called upon learned counsel for the State to assist with respect to the impugned debarment order, learned counsel for the State did not have clear instructions. Thus, the Court asked him to request the Secretary, Building Construction Department, Government of Bihar to join the proceeding virtually.

14. Accordingly, the case was again taken up after a short interregnum, when the Secretary, Building Construction



Department had joined the proceedings.

15. Apropos the impugned order dated 01.04.2021 whereby the decision to debar the petitioner was communicated to it and which was stayed by the Court *vide* order dated 08.06.2021, the Secretary, Building Construction Department, submitted, very fairly, that, as the petitioner has itself agreed to complete the entire remaining works, as per the specification, by 30th June, 2022, the said order of debarment shall be kept in abeyance till such time and upon the commitment of the petitioner to complete all the remaining works is fulfilled, as per the agreement and specification, to the satisfaction of the State, latest by 30th June, 2022, the order shall be formally withdrawn. He stated that if the petitioner defaulted, the impugned order would be revived with effect from 1st July, 2022.

16. Learned senior counsel for the petitioner submitted that he had no objection to the aforesaid. However, he pointed out that a formal order is required to be issued by the concerned authorities of the Building Construction Department, both with regard to the extension of time for completing all the works till 30th June, 2022 as well as to keep the order of debarment in abeyance till 30th June, 2022.

17. On this specific issue, on a response sought



from the Secretary, Building Construction Department, he submitted that the formal application in this regard from the petitioner had been received and a decision would be taken in the next departmental meeting. It was submitted that the same would be done within a period of ten days from today.

18. Having regard to the aforesaid, the writ petition stands disposed of in terms of the arrangement dated 12.08.2021 arrived at between the petitioner and the State through its Building Construction Department, that all the remaining/outstanding works, shall be completed, in terms of the specifications, to the satisfaction of the authorities concerned, by the petitioner, latest by 30th June, 2022. A formal order with regard to the extension of time for completing the work as also the decision to hold in abeyance the debarment of the petitioner till 30th June, 2022, shall be passed within ten days from today, subject to the completion of the entire works as per the agreement and specifications and satisfaction of the concerned authorities, by 30th June, 2022, with the further express stipulation that if there is any default on the part of the petitioner, the order of debarment shall stand revived with effect from 1st July, 2022. As a sequel to the above, on the Building Construction Department issuing the requisite order in the



aforesaid terms, the interim order of this Court dated 08.06.2021 shall cease to operate.

19. The Court would note here that upon the completely voluntary stand(s) taken on its behalf, as indicated hereinbefore, upon which the exercise of discussion between the two sides was directed for and pursuant thereto, the State having agreed to the proposal of the petitioner to extend the time till 30th June, 2022, the Court would direct that such time-frame shall also be construed as an undertaking and binding commitment of the petitioner to the Court, as the same forms the basis for the instant order. Moreover, the commitment having been given totally voluntarily, added responsibility, duty and obligation is cast upon the petitioner to scrupulously and strictly adhere to such time-frame. It is made clear that consequences would follow in the event of default, and the State is also granted liberty to file an application to bring such default, if any, to the notice of this Court.

(Ahsanuddin Amanullah, J)

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