

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5244 of 2023

=====

Sona Engicon Pvt. Ltd. having its Head Office at Sona Commercial Complex, Thana Road, Gopalganj, Bihar- 841428, represented through its Director Prabhat Kumar Panja, aged about 56 years (Male), son of Late Anil Panja, resident of House No. 37K/A, Sareya, Ward No. 13, Kali Asthan Road, P.O.- Gopalganj, P.S.- Gopalganj Town, District- Gopalganj (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. Engineer-in-Chief, Road Construction Department, Bihar, Patna.
4. The Chief Engineer (North), Road Construction Department, Bihar, Patna.
5. The Superintending Engineer, Road Construction Department, Work Division, Motihari.
6. The Executive Engineer, Road Division, Road Construction Department, Road Division, Dhaka.
7. The Executive Engineer, Road Division, Road Construction Department, Road Division, Motihari.
8. The Assistant Engineer, Road Sub Division, Chakia, Road Division Dhaka, Motihari.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Ms. Riya Giri, Advocate
For the Respondent/s	:	Mr.P.K. Shahi, AG

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-09-2023

In the instant petition, the petitioner has prayed for the following reliefs:

"(i) To issue a writ/order/direction in the nature of certiorari for quashing



the letter no.284 dated 15.03.2023 issued under the signature of the Executive Engineer, Road Division, Dhaka by which the petitioner has been debarred in relation to the Agreement No.01SBD/2021-22 dated 26.07.2021 for not completing the work within the time prescribed in accordance with the agreement (Annexure-8 pg 35).

(ii) To hold and declare that the impugned order of debarment dated 15.03.2023 passed without considering the reply to the show cause notice is in violation of Article 14 & 19(1)(g) of the Constitution of India and as such not sustainable in the eyes of law and accordingly direct the respondents to immediately remove the name of the petitioner from the list of debarment.

(iii). To hold and declare that the impugned order of debarment dated 15.03.2023 passed by the Executive Engineer, Road Division, Dhaka, is without jurisdiction and contrary to the provisions of Bihar Contractor Registration Rules, 2007.

(iv). To pass interim/ex-parte interim order staying the operation of letter no.284 dated 15.03.2023 issued under the signature of the Executive Engineer, Road Division, Dhaka, and/or permit the petitioner to participate in other tenders including the subsequent tender issued by the Rural Works Department, Bihar, including NIT No.RCD/Dhaka-09/2022-23.

(v). To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.



2. The petitioner was allotted certain work pursuant to the NIT but it was not executed within the time limit. Taking note of delay in execution of the work, the respondents proceeded to issue show cause notice of debarment on 25.11.2022. Thereafter, final order was passed on 15.03.2023 by which petitioner has been debarred for future tenders till completion of the work.

3. Learned counsel for the petitioner submitted that impugned order dated 15.03.2023 vide Annexure-8 is not after due consideration of petitioner's reply. Obviously, the allegation made by the petitioner is that show cause notice dated 25.11.2022 has been communicated to the petitioner on 13.03.2023 for which the petitioner has submitted his reply on 17.03.2023. In the meanwhile, the impugned order dated 15.03.2023 has been issued. It is further submitted that the competent authority to issue or take action against the petitioner is the Chief Engineer in terms of Bihar Registration of Contractors Rules (Rural Works Department) 2007 notified on 19.12.2007, in particularly, Rule 4(b), the competent authority has been identified as Engineer-in-Chief. Further State Government was permitted to issue Notification.

4. We have come across in one of the case, the State Government has issued Notification by replacing Engineer-in-Chief to that of Chief Engineer.



5. *Per contra*, learned counsel for the respondents submitted that let the matter be remanded to the concerned authority for passing a fresh order after taking note of the above dates and events. In fact, he has disputed insofar as communication of the show cause notice dated 25.11.2022 on 13.03.2023. In other words, petitioner has been communicated the show cause notice dated 25.11.2022 before 13.03.2023. However, in this regard necessary material has not been placed on record.

6. Taking note of these factual matrix and the fact that the impugned order dated 15.03.2023 is bereft of reason and there is a disputed issue relating to whether the Executive Engineer is competent authority or not?

7. Therefore, we set aside the impugned order dated 15.03.2023 (Annexure-8) on the ground of non-speaking order. Accordingly, writ petition stands allowed reserving liberty to the respondents/competent authority to proceed afresh. If the Executive Engineer is not the competent authority, in that event, competent authority shall issue show cause notice to the petitioner afresh and on receipt of the petitioner's reply, proceed to pass a detailed speaking order after due consideration of petitioner's each of the contention to be raised. The above exercise shall be undertaken



within a period of three months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

