

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11375 of 2017

=====

M/s Alectra Construction Ltd., through its director, Mr. Dhananjay Kumar S/o
Anil Singh, New Colony, Dharampur, Ward no-3, Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Road Construction Department, Govt. of Bihar, Vishweshwaraiya Bhawan, Bailey Road, Patna
2. The Engineer-in-Chief, RCD, Govt. of Bihar, Vishweshwaraiya Bhawan, Bailey Road, Patna.
3. The Chief Engineer, RCD, North Bihar at Patna, Govt. of Bihar, Vishweshwaraiya Bhawan, Bailey Road,
4. The Superintending Engineer, RCD, Work Circle, Muzaffarpur.
5. The Executive Engineer, RCD, Road Division, Muzaffarpur-1.
6. The Asst. Engineer, RCD, Works Subdivision, Muzaffarpur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Kumari Rashmi, Advocate Mr. Suresh Pd. Singh No. 1, Advocate
For the State	:	Mr. Swapnil Kumar Singh, AC to GP 19

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 26-04-2023

Heard learned counsels for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“i. For quashing the letter no. 1292 dated 23.06.2017 issued by respondent No. 5, Muzaffarpur-1, by which he has debarred the petitioner from participating in any future tenders, in utter disregard of the order dt. 26.09.2016 in CWJC No.6293/2016 passed by the Honb'le court, by which in the same work and in similar circumstance, when the respondent no.5 has issued debarment order on 20.2.2016, the Honb'le court has been



pleased to quash the order finding lapsed on part of the respondents, holding "In the aforesaid view of the matter, the writ application is allowed and the impugned order dated 20.02.2016 debarring the petitioner is quashed. However, it shall be open to the respondents to take action in accordance with law after the matter is adjudicated by an independent adjudicatory body" and the order is still intact so far as the subject tender is concerned and it has attained finality, as they have complied the order and waved the debarment, thus respondents have no authority to pass the impugned order, As till date no adjudication of the disputes is made by **any independent adjudicatory body** such order cannot be passed, whereas thepreexisting hurdles remained present on works site.

ii. For staying operation of the impugned order dated 23.06.2017 till pendency of the writ application, under specific reason that neither the Executive engineer who is a party to the agreement has got any authority to penalize or pass any coercive.orders unilaterally nor is legal as held in judgment passed in NCC case reported in 2013(1) PLJR page 952, which has even been affirmed by the Honb'le court. Moreover still the pre-existing hurdles are still persisting on work site, and to remove the same is the responsibility of the respondents in which they have failed despite timely information/ representations/reminders, which is the cause of some delay in completion of work, and it was beyond control of the petitioner, thus as per clause of 5.2 of the SBD, they would not had passed the impugned order, hence on this score also, the order impugned may be quashed.

iii. For declaring the impugned order as nonest in the eye of law as none of the reply/representation has been considered before passing the impugned order, which is against the principles of natural justice, even the up-to-date work progress' is not ascertained in presence of the petitioner, rather and under political pressure the impugned order has been passed, which is arbitrary and illegal, and it appears that in predetermined manner the impugned order is passed to harass the petitioner company and to ruin its huge plants and machineries compelling hundreds of staffs and engineers to starve.

iv. For declaring the impugned order as illegal as execution of the work is assigned to the petitioner for widening and strengthening of existing Road of 3.5 Meter to 10 meter (7 Meter Road plus 3 meter flanks in both sides), without acquiring and measuring the lands, without obtaining NOC



from RWD as the road was under DLP with another contractor who has constructed the existing Road up to 3.5 meter going to be widened, without even shifting High Tension Electric Poles and Wires passing just adjacent to 3.5 meter Road, and the respondent took time for shifting the poles till may 2014, thereafter the work allowed to be roceeded but then also the problem of underground cables of Airtel and W.T.T.L arose and due damage caused to their cable, the heavy machines and JCBs were seized by the them, which is an admitted fact, apart from hurdles created by local antisocial elements and Nuxals who demanded levy in case the work is executed by the petitioner, but no protection was provided by the respondents despite repeated requests and reminders, and all these hurdles delayed execution of the work, which cannot be said deliberate delay for which the impugned could be passed, even till date more than 85% work is completed under such Nuxal threats which is evident from memo no. 2065 dt.1.12.2014 written by the respondent themselves to the DM, S.P. and SHO to provide protection, due to which no work was executed after 4 PM till 10 AM, and execution of became slow, which is not fault of the petitioner nor for the same petitioner may be debarred time and again, which has civil consequences, moreover to provide clear and safe site is the responsibility of respondents, in which they have failed, hence in any view of the matter order of debarment could not be said justified or proper, hence the impugned order and its any consequential order affecting the petitioner company adversely may be held be illegal and nullified, directing the respondents to provide clear and hindrance free site, so that the timely completion of the work may be made.

v. For directing the respondent No. 5 not to disqualify or cancel any the other tenders submitted or going to be submitted by the petitioner in future.

vi. For granting any other relief/s for which the petitioner be found entitled in the eye of law.”

3. Reliefs sought by the petitioner do not survive for consideration in view of later development to the extent that the petitioner has completed his work. Thereafter, his name has been removed from the debar list. If any claim is due to the petitioner, he is at liberty to approach the concerned authority.



4. With the above observation, writ petition stand disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2023
Transmission Date	NA

