

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17831 of 2016

Engineering Projects India Ltd. (A Government of India Enterprises) having its Head Office at 43, Scope Complex, Lodi Road, New Delhi-110003 & Local Office at Flat No.202, R.S. Villa, Behind Rajeshwar Hospital, Kankarbagh, P.S.-Kankarbagh, District- Patna-800020.

... .. Petitioner/s

Versus

1. The Bihar Police Building Construction Corporation (Undertaking of Bihar Govt.), Kautilya Nagar, Patna-14 through its Director General of Police-cum-Chairman-cum-Managing Director.
2. The Director General of Police-cum-Chairman-cum-Managing Director, Bihar Police Building Construction Corporation (Undertaking of Bihar Govt.), Kautilya Nagar, Patna-14.
3. The Chief Engineer, Bihar Police Building Construction Corporation (Undertaking of Bihar Govt.), Kautilya Nagar, Patna-14.
4. The Superintending Engineer, Bihar Police Building Construction Corporation (Undertaking of Bihar Govt.), Kautilya Nagar, Patna-14.
5. The Executive Engineer, Rajgir Division, Bihar Police Academy Office, Chhabilapur Road, Rajgir-803116.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Vikas Kumar, Advocate
For the Respondent/s : Mr.Prasoon Sinha, Advocate

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

Date : 19-05-2023

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. In the instant petition, the petitioner is challenging the order contained in memo no.5163 dated 01.12.2015 issued by the Chief Engineer, Bihar Police Building Construction Corporation (hereinafter referred as 'Corporation') whereby and whereunder the petitioner has been debarred from participating



in any future tender of the Corporation due to non-completion of Bihar Police Academy, Rajgir.

3. Brief facts of the case, according to the petitioner, are that the Corporation floated a tender for construction of Bihar Police Academy (Administrative etc., Civil, Electrical, PHED and other works including Green Building related works) at Rajgir. Pursuant to the said advertisement, the petitioner participated in the said tender process and he was declared successful. Accordingly, the aforesaid work was allotted to the petitioner and the agreement was executed between the petitioner and the Corporation for execution of aforesaid work on 15.02.2012. The work commencement order was also issued by Executive Engineer on 15.02.2012 itself. As per the aforesaid agreement, the completion period of the work was 30 months and the completion date was 14.08.2014. There happened to be some non-cooperation on the part of the respondent authorities and they were not acting as per the terms of the agreement, the work could not be completed and the contract period was also coming to an end, the petitioner by filing an application dated 01.08.2014 prayed for extension of time mentioning all the issues in details. Thereafter, on 08.01.2015 under the supervision of Chief Engineer of the Corporation, the work was



supervised and concurrence was given for approval of time extension, but the respondent authority did not adhere to the aforesaid decision and approval. As the extension of time was not given, the petitioner vide letter dated 04.03.2015 made request to the Chief Engineer of the Corporation for extension of time till 14.08.2015. Pursuant to the said letter, the Corporation vide letter dated 20.03.2015 granted the extension of time to the petitioner to complete the work before 14.08.2015. When the work was in progress and the petitioner was facing several problems in execution of works, he made several requests to the respondent authorities but they were paying no heed. All of a sudden, the Chief Engineer vide letter no. 4844 dated 03.11.2015 issued show-cause notice to the petitioner as to why he be not debarred from future tender and also to terminate the contract agreement. Further the Executive Engineer vide letter no. 1043 dated 06.11.2015 issued show-cause notice to the petitioner as to why in terms of Clause 3 of the contract agreement, steps should not taken to terminate the agreement. Pursuant to the aforesaid notices, the petitioner filed his show-cause reply vide letter dated 19.11.2015 giving the details of the problems which it was facing in execution of the work. At the same time, it also made request to grant him



extension of time for further 12 months so that the work may be completed. But surprisingly the petitioner received an order contained in memo no. 5163 dated 01.12.2015 (Annexure 1) by which the Chief Engineer of the Corporation debarred him from participating in future tender till completion of the work. Thereafter, the petitioner vide letters dated 10.12.2015 and 21.12.2015 addressed to the Chief Engineer of the Corporation made a detailed representations mentioning all the facts and requested him to recall the debarment order, but the respondent authorities did not accede to the request. Being aggrieved, the petitioner filed the present Writ.

4. The learned counsel for the petitioner submitted that there is no provision in the agreement or any other law which empowers the Respondent authority to debar the petitioner from participating in future tender. The learned counsel further submitted that there is a serious breach of agreement on the part of the respondent authorities due to which the petitioner could not adhere to the time schedule mentioned in the agreement. The learned counsel further submitted that due to the aforesaid debarment, the petitioner is facing serious problems on day to day working as there are other tenders/bids in which the petitioner has participated and it has serious apprehension that



due to the said debarment, its technical bid may be rejected on this ground. The learned counsel further submitted that the aforesaid order of debarment is prejudicially causing great hardship in day to day working. The action of the Respondent authorities is arbitrary, malafide and illegal.

5. On the other hand, learned counsel for the respondents submitted that admittedly the agreement was executed by the petitioner and the Corporation on 15.02.2012 and the work commencement order also was issued by the Executive Engineer of the Corporation on the same day i.e. 15.02.2012 itself. As per the aforesaid agreement, the completion period of the work was of 30 months and the completion date was 14.08.2014. However, the petitioner himself after having considered the pros and cons of the entire matter requested the Corporation for extension of the period for completing the work up to 14.08.2015 by its letter dated 04.03.2015 which contains the undertaking given by the petitioner mentioning categorically the time schedule for completion of the buildings in question. It has been assured that 11 buildings would be completed by 15.05.2015, 05 buildings would be completed by 15.06.2015 and 04 buildings would be completed by 15.07.2015 i.e. the total number of 20 buildings would be completed by



15.07.2015. It was categorically stipulated that structural work, brick work, under flooring work, plaster work and finishing work of remaining 22 buildings would be completed by August, 2015. However, the petitioner did not complete even a single building till 01.12.2015 and completely failed to comply with aforesaid undertaking. The learned counsel further submitted that even after lapse of 45 months, the work remained incomplete which shows that the petitioner has no seriousness and interest in completing the works of Bihar Police Academy as per the provisions of the agreement and, as such, the Corporation was compelled to take the decision of debarring the petitioner under the provisions of the Bihar Contractor Registration Rule, 2007. Thus, learned counsel submitted that the order of debarment is proper and in terms of the agreement and Contractor Registration Rules. Hence, this writ application is devoid of any merit and is liable to be dismissed.

6. Having considered the material available on record and further considering the pleadings and submissions, it appears that in terms of the agreement dated 15.02.2012, the petitioner was required to complete the contractual works by 14.08.2014, i.e., within thirty months, but after lapse of about three years and nine months, he did not complete the said



contractual work in spite of several directions/instructions as stated above. Thereafter, the respondent-department took the decision to debar the petitioner from participating in any future tender vide order dated 01.12.2015. Even prior to issuance of the aforesaid order dated 01.12.2015, the petitioner had been warned in writing by letter no.691 dated 15.07.2015 and letter no.1043 dated 06.11.2015 issued under the signature of the Executive Engineer, Rajgir Division. Besides the aforesaid two letters, a show cause notice was issued separately under the signature of the Chief Engineer of the Corporation vide letter dated 03.11.2015 before issuing the order of debarment dated 01.12.2015. The petitioner submitted its reply vide letter dated 19.11.2015 which was examined by the Corporation and, thereafter, the order of debarment was issued on 01.12.2015 in terms of provisions of Contractor Registration Rules, 2007 as well as different clauses of the agreement.

7. It is relevant to quote the impugned order dated 01.12.2015 for ready reference.

"मुख्य अभियंता का कार्यालय,
बिहार पुलिस भवन निर्माण निगम,
कौटिल्य नगर पटना -14.
सकारण आदेश

आदेश संख्या- -दिनांक-2015



बिहार पुलिस एकेडमी राजगीर के निर्माण कार्य का कार्य आदेश रु० 181.45,42,657 / (एक मी एकासी करोड पैतालीस लाख बेयालीस हजार छ सो संतावन रूपये) की राशि पर कार्यपालक अभियंता, बिहार पुलिस भवन निर्माण निगम के पत्रांक 150 (अनु०) दिनांक-15-02-2012 द्वारा मेसर्स ई०पी०आई०एल० (भारत सरकार का उदयम) को ई-टेन्डरिंग द्वारा न्यूनतम निविदाकार होने के आधार पर किया गया था। इस कार्य का एकरारनामा संख्या -1 एफ 2/3 ऑफ 2012 है। एकरारनामा के अनुसार कार्य प्रारंभ की तिथि 15-02-2012 एवं कार्य समाप्ति की तिथि 14-08-2014 थी।

(2) कार्य की प्रगति एकरारनामा की अवधि में भी काफी धीमी रही है, जिसके लिये मेसर्स ई०पी०आई०एल० को बिहार पुलिस भवन निर्माण निगम द्वारा कार्य में प्रगति लाने हेतु लगातार प्रयास किया गया।

(3) मुख्य सचिव के स्तर पर दिनांक 09-01-2014 को मेसर्स ई०पी०आई०एल० के अध्यक्ष-सह-प्रबंध निदेशक एवं उनके वरीय पदाधिकारियों के साथ कार्य की प्रगति की समीक्षा की गई, जिसमें मेसर्स ई०पी०आई०एल० द्वारा दिनांक -14-08-2014 तक कार्य पूरा करने का लिखित आश्वासन दिया गया था। जिसका उल्लेख कार्यवृत्त जो पत्रांक- 728 दिनांक- 29-01-2014 द्वारा निर्गत है, में किया गया है। फिर भी कार्य 14-08-2014 तक पूरा नहीं किया गया।

(4) ई०पी०आई०एल० द्वारा कार्य को पूरा करने के लिये उनके पत्रांक - EPI/ERsite/685/ BPBCC/002 दिनांक-04-03-2015 द्वारा दिनांक-14-08-2015 तक समयवृद्धि की मांग की गयी, जिसमें उनके द्वारा सभी भवनों को पूरा करने का लिखित (Undertaking दिया गया है। मेसर्स ई०पी०आई०एल० के इस पत्र के आलोक में उच्च स्तरीय समीक्षा की गई। इस संबंध में कार्यवृत्त गृह (आरक्षी) विभाग का पत्रांक-2018. दिनांक-23-03-2015 के द्वारा निर्गत किया गया है।

मेसर्स ई० पी० आई० एल० के पत्रांक EPIERsite 685 / BPBCC/1002 दिनांक-04-03-2015 द्वारा दिये गये लिखित कार्यक्रम एवं अन्डरटेकिंग के आधार पर एवं मेसर्स ई०पी०आई०एल० जो भारत सरकार का उदयम है, के लिखित अन्डरटेकिंग को आधार मानते हुये निगम के पत्रांक - एव०क्यू०- 1667 दिनांक 20-03-2015 द्वारा दिनांक - 14-08-2015 तक समयवृद्धि दी गई।

(5) निगम के राजगीर प्रमंडल के कार्यपालक अभियंता द्वारा एकरारनामा के विहित प्रावधान के अधीन अप्रत्याशित बिलंब की स्थिति में उनके पत्रांक 191 दिनांक-16-07-2015 एवं पत्रांक-1043 दिनांक-06-11-2015 द्वारा ई०पी०आई०एल० को कारण बताओ नोटिस दी गई है। पुलिस निगम के पत्रांक-एचक्यू - 4844 (अनु०) दिनांक-03-11-2015 द्वारा एकरारनामा के प्रावधान के तहत कार्रवाई हेतु मेसर्स ई०पी०आई०एल० को दिनांक 15-11-2015 तक जबाबदेने के लिये कारण बताओ नोटिस निर्गत की गई है।

(6) मेसर्स ई०पी०आई०एल० द्वारा पत्रांक - EPI/ERsite/685/BPBCC/1002



दिनांक-19-11-2015 द्वारा उत्तर दिया गया है जिसके अनुसार कार्य पूरा करने के लिये ई०पी०आई०एल० द्वारा 12 (बारह) महीने का समय की मांग की गई है।

इस प्रकार कार्य प्रारंभ की तिथि 15-02-2012 से अभी तक लगभग 03 वर्ष 09 महीने का समय गुजर चुका है, जबकि कार्य को 14-08-2014 तक ही (21 वर्ष में) पूरा कर देना था। पुन इनके द्वारा 12 महीने के समय का मांग किया जा रहा है, जो उनके कार्य के प्रति लगातार अरुचि एवं उदासीनता को दर्शाता है।

उपरोक्त तथ्यों से स्पष्ट है कि कार्य को पूरा करने में अप्रत्याशित निलंब एवं अनावश्यक पत्राचार द्वारा निगम का बहुमूल्य समय एवं संसाधन नष्ट किया गया। सम्युक्त विचारोपरान्त मेसर्स ई०पी०आई०एल० को बिहार पुलिस एकेडमी, राजगीर के कार्य पूरा नहीं करने के कारण अगली निविदा में भाग लेने से बचित (डिबार) किया जाता है।

ह 0/- मुख्य अभियन्ता

ज्ञापांक- 5163 /पटना, दिनांक- 01/12/2015

प्रतिलिपि- मेसर्स ई०पी०आई०एल०, कोर-3, स्कोप कम्पलेक्स, लोधी रोड, नई दिल्ली-110003, फैक्स-9111-24363426 को सूचनार्थ।

ह 0/- मुख्य अभियन्ता"

8. In the light of discussions made here-in-above, it is apparent that the petitioner has attributed the delay in execution of work to the acts of the respondents like not providing designs on time and further not paying any heed to the request made by the petitioner in this regard. No doubt, the petitioner undertook to abide by the stipulated time limit and the respondent authorities issued two show cause notices dated 03.11.2015 and 06.11.2015 for debarring the petitioner from future work and terminating the contract. A detailed reply to the show cause notices was furnished by the petitioner wherein it submitted that the desired progress could not be achieved due to various



reasons not attributable to the petitioners and it enumerated the major reasons in detail in its reply to the show cause notices and sought time of 12 months for completing the project.

9. The reasoned order dated 01.12.2015 of the Chief Engineer does not take into consideration the reply submitted by the petitioner. Calling for show cause and not considering the same while passing the order makes such exercise only an empty formality. This goes against various judicial pronouncements of the Hon'ble Apex Court, i.e., in the cases of ***UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Anr.***, reported in ***(2021) 2 SCC 551***, ***Isolators and Isolators through its Proprietor Mrs. Sandhya Mishra Vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. and Anr.***, reported in ***2023 LiveLaw (SC) 330*** and ***M/s Chauhan Builders Raibareli Vs. The State of Uttar Pradesh and Ors.***, reported in ***2022 LiveLaw (SC) 694***.

10. In the light of these facts and circumstances and law laid down by the Hon'ble Apex Court, the petitioner has made out a *prima-facie* case so as to interfere with the impugned order dated 01.12.2015 passed by the Chief Engineer of the respondent-Corporation

11. Accordingly, the impugned order dated 01.12.2015,



passed by the Chief Engineer, of the respondent-Corporation is set aside.

12. This writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	11.05.2023
Uploading Date	19.05.2023
Transmission Date	NA

