



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1594 OF 2024

K & J PROJECTS PRIVATE LIMITED

Vrs.

NATIONAL HIGHWAYS AUTHORITY OF INDIA AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R. D. Bhuibhar, Advocate for petitioner.
Shri A. A. Kathane, Advocate for respondent Nos. 1 to 5.

**CORAM: NITIN W. SAMBRE AND
ABHAY J. MANTRI, JJ.**

DATE : 01/04/2024.

P. C. :

1. Heard.
2. The challenge in the petition is to the debarment order dated 23/02/2024 whereby the petitioner - consultant was said to have committed misconduct in preparation of Detailed Project Report (DPR) in contravention of contract agreement and as such, was debarred for a period of one year for the future work in the NHAI from the date of said order in terms of clause 7.4.2 of the General Conditions of Contract of Consultancy Agreement. The petitioner was also saddled with the penalty of Rs.50,00,000/- (Rs.Fifty Lakhs) in terms of Para 7.3 i.e. penalty for violation of the General Conditions of Contract Agreement.

3. Before passing of the aforesaid impugned order, the petitioner was served with the show cause notice dated 22/06/2023. The said notice incorporates Clause-6, which reads thus :-

"6. Whereas as per clause 7 of the Consultancy Agreement you are fully responsible for the accuracy of the design and drawing of the bridges and structures and it further mentioned that the consultant shall indemnify the client against any inaccuracy / deficiency in the design and drawings of the bridges and structures noticed during the construction and even thereafter and the client shall bear no responsibility for the accuracy of the design and drawings submitted by the Consultant."

4. Based on the aforesaid, the petitioner was called upon to explain why the action should not be initiated against him for dereliction of obligation under the Contract Agreement.

5. The petitioner accordingly was saddled with debarment order for a period of one year and as such, this petition.

6. The contention of the learned counsel appearing for the petitioner is that no doubt, the conditions of General Agreement, particularly

Clause (7.3) onwards provides for penalty, penalty for delay, action for deficiency in service, warning / debarring. According to him, whatever action respondents intends to initiate / propose shall be mentioned in the show cause notice. According to him, the show cause notice not only should contain imputation of allegation against the petitioner but also, the proposed action to be initiated against the petitioner.

7. It is urged that even though there is show cause notice, what was proposed, in the show cause notice above, the action to be initiated against the petitioner is to the extent of calling upon the petitioner as to why action should not be initiated against him for dereliction of obligation under the Contract Agreement. He would claim that the petitioner was put to notice to the extent of action to be taken against the petitioner for dereliction of obligation under the Contract Agreement and such vague term proposed in the show cause notice cannot be said to be a specific notice and the punishment proposed against the petitioner.

8. Shri Bhuihar, learned counsel so as to substantiate the contention has relied upon the Judgment of the Hon'ble Apex Court in the case of Gorkha Security Services Vrs. Government (NCT of Delhi) and others, reported in (2014)9 SCC 105, particularly Paragraph 21. He would claim that the show cause notice does not speak of imposing the punishment so also

saddling the penalty on the petitioner and as such, there is denial of opportunity of hearing.

9. As against above, Shri Kathane, learned counsel appearing for the respondent Nos.1 to 5 would urge that show cause notice contains entire penalty alleged against the petitioner. According to him, once the show cause notice is given and an opportunity to reply to the show cause notice is offered, there is no necessity to oral hearing of the petition. His further contentions are even if the particular penalty or action is proposed to be taken, it is not necessary to mention the proposed action to be taken against the parties or defaulter like petitioner, if same cannot be discerned from the contents of the show cause notice. He would draw support Paragraph 22 of the said Judgment.

10. We have considered the rival claims.

11. The fact remains that the show cause notice issued to the petitioner on 22/06/2023 contains the entire details of allegations against the petitioner. Such allegations according to the respondents, as he sought to be canvassed during the course of oral argument the provisions of Clauses 7.3 and 7.4 in the matter of levying penalty and order of debarring.

12. Even if the aforesaid General Conditions of Agreement are said to be attracted in the case in hand, what is provided by the respondents in the show cause notice is allegation of dereliction of the obligation under the Contract Agreement and the decision of the respondents to initiate appropriate action against the petitioner.

13. The fact remains that the order which is passed against the petitioner is two-fold viz. (i) that the fine of Rs.50,00,000/- is imposed and (ii) that the petitioner is debarred for a period of one year.

14. No doubt, the oral opportunity may not be necessity in the facts and circumstances of the present case, but in the given situation, particularly when the respondents intend to impose two-fold penalty against the petitioner, one is debarring and another of saddling the penalty the least expected of respondents is to issue specific show cause notice containing proposed punishment to that effect thereby proposing the punishment. The vague and general wordings are used in the show cause notice against the petitioner of initiation of action against the petitioner as per the general conditions of agreement.

15. In our opinion, the use of wordings or the wordings employed in the show cause notice are not sufficient enough to satisfy whether it is

incorporated or prescribed in Paragraph 21 of the Judgment of the Hon'ble Apex Court in the matter of Gorkha Security Services cited supra.

16. The show cause notice in categorical terms warrants the requirement of the action stating the action to be proposed against the parties like the petitioner. The same is with an intention to know parties like the petitioner to understand the case against him. No doubt, the breaches and defaults so also the imputations are contained in the show cause notice, however, the nature of action which is proposed to be taken for such breaches is categorical and conspicuously absent in the show cause notice.

17. The Apex Court in the aforesaid Judgment particularly in Paragraph 21 in categorical terms made observations for debarring or blacklisting the parties, like the petitioner. The show cause notice proposed the said punishment against the parties like the petitioner in which show cause notice is more imperative as the harsh punishment is sought to be imposed against the party.

18. In the aforesaid background merely because the show cause notice in detail contains the imputations and the allegations which are found to be basis for taking a decision of imposing punishment on the petitioner was mentioned, that by itself will not satisfy the very requirement of informing the petitioner of the punishment proposed against him.

19. That being so, the contention raised by the counsel for the respondents that there is sufficient compliance cannot be accepted.

20. That being so, we deem it appropriate to allow the petition thereby quashing the impugned order dated 23/02/2024 whereby the petitioner was debarred and penalty of Rs.50,00,000/- was saddled on him.

21. We deem it appropriate to grant fresh opportunity to the respondents to issue show cause notice to the petitioner thereby proposing the action to be taken against him and after giving him reasonable opportunity, without being influenced by the finding recorded. It shall be open for the respondents to pass fresh order in accordance with law.

22. Petition is partly allowed.

[ABHAY J. MANTRI, J.]

[NITIN W. SAMBRE, J.]

Choulwar