



\$~72

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 15218/2024 & CM APPL. 63910/2024**

PANKAJ KUMAR

.....Petitioner

Through: **Mr. R.K. Kapoor and Ms. Akriti
Kapila, Advs.**

versus

NATIONAL HIGHWAY AUTHORITY OF INDIARespondent

Through: **Mr. Santosh Kumar, SC with Mr.
Devansh Malhotra, Advocate.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

18.12.2024

%

1. The Petitioner, an engineer by profession, is registered as a consultant with 'INFRACON' portal established under the aegis of Ministry of Road Transport & Highways¹. The Petitioner was appointed as the Team Leader cum. Sr. Bridge Engineer by Rodic Consultants Pvt. Ltd., for consultancy services for the Authority's Engineer in relation to the project of 'Construction of Four-Lane Greenfield Amritsar Connectivity'.
2. Through the instant writ petition, the Petitioner challenges the circulars dated 29th July, 2024, read with circular dated 18th October, 2024², issued by the Respondent – National Highway Authority of India³, debarring the Petitioner by from being engaged in any NHAI/ MoRTH projects for a period of one year. The impugned circular dated 29th July, 2024, reads as follows:

¹ "MoRTH"

² "Impugned circulars"

³ "NHAI"



“NHAI/PIU/ASR/DAK/AC/Pkg-I/Eoffice-187468

29.07.2024

CIRCULAR

Sub: *Debarment of Mr. Pankaj Kumar from engagement in any NHAI/MORTH/NHIDCL projects for a period of 03 years-reg.*

It is brought to the notice of all division / Units of NHAI that Mr. Pankaj Kumar was selected as Team Leader cum Senior Bridge Engineer with M/s Rodic Consultants Pvt. Ltd. in JV with M/s G ENG Advisory Services Pvt. Ltd., for the work "Construction of four-lane Greenfield Amritsar connectivity for Connection of Amritsar with Delhi-Amritsar-Katra Expressway from Junction with Kapurthala-Sultanpur Lodhi road (NH-703A) near Isharwal village Ch.24+000 to MDR Junction at Ch. 40+900 Dhunda Village on EPC mode under Bharatmala Pariyojana in the State of Punjab "under PIU Amritsar, NHAI.

2) *Mr. Pankaj Kumar (the then Team Leader) issued a letter to the Contractor dated 18.09.2023 wherein he had approved the construction of COS Works without the approval of Authority stating that he shall release the payment as per Schedule-H and any variation shall be released after approval of the COS. The Authority had taken cognizance of the same and immediately ordered the Contractor to stop any COS works before approval of thei Competent Authority.*

3) *The then Team Leader, Sh. Pankaj Kumar has accordingly been removed and replaced after due approval of the Competent Authority. It is also to mention that Sh. Pankaj Kumar Ex-Team Leader also has a history of Non-performance in the past and letters have been issued by PIU Mandi, NHAI in November 2020 for his replacement citing inefficiency and delays in work in the project i.e. "Four Laning of Takoli-Kullu section of NH-21 in the state of Himachal Pradesh".*

4) *Therefore, Competent Authority, NHAI has approved debarment of Mr. Pankaj Kumar from being engaged by any other consultant working (or to be appointed) for any other NHAI / MORTH projects as per Contract Agreement and NHAI policy circulars for the period of 03 Years from the date of issuance of this circular.*

5) *The brief details of Mr. Pankaj Kumar are as under:*

<i>Name of Personnel</i>	<i>Date of Birth</i>	<i>Education Qualification</i>	<i>Infracon Email ID</i>
<i>Mr. Pankaj</i>	<i>08/12/1966</i>	<i>B.Tech Civil Engineering,</i>	<i>pankajhiya@yahoo</i>



Kumar		1991	o.com
-------	--	------	-------

Copy of CV is enclosed herewith.

6). *This is issued with the approval of Competent Authority.*

Sd/
(Anuj Kumar Jain)
General Manager (Tech)
Haryana & Punjab Division

3. The Petitioner urges that he has never granted any independent sanction for Change of Scope⁴ works. Instead, the letter dated 18th September, 2023, mentioned in the circular above, explicitly referenced the relevant clause of the Contract Agreement and reiterated that no variation of work could be implemented without express clearance from the Competent Authority. Thus, the Petitioner contends that NHAI's interpretation is flawed and that the punitive measure of debarment, is unwarranted and disproportionate.

4. The Court has heard the counsel for the parties. The basis for the debarment has been spelt out in Paragraph nos. 2 & 3 of the circular extracted above. It is thus clear that as per NHAI, the cause of action for debarment was the Petitioner's letter dated 18th September, 2023, which, according to NHAI, wrongly gives approval for CoS works, without the necessary approval of the Authority – i.e., NHAI. Therefore, in order to appreciate the contentions of the parties, it is apposite to refer to the communication dated 18th September, 2023 issued by the Petitioner, which reads as follows:

⁴ "CoS"



RC-1613-SO-HWB-RD-LTR-0119

Dated: 18th September 2023

To,
The Project Manager
M/s S.P. Singla Constructions Pvt. Ltd.
Vill. & P.O. Talwandi Chaudharian,
Tehsil – Sultanpur Lodhi, Distt. Kapurthala
Punjab-144626

Kind Attn: Sh. Kishor Roy

Sub.: - Construction of four-lane Greenfield Amritsar connectivity for Connection of Amritsar with Delhi-Amritsar-Katra Expressway from Junction with Kapurthala –Sultanpur Lodhi road (NH-703A) near Isharwal village Ch. 24+000 to MDR Junction at Ch. 40+900 Dhunda Village on EPC mode under Bharatmala Pariyojna in the state of Punjab- Undertaking of works by the Contractor without the Approval of Change of Scope, pursuant to Article 13, Clause 13.2 (v)

Ref:

I. Authority

i) Nil

II. Authority's Engineer

i) RC-1613-SO-HWB-RD-LTR-0101, Dated 29th August 2023

III. Contractor

i) Nil

Dear Sir,

This has reference to Article 13, Clause 13.2(v) of Contract Agreement which states that *the Contractor shall not undertake any Change of Scope without the express consent of the Authority*”.

In the above connection, the Authority's Engineer state that the Contractor can proceed with the Construction works, with the understanding that the Payments shall be released as per Schedule-H of Contract Agreement.

In view of the above, the Authority's Engineer also inform the Contractor that Variations in the cost of Construction shall be calculated as per provisions of Contract Agreement and adjusted after the approval of COS proposal by the competent Authority.

Thanking you
Yours Sincerely

5. In light of the above, in the opinion of the Court, the impugned action of debarring the Petitioner from all NHAI/MoRTH projects is not sustainable, as it is based on a misconstruction of the aforementioned communication dated 18th September, 2023 issued by the Petitioner. This is for two reasons, firstly, the aforementioned communication categorically refers to Article 13, Clause 13.2(v) of the Contract Agreement and expressly states that the contractor shall not undertake any CoS without the express consent of the authority. Secondly, in the concluding paragraphs of the



communication, the Petitioner even clarified that payments for any variations would be reconciled only after the Competent Authority approved the CoS proposal. By reiterating the primacy of NHAI's sanction, the Petitioner's letter guarded against any unilateral departures from established protocols. Thus, considering the plain and direct language of the aforementioned communication, the Court finds no legitimate basis for the Respondents' conclusion that the Petitioner sanctioned CoS works unilaterally.

6. It must also be noted that the impugned circular dated 29th July, 2024, also refers to the past actions of the Petitioner. In this regard, it is not in dispute that previously no punitive action, especially one as serious as debarment was taken against the previous actions of the Petitioner, which have now been relied upon to justify the present debarment. In any event, each cause of action has to be appreciated and evaluated on its own merits and the present debarment action is premised on the communication of 18th September, 2023, which as observed above, has been misconstrued by the Respondent.

7. Moreover, it must be noted that no prior show cause notice was issued to the Petitioner, before the impugned debarment circular dated 29th July, 2024 was issued by the Respondent. On this issue, Mr. Santosh Kumar, counsel for Respondent, has pointed out that after the decision of debarment was initially taken on 29th July, 2024, the Petitioner furnished representations which were duly considered and the period of debarment was reduced from three years to one year, as specified in the subsequent impugned circular dated 18th October, 2024. The Court notes that while this may be step in the right direction, however, this post-decisional softening does not cure the initial procedural defect. The principles of natural justice



judicially recognized in matters relating to blacklisting / debarment are well-established. The Petitioner should have been given an opportunity to present his side before the hammer of debarment fell on him.

8. Lastly, it must be observed that Petitioner was employed as a Team Leader for the project by M/s Rodic Consultants, which was the entity to whom the consultancy services for the project work was awarded. On this aspect, Mr. Santosh Kumar points out that the Team Leader's position is approved by NHAI. While that be true, the penalty inflicted upon him, of personally excluding him and not the Consultant raises questions about the proportionality and reasonableness of the remedy chosen. The impugned action has the effect of denying a professional an opportunity of employment, without any substantive basis.

9. In light of the above, present writ petition is allowed and the impugned circular dated 29th July, 2024, read with circular dated 18th October, 2024 is hereby quashed.

10. Accordingly, pending application also stands disposed of.

SANJEEV NARULA, J

DECEMBER 18, 2024

as