
(2019) 10 JH CK 0007
In the Jharkhand High Court
Case No : Writ Petition (C) No. 766 Of 2016

M/S Kalawati Builders

APPELLANT

Vs

National Project Construction Corporation Limited And Ors

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 10 JH CK 0007

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Sunil Kumar Sinha, Sarvesh Kumar Verma

Final Decision : Disposed Of

Judgement

1. This writ petition is under Article 226 of the Constitution of India for quashing of the order as contained in Ref. No. 133017/PMGSY/1593 dated 29.01.2016 passed by Zonal Manager, National Project Construction Corporation Limited-respondent no. 2, whereby and whereunder the Agreement No. NPCC/J20/PMGSY/Agg/146 dated 04.03.2014 executed between the petitioner and NPCC has been terminated and performance security deposited has been forfeited and petitioner has been blacklisted and debarred from further participation in any tender of M/s NPCC Limited for three years from the date of issuance of the letter.

2. It is the case of the petitioner that pursuant to the Notice Inviting Tender, the petitioner participated in the tender process for consideration of his candidature for execution of work, in which, he has been found successful and accordingly, work has been allotted in his favour in terms thereof, letter of acceptance has been issued and agreement has been executed in between the petitioner and the respondents. Thereafter, the petitioner has started execution of the work but in course of its execution, hindrance has come from the anti-social element, the terrorist group of P.L.F.I, which resulted even into death of the brother of the petitioner and one local people, who has been engaged to look after the work, which led the petitioner to represent before the authority vide application dated

22.04.2015 stating therein the entire fact with a request for closure of the contract, disbursement of the money to the extent as per the execution of the work as also for refund of the earnest money but according to the petitioner instead of taking decision thereupon the authorities has come out with an order by which, forfeiture of the earnest money has been ordered. Apart from that the petitioner has been blacklisted for a period of three years vide order dated 29.01.2016 (Annexure 5).

3. Learned counsel for the petitioner by referring to Condition No. 24 of the terms of the contract, which contains a condition about 'Dispute Redressal System' and as such when the petitioner has made a request for closure of the contract showing therein the reason about non-execution of the work, the said grievance has to be referred before the 'Dispute Redressal System' before taking such decision but having not done so, the respondents-authorities have violated the terms of the contract, which equally is binding upon the respondents-authorities.

4. Further submission has been made that the order of blacklisting has been passed without issuance of any notice and even for blacklisting a period three years, issuance of show cause is necessary because blacklisting casts a stigma upon the person against whom the order of blacklisting is being passed.

5. Mr. Sarvesh Kumar Verma, learned counsel for the respondents by putting reliance upon the averments made in the counter affidavit filed on their behalf has raised the issue of maintainability of the writ petition in view of availability of Dispute Redressal System and to that effect specific stand has been taken at paragraph 9 of the counter affidavit, which reads as under:

"9. That in the light of the provision in contract agreement this writ petition is not maintainable before this Hon'ble Court and the writ petition may kindly be dismissed with direction to the petitioner to approach before the empowered standing committee for redressal of his grievance and the Dispute Redressal Committee will consider the matter objectively and the writ petition may kindly be dismissed accordingly because the petitioner has not approached the authority in terms of the agreement."

6. He further submits that the order of blacklisting since was for a period of three years and the said period of three has already crossed, therefore, the order of blacklisting has lost its force.

7. In response, learned counsel for the petitioner has submitted that so far as the issue of blacklisting is concerned, he has been instructed that order of blacklisting has been recalled by the authorities concerned but his contention is that against the decision taken by the authorities about forfeiture of the earnest money and non-disbursement of the amount, which has been incurred in execution of the part of the work, the petitioner has made an application. It was incumbent upon the authorities to refer the same as per the condition, as contained in condition no. 24.1 of the terms of contract wherein it has mentioned

to refer the the matter for settlement to the competent authority within 45 days of arising the dispute or difference, but having not done so the respondents-authorities have failed in discharging their duties to be performed on their part.

8. This Court, after having heard learned counsel for the parties and considering the stand taken by the respondents-authorities taken at paragraph 9 of the counter affidavit, is of the view that since the petitioner has raised the issue about hindrance which has occurred in execution of the work and as such in view of the terms of the contract, as contained in condition no. 24.1 of the terms of contract, it was incumbent upon the authority to refer before the Dispute Redressal Committee for adjudication of the dispute but having not done so the authorities have failed to discharge their contractual obligation as has been arrived at between the parties and to that effect specific stand has been taken at paragraph 9 of the counter affidavit.

9. In view of such stand having been taken by the respondents, this Court is of the view that application, which has been submitted by the petitioner dated 22.04.2015 is required to be referred before the competent authority in terms of the contract as contained in condition no. 24.1 of the terms of contract.

10. Accordingly, the authorities are directed to decide the said claim by taking decision in accordance with law within a period of two months from the date of receipt of copy of this order.

11. With the aforesaid observations and directions, the writ petition stands disposed of.