

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 3952 of 2021

A2Z INFRA ENGINEERING LTD, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at O-116, First Floor, Shopping Mall, Arjun Marg, D.L.F. City, Phase – I, P.O. & P.S. – DLF Phase-I, Gurugram – 122002, Haryana, represented through its duly Authorised Signatory, Sh. Vikas Vij, S/o Bal Krishan Vij, aged about 49 years, R/o A-1405, JM Orchid, Sector-76, Noida, P.O. & P.S. sector-76, Gautam Buddha Nagar, Uttar Pradesh.

.....Petitioner

Versus

1. Jharkhand Urja Sancharan Nigam Limited (A Government of Jharkhand Enterprises) through its Managing Director, Ranchi having its office at 2nd Floor, JUSNL, (SLDC) Building Kusai Colony, P.O. & P.S. Doranda, Doranda, Ranchi-833202, Jharkhand.
2. The General Manager, Contracts & Materials (Non W.B. Projects), Jharkhand Urja Sancharan Nigam Ltd., 2nd Floor, JUSNL (SLDC) Building, Kusai Colony, P.O. & P.S. Doranda, Doranda, Ranchi-833202, Jharkhand.
3. The State of Jharkhand Through its Principal Secretary, Department of Energy, Having its office at, Nepal House, P.O. & P.S. Doranda, Doranda, Ranchi-834001, Jharkhand.

.....Respondents

CORAM: SRI SANJAYA KUMAR MISHRA, C.J.
SRI ANANDA SEN, J.

For the Petitioner: Mr. Ajit Kumar, Sr. Advocate
Mr. Mayank Mohit Sinha, Advocate
For Resp.1&2: Mr. Sachin Kumar, Sr. S.C. (JUVNL)
For Resp.3/State: Mr. Piyush Chitresh, A.C. to A.G.

10/Dated: 17.05.2023

Upon hearing the learned counsel for the parties, this Court passed the following, (Per Sanjaya Kumar Mishra, C.J.)

ORDER

1) By preferring this writ application under article 226 of Constitution of India, the petitioner seeks issuance of writ in the nature of certiorari and also mandamus and quashing of the show-cause notice dated 13.08.2021 (Annexure 14), the reminder impugned show-cause notice dated 30.09.2021 (Annexure 16) and the impugned letter No. 320/G.M., C&M (NWBP)/JUSNL dated 21.03.2022 (Annexure 19).

2) The facts of this case are not disputed which lie in a narrow compass. The petitioner was selected as the successful bidder in respect of proposal floated by respondent No.1 for (i) Design, Engineering, Supply, Erection, Testing and commissioning on turnkey basis of construction of 2 nos. 220 KV Bays at 220/132/330 KVS at Ulijhari, Chaibasa and (ii) Transmission Line (220 KV D/C) from Ulijhari, Chaibasa to Gua (Approximately 110 Km).

3) Respondent No. 1 executed a contract with the petitioner. In between 2018 to 2021 the petitioner commenced the work on the project but because of certain unavoidable reasons like lack of clearance of forest land, etc., the entire work could not be completed within the stipulated time. Thereafter, there has been an extension of the agreement by respondent No. 1 on 13.03.2018 till 28.09.2018, then on 01.04.2019 till 30.06.2019 and finally vide letter dated 28.11.2019 extending the timeline till 31.03.2020. However, a dispute arose between them and it is submitted by the learned Senior Counsel that there was an oral agreement between the parties to settle the matter, but the petitioner received a show-cause notice including termination of the performance of the contract document vide its letter dated 20.09.2021.

4) At present the petitioner is not pressing its prayer regarding relief with respect to the termination of the performance of the contract document, rather he centers his argument only around the impugned show-cause notice and the debarment/blacklisting of the petitioner for five years.

5) The sole contention raised by the learned Senior Counsel for the petitioner is that the show-cause that has been issued to him, i.e., Annexure 14, was not considered in its proper perspective by the order

impugned i.e. Annexure 19. For proper appreciation, we take note of the exact words used by the authorities in Annexure 14:-

“JHARKHAND URJA SANCHARAN NIGAM LIMITED

(CIN N-U4010R/H2013SGC001704)

2nd Floor, JUSNL (SLDC) Building, Kusai Colony, Doranda, Ranchi-02
Fax No.-0651-2400123 (E-mail-cetjusnl@gmail.com)

Letter No. 659 G.M., C&M (NWBP)/JUSNL
C.E. (Trans)/787/2009-10 (Part)

Dated 13-08-21

From,

Amar Nayak,
General Manager, Contracts & Materials (non W.B. Project).

To,

M/s A2Z Infra Engineering Ltd.,
0-116 First Floor, Shopping Mall, Arjun Marg,
DLF City, Phase-I, Gurgaon-122002 Haryana
(E-mail-info@a2zemail.com)

Sub: SHOW CAUSE NOTICE for poor performance in planning and execution of project for Design, Engineering, Supply, Erection, Testing and commissioning on turnkey basis of following deposit work of M/s SAIL:

- (i) 02 Nos. 220 KV Bays at 220/132/33 kV GSS at Ulijhari, Chaibasa and
- (ii) 220KV D/C Transmission line from Ulijhari, Chaibasa to Gua (Approx. 110km).

- Ref:**
- i) LOI No. 947/CE (T)/JUSNL dated 29.09.2016.
 - ii) P.O. No. 29&W.O. No. 18 dated 30.11.2016
 - iii) This office notice letter no. 1161 dated 24.07.2018
 - iv) This office notice letter no. 621 dated 12.04.2019
 - v) D.G.M. Transmission Circle, Chaibasa memo no. 554 dated 30.05.2019
 - vi) This office notice letter no. 1048 dated 07.06.2019
 - vii) Letter no. 430 dated 11.08.2021 of DGM, Transmission Circle, Chaibasa

Sir,

With reference to above, it is to mention that you had been awarded the work for Design, Engineering, Supply, Erection, Testing and commissioning on turnkey basis of following work vide LOI No. 947 dated 29.09.2016 :-

- (i) 02 Nos. 220 KV Bays at 220/132/33 kV GSS at Ulijhari, Chaibasa and
- (ii) 220KV D/C Transmission line from Ulijhari, Chaibasa to Gua (Approx. 110Km)

The above mentioned work was to be completed within 18 (Eighteen) months from the date of LOI as per tender clause and condition of contract. It was specifically mentioned in the contract that this was targeted work with time as essence of contract & contractor had to ensure completion of the work in all respect within stipulated time.

But due to lackadaisical attitude and non-adherence to the time schedule by the company to the contract, the whole work had got delayed by almost 03 year 05 months from the original schedule date of completion of work with details as below:

Date of LOI/Award	Completion date as per contract	Remarks
947/29.09.2016	28.03.2018	

Considering the request made by the firm, extension of time had been granted for completion of project as below :-

Sl. No.	Time extension	Extended upto	Letter no. date	Remarks
1	1 st time extension	28.09.2018	997/17.07.2018	Provisionally without LD
2	2 nd time extension	30.06.2019	512/01.04.2019	With LD & without PV
3	3 rd time extension	31.03.2020	2434/28.11.2019	provisionally without LD and without price variation to maintain the necessary cash flow required for progress of the project with a condition that decision on imposition of LD will be taken at the time of closure of project taking entire aspects into account.

Present Status of work

Sl. No.	Name of work	Progress up to this month (11.08.2021)
1	220kV D/C Chaibasa- Gua TL (85 Kms)	Foundation = 141/278 Erection = 118/278 Stringing = 0/84.105 Kms Work is completely stopped since Nov'2020
2	220kV Bay Extension at Chaibasa GSS	Tower and stub Structure 54/54 Nos. Equipment structure 40/48 nos. completed Earthmat erection 1400/1442 Mtr. erected.

This indicates that the Progress of the work is very poor and also you have stopped the work since November 2020. Due to your lacklustre approach, even after elapse of more than 04 years 11 month from the date of LOI, forest clearance issue is pending/ unresolved. You have also not completed materials supply for the project.

As per review online meeting dated 13.08.2021, it has been directed to submit the detailed work plan and to start the work within a week.

In spite of repeated requests and notices, you have not taken it seriously for planning and execution of the work and its completion and the firm have stopped the work since November 2020 unilaterally.

In the aforesaid submissions, your company is being served this notice to show cause as to why your company's contract with the employer company (JUSNL) be not terminated, why your company be not debarred/blacklisted and why a decision be not taken by us to get the works completed through other agency or departmentally at your risk and cost apart from forfeiting the security deposit made by your company in relation to the contract in question.

Yours faithfully

Sd/-

General Manager, C&M (non WB project)''

6) Then the petitioner filed a detail show-cause reply as Annexure 15 raising various points. Thereafter the impugned order at Annexure 19 has been issued and it is apparent from Annexure 19 that the authorities took into consideration certain aspects of the case which were not mentioned in the show-cause notice.

7) Learned Senior Counsel for the petitioner would, therefore, rely upon the case of ***Gorkha Security Services Vs. Govt. (NCT of Delhi) and Others, (2014) 9 SCC 105***, wherein the Hon'ble Supreme Court has held that the fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out why proposed action is not warranted in the given case, if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, the Hon'ble Supreme Court, further held, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

8) In that view of the matter, we are in agreement with the contentions raised by the learned Senior Counsel, but at the same time, since there are certain material allegations against the petitioner, we are inclined to allow this application to relegate the matter again back to the authorities to issue fresh show-cause notice indicating all the flaws that have been imputed against the petitioner and to give him a fresh opportunity of showing cause and thereafter consider the cause shown by him point-wise and dispose of the matter by reasoned and speaking

order. The petitioner is, therefore, directed to appear before the General Manager (respondent No.2) within a period of 15 working days, hence, and the entire process will be reconsidered by the General Manager as expeditiously as possible in terms of the observations made by this Court in the preceding paragraphs and the entire process shall be completed within a period of 60 days thereafter. The petitioner may submit additional show-cause within the 15 days, if so advised.

9) With the aforesaid observations and directions, this writ petition stands disposed of.

10) Pending Interlocutory Applications, if any, stand disposed of.

11) No orders as to costs.

12) Urgent Certified copies as per Rules.

(Sanjaya Kumar Mishra, C.J.)

(Ananda Sen, J.)

N.A.F.R.

Manoj/MM