

GAHC010104172024



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/2749/2024**

M/S ARMENGE ENGG. AND MANAGEMENT CONSULTANT PVT LTD  
HAVING ITS REGISTERED OFFICE AT- A1008, ASHIANA GREENWOOD,  
NEAR SHOOTING RANGE, JAGATPRA, JAIPUR-302017 THROUGH ITS  
AUTHORIZED REPRESENTATIVE SHRI RAM SINGH, GENERAL MANAGER,  
SON OF SHRI OMKAR SINGH, R/O- VIJAYNAGAR, KHOONDROT, ALWAR,  
RAJASTHAN-301704.

VERSUS

THE UNION OF INDIA AND 2 ORS.  
THROUGH THE SECRETARY, MINISTRY OF ROAD TRANSPORT AND  
HIGHWAYS, TRANSPORT BHAWAN, 1, PARLIAMENT STREET, NEW DELHI-  
110001.

2:NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT  
CORPORATION (NHIDCL)

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS  
GOVT. OF INDIA  
1ST AND 2ND FLOOR  
TOWER-A  
WORLD TRADE CENTRE  
NAROJI NAGAR  
NEW DELHI-110029 AND ASLO AT REGIONAL OFFICE GUWAHATI  
2ND FLOOR  
AGNISHANTI BUSINESS PARK  
OPPOSITE AGP OFFICE  
GNB ROAD  
AMBARI  
GHY-781001.

3:EXECUTIVE DIRECTOR (T)

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT  
CORPORATION (NHIDCL)  
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS  
GOVT. OF INDIA  
1ST AND 2ND FLOOR  
TOWER-A  
WORLD TRADE CENTRE  
NAROJI NAGAR  
NEW DELHI-11002

**Advocate for the Petitioner : N GAUTAM**

**Advocate for the Respondent : D.Y.S.G.I.**

**BEFORE  
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**27.05.2024**

Heard Mr. R.R. Raj, learned counsel for the petitioner. Also heard Ms. R. Bora, learned Standing Counsel, NHIDCL.

**2.** The petitioner is aggrieved by the order dated 13.05.2024 by which the NHIDCL had debarred the writ petitioner from participating any contract works for the period of two years in accordance with clause- 2.9.7 of the GCC of Contract Agreement.

**3.** The petitioner was awarded the contract works for widening/improvement of four lane with Paved Shoulder from KM 95+400 to KM 113+330 of Near Ganpath Gaur Gaon to Kwaram Taro Village Section (Package 5) of NH-29 in the State of Assam under Bharatmala Pariyojana on EPC Mode. The said contract was terminated by the NHIDCL on the basis of the order dated 24.04.2024. Pursuant thereto vide impugned order, the petitioner was debarred from participating in any contract works for executing the contract work for a period

of two years in terms of Clause 2.9.7 of the GCC.

**4.** The learned counsel for the petitioner has urged before the Court that series of Judgments rendered by the Apex Court in M/S Erusian Equipment & Chemical Ltd. Vs. State of West Bengal & Anr, reported in (1975) 1 SCC 70 and Gorkha Security Services Vs. Government (NCT of Delhi) & Ors, reported in (2014) 9 SCC 105 has held that there can be no debarring or blacklisting of a contractor without prior notice notwithstanding that the authorities had taken recourse to Clause-2.9.7 of the General Clauses of Contract of the Contract Agreement and issued the impugned order blacklisting/debarring the writ petitioner in participating in any of the contract works for a period of two years pursuant to the order of termination. Being aggrieved, the present writ petition has been filed.

**5.** The learned counsel for the petitioner further submits his tender bids submitted in respect of several other works under the NHIDCL and other authorities and authorities by taking recourse to the impugned order, will be declared non-responsive by those. He therefore submits that the impugned order being contrary to the law laid down by the Apex Court be set aside and during the pendency of this writ petition, adequate interim protection be granted.

**6.** Ms. R. Bora, learned Standing Counsel, NHIDCL submits that the impugned order of blacklisting is pursuant to the order of termination and the same is a mandate of Clause 2.9.7 of the GCC of the contract. It is submitted that the writ petitioner had executed and signed the contract and therefore he cannot now be permitted to resile from the clauses mentioned in the contract which he had agreed to at the time the contract work was awarded. She, therefore submits that since notice was issued prior to the termination and since

in terms of Clause 2.9.7, no further notice is required to be issued, the impugned order issued by the authority in terms of the provisions of the contract does not call for any interference and that there is no infirmity in the order that is issued.

**7.** In rejoinder, the learned counsel for the petitioner by referring to the Judgment of the Apex Court in Central Inland Water Transport Corporation Vs. Brajo Nath Ganguly, reported in 1986 SCC 156 submits that the unequal bargaining powers causing great disparity between contracting parties result in inequality of the circumstances and therefore the same cannot be used to deprive against the affected party. Such action of the respondent authority is hit by Article 14 of the Constitution.

**8.** Having heard the learned counsel for the parties and upon careful perusal of the materials placed before the Court, it is seen that the Apex Court has held that there should be no debarring or blacklisting without prior notice as it will have civil consequences on the bidder/contractor. The termination of a contract and the blacklisting of a contractor operate in two different situations. While termination of contract is essentially for failure to comply with the terms of the contract as may be specified, blacklisting on the other hand has far more severe consequences and is generally taken recourse to where the employer has materials against the contractor to show that there was supersession or misrepresentation of material facts and/or false representation or malafides on the part of the contractor etc. Under such circumstances, it appears to the Court prima facie, that law laid down by the Apex Court in the Judgments pressed into service by the petitioner is applicable to the facts of the case. This Court is of the view that the matter will require consideration. Therefore at this stage, Notice be issued, Returnable on 05.06.2024.

**9.** Since Ms. R. Bora, learned Standing Counsel appears on behalf of all the respondents, Notices are waived. However, extra copies be furnished within one week from today.

**10.** Let notice also be issued on the interim prayer made by the writ petitioner making it returnable on the same day.

**11.** Till the next date fixed, the impugned order dated 13.05.2024 shall not be given effect.

**12.** Matter be listed again on 05.06.2024.

**JUDGE**

**Comparing Assistant**