

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12336 of 2015**

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M/s. Brahmaputra Infrastructure Limited, having its registered office at Brahmaputra House, A/7 Mahipalpur, New Delhi- 110 037 through its Manager Project Sri Alakh Nath Sinha son of Late Pasupati Nath Sinha, resident of G-6, Ashadeep Apartment, Purulia Road, Namkum, Ranchi- 834010 (Jharkhand)

.... .... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna
3. Engineer-in-Chief (Central), Water Resources Department, Government of Bihar, Patna
4. The Executive Engineer, Bagmati Division No. 1, Sitamarhi

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Y.V.Giri, Sr. Advocate with  
Mr. Ashish Giri, Advocate

For the Respondent/s : Mr. S. Iqbal Ahmad, S.C. 20 with Mr. Mahendra  
Pd. Verma, AC to S.C. 20

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**  
**ORAL ORDER**

6      08-09-2016

I.A.No. 2181 of 2016

The interlocutory application has been filed for addition of certain prayers, including quashing the show cause notice dated 4.2.2016 for blacklisting for a period of 15 years and for quashing the letter dated 13.2.2016 of the Executive Engineer, Bagmati Division No.1, Sitamarhi by which an amount of Rs.3 crores is directed to be recoverable from the petitioner.

In the facts and circumstances of the case, the prayer for addition of reliefs is allowed.

I.A.No. 2181 of 2016 is, accordingly, disposed of.

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 12.3.2015 passed by the Engineer-in-Chief (Central), Water Resources Department, Government of Bihar by which the petitioner has been held guilty of delay in execution of the agreement dated 15.5.2012 for which the registration of the petitioner being a Class-1 contractor, has been suspended for a period of two years and thereby debarred it from participating in any other tender in future for that period. The further challenge is to the show cause notice dated 4.2.2016 issued by the Engineer-in-Chief (South), Water Resources Department by which the petitioner has been found guilty of as many as nine charges and directed to show cause as to why it should not be blacklisted. The petitioner also seeks to challenge the direction for recovery of Rs.3 crores from the bills of the petitioner.

Pursuant to the Notice Inviting Tender No. 01 of 2011-12 the petitioner was awarded a contract for raising and strengthening the Adhawara Left Embankment between km. 0.00 to km.43.60 and Adhawara Right Embankment between km. 0.00 to km.44.00, including repair/construction of structure and dhola



under Bagmati Division No.1, Sitamarhi. In terms of the agreement the work was to be completed by 30.6.2013. According to the petitioner, the delay in the first phase of work was caused because of the fact that the site was not free from encumbrances and the drawings were not made available till the month of February, 2013. It is also alleged by the petitioner that the local villagers did not allow the petitioner to work on their land because of the standing crops and non-providing of compensation to them by the authority, which was duly communicated to the authorities by the petitioner informing them by as many as 10 letters, starting from 16.6.2012 till 20.4.2014, which was the further cause of delay in execution of the work. The fact of hindrance being caused by the local villagers has also been noticed by the Executive Engineer, Bagmati Division No.1, Sitamarhi in his letter dated 21.6.2012 and other letters. The petitioner further alleges the threat by the local villagers and antisocial elements and criminals and for that the petitioner had requested the Director General of Police, Government of Bihar by its letter dated 23.8.2013 for deputation of Security Commando at the work site and the petitioner further alleges non-release of timely payment by the authorities causing great difficulty to the petitioner in completion of the work.



Ultimately, the petitioner was issued a show cause notice dated 21.3.2014 for blacklisting and debarment on account of no progress in the work, to which the petitioner replied on 24.3.2014 stating the aforesaid facts. Thereafter further show cause notice was issued to the petitioner on 10.10.2014 by the Engineer-in-Chief (Central), in the light of Clause 4.8 of SBD as to why the petitioner be not declared defaulter and debarred from participating in future tenders till completion of the work, to which the petitioner replied on 28.10.2014 stating that the petitioner had already completed 85% of the work and had every intention to complete the balance 15% work by 31.3.2015 as per the extension sought by the petitioner.

Again a further show cause notice dated 2.1.2015 was issued to the petitioner by the Engineer-in-Chief (Central) as to why action for suspending the registration of the petitioner for two years be not taken under the Bihar Contractors Registration Rules, 2007, to which the petitioner replied by its letter dated 17.1.2015. However, by the impugned order dated 12.3.2015 the registration of the petitioner has been suspended for a period of two years on the ground of delay in execution of the project. Thereafter further action has been taken by the respondents by issuing show cause notice for blacklisting on 4.2.2016 and have also recovered Rs.3

crores from the petitioner on account of wrong lead chart payment.

Learned counsel for the petitioner submits that in view of the given facts stated in the writ petition, which clearly show that the delay is not attributable to the petitioner alone, it is not open to the respondents to unilaterally decide the matter holding the petitioner guilty and suspending the registration of the petitioner. It is further pointed out that having issued an order for debarment until completion of the work the respondents had to change tack because under Clause 4.8 of the SBD and the Circular issued pursuant thereto, debarment can only be ordered if 80% of the work had not been completed and they having found that the petitioner had completed 85% of the work, took recourse to the provisions of the Bihar Contractors Registration Rules for suspending the petitioner. It is thus submitted that the respondents are bent upon victimizing the petitioner without any justifiable reason.

It is urged by learned counsel that the case of the petitioner squarely falls within the law laid down by this Court in M/s. NCC Ltd. vs. The State of Bihar & Ors. : 2013(1) PLJR 952 and in such circumstances it is not open to the respondents to act unilaterally in the matter until there has been an independent adjudication either by an Arbitral Tribunal or a court of law.



Learned counsel for the State has sought to reply upon the statements made in the counter affidavit and supplementary counter affidavit to show that the action of the respondents is justified and that the petitioner has been citing bogus allegations regarding disturbances by the villagers and the other allegation regarding delay in providing the design is not correct.

The aforesaid M/s. NCC case (supra) has primarily held that when there are allegations and counter allegations alleged it is not open to the authorities of the Government to act on their allegations only ignoring the allegations made by the other side as having no basis. It has been held therein that punishment can only be imposed after adjudicating the allegations and the counter allegations of both sides either by an Arbitral Tribunal or a court of law and not otherwise.

In the aforesaid view of the matter, the writ application is allowed. The impugned order dated 12.3.2015 and the show cause notice for blacklisting dated 4.2.2016 are both quashed leaving it open to the parties to take recourse to arbitration before the Bihar State Public Works Arbitration Tribunal. So far as the recovery of Rs.3 crores on account of excess lead charge payment is concerned, learned counsel for the petitioner submits that the petitioner has been stopped for

executing the remaining work of contract on account of such recovery and it is not possible for the petitioner to complete the work in the absence of essential financial resource and for which the respondents have also given extension of time to the petitioner for the additional work to be completed by 31.3.2017. It is submitted that the petitioner is prepared to give Bank Guarantee for the said amount, and on the said issue also the petitioner seeks liberty to raise the issue before the Arbitral Tribunal.

This Court is of the view that the stand of the petitioner is fair and justified and it is directed that upon the petitioner furnishing Bank Guarantee for Rs.3 crores, the respondent shall return the amount to the petitioner and the final decision with regard to the same shall be subject to the decision of the Arbitral Tribunal.

**(Ramesh Kumar Datta, J)**

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