

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4213 of 2015

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KNR - JKM - KAMLA (JV) having its Corporate Office at C -84, Grater Kailash I, New Delhi 110048, through its authorized signatory Abhay Kumar Mishra, Son of Sri Chandra Mishra, resident of Sankat Mochan Nagar, New Police Line, P.S. Nawada, District Ara, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Engineer in Chief (North), Water Resources Department, Government of Bihar, Patna.
3. The Superintending Engineer, Planning and Monitoring, Patna, Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Purnia.
5. Engineer-in-Chief (Center), Water Resources Department, Government of Bihar, Patna cum Registration Authority.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate.
For the Respondent/s	:	Mr. Sanjay Pandey, G.P. 21
		Mr. Vivik Anand Amritesh, A.C. to G.P. 21.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 03-02-2016

Heard learned counsel for the parties.

The writ petition was initially filed against the show cause notice issued to the petitioner dated 04.03.2015 under Letter No. 487 as to why he should not be debarred from participating in future tenders till the completion of the agreement work. Subsequently, an order was passed suspending him for one year which was also challenged by way of an Interlocutory Application which has been allowed. Learned counsel for the petitioner submits that the show cause though was issued by the Engineer-in-Chief of the Department but under the directions of the Department i.e., the Principal Secretary who, under the Bihar



Thekadari Nibandhan Niyamawali, 2007 is the Appellate Authority with regard to any penalty imposed by the Registering Authority. It was thus submitted that both on account of there being a decision to suspend taken by the Appellate Authority and only a formality having been preformed by the Registering Authority i.e., the Engineer-in-Chief of the Department, the petitioner has lost a statutory Appellate Forum which is impermissible in law. It is further contended that the facts are disputed and the petitioner has been given a certificate which clearly states that he has completed 80% of the work satisfactorily and thus as per the State Government's decision contained in Memo No. Pra 6/Da. Vi. Niyam 03-03/2004 2131(S) dated 18.03.2009, the Government has taken a conscious decision that only in those cases where the contractor has completed less than 80% of the work as per the agreement, he shall not be allowed to take part in any other tender and thus the action of the respondents itself is arbitrary.

Learned counsel for the State submits that taking into account the interest of the contractor, that is the petitioner, the department had in fact agreed for escalation in the price as well as subsidiary work had been given but the petitioner had not performed the same as per the terms of the agreement and thus the action taken against him is in accordance with law and cannot be faulted. It is further submitted that the petitioner has not been able to prove the fact that there has not been delay on his part and therefore the agreement itself stipulating that the authorities

can take penal action against the contractor for inordinate delay, as time is of essence, the action taken against the petitioner was in public interest and also to ensure that the petitioner completed the remaining work.

Having considered the rival contentions, in the opinion of the Court, though the power to blacklist or debar is inherent with the Registering Authority or any person superior to the Registering Authority, however, the same is not an unbridled power and has to be exercised only when the facts so justify. For the same there has to be an adjudication on facts where the parties are at liberty to plead their case and a finding has to be arrived at based on the materials produced by the parties, and thereafter, as a matter of consequence, there can be an order of blacklisting, debarment or suspension depending on the result of such a fact finding exercise. The State Government has thus constituted a statutory Tribunal under the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 to go into disputes arising between the parties to the contract. The Court is thus of the opinion that the matter relating to the rival stand of the parties would be more appropriately dealt with by such Tribunal which would have the opportunity to look into the materials produced by the parties to arrive at findings of facts.

For the reasons aforesaid, the writ petition stands disposed off with a direction to the petitioner to move before the Bihar Public Works Contract Disputes Arbitration Tribunal within

one month from today. If the same is filed within the said period along with a copy of this order, the Tribunal shall decide the matter expeditiously. The subsequent and consequential action including that of debarment/suspension/blacklisting shall depend on the order passed by the Tribunal and till such time the present order of suspension passed against the petitioner shall be kept in abeyance.

(Ahsanuddin Amanullah, J.)

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