

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3577 of 2018

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Kamladitya Constructions Pvt. Ltd. through its authorized signatory Abhay Kumar Mishra, Son of Chandrama Mishra, Resident of Shankar Mochan Nagar, New Police Line, P.S.-Nawada, District-Bhojpur.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Engineer-in-Chief, Central, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Dehri, District Sasaram, Bihar.
4. The Superintendent Engineer, Water Ways Circle, Bhabhua, District-Sasaram, Bihar.
5. The Executive Engineer, Sone High Level Canal Division, Bhabhua, , District Sasaram, Bihar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Y.V. Giri, Sr. Advocate.
Mr. Ashish Giri, Advocate.
For the Respondents : Mr. Vinay Kriti Singh, GA-2

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-03-2018

Heard learned counsel for the petitioners as well as learned counsel for the respondents.

2. The present writ petition has been filed for the following reliefs –

“(i) To issue a writ/order/direction in the nature of certiorari for quashing the order bearing no. 412 dated 06.02.2018 passed by the respondent Engineer-in-Chief, Central, Water Resources Department, Government of Bihar by which the petitioner company in exercise of power under Rule-11 (Ka)(ii) of the Bihar Contractors Registration Rule,



2007 has been blacklisted till further orders (Annexure-15).

(ii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case."

3. Learned counsel for the petitioner-firm assails the impugned order of blacklisting mainly on two grounds, namely, (a) that though a notice was issued as far back as on 23.10.2017 for taking various actions such as termination of the agreement, forfeiture of security deposit etc and for blacklisting, no action was taken for blacklisting at the relevant time and thereafter all of a sudden the impugned order of blacklisting has been passed on 06.02.2018 without any further show cause notice; and (b) that the impugned order has been passed banning all the business activities of the petitioner-firm which amounts to an order of blacklisting for all times to come, which is wholly arbitrary and illegal.

4. Learned counsel for the respondents appears and has been heard but however is unable to controvert the stand of the petitioner.

5. Having heard the parties and on consideration of the materials on record, this Court finds merit in the submissions of the petitioner. In *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others*, (2014) 14 SCC 731, the Apex Court observed as follows :-

"25. Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining deviant



suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

6. It would appear that the principles in regard to "debarment" and "blacklisting" would be the same in view of para 21 of the said judgment, wherein it has been observed as follows –

"21. The legal position governing blacklisting of supplies in U.S.A. and U.K. is no different. In U.S.A. instead of using the expression "blacklisting" the term "debarring" is used by the statutes and the Courts."

7. In the above view of the matter, the impugned order of blacklisting dated 06.02.2018 (Annexure-15) is being interfered with only to the extent that the petitioner has been barred from carrying on its business activities for an indefinite period. The matter is remanded to the Engineer-in-Chief, Central, Water Resources Department, Government of Bihar, Patna (Respondent No. 2) for taking a fresh decision with respect to the period of blacklisting to be imposed upon the petitioner after grant of opportunity of hearing to the petitioner in accordance with law.

8. The writ petition stands allowed as above.



(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
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Transmission Date	N.A.

