

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16955 of 2018

=====

M/s B. M. Construction through its Working Partner Mr. Vijay Mandal, Son of Late Sri Dudheshwar Yadav, Village- Yadu Bigha, P.O. Ratni Faridpur, Distt.- Jehanabad, At present Resident of Mohalla- Purani Bijali Colony, P.O. + P.S. + District- Jehanabad, Pin- 804429.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, 'Sinchai Bhawan', Patna.
2. The Principal Secretary, Water Resources Department, 'Sinchai Bhawan', Patna.
3. The Engineer-in-Chief (Head Quarter), Water Resources Department, 'Sinchai Bhawan', Patna.
4. The Chief Engineer, Irrigation Creation, Water Resources Department, Bhagalpur.
5. The Superintending Engineer, Irrigation Circle, Water Resources Department, Bhagalpur.
6. The Executive Engineer, Water Resources Department, Ganga Pump Canal Division, Kahalgaon (Bhagalpur).

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Manish Sahay, Adv.
Mr. Alok Ranjan, Adv.
Mr. Anil Kumar Sinha, Adv.

For the Respondent/s : Mr. ANJANI KUMAR- AAG4

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 11-10-2018

The present writ petition has been filed for quashing the order dated 21.06.2018 passed by the Engineer -in- Chief (Headquarter), Water Resources Department, Government of Bihar, Patna whereby and whereunder the petitioner has been declared defaulter and debarred from participating in future tenders.

2. The short submission made by the learned counsel for the petitioner is that the petitioner would approach the Bihar Public Works Contract Disputes Arbitration Tribunal, under section 9 of the Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008



which contemplates that any dispute which has arisen between the parties should be referred for arbitration by the said Tribunal.

3. However, the learned counsel for the petitioner submits that in the meantime, the impugned order dated 21.06.2018 may be kept in abeyance since the dispute is yet to be resolved and for the same, the petitioner would be approaching the aforesaid Tribunal.

4. The learned counsel for the petitioner has relied upon a judgment reported in (2011) 5 SCC 758 (**M/s. J.G. Engineers Pvt. Ltd. vs. Union of India and others**) to contend that the issue relating to breach of condition of contract and adjudication of assessing damages arising out of the breach are two different and distinct concepts and the right to assess damages arising out of a breach would not include a right to adjudicate upon as to whether there was any breach also. Therefore, the submission of the learned counsel for the petitioner is that since the parties are in contract with each other, one party cannot be the arbiter and the dispute would have to be adjudicated by an independent arbitrator which in the present case is the Bihar Public Works Contract Disputes Arbitration Tribunal. It is thus, the contention of the petitioner that since the dispute is yet to be adjudicated, the penal consequences cannot follow, hence the same should be kept in abeyance till the final decision of the Tribunal.

5. I have heard the learned counsel for the parties and I find that the proper course for the petitioner is to approach the Bihar Public Works Disputes Arbitration Tribunal for redressal of his grievances as also for adjudication of the disputes arising out of the contract entered into with the respondents.

6. In such view of the matter, the petitioner is granted liberty to file an appropriate petition before the aforesaid Tribunal within a period of six weeks from today and in the meantime for a



period of eight weeks, it is directed that the respondents shall not take any coercive action against the petitioner. It is further directed that the impugned order of department dated 21.06.2018 shall be kept in abeyance till the passing of the final award by the Arbitration Tribunal.

7. It is needless to state that in case the petitioner does not file any appropriate petition before the aforesaid Tribunal within a period of six weeks from today, the present order shall become void automatically.

8. The present writ petition is disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

BTiwary/Md.Rashid

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.11.2018
Transmission Date	N/A

