

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17338 of 2017

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Dharti Dredging and Infrastructure Ltd. having its registered and corporate office at 6-3-1113/2 DDIL Bhawan, B.S. Maktha, Begumpur, Hyderabad, through its authorized representative Sri Laxmikanta Panda, Son of R.N. Panda, Resident of 14, Surya Nagar, Kaushlya Enclave, Tirumalgiri, Secunderabad, P.S.- Tirumalgiri, District- Ranga Reddy, presently working as Executive Director of the Company.

.... 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. The Under Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Engineer in-Chief, (Central), Water Resources Department, Government of Bihar, Patna.
5. The Chief Engineer, Water Resources Department, Siwan.
6. The Superintending Engineer, Flood Control Circle, Gopalganj.
7. The Executive Engineer, Flood Control Division, Thakraha Camp, Gopalganj.

.... Respondents

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Appearance:

For the Petitioner : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Sandeep Kumar, Adv
Mr. Abhishek Kumar, Adv
For the Respondents : Mr. Harish Kumar-GP8

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 08-01-2018

The present writ petition has been filed for the following
reliefs :-

- (i) For issuance of a writ of certiorari for quashing the order dated 18.02.2015 (Annexure-5) issued under the signature of the Engineer-in-Chief (Central), Water Resources Department (hereinafter referred as WRD), Patna vide Memo No. 955 whereby



- and whereunder the petitioner company has been blacklisted by an ex-parte order.
- (ii) For issuance of writ of certiorari for quashing the memo no. 5210 dated 19.10.2015 issued under the signature of the Secretary of Government, WRD, Govt. of Bihar, Patna whereby and whereunder he has been pleased to confirm the order issued vide memo no. 955 dated 18.02.2015 (Annexure-5) issued under the signature of the Engineer-in-Chief (Central), WRD, Govt. of Bihar by which the petitioner company was blacklisted, while rejecting the appeal preferred by the petitioner.
- (iii) For any other consequential relief/reliefs for which the petitioner is entitled by this Hon'ble Court in the facts and circumstances of the present case.

2. At the very outset Mr. Chitranjan Sinha, learned Senior Counsel appearing on behalf of the petitioner confines his prayer with regard to the impugned order dated 18.02.2015, which is arbitrary and illegal in view of the indefinite period of blacklisting meted out to the petitioner. He relies on the decision of the Apex Court in *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others*, (2014) 14 SCC 731 to submit that a blacklisting order cannot enure for an indefinite period. Moreover, it is stated that the issues relating to recovery of excess payment said to have been made to the petitioner



as well as the petitioner's claim for payment of his own bills are the subject matter of adjudication before the Bihar Public Works Contracts Disputes Arbitration Tribunal and the matter of blacklisting ought to be decided after decision of the Tribunal.

3. Learned counsel for the respondents opposes the writ petition on the basis of the counter affidavit, but however is unable to show that the impugned order of blacklisting the petitioner for indefinite period is not in violation of the principles laid down in Kulja Industries (supra).

4. 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 (supra) it was 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."

5. 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.”

6. In the above view of the matter, the impugned order dated 18.02.2015 (Annexure-5) as well as the appellate order dated 19.10.2015 (Annexure-11) dismissing the appeal, are hereby quashed and the matter remanded to the Engineer-in-Chief (Central), Water Resources Department, Government of Bihar, Patna (Respondent No. 4) 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.

7. Learned counsel for the respondent-State fairly accepts that the outcome of the matter pending before the Tribunal would have a bearing on the issue of blacklisting. As such, in the interest of justice, let the respondent no. 4 await the decision of the Tribunal before passing orders afresh pursuant to the present judgment remanding the matter for fresh decision.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	N.A.



Uploading Date	11.01.2018
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