

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13292 of 2018

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Kamladitya Constructions Pvt. Ltd. through its Authorized Signatory Abhay Kumar Mishra son of late Chandrama Mishra Resident of Shankat Mochan Nagar, New Police Line, P.S. Nawada, District- Bhojpur, 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 (Head Quarters) cum Registering Authority, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Irrigation Creation, Water Resources Department, Siwan, Bihar.
4. The Superintending Engineer, Saran Canal Division, Siwan, Bihar.
5. The Executive Engineer, Saran Canal Division, Bhore, District- Gopalganj, Bihar.
6. Sri Arun Kumar Singh Father's name not known to the petitioner at Present Principal Secretary, Water Resources Department, Government of Bihar, Patna.
7. Sri Arun Kumar Father's name not known to the petitioner At Present Posted as Engineer in Chief (Head Quarters) cum Registering Authority, Water Resources Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan
For the Respondent/s : Mr. Anjani Kumar, AAG-4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 30-11-2018 The present writ petition has been filed for the following reliefs:-

(i) *Quashing of the Notice to show cause bearing Letter No. 4642 dated 20.12.2017 (Annexure-2) whereby, the petitioner has been asked to submit his reply as to why for the allegations mentioned therein, the firm be not Blacklisted for a period of 10 years; and*

(ii) *Quashing of the consequential order no. 2480 dated 04.07.2018 (Annexure-6) issued by the Engineer in Chief (Head Quarter),*



Blacklisting the petitioner for a period of 10 years in terms of Rule 11(ka) (ii) of the Bihar Contractors Registration Rules, 2007.

2. The learned counsel appearing for the petitioner has assailed the order of department dated 04.07.2018 bearing order no. 2480 on various grounds and has submitted that in fact, the petitioner has already moved the Engineer-in-Chief, Water Resources Department, Government of Bihar, Patna in connection with Agreement No. 01-SBD/2014-15 dated 23.12.2014 (Group No. I), invoking the arbitration clause in terms of Clause 25 of the agreement, requesting him to appoint an arbitrator, however, it is the submission of the learned senior counsel for the petitioner that no steps have been taken till date for appointment of an arbitrator.

3. 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.

4. 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 such a petition 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 that time the present order of blacklisting dated 04.07.2018, pertaining to Agreement No. 01-SBD/2014-15 dated 23.12.2014 (Group No. I), passed



against the petitioner shall be kept in abeyance, subject to the petitioner filing an appropriate petition before the Bihar Public Works Contract Disputes Arbitration Tribunal within a period of one month from today.

5. The present writ petition stands disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

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