

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.19802 of 2018**

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Kamladitya Construction Pvt. Ltd. through its authorized signatory Vinod Kumar Singh, son of Late Lalan Singh, resident of Plot No.201, Cooperative Colony, Bokaro Steel City, Bokaro (Jharkhand) and local address at Shivpuri, Road No.-23, Patna, Bihar.

.... .... Petitioner/s

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, Siwan, Bihar.
4. The Executive Engineer, Saran Canal Division, Siwan, Bihar.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv.

: Mr. Ashish Giri, Adv.

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

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 04-10-2018**

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 of the order bearing no. 2691 dated 16.07.2018 issued under the signature of the respondent Engineer-in-Chief, Central Water Resources Department, Government of Bihar by which for delay in completing the work arising out of agreement No. 1/2014-15 dated 26.02.2015, the petitioner has been held guilty unilaterally and the registration of the petitioner bearing registration no.11/2011 has been blacklisted for period of 10 years in terms of Rule 11 Ka (2) of the Bihar Contractor Registration Rule, 2007 (Annexure-16).



- (ii) To hold and declare that the order of blacklisting can be passed only once the issue of delay in completion of the project is decided by an independent Arbitrator and not prior to it unilaterally by the respondent becoming judge of his own cause.
- (iii) To pass appropriate interim/ex-parte interim order staying the operation of the order of blacklisting dated 16.07.2018.”

2. The learned senior counsel appearing for the petitioner has assailed the order of department dated 16.07.2018 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 26 February, 2015(Group No.4), invoking the arbitration clause in terms of Clause 25 of the agreement and 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 16.07.2018, pertaining to Agreement No. 01-SBD/2014-15 dated 26 February, 2015(Group No.4), 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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