

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4458 of 2019

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R.B. Bharti and Sons (H.U.F.) having its registered office at House No. C-68, Section-49, Noida, Police Station- Sector-49, District- Gautam Budh Nagar, Uttar Pradesh through its authorized signatory namely Sri Rishikesh Bharti, Gender- Male, aged about 40 years, Son of Sri R.B. Bharti, Resident of C-68, Section-49, Police Station- 49 Sector, District- Noida, Uttar Pradesh

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Rural Works Department, Patna
2. The Secretary, Rural Works Department, Government of Bihar, Patna
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna
4. The Chief Engineer-3, Rural Works Department, Government of Bihar, Patna
5. The Superintending Engineer, Rural Works Department, Works Circle, Samastipur
6. The Executive Engineer, Rural Works Department, Works Division- Patori, Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Adv. Mr. Rajeev Shekhar, Adv.
For the Respondent/s	:	Mr. Kameshwar Prasad Gupta (GP-10) Mr. Binod Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 05-04-2019 Heard learned counsel for the petitioner and learned counsel representing the State.

This writ application has been preferred for issuance of a writ in the nature of certiorari for quashing the letter no.1181 dated 22.12.2018 by which the agreement entered into between the petitioner and the respondents has been rescinded in terms of the provisions contained in clause 3(iv) and 3(v) and security deposit as also earnest money deposit of the petitioner have been forfeited



and the petitioner has been called upon to show cause as to why he should not be blacklisted.

Learned counsel for the petitioner submits that earlier the petitioner had challenged the order of termination of contract in Reference Case No.1 of 2019 before the Bihar Public Works Contract Disputes Arbitration Tribunal, but thereafter in view of the judgment of the Hon'ble Supreme Court in the case of **State of Bihar and others Vs. M/s Brahmaputra Infrastructure Limited** reported in **AIR 2018 SC 2640**, the petitioner has withdrawn the reference case unconditionally. It is, however, informed to this Court that till date no blacklisting order has been passed by the respondents.

Learned counsel for the State submits that in view of the judgment of the Hon'ble Supreme Court, now the petitioner may seek his remedy under the provisions of the Arbitration and Conciliation Act, 1996. It is submitted that this writ application is premature inasmuch as the respondents have not passed any order of blacklisting and the petitioner has, thus, no cause of action to move this Court challenging the show cause by which he has been called upon to show as to why he should not be blacklisted.

Having heard learned counsel for the parties and on perusal of the records, this Court finds force in the submission of the learned counsel for the State. So far as the order of rescindment and forfeiture of security deposit and earnest money deposit are concerned, it is not in dispute that the petitioner has got a remedy by



way of arbitration. In view of the provisions contained in the SBD and in accordance with Arbitration and Conciliation Act, 1996 the petitioner has not invoked his remedy. Learned counsel for the petitioner submits that to invoke arbitration clause he may be required to file a request case under Section 11 of the Arbitration and Conciliation Act, 1996. This Court is unable to understand as to why the petitioner will not file a request case and will seek a remedy under the writ jurisdiction of this Court.

The order of blacklisting has yet not been passed, therefore, learned counsel for the State is correct in saying that the petitioner has no cause of action against show-cause notice alone.

In the totality of the circumstances, this Court finds no reason to entertain the present writ application. The writ application is dismissed.

It goes without saying that the petitioner will have liberty to invoke his remedy under the Arbitration and Conciliation Act, 1996 in respect of rescindment of contract and forfeiture of security and earnest money deposit.

(Rajeev Ranjan Prasad, J)

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