

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14724 of 2019

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Shyam Kishore Yadav Son of Late Nageshwar Prasad Yadav, resident of
Village- Maruki, P.O. Kumma, P.S.- Sursand, District- Sitamarhi.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna.
2. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Bihar, Patna.
3. The Chief Engineer North, Road Construction Department, Bihar Patna.
4. The Superintendent Engineer, Road Construction Department, Road Circle, Darbhanga.
5. The Executive Engineer, Road Construction Department, Road Division, Darbhanga.
6. The District Magistrate, Darbhanga.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Praveen Kumar Jaipuriyar, Advocate Mr. Anukriti Jaipuriyar, Advocate Mr. Anshuman Jaipuriyar, Advocate
For the Respondent/s	:	Mr.Rajeev Shekhar, A.C. to G.A.-13

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 17-08-2019 Heard learned counsel for the petitioner and learned
counsel representing the State.

Petitioner in the present case is aggrieved by the
office order as contained in Letter No. 902 dated 11.07.2019
(Annexure '8') to the writ application.

By the impugned order the Executive Engineer, Road
Construction Department, Road Division, Darbhanga has
cancelled the agreement in question and forfeited the security
deposits of the petitioner and has further notified that the work



in question shall be carried on risk and cost basis. The Executive Engineer has further recommended the name of the petitioner for blacklisting under the Bihar Contractors Registration Rules, 2007.

Learned counsel for the petitioner submits that the contract in question has been terminated for no valid reasons. It is submitted that prior to termination the required notice was not served upon the petitioner and as such the decision terminating the agreement and forfeiture of the security deposits need to be interfered with. Learned counsel also submits that the petitioner has been blacklisted without giving any opportunity of hearing to him that too for a permanent period.

Learned counsel for the State submits that the apprehension of the petitioner that he has been blacklisted is not correct, inasmuch as, for the present no order of blacklisting the petitioner has been passed by the competent authority. It is submitted that prior to passing of the order of blacklisting the competent authority i.e. Engineer-in-Chief of the Road Construction Department shall give an opportunity of hearing to the petitioner and then only any such order will be passed if required.

As regards the order of termination of contract and



forfeiture of security deposits as also the direction to get the work carried out on risk and cost basis, learned counsel submits that in terms of the contract the petitioner has a remedy available by invoking the arbitration clause and once a dispute redressal mechanism is provided under the agreement itself, there is no reason to entertain the present writ application. It is submitted that even otherwise in the State of Bihar the Legislatures have enacted Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008 (hereinafter referred to as the 'Act of 2008') whereunder all works contract disputes may be brought to the Arbitral Tribunal constituted by the Act.

Having heard learned counsel for the parties and on perusal of the record, this Court is of the considered opinion that on the face of there being an arbitration clause and the facilities provided under the agreement for redressal of the grievances, this Court need not exercise its extraordinary writ jurisdiction. By virtue of Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') now it has been made more obligatory on the judicial authorities to relegate the parties to arbitration if there is an arbitration clause under the agreement. That being the position, this Court would not be willing to exercise its writ jurisdiction. So far as the grievance



with respect to invocation of bank guarantee is concerned, even that aspect may be taken care if the petitioner applies for an interim remedy in terms of the Act of 1996 or Act of 2008, as may be applicable in the case of the petitioner.

The order of blacklisting not being in existence, the petitioner will have a remedy if occasion so arises to the petitioner in future to contest any such order.

The writ application stands disposed off.

(Rajeev Ranjan Prasad, J)

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