

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.237 of 2019

In
Civil Writ Jurisdiction Case No.19802 of 2018

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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

... .. Appellant/s

Versus

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

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, AAG-4 Mr. Alok Kumar Rahi, A.C. to AAG-4 Mr. Shailendra Kumar Singh, A.C. to AAG-4 Mr. Utkarsh Bhushan, Advocate Mr. Vikas Kumar, SC-11
For the Respondent/s	:	Mr. Ashish Giri, Advocate Ms. Riya Giri, Advocate Mr. Sumit Kumar Jha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

- 4 14-09-2023 1. In the order dated 31.08.2023, the order no.2 be read as order no.3.
2. The appellant is the State who has challenged the order in the writ petition. The writ petition was filed by a contractor wherein he sought for a certiorari against the order of blacklisting issued on 16.7.2018 and prayed for an adjudication



as to whether there was delay in completion of the project, which adjudication alone could lead to an order of blacklisting.

3. The learned Single Judge by the impugned order in the L.P.A. directed that the matter would be referred to the Bihar Public Works Contract Disputes Arbitration Tribunal (for brevity we call it 'Statutory Tribunal' which has been created under a statute by the State). It was also directed that the blacklisting shall depend upon the order passed by the Tribunal and till that time, the order of blacklisting dated 16.7.2018 also stood stayed.

4. The writ petitioner approached the Statutory Tribunal which found that it does not have the jurisdiction to deal with the matter, relying on the decision of the Hon'ble Supreme Court in *State of Bihar vs. M/S Brahmputra Infrastructure Limited dated 22.03.2018 in Civil Appeal No.3344 of 2018*. The writ petitioner again approached this Court with a review. The order in review is produced as Annexure-R/1 along with the counter affidavit filed on behalf of the respondent no.1 dated 04.09.2023 in the L.P.A.

5. Two issues arose for consideration in the review, whether the Statutory Tribunal has the authority to decide the issue and whether the interim direction of protection against the



blacklisting order could survive. The learned Single Judge after a detailed discussion found that the Statutory Tribunal would not have the jurisdiction to consider the matter and relegated the writ petitioner to the remedies under the Arbitration and Conciliation Act, 1996. Considering the interim protection granted earlier, it was extended for a period of eight weeks so that in the meantime, the petitioner could take recourse to the appropriate remedies. It is admitted by both sides that there was a sole Arbitrator appointed, on consent of both parties, who has now issued a stay order against the blacklisting.

6. The learned AAG who appears for the State specifically points out that there is no power on the Arbitrator to issue such an order. To urge that claim, we are of the opinion that the said order should be challenged.

7. As far as the appeal is concerned, we reiterate that there were two issues, one, the validity of the relegation to the Statutory Tribunal and the other, the interim protection till the Statutory Tribunal decides the issue. Both these orders have now been reviewed. The order in review finds that there cannot be any relegation to the Statutory Tribunal. As far as the interim protection granted till the Statutory Tribunal decides the issue, the learned Single Judge has confined it to eight weeks. The



eight weeks are now past and as of now there is an order passed by the sole Arbitrator appointed. We would not say anything on the validity of the order passed by the Arbitrator since that is not placed before us or challenged in the L.P.A.

8. In such circumstances, all contentions regarding the order of blacklisting and the stay order issued by the Arbitrator appointed, are left open to be agitated in a valid challenge against that order and the present appeal is closed as infructuous.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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