

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.363 of 2017

In
Civil Writ Jurisdiction Case No.12336 of 2015

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1. The State Of Bihar
 2. The Principal Secretary, Water Resources Department Government of Bihar, Patna.
 3. The Engineer-in-Chief, Central, Water Resources Department, Govt. of Bihar, Patna.
 4. The Executive Engineer, Bagmati Division No.1, Sitamarhi Now Bagmati Division, Sitamarhi.

... .. Appellant/s

Versus

M/s Brahmaputra Infrastructure Limited son of Late Pasupati Nath Sinha, resident of G-6, Ashadeep Apartment, Purulia Road, Namkum, Ranchi.- 834010 Jharkhand.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, AAG-4 Mr. Brajesh Kumar, Advocate
For the Respondent/s	:	Mr. Ashish Giri, Advocate Mr. Pranav Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-02-2024

The appeal arises from an order of the learned Single Judge which interfered with an order dated 12.03.2015, leading to the cancellation of the contract and the show cause notice dated 04.02.2016 issued for blacklisting. The parties were permitted to take recourse before the Bihar State Public Works Arbitration Tribunal (hereinafter referred to as the 'Tribunal' in short). The petitioner also had raised the contention regarding



inability to continue with the work, if the recovery of Rs. 3 Crores threatened by the respondent department is made. On the request of the petitioner the learned Single Judge directed furnishing of bank guarantee for the said amount and also permitted the petitioner to raise the issue before the Tribunal. The respondent had taken the matter before the Hon'ble Supreme Court. The Arbitral Tribunal was found to have no jurisdiction and hence a Request Case was filed by the appellant and an Arbitrator was appointed. The term of the Arbitrator had expired and once it was extended. As of now the extended period also has expired and there is a further application filed before the Principal District Court of original jurisdiction in the State of Bihar.

2. The learned counsel for the appellant submits that there is confusion as to whether the extension of time has to be granted by the Civil Court having original jurisdiction as defined under the Arbitration and Conciliation Act, 1996 or by the High Court when the Arbitrator was appointed under section 11 of the Arbitration and Conciliation Act, 1996.

3. The learned AAG appearing for the appellants would on the other hand contend that the blacklisting is not an issue that could be considered by the Arbitrator and it is also



submitted that when the Arbitrator has been appointed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner has to necessarily move before the High Court as provided under the Arbitration and Conciliation Act, for extension of time.

4. On the question of court of competent jurisdiction to grant extension of time, we find no way to consider the same in the present appeal. Admittedly, there is an application filed by the respondent before the Principal Civil Court having original jurisdiction and it has to be left to the Principal Civil Court to decide the issue, based on various precedents produced before Court. We cannot pre-empt the Principal Civil Court from such consideration by finding on the issue, here in an appeal, where that question does not arise.

5. Insofar as the contention raised by the appellant that blacklisting would not be an issue which could be considered by the Arbitrator; we are not impressed. Blacklisting could occur only if the cancellation is upheld and a breach is found on the contractor. Hence, the issue of blacklisting is inextricably linked with the implementation of execution of the contract; which is the matter referred for arbitration. Hence, the State has to wait till the arbitration is over, since if in the arbitration constituted no breach is found, there could definitely be no blacklisting. On



the other hand if breach is found, then it would be open for the State to issue a fresh notice for blacklisting.

6. We are also told by the learned counsel appearing for the respondents in the appeal that the petitioner had continued with the work and is still continuing the work. We gave time to the learned AAG to get instructions in the matter and we are informed on instructions, that the respondent had continued with the work and almost 95 per cent is over. In the said circumstances, we are of the opinion that the appeal can be closed leaving the parties to agitate their cause before the Arbitrator. The parties would also do well to sit across a table and decide whether the further proceedings are necessary, in the facts and circumstances coming out saving valuable time and money.

7. The appeal would stand closed with the liberty aforesaid.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
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