

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11199 of 2009

=====

1.Sukumar Das son of Late Bhola Nath Das resident of village Bijaili P.S. Dandkhora, District Katihar.

2.M/s Maa Sharda Nursery, Village & P.O. Bijaili, P.S. Dandkhora, District Katihar through the Proprietor Sukumar Das son of Late Bhola Nath Das, resident of village Bijaili, P.S. Dandkhora, District Katihar.

.... Petitioner/s

Versus

1.The State of Bihar through the Secretary, Department of Agriculture, Government of Bihar, Patna.

2.The Additional Secretary, Department of Agriculture, Government of India, Bihar.

3.The Mission Director, Bihar State Horticulture Mission, Department of Agriculture, Government of Bihar.

4.The District Magistrate, Purnia.

5.The District Horticulture Officer, Purnia.

6.The District Magistrate, Katihar.

7.The District Horticulture officer, Purnia.

8.The District Magistrate, Kishanganj.

9.The District Horticulture Officer, Kishanganj.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Vidhanesh Mishra, Adv & Mrs. Tanuja Mishra, Adv.

For the Respondent/s : Mr. Rakesh Ambastha, AC to AAG-15

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

6 30-01-2015 Heard learned counsel for the parties as with regard to the following relief, prayed in this writ application:-

“For quashing the order dated 15/2/2008 contained in Memo No. 202 passed by Additional Secretary, Department of Agriculture, Government of Bihar.

For quashing the order dated 12/6/2008 contained in Memo No. 631 passed by the Mission Director, State Horticulture Mission, Bihar, Patna.

For holding the order of ban of three years due to black listing of petitioner no. 2 as illegal arbitrary and malafide.

For lifting of the ban of three years due to

blacklisting of petitioner No. 2 as it is illegal, arbitrary and mala fide.

For commanding the respondents to lift the ban of the petitioners due to blacklisting as this is seriously prejudicing the petitioners as they can not do business with any private firm, company or individual which is making their business prospects.

For commanding the respondents to make payment to the petitioners the outstanding amount of the supply of fruit plants made by the petitioners Nursery and also to release his security deposit withheld by Respondents.”

Mr. Vidhanesh Mishra, learned counsel appearing on behalf of the petitioners at the outset has submitted that in view of the fact that the period of three years has already been completed for which the petitioners were blacklisted by the impugned order, there would be now no need to adjudicate the said issue because the respondents themselves in the impugned order had undertaken to reconsider the case of the petitioners for award of fresh order after expiry of a period of three years. In that view of the matter, this Court is not inclined to examine the correctness and legality of the impugned order which of course was passed for blacklisting the petitioner for a period of three years



after giving notice and/or affording opportunity of hearing. In fact the impugned order also proceeds on the basis of consideration of certain objection and satisfaction of the competent authority which cannot be even otherwise questioned within the limited jurisdiction under Article-226 of the Constitution of India. This Court therefore, will approve the impugned order passed against the petitioners so far it relates to their blacklisting for a period of three years.

Coming however to the relief regarding payment of admitted amount it has to be taken into consideration that the petitioner in paragraph no. 18 of the writ application, has made specific averment as with regard to such claim. Paragraph no. 18, in this regard reads as follows:-

“That part of the bills were passed and payment was made in part to the petitioner No. 1 but still there is a huge amount remains outstanding before Respondent No. 9, Rs. 5,05,802/- is outstanding. Before Respondent No. 7 Rs. 35,635/- is outstanding and Before Respondent No. 5 Rs. 76,986/- is outstanding.”

Mr. Mishra has thereafter drawn attention to the



stand of the respondents in paragraph No. 8 of the counter affidavit, wherein, according to him nothing has been said about those two outstanding payments relating to supply in the district of Kishanganj and Purnea. Learned counsel for the State on the other hand has also relied on same paragraph no. 8 of the counter affidavit to contend that whatever was admissible and found payable to the petitioners has already been paid.

In the considered opinion of this Court, neither the respondents in the counter affidavit have made out a case that the petitioners will not be entitled for payment of supply of plants made by them in the district of Kishanganj and Purnea nor they infact have given any suitable explanation for withholding such payment to the petitioners in paragraph no. 8 of the counter affidavit, which reads as follows:-

“That with regard to the Statements made in para no. 18 & 36 & 39 it is humbly submitted that Respondent no. 7, District Horticulture Officer, Katihar has made payment of the outstanding bill of Rs. 35,635.00 vide Cheque No. 02877 dated 15.10.09 (Annexure-III) Respondent No. 5, District Horticulture Officer, Purnea has made payment of the outstanding bill of Rs. 14470/- vide cheque No. 657819.”



Thus, on the basis of such pleading, it would be very difficult to hold either way namely that the petitioner was not entitled to get payment or that petitioners' admitted payment has been made in respect of supply of plants made in the district of Kishanganj and Purnea.

That being so, this court would direct the concerned respondents to consider the claim of the petitioners for the balance amount and also make payment of the same, if supply has been made by them in the district of Kishanganj and Purnea. If, however, the respondents for any justified reason whatsoever find that the petitioners are not entitled for payment of the amount being claimed in paragraph no. 18 of the writ application, they will be under an obligation to pass a reasoned order and communicate the same to the petitioners. This exercise however must be completed within a period of three months and the period of three months shall be reckoned from the date the petitioner

will file his representation enclosing a copy of this order with evidence of such payment as being asserted in paragraph no. 18 of the writ application.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

Ranjan/-

U			
---	--	--	--