

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8035 of 2016

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M/s. Raj Traders through its Proprietor Pushpa Devi Wife of Sri Rameshwar Prasad@Pappu Sah Resident of K G Road, PS Ara, Nawada, District Bhojpur Bihar.

.... Petitioner

Versus

1. The Bihar State Food And Civil Supplies Corporation Ltd. through its Managing Director, 5th Floor, Sone Bhawan, Patna-800001
2. The Managing Director , Bihar State Food and Civil Supplies Corporation Ltd, 5th Floor Sone Bhawan, Patna-800001
3. The Deputy Chief (Transporation) Bihar State Food and Civil Supplies Corporation Ltd. 5th Floor, Sone Bhawan, Patna - 800001
4. The District Manager,n State Food Corporation, District Bhojpur, Bihar.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 3191 of 2016

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M/s. Raj Traders through its Proprietor Pushpa Devi, Wife of Sri Rameshwar Prasad @ Pappu Sah, Resident of K. G. Road, P.S. - Ara, Nawada, District - Bhojpur,Bihar.

.... Petitioner

Versus

1. The Bihar State Food And Civil Supplies Corporation Ltd. through its Managing Director, 5th Floor, Sone Bhawan, Patna - 800001.
2. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd., 5th Floor, Sone Bhawan, Patna- 800001.
3. The Deputy Chief (Transportation) Bihar State Food and Civil Supplies Corporation Ltd., 5th Floor, Sone Bhawan, Patna 800001.
4. The District Manager, State Food Corporation, District Bhojpur, Bihar.

.... Respondents

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Appearance :

(In CWJC No.8035 of 2016)

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate

For the Respondent/s : Mr. Shailendra Kumar Singh, Advocate

(In CWJC No.3191 of 2016)

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate

For the Respondent/s : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 12-08-2016

Heard learned counsel for the petitioner and learned counsel for the Bihar State Food and Civil Supplies Corporation Ltd. in both the matters.

The relief sought in C.W.J.C. No.8035 of 2016 is subsidiary to the action that has been taken and the orders that have been impugned in C.W.J.C. No.3191 of 2016 and, accordingly, the consideration of C.W.J.C. No.3191 of 2016 is taken up first.

In this writ application the petitioner is aggrieved by the order dated 04.02.2016, by which the agreement of the petitioner has been suspended solely on account of the fact that Sikarhatta P.S. Case No.13 of 2016 has been lodged against him and show cause has been asked as to why the agreement be not cancelled for violation of its terms and conditions and security money/bank guarantee be not forfeited. Thereafter, another order was issued on 04.03.2016 by which the agreement of the petitioner has been terminated and the petitioner has been blacklisted and further the security deposit and Bank Guarantee have been forfeited and consequential order passed, which has also been assailed by the petitioner by filing an interlocutory application.

The petitioner is a transporting and handling agent of the respondent Bihar State Food and Civil Supplies Corporation (in short 'Corporation') for the district of Bhojpur. Seven trucks of the



petitioner, which were used for transportation of foodgrains, were found parked in the vicinity of M/s. Singh Rice Mill, Arrah which, according to the petitioner, had been done after unloading the grains in the respective godowns but the same prompted the respondents to enquire into the matter and F.I.R., being Sikarhatta P.S. Case No. 13 of 2016, was instituted on 02.02.2016 under Sections 411/120(B) of the Indian Penal Code and Section 7 of the Essential Commodities Act.

Thereafter, the show cause notice dated 04.02.2016 was issued stating that for the charge of black-marketing the first information report had been lodged against the petitioner and for the said irregularity and lodging of F.I.R., the petitioner was suspended from doing transportation and handling work and directed to file her explanation by 08.02.2016 as to why the agreement be not cancelled and for violation of the terms and conditions of the agreement, the security amount/bank guarantee be not forfeited and her name be not entered in the black list. The petitioner filed the reply to the same. Thereafter, a further show cause notice dated 11.02.2016 was issued referring to the earlier show cause notice and further stating that for the charge of blackmarketing, after enquiry by the District Magistrate, Bhojpur he, by his letter dated 05.02.2016, recommended for taking legal action against the petitioner and for her blacklisting.



Accordingly, the petitioner was directed to file second explanation by 22.02.2016 as to why the agreement be not cancelled and for violation of its conditions the security/bank guarantee be not forfeited and she should not be blacklisted. The petitioner filed a reply to the second show cause notice stating various facts. Thereafter, the impugned order dated 04.03.2016 was passed, after referring to the letter of the District Magistrate and facts stated as also the recommendation made by the District Magistrate for legal action and blacklisting of the petitioner, cancelling the agreement of the petitioner and blacklisting it and for violation of clause 9 of the agreement, the security money as also the bank guarantee have been forfeited and for blackmarketing of grains, the cost of food grains seized in the F.I.R. dated 02.02.2016 was to be recovered from the petitioner.

The other writ application has been filed by the petitioner on account of recovery made pursuant to the said order for realization of Rs.92,40,350/- by letter dated 06.04.2016.

Learned counsel for the petitioner submits that it is evident from perusal of the impugned order dated 04.03.2016 that it has been passed essentially on the basis of the letter dated 05.02.2016 of the District Magistrate on the basis of an enquiry made by him as also the recommendation made therein, whereas admittedly the copy of the order of the District Magistrate was not supplied to the

petitioner. For the said sole reason, the orders passed by the said impugned orders are fit to be quashed.

It is also submitted by learned counsel for the petitioner that mere institution of an F.I.R. cannot be a ground of blacklisting the petitioner. It is urged by learned counsel for the petitioner that there was no show cause for recovery and thus it was not open to the respondents to have passed an order for recovery and the impugned orders are bad on that count also.

In this regard, it is submitted by learned counsel for the petitioner that admittedly grains are in the possession of the respondents, for which learned counsel for the petitioner relies upon the Goods Inward Register of the Bihar State Food and Civil Supplies Corporation Ltd., Bhojpur.

Learned counsel for the respondent Corporation has sought to support the impugned order stating that the report of the District Magistrate is only a supplementary material and it is not the basis on which the order has been passed. It is further submitted that serious allegations have been made against the petitioner in the first information report filed against it and thus it was open to the respondents to have blacklisted the petitioner on the ground of institution of the said F.I.R.

On a consideration of the facts and circumstances of the



case and submissions of learned counsels for the parties, this Court finds sufficient force in the submissions of leaned counsel for the petitioner. It is evident from a consideration of the impugned order dated 04.03.2016 that the said order has been essentially passed relying upon the report dated 05.02.2016 of the District Magistrate and the recommendations made therein and it cannot be said that the said report was merely a supplementary material.

From a perusal of the impugned order, it is evident that the said report is the sheet anchor of the decision arrived at. Even otherwise if an authority while taking a decision relies upon a document, whether it is a sheet-anchor or not, to come to the final decision of the case, then the person who is affected by the said order is entitled to a copy of the said order, otherwise there would be a violation of the principles of natural justice. In the present matter, the report of the District Magistrate is the sheet anchor of the impugned order dated 04.03.2016. It is evident that the order cannot stand solely on the ground that the report of the District Magistrate has admittedly not been supplied to the petitioner so that he could file any effective show cause in the matter.

This Court is also in agreement with the submission of learned counsel for the petitioner that the mere filing of the F.I.R. cannot be a ground for blacklisting any person, even though the

allegations made in the F.I.R. are of a grave nature.

So far as the F.I.R. is concerned, there are allegations which have to be investigated by the police and a report filed in court after the investigation.

In the said circumstances, the filing of the F.I.R. per se cannot be a ground for blacklisting a person. It is, however, made clear that the facts upon which the F.I.R. has been instituted can be a ground for blacklisting the petitioner but those facts must be stated in the show cause notice issued to the concerned person so that he could meet the same but not merely on the ground that the F.I.R. has been filed.

This Court also agrees with the contention of learned counsel for the petitioner that since no notice of recovery was made in the show cause, it was not open to the respondents to have passed an order for recovery. It is evident that in both the show cause notices dated 04.02.2016 and 11.02.2016, the petitioner was not at all called upon to explain as to why the recovery be not made. If any loss had been caused to the Corporation by the action of the petitioner, for that an earlier notice should have been given so that the petitioner could have explained and met the same which, according to the petitioner, she is in a position to do on the basis of the documents available, including the documents of the Corporation.

So far as this Court is concerned it does not express any view on the credibility of the documents, which are in the possession of the petitioner but it is evident that the petitioner is required to be given a proper opportunity to explain if any loss has been caused to the Corporation which entails recovery.

For the aforesaid reasons, both the writ applications are allowed. The impugned orders dated 04.02.2016, 04.03.2016 and 06.04.2016 are quashed. However, liberty is granted to the respondents to issue fresh show cause notice indicating the grounds which the petitioner has to meet and if the respondents intend to rely upon the said report of the District Magistrate, the same ought to be supplied to the petitioner to enable her to file an effective reply. The respondents may also proceed for recovery of any loss caused to them but for that also a proper show cause notice will have to be issued to the petitioner and only upon consideration of the explanation of the petitioner, any action of recovery or otherwise should be taken.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

NAFR	
CAV DATE	
Uploading Date	30.9.2016
Transmission Date	