

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5091 of 2017

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1. Mata Di Travels, represented through its Sole Praoprietor Kumar Dhiraj Son of Sri Kamta Prasad Singh Resident of Road No. 3/A, Mahesh Nagar, P.S. Patliputra, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Bihar Human Rights Commission, represented through its Deputy Secretary, 9, Bailey Road, Patna 800015.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan,
Mr. Chandan Kumar
For the Respondent/s : Mr. Rakesh Kumar
For the State : Mr. Asit Kumar Jha, AC to GP-2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-10-2017

Heard the parties.

In the present writ petition, petitioner is challenging the order dated 6.2.2017 (Annexure-1) issued by the Deputy Secretary, Bihar Human Right Commission by which the petitioner has been blacklisted for an indefinite period. He has also prayed for quashing the letter dated 28.2.2017 (Annexure-3) issued by the Managing Director, Bihar State Tourism Development Corporation by placing reliance upon the order of blacklisting; the petitioner has been debarred from supplying vehicles for the Corporation.

Petitioner is a partnership firm engaged in the business of



Travel and Tour to supply the vehicle for transportation in different organization including Bihar Human Rights Commission (hereinafter referred to as the Commission). The Commission issued an advertisement calling upon the interested persons to participate in the bid and in pursuance thereof the petitioner also dropped a sealed cover tender was recommended by tender committee to supply Tata Safari AC and Innova AC but formal agreement was not arrived in between parties.. The petitioner was informed by the Bihar State Tourism Development Corporation vide letter dated 14.2.2017 about the factum of blacklisting of the firm by the Commission. Immediately thereafter the petitioner enquired into the matter and came to know that the Commission through letter no. 1359 dated 6.2.2017 has blacklisted the petitioner firm for an indefinite period. Allegation has been made that petitioner has not made available the vehicle as per demand and for that a show cause was issued which the petitioner failed to reply. As the petitioner did not supply the vehicle caused constrain to execute the work and on that account the petitioner's firm has been blacklisted. As per petitioner, no sooner, he could know about the order immediately represented to the Deputy Secretary, vide letter no. 1359 dated 6.2.2017 giving all facts in the notice where it has been mentioned that petitioner and



Gangotri Tour and Travel were selected, but did not make available vehicle as per demand, nor received reply to show cause. Vide letter nos.41177 and 41178 dated 14.11.2016 and vide letter no. 13299 dated 7.4.2016 and letter no.14590 dated 21.4.2016 (Annexure-C) it was informed to the petitioner for supplying Tata Safari AC and Innova AC for daily use and records were demanded which were deposited by the petitioner. Time to time assurances were given but the same was never materialized. On 7.7.2016 and 7.8.2016 by verbal direction petitioner was asked to supply vehicle which was supplied, accordingly, remuneration was paid to the petitioner of Rs.3,000/- as well as Rs.2,000/ vide cheque no.890680 and thereafter petitioner was never asked to supply the vehicle. Request was made to review its earlier order and drop the name of the petitioner from the blacklist. The Manager (Transport) Bihar State Tourism Development Corporation vide letter dated 29.4.2017 has dropped the name of the petitioner from the blacklist, later on prayer has been made for quashing letter no.1359 dated 6.2.2017 wherein allegation has been made of causing interruption in the work of the Commission, on that account the petitioner has been blacklisted for an indefinite period.

Learned counsel for the petitioner submits that before



passing the order of blacklisting petitioner was not given any show cause nor any hearing rather ex-parte order of blacklisting has been passed whereas learned counsel for the Commission has submitted that petitioner was asked to supply the vehicle which he has not complied whereafter he was issued show cause notice vide memo no.41177 dated 14.11.2016 for blacklisting which was sent by the speed post and postal department has informed the service of notice but the petitioner did not given any response.

In paragraph 9 of the first counter affidavit of the Commission wherein it has been stated that petitioner has supplied the paper of Scorpio AC and Innova AC. It has further been stated that petitioner was not selected for supply of Scorpio AC but he was selected only for supply of Innova AC and Tata Safari AC whereas in show cause notice vide letter no. 41177 dated 14.11.2016 wherein it has been mentioned that for the local daily service (12 hours/80 Km) the petitioner was selected for supply of vehicle of Tata Safari AC and Innova AC and in pursuance thereof the office of the Commission had issued letter vide letter no. 13299 dated 7.4.2016 and reminder vide letter no.13299 dated 7.4.2016 by which the petitioner was directed to produce the relevant records of Tata Safari AC and Innova AC but he failed to produce the records thereby created immense problem



to carry out the work and at the end it appears that petitioner was asked to give reply within three days of receipt of show cause notice, in failure to reply or found unsatisfactory, the petitioner would be black listed. As per petitioner he has not received any show cause and as such question of giving reply does not arise. Had he received the show cause then he must have replied, inasmuch as he has further submitted that proper paper with respect to Innova AC and Scorpio AC were made available to the Commission and they have not served any letter thereby showing any infirmity with regard to paper deposited. It has been stated that order has been passed behind back of the petitioner without any show cause or without giving any opportunity to defend itself, and as such order suffers from illegality of violation of natural justice. Further it has been submitted that Commission has passed the order for blacklisting for indefinite period is not sustainable which has been dealt with by Hon'ble Supreme Court in the case of M/S Kulja Industries Limited v. Chief Gen. Manager, W.T. Proj. BSNL & others, reported in 2013(4) PLJR 447 (SC). There the Hon'ble Supreme Court has held that while passing the order of blacklisting the authority should decide the period of blacklisting in context of allegation which has been proved against the establishment and there cannot any blanket order for



indefinite period whereas counsel for the Commission said that allegation of non-supply of show cause is per se not sustainable as the information which has supplied to Commission by the Postal Department that consignment was booked and sent on 18.11.2016 Under Section 27 of the General Clauses Act in case of non-return of notice within 30 days it will be presumed of service of notice upon the petitioner but the fact is that he has taken specific plea of non-supply of show cause notice so it cannot be ignored straightway.

Be that as it may, in the present case, even from the record, it appears, that there are two anomalies in taking action against the petitioner. First in the counter affidavit it has been specifically mentioned that document and paper with respect to Scorpio AC and Innova AC were handed over by the petitioner which has not been taken into account while issuing show cause so statement is contradictory statement made in paragraph 9 of the counter affidavit of the Commission. Another mistake has been committed by the Commission that there cannot be any order of blacklisting for indefinite period but it must commensurate to the nature of the allegation made against the establishment.

In the present case, in reply, it has been submitted that even before entering into an agreement the petitioner was asked to



supply the vehicle which was supplied, has not been denied in the counter affidavit filed by the Commission and it is also a fact that the parties have/had not entered into an agreement. It was oral demand by the Commission to supply the vehicle.

In such view of the matter, the order 6.2.2017 of blacklisting the petitioner for indefinite period cannot be sustained. In the facts and circumstance of the case, accordingly the order dated 6.2.2017 is set aside with a liberty to the Commission, if he so like, may issue fresh show cause whereupon the petitioner could reply and take a decision in accordance with law taking into consideration that there cannot be an order of blacklisting for indefinite period. Accordingly impugned orders dated 6.2.2017 and 28.2.2017 are quashed.

With the aforesaid observation and direction this writ petition is allowed to the aforesaid extent.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.10.2017
Transmission Date	NA

