

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15997 of 2016

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Arun Kumar Singh, aged about 45 years, Son of late Ramadhar Singh, Resident of Village- Pakhrinankar, Police Station - Pipra Kothi, District East Champaran.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna
2. The Director, Mid-Day Meal, Bihar, Patna..
3. The Collector-Cum-Chairman Selection -Cum -Term Extension of Period Committee, East Champaran, Motihari.
4. The District Education Officer, East Champaran , Motihari.
5. The District Programme Officer/Mid-day Meal, East Champaran, Motihari.
6. The District Co-ordinator, Mid-day Meal, East Champaran at Motihari.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Tondon, Adv.

For the Respondent/s : Mr. Ashutosh Ranjan Pandey-A.A.G.-15

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 01-03-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. In this case, the petitioner is challenging the order dated 01.06.2016, whereby and whereunder the agreement with the petitioner has been rescinded on the ground that for number of days he has not supplied the food grains in the school under the “Mid-day Meal Scheme”. Another action has been taken that the petitioner along with one Ravi Kumar Jayswal has been blacklisted



without giving any notice to the petitioner.

3. So far as the blacklisting is concerned, before passing the order of blacklisting the respondent authority should have issued the notice or the show cause and only after receiving the explanation should have passed the order of blacklisting according to the gravity of the charges. There cannot be blacklisting for indefinite period as has been held by the Hon'ble Supreme Court in the case of *M/s. Kulja Industries Limited vs. Chief General Manager, W.T. Project, B.S.N.L. and Ors.* reported in **2013 (4) PLJR, 447**, where the Hon'ble Supreme Court in paragraph Nos. 26 and 27 has held as under:-

“26. The next question then is whether this Court ought to itself determine the time period for which the appellant should be blacklisted or remit the matter back to the authority to do so having regard to the attendant facts and circumstances. A remand back to the competent authority has appealed to us to be a more appropriate option than an order by which we may ourselves determine the period for which the appellant would remain blacklisted. We say so for two precise reasons. Firstly, because blacklisting is in the nature of penalty the quantum whereof is a matter that rests primarily with the authority competent to impose the same. In the realm of service jurisprudence this Court has no doubt cut short the agony of a delinquent employee in exceptional circumstances to prevent delay



and further litigation by modifying the quantum of punishment but such considerations do not apply to a company engaged in a lucrative business like supply of optical fibre/HDPE pipes to BSNL. Secondly, because while determining the period for which the blacklisting should be effective the respondent-Corporation may for the sake of objectivity and transparency formulate broad guidelines to be followed in such cases. Different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines. While, it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or violations of contractual obligations by a contractor, the respondent-Corporation may do so as far as possible to reduce if not totally eliminate arbitrariness in the exercise of the power vested in it and inspire confidence in the fairness of the order which the competent authority may pass against a defaulting contractor.

27. In the result, we allow this appeal, set aside the order passed by the High Court and allow writ petition No.2289 of 2011 filed by the appellant but only to the extent that while the order blacklisting the appellant shall stand affirmed, the period for which such order remains operative shall be determined afresh by the competent authority on the basis of guidelines which the Corporation may formulate for that purpose. The needful shall be done by the Corporation and/or the competent authority expeditiously but not later than six months from today. The parties are left to bear their own costs.”



4. In such view of the matter, the order of blacklisting is set aside.

5. So far as the decision regarding rescinding the agreement with the petitioner is concerned, the same cannot be said to be an arbitrary exercise of power. When the petitioner was given a contract for supplying the food grains to the school for small kids and when he was fallen ill, he should have made alternative arrangement, but he failed to do so and on that ground the decision for rescinding the agreement has been taken, which cannot be said to be suffering from any arbitrary exercise of power as he has not supplied the food grains for the substantial period.

6. With the aforesaid observations and directions, this writ application is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	02.03.2017
Transmission Date	N/A.

