IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18652 of 2016

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Kishlay Kumar Choudhary son of Late Kameshwar Choudhary resident of Village Garhia, P.S.- Pandaul, District- Madhubani.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Disaster Management Department, Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The Additional Collector, Madhubani.
4. The Sub Divisional Officer, Madhubani.
5. The Superintendent, Divisional Jail, Madhubani.

.... Respondents

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Appearance :
For the Petitioner : Mr. Vijay Kumar, Advocate
For the Respondents : Mr. Subhash Chandra Yadav-GP15

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 06-02-2018

The present writ petition has been filed for the following releifs :-

(i) *For quashing of a letter received vide Memo No. 2091 dated 27.08.2016 with the signature of learned District Magistrate, Madhubani whereby and whereunder the contract work for supply of materials by this petitioner to the Superintendent, Divisional Jail, Madhubani/Sub Jail, Jhanjharpur has been cancelled and after putting the name of this petitioner in black list the petitioner has been debarred from taking*

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part in any of the Government tender in future on the ground that he had not been able to make supply of goods to the flood relief victims during the period of emergency and the office has been further directed to communicate this order to all concerned and a copy of this order has been communicated to this petitioner by the Superintendent, Divisional Jail, Madhubani vide his memo no. 1782 dated 30.09.2016, contained in Annexure-1 to this application.

(ii) For stay the implementation of the impugned order (Annexure-1) during the pendency of the instant writ application.

(iii) For any other relief or reliefs, the petitioner is entitled for.

2. Learned counsel for the petitioner at the very outset confines the challenge in the writ petition to that part of the impugned order dated 27.08.2016 (Annexure-1) by which he has been blacklisted for an indefinite period and does not press any other ground. He relies on the decision of the Apex Court in Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others, (2014) 14 SCC 731.

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3. Having heard the parties and on consideration of the materials on record, this Court finds merit in the submissions of the petitioner. In Kulja Industries (supra) it was observed as follows :-

> *"25. Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor*."

4. It would appear that the principles in regard to "debarment" and "blacklisting" would be the same in view of para 21 of the said judgment, wherein it has been observed as follows –

> *"21. The legal position governing blacklisting of supplies in U.S.A. and U.K. is no different. In U.S.A. instead of using the expression "blacklisting" the term "debarring" is used by the statutes and the Courts."*

5. In the above view of the matter, the impugned order dated 27.08.2016 (Annexure-1) is hereby quashed and the matter remanded to the learned District Magistrate, Madhubani (Respondent No. 2) for taking a fresh decision with respect to the period of blacklisting to be imposed upon the petitioner after grant of opportunity of hearing to

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the petitioner in accordance with law.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
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