

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16950 of 2017

=====

M/s Saraf Traders, Bhagalpur Bihar through its Proprietor Pradeep Kumar Saraf, S/o Prabhudayal Saraf, Chaturbhuj Marwari Lane, P.S.+P.O.- Barari, Bhagalpur.

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Human Resource Development Deptt. of School Education and Literacy, Govt. of India, New Delhi.
2. The Secretary, Ministry of Human Resource Development Deptt. of School Education and Literacy, Govt. of India, New Delhi.
3. The Deputy Commissioner, Naodaya Vidyalaya Samiti, Regional Office, 5th Floor Karpuri Thakur Sadan, Kendriya Karyalaya Parishar Ashiyan Digha Road, Patna- 800025.
4. The Regional Office, Navodaya Vidyalaya Samiti, Regional Office, 5th Floor Karpuri Thakur Sadan, Kendriya Karyalaya Parishar Ashiyan Digha Road, Patna- 800025.
5. The Sub Divisional Magistrate Naugachiya-cum-Nominee, Chairman, V.M.O. Jawahar Navodaya Vidyalaya Bhagalpur.
6. The Principal Jawahar Navodaya Vidyalaya, Bhagalpur, Nagarpara Bhagalpur- 853203.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Sanjeev Kumar Mishra
For the Respondents : Mr. Siddhartha Prasad, Advocate.
Mr. Kaustubh, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-03-2018

The present writ petition has been filed for the following
reliefs –

“(i) For issuance of Appropriate writ(s) thereby quashing and setting aside the communication letter bearing no. F5/I.A. (Mains) N.V.S. (PTR) 2016-17/5192-93 dated 04.08.2017 issued under the seal and signature of respondent no. 3 addressed to the Principal of all Jawahar Navodaya Vidyalayas Under Patna Region thereby blacklisting the



petitioner's Firm namely M/s Saraf Traders allegedly for violation of purchase procedure of N.V.S.on the Basis of internal audit and verification of the address of the Tenders by the committee constituted;

(ii) For quashing further issuance of appropriate writ/writs thereby restraining the principals of all the J.N.V. under Patna Region from cancelling the tenders of the petitioner's Firm for supply of stationary uniform, and other school related items and allow the petitioner's Firm to participate in further tender of supply of required items;

(iii) For stay of the impugned blacklisting letter as contained in annexure subject to the final outcome of this case."

2. Learned counsel for the petitioner submits that the impugned order of blacklisting has been passed without issuance of show cause notice and without grant of any opportunity of being heard in the matter. It is, therefore, submitted that such order cannot be sustained in law as it is in violation of the fundamental principles of natural justice.

3. Learned counsel for the respondents appears and has been heard. A counter affidavit has been filed on behalf of the respondents in which however the aforesaid stand of the petitioner has been controverted.

4. It is well settled that any action of the State having civil consequences must conform to the principles of natural justice. It is relevant to take note of the decision in *Erusian Equipment & Chemicals Ltd. vs. the State of W.B., (1975) 1 SCC 70* wherein the Hon'ble Apex Court observed as follows __



“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purpose of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

5. It would further appear from the decision of the Hon’ble Apex Court in *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others, (2014)14 SCC 731* that the principles in regard to “debarment” and “blacklisting” would be the same __

“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.”

6. In the above view of the matter and without entering into the merits of the case, the impugned order as contained in letter No. F5/I.A. (Mains) N.V.S. (PTR) 2016-17/5192-93 dated 04.08.2017 issued by the Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, 5th floor Karpuri Thakur Sadan, Kendriya Karyalaya Parishar Ashiyana Digha Road, Patna (respondent no. 3) as contained in Annexure-6 is hereby set aside granting liberty to the respondents to issue an



appropriate show cause notice and grant reasonable opportunity of hearing before resorting to any adverse action against the petitioner.

7. It is made clear that if the petitioner participates in any tender in the meantime, the same shall be subject to any fresh order of blacklisting as may be passed against the petitioner pursuant to the liberty as aforesaid.

8. It is further made clear that in case the stand of the petitioner denying non-service of show cause notice prior to the order of blacklisting being passed is found to be incorrect, the respondents shall be at liberty to approach this Court for recall of this judgment.

9. The writ petition accordingly stands allowed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.03.2018
Transmission Date	N.A.

