IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18220 of 2017

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M/s A. K. Mishra & Associates, Chartered Accountants, through its Partner cum Incharge Purnendu Kumar age about 48 years, son of Late Ladli Mohan Choubey, resident of Village- Indu Mohan Smriti, R.B.S.S Sahay Road Naya Tola, Mundichak, Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Co-Operative Societies Bihar, Patna.
2. The Registrar, Co-Operative Societies, Bihar, Patna.
3. The Public Relation Officer, Co-Operative Societies Bihar, Patna.
4. Senior Audit Officer, Co-Operative Societies, Bhagalpur.
5. The District Audit Officer, Co-Operative Societies, Bhagalpur.

.... Respondents

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Appearance :
For the Petitioner : Mrs. Shama Sinha, Advocate
For the Respondents : Mr. U.S.S.SINGH -GP19
Mr. Uday Bhan Singh, AC to GP 19

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 11-01-2018

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

(i) To issue an appropriate writ/order/direction in the nature of certiorari for quashing memo no. 8288 dated 18.10.2017 (Annexure-11) vide which the Registrar, Co-operative Societies, Patna has blacklisted A.K. Mishra & Associates, Bhagalpur Branch (hereinafter the petitioner) and further the petitioner has been de-listed

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from the Department Panel and also the Registrar has further recommended to the Institute of Chartered Accountants of India (hereinafter referred to as 'I.C.A.I.') for cancellation of the registration of the petitioner's firm and also sent the copy of the memo no. 8288 to all the Departments and District Magistrates.

(ii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

2. Learned counsel for the petitioner impugns the blacklisting order dated 18.10.2017 (Annexure-11) mainly on two grounds, namely, that the same has been passed without any proper show cause as specifically stated in para 63 of the writ petition as well as the blacklisting order has been made effective for an indefinite period. It is submitted that the impugned order therefore, falls foul on the principles laid down by the Apex Court in Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and others, (2014) 14 SCC 731.

3. Learned counsel for the respondents appears and has been heard.

4. Having heard the parties and on consideration of the

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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*."

5. 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."*

6. In the above view of the matter, the impugned order dated 18.10.2017 (Annexure-11) is hereby quashed and the matter remanded to the Registrar, Co-Operative Societies, Bihar, Patna (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 the petitioner in accordance with law.

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7. It is made clear that in case the stand of the petitioner denying receipt 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.

8. The writ petition stands allowed as above.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2018
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