

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23615 of 2018

Ajeet Raj @ Ajit Raj, aged about 30 years, son of Anjni Kumar Prasad Mishra, resident of Road No. 1, Near Kejariwal hospital, Juran Chhapra, Barhanpura, S. - Muzaffarpur, district – Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Food and Civil Supply Department, Government of Bihar, new Secretariat, Patna.
3. The District Magistrate, East Champaran, Motihari.
4. Sub-Divisional Magistrate, Sadar Division, Motihari, East Champaran.
5. District Supply Officer, East Champaran, Motihari.
6. Additional District Supply Officer, Sadar Division, Motihari, East Champaran.
7. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd., Khadhya Bhawan, 4th Floor, Daroga Roy Path, Patna.
8. The District Manager, Bihar State food and Civil Supplies corporation Ltd. East Champaran, Motihari.
9. The District Transport Committee, East Champaran, Motihari through the Bihar State food and Civil Supplies corporation Ltd. East Champaran, Motihari.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Arun Kumar, Advocate
For the BSFC	:	Mr. Namrata Mishra, Advocate
For the State	:	Mr. U.P. Singh, AC to SC-4

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 01-03-2019 Heard Sri P.K. Shahi, learned senior counsel for the petitioner and learned counsel representing the Bihar State Food & Civil Supplies Corporation.

In the present case, Annexure-1 & 2 to the writ application are under challenge. It is Annexure-2 which has come in existence at first. By Annexure-2 dated 05.11.2018, the agreement of the petitioner has been cancelled and he has been permanently blacklisted. As a consequence thereof, Annexure-1



dated 06.11.2018 has been issued whereby the work allotted to the petitioner has been attached to the other contractors and they have been directed to lift the food-grains as additional allotment.

Mr. P.K. Shahi, learned senior counsel representing the petitioner has raised a short point for consideration. It is his submission that a bare perusal of Annexure-2 would show that the District Supply Officer, East Champaran, Motihari has written this letter to the District Manager, State food Corporation, Motihari in which he has informed that in course of verification of the records of the godown, several irregularities have been found. In course of physical verification, the quantity of wheats and rice were not in accordance with the supplies and proper register were not maintained, for this reason the District Magistrate had called for an explanation from the Assistant Godown Manager but for that reason has cancelled the agreement with the petitioner who is a transporter and ordered for blacklisting of the petitioner.

Learned senior counsel submits that Annexure-2 nowhere talks of any reason for cancellation of agreement and in no case there can be order for permanent blacklisting which has been done in the present case. It is further submitted that although the letter as contained in Annexure-2 talks of a show cause notice to the Assistant Godown Manager but it nowhere talks of any show cause to the petitioner. In fact no show cause notice was



served upon the petitioner. The show cause was only issued to the Assistant Godown Manager.

It is also argued that all the irregularities and illegalities mentioned in the impugned letter (Annexure-2) relate to the godown and by no stretch of imagination those may be attributed to the transporter.

Ms. Namrata Mishra, learned counsel representing the Corporation has at the outset taken a plea that there is a provision for appeal against the impugned order, therefore, if the petitioner is aggrieved by order, as contained in Annexure-2, he may prefer an appeal before the Managing Director of the Corporation.

It is further submitted that a show cause notice was issued to the petitioner, however after referring to the counter affidavit, learned counsel is unable to demonstrate that any show cause notice was issued to the petitioner.

Learned counsel further submits that certain irregularities were also found against the transporter which may be found from Annexure-R and R/1 to the counter affidavit.

Having heard learned senior counsel for the petitioner and learned counsel representing the Corporation and on perusal of the records, this court finds much substance in the submission of learned senior counsel. A bare perusal of Annexure-2 would show that it talks of a show cause notice issued to Sri Omnath Prasad,



Assistant Godown Manager and not to this petitioner. In one line it is stated that the agreement of the petitioner has been cancelled and he has been blacklisted.

In the case of **Kulja Industries Ltd. v. Chief General Manager, BSNL** reported in **AIR 2014 SC 9**; the Hon'ble Supreme Court has categorically held that there cannot be a permanent blacklisting and an order of blacklisting may always be challenged on two grounds, firstly that it is in violation of principles of natural justice, and secondly on the issue of proportionality of the punishment. This court finds that in the present case both the grounds exist. The petitioner has been blacklisted without any show cause notice and it is a permanent blacklisting.

Further, this court finds that although there is an objection on behalf of the Corporation on the ground of alternative remedy available to the petitioner, the said ground is liable to be rejected, as it is well settled in law that a plea of alternative remedy is not based on a rule of law rather it is rule of convenience and in appropriate cases where the orders suffer from violation of principles of natural justice or has a jurisdictional error, this court can interfere with such orders sitting in its writ jurisdiction.

In this case the court finds that even the agreement has



been cancelled without any show cause notice to the petitioner. Nothing has been referred in Annexure-2 to show as to under which terms and conditions of the agreement action has been taken. There is one more reason to take this view that the order suffers from jurisdictional error as it has been pointed out by Mr. Shahi, learned senior counsel that the power to cancel the agreement in the facts of the present case would vests with the District Transport Committee in terms of the policy document of 2018 which has got a sanction of the Board of Directors of the Corporation. Learned senior counsel has relied on para-3(iii) of the Transportation Policy as contained in Memo No. 2648 dated 16.03.2018.

For all the aforesaid reasons, the impugned orders cannot sustain the test of law. Those are liable to be set aside. Annexure-1 & 2 to the writ application are thus set aside.

This Writ Application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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