

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Civil Writ Jurisdiction Case No.6575 of 2020**

M/s Daruka and Co. through its Partner Sunil Kumar Daruka aged about 51 Years (Male), Son of Shri Bijay Kumar Daruka, Resident of A-301, Okhandiar Complex, Amulya Ghosh Road, Near Zila School Kharmanchak, Jagdishpur, P.S.-Aadampur, District-Bhagalpur, Bihar.

... .. 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. Joint Registrar, Co-Operative Societies, Bihar, Patna.
4. Senior Audit Officer, Co-Operative Societies, Bhagalpur.
5. The District Audit Officer, Co-Operative Societies, Bhagalpur.

... .. Respondents

Appearance :

For the Petitioner/s : Ms. Shama Sinha, Advocate
For the Respondent/s : Mr. Ravi Bhardwaj, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

5 24-09-2020 Heard Ms. Shama Sinha, learned counsel for the petitioner and Mr. Ravi Bhardwaj, learned A.C. to G.A.

A counter affidavit has been filed on behalf of respondent no. 2. Learned counsel for the petitioner has filed a rejoinder thereto. With the consent of the parties the writ application has been taken up for final consideration and disposal.

While hearing the writ application on the very first date on 29.06.2020, this Court passed the following order:-

“Learned counsel for the petitioner



undertakes to remove all the defects pointed out by office within three weeks after start of normal functioning of the Court.

Learned counsel for the petitioner as well as Mr. Amit Prakash, learned Govt. Advocate with Mr. Ravi Bhardwaj, learned counsel on behalf of the State are present.

The petitioner in the present case has prayed for the following reliefs:

- (i) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the memo no. 3725 dated 15.06.2020 (Annexure-1) vide which the Registrar, Co-operative Societies, Patna, has permanently blacklisted petitioner firm of Chartered Accountants Daruka & Co, Bhagalpur, without giving a proper showcause bearing the specific charges or allegations against them, to enable them to defend themselves.
- (ii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

In paragraph '10' to '13' the petitioner has made statements that in respect of audit report for the financial year 2014-15 and 2015-16 the respondent no. 2 made certain vague observation with regard to certain transactions from the Bhagalpur Central Cooperative Bank to Srijan Mahila Vikas Sahyog Samiti Limited which were not reflected in the audit report of the year 2014-



15. It is further stated that the petitioner has submitted a reply to respondent no. 2 in which he had stated that the petitioner was a statutory auditor of the Bank and he has complied with the ethical requirements and plan and performed the audit. The submission of the petitioner is that suddenly on 15.06.2020 the Registrar has declared the petitioner guilty of procedural defects and the petitioner firm has been blacklisted permanently and for an indefinite period vide Annexure '1'.

Ms. Shama Sinha, learned counsel has submitted before this Court that prior to passing any blacklisting order the respondent no. 2 was obliged to issue a specific show cause with regard to his intention, if any, to blacklist the petitioner. According to her, there was no proposal to blacklist and as such the impugned order is bad in law in view of the judgment of the Hon'ble Apex Court in the case of **Gorakha Security Services vs. Govt. of NCT of Delhi** reported in **AIR 2014 SC 3371**.

It is also submitted that in terms of the judgment of the Hon'ble Apex Court in the case of **M/s Kulja Industries Limited vs. Chief Gen. Manager, W.T. Proj., BSNL and others** reported in **AIR 2014 SC 9** there cannot be a permanent blacklisting. Learned counsel submits that the impugned order, thus, offends Article 19 of the Constitution



of India.

As prayed, let the State respondents file a counter affidavit in opposition within four weeks. List this case after four weeks i.e. on 28th July, 2020. Till next hearing operation of impugned order as contained in Annexure '1' shall remain stayed .”

In the counter affidavit filed on behalf of respondent no. 2 there is no denial of the facts that prior to issuance of the impugned order no show cause notice proposing blacklisting was issued to the petitioner. The show cause notice as contained in Annexure '4' to the writ application which has also been referred to in the counter affidavit of respondent no. 2 nowhere indicates that there was any proposal to blacklist the petitioner and as such the petitioner was not called upon to show cause on that point.

In such circumstance, this Court finds that the impugned order suffers from violation of principles of natural justice. The ratio of the judgment of the Hon'ble Apex Court in the case of **Gorakha Security Services versus Govt. of NCT of Delhi** reported in **AIR 2014 SC 3371** would be fully applicable in the present case.

Similarly, the impugned order by which the petitioner has been permanently blacklisted cannot be sustained in the light of the judgment of the Hon'ble Apex Court in the case of



**M/s Kulja Industries Limited versus Chief Gen. Manager,
W.T. Proj., BSNL and others reported in AIR 2014 SC 9.**

Mr. Ravi Bhardwaj, learned A.C. to the Government Advocate has though tried to impress upon this Court on the nature of the allegations made against the petitioner but is unable to demonstrate that there is a compliance with the principles of natural justice as indicated hereinabove.

In result, this Court finds that the impugned order as contained in Memo No. 3725 dated 15.06.2020 (Annexure '1') issued by the Registrar, Cooperative Societies, Patna cannot be sustained. It is accordingly set aside.

While setting aside the impugned order it is made clear that it is open for the competent authority, if so advised to proceed afresh in accordance with law.

The application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

vats/-

U			
---	--	--	--

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

