

IN THE HIGH COURT OF JUDICATURE AT PATNA**Civil Writ Jurisdiction Case No. 4590 of 2021**

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M/S Vaishnavi Hospital, Maurya Bihar Colony, P.S. Agamkuan, District Patna through one of its partner namely Prince Kumar Tiwary, aged about 42 years (male) son of Late Dhruv Deo Tiwari, resident of village, P.O. and P.S. Darauli, District Saran- 841234 at present Vaishjnavi Hospital Krishna Niketan School Road, near Baadshahi Payeen, Dwarikapur, Pahari, P.S. Gamkuan, District Patna- 80030.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Planning and Development, Government of Bihar, Patna.
2. The Principal Secretary, Department of Planning and Development, Government of Bihar, Patna.
3. The District Magistrate, Madhepura.
4. Deputy Development Commissioner, Madhepura.
5. District Planning Officer, Madhepura.
6. District Manager District Registration and Conciliation



Centre, Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner : Mr. Ajay Kumar Thakur, Adv.

For the Respondent/s. : Mr. Sanjay Kumar, AC to AAG-4.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 12-08-2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. Heard the learned counsel for the petitioner, Shri Ajay Kumar Thakur and the learned counsel for the respondent State, Shri Sajay Kumar, AC to AAG-4.

3. The present writ petition, though has been filed for setting aside the order passed by the District Planning Officer, Madhepura, as contained in Memo No. 1004, dated 24.12.2020, by which the work issued to the petitioner's firm has been terminated and the firm has been blacklisted as also it has been stipulated the petitioner will not be able to



participate in any tender, but the learned counsel for the petitioner has confined the prayer made in the present writ petition only to that portion of the impugned order dated 24.12.2020, whereby the petitioner's firm has been blacklisted and it has been directed that it shall not be able to participate in any tender.

4. The short issue raised by the learned counsel for the petitioner in the present writ petition, for assailing the impugned order dated 24.12.2020, is that first of all no show cause notice was ever issued to the petitioner's firm before it was blacklisted and secondly, the petitioner firm could not have been blacklisted for a perpetual period inasmuch as the same entails civil consequences.

5. Per contra, the learned counsel for the respondent State, though has got no quarrel with the legal issue raised by the petitioner and has also not been able to show that any show cause notice was issued to the petitioner firm, prior to passing of the blacklisting order as aforesaid, but has submitted that the order of termination of the work allotted to the petitioner's firm is justified and requires no interference.



6. I have heard the learned counsel for the parties and gone through the materials on record. This Court finds from a bare perusal of the impugned order dated 24.12.2020, passed by the District Planning Officer, Madhepura that the same neither depicts issuance of a show cause notice to the petitioner, prior to the passing of the blacklisting order, nor the same takes into account the petitioner's version, which in any view of the matter could not have been considered since the petitioner was never granted an opportunity of hearing, resulting in violation of the principles of natural justice and moreover, this Court also finds from the impugned order dated 24.12.2020 that the same has not only blacklisted the petitioner for an indefinite period i.e. for all times to come but has also barred the petitioner from participating in any future contracts, which is contrary to the law laid down by the Hon'ble Apex Court in the case of ***Kulja Industries Ltd. v. Western Telecom Project BSNL***, reported in ***(2014) 14 SCC 731***; paragraphs no. 25 to 29 whereof, are reproduced herein below:-

“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 misre



alsification 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.

26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back.

27. The next question then is whether this Court ought to itself determine the time period for which the appellant should be blacklisted or remit the matter back to the authority to do so having regard to the attendant facts and circumstances.

28. A remand back to the competent authority has appealed to us to be a more appropriate option than an order by which we may ourselves determine the period for which the appellant would remain blacklisted. We say so for two precise reasons:



penalty the quantum whereof is a matter that rests primarily with the authority competent to impose the same. In the realm of service jurisprudence this Court has no doubt cut short the agony of a delinquent employee in exceptional circumstances to prevent delay and further litigation by modifying the quantum of punishment but such considerations do not apply to a company engaged in a lucrative business like supply of optical fibre/HDPE pipes to BSNL.

28.2. Secondly, because while determining the period for which the blacklisting should be effective the respondent Corporation may for the sake of objectivity and transparency formulate broad guidelines to be followed in such cases. Different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines. While it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or violations of contractual obligations by a contractor, the respondent Corporation may do so as far as possible to reduce if not totally eliminate arbitrariness in the exercise of the power vested in it and inspire confidence in the fairness of the order which the competent authority may pass against a defaulting contractor.

29.



allow this appeal, set aside the

order [Kulja Industries Ltd. v. Western Telecom Project BSNL, WP (C) No. 2289 of 2011, order dated 6-4-2011 (Bom)] passed by the High Court and allow Writ Petition No. 2289 of 2011 filed by the appellant but only to the extent that while the order blacklisting the appellant shall stand affirmed, the period for which such order remains operative shall be determined afresh by the competent authority on the basis of guidelines which the Corporation may formulate for that purpose. The needful shall be done by the Corporation and/or the competent authority expeditiously but not later than six months from today. The parties are left to bear their own costs.”

7. Having regard to the facts and circumstance of the case, considering the fact that the petitioner firm, by the impugned order dated 24.12.2020, has been blacklisted in perpetuity i.e. for all times to come, which has severe consequences and further taking into account the law laid down by the Hon’ble Apex Court in the case of **Kulja Industries Ltd.** (supra), to the effect that blacklisting/ debarment” is never permanent, this Court finds that the impugned order dated 24.12.2020, passed by the District Planning Officer, Madhepura, stands vitiated in the eyes of law, hence is quashed to the extent the petitioner’s firm has been blacklisted and it has been directed that it



to participate in any tender.

8. The writ petition stands allowed to the aforesaid extent, however, with liberty to the petitioner to take recourse to such other remedies as are available under the law for the purposes of challenging that portion of the impugned order dated 24.12.2020, whereby and where-under the work allotted to the petitioner has been terminated.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13-08-2021
Transmission Date	N/A

