

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3343 of 2020

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1. Rural Youth Jan Seva Parishad through its representative Shailesh Kumar Singh, Son of Binda Singh, having its registered Office- North Dahiyawan Tola, Teachers Colony, Police Station- Chapra Muffasil, District- Chapra.
 2. Peoples Action for Development through its Secretary Ramyatan Prasad, Son of Sakaldeo Singh having its registered office at Village- Miyan Bigha, Post- Kahuara, Police Station- Nardiganj, District- Nawada.
 3. Gyan Jyoti Gramouthan Kalyan Samiti through its Secretary Jitendra Kumar Pandey, having its registered Office at Village- Choraun, Police Station- Baniapur, District- Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. The Commissioner Magadh Division, Gaya.
3. The District Magistrate-cum-Chairman, District Health Society, Gaya.
4. The Civil Surgeon-Cum-Secretary, District Health Society, Gaya.
5. The Regional Deputy Director, Health Department, Magadh Division, Gaya.
6. The Secretary to the Commissioner, Magadh Division, Gaya.
7. The Joint Secretary, Health Department, Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Gyan Prakash
For the Respondent/s : Mr.S.D. Yadav (AAG-9)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 19-03-2021 The present writ petition has been filed by the petitioners for quashing that part of the order dated 05.12.2019 passed by the Joint Secretary to the Government, Health Department, Government of Bihar, Patna and the order dated 16.12.2019 passed by the Civil Surgeon-cum-Chief Medical Officer, Gaya, whereby and whereunder the petitioners have



been blacklisted permanently.

The brief facts of the case are that the petitioners are registered non-government organization, registered under the Society Registration Act, 1960 and in pursuance to a tender issued by the District Health Society, Gaya pertaining to outsourcing of different kinds of work in different government hospitals in the District of Gaya in the month of February, 2014, the petitioners had applied for grant of work to them and finally work order was issued to the petitioners and an agreement was entered into between the petitioners and the respondents in the year 2014. The petitioners are stated to have worked satisfactorily and considering their good work, the District Health Society, Gaya had extended the tenure of the petitioners, after expiry of their tenure on 30.06.2017 till the finalization of the process of fresh tender, however, it was subsequently found that the petitioners had committed irregularities and had received illegal payment in lieu of the services provided by them as also the generators provided by them were not adequate to provide uninterrupted supply to the hospitals without any voltage fluctuation. Thereafter, the Civil Surgeon-cum-Chief Medical Officer, Gaya had blacklisted the petitioners no. 1 & 2 for an indefinite period by an order dated 01.09.2018 which



was challenged by the petitioners no. 1 & 2 by filing writ petitions bearing CWJC No. 19712 of 2018 and CWJC No. 20404 of 2018 and a coordinate Bench of this Hon'ble Court had set aside the order of blacklisting dated 01.09.2018 and had remanded the matter back to the Civil Surgeon-cum-Chief Medical Officer, Gaya for proceeding afresh, after giving an opportunity to the petitioners to place their case.

The learned counsel for the petitioners has submitted that yet again the impugned orders dated 05.12.2019 and 16.12.2019, have been passed, firstly without issuing any show cause notice to the petitioners and secondly the petitioners have been blacklisted permanently which is in teeth of 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 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.



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:*

28.1. *Firstly, because blacklisting is in the nature of 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. *In the result, we 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."*

The learned counsel for the respondent-State has neither been able to controvert the fact that no show cause notice was issued to the petitioners prior to the passing of the blacklisting order, as aforesaid, nor it has been shown that the petitioners can be blacklisted permanently.

Having regard to the facts and circumstances of the case and considering the admitted fact that no show cause notice has been issued prior to issuance of the aforesaid blacklisting order dated 05.12.2019, passed by the Joint Secretary to the Government, Health Department, Government of Bihar, Patna



as also the order dated 16.12.2019, passed by the Civil Surgeon-cum-Chief Medical Officer, Gaya, this Court finds that the same has resulted in violation of the principles of natural justice inasmuch as the petitioners have been precluded from submitting their wholesome defence and secondly considering the law laid down by the Hon'ble Apex Court in the case of **Kulja Industries Ltd.** (supra), the blacklisting orders cannot be for a permanent period i.e. for all times to come, hence this Court finds that the impugned orders dated 05.12.2019 passed by the Joint Secretary to the Government, Health Department, Government of Bihar, Patna and the one dated 16.12.2019 passed by the Civil Surgeon-cum-Chief Medical Officer, Gaya stands vitiated, hence are quashed.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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