

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7279 of 2021

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M/S ICN (INDIA) Pvt. Ltd., WZ-1390/7, First Floor, Pankha Road, Nagal Rai, New Delhi through its Director namely Navin Kishore, S/o Ramkishore Singh, Resident of Flat No. C-602, Manglik Apartments, Plot No. 25, Dwarka, Sec-6, South West Delhi, P.S.-Dwarka, Delhi-110075.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Chairman, Central Selection Board (Constable Recruitment), Bihar, Patna.
3. The Officer on Special Duty, Central Selection Board (Constable Recruitment), Bihar, Patna.
4. The Registrar of Companies, NCT of Delhi and Haryana.
5. Senior Superintendent of Police, Patna, Bihar.
6. Superintendent of Police, Patna Central, Bihar,
7. Deputy Superintendent of Police Patna, Bihar.
8. Police Inspector-Cum-Station Head Officer, Shastri Nagar, Patna.
9. Mr. Arun Kumar, Ex. Manager/Ex. Director, M/S ICN (India) Pvt. Ltd.
10. Mr. Sunil Kumar Dhawan, Ex. Director, M/S ICN (INDIA) Pvt. Ltd.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Niranjan Kumar, Advocate
Mr. Ravi Raj, Advocate
For the Central Selection Board: Mr. P.N. Shahi, AAG-6
Mr. Sanjay, Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 07-09-2021

This matter has been taken up for hearing online because of COVID 19 pandemic restrictions.

2. The petitioner M/S ICN (India) Private Limited (for short “the company”) through its Director namely, Navin Kishore has filed the present writ application seeking quashing of order dated 10.09.2020 issued under the signature of the



Chairman, Central Selection Board (Constable Recruitment), Bihar, Patna, (hereinafter referred to as “the Board”) whereby the company has been blacklisted.

3. The company is registered under the Companies Act, 1956. It has been asserted in the writ application that the company was incorporated in 1993 with Mr. Sunil Kumar Dhawan (respondent no.10) and Smt. Sangeeta Dhawan holding the complete shareholding. Navin Kishore, through whom the present writ application has been filed is said to have been appointed as the Director of the company after purchase of with the said shareholding of the company from Arun Kumar (respondent no.9). It has been stated that said Arun Kumar had purchased the entire shareholding from Mr. Sunil Kumar Dhawan (respondent no.10) and Ms. Sangeeta Dhawan. The company is engaged in the business of website design development, software development and Data processing, recruitment processing, scanning of forms by ICR/OCR technology and scanning of answer-sheets by OMR scanners and turnkey projects for conduct of examination and question paper setting and printing. Admittedly, the company had entered into an agreement with the Board for the financial years 2017-18 and 2018-19 for providing website scanner resources,



application design, SMS and payment collection to the Board, which was signed by the then Manger of the Company namely, Arun Kumar (respondent no.9) after having been authorized by Sunil Kumar (respondent no.10), one of the Directors of the company. In terms of the said agreement, the company as an agency of the Board had to collect online application forms from 28.05.2018 to 30.06.2018, of all the aspirants against Advertisement No.2 of 2018. The fee collected was to be deposited in the account of the Board within six days of the transaction. The agreement further required that after collecting applications from the candidates, the company would make available all the data related to the candidates to the firm as mentioned by the Board. The Company, though, collected fee from the applicants, it did not deposit a total sum of Rs. 14,06,39,674/- in the account of the Board till 06.09.2019, thus breaching the terms of the agreement. Despite reminders having been sent, the amount was not deposited. A legal notice was thereafter sent on 13.08.2019 to respondent no.10, the Director of the company and respondent no.9, the Manager of the company, asking them to deposit the aforesaid amount. On 04.12.2019, a show-cause notice was issued to respondent nos. 9 and 10 asking them to submit an explanation as to why the



company should not be blacklisted for having been committed fraud, cheated the Board and violated the terms of the agreement. An F.I.R. was also registered against them vide Shastri Nagar P.S. Case No. 733 of 2019 for the offences punishable under Sections 409 and 420 of the Indian Penal Code. They were arrested on 18.09.2019. In response to the show-cause notice, the said respondents submitted that since they were in custody, it would not be possible for them to submit the explanation. They had filed bail applications before this Court. The respondent no.10 was allowed provisional bail by an order dated 17.12.2019 on the condition of depositing a sum of Rs. 3,50,000,00/- in the account of the Board within four days. The provisional bail was subsequently confirmed by an order of this Court dated 31.01.2020 since he had deposited the said amount of Rs.3,50,000,00/- in the account of the Board. The respondent no. 9 (Arun Kumar) was also allowed provisional bail subject to the condition that he would deposit rest of the amount of Rs.10,56,39,674/- in installments. Respondent No.9, however, failed to deposit the full amount leading to cancellation of his bail.

4. Be that as it may, when they were on bail they submitted their explanation in response to the show-cause notice



in relation to blacklisting of the company. After having considered the explanation to the show-cause, the Chairman of the Board, by the impugned order dated 10.09.2020.

5. The facts, as noted above, are not in dispute. When the matter was taken up on 23.07.2021 a submission was made on behalf of the company that the impugned order had been passed on the basis of show-cause notices issued to two individuals, who were no more associated with the company. An argument was made that the company is a juristic person and show-cause ought to have been served upon the company instead of the Director and the Manager of the company. In view of peculiar stand having been taken on behalf of the company, the Court had put a query as to who was the person running the affairs of the company and could, according to learned counsel for the petitioner, respond to the show-cause notice sent by the Board. The Court vide order dated 23.07.2021 had permitted Navin Kishore through whom the present writ application has been filed, to submit his reply to the show-cause notice. The Court had not gone into the question of any requirement of filing of a fresh reply to show-cause notice and the same was done for the sole purpose of expediting the conclusion of the entire controversy being raised in the present case. For the said



reason, the Chairman of the Board was directed to pass an order considering the reply to the show-cause notice but with a direction that he shall not communicate the same to the petitioner and shall produce before this Court in a sealed cover. A reply was accordingly filed by Navin Kishore, whereafter, an order has been passed by the Chairman of the Board dated 04.08.2021. A copy of the said order was made available to learned counsel for the petitioner with a liberty to the petitioner to challenge the said order dated 04.08.2021. I.A. No. 01 of 2021 has been filed seeking amendment in the writ application questioning the subsequent order dated 04.08.2021. I. A. No. 01 of 2021 is allowed permitting the petitioner to question the legality of the order dated 04.08.2021.

6. Mr. Niranjana Kumar, learned counsel appearing on behalf of the petitioner has argued that the impugned order of blacklisting is bad for the reason that the company has been blacklisted for the misdeeds of its Manager and the Director. He has submitted that it is evident from the admitted facts that the real culprits are respondent nos. 9 and 10, who have admitted their guilty by agreeing to deposit the amount in the account of the Board in terms of the agreement. He has placed reliance on decisions of the Hon'ble Supreme Court in the case of *Kulja*



Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited and Others reported in (2014) 14 SCC 731 and *UMC Technologies Private Limited vs. Food Corporation of India and Another* reported in (2021) 2 SCC 551; decisions of this Court dated 20.03.2017 rendered in C.W.J.C. No. 17451 of 2016 (M/s. Ghandhyam Lal vs. The State of Bihar and Ors.) and order dated 12.08.2021 rendered in C.W.J.C. No. 4590 of 2021 (M/S Vaishnavi Hospital vs. The State of Bihar and Ors.).

7. He has submitted that in any event, the impugned order of blacklisting cannot be allowed to operate for an indefinite period in view of clear enunciation of law in the case of *Kulja Industries Limited* (supra).

8. Mr. P.N. Shahi, learned senior counsel appearing on behalf of the Board, has on the other hand, submitted that as per his own showing, the petitioner was not in any manner associated with the company when the show-cause notice was issued, seeking explanation for blacklisting of the company in view of the gross misconduct and embezzlement of huge sum of money. He has argued that the petitioner cannot raise any plea of violation of principle of natural justice inasmuch as not only respondent nos.9 and 10 were given an opportunity to explain,



the petitioner was also given such opportunity and whereafter the impugned order of blacklisting has been rightly passed.

9. In the Court's opinion, the petitioner had taken absolutely incorrect plea that the order of blacklisting was passed without giving any opportunity to Navin Kishore to explain. The misconduct of the company related to the year 2018 and the show-cause notices were issued to respondent nos. 9 and 10 who were admittedly the Manager and Directors of the company respectively at that point of time. The petitioner himself has stated in the writ application that he was appointed as a Director of the company on 07.07.2020 when he purchased the shares of the company from respondent no.10. From the impugned order, it is evident that a huge amount of money which was required to be deposited in the account of the Board was embazelled by the company.

10. Since learned counsel for the petitioner has relied on Supreme Court's decision rendered in the case of ***Kulja Industries Limited*** case (supra) in support of his argument, the brief facts of the said case need to be taken note of. In the said case, the Western Telecom Project of BSNL with whom Kulja Industries Limited had entered into an agreement, had noticed that excess amount was credited to the account of



the company towards outstanding dues. The said transaction was found to be in connivance with four of the Officers of the BSNL who had abused their official position and fraudulently generated voucher numbers on the duplicate and triplicate copies of the bills submitted by the said Kulja Industries Limited to facilitate payment as if the said bills were genuine. After issuing show-cause notice to the company, the BSNL, which was defrauded, had passed the order of blacklisting, which was under challenge. The Hon'ble Supreme Court in paragraph nos. 26 and 27 of the said decision has held as under:-

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.

11. The Hon'ble Supreme Court further concluded in paragraph nos. 28 and 29 as under:-

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 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.” (Emphasis supplied)

12. Considering the nature of misconduct, the Supreme Court in the case of ***Kulja Industries Limited*** (supra) did not interfere with the order of blacklisting and remanded the matter back to the BSNL to consider on the sole point of term of



blacklisting to be determined afresh as blacklisting for all future contracts was considered to be too harsh.

13. Considering the admitted facts and circumstances of the case, as noted above, in my opinion, the impugned order of blacklisting passed by the Board does not require interference. However, following the decision rendered in the case of *Kulja Industries Limited* case (supra) wherein it has been specifically laid down that the order of blacklisting cannot be indefinite, the matter is remanded back to the Chairman of the Board to determine the period for which the order of blacklisting should operate.

14. This writ application is accordingly dismissed but with the observations as above.

(Chakradhari Sharan Singh, J)

P. Tiwari/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	19.09.2021
Transmission Date	N/A

