

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13294 of 2021

Abha Chaudhary W/o Hari Shankar Chaudhary Proprietor of the Firms Ganpati Drugs, premise situated at Basant market, Shekhpur, Zero mile road, Muzaffarpur- 842001, R/o- Mohalla and P.O.- Shekhpur, Gali No. 3, Zero Mile Road, Muzaffarpur, P.S.- Ahiyapur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Health, Govt. of Bihar, Patna.
2. The Principal Secretary Health Department, Government of Bihar.
3. The Principal Nalanda Medical College, Hospital, Patna.
4. The Superintendent Nalanda Medical College, Hospital, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Srinandan Singh, Sr. Adv. Mr. Prakritita Sharma, Adv.
For the Respondent/s	:	Mr. Mujtabaul Haque (Gp12) Mr. Vasant Vikas, AC to GP-12

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 02-11-2021

The present petition has been filed for quashing the order dated 04.06.2021 passed by the Superintendent, Nalanda Medical College and Hospital, Patna whereby and where under the petitioner firm has been black listed for an indefinite period.

2. Shorn of the details it would suffice to state that the petitioner was granted the work of supplying drugs by the respondent no. 4, vide various office orders, however, it appears that the petitioner failed to supply the same on account of shortage of raw materials. Whereupon, the Respondent no. 4 is stated to have issued show cause notices to the petitioner,



however, the petitioner did not respond and ultimately by the impugned order dated 4.6.2021, the petitioner has been blacklisted.

3. The learned Senior counsel for the petitioner, Shri Srinandan Pd. Singh assisted by Ms. Prakritita Sharma, Advocate has submitted that a blacklisting order entails civil consequences, hence it cannot be in perpetuity as has been held 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. 17 to 19 and 25 whereof are reproduced herein below:-

17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because "blacklisting" simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party



being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.

18. The legal position on the subject is settled by a long line of decisions rendered by this Court starting with *Erusian Equipment & Chemicals Ltd. v. State of W.B.*³ where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed: (SCC p. 75, para 20)

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

Subsequent decisions of this Court in *Southern Painters v. Fertilizers & Chemicals Travancore Ltd.*⁴; *Patel Engg. Ltd. v. Union of India*⁵; *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.*⁶; *Joseph Vilangandan v. Executive Engineer (PWD)*⁷ among others have followed the ratio of that decision and applied the principle of audi alteram partem to the process that may eventually culminate in the blacklisting of a contractor.

 **19.** Even the second facet of the scrutiny which the blacklisting order must suffer is no longer res integra. The decisions of this Court in *Radhakrishna Agarwal v. State of Bihar*⁸; *E.P. Royappa v. State of T.N.*⁹; *Maneka Gandhi v. Union of India*¹⁰; *Ajay Hasia v. Khalid Mujib Sehravardi*¹¹; *Ramana Dayaram Shetty v. International Airport*



Authority of India¹² and Dwarkadas Marfatia and Sons v. Port of Bombay¹³ have ruled against arbitrariness and discrimination in every matter that is subject to judicial review before a writ court exercising powers under Article 226 or Article 32 of the Constitution.

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.

4. The learned Senior counsel for the petitioner has also submitted that no show cause notice on the point of blacklisting has ever been issued to the petitioner and merely, the authorities have directed the petitioner to supply the drugs in question by various notices issued to the petitioner.

5. Per contra, the learned counsel for the Respondent State, Shri Mujtabaul Haque (GP 12), has submitted by referring to the counter affidavit filed in the present case that various show cause notices were issued to the petitioner, however, he did not supply the drugs in question, hence, the petitioner has been blacklisted.

6. I have heard the learned counsel for the



parties and perused the materials on record from which it is apparent that the order, blacklisting the petitioner, dated 4.6.2021, has been passed in perpetuity meaning thereby that the blacklisting of the petitioner is for an indefinite period, which is de hors the law laid down by the Hon'ble Apex Court in the case of **Kulja Industries Ltd.** (*supra*). Consequently, this Court finds that the impugned order 4.6. 2021 stands vitiated in the eyes of law, hence, is quashed. However, the respondents are granted liberty to proceed afresh in accordance with law.

7. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03.11.2021
Transmission Date	N/A

