

IN THE HIGH COURT OF JUDICATURE AT PATNA

C.W.J.C. No. 20934 of 2018

Mrigendra Kumar, s/o Ramashish Sharma Kishor Mahila Shishu Kalyan Sansthan having its office at vill-Bana, PS- Khizarsarai, District-Gaya through its Secretary.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The District Magistrate, Gaya
3. The Sub Divisional Officer, Sadar, Gaya
4. The Civil Surgeon-cum-Secretary, District Health Committee, Gaya
5. The Deputy Superintendent, Sub- Divisional Hospital, Sherghati, Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rajesh Kr., Adv.

For the Opposite Party/s: Mr. Surya Kant Kumar (AC to GA 8)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

28-07-2021 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. The present writ petition has been filed for quashing Memo no. 2623 dated 01.09.2018, issued by the respondent no. 4 i.e.



the Civil Surgeon-cum-Chief Medical Officer, Gaya, whereby and whereunder the N.G.O. of the petitioner namely *Kishor Mahila Shishu Kalyan Sansthan* has been blacklisted.

3. The learned counsel for the petitioner, without going into the details of this case, has raised a short issue to the effect that a bare perusal of the impugned order dated 01.09.2018 would show that the blacklisting of the petitioner's N.G.O. is for an indefinite period i.e in perpetuity. It is also submitted that the impugned order dated 01.09.2018 is an unreasoned Order and no reason whatsoever has been furnished to come to a conclusion that the N.G.O. of the petitioner is required to be blacklisted. In this connection, the learned counsel for the petitioner has relied on a judgment dated 26.02.2020, rendered by a co-ordinate Bench of this Court, in C.W.J.C. no. 2006 of 2020 (**M/s Aryabhat Computers v. The State of Bihar and others**), to submit that an order passed without furnishing any cogent reason is vitiated in the eyes of law. Therefore, it is the submission of the learned counsel for the petitioner that the impugned order dated 01.09.2018 is contrary to the law of the land, thus is required to be set aside.

4. *Per contra.* the learned counsel for the State Sri Surya Kant



Kumar, AC to GA 8 has submitted that appropriate show cause notice was issued to the petitioner, *inter alia* stating therein that the N.G.O. of the petitioner had raised inflated bills and had drawn excess amount in the name of supplying electricity by generator, than what was required to be charged as per the agreement. It is submitted that only after considering the reply of the petitioner, the impugned order dated 01.09.2018 has been passed, as such there is no ambiguity as far as the impugned order dated 01.09.2018 is concerned.

5. I have heard the learned counsel for the parties and perused the materials on record, from which it is apparent that a cryptic order, not furnishing any cogent, clear and succinct reason in support of the decision dated 01.09.2018, has been passed by the Civil Surgeon-cum-Chief Medical Officer, Gaya, rendering the impugned order dated 01.09.2018 vitiated in the eyes of law. Another aspect of the matter is that since the order of black-listing entails severe consequences, the same cannot be passed in perpetuity i.e. for all times to come, hence on this ground as well, the impugned order dated 01.09.2018 is fit to be set aside. In this regard, it would be apt to refer to the judgment rendered 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 ap



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.”

6. Having regard to the facts and circumstances of the case and for the reasons stated hereinabove, the impugned order dated 01.09.2018, passed by the respondent no. 4 stands vitiated in the eyes of law, hence is quashed. The writ petition stands



allowed. It is needless to state that the respondent authorities may proceed afresh, in accordance with law, if so advised.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
CAV	NA
Uploading date	
Transmission date	NA

