

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24388 of 2019

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M/s S. K. Traders through its Proprietor Shankar Kumar, aged about 45 years (Male), Son of Jamuna Kumar Sahu, Resident of 30kh, Dariyapur Gola, Birla Mandir Road, P.O.- Bankipur, P.S.- Pirbahore, District- Patna

... .. Petitioner/s

Versus

1. The Bihar School Examination Board through its Chairman, Patna
2. The Chairman, Bihar School Examination Borad, Patna
3. The Secretary, Bihar School Examination Borad, Patna
4. Sri Jai Kishore Singh S/o not known to the Petitioner presently posted as the Deputy Controller of Examination-cum-Incharge Officer, Stores (Secondary Education), Bihar School Examination Borad, Patna
5. Shree Shyam Trading Company Savitri Market, P.O.- Khazanchi Road, P.S.- Jakkanpur, Patna-800004, through its representative Sanjay Kumar Modi, aged about not known to the petitioner (Male), Son not known to the petitioner, Resident of Savitri Market, P.O.- Khazanchi Road, P.S.- Jakkanpur, Patna-800004
6. The Deputy Controller of Examination cum Incharge Officer Stores (Secondary Education), Bihar School Examination Borad, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey
For the Respondent/s	:	Mr.Lalit Kishore
For the B.S.E.B.	:	Mr. Satyabir Bharti

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 04-03-2021 The present writ petition was initially filed seeking a direction upon the respondents to quash the work order, issued to the respondent no. 5, upon the petitioner being deprived of the same. During the interregnum period, an order dated 27.04.2020 has been passed by the respondent- Bihar School Examination Board, Patna, whereby and whereunder the petitioner has been blacklisted for two years.



The learned counsel for the petitioner, at the outset, seeks liberty to invoke Clause 22 of the N.I.T. in question, for the purposes of resolution of other disputes, except the issue of blacklisting. Liberty, so sought, is granted.

The learned counsel for the petitioner has assailed the order of blacklisting dated 27.04.2020 on the ground that no separate show cause notice was issued to the petitioner before passing the said order of blacklisting.

The learned counsel for the respondent-Board has submitted that it is true that no separate show cause notice was issued to the petitioner prior to passing of the blacklisting order dated 27.04.2020, hence the same be quashed and the matter be remanded back to the respondent- Board for passing of fresh orders.

Having regard to the facts and circumstances of the case and considering the fact that no separate show cause notice was issued to the petitioner prior to passing of the blacklisting order dated 27.04.2020, issued by the Joint Secretary-cum-Incharge Officer, Stores (Secondary Education), Bihar School Examination Board, the aforesaid order dated 27.04.2020 is quashed, however with liberty to the respondent-Board to proceed further in accordance with law.



At this juncture, the learned counsel for the petitioner has submitted that in view of the amendment made in the Arbitration and Conciliation Act, 1996 and in view of the judgment rendered by the Hon'ble Apex Court in the case of ***Voestalpine Schienen GMBF v. Delhi Metro Rail Corporation Limited***, reported in ***(2017) 4 SCC 665***, it is evident that the Arbitrator cannot be an Official of the Bihar School Examination Board, Patna. In this regard, this Court would only observe that in case the parties have, in terms of Clause 22 of the N.I.T., decided to get the matter resolved through arbitral process, it will be open for them to agree on the mode of appointment of the Arbitrator as also they would be at liberty to take recourse to such other remedies as are available under the Arbitration and Conciliation Act, 1996 for the purposes of appointment of an Arbitrator.

The writ petition stands disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

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