

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13808 of 2021

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Gopal Kumar Mandal Son of Late Banarsi Mandal Resident of Baniya Tola,
Hafiaganj, Police Station- Muffasil, District - Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, Vikash Bhawan, New Secretariat, Patna.
2. The Additional Chief Secretary, Education Department, Government of Bihar, Vikash Bhawan, New Secretariat, Patna.
3. The Director, Mid-Day Meal, Bihar Text Book Compound, Buddha Marg, Patna.
4. The District Magistrate, Katihar.
5. The District Magistrate - cum -Chairman of District Level Tender Selection Committee, Katihar.
6. The District Program Officer, Mid - Day Meal, Katihar.
7. The District Program Officer, Mid - Day Meal - cum - Member Secretary, District Level Tender Selection Committee, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Sanjeet Kumar, Advocate
For the Respondent/s	:	Mr. Madanjeet Kumar, GP-20

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

6 07-02-2022 This matter has been taken up for online hearing through video conference because of *COVID-19* pandemic restrictions.

2. The petitioner seeks quashing of office order bearing memo No. 291 dated 19.06.2021, issued under the signature of the District Programme Officer, Mid Day Meal,



Katihar whereby and whereunder the petitioner has been blacklisted after cancelling the agreement for execution of the Scheme of Mid Day Meal in Barsoi Block in the District of Katihar. By the impugned order, the security money of the petitioner has also been forfeited.

3. We have heard Mr. N. K. Agrawal, learned Senior Counsel appearing on behalf of the petitioner and Mr. Madanjeet Kumar, learned GP-20 for the State of Bihar. Mr. Girijish Kumar, Advocate has appeared on behalf of the Director, Mid Day Meal.

4. Pleadings are complete.

5. Mr. N.K. Agrawal learned Senior Counsel appearing on behalf of the petitioner has, however, chosen to confine the challenge to the impugned order only to the extent it relates to blacklisting the petitioner.

6. It may be noted, at this stage, that admittedly before passing of the impugned order the petitioner was put to a show cause notice through letter No. 213/ MDM dated 03.04.2021 issued by the District Programme Officer, Mid Day Meal, Katihar, alleging various irregularities by the petitioner in execution of the work awarded to him. He was asked to explain as to why appropriate legal action may not be taken and his



contract may not be cancelled.

7. It is undisputed that the petitioner did not submit any reply to the said show cause notice dated 03.04.2021.

8. Mr. N. K. Agrawal, learned Senior Counsel appearing on behalf of the petitioner, has submitted that the said show cause notice dated 03.04.2021 did not disclose proposed action of blacklisting against the petitioner. Relying on Supreme Court's decision in case of ***Gorkha Security Services vs. Govt. of NCT of Delhi & Ors.*** reported in ***2014(4) PLJR (SC) 387, paragraph- 19*** he contends that before taking any decision to blacklist a contractor, it was imperative for the authorities to have disclosed proposed penal action in the nature of blacklisting.

9. He has secondly submitted that the impugned order of blacklisting is also unsustainable for the reason that no period has been prescribed for which the said order shall remain operative and thus it has been made operative for indefinite period. He contends that such action is contrary to the Supreme Court's view in case of ***M/s Kulja Industries Limited vs. Chief Gen. Manager, W.T. Proj. BSNL & Ors.*** reported in ***(2013)4 PLJR(SC) 447.***

10. Upon consideration of materials on record, there



does not appear to be any dispute over the fact that no show cause notice was issued to the petitioner disclosing proposed action of blacklisting.

11. Mr. N. K. Agrawal, learned Senior Counsel for the petitioner is correct in his submission that an order of blacklisting cannot be allowed to operate for an indefinite period, in view of the law laid down by the Supreme Court in case of *Gorkha Security Services* (supra).

12. In such view of the matter, the impugned order dated 19.06.2021 is hereby set aside to the extent the same relates to blacklisting the petitioner. It will, however, be open for the respondents to take appropriate decision on the point of petitioner's blacklisting after putting him on a proper show cause notice and pass appropriate order in accordance with law.

13. The application stands allowed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Rajesh/-

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