

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11687 of 2022

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AIMS International A proprietorship firm having its unit at 599 Treasury Road, Ambala City Haryana, through its proprietor Maman Jain @ Maman Chand Jain, aged about 54 years (Male), son of Chattar Singh Jain, resident of Mohalla 393, Huda Sector 8, P.O. and P.S.- Ambala City, District- Ambala, Haryana 134003.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Animal and Fisheries Department, New Secretariat Vikas Bhawan, Bailey Road, Patna- 800015.
2. The Secretary, Animal and Fisheries Department, New Secretariat Vikas Bhawan, Bailey Road, Patna 800015.
3. The Director, Animal Husbandry, New Secretariat Vikas Bhawan, Bailey Road, Patna- 800015.
4. The Joint Director, Animal Health, New Secretariat Vikas Bhawan, Bailey Road, Patna 800015.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Suraj Samdarshi, Advocate
For the Respondent/s : Mr.Raj Kishore Roy, GP-18

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SATYAVRAT VERMA)

Date : 24-08-2022

Heard learned counsel for the parties.

2. Petitioner has prayed for the following relief(s):-

- (i) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing letter no. 864 dated 04.03.2021 (Annexure 10) issued by the Respondent Joint Director, Animal Health, whereby and whereunder the petitioner firm has been perpetually blacklisted in flagrant and blatant violation of the principles of natural justice.



(ii) This Hon'ble Court may adjudicate and hold that an order of blacklisting cannot be perpetual in nature.

(iii) This Hon'ble Court may adjudicate and hold that an order of blacklisting, which entails grave civil consequence, cannot be passed in a mechanical manner without providing the evidence and other relied upon documents to the noticee and affording an adequate opportunity to rebut the same.

(iv) This Hon'ble Court may further adjudicate and hold that the impugned order of blacklisting is violative of the principles of natural justice inasmuch as the petitioner has not been provided the evidence against itself and other relied upon documents so as to enable the petitioner to rebut the same and the petitioner has been condemned unheard.

(v) This Hon'ble Court may adjudicate and hold that the Respondents were duty bound to supply the evidence and other documents requested by the petitioner prior to passing the order of blacklisting.

(vi) This Hon'ble Court may further adjudicate and hold that the impugned order of blacklisting is bad in the eyes of law since the same has been passed in a highly mechanical manner that too after seven years of the alleged irregularities.

(vii) This Hon'ble Court may further adjudicate and hold that the Respondents have waived the right to take any action against the petitioner on account of the fact that Respondents did not take



any action against the petitioner for as many as seven years.

(viii) This Hon'ble Court may further adjudicate and hold that the action of the Respondent Authorities, in blacklisting the petitioner, is an act of mala fide and complete arbitrary exercise of authority/power.

(ix) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.

3. The learned counsel for the petitioner submits that the sole issue which arises for consideration in the present writ application is whether the Letter No. 864 dated 04.03.2021 (Annexure-10 to the writ application) issued by the respondent no. 4 blacklisting the petitioner's firm perpetually can be sustained in the nature of the order passed by the respondent no. 4 which prima facie appears to be sans reasons and at the same time was passed behind the back of the petitioner.

4. The learned counsel next submits that petitioner is engaged in manufacture and supply of Pharmaceuticals, Feed Supplements and Herbal Products and the unit of the petitioner is located at 599 Treasury Road, Ambala City Haryana. It is next submitted that the controversy in the present writ application has arisen in the backdrop of the fact that it is alleged that the petitioner's firm had participated in the tender



bearing P.R. No. 4318 (animal and fish) 2017-18 floated by the Animal and Fisheries Department for procurement of Veterinary Medicines for the Financial Year 2017-2018, 2018-2019 and 2019-2020. The learned counsel next submits that the said tender came to be rejected on the ground that it does not bear the original signature of the petitioner as is evident from minutes of the meeting of the Tender Committee dated 23.01.2018 contained in Memo No. 431 dated 12.02.2018 (Annexure-1 to the writ application). The learned counsel next submits that thereafter the respondents published another tender bearing P.R. No. 001833 (animal) 2020-2021 for procurement of Veterinary Medicines for the year 2020-2021 and 2021-2022, in which the petitioner participated after submitting all the requisite documents as required in terms of the Tender Bearing No. 001833.

5. The learned counsel further submits that from facts stated hereinafter, it is clear that in pursuance of the Tender Bearing P.R. No. 4318 (animal and fish) 2017-2018, in which the participation of the petitioner was rejected as aforesaid but no action was taken against the petitioner nor any explanation much less a show cause was even issued, it is thus submitted that the said process of tendering came to an end



without any dispute raised at the end of the respondents and thereafter fresh tender was issued in which petitioner participated. The learned counsel further submits that all of a sudden he came to know that his technical bid submitted in pursuance of the Tender Bearing No. 001833 (animal) 2020-2021 came to be rejected on the ground that the petitioner had participated in pursuance of tender floated at the district level for procurement pertaining to the year 2014-2015, 2015-2016 and 2016-2017 and Tender Bearing P.R. No. 4318 (animal and fish) 2017-2018 in which the documents submitted by the petitioner was found to be fake, this is the evident from the minutes of the meeting dated 29.06.2020 contained in Memo No. 2503 dated 02.09.2020 (Annexure-2 to the writ application). The learned counsel thus submits that it absolutely defies all logic and wisdom and reasonable administrative behaviour that the tender of the petitioner with respect to Tender Bearing P.R. No. 001833 (animal) 2020-21 came to be rejected on a non-existing ground even without seeking any explanation from the petitioner prior to rejecting his technical bid, it is also submitted that it absolutely does not stand to reason that the ground on which the present technical bid was rejected was based on the fact that petitioner in the



previous tender, as aforesaid, had submitted fake documents, but no action was taken against the petitioner in pursuance of the previous tenders. The learned counsel next submits that petitioner accordingly vide his letter dated 11.09.2020 (Annexure-3A to the writ application) addressed to the respondent no. 2 objected the rejection of his technical bid on the ground that his Tender Bearing P.R. No. 4318 (animal and fish) 2017-2018 was rejected for want of signature on the documents and also highlighted irregularities being committed in the department. The learned counsel further submits that peeved by his letter dated 11.09.2020 and 26.09.2020, the respondent no. 3 issued Letter No. 2878 dated 07.10.2020 (Annexure-4 to the writ application) by which the petitioner was directed to show cause as to why the firm be not blacklisted for furnishing fake drug license, non-conviction certificate, GMP certificate, performance certificate and affidavit in the district level tenders pertaining to procurement of license for the year 2014-2015, 2015-2016 and 2016-2017, the said letter also had reference of Letter No. 8468 dated 20.03.2019 issued by the State Licensing Authority Department, Ayush Haryana which had denied issuing the certificates to the petitioner, further the petitioner was directed



to appear on 20.10.2020 to present his case, it is next submitted that petitioner was intimated by Letter No. 2951 dated 19.10.2020 (Annexure-6 to the writ application) issued by the respondent no. 4 that the hearing schedule for 20.10.2020 has been deferred. It is further submitted that the petitioner also Vide Letter No. 1248 dated 19.10.2020 (Annexure-7 to the writ application) requested the respondent no. 3 to provide certain documents so as to enable the petitioner to furnish a proper reply to the show cause notice dated 07.10.2022 i.e., the petitioner asked to provide the name of the firm which submitted the tender on behalf of the petitioner for the year 2014-2015, 2015-2016 and 2016-2017, details of payment made, copy of the department letter by which the documents of the petitioner were verified and communication of the verifying authority. It is next submitted that petitioner was directed to appear on 22.01.2021 for hearing in the blacklisting matter and also with respect to complaints made by the petitioner Vide Letter No. 201 dated 15.01.2021 (Annexure-8 to the writ application) issued by the respondent no. 4. The petitioner accordingly vide his Letter No. 1586 dated 19.01.2021 (Annexure-9 to the writ application) responded to the letter dated 15.01.2021, requesting that the information sought by



him by letter dated 19.10.2020 till date had not been provided, further made a categoric statement that he had not participated in the tender of the year 2014-2015, 2015-2016 and 2016-2017. It is next submitted that since the document asked for by the petitioner as aforesaid by his letter dated 19.10.2020 was not provided to him by the respondent authorities as such neither the petitioner nor his representatives could appear on 22.01.2021 i.e., the date fixed for hearing, as the petitioner in absence of relevant document was not in a position to contest the proceedings relating to blacklisting, more so when he had made a categoric statement in his letter dated 19.01.2021 that he had not participated in the tender of the year 2014-2015, 2015-2016 and 2016-2017. The learned counsel submits that the respondent no. 4 in absence of the petitioner or his representative passed order contained in Letter No. 864 dated 04.03.2021 (Annexure-10 to the writ application) blacklisting the firm of the petitioner by recording that the State Licensing Authority Directorate Ayush, Haryana vide its Letter No. 8468 dated 20.03.2019 had informed that the documents as aforesaid submitted by the petitioner were not issued by their office as such the petitioner for procuring the tender had applied in pursuance of fake documents in breach of the condition of the



tender as such the petitioner along with his authorized representative have been blacklisted. The Learned counsel for the petitioner submits that the procedure adopted for blacklisting is not in consonance with the law, it is submitted that the respondent did not make available, the documents asked for by the petitioner for submitting an effective reply, it is next submitted that blacklisting entails both civil and penal consequences as such an order passed in a casual manner without giving proper opportunity to defend cannot be countenanced.

6. Learned counsel appearing for the petitioner, invites our attention to the decisions rendered by Hon'ble Apex Court in **State of Orissa and others versus Balram Sahu, (2009) 2 SCC 652; Patel Engineering Limited Versus Union of India and another, (2012) 11 SCC 257; Gorkha Security Services Versus Government (NCT of Delhi) and others, (2014) 9 SCC 105; and Kulja Industries Limited Versus Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others, (2014) 14 SCC 731.**

7. The principles enunciated in the said decisions can be summarized as under:-

(a) The effect of blacklisting is to exclude a person from



entering into a lawful relationship with the government for a gainful purpose.

- (b) The power of the State and the Union under Article 298 of the Constitution extends to carrying on any form of trade, the acquisition, holding or disposal of property and entering into any related contracts. Such exercise of power may be with or without a law, on the books, subjected of course to Part III of the Constitution, including Article 14 and 21.
- (c) Public contracts are subject to equality of opportunity. The State's right to trade must be executed with due observance of equality.
- (d) An individual may choose to or not to deal with a particular person but the government does not have such Liberty. It cannot discriminate similarly situated person.
- (e) Blacklisting deprives a person of equality of opportunity in a public contract, disabling them from participating, in spite of eligibility. A person transacting business with the State possesses a legitimate expectation that any act done by the State will be backed by legality.
- (f) The ground of prejudice being caused to the petitioner on non issuance of Show cause, is as a matter of practice, generally, not available to the State.
- (g) The issuance of show Cause Notice, unless otherwise warranted, must precede blacklisting.
- (h) Blacklisting is not a simple event. It is followed by many civil consequences, or those of another



nature. It is also termed “civil death.”

- (i) Given the stigmatic nature of an order of blacklisting it must be issued with great caution as it entirely precludes a person who has been blacklisted from the award of government contracts.
- (j) An order of blacklisting is open to be weighed on the scales of natural justice and the doctrine of proportionality.
- (k) An essential precondition for a duly issued order of blacklisting is a fair hearing on the Show Cause Notice issued.

8. The principles as mentioned earlier stand reiterated by Hon'ble the Apex Court in **Vetindia Pharmaceuticals Ltd. State of Uttar Pradesh and another, (2021) 1 SCC 804**, wherein it is further observed as under:

“12.An order of blacklisting operates to the prejudice of a commercial person not only *in praesenti* but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death. The repercussions on the appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred expressly because of the present impugned order. The possibility always remains that if a proper show-cause notice had been given and the reply furnished would have been considered in accordance with law, even if the respondents decided to blacklist the appellant, entirely different considerations may have prevailed in their minds especially with regard to the duration.



13. This Court in *Kulja Industries Ltd. v. Western Telecom Project BSNL* [*Kulja Industries Ltd. v. Western Telecom Project BSNL*, (2014) 14 SCC 731] , despite declining to interfere with an order of blacklisting, but noticing that an order of permanent debarment was unjustified, observed: (SCC p. 744, para 28)

“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.”

9. The principles of natural justice are attracted whenever a person suffers a civil consequence, or prejudice is caused to him because of some administrative action. Civil Consequences mean infraction of personal property rights, violation of civil liberties, material deprivation or sufferance of non-pecuniary damages. It is also settled law that mere violation of Natural Justice Principles is not sufficient for Judicial intervention unless such breach also entails avoidable prejudice caused to the person. [**Natwar Singh v. Director of Enforcement, (2004) 13 SCC 255; SEBI v. Akshaya Infrastructure (P) Ltd., (2014) 11**



SCC 112]

10. We also take note of what Hon'ble Apex Court held in **H.L Trehan v. Union of India,(1989) 1 SCC 764**, where it was held that even when the statutory authority had the power to take action without hearing, it would be arbitrary to take action without hearing, and thus, be violative of Article 14 of the Constitution.

11. We noticed that the impugned order insofar as it relates to blacklisting is concerned, requires interference as the same is in utter violation of the fundamental principles of natural justice and at the same time does not even remotely consider the objection raised by the petitioner that he never participated in the tender process relating to the year 2014-2015, 2015-2016 and 2016-2017 hence the impugned order dated 04.03.2021 (Annexure-10 to the writ application) issued by the respondent no. 4 whereby the petitioner and his authorised representative stands blacklisted is quashed and set aside.

12. The appropriate authority shall pass a fresh order, in accordance with law, after complying with the principles of natural justice, giving adequate opportunity of hearing after supplying the evidence and other documents requested by the petitioner.



13. The writ petition stands disposed of in the above terms.

14. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Satyavrat Verma, J)

Shivam/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.08.2022
Transmission Date	

