

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13069 of 2022**

=====

Datacon Technologies Pvt Ltd. having its Office at 31/10 Left of Magadi Main Road, behind Saraswathi Convention Center, Bengaluru, Karnataka-560079 through its Managing Director Dileep Kumar, Male, 52 years, S/o Jayprakadh M A R/o389, 4th main 3rd Phase 3rd Stage, Kathriguppe, South Bangalore, Bengaluru, Karnataka- 560085

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, State of Bihar
2. The Development Commissioner-cum-Chairman, BSBCL, Bihar, Patna.
3. The Additional Chief Secretary, Prohibition, Excise and Registration Department, Bihar, Patna.
4. Excise Commissioner, Prohibition, Excise and Registration Department, Bihar, Patna.
5. The Managing Director, BSBCL, Bihar, Patna.
6. The Deputy Commissioner-cum-nodal Officer, Prohibition, Excise and Registration Department, Bihar, Patna.
7. The General Manager, BSBCL, Bihar, Patna.

... .. Respondent/s

=====

**Appearance :**

|                      |   |                                      |
|----------------------|---|--------------------------------------|
| For the Petitioner/s | : | Mr. Kumar Amit, Adv.                 |
| For the Respondent/s | : | Mr. Vikash Kumar (Sc11)              |
|                      |   | Mr. Sri Ram Krishna, (A.C to S.C-11) |
| For BSBCL            | : | Mr. Vikas Kumar, Adv.                |
|                      |   | Mr. Grijesh Kumar, Adv.              |

=====

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE NAWNEET KUMAR**  
**PANDEY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 01-12-2022**

1. Heard Mr. Kumar Amit, the learned counsel  
  
for the petitioner and Mr. Vikash Kumar, for the  
  
State.

2. The petitioner/ Datacon Technology Private



Ltd. has challenged the order dated 04.05.2022 issued by the Deputy Commissioner-cum-Nodal Officer, Prohibition Excise and Registration Department of Government of Bihar, blacklisting the firm initially for a period of one month and thereafter by order dated 03.06.2022 by which the petitioner has been blacklisted for three years.

**3.** The main grievance of the petitioner is that no show-cause notice was served upon the petitioner/company before taking the decision.

**4.** The petitioner/ Datacon Technology Private Ltd. was empanelled by Karnataka State Electronic Development Corporation Ltd. (herein after called KEONICS) a Government of Karnataka enterprise, to undertake the implementation of the Integrated Excise Management System (herein after referred to as 'IEMS') and call center projects of the State of Bihar.

**5.** The Department of Prohibition, Excise and Registration, Government of Bihar had issued tender



for selection of an agency for Design, Supply, Installation, Commissioning, Operations and maintenance of IEMS for the Department. In the said tender, KEONICS was selected as the Total Solution and Service Provider to undertake the project of development and implementation of the solution, its roll-outs and state operations. A Master Service Agreement (hereinafter referred to as "MSA") was entered into between KEONICS and Bihar State Beverage Corporation Ltd. (hereinafter referred to as BSBCL). Under the aforesaid agreement, the petitioner was empanelled to undertake the entire implementation work as noted above.

- 6.** It is the case of the petitioner that under the MSA which contained detailed provisions for dispute resolution including that of escalation, conciliation, mediation and arbitration, which could have been invoked in cases of complaint but the respondent has chosen to black-list the petitioner/ company with



which there was no direct agreement. The petitioner had been working under the MSA which was concluded between KEONICS and the concerned Department of the Government of Bihar. For their part, the petitioner has informed this Court that the obstacles in the way of completion of the project were made known to the Department through the vendor namely, KEONICS. There were issues of non-availability of infrastructure, non-functional internet facilities at check-posts and delayed payment of services rendered, but no heed was paid to such complaints.

**7.** The further grievance of the petitioner/company is that the Department chose to change its requirements which was conveyed to the petitioner but those changes were not part of the MSA. Because of all these bottlenecks, there was some delay in execution of the project. Notwithstanding the petitioner having moved the entire hardware items to Patna in August, 2017, the



implementation work could not start until 2019 for want of decision of location/site for carrying out the work.

- 8.** The major grievance of the petitioner, as noted above, is that by the Office Memorandum dated 04.05.2022, the vendor/ KEONICS and the petitioner were informed that the Department was of the view that the delay in making the project "go live" was because of non-implementation of various modules of IEMS software and its poor management. By the afore-noted notice, it was declared by the Department that the vendor would be obligated to take up the issues of poor management of IEMS and call centers with its empanelled agency i.e. petitioner and resolve those to the satisfaction of the Department within 30 days. The vendor was given the liberty to consider changing the empanelled agency if it was not able to address the grievance of the Department. It was also cautioned that in case the empanelled agency was changed / substituted by



another, the transition ought to be smooth, without disrupting either the IEMS or the call center operations. Along with this declaration, the vendor and the empanelled agency i.e. the petitioner were directed to submit a reply as to why the contract be not finally terminated and the vendor and the empanelled agency be not black-listed for a period of three years.

- 9.** Till the time the empanelled agency resolved the dispute, the petitioner was black-listed for a period of 30 days with immediate effect, prohibiting it, till further orders, to participate in any future project of Prohibition, Excise and Registration Department in any direct, indirect or subsidiary capacity. This provisional/tentative black-listing, however, was with a caveat that if the grievances of the Department would be addressed before 30 days, the Department may consider removing the empanelled agency from the black-list at an early date. The Office Memorandum referred to above



further indicated that if the services provided by the vendor and the empanelled agency did not improve or address the grievances, the Department would mull over the termination of the contract by invoking Clause 18.1.1 of the agreement with all its necessary consequences.

**10.** There was also a veiled threat in the aforesaid office memorandum that the Department would not renew its MSA with the vendor unless there was improvement in the management of IEMS and call centers. The Department could take a sympathetic view and consider continuing with the vendor and the empanelled agency.

**11.** Mr. Kumar Amit, the learned Advocate for the petitioner/company submits that this is no notice for black-listing for two reasons viz., the tenor of the office memorandum only reflects the grievance of the Department and an opportunity to the vendor and the empanelled agency to address those issues and sort it out, failing which, there



could be termination of contract with the vendor and black-listing of the vendor; secondly that black-listing as such was not in the contemplation of the petitioner when it received such notice for the major thrust of the intimation was for improving the working of IEMS and call centers. The notice would have been complete only if the Department would have said that nothing has been done withing the time frame entitling it to invoke the provisions of black-listing and debarment as also termination of contract.

**12.** It has further been submitted that black-listing entails very serious consequences. It takes out a company from the privileges and advantages of entering into any lawful relationship with the Government for the purposes of gains. With an action so stringent, with such cascading evil effects, it has been argued, notice is a must as it is one of the primary requirements of principles of natural justice. Notice must intimate the noticee the



contemplation of the Department in view of deficiency in service provided to black-list it. The notice cannot be tentative, vague or providing the various options to the noticee.

**13.** On a plain reading of the purported notice, the petitioner thought it to be a reminder that the services at IEMS and call centers ought to be improved or upscaled, giving liberty to the vendor (KEONICS) to further indicate the impediments faced by the empanelled agency or the vendor, which could, in turn, have been addressed by the Department. This office memorandum, the learned Advocate submits, *prima facie*, appears to be a consultation of one party with the other and not a notice as required for as serious an action as black-listing.

**14.** The order of black-listing dated 03.06.2022 refers to the same grievance of the Department, viz. poor management of the IEMS and call centers including certain new departures in the



implementation and execution of schemes. There is reference of another show-cause notice having been issued by the Department to the main vendor/ KEONICS regarding supposed default in deduction and contribution of E.P.F. and E.S.I. amount of employees of the petitioner, who were engaged with IEMS.

15. The sudden and complete shutdown of servers on 31.05.2022 an event which occurred post notice, was also taken into account for black-listing the petitioner, as such shutdown of servers affected IEMS supply chain module leading to total collapse of the call centers. This was an isolated/ separate event for which the petitioner had no notice that this event shall be read squarely against the petitioner for black-listing it.

**16.** It further appears from the order of black-listing that there was no response to such notice by KEONICS and that the petitioner communicated with KEONICS its decision to



withdraw from the project from 20.05.2022 which was communicated to the Department on 19.05.2022. This unilateral withdrawal from the work with only 24 hours notice to the Department also appears to be one of the reasons for black-listing the petitioner.

**17.** The learned Advocate for the petitioner, after taking this Court to the further contents of the order of black-listing, submits that decision of black-listing the petitioner /company was taken on mere supposition that the above developments which had taken place gave an impression to the Department that there would not be any smooth transition if the empanelled agency is changed.

18. The petitioner therefore, questions the correctness of this reason as a ground for black-listing the petitioner.

**19.** Further ground of assail is that there was no direct agreement between the petitioner and the Government as the petitioner was only working as an



empanelled agency, though approved by the Government, but under the MSA between the main vendor/ KEONICS and the Department of Excise. The inefficiency of the empanelled agency could have been a ground for terminating the contract with the vendor/KEONICS or perhaps black-listing the vendor if the situation so demanded but not the empanelled agency, which was only working under an agreement with the main vendor.

**20.** The learned counsel for the State however has submitted that such super-technical view of the contents of the notice may not be insisted upon. The Excise Department, which had selected KEONICS for total solutions, ought to have freedom of terminating the contract, if the services provided are not to the satisfaction of the Department. Several sets of notices were served on the vendor and the empanelled agency but the solutions to the problems pointed out were not provided, forcing the Department to give a final notice to the vendor as



also the empanelled agency to improve upon its working or else suffer termination of contract and eventual black-listing.

**21.** True it is, Mr. Vikas Kumar argues, that before black-listing, a notice has to be given but there is no requirement under law to segregate notices with different fall-outs viz. termination of contract, debarment, provisional black-listing and black-listing for a specified term. The petitioner therefore cannot clamour for want of notice. Even if the notice referred to above did not qualify strictly to be called a notice for black-listing, neither the vendor nor the petitioner replied to the same and in a most un-business like approach, walked out of the agreement by giving only a 24 hours notice specially when the servers were down and the IEMS and call centers were rendered totally dysfunctional.

**22.** After having heard the learned counsel for the parties, we find that the services provided by the vendor through the agency of the petitioner as an



empanelled agency was not to the satisfaction of the Department but black-listing the empanelled agency/ the petitioner on grounds with which the petitioner was never confronted, would not be justifiable, regardless of the proposition of law that a party to a contract in such business venture ought to have some freedom in getting the work executed and evaluating the quality of work for it to continue or repeat such arrangement with the agency/ petitioner. It is now well settled that an order of black-listing, even it be for a limited period, creates a disability and for saddling a company with the aforesaid disability, there should be an objective satisfaction of the authority passing such order.

**23.** In *Erusian Equipment and Chemicals Ltd. v. State of West Bengal* 1975 (1) SCC 70, it was conclusively held that in the event of a decision by the State or its instrumentality not to deal with an entity or enter into any contractual relationship with it entails serious consequences. The authority of the



State to black-list a company is a necessary concomitant of the executive power of the State to carry on trade or business and making contracts for any purpose and there is no need of any statutory ground of such power, but there is an inherent limitation, which is of fairness and rationality in the decision.

24. Also refer to [***Patel Engineering Ltd. v. Union of India and Another, (2012) 11 SCC 257; Kulja Industries Ltd. v. Chief Gen. Manager W. T. Proj. Bsnl., (2014) 14 SCC 731; Southern Painters v. Fertilizers and Chemicals Travancore Ltd. 1994 Suppl (2) SCC 699 ; BSN Joshi and Sons Ltd. v. Nair Coal Services Ltd And Others, (2006) 11 SCC 548 ]***].

25. On a perusal of so-called notice and the final order of termination, we find that the notice was not complete in itself as it did not intimate the noticee about the positive displeasure of the Department regarding the work carried out uptill then and the



intention to black-list the petitioner, if the explanations were not found to be plausible or satisfactory. The entire spectrum of notice was towards the displeasure at poor management of IEMS and call centers and an invocation of the vendor and the empanelled agency i.e. the petitioner to improve upon the same. There was no final conclusion of the Department that the services rendered by the vendor with the agency of the petitioner was unsatisfactory; not of the standard and not in tune with the requirements under the MSA. This cannot be held to be a proper notice for the petitioner to respond. The petitioner was never confronted with the later developments, in that event, those facts could not have weighed with the Department for taking a decision of black-listing the petitioner for three years.

**26.** The argument of learned counsel for the petitioner that there was no agreement with the Government in a direct way cannot be accepted as



the MSA was approved by one of the parties i.e. the Department which declared that the petitioner shall be the empanelled agency of KEONICS and that all solutions had to be provided by the empanelled agency. Even if it was not entered in the MSA that the petitioner shall only be the empanelled agency, that the petitioner worked with the Department towards the implementation of the project definitely provides relevant information to the Department about the functioning of the empanelled agency and it's own satisfaction whether such agency can in future be entrusted with any task. It may not be necessary for a party to an agreement only to be subjected to black-listing or to be put on holiday list. It is the satisfaction of the Department and its autonomy even in business matters to select only the best and if the performance of an agency is not found to be satisfactory, such black-listing can be directed as an order of black-listing may be adversely affecting a particular agency/ party, but it



is also for the State/ Department to be apprised that in the past, working with such agency had not been to its satisfaction and therefore, not to deal with such agency in near future.

**27.** Be that as it may, this order of black-listing does not appear to be in conformity with the legal requirements of such order being passed after the petitioner was noticed with clarity and had an opportunity to represent his cause.

28. For the afore-noted reason alone, we set aside the order of black-listing for three years against the petitioner, regardless of the fact that the services offered by the petitioner were not at all to the satisfaction of the Department and direct that after giving fresh notice to the petitioner and adverting to the reply, a fresh decision shall be taken by the Department regarding black-listing.

**29.** The entire exercise be concluded within a period of three months, to be counted from the date of receipt / production of a copy of this order before



the concerned Department.

30. With the afore-noted observation, the writ  
petition stands disposed off.

**(Ashutosh Kumar, J)**

sunilkumar/-  
mathew

**( Nawneet Kumar Pandey, J)**

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N/A        |
| Uploading Date    | 09.12.2022 |
| Transmission Date | N/A        |

