

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 5385 of 2022

M/s Dibyaprava Transport

.....

Petitioner

Mr. S.K. Dalai, Advocate

Vs.

State of Odisha & others

.....

Opposite parties

Mr. J. Patnaik, Government Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE V. NARASINGH

ORDER

24.02.2022

Order No.

01

This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Dalai, learned counsel for the petitioner and Mr. J.P. Patnaik, learned Government Advocate for the State.

3. The petitioner files this writ petition challenging the office order dated 02.02.2022 in Annexure-9, by which on consideration of show cause reply submitted by the petitioner, the agreement executed by the petitioner has been terminated and the petitioner has been blacklisted vide Clause-XI (b) and XI (d) of the agreement for breach of terms and conditions laid down in clause-4 as he has contravened the OPDS Control Order, 2016 read with Clause-16, i.e. illegal diversion or substitution of commodities under PDS and Clause-XXI of the agreement, and the security deposit furnished by him has been withheld until further orders.

4. Mr. S.K. Dalai, learned counsel for the petitioner contended that the order of termination of agreement and blacklisting of the petitioner, vide impugned order in Annexure-9, are the outcome of

non-application of mind. According to him, an inquiry was conducted, the details of which have been placed in Annexure-8 series, and the Collector, while giving approval in terms of clause XI (b) and (d) of the agreement and also clause-XXI of the agreement, has not applied his mind appropriately and, therefore, he contended that liberty may be granted to the petitioner to approach the Collector and apprise the fact in Annexure-8 series and the authority may be directed to consider the same and pass appropriate order.

5. Mr. J.P. Patnaik, learned Government Advocate contended that once the order of termination has been passed in terms of Clause-XI (b), XI (d) and XXI of the agreement with the approval of the Collector, now the Collector has become functus officio and cannot take a decision once again taking into consideration the subsequent developments, as placed by the petitioner vide Annexure-8.

6. Having heard learned counsel for the parties and after going through the record, this Court is of the considered view that as the petitioner has prayed for consideration of his case by the Collector on the basis of the documents under Annexure-8 series, where the inquiry report has been submitted, and as such, it is contended that approval has been granted without taking into consideration such documents, if at all, the Collector has not taken into consideration the same, he is at liberty to re-consider the same in accordance with law, if he is so permitted under the agreement itself, so far as termination of the agreement as well as blacklisting of the petitioner vide Clause-XI (b) and XI (d) of the agreement for alleged breach of terms and conditions laid down in clause-4 as he has contravened the OPDS

Control Order, 2016 read with Clause-16, i.e. illegal diversion or substitution of commodities under PDS and Clause-XXI of the agreement. The Collector shall take a decision as expeditiously as possible, preferably within a period of four weeks from the date of communication of the order.

7. With the above observation/direction the writ petition stands disposed of.

8. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(V. NARASINGH)
JUDGE

Arun

