

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4435 of 2020

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M/s Rakesh Rohan and Associates, Chartered Accountants through its Proprietor Rakesh Kumar (M), aged about 46 Years, Son of Late Moti Lal Mahto, Resident of 302/A Maa Ambika Complex, Mahabir Path, West Patel Nagar, District - Patna, Bihar – 800023. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Co-operative, Department, Bihar, Patna.
 3. The Registrar, Co-operative Societies, Bihar, Patna.
 4. Joint Registrar, (Audit) Co-operative Societies, Bihar, Patna.
- Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Rai, Advocate
For the Respondent/s : Mr. Uday Bhan Singh, AC to GP 19

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

2 02-08-2023 Heard the parties.

The present petition has been preferred for issue an appropriate writ/order/direction in the nature of Certiorari for quashing the memo no.8837 dated 17.09.2019 (Annexure-6) vide which the Registrar, Co-operative Societies, Bihar, Patna, has blacklisted a firm of Chartered Accountants namely, Rakesh Rohan & Associates, without giving any hearing bearing the specific charges or allegations against them, the order was passed.

Learned Counsel appearing on behalf of the petitioner submits that an audit of the *Bihar Mahila Seva Bachat Awam Sakh Swavlambi Sahkari Samiti Limited*, Munger for the period of 2015-16 was done in line with the bye- laws.

However, the petitioner-firm was surprised to receive



notice from the Joint Registrar, Cooperative Society, Bihar, Patna vide letter no. 9955 dated 06.11.2018 (Annexure 4 to the writ petition) by which it was informed that the petitioner firm failed to put any comment regarding the expenses of Rs. 7,32,257/- for the period 2015-16 by the Committee as also it failed to detail out on the point of insecure loan granted to its member which can any time become NPA.

The petitioner firm diligently submitted reply on 21.11.2018 (Annexure 5 to the petition) detailing out all the facts and also answer to the two questions put forward by the Joint Registrar.

However, without hearing the petitioner firm an order was passed received by it vide memo no. 8837 dated 17.09.2019 by which it was blacklisted by the Registrar, Cooperative Society, Bihar, Patna and a cursory reading of the same would show that not even time frame was given which means the same is for an indefinite period.

He as such, submits that the an order of the Hon'ble Apex Court in the case of **M/S Kulja Industries Ltd. vs Chief General Manager W.T.Proj.Bsnl and Ors.** in Civil Appeal No. 8944 of 2013 reported in **2014 (14) SCC 731** is applicable in which the Hon'ble Supreme Court held in paragraph 24 as



follows:-

“24. Suffice it to say that 'debarment' is recognized and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the 'debarment' is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.”

Further, in paragraph 25, it held that permanent debarment from future contracts for all times to come may sound too harsh and heavy punishment.

It accordingly, held in paragraph 27 as follows:-

“27. In the result, we allow this appeal, set aside the order passed by the High Court and allow writ petition No.2289 of 2011 filed by the appellant but only to the extent that while the order blacklisting the appellant shall stand affirmed, the period for which such order remains operative shall be determined afresh by the competent authority on the basis of guidelines which the Corporation may formulate for that purpose. The needful shall be done by the Corporation and/or



the competent authority expeditiously but not later than six months from today. The parties are left to bear their own costs.”

Learned Counsel further took this Court to another order of Patna High Court in CWJC No. 17455 of 2016 decided on 08.02.2018 relating to **M/s Omdeo Packers & Movers Pvt. Ltd. vs. The State of Bihar & ors.** in which taking into account the aforesaid order of the Hon'ble Apex Court in **M/S Kulja Industries Ltd. (supra)** the petitioner was directed to file fresh representation which was to be considered and paragraphs 4 and 5 read as follows:-

“ 4. Having heard the parties and on consideration of the materials on record, this Court finds merit in the submissions of the petitioner. In Kulja Industries (supra) it was observed as follows:-

"25. Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the



period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

5. It would appear that the principles in regard to "debarment" and "blacklisting" would be the same in view of paragraph 21 of the said judgment, wherein it has been observed as follows-

21. The legal position governing blacklisting of supplies in U.S.A. and U.K. is no different. In U.S.A. instead of using the expression "blacklisting" the term "debarring" is used by the statutes and the Courts."

Accordingly, the coordinate bench directed the concerned respondent to take fresh decision with respect to the period of blacklisting to be imposed upon the petitioner after grant of opportunity of hearing in accordance with law.

It is his submission that while the petitioner firm has been censored by the Registrar, Co-operative Society, Bihar, Patna, in Miscellaneous Case No. 07 of 2019/2021 preferred by it before the Court of Bihar Self Supporting Co-operative Society Tribunal, Patna for dissolution of *Bihar Mahila Seva Bachat Awam Sakh Swavlambi Sahkari Samiti Limited*, Munger was dismissed by the said Tribunal on 10.02.2023 communicated vide memo no. 38 dated 10.03.2023.



Learned State Counsel tried to defend the order but conceded that in view of the order of the Hon'ble Apex Court as also a co-ordinate bench of this Court, permanent debarment/blacklisting cannot be done.

Considering the aforesaid facts as also the orders of the Hon'ble Apex Court and a bench of this Court (Hon'ble Mr. Justice Vikash Jain, as his Lordship then was), this Court is also of the same opinion, that any blacklisting cannot be done for the permanent period and in that view of the matter, in line with the order passed by the Hon'ble Apex Court, the matter is remanded back to the Registrar, Co-operative Society, Patna to determine the case of the petitioner to the extent of blacklisting only which shall be concluded within a period of three months from the passing of the order after hearing the petitioner.

The order dated 17.09.2019 as contained in Annexure 6 stands quashed.

The writ petition stands disposed of with the aforesaid observations.

(Rajiv Roy, J)

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