

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14320 of 2019

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M/s Tirupati Computer Stationers having its Office at Ramkrishna Colony, Sandalpur, Patna- 800006 through its Proprietor Manoj Kumar, son of Late Brajnandan Prasad Sinha, resident of T- 567, Braj Niwas, Housing B- Block, Kankarbagh, P.O.- Lohia Nagar, P.S.- Kankarbagh, District- Patna, Pin- 800020.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Vikash Bhawan, New Secretariat, Government of Bihar, Patna.
2. The Managing Director, Bihar State Text Book Publishing Corporation Limited, Pathya Pushtak Bhawan, Buddh Marg, Patna, PIN- 800001.
3. The Bihar State Text Book Publishing Corporation Limited, Pathya Pushtak Bhawan, Buddh Marg, Patna, PIN- 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Chaudhary, Advocate
For the State	:	Mr.Prabhakar Jha, G.P.27
		Mr. Mukund Mohan Jha, AC to GP-27
For the Corporation	:	Ms. Anukriti Jaipuriyar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 23-03-2023

Heard I.A.No.01 of 2019 for amendment of prayer insofar as challenging the subsequent modified blacklisting order. For the reasons stated in the application and affidavit, I.A. stands allowed.

2. The petitioner is hereby directed to carry out necessary amendment in the prayer during the course of the day.

3. Initially, the present writ petition has been filed



claiming the following reliefs :-

“(A) Issuance of writ in the nature of Certiorari quashing the Order dated 24.06.2016 contained in Letter No.2869 (hereinafter referred as “Impugned Order”) whereby the Respondent no.2 has been pleased to blacklist the petitioner firm for indefinite period.

(ii) For any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case”.

4. Thereafter, I.A.No.01 of 2019 has been filed for amendment in the writ petition by adding the following relief :

(i) “For quashing the Letter No.3099 dated 20.09.2019 issued by the Managing Director, Bihar State Text Book Publishing Corporation Ltd. by which the (Respondent no.2) whereby and whereunder the order as contained in letter no.2869 dated 24.06.2019 has been modified and passed fresh order during the pendency of the writ application whereby the petitioner has been debarred from doing all types of printing work and further the ordered to blacklisted his firm for ten years.

(ii) The petitioner further prays for direction commanding the respondents to permit the petitioner firm for doing the printing works which has been assigned to his firm.

(iii) For any other relief/reliefs for which the petitioner may be found entitled too”.



5. The short facts, according to the petitioner, are that the Respondent Corporation had invited Expression of Interest (EOI) for publication of educational material for classes 1 to 8 under the Samagra Siksha Abhiyaan for the Academic Year 2019-20 from the empanelled printers/publishers. Pursuant to the calling of EOI by the Respondent Corporation, the petitioner applied for grant of contract for publication of educational materials. For printing the books for the Academic Session 2019-20 under Samagrha Shiksha Abhiyan, the petitioner firm was awarded the work order vide Letter No. 2726 dated 31.03.2019, on the basis of the Expression of Interest, for printing of the books namely Prayavaran and Hum-1 for Class-III and Kislay Bhag-3 for Class- VIII. The said work order contained the various specifications, to be followed by the petitioner firm while publishing the books and the petitioner was also asked to sell the printed books in the open market in terms of conditions prescribed therein. The work order stated that for the purposes of printing of the books, the Corporation shall be supplying the text/sample of the cover of the book/the films for printing the books. It is stated that the Ammonia Proof of the film's shall be first approved by the education section of the Corporation and only thereafter that the printing work would



be undertaken by the tenderer-petitioner. The work order further stated that the tenderer/publisher shall be under obligation to submit 25 copies of the published material. It was a condition of the work order that the books would be available for open sale at State, Block and local level within 30 days of the issuance of the work order. Pursuant to the work order, the petitioner firm printed the books and submitted 25 copies each of the printed books i.e. Prayavaran and Hum-1 for Class-III and Kislay Bhog-3 for Class VIII as sample to the Corporation on 14.05.2019, as it was mandatory for the printers to send the printed books first to the Corporation before selling it in the open market. Pursuant to the approval accorded by the Corporation, the petitioner firm supplied the aforesaid printed books to the various shopkeepers for sale in the various districts of the State of Bihar. In the course of distribution, it was realized that the colour combination of the national flag had got reversed at the back cover of the book Paryavaran and Hum-1 for Class III. On account of an error in placing the colour plates by the technician in the first lot of publication - the national flag showed the green colour on top and the Saffron at the bottom. When the mistake was noticed by the petitioner, he himself withdrew almost all the books immediately from the market and the same was



communicated to the Respondent Corporation. However, some of the books which have already been purchased by the students could not be traced. Upon recovery of the published material, the cover page of the published book was destroyed. Thereafter, the Managing Director of the Corporation, vide letter no. 2793 dated 14.05.2019, issued show cause to the petitioner firm and sought an explanation with regard to the fault and shortcomings that had occurred while printing against the work order dated 31.03.2019. The show cause alleged that an enquiry had been conducted in the course of printing/publication of the work under the Corporation Printing Order No. 2726 dated 31.03.2019 and lapses were found in carrying out the work. The show cause stated that the cover pages of the book Prayavaran and Hum-1 for Class-III were of different colours, the National Flag at the back cover page of the book was of different colour, the logo of the Corporation was also changed and about 25,000 pieces of books had been sold without submitting the sample of 25 copies of each books. The petitioner was asked to furnish the reply within 24 hours as to why it should not be blacklisted. The petitioner firm was further directed to recall the supplied books and destroy all the cover pages. It has also been directed to destroy the defective cover pages lying in the press premises



and furnish an undertaking to that effect. Pursuant to the show-cause dated 14.05.2019, the Manager of the firm furnished the explanation on 15.05.2019 stating therein that the fault pointed out by the enquiry team has been rectified and books having the defective cover page has also been recalled from the market and the defective cover pages have also been destroyed. The petitioner accepted the fault which had occurred due to error in placing the Colour printing plates by the machine operator while printing of the cover page of the Book Prayavaran and Hum-1 for Class-III. The petitioner stated that fault which occurred during printing was neither deliberate nor intentional and the same has been rectified after recalling the printed books from the market. The petitioner firm also submitted an undertaking dated 16.05.2019 to the aforesaid effect and assured that in future no such shortcomings or fault would occur. After the submission of the reply to the show-cause dated 14.05.2019, the petitioner firm continued to print the books after making the necessary changes and supplied it to the various districts and no objection was ever raised by the Respondent-Corporation. Suddenly the Managing Director, Bihar State Text Book Publishing Corporation Limited issued Letter No. 2869 dated 24.06.2019 whereby it was communicated that the award of the



work order contained in letter no. 2726 dated 31.03.2019 has been cancelled and the petitioner's empanelment, from the list of the empanelled printers, has been terminated and that the petitioner firm stands blacklisted for infinite period. Being aggrieved by the action of the respondents, the petitioner has filed the present Writ. However, during the pendency of this writ application, vide letter no.3099 dated 20.09.2019, the Managing Director, Bihar State Text Book Publishing Corporation Ltd. has modified the earlier order dated 24.06.2019 to the extent that the petitioner's firm stands blacklisted for a period of ten years instead of infinite period, which is also under challenge.

6. The learned counsel for the petitioner has submitted that the petitioner firm has been involved in the printing of the books for the respondent Corporation for last several years and it was for the first time that the petitioner had erred in the task of printing the material and that too on account of an inadvertent human error in placing of the plates. The learned counsel further submitted that the petitioner has already submitted the sample copies of 25 pieces of books to the Corporation on 14.05.2019 and after the approval of the Corporation, the petitioner firm was allowed to publish the books and sell out the same in market. The learned counsel further submitted that the



punishment of blacklisting is severe and amounts to a civil death of the company. The respondents ought to have considered that the explanation furnished by the petitioner and as also the fact that the error in publication of the National Flag was neither deliberate or intentional. The order of penalty does not take into consideration the mitigating circumstances that the petitioner had, even prior to coming to the notice of either the media or that Respondent Corporation, had withdrawn the books and had on their own informed the Respondent-Corporation. The order of penalty also does not take into account that the error had been rectified and all subsequent publications conformed to the specifications of the Respondent Corporation. The learned counsel further submitted that the blacklisting is a punitive measure and the respondents ought to have considered the purpose of inflicting the punishment and ought to have considered the least harsh effective measure to discipline the petitioner firm rather than punishing the petitioner in the extreme form of blacklisting and also of imposing multiple punishments. The learned counsel further submitted that the impugned order had been passed mechanically and there has been no application of mind by the respondent authority. The learned counsel also submitted that the impugned order passed



by the Respondent is too harsh and disproportionate and suffers from complete non-application of mind and as such liable to be set aside.

7. On the other hand, learned counsel for the respondents submitted that on 9.05.2019, an information was received that there has been certain error in the National Anthem and in the colour of the National flag on the back cover of books of class 3 namely Paryavaran and Hum-I. Immediately, on the next date, i.e, on 10.05.2019, an inspection team was sent to the site of M/s Tirupati Computers Stationer for inspection where it was found that around 15,000 books were ready for sell, but the print copies of the book were different from that which were approved by the Corporation. Moreover, the information which was received earlier relating to the erroneous publication of National Anthem and National Flag in Class 3 books of Paryavaran and Hum-1 were found to be true. Hence, the direction was given immediately to stop the publication of the misprinted books and also to retrieve them back from the seller, if already dispatched. On the basis of inspection report, a show cause notice was served to the petitioner vide Letter no.2793 dated 14.05.2019. The petitioner gave its reply on 15.05.2019 where it has accepted the fault on its part and gave the assurance



that all the misprinted books will be recalled and destroyed. The learned counsel further submitted that the aforesaid work order contained certain terms and conditions which the petitioner was bound to follow herein which the respondents have right to take any action against them. The learned counsel further submitted that the District Education Officer, Banka vide its Letter no. SSA/1257 dated 20.06.2019 informed that the misprinted books which was published by the petitioner were still found in the open market and was recently purchased by a student from one book sales center at Banka and was made available to their office. From the above fact, it appears that the petitioner has given a false affidavit and has committed an offence under Prevention of Insults to National Honour Act, 1971. Hence, immediately the FIR was lodged against the petitioner which was registered as Bahadur PS Case no. 183/19 dated 24.06.19 under sections 420, 201 IPC and section 2(2) of the Prevention of Insults to National Honour Act, 1971. The learned counsel further submitted that it was the condition as per the work order dated 31.03.19 that the publisher has to first get the approval of Ammonia proof of the films and then publish the books according to it. But, it was found as per inspection report that the published books were not as per the approved Ammonia



proof of the films. Moreover, the publisher has also not provided 25 copies of the published books to the Education Cell of the Corporation before selling it in the open market which was the mandatory condition as per Clause 4 of the work order. As a result, the Corporation also has to face the embarrassment of misprinted Flags in their Textbooks which received wide coverage in both print and electronic media. The learned counsel further submitted that the petitioner firm has violated the terms of the work order and committed the offence under Prevention of Insults to National Honour Act, 1971 and swore false affidavit on oath. The learned counsel for the respondents also submitted that the petitioner has not made out any ground which would justify his action in pursuance of which the impugned action was taken after compliance of principles of natural justice. Hence, no interference is required by this Court in this matter.

8. Having considered the material available on record and rival submissions, it appears that before blacklisting, the petitioner was issued a show cause notice vide letter dated 14.05.2019 for violation of terms and conditions of work order dated 31.03.2019 and he submitted his reply vide letter dated 15.05.2020 wherein the petitioner accepted the fault which had



occurred due to error in placing the colour printing plates by the machine operator while printing of the cover page of the Book Prayavaran and Hum-1 for Class-III. The petitioner stated that fault occurred while printing was neither deliberate nor intentional and the same had been rectified after recalling the printed books from the market. The petitioner firm also submitted the undertaking/affidavit dated 16.05.2019 to that effect and assured that in future no such shortcomings or fault would occur. The said explanation was considered and rejected by the impugned order dated 24.06.2019, which is quoted herein-below for reference :-

"बिहार स्टेट टेक्स्ट बुक पब्लिशिंग कारपोरेशन लि0,
(बिहार सरकार का उपक्रम)

पाठ्य पुस्तक भवन, बुद्ध मार्ग, पटना-800 001

फोन 2221075 2223533 22140012-223380 Email:

textbookmd@gmail.com

पत्रांक : 2869 /
सेवा में

पटना 24-6-2019

मेसर्स तिरुपति कम्प्यूटर स्टेशनर्स,
राम कृष्ण कॉलोनी संदलपुर.
पटना-6

विषय- मे० तिरुपति कम्प्यूटर स्टेशनर्स पटना को काली सूची में दर्ज करने के संबंध में।

सन्दर्भ:- निगम पत्रांक 2793 दिनांक 14.05.2019

महाशय,

उपर्युक्त विषय के संबंध में सूचित करना है कि समग्र शिक्षा अभियान 2019-20 के अन्तर्गत निगम पत्रांक 2720 दिनांक 31.03.2019 के द्वारा दो पुस्तक यथा पर्यावरण और हम भाग कक्षा-3 की 7,10,353 प्रतियों एवं किसलय



भाग-3 कक्षा-8 की 5.96.25 प्रतियों को कागज सहित मुद्रण कर राज्य के जिला, प्रखंड एवं स्थानीय स्तर पर निर्धारित दर पर खुले बाजार में विक्रय हेतु उपलब्ध कराने हेतु मुद्रणादेश दिया गया था। आपके द्वारा पर्यावरण और हम भाग- कक्षा के बैंक पृष्ठ पर राष्ट्रीय के रंगों में हेर-फेर परिवर्तन करा के स्थान पर हरा एवं केन पर केसरिया गुटित कर दिया गया जबकि आपको मुद्रण हेतु प्रेस कॉपी (पुस्तक) एवं फिल्म / सीडी निगम कार्यालय से दिया गया जो सही है। साथ ही प्रूफ पास कराने पश्चात नमूना के तौर पर 25 प्रति पुस्तक निगम में जमा करने के उपरान्त ही बाजार में विक्रय करने हेतु पुस्तक उपलब्ध कराने का निदेश मुख्यादेश के 4 के माध्यम से दिया गया था लेकिन आपके द्वारा नमूना कार्यालय को उपलब्ध नहीं कराया एवं पुस्तक के कवर पेज के रंगों में लापरवाही से परिवर्तन कर बाजार में विक्रय हेतु उपलब्ध कराया गया। इस क्रम में पुस्तक को बैंक कर पृष्ठ पर राष्ट्रीय झंडा का रंग उल्टा मुद्रित किया गया है एवं निगम के लोगों (Logo) का रंग भी बदल दिया गया। निगम पत्रांक 2793 दिनांक 14.05.2019 द्वारा स्पष्टीकरण की मांग की गयी परन्तु आपके द्वारा दिया गया स्पष्टीकरण जवाब एवं शपथ पत्र में स्वीकार किया गया कि आपने त्रुटिपूर्ण कार्य किया है साथ ही आपने शपथ पत्र के माध्यम से सूचना दी कि त्रुटिपूर्ण मुद्रित पुस्तकें बाजार से मंगवाकर पृष्ठ को नष्ट भी कर दिया लेकिन मीडिया की खबरो एवं जिला शिक्षा पदाधिकारी बाँका द्वारा त्रुटिपूर्ण मुद्रित पुस्तक निगम को उपलब्ध कराये जाने से स्पष्ट हुआ है कि आपने नी वार पर पत्र दिया एवं राष्ट्रीय झंडा का अपमान करने में आप और आपका प्रतिष्ठान जिम्मेवार है।

अतः आपके कार्यशैली, कर्तव्यनिष्ठा एवं प्रतिष्ठान की जवाबदेही संदिग्ध पायी गयी है। आपको निगम कार्यालय के पत्रांक 2720 दिनांक 31.03.2019 द्वारा दिया गया मुद्रणादेश रद्द करते हुए इम्पैनाल्ड मुद्दों की सूची से आपके प्रतिष्ठान सम्बद्धता समाप्त की जाती है एवं आपके प्रतिष्ठान को बिहार राज्य पाठ्य पुस्तक प्रकाशन निगम लि. के लिए काली सूची में दर्ज की जाती है।

विश्वासभाजन,

sd/(अरविन्द कुमार वर्मा)

प्रबन्ध निदेशक।"

9. Thus, it appears that the order of blacklisting was issued after considering all the facts and circumstances and after giving due opportunity to the petitioner and consideration of his explanation.



10. It is well settled principle of law that the constitutional courts are expected to exercise restraint in interfering with the administrative decisions and they ought not to substitute their views in place of that of the administrative authority.

11. In the light of aforementioned facts and circumstances of the case, this Court has no hesitation in holding that no illegality or irregularity has been committed in blacklisting the petitioner firm and the reasons assigned for the same are well justified and the same do not require interference by this Court.

12. Accordingly, this writ petition stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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