IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17705 of 2022

M/S Rajiv Ranjan & Associates, Chartered Accountants through Chartered Accountant Rajiv Ranjan Jha aged about 56 years (Male), S/o Kailash Chandra Jha, resident of Village- 26 Ganesh Path, Shastri Nagar, Shivpuri Patna, Phulwari, L.B.S. Nagar, P.S.- Shastri Nagar, District- Patna, Bihar- 800023.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Co-operative Societies Bihar, Patna.
2. The Registrar, Co-operative Societies Bihar, Patna.
3. Joint Registrar, Co-operative Societies Bihar, Patna.
4. Senior Audit Officer, Co-operative Societies, Bhagalpur.
5. The District Audit Officer, Co-operative Societies, Bhagalpur.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Shama Sinha, Advocate
For the Respondent/s	:	Mr. AC to SC 26

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 18-05-2023

Heard Ms. Shama Sinha, learned counsel appearing on behalf of the petitioner and learned Assistant Counsel to the Standing Counsel No. 26, representing the State of Bihar.

2. The petitioner is a chartered accountants firm in the name and style of M/S Rajiv Ranjan & Associates, having

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head office in Patna, who provides professional services like, assurance, taxation and accountancy to its clients.

3. The aforenoted firm is registered with ICAI. The firm having experience of conducting the statutory internal audit of various government agencies as enumerated in the writ application, comprising of professionally qualified chartered accountants invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking quashing of Memo No. 8987 dated 11.11.2022 (Annexure-1 to the writ application), whereby the Registrar, Cooperative Society, Patna has delisted the petitioner's firm of chartered accountants from its lists and further blacklisted it for a period of five years.

4. It is submitted that pursuant to Letter No. 28 dated 07.04.2011, the petitioner's firm conducted audit of the Bhagalpur Central Cooperative Bank Limited (hereinafter referred to as the 'Bank') for the financial year 2010-11 and having successfully conducted the audit at par with the guidelines issued by the Reserve Bank of India as well as the guidelines issued by the Co-operative Department, Government of Bihar, expressed an opinion on the financial statement after examination of financial transaction of the Bank. The copies of the audit report for the financial year 2010-11 were submitted to

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the concerned authorities and no objection/defect had ever pointed out for about a decade, however, all of a sudden, the petitioner's firm received Letter No. 4419 dated 06.07.2020 issued by the respondent no. 2.

5. The aforenoted letter categorically mentions that the firm had conducted audit for the years 2010-11 and 2011-12 in which certain transactions between the Bank and *Srijan Mahila Vikas Sahyog Samiti Limited,* of an amount of Rs.4,33,73,070/- was not reflected due to which financial irregularity could not have been averted. The aforesaid letter also talks about earlier show cause letters addressed to the petitioner, however, it is the case of the petitioner that the same has never been received.

6. In response to the aforenoted letter dated 06.07.2020, the petitioner's firm immediately responded *vide* its letter dated 04.08.2020 and requested for some time as the matter was of the year 2010-11. The firm had also categorically asserted that it had never been assigned audit for the year 2011-12 and the letters which have been mentioned in the letter dated 06.07.2020, out of which one letter No. 7060 dated 25.07.2019 was annexed but another letter was not appended. The petitioner subsequently submitted a detailed representation/reply to the

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aforenoted letter issued by the respondent no. 2 and candidly stated that while conducting the audit of the financial statement of the above-mentioned Bank for the year 2010-11, there was no evidence of any such transactions of Rs.4,33,73,070/- with *Srijan Mahila Vikas Sahyog Samiti Limited* in the books of accounts and the financial statements of the Bank which were produced before the firm for verification and audit. It is the case of the petitioner that on receipt of the aforesaid reply submitted by the petitioner, no further action was taken for more than two years and suddenly the respondents came out with the impugned order contained in Memo No. 8987 dated 11.11.2022 delisting the petitioner's firm of chartered accountants from its list and blacklisted it for a period of five years.

7. While assailing the impugned as contained in Annexure-1, Ms. Sinha vehemently submitted that the impugned order is wholly without jurisdiction as the statutory provision did not provide any power to the Registrar to blacklist the firm, if any defect is detected with respect to procedure prescribed in guidelines issued in consonance with Section 33 of the Bihar Co-operative Societies Act, 1935. The Registrar has power for rejecting the audit report and pass order for re-auditing in consonance to sub rule (2) of Rule 57 of the Rules,

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1959 and guidelines, but neither the Act nor the Rules provides any power to the Registrar to take any such action against the Auditor, apart from the fact that all the audit reports are presented before the Registrar and he is empower to revise any statement made in the audit report, if in his opinion it does not represent the actual position of the working of the Society and may order necessary modifications to be made therein.

8. It is next submitted that prior to the issuance of the impugned order neither any show-cause notice, with respect to specific charges or any intention of inflicting punishment of blacklisting has been given, nor the impugned order suggests any application of mind as there is no discussions of the submissions/grounds taken by the petitioner's firm in its reply.

9. In order to buttress her points, learned counsel for the petitioner relied upon the judgment rendered in the case of ***Gorkha Security Services vs. Govt. (NCT of Delhi) and others, (2014) 9 SCC 105.*** Further, reliance has been made on a judgment passed by the Hon'ble Supreme Court in the case of ***Kranti Associates (P) Ltd. and another vs. Masood Ahmed Khan and others, (2010) 9 SCC 496***.

10. On the other hand, learned counsel for the State refuted the contention of the petitioner and submitted that after

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the issue of irregularities and embezzlement in *Srijan Mahila Vikas Sahyog Samiti Limited* came into the light and it was found that huge amount of illegal transfer of funds took place from the Bank to the *Srijan Mahila Vikas Sahyog Samiti Limited,* the respondent no. 2 directed for special audit, which discloses the fact that while conducting audit, the petitioner's firm deliberately overlooked certain transactions which led to financial irregularities and fraud. A three-member team headed by Deputy Chief Auditor, Cooperative Society has also been constituted and its report clearly suggests that the petitioner's firm conducted the statutory audit without verification of the documents made available to them by the Bank, contrary to the departmental guidelines for conducting audit.

11. Having found the unethical functioning of the petitioner's firm, show-cause notice was duly served and after considering the reply and taking into consideration the omission and commission committed by the firm in course of audit, the the order of delisting the petitioner's firm from the lists and the order of blacklisting for five years has been passed in consonance to the petitioner's misconduct.

12. This Court after giving anxious consideration to the submissions advanced on behalf of the parties and having

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examined the materials available on record, *prima facie,* found that the show-cause notice as contained in Lettter No. 7060 dated 25.07.2019, it appears that the notice talks about certain discrepancies in the audit of the financial year 2010-11 and 2011-12, however, it is the case of the petitioner that they never conducted any audit of the Bank in the financial year 2011-12 which fact has not been refuted by the respondents.

13. This Court also finds substance in the submissions of the petitioner that the aforenoted show-cause notice does not talk about any proposed action/punishment nor prior to passing of any blacklisting order or the order delilsting the name of the petitioner's firm from the list of the chartered accountants, the petitioner was served any specific show-cause with regard to intention of the respondent, if any, to blacklist the petitioner's firm. Even otherwise, from the notice discussed hereinabove, there was no proposal to blacklist and as such, the reliance of the petitioner on a judgment of the Hon'ble Apex Court in the case of ***Gorkha Security Services*** (*supra*) squarely covers its cause in the present facts and circumstances of the case. For proper appreciation, paragraphs 21 and 22 of the judgment are reproduced hereinbelow:

> *"21. The central issue, however, pertains to the requirement of stating the action which is proposed*

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to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if, the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

> *(i) The material/grounds to be stated which according to the department necessitates an action;*
>
> *(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.*

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the

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reading thereof, that would be sufficient to meet this requirement."

14. It is the admitted fact that prior to the issuance of the impugned order no show cause notice proposing blacklisting or delisting the petitioner's firm in the list of accountants had ever been issued to the petitioner nor the notice dated 25.07.2019 as well as 06.07.2020 indicate that there was any proposal to inflict the punishment much less, the punishment of blacklisting and, as such, the petitioner had never been called upon to show cause on that point. Further, the impugned order as contained in Annexure-1 does not reflect that there is any discussion or consideration of the reply of the petitioner's firm, inasmuch as the required notice/documents as was asked by the petitioner has never been supplied to the petitioner.

15. In the result, for reasons assigned and discussed hereinabove, this Court finds that the impugned order, as contained in Memo No. 8987 dated 11.11.2022 (Annexure-1 to the writ application), issued by the Registrar Co-operative Society, Patna, cannot be sustained and accordingly the same is set aside.

16. While setting aside, the impugned order, it is made clear that it is open for the competent authority, if so

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advised, to proceed afresh, in accordance with law.

17. The application stands disposed of accordingly.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	24-05-2023
Transmission Date	N.A.

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