

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1665 of 2019**

M/s A. K. Mishra and Associates Son of Tulsi Das Mishra, Chartered Accountants, through its Partner A.K.Mishra @ Amiy Kumar Mishra, resident of Road No. 1, North Patel Nagar, Keshari Nagar, P.S. Patliputra, District-Patna, Bihar- 800024

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors through the Principal Secretary, Co-operative Department, 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 | : | Mr. Shama Sinha                          |
|                      | : | Mr. Saurav Kumar Suman                   |
|                      | : | Ms. Shreya                               |
|                      | : | Ms. Asmita                               |
| For the Respondent/s | : | Mr. Chitranjan Sinha (Paag2)             |
|                      | : | Mr. Manoj Kumar Ambastha (Sc26)          |
|                      | : | Mr. Tripurari Nath Ambastha (Ac to Sc26) |

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**ORAL ORDER**

- 5      13-02-2024      1. Heard the parties.
2. This is the second round of litigation on behalf of the petitioner in which the petitioner has challenged the order dated 02.11.2018, passed by the Registrar Co-operative Society, Patna, whereby the petitioner's chartered accountant firm, in the name and style of A.K. Mishra & Associates, Bhagalpur, has been blacklisted for thirty years. Earlier, by order dated 18.10.2017, the Registrar Co-operative Society, Patna, had blacklisted the petitioner/firm and had de-listed it from the department panel and further, recommended to the Institute of Chartered Accountants of India (ICAI) for cancellation of



the registration of the petitioner/firm. It was challenged by the petitioner in C.W.J.C. No. 18220 of 2017. The challenge by the petitioner, in the first writ application, was mainly on the ground that the order of blacklisting has been passed without proper show cause as well as the blacklisting order has been made effective for an indefinite period.

3. A Co-ordinate Bench of this Court, vide its order dated 11.01.2018, after taking note of the submissions of the learned counsel for the petitioner and specific statement made in Para 63 of the writ petition that order of blacklisting has been passed without any proper show cause, remanded the matter back before the Registrar Co-operative Society, Patna, for taking a fresh decision with respect to the period of blacklisting with further observation that in case the stand of the petitioner, denying receipt of show cause notice, prior to the order of blacklisting, being passed is found to be incorrect, the respondents shall be at liberty to approach this Court for recall of this judgment.
4. Mrs. Shama Sinha, learned counsel appearing for the petitioner, argued that the order of blacklisting has been



passed, without giving a show cause to the petitioner, bearing a specific charges or allegations against them to enable them to defend themselves. After remand of the matter by this Court, a show cause has been issued, to the petitioner, on 11.06.2018 only on the period of blacklisting which would be evident from Annexure 13. She further argued that no show cause has been served after remand on the point of blacklisting alongwith specific charges/allegations, related to audit, and or no opportunity was given to the petitioner to explain the circumstances before the authority prior to the blacklisting order.

5. Learned counsel submits that the respondent authority, while treating the order of blacklisting against the petitioner operative, has merely asked show cause on the period of blacklisting only. An opportunity was given to the petitioner to appear and submit his defense on the period of blacklisting. Learned counsel has relied upon the judgment of Hon'ble Supreme Court quoted in Gorakha Security Services Vs. Govt. of NCT of Delhi reported in AIR 2014 SC 3371 and M/s Khulja Industries Limited Vs. Chief Gen. Manager, W.T. Proj., BSNL and



Others reported in AIR 2014 SC 9.

6. On the other ground, Mr. Manoj Ambasta, learned counsel appearing for the State, submitted that the petitioner was knowing about the charges. It participated in the hearing conducted by the Registrar Co-operative Society, Patna, after remand order of this Court and show cause notice was issued by the respondent No. 2. The petitioner during the course of hearing before the concerned authority, never complained about non-furnishing of the show cause with specific charges. He filed several petitions and also produced some documents in his defense. He thus submits that no prejudice has been caused to the petitioner due to non-service of show cause having specific allegation.
7. I have heard learned counsel for the parties and have gone through the materials on record. The facts are not disputed to the extent that earlier, the petitioner's firm was blacklisted which was challenged by the petitioner before this Court on two grounds i.e., first, non-furnishing of show cause notice before passing of the order of blacklisting and second, the order of blacklisting was for an indefinite period i.e., permanent blacklisting in



violation of the law laid down by Hon'ble Supreme Court in M/s Kulja Industries Limited Vs. Chief Gen. Manager, W.T. Proj., BSNL and Others. From perusal of the earlier order passed by this Court, it transpires that the Court remanded the matter back before the concerned authority for passing a fresh order after giving opportunity to the petitioner on both the counts. However, from the show cause notice, served upon the petitioner at Annexure 13, it transpires that the authority has only asked show cause from the petitioner on the point of period of blacklisting. No separate show cause has been served upon the petitioner giving specific charges and allegations against the petitioner along with the documents which the authorities intended to rely while passing the order of blacklisting. The concerned authority, after remand by this Court, has merely proceeded on the premise that the authority is required to consider the order of blacklisting to the extent of period of blacklisting. Accordingly, the concerned authority, after hearing the petitioner, by the impugned order, has changed the period of blacklisting from indefinite period to the period of thirty years. From the consideration of the attending facts and the materials



available on record, this Court is satisfied that no prior show cause was served upon the petitioner with specific charges and allegations regarding audit etc.

8. The penalty of blacklisting and its consequences have been aptly formulated in Erusian equipment & Chemicals Ltd. Vs. The State of West Bengal 1975 1 SCC 70. In the said case, it has been held that the order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. Nobody may have the right to enter into contract with the government or government agency but everyone is entitled to equal treatment with others, who offer tender and quotations for the work. The State has complete freedom to enter into any contract with anyone but if it does so, it must do so fairly, without discrimination and with unfair procedure. The reputation is a part of persons character and personality. Blacklisting tarnishes ones reputation. It has the effect of preventing a person/company from the privilege and advantage of entering into lawful relationship with the government for the purposes of gains. The fact that the disability is created by the order of blacklisting indicates that the relevant authority is to have



an objective satisfaction. Fundamentals of fair play would require that a person concerned should be given opportunity to represent his case before he is put on blacklist (also referred to Patel Engineering Lt. Vs. Union of India (2012) 11 SCC 257; Kulja Industries Ltd. Vs. Chief General Manager, Western Telecom Project, BSNL (2014) 14 SCC 731; Southern Painters Vs. Fertilizers and Chemicals Travancore Ltd. 1994 Supp (2) SCC 699; B.S.N. Joshi & Sons Vs. Nair Cole Services Ltd. (2006) 11 SCC 548). In UMC Technologies Private Limited Vs. Food Corporation of India and Another, reported in (2021) 2 SCC 551, the Hon'ble Supreme Court has held that prior show cause notice granting reasonable opportunity of being heard is an essential element of all administrative decision making and particularly in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. Similar view has been taken by this Court in 2021 SCC online Pat 2120 ≡ 2021(4) PLJR 556.

9. In these cases, furnishing of the valid show cause notice is critical and failure to do so would be fatal to any order of blacklisting pursuant thereto. For a show cause notice



to constitute the valid basis of blacklisting order, such notice must spell out, clearly, that there is intention on the part of the issuer to blacklist the noticee. Such a clear notice is essential for ensuring that the person, against whom the penalty of blacklisting is intended to be imposed, has an adequate informed and meaningful opportunity to show cause against his possible blacklisting.

10. In *Daffodils Pharmaceuticals Ltd. Vs. The State of U.P.* JT (2019) 12 SC 283, the Hon'ble Supreme Court has observed that an order of blacklisting beyond three years or maximum of five years is disproportionate.
11. The contention of the learned counsel for the State that no prejudice has been caused to the petitioner due to non-service of show cause inasmuch as the petitioner has participated in the hearing given by the Registrar Co-operative Society, Patna, after remand by this Court is not acceptable for the simple reason that order of blacklisting, for thirty years, shall entail civil and evil consequences upon the petitioner. Further, this Court finds that the blacklisting, for thirty years, is also arbitrary and excessive and shall be similar to giving life imprisonment



to the petitioner.

12. Upon Objective consideration of the materials on record and the discussion held hereinabove, I find that the blacklisting for a period of thirty years is disproportionate and is shocking and harsh. Secondly, non-furnishing of show cause notice prior to passing order of blacklisting suffers from the principles of natural justice and the law settled in this regard by the Hon'ble Supreme Court and the various High Courts.
13. In the result, the order impugned, dated 02.11.2018 bearing Memo No. 9347 is set aside. The matter is remanded back to the respondent authority to issue a fresh show cause upon the petitioner if so advised giving the details of specific allegations/charges with intending punishment. It goes without saying that before passing a fresh order, the opportunity of hearing shall be given to the petitioner.
14. With the aforesaid observation and direction, the said writ application is disposed.

**(Anil Kumar Sinha, J)**

HarshPandey/-

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