

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2517 of 2024

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M/S Vijayshree Press Panchavati Chowk, Ward No. 18, Gangjala, P.S.-
Saharsa, District-Saharsa through its Proprietor Rajiv Kumar, aged about 48
years, male, son of Late Ramchandra Prasad Bhagat, resident of Punchvati
Chowk, Ward No. 18, Gangjala, P.S.-Saharsa, District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health
Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Health Department, Govt. of Bihar, Patna.
3. The Principal, Jannayak Karpoori Thakur Medical College and Hospital,
Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prashant Sinha, Advocate
For the Respondent/s : Mr.Vikas Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 09-05-2024

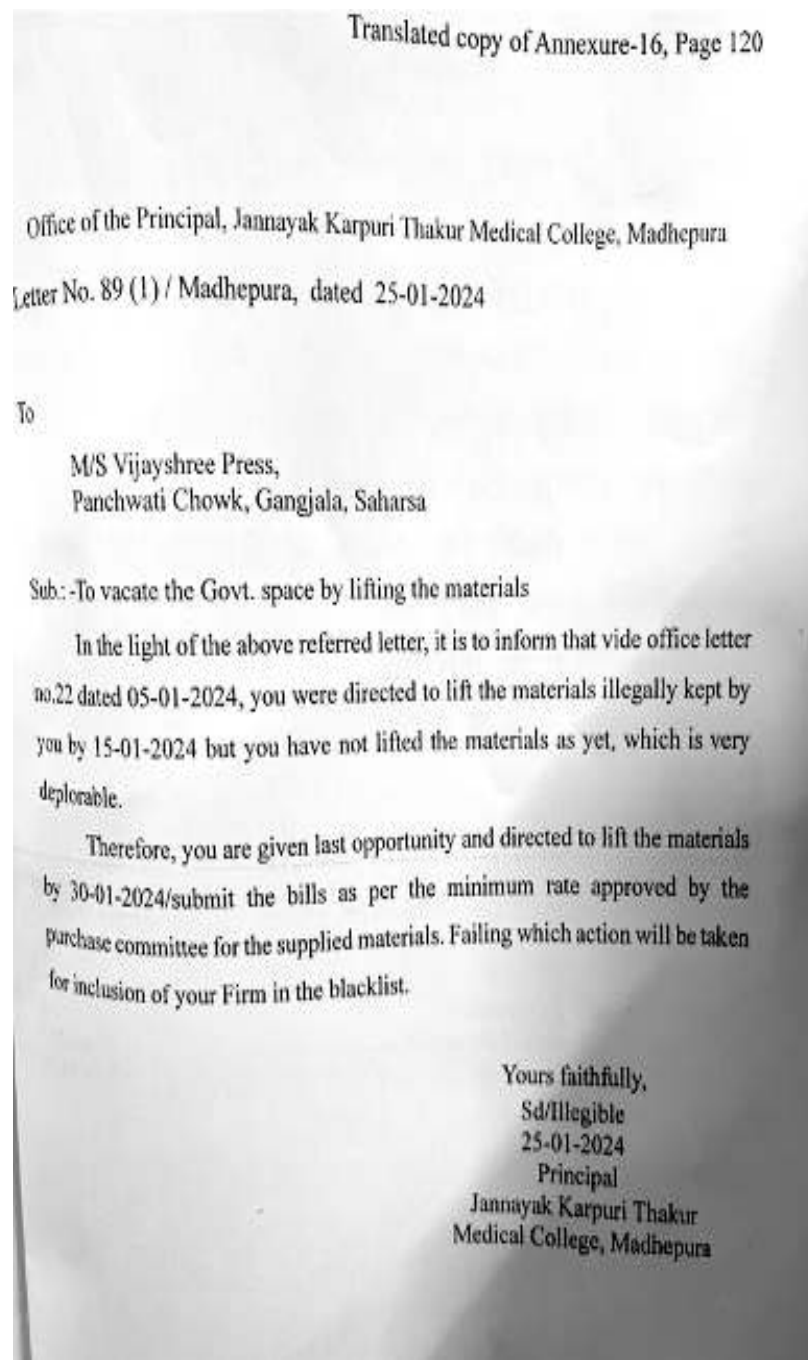
The petitioner is aggrieved with the public notice
issued blacklisting the petitioner without a proper show-cause
notice.

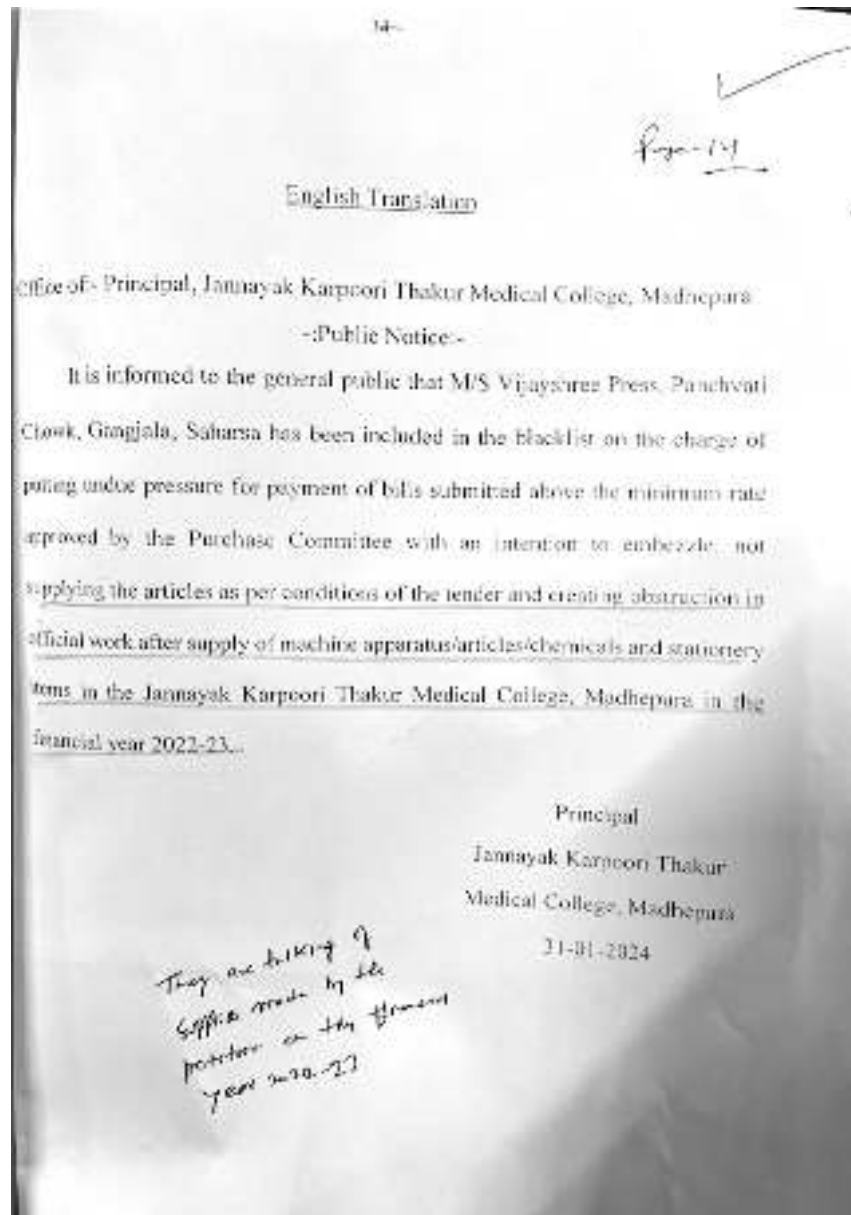
2. The show-cause notice according to the learned



Government Advocate is issued and produced at Annexure-16.

We have been given the translated copies of both the show-cause and the public notice issued. We extract both here; the show-cause notice dated 25.01.2024 and public notice issued.





3. There was no show-cause notice issued as per the communication of 25.01.2024. That was just a notice to lift the materials illegally kept by the contractor, failing which action was threatened including blacklisting. The public order issued, the translation of which is extracted herein above does not even refer to the lifting of materials or whether it has not been carried



out. The various aspects referred to in the public notice issued have not even been intimated to the petitioner.

4. It must be kept in mind that a quasi judicial authority, acting in exercise of its statutory power must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. The Hon'ble Supreme Court in the case of *Oryx Fisheries (P) Ltd. v. Union of India & Ors.; (2010) 13 SCC 427* while emphasizing the importance of show-cause notice has observed that while reading a show-cause notice, the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice, a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of per-judged opinion, such a show-cause notice does not commence a fair procedure. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind, as they are to act fairly in adjudging the guilty or otherwise of the



person proceeded against.

5. 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 imputation detailing out the alleged speeches and defaults he has committed, so that he gets an opportunity to rebut the same. The Hon'ble Supreme Court in case of ***Gorkha Security Services v. Govt. (NCT of Delhi) & Ors.; (2014) 9 SCC 105*** has specifically summarized that a show-cause notice should, at least meet the following two requirements, viz (i) the materials/grounds to be stated which according to the department necessitates an action (ii) particular penalty/action which is proposed to be taken.

6. We may further add that the severity of effect of blacklisting and the resultant need for strict observance of principles of natural justice, before passing an order of blacklisting were highlighted in ***Erusian Equipment & Chemicals Ltd. vs. State of West Bengal, (1975) 1 SCC 70*** where the Hon'ble Supreme Court observed as follows:-

12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or



without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are “instruments of coercion”.

7. Show-causes notice should show specific allegations and the provision under which the blacklisting is also proceeded with. It is only proper that an objection should be called for and after considering the objections, the final order should be passed. None of this procedure has been followed in the instant case.

8. We hence set aside the Annexure-17 order, but only



on the ground of violation of principles of natural justice. We reserve remedy to the respondents to issue a proper show-cause notice, if so desired.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.05.2024
Transmission Date	

