

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18501 of 2016

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M/s Gungun Enterprises, Gangotri Kunj, back of Bhawani Market, Ambedkar Path, Bailey Road, Patna, through Rina Sinha D/o - Sri Bachan Lal Srivastava R/v - New Jakkanpur, Mithapur, B - area, P.S. - Jakkanpur, Distt. - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The District Magistrate, Patna.
3. The Additional Collector, Collectorate, Patna.
4. The Deputy Collector, District Najarat Branch Collectorate, Patna.
5. The Protocal Officer, District Protocol Branch, Patna.
6. Principal Secretary, Revenue Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Vijay Kumar Sinha
A.K.Srivastava
S.K.Bhatnagar
K.M.Prasad, Advocates

For the Respondent/s : Mr. Dhurjati Kumar Prasad, GP 14

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 13-05-2025

1. The petitioner has filed the Writ application for the following reliefs:

“That this writ application is being filed for issuance of an appropriate writ or writs commanding/ directing the respondents to revoke the order dated 16.10.2016 issued by the District Magistrate, Patna vide letter no.- 531 dated 18.10.2016 by which the tender allotted to M/s Gungun Enterprises



dated 10.06.2016 was cancelled for supplying of A.C. and Non-A.C. car for the State guest of District Protocol Branch, Patna Collectorate, Patna and further pleased to quash the letter no,- 531 dated 18.10.2016 issued by the District Magistrate, Patna (Annexure-6) of the this petition by which the work order allotted to the petitioner was cancelled by the District Magistrate, Patna."

2. The brief facts culled out of the petition are that the petitioner is a partner in M/s Gungun Enterprises, which was registered under the Bihar Shops and Establishments Act, 1953 on 01.09.2010 (Registration No. PT68490) with the Labour Superintendent, Patna, initially registered as a proprietorship under Manoranjan Kumar Sinha, the firm was later converted into a partnership between Manoranjan Kumar Sinha and Smt. Rina Sinha through a registered partnership deed executed on 01.12.2015, with both partners holding a 50% share in capital and profits. The



partnership was formed for conducting business in the tour and travel sector and other related services.

3. It is submitted by the petitioner in the Writ petition that on 05.03.2016, M/s Gungun Enterprises was awarded a tender by the District Najarat Branch, Patna Collectorate, for providing AC and non-AC Tata Indica and Indigo cars. The District Purchase Committee approved the rates submitted by the petitioner, and vide letter dated 01.06.2016, the petitioner was directed to present 12 vehicles for verification. No complaints were received regarding the services rendered, and the firm continued to operate satisfactorily under the contract. Subsequently, on 10.06.2016, the District Protocol Branch, Patna Collectorate, floated a fresh tender for vehicle supply. The petitioner submitted its technical and financial bid on the same day. The bid was accepted, and a work order was issued on 15.06.2016 (Annexure-5) for a period from 13.06.2016 to 12.06.2017. M/s Gungun Enterprises commenced vehicle supply to the District Protocol



Branch, and the services were carried out without any complaints from officials or guests. However, a third party, Ritesh Kumar Raj, filed a complaint alleging that Manoranjan Kumar Sinha, one of the partners in M/s Gungun Enterprises, was the same person who previously operated M/s Gangotri Tour and Travels, which had been blacklisted on 06.09.2005. Acting on this complaint, the District Magistrate conducted an inquiry and sought clarification from the Labour Superintendent, who confirmed the involvement of Manoranjan Kumar Sinha in both firms. Although Smt. Rina Sinha filed an affidavit asserting that M/s Gungun Enterprises was a partnership firm, not a proprietorship, the District Magistrate cancelled the petitioner's tender and work order vide letter no. 531 dated 18.10.2016, based on the alleged connection with the blacklisted firm.

4. The Learned counsel for the petitioner submitted that M/s Gangotri Tour and Travels never participated in the 2016 tender. Further, M/s Gungun Enterprises is a legally



registered partnership firm run by Smt. Rina Sinha, and was never blacklisted. It is also submitted that the cancellation was done without issuing a show-cause notice, violating the principles of natural justice and L2 bidder, Super Tour and Travels, declined to provide services at the rate quoted by M/s Gungun Enterprises, causing disruption in services. The entire supply work was handled efficiently and without complaints, as evident from the records and annexures. It is further submitted that the complaint by Ritesh Kumar Raj was malicious and irrelevant, as he had no connection with the tender process.

5. In view of these facts, the Learned counsel for the petitioner submitted that the cancellation of the work order is arbitrary, illegal, and violative of Articles 14 and 19(1)(g) of the Constitution of India. The action of the District Magistrate, taken without proper inquiry or hearing, is mala fide, capricious, and unsustainable in law, and hence liable to be quashed.

6. A detailed counter affidavit was filed



on behalf of the respondent Nos. 2 to 5. It is averred in the counter affidavit that the writ petition has been filed seeking revocation of the order dated 16.10.2016, communicated vide Memo No. 531 dated 18.10.2016, by which the tender awarded to M/s Gungun Enterprises for supply of AC and Non-AC vehicles to the District Protocol Branch, Patna, was cancelled.

7. It is further contended in the counter affidavit that a tender had been duly invited for the supply of vehicles, and M/s Gungun Enterprises was awarded the contract vide Memo No. 356 dated 15.06.2016. Subsequently, a complaint from one Ritesh Kumar Raj alleged that Manoranjan Kumar Sinha, the proprietor of M/s Gangotri Tour & Travels, a blacklisted firm (vide Memo No. 100/Naya dated 06.09.2005), was also the proprietor of M/s Gungun Enterprises. In response to the complaint, a report was sought from the Labour Superintendent, Patna, who confirmed that Manoranjan Kumar Sinha was listed as proprietor of both firms as per the registration certificate. It



was further pointed out that while the registration certificate described M/s Gungun Enterprises as a proprietorship, a separate partnership deed dated 01.12.2015 described it as a partnership firm between Manoranjan Kumar Sinha and Rina Sinha, thus creating a contradiction in its legal status.

8. Based on this contradiction, the District Purchase Committee, in its meeting held on 30.09.2016, recommended cancellation of the work order, which was accepted and implemented through the impugned order dated 18.10.2016.

9. The Learned counsel for the respondents submitted that the cancellation was valid, lawful, and based on the Labour Superintendent's report and the District Purchase Committee's recommendation. They also clarify that the tender naturally lapsed at the end of its term in 2017, and no further representation or participation was made by the petitioner in subsequent tenders.

10. A rejoinder to the counter affidavit was filed on behalf of the petitioner. It is submitted



on behalf of the petitioner that M/s Gangotri Tour and Travels was blacklisted vide Letter No. 100 dated 06.09.2005 (Annexure-A of the counter affidavit), but there exists a limitation period for blacklisting, which was not adhered to by the authorities. In support, the petitioner relies on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 1083 of 2022 dated 24.02.2022 (Annexure-7), which lays down that blacklisting must be time-bound and not indefinite. Further, with reference to paragraph 7 of the counter affidavit, the petitioner contends that the District Purchase Committee cancelled the tender allotment vide Memo No. 531 dated 18.10.2016 (Annexure-C) without issuing a show cause notice or affording an opportunity of hearing, and without settling the petitioner's accounts, which renders the cancellation arbitrary and illegal. Regarding paragraph 17 of the counter affidavit, wherein the respondents stated that the tender lapsed at the end of the year 2016 and that the petitioner did not participate in subsequent tenders, the



petitioner asserts that the cancellation of the tender without due process left no scope or justification to participate in future tenders. The petitioner emphasizes that officials cannot unilaterally publish new tenders without settling the previous contract or hearing the aggrieved party. The cancellation based on the past blacklisting of M/s Gangotri Tour and Travels, with which the petitioner shares a partner only, cannot be used to disqualify the distinct partnership firm, M/s Gungun Enterprises.

11. The Learned counsel for the petitioner submitted that the counter affidavit appears to be an attempt by the respondents to justify an illegal and unjust action, and reiterates that the cancellation of the tender was in violation of the principles of natural justice and is not sustainable in law

12. Heard the Learned counsel for the petitioner and the Learned counsel for the respondents.

13. From perusal of the records of the



case it appears that the tender was opened and work was allotted to the petitioner vide order dated 15.06.2016 for a period of one year. Upon complaint received from One Ritesh Kumar, claiming that proprietor of M/s Gungun Enterprises is the same person as of M/s Gangotri Tour & Travel and M/s Gangotri Tour & Travel was blacklisted by the respondent by Annexure-A. A report was called for from the Labour Superintendent, Patna. In report (Annexure-B) submitted by the Labour Superintendent, Patna stating therein that the proprietor of both M/s Gungun Enterprises and M/s Gangotri Tour & Travel was the same person i.e. Manoranjan Kumar Sinha. The Registration certificate showing it proprietorship firm whereas partnership deed shows that it is a partnership firm and both the registration certificate and partnership deed are contradictory to each other. Upon the report, a meeting of District Purchase Committee was held on 30.09.2016 and recommended for cancellation of the said tender allotted to the petitioner vide order contained in



Memo No. 531 dated 18.10.2016 (Annexure-C). It is further important to note that the tender lapses at the end of every year and in this case the same was ended in the year 2016, post which subsequent tenders were held where the petitioner never appeared or made any submission regarding eligibility for participation.

14. The Learned counsel for the petitioner relied upon a judgment dated 19.05.2023 passed in CWJC No. 3456 of 2021 by a Co-ordinate Bench of this Court. After perusal of the ratio decided in the CWJC No. 3456 of 2021, this Court found that the same did not apply in this case. Further the petitioner relied on the judgment passed by Hon'ble Apex Court in Civil Appeal No. 1083 of 2022 dated 24.2.2022. The same is also not helpful the petitioner.

15. In support of submission of respondents, the Learned counsel for the respondents placed reliance upon the judgment rendered in **(2008) 12 SCC 500 (Kisan Sahkari Chini Mills Limited & Ors. Vs. Vardan Linkers**



& Ors.) (paragraph No.s 28 and 23 and also judgment reported in **(2015) 13 SCC 233 (Rishi Kiran Logistics Pvt. Ltd. Vs. Board of Trustees of Kandla Port Trust & Ors.)** (paragraph 37 and 38).

16. It would be apposite to reproduce para 18 and 23 of the judgment reported in **Kisan Sahkari Chini Mills Limited (supra)** which is as under:

“18. Ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He will be entitled to the relief of specific performance, if the contract is capable of being specifically enforced in law. The remedies for a breach of contract being purely in the realm of contract are dealt with by civil courts. The public law remedy, by way of a writ petition under Article 226 of the Constitution of India, is not available to seek damages for breach of contract or specific performance of contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 of the



Constitution of India may be invoked.”

23. If the dispute was considered as purely one relating to existence of an agreement, that is, whether there was a concluded contract and whether the cancellation and consequential non-supply amounted to breach of such contract, the first respondent ought to have approached the civil court for damages. On the other hand, when a writ petition was filed in regard to the said contractual dispute, the issue was whether the Secretary (Sugar), had acted arbitrarily or unreasonably in staying the operation of the allotment letter dated 26-3-2004 or subsequently cancelling the allotment letter. In a civil suit, the emphasis is on the contractual right. In a writ petition, the focus shifts to the exercise of power by the authority, that is, whether the order of cancellation dated 24-4-2004 passed by the Secretary (Sugar), was arbitrary or unreasonable. The issue whether there was a concluded contract and breach thereof becomes secondary. In exercising writ jurisdiction, if the High Court found that the exercise of power in passing an order of cancellation was not



arbitrary and unreasonable, it should normally desist from giving any finding on disputed or complicated questions of fact as to whether there was a contract, and relegate the petitioner to the remedy of a civil suit. Even in cases where the High Court finds that there is a valid contract, if the impugned administrative action by which the contract is cancelled, is not unreasonable or arbitrary, it should still refuse to interfere with the same, leaving the aggrieved party to work out his remedies in a civil court. In other words, when there is a contractual dispute with a public law element, and a party chooses the public law remedy by way of a writ petition instead of a private law remedy of a suit, he will not get a full-fledged adjudication of his contractual rights, but only a judicial review of the administrative action. The question whether there was a contract and whether there was a breach may, however, be examined incidentally while considering the reasonableness of the administrative action. But where the question whether there was a contract, is seriously disputed, the High Court cannot



assume that there was a valid contract and on that basis, examine the validity of the administrative action.”

17. In **Rishi Kiran Logistics Pvt. Ltd.** (**supra**), the Hon’ble Supreme Court has held in paragraph 37 and 38 as follows:

“37. The questions before the Supreme Court in *Kisan Sahkari Chini Mills Ltd. case* [(2008) 12 SCC 500] were: (i) Whether the High Court was right in concluding/assuming that there was a valid contract? and (ii) Whether the High Court was justified in quashing the order of the Secretary (Sugar)? This Court answered the aforesaid questions in the negative and set aside the judgment of the High Court holding that: (SCC pp. 501-02)

“Ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He would be entitled to the relief of specific performance, if the contract was capable of being specifically enforced in law. The remedies for a breach of contract being purely in the realm of contract are dealt with by civil



courts. The public law remedy, by way of a writ petition under Article 226 of the Constitution, is not available to seek damages for breach of contract or specific performance of contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 may be invoked.”

It is clear that the aforesaid case is closest to the facts of the present case

38. It thus stands crystallised that by way of writ petition under Article 226 of the Constitution, only public law remedy can be invoked. As far as contractual dispute is concerned that is outside the power of judicial review under Article 226 with the sole exception in those cases where such a contractual dispute has a public law element.”

18. In light of the aforesaid judgments, the Hon’ble Supreme Court has held that “ It thus stands crystallised that by way of writ petition under Article 226 of the Constitution, only public



law remedy can be invoked. As far as contractual dispute is concerned that is outside the power of judicial review under Article 226 with the sole exception in those cases where such a contractual dispute has a public law element. Admittedly, the Writ petition is not filed for challenging the blacklisting of the partner of the petitioner.

19. The outcome of the aforesaid discussion would be to hold that there is no merit in this writ petition which is accordingly dismissed.

20. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2025
Transmission Date	

