**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.18011 of 2024**

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Pradeep Kumar s/o Mahesh Prasad R/o Near Uma Trade Cement Store, 1074 Mourya Bihar Colony, Transport Nagar, P.O.- Bhadurpur Housing Colony, P.S.- Agamkuna, Dist. Patna

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Food and Civil Supply Department, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Food and Civil Supply Department, Government of Bihar, New Secretariat, Patna.
3. The District Magistrate, Begusarai.
4. The Superintendent of Police, Begusarai.
5. The District Magistrate cum Chairman, District Transport Committee, Begusarai.
6. Bihar State Food and Civil Supply Corporation Ltd, Khadya Bhawan, Daroga Rai Patn, R- Block, Road No 2, Patna through its Managing Director.
7. The Managing Director, Bihar State Food and Civil Supply Corporation Ltd, Khadya Bhawan, Daroga Rai Path R- Block, Road No 2, Patna.
8. The District Manager, Bihar State Food and Civil Supply Corporation Ltd, Begusarai

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Ashok Kr. Chaudhary, Sr. Adv. |
| | : | Mr. Uday Kumar, Adv. |
| | : | Ms. Jyoti Kumari, Adv. |
| For respondent | : | Mr. SK Singh, Adv. |
| For the Respondent/s | : | Mr. Nalin Saroj, Government Pleader (05) |
| | : | Ms. Shalini AC to GP5 |

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**CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY**
**ORAL JUDGMENT**
**Date : 02-05-2025**

Heard the learned counsel for the parties.

The present writ petition has been filed for the following relief(s):-

> *"I. For quashing of the order dated 17/08/2024 having letter no-987 passed under signature of District Manager, State Food Corporation, Begusari whereby and where*

*under remaining period of tender has been suspended with immediate effect on the charge of violating clause 12(X) and clause number 4(f) of the Agreement further hold that the instant decision will be affected by the result of the order passed by learned court in FIR NO-363/2023 dated 27/11/2023 and if found guilty,action will be taken to put him in the blacklist.*

*II. For quashing the order dated 17.09.2024 communicated by Memo No.8606 dated 22.10.2024 whereby and whereunder the appeal preferred by the petitioner has been rejected by the Respondent no.7.*

*III. For any other relief or reliefs for which the petitioner is entitled in the fact and circumstance of the present case."*

**3.** The brief facts necessary for disposal of the case are that the Petitioner was awarded a contract pursuant to NIT No. 744 dated 18.04.2023 issued by the State Food Corporation and entered into an agreement on 04.08.2023 to transport food grains. The work proceeded smoothly until 25.11.2023 when a truck bearing registration number BR06GD/1666, loaded with 800 sacks of rice (395.14 qt.), remained unloaded for two days due to the unavailability of dharamkanta and subsequently went missing. The Petitioner lodged a FIR on 27.11.2023 at Bakhri Police Station bearing Case No. 363/2023 under Sections 409 and 420 of the IPC. On 28.11.2023 copy of said FIR was intimated to District Manager, State Food Corporation, Begusarai expressing conspiracy by anti-social elements. On the same day, a show cause notice was issued to the Petitioner by the Corporation holding him responsible for the disappearance of the food grains and seeking recovery of the amount for the value of grains from the Petitioner's dues. The Petitioner responded on 01.12.2023, consenting to the recovery, the loss was quantified at ₹14,50,180/-, and the said amount was adjusted from the Petitioner's security and pending bills. Thereafter, on 06.08.2024, another show cause notice was issued alleging violation of Clauses 12(x) and 4(f) of the agreement and suggesting possible blacklisting. The Petitioner replied on 08.08.2024 denying any involvement in the alleged theft and submitted that the matter was under investigation. Subsequently, the District Transport Committee passed a resolution on 13.08.2024 that if the driver was found guilty, the Petitioner would be liable under Clause 12(x) and 4(f). The Respondent then passed the impugned order dated 17.08.2024 suspending the Petitioner's contract for remaining period of tender. Though the Petitioner preferred an appeal, authority vide order dated 17.09.2024 rejected the Petitioner's appeal.

**4.** Learned counsel appearing for the Petitioner submits that the entire action taken by the Respondent corporation is arbitrary, harsh, and bad in law. It is submitted that the Petitioner having paid the full amount of ₹14,50,180/- for the lost grains cannot be subjected to further action of suspending the work order and proposing blacklisting. The same amounts to double punishment for a single incident. It is further contended that the FIR was not lodged for black marketing but for criminal breach of trust and cheating, and therefore Clause 12(x) and 4(f) are not attracted. It is also argued that there is no evidence of involvement of the Petitioner in the incident and he cannot be held liable for the alleged conduct of the driver, especially when the FIR was filed by the Petitioner himself and investigation is still going on. The Petitioner was not present when the incident occurred and has cooperated throughout the process.

**5.** Learned Counsel has advanced the following contentions:

i. That the Petitioner has already paid the entire compensation amount of Rs. 14,50,180/- for the loss suffered and any further punishment would amount to double jeopardy.

ii. That the FIR registered is under Sections 409 and 420 IPC and not for black marketing, and therefore, Clauses 12(x) and 4(f) of the agreement are not attracted.

iii. That there is no evidence to establish that the Petitioner was involved in the disappearance of the truck or the food grains.

iv. That the transporter cannot be held liable for the act of a driver.

**6.** Learned Counsel has laid emphasis on the unrefuted judgment of the Hon'ble court in ***Piyush Kumar v. State of Bihar***, in CWJC No. 12554 of 2019 and ***Vishwajit Kumar v. State of Bihar*** in CWJC No. 90 of 2023.

**7.** *Per contra,* the learned counsel for the Respondent/State submits that the disappearance of the truck and food grains amounts to a serious breach of trust and the Petitioner cannot avoid responsibility by blaming the driver. It is stated that Clause 12(x) and Clause 4(f) of the agreement clearly provide that if any person including the driver engaged by the transporter is found involved in black marketing or misappropriation, the transporter shall be liable and subject to blacklisting for five years. It is submitted that the fact that the truck remained unloaded and subsequently disappeared indicates gross negligence on the part of the Petitioner and raises strong suspicion of involvement in the act. The authorities were justified in suspending the work order in public interest. It is stated that the petitioner's own FIR cannot be treated as evidence of his innocence, as he would not name himself as an accused. Upon due consideration, the District Transport Committee found that the FIR was filed merely as a protective measure to avoid being implicated in the incident and the petitioner is liable under the applicable clauses.

**8.** Learned Counsel for the Respondents has raised the following contentions:

i. That the transporter is liable under Clause 4(f) for any act committed by his driver in relation to the contract.

ii. That disappearance of the truck loaded with government food grains is a serious lapse for which the transporter must be held liable.

**9.** The only question that arises for consideration in the present CWJC is as to whether the suspension of the Petitioner’s contract and the proposal to blacklist him is legally sustainable or not, especially after the full compensation for the loss has already been recovered from the Petitioner. It is to be noted that the entire loss amount of ₹14,50,180/- has already been adjusted from the Petitioner’s account. The Corporation raised the demand, and the Petitioner, without any contest, allowed the deduction to be made from his pending dues. Once the Corporation has accepted the compensation and the financial loss has been recovered, there remains no cause to inflict any further punitive action such as suspension or blacklisting against the Petitioner. Such action clearly amounts to double punishment for the very same incident.

Article 20(2) of the Constitution of India deals with double jeopardy, whereby no person shall be prosecuted and punished for the same offence more than once. In the absence of any fresh default or independent ground, imposing multiple penalties on the very same cause of action is legally impermissible.

**10.** Further, it is to be noted that the investigation in this case is still going on, and there is no evidence to show that the Petitioner was involved in any wrongdoing. Further the authorities have till date not filed any FIR against the Petitioner accusing him of cheating, criminal breach of trust, black marketing or illegal diversion of rice. There is nothing on record to suggest that the rice was diverted and sold in the black market by the Petitioner. Clause 12(x) and Clause 4(f) deal with black marketing and illegal diversion, the ingredients of which are not satisfied.

**11.** The Petitioner cannot wholly be blamed for the action that the driver may have committed, in the absence of any proof that the Petitioner was involved. Further it is to be noted that the investigative authorities have till date not found the Petitioner’s complicity in the incident. The suspension order is based only on suspicion, without any proper inquiry or proof. Suspending the contract given to the Petitioner at this stage, when the investigation is still going on is not justified.

**12.** The Petitioner has relied on case of Hon'ble Patna High Court in ***Piyush Kumar v. State of Bihar***, CWJC No. 12554 of 2019 where a vehicle owner, was blacklisted after his driver was accused of black-marketing when the Petitioner himself was not named or found involved or guilty of black marketing. The Court held that blacklisting the Petitioner without any allegation or proof of his involvement amounted to an arbitrary action based on mere presumption, and such blacklisting would violate his fundamental right to trade under Article 19(1)(g) of the Constitution.

> *"It is apparent that the reasonableness of the decision is open for consideration whenever an order of blacklisting is challenged in the writ petition and this court is exactly doing the same while considering the impugned orders on the anvil of the twin principles of our Constitution i.e. relevance and reasons. A careful reading of paragraph 4(1)(f) would show that it refers to 'driver/owner of vehicle/any other person' followed by the kind of action which may be taken in case they are found indulged in black-marketing. What action is to be taken depends on the involvement of the person and it must be proportional. In this case, the owner of the vehicle is not an accused in this case and he has not been found involved in black-marketing. This court is of the considered opinion that clause 4(f) of the*

*agreement cannot be invoked in the present circumstance where the alleged deviation by driver and his guilt with regard to black-marketing or theft is yet to be proved and no connivance is alleged against the Petitioner being the owner of the vehicle and he has not been made accused in the said criminal case, in the opinion of this court, by no stretch of imagination it can be reasonably held that the Petitioner would be liable to be blacklisted for a period of five years taking recourse to paragraph 4(1)(f) of the agreement. This court has already expressed it's opinion with regard to the 'presumption' as being drawn by virtue of paragraph 4(d) of the agreement. This would amount to causing civil death of a business entity on mere 'presumption' who has otherwise a fundamental right to do trade and business under the Constitution of India."*

**13.** Similarly in the case of ***Vishwajit Kumar v. State of Bihar*** in CWJC No. 90 of 2023, the Hon'ble Patna High Court held that blacklisting the Petitioner solely on the basis of an FIR, despite the final report clearing his name, was unjustified. Since no show-cause notice was issued before blacklisting, it violated the principles of natural justice, and the order was accordingly set aside.

*"6. A perusal of the impugned order shows that the*

*Petitioner was black-listed on the sole ground that the F.I.R. has been lodged against him. Both the Appellate as well as the Primary Authority have taken the same stand but as a matter of fact, the final report filed by the police officials have exonerated the Petitioner and his name is not found place in the final report. Therefore, the impugned order has to be necessarily set aside. Moreover, as seen from the record, the Petitioner has been blacklisted without putting him on show cause notice and the same is against the principles of natural justice and equity, on this ground also impugned order is liable to be set aside.*

*7. Having regard to the above, the impugned order is set aside and the official-respondents are directed to permit the Petitioner to ply his vehicles as per the terms and conditions of the licence agreement."*

**14.** In the present case, no investigating authority has filed the final report, the matter is still under investigation. The order of suspension is based solely on suspicion and without any independent fact-finding.

**15**. In light of the above, this Court is of the considered view that the impugned order dated 17.08.2024 suspending the Petitioner's contract, as well as the appellate order dated 17.09.2024 rejecting the Petitioner's representation, are arbitrary, unjustified, and contrary to law. The Petitioner has already suffered financial loss and paid the assessed compensation. Penalising him further amounts to double jeopardy and violates basic principles of fairness and proportionality.

**16.** Accordingly, the order dated 17.08.2024 bearing Letter No. 987 and the appellate order dated 17.09.2024 are both set aside. The Respondent Corporation is directed not to take any further adverse action against the Petitioner in connection with the said incident unless and until there is a conclusive finding by the competent authority establishing wrongdoing by the Petitioner, and after giving due opportunity of hearing.

**17.** With the above directions, the present writ petition stands allowed.

**(A. Abhishek Reddy, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 14.05.2025. |
| **Transmission Date** | NA |