IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15550 of 2018

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Dharmendra Kumar Patel Son of Late Hridya Nand Singh, Resident of Village- Sion, P.S.- Bhabhua, District- Kaimur Bhabhua.

... ... Petitioner/s

Versus

1. The Bihar State Food and Civil Supply Corporation Ltd. Khadya Bhawan, Daroga Rai Path, Patna- 800 001.
2. The Managing Director, Bihar State Food and Civil Supply Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna- 800 001.
3. The Chief of Procurement, Bihar State Food and Civil Supply Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna- 1.
4. The Chief of Transporting, Bihar State Food and Civil Supply Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna.
5. The District Manager, Bihar State Food and Civil Supply Corporation Ltd., Kaimur, District- Kaimur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amrendra Narayan Rai, Advocate

For the Respondent/s : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RANJAN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 30-06-2026

Heard learned counsel for the parties.

2. Following are the reliefs sought for in the present writ application:

"I. For quashing the memo no 2261 dated 29.12.2017 (Annexure-6 series) issued by District Manager, SFC, Kaimur by the order (memo no. 13058 dated 23.12.2017) of Managing Director, whereby and where under, agreement for Door step delivery between petitioner and SFC, Kaimur has been cancelled and petitioner has been declared

black listed for three years and his security amount along with Bank guaranty has been forfeited.

II. For directing the respondent authorities to re-engage the petitioner immediately as transporting agent for door step delivery of food grains under Kaimur District because petitioner's agreement has been illegally cancelled by the respondent authorities.

III. For issuance of any other appropriate writ/writs, order/orders, direction/directions for grant of any other reliefs to which the petitioner may be found entitled under the facts & circumstances of the case."

3. The brief facts of the present case are that the respondent-Corporation issued a Notice Inviting Tender dated 05.02.2016 inviting applications for appointment of Transporting and Handling Agents for Door Step Delivery of food grains under the Public Distribution System (PDS) in various districts of the State of Bihar, including the district of Kaimur. The petitioner participated in the tender process and, upon being found eligible by the District Transport Committee as well as the Head Office Transport Committee, was appointed as a Transporting and Handling Agent for Kaimur. Consequently, an agreement was executed between the parties on 31.08.2016, whereunder the petitioner was entrusted with the work of transportation and doorstep delivery of food grains for

the prescribed contractual period.

4. While the petitioner was discharging his contractual obligations, an alleged incident occurred on 15.09.2017, pursuant to which Bhabhua P.S. Case No. 577 of 2017 was instituted. The allegation in the FIR was that 26 bags of rice meant for the Public Distribution System were being transported for the purpose of black marketing in the petitioner's tractor bearing Registration No. BR-45G-3141 and trailer bearing Registration No. BR-45G-3143, which were intercepted and seized by the police. It was further alleged that the said vehicle was being used for facilitating the illegal diversion of food grains meant for distribution under the Public Distribution System.

5. Taking note of the aforesaid incident, the Managing Director of the respondent-Corporation issued a show cause notice dated 10.10.2017. The petitioner submitted his reply dated 17.10.2017 denying the allegations. Thereupon, the District Manager, vide Memo No. 2261 dated 29.12.2017, acting upon the decision of the Managing Director communicated vide Memo No. 13058 dated 23.12.2017, cancelled the petitioner’s agreement, blacklisted him for a period of three years, and forfeited his security deposit as well

as the bank guarantee.

6. Learned counsel for the petitioner submits that the entire action of the respondent-Corporation proceeds on the alleged violation of Clause 10.2 of the agreement, whereas no such clause exists either in the tender conditions or in the agreement executed between the parties. It is further submitted that there is no material on record to establish that the petitioner was involved in any act of black marketing or diversion of food grains under the Public Distribution System. The allegation is founded merely on the seizure of certain food grains from the petitioner’s vehicle, despite the fact that the PDS food grains had already been delivered to the concerned dealer and the seized bags were not PDS bags.

7. Learned counsel further submits that even the F.I.R. does not attribute any overt act to the petitioner and, on the contrary, records the stand of the concerned PDS dealer that the seized food grains were his own agricultural produce. In such circumstances, there was no justification for the respondents to conclude that the petitioner had violated the terms of the agreement.

8. Learned counsel further submits that the impugned orders are liable to be quashed as being arbitrary, mala fide,

unsupported by any legal or factual basis, and violative of Articles 14 and 19(1)(g) of the Constitution of India.

9. Per contra, learned counsel appearing on behalf of the respondents submits that Bhabhua P.S. Case No. 577 of 2017 was instituted under Section 7 of the Essential Commodities Act against the concerned PDS dealer, Shri Anirudh Prasad, wherein it was alleged that the petitioner's tractor bearing Registration No. BR-45G-3141 and trailer bearing Registration No. BR-45G-3143 were used in the transportation of the food grains forming the subject matter of the case.

10. Learned counsel further submits that the action of cancellation of the agreement, blacklisting of the petitioner and forfeiture of the security deposit and bank guarantee is fully justified in terms of Clauses 10.2, 11 and 15.4 of the Notice Inviting Tender read with Clause 17 of the agreement, which govern the obligations of the transporter and empower the Corporation to take appropriate action in the event of breach of the contractual terms.

11. It is, therefore, submitted that the impugned orders have been passed after following due procedure and in accordance with the contractual provisions, and as such, the writ

petition is liable to be dismissed.

12. The following issue arises for consideration before this Court:

1. Whether, in the facts and circumstances of the present case, the respondent-Corporation was justified in invoking Clauses 10.2, 11 and 15.4 of the Notice Inviting Tender read with Clause 17 of the agreement for terminating the petitioner's contract, blacklisting him and forfeiting his security deposit and bank guarantee?
2. Whether the impugned action suffers from any arbitrariness, perversity or procedural infirmity so as to warrant interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India?

<u>Re Issue No. (i)</u>

13. Before adverting to the rival submissions, it would be apposite to reproduce the relevant contractual clauses governing the parties.

14. Clause 10.2 of the Notice Inviting Tender reads as under:

> *"10.2. In case any default in course of transporting work any loss cause to corporation by the Transporter on account of strike or any other mode such loss shall be recovered by forfeiting the Bank guarantee/security deposit which will be utilized by*

the Corporation or/and the said loss shall be also recovered from the immovable property by way of attachment or sale of mortgaged Properties."

15. Clause 11 of the NIT stipulates:

> *"11. Transporter will be solely responsible for transporting grains handed over by SFC, block godown for delivery of food grains under Door Step delivery for PDS dealers as per delivery schedule and route chart as directed by the concerned District Administration/District Manager and obtained signature of the recipient (FPS) on the document handed over to him by block godown of SFC."*

16. Clause 15.4 of the NIT provides:

> *"15.4. The agreement shall be remain in operation for the period of one year from the date of execution of the agreement or allotment of work. This may be extended by mutual consent for a further period of one year on the recommendation of District Transport Committee or may be terminated earlier than the period mentioned above on behalf of the BSFC in case of non delivery of food grains. During the specified period if there is any breach of the terms of agreement by the Transport Handling-cum-Delivery Agent, he will be terminated and blacklisted as well as debar for further work."*

17. Likewise, Clause 17 of the Agreement provides, inter alia, that:

> *"17. The agreement shall remain in operation for one year which may be*

extended by mutual consent for a further period of one year on the recommendation of District Transport Committee or it can be terminated any time by issuing 15 days prior notice. This may be terminated earlier than the period mentioned above on behalf of the First Party in case of non-lifting of grains, sugar, edible oil etc. During the specified period if there is any breach of any of the terms of the agreement by the second party, the agreement may be terminated and blacklisted as well as debarred for next five years from future transportation work, security deposits will be forfeited and Bank guarantee of 10 laces (Ten lac only) will be utilized and encashed at once by the First Party. The responsibility of the second party shall not cease with the termination of the agreement unless he has redelivered the grains, sugar, edible oils and etc, entrusted to him and rendered complete accounts thereof to the satisfaction of the First Party."

18. A conjoint reading of the aforesaid clauses leaves no room for doubt that the contractual scheme casts a

heightened degree of responsibility upon the transporter entrusted with the movement of food grains under the Public Distribution System. Clause 11 unequivocally fastens the responsibility of safe transportation and delivery of the food grains upon the transporter, whereas Clauses 15.4 and 17 reserve to the Corporation the power to terminate the agreement, blacklist the contractor and forfeit the security deposit in the event of breach of the contractual obligations. Clause 10.2 further contemplates recovery of loss suffered by the Corporation on account of any default committed during the course of transportation work.

19. The record reveals that Bhabhua P.S. Case No. 577 of 2017 came to be registered under Section 7 of the Essential Commodities Act against the concerned PDS dealer. It is not in dispute that the FIR specifically mentions the petitioner's tractor bearing Registration No. BR-45G-3141 and trailer bearing Registration No. BR-45G-3143 as the vehicle used in the alleged black marketing of the food grains. Acting upon the said report, the respondent-Corporation issued a detailed show cause notice to the petitioner calling upon him to explain his conduct. The petitioner submitted his reply, which was duly considered by the competent authority before the

impugned order came to be passed.

20. The principal contention of the petitioner is that no loss has been caused to the Corporation and that Clause 10.2, therefore, could not have been invoked. This submission, in the considered opinion of this Court, cannot be accepted in isolation. Clause 10.2 cannot be read in isolation from Clauses 11, 15.4 and Clause 17 of the agreement. The contractual provisions have to be construed harmoniously. While Clause 10.2 deals with recovery of loss through forfeiture of the security deposit and bank guarantee, Clauses 15.4 and 17 independently empower the Corporation to terminate the agreement and blacklist the contractor upon breach of the contractual obligations. Therefore, the absence of a quantified pecuniary loss by itself does not denude the Corporation of its contractual authority to terminate the contract if the conduct of the transporter amounts to breach of the obligations undertaken under the agreement.

21. The submission that the food grains seized were not PDS food grains or that the concerned dealer claimed them to be agricultural produce are matters which may have relevance in the criminal proceedings. However, the Corporation was not required to await the outcome of the criminal prosecution before

taking an administrative decision regarding continuation of a contractor entrusted with the transportation of essential commodities under the Public Distribution System. The contractual relationship is founded upon confidence, integrity and accountability. Once the competent authority, after issuing notice and considering the explanation, arrived at a bona fide satisfaction that the petitioner's conduct was inconsistent with the standards expected of a transporter engaged under the PDS scheme, it cannot be said that the action was dehors the contract.

22. The Hon'ble Supreme Court in ***Patel Engineering Ltd. v. Union of India, reported in (2012) 11 SCC 257,*** has held that the power of the State or its instrumentalities to blacklist a contractor is an inherent facet of its executive power to enter into contracts, subject only to the requirement that such power must be exercised fairly and for a legitimate purpose. The relevant part of the said order reads as follows:

> ***15.*** *It follows from the above judgment in Erusian Equipment case that the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting. The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of the State to blacklist a person is a necessary*

> *concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors."*

23. Likewise, in ***Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project, BSNL, reported in (2014) 14 SCC 731***, the Supreme Court reiterated that while the power of blacklisting is inherent, its exercise must satisfy the requirements of fairness, proportionality and observance of natural justice. The relevant part of the said order reads as follows:

> ***17.*** *That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because "blacklisting" simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private*

parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court."

24. In the present case, the records disclose that the petitioner was served with a show cause notice specifically proposing action against him, an opportunity of reply was afforded, and the reply was considered before the competent authority passed the impugned order. Thus, the procedural safeguards recognised in the aforesaid decisions stand duly complied with.

25. This Court is, therefore, of the considered view that the respondent-Corporation acted within the four corners of the contractual provisions while invoking Clauses 10.2, 11 and 15.4 of the Notice Inviting Tender read with Clause 17 of the

agreement. The decision to terminate the agreement, blacklist the petitioner and forfeit the security deposit and bank guarantee cannot be said to be without contractual authority or unsupported by the governing terms of the contract.

26. Accordingly, Issue No. 1 is answered in favour of the respondent-Corporation and against the petitioner.

Re Issue No. (ii)

27. The scope of judicial review under Article 226 of the Constitution in matters arising out of contractual relationships is well settled. While this Court is not denuded of its power to examine the decision-making process of a State instrumentality, it is equally settled that judicial review is concerned with the legality of the decision-making process and not with the merits of the decision itself. Unless the impugned action is shown to be arbitrary, mala fide, perverse, actuated by extraneous considerations, or in violation of the principles of natural justice or the statutory or contractual provisions, the writ court would not substitute its own view for that of the competent authority.

28. In ***Tata Cellular vs. Union of India, reported in (1994) 6 SCC 651***, the Hon'ble Supreme Court held that judicial review in contractual matters is confined to examining the

decision-making process and not the correctness of the decision itself. The Court observed that it is not the function of the writ court to act as an appellate authority over administrative decisions unless the action is vitiated by arbitrariness, irrationality or mala fides. The relevant part of the said order reads as follows:

> ***"77.*** *The duty of the court is to confine itself to the question of legality. Its concern should be:*
>
> *1. Whether a decision-making authority exceeded its powers?*
>
> *2. Committed an error of law,*
>
> *3. committed a breach of the rules of natural justice,*
>
> *4. reached a decision which no reasonable tribunal would have reached or,*
>
> *5. abused its powers.*
>
> *Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:*
>
> *(i) Illegality : This means the decision-maker must understand correctly the law that*

regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

29. The said principle has been consistently reiterated by the Hon'ble Supreme Court in ***Michigan Rubber (India) Ltd. v. State of Karnataka, reported in (2012) 8 SCC 216*** , wherein it was held that in matters concerning contracts entered into by the State, interference under Article 226 is warranted only when the process adopted or the decision made is mala fide, intended to favour someone, or is so arbitrary and irrational that no reasonable authority acting in accordance with law could have arrived at such a decision. The relevant part of the said order reads as follows:

"24. *Therefore, a court before interfering in*

> *tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:*
>
> *(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"? And*
>
> *(ii) Whether the public interest is affected?*
>
> *If the answers to the above questions are in the negative, then there should be no interference under Article 226."*

30. Similarly, in ***Silppi Constructions Contractors v. Union of India, reported in (2020) 16 SCC 489***, the Apex Court cautioned that constitutional courts should exercise restraint in interfering with contractual and commercial decisions of the State unless the decision-making process is demonstrably arbitrary or suffers from patent illegality. The relevant part of the said order reads as follows:

> ***"19.*** *This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of*

judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer."

31. Tested on the aforesaid principles, this Court finds

no such infirmity in the present case. The records reveal that the petitioner was served with a detailed show cause notice setting out the allegations against him. The petitioner submitted his explanation, which was duly considered by the competent authority before passing the impugned orders. Thus, the requirements of *audi alteram partem* stood substantially complied with and the petitioner cannot legitimately contend that the impugned action was taken in breach of the principles of natural justice.

32. The contention that the respondent-Corporation ought to have awaited the outcome of the criminal proceedings is equally untenable. The impugned action is not founded upon the petitioner's criminal liability but upon the contractual obligations governing the relationship between the parties. The standard applicable to administrative action under a contract is distinct from that governing a criminal prosecution. The respondent-Corporation was competent to assess whether the petitioner’s conduct justified continuation of the contractual relationship, independent of the result of the criminal case.

33. This Court also does not find any material to indicate that the decision of the respondent-Corporation was actuated by mala fides, extraneous considerations or colourable

exercise of power. The petitioner has not placed any cogent material on record to establish that the action was discriminatory or that similarly situated contractors were treated differently in comparable circumstances. On the contrary, the records indicate that the Corporation acted upon the information received, issued notices, considered the replies and thereafter passed the impugned orders in exercise of powers traceable to the contractual terms.

34. Once this Court has held under Issue No. 1 that the respondent-Corporation possessed the contractual authority to terminate the agreement, blacklist the petitioner and forfeit the security deposit and bank guarantee, and that such action was taken after following the prescribed procedure, the scope of judicial review becomes considerably limited. This Court cannot sit in appeal over the subjective satisfaction of the competent authority merely because another view may also be possible.

35. In the absence of any demonstrated arbitrariness, perversity, mala fides or procedural impropriety, no case is made out for interference under Article 226 of the Constitution of India.

36. Accordingly, Issue No. 2 is answered in favour of the respondent-Corporation and against the petitioner.

37. In view of the findings recorded on the issues framed hereinabove, this Court is of the considered opinion that the impugned orders do not suffer from any illegality, arbitrariness, perversity or procedural infirmity warranting interference in exercise of the extraordinary writ jurisdiction under Article 226 of the Constitution of India. The respondent-Corporation has acted within the scope of the contractual provisions after affording the petitioner due opportunity of hearing. Consequently, no case for interference is made out.

38. Accordingly, the present writ petition stands dismissed.

39. However, it is made clear that this Court has not expressed any opinion on any other contractual or monetary claims, if any, that may be available to the petitioner.

40. If so advised, the petitioner shall be at liberty to invoke Clause 20 of the agreement and take recourse to the dispute resolution mechanism provided therein by initiating appropriate arbitration proceedings for redressal of his grievances, in accordance with law. Clause 20 of the agreement reads as follows:

> *"**20.** All disputes arising under or in pursuance of this agreement between the parties, except matters decision of which herein expressly is otherwise provided, shall*

be referred to sole arbitration of the C.M.D/Managing Director of the Bihar State Food & Civil Supplies Corporation Ltd. Patna or a person nominated by the C.M.D/Managing Director decision of such arbitrator shall be final and binding on both the parties. The provisions of the arbitration and conciliation Act, 1996 and rules framed there under and statuary modifications thereof shall apply to the proceedings of arbitration and all such disputes shall be subject to the jurisdiction of courts at Patna."

41. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Ranjan Kumar Jha, J)

rishabh/rajesh

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.07.2026
Transmission Date	