

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3995 of 2024

Naveen Kumar Son of Lilanand Jha, Naveen Kumar, male, aged about years,
Resident of village- Balaur, P.S.- Manigachi, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Managing Director, Bihar State Food and Civil Supplies Corporation, R-Block, Khadya Bhawan, Daroga Prasad Rai Path, Road No. 2, Bihar, Patna.
3. The Deputy Managing Director Modernisation, Bihar State Food and Civil Supplies Corporation, R-Block, Khadya Bhawan, Daroga Prasad Rai Path, Road No. 2, Bihar, Patna.
4. The District Magistrate Cum Chairman, District Transport Committee Madhubani.
5. The District Manager Bihar State Food and Civil Supplies Corporation, Khadi Bhandar Road Old LIC Campus, Madhubani.
6. The Block Supply Officer, Madhepur, Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rama Kant Sharma, Sr. Advocate
For the Respondent/s : Mr. Anjani Kumar, Sr. Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 02-04-2024

Heard Mr. Rama Kant Sharma, learned senior Advocate appearing on behalf of the petitioner and Mr. Anjani Kumar, learned senior Advocate for the Bihar State Food and Civil Supplies Corporation (herein after referred to as 'Corporation').

2. The petitioner by filing the present writ petition



seek quashing of the order contained in Memo No. 2469 dated 03.12.2021 issued under the signature of respondent no. 5 whereby, the petitioner who was working as Transportation-cum-Handling Contractor is black listed for five years after rescinding the agreement with the forfeiture of the security deposit and bank guarantee. In addition to that a decision has also been taken to realize the loss of food grain to the tune of Rs. 2,30,594.28/- apart from a direction to restrain the petitioner from making use of his private vehicle for transportation in distribution of food grains in PDS shop.

3. At the outset, learned Senior Advocate for the petitioner submits across the Bar that during the pendency of the writ petition, the period of agreement has already been expired and the respondent Corporation has floated a fresh tender vide NIT No. 272 dated 27.01.2024 leading to appointment of new bidders. The petitioner, hence is not pressing the writ petition with respect to the relief against cancellation of his contract.

4. It is thus submitted that the petitioner having been selected as a Transportation-cum-Handling Contractor for door step delivery of transportation of food grains in the district of Madhubani entered into an agreement with the Corporation on 02.03.2021. The copy of the agreement is produced as Annexure – P/3. While the petitioner was discharging the assignment in



terms of the agreement, an FIR was instituted against the PDS dealer and the petitioner along with other officials on 30.05.2021 being Madhepura P.S. Case No. 83 of 2021 for the offences under Section 420/34 of the Indian Penal Code and Section 7 of the Essential Commodities Act.

5. The allegation as narrated in the FIR reveals that the food grains carried in the vehicle bearing Registration No. BR32GB-3954 was diverted for black marketing. After lodging of the FIR show-cause notice as contained in Letter No. 842 dated 31.05.2021 has been issued seeking explanation from the petitioner. In response thereto, the petitioner submitted his show-cause reply narrating all the facts in support of his defense.

6. Another letter was also issued by the Deputy Managing Director vide Memo No. 848 dated 01.06.2021 directing the petitioner to explain regarding GPS location and the movement of his vehicle, the copy of which is produced as Annexure – P/7. The petitioner submitted his explanation denying the allegation, the copy of which is also marked as Annexure – P/8.

7. Adverting to the aforesaid facts, learned senior Advocate vigorously contended that irrespective of detailed show-cause reply/explanation, the respondent Corporation



without making any enquiry stayed the agreement of the petitioner with immediate effect and the work assigned to the petitioner was handed over to other transportation Contractor vide Letter No. 856 dated 03.06.2021. The respondent Corporation further, without any notice to show-cause, issued impugned Memo No. 2469 dated 03.12.2021 inflicting the order of black listing and rescinding the agreement of the petitioner with the Corporation only on the basis of lodgement of Madhepura P.S. Case No. 83 of 2021.

8. Learned Senior Advocate further argued that the very basis of the impugned order is the FIR noted hereinabove, wherein, a final report has been submitted and the petitioner has not even been sent up for trial for want of evidence, which report has also been accepted by the jurisdictional Court. The copy of which is marked as Annexure – P/11.

9. In the aforesaid premise, the learned Senior Advocate submits that once the very basis of the impugned order does not exist, the black listing of the petitioner, forfeiture of the earnest money and realization of alleged loss at the hands of the Corporation are all untenable and fit to be quashed. He has further taken this Court to the show-cause notices and referring thereto he further submits that the notice does not speak about any proposed consequences and thus the same was



deficient as it did not state the action contemplated in the event of his explanation not being found to be satisfactory. Reliance has also been placed on a Full Bench decision of this Court in the case of *Ghuran Paswan Vs. State of Bihar (Full Bench), 2024 (2) BLJ 334* and further on *Panash Infotech Pvt. Ltd. Vs. Chief Secretary, Government of Bihar & Ors., 2024 (1) BLJ 311*.

10. Per contra learned Senior Advocate representing the Corporation has drawn the attention of this Court to the relevant provisions in the instruction to bidders, of the NIT as well as the agreement executed by the petitioner and the Corporation, especially Clause 4 (a) to 4(g). It is further submitted that though the petitioner has not been sent up for trial but from the charge-sheet as well as the order taking cognizance, it would be evident that the vehicle in question and its driver were found to be involved in the crime of black marketing and accordingly cognizance of the offences have been taken.

11. After taking careful consideration of the rival submissions while exercising the power of judicial review, this Court would examine the procedure as has been taken by the respondent to reach the conclusion of rescinding of the agreement and inflicting the punishments, which are impugned



herein. From perusal of the notice, the copy of which is produced in the writ petition, it would be evident that the petitioner has been asked for to submit his explanation with respect to the FIR instituted in relation to the vehicle found indulging in black marketing.

12. From the materials available on record admittedly before passing the impugned order, the respondent Corporation has not served any show-cause notice in relation to the proposed action to be taken against the petitioner in case his explanation is found to be unsatisfactory. It would be apposite to quote paragraph nos. 24, 31 and 32 of the judgment rendered in the case of *Oryx Fisheries Pvt. Ltd. Vs. Union Of India & Ors*, reported in *2010 (13) SCC 427* wherein, the Hon'ble Apex Court while highlighting the importance of the show-cause notice held as follows:

“24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and 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.

31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear 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 prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. 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 guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.”

13. This Court also tempted to quote two of the paragraphs i.e. paragraph nos. 21 and 22 of the decision referred in ***Gorkha Security Services Vs. Government (NCT of Delhi) and Ors.*** reported in ***2014 (9) SCC 105.***

“21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. 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 imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not



satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

14. From the position obtaining in law as noted hereinabove, it would be worth observing that mentioning of the proposed action in show-cause notice for rescinding of the agreement or black listing is even otherwise an essential requirement of compliance of the principle of natural justice. In absence thereof, the impugned order is held to be not tenable. This Court also finds that even before forfeiture of the earnest money and quantification of the loss allegedly caused to the



Corporation, the petitioner has not been visited with any show-cause nor the method of quantification or assessing the loss has been disclosed.

15. Besides the aforesaid facts, this Court also finds that the impugned order does not reflect the consideration of the show-cause reply/explanation of the petitioner and, as such, there is no application of mind. Taking note of the entire gamut of the facts, this Court finds that the show-cause notice issued by the respondent Corporation is not in accordance with law, as it does not project the consequence and proposed action to be taken against the petitioner in case his explanation is found to be unsatisfactory. In such circumstances, this Court thinks it proper to dispose of the writ petition with a direction to the respondent to issue a fresh show-cause notice to the petitioner, reserving liberty to him to file an adequate reply.

16. When the reply is filed on behalf of the petitioner, the respondent Corporation or the competent authority shall consider the show-cause reply/explanation of the petitioner and pass a reasoned and speaking order taking into consideration the defense of the petitioner especially, the fact that the petitioner has not been sent up for trial for want of evidence and the same has been accepted by the learned jurisdictional Court.

17. It is made clear that in view of the order passed by



this Court, the impugned order shall stand set aside.

18. With the aforesaid observation, the present writ petition stands allowed, to the extent indicated hereinabove.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.04.2024.
Transmission Date	NA

