

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14665 of 2016**

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Subodh Kumar Gupta, son of Late Babu Lal Gupta, Resident of Village- Raj Bandh, P.S.- Dohraiya, District- Banka, at present Resident of Mohalla- Hanuman Path, Tilkamanjhi, P.S.- Tilkamanjhi, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the 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. Bihar State Food and Civil Supply Corporation Ltd. Sone Bhawan 5th Floor Bir Chand Patel Path, Patna-800011 through its Managing Director.
4. The Managing Director, Bihar State Food and Civil Supply Corporation Ltd. Sone Bhawan 5th Floor, Bir Chand Patel Path, Patna-800011.
5. The Chief Administrator, Bihar State Food and Civil Supply Corporation Ltd. Sone Bhawan 5th Floor, Bir Chand Patel Path, Patna-800011.
6. The District Manager, Bihar State Food and Civil Supply Corporation Ltd. Bhagalpur.
7. The District Magistrate, Bhagalpur.
8. The Sub Divisional Officer Sadar Bhagalpur.
9. The Block Supply Officer, Sultanganj, Bhagalpur.
10. The Block Supply Officer, Jagdishpur, Bhagalpur.
11. The Supply Inspector, Sabour, Bhagalpur.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 16064 of 2016**

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Subodh Kumar Gupta Son of Late Babu Lal Gupta Resident of Village- Raj Bandh, P.S.- Dohraiya, District- Banka at present Resident of Mohalla- Hanuman Path, Tilkamanjhi, P.S.- Tilkamanjhi, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the 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, Bhagalpur.
4. The Sub Divisional Officer, Sadar Bhagalpur.
5. The Block Supply Officer, Sultanganj, Bhagalpur.
6. The Block Supply Officer, Jagdishpur, Bhagalpur.
7. The Supply Inspector, Sabour, Bhagalpur.
8. Bihar State Food and Civil Supply Corporation Ltd., Sone Bhawan, 5th Floor, Bir Chand Patel Path, Patna-800011 through its Managing Director.



9. The Managing Director, Bihar State Food and Civil Supply Corporation Ltd., Sone Bhawan, 5th Floor, Bir Chand Patel Path, Patna-800001.
10. The Chief Administrator, Bihar State Food and Civil Supply Corporation Ltd., Sone Bhawan, 5th Floor, Bir Chand Patel Path, Patna-800001.
11. The District Manager, Bihar State Food and Civil Supply Corporation Ltd., Bhagalpur.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 16029 of 2016**

Subodh Kumar Gupta Son of Late Babu Lal Gupta Resident of village - Raj Bandh, P.S. Dohraiya, District - Banka at Present Resident of Mohalla - Hanuman Path, Tilkamanjhi, P.S. Tilkamanjhi, District - Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar 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, Bhagalpur
4. The Sub - Divisional officer Sadar Bhagalpur.
5. The Block Supply officer, Sultanganj, Bhagalpur
6. The Block Supply Officer, Jagdishpur, Bhagalpur .
7. The Supply Inspector, Sabour, Bhagalpur.
8. Bihar State Food and Civil Supply Corporation Ltd., Sone Bhawan, 5th Floor, Bir Chand Patel Path, Patna-800001.
9. The Managing Director, Bihar State Food and Civil Supply Corporation Ltd., Sone Bhawan, 5th Floor, Bir Chand Patel Path Patna 800 011
10. The Chief Administrator, Bihar State Food and Civil Supply Corporation Ltd., Sone Bhawan, 5th Floor, Bir Chand Patel Path Patna 800 011
11. The District Manager, Bihar State Food and Civil Supply Corporation Ltd., Bhagalpur

... .. Respondent/s

**Appearance :**

(In Civil Writ Jurisdiction Case No. 14665 of 2016)

For the Petitioner/s : Mr.Sanjeet Kumar, Adv.  
For the Respondent/s : Mr.Alok Ranjan, AC to AAG 5.  
For the BSFCC : Mrs. Namrata Mishra, Adv.

(In Civil Writ Jurisdiction Case No. 16064 of 2016)

For the Petitioner/s : Mr.Sanjeet Kumar, Adv.  
For the Respondent/s : Mr.Mr. Manoj Kumar, AC to GP 4.  
For the BSFCC : Mrs. Namrata Mishra, Adv.

(In Civil Writ Jurisdiction Case No. 16029 of 2016)

For the Petitioner/s : Mr.Sanjeet Kumar, Adv.  
For the Respondent/s : Mr.Arvind Ujjwal, SC 4.



For the BSFCC : Mrs. Namrata Mishra, Adv.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
ORAL JUDGMENT**

**Date : 25-04-2019**

All these three writ applications are arising out of the common order as contained in Memo No.3898 dated 28.03.2016 passed by the Managing Director of the Bihar State Food and Civil Supply Corporation Ltd. The impugned order is Annexure '1' to the writ application.

By the impugned order the following order have been passed:-

“1. प्रखण्ड आपूर्ति पदाधिकारी, जगदीशपुर द्वारा जगदीशपुरा थाना में दर्ज प्राथमिकी सं०-37/16 दिनांक-5.02.16 एवं सुलतानगंज थाना में काण्ड संख्या-20/2016 दिनांक 06.02.2016 के आलोक में परिवहन सह हथालन अभिकर्ता, भागलपुर के विरुद्ध नन जी०पी०एस० युक्त वाहनों से खाद्यान्न की दुलाई एवं कालाबाजारी के आरोप में श्री सुबोध कुमार गुप्ता, परिवहन सह हथालन अभिकर्ता, भागलपुर को परिवहन सम्बन्धी एकरारनामा को रद्द करते हुए उने नाम को काली सूची में दर्ज किया जाता है।

2. एकरारनामा की कंडिका-9 के लिए श्री सुबोध कुमार गुप्ता, परिवहन सह हथालन अभिकर्ता, भागलपुर द्वारा जमा की गयी जमानत की राशि एवं बैंक गारंटी जप्त किया जाता है।

3. साथ ही एकरारनामा की कंडिका-2(डी०), 2(ई) एवं 13.3 का उल्लंघन के लिये निगम को हुई आर्थिक क्षति की वसूली श्री सुबोध कुमार गुप्ता, परिवहन सह हथालन अभिकर्ता, भागलपुर द्वारा समर्पित परिवहन विपत्र से करने का आदेश दिया जाता है।”

The facts as disclosed in the writ application would show that the petitioner was working as a Transport-cum-Handling Agent of the respondent Corporation. In terms of the



agreement dated 02<sup>nd</sup> February, 2015 as contained in Annexure '2' to the writ application certain obligations were cast upon the petitioner. Clause 2 (d) of the agreement imposes a condition whereunder the petitioner being the second party is obliged to deliver the foodgrains to the designated godown by the shortest motorable route, within reasonable travelling period, necessary to cover distance from Food Corporation of India depot to the corporation godowns or from corporation godowns to other destinations. It also raises a presumption saying that "if the Second Party would fail to deliver foodgrains within reasonable time, it would be presumed that the intention of Second Party was to default or to black market the foodgrains by illegal means and, accordingly, legal action would be taken by the First Party against Second Party as penalty including termination of agreement and will be blacklisted as well as debarred from future transportation work and other lawful action....."

It appears from reading of the impugned order that there had been certain delay in transportation of the foodgrains by the petitioner in respect of the consignment which were loaded in Truck No. BR10G-1884 and BR10GC-4530. The Block Supply Officer, Jagdishpur had lodged one Jagdishpur P.S. Case No.37 of 2016 dated 05.02.2016 and the Block Supply



Officer, Sultanganj had lodged Sultanganj P.S. Case No.20 of 2016 on 06.02.2016 against the petitioner alleging that the petitioner had indulged in blackmarketing.

A show cause notice was issued to the petitioner on the ground that two criminal cases have been lodged against him for alleged breach of terms and conditions of the agreement and his acts of alleged omission and commission in the nature of blackmarketing. It is for this reason that the cancellation of agreement was proposed. The petitioner submitted his explanation but then on being dissatisfied with the same, the impugned order was passed.

In course of hearing, learned counsel for the petitioner submits that while the show cause notice was issued giving description of two cases only, in the impugned order this Court shall find that the respondent Corporation has passed the order taking into consideration one more case with respect to which no opportunity of explanation was given to the petitioner. Learned counsel has further attempted to show from the contents of the two F.I.R (s) being Jagdishpur P.S. Case No.37 of 2016 and Sultanganj P.S. Case No.20 of 2016 that the allegations made therein cannot even prima-facie constitute a case of blackmarketing. It is submitted that in the first case there



was a delay of two days in delivery of the foodgrains whereas in the second case the foodgrains which were seized by the Block Supply Officer belonged to some other person and the same was released in favour of that person, therefore, it is submitted that the whole allegation that the petitioner was indulged in act of blackmarketing have no basis to stand.

Learned counsel further submits that from the impugned order it would appear that the contract in question has been rescinded and the security deposit in form of Bank Guarantee has been forfeited for no valid reasons. It is submitted that the respondent Corporation has not determined the alleged loss and damages said to have been caused by the petitioner but even before determination of loss and damages an order has been passed vaguely stating that monetary loss caused to the petitioner shall be recovered from the bills of the petitioner.

It is submitted that the order of blacklisting of the petitioner is equally bad in law as the respondent Corporation has decided to place the name of the petitioner in the blacklist permanently and even before the action of termination of contract and forfeiture of security deposit and when the order of the respondent Corporation are still subject to adjudication.



Learned counsel has relied upon the Judgment of the Hon'ble Supreme Court in the case of **M/s Kulja Industries Limited v. Chief Gen. Manager, W.T. Proj., BSNL** and others reported in **AIR 2014 SC 9**, to submit that there cannot be a permanent blacklisting and if such decision has been taken it offend Article 19 (1) (g) of the Constitution of India.

On the other hand, learned counsel representing the respondent Corporation submits that so far as the order of termination of agreement and forfeiture of security deposit is concerned, those being the disputed question of facts requiring evidence to be adduced by the parties, this Court sitting under Article 226 of the Constitution of India may not take upon itself the exercise as a fact finding Court. It has been pointed out from Annexure '2' that the parties here have agreed for redressal of their grievances under the agreement by referring their disputes to a sole arbitrator. It is submitted that though under Clause 17 of the agreement the C.M.D/Managing Director of the Corporation has been named as sole arbitrator but now in view of the amending Act of 2015 which has come into effect from 23.10.2015 the C.M.D/Managing Director of the Corporation would not be eligible to be appointed as an arbitrator but in order to avail the remedy of adjudication through Arbitration



Tribunal, the parties may either agree on the name of a sole arbitrator or they can apply for appointment of an arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996.

It is one of the submissions of learned counsel for the respondent Corporation that so far as the order with regard to realisation of the monetary loss allegedly caused by the petitioner is concerned, the same may also be a matter of dispute to be arbitrated upon in course of arbitration proceeding, therefore, the submission of learned counsel for the respondent Corporation is that so far as these two aspects of disputes are concerned those are arbitrable disputes and the same would only be decided in an appropriate arbitration proceeding.

As regards the blacklisting order, learned counsel representing the respondent Corporation has taken a reasonable stand considering the judicial pronouncements on the subject and has submitted that because the order of blacklisting is in the nature of a permanent blacklisting which has got a civil consequence, the same may be allowed to be considered afresh by the respondent Corporation and a fresh decision thereon may be taken after hearing the petitioner keeping in mind the judicial pronouncements on the subject.



Having heard learned counsel for the parties and on perusal of the records, this Court finds that the writ application insofar as it relates to a challenge to the order of blacklisting, is fit to be allowed on the grounds pleaded in the writ application which find support from the judicial pronouncements from the subject. It appears that the order of blacklisting is in the nature of a permanent blacklisting and has been passed by the employer only on the ground that the three F.I.R (s) have been lodged against the petitioner. This Court has been given to understand that in the two cases discussed earlier charges have not been framed. This aspect of the matter would be one of the considerations to be looked into by the respondent Corporation. This Court, therefore, set-aside the order present at Serial No.1 in Memo No.3898 dated 28.03.2016 (Annexure 1) insofar as it relates to and by which the petitioner has been blacklisted. The respondent Corporation will be at liberty to consider the matter of blacklisting afresh on the basis of the materials available on the record after giving an opportunity of hearing to the petitioner and by keeping the judicial pronouncements on the subject in mind.

So far as, the order of termination of contract is concerned, learned counsel for the petitioner has submitted that



the agreement period has already expired. As regards other two orders present at Serial Nos.2 and 3, this Court agrees with the submission of learned counsel representing the respondent Corporation that those will be subject matter of dispute to be arbitrated upon in a duly constituted arbitration proceeding. In terms of Clause 17 of the agreement as contained in Annexure '2' to the writ application, the parties are free to get their disputes decided through a sole arbitrator and in the opinion of this Court they can either agree on the name of a sole arbitrator by sitting together or one of the parties may approach the competent Court in competent jurisdiction for appointment of the sole arbitrator.

Thus, so far as, CWJC No.14665 of 2016 is concerned, it is allowed to the extent indicated hereinabove. CWJC No.16064 of 2016 and CWJC No.16029 of 2016 are disposed of with the liberty to the parties to seek their remedies before Arbitration Tribunal in terms of the agreement.

**(Rajeev Ranjan Prasad, J)**

R.R.Ojha/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

