IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20887 of 2025

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Kumari Sneha W/o Shri Akshay Mohan, Resident of Village- Husainpur, P.S.- Rahui, District- Nalanda

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Civil Supplies, Government of Bihar, Patna.
2. The Bihar State Food and Civil Supplies Corporation, through its Managing Director, Patna.
3. The District Magistrate -cum- Chairman, District Transport Committee, Nalanda.
4. The District Transport Committee, through its Secretary, Nalanda.
5. The District Manager -Cum- Secretary, District Transport Committee, Nalanda.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Hansraj, Advocate
For the State	:	Mr. Sajid Salim Khan, SC 25
For the BSFC	:	Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 21-07-2026

Heard learned counsel for the parties.

2. The present writ application has been filed for the following reliefs :-

> *"1. i. For issuance of a writ in the nature of certiorari or any other appropriate writ, order or direction for quashing / setting aside the Letter bearing Memo No. 1129 dated 02.12.2024 (Annexure- P/4) issued under the signature of the District Manager, State Food Corporation, Nalanda whereby and whereunder the amount of Rs. three lakhs deposited by the petitioner along with the tender has been forfeited and the petitioner has been black-listed for five years for not entering into an agreement with the Corporation,*

despite having been selected.
ii. For issuance of a writ in the nature of certiorari or any other appropriate writ, order or direction for setting aside the decision of the District Transport Committee, Nalanda, in so far as it relates to the petitioner, contained in Memo no. 1128 dated 02.12.2024 (Annexure-P/4), whereby it has been decided that the amount of Rs. three lakhs deposited by the petitioner along with the tender has been forfeited and the petitioner has been black-listed for five years for not entering into an agreement with the Corporation, despite having been selected.
iii. For issuance of consequential writ in the nature of writ of mandamus or any other appropriate writ, order or direction, commanding the respondents to release the amount of Rs. three lakhs submitted at the time of submission of tender
iv. For any other relief/reliefs for which petitioner is entitled under law as well as on facts."

3. The present writ petition arises out of Notice Inviting Tender (NIT) No. 573 dated 26.06.2024 issued by the Bihar State Food and Civil Supplies Corporation Limited through the District Manager, Nalanda, for selection and empanelment of contractors for doorstep delivery transportation of food grains in the district of Nalanda. The petitioner participated in the tender process and was declared technically qualified along with eight other bidders. Upon opening of the financial bids, Mukesh Kumar was declared the L-1 bidder, while the petitioner and seven others were placed in the L-2 category. After negotiations with the L-1 bidder, the negotiated rate of SOR + 6.25% (Rs. 38.25 per quintal) was approved by the District Transport Committee, Nalanda. The petitioner, along

with the other successful bidders, submitted her consent to execute the work at the approved L-1 rate and was declared selected, with directions to execute the agreement.

4. Before execution of the agreement, however, the petitioner submitted a representation requesting permission to execute the work at SOR + 20% (Rs. 43 per quintal), stating that the approved rate was commercially unviable in view of the loading and unloading charges payable to labourers and other transportation expenses. In the alternative, the petitioner sought refund of the earnest money deposit of Rs. 3,00,000/-. The District Transport Committee, in its meeting held on 02.12.2024, rejected the petitioner’s representation on the ground that she had failed to execute the agreement despite her selection at the approved rate and resolved to forfeit her earnest money deposit and blacklist her for a period of five years. The said decision was communicated to the petitioner vide Memo Nos. 1128 and 1129, both dated 02.12.2024. Aggrieved thereby, the petitioner has preferred the present writ petition challenging the forfeiture of the earnest money deposit and the order of blacklisting.

5. Learned counsel for the petitioner submits that although the petitioner had initially consented to execute the

work at the negotiated L-1 rate, she subsequently found the rate to be commercially unviable and, therefore, requested the District Transport Committee to permit execution of the work at SOR + 20% or, in the alternative, to refund the earnest money deposit. It is contended that the said representation was rejected without proper consideration and the petitioner was blacklisted for five years and her earnest money deposit was forfeited without issuance of any show-cause notice or affording her an opportunity of hearing, in violation of the principles of natural justice.

6. Learned counsel for the respondents submits that the impugned action has been taken strictly in accordance with Clause 12(c) of the NIT, which provides that where a selected bidder fails to furnish the requisite security deposit or execute the agreement, the contract shall stand terminated, the security deposit shall be forfeited, and the bidder shall be debarred from participating in BSFCSCL tenders for a period of five years. It is further submitted that the petitioner has selectively relied upon the tender conditions while suppressing the complete text of Clause 12(c), under which the impugned forfeiture and debarment have been effected.

7. The limited issue which arises for consideration

before this Court is as to whether, when Clause 12(c) of the Notice Inviting Tender provides only for debarring a selected bidder from participating in BSFCSCL tenders for five years upon failure to execute the agreement, the respondents were justified in passing an order blacklisting the petitioner.

8. Clause 12(c) of the Notice Inviting Tender prescribes the consequence of a selected bidder failing to furnish the requisite security deposit or execute the agreement. The clause reads as under:

> *"12 (c) In the event of Tenderer's failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Security Deposit under clause 12 (a) by the due date, his Contract shall be summarily terminated besides for feature of the Security and the Corporation shall proceed for appointment of another contractor. Any losses or damages arising out of and incurred by the Corporation by such conduct of the contractor will be recovered from the contractor, without prejudice to any other rights and remedies of the Corporation under the Contract and Law. The contractor will also be debarred from participating in any future tenders of the Corporation for a period of* ***five years****. After the completion of prescribed period of five years, the party may be allowed to participate in the future tenders of BSFCSCL provided all the recoveries/dues have been affected by the Corporation and there is no dispute pending with the contractor/party."*

9. A plain reading of the aforesaid clause shows that the tender conditions specifically provide for three consequences, namely, (i) termination of the contract, (ii) forfeiture of the security deposit, and (iii) debarment from participating in BSFCSCL tenders for a period of five years.

Notably, the clause does not provide for blacklisting of the selected bidder.

10. The terms "debarment" and "blacklisting" are not synonymous. While debarment under a tender condition is a contractual consequence restricting participation in future tenders of the concerned procuring entity for the specified period, blacklisting is a stigmatic administrative action having wider civil and commercial consequences. The Supreme Court in ***Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project, BSNL, reported in (2014) 14 SCC 731***, observed that blacklisting is an inherent executive power of the State, but its exercise has serious civil consequences and must be traceable to law and exercised fairly. The relevant para 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."*

11. Likewise, in ***UMC Technologies Pvt. Ltd. v. Food Corporation of India, reported in (2021) 2 SCC 551***, the Court recognized that blacklisting is a distinct penal measure affecting future business relations with the State and cannot be treated as an ordinary contractual consequence. The relevant para of the said order reads as follows:

> *"13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Custodian General, Evacuee Property has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.*
> *14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged*

opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person."

12. In the present case, the respondents have purported to blacklist the petitioner, whereas Clause 12(c) authorizes only debarment from participating in BSFCSCL tenders for five years. It is well settled that the rights and liabilities of the parties in a tender are governed by the terms of the tender itself, and the authority cannot travel beyond the conditions incorporated therein. Once the NIT consciously provides for debarment as the prescribed consequence, the respondents could not substitute it with the more onerous consequence of blacklisting.

13. Accordingly, this Court holds that while the respondents might be entitled to impose the consequences expressly stipulated under Clause 12(c), including forfeiture of the security deposit and debarment from participation in BSFCSCL tenders for five years, they were not justified in passing an order blacklisting the petitioner, as such a consequence is not envisaged under the tender conditions.

Therefore, the issue framed is answered in favour of the petitioner.

14. Considering the aforesaid facts and circumstances, the impugned order dated 02.12.2024 (Annexure-P/4) is hereby set aside to the extent it deals with the present Writ Petitioner, i.e., Kumari Sneha.

15. The matter is remitted to the respondent authorities to pass a fresh order as may be permissible strictly in accordance with the terms of the Notice Inviting Tender and applicable law.

16. Accordingly, the present writ petition stands allowed.

17. The forfeited security deposit, if any, shall be refunded to the petitioner within a period of four weeks from the date of receipt or production of a copy of this order.

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

(Sudhir Singh, ACJ)

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.07.2026
Transmission Date	NA