

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12554 of 2019

Piyush Kumar, aged about 29 years, Gender – Male, Son of Sanjeev Kumar Singh, Resident of Village- Sihma, Police Station- Matihani, District- Begusarai.

... .. **Petitioner**

Versus

1. The Bihar State Food and Civil Supply Corporation, Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna through its Managing Director.
2. The Managing Director, The Bihar State Food and Civil Supply Corporation, Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna.
3. The Deputy General Manager (Modernization), The Bihar State Food and Civil Supply Corporation, Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna.
4. The Deputy General Manage(Transportation), The Bihar State Food and Civil Supply Corporation, Khadya Bhawan, Daroga Rai Path, R. Block, Road No. 2, Patna.
5. The District Manager, Bihar State Food and Civil Supply Corporation Ltd. Madhubani.
6. The Assistant Manager, The Bihar State Food and Civil Supply Corporation Ltd., Khutaina Godown, Khutaina, Madhubani.
7. The State of Bihar through the Principal Secretary Food and Civil Supplies Department, Government of Bihar, Patna.
8. The District Magistrate, Madhubani.
9. The District Manager- Cum-Chairman.
10. The District Transport Committee, Madhubani.
11. The Superintendent of Police, Madhubani.
12. The Officer-in-Charge, Khutaina Police Station, Sub-Division, Phulparas, District- Madhubani.

... .. **Respondents**

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Advocate Mr. Sanjeet Kumar, Advocate Mr. Rohit Raj, Advocate
For the BSFC	:	Mr. Anjani Kumar, Sr. Advocate Mr. Shailendra Kumar Singh, Advocate
For the State	:	Mr. Alok Ranjan, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 21-08-2019



Heard learned counsel for the petitioner and learned senior counsel assisted by learned Advocate on Record on behalf of the Bihar State Food & Civil Supplies Corporation. Learned counsel for the State is also present.

Petitioner, in the present case, is aggrieved by and dissatisfied with the order as contained in Memo No. 681 dated 23.05.2019 issued under the signature of District Magistrate-cum-Chairman, District Transport Committee, Madhubani by which the agreement dated 24.10.2016 executed between the petitioner and the District Manager, Banka has been cancelled, the security money of the petitioner has been forfeited, the Bank Guarantee invoked and then the petitioner has been blacklisted for a period of five years.

At the outset, in course of hearing of the writ application finding that agreement contains an arbitration clause, this court expressed it's prima-facie opinion that on the face of there being dispute redressal mechanism into the agreement, the court would not be willing to go into the issue as to termination of contract, forfeiture of security and



invocation of Bank Guarantee (in short 'B.G.'). Learned counsel for the petitioner then submitted before this court that so far as the termination of contract, forfeiture of security and invocation of B.G. are concerned, the petitioner may be given liberty to challenge that part of the action in a duly constituted arbitration proceeding under the agreement.

Learned senior counsel as well as learned Advocate on Record representing the Bihar State Food & Civil Supplies Corporation (hereinafter referred to as the 'Corporation') has no objection to the petitioner seeking his remedy against the order of termination, forfeiture of security deposit and invocation of B.G. under the arbitration clause. This court, therefore, grants liberty to the petitioner to seek his remedy against the order of termination, forfeiture of security and invocation of bank guarantee in a duly constituted arbitration proceeding or as may be advised in accordance with law.

In view of the Hon'ble Division Bench judgment of this court in the case of **The State of Bihar and Others Vs. Dharti Dredging and Infrastructure Ltd.** passed in



L.P.A. No. 367 of 2016 since the order of blacklisting cannot be a subject matter of arbitration proceeding, this court has confined the consideration in this writ application limited to the challenge made to the order of blacklisting of the petitioner for a period of five years.

Learned counsel for the petitioner has placed before this court the impugned order dated 21.05.2019 as contained in Annexure '1' to the writ application which is in fact a minute of the meeting of the District Transport Committee, Madhubani, it shows that in the said meeting the Committee relying upon paragraph 4(f) of the agreement decided to blacklisting the petitioner for a period of five years and thereafter a reasoned order as contained in Annexure '2' was issued. It is the contention of learned counsel for the petitioner that a perusal of the impugned order(s) would show that although the explanation of the petitioner was very much available before the Committee but the Committee has not at all looked into the explanation of the petitioner.

Attention of this court has been drawn towards



paragraph 4, 5, 6 & 7 of the impugned minute/order in which the case of the petitioner has been taken note of and the decision has been arrived at by the Committee. It is submitted that the consideration part of the decision is based on the allegations made in the First Information Report and that the police had in course of investigation found the case true against the driver of the petitioner. Except looking into the F.I.R. and the investigation report of police saying that the case has been found true against the driver of the petitioner, the Committee has not discussed anything else.

It is submitted that the reliance placed by the Committee on paragraph 4(f) of the agreement to blacklist the petitioner is based on a mere presumption as envisaged under paragraph 4(d) of the agreement. Learned counsel submits that blacklisting of a business entity amounts to causing a civil death of that entity, the punishment being harsh any power to take such drastic action must be exercised with all circumspection and care. It is submitted that an order of blacklisting of a business entity cannot be based on mere presumption that if a driver employed by a



person or owner of vehicle is found indulged in black-marketing, the transporter would be liable to be blacklisted, moreover, it is submitted that the word 'is found indulged in black-marketing' is a word of significance and it clearly shows that the mere allegations cannot take place of a proof that the driver was indulged in black-marketing. It is submitted that in the present case the driver had informed the owner of the vehicle about the loot which had taken place, this fact was brought to the notice of the Officer Incharge of the concerned police station who in turn informed it to the police party who were on the patrolling duty and then the Sub-Inspector of Police who was leading the patrolling party reached to the alleged place of occurrence. It is submitted that these are the facts stated in the First Information Report lodged by the Sub-Inspector of Police himself and may found from the records. It is submitted that the police has found the case true against the driver of the vehicle, no connivance or conspiracy has been found on the part of the petitioner being owner of the vehicle, and, therefore, the owner of the vehicle has not



been made accused in the case. It is submitted that out of 550 bags which were looted, police has recovered 344 bags of rice and a sum of Rs. 8,82,223/- has been deducted from the transportation bill of the petitioner. He had himself written letter dated 31.12.2018 (Annexure '10') in which he had consented to deduct the amount for the present, therefore, learned counsel submits that the petitioner was acting bonafide right from beginning. In these circumstances, it is submitted that had these facts been considered by the Transport Committee which was very much available on the record with the explanation of the petitioner, there was a possibility that the Committee would have reached to a reasonable decision in the matter.

Learned counsel has placed before this court a judgment of this court in the **Deepak Kumar Vs. State of Bihar and others** reported in **2019(2) BLJ 479** to submit that in the said case this court had occasion to consider clause 4(d) of the agreement and what has been recorded by this court may be found in paragraph 16 & 17 of the judgment.



Contesting the submissions of learned counsel for the petitioner, Mr. Anjani Kumar, learned Senior Counsel together with Mr. Shailendra Kumar Singh, learned Advocate on Record has submitted before this court that in terms of Clause 4(1)(f) of the agreement the petitioner is liable to be blacklisted for a period of five years. It is submitted that the decision of the Committee cannot be said to be unreasonable when in course of investigation it has been found that the driver of the vehicle was indulged in black-marketing or theft of the food-grains loaded on the vehicle. Learned Senior Counsel submits that the petitioner was duly served with a show cause notice calling upon him to submit his explanation and only when his explanation was not found satisfactory the impugned decision has been taken to blacklist him.

In course of hearing, learned Senior Counsel has taken this court through the allegations made in the First Information Report to show that it was the driver of the vehicle who had along with some of his men hatched the conspiracy and for that reason he was taken in custody. In course of investigation the driver of the petitioner has been



found involved in black-marketing. Learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **M/s Kulja Industries Ltd. Vs. Chief General Manager WT Proj. BSNL & Ors.** Reported in **AIR 2014 SC 9** to submit that in the said case even though there was no power provided under the agreement to blacklist the contractor the Hon'ble Supreme Court held that the employer has got an inherent power to blacklist the contractor.

Consideration

Having heard learned counsel for the parties and on perusal of the records, this court is of the considered opinion that the legality and validity of the impugned order must be judged on the basis of the grounds and reasons shown in the impugned order. When this court goes through the minutes of the meeting dated 21.05.2019 (Annexure '1') and the reasoned order as contained in Annexure '2' to the writ application, this court finds no consideration given to the explanation furnished by the petitioner. In the opinion of this court the issuance of the show cause notice to the petitioner



cannot be taken as a mere empty formality. If the petitioner has submitted his explanations, those were required to be looked into particularly when the petitioner had consented for deduction of Rs. 8,82,000/- approx. from his bills but the respondents were looking to blacklist the petitioner for a period of five years which had a civil consequence.

The relevant part of the minutes of the meeting as contained in paragraph 4, 5, 6, & 7 read as under:

“4— पुनः दिनांक 10.05.2019 की जिला परिवहन समिति की बैठक में जिला प्रबंधक, राज्य खाद्य निगम, मधुबनी के द्वारा बताया गया था कि दिनांक 22.12.2018 को बी०एस०डब्लू०सी० झंझारपुर से श्री पियूष कुमार, परिवहन-सह-हथालन अभिकर्ता (मुख्य), राज्य खाद्य निगम मधुबनी का वाहन संख्या-JH12B-4238 टी०पी०डी०एस० गोदाम खुटौना के लिए चला किन्तु रास्ते में वाहन निर्धारित मार्ग से विचलित हो गया तथा उसमें लदे खाद्यान्न की चोरी हो गई। पुलिस की छापेमारी के पश्चात् वाहन पर लदे 550 बोरे में से 344 बोरा चावल बरामद हो गया। इस मामले में खुटौना थाना में प्राथमिकी दर्ज कराई गई जिसकी प्राथमिकी संख्या-133/18 दिनांक 23.12.2018 (धारा-379, 411, 409, 120B भा०द०वि०) एवं 7 आवश्यक वस्तु अधिनियम एवं 37B बिहार मद्य निषेध एवं उत्पाद अधिनियम, 2018) है। दिनांक 10.05.2018 की जिला परिवहन समिति की बैठक में इस संबंध में श्री पियूष कुमार परिवहन-सह-हथालन अभिकर्ता (मुख्य), राज्य खाद्य निगम मधुबनी से पुनः स्पष्टीकरण पूछने का निर्णय लिया गया था। समिति के उक्त निर्णय एवं निगम मुख्यालय बिहार, पटना के पत्रांक 1616 दिनांक 08.02.2019 एवं पत्रांक 4439 दिनांक 22.04.2019 के आलोक में ज्ञापांक 627/रा०ख०नि० दिनांक 13.05.2019 के द्वारा स्पष्टीकरण की मांग की गई।



5- श्री पियूष कुमार परिवहन-सह-हथालन अभिकर्ता (मुख्य), राज्य खाद्य निगम मधुबनी के स्पष्टीकरण का जिला परिवहन समिति द्वारा अवलोकन किया गया। साथ ही इस मामले से संबंधित खुटौना थाना में दर्ज प्राथमिकी संख्या-133/18, अनुमंडल पुलिस पदाधिकारी, फुलपरास की निरीक्षण टिप्पणी ज्ञापांक-2823/18 दिनांक 29.12.2018 तथा पुलिस अधीक्षक, मधुबनी के विशेष प्रतिवेदन ज्ञापांक 307/सी0आर0 दिनांक 09.02.2019 का भी अवलोकन जिला परिवहन समिति के सदस्यों के द्वारा किया गया।

उक्त प्रतिवेदनों के अवलोकन से स्पष्ट होता है कि प्राथमिक अभियुक्त-01 ट्रक संख्या-JH12B-4238 के चालक जय कुमार यादव को दिनांक 23.12.2018 को गिरफ्तार कर न्यायिक हिरासत में भेजा गया है। पुलिस अधीक्षक के द्वारा भी घटना को सत्य पाते हुए अन्य अभियुक्तों की गिरफ्तारी का आदेश दिया गया। पुलिस अनुसंधान में श्री पियूष कुमार, परिवहन-सह-हथालन अभिकर्ता (मुख्य), राज्य खाद्य निगम मधुबनी के चालक को कालाबाजारी में संलिप्त पाया गया।

6- श्री पियूष कुमार परिवहन-सह-हथालन अभिकर्ता (मुख्य), राज्य खाद्य निगम मधुबनी के साथ दिनांक 24.10.2016 को किये गये एकरारनाम की कंडिका-4(f) में स्पष्ट अंकित है, "If Driver/owner of vehicle/any other person deployed by transporting-cum-handling agent (i.e. Main transporter) is found indulged in Black Marketing or theft of food grains then punitive action will be taken against the transporter as per law and will be blacklisted for next five years." चूँकि पुलिस अनुसंधान में ट्रक संख्या-JH12B-4238 के चालक जय कुमार यादव को कालाबाजारी में संलिप्तता पाया गया है, अतः खाद्यान्न की कालाबाजारी में परिवहन-सह-हथालन अभिकर्ता (मुख्य) की भी संलिप्तता प्रतीत होती है। उल्लेखनीय है कि इस संदर्भ में निगम मुख्यालय, बिहार, पटना के द्वारा उनके विपत्र से राशि की कटौती कर ली गयी है।

7- अतएव जिला परिवहन समिति दिनांक 10.05.2019 को आहूत बैठक में लिए गये निर्णय के अतिरिक्त श्री पियूष कुमार परिवहन-सह-हथालन अभिकर्ता (मुख्य), राज्य खाद्य निगम मधुबनी के संदर्भ में एकरारनामा की



कंडिका 4(f) के आलोक में निम्न निर्णय लेती है :-

- (I) श्री पियूष कुमार परिवहन-सह-हथालन अभिकर्ता (मुख्य), राज्य खाद्य निगम मधुबनी के द्वारा दिनांक 30.09.2016 को किए गये एकरारनामा को रद्द किया जाय।
- (II) श्री पियूष कुमार परिवहन-सह-हथालन अभिकर्ता (मुख्य), राज्य खाद्य निगम मधुबनी को अगले पाँच वर्षों के लिए परिवहन अभिकर्ता की काली सूची में डाला जाए।
- (III) श्री पियूष कुमार परिवहन-सह-हथालन अभिकर्ता (मुख्य), राज्य खाद्य निगम मधुबनी द्वारा जमा की गई जमानत की राशि (दस लाख रुपये) एवं बैंक गारंटी की राशि (बीस लाख रुपये) को जब्त किया जाय।”

Similarly the relevant part of the reasoned order as contained in Annexure '2' to the writ application are quoted hereunder for a ready reference:

“उक्त आलोक में दिनांक 10.05.2019 को जिला परिवहन समिति की बैठक में निर्णय लिया गया कि परिवहन अभिकर्ता श्री पियुष कुमार द्वारा राज्य खाद्य निगम द्वारा किये गए एकरारनामा के कण्डिका 4d एवं f का स्पष्ट उल्लंघन किया गया है। अतः इनसे कार्य नहीं लेने का निर्णय लिया गया। उक्त आलोक में अधोहस्ताक्षरी को निर्देश दिया गया कि श्री पियुष कुमार से स्पष्टीकरण प्राप्त करने हेतु प्रारूप शीघ्र जिला पदाधिकारी के समक्ष प्रस्तुत करेंगे। ताकि अगले परिवहन समिति के बैठक में प्राप्त स्पष्टीकरण पर निर्णय लिया जा सके। समिति के निर्णय एवं निगम मुख्यालय पटना के पत्रांक 1616 दिनांक 08.02.2019 एवं पत्रांक 4439 दिनांक 22.04.2019 के आलोक में इस कार्यालय के ज्ञापांक 627 दिनांक 13.05.2019 के द्वारा श्री पियुष कुमार परिवहन सह हथालन अभिकर्ता मुख्य से स्पष्टीकरण की मांग की गई थी। श्री पियुष कुमार परिवहन सह हथालन अभिकर्ता मुख्य राज्य खाद्य निगम के स्पष्टीकरण का जिला परिवहन समिति द्वारा अवलोकन किया गया। साथ ही इस मामले में संबंधित खुटौना थाना के दर्ज प्राथमिकी संख्या 133/18, अनुमण्डल पुलिस पदाधिकारी, फुलपरास की निरीक्षण टिप्पणी ज्ञापांक 2823/18



दिनांक 29.12.2018 तथा पुलिस अधीक्षक, मधुबनी के विशेष प्रतिवेदन ज्ञापांक 307/सी0आर0 दिनांक 09.02.2019 का भी अवलोकन जिला परिवहन समिति के सदस्यों के द्वारा किया गया।

उक्त प्रतिवेदनों के अवलोकन से स्पष्ट होता है कि प्राथमिक अभियुक्त-01 ट्रक संख्या-JH12B-4238 के चालक जयकुमार यादव को दिनांक 23.12.2018 को गिरफ्तार कर न्यायिक हिरासत में भेजा गया है। पुलिस अधीक्षक के द्वारा भी घटना को सत्य पाते हुए अन्य अभियुक्तों की गिरफ्तारी का आदेश दिया गया। पुलिस अनुसंधान में श्री पियुष कुमार परिवहन सह हथालन अभिकर्ता मुख्य राज्य खाद्य निगम मधुबनी के चालक को कालाबाजारी में संलिप्त पाया गया।

श्री पियुष कुमार परिवहन सह हथालन अभिकर्ता मुख्य राज्य खाद्य निगम मधुबनी के साथ दिनांक 24.10.2016 को किये गये एकरारनामा की कंडिका-4(f) में स्पष्ट अंकित है :-

"If Driver/owner of vehicle/any other person deployed by transporting-cum-handling agent (i.e. Main transporter) is found indulged in black marketing or theft of food grains then punitive action will be taken against the transporter as per law and will be blacklisted for next five years."

चूँकि पुलिस अनुसंधान में ट्रक संख्या-JH12B-4238 के चालक जय कुमार यादव का कालाबाजारी में संलिप्त पाया गया है, अतः खाद्यान्न की कालाबाजारी में परिवहन सह हथालन अभिकर्ता मुख्य की भी संलिप्तता प्रतीत होती है। उल्लेखनीय है कि इस संदर्भ में निगम मुख्यालय बिहार पटना, के द्वारा उनके विपत्र से राशि की कटौती कर ली गयी है।

अतएव जिला परिवहन समिति दिनांक 10.05.19 को आहूत बैठक में लिए गये निर्णय के अतिरिक्त श्री पियुष कुमार परिवहन सह हथालन अभिकर्ता (मुख्य) राज्य खाद्य निगम मधुबनी के संदर्भ में एकरारनामा की कंडिका 4(f) के आलोक में समिति के निर्णय के अनुसार :-

(1) श्री पियुष कुमार परिवहन सह हथालन अभिकर्ता (मुख्य) राज्य खाद्य निगम मधुबनी के द्वारा दिनांक 30.



09.2016 को किए गये एकरारनामा को रद्द किया जाता है।

(2) श्री पियुष कुमार परिवहन सह हथालन अभिकर्ता (मुख्य) राज्य खाद्य निगम मधुबनी को अगले पाँच वर्षों के लिए परिवहन अभिकर्ता की काली सूची में डाला जाता है।

(3) श्री पियुष कुमार परिवहन सह हथालन अभिकर्ता (मुख्य) राज्य खाद्य निगम मधुबनी द्वारा जमा की गई जमानत की राशि (दस लाख रुपये) एवं बैंक गारंटी की राशि (बीस लाख रुपये) को जब्त किया जाता है।”

Annexure '2' is mere repetition of Annexure '1'.

In the case of Deepak Kumar (supra) this court was considering a case of blacklisting of the petitioner in the said case. There was also one F.I.R. lodged against the petitioner and with the help of clause 4(d) of the agreement he was blacklisted by drawing a presumption of his guilt. This court in paragraph 16 & 17 of the judgment held as under: -

“16. Having heard learned counsel for the parties and on perusal of the records as also the Judgments cited at the bar, this Court finds that the petitioner had submitted his reply vide Annexure 'P/16' against the proposed action of cancellation of agreement and blacklisting. The impugned order as contained in Annexure '1' to the writ application does mention about the receipt of reply from the petitioner but then it has not been considered dispassionately by the



competent authority. The reply has been rejected only by stating that it contains more questions than the answers and that the story made out by the petitioner is not believable. To this Court, it is apparent from the records that the impugned order, insofar as, it relates to blacklisting of the petitioner and is under challenge in the present writ application cannot sustain the test of law for the reason that it suffers from vice of non-consideration of the materials available on the record. It is evident that the F.I.R was lodged under an impression that there was an attempt of black marketing but when the rice was weighed at the Dharamkanta the entire 500 bags of rice were said to be present. The petitioner made his all efforts to get the rice released in accordance with law but despite the order of the court and show cause notice issued to the authorities concerned by learned ACJM, the rice were not released. The petitioner had to move this Court in criminal writ jurisdiction and only after the order of this Court the rice were released. To this Court, it prima-facie indicates that despite his best efforts taken during the process of Court, the petitioner was unable to deliver the rice in the godown within a reasonable time. Till date, there is no finding of guilt against the petitioner as the criminal proceeding arising out of the F.I.R. lodged in the matter has not culminated in a conviction of the petitioner. The respondent Corporation has blacklisted the



petitioner on a mere presumption as envisaged under Clause 4 (d) of the agreement. A bare perusal of Clause 4 (d) would show that it talks of 'presumption'.

17. In the opinion of this Court, a valuable right to business which is provided under the Constitution cannot be curtailed by incorporating a Clause in the agreement to the effect that there will be a presumption of the fact that an unreasonable delay in delivery of foodgrain is because of indulgence of the transporter in black marketing. Such presumptions cannot be given effect to unless the guilt is duly proved in accordance with law."

So far as the submission of Mr. Anjani Kumar, learned Senior Counsel based on the judgment of the Hon'ble Apex Court in the case of **M/s Kulja Industries (supra)** is concerned, there is no quarrel with the proposition that an employer has got an inherent power to blacklist but in the same judgment what has been said in paragraph 17 by the Hon'ble Apex Court would be necessary to go through and this court quotes paragraph '17' of the judgment as under:

"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 pre-condition 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. The legal position on the subject is settled by a long line of decisions rendered by this Court starting with *Erusian Equipment & Chemical Ltd. v. State of West Bengal and Anr.* (1975) 1 SCC 70 where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for



purposes of gains and that the Authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed:

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

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.

This court is, therefore, of the considered opinion



that the impugned order as contained in Annexure '1' & '2' to the writ application are liable to be set aside and those are accordingly set-aside. The Corporation, if so advised, may proceed to consider the matter afresh keeping in mind the observations and discussions of this court made hereinabove.

The Corporation may, if so advised, consider any independent material but in the facts of this case, unless and until the connivance of the petitioner is found in the alleged occurrence and he is proved guilty, a drastic power of blacklisting which has got an ultimate effect of causing civil death cannot be exercised with the help of paragraph 4(f) of the agreement.

This Writ Application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	23.08.2019
Transmission Date	

