



Serial No. 34
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 627 of 2025

Date of Decision: 10.09.2026

1.M/s INDRA CONSTRUCTION
a proprietorship concern having its registered
office at Sector D, Near Hotel Rajhans, P.O.
& P.S. Naharlagun, District – Papumpare,
Arunachal Pradesh – 791110. Represented by its
proprietor Mr. Balmiki Das

2.MR. BALMIKI DAS
Aged about 38 years,
Son of Sri Indrason Das,
Resident of Sector D, Near Hotel Rajhans,
P.O. & P.S. Naharlagun, District-Papumpare,
Arunachal Pradesh-791110

:::Petitioners

-Versus-

1.THE UNION OF INDIA, represented by the
Secretary to the Govt. of India, Ministry of Consumer
Affairs, Food and Public Distribution, Room No. 173,
Krishi Bhawan, New Delhi-110001

2.THE FOOD CORPORATION OF INDIA, 16-20,
Barakhamba Lane, New Delhi-110001, represented by
its Managing Director

3.THE GENERAL MANAGER (REGION), Food
Corporation of India, NEF Regional office,
Mawlai Mawroh, Meghalaya – 793008

4.THE ASSISTANT GENERAL MANAGER(CE),
Food Corporation of India, NEF Regional office,
Mawlai Mawroh, Meghalaya – 793008.

:::Respondents



Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) :	Mr. R.S. Mishra, Adv. Ms. B. Sharma, Adv.
For the Respondent(s) :	Ms. M. Myrchiang, Adv. vice Dr. N. Mozika, DSGI (For R 1) Mr. B.K. Singh, Adv. (For R 2-4).

i) Whether approved for reporting in Law journals etc.:	Yes/No
ii) Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. R.S. Mishra, learned counsel on behalf of the petitioners and Mr. B.K. Singh, learned counsel on behalf of the respondents No. 2-4, Ms. M. Myrchiang, learned counsel vice Dr. N. Mozika, learned DSGI on behalf of the respondent No. 1, who is a formal party.

2. The brief facts are that the petitioners' business concern had participated in a tender floated by the respondent No. 4 vide E-tender Notice No. Engg/20/2024-25 dated 07.03.2025, and thereafter on being successful, the respondent No. 4 had issued a letter of acceptance which required the petitioners to submit a Performance Bank Guarantee of Rs.5,48,910/- by 12.08.2025. The petitioners being unable to submit the



said Bank Guarantee within the time given, had requested for extension, which was allowed upto 19.08.2025, by the respondent No. 4, and was communicated by an email dated 12.08.2025. It is the case of the petitioners that though on 14.08.2025, a Fixed Deposit of Rs.5,48,910/- was made, as required for issuance of Bank Guarantee, the same could not be issued in time by the Bank for various reasons before 19.08.2025, but the same was then given on 20.08.2025, that is a day after the deadline had elapsed. The petitioners thereafter, being hopeful of being settled with the contract, however, were served with a termination/debarment letter dated 15.09.2025, terminating the tender of the petitioners, and debarring the petitioners from participating in any future tender issued by the respondent No. 2, for a period of 5(five) years and which also carried the penalty of forfeiture of the earnest money deposit of Rs.2,01,680/-. Being aggrieved thereby, the instant writ petition has been preferred.

3. Mr. R.S. Mishra, learned counsel appearing on behalf of the petitioners has submitted that the non-submission of the Bank Guarantee within the stipulated date i.e. 19.08.2025, was caused by circumstances beyond their control, inasmuch as, the petitioners on 14.08.2025, itself that is a clear 5(five) days before the deadline, had made the required deposit in the concerned Bank for preparation of the Bank Guarantee. Learned counsel submits that the delay that has occurred, is also marginal of only 1(one) day, and is not a delay that is unsurmountable, or unacceptable by



the respondents. It is further submitted that the debarment, though stated to be in terms of Clause – 2(c) of the Model Tender Form(MTF) is unproportionally harsh, coupled with the fact that no opportunity was allowed to the affected person to be heard, before such coercive action was taken. The learned counsel reiterates that the circumstances surrounding the case was beyond his control and apart from the loss of valuable business, the petitioners for no fault of theirs, have been settled with the liability of forfeiting the earnest money deposit, and being debarred from future participation in tenders of the respondent No. 4. He therefore prays for appropriate orders that direction be issued, firstly for reimbursement or refund of the earnest money deposit, and also for quashing the order of debarment of the writ petitioners. In support of his case, the learned counsel has placed reliance on a case of the Gauhati High Court i.e. *M/s Feedback Infra Pvt. Ltd. Versus The Union of India & 2 Ors.* in WP(C) No. 2934/2024, wherein he submits that in similar circumstances, the writ petitioner therein was allowed to represent or to be issued a show-cause before such debarment.

4. Mr. B.K. Singh, learned counsel appearing on behalf of the respondents No. 2-4, has at the outset submitted that it may be so that the Performance Bank Guarantee was obtained only on 20.08.2025, but however, a physical copy of the same was not submitted before the respondents, and only a scan copy of the Performance Bank Guarantee was



provided vide an email dated 20.08.2025. Learned counsel further submits that the conditions of the MTF has been violated by the writ petitioners, and in this context has referred to Clause – 9 of the Notice Inviting Tender (NIT) dated 07.03.2025, which he submits the writ petitioners are bound by. He therefore submits that no interference is called for and the writ petition be dismissed.

5. This Court has heard the learned counsel for the parties, and also perused the materials as available. From the facts as narrated above, this Court notes that what is not undisputed is the sequence of dates, with regard to the furnishing of the Performance Bank Guarantee i.e. the writ petitioners had created the Fixed Deposit on 14.08.2025, which is evidenced by the Deposit Confirmation Advice, which has been annexed as Annexure – E to the writ petition. Further, it is also noted that the Bank itself had issued the Bank Guarantee on 20.08.2025, in a physical copy, which is also annexed at Annexure – F to the writ petition.

6. In the considered view of this Court, these are the two main factors which have to be considered taking into account the fact that the submission of the Performance Bank Guarantee had been extended by the respondent No. 4 to 19.08.2025, and the same was obtained on 20.08.2025. However, as much time had elapsed, the prayer with regard to the termination of the contract, at this stage is no longer alive for consideration.



7. The only other aspect which is relevant for consideration is whether in the circumstances, the debarment for a period of 5(five) years, notwithstanding Clause – 2(c) is sustainable in the eye of law. In this context, it would be relevant to examine the said Clause – 2(c), from the conditions of contract and the same is reproduced hereinbelow.

“Clause -2

(c) In the event of the Tenderer failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Performance Guarantee by the due date including extension period, his Contract shall summarily terminated besides forfeiture of earnest money 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 FCI provided all the recoveries/dues have been effected by the Corporation and there is no dispute pending with the contractor/party”



A perusal of the above noted Clause, would show that in the event, the tenderer fails after the communication of acceptance of the tender by the Corporation, to furnish the requisite Performance Guarantee by the due date including extension period, his Contract shall summarily be terminated besides forfeiture of earnest money and further would also be debarred from participating in any future tenders of the Corporation for a period of five years. This Clause on a closer examination does not incorporate any opportunity to the tenderer to make any sort of a representation or a complaint against debarment.

8. In the facts of the instant case given herein before, it is clearly seen that the petitioners failure to furnish the requisite Performance Bank Guarantee cannot be squarely attributed to their negligence and therefore in the considered view of the Court, the penalty of debarment as non-consideration of the facts of the case will surely offend the Principles of Natural Justice.

9. Clause – 2(c) quoted hereinbefore, therefore to the extent of not affording opportunity of hearing or prior notice before debarring a person or entity cannot deprive the petitioners and is held to be unsustainable.

10. The case cited by the counsel for the petitioners has great persuasive value, inasmuch as, the leading cases regarding blacklisting have been digested therein, and relief had been given to the petitioner therein, to be given prior notice.



11. Accordingly, in view of this discussion made hereinabove, in the considered view of this Court, the writ petitioners in the interest of justice, are entitled to an opportunity to represent against the termination, and more importantly, the order of debarment dated 15.09.2025. The respondents are therefore directed to consider the case of the petitioners on an appropriate representation being filed within a period of 2(two) weeks from the date of this order, and the respondents to pass a reasoned and speaking order thereon, within a period of 4(four) weeks thereafter. It is made clear that as the Contract no longer survives for consideration, the respondents will confine themselves to the question of refund of the earnest money deposit and the question of debarment.

12. As ordered above, the writ petition accordingly stands allowed to the extent indicated and is disposed of.

13. Further concession be given to the writ petitioners is that as interim orders are operating, the stay of debarment will continue until further orders are passed by the respondents No. 2-4.

Judge

Meghalaya
10.09.2026
"D. Thabab-PS"