

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17661 of 2024

=====

M/s Jai Mata Di Construction Co. a Registered Partnership Firm having its registered office at Professor Colony, Power House Road, P.S. and District-Begusarai through its Partner namely Sri Sanjeev Kumar (Male), aged about 49 Years, Son of Late Digamber Prasad Singh, Resident of Ward No.8, P.O.-Chandaur, P.S.-Bhagwanpur, District-Begusarai.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Department of Petroleum and Natural Gas, New Delhi
2. The Secretary, Department of Petroleum and Natural Gas, New Delhi
3. The Indian Oil Corporation Ltd., through the Chief Manager (Contracts), Indian Oil Corporation Ltd., Barauni Refinery, District-Begusarai, Bihar.
4. The Chief Manager (Contracts), Indian Oil Corporation Ltd., Barauni Refinery, District-Begusarai, Bihar.
5. The Deputy General Manager (MN-CL), Indian Oil Corporation Ltd., Barauni Refinery, District-Begusarai, Bihar.
6. The Executive Director, Indian Oil Corporation Ltd., Barauni Refinery, District-Begusarai, Bihar.
7. The Engineer-in-Charge of Work Order No.24998067/136 Dated 02.02.2017, tender no. BCCC163605, Indian Oil Corporation Ltd., Barauni Refinery, District-Begusarai, Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Sr. Advocate Mr. Sumit Kumar Jha, Advocate Ms. Riya Giri, Advocate
For the Respondent/s	:	Mr. Ankit Katriar, Advocate

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY



CAV JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 28-01-2025

We have heard Mr. Ashish Giri, the learned Senior Advocate for the petitioner and Mr. Ankit Katriar, the learned Advocate for the respondents.

2. The challenge in this writ petition is to the order dated 17.08.2024 issued under the signature of the Deputy General Manager (MN-CL) Indian Oil Corporation Limited (hereinafter referred to as "the IOCL"), whereby the petitioner has been placed on the holiday list and has been debarred from entering into contracts with IOCL for a period of one year.

3. The petitioner has also sought release of the additional security deposit which has been withheld by IOCL under the contract.

4. The petitioner, a registered partnership firm, bagged the contract vide Tender No. BCCC163605, published by Barauni Refinery, IOCL for repair and maintenance of roads at Barauni Refinery Township and



repair of existing road at outside boundary wall from HarHar Mahadev Chowk to Etwa More. The repair work had to be carried out within a period of four months. The Letter of Acceptance was issued on 02.02.2017 and the site was handed over to the petitioner on 17.02.2017. An extension was given for completing the work up to 10.07.2017 without invoking the price reduction clause under the General Conditions of Contract.

5. It is not in dispute that the work of repair was completed on 10.07.2017 and the petitioner was paid for the work executed. However, an additional security deposit amounting to Rs. 14,08,538.11/- was withheld, citing Clause 3.5 of the Special Condition of Contract (Technical) which provided that contractor shall repair/maintain roads and all major potholes for five years including defect liability period and ten percent additional security deposits would be effected from RA/final bills for specified items in Part A and B of the contract.

6. The petitioner sought a breakup of



payment, which was provided to him promptly. Thereafter, a request was made by the petitioner on 05.06.2020 for release of additional security deposit, which was denied by the IOCL for the reason that the petitioner had not carried out his obligation under Clause 3.5 of the Special Conditions of Contract (Technical), viz., maintaining and repairing the roads and the potholes for a period of five years, inclusive of the defect liability period.

7. The petitioner instead was asked to conduct a survey of the damaged road locations and submit a plan for the repair of the same. The petitioner raised the issue of lack of funds and agreed to undertake the repair work on a chargeable basis, which, according to IOCL, was in derogation of the terms of the contract.

8. The correspondence between the petitioner and the IOCL with respect to release of the additional security deposit continued on two occasions. Request was made by the petitioner for appointment of an Arbitrator. He also approached the Micro and Small



Enterprises Facilitation Council (MSEFC), but the IOCL reminded the Council that the work in question fell under the category of a works contract and, therefore, was outside the ambit of MSME Act.

9. It further appears from the records that an investigation was conducted by the IOCL Internal Vigilance Department regarding non-compliance of Clause 3.5, referred to above, and it was found that there was non-compliance of such tender specification.

10. Thereafter, on the recommendation of the Vigilance Department, a show-cause notice was issued to the petitioner on 17.05.2024 explaining the reason for non-compliance of Clause 3.5.

11. This was responded by the petitioner by intimating the IOCL that he was never noticed during the vigilance investigation and continued with his demand for release of additional security deposit.

12. In the meantime, an application bearing Request Case No. 95 of 2024 was also filed by the



petitioner for appointment of an Arbitrator.

13. Thereafter, a supplementary show-cause notice for holiday listing of the petitioner was issued on 20.06.2024 giving detailed reasons for invoking Clauses 2.1(a), 2.1(i) and 2.1(r) of the Holiday Listing Guidelines of the IOCL, to which the petitioner responded.

14. However, by order dated 17.08.2024, an order was passed by the Deputy General Manager (MNCL), Barauni Refinery placing the petitioner on the holiday list and debarring him from entering any contract with IOCL for a period of one year, effective from the date of issuance of the order.

15. The debarment period is presently in currency.

16. The case of the petitioner is that the entire action of the IOCL in issuance of the show-cause notice to the passing of the debarment order suffers from violation of fair hearing; the allegations are vague; no notice had been issued to him during the investigation by



the Vigilance Department of IOCL; the order of debarment was based on ex-parte/unilateral report of the Vigilance Department; the report was never furnished to the petitioner; there was genuine confusion with regard to the understanding of the obligation of the party; delayed action of holiday listing was in the nature of a knee-jerk reaction of the IOCL, after a demand was made for release of additional security deposit; and the order of debarment being completely disproportionate.

17. With respect to the vagueness of the allegation and issue regarding his obligation under the contract, Mr. Ashish Giri, the learned Senior Advocate pointed out that the work was only for repair and maintenance of roads at Barauni Refinery Township and repair of existing road at outside boundary wall from HarHar Mahadev Chowk to Etwa More for which the completion time was provided as four months.

18. Thus, it was absolutely confusing whether the maintenance of such roads for another five



years, inclusive of the defect liability period of one year, was to be carried out without any charge or was it included in the contract agreement at the stipulated cost.

19. The aforementioned argument of the petitioner is without substance as Clause 3.5 of the Special Condition of Contract (Technical) clearly stipulates as hereunder:

“3.5 Contractor shall repair/ maintenance of roads & all major potholes for five years including defect liability period. 10% additional Security Deposits shall be effected from RA/Final Bills for Following Items:

Part-A : Item No. 10, 20, 30, 40, 50, 90 & 100

Part-B : Item No. 10, 20, 30, 40, 50, 60, 70 & 80”

20. There could be no confusion in this matter with regard to the obligation of the contractor to maintain and repair the roads and all potholes for a period of five years including defect liability period.

21. The contention of the petitioner further is that he was always ready to repair the roads which would be evident from the e-mail communication made by him and that it is nowhere mentioned in the NIT that the



maintenance work for four years excluding the liability free period had to be done free of cost.

22. The petitioner also questioned the very rationale of invoking Clause 2.1(i) of the Guidelines in the event of the readiness of the petitioner to repair the roads, but on cost and his having completed the work within time and without any complaint regarding the quality of his work. The delayed invocation of the clause has also been cited as one of the grounds holding the debarment order to be bad in the eyes of law.

23. In response to the aforementioned arguments, Mr. Ankit Katriar, the learned Advocate for the IOCL has very categorically stated that Clause 3.5 of the SCC leaves no room for confusion in the matter and non-performance of the obligation set out therein entitles the IOCL to withhold the additional security deposit. The deposit was withheld only for the purposes of it being retained as a performance guarantee towards the obligation of the petitioner for maintaining the road for



five years.

24. It was also urged on behalf of the IOCL that it is part of the internal policy of the Corporation to entrust the Vigilance Department to conduct investigation into the ongoing or completed works based on documents and records and there is no necessity of notifying the contractor for the same. The internal investigation by the Vigilance adheres the IOCL's policy which do not mandate any prior notice or disclosure of interim reports to the contractor. The findings of the Vigilance Department are based on document reviews and those are taken into account only after issuance of a show cause notice to the contractor, giving him reasonable opportunity to respond.

25. It was lamented by the Corporation that instead of timely responding substantively to the issue of maintenance flagged by the Corporation, the petitioner continued to dilly-dally and take imaginary pretexts for avoiding maintaining the roads.

26. As noted above, we have examined the



terms of the contract which specifically state that the maintenance of the repaired roads had to be carried out for five years, inclusive of the liability period, which clause of the agreement was never objected to by the petitioner during all this period.

27. We have also examined the supplementary show cause notice issued to the petitioner with respect to the proposal of his being put on holiday list and debarring him for a particular period for dealing with IOCL in future. There is no vagueness in the notice and as also in the order putting the petitioner on the holiday list for one year and therefore does not appear to be unjustified to us.

28. With respect to the allegation of the petitioner that the debarment order is disproportionate in any case, it was submitted that putting a contractor on holiday list is one of the ways of blacklisting, which is a very drastic remedy, which need be subjected to rigorous scrutiny.



29. There could be no two opinions about it.

30. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with another agency of the Government also for the purposes of gains. For such a disability to be foisted on a contractor, there should be an objective satisfaction of the authority concerned. When a demand is made and if the person concerned raises a bonafide dispute in regard to the claim, so long as the dispute is not resolved, he may not be declared to be a defaulter [Refer to ***B.S.N. Joshi & Sons Ltd. vs. Nair Coal Services Ltd. : (2006)11 SCC 548***].

31. Similarly, in ***Kulja Industries Ltd. vs. Chief General Manager Western Telecom Project BSNL (2014)14 SCC 731***, debarment as an effective method of disciplining deviant contractor was recognised but it was observed that it could not be permanent and the period of debarment ought to depend upon the nature of the offence committed by the erring contractor.



32. In a very pithily crafted judgment of the Supreme Court in ***Blue Dreamz Advertising Pvt. Ltd. and another vs. Kolkata Municipal Corporation and others : 2024 SCC OnLine SC 1896***, the Supreme Court has said that debarment as a remedy is to be invoked in cases where there is harm or potential harm for public interest particularly in cases where a person's conduct has demonstrated that debarment, as a penalty alone, will protect public interest and deter the person from repeating his actions which have a tendency to put public interest in jeopardy. If the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bonafide dispute, blacklisting/ debarment as a penalty ought not to be resorted to as it would amount to civil death because of the commercial ostracization. To readily invoking the debarment for ordinary cases of breach of contract, where there is bonafide dispute, is not permissible.

33. Citing this case, the learned Advocate



for the petitioner has submitted that there existed a dispute, albeit a doubt whether repair work had to be carried out free of cost or was it included as part of obligation of the contractor in the agreement. This ought to have been resolved before invoking the clauses in the guidelines justifying the debarment.

34. We do not agree.

35. On a plain reading of the contract, especially Clause 3.5 of the SCC, there appears to be no doubt about the obligation of the contractor. Not repairing the potholes for four years and then raising this dispute unnecessarily was a ground good enough to take recourse to debarment and withholding of the additional security deposit.

36. The blacklisting order carries reasons which justifies the penalty of putting the petitioner on a holiday list for one year.

37. In our considered view, the penalty is proportionate. The common-weal of road safety was also



compromised by the petitioner’s unwillingness to carry out his obligation under the contract for repairing the roads and potholes for a particular number of years.

38. There is no merit in this petition and the same is therefore dismissed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Sauravkrsinha/
Rajesh-

AFR/NAFR	NAFR
CAV DATE	22.01.2025
Uploading Date	28.01.2025
Transmission Date	NA

