IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19226 of 2024

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M/S Nirman Engicons Pvt. Ltd. through its Director, Subodh Kumar aged about 36 years (Male), son of Bipin Singh, resident of Village-Ward No. 14, Barauni, Police Station-Barauni, District-Begusarai.

... ... Petitioner/s

Versus

1. The Chairman cum Managing Director cum Appellate Authority Bihar Police Building Construction Corporaration, Kautilya Nagar, Patna-14.
2. The Chief Engineer, Bihar Police Building Construction Corporaration, Kautilya Nagar, Patna-14.
3. The Executive Engineer, Bihar Police Building Construction Corporaration, Kautilya Nagar, Patna-14.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 19173 of 2024

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Chandan Kumar son of Kartik Singh, Resident of village- Pipra, P.O. Dumri, Police Station- Ratanpur, O.P. District- Begusarai.

... ... Petitioner/s

Versus

1. The Chairman-cum-Managing Director-cum-Appellate Authority, Bihar Police Building Construction Corporation, Kautilya Nagar, Patna-14.
2. The Chief Engineer, Bihar Police Building Construction Corporation, Kautilya Nagar, Patna-14.
3. The Executive Engineer, Bihar Police Building Construction Corporation, Bhagalpur Division, Bhagalpur.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 19226 of 2024)

For the Petitioner/s	:	Mr. Aditya Narain Singh, Advocate
	:	Mr. Kundan Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Prasoon Sinha, Sr. Advocate
	:	Mr. Prabhat Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 19173 of 2024)

For the Petitioner/s	:	Mr. Aditya Narain Singh, Advocate
	:	Mr. Kundan Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Prasoon Sinha, Sr. Advocate
	:	Mr. Prabhat Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA)

Date : 09-10-2025

From a comprehensive perusal of records of both the cases, it is found that the facts of both the cases are similar and common issues arise for consideration. Therefore, both the cases are being disposed of by this common judgment.

CWJC No. 19226 OF 2024

FACTS OF THE CASE:

Heard the parties.

2. The petitioner in the present writ application seeks the following main relief:

> *"(i) To issue an appropriate writ/ order/ direction in the nature of certiorari for setting aside/ quashing of the order passed by the Respondent Chief Engineer, Bihar Police Building Construction Corporation, Patna (BPBCC) dated 17.08.2024 contained in memo no. HQ3310 as well as the Appellate order dated 13.11.2024 bearing memo no. HQ4625 by which the petitioner's firm/ company M/S Nirman Engicons Pvt. Ltd. has been imposed a penalty of blacklisting for two years and further for a direction to the Respondent Corporation to return the security money of Rs. 11,15,000 deposited at the time of submitting the tender paper."*

3. Learned counsel for the petitioner respectfully submits that the present writ petition has been preferred challenging the order dated 17.08.2024 contained in Memo No. HQ-3310 passed by the Respondent Chief Engineer, Bihar Police Building Construction Corporation (hereinafter referred to as the “BPBCC”), Patna, whereby the petitioner’s firm, M/s Nirman Engicons Pvt. Ltd., has been blacklisted for a period of two years, as also the appellate order dated 13.11.2024 contained in Memo No. HQ-4625, by which the said order of blacklisting has been affirmed. The petitioner has further prayed for a direction upon the respondent Corporation to refund the security deposit of Rs. 11,15,000/- which was submitted at the time of tender participation.

4. The learned counsel for the petitioner submits that the controversy arises out of E-Tender Notice No. 05/SBD/2022-23 published on 18.05.2022 by the respondent Corporation, wherein the petitioner’s firm was one of the bidders with respect to item No. 17 of the said tender. It is submitted that as per the tender notice, the technical bid was initially scheduled to be opened on 01.07.2022, but subsequently corrigenda dated 23.06.2022 and 28.06.2022 extended the dates for uploading the bid papers and for opening of the technical bid. However, despite such corrigenda,

the entire bid process was mandatorily required to be completed within 120 days from 18.05.2022, i.e. on or before 17.09.2022.

5. Learned counsel submits that contrary to the conditions of the tender, the technical bid was in fact opened on 25.04.2023, i.e., after a delay of more than seven months, rendering the entire tender process infructuous. In view of such prolonged delay, the petitioner's firm duly withdrew its tender by submitting a withdrawal letter dated 24.04.2023, which was received and acknowledged by the office of the respondent Corporation. Consequently, the bid of the petitioner stood declared as non-responsive.

6. It is further submitted that the petitioner had deposited security money of Rs. 11,15,000/- in terms of the NIT, but without issuing any notice or affording opportunity, the said deposit, along with accrued interest, was forfeited and encashed by the respondent Corporation. Learned counsel points out that Clause 16.6 of the Standard Bidding Document (SBD) clearly specifies the limited conditions under which earnest money may be forfeited, and none of those conditions are attracted in the present case since the petitioner had withdrawn the tender prior to the opening of technical bids and was not a valid bidder thereafter.

7. Learned counsel for the petitioner further submits that the basis for the impugned blacklisting order lies in the allegation that the petitioner had submitted a forged experience certificate dated 22.06.2018 purportedly issued by the office of the Dy. Chief Engineer, East Central Railway, Samastipur. It is the case of the respondents that upon verification, the said authority denied issuance of such a certificate. On this premise, a show cause notice dated 03.06.2024 was issued to the petitioner.

8. The petitioner in his reply dated 14.06.2024 categorically denied the allegations, submitting details of prior work executed by the petitioner's firm for the East Central Railway, including substantial works under Agreement No. 561 dated 19.05.2011 for Rs. 1,74,00,797.18 and Agreement dated 29.07.2010 for Rs. 6,02,48,900.27. It was also clarified that the experience certificate issued by the Railways covered quantities of two different works but bore an error in date. Furthermore, it was emphasized that since the petitioner had already withdrawn from the tender process prior to the opening of the technical bid, there was no occasion or authority for the respondent Corporation to examine the bid documents, much less to scrutinize the experience certificate.

9. Learned counsel further submits that Rule 11 of the Bihar Contractors Registration Rules, 2007 prescribes specific grounds upon which a contractor may be blacklisted. A plain reading of the said rule makes it evident that blacklisting can only be imposed after the allotment of work and subsequent breach or misconduct by the contractor. In the instant case, since the petitioner had withdrawn from the bid process much before the stage of consideration or allotment of work, invocation of Rule 11 against the petitioner is wholly arbitrary, misconceived, and unsustainable in law.

10. It is also urged that in a number of cases arising out of the same tender process, FIRs were lodged against other contractors under serious criminal allegations, yet those contractors have not been blacklisted by the respondent Corporation. However, the petitioner alone has been singled out for the penalty of blacklisting, which demonstrates discrimination and lack of uniformity in the decision-making process.

11. The learned counsel submits that the Appellate Authority, instead of independently considering the petitioner’s grounds of challenge, merely reiterated the findings of the Chief Engineer in a mechanical manner. The appellate order suffers from complete non-application of mind as it fails to deal with the

specific points raised by the petitioner, including the fact that the bid stood withdrawn, and that the alleged forged certificate could not have had any impact upon a non-existent or lapsed tender process. It is further contended that the impugned orders are vague and indefinite even with respect to the period of blacklisting, merely stating “for two years” without specifying the commencement date or operative period of the penalty. Such vagueness renders the orders arbitrary and unenforceable in law.

12. Learned counsel finally submits that the impugned orders of blacklisting and forfeiture of security deposit are without jurisdiction, violative of principles of natural justice, arbitrary, discriminatory, and contrary to the statutory provisions under the Bihar Contractors Registration Rules, 2007 as well as the terms of the tender document. Hence, the impugned orders contained in Annexures-P/1 and P/2 deserve to be quashed and the security money of Rs. 11,15,000/- with interest be directed to be refunded to the petitioner.

13. During the pendency of the writ petition, the petitioner filed an Interlocutory Application bringing on record subsequent events and documents, and further sought leave to amend the relief clause of the main writ petition to challenge Office Order No.3/2025 bearing Memo No.138 dated 04.02.2025

issued by the Respondent No.3, whereby the earnest money deposit (EMD) of Rs.11,15,000/- deposited against E-Tender No.05/SBD/2022-23, Item No.17, was forfeited on the ground that the petitioner had withdrawn the tender after opening of the technical bid. The petitioner contended that the withdrawal letter was submitted on 24.04.2023, prior to the technical bid opening dated 25.04.2023, and hence invocation of Clause 16.6(a) of the Standard Bidding Document was unjustified. It was further submitted that the EMD amount had already been foefeited much prior to the impugned order dated 04.02.2025, rendering the subsequent forfeiture order redundant and unsustainable.

<u>CWJC No. 19173 of 2024</u>

FACTS OF THE CASE:

14. The petitioner in the present writ application seeks the following main relief:

> *"(i) To issue an appropriate writ/ order/ direction in the nature of certiorari for setting aside/ quashing of the order passed by the Respondent Chief Engineer, Bihar Police Building Construction Corporation, Patna (BPBCC) dated 03.08.2024 contained in memo no. HQ3310 as well as the Appellate order dated 13.11.2024 bearing memo no. HQ4579 by which the petitioner's firm has been imposed a penalty of debarment until 21.02.2026 and further for a direction to the Respondent Corporation to return the security*

money of Rs. 11,15,000 deposited at the time of submitting the tender paper."

15. Learned counsel for the petitioner submits that the petitioner preferred an appeal against the said order before the Appellate Authority, bearing Memo No. HQ4579 dated 06.11.2024, which was dismissed without consideration of the factual and legal grounds raised in the appeal. Consequently, both the orders impugned herein are liable to be set aside. True copies of the aforementioned orders are annexed as Annexures P/1 and P/2 to this writ petition.

16. Learned counsel further submits that the impugned order dated 03.08.2024 is merely a culmination of a decision taken by the Respondent Chief Engineer on 02.08.2024, whereby, invoking Rule 11 of the Bihar Contractor Registration Rules, 2007, the Chief Engineer passed a penal order of debarment until 21.02.2026. It is submitted that the issuance of two separate orders by the same authority in respect of the same subject-matter is redundant and arbitrary. Further, the Chief Engineer, while rejecting the show-cause reply filed by the petitioner, failed to provide any cogent reason or rationale.

17. It is further submitted that the petitioner's firm was not a registered contractor of the Respondent Corporation, and therefore, the bid submitted against Item No.17 of the E-Tender

notice dated 18.05.2022 was in any view of the matter meaningless. Moreover, the petitioner was never provided with the report of the Executive Engineer, Jharkhand Industrial Infrastructure Development Corporation (JIIDCO), Ranchi, dated 24.04.2023, which formed the basis of the punitive action, thereby resulting in an ex-parte order which deserves to be set aside.

18. Learned counsel further submits that the tender process, pursuant to E-Tender Notice No. 05/SBD/2022-23, was to be completed and the final bid opened within 120 days from 18.05.2022, i.e., by 17.09.2022. However, the technical bid was only opened on 25.04.2023, after an inordinate delay of more than seven months, rendering the tender notice infructuous. The petitioner's firm had already withdrawn its bid on 24.04.2023, as evidenced by Annexure P/6, well before the opening of the technical bid.

19. Learned counsel for the petitioner submits that the petitioner's consent to extend the bid validity till 31.03.2023, as per email dated 12.01.2023 (Annexure P/7), became inoperative as the technical bid was not opened even by the stipulated extended period. Consequently, the petitioner's withdrawal renders it legally non-viable to proceed against the petitioner. The Respondent Corporation forfeited the Earnest Money Deposit of

Rs.11,15,000/- deposited by the petitioner's firm, without issuing any notice, and notwithstanding the fact that the petitioner had already withdrawn from the tender process. As per Clause 16.6 of the Standard Bidding Document (SBD, Annexure P/8), forfeiture of the earnest money is permissible only under specific conditions, none of which are applicable to the petitioner.

20. Learned counsel submits that the alleged grounds for blacklisting pertain to an experience certificate dated 10.02.2022, purportedly issued by the Executive Engineer, JIIDCO, Namkum, Ranchi, which was allegedly found to be forged. However, it is submitted that the petitioner had withdrawn its bid prior to the opening of the technical bid, and therefore, the alleged irregularity could not have caused any prejudice or advantage, rendering the punitive action under Rule 11(क) of Bihar Contractor Registration Rules, 2007, inapplicable and unjust.

21. It is further contended that the Appellate Authority failed to consider the grounds raised in the appeal and, without application of mind, reiterated the same order of debarment. The petitioner's firm has thus been subjected to disproportionate and illegal penal action, without affording an opportunity of hearing, thereby violating the principles of natural justice. In view of the facts stated above, learned counsel for the petitioner submits that

the impugned orders, Annexures P/1 and P/2, are illegal, arbitrary, and unsustainable in law, and are liable to be quashed and set aside by this Hon'ble Court.

22. Learned counsel for the petitioner further submits that, by way of Interlocutory Application, the petitioner seeks to incorporate an additional prayer in the main writ petition for quashing of Office Order No. 02/2025 dated 28.01.2025 issued by Respondent No.3, whereby the Earnest Money Deposit of Rs.11,15,000/- deposited against E-Tender No.05/SBD/2022-23, Item No.17 was forfeited on the ground of withdrawal of the tender paper after the technical bid was opened. It is submitted that the tender paper was withdrawn on 24.04.2023, whereas the technical bid was opened on 25.04.2023 and had already lost its validity on 31.03.2023. Accordingly, the forfeiture under Clause 16.6(a) of the SBD is legally untenable, and the said order deserves to be quashed along with the main writ petition.

RESPONDENT'S SUBMISSIONS:

23. Learned counsel for the respondents in both matters being similar in nature submitted that the writ petition is wholly misconceived and devoid of merit, having been filed by the petitioner with the deliberate intent to mislead this Hon'ble Court by suppressing material facts. It is contended that E-Tender Notice

No. 05/SBD/2022-23, contained in Memo No. HQ-1410 dated 18.05.2022, was duly issued under the signature of the Chief Engineer, Bihar Police Building Construction Corporation (BPBCC), inviting bids for several works, including the construction and electrification of a Model Police Station (G+3) with outhouse at Habibpur, Bhagalpur.

24. It is stated that, in terms of Clause 35 of the Notice Inviting Tender (NIT), bidders were required to upload documentary proof of experience in executing similar nature of works under any Government or Public Sector Undertaking. The petitioner, M/s Nirman Engicon Pvt. Ltd., submitted an experience certificate bearing No. W/Con/247/Dy.CE/Con/II/SPJ/CA-17 dated 22.06.2018, purportedly issued by the Deputy Chief Engineer, East Central Railway, Samastipur. The petitioner Chandan Kumar submitted an experience certificate bearing letter no. 235 dated 10.02.2022, purported to have been issued under the signature of the Executive Engineer, JIIDCO, Ranchi, Jharkhand. Upon verification of M/S Nirman Engicons Pvt. Ltd. by the BPBCC through letter dated 03.04.2023, and verification of Chandan Kumar by the Executive Engineer, JIIDCO, Ranchi and further the East Central Railway, vide its letter dated 19.04.2023, and the Executive Engineer, JIIDCO via letter no. 303 dated

24.04.2023 categorically informed that the said certificate had never been issued by its office and that the signature appearing thereon was forged.

25. The respondents further submitted that, as per Clause 41 of the NIT, the petitioner had submitted a sworn affidavit affirming that all uploaded documents were genuine and that, in the event of any document being found to be false or fabricated, the Corporation would be at liberty to blacklist the firm and initiate criminal proceedings. On receipt of the verification report from the East Central Railway and JIIDCO, the Technical Bid Evaluation Committee, in its meeting held on 25.04.2023, found the petitioner's bid to be non-responsive, having relied upon a forged experience certificate. The Committee's decision was uploaded on the Corporation's website and communicated to all bidders vide email dated 27.04.2023, inviting objections within five working days.

26. It is further stated that instead of submitting any clarification or objection, the petitioner sought to withdraw its bid through letter dated 24.04.2023—one day prior to the meeting of the Technical Bid Evaluation Committee—evidently as a calculated attempt to evade the consequences of having submitted forged documents. As per Clause 16.6(a) of the Standard Bidding

Document (SBD), the Corporation is entitled to forfeit the Earnest Money Deposit (EMD) where a bidder withdraws its bid during the period of bid validity. Since the petitioner had earlier extended its bid validity till the final disposal, vide letter dated 06.03.2023, the withdrawal on 24.04.2023 squarely attracted the consequences under Clause 16.6(a).

27. Accordingly, a show cause notice dated 16.01.2025 was issued to M/S Nirmaan Engicons Pvt. Ltd. and a show cause notice dated 09.01.2025 was issued to Chandan Kumar, to which a reply was submitted but found unsatisfactory. Consequently, a reasoned order bearing No. 03/2025, Memo No. 138 dated 04.02.2025 for M/S Nirmaan Engicons Pvt. Ltd. and a reasoned order bearing No. 02/2025, Memo No. 122 dated 28.01.2025 for Chandan Kumar, was passed by Respondent No. 3 forfeiting the petitioner's EMD amounting to ₹11,15,000/-. The respondents also submitted that on the basis of a written report by the Executive Engineer, Bhagalpur Division, Hawai Adda P.S. Case No. 151/2023 was registered against the Directors of the petitioner company under Sections 467, 468, 471, 420, 120B, and 511 of the Indian Penal Code for use of a forged experience certificate in a public tender.

28. It is further submitted that in light of the aforesaid developments, a show cause notice dated 03.06.2024 was issued under Clause 11(क)(7) of the Bihar Contractor Registration Rules, 2007, calling upon the petitioner to explain why its registration should not be blacklisted. After due consideration of the reply, the registration of the petitioner company M/S Nirmaan Engicons Pvt. Ltd. was blacklisted for two years vide Office Order No. 318/2024, Memo No. HQ-3310 dated 17.08.2024 and the petitioner Chandan Kumar was debared from participating in any future tender till his registration is valid, i.e., 21.02.2026 vide office order no. 298/2024, Memo no. HQ-3020 dated 03.08.2024. The petitioner M/S Nirmaan Engicons Pvt. Ltd. thereafter preferred Appeal No. 09/2024 and the petitioner Chandan Kumar preferred Appeal No. 34/2024 under Clause 11(घ) of the said Rules, which was duly heard by the Chairman-cum-Managing Director of BPBCC. The Appellate Authority, after affording full opportunity of hearing, passed a detailed order vide Memo No. HQ-4625 dated 13.11.2024 for M/S Nirmaan Engicons Pvt. Ltd. and Memo No. HQ-4579 dated 06.11.2024, affirming the order of blacklisting/debarment.

29. The learned counsel for the respondents therefore contended that the actions taken by the Corporation were in strict conformity with law and the principles of natural justice. The

petitioner has nowhere denied having submitted the impugned experience certificate, nor has it produced any material to establish its authenticity. It is asserted that the plea of violation of natural justice is baseless, as all relevant documents were supplied and due opportunity of hearing was granted at both the departmental and appellate stages. The orders impugned are reasoned, based on cogent evidence, and passed by competent authorities. Hence, the petitioner, having been found guilty of submitting forged documents in a public tender, is not entitled to any relief from this Hon’ble Court.

30. The petitioner M/S Nirmaan Engicons Pvt. Ltd. has also filed a supplementary affidavit pursuant to the direction of this Hon’ble Court dated 19.04.2025, bringing on record certain documents in support of his claim that the experience certificate dated 22.06.2018, issued by the office of the Dy. Chief Engineer (Construction), East Central Railway, Samastipur, is genuine and not forged. It has been stated that the petitioner’s firm had in fact executed substantial construction work under Agreement dated 15.01.2009 against Tender No. 05 of 2008-09 for a total value of ₹4,79,95,710.89, which was subsequently enhanced to ₹6,02,48,900.27 pursuant to a supplementary agreement dated 29.09.2010. The petitioner has placed on record copies of both

agreements, along with contemporaneous correspondence and payment letters, to show that the East Central Railway had paid ₹4,48,48,917/- on 21.01.2011 for the said work, and that certain additional works were also executed and paid for. It is further averred that the construction work continued till 2013 and the petitioner's communications with the Dy. Chief Engineer, E.C. Railway, during this period reflect that the contract had not been closed. On this basis, the petitioner asserts that the experience certificate dated 22.06.2018 was duly issued by the then Dy. Chief Engineer, Mr. Murari Lal, and that there is no forgery involved. It is further submitted that the petitioner was never provided with the verification report relied upon by the respondents, and had such report been furnished, he would have been in a position to clarify any discrepancy regarding the signature or issuance of the said certificate.

31. The petitioners M/S Nirmaan Engicons Pvt. Ltd. and Chandan Kumar have individually filed a consolidated reply to the counter affidavit submitted by the Bihar Police Building Construction Corporation, challenging both its maintainability and the legality of the respondent's actions. At the outset, the petitioner questions the competency of the deponent of the counter affidavit, contending that the individual claiming to be posted as Executive

Engineer is over 62 years of age and, therefore, beyond the permissible age of superannuation under the State Government service rules, rendering the affidavit unsworn by a competent person and liable to be rejected on that ground alone.

32. On merits, the petitioners reiterate that the blacklisting/debarment order and forfeiture of security money are unsustainable in law as the tender in question had lost its validity on 31.03.2023, pursuant to the last corrigendum dated 12.01.2023, which extended bid validity only up to that date. It is urged that since the technical bid was opened on 25.04.2023—nearly a month after expiry of the bid validity—any proceeding or penal action based thereon is void ab initio. The petitioner asserts that the withdrawal of the tender paper was made on 24.04.2023, prior to the opening of the technical bid, and thus, the petitioner had ceased to be a bidder at the relevant time. Consequently, invoking Clause 16.6(a) of the Standard Bidding Document for forfeiture of EMD or for initiating blacklisting proceedings was wholly without jurisdiction.

It is further submitted that the respondents have deliberately suppressed the material fact regarding the expiry of bid validity and have proceeded to act on an expired tender, which is arbitrary, mala fide, and contrary to settled principles of law.

The petitioner also contends that the impugned orders of blacklisting were passed without furnishing the verification report relied upon by the Corporation, thereby violating the principles of natural justice and depriving the petitioner of an effective opportunity to rebut the allegations.

33. Learned counsel for Respondent No.3 via. Personal Affidavit submits that the tenders were initially invited on E-Proc1.0, but from 01.08.2022 all submissions were required on E-Proc2.0, which ensured enhanced security and transparency. E-Tender No.05/SBD/2022-23 (GR No.17) was floated on E-Proc2.0, with the last date for bid submission as 21.07.2022 and technical bid opening on 22.07.2022. All bids, including that of the petitioner, were uploaded within the prescribed time and evaluated through a Technical Evaluation Sheet. The petitioner, though having initially consented to the bid validity, withdrew his tender on 24.04.2023 after the technical bid was opened on 25.07.2022. Verification revealed that the experience certificate submitted by the petitioner was forged/fabricated, and accordingly, the Earnest Money Deposit was forfeited under Clause 16.6(a) of the SBD.

34. The petitioners M/S Nirmaan Engicons Pvt. Ltd. and Chandan Kumar individually, in the rejoinder filed subsequent to the series of counter affidavits submitted by the respondents both

collectively and individually, has specifically questioned the opening of the Technical Bid by Mr. Arun Kumar, Superintending Engineer, Works Circle 1 on the ground that he was not authorized to open the technical bid. It has been contended that, as per Clause 19.1 of the Standard Bidding Document (SBD), the technical bid was required to be opened in the presence of the Evaluation Committee or *duly authorized officers*. However, in the present case, the said Superintending Engineer, Works Circle 1, who is not shown to be an authorized person in any official communication or record, has admittedly opened the technical bid. The petitioner has further argued that no authorization was ever issued in favour of the said Superintending Engineer by any competent authority, and even the Chief Account Officer's subsequent signature dated 13.02.2023, as referred to in Annexure-R/M, does not cure this procedural irregularity. The petitioner has thus alleged that the act of opening the bid by an unauthorized person vitiates the entire tender process and raises serious doubts regarding the authenticity and transparency of the documents subsequently produced by the respondents, including Annexure-R/M, which has been described as a comparison chart.

Based on the arguments raised by the learned counsel for the petitioners and respondents and upon perusal of records in

CWJC No. 19173 of 2024 and CWJC No. 19226 of 2024, it is observed that the facts of both the cases are of similar nature and thus, can be dealt together. The common issues in question are listed and dealt as under.

ISSUES IN QUESTION:

1. Whether the impugned orders of blacklisting the petitioner's firm, M/s Nirman Engicons Pvt. Ltd., and the individual petitioner, Chandan Kumar, under Rule 11 of the Bihar Contractors Registration Rules, 2007, are legally sustainable, in light of the petitioner having withdrawn its tender prior to the opening of the technical bid?

2. Whether the forfeiture of the Earnest Money Deposit of ₹11,15,000/- under Clause 16.6(a) of the Standard Bidding Document is justified, particularly when the petitioner had withdrawn its bid prior to the opening of the technical bid, and whether the technical bid being opened after the stipulated tender validity period renders the tender process infructuous and any penal action thereon void ab initio?

3. Whether the technical bid, which formed the basis of the punitive action, was validly opened by Mr. Arun Kumar, Superintending Engineer, Works Circle 1, and whether such officer was competent under Clause 19.1 of the Standard Bidding

Document to open the technical bid, failing which the tender process and subsequent actions would be vitiated?

4. Whether the absence of any official document specifying the date of technical bid opening casts doubt on the validity, transparency, and authenticity of the tender process and the consequential actions taken by the respondents?

5. Whether the impugned orders were passed without furnishing the verification reports relied upon by the respondents, without affording a meaningful opportunity of hearing to the petitioner, and whether punitive action on the ground of allegedly forged experience certificates is justified when the petitioner had ceased to be a valid bidder, thereby raising questions of arbitrariness and violation of principles of natural justice?

FINDINGS:

Issue 1: Whether the impugned orders of blacklisting the petitioner's firm, M/s Nirman Engicons Pvt. Ltd., and the individual petitioner, Chandan Kumar, under Rule 11 of the Bihar Contractors Registration Rules, 2007, are legally sustainable, in light of the petitioner having withdrawn its tender prior to the opening of the technical bid?

Upon a comprehensive examination of the pleadings, counter affidavits, rejoinders, and the documents placed on record, this Court is of the considered view that the impugned orders of blacklisting the petitioner's firm, M/s Nirman Engicons Pvt. Ltd., and the petitioner, Chandan Kumar, under Rule 11 of the Bihar Contractors Registration Rules, 2007, are not legally sustainable in the facts and circumstances of the present case. The admitted factual matrix reveals that the petitioner had withdrawn its tender prior to the opening of the technical bid. The communication evidencing such withdrawal was duly received and acknowledged by the respondent department before any technical evaluation commenced. Once the withdrawal was effected, the petitioner ceased to have any locus in the ongoing tender process, and the bid documents submitted by it lost their operative character in law. Any action taken thereafter, treating the petitioner as a continuing participant in the tender, would therefore be dehors the governing tender conditions and beyond the authority vested in the respondents under the applicable statutory rules.

It is further noteworthy that the respondents have failed to produce any contemporaneous document or record indicating the actual date and time of opening of the technical bid. No proceedings of the bid opening committee, nor any authenticated record evidencing such opening has been placed before the Court. The absence of such material documents creates a serious doubt regarding the transparency and procedural propriety of the tender process. In such a situation, when the very date and process of bid opening remain unsubstantiated, the consequential reliance on the petitioner's bid documents for initiating penal action becomes legally untenable. The principle that administrative orders affecting civil consequences must be founded upon verifiable and contemporaneous records stands clearly violated in this case.

The blacklisting order has been primarily founded upon the allegation that the petitioner submitted a forged experience certificate. However, such allegation cannot, by itself, sustain a punitive action of blacklisting when the petitioner had already withdrawn from the tender before evaluation and before any contract was awarded. The power under Rule 11 of the Bihar Contractors Registration Rules, 2007, though wide, cannot be invoked mechanically or retrospectively against a party who was no longer a part of the procurement process at the relevant time. The said Rule contemplates action in cases where a registered contractor commits misconduct in the execution of a work or indulges in fraudulent practices during a subsisting tender or contract. In the present case, no such contractual relationship ever came into existence, and hence, invocation of Rule 11 against the petitioner is without jurisdiction.

Moreover, the respondents have failed to establish any causal nexus between the alleged irregularity and prejudice to the tender process. There is nothing on record to demonstrate that the purported experience certificate influenced the evaluation process. The impugned orders are also conspicuously silent on this aspect. Administrative action of blacklisting and having civil consequences of far-reaching impact, must be exercised with due caution and based on substantive evidence. It is trite law that blacklisting affects not only the present rights of a contractor but also casts a shadow on their professional reputation and future business prospects and it is in violation of Article 14,19(1)(g) & 21 of Constitution. Therefore, such an order must reflect application of mind to all relevant facts and a clear finding of wilful misconduct.

It is also pertinent to note that while the respondents have relied upon certain verification reports to substantiate the allegation of forgery, those reports were never supplied to the petitioner prior to the passing of the impugned order. The petitioner was thus deprived of a fair opportunity to rebut the same.

In view of the aforesaid discussion, this Court is constrained to hold that the foundational facts necessary to justify exercise of power under Rule 11 are wholly absent. The respondents cannot validly sustain a punitive order against a bidder who had lawfully withdrawn before the stage of evaluation. Consequently, the orders of blacklisting passed against the petitioners are held to be unsustainable in law.

Issue 2: Whether the forfeiture of the Earnest Money Deposit of ₹11,15,000/- under Clause 16.6(a) of the Standard Bidding Document is justified, particularly when the petitioner had withdrawn its bid prior to the opening of the technical bid, and whether the technical bid being opened after the stipulated tender validity period renders the tender process infructuous and any penal action thereon void ab initio?

Upon consideration of the rival submissions and the materials available on record, this Court finds that the forfeiture of the Earnest Money Deposit (EMD) amounting to ₹11,15,000/- under Clause 16.6(a) of the Standard Bidding Document (SBD) is not legally justified in the facts and circumstances of the present case. It is an admitted position that the petitioner had formally withdrawn its tender prior to the Technical Bid Evaluation, and such withdrawal was communicated to the respondent authorities before the commencement of any evaluation process. Once the tender stood withdrawn in accordance with the procedure prescribed, the petitioner ceased to have any participation or interest in the tender process. Therefore, any subsequent action taken by the respondents treating the petitioner's bid as subsisting and proceeding to forfeit the EMD would be beyond the scope of the contractual terms and inconsistent with settled principles of tender law.

Clause 16.6(a) of the SBD empowers the employer to forfeit the EMD only in cases where a bidder withdraws its bid during the period of bid validity or fails to execute the agreement after being declared successful. The term "period of bid validity" assumes critical importance, as it defines the timeframe within which withdrawal attracts forfeiture. In the present case, the record indicates that the bid validity period had already expired prior to the purported opening of the technical bid. The respondents have failed to produce any material document or record showing either the extension of bid validity by mutual consent or the precise date and manner of bid opening within the prescribed validity period. In absence of such evidence, the legal presumption must be drawn that the bid validity had lapsed, thereby rendering the tender process infructuous. Consequently, any forfeiture of the EMD after expiry of bid validity stands on an untenable footing and cannot be sustained in law.

Furthermore, the forfeiture clause in a tender document is penal in nature and must, therefore, be construed strictly. It can only be invoked upon clear proof that the conditions precedent for such forfeiture were satisfied. The withdrawal of the bid prior to its opening merely amounted to an exercise of the petitioner's contractual right, and such withdrawal, in itself, cannot be treated as a default attracting penal consequences, particularly when the tender process had become non-functional due to lapse of validity.

It also deserves mention that forfeiture of earnest money is a drastic measure carrying civil consequences. The absence of any authenticated record of bid opening or of any extension of bid validity leads to the irresistible conclusion that the forfeiture of the petitioner's EMD was arbitrary and unsustainable. The respondents, having failed to adhere to the procedural safeguards and contractual conditions governing bid validity and withdrawal, cannot derive benefit from their own procedural lapses.

In view of the above discussion, this Court holds that the forfeiture of the petitioner's Earnest Money Deposit under Clause 16.6(a) of the Standard Bidding Document was in violation of the principles of fairness and reasonableness. The tender process having become infructuous upon expiry of the bid validity period, all consequential actions, including forfeiture of EMD, stand vitiated and are liable to be set aside.

Issue 3: Whether the technical bid, which formed the basis of the punitive action, was validly opened by Mr. Arun Kumar, Superintending Engineer, Works Circle 1, and whether such officer was competent under Clause 19.1 of the Standard Bidding Document to open the technical bid, failing which the tender process and subsequent actions would be vitiated?

Upon examination of the pleadings and the documentary materials brought on record, this Court finds that a serious doubt arises with respect to the validity of the technical bid opening and the competence of the officer who undertook such action. The petitioner has consistently asserted, and the respondents have not effectively rebutted, that the technical bid was opened by an Superintending Engineer, Works Circle 1 who, under the provisions of Clause 19.1 of the Standard Bidding Document (SBD), was not authorized to do so. Clause 19.1 clearly stipulates that the technical bid shall be opened by the duly constituted Tender Opening Committee or by such officer as may be expressly empowered by the competent authority in accordance with the prescribed e-procurement protocol. The respondents, despite specific challenge, have not produced any order, notification, or delegation of authority evidencing that the said Superintending Engineer, Works Circle 1 was ever authorized or designated to perform this function.

In the absence of such authorization, the act of opening the technical bid by an officer not vested with such competence constitutes a material irregularity going to the root of the tender process. The sanctity of tender proceedings depends upon adherence to prescribed procedures ensuring transparency, fairness, and accountability. Where the technical bid—the foundational stage for evaluation—is opened by an unauthorized individual, the entire process that follows, including any evaluation, verification, or consequential punitive action, becomes tainted with illegality. Such deviation cannot be treated as a mere procedural lapse, as it affects the very jurisdiction and validity of the administrative action. In matters of public procurement, where public funds and contractual rights are involved, strict adherence to the procedure prescribed by the tender document is not an empty formality but a mandatory requirement ensuring fairness and transparency.

The respondents' subsequent reliance on the outcome of such a procedurally defective bid opening to initiate penal action, including forfeiture of EMD and blacklisting, further compounds the illegality. Once the foundational act—the opening of the technical bid—stands vitiated by lack of authority, all subsequent actions flowing therefrom lose their legal validity. It is well-settled that an administrative act performed without jurisdiction cannot be validated by subsequent ratification unless the authority was inherently empowered to delegate such functions, which has not been shown in the present case.

In view of the foregoing discussion, this Court holds that the technical bid, which formed the basis of the punitive measures against the petitioner, was not validly opened in accordance with Clause 19.1 of the Standard Bidding Document. Mr. Arun Kumar, Superintending Engineer, Works Circle 1, not being a competent authority to open the bid, acted without jurisdiction, thereby rendering the tender opening process and all consequential proceedings, including blacklisting and forfeiture of earnest money, legally unsustainable. The tender process, having been vitiated at its inception, cannot form a lawful basis for any penal or administrative action against the petitioner.

Issue 4: Whether the absence of any official document specifying the date of technical bid opening casts doubt on the validity, transparency, and authenticity of the

tender process and the consequential actions taken by the respondents?

This Court finds that the absence of any official record specifying the exact date and proceedings of the technical bid opening casts a serious doubt on the validity, transparency, and authenticity of the tender process. In a public tender governed by statutory and procedural safeguards, the maintenance of contemporaneous records such as bid opening registers and system-generated logs is not a mere administrative formality but a mandatory requirement to ensure fairness and verifiability. The respondents, despite specific challenge by the petitioners, have failed to produce any such document evidencing the precise date, time, or the presence of authorized officials during the bid opening.

In the absence of such documentary proof, it becomes impossible for the Court to ascertain whether the technical bid was opened within the prescribed validity period in accordance with the tender conditions. The lack of such evidence undermines the presumption of regularity that would otherwise attach to official acts. On the contrary, it raises a legitimate inference that the process may not have been conducted in conformity with the mandatory provisions of the Standard Bidding Document and the principles of transparency that govern public procurement.

This omission assumes greater significance since the alleged date of technical bid opening forms the very foundation for subsequent actions, including the declaration of the petitioner's bid as non-responsive, the forfeiture of the Earnest Money Deposit, and the blacklisting orders. When the basic event giving rise to these penal consequences is itself uncertain and unsupported by any contemporaneous record, the entire chain of actions becomes suspect and legally unsustainable.

Accordingly, this Court holds that the non-availability of any official document specifying the date of technical bid opening vitiates the credibility and transparency of the tender process, rendering the consequential actions taken by the respondents—based upon such indeterminate proceedings—unsound in law and contrary to the settled principles of fairness and procedural propriety.

Issue 5. Whether the impugned orders were passed without furnishing the verification reports relied upon by the respondents, without affording a meaningful opportunity of hearing to the petitioner, and whether punitive action on the ground of allegedly forged experience certificates is justified

when the petitioner had ceased to be a valid bidder, thereby raising questions of arbitrariness and violation of principles of natural justice?

Upon consideration of the materials available on record, this Court finds substantial force in the contention of the petitioner that the impugned orders were passed in contravention of the settled principles of natural justice and procedural fairness. It is undisputed that the respondents relied upon certain verification reports pertaining to the authenticity of the petitioner's experience certificates while imposing the penal consequences of blacklisting and forfeiture of Earnest Money Deposit. However, it is equally undisputed that such verification reports were never supplied to the petitioner at any stage of the proceedings. The non-supply of documents forming the basis of adverse findings amounts to a clear denial of reasonable opportunity to defend, thereby violating the fundamental principle of audi alteram partem—that no one should be condemned unheard.

The petitioner's grievance is further reinforced by the admitted fact that by the time such verification exercise was undertaken and penal action initiated, the petitioner had already withdrawn its bid prior to the technical bid evaluation. Consequently, the petitioner had ceased to be a valid bidder, and its participation in the tender process stood effectively terminated. Once the petitioner was no longer in the fray, any subsequent inquiry or verification pertaining to its bid or documents lost legal relevance. Proceeding against a non-participating bidder on grounds of alleged document forgery, when the tender relationship itself had ceased, is not only arbitrary but also contrary to the principles of proportionality and fairness.

The respondents' action, based on undisclosed reports and without granting an effective opportunity of rebuttal, reveals procedural impropriety of a serious nature. It is a settled proposition that even in cases involving allegations of fraud or misconduct, the affected party must be furnished with the materials relied upon and given an adequate chance to present its explanation before any punitive measure is imposed. The absence of such procedural safeguards renders the impugned orders vulnerable to challenge on the ground of arbitrariness under Article 14 of the Constitution of India.

35. In view of the foregoing discussion and upon a holistic appreciation of the facts and circumstances of the case, this Court is constrained to hold that the tender process and the consequential actions undertaken by the respondents suffer from multiple procedural and legal infirmities. The petitioner had

lawfully withdrawn from the tender prior to the opening of the Technical Bid or most certainly prior to Technical Bid Evaluation, and there exists no credible material on record to show that the technical bid was either opened within the prescribed validity period or by a duly authorized officer in accordance with Clause 19.1 of the Standard Bidding Document. The absence of any contemporaneous record specifying the date of bid opening, coupled with the reliance on undisclosed verification reports and the denial of meaningful opportunity of hearing, demonstrates a clear departure from the settled principles of natural justice and transparency which form the cornerstone of fair administrative procedure.

36. This Court, therefore, finds that the impugned orders of forfeiture of Earnest Money Deposit and blacklisting of the petitioner's firm and its Director are unsustainable in law. The same are vitiated by lack of jurisdiction, procedural irregularities, and violation of fundamental principles of fairness and reasonableness. The actions of the respondents, being arbitrary and devoid of legal foundation, cannot be permitted to stand. The impugned orders are, therefore, quashed and set aside. Accordingly, the writ petitions are allowed. The impugned orders of blacklisting and forfeiture of the Earnest Money Deposit of

₹11,15,000/- along with any accrued interest are hereby quashed. The respondents are directed to refund the entire EMD amount to the petitioners within a period of six weeks from the date of this order. All I.As, if any, shall stand disposed of. There shall be no order as to costs.

(P. B. Bajanthri, CJ)

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	26.09.2025
Uploading Date	09.10.2025
Transmission Date	NA