2025:CGHC:60221-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 5902 of 2025

M/s Dynamics Services, Through Its Proprietor, Jugal Kishore Bhagat, Aged About 49 Years, S/o Harinaraya Bhagat, Address 139, Dakshindari Road, Lake Town, North 24 Parganas, West Bengal, 700048

Petitioner(s)

Versus

1 - South East Central Railway (SECR) Through The General Manager, Wouth East Central Railway (SECR), Bilaspur Zone, Bilaspur, (C.G.) -495004

2 - Divisional Railway Manager (Comml) South East Central Railway, Bilaspur Division, Bilaspur (C.G.) -495004

3 - Senior Divisional Commercial Manager South East Central Railway, Bilaspur Division, Bilaspur (C.G.) -495004

Respondent(s)

(Cause-title taken from Case Inf

For Petitioner(s)	:	Mr. Rupesh Shrivastava, Advocate
For Respondent(s)	:	Mr. R.K. Mishra, DSGI

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Bibhu Datta Guru, Judge
Judgment on Board

***Per* Ramesh Sinha, Chief Justice**

11/12/2025

1. By the present writ petition, the petitioner is challenging Letter No. Com/G-13/HK/UKR-KLPG/22 dated 11/09/2025 03/07/2024 (Annexure-

P/4) passed by the respondent No.2, whereby, the respondent No.2 terminated the contract/agreement entered between the petitioner and Respondents authorities and also blacklisted/debarred the petitioner for 2 years in participating in all kinds of tenders issued by them. For which, the petitioner is seeking following reliefs:-

> *"10.1 That, this Hon'ble Court may kindly be pleased to call the entire records pertaining to the case of the petitioner.*
>
> *10.2 That, this Hon'ble Court may kindly be pleased to Quash and set aside the impugned order dated 11.09.2025 (Annexure P/4).*
>
> *10.3 That, this Hon'ble Court may kindly be pleased to direct the Respondents to pay the bill from September 2024 to September 2025.*
>
> *10.4 That, this Hon'ble Court may kindly be pleased to direct the Respondents to restore the Petitioner's eligibility to participate in future tenders of the South East Central Railway.*
>
> *10.5 That, this Hon'ble Court may kindly be pleased to direct the Respondents to reconsider the matter afresh after granting a personal hearing.*
>
> *10.6 Any other relief or relief(s), which this Hon'ble Curt deems fit and proper in view of the facts and circumstances of the case, may also be granted.*
>
> *10.7 Cost of the petition may also be awarded.*

2. (a) Learned counsel for the Petitioner would submit that the Respondents issued an e-Tender Notice dated 07.12.2022 for providing

cleaning and housekeeping services at UKR–KLPG Railway Station under the Bilaspur Division of SECR. The Petitioner participated in the said tender process and was declared the lowest successful bidder (L-1). Accordingly, a Letter of Acceptance (LOA) was issued, followed by execution of the formal agreement, and work orders were granted for a period of four years commencing from 01.03.2023 to 30.03.2027. It is submitted that the Petitioner duly commenced and continued to perform all contractual obligations in terms of the agreement. However, despite successful execution of the work, the Respondents failed to release the Petitioner's legitimate bills from September 2024 up to the termination order dated 11.09.2025. It is further submitted that timely payment of bills is an essential reciprocal obligation, and non-payment by the employer severely prejudices the contractor's ability to maintain manpower, materials and operational efficiency, thereby frustrating the contract itself.

(b) Learned counsel submits that during execution of the contract, the Respondents issued a notice dated 17.07.2025 alleging minor deficiencies. Although the Petitioner could not submit a written reply, all alleged shortcomings were immediately rectified on the ground. Despite this, a performance notice dated 31.07.2025 and a subsequent seven-day notice were issued. It is urged that the Respondents acted arbitrarily and capriciously in terminating the contract without granting any personal hearing or final opportunity to the Petitioner, even though the alleged deficiencies were trivial and had already been rectified. The unilateral termination is unjustified and contrary to settled principles of law, more so when the Respondents themselves failed to fulfil their reciprocal obligations, including timely payments. The impugned order dated 11.09.2025 further proceeds to blacklist/debar the Petitioner for a period of two years and to forfeit the performance guarantee of ₹3,24,688/–, all without following due process. The action is punitive, disproportionate, and in stark violation of principles of natural justice.

(c) Learned counsel would further submit that the blacklisting of the Petitioner for two years is wholly arbitrary, illegal and unsustainable. Blacklisting has serious civil consequences and directly affects the Petitioner's right to carry on trade and business. Therefore, before imposing such a drastic penalty, the Respondents were mandatorily required to issue a specific notice proposing blacklisting and afford an opportunity of hearing, which was not done in the present case. The impugned order is thus contrary to the well-settled law laid down by the Hon'ble Supreme Court in ***UMC Technologies Pvt. Ltd. v. Food Corporation of India (2021) 2 SCC 551 and Isolators & Isolators v. M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. (2023) 8 SCC 607,*** wherein the Apex Court has held that any order of blacklisting passed without prior notice and hearing is violative of natural justice and liable to be set aside.

3. Learned counsel for the respondents would submit that with regard to the termination of contract, when the assigned contractual work was not completed by the petitioner company in the stipulated time period, their contract was terminated as per the provisions of the NIT, i.e. after issuance of a Show Cause Notice dated 17.07.2025 i.e. Annexure P/3, though the

petitioner did not submitted any reply. Hence, the action of the respondent authorities is completely in accordance with the due process of law. He further submits that if the petitioner is aggrieved by the action of termination of the contract by respondents, he has an option of alternative remedy of Arbitration under the Dispute Resolution Clause i.e. Clause 49 of the "Conditions of Contract" under the NIT, which he has failed to avail and directly approached this Court.

4. We have heard learned counsel for the parties, perused the pleadings and documents.

Blacklisting :

5. Blacklisting is a serious matter affecting commercial credibility in the business world. It has been described as a civil death also. There has to be a balance of competing interests with regard to the rights of the person entitled to supplies under the contract and those who may have failed to abide by the obligations. The jurisdiction of the Court in judicial review is primarily confined to the decision making process. If there are no infirmities in the decision making process, the writ court will ordinarily refrain from going into the matter further except where there may may be compelling circumstances. But if the decision making process before blacklisting suffers from gross procedural infirmities, judicial review will step in and the order will have to be struck down.

6. The terms of the contract contained several options available to the Respondents to take any action against the Petitioner if it defaulted in

supplies. Unless he was specifically told that it was the option for blacklisting which was proposed to be exercised, it cannot be said that he was given an adequate opportunity to show cause. It is very reasonable to presume that the Petitioner may have thought that the Respondents would invoke other options and not blacklisting. This aspect of the matter need not detain us for further discussions in view of the enunciation of law laid down in ***(2014) 9 Supreme Court Cases 105 (Gorkha Security Services vs. Government [NCT of Delhi) and Others)***, as follows:

> *21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the notice understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action."*
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> ……………………………………………………………………
>
> *26 This clause, no doubt, gives further right to the Department to blacklist the contractor for a period of 4 years and also forfeit his earnest money/security*

deposit, if so required. It is thus apparent that this sub-clause provides for various actions which can be taken and penalties which can be imposed by the Department. In such a situation which action the Department proposes to take, need to be specifically stated in the show-cause notice. It becomes all the more important when the action of blacklisting and/or forfeiture of earnest money/security deposit is to be taken, as the clause stipulates that such an action can be taken, if so warranted. The words "if so warranted", thus, assume great significance. It would show that it is not necessary for the Department to resort to penalty of blacklisting or forfeiture of earnest money/security deposit in all cases, even if there is such a power. It is left to the Department to inflict any such penalty or not depending upon as to whether circumstances in a particular case warrant such a penalty. There has to be due application of mind by the authority competent to impose the penalty, on these aspects. Therefore, merely because of the reason that Clause 27 empowers the Department to impose such a penalty, would not mean that this specific penalty can be imposed, without putting the defaulting contractor to notice to this effect. "

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33. When we apply the ratio of the aforesaid judgment to the facts of the present case, it becomes difficult to accept the argument of the learned Additional Solicitor General. In the first instance, we may point out that no such case was set up by the respondents that by omitting to state the proposed action of

> *blacklisting the appellant in the show-cause notice, has not caused any prejudice to the appellant. Moreover, had the action of blacklisting being specifically proposed in the show-cause notice, the appellant could have mentioned as to why such extreme penalty is not justified. It could have come out with extenuating circumstances defending such an action even if the defaults were there and the Department was not satisfied with the explanation qua the defaults. It could have even pleaded with the Department not to blacklist the appellant or do it for a lesser period in case the Department still wanted to blacklist the appellant. Therefore, it is not at all acceptable that non-mentioning of proposed blacklisting in the show-cause notice has not caused any prejudice to the appellant. This apart, the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the appellant."*

7. Applying the well settled principles of law to the facts of the present case as there is no specific notice issued to the petitioner proposing the blacklisting of the petitioner's firm and for the reasons mentioned herein above, the impugned order dated 11/09/2025, in so far as it blacklists the petitioner, is set aside.

Termination :

8. As far as the termination of the contract by respondent No.2 is concerned, the petitioner has an option of alternative remedy of Arbitration under the Dispute Resolution Clause i.e. Clause 49 of the "Conditions of Contract"

under the NIT. For the sake of convenience, the said clause is quoted below :-

(49). ***<u>Demand for arbitration:</u>***

In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the "excepted matters" referred to in Clause 62 of these Conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

(i) The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, given by the Railway. shall be referred to arbitration and other matters shall not be included in the reference.

(ii) The parties may waive off the applicability of sub-section 12 (5) of Arbitration and Conciliation (Amendment) Act 2015, if they agree for such waiver, in writing, after dispute having arisen between them, in the format given general conditions of contract for services.

(a) The Arbitration proceedings shall be assumed to have commenced from the day; a written and valid demand for Arbitration is received by the Railway.

(b) The claimant shall submit his claim stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

(c) The Railway shall submit its defence statement and counter claim (s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension granted by Tribunal. d) Place of Arbitration: The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or deference thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

If the contractor(s) does/do not prefer her/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways that the final bill is ready for payment. She/they will be deemed to have waived her/their claim(s) and the Railway shall be discharged and released of all liabilities under the contract in respect of these claims

9. It is a well-settled principle of law that when a remedy is available, writ jurisdiction under Article 226 of the Constitution should not ordinarily be exercised.

10. The Supreme Court in the matter of **State of H.P. and Others v Gujarat Ambuja Cement Limited & Another** reported in **(2005) 6 SCC 499** held that normally the High Court should not interfere if there is an adequate efficacious alternate remedy.

11. The Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 19 SCC 172**, reiterated that writ jurisdiction should not be invoked when a statutory forum is available and has not been availed.

12. In view of the aforesaid availability of alternative remedy of Arbitration, the petitioner is directed to raise the dispute regarding the termination of the Contract before the Arbitrator, if so advised.

13. In view of the above, the writ petition is allowed to the extent indicated above, leaving the parties to bear their own costs.

SD/-

(Bibhu Datta Guru)
Judge

SD/-

(Ramesh Sinha)
Chief Justice

Rahul/Gowri