

JVS.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15631 OF 2025

Peyush Traders	}	Petitioner
versus		
Union of India & Ors.	}	Respondents

Mr. C. K. Tripathi, Advocate for the Petitioner.

Mr. T. J. Pandian, Advocate for the Respondents.

**CORAM: SHREE CHANDRASHEKHAR, C.J. &
GAUTAM A. ANKHAD, J.**

DATE: 26th NOVEMBER 2025

Per, Shree Chandrashekhar, CJ :

Aggrieved by the order of debarment contained in the letter dated 5th November 2025, the petitioner-Firm has approached this Court.

2. The petitioner-Firm states that it was awarded the work under e-Tender Notice No. GEM/2024/B/4824252 for providing AC Coach attendants with linen distribution in trains at Pune Division, vide contract agreement dated 21st August 2024 for two years commencing from 28th August 2024 to 27th August 2026. In compliance of the tender conditions, the petitioner-Firm furnished bank guarantees dated 13th November 2024 for Rs.74,11,600/-. The petitioner-Firm gives details of the attendants provided by it in connection to performance of the work under the contract in paragraph no.9 of the writ petition which is reproduced as under: -

“9. The Petitioner states that as on the date contract was awarded to the Petitioner, there was in existence railway board's guidelines as regards provision of only 1 AC Coach attendant per workstation (Normally One workstation=2 AC Coaches) to maintain social distance norms on account of pandemic Covid 19 Pandemic guideline, due to this huge numbers of passenger complaints were being received on Rail Madat portal for delay in providing of Linen and

*Penalty was imposed upon the Petitioner, even after closer of complaint on Rail Madat portal. In that regard, Petitioner facing the problem, had addressed letter Dt: 16.01.2025 to the respondent No. 4 thereby informing respondent No. 4 that it was difficult for Petitioner to manage 1 attendant for 2 AC coaches as even after railway board's guideline to deploy 1 Attendant in 1 AC Coach, respondent No.4 had invited the tenders for providing 1 AC attendant in 2 AC coaches. The Petitioner also informed the respondent No. 4 in other division of Central Railway viz Solapur, Nagpur, there was provision of only 1 AC attendant to 1 AC Coach, and to expect Petitioner to deploy 1 AC attendant to 2 AC Coaches was discriminatory and arbitrary as with such an arrangement the AC Coach attendant of the petitioner was finding it difficult to manage 2 AC coaches. As a result there were being filed complaints by passengers on Rail Madat Portal against attendant and for that penalty was being imposed upon the Petitioner, compelling the Petitioner to deduct such penalty from the salary of the attendant inviting risk of attendant's abandoning the work due to deduction in salary. This was not limited only to the imposition of penalty upon the attendant and petitioner but even after payment of penalty, and closure of complaints on Railway Madat Portal, respondent No. 4 was still imposing penalty upon closed complaints. As such Petitioner requested respondent No. 4 vide letter Dt: 16.01.2025 to foreclose the contract from 01.02.2025 in respect of the LOA issued to them this is followed by further letter Dt:20.01.2025 by the Petitioner to respondent No. 4. The Copy of Letter Dt: 16.01.2025 and 20.01.2025. annexed hereto and marked **Exhibit "D"colly**.*

3. The petitioner-Firm further states that vide letter dated 16th January 2025, it made a request for foreclosure of the contract from 1st February 2025 but its request was not acceded to whereupon he wrote several letters including the letter dated 20th January 2025. On 17th April 2025, the petitioner-Firm received a letter regarding failure to maintain the linen distribution for trains and to provide AC coach attendants. In reply thereto, the petitioner-Firm submitted its response through the letter dated 30th October 2025 offering an explanation that it was facing the problem of managing two AC coaches with one AC coach attendant and that either contract should be revised or foreclosed. The petitioner also requested to withdraw notices dated 17th October

2025 and 27th October 2025. However, the impugned letter dated 5th November 2025 was issued by the Senior DME (C&W)/Pune on the following grounds: -

“8. Since the period of 7 days’ notice has already expired, the above contract stands rescinded in terms of Clause 7.4 of General Conditions of Contract and the balance services under this contract will be carried out independently without your participation. Your participation as well as participation of every member/partner in any manner as an individual or a partnership firm is hereby debarred from participation in the Bid for executing the balance services and your Performance Guarantee shall also be encashed/forfeited.

9. In addition, your participation as well as participation of every member/partner in any manner as an individual or a partnership firm is hereby debarred from participation in the bid for executing any work being tendered by the said Railway division for a period of two years from the date of issue of this letter.”

4. The learned counsel for the petitioner-Firm submits that no show-cause notice was issued by the Employer before proceeding to take a decision for debarment of the petitioner-Firm. The impugned letter dated 5th November 2025 has been issued under clause 7.4 of the general conditions of the contract but the show-cause notices issued to the petitioner-Firm are not in relation thereto. Clause 7.4 of the general conditions reads thus: -

“7.4 Determination of Contract Owing to Default of Contractor

If the contractor should-

- (a) Become bankrupt or insolvent, or*
- (b) Make an arrangement with or assignment in favour of her creditors, or agree to carry out the contract under a Committee of Inspection of her creditors, or*
- (c) Being a Company or Corporation, to into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or*
- (d) have an execution levied on her goods or property on the services, or*
- (e) Assign the contract or any part thereof otherwise than as provided in clause 4.5 of these Conditions, or*
- (f) Abandon the contract, or*

- (g) Persistently disregard the instructions of the Manager, or contravene any provisions of the contract, or*
- (h) Fail to adhere to the agreed programme of work by a margin of 10% of the stipulated period, or*
- (i) Have been imposed with maximum cumulative penalty as per clause 4.17.1, or*
- (j) Fail to remove materials from the site or to pull down and rectify service wherever applicable after receiving from the Manager notice to the effect that the said materials or works*
- (k) have been condemned or rejected under clause 4.25, 4.27 and 4.28 of these Conditions, or*
- (l) Fail to take steps to employ competent or additional staff and labour as required under clause 4.26 of the Conditions, or*
- (m) Fail to afford the Manager or Manager's representative proper facilities for inspecting the services or any part thereof as required under clause 4.29 of the Conditions, or*
- (n) Promise, offer or give any bribe, commission, gift or advantage either herself or through her partner, agent or servant to any officer or employee of the Railway or to any person on her or on their behalf in relation to the execution of this or any other contract with this Railway.*
- (o) At any time after the bid relating to the contract, has been assigned and submitted by the contractor, being a partnership firm admits as one of its partners or employees under it, or being an incorporated company elect or nominate or allow to act as one of its directors or employee under it in any capacity whatsoever, any retired officer of the Gazetted rank or any other retired Gazetted officer working before her retirement, whether in the executive or administrative capacity, or whether holding any pensionable post or not, in the Railways for the time being owned and administered by the President of India before the expiry of one year from the date of retirement from the said service of such officer, unless such officer has obtained permission from the President of India or any officer duly authorised by her in this behalf, to become a partner or a director or to take employment under the contract as the case may be, or*
- (p) Fail to give at the time of submitting the said bid:*
 - (i) The correct information as to the date of retirement of such retired officer from the said service, or as to whether any such retired officer was under the employment of the contractor at the time of submitting the said Bid, or*

- (ii) *The correct information as to such officers obtaining permission to take employment under the contractor, or*
- (iii) *Being a partnership firm, the correct information as to, whether any of its partners was such a retired officer, or*
- (iv) *Being in incorporated company, correct information as to whether any of its directors was such a retired officer, or*
- (v) *Being such a retired officer suppress and not disclose at the time of submitting the said bid the fact of her being such a retired officer or make at the time of submitting the said bid a wrong statement in relation to her obtaining permission to take the contract or if the contractor be a partnership firm or an incorporated company to be a partner or director of such firm or company as the case may be or to seek employment under the contractor.*

Then and in any of the said clause, the Manager on behalf of the Railway may serve the contractor with notices stipulated in the clauses 7.4.1, 7.4.2 & 7.4.3.”

5. To support his submissions, the learned counsel for the petitioner-Firm refers to the decisions in “*UMC Technologies Private Limited v. Food Corporation of India & Anr.*” (2021) 2 SCC 551 and “*Isolators and Isolators v. Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. & Anr.*” (2023) 8 SCC 607.

6. In “*UMC Technologies Private Limited*”, the Hon’ble Supreme Court observed as under: -

*“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This court in **Nasir Ahmad v. Assistant Custodian General, Evacuee Property, Lucknow and Anr.** has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person*

cannot be said to have been granted any reasonable opportunity of being heard."

7. The decision in "*UMC Technologies Private Limited*" has been followed by the Hon'ble Supreme Court in "*Isolators and Isolators*" with the following observations: -

"35. As regards the principles of law applicable to the case, we need not elaborate on various decisions cited at the Bar. Suffice it would be to take note of the decision in ***UMC Technologies Private Limited*** (supra) wherein, the substance of the other relevant decisions has also been duly noticed by this Court while explaining the principles governing such actions of debarment/blacklisting. Therein, this Court, inter alia, underscored the requirement of specific show-cause notice and referred to the settled principles in the following terms: -

13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad v. Custodian (Evacuee Property)* [*Nasir Ahmad v. Custodian (Evacuee Property)*, (1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting

has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

16. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in *Erusian Equipment & Chemicals Ltd. v. State of W.B.* (1975) 1 SCC 70 in the following terms: -

12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

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.

17. Similarly, this Court in *Raghunath Thakur v. State of Bihar*, (1989) 1 SCC 229 struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgment in that case is as follows: -

‘4. ... [I]t is an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order.’

18. This Court in *Gorkha Security Services v. State (NCT of Delhi)*, (2014) 9 SCC 105 has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts. It has been held thus: -

‘16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.’

19. In light of the above decisions, it is clear that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show-cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.”

8. On a glance at the order contained in the letter dated 5th November 2025, we gather that performance notices dated 17th April 2025 and 17th October 2025 were issued to the petitioner-Firm. Thereafter, the letters dated 23rd October 2025 and 24th October 2025 were also issued and that were followed by seven days' notice on 27th October 2025. The notices indicate that 89 passengers' complaints were received on the complaint portal before the notice period. After the performance notices were issued to the petitioner-Firm, 190 passenger complaints and during the 7 days' notice period, 158 complaints were received. The details of complaints so made have been cataloged in the letter dated 5th November 2025. It is recorded in the letter dated 5th November 2025 that sufficient time was given to the petitioner-Firm to improve its performance but no significant improvement was observed. In its reply dated 30th October 2025, the petitioner-Firm does not deny the complaints made against it and admits to the default. In paragraph no.4 of the letter dated 5th November 2025, the attention of the petitioner-Firm was drawn to several other non-compliances which read as under: -

"4. Your firm's attention was also invited to following non compliances against contractual obligations as per terms and conditions of the subject contract:

- During incoming of tranis at Pune Station ACCA needs to ensure folding of all soiled linen and blankets which is not being done on the regular basis due to which upper deck maintenance is getting hampered.*
- ACCA staff or supervisor are not present during counting of soiled and even if they are present, they refuse to sign on linen hand over sheet.*
- There Distribution of the linen is not being done intime and no of complaints for delay in providing linen to passengers is increasing.*
- Your staff is behaving irresponsibly and does not respond to Rail Madad calls to resolve passenger complaints timely.*

- *Collection of linen from passenger is not being done before end of the journey.*
- *Non deployment of any staff in entire train, details as under:*
 - i. Train No. 01475/76 on 23.10.2025*
 - ii. Train No. 01409/10 on 25.10.2025*
 - iii. Train No. 01453/54 on 26.10.2025*
 - iv. Train No. 01401/02 on 26.10.2025*
 - v. Train No. 01401/02 on 28.10.2025 (Performance Notice period)***

As there was no ACCA staff in the entire train services mentioned above, it hampered the linen distribution services and resulted into increase in passenger complaints as furnished in the above table.

Poor performance & services of Provision of linen to passengers is an important activity, which had resulted into increase in passenger complaints affecting the Railway image severely which is not acceptable.

Hence, the your firm was instructed to improve your performance however it is deteriorating in recent days.”

9. In the contractual matters, the power of judicial review in exercise of the jurisdiction under Article 226 of the Constitution of India is very limited. Except in cases where it is demonstrated on the face of the records that the action taken by the Employer was arbitrary, illegal or so outrageous that no Employer could have taken such a decision, the writ Court shall not entertain a writ petition pertaining to a decision taken in the contractual matters; *mala fide* being one of such grounds. In its response through the letter dated 30th October 2025, the petitioner-Firm offered an assurance to the Employer that the services of ACCA shall start to the satisfaction of the Railway administration after the festive season is over. The petitioner-Firm tendered a further promise in the said letter that it would try its best to provide linen distribution services by deploying adequate ACCA staff. With such factual background, the reference to the decisions in “*UMC Technologies Private Limited*” and “*Isolators and Isolators*” shall not provide any

help to the petitioner-Firm to challenge the letter dated 5th November 2025. As indicated in the general terms and conditions, the Employer has power to debar a contractor for two years under clause 4.11.8 which reads thus: -

“4.11.8 Whenever the contract is rescinded, the Performance Guarantee shall be encashed/forfeited. The balance work or services for the same shall be got done independently without risk & cost of the failed contractor. The failed contractor shall be debarred for a period of 2 years from the date of such rescindment from participating in the bid which includes delivery of balance services of failed contract. If the failed contractor is a Partnership firm, then every member/partner of such a firm shall be debarred for a period of 2 years from the date of such rescindment from participating in the bid which includes delivery of balance services of failed contract in his/her individual capacity.”

10. Having regard to the series of notices issued to the petitioner-Firm, this is not correct to say that the petitioner-Firm was not issued any show-cause notice or had no knowledge that the order of debarment is one of the consequences which could have been imposed upon it. Being a party to the contract, knowledge to the terms and conditions of the contract must be inferred to the petitioner-Firm. There is no illegality or arbitrariness in the decision taken by the Employer. The rail services are necessary for the general public and the Employer could not have waited endlessly awaiting compliances by the petitioner-Firm.

11. In view of the aforesaid, Writ Petition No. 15631 of 2025 is dismissed.

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[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]