



W.P.No.6870 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 25.02.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.6870 of 2025
and W.M.P.No.7562 of 2025

Satvat Infosol Private Limited
Represented by its Director
Mr.Ramesh KJ
Registered Office at:
Flat No.1A, 1st Floor
No.32, Devadaya Apartments
1st Main Road, Gandhi Nagar
Adyar, Chennai – 600 020.

Presently at
No.23, III Floor, Nibav Building
Lattice Bridge Road, Adyar
Chennai – 600 020.

.. **Petitioner**

Vs.

Bharatiya Nabhikiya Vidyut Nigam Ltd.,
Represented by Executive Director (HR) /
DGM (CMM)
Kalpakkam, Chengelpattu District
Tamil Nadu – 603 102.

.. **Respondent**



W.P.No.6870 of 2025

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the respondent to amend the tender bearing tender No.BHAVINI/GEM/CMM/HR/2024/245 dated 28.01.2025 in consonance with the 'Guidelines on Debarment of Firms from Bidding' dated 02.11.2021 issued by the Department of Expenditure, Ministry of Finance by removing the arbitrary requirement that the bidder should not have been blacklisted by any Government or PSU on the day of bidding and to consequently permit the petitioner to participate in Tender bearing Tender No. BHAVINI/GEM/CMM/HR/2024/245 dated 28.01.2025 and pass such further or other orders.

For the Petitioner : Ms.Ashwini Vaidialingam

For the Respondent : Mr.S.Senthil Nathan

ORDER

This writ petition is filed to direct an amendment to the tender bearing No. BHAVINI/GEM/CMM/HR/2024/245 dated 28.01.2025, in accordance with the guidelines on the debarment of firms from bidding dated 02.11.2021 issued by the Department of Expenditure, Ministry of Finance. The petition seeks to remove the arbitrary requirement that the bidder should not have been blacklisted by any government or PSU on the day of bidding and consequently



W.P.No.6870 of 2025

allow the petitioner to participate in the aforementioned tender.

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2. The case of the petitioner is that they were blacklisted by the Government of Jharkhand by an order dated 25.04.2024. The petitioner has already challenged this order, and as of now, the Special Leave Petition remains pending before the Hon'ble Supreme Court of India. Meanwhile, the impugned tender has been floated by the respondent. The respondent is a company wholly owned, sponsored, and operated by the Government of India, Ministry of Finance, Department of Atomic Energy. The eligibility criteria in the impugned tender includes the following clause,

“The bidder should not have been blacklisted by any Govt. or PSU on the day of bidding. An affidavit in this respect that their firm is not blacklisted as cited above shall be provided by the bidder along with the bid amount.”

3. According to the petitioner, since the respondent is an organisation under the Government of India, it is bound by the debarment guidelines issued by the Government of India in its orders dated 07.12.2021 and 02.11.2021, which are applicable to the Department of Atomic Affairs, and it has expressly



W.P.No.6870 of 2025

WEB COPY

adopted these guidelines. According to said guidelines, if any person is blacklisted, the same applies only to the concerned Ministry. If the agency believes that the person should be blacklisted across all Ministries, a specific procedure is outlined in guideline No. 11, where a note must be sent to the Department of Expenditure, which will review the issues before issuing orders. If the relevant person is debarred by following this procedure across the board, the debarment can be enforced; otherwise, a debarment by one agency should not affect contractors/bidders throughout the country in other sectors.

4. In this context, the petitioner wrote to the respondent through its representative and sought clarification that the blacklisting mentioned in the tender document would only pertain to the blacklisting as per the debarment guidelines. The respondent refused to provide clarification and reiterated that they would strictly adhere to the tender conditions alone. Under these circumstances, the petitioner is now before this Court.



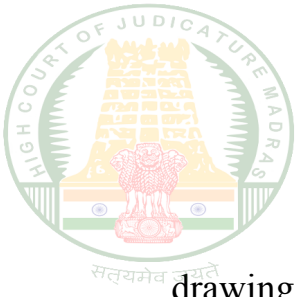
W.P.No.6870 of 2025

WEB COPY

5. *Ms.Ashwini Vaidialingam*, the learned counsel representing the petitioner, took this Court through the debarment guidelines and specifically pointed out that the procedure regarding debarment, as well as the documents, must align with these guidelines. By referring to guideline No. 25, she submitted that the bidding documents should be suitably amended. The respondent should not have included such an omnibus clause in the tender document, which excludes any person blacklisted by any Government Organization or PSU. They should have clearly articulated their tender conditions to comply with the debarment guidelines. Since the guidelines adopted by the Department are mandatory, failing to follow them renders the tender conditions arbitrary. Even after the petitioner submitted a representation, the respondent did not respond, leading to the Writ Petition.

6. *Ms.Ashwini Vaidialingam*, the learned counsel would also rely on the Division Bench judgment of the High Court of Orissa in ***VA Tech Wabag Limited Vs. Steel Authority of India Limited and Another***¹, particularly

¹ (2023) SCC OnLine Ori 5356



W.P.No.6870 of 2025

WEB COPY

drawing the attention of the Court to paragraph No. 27. She would submit that the Court considered an identical issue, where the prospective bidder was also banned by another State Government PSU, and there also the party having lost the first round of challenge to the blacklisting order, with the appeal pending. In similar circumstances, the judgment holds that when the Department's rules are clear that for a blacklisting or debarment must be valid across all organizations, a particular procedure is prescribed and in the absence thereof, the debarment shall not be bar. Therefore, the tender conditions to the contrary should be interfered with by this Court.

7. I have also heard *Mr. S. Senthil Nathan*, the learned counsel appearing on behalf of the respondent.

8. It is true that under similar circumstances, the Division Bench of the High Court of Orissa has ruled that unless the procedure related to debarring in all Ministries and Departments is followed, it should not be applied to the bidder. The entire paragraph No. 27 is extracted hereunder:-



W.P.No.6870 of 2025

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“27. However, emphasis was laid by the learned counsel for the petitioner on the interim order passed by High Court of Delhi, where the order of banning by Delhi Jal Board was challenged. The banning order dated 15.10.2020 of Delhi Jal Board made it clear the petitioner cannot participate in any bidding process in respect to the projects directly or indirectly connected with Delhi Jal Board. Therefore, the said prohibition cannot be extended to the projects where Delhi Jal Board does not concern. In view of the office memorandum dated 02.11.2021 issued by the Central Government, wherein it has been envisaged that every blacklisting order cannot be made the basis of debarring a firm across all Ministries/Departments. Rather, it envisages a multi tied approach for debarring a firm across various departments. The office memorandum also provides that if an action of debarment across Ministries/Departments is to be taken, then the Ministry of Finance, Department of Expenditure, Government of India has to apply its mind as to whether such an action is justified or not by considering all the relevant papers and documents. This shows that debarment across all Ministries is not automatic and has to be done on a case-to-case basis and only by the said Ministry. Therefore, in absence of any such decision by the Ministry of Finance in terms of office memorandum dated 02.11.2021, the petitioner cannot be prevented from participating in the tenders invited by any other Government organizations except Delhi Jal Board.”

9. However, with due respect to the Hon'ble Division Bench of the High Court of Orissa, I cannot subscribe to the said opinion. Firstly, in a tender, it is within the authority/the tendering issuing body to frame its conditions. No malafide intent or unreasonableness can be alleged against a clause stating that a person who has been blacklisted by any government or PSU organisation will be ineligible. The only argument made is that it directly contravenes the guidelines



W.P.No.6870 of 2025

issued by the Government of India.

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10. After a complete reading of the guidelines issued vide office memorandum dated 02.11.2021, it can be seen that they are issued under Rule 151 of the General Financial Rules, 2017. The said rule is extracted hereunder for ready reference:-

“Rule 151 Debarment from bidding.

(i) A bidder shall be debarred if he has been convicted of an offence

(a) under the Prevention of Corruption Act, 1988; or

(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.

(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.

(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.”



W.P.No.6870 of 2025

WEB COPY

11. The rule prescribes the procedure for debarment or blacklisting by the Government of India. It states that if any person is convicted of offenses under the Prevention of Corruption Act, 1988, the Indian Penal Code, or any other law currently in force that causes loss of life or property, or poses a threat to public health as part of the execution of a public procurement contract, that person will be debarred. Further debarment can be made by the procuring agency. The duration of debarment is also specified, and it is stipulated that debarment cannot occur without providing an opportunity for a hearing. Therefore, what is contemplated under GFR 151 is the method by which debarment should be carried out by the Government of India. By the office memorandum dated 02.11.2021, additional guidelines were issued regarding the aforementioned debarment rule. These guidelines classify debarment into two types, allowing the concerned Ministry to propose debarment limited to that Ministry or to extend the debarment beyond the jurisdiction of the particular Ministry to cover all Central Ministries and Departments.



W.P.No.6870 of 2025

WEB COPY

12. When the specific Ministry believes that the debarment should encompass all Central Ministries/Departments, a different procedure is required: the Ministry must approach the Department of Expenditure, which will issue the order after following the established process. Guideline No. 1 is extracted hereunder:-

“The Guidelines are classified under following two types:

- (i) In cases where debarment is proposed to be limited to a single Ministry. the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.
- (ii) Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry I.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).”

13. Guideline No. 11, relied upon by the learned counsel for the petitioner, is extracted here for ready reference:

“Debarment across All Ministries/ Departments

11. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary



WEB COPY



W.P.No.6870 of 2025

orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.”

Guideline No.25 reads as follows:-

“25. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines within two months of issue of these Guidelines. Further, bidding documents must also be suitably amended, if required.”

14. Therefore, after reading the guidelines issued by the Government of India, one can only conclude that a procedure has been established to debar a person from participating in bids. I believe it is entirely different for the respondent Company to issue a tender and impose a condition that a person who is blacklisted by another Government or PSU should also be excluded from participation. Continuously raising the bar and expecting better conduct from the bidders cannot be considered unreasonable or unfair.

15. The petitioner cannot succeed on the basis of the guidelines because :

(a)The guidelines will only be applicable concerning the exercise of passing

an order related to the debarment of a person by the Government of India.



W.P.No.6870 of 2025

WEB COPY

Therefore, they cannot be applied to challenge a tender condition. The government can have a set of rules for debarment. But there cannot be any estoppel or legitimate expectation to claim that they shall only stick to the same while issuing tenders. Both are mutually exclusive exercises.

(b) It can be seen that guideline 1(ii) indicates that it pertains to covering all the Central Ministries, and hence, these guidelines cannot be expected to be followed by the State Governments or PSUs under the State Governments. Consequently, it cannot be expected that if a concern is blacklisted by any PSU run by the state government, the respondent should overlook the same and award the contract. Such a view is thus fallacious and against public interest;

(c) Further, these guidelines cannot be expected to apply to the current case, namely, the respondent—PSU, which is not an integral part of the Ministry itself. To extend the guidelines, a board resolution from the respondent—Company would be required.

16. Therefore, for all the aforementioned reasons, I cannot accept the submission made by the learned counsel for the petitioner, though brilliantly put



W.P.No.6870 of 2025

WEB COPY

across. Conversely, the respondent is an organisation that operates the atomic power unit at Kalpakkam. While recruiting employees, it imposes such a condition, and upon examining the nature of the disability, the petitioner is barred due to an allegation related to a question paper leak, which has also been upheld by the High Court. This situation clearly illustrates why the guidelines cannot be applied in the case of a tender and how the authorities that issue tenders are entitled to impose their own conditions, which apply to everyone equally.

17. For all the aforementioned reasons, this Writ Petition is dismissed. No costs. Consequently, the associated miscellaneous petition is closed.

25.02.2025

Neutral Citation : Yes

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To
The Executive Director (HR) /
DGM (CMM)

Page 13 of 15



W.P.No.6870 of 2025

Bharatiya Nabhikiya Vidyut Nigam Ltd.,
Kalpakkam, Chengelpattu District
Tamil Nadu – 603 102.

D.BHARATHA CHAKRAVARTHY, J.

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W.P.No.6870 of 2025