

W.P.No.11098 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDERS RESERVED ON : 22.04.2025

ORDERS PRONOUNCED ON : 22.05.2025

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.11098 of 2025
and
W.M.P.Nos.12523 & 12524 of 2025

1. M/s.Global Infra Solutions,
F-2, E-8/11A, Sukhsagar Apartment,
Trilanga, Bhopal – 462 039.
Madhya Pradesh,
Though its sole Proprietor,
Mr.Sandeep Singh
2. Dhruv Consultancy Services Limited,
501, Pulkit Plaza, C.B.D.Belapur,
Navi Mumbai – 400 614,
Through its Authorized Representative,
Mr.Sandeep Singh.
3. M/s.MS Consultant,
E-8/11A, Sukhsagar Apartment,
Trilanga, Bhopal – 462 039.
Madhya Pradesh,
Though its Partner,
Mr.Sandeep Singh

.. Petitioner

/versus/

1. Union of India,



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Through the Secretary,
Ministry of Road Transport & Highways,
Transport Bhawan,
1, Parliament Street, New Delhi - 110 001.

2. National Highway Authority of India,
O/o. Regional Officer,
Chennai Region,
5th Floor, CMRL Building,
Poonamallee High Road,
Koyembedu, Chennai – 600 107.

Also at:
Corporate Office,
G-5 & 6, Sector – 10, Dwarka,
New Delhi - 110 075.

3. National Highway Authority of India,
Project Implementation Unit- Krishnagiri,
259/1, Salem Main Road,
Near KAKC Petrol Bunk,
Krishnagiri - 635 001.
Tamil Nadu.

.. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, to call for the records of the second respondent pertaining to impugned order in NHAI/11021/16/PIU-K'giri/2023/834/33/(243693) dated 11.03.2025 debarring the petitioner from participating in future bids for a period of 2 years and quash the same.

For Petitioners : Mr.Rajive R.Raj



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for Mr.A.R.Ramanathan

For R1

: Ms.P.J.Anitha
Central Government Standing Counsel

For R2 & R3

: Mr.A.R.L.Sundaresan
Additional Deputy Solicitor General
assisted by Ms.S.R.Sumathy

ORDER

A. The Writ Petition:

This writ petition challenges the impugned order in NHAI/11021/16/PIU-K' giri/2023/834/33/(243693) dated 11.03.2025, which debarred the petitioners as consultants for a period of two years and prohibited them from participating in future bids during this period, effective from 11.03.2025. The debarment was made without prejudice to any other actions that may be taken against the petitioners.

B. The Case of the Petitioners:

2. The case of the petitioners is that they are a consortium of three entities, all premier consulting engineering companies operating in India, providing Civil Engineering Consultancy to the Government, its agencies, and the private sector. Meanwhile, the second respondent invited bids for

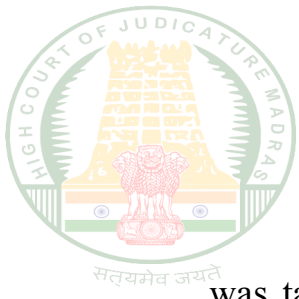


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Independent Engineering Services related to its work on “Four laning of Neraluru (Karnataka) -Thorapalli Agraharam (Hosur Taluk, Krishnagiri District) section of NH – 844 from Km. 0.000 to 23.350 (Design Chainage) under Bharatmala Pariyojna Phase -I (National Corridor) on Hybrid Annuity Mode in the State of Tamil Nadu and Karnataka (Package -I)”. According to the Request for Proposal (RFP), the petitioners participated and were judged as the highest-scoring bidder (H1), subsequently awarded the contract through a letter of award dated 15.12.2022. Following this, the consultancy agreement was executed on 11.01.2023. While the petitioners were fulfilling their obligations under the contract, a show cause notice dated 15.05.2024 was issued. This notice included seven allegations, and the petitioners were requested to provide an explanation. The petitioners submitted their explanation on 29.05.2024, detailing their responses to each allegation. Nevertheless, the impugned order dated 11.03.2025 was issued, resulting in a two-year debarment of the petitioners. Additionally, the petitioners' contract was terminated, against which separate proceedings have been initiated.

3. Regarding the debarment, the petitioners argue that the action



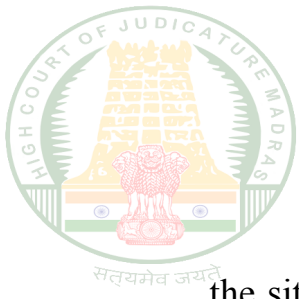
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was taken outside the scope of the contract agreement executed by the parties. Appendix N permits debarment only concerning specific actions, which are absent in this case. Moreover, when certain violations occurred by the concessionaire, they were acknowledged on the spot by the key professionals/team leader, who were solely sponsored by the second respondent. For the mistakes made by these professionals, actions are now being initiated against the petitioners. In fact, no action has been taken concerning any violations against the key professionals, the concessionaire, or the Project Director, who was present at the site while the work was being conducted. The action against the petitioners appears to be an attempt to make them scapegoats for the entire incident.

C. The case of the Respondents:

4. The writ petition is resisted by the respondents. The counter-affidavit has been filed by the third respondent. It is their case that after the execution of the contract agreement on 11.01.2023, the consultant's team leader also joined on 16.01.2023. When the concessionaire submitted the design and drawings on 24.01.2023, the petitioners approved the construction of box culverts on 21.02.2023 without taking



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the site conditions into account. No site observations were issued by the petitioners, and no instructions were provided to the concessionaire to stop construction. According to the agreement, Clause 4.4(c) requires prior approval from the authority in the event of the absence of any key professionals. The Resident Engineer cum Highway Engineer was absent from the site during February and March 2024. The team leader was absent from the site for more than 10 days in March 2024.

5. A show cause notice was issued in this regard. Despite repeated directions and reminders, several shortcomings on the part of the petitioners persisted. In light of these defaults, the Project Director, Krishnagiri, through communication dated 16.03.2024, recommended to the Regional Office, Chennai, that actions be initiated against the consultants. A detailed show cause notice was issued, and several allegations related to serial numbers 3(a), (b), (c), (d), and (e) in Appendix N were presented. The explanation offered by the petitioners was considered but deemed unacceptable. Consequently, the penalty of debarment for a period of two years was imposed. The grounds raised in the writ petition lack merit; thus, the writ petition is subject to dismissal.



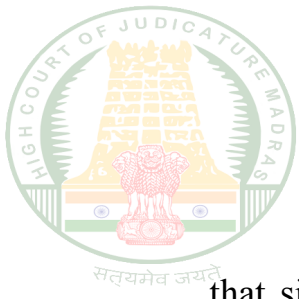
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D. The Arguments:

6. Heard *Mr.Rajive R.Raj*, the learned Counsel appearing for the petitioners. Firstly, he submits that no adequate and informed opportunity was granted to the petitioners. The show cause notice was generally given and was vague. It did not specify what deficiencies, as listed in clauses 3(a) to 3(e) in Appendix N, were present in the instant case. Therefore, the petitioners were unable to respond effectively. Furthermore, as per Clause 3 of Appendix N, the punishment of debarment can only be imposed if the discrepancies or lapses impact more than 1% of the construction cost, which is Rs. 484.74 crore, or if the time implication exceeds 5%. No such quantum of cost or time implication is indicated in the show-cause notice. Therefore, the show cause notice was issued.

7. The learned counsel for the petitioners would rely on the judgment of the Honourable Supreme Court of India in ***Gorkha Security Services vs. Government (NCT of Delhi) and others***, reported in 2014 (9) SCC 105, specifically pointing to paragraphs 19 and 20, and submit



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that since the show cause notice itself is vague, the impugned order of punishment, namely debarment, must be set aside by this Court. The learned counsel would contend that the show cause notice was issued for an alleged violation of Clause 3.1.1 of the General Conditions of Contract (GCC) and Clauses 4.1, 4.4, and 5.3 of the Terms of Reference (TOR) of the consultancy agreement. However, the punishment of debarment is to be imposed only for violations of Clause 3.2 of the GCC and Clause 13 of the TOR. Therefore, when these allegations were not specifically mentioned in the show cause notice, the entire exercise is illegal. When the petitioners was compelled to provide an explanation concerning other clauses, the debarment order was suddenly issued. Therefore, the authority cannot be allowed to change the goalposts while passing the order. Reference is made to paragraph 23 of the judgment of the Honourable Allahabad High Court in ***A.K Construction Company versus Union of India and others (Writ -C No. - 20223 of 2024)***.

8. Next, the learned Counsel appearing for the petitioners submits that the debarment order will have a cascading effect on the petitioners, as they will not be able to participate in any future bids. The petitioners

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employ more than 2,000 people, and the livelihoods of 1,500 families are affected. Upon perusal of the allegations, it is evident that the punishment of debarment is grossly disproportionate to the alleged deficiencies and discrepancies. First of all, it appears that the alleged deficiencies and discrepancies are rectifiable and were, in fact, rectified even before the debarment order was issued. In this view of the matter, and in light of the pronouncement of the Honourable Supreme Court of India in ***Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others, reported in 2014 (14) SCC 731***, specifically paragraphs 25 and 26, the impugned order is liable to be quashed.

9. The learned Counsel appearing for the petitioners would then submit that absolutely no action was taken against the team leader, Project Director, National Highway Authority of India (NHAI), or the concessionaire. The learned Counsel submits that it is evident that the team leader had to be selected from the INFRACON portal, which is maintained by the second respondent. The petitioners were required to choose the Team Leader solely from this panel. This individual approved the design on the spot without consulting the other professionals in the

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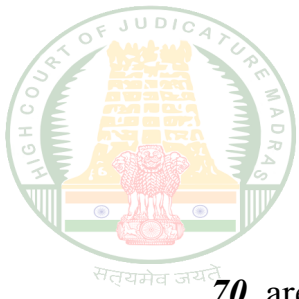


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petitioners' consultancy. Similarly, the Project Director was present at the site and signed the same. When lapses and deficiencies were subsequently discovered, it became evident that the primary mistake lay solely with the Team Leader and the Project Director. The concessionaire, who violated the terms of reference by making certain designs and constructions that were deemed incorrect by the second respondent, has not been held accountable at all. No action was taken against the Team Leader, Project Director, or the concessionaire; therefore, the impugned order of debarment is illegal, as it scapegoats only the petitioners for the mistakes of the other authorities.

10. Furthermore, the petitioners contend that debarment or blacklisting should not be imposed for ordinary breaches of contract or for every violation. Debarment is akin to capital punishment and amounts to the civil death of a company, commercially ostracising it and leading to serious consequences. The pronouncements in paragraphs 26 and 27 of the Honourable Supreme Court of India in ***Blue Dreamz Advertising Private Limited and another versus Kolkata Municipal Corporation and others reported in (2024) 8 S.C.R 189*** and ***Erusian Equipment and Chemicals Limited vs. State of West Bengal and another, 1975 (1) SCC***

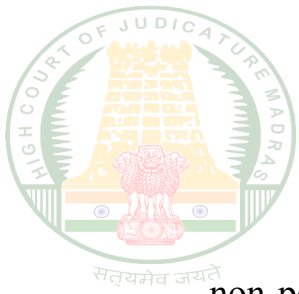


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70, are relied upon.
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11. The learned counsel would submit that, overall, there was no potential harm to the public interest. In such cases, especially when the construction had not been terminated, the rectifications were made, and the project was completed, the order of debarment ought not to have been passed.

12. Mr.A.R.L.Sundaresan, the Learned Additional Deputy Solicitor General of India, appearing for the second and third respondents, would draw the attention of this Court to the show cause notice dated 15.05.2024, which was issued by the second respondent. In the said show cause notice, in paragraph 2, seven specific allegations were made. While the show cause notice mentions explicitly that the violations of stipulations are noted under clauses 3.1.1 of the GCC and clauses 4.1, 4.4, and 5.3 of the TOR of the consultancy agreement, it also categorically mentions to show cause as to why action should not be initiated for debarment for a period of two years, apart from declaring the firm as a



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non-performer. Therefore, it cannot be said that the show cause notice is vague or that the impugned order travelled on any allegations beyond the scope of the show cause notice. In respect of these seven allegations, the petitioners have submitted a categorical reply.

13. Mr.A.R.L.Sundaresan, would then draw this Court's attention to Appendix N of the contract, which categorically mentions the types of deficiencies, the penal actions against key personnel, and the nature of actions to be taken. Under Appendix N, regarding any allegations falling within clauses 3(a) to 3(e), the key personnel and team leader are liable to be removed from the project and debarred for up to two years. It is also stated that, in the case of firms, in addition to rectifying deficiencies and taking adequate measures to prevent their recurrence, the consultant may be debarred for up to two years. Adverting to the nature of the allegations, he would submit that they clearly fall within clauses 3(a) to 3(e). Therefore, it is within the scope of the respondents' powers to have initiated the action and debar the petitioner for a period of two years.



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14. According to the learned Additional Solicitor General of India, this is not a case of permanent debarment. Therefore, the principles laid down by the Honourable Supreme Court of India regarding the civil death of a company, as in *Blue Dreamz Advertising and Eurasian Equipment(cited supra)*, do not apply in this case. He would submit that the Project Director of the National Highways Authority of India (NHAI) was never at fault. The Project Director has pointed out the absence of authorities and the errors that are committed by the concessionaire and key personnel from time to time. Therefore, action should be initiated against the petitioners as well as the other persons involved. As far as the concessionaire is concerned, it is not always advisable to terminate the concession. In the public interest, the concessionaire was instructed to rectify the defects and ensure that the constructions were carried out properly. The entire action was necessitated by the inaction of the petitioners. Therefore, action is being taken against them. The Team Leader is also chosen by the petitioners and is deemed to be an employee of the petitioners, not that of the second respondent. Therefore, the argument made in that regard is without merit.



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E. The Questions:

15. I have considered the rival submissions made on either side and examined the material record of the case. The following questions are raised for consideration:-

(a) Is the second respondent justified in initiating debarment proceedings against the petitioners?

(b) Is the impugned order liable to be quashed on the grounds that the show cause notice is vague?

(c) Is the impugned order based on any grounds not mentioned in the show cause notice?

(d) Is the punishment of debarment proportionate and appropriate?

F. Question (a).

16. The copy of the consultancy agreement signed between the parties on 11.01.2023 is filed, along with the General Conditions of Contract (GCC) and the Terms of Reference (ToR) for the independent engineer, including the respective appendices. The roles and functions of the independent engineer during the design stage, development period, and construction period are detailed in clauses 3, 4, and 5 of the ToR.



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Additionally, the penal actions to be taken against the independent engineer are outlined in Appendix N. The picture image is reproduced here for reference:

Appendix N: Penal Actions against independent Engineer (IE) and Concerned Key Personnel

1.1 Following penal actions shall be taken against independent Engineer in case of lapses on their part/deficiencies in services provided under this contract.

Sr.No.	Type of Deficiency	Penal Actions	
		Key Personnel	Firm
1 (a)	Failure to detect design / quality deficiency in Non-key Components*	For first three instances, key personnel may be kept on "watch list". Thereafter, the concerned key personnel &	i. For first three instances, to be kept on watch list.
1(b)	Failure to issue follow-up notices to contractor / concessionaire for delays in closure of NCRS, delays in furnishing detail of time & cost claims / COS / revised work programmes / work methodologies, etc.	Team Leader to be removed from the project and debarred up to 6 months.	ii. Thereafter, a monetary penalty of 1% of the consultancy fee (the aggregate of such penalties in a contract would not exceed the performance Guarantee amount) and /or declaring the consultant as Non-performer up to 6 months of till rectification of deficiencies# and taking adequate measures not to repeat such instances in future whichever is earlier.
1 (c)	Delays or submission of improper MPRS, improper review of methodologies, temporary works, QA plan / manual, O&M plan / Manual etc.		



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Sr.No.	Type of Deficiency	Penal Actions	
		Key Personnel	Firm
2 (a)	Failure to detect design / quality deficiency in key component** not having substantial cost (below 1% of civil work (cost) and / or time implication (below 5% or project completion period)	The concerned key personnel & Team Leader to be removed from the project and debarred up to 1 year.	Declaring the Consultant as Non-Performer up to 1 year or till rectification of deficiencies# and taking adequate measures not to repeat such instances in future, whichever is earlier.
2 (b)	Failure to detect deficiency in quantity executed vis-a-vis design not having substantial financial implication (below 1% civil work cost)		
2 (c)	Failure to conduct/witness tests as prescribed in the consultancy contract agreement		
2 (d)	Delay in processing EOT/COS proposals, inaccurate assessment of COS proposals, not issuing NCRs, delays / improper review of designs / drawings / work programme or failure to submit completion / Provisional Completion Certification as prescribed in contract.		



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Sr.No.	Type of Deficiency	Penal Actions	
		Key Personnel	Firm
3 (a)	Failure to detect deficiency in quantity executed vis-a-vis design having substantial financial implication (1% of civil work cost or more)	The concerned key personnel & Team Leader to be removed from the project and debarred up to 2 years.	In addition to rectification of deficiencies and taking adequate measures not to repeat such instances in future, the consultant to be debarred up to 2 years.
3 (b)	Failure to detect design / quality deficiency in key component having substantial cost (1% of civil work cost or more) and / or time implication (5% of project completion period or more)		
3 (c)	Failure to detect deficiency / not reviewing design (including temporary works) and construction (including methodology) of structural components of flyover / bridges / underpasses / overpasses / ROB / RUB etc.		
3(d)	Failure to propose action (like cure period notice, levy of damages, etc.) on contractor / concessionaire as per contract agreement for their default / poor progress having material adverse effect on the project implementation in		



Sr.No.	Type of Deficiency	Penal Actions	
		Key Personnel	Firm
	terms of cost (1% of civil work cost or more) and / time (5% of project completion period or more).		
3(e)	Improper / wrong interpretation of provision in contract agreement or wrong certification of payment / COS value / cost & time claims; or poor performance of services leading to cost (1% of civil work cost) and / or time (5% of project completion period) claims against NHAI awarded by DRB/CCIE/Arbitration / Court.		

17. Upon reviewing the documents, it is evident that if the allegations fall within clauses 3(a) to 3(e), the second respondent has the authority to debar the independent engineer/consultant for a period of up to two years. In this regard, the following allegations were included in the show cause notice, which are also considered in the impugned order:-

“Issue 1: The Profile submitted by the concessionaire deviated from the provision of the Concession Agreement as the design speed was considered



as 80 Kmph instead of 100 Kmph and Limited Gradient was adopted instead of Ruling Gradient. However, IE arbitrarily reviewed profile without verifying the scope of work and without furnishing any comment about the site conditions that warrants deviations from the Concession Agreement. Further IE not only failed to ascertain that the Profile of Main Carriageway is in accordance with the provisions of the Concession Agreement and Standards & Specifications, but also issued a letter no.026A dated 13.03.2023 (back dated & without submitting any copy to the Authority) thereby approving (as claimed by the concessionaire), the submission of concessionaire vide letter no.112 dated 16.03.2023 which is contrary to TOR of Independent Engineer and also contrary to CI.1.18 (a) of IRC:SP 84-2019, CI.12.2 (c) of CA and CI.4.1 of ToR of IE services. Further, IE letter dated 13.03.2023 contained reference to Concessionaire's submission dated 16.03.2023.

Issue 2: *Approval of the Drawings of Underpasses wherein the levels have been lowered w.r.t. adjoining ground levels and also the levels of the cross roads at Km 1+055, Km 2+881, Km 9+370, Km 9+370, Km 21+048 below OGL. Also construction of LVUP at Km 1+859 has not been aligned with the crossroads and the profile of MCW was lowered by the concessionaire as compared to the provisions of CA.*

Issue 3: *Approval of drawings of SVUP at Km 5+300 even after knowing about the discrepancy in highway profile at the said location.*



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Issue 4: *Lapse in supervision of work: Box culvert was constructed at Km 6+205 with a residential building on the downstream end.*

Issue 5: *Non-availability of Resident cum Highway Engineer for complete February 2024 and no response further.*

Issue 6: *IE certified that the concessionaire achieved Project Milestone II on 10.01.2024 without examining the provisions as per clause 3.2 of Schedule G of the concession agreement.*

Issue 7: *Failure to review the reports of the safety consultant.*

18. Thus, upon reviewing the same, it is clear that the repeated allegations fall within the scope of failing to detect deficiencies in the review of the design and construction of structural components of the project. It also constitutes a failure to propose action against the concessionaire, even though the 1% or 5% cost criteria are not categorically mentioned. However, with respect to the violation of clause 3(c), no such cost slab is required. When the allegations regarding the construction of box culverts are made, it highlights the inappropriate location of SVUP and underpasses that are situated without alignment with crossroads. It can be seen that the allegations levelled would fall



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within various clauses 3(a) to 3(e), more specifically 3(c). Therefore, I hold that the respondents are justified in initiating action for debarment against the petitioners.

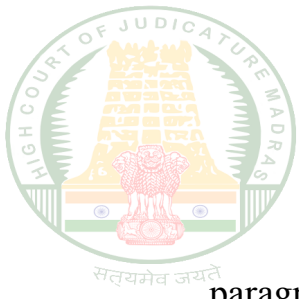
G. Question (b) & (c):

19. In the show cause notice dated 15.05.2024, paragraph 4 states as follows:

4. *Therefore, for above said deficiencies, a Show Cause Notice is hereby served to the Independent Engineer in terms of the Consultancy Agreement, as to why action should not be initiated against your firm for declaring your firm as a "non-performer" & **Debarment for 02 years period in terms of IE's Consultancy Agreement, NHAI Policy Circulars and Applicable Laws.** In case, consultant fails to submit an explanation within 15 days time, it shall be presumed that it has nothing to submit in this regard and the Authority is at liberty to initiate aforesaid action without any further notice to the consultant.*

(Emphasis supplied)

20. Thus, it can be seen that when the common show cause notice was issued regarding the declaration of the petitioner as a non-performer and debarment, the process for declaring non-performance was detailed in

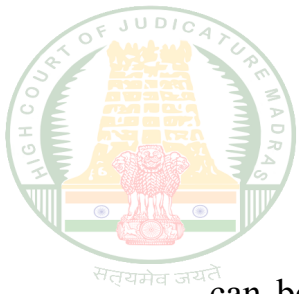


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paragraph 3. It cannot be claimed that the show cause notice is vague. Specific allegations are made, and an explanation is requested as to why debarment should not be imposed. Similarly, the impugned order addresses the seven items mentioned in the show cause notice and does not take into account any other extraneous reasons or materials when issuing the order of debarment against the petitioners.

21. On the merits of the allegations, after considering the entire averments made in the affidavit and the arguments presented, it can be seen that when the allegation of approving a wrongful design was raised, the respondents stated that the team leader made the decision on the spot. When questioned about the incorrect location of the box culverts, it was again submitted that the consultants were situated elsewhere. However, upon reviewing the Terms of Reference, it becomes evident that the consultants were responsible for both the design and construction stages. They were tasked with reviewing the drawings and documents during both the development and construction periods. Their roles and functions are clearly delineated in clauses 3, 4, and 5 of the ToR. Therefore, if one were to accept the arguments made on behalf of the petitioners, no role



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can be identified for them. Thus, when the team leader is part of their team, it is the responsibility of the independent engineering consultants to have their engineers on site, and they are accountable for any errors in design, execution, and construction. Consequently, I answer the questions (b) & (c) that the show cause notice is not vague and the impugned order does not take into account any grounds which is not mentioned in the show cause notice.

H. Question (d):

22. In the instant case, it can be seen that the allegations are levelled regarding the approval of the design stage, the execution stage, and the construction stage, where the box culverts are located in the wrong place, and constructions were made. The underpasses were located in the wrong place, and constructions were made. The entire job of the independent engineer seems to verify the original plan with reference to the terms of reference for the concessionaire and ensure that the design is properly made according to the standards of the second respondent and that the work is executed strictly in terms of the design. The allegations refer to lapses at every level. At each level, the petitioners claims that it is not their responsibility. The same cannot be accepted.



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23. Therefore, for such allegations that could lead to the loss of lives (for example, if underpasses are poorly located, accidents may occur when they are not situated optimally), this matter cannot be treated lightly. In any event, in this instance, the debarment does not result in civil death as it is a suspension, limited to two years. Therefore, it cannot be characterised as disproportionate, nor can the principles regarding civil death or permanent closure of the company's business be applied here, as the punishment is confined to a period of only two years. Consequently, the submissions made by the learned Senior counsel for the petitioner, based on the rulings of the Honourable Supreme Court in the *Blue Dreamz Advertising* and *Eurasian Equipment & Chemicals Limited cited* (supra), cannot be upheld.

24. The allegations made relate to every aspect of the project's execution. Therefore, merely because the concessionaire was given one more opportunity to rectify all the defects and because no disciplinary action has been taken against the team leader, the same would not enure to the benefit of the petitioners who are alleged to have failed in their



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actions at every stage. The receipt of the consultation fee is for performing these tasks. However, the pleading in respect of every charge is to disclaim responsibility; if accepted, one can see no role for the petitioners in the whole execution of the contract, and as such, the contention cannot be accepted. If allegations that are made are viewed in the context, it cannot be said that the debarment is either disproportionate or inappropriate.

I. The Result:

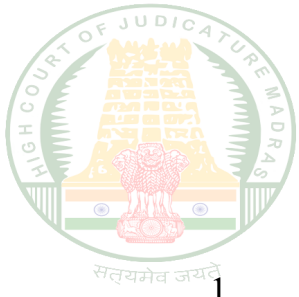
25. Finding no merits, this writ petition is dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

22.05.2025
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Neutral citation: Yes
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1. The Secretary, Union of India,
Ministry of Road Transport & Highways,
Transport Bhawan, 1, Parliament Street, New Delhi - 110 001.
 2. The Regional Officer,
National Highway Authority of India,
Chennai Region, 5th Floor, CMRL Building,
Poonamallee High Road,
Koyembedu, Chennai – 600 107.
- Also at:
Corporate Office,
G-5 & 6, Sector – 10, Dwarka,
New Delhi - 110 075.
3. National Highway Authority of India,
Project Implementation Unit- Krishnagiri,
259/1, Salem Main Road, Near KAKC Petrol Bunk,
Krishnagiri - 635 001, Tamil Nadu.

D.BHARATHA CHAKRAVARTHY,J.



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