



\$~231

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 189/2025 & CM APPL. 14603/2025, CM APPL. 14604/2025, CM APPL. 14605/2025, CM APPL. 14606/2025

NATIONAL HIGHWAYS AUTHORITY OF INDIA ...Appellant

Through: Mr. Santosh Kumar, Standing Counsel
with Mr. Devansh Malhotra and Mr.
Adithya Raman, Advocates.

versus

PANKAJ KUMAR

.....Respondent

Through: None.

%

Date of Decision: 11th March, 2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J. : (ORAL)

1. Present letters patent appeal has been filed assailing the impugned order dated 18.12.2024 passed by the learned Single Judge whereby the underlying writ petition being W.P.(C) 15218/2024 filed by the respondent was allowed and consequently, the circulars dated 29.07.2024 and 18.10.2024 issued by the appellant/NHAI whereby the respondent was debarred from all NHAI/MoRTH projects for a period of one year, were quashed.
2. It is the case of the appellant that an Engineering Procurement and Construction Agreement dated 15.06.2022 (EPC Contract) was executed between the appellant/NHAI and S.P. Singla Construction Private Limited (Contractor) for construction of highway for connection of Amritsar with Delhi-Amritsar-Katra Expressway on EPC mode. The EPC Contract needs expert



technical consultancy for which a third party technical consultant M/s. Rodic Consultants Pvt. Ltd. in JV with G-ENG Advisory Services Pvt. Ltd. (Consultant) was awarded the work for consultancy services for Authority's Engineer for supervision of the project *vide* agreement dated 10.01.2023. The respondent was appointed as Team Leader cum Senior Bridge Engineer in the said project of the appellant/NHAI by the Consultant.

3. It is further the case of the appellant that the respondent, through a letter dated 18.09.2023, unlawfully disregarded the mandatory approval of NHAI required under Clause 13.2(v) of Article 13 of the Concession Agreement and instructed the Contractor to proceed with the works under the Change of Scope (hereafter referred to as 'COS') without such approval of NHAI. Pursuant to this, the appellant/NHAI claims to have promptly taken cognizance of the matter and instructed the Contractor to halt any COS works until approval from the competent authority of NHAI was obtained. Thereafter, the appellant/NHAI issued circular dated 29.07.2024 whereby the respondent was debarred for a period of three years.

4. Subsequently, the respondent submitted a representation on 03.08.2024 requesting the appellant/NHAI for a personal hearing. It is stated that the respondent submitted further representations on 13.08.2024 and 23.09.2024, and after consideration of the respondent's case, the debarment was reduced from three to one year *vide* another circular dated 18.10.2024 issued by the appellant/NHAI.

5. Mr. Santosh Kumar, learned counsel for the appellant/NHAI submits at the outset that learned Single Judge has misinterpreted and misconstrued the import and purport of the letter dated 18.09.2023 issued by the respondent. By drawing attention to the said letter, he emphasizes that though in the first



paragraph, the respondent indeed refers to Clause 13.2 (v) of the Contract Agreement yet in para 2 therein, expressly permits the Contractor to proceed with the construction work. He contends that it is this permission which has been granted by the respondent that is contrary to the Clause 13.2 (v) of the Contract Agreement. In order to support the aforesaid argument, the learned counsel refers to Clause 13.2 (v) to urge that the said instruction, *vide* letter dated 18.09.2023, by the respondent to the Contractor to proceed with the COS work without approval of NHAI is violative of the aforesaid terms and the appellant was fully justified in taking the action impugned before the learned Single Judge.

6. Learned counsel also emphasizes that the respondent has a history of non-performance in the past which the learned Single Judge did not take into consideration while passing the impugned judgement. According to him, the past non-performance of the respondent is a material consideration while deciding as to whether the respondent should be debarred. On a pointed query, learned counsel for the appellant fairly concedes that no show cause notice was ever issued to the respondent in the aforesaid context.

7. Learned counsel also sought to impress upon this Court that violation of principles of natural justice as held by the learned Single Judge, even if assumed in favour of the respondent, could only entail quashing of the impugned debarment notice with appropriate liberty to the appellant to issue a show cause notice in respect of proposed debarment but could not have entailed quashing of the said debarment notice/circular on merit.

8. We have heard learned counsel for the appellant and are unimpressed with the submissions made across the bar.



9. Concededly, in the present case no show cause notice was issued to the respondent calling upon him as to why the order of debarment be not passed against him. On the short point itself, we find stark violation of the principles of natural justice necessarily entailing quashing of any such order/circular of debarment. It is trite, by unending catena of judgements, that no order of debarment/blacklisting etc. can at all be countenanced in the absence of, (i) issuance of an appropriate show cause notice clearly encapsulating the grounds of such debarment; and (ii) affording an opportunity of personal hearing to such individual. The judgements of the Supreme Court in ***Gorkha Security Services vs. Government (NCT of Delhi) and Ors.*** reported in **(2014) 9 SCC 105** and ***UMC Technologies Pvt. Ltd. vs. Food Corporation of India and Anr.*** reported in **(2021) 2 SCC 551** have clearly enunciated the law regarding applicability of principles of natural justice even in administrative law. It was observed that an order of blacklisting or debarment is stigmatic in nature and precludes such person or an entity from participating further in government tenders in all probability entailing civil death. In such cases, it was held that such proceedings ought to precede by issuance of a mandatory show-cause notice specifying the charges leveled clearly in order to enable such individual or entity to meet the said charges. Short of such adherence to principles of natural justice, any action undertaken *de hors* such mandate ought to necessarily be deprecated and quashed. As such, on this issue itself, the impugned judgement is upheld.

10. So far as the contention of learned counsel for the appellant regarding the import and purport or interpretation of the letter dated 18.09.2023 is concerned, the same is unpersuasive and does not commend to us. From the submissions so made, it is manifest that learned counsel for the appellant/NHAI is reading the contents disjunctively. It is trite that the literal interpretation which is to be



adopted ordinarily would propel an interpretation which would require harmonious reading of the entire letter instead of dissecting them in parts and using them selectively as per convenience. Once read harmoniously, it is apparent that the respondent had cautioned the Contractor in the first para of the letter by referring to the relevant Clause of the Contract Agreement and in the penultimate paragraph, has clearly stated that the cost of construction shall be as per the provisions of Contract Agreement and adjusted “*after the approval of COS proposal by the Competent Authority*”. Thus, we do not find any contradiction or disharmony between the two paragraphs and in our opinion, the respondent had not granted any unilateral permission for the COS proposal without obtaining the necessary approval from the competent authority of the appellant/NHAI. Thus, the said submission too is unmerited.

11. In so far as the reference to previous alleged non-performances are concerned, since admittedly no show cause notice had been issued in that regard, the said submission is unmerited.

12. It is worthwhile to refer to the judgement of Hon’ble Supreme Court in ***Vetindia Pharmaceuticals Ltd. vs. State of Uttar Pradesh and Anr. (2021) 1 SCC 804***, reiterating the same principles, relevant paragraphs of which are extracted hereunder:-

“9. Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70], held that there could not be arbitrary blacklisting and that too in violation of the principles of natural justice. In Joseph Vilangandan v. Executive Engineer (PWD) [Joseph Vilangandan v. Executive Engineer (PWD), (1978) 3 SCC 36] , this Court was considering a show-cause notice as follows : (Joseph Vilangandan case [Joseph Vilangandan v. Executive Engineer (PWD), (1978) 3 SCC 36] , SCC pp. 41-42, para 17)

“17. ... ‘You are therefore requested to show cause ... why the work may not be arranged otherwise at your risk and loss, through other agencies after debarring you as a defaulter ...’



The crucial words are those that have been underlined. They take their colour from the context. Construed along with the links of the sentence which precede and succeed them, the words “debaring you as a defaulter”, could be understood as conveying no more than that an action with reference to the contract in question, only, was under contemplation. There are no words in the notice which could give a clear intimation to the addressee that it was proposed to debar him from taking any contract, whatever, in future under the Department.”

(emphasis in original)

10. *The question whether a show-cause notice prior to blacklisting mandates express communication why blacklisting be not ordered or was in contemplation of the authorities, this Court in Gorkha Security Services [Gorkha Security Services v. State (NCT of Delhi), (2014) 9 SCC 105] held as follows :*

“27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show-cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show-cause notice, it can be clearly inferred that such an action was proposed, that would fulfil this requirement. In the present case, however, reading of the show-cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.

28. In the instant case, no doubt the show-cause notice dated 6-2-2013 was served upon the appellant. Relevant portion thereof has already been extracted above (see para 5). This show-cause notice is conspicuously silent about the blacklisting action. On the contrary, after stating in detail the nature of alleged defaults and breaches of the agreement committed by the appellant the notice specifically mentions that because of the said defaults the appellant was “as such liable to be levied the cost accordingly”. It further says ‘why the action as mentioned above may not be taken against the firm, besides other action as deemed fit by the competent authority’. It follows from the above that main action which the respondents wanted to take was to levy the cost. No doubt, the notice further mentions that the competent authority could take other actions as deemed fit. However, that may not fulfil the requirement of putting the defaulter to the notice that action of blacklisting was also in the mind of the competent authority. Mere existence of Clause 27 in the agreement entered into between the parties, would not suffice the aforesaid mandatory requirement by vaguely mentioning other “actions as deemed



fit". As already pointed out above insofar as penalty of blacklisting and forfeiture of earnest money/security deposit is concerned it can be imposed only, "if so warranted". Therefore, without any specific stipulation in this behalf, the respondent could not have imposed the penalty of blacklisting.

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."

11. If the respondents had expressed their mind in the show-cause notice to blacklist, the appellant could have filed an appropriate response to the same. The insistence of the respondents to support the impugned order [Vetindia Pharmaceuticals Ltd. v. State of U.P., 2019 SCC OnLine All 6734] by reference to the terms of the tender cannot cure the illegality in the absence of the appellant being a successful tenderer and supplier. We therefore hold that the order of blacklisting dated 8-9-2009 stands vitiated from the very inception on more than one ground and merits interference.

12. In view of the aforesaid conclusion, there may have been no need to go into the question of the duration of the blacklisting, but for the arguments addressed before us. An order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death. The repercussions on the appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred expressly because of the present impugned order. The possibility always remains that if a proper show-cause notice had been given and the reply furnished would have been considered in accordance with law, even if



2025:DHC:1637-DB



the respondents decided to blacklist the appellant, entirely different considerations may have prevailed in their minds especially with regard to the duration.”

13. In view of the above, we do not find any reason, much less a cogent reason to interfere with the sound judgement passed by the learned Single Judge and accordingly, the present appeal, alongwith the pending applications, is dismissed.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MARCH 11, 2025/rl