



2025:DHC:3659



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Judgment pronounced on: 13.05.2025**+ **W.P.(C) 11689/2023 and CM APPLs.45620/2023, 55598/2024**

M/S ORIENTAL SECURITY SERVICEPetitioner
Through: Mr. Shikhar Srivastava and
Ms. Perna Singh, Advocates.
versus

NORTHERN RAILWAY (DELHI DIVISION) & ORS.
.....Respondents
Through: Mr. Mukul Singh, CGSC alongwith
Ms. Ira Singh and Mr. Aryan Dhaka,
Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioner being aggrieved by the impugned termination letter /communication bearing No. 221-S/4/2/DEO/DLI Divn./(2022)/ML-IV dated 20.04.2023 (hereinafter '*the impugned order*') issued by the Assistant Divisional Mechanical Engineer (Power), Northern Railway NDCR Building (respondent no.3).
2. Pursuant to the impugned order, the following action has been taken against the petitioner –
 - (i) The ongoing contract / agreement between the parties has been terminated with immediate effect;
 - (ii) The petitioner has been banned from doing business with the Indian



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Railway for a period of five years

(iii) Performance Bank Guarantee and Security Money furnished by the petitioner has been forfeited in terms of the GCC.

3. The petitioner is a partnership firm engaged in providing security services, other man power services, maintenance of railway running rooms, canteens, office rest house, house keeping works, coach cleaning activities, bedroll services, sand filling works and other allied services. The petitioner firm was first constituted in 1985 with two partners- Sh. Pratap Chandra Samantaray and Ugrasen Samantaray, each having a 50% share in the firm.

4. Over the years, the petitioner / partnership firm came to be reconstituted from time to time. As per the partnership deed dated 25.02.2013 (hereinafter '*the earlier partnership deed*'), the profit-sharing ratio of the respective partners in the petitioner firm was agreed upon to be as follows –

- i. Pratap Chandra Samantaray – 51%
- ii. Sashibhushan Samantaray – 25%
- iii. Bibhuti Bhushan Samantaray – 24%

5. A deed of power of attorney dated 07.09.2015 was also executed between the partners, pursuant to which, Sh. Pratap Chandra Samantaray was appointed as the managing partner of the petitioner firm and was authorised to act on behalf of the petitioner firm *inter alia* in respect of tender/s.

6. On 16.05.2021, one of the partners – Sh. Sashibhushan Samantaray passed away. However, the petitioner firm continued to exist with the surviving partners.



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7. Thereafter, on 01.06.2021, a new partner – Sh. Biswabhushan Samantaray, was sought to be inducted into the petitioner firm in place of the deceased partner- Late Sh. Sashibhushan Samantaray and a deed of reconstitution of partnership deed dated 01.06.2021 (hereinafter '*the reconstituted partnership deed*') was executed whereby the share of the respective partners in the reconstituted partnership firm was agreed upon to be as follows –

- i. Pratap Chandra Samantaray – 51%
- ii. Biswabhushan Samantray – 25% [in place of Sh. Sashibhushan Samantaray (decd.)]
- iii. Bibhuti Bhushan Samantaray – 24%

8. Thereafter, a letter bearing reference no. 444/2022/055 dated 05.05.2022 was submitted by the petitioner firm before the Registrar of Firms, Odisha seeking approval of the reconstituted partnership deed. Till the said approval was awaited, the firm continued to operate in terms of the earlier partnership deed dated 25.02.2013.

9. On 22.08.2022, a tender was floated by the Northern Railway (Delhi Division) [respondent no.1] on the GeM Portal inviting bids for services relating to “provision of data entry operators feeding of CMS data generation of reports at diesel crew lobbies and control office New Delhi under Mechanical Power Wing and Accounts EDP Centre of Delhi Division” (hereinafter '*the tender in question*'). It is pertinent to note that as per the tender documents, the tender in question was scheduled to be opened on 12.09.2022.

10. The petitioner's bid bearing GEM/2022/B/2459214 was submitted on 12.09.2022. Along with the said bid, the petitioner submitted the earlier



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partnership deed dated 25.02.2013 along with the deed of power of attorney dated 07.09.2015.

11. However, on the next day, i.e. 13.09.2022, the reconstituted partnership deed dated 01.06.2022 was granted approval by the Registrar of Firms, Odisha *vide* certificate dated 13.09.2022.

12. Thereafter, on 15.09.2022, a fresh deed of power of attorney was also executed whereby Sh. Pratap Chandra Samantaray continued to act as the managing partner of the petitioner firm and the authorised representative of the petitioner firm, with respect to participation in tender/s.

13. On 06.12.2022, the petitioner's bid submitted on 12.09.2022 was declared as successful, and contract bearing GEMC-511687717465765 dated 06.12.2022 was awarded in favour of the petitioner. At the time of execution of the contract, the aforesaid reconstituted partnership deed dated 01.06.2021, along with the deed of power of attorney dated 15.09.2022, was duly communicated to the respondents by the petitioner.

14. Thereafter, on 11.04.2023, a show cause notice came to be issued by the Senior Divisional Mechanical Engineer (Power), Northern Railway [respondent no.2] on the ground that the petitioner had violated conditions in the tender document by having submitted, along with the bid documents, the earlier partnership deed instead of the reconstituted partnership deed wherein the name of Sh. Sashibhushan Samantaray (decd.) has been replaced with Sh. Biswabhushan Samantray as a partner in the petitioner firm. On this basis, it was stated therein that the non-submission of the reconstituted partnership deed dated 01.06.2021 amounts to concealment of facts by the petitioner. The said show cause notice reads as under –



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“Sub: “Provision of Data Entry Operators, Feeding of CMS data, generation of reports at Diesel Crew Lobbies and Control office under Mechanical Power Wing for the period of two years from the date of execution”

Ref.: GeM Contract no. GEMC- 511687717465765 dated 06.12.2022.

In reference to GeM Contract at above, the work was awarded to your firm. While participating in the tender, you have submitted/uploaded copy of Partnership deed Reconstitution on dated 25.02.2013 is as under:-

- 1) Sri Pratap Chandra Samantary- Managing Partner.*
- 2) Sashibhushan Samantary- Partner*
- 3) Bibhuti Bhushan Samantary- Partner*

During the course of formation of agreement, your firm has submitted partnership deed dated 01.06.2021 reveals that following three partners of the firm:-

- 1) Sri Pratap Chandra Samantary- Managing Partner.*
- 2) Biswabhushan Samantary- Partner*
- 3) Bibhuti Bhushan Samantary- Partner*

Railway Administration has taken this matters serious and it has been alleged that you have concealed the facts and declaration submitted by you to comply and certifying the truthfulness of all documents with the tender in Annexure XXII format with your tender documents and as per TD page no. 96 of 98, the Para 7 & 8 of the same certificate of truthfulness to be read as under:-

*Para 7. I/we undersigned that if the certificates regarding eligibility criteria submitted by us are found to be forged/false or incorrect at any time during the process for evaluation of tenders, it shall lead to forfeiture of the tender EMD besides banning of business for five years on entire Indian Railways. Further, I/we (insert name of the tenderer)**..... and all my/our constituents understand that my/our offer shall be summarily rejected.*

Para 8. I/we also understand that if the certificates submitted by us found to be false/forged or incorrect at any time after the award of the contract, it will lead to termination of the contract, alongwith forfeiture of EMD/SD and Performance guarantee besides any other provided in the



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contract including banning of business for five year.

You have also violated para 16.2, page 73 of 98 of TD and para 2.4.1.11.1(a), page 20 of TD. In view of above, in this regard, you are requested to clarify the above observations to avoid termination of contract on furnishing false/forged, incorrect Reconstitution of Partnership deed, which clearly shows breach of contract terms and conditions as mentioned above. If you failed to reply within seven days otherwise contract shall be terminated and banning of business for five years.”

15. The said show cause notice sought to terminate the contract dated 06.12.2022, awarded in favour of the petitioner, and ban the petitioner for a period of 5 years on the basis of the following clauses in the tender documents being violated by the petitioner–

- (i) Paragraph 2.4.1.11.1(a) of the General Conditions of Contract for Service;
- (ii) Paragraph 16.2 “Bid Form (second sheet)” appended as Annexure IIA to the General Conditions of Contract for Service forming part of the tender documents;
- (iii) Paragraph 7 & 8 of the Certificate in Annexure XXII of the tender document.

16. A response thereto was submitted by the petitioner on 17.04.2023, refuting the aforesaid allegations made by the respondent no.2. However, the Assistant Divisional Mechanical Engineer (Power), Northern Railway (respondent no. 3) proceeded to issue the impugned order dated 20.04.2023 on the sole basis that the petitioner had acted in violation of paragraph 16.2(b) of the General Conditions of Contract. The impugned order / communication reads as under –



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“Subject: Provision of Data Entry Operators, Feeding of CMS data, Generation of Reports at Diesel Crew Lobbies and Control office and under Mechanical Power Wing for the period of two years from the date of execution.

- Ref.: 1) Gem Contract No. GEMC-511687717465765 dated 06.12.2022
2) This office letter no. 221-S/4/2/DEO/DLI Divn (2022)/ML-IV dated 11-04-2023
3) Your office Letter No. 539/2023/055 dated 17/04/2023

In reference to GeM Contract at above, the work was awarded to your firm. While participating in the tender, you have submitted/uploaded copy of Partnership deed of your firm reconstituted on 25.02.2013 as under:-

- 1) *Sri Pratap Chandra Samantary- Managing Partner.*
- 2) **Sashibhushan Samantary- Partner**
- 3) *Bibhuti Bhushan Samantary- Partner*

During the course of formation of agreement, your firm has submitted partnership deed dated 01.06.2021 having following three partners of the firm which is different from the earlier deed submitted alongwith tender:-

- 1) *Sri Pratap Chandra Samantary- Managing Partner.*
- 2) **Biswabhushan Samantary- Partner**
- 3) *Bibhuti Bhushan Samantary- Partner*

In the partnership deed submitted by your firm at the time of agreement a new name Sh. Biswabhushan Samantary has appeared as member whereas in previous partnership deed dated 25.02.2013 Sh. Sashibhushan Samantary was shown as a partner. In Partnership deed dated 01.06.2021 partner Sh. Sashibhushan Samantary has been replaced by Sh. Biswabhushan Samantary as a partner.

Accordingly a show cause notice was served to you vide this office Letter No. 221-S/4/2/DEO/DLI Divn/(2022)/ML-IV dated 11-04-2023 to explain the partnership deed framed on 1st June, 2021 which was available with you, but not complied with at the time of participation of tender, thus, concealed the facts of constitution of firm and violated the para 16.2(b) of GCC page 73 of 98 of tender document.

Your request No. NIL dated 17/04/2023 has been examined carefully and no new facts noticed to review the matter. Railway administration has decided to terminate the contract with immediate effect and banning of



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business for five years on the entire Indian Railway. Performance Guarantee and Security Money submitted by your firm has been forfeited as per stipulated terms and conditions of GCC.

This has approval of Sr. DME/Power, New Delhi.”

17. Learned counsel for the petitioner has confined to assailing the aforesaid order to the extent it purports to ban the petitioner for a period of 5 years, from doing business with the Indian Railways. Learned counsel for the petitioner seeks liberty to raise its grievance as regards the termination of the agreement and forfeiture of the performance bank guarantee before an arbitral tribunal constituted in terms of Clause 8 of the General Conditions of Contract for Service.

18. Learned counsel for the petitioner submits that there was no concealment of facts by the petitioner or any impropriety in submitting the earlier partnership deed along with the bid documents, instead of the reconstituted partnership deed inasmuch as the reconstituted partnership deed had not been granted approval by the concerned Registrar of firms at the time when the bid was submitted by the petitioner on 12.09.2022 ; the partnership deed which was valid and subsisting at the relevant time was the partnership deed dated 25.02.2013.

19. Furthermore, learned counsel for the petitioner draws the attention of this Court to paragraph 16.4 of the Bid Form appended as annexure IIA in the tender documents which reads as under –

“16.4 After opening of the Bid, any document pertaining to the Constitution of the Firm/JV/Society etc. shall neither be asked nor be entertained/ considered.”

It is submitted that despite the aforesaid, the petitioner, voluntarily and in



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good faith, informed the respondents about the reconstituted partnership deed at the time of formation of the contract between the parties i.e. subsequent to the grant of approval by the concerned Registrar of Firms *vide* certificate dated 13.09.2022.

20. It is submitted that the reconstitution of the petitioner firm has no bearing on the capacity or standing of the firm; the firm continued to be represented by the same managing partner.

21. Learned counsel for the petitioner further submits that the impugned action to ban the petitioner's business by the respondents is unwarranted and disproportionate.

22. On the other hand, learned counsel for the respondents draws attention of this Court to a gazette notification dated 25.07.2022 appended as Annexure R-2 in the reply dated 10.09.2024, whereby, the reconstitution of the petitioner firm in terms of the deed of reconstitution of partnership deed dated 01.06.2021 was notified in the Odisha Gazette. The said notification reads as under –

“NOTICE

It is for information of all concerned that the partnership firm M/s Oriental Security Services bearing Regd. No. 91/1985, has been reconstituted with effect from the 1st June 2021 as follows:

- | | | |
|----|--------------------------------|--|
| 1. | Shir Pratap Chandra Samantary | Existing Managing Partner |
| 2. | Shri Bibhuti Bhushan Samantary | Existing Partner |
| 3. | Shri Biswabhusan Samantary | Incoming Partner |
| 4. | Shri Sashibhusan Samantary | Retiring Partner due to death on the 16 th May 2021 |

PRATAP CHANDRA SAMANTARY
Managing Partner”



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In view of the above, learned counsel for the respondents submits that the petitioner firm has concealed the death of one of its partners – Sh. Sashibhushan Samantaray as well as the consequent reconstitution of the petitioner firm inasmuch as the deceased partner had died on 16.05.2021 and a Gazette Notification notifying the reconstitution of the petitioner firm was issued on 25.07.2022, both of which are prior to 12.09.2022 i.e. when the tender was opened and the bid was submitted by the petitioner.

23. Learned counsel for the respondents also draws the attention of this Court to ‘Para D’ of the Tender Conditions and Instructions to Tenderers stipulating the ‘System of verification of tender’s credentials’ contained in the tender documents provides that the respondents are entitled to impose a ban on a contractor for a period of 5 years in case of wrong information being supplied; the same reads as under –

“‘D’ System of verification of Tender’s credentials:-

i) 2.6.2.1.3 The bidders shall submit an undertaking certifying the truthfulness of all the documents submitted / uploaded along with the tender. This shall be mandatory for all the bidders. In case of failure of the bidder to submit the undertaking, their offer shall be summarily rejected.(as per Annexure- XXII) (Advance correction slip no.2 of GCC for services, 2018)..

ii) The Railway reserves the right to verify all statements, information and documents submitted by the bidder in his tender offer, and the bidder shall, when so required by the Railway, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the railway shall not relieve the bidder of its obligations or liabilities hereunder nor will it affect any rights of the railway there under.

iii) In case of any wrong information submitted by tenderer, the contract shall be terminated, Earnest Money Deposit (EMD), Performance Guarantee (PG) and Security Deposit (SD) of contract forfeited and



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agency barred for doing business on entire Indian Railways for 5 (five) year

OFFERS WITHOUT CONFORMING TO THE ABOVE ELIGIBILITY CRITERIA AS ENUMERATED IN CLAUSE A, B, C & D ABOVE SHALL BE TREATED AS INELIGIBLE AND SUMMARILY REJECTED”

24. Respective counsel for the parties have been heard.

25. It is well settled that banning or blacklisting of a contractor has civil consequences with far reaching ramifications for the contractor. In this regard, it has been held in ***Erusian Equipment & Chemicals Ltd. vs State of West Bengal & Anr.*** (1975) 1 SCC 70 as under -

“15. The blacklisting order does not pertain to any particular contract. 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”.”

26. Furthermore, the Supreme Court in ***Blue Dreamz Advertising Pvt. Ltd. and Another v. Kolkata Municipal Corporation and Others*** 2024 SCC OnLine SC 1896, has held as under-

“26. In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.”

27. It is also well settled that the decision to blacklist a contractor is required to be tested on the anvil of the doctrine of proportionality. Reference in this regard may be made to the judgment of the Supreme Court in ***Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Others*** (2014) 14 SCC 731



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wherein it has been held as under –

“17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because “blacklisting” simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.”

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20. It is also well settled that even though the right of the writ petitioner is in the nature of a contractual right, the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. All these considerations that go to determine whether the action is sustainable in law have been sanctified by judicial pronouncements of this Court and are of seminal importance in a system that is committed to the rule of law. We do not consider it necessary to burden this judgment by a copious reference to the decisions on the subject. A reference to the following passage from the decision of this Court in Mahabir Auto Stores v. Indian Oil Corpn. [(1990) 3 SCC 752] should, in our view, suffice: (SCC pp. 760-61, para 12)

“12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court



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in Radhakrishna Agarwal v. State of Bihar [(1977) 3 SCC 457 : (1977) 3 SCR 249] In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. ... It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.”

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*25. Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. **What is notable is that the “debarment” is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.**”*

28. The impugned order proceeds to ban the petitioner for a period of 5 years solely on the basis of the petitioner having violated paragraph 16.2(b) of the “Bid Form (second sheet)” appended as Annexure IIA to the General



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Conditions of Contract for Service forming part of the tender documents.

The said paragraph reads as under –

16. The bidder whether sole proprietor, a limited company or a partnership firm if they want to act through agent or individual partner(s) should submit along with the tender, a power of attorney duly stamped and authenticated by a Notary Public or by Magistrate in favour of the specific person whether she/they be partner(s) of the firm or any other person specifically authorizing her/them to submit the tender, sign the agreement, receive money, witness measurements, sign measurement books, compromise, settle, relinquish any claim(s) preferred by the firm and sign “No Claim Certificate” and refer all or any dispute to arbitration.

16.1 The bidder shall clearly specify whether the bid is submitted on her own or behalf of a Partnership Firm/Joint Venture (JV)/Society etc. The bidder(s) who is/are constitutes of Firm, Company, Association or Society shall enclose self-attested copies of the Constitution of their concern, Partnership Deed and Power of Attorney along with their bid. Bid documents in such cases shall to be signed by such persons as may be legally competent, Association or Society, as the case may be.

16.2 The bidder shall give full details of the constitution of the Firm/JV/Company/Society etc. and shall also submit following documents (as applicable), in addition to documents mentioned above:

(a) Sole Proprietorship Firm: The bidder shall submit the notarized copy of the affidavit.

(b) Partnership Firm: The bidder shall submit self-attested copies of (i) registered/notarized Partnership Deed and (ii) Power of Attorney duly authorizing one or more of the partners of the firm or any other person(s), authorized by all the partners to act on behalf of the firm and to submit & sign the Bid, sign the agreement witness measurements, sign Measurement Books, receive payment, make correspondences, compromise/settle/relinquish any claim(s) preferred by the firm, sign ‘No Claim Certificate’, refer all or any dispute to arbitration and to take similar action in respect of all Bids/contracts OR said Bid/Contract.”

29. The aforesaid provision in the tender documents clearly sets out that the bidder is required to submit a ‘registered/notarized partnership deed’. In



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the present case, the entire issue revolves around the fact that the petitioner had failed to submit the reconstituted partnership deed dated 01.06.2021 at the time of submitting its bid and instead, submitted the earlier partnership deed dated 25.02.2013.

30. In this regard, it is relevant to advert to the following facts which have not been disputed by the respective parties –

- (i) The petitioner's bid with respect to the tender in question was submitted along with the earlier partnership deed dated 25.02.2013 on 12.09.2022. At that point of time, the reconstituted partnership deed had not yet been granted approval by the concerned Registrar of firms.
- (ii) The reconstituted partnership deed was granted approval by the concerned registrar of firms on 13.09.2022 i.e., after the bid had already been submitted by the petitioner.
- (iii) The reconstituted partnership deed was communicated to the respondents at the time of framing of the agreement between the parties.

31. In the aforesaid circumstances, it cannot be said that non-submission of the reconstituted partnership deed was an omission on the part of the petitioner which warranted the extreme action of inflicting a ban for a period of 5 years being taken against the petitioner.

32. There is some credence in the petitioner's explanation that it was under a *bona fide* belief that the reconstituted partnership deed could not have been submitted prior to grant of approval thereof by the concerned Registrar of firms. Importantly, the petitioner, pursuant to being declared the successful bidder, and at the time of formation of contract itself, voluntarily



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submitted the reconstituted deed of partnership to the respondents pursuant to certificate of approval dated 13.09.2022 being granted by the concerned Registrar of Firms.

33. Also, it is extremely pertinent that the non-submission of the reconstituted deed of partnership at the time of submission of bid by the petitioner had no bearing whatsoever on the capacity or standing of the partnership firm to participate in the tenders. Even in terms of the reconstituted partnership deed, the petitioner firm continued to be represented by the same managing partner i.e. Sh. Pratap Chandra Samantaray having a 51% profit share in the petitioner firm.

34. In the circumstances, it cannot be said that non-submission of reconstituted partnership deed at the time of submission of bid resulted in any “wrong information” being supplied to the respondents.

35. Moreover, the *bona fides* on the part of the petitioner is evident from the fact that in the immediate aftermath of the concerned Registrar of Firms according approval to the reconstituted partnership deed, the same was forthwith supplied to the respondents. It is notable that the respondents did not take any immediate action pursuant thereto. It was only on 11.04.2023 that a Show Cause Notice came to be issued by the Senior Divisional Mechanical Engineer (Power), Northern Railway [respondent no.2] upon the petitioner.

36. Significantly, it has not been disputed that the capacity of standing of the petitioner’s firm to participate in the bid is not impacted on account of reconstituted partnership deed. Thus, even assuming that the petitioner was remiss in supplying the same to the respondents at the time of submission of



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bid, the same was only a technical lapse having no bearing on the tender process and award of contract on the petitioner.

37. In any event, the same cannot be construed to be so egregious so as to warrant a ban for a period of 5 years. It is notable that the impugned order gives no rationale or justification in respect of the inordinately long period of ban imposed on the petitioner.

38. As such, the impugned order dated 20.04.2023 is not only unjustified, the same is also clearly disproportionate. In the circumstances, the present petition is allowed, the impugned order to the extent that it seeks to ban/blacklist the petitioner firm for a period of 5 years, is set aside.

39. The present petition stands disposed of in the above terms. Pending applications also stand disposed of.

SACHIN DATTA, J

MAY 13, 2025/dn