

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2038 of 2026**

M/s S. K. Traders through its Proprietor namely Shankar Kumar, aged about 51 years, (Male), Son of Jamuna Kumar Sahu, Residing at 30Kh, Dariyapur Gola, Birla Mandir Road, Opposite Church Gate, P.S.- Pirbahore, District-Patna- 800004.

... .. Petitioner/s

Versus

1. The Bihar Public Service Commission, Patna through its Secretary, 15, Nehru Path, Bailey Road, Patna- 800001.
2. The Chairman, Bihar Public Service Commission, Patna.
3. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

**Appearance :**

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|----------------------|---|--------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. S.S. Sundaram, Advocate<br>Mr. Ankit, Advocate<br>Mr. Aman Kumar, Advocate |
| For the Respondent/s | : | Mr. Sanjay Pandey, Advocate<br>Mr. Nishant Kumar Jha, Advocate                 |

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**  
**and**  
**HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**  
**ORAL ORDER**  
**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

2      12-02-2026                      Heard learned counsel for the parties.

2. The petitioner firm has filed the present writ application challenging the order dated 23.01.2026 passed by the Secretary, Bihar Public Service Commission, Patna, whereby its selection as the highest bidder (H-1) pursuant to the Short Term NIT dated 19.12.2025 was cancelled, its Earnest Money Deposit (EMD) of Rs. 1,00,000/- was forfeited and it was debarred for one year from participating in tenders issued by the Commission. The petitioner was subsequently intimated of the said decision through Memo No. 1718 dated 27.01.2026.



It is not in dispute that the petitioner had participated in the tender process within time and was declared H-1 after opening of technical and financial bids. However, before issuance of the work order, the petitioner was served with a show cause notice alleging concealment of information regarding its prior debarment for two years by Bihar State Text Book Publishing Corporation Limited (BSTBPC) vide order dated 01.01.2024 and submission of a false affidavit under Clause 6 of the NIT. Despite submitting a reply stating that the earlier order amounted only to limited debarment and not blacklisting, and that Clause 6 required disclosure only regarding blacklisting, the Commission proceeded to cancel the petitioner's selection, forfeit the EMD and impose debarment, leading to filing of the present writ petition.

3. Learned counsel for the petitioner submits that the impugned action of the respondent Commission is wholly arbitrary, illegal and dehors the terms and conditions of the NIT. It is submitted that the tender conditions must be strictly construed and the authority is bound by the four corners of the NIT. Clause 6 of the NIT merely required submission of a notarized affidavit regarding non-blacklisting and did not mandate disclosure of any prior debarment by any other



Government or Semi-Government body. The petitioner having complied with the explicit requirement of the clause, the respondents could not have read into it an additional condition equating “debarment” with “blacklisting.”

4. Learned counsel for the petitioner further submits that blacklisting and debarment are distinct legal concepts and cannot be interchangeably applied unless expressly provided in the tender document. In absence of a specific stipulation requiring disclosure of prior debarment, the Commission has travelled beyond the terms of the NIT and imposed penal consequences without contractual foundation. It is submitted that such action amounts to adding a new condition *post facto*, which is impermissible in law.

5. Learned counsel for the petitioner places reliance upon the judgment of the Hon’ble Supreme Court in ***Kimberley Club Pvt. Ltd. vs. Krishi Utpadan Mandi Parishad & Ors.***, wherein it has been categorically held that the terms of a Notice Inviting Tender must be clear and unambiguous and that the tendering authority cannot import conditions not expressly stipulated therein.

6. Learned counsel for the respondent Commission submits that the petitioner has deliberately suppressed material



information while submitting the notarized affidavit as required under Clause 6 of the NIT. It is submitted that the requirement of furnishing a notarized affidavit regarding non-blacklisting necessarily obligated the bidder to disclose any order of debarment or blacklisting passed by a Government or Semi-Government authority. It is further submitted that debarment and blacklisting are not materially different in substance, as both result in exclusion of a bidder from participating in tender processes and carry serious civil consequences.

7. Learned counsel for the respondent further submits that the petitioner's prior debarment by a Government undertaking was a material fact directly relevant to its eligibility and credibility. By failing to disclose the same and by stating that it had not been blacklisted, the petitioner furnished an affidavit which was misleading in effect. The object of Clause 6 was to ensure that only bidders with clean antecedents participate in the tender process, and a narrow or technical distinction between "debarment" and "blacklisting" cannot be permitted to defeat that purpose. Therefore, the action of cancellation of selection, forfeiture of EMD and imposition of debarment is justified and in accordance with law.

8. The limited issue for consideration before this



Court is whether, in the facts and circumstances of the present case, this Court, in exercise of its power of judicial review under Article 226 of the Constitution of India, is required to interfere with the decision of the respondent Commission cancelling the petitioner's selection, forfeiting the EMD and imposing debarment.

9. It is well settled that the scope of judicial review in contractual and tender matters is limited. The Court does not sit as an appellate authority over administrative decisions and cannot substitute its own view for that of the competent authority unless the decision-making process is shown to be arbitrary, mala fide, discriminatory or in violation of statutory provisions. The interference is confined to examining the legality of the decision-making process and not the merits of the decision itself.

10. In the present case, the requirement of submission of a notarized affidavit formed part of the tender conditions. The said condition was clear, unambiguous and mandatory in nature. Participation in the tender process by the petitioner amounted to acceptance of all the terms and conditions contained therein. The petitioner cannot, after having participated in the process, turn around and challenge the consequences flowing from non-



compliance of an essential condition.

11. The respondent authority, being the author of the tender document, is the best judge of the requirements of the tender and the necessity of strict compliance with its terms. The cancellation of selection, forfeiture of EMD and consequent debarment have been imposed on account of breach of a mandatory condition and not on any extraneous or irrelevant consideration.

12. The decision relied upon by the petitioner in ***Kimberley Club Pvt. Ltd. (supra)*** is clearly distinguishable on facts. In the said case, the issue pertained to a different factual matrix and the nature of the action under challenge was not founded upon non-compliance of an essential eligibility condition expressly stipulated in the tender document. The ratio of that judgment cannot be extended to a case where the bidder has admittedly failed to comply with a mandatory requirement forming the basis of eligibility and contractual obligations.

13. On the contrary, the Hon'ble Supreme Court in ***Tata Cellular vs. Union of India, (1994) 6 SCC 651***, has observed as follows:

“94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.



- (2) *The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
- (3) *The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*
- (4) *The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*
- (5) *The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*
- (6) *Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”*

14. Similarly, in ***Michigan Rubber (India) Ltd. vs. State of Karnataka & Ors., (2012) 8 SCC 216***, the Hon’ble Supreme Court has observed as follows:

*“23. From the above decisions, the following principles emerge:*

*(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and*



*not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*

*(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;*

*(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;*

*(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and*

*(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.”*

15. Applying the aforesaid settled principles, this Court finds no illegality, irrationality or procedural impropriety in the impugned action of the respondent authority. The petitioner, having failed to comply with an essential condition of the tender, cannot seek equitable relief under Article 226 of the



Constitution of India.

16. Accordingly, no case for interference is made out.

The present writ petition is, therefore, dismissed.

17. Pending application(s), if any, shall also stand disposed of.

**(Sudhir Singh, J)**

**(Rajesh Kumar Verma, J)**

Anushka/-

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