

S/L 11
25.06.2026
Court. No. 25
Sourav

WPA 6212 of 2026

Swapan Choudhury
Vs.
Union of India & Ors.

Mr. Siddhartha Banerjee
Mr. Sharanya Chatterjee
Mr. Subhajit Barman

...for the petitioner.

Mr. Arun Kumar Upadhyay
Mr. Anish Kumar Mukherjee

...for the respondents.

1. The petitioner has filed the present writ application challenging the impugned order dated February 4, 2026 wherein the petitioner is debarred for participating in MSF future tender for a period of two years with effect from February 1, 2026.
2. The petitioner has raised two issues by challenging the said impugned order. He submits that before issuance of the impugned order, on December 11, 2025 and December 27, 2025, the authorities have issued show-cause notices. In the show-cause notices, there is no mentioning that why the petitioner shall not be debarred for participating in the future tender. It is the further case of the petitioner that without giving any opportunity of hearing to the petitioner passed an order debarring the petitioner participating in the future tender for a period of two years.
3. In support of their submission, the petitioner has relied upon the judgment in the case of **State Bank of India & Ors. Vs. Rajesh Agarwal & Ors.** reported in **(2023) 6 SCC 1** wherein the Hon'ble Supreme Court by

relying upon the judgment in the case of ***Raghunath Thakur Vs. State of Bihar*** reported in **(1989) 1 SCC 229** held that blacklisting of any person in respect of the business ventures has civil consequences for future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order.

4. He further relied upon the judgment in the case of ***Blue Dreamz Advertising Private Limited & Anr. Vs. Kolkata Municipal Corporation & Ors.*** reported in **(2024) 15 SCC 264** and submits that any decision to blacklist should be strictly within the parameters of law and has to comport with the principle of proportionality. He further relied upon the judgment in the case of ***Techno Prints Vs. Chattisgarh Textbook Corporation & Anr.*** reported in **2025 SCC OnLine Sc 343** and submits that the penalty of blacklisting may only be imposed when it is necessary to safeguard the public interest from irresponsible or dishonest contractors only being given an opportunity of hearing to the person concerned.
5. The second issue raised by the petitioner in the present writ application is that in the tender document, there is no provision for debarring the contractor for participating in the future tender. He further submits that though in the tender document the penalty has been prescribed, but there is not penalty for debarring the contractor for participating in the future tender.

6. Learned counsel for the respondents submits that two show-cause notices have been issued to the petitioner, the petitioner chose not to reply to the said show-cause notices and, as such, the respondent authorities have no other alternative but to pass the impugned order by debarring the petitioner for a period of two years. Learned counsel for the respondents further submits that this is not the only occasion when the petitioner has violated the terms and conditions of the contract. The petitioner is in the habit of defaulting the terms and conditions of the contract. The similar incident was also occurred on earlier occasion and the petitioner was blacklisted. But the petitioner has not narrated the said facts in the present case.
7. He further submits that in the said incident, two persons have expired due to the negligence on the part of the petitioner and, as such, the authorities have taken into consideration of the gravity of the charges against the petitioner and the respondent authorities have passed the impugned order by debarring the petitioner from participating in the tender only for the period of two years.
8. Heard the learned counsel for the respective parties. Perused the materials on record.
9. This court finds that on December 11, 2025, a first show-cause notice was issued to the petitioner wherein the respondent authorities have directed the petitioner to show-cause within five days as to why necessary action should not be initiated against the firm of the petitioner for compromising the safety of the employees and non-

compliance with the regulatory standards. On receipt of the said notice, the petitioner has sent a reply requesting the respondent authorities that the petitioner has taken all the safety measures while executing the said order and also requested to provide the documents of proof like CCTV footage, photography to justify any fault on the part of the petitioner.

10. On receipt of the said reply dated December 16, 2025, the respondent authorities have again issued another show-cause notice on December 27, 2025 intimating that MSF is a Sensitive Defence Establishment where any kind of photography or video is strictly prohibited and, as such, no CCTV footage or photography can be provided and directed the petitioner to file the show-cause reply by December 30, 2025. On January 1, 2026, the petitioner had again sent a request to the respondent authorities to provide the documents to justify any fault on the part of the petitioner but instead of providing such documents of proof, the respondent authorities have passed the impugned order.
11. As per the contract, the following penalty is provided:

“PENALTY

Firm should know that either ladle preheater or ladle drier will be used during production. Similarly only two numbers ladle to be used at a time during production. Firm should maintain machines/equipment listed in A and B to ensure zero production loss due to non availability of the equipment. Total duration of production hampered due to breakdown/non availability of equipment listed in A & B shall call for penalty as per rate specified listed below.

1. *For 3 hrs of production hampered, penalty of 5% of quarterly payment will be imposed.*
 2. *For 5 hrs of production hampered, penalty of 10% quarterly payment will be imposed.*
 3. *For 7 hrs of production hampered, penalty of 15% quarterly payment will be imposed.*
 4. *For 10 hrs of production hampered, penalty of 25% quarterly payment will be imposed.*
 5. *For more than 10 hrs of production hampered, no payment will be made.”*
12. The respondent authorities by the impugned order mentioned about the Scope of Work Special Note Sl. No. 2, Terms and Condition, Serial No. 11 and Terms and Condition Sl. No. 32 which read as follows:
- “1. **Scope of work Special Note Sl. No. 2:** All safety rules to be followed by the firm’s personnel including men working at height & firm shall submit group insurance of their employee before execution of contract. Firm may visit MSF safety section for details.*
- 2. **Terms and conditions (Annexure A) Sl. No. 11:** To follow the Safety Rules, the Contractor/firm should arrange for their employees all Safety Measure during execution of work. If any accident occurs ED/MSF will not be responsible.*
- 3. **Terms and Condition (Annexure A) Sl. No. 32:** The personnel deputed shall wear PPEs such as Helmet, Safety shoes, gloves, goggles for welding and grinding safety belt and harness for working at height mast etc. Firm’s office will be inclusive of all safety equipment. MSF will not provide any safety equipment.”*
13. The conditions which the respondent authorities have relied upon by passing the impugned order, the said conditions also do not disclose that the terms and

conditions of the contract provide for debarring the petitioner for participating in the future tender.

14. This Court finds that on receipt of the show-cause notices, the petitioner has categorically requested the respondent authorities to provide the documents with regard to the allegations made in the show-cause notices so as to enable the petitioner to file reply but the respondent authorities have taken the plea that the CCTV footage or photography cannot be provided because of the sensitive area. The specific query has been made by this Court to the learned advocate appearing for the respondent authorities whether any criminal case has been initiated against the petitioner with regard to the said incident but the respondent authorities have failed to give any reply to the said query.
15. Admittedly, there is no clause under the contract for debarring the petitioner for participating in the future tender. None of the show-cause notices the respondent authorities have informed the petitioner that the respondents will pass an order with regard to debarring the petitioner for participating in the future tender. In the case of ***Rajesh Agarwal (supra)*** the Hon'ble Supreme Court has held that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, may civil and/or evil consequences follow. It is described as

civil death of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.

16. In the case of ***Techno Prints (supra)***, the Hon'ble Supreme Court has further held that an order or blacklisting casts a slur on the party being blacklisted and is stigmatic. Given the nature of such an order and import thereof, it would be unreasonable and arbitrary to visit every contractor who is in breach of his contractual obligations with such consequences. There have to be strong, independent and overwhelming materials to resort to his power given the drastic consequences that an order of blacklisting has on a contractor. The power to blacklist cannot be resorted to when the grounds for the same are only breach or violation of a term or condition of a particular contract and when legal redress is available to both parties.
17. In the case of ***Blue Dreamz Advertising Private Limited (supra)*** the Hon'ble Supreme Court held that debarring a person albeit for a certain number of years tantamount to a civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.
18. Considering the above, this Court finds that neither in the show-cause notices the respondent authorities have informed the petitioner that why the petitioner shall not be debarred from participating in the future tender nor

the terms and conditions of the contract provides for debarring the petitioner for participating in the future tender.

19. Considering the above, the impugned order is set aside and quashed.
20. **WPA 6212 of 2026** is disposed of.
21. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Krishna Rao, J.)