

Form No.J(2)
akg/Sayandeep

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 140 of 2026

M/s. Patel Engineering & Anr.
Vs.
Union of India & Ors.

For the petitioners : Mr. Amales Ray, Sr. Advocate
Mrs. Yatun Chakraborty, Advocate
Mr. Nigam Mittal, Advocate
Ms. Akshita Chettai, Advocate

For the respondents : Mr. Sudipto Kumar Mazumdar, DSGI
Mr. Ajoy Kumar Singhanian, Advocate

Heard on : 13.04.2026

Judgment on : 13.04.2026.

Raja Basu Chowdhury, J. (Oral):

1. The present writ petition has been filed, inter alia, challenging the order of the suspension dated 19th July, 2025 issued by the respondents whereby the petitioner-firm, being the petitioner no.1, has been suspended temporarily from the entering into any business dealing with the respondent authorities.

2. The petitioners claim that the petitioner no.1 is a partnership firm of which the petitioner no.2 is a partner. It is the petitioner's case that the petitioner no.1-firm has been enlisted in Eastern Command in class D. It is also the petitioner's case that the original enlistment has since from time to time been renewed and continued to subsist until 31st December 2025. It is also the petitioner's case that the petitioner has executed diverse contracts issued by the Garrison Engineer at Lakshwadeep from time to time. According to the petitioners, all such contracts have been duly executed to the satisfaction of the employer as would appear from the completion certificates which have been issued in consonance with Clause 49 of the General Conditions of Contract. Such completion certificates have also been enclosed to the writ petition. The petitioners' case further proceeds on a premise that all on a sudden, on 29th February, 2024, Central Bureau of Investigation (CBI) had initiated an FIR against the petitioner no.1 and one Ibrahim Ali for offences under Sections 120(B) read with Section 7, 8, 9 and 12 of the Prevention of Corruption Act, 1988 (in short, 'the said Act'), as amended from time to time and on the said basis, a criminal case was registered against the petitioner no.1 and other accused persons under Section 154 of the Code of Criminal Procedure in the ACB Cochia Police Station.

3. According to the petitioners, in furtherance to the above, on 19th June, 2025, a show cause notice was issued by the respondent no.5, calling upon the petitioners to respond to the same and show cause as to why the petitioners' firm shall not be suspended from carrying out any business dealings by reasons of the pending investigation based on the aforesaid FIR lodged against the petitioner no.1. The petitioner no.1 had duly responded to the same by a notice in writing dated 23rd June, 2025. Following the above, by an order dated 19th July 2025, the office of the respondent no.5 by holding the petitioner no.1 to be, *prima facie*, guilty of adopting unethical practices had suspended the petitioner no.1 temporarily from business dealings with immediate effect, for a period of one year from the date of such letter. The final decision of the enlistment authority is to be taken after finalization of investigation.
4. No final decision appears to have been communicated by the enlistment authority, later challenging the aforesaid order, the petitioners had approached this Court in the month of January 2026. Accordingly, when the matter was taken up for consideration on 6th February, 2026, this Court had noting the *prima facie* case made out, stayed the suspension order for a period of 6 weeks. By the above order, affidavits were also directed to exchanged.

5. Although the respondents had since appeared, and filed their affidavit-in-opposition, records would reveal that challenging the interim order, an appeal was filed before the Hon'ble Division Bench.
6. When the matter came up for consideration before the Division Bench on 10th April, 2026, the Hon'ble Division Bench was *inter alia*, pleased to dispose of the appeal and the connected applications by, *inter alia*, observing as follows:

"The respondents before the writ court have preferred the present intra-court appeal assailing an interim order of stay dated 6th February, 2026 passed in WPA 140 of 2026 in favour of the writ petitioners.

Heard the learned D.S.G.I appearing for the appellants and the learned advocate representing the writ petitioners/respondents.

The writ petitioners are MES enlisted contractor with the respondents. He was served with a show-cause notice on 19th June, 2025 on account of his implication in a case instituted by the Central Bureau of Investigation (CBI). Pursuant to the notice and reply, the business dealing with the petitioners has been suspended by the order dated 19th July, 2026. Being aggrieved by the suspension, the writ petitioners have approached the writ court.

The Single Judge Bench by an order dated 6th February, 2026 has stayed the suspension in the following terms;

"..... The impugned order does not reveal on which contract has been awarded by the Subedar Ibrahim Ali to the petitioner by taking the advantage of illegal bribe. The respondent authorities in the impugned order have stated that prima facie the authorities have found guilty of the petitioner for adopting unethical practices. This Court finds that the CBI only initiated the case and is

pending before the appropriate court of law unless and until it is not decided whether the officer concerned and the petitioner are involved in the criminal conspiracy for getting the award by way of illegal manner, it cannot be said that the petitioner is guilty for the alleged offence.

Considering the above, this Court finds that the prima facie opinion made by the authorities on the basis of the which the impugned suspension order is issued against the petitioner is liable to be stayed and the same is stayed for the period of six weeks from date. The respondent authorities are directed to file affidavit-in-opposition within a period of four weeks from date. Reply, if any, thereto be filed within two weeks thereafter.

List this matter on March 24, 2026 under the heading "Adjourned Motion".

5. The learned D.S.G.I. submits that the authorities have proceeded after issuing a show-cause notice. Steps have been taken in view of the discretion vested with the authorities under Clause 9 of the Enlistment Order, wherein such action is permitted, under 3 circumstances;

- (i) on account of submission of non-bona fide tenders,*
- (ii) on account of technical,*
- (iii) or on account of other delinquencies.*

The suspension order, therefore, requires no interference and the stay order should be set aside so as to enable consideration of the writ petition without any stay.

The learned D.S.G.I. also referred to a decision of the Hon'ble Apex Court in the case State of Odisha vs. Panda Infraproject Ltd., reported in (2022) 4 SCC 393.

The learned writ petitioners/respondents are represented. The learned senior advocate submits that the finding of the Hon'ble Single Judge is based on a prima facie appreciation of the material. He further submits that this morning the writ petition was mentioned with a view to its consideration for extension

of the interim order, and the same was fixed for consideration on 13th April, 2026.

The prima facie finding recorded by the Hon'ble Single Judge, extracted above, in our view was sufficient for passing the interim order. We do not propose to comment on the merits of the matter with reference to the judgment in the case of State of Odisha (Supra) relied upon by the learned D.S.G.I. as the merits of the matter is yet to considered by the learned Single Judge Bench. No other grounds have been urged.

Since the matter is fixed just two days from now and in view of the nature of the order passed by the learned Single Judge extracted above, we find no reason to interfere with the same, at this stage.

We refrain from making any further observation with respect to the merits of the matter. Since the interim order is based on a prima facie consideration, which it is needless to say, is subject to a consideration of the matter after exchange of pleadings, with a view to a final adjudication of the writ petition on merits.

We are informed that pleadings have already been exchanged. We therefore, would allow the learned advocates representing the parties that when the matter is taken up next on 13th April, 2026, for consideration for extension of the interim order, they may request the learned Single Judge to proceed for final consideration of the writ petition.

We, therefore, dispose of the appeal and the connected application in the above terms.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.”

7. Since then, the matter was mentioned before this Court and has come up today under the heading “extension of interim order”. This court upon going through the aforesaid order and

noting the observations made by the Division Bench by consent of the parties has taken up final hearing of the matter.

8. Mr. Mazumdar, learned DSGI appearing for the Union of India by drawing attention of this Court to the FIR lodged against the petitioner no.1 would submit that when an FIR has been registered and an investigation is going on, it was within the competence of the respondents to invoke the provisions of Clause 9 of the enlistment letter and takes steps in pursuance thereto. He would submit that since the petitioners' delinquencies have already been established by reasons of lodgment of the FIR, there is no irregularity on the part of the respondents in primarily initiating a proceedings for suspending the petitioners and subsequently, on the basis of the response filed by the petitioners and having found such response to be unsatisfactory, in suspending the petitioners from the enlistment for a period of one year. He submits that the aforesaid steps have been taken in effect to discipline the petitioners and to ensure that the petitioners fall in line.
9. Independent of the above, Mr. Mazumder, would submit that though the respondents had not raised the point of maintainability at the threshold, however, such point is always available and accordingly he submits that ordinarily a challenge to an order of suspension cannot form subject matter of challenge in a writ petition under Article 226 of the

Constitution of India. In support of his contention, reliance has been placed on the Judgment delivered by the Hon'ble Supreme Court in the case of ***Orissa Agro Industries Corpn. Ltd. v. Bharati Industries & Ors.***, reported in **(2005)12 SCC 725**.

10. On the scope of the authority of the respondents to discipline a delinquent entity, he relies on the following Judgments delivered by the Hon'ble Supreme Court.

- (i) ***Kulja Industries Limited v. Chief General Manager, Western Telecom Project BSNL & Ors.***, reported in **(2014)14 SCC 731**
- (ii) ***State of Odisha & Ors. v. Panda Infraproject Limited***, reported in **(2022) 4 SCC 393**.

11. In the facts as noted hereinabove, according to him, neither any interim order nor any final order can be passed. This Court should not only discontinue the interim order but should reject the writ petition on merit.

12. Mr. Roy, learned senior Advocate representing the petitioners in response would submit that in the instant case, apart from what has already been argued, it is apparent and clear that the show cause notice does not make out a cause based on which the suspension order was passed. It is well settled that a decision cannot be taken without the foundation thereof being

laid in show cause itself and in support thereof, he has placed reliance on the judgment delivered in the case of ***Commissioner of Central Excise, Bhubaneswar-I v. Champdany Industries Limited***, reported in **(2009)9 SCC 466**.

13. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I find admittedly, the petitioner No. 1 is an enlisted contractor in Eastern Commands which has from time to time been renewed and remained valid up to 31st December, 2025. It is also a matter of record that the petitioners had been awarded diversified contract which has been successfully executed by the petitioners without any objection from any quarter. In fact, completion certificates have also been issued by the competent authority pursuant to the clause 49 of the General Conditions of Contract in respect of the work orders executed by the petitioners' copies whereof, have already been annexed to the petition. The dispute in the matter however, resolves around lodging of FIR against the petitioner No. 1 along with other accused. The content of the FIR has also been annexed to the affidavit. From a copy of the aforesaid FIR dated 29th February, 2024 lodged under Section 154 of the Code of Criminal Procedure, 1973, it would transpire that the

officer concerned has noted the contents thereof in the following language:

“First information contents:

Shri Subedar Ebrahim Ali (Al) JC333663 is posted as Junior Engineer /R) at Garrison Engineer (Navy), Kavaratti, Lakshadweep and is presently Miciating as Assistant Garrison Engineer (B/R). Reliable Information revealed that Shri Subedar Ebrahim Ali during 2022 to 2024 entered into criminal conspiracy with M/s. Patel Engineering (A2) represented by its director Sh. Naser (A.3), an MES contract staff at Andrut Island and unknown others in the matter of awarding contract for the work of Naval/Coast Guard Unit in L&M, Lakshadweep. In furtherance to the conspiracy, Shri Subedar Ebrahim Ali demanded undue advantage for improper performance of his public duty from M/s. Patel Engineer and M/s Patel Engineering paid illegal gratification to Shri Subedar Ebrahim ali through the bank account Shri Naser who was MES contract staff at Andrut Island. It is revealed from the source information the M/s. Patel Engineer is used to send money to the bank accounts of the father and sister of Shri Naser under the disguise as they are working for M/s. Patel Engineering at Androth Island. Shri Naser transferred the received illegal gratification to the bank account of wife Shri Subedar Ebrahim Ali. The act of the accused persons constitutes the offence punishable under section 120B of ICP r/w section 7, 8, 9 and 12 of the PC act 1988 (as amended in 2018) and substantive offences thereof. Hence this FIR.

Action taken: Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2.”

14. Despite the fact that the FIR was lodged on 29th February, 2024, no immediate action appears to have been taken. Nearly

after a lapse of more than a year therefrom, on 19th June, 2025, a show cause was issued intimating the petitioners that an FIR has been registered and accordingly the petitioner No. 1 was directed to show cause as to why it shall not be suspended from business dealings due to reasons as noted in the said show cause notice. The petitioners had duly responded to the above by communication dated 23rd June, 2025. Following the above, by an order dated 19th July, 2025, the respondents had concluded upon examining the response filed by the petitioners that such response was not found to convincing at all and had *prima facie* found the petitioner no.1 to be guilty of adopting unethical practices, passed an order suspending the petitioner no.1 temporarily from carrying on any business dealings for a period of one year with the concerned respondents. The order also noted that the final decision of the enlistment authority in the matter shall be conveyed after detailed analysis and finalization of investigation of the case. It is this order which forms subject matter of challenge in the present petition. At the very outset, though the respondents had not raised the point of maintainability, or at any stage prior to Mr. Mazumder making such submissions, I find that the respondents have contended that the above issue ordinarily should not fall for consideration in an application under Article 226 of the Constitution of India and in support thereof, reliance has been

placed on the judgment delivered in the case of **Orissa Agro Industries Corpn. Ltd.** (supra).

15. I, however, find that in the aforesaid matter, the corporation had taken a point that the petitioners' claim was merely a money claim arising out of alleged breach of contract and, therefore, the writ petition was not maintainable. It is in those facts that the Hon'ble Supreme Court in paragraph 7 of the said judgment was, *inter alia*, pleased to record that bare perusal of the High Court's judgments shows that there was clear non application of mind, on one hand the High Court observed that the disputed question cannot be gone into a writ petition and had also noticed that the essence of dispute was breach of contract. Accordingly, the writ petition could not be maintained. Such is not the case here. I am afraid the above judgment does not assist respondents. This apart, the respondents at no stage had raised the issue of maintainability. Even when the matter had travelled up to the Division Bench, the issue of maintainability was not raised. Though, fundamentally a point of maintainability is always open to be taken depending on the facts, however, in the instant case, the above judgment does not assist the respondents. This matter does not also deal with any determination of disputed questions of fact. Accordingly the issue of maintainability is decided against the respondents.

16. This apart, I find that Mr. Majumdar has contended that it is within the authority of the respondents to discipline the contractors by placing reliance on the case of **Kulja Industries Limited** (supra). I, however, find that the case of **Kulja Industries Limited** (supra) dealt with a tender notice for supply of permanent lubricated HDPE Pipe (telecom ducts) and installation of OF cable through blowing technique by the BSNL. In the said case, certain excess payments had been made. Later, the contractor upon acquiring knowledge about the excess payment received by it after reconciliation of accounts, had offered to adjust the excess payments. It is in that context taking note of the fraudulent payments made to the appellant therein an FIR was lodged and an order of black listing was passed. The matter obviously dealt with issues relating to admitted excess payments on the basis of duplicate copies of the bills which were processed for payment. It is in that context that the Hon'ble Supreme Court in paragraph 25 had observed that debarment is recognized as an effective method of disciplining the deviant supplier/contractor who had committed act of commission and or fraud. The facts in the above case, is unlike the present cause.

17. In addition to the above, reliance has also been placed on judgment delivered in the case of **State of Odisha & Ors.** (supra), in support of the self-same contention. In the said

case, a high level enquiry was conducted against the petitioners by the Chief Engineer (Design) and Chief Engineer (DPI and Roads) and the committee had submitted a comprehensive report and after detailed enquiry, it was found that the contractor was guilty. The contractor did not submit framework design and adapted his own arrangement leading to collapse of huge structure during construction. It is in those facts in paragraph 24 of the judgment the Hon'ble Supreme Court had observed that debarment was recognized to be an effective method of disciplining a deviant supplier and/or contractor who may have committed act of omission, and as such did not interfere with the order. Such is not the case here. In the instant case, only an FIR has been lodged, the enquiry is yet to be concluded. It is admitted position the charge sheet is yet to be filed. Merely because an FIR has been lodged and investigation whereof is yet to be completed, the respondents cannot be permitted to hold out the petitioners to be prima facie guilty to be unethical practices. This apart the show cause also did not spell out that the petitioners are otherwise found to have been guilty of adopting unethical practices. It is true that the clause 9 of the enlistment letter authorizes the employer to take such steps as may be necessary in case of delinquency. Admittedly in this case, the matter is only under investigation and charge-sheet has not been filed, delinquency

is yet to be established. The last line of the operative portion of the suspension order notes that final decision shall be taken after finalization of investigation in the case.

18. As noted above, when the case against the petitioners is being investigated and the charge-sheet in this regard is yet to be filed, it cannot be said that the petitioner no.1 is in trial for the petitioner no.1 to be treated as a delinquent. Accordingly, in my view, Clause 9 of the letter of enlistment cannot be made applicable in the facts of the case. This apart, since the respondents while deciding the cause had exceeded their authority and had returned the finding that the petitioner no.1 is found to be prima facie guilty of adopting unethical practices without the petitioners being given opportunity to defend such findings, the order suspension cannot be sustained on such ground as well. The same is accordingly quashed. The above shall not stand in the way of the respondents from taking legal recourse against the petitioner no.1, if so advised.

19. With the above observations and directions, the writ petition is disposed of.

20. Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Raja Basu Chowdhury, J.)