

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4823 OF 2025

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Society for Human Advancement &
Progressive Education (SHAPE)

.. Petitioner

Vs.

Maharashtra Metro Rail Corporation Ltd.
(Maha-Metro)

.. Respondent

...

Mr. Pulkit Agarwal (through VC) with Mr. Shivprasad H.
Salunke Advocates for the Petitioner

Mr. Kedar B. Dighe, Advocate for Respondent-MMRCL

CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.

DATE : 29th APRIL 2026

Per, Shree Chandrashekhar, CJ.

Aggrieved by the communications dated 6th January 2025 under which the petitioner-Company has been blacklisted/debarred/banned for two years from participating in any tender floated by the Maharashtra Metro Rail Corporation Ltd. (in short, MMRC Ltd.), this writ petition has been filed invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

2. Pursuant to the Tender Notice No.P1/Misc-35/2024 published by the MMRC Ltd. (Pune Metro Rail Project) on 3rd August 2024, the petitioner-Company was selected for providing Consultancy Services for Implementation of Livelihood Restoration Plan for Civil Court Metro Station PAFs of PMRP. The period of contract was three years from the date of Letter of Acceptance (LoA) which was issued in favor of the petitioner-Company on 7th October 2024. It was on account of a communication received from the Women & Child Development

Corporation, Bihar that a show cause notice was issued to the petitioner-Company and its Joint Venture partner, namely, M/s. Automech Engineering India Pvt. Ltd. through their authorised signatory. The show cause notice dated 22nd November 2024 also refers to the legal notice dated 8th November 2024 issued by M/s. Automech Engineering India Pvt. Ltd. to the petitioner-Company and the legal notice dated 25th October 2024 from the petitioner-Company. The allegation pertains to an experience certificate furnished by the Consortium constituting the petitioner-Company and other JV Partner. and issued from the Women and Child Development Corporation, Bihar which was never issued from the office of the said Corporation as per their communication dated 7th July 2024.

3. The show cause notice dated 22nd November 2024 recorded as under:-

“..... With reference to subject tender and documents submitted by your consortium, Maha-Metro sought confirmation regarding the experience certificate provided by your consortium from the Women and Child Development Corporation, Bihar (WCDC).

We have now received an official response from the Women and Child Development Corporation, Bihar, which confirms that the certificate bearing no.WCDC/245/24, dated 07.07.2024, submitted by your consortium, was never issued by their office.

Therefore, you are hereby instructed to submit any clarifications in writing within 7 days from the receipt of this letter, explaining why the LOA issued for the subject tender shall not be revoked and penal action is initiated. Failure to respond within the stipulated time will result in appropriate action being initiated against you.....”

4. It was further indicated in the show cause notice to the petitioner-Company that the LoA issued in its favour for the said tender shall be revoked and penal action shall be initiated.

5. In its reply dated 28th October 2024, the petitioner-Company stated as to the role of its JV Partner as under:-

“We shared essential documents, including the organization’s registration certificate, PAN, audit reports, by-laws, and legitimate work orders with Automech Engineering India Private Limited on 24th 25th and 26th August 2024, as documented in our internal communications. However, the preparation and submission of the said forged experience certificate in question were neither authorized nor verified by SHAPE.”

6. The petitioner-Company endeavoured to suggest that it had no role and was not involved in submission of the forged or non-existent documents and stated as under:-

“Document Submission: The experience certificate and related forged documents were prepared and submitted solely by Automech Engineering India Private Limited and its attorney, Mr. Rakesh Bagal. Society for Human Advancement & Progressive Education (SHAPE) had no prior knowledge or involvement in this fraudulent activity.

Lack of Approval : Society for Human Advancement & Progressive Education (SHAPE) did not authorize or endorse the submission of any forged documents. This is evident as our authorized representatives’ signatures are absent from the alleged certificate.

WhatsApp Records : The primary mode of communication for this tender was through a WhatsApp group created by Mr. Prashant Shinde, Director of Automech Engineering India Private Limited. These chats confirm that the forged document was never approved or sent by SHAPE. We are willing to share these records for your verification if required.

Notice to Automech Engineering India Private Limited: Upon learning of the forgery, Society for Human Advancement & Progressive Education (SHAPE) immediately issued a legal notice to Automech Engineering India Private Limited on 25 October 2024, requesting clarification and accountability for the fraudulent act. A copy of this notice and its acknowledgment is enclosed herewith for your reference.”

7. Mr. Pulkit Agarwal, the learned counsel for the petitioner-Company submits that no opportunity to defend itself was afforded to the petitioner-Company, no hearing was given to it and the impugned decision to debar the petitioner-Company for two years has been taken. The learned counsel further submits that whether the documents furnished by the petitioner-Company are forged shall be a matter of trial before the competent Court and no decision of blacklisting could have been taken against the petitioner-Company on that ground. The learned counsel for the petitioner-Company

referred to the decision in “*Gorkha Security Services*”¹ and submitted that the show cause notice dated 22nd November 2024 merely stated that penal action shall be initiated against the petitioner-Company but the said show cause notice did not indicate that an order of blacklisting may be passed against the petitioner-Company. The learned counsel for the petitioner-Company states that this writ petition is confined only to the order of blacklisting of the petitioner-Company for two years from participating in any tender of the MMRC Ltd.

8. A First Information Report has been lodged vide First Information Report No.0429 of 2024 against M/s. Automech Engineering India Pvt. Ltd. and the Employer is not required to await the outcome in the said proceedings. In our opinion, there is no breach of natural justice and the impugned communication dated 6th January 2025 does not require any interference by this Court. In “*Gorkha Security Services*,” on which the learned counsel for the petitioner placed reliance, the Hon'ble Supreme Court held as under:-

“25) It is thus apparent that this sub-clause provides for various actions which can be taken and penalties which can be imposed by the Department. In such a situation which action the Department proposes to take, need to be specifically stated in the show cause notice. It becomes all the more important when the action of black listing and/or forfeiture of earnest money/security deposit is to be taken, as the clause stipulates that such an action can be taken, if so warranted. The words “if so warranted”, thus, assume great significance. It would show that it is not necessary for the Department to resort to penalty of black listing or forfeiture of earnest money/security deposit in all cases, even if there is such a power. It is left to the Department to inflict any such penalty or not depending upon as to whether circumstances in a particular case warrant such a penalty. There has to be due application of mind by the authority competent to impose the penalty, on these aspects. Therefore, mere because of the reason that clause 27 empowers the Department to impose such a penalty, would not mean that this specific penalty can be imposed, without putting the defaulting contractor to notice to this effect.”

1. *Gorkha Security Services v. Government (NCT of Delhi) & Ors.* : (2014) 9 SCC 105

9. In “*Gorkha Security Services*”, the relevant clauses under the contract provided the consequences as to (a) to cancel the contract and withhold the agreement and to recover the costs from the defaulter-contractor in the event the Department gets the job carried out from the other contractor, (b) to blacklist the defaulter-contractor for the period of four years, and; (c) to forfeit the earnest money/deposit if so warranted. Whereas, the tender notice dated 3rd August 2024 issued in the present case provides under clause 6.1.10 that the contract may be terminated under certain circumstances as indicated thereunder. Clause 6.1.10 further provides that the security deposit shall be forfeited if the agreement is terminated and the contractor shall stop the work on the plan. Clause 6.1.12 mandates that the bidder and its officers, employees, agents, advisers etc. shall observe the highest standard of ethics during the bidding process. It is also provided that if a bidder is found to have directly or indirectly or through an agent indulged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the bidding process it shall not be allowed to participate in the tender floated by the MMRC Ltd. The expression “corrupt practice” has also been defined in sub clause (a) to clause 6.1.12. However, the learned counsel for the petitioner-Company referred to clause 5.4 of the Government Resolution No. Bha. Kha. Sa-2014/Pra.Kra.82/Section-III/Industry-4 dated 1st December 2016 and submits that the procedure for banning/suspension/removal of a party as provided thereunder was not followed and merely on the basis of reply submitted by the petitioner-Company to the show cause notice dated 22nd November 2024 the impugned decision of blacklisting has been passed. The order of termination of contract and forfeiture of security deposit are

not under challenge as stated by the learned counsel for the petitioner-Company. Under the general terms of contract, the employer has a right to proceed against the defaulting contractor to pass an order of blacklisting/debarment/banning of such individual or entity. The expression “penal action is initiated” provides a clear indication to the petitioner-Company that an order of blacklisting may be passed against it. This is made more clear on a glance at the various provisions under the general terms of a contract which provide no other penal action except the order of blacklisting/debarment/banning of the defaulting contractor when the agreement is terminated and the security deposit is forfeited. In its reply to the show cause notice, the petitioner-Company seems to shift the responsibility of furnishing true and correct documents on M/s. Automech Engineering India Pvt. Ltd. The document as to the experience certificate which was furnished by the Consortium was non-existent and there is no dispute raised in this regard except that the genuineness or otherwise of the experience certificate shall be decided in trial. The different stipulations under the tender notice provide sufficient powers to the employer to pass an order of blacklisting. While exercising such powers, the employer shall not wait for a decision by the criminal Court as to the forgery committed by the Consortium.

10. For the aforementioned observations, Writ Petition No. 4823 of 2025 is dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]