



2026:DHC:4228-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 30.04.2026
Judgment pronounced on: 14.05.2026
Judgment uploaded on: 14.05.2026

+ W.P.(C) 6041/2024, CM APPL. 25036/2024 and CM APPL. 5606/2025

BHILAI ENGINEERING CORPORATION LIMITED

.....Petitioner

Through: Mr. Gopal Jain, Sr. Adv. with
Mr. Rishi Anand, Mr. Utkarsh
Mishra, Ms. Deeksha Dubey &
Ms. Shruti Roy, Advs.

versus

STEEL AUTHORITY OF INDIA LIMITEDRespondent

Through: Mr. Jayant Mehta, Sr. Adv.
along with Mr. Samaksh Goyal
and Mr. Pallav Arora, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present Petition invoking writ jurisdiction of this Court under Article 226 of the Constitution of India seeks quashing of Letter dated 18.04.2024 (Annexure P-1), *vide* which the representation of the Petitioner was rejected in view of the observations made in Impugned Advisory dated 17.09.2022 issued by the Corporate Projects Section of Respondent/Steel Authority of India ('SAIL') (Annexure P-2), leading to its bid disqualification in Impugned Tender

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No.PROJECTS/CPX-B/COB-12/BATTERY-CCHP/TN-1042 dated 12.01.2023, floated by the Respondent in relation to installation of battery proper along with oven machines, refractions, coal & coke handling facilities (Package no.2) for its IISCO Steel Plant at Burnpur (West Bengal) (Annexure P-3).

2. As such, the challenge herein essentially revolves around the discretion exercised by the Respondent after taking into consideration the observations made in the Impugned Advisory, wherein the past performance of the Respondent with respect to Sinter Plant Project at Bokaro Steel Limited (BSL) was found unsatisfactory.

3. The question that arises in the present case, thereby requiring our adjudication is as follows:

i. Whether the Respondent was justified in rejecting the Petitioner's technical bid on the basis of inter departmental advisory, while intimating Petitioner's poor performance in a different project, particularly when principles of natural justice have been complied with pursuant to direction of the Court in its previous petition bearing W.P.(C) No. 4044/2024?

ii. Whether at this stage, it would be appropriate to set aside award of contract when 25% of the work, which is very significant in steel production, has been completed and the successful party/bidder is not before the Court?

4. The Respondent being a public sector undertaking invited online bids on 12.01.2023 from experienced, resourceful and *bona*

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fide bidders on global tender basis for the Impugned Tender. The bids herein, were to be submitted in three parts, namely; (i) Bid Securing Declaration, (ii) Eligibility Criteria, Fulfilment & Techno-Commercial Bid and (iii) Price Bid.

5. It will be noted here that major component in the present tender pertains to Stamp Charged Coke Oven Battery project, which has not been previously installed at any SAIL plant.

6. Prior to the floating of the present tender, the Executing Director (ED) Projects, on 17.09.2022, issued the Impugned Advisory to all Directors/CVO, SAIL, intimating the satisfactory performance of the Petitioner in the area of Top Charged Coke Oven Batteries at different plants/units of SAIL. However, the performance of Petitioner as a Consortium Partner for the installation of New Sinter Plant Project at BSL was found and conveyed to be unsatisfactory.

7. The Petitioner's bid was rejected on 07.03.2024 relying upon the communication dated 17.09.2022. Aggrieved thereby, the Petitioner, challenged the aforesaid communication by way of **W.P.(C) 4044/2024** captioned **Bhilai Engineering Corporation Limited v. Steel Authority of India Limited**. This Court *vide* its Order dated 21.03.2024, disposed of the said petition, thereby setting aside the communication dated 07.03.2024, while issuing the following directions:

6. Accordingly, the present writ petition is disposed of with a direction to the Respondent to furnish the adverse material to the Petitioner within a week, who shall file a detailed representation within a week thereafter. The Respondent after giving an opportunity of hearing to the Petitioner shall decide the same by

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way of a speaking order in accordance with law within two weeks thereafter.

7. This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open. To balance the equities between the parties, it is clarified that for a week after the Petitioner's representation is disposed of, the Respondent shall not award the contract in question.

8. Pursuant thereto, the Petitioner was granted an opportunity to file representation and a subsequent opportunity of hearing, which led to rejection of the Petitioner's representation by way of a detailed Impugned Letter dated 18.04.2024. Aggrieved thereby, the Petitioner in April 2025 preferred the present Petition challenging the Impugned Letter as well as the Impugned Advisory. During the pendency of the present Petition, the Contract pertaining to the relevant project came to be awarded to a consortium comprising of (i) M/s. SMS India Pvt. Ltd.; (ii) M/s. Paul Wurth S.p.A Italy; (iii) Paul Wurth S.A.; and (iv) MECON Ltd.

9. Learned senior counsel for the Petitioner, essentially, impugns the rejection of the Petitioner, on the ground that the Respondent has adopted an arbitrary and mala fide reason for disqualifying it from the present tender process, which is based upon the unsatisfactory performance in a different and unrelated plant project at BSL.

10. It has also been urged that the Impugned Advisory, in effect, leads to a permanent blacklisting of the Petitioner, as it does not provide any definite period for its operation.

11. *Per contra*, learned senior counsel for the Respondent has argued that the unsatisfactory performance of the Petitioner at BSL plant, has led to prolongation of contract, by virtue of culmination of



multiple legal proceedings. As such, in view of the Impugned Advisory and in particular, Clause 9.3 of the Purchase Contract Procedure (PCP), the actions of the Respondent were justified.

12. It has also been urged that the Stamp Charged Coke Oven Battery and Top Charged Coke Oven Battery, are two distinct technologies, in terms of oven machinery and coal cake charging methodology. Accordingly, the Respondent's performance in Top Charged Coke Oven Battery, cannot become a basis for granting it the present tender as well.

13. To answer the present controversy and the questions highlighted in Paragraph No.3 (*Supra*), it would be relevant to highlight that while deciding a Writ Petition arising out of rejection of tender, due consideration is required to be given to public law element in the contractual matters. The Courts are reluctant to entertain Writ Petitions challenging violation of contractual terms except where public money is involved, and it is found that expeditious disposal is of utmost importance in the public interest. Hence, while deciding the matters like the present, the Court is required to keep in view primarily the interest of the public and public law elements.

14. In the present case, admittedly, pursuant to the directions issued by this Court on 21.03.2024, the Respondent by way of the Impugned Letter passed a detailed and elaborate order after considering Petitioner's representation as well as granting it an opportunity of oral hearing. The operative part of the Order read as under:

"B) May it be noted that under the Phase 1 of the Expansion Plan of the Bokaro Steel Plant for 5.77 MTPA Hot Metal Production, the



Contract of the New Sinter Plant (SINTER PLANT-II) of 1x360m² Sinter Machine Main Package had been awarded to the consortium of M/s GP UKRGIPROMEZ (consortium leader) M/s URALMASHPLANT JSC, M/s TRAFALGAR Int F.Z.E and M/s Bhilai Engineering Corporation Ltd awarded for a total contract value of EURO 19,763,700 and INR 519,55,64,000. The scope of work of BEC consisted of design & engineering including all civil works, steel structural works, refractory works, supply of plant and equipment for the balance of plant, all including all electrical, automation, utilities works etc. May it be noted that M/s BEC Ltd. Bhilai is the main EPC contractor for the Sinter Plant Contract having the major share of price component, constituting for seventy percent of the total contract value aggregating to 448 Crores.

C) It is also to be noted that the even though the aforementioned Contract was awarded for a total time period of thirty (30) months 10th May 2015 (being the effective date of the contract), information was received from SAIL BSL that the said project has been inordinately delayed due to factors attributable to BEC. Since the site progress was the prime responsibility of M/s BEC and since the progress of which has been extremely slow, the contract has remained stalled from your end from February 2022 triggering a massive stalemate of vital project investments. The progress performance of BEC had been reviewed by the SAIL Corporate Office with active consultation with SAIL Bokaro Steel Plant, and following such examination, it was informed by way of the general advisory dated 17.09.2022 regarding the 'adverse report' received against your unsatisfactory performance in the Sinter Plant contract. Such 'adverse report' in the form of the general advisory dated 17.09.2022 was taken into consideration by SAIL-ISP while evaluating your bid.

D) May it be noted that on account of your poor performance, SAIL BSL had taken the decision of de-scoping your portion of the work assigned under the contract and complete the same at your risk and cost. The same is admitted by you in your representation dated 30.03.2024 whereby you have admitted that that against this decision, you had preferred a Writ Petition (being WP (C) No 2053 of 2023) before the Jharkhand High Court. In this regard, in your representation dated 30.03.2024 you have stated that the matter was heard at length and vide Order dated 10.10.2023, the Hon'ble High Court was pleased to direct that no final 'decision shall be taken by SAIL on the tender floated. However, as per the last Order of the Hon'ble High Court, it is evident that the matter was subsequently heard on 22.02.2024 whereby the Hon'ble High Court has observed that "instead of not taking a final decision on the tenders floated by the respondents, no coercive action was directed in the sense that no risk and cost shall be recovered from the



petitioner by the respondents till the next date of listing" while also observing "that the interim order dated 10.10.2023 shall continue, in the meantime". Therefore, a cumulative reading of the Orders of the High Court passed in WP (C) No 2053 of 2023 abundantly clarify there is no prohibition on SAIL in de-scoping the work originally assigned under your contractual obligations and/or subsequent floating of tender, with the only restriction being imposed effectuating the recovery of the costs till the adjudication of dispute either through conciliation or arbitration. There is no dispute to the effect that your performance in the Sinter Plant Contract at SAIL BSL has been heavily compromised because of your action/inaction towards contractual obligations for which SAIL has suffered production and business losses.

E) In your letter dated 30.03.2024 you have also drawn attention to the General Advisory dated 17.09.2022 whereby you have alleged that the general advisory draws distinction to the satisfactory performance of BEC in Top Charged Coke Oven Battery. In support of your contention, you have alleged that as the tender was for installation of a stamp charged battery which is similar to top charged battery. You have also drawn reference to the corrigendum by virtue of which the technical eligibility required for applying to the tender was (i) Firstly past experience in carrying out design/engineering, erection/supervision of erection and commissioning /supervision of stamp charged by-product coke oven battery and (ii) Secondly, supply of plant equipment of top/stamp charged by product recovery type coke oven battery. You have alleged that in view of the construction and technology of top and stamp charged batteries with similar functioning, therefore SAIL-ISP ought to have taken a considered view of the General Advisory and allowed BECL to participate in the tender.

*F) As regards the above, we state that there is a major difference between a stamp charged battery and top charged battery. For the purposes of brevity, the differences are not stated herein but have been clarified in detail in **Annexure 1** to this Order, which shall be read as an integral part and parcel of this Order."*

Therefore, in light of the above paragraphs, based on your past performance vis-a-vis "adverse report" it cannot be denied that your performance in the Sinter Plant Contract in SAIL BSL has been abysmally poor. Even to the extent the General Advisory states that performance of BECL in Top Charged Battery is satisfactory and considered view may be taken, SAIL ISP has drawn out the distinction between Top Charged Battery and Stamp Charged Battery (for which Tender was floated) and has not acceded to your validation that Stamp Charged Battery and Top Charged Battery is similar in function (clarified in Annexure 1). Therefore, taking into cognizance the General Advisory dated 17.09.2022 received from



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the SAIL Corporate Office, SAIL—ISP hereby rejects your representation while complying with the Order dated 21.03.2024 passed by the Hon'ble Delhi Court and the directions contained therein. Your bid for the tender enquiry PROJECTS/CPX-B/C0B-12/Battery-CCHP/TN-1042 dated 12.01.2023 [SRM RFx No 2100000053] hereby stands disqualified for all purpose under provision of SBD ITB clause 22.2.”

15. The challenge in the present case does not pertain to the technical non-qualification of Consortium comprising of four members, to whom the present tender has been awarded, nor does it pertain to the contract being awarded at an excessive amount adversely impacting public money.

16. Though the Petitioner has neither impleaded the members of the subject Consortium nor challenged the award of the Impugned Tender in their favour, the Petition cannot be dismissed solely on account of non-impleadment and failure to challenge the award of the Impugned Tender, as it only came to be awarded during the pendency of the present proceedings.

17. Moreover, there is also no dispute that the Petitioner has failed to complete Sinter Plant II project at BSL. Since, amongst the various members of the Consortium at BSL, the Petitioner was the main EPC Contractor for the aforesaid project, which remained incomplete despite grant of sufficient opportunities. Such failure on part of the Petitioner led to the Respondent taking a decision to de-scope the portion of work assigned to the Petitioner under the contract and complete the same at the Petitioner's risk and cost.

18. It is the case of the Respondent that only Two Coke Charged Oven Battery Plants are currently in operation, out of which, one is

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likely to undergo cold repair in 2028-2029 and be re-commissioned by 2030-2031. Prior thereto, a new Coke Charged Oven Battery Plant needs to be erected, commissioned and stabilized, a process which is expected to take approximately around four years.

19. It also deserves mention that, after allotment of the Impugned Tender to the Consortium in January 2025, nearly 25% of the work has already been completed within a span of one year and three months, including completion of the pile foundations for Coke Oven Battery ('COB'). The project is now set to enter the next phase of installation of COB approximately by the first week of May 2026.

20. The distinction between the Top Charged and Stamp Charged Coke Oven Batteries, as explained in Annexure-1 to the Impugned Letter has been brought to the notice of this Court. The material differences between the two lies in their design, coal charging and pushing operations, quality parameters and type of machinery used, a position which has not been disputed by the Petitioner.

21. In view of the aforesaid observations, the contention of learned senior counsel representing the Petitioner, that the rejection is based upon a different project altogether lacks merit. In particular, taking into consideration the intricate nuances of the Impugned Tender, and the fact that the Respondent intends to install Stamp Charged Coke Oven Battery for the first time, the past performance of the Petitioner at BSL has been correctly relied upon to reject its technical bid. While the Impugned Advisory acknowledges the satisfactory performance and long-standing experience of the Petitioner in Top Charged Coke



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Oven Battery Projects, the same cannot by any length justify its acceptance for a Stamp Charged Coke Oven Battery Project, which admittedly is distinct in nature and requirements.

22. The submission of learned senior counsel for the Petitioner, to the effect that the pendency of dispute resolution arising out of the Sinter Project at BSL, could not be relied upon, also lacks substance. SAIL is entitled, while awarding future contracts, to assess the suitability of a bidder on the basis of its performance in the previously awarded work.

23. There is no occasion to hold that consideration of pending disputes arising out of previously awarded contracts cannot be considered as an adverse material for such assessment. The principle of sub-judice or pending adjudication, does not exclude the Authority from relying upon the past performance of the bidder, particularly in the absence of any order of a Competent Authority discrediting such assessment.

24. In regards to the aforesaid, it shall also be noticed that the action of Respondent to give consideration to the past performance of the Respondent, is borne out of the terms highlighted in Clause 13 of Section-A of the Impugned Tender which provides that an Employer can take into account the capability and past performance of the bidders in other projects while evaluating any Tender.

25. The core contention of learned senior counsel for the Petitioner lies in the context of Impugned Advisory resulting in blacklisting of the Petitioner. However, this argument is required to be examined

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from two different perspectives, firstly, the action of the Respondent does not amount to blacklisting because the Impugned Advisory is merely an internal communication between the units of Respondent, thereby intimating the bifurcation of satisfactory and non-satisfactory past performance of the Petitioner in Top Charged Coke Oven Batteries and in the remaining fields based upon Respondent's own experience at BSL, respectively. The said Advosiry is not intended for external application by organizations/institutions/Steel Mills which are not working under SAIL. The Petitioner has altogether also not been debarred as such from participating in New Notice inviting Tenders.

26. Secondly, blacklisting implies a complete debarment of the bidder from participating in any of the project, which is not the case in the present circumstances. The Petitioner continues to be eligible for participation in Top Charged Coke Oven Battery Project and, as a matter of fact, has been awarded contracts worth approximately Rs. 1,500 crores post the issuance of the Impugned Advisory. In such circumstances, to state that the disqualification of the Petitioner amounts to blacklisting, will be a position taken contrary to the pertinent facts and circumstances.

27. For the sake of argument, even if the disqualification of the Petitioner is to be assumed as blacklisting from other projects, still the Petitioner cannot allege violation of principles of natural justice, particularly, when the Petitioner was granted a fair opportunity of hearing, pursuant to the order passed by this Court on 21.03.2024, followed by the Impugned Letter. Accordingly, the Petitioner cannot

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claim that he has not been afforded any effective opportunity to demonstrate its credibility credential and experience.

28. It will be noted here that the Respondent, is going to install Stamp Charge Coke Oven Batteries for the first time and would like to have an experienced contractor onboard for the same, who has sufficient or atleast some experience demonstrating its capability and credential in relation of Stamp Charged Coke Oven Battery works. The Petitioner, however, does not claim that it has already gained sufficient capability and experience by installing similar works for other institutions/steel mills.

29. Though, there is some force in the submissions of learned senior counsel for the Petitioner that the Impugned Advisory does not prescribe any define period or time limit for its operation, which in effect would result in indefinite period of blacklisting. Learned counsel representing the Respondent, to this extent, has fairly admitted that if the Petitioner makes a representation and satisfies Respondent, the Impugned Advisory so issued can be reconsidered.

30. Notwithstanding, the aforestated, in the instant case, the Impugned Advisory was issued in February 2022, whereas the Impugned Tender came to be floated in January 2023. Hence, the disqualification of the Petitioner, in consideration of an advisory issued within less than one year prior to the Impugned Tender, cannot be said to be arbitrary or irrelevant, and the Respondent was entitled to take the same into consideration while evaluating the Petitioner's technical suitability for the Impugned Tender.



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31. In view of the foregoing, the argument of learned counsel for the Petitioner that the Impugned Advisory and consequent rejection suffers from non-application of mind, lack of nexus has no merit. In particular, when the Impugned Letter, is a fresh order passed by the Respondent, after Petitioner had already been granted an opportunity of hearing pursuant to the Order dated 21.03.2024 of this Court in W.P.(C) 4044/2024. In exercise of writ jurisdiction, the Court is expected to examine matter from all the perspectives. The respondent-SAIL is expected to take a considered decision while keeping in view poor performance of the petitioner-company in another project. Hence, no fault can be found in the decision of SAIL to refusing to hand it over another important project which is being established for the first time.

32. Learned senior counsel's reliance on the judgment passed in ***Banshidhar Construction Pvt. Ltd. vs. Bharat Coking Coal Limited & Others***¹, is also misplaced. Since in that case, the Court returned a finding that allotment of contract in favour of a successful bidder was arbitrary, as the requisite documents had never been submitted by the successful bidder while submitting the bid. While dealing with the said facts of the case, the Court found that Bharat Cooking Coal Ltd. had arbitrarily allotted the contract in favour of successful bidder.

33. Similarly, the reliance on the judgment passed in ***Blue Dreamz Advertising Pvt. Ltd. & Anr. vs. Kolkata Municipal Corporation & Ors.***², is also misplaced, as the Court therein, found that the reasons

¹ (2024) 10 SCC 273

² 2024 SCC OnLine SC 1896



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fell far short of rendering the conduct of the Appellant before the Court so abhorrent as to justify invocation of drastic remedy of blacklisting/debarment. The Court also came to the conclusion that the Appellant has been subjected to disproportionate penalty. Hence, this judgment also does not come to the rescue of the Petitioner.

34. Keeping in view the aforesaid discussions, no ground for interference under Article 226 of the Constitution of India is made out.

35. The present Petition is accordingly dismissed. The pending applications also stand closed.

36. However, the Respondent shall remain bound of its stand to the effect that, if the Petitioner makes a representation and establishes its improved performance the Impugned Advisory as already issued shall be re-considered.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MAY 14, 2026

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