



**ORISSA HIGH COURT : CUTTACK**

**AFR**

**W.P.(C) No.8589 of 2024**

In the matter of an Application under Articles 226 & 227  
of the Constitution of India, 1950.

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Binodini Infrastructure Pvt. Ltd.  
Registered Office  
At: Bahadurbagichapada  
Bhawanipatna  
District: Kalahandi, Odisha  
Represented through  
Managing Director  
(Being authorized by Board of Directors)  
Sri Pradipta Kumar Singh  
Aged about 48 years  
Son of Late Nrusingha Charan Singh  
At: Bahadurbagichapada  
P.O./P.S.: Bhawanipatna  
District: Kalahandi, Odisha. ... Petitioner

*-VERSUS-*

- 1.** State of Odisha  
Represented through  
Commissioner-*cum*- Secretary  
Work Department, State Secretariat  
Bhubaneswar, District: Khurda.
- 2.** F.A.-*cum*-Special Secretary to Government  
Works Department, Government of Odisha  
State Secretariat, Bhubaneswar.



3. Engineer-in-Chief (Civil), Odisha  
Bhubaneswar, District: Khordha.
4. Chief Engineer  
Bridge World Bank Project, Odisha  
Bhubaneswar, District: Khordha.
5. Chief Engineer, (DPI & Roads)  
Works Department, Odisha  
Bhubaneswar, District: Khordha.
6. Chief Construction Engineer  
Jeypore (R & B ) Circle, Jeypore
7. Superintending Engineer  
Malkanagiri (R & B) Division  
Malkangiri. ... Opposite Parties.

***Advocates appeared in this case:***

- For the Petitioner : M/s. Prabodha Chandra Nayak,  
S.K. Sahoo, Advocates
- For the Opposite Parties : Mr. Saswat Das,  
Additional Government Advocate

*P R E S E N T:*

**HONOURABLE CHIEF JUSTICE  
MR. HARISH TANDON**

**AND**

**HONOURABLE JUSTICE  
MR. MURAHARI SRI RAMAN**

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**Date of Hearing : 06.05.2026 :: Date of Judgment : 20.05.2026**

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**JUDGMENT**



**MURAHARI SRI RAMAN, J.—**

The petitioner, craving to question the propriety and legality of order dated 30.03.2024 passed by the Chief Engineer, Bridges (WBP), Odisha, blacklisting the company for six years for having failed to achieve the desired milestones as per agreement and complete the works entrusted within period stipulated in terms of conditions of contract, beseeches exercise of power conferred on this Court under the provisions of Articles 226 and 227 of the Constitution of India for grant of following relief(s):

*“It is therefore prayed that this Hon’ble Court may be graciously pleased to issue rule NISI in the nature of any appropriate writ/writs and/or any other writ/writs and/or order/orders and/or direction/directions calling upon the opposite parties to show cause as to why:*

- (i) The impugned order No.14974, dated 30.03.2024 under Annexure-1, passed by the opposite party No.4 in blacklisting and debarring the petitioner to participate in any tender for six years without following due procedure shall not be declared illegal, arbitrary and same shall not be quashed.*
- (ii) The action and decision of the opposite party No.4 under Annexure-1 in blacklisting the petitioner shall not be declared illegal, arbitrary, unreasonable and violative of Article 14 and 19(1)(g) of the Constitution of India;*



*And may pass such other order(s)/direction(s) as this Hon'ble Court deems just and proper;*

*And for this act of kindness, the petitioner shall as in duty bound ever pray."*

**Facts:**

**2.** The present case emanates from two work orders, namely:

*i.* "Construction of H.L. Bridge over river Saberi, at 16/000 km of Mathili-Kaliguda road in Malkangiri district" with stipulation to commence on 27.12.2017 and complete on 26.06.2019 *vide* Agreement No.45P-1/2017-18 (hereinafter be referred to as "Work No.1").

*ii.* Bid identification No.58/2016-17 for the work "Construction of H.L. Bridge over river Satpadhara, at km 2/000 of Govindapalli-Kamalapadar-Gajaguda road in Malkangiri district under State Plan" with stipulation to commence on 28.11.2017 and complete on 27.02.2019 *vide* Agreement No.33P-1/2017-18 (hereinafter be referred to as "Work No.2").

*2.1.* Due to unforeseen circumstances, the petitioner could not complete the Work No.2 in time and upon consideration of request, extension of time was allowed up to 30.06.2020. Yet no substantial work being shown



to have been progressed, *vide* Letter No.3079, dated 25.06.2021 issued by the Executive Engineer, Malkangiri (R&B) Division while granting period to complete the work by 31.03.2022, the petitioner was instructed to show cause failing which action would be initiated for rescission of the agreement.

2.2. After furnishing replies eliciting the difficulties faced by the petitioner and it is brought to the notice of the Chief Engineer (World Bank Projects), Bhubaneswar by Letter dated 10.05.2023 that though super structure drawing was approved in Directorate of Design on 30.11.2022, the same was not communicated to the petitioner. In the said letter the authority was requested to allow the petitioner to execute the balance work and release the escalation cost up to 30.06.2020. Notwithstanding such reply, the Works Department intimated the Chief Engineer, World Bank Projects regarding approval of rescission proposal of contract in terms of Clause 2(b)(i)<sup>1</sup> of Agreement No.33P1 of 2017-18. Consequent upon such communication, an Office Order dated 23.08.2023 was issued by the Superintending Engineer, Malkangiri (R&B) Division which reads as follows:

*“The contract bearing No.33P1/2017-18 for the work ‘Construction of HL Bridge over river Saptadhara at km*

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<sup>1</sup> *“To rescind the contract (of which rescission notice in writing to the contractor under the hand of the Executive Engineer shall be conclusive evidence) 20% of the value of left-over work will be realized from the contractor as penalty.”*



*2/0 of Govindapalli-Kamalapadar-Gajiaguda road in Malkangiri District under State Plan' has been rescinded under Clause 2b(i) of the said P1 Agreement executed by Binodini Infrastructure Pvt. Ltd. 'Super' Class Contractor vide Letter No.33086, dated 10.08.2023 of Chief Engineer (World Bank Projects), Odisha, Bhubaneswar."*

2.3. Assailing such order of rescission of contract with respect to Work No.2, the petitioner approached this Court by way of filing an application registered as W.P.(C) No.31693 of 2023, wherein *vide* order dated 29.09.2023 notice was issued and the matter was directed to be listed along with W.P.(C) No.29863 of 2023 which related to Work No.1.

2.4. While the matter was *sub judice*, two show cause notices on 18.10.2023 were issued with respect to above both the works.

2.5. Show Cause Notice *vide* Letter No.C-II-MLK-05/2016—44375, dated 18.10.2023 with respect to Work No.1 was issued indicating as follows:

*"Please take notice that you have been entrusted with the work 'Construction of H.L Bridge over river Saberi at 16.000 Km. of Mathili-Kaliaguda road in the district of Malkangiri under state plan vide Agreement No.45-P1 of 2017-18 of the Executive Engineer, Malkangiri (R&B) Division, Malkangiri with the date of commencement as 27.12.2017 and stipulated date of completion as 26.06.2019. You have not completed the said work till*



*rescission of contract by the Government in Works Department vide Letter No.13148, dated 08.08.2023.*

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*Further on the final notice of the Superintending Engineer, Malkangiri (R&B) Division vide Letter No.3139, dated 30.06.2021 where he has stated that on his inspection to bridge site, no men and machineries were found in execution of the bridge project and he has again requested you to gear up the work in a war footing basis by engaging sufficient men and machineries with maximum working hour to complete back log quantities of the work by 31.03.2022 otherwise suitable action as per relevant clauses of the agreement will be initiated for rescission of the agreement. But no such initiative was found to be taken by you. Hence, it is apprehended that due to your such type of apathetic attitude and deliberate negligence the above work couldn't have been completed till date and could not be put to use of General Public.*

*In view of the above factual matrix, you are hereby directed to submit your explanation within 15 days from the date of issue of this show cause notice why suitable action shall not be taken by the undersigned under Appendix-XXXIV of Odisha Public Works Department Code, Volume-II and under Clause No.121 of the DTCN, failing which it is to be deemed that you have nothing to reply against this show cause and accordingly the action as deemed proper will be processed against you without any further intimation.”*

- 2.6. Show Cause Notice vide Letter No.C-II-MLK-05/2016—44374, dated 18.10.2023 with respect to Work No.2 was issued indicating as follows:



*“Please take notice that you have been entrusted with the work ‘Construction of HL Bridge over river Saptadhara at 2.00km of Govindapalli-Kamalapadar-Gujiaguda road in the district of Malkangiri under State plan vide Agreement No.33P1 of 2017-18 executed by the Executive Engineer, Malkangiri (R&B) Division, Malkangiri with the date of commencement as 28.11.2017 and stipulated date of completion as 27.02.2019. You have not completed the said work till rescission of contract by the Government in Works Department vide Letter No.13147, dated 08.08.2023.*

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*Though you have been allowed with the extension of time up to 30.06.2020 vide Government in Works Department Letter No.6805, dated 03.06.2020, the bridge work could not be completed within the extended period also. The Superintending Engineer, Malkangiri (R&B) Division vide Letter No.3842, dated 26.08.2020 issued another show cause notice to you regarding slow progress of work. Neither you have expedited the work nor you have applied for further extension of time to complete the said work.*

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*The Superintending Engineer, Malkangiri (R&B) Division issued final notice vide Letter No.357, dated 25.01.2021 to you with a request to execute the back log quantities of the work by engaging sufficient men and machineries with maximum working hours as well as to achieve the target for completion of the above project otherwise suitable action as per relevant clauses of the agreement will be initiated for rescission of the agreement. It proves that due to your lack of interest and deliberate negligence*



*the above work couldn't be completed till date and could not be put to use of General Public.*

*In view of the above factual matrix, you are hereby directed to submit your explanation within 15 days from the date of issue of this show cause notice why suitable action shall not be taken by the undersigned under Appendix-XXXIV of Odisha Public Works Department Code, Volume-II and under Clause No.121 of the DTCN, failing which it is to be deemed that you have nothing to reply against this show cause and accordingly the action as deemed proper will be processed against you without any further intimation.”*

- 2.7. Imposing penalty of Rs.74,96,518/- with respect to Work No.2 a demand has been raised *vide* Letter No.4815, dated 26.10.2023 by the Superintending Engineer, Malkangiri (R&B) Division with instruction to deposit balance penalty to the tune of Rs.10,52,210/- after adjustment of amounts due on account of earnest money deposit, initial security deposit, security deposit, withheld for extension of time and value of work executed as per final/joint measurement for payment.
- 2.8. By Letter Nos.BIPL/283/2023-24 (Work No.1) and BIPL/282/2023-24 (Work No.2), dated 23.10.2023 citing pendency of writ petitions being W.P.(C) No.29863 of 2023 and W.P.(C) No.31693 of 2023 the petitioner objected to steps taken for blacklisting/debarring exercising power under Appendix-XXXIV of the Odisha Public Works Department Code, Volume-II (“OPWD



Code”, for brevity) read with Clause No.121 of the DTCN. An affidavit dated 29.01.2024 was filed in W.P.(C) No.31693 of 2023 before this Court with the following undertaking:

*“That the petitioner files this affidavit with undertaking to complete the balance work, i.e., Construction of HL Bridge over river Saptadhara at km 2/000 of Govindpalli-Kamalapadar-Gajiaguda road in Malkangiri district under State plan within a period of 8 months from the date of order in terms of agreement and will not claim escalation for the said period.”*

2.9. The writ petition being W.P.(C) No.29863 of 2023 (relating to Work No.1) came to be disposed of on 01.03.2024 with the following observation:

*“4. In the additional affidavit filed by the petitioner dated 02.02.2024, at paragraph-3 the petitioner has stated as follows:*

*‘3. That, the petitioner files this present Affidavit with an undertaking to complete the remaining portion of the work “Construction of H.L. Bridge over river Saberi at 16/000 of Mathili-Kaliguda Road in Malkangiri district under State Plan” within a stipulated period of eight (8) months from the date of order in terms of agreement and hence shall not claim escalation for the said period.*

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*6. In view of the above, this writ petition stands disposed of directing the opposite parties to*



*permit the petitioner to complete the work within the period of eight months as indicated in paragraph-3 of the affidavit dated 02.02.2024.”*

2.10. Assailing the order dated 01.03.2024, the State of Odisha moved the Hon'ble Supreme Court of India in S.L.P.(Civil) No.14142 of 2024 [Civil Appeal No.7085 of 2025], wherein the following order was passed on 14.05.2025:

*“Leave granted.*

*The issue involved in the present appeal is covered by the decision in State of Odisha & Ors. Vrs. Binodini Infrastructure Pvt. Ltd.-[Civil Appeal No.5228 of 2025]<sup>2</sup> dated 15.04.2025, wherein the following order was passed:*

*‘After hearing learned counsel appearing for the parties, we find that the directions as contained in paragraph 3 of the impugned order could not possibly have been issued by the High Court as the same would fall in the domain of re-writing the terms of contract. The challenge before the High Court in the Writ Petition was to an order vide which the contract granted to the respondent was rescinded. The High Court had travelled beyond the prayer made in the Writ Petition. Instead of going through the validity of the order impugned, the High Court granted further time to the respondent to complete the contract, which was not*

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<sup>2</sup> *Vide Special Leave to Appeal (C) No(s). 1479 of 2025 [Arising out of order dated 12.01.2024 in WP(C) No.37679 of 2023 passed by the High Court of Orissa at Cuttack in the case of Binodini Infrastructure Pvt. Ltd., Kalahandi Vrs. State of Odisha].*



*within the domain of the High Court in exercise of the power under Article 226 of the Constitution of India.*

*For the reasons mentioned above, the impugned order passed by the High Court is set aside. However, the legal issues raised by the appellant in the Writ Petition having not been gone into by the High Court, we remit the matter to the High Court for examination thereof. All the arguments by both the parties are left open.'*

*In view of the above order, the impugned order stands set aside and the matter stands remitted to the High Court, for examination of the issues therein.*

*The appeal stands allowed accordingly."*

2.11. So far as writ petition being W.P.(C) No.31693 of 2023 relating to Work No.2 is concerned, counter affidavit has been filed by the opposite parties, copy of which was served on the counsel for the petitioner on 11.03.2024.

2.12. Thus, both the writ petitions are now pending before this Court.

2.13. It is submitted by the petitioner that the blacklisting order dated 30.03.2024 for six years is arbitrary and contrary to the Codal Provisions contained in sub-rule (c) of Rule A of Appendix-XXXIV of the OPWD Code read with Works Department Office Memorandum No.16131/W, dated 26.11.2021. While the writ petition, being W.P.(C) No.31693 of 2023 relating to Work No.2 is pending, the opposite parties in the counter affidavit filed therein took a stand that the petitioner had not



assured nor applied for extension of time seeking to complete the balance work of the bridge. Without taking cognizance of the fact that the petitioner did furnish affidavit before this Court showing its inclination to complete the Work No.2 “within eight months from the date of order in terms of the agreement”, such stand is not in consonance with the order dated 02.02.2024 passed by this Court in the said writ petition, which reads as follows:

*“2. An additional affidavit dated 29.01.2024 has been filed by the petitioner undertaking to complete the work in question within a period of eight months from the date of order in terms of the agreement. To that effect, Mr. P.P. Mohanty, learned Additional Government Advocate for the State-Opposite Parties seeks time to obtain instructions.”*

2.14. Further submission is made by the petitioner that though this Court by order dated 01.03.2024 passed in W.P.(C) No.29863 of 2023 relating to Work No.1 taking similar affidavit furnished in the said case into consideration directed the opposite parties to permit the petitioner to complete the work within the period mentioned therein.

2.15. Objecting to continuance of blacklisting order, it is submitted that in view of order dated 02.02.2024 passed by this Court in the writ petition being W.P.(C) No.31693 of 2023 relating to Work No.2 the impugned order *vide*



Annexure-1 is liable to be quashed being arbitrary and illegal.

***Counter affidavit of the opposite parties:***

**3.** The Superintending Engineer having issued notices on very many occasions requested the petitioner to complete the work and thereby given opportunities to complete the work within the period extended. On inspection of the site by the authority as no men and machineries were found, steps were taken.

3.1. Perceiving poor performance of the petitioner, who showed indifference to complete the works, the authority rescinded the contracts, and on receiving instruction from the Chief Construction Engineer, Jeypore (R&B) Circle in Letter No.5368, dated 13.10.2023, the Chief Engineer (WBP) issued Show Cause Notice Nos.44374 and 44375, dated 18.10.2023 (Annexure-11 enclosed with the writ petition) contemplating action as per Clause 121 of the DTCN in terms of Appendix-XXXIV of the OPWD Code.

3.2. It is highlighted that challenging the decision to rescind the contracts with respect to Work Nos.1 and 2, the petitioner filed writ petitions being W.P.(C) Nos.29863 of 2023 and 31693 of 2023 and requested the authority concerned not to take step with respect to blacklisting. Nonetheless, questioning the legality of order dated



01.03.2024 passed in W.P.(C) No.29863 of 2023, the opposite parties approached the Hon'ble Supreme Court of India in SLP(C) No.14142 of 2024, wherein by order dated 15.07.2024 stay of operation of said order of this Court was granted. Nevertheless, in W.P.(C) No.31693 of 2023 counter affidavit has been filed by the opposite parties.

3.3. With technical details, it is submitted by the opposite parties that the petitioner could have completed the work within the extended period as allowed by the authority and thereby the ground citing non-completion of works within the period stipulated, as sought to be extended by the petitioner, has been denied. Referring to many Show Cause Notices issued to the petitioner granting liberty to accomplish the works, it is asserted that the petitioner remained indolent and recalcitrant. It is pertinent to quote the following reply found place in the counter affidavit:

*“12. That in reply to the averments made in Paragraph Nos. 07 and 08 of the writ petition, it is humbly submitted that due to abnormal delay in progress, the petitioner had been requested from time to time to expedite the progress of work. As on 09.07.2019, the petitioner had left the approach road work in haphazard position in which it was causing inconvenience to the public. So, the petitioner had been asked in written to complete the approach road work. The petitioner could have completed the work*



*by 27.02.2019. The petitioner failed to submit the testing report of test pile within stipulated period of completion for which further drawing could not be obtained from the authority concerned and also, the petitioner had not deployed sufficient manpower and machineries as required for the bridge work, show-cause notices were issued to the Petitioner as to why penal action as per Clause 2(b)(i) shall not be initiated against it. In spite of the Show Cause notices, as to why the contracts in question shall not be terminated for causing the delay in completing the work, the petitioner had neither attended at work site of bridge properly nor responded to the communication made by the Executive Engineer vide his Letter dated 09.07.2019 and 15.07.2019 and failed to complete the bridge work.*

*\*\*\**

- 16. That the averments made in Paragraph No.12 of the writ petition are disputed and denied. It is humbly submitted that the original time period was 15 months (01 year 03 months) to complete the total bridge work. Basing on Letter dated 14.12.2021 of the petitioner, the petitioner had already lost more than 04 years since date of commencement of bridge work i.e. 28.11.2017, but pile integrity test and pile dynamic test over the river had not attended to complete it, in which other drawings could not be obtained from the authority concerned in absence of above report. After lapses of maximum time period, the petitioner had able to submit the Dynamic Test Report in 02 (two) phases i.e on 21.12.2021 for Abutment and 23.03.2022 for Piers. Basing on above report, the final drawing and design dated*



*30.11.2022 was provided to the site engineer of the petitioner for execution of work. Still then the petitioner had not started that work. From time to time the petitioner had been reminded to start the work otherwise suitable action will be initiated for rescission of the agreement.”*

3.4. The opposite parties stuck to the action taken by the opposite parties and sought for dismissal of the writ petition.

***Hearing:***

4. As the blacklisting order poses “civil death” of the petitioner’s business activities and the same debars it from participating in tenders, urgency in the matter being shown, the matter is taken up for hearing.

4.1. The pleadings being completed, heard Sri Prabodha Chandra Nayak, learned Advocate for the petitioner; Sri Saswat Das, learned Additional Government Advocate for the opposite parties. Written note of submissions has been filed by the counsel for respective parties on 06.05.2026.

4.2. Being directed to list the matter for “orders”, the matter being listed, the Judgment is pronounced.

***Rival contentions and submissions with written note of submissions:***



5. With the above background of factual scenario, though the matters challenging propriety of decision taken for rescinding the works in question are pending adjudication, Sri Prabodha Chandra Nayak, learned Advocate, insisted for hearing of the matter relating to debarring the petitioner from participating in tenders by contending that where certain things are required to be done in certain way, the same must be done in that manner, but not otherwise as other methods are necessarily forbidden inasmuch as the authorities have not adhered to the Codal Provisions in proper perspective. He relied on following *dictum* in *Avtar Singh Vrs. State of Punjab, (2023) 18 SCC 717*:

*“15. It is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to Dharani Sugars & Chemicals Ltd. Vrs. Union of India, (2019) 5 SCC 480.”*

5.1. It is with vehemence argued that the reasons ascribed for the conclusion arrived at by the Chief Engineer, Bridges (WBP), Odisha, *vide* order dated 30.03.2024 to blacklist the petitioner are vague and incoherent with the grounds enshrined in Rule A of Appendix-XXXIV to the OPWD Code.

5.2. It is canvassed before this Court that mere rescission of contracts does not contemplate step to be taken for



debarment/blacklisting the contractor under the said Code. The authority prior to taking a decision to blacklist the petitioner ought to have conducted enquiry and ought to make specific fact-finding that the ground(s) existed warranting order to be passed for blacklisting. Without granting reasonable, fair and meaningful opportunity of hearing to the petitioner the impugned order *vide* Annexure-1, being illegal, whimsical and arbitrary, is liable to be quashed”.

5.3. The learned Advocate for the petitioner referred to and relied on the following decisions to countenance his argument that the authority prior to action proposed should mention specifically and unambiguously the grounds:

i. *Erusian Equipment and Chemicals Ltd. Vrs. State of West Bengal, (1975) 1 SCC 70*, wherein it has been observed as follows:

“12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality



before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. **The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract.** A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. **When the State acts to the prejudice of a person it has to be supported by legality.**

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15. The blacklisting order does not pertain to any particular contract. **The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are “instruments of coercion”.**
16. In passing an order of blacklisting the government department acts under what is described as a standardised Code. This is a code for internal instruction.

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19. *Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. **A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice.** A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein.*

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20. ***Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.***



ii. *UMC Technologies Private Limited Vrs. Food Corporation of India*, (2021) 2 SCC 551, wherein the following is the observation:

**“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad Vrs. Custodian General, Evacuee Property*, (1980) 3 SCC 1 has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.**



14. **Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted.** Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into Government contracts. This privilege arises because it is the State who is the counterparty in Government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. **Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.**
15. In the present case as well, the appellant has submitted that serious prejudice has been caused to it due to the Corporation's order of blacklisting as several other government corporations have now terminated their contracts with the appellant and/or prevented the appellant from participating in future



tenders even though the impugned blacklisting order was, in fact, limited to the Corporation's Madhya Pradesh regional office. **This domino effect, which can effectively lead to the civil death of a person, shows that the consequences of blacklisting travel far beyond the dealings of the blacklisted person with one particular Government Corporation and in view thereof, this Court has consistently prescribed strict adherence to principles of natural justice whenever an entity is sought to be blacklisted.**

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21. Thus, from the above discussion, a clear legal position emerges that **for a Show-Cause Notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee.** Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.”

5.4. Advancing further his argument, Sri Prabodha Chandra Nayak, learned counsel would submit that the Codal Provisions for blacklisting contractors in sub-rule (c) of Rule A of Appendix-XXXIV appended to the OPWD Code



envisages two aspects, namely (i) Constant non-achievement of milestones on insufficient and imaginary grounds; and (ii) non-adherence to quality specifications despite being pointed out conjoined. Both the aspects together would form part of one ground. In the present case, only first two being pointed out by the authority concerned, the decision taken by the Chief Engineer, World Bank Projects, Odisha pursuant to Show Cause Notices dated 18.10.2023 (Annexure-11) is inconsistent with the Codal Provision; as such, the same suffers *vice* of arbitrariness, caprice and fancies of the authority; and the decision thereon is tainted with mechanical application of mind. To buttress his argument that these circumstances as envisaged in sub-rule (c) of Rule A of Appendix-XXXIV do constitute single whole, he referred to *Sk. Ahmed Vrs. State of Telangana, (2021) 9 SCC 59*, wherein it was held that,

*“19. This Court held that when the provisos (i) and (ii) are separated by conjunctive word “and”, they have to be read conjointly. The requirement of both the proviso has to be satisfied to avail the benefit. Para 8 [in Hyderabad Asbestos Cement Products Vrs. Union of India, (2000) 1 SCC 426] is as follows:*

*‘8. The language of the rule is plain and simple. It does not admit of any doubt in interpretation. Provisos (i) and (ii) are separated by the use of the conjunction “and”. They have to be read conjointly. The requirement of both the provisos*



*has to be satisfied to avail the benefit. Clauses (a) and (b) of proviso (ii) are separated by the use of an “or” and there the availability of one of the two alternatives would suffice. Inasmuch as cement and asbestos fibre used by the appellants in the manufacture of their finished excisable goods are liable to duty under different tariff items, the benefit of pro forma credit extended by Rule 56-A cannot be availed of by the appellants and has been rightly denied by the authorities of the Department.’  
\*\*\*”*

5.5. Sri Prabodha Chandra Nayak, learned Advocate arduously submitted that mere allegation of breach of contractual obligations without anything more, *per se*, does not invite such punitive action. He referred to following observation of the Hon’ble Supreme Court of India made in *Techno Prints Vrs. Chhattisgarh Textbook Corporation*, (2025) 3 SCR 208:

“34. Plainly, if a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that he has committed a breach of a contract, the nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. **A mere allegation of breach of contractual obligations without anything more, per se, does not invite any such punitive action.**

35. Usually, while participating in a tender, the bidder is required to furnish a statement undertaking that it has not been blacklisted by any institution so far



and, if that is not the case, provide information of such blacklisting. This serves as a record of the bidder's previous experience which gives the purchaser a fair picture of the bidder and the conduct expected from it. **Therefore, while the debarment itself may not be permanent and may only remain effective for a limited, pre-determined period, its negative effect continues to plague the business of the debarred entity for a long period of time. As a result, it is viewed as a punishment so grave, that it must follow in the wake of an action that is equally grave.**

36. In the overall view of the matter more particularly in the peculiar facts of the case, we have reached the conclusion that asking the appellant herein to file his reply to the show cause notice and then await the final order which may perhaps go against him, leaving him with no option but to challenge the same before the jurisdictional High Court will be nothing but an empty formality. **Even otherwise, issuing of show cause notice if not always then at least most of the times is just an empty formality because at the very point of time the show cause notice is issued the Authority has made up its mind to ultimately pass the final order blacklisting the Contractor. In other words, the show cause notice in most of the cases is issued with a pre-determined mind. It has got to be issued because this Court has said that without giving an opportunity of hearing there cannot be any order of blacklisting. To meet with this just a formality is completed by the Authority of issuing a show cause notice.**



5.6. It is submitted that since the petitioner pursuing his remedy *bona fide* and the propriety and legality of rescission of contracts being *sub judice* before this Court for adjudication in W.P.(C) Nos.29863 of 2023 and 31693 of 2023, the authority should not have shown haste in taking recourse of banning the petitioner for six years from participating in any of the tenders undertaken by the Government of Odisha and transacting business with the Government of Odisha, directly or indirectly.

5.7. Stemming on the observations made in *Blue Dreamz Advertising (P) Ltd. Vrs. Kolkata Municipal Corporation, (2024) 15 SCC 264*, the Codal Provisions specifying modalities for blacklisting/debarment requires strict interpretation, and non-fulfilment of any of the conditions thereof would render the decision of the authority vitiated. It is, thus, asserted that the ban order dated 30.03.2024 can be regarded as “civil death”<sup>3</sup>, for such a decision tends to “blacklisting” the petitioner preventing it to eke out livelihood.

5.8. Hence, it is urged fervently for showing indulgence in the matter.

**6.** Sri Saswat Das, learned Additional Government Advocate dispelling controversial contentions raised by

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<sup>3</sup> See, *Shri Artatran Bhuyan Vrs. State of Odisha, 2025 (II) ILR-CUT 1042* as followed in *Rinabala Sethi Vrs. State of Odisha, 2025 SCC OnLine Ori 4785*.



the petitioner submitted that the petitioner prior to passing order banning it from participating in the bidding process for the work undertaken by the Government of Odisha and entering into transactions of business with the Government of Odisha, issued Show Cause Notices and the reply of the petitioner was found not to have been specific or cogent. Referring to written note dated 21.07.2025 submitted by the opposite parties, he emphasised that in view of *State of Odisha Vrs. Panda Infraproject Limited, (2022) 4 SCC 393*, having adhered to principles of natural justice prior to taking decision to debar/ban, no flaw in the order dated 30.03.2024 of the Chief Engineer, Bridges (WBP) can be imputed so as to warrant this Court to interfere with. He would submit that banning the contractor like the petitioner who defied to complete the works entrusted within the period stipulated is an effective measure to discipline the defiant.

- 6.1. Explaining further he strenuously contended that the petitioner even though was granted sufficient opportunity and extension of period to complete the works in question, he remained dormant and filed affidavit before this Court for a direction to the opposite parties to extend the period so expired knowing fully well that such a recourse is not open for it to approach by



invoking provisions of Articles 226 and 227 of the Constitution of India.

- 6.2. In counter reply to the interpretation of use of the word “and” in sub-rule (c) of Rule A of the Appendix-XXXIV, Sri Saswat Das, learned Additional Government Advocate made suave submission that the aspects contained therein are to be read disjunctively, but not conjunctively. It is one thing to hold the petitioner having committed offence of “Constant non-achievement of milestones on insufficient and imaginary grounds” and nevertheless, it is another to say “non-adherence to quality specifications despite being pointed out”. It is vociferously submitted that two independent aspects cannot be construed to be one ground. Since the Show Cause Notices indicated one aspect *i.e.*, “Constant non-achievement of milestones on insufficient and imaginary grounds” out of the two aspects in the ground *vide* sub-rule (c) of Rule A of Appendix-XXXIV read with Clause 121 of the DTCN, and the reply thereto by the petitioner being not found favour with, ban order debarring the petitioner from participating in tenders *vide* order dated 30.03.2024 has been passed. Valiant attempt was made by the learned Additional Government Advocate to construe the word “and” joining two situations/ circumstances enjoined in sub-rule (c) of Rule A of Appendix-XXXIV to the OPWD Code to be disjunctive.



6.3. Referring to *Venkataraman Krishnamurthy Vrs. Lodha Crown Buildmart Pvt. Ltd.*, (2024) 4 SCC 230, it is submitted that the explicit terms contained in Clause 2(b)(i)<sup>4</sup> read with Clause 121 of the DTCN should be treated to be final word with regard to the intention of the parties. On the specious plea of regulatory or adjudicatory forum the petitioner should be discouraged to insist for judicial review after participation in the tender and being awarded with the works to accomplish within the periods stipulated in the guise of seeking equity or fairness. Such a course to draw sympathy of this Court is anathema to judicial approach and to insist for rewriting the contractual framework or superimpose obligations alien to the agreement.

6.4. He, thus, prayed not to meddle with the order of debarment *vide* Annexure-1 and dismiss the writ petition.

### ***Analysis and discussion:***

7. Before this Court the rescission of contracts with respect to two different works awarded has been under challenge in W.P.(C) Nos.29863 and 31693 of 2023. In both the cases the petitioner filed affidavit undertaking that given extension of further period, it would be in a

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<sup>4</sup> “To rescind the contract (of which rescission notice in writing to the contractor under the hand of the Executive Engineer shall be conclusive evidence) 20% of the value of left-over work will be realized from the Contractor as penalty.”



position to complete the works. While in respect of one of the works, being Work No.1, this Court having directed the opposite parties to allow the petitioner to complete the work in W.P.(C) No. 29863 of 2023 *vide* order dated 01.03.2024, the Hon'ble Supreme Court in the case of *State of Odisha Vrs. Binodini Infrastructure Pvt. Ltd., Civil Appeal No.7085 of 2025 [Arising out of S.L.P.(C) No.14142 of 2024]* *vide* order dated 14.05.2025 set aside the matter by holding that this Court could not have issued such direction inasmuch as such consideration would fall in the domain of rewriting the terms of contract. In the other matter being W.P.(C) No.31693 of 2023 the opposite parties have filed counter refuting the averments and contentions of the petitioner. Both the matters are now *sub judice* before this Court. Rescission of contracts being questioned in the said writ petitions, in the present the concern is for ban order clamped against the petitioner from participating in tenders and transacting business with the Government.

- 8.** Be that as it may, the order banning/debarring the petitioner has come to be passed by the Chief Engineer, Bridges (WBP), Odisha on 30.03.2024 which is subject matter of challenge in this writ petition.
- 9.** Perusal of Show Cause Notice dated 18.10.2023 with respect to Work No.1, it transpired that several requests were made by the authority concerned by issue of



notices to the petitioner to complete the works, which turned out to be futile and went unheeded. Upon inspection being conducted by the Superintending Engineer, Malkangiri (R&B) to the spot, it was found that there were no men or machineries at the site. Such negligence on the part of the petitioner invited issue of such notice with the caveat that failure to act with promptitude would invite action in terms of Clause 121 of the DTCN read with provisions of Appendix-XXXIV of OPWD Code, Volume-II.

9.1. Perusal of Show Cause Notice dated 18.10.2023 with respect to Work No.2 (Annexure-11) it is manifest that notwithstanding several notices issued to the petitioner, it remained indifferent and failed to complete the work within the period stipulated, as extended. Even a notice in Letter No.357 dated 25.01.2021 was issued with request to complete the balance work with warning that failure to resume work would entail step under Clause 121 of DTCN read with relevant provisions of Appendix-XXXIV of OPWD Code, Volume-II.

9.2. Separate replies dated 23.10.2023 were submitted to the Chief Engineer, World Bank Projects with copies to other authorities making them aware that the tenability of decision to rescind the contracts has been pending before this Court.



- 9.3. Perusal of record further revealed the fact that the petitioner has been imposed with penalty *vide* Letter dated 26.10.2023 issued by the Superintending Engineer (R&B) Division, Malkangiri (Annexure-12).
- 9.4. When the material with respect to pendency of cases relating to the works in question was made known to the authority concerned, without issuing further notice contemplating to take drastic step against the petitioner and/or hearing it the order of ban/debarment has been passed, which is recognized akin to “blacklisting”, thereby affecting the fundamental right to carry business under Article 19(1)(g) of the Constitution of India. As it emanates *ex facie* from the reply dated 23.10.2023, the petitioner merely made aware the authorities regarding pendency of cases before this Court as against rescission of contracts; but the reply does not indicate that the petitioner has disclosed the reasons for non-completion of the works within the periods stipulated.
- 9.5. It cannot be gainsaid that in order to impose stringent condition, like ban/debarment/blacklisting which would have effect of impinging upon constitutional right of the contractor, the authority exercising such power must be more circumspect and such recourse preventing the contractor from carrying on business would have unreasonable restriction on the right flowing from Article



19(1)(g). Article 14 of the Constitution of India safeguards such persons being contemned without affording opportunity of hearing. Such is the facet is *audi alteram partem*.

9.6. This Court in *Sumitra Sethy Vrs. The Indian Railways*, W.P.(C) No.6182 of 2025, vide Judgment dated 06.05.2026 observed thus:

“7. It is no gainsaying that the blacklisting or debarment has an effect of eliminating a person from participating in any contract with the Government nor will have any such privilege and advantage of entering into the contract with the Government agencies. **It is, in effect, deprived a person from having any commercial relationship with the Government or its agencies and has an impact on the right to trade or profession as provided under Article 19(1)(g) of the Constitution of India. Such fundamental right is always subject to the established procedure of law and in the event it is found that the person has committed a gross error or violated the terms and conditions of the contract, there is no fetter in debarring such person to participate in any tender, nor will be entitled to establish a contractual relationship with the public authority. In such sense, it is time and again regarded as a “civil death” and therefore, it is a paramount duty of the authorities to adhere the principles of natural justice before it**



***proceeds to inflict an order of debarment and/or blacklisting on the person.***

8. *The aforesaid concept/notion is further fortified in the judgment rendered by the Apex Court in case of Raghunath Thakur Vrs. State of Bihar; (1989) 1 SCC 229 in the following:*

*‘4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the 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. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside. So*



*far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant. The appeal is thus disposed of.'*

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10. *It is manifest from the ratio of law enunciated in the above report that the order of blacklisting and/or debarment not only prevents and/or excludes a person from participating in any contractual relationship with the Government or its agencies but is also deprived of his livelihood as a stigma would be attached to him which cannot be inflicted without giving ample opportunity to defend. Even if the terms and conditions embodied in the tender document does not contain an express provision relating to issuance of a show cause preceding the order of blacklisting, yet the rule of natural justice being paramount cannot be abridged and/or whittled down which is one of the ethos of the constitutional rights guaranteed in the Constitution of India. **The maxim audi alteram partem is ingrained and***



***inherited into the legal system and even a person cannot be penalised and/or condemned without giving an opportunity of hearing.*** As indicated hereinabove the debarment/blacklisting has the blend of a civil death, such order cannot be passed without affording an opportunity to defend and for such reason the issuance of show cause becomes inevitable.

11. *In a recent judgment rendered by the Hon'ble Supreme Court in M/s. A.K.G. Construction and Developers Pvt. Ltd. Vrs. State of Jharkhand and others; (2026) 4 SCR 331, the Apex Court was considering a case where a show cause notice was issued to the contractor with regard to the termination of a contract for the reasons reflected in the said show cause notice but the authorities while terminating the contract proceeded to pass an order of blacklisting and/or debarment. **The Apex Court did not interfere with the order of termination of a contract but set aside the order of the debarment as both the circumstances relating to a termination of a contract and imposition of a blacklisting and/or debarment are distinct, different and separate.** It is held that the show cause notice which was restricted to a termination of contract cannot be stretched to mean that it is also for the debarment in the following:*

- '3. Upon careful consideration of the impugned State action, which terminates the contract and blacklists the appellant without meaningful distinction, we hold that the termination order is substantiated and justified. However, the blacklisting order suffers from patent*



***infirmities: it evinces no application of mind, disregards the mandatory precept of audi alteram partem, and fails to precede with a show-cause notice requiring the contractor to demonstrate why such drastic action should not be taken. Blacklisting, being stigmatic and exclusionary in nature, cannot be imposed mechanistically but must comport with principles of natural justice and reasonableness.***

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22. *Returning to the facts of the present case, at the outset, it is apparent that the show cause notice dated 04.06.2024 does not purport to be a show cause notice for blacklisting at all. It perhaps expects the contractor to assume that it is for termination as well as for blacklisting. Even if we accept the submissions of Mr. Kumar Anurag Singh that, as there is no provision for prior notice before termination, this show cause notice must be taken to be for blacklisting, we are of the opinion that it still falls short of the requirement of a proper show cause notice for blacklisting. This is for the reason that as the decision to blacklist is independent of the decision to terminate, the Department must demonstrate application of mind before it takes the next step of blacklisting the contractor, over an order of termination. Upon taking such a decision, it must also issue a show cause notice calling upon the contractor to explain why a*



*consequential order of blacklisting should also not be passed. The letter must be indicative of the proposed decision to blacklist and the requirement of the contractor to respond to it. The show cause notice dated 04.06.2024 falls short of these requirements. Similarly, the final order of blacklisting, dated 23.08.2024, also does not list the reasons as to why an order of blacklisting has become necessary.’ \*\*\*”*

9.7. There is no cavil that the order of banning/blacklisting/debarment would be akin to “civil death”, this Court in *Kwick Soft Solutions Pvt. Ltd., Tamilnadu Vrs. State of Odisha, W.P.(C) No.24026 of 2024* vide order dated 21.08.2025<sup>5</sup> observed as follows:

“3. *It is no doubt true that the debarment or blacklisting of any individual or an entity to participate in a tender process is akin to a “civil death” as a person is deprived of entering into any commercial relationship with the public or the Government. Any order of debarment or blacklisting is always regarded as a stigma attached to the commercial dealing with the Government and in effect debars from a person to have the award of the Government contracts. **The debarment or blacklisting has an effect of bringing a person from the privilege and advantage of entering into a lawful relationship with the Government or its instrumentalities and above all impacts the livelihood.** In effect such debarment has a far-reaching consequence in public contracts and,*

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<sup>5</sup> Referred to in *Rinabala Sethi Vrs. State of Odisha, W.P.(C) No.21309 of 2024, vide Judgment dated 22.12.2025.*



therefore, the authority must view the misconduct more scrupulously before taking a decision of debarment/blacklisting. **The misdeed must be of such magnitude which in ordinary sense is not expected from a reasonable man.** It may at times should be judged on the parameter of unfair means or illegal gain. The minimal or accidental omission or mistake, which was subsequently rectified, if it does not, cause any prejudice or hinders in its invocation as the Bank remain committed to the person, in whose favour the Bank Guarantee is issued to honour the same, the authority must view the mistake in such perspective. Mere non-incorporation of UIN of the Odisha Police and incorporation of the PAN number of one of the Directors of the petitioner-Company mistakenly neither invalidates the said Bank Guarantee nor put any invasion into its invocation by the Odisha Police in the event the same is warranted from the conduct of the petitioner. Apart from the same, the said ministerial mistake was rectified by the Bank issuing the Bank Guarantee, which does not in our view invites the civil death as held by the Apex Court in the case of *Gorkha Security Services Vrs. Government (NCT of Delhi)* and others, (2014) 9 SCC 105 in the following:

‘16. It is a common case of the parties 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, many 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.’ \*\*\*”***

9.8. At this juncture careful reading of Show Cause Notices dated 18.10.2023 would depict that except for slow pace of work being flagged, nothing is emanated with specific terms with regard to the grounds on which the action for banning was contemplated.

9.9. It may be necessary to have regard to Clause 121 of the DTCN, which is reproduced hereunder [*vide* Counter affidavit, paragraph 6]:

*“121.A contractor may be blacklisted as per amendment made to Appendix XXXIV to OPWD Code, Volume-II on rules for blacklisting of contractors vide Letter No. 3365 dated 01.03.2007 of Works Department, Odisha.*

- (a) Misbehavior/threatening of departmental supervisory officers during work/tendeiing process,*
- (b) Involvement in any sort of tender fixing,*
- (c) Constant non-achievement of milestones insufficient and imaginary grounds and non-*



*adherence to quality specifications despite being pointed out.*

- (d) Persistent and intentional violation of important conditions of contract.*
- (e) Security consideration of the State, i.e., any action that jeopardizes the security of the State.*
- (f) Submission of false/fabricated/forged documents for consideration of a tender.”*

9.10. Relevant portion of Appendix XXXIV is quoted hereunder:

*“Appendix-XXXIV  
Codal provisions for blacklisting  
Contractors*

- A. The Chief Engineer of a department may blacklist a contractor with the approval of concerned Administrative Department on the following grounds:*
  - (a) Misbehaviour/threatening of departmental and supervisory officers during execution of work/tendering process.*
  - (b) Involvement in any sort of tender fixing.*
  - (c) Constant non-achievement of milestones on insufficient and imaginary grounds and non-adherence to quality specifications despite being pointed out.***
  - (d) Persistent and intentional violation of important conditions of contract.*



- (e) *Security consideration of the State i.e., any action that jeopardizes the security of the State.*
- (f) *Submission of false/fabricated/forged documents for consideration of a tender.*
- (g) *Non submission of Additional Performance Security (APS) within stipulated period in pursuance to Works Department Office memorandum No 14299/W, dated 03.10.2017.*

*The Divisional Officer shall report to the Chief Engineer if in his opinion any of the above wrong has/have been committed by any contractor. On receipt of such a report from the Divisional Officer the Chief Engineer shall make due enquiry and if considered necessary, issue show cause notice to the concerned contractor who in turn shall furnish his reply, if any, within a fortnight from the date of receipt of the show cause notice. Therefore, if the Chief Engineer is satisfied that there is sufficient ground, he shall blacklist the concerned contractor with the approval of the Administrative Department. After issue of the order of blacklisting of the said contractor, the Chief Engineer shall intimate to all Chief Engineers of other Administrative Departments, the Registering Authority as provided under Rule 4 of PWD Contractor's Registration Rules, 1967 and Department of Information & Technology for publication in web site of State Government.*

- B. *The registration certificate of blacklisted contractor shall remain automatically suspended while allowing him to complete all his ongoing work(s)*



*unless otherwise rescinded by the competent authority on grounds of breach of conditions of agreement.*

- C. *The name(s) of partners and allied concerns of the blacklisted contractors shall also be communicated to all concerned. Care shall be taken to see that the contractor blacklisted and his partners do not transact any business with Government under a different name or title.*
- D. *Once the blacklisting order is issued it shall not be revoked ordinarily unless:*
- (i) *On review in later date, the Chief Engineer is of the opinion that there is sufficient justification to revoke the order of blacklisting, or*
  - (ii) *In respect of the same offense, the accused has been honourably acquitted by court of law.*

*The concerned Chief Engineer will obtain order from the concerned Administrative Department before revoking the order of blacklisting. The order of revocation shall also be communicated to all concerned.*

*<sup>6</sup>[The blacklisting period per offence shall be limited to 03 (three) years subject to an overall maximum*

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<sup>6</sup> This clause has been introduced by virtue of Office Memorandum File No.07180200982020/16131/W, dated 26.11.2021;

“Sub.: *Codal provisions for blacklisting of contractor*

*Government after careful consideration have been pleased to make the following provision under Rule-D of Appendix-XXXIV of OPWD Code, Volume-II:*

*‘The blacklisting period per offence shall be limited to 03 (three) years subject to an overall maximum cumulative period of 10 (ten) years for multiple offences’.*

*This shall form a part of the Appendix-XXXIV of OPWD Code, Volume-II.”*



*cumulative period of 10 (ten) years for multiple offences.]*

- E. The Chief Engineer and Administrative Department shall maintain a list of blacklisted contractor. Updated list of blacklisted contractors shall be communicated to all concerned by the Chief Engineers on a quarterly basis.*
- F. Checklist as per Annexure-I, shall be furnished by the concerned Chief Engineer for blacklisting the contractor.*
- G. Checklist as per Annexure-II, shall be furnished by the concerned Chief Engineer for revoking blacklisting order.*

*Explanation:*

- (i) Action taken under this rule shall be in addition to any action taken under Rule 11 of PWD Contractor's Registration Rules, 1967 (Appendix-VIII of OPWD Code, Vol.-II). On revocation of order of blacklisting, registration certificate of the contractor shall valid automatically, if not otherwise become invalid which shall be recorded in the registration certificate by the revoking authority.*
- (ii) The ground mentioned above for blacklisting of contractor shall be deemed to be deleted from the grounds for cancellation/suspension of registration certificate under Rule 11(a) of PWD Contractor's Registration Rules, 1967 (Appendix VIII of OPWD Code, Vol.-II)."*



9.11. Ground on which the authority concerned proceeded to ban the petitioner is sub-rule (c) of Rule A of the Appendix-XXXIV. Having glance at the provisions as referred to above read with order dated 30.03.2024 (Annexure-1), it emerges that “Even after several notices and persuasions, the contractor constantly failed to achieve the desired milestones as per agreement and did not complete the above works within the time stipulated violating the conditions of contract and Codal Provisions.”

9.12. It is apparent that the ground for jumping to conclusion to debar the petitioner from participating in Government tenders falls within the ambit of sub-rule (c) of Rule A of Appendix-XXXIV. Rule A consists of seven grounds stemming on which the competent authority can invoke power to blacklist/debar a contractor. Minute reading of the order impugned would suggest that the ground on which the Chief Engineer, Bridges (WBP) proceeded was sub-rule (c) thereof. As debarment is stated to be for “six years”, it does not emanate from said order the reason for invocation of introduced clause by virtue of Office Memorandum dated 26.11.2021.

9.13. Sub-rule (c) of Rule A comprehends two aspects, namely:

- i. Constant non-achievement of milestones on insufficient and imaginary grounds; “and”



ii. non-adherence to quality specifications despite being pointed out.

9.14. Both the situations are placed under one entry as a composite ground. However, unless the deficiencies are put to notice of the petitioner in specific terms with respect to both the situations, it may not possibly be appropriate for the authority to jump to conclusion that the contract invites stringent restriction.

9.15. At this stage Show Cause Notices *vide* Annexure-11 are required to be taken into consideration. Meaningful reading of the tenor and texture of such notices would only indicate that notices were issued to the petitioner requesting it to complete the balance work. However, it does not emerge therefrom that the contemplated action for blacklisting was intimated in specific terms and ground(s) specified in sub-rule (c) of Rule A. It is only the Show Cause Notices dated 18.10.2023 which depict that failure to resume both the works would attract steps as per Clause 121 of the DTCN read with Rule A of the Appendix-XXXIV of the OPWD Code.

9.16. It is interesting to note that Show Cause Notices dated 18.10.2023 does not indicate whether there was any “insufficient and imaginary ground” that led to “constant non-achievement of milestones”. In the Show Cause Notice dated 18.10.2023 with respect to Work No.2 it is



stated that “The Superintending Engineer, Malkangiri, Malkangiri (R&B) Division again issued another show cause notice *vide* Letter No.5823, dated 11.11.2020 where he has stated that even though you have committed during contract management meeting held on 06.07.2020 in his office to start the bridge work by 2<sup>nd</sup> week of September, 2020, till November, 2020 you did not taken any initiative.” It is further revealed therefrom that “the Superintending Engineer, Malkangiri (R&B) Division issued final notice *vide* Letter No.357, dated 25.01.2021 to you with a request to execute the backlog quantities of the work by engaging sufficient men and machineries with maximum working hours as well as achieve the target for completion of the above project”. Similar facts are also found place in Show Cause Notice dated 18.10.2023 with respect to Work No.1.

9.17. Above recitals emanating from the Show Cause Notices would indicate that the extensions granted for completion of works were during the period of pandemic. There is no iota of indication found in said Show Cause Notices with respect to “non-adherence to quality specifications”. Had the authority wanted real reason for the delay and non-accomplishment of the works entrusted to the petitioner, it should have issued notice to submit explanation for the delay and affording opportunity of hearing. Failure to give such an



opportunity would render the order legally fragile not on the ground of lack of jurisdiction on the part of the authority concerned but on the ground of violation of principles of natural justice. There can be no dispute that while the authority is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered relevant by the contractor, must be afforded to him prior to the finalization of the decision. See, *Commissioner of Income Tax Vrs. Amitabh Bachchan*, (2016) 3 SCR 516.

9.18. In *Oryx Fisheries Pvt. Ltd. Vrs. Union of India*, (2010) 13 Addl. SCR 234 it has been stated thus:

- “22. Relying on the underlined portions in the show cause notice, learned counsel for the appellant urged that even at the stage of the show cause notice the third respondent has completely made up his mind and reached definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.
23. This Court finds that there is a lot of substance in the aforesaid contention.
24. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause



*proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.*

25. *Expressions like 'a reasonable opportunity of making objection' or 'a reasonable opportunity of defence' have come up for consideration before this Court in the context of several statutes.*
26. *A Constitution Bench of this Court in Khem Chand Vrs. Union of India and others, reported in AIR 1958 SC 300, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.*
27. *Chief Justice S.R. Das speaking for the unanimous Constitution Bench in Khem Chand (supra) held that the concept of 'reasonable opportunity' includes various safeguards and one of them, in the words of the learned Chief Justice, is:*
- '(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;'***
28. *It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the chargesheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the*



*entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.*

29. *Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against. In the instant case from the underlined portion of the show cause notice it is clear that the third respondent has demonstrated a totally close mind at the stage of show cause notice itself. Such a close mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid rule has been framed in exercise of the power conferred under Section 33 of The Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.*

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31. *It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his*



*head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.*

32. *Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.*
33. ***The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.***
34. *A somewhat similar observation was made by this Court in the case of Kumaon Mandal Vikas Nigam Limited Vrs. Girja Shankar Pant & others, (2001) 1 SCC 182. In that case, this court was dealing with a show cause notice cum charge sheet issued to an employee. While dealing with the same, this Court in paragraph 25 (page 198 of the report) by referring to the language in the show cause notice observed as follows:*
  - ‘25. *Upon consideration of the language in the show-cause notice-cum-charge-sheet, it has been very strongly contended that it is clear*



*that the Officer concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete.’*

35. *After paragraph 25, this Court discussed in detail the emerging law of bias in different jurisdictions and ultimately held in paragraph 35 (page 201 of the report), the true test of bias is:*

*‘35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom— in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained.’*

36. *Going by the aforesaid test any man of ordinary prudence would come to a conclusion that in the instant case the alleged guilt of the appellant has been prejudged at the stage of show cause notice itself.”*

9.19. In *Commissioner of Central Excise, Bhubaneswar Vrs. Champdany Industries Limited*, (2009) 14 (Addl.) SCR 211 it is unequivocally laid down as follows:

*“50. Apart from that, the point on Rule 3 which has been argued by the learned counsel for the Revenue was not part of its case in the show-cause notice. It is well settled that unless the foundation of the case is made out in the show-cause notice, Revenue cannot*



*in Court argue a case not made out in its show-cause notice. [See: Commissioner of Customs, Mumbai Vrs. Toyo Engineering India Limited, (2006) 7 SCC 592, para 16].*

51. *Similar view was expressed by this Court in the case of Commissioner of Central Excise, Nagpur Vrs. Ballarpur Industries Ltd., (2007) 8 SCC 9. In paragraph 27 of the said report, learned Judges made it clear that if there is no invocation of the concerned rules in the show-cause notice, it would not be open to the, Commissioner to invoke the said Rule.”*

9.20. The Supreme Court in case of *Commissioner of Customs, Mumbai Vrs. Toyo Engineering India Limited, (2006) Supp.5 SCR 657* noted that the Department cannot be allowed travel beyond the show cause notice and, therefore, it would be against the principles of natural justice that a person who has not been confronted with any ground is saddled with liability thereof. Since the issue did not form the basis of the show cause notice and was not even confronted to the order passed beyond show cause notice is to be quashed. In the instant case, the Show Cause Notices do not with specificity spelt out with regard to twin conditions envisioned in sub-rule (c) of Rule A of Appendix-XXXIV appended to the OPWD Code. The Show Cause Notices dated 18.10.2023 and the impugned order dated 30.03.2024 are silent about the circumstances/aspects which led to construe that



the explanation of the petitioner was “insufficient and imaginary grounds”. Neither the Show Cause Notices nor did the order demonstrate that there was “non-adherence to quality specifications despite being pointed out”.

9.21. Numerous grounds are found mentioned in Rule A. Each ground is placed separately as item (a) through (g). Had both the aspects in Ground contained in sub-rule (c) of Rule A “Constant non-achievement of milestones on insufficient an imaginary grounds” “and” “non-adherence to quality specifications despite being pointed out” were to be treated as separate grounds, then there was no difficulty in formulating each of them in separate items. Before analyzing the nuance of grounds found enumerated under Rule A, OPWD Code, a doctrinaire principle ingrained in *noscitur-a-sociis* may be referred to as reflected in *State Vrs. Hospital Mazdoor Sabha, (1960) 2 SCR 866* may be regarded as relevant for the present purpose. The Hon’ble Supreme Court of India held,

*“This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general.*

*The same rule is thus interpreted in “Words and Phrases” (Vo. XIV, p. 207):*



*‘Associated words take their meaning from one another under the doctrine of noscitur-a-sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim Ejusdem Generis.’*

*In fact the latter maxim ‘is only an illustration or specific application of the broader maxim noscuntur-a-sociis’.*”

9.22. In *Parle Agro Private Limited Vrs. CCT*, (2017) 7 SCC 540 it has been said that it must be borne in mind that *noscitur-a-sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied.

9.23. Rule A begins with expression— “The Chief Engineer of a department may blacklist a contractor with the approval of concerned Administrative Department on the following grounds”. Said expression is followed by seven categories of grounds enumerated in sub-rules (a) through (g). The setting of said Rule inculcates in mind only one thing that the Chief Engineer is empowered to take decision to blacklist a contractor subject to approval of the Administrative Department on the grounds mentioned in



sub-rules (a) to (g) on any one ground or combination of grounds; nonetheless, each sub-rule is a ground to be construed independently. Twin condition is specified in sub-rule (c) of Rule A. The languages employed in Clause 121 of the DTCN and sub-rule (c) of Rule A of Appendix-XXXIV appended to the OPWD Code, Volume-II are identically worded. Rule A read as a whole indicates that the blacklisting of the contractor can be done on the grounds enumerated therein. Seven independent grounds are reflected in said Rule A. As has already been observed above each ground is separately enumerated from sub-rule (a) to sub-rule (g). Sub-rule (c) is one of the grounds contained in Rule A. Therefore, the suggestion of the learned Additional Government Advocate to read the word “and” between two expressions, *i.e.*, “Constant non-achievement of milestones on insufficient an imaginary grounds” “and” “non-adherence to quality specifications despite being pointed out” disjunctively cannot be acceded to for the simple reason that while enumerating different grounds the OPWD Code specified separately each ground; then there was no difficulty in placing two disjunctive situations/aspects, as pleaded by the opposite parties through the learned Additional Government Advocate, in different segment. The intent of the Government to treat both the conditions as one ground for the purpose of



taking step to blacklist a contractor is loud and clear and no ambiguity can be imputed.

9.24. It is well-established principle of statutory interpretation that the word “or” is normally disjunctive and the word “and” is normally conjunctive. Both of them can be read as *vice-versa*, but that interpretation is adopted only where the intention of the legislature is manifest. See, *Central Council for Research in Ayurvedic Sciences Vrs. Bikartan Das*, (2023) 11 SCR 731.

9.25. In *Bhavnagar University Vrs. Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111 it has been enunciated as follows:

*“It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant.”*

9.26. In *Renaissance Hotel Holdings Inc. Vrs. B. Vijaya Sai*, (2022) 5 SCC 1, it has been emphasized as follows:

*“66. It is thus trite law that while interpreting the provisions of a statute, it is necessary that the textual interpretation should be matched with the contextual one. The Act must be looked at as a whole and it must be discovered what each section, each clause, each phrase and each word is meant*



*and designed to say as to fit into the scheme of the entire Act. **No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.** \*\*\**

67. Another principle that the High Court has failed to notice is that a part of a section cannot be read in isolation. This Court, speaking through A.P. Sen, J., in *Balasinor Nagrik Coop. Bank Ltd. Vrs. Babubhai Shankerlal Pandya*, (1987) 1 SCC 606, observed thus:

‘4. \*\*\* **It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section.**’

*This principle was reiterated by this Court in Kalawatibai Vrs. Soiryabai*, (1991) 3 SCC 410:

‘6. \*\*\* **It is well settled that a section has to be read in its entirety as one composite unit without bifurcating it or ignoring any part of it.**’ \*\*\*”

9.27. On the basis of said principle, when Rule A of the Appendix-XXXIV of the OPWD Code, Volume-II is studied, it manifests that from sub-rules (a) to (g) of Rule A contains independent ground mentioned in each sub-rule. Each ground contained in each sub-rule is distinct from one and the other. Sub-rules (a) to (g) comprehend



different identifiable circumstance/event/ground in each sub-rule. In that sense, sub-rule (c) of Rule A is to be read as one composite whole.

9.28. The Show Cause Notice and the order impugned do not contain reason as to why the reply of the petitioner did contain “insufficient and imaginary ground”. Cursory glance at replies at Annexure-13 would show that the petitioner has simply intimated the authority concerned regarding challenge being made before this Court against the rescission of contract; but such replies do not reflect that the petitioner has proffered cause of delay in completion of the works. If the authority concerned decided to discard such replies and wished to proceed with the matter on merit in the context of blacklisting the petitioner, he should have shown deference by issuing further intimation with more details eliciting the circumstances that the petitioner was required to explain as to its “constant non-achievement of milestone on insufficient and imaginary ground and non-adherence to quality specifications despite being pointed out”. If the replies dated 23.10.2023 does not reveal that the petitioner has offered specific explanation indicating both the aspects on the ground *vide* sub-rule (c) of Rule A of the Appendix-XXXIV, OPWD Code, Volume-II, the authority should have shown alacrity by issuing further notice by mentioning specific instance/



ground to which the petitioner was required to place his defence/explanation.

9.29. In *A.K.G. Construction and Developers Pvt. Ltd. Vrs. State of Jharkhand*, (2026) 4 SCR 331 it has been highlighted as follows:

*“23. The contractual relationship between the parties is governed by two legal regimes. While GCC governs termination, the 2012 Rules govern blacklisting. Proceedings for termination should not be conflated with proceedings for blacklisting. In the latter action, what is at stake is the future of the contractor. A blacklisting order assumes that the contractor is an incorrigible entity, at least for some time to come, in this case such an assumption was intended to operate for five years. For giving effect to such a premise, there has to be sufficient evidence, clear application of mind and stronger adherence to principles of natural justice<sup>7</sup>. The blacklisting order dated 23.08.2004 falls short of this requirement and is liable to be set aside.”*

9.30. Hence, the order dated 30.03.2024 passed by the Chief Engineer, Bridges (WBP), Odisha cannot withstand judicial scrutiny.

**10.** Reading of order dated 30.03.2024 of the Chief Engineer, Bridges (WBP), Odisha debarring the petitioner for six years manifests that he has invoked

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<sup>7</sup> *Kulja Industries Ltd. Vrs. Chief General Manager, Western Telecom Project BSNL*, (2014) 14 SCC 731; *Blue Dreamz Advertising (P) Ltd. Vrs. Kolkata Municipal Corporation*, (2024) 15 SCC 264, *Techno Prints Vrs. Chhattisgarh Textbook Corporation*, (2025) 3 SCR 208.



Rule D of Appendix-XXXIV as amended by virtue of Office Memorandum, dated 26.11.2021. As per such amended provision, the blacklisting period per offence shall be limited to three years subject to an overall maximum cumulative period of ten years for multiple offences. Neither Show Cause Notices nor does the order impugned reveal that there was any proposition to initiate proceeding to impose punishment for cumulative period with respect to multiple “offences” attracting Codal Provisions for banning/blacklisting contractor.

10.1. The term “offence” as found place in Rule D of Appendix-XXXIV has not been defined in the OPWD Code. The Hon’ble Supreme Court of India in the case of *Standard Chartered Bank Vrs. Directorate of Enforcement, (2006) 4 SCC 278* laid down the interpretation of “offence” in absence of definition in the following manner:

*“29. Both, Section 50 providing for imposition of penalty and Section 56 providing for prosecution, speak of contravention of the provisions of the Act. Contravention is the basic element. The contravention makes a person liable both for penalty and for prosecution. Even though the heading to Section 56 refers to offences and prosecutions, what is made punishable by the section is the contravention of the provisions of the Act and the prosecution is without prejudice to any award of penalty. The award of penalty is also based on the same contravention. Section 63 confers the power of*



*confiscation of currency, security or any other money or property in respect of which a contravention of the provisions of the Act has taken place conferred equally on the adjudicating authority and the court, whether it be during an adjudication of the penalty or during a prosecution. Whereas Section 64(1) relating to preparation or attempt at contravention is confined to Section 56, the provision for prosecution, sub-section (2) of Section 64 makes the attempt to contravene or abetment of contravention, itself a contravention, for the purposes of the Act including an adjudication of penalty under the Act. Section 68 relating to offences by companies, by sub-section (1) introduces a deeming provision that the person who was in charge of and was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty along with the company of the contravention of the provisions of the Act and liable to be proceeded against and punished accordingly. The proviso, no doubt, indicates that a person liable to punishment could prove that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. Sub-section (2) again speaks only of a contravention of the provisions of the Act and the persons referred to in that sub-section are also to be deemed to be guilty of the contravention and liable to be proceeded against and punished accordingly.*

*The word “offence” is not defined in the Act. According to Concise Oxford English Dictionary, it means, “an act or instance of offending”. Offend means, “commit an illegal act” and illegal means, “contrary to or forbidden by law”. According to New*



*Shorter Oxford English Dictionary, an offence is “a breach of law, rules, duty, propriety, etiquette, an illegal act, a transgression, sin, wrong, misdemeanour, misdeed, fault”. Thus, an offence only means the commission of an act contrary to or forbidden by law. It is not confined to the commission of a crime alone. It is an act committed against law or omitted where the law requires it and punishable by it. In its legal signification, an offence is the transgression of a law; a breach of the laws established for the protection of the public as distinguished from an infringement of mere private rights; a punishable violation of law, a crime, the doing that which a penal law forbids to be done or omitting to do what it commands (see P. Ramanatha Aiyar’s Advanced Law Lexicon, 3rd Edn., 2005, p. 3302).*

*This Court in Depot Manager, Andhra Pradesh State Road Transport Corporation Vrs. Mohd. Yousuf Miya, (1997) 2 SCC 699 stated that the word “offence” generally implies infringement of a public duty, as distinguished from mere private rights punishable under criminal law.*

*In Brown Vrs. Allweather Mechanical Co., (1954) 2 QB 443 = (1953) 1 All ER 474 = (1953) 2 WLR 402 (DC) it was described as: (All ER p. 476 A-B)*

*A failure to do something prescribed by a statute may be described as an offence, though no criminal sanction is imposed but merely a pecuniary sanction recoverable as a civil debt.*

*The expression “offence” as defined in Section 3(38) of the General Clauses Act means an act or omission*



*made punishable by any law for the time being in force.*

*“Punishable” as noticed by this Court in Sube Singh Vrs. State of Haryana, (1989) 1 SCC 235 is ordinarily defined as deserving of, or capable or liable to punishment. According to Concise Oxford English Dictionary, “punish” means, “inflict a penalty on as retribution for an offence, inflict a penalty on someone for (an offence)”.*

*In New Shorter Oxford English Dictionary (Vol. 2, 3rd Edn., reprint 1993), the meaning of “punishment” is given as, “infliction of a penalty in retribution for an offence; penalty imposed to ensure application and enforcement of a law”.*

*Going by Black’s Law Dictionary (8th Edn.) it is:*

*“A sanction— such as a fine, penalty, confinement, or loss of property, right, or privilege— assessed against a person who has violated the law.”*

*According to Jowitts Dictionary of English Law, Vol. 2, (2nd Edn. by John Burke), punishment is the penalty for transgressing the law.*

*It is significant to notice that Section 68, both in sub-section (1) and in sub-section (2) uses the expression, shall be liable to be proceeded against and punished accordingly. There does not appear to be any reason to confine the operation of Section 68 only to a prosecution and to exclude its operation from a penalty proceeding under Section 50 of the Act, since the essential ingredient of both is the contravention of the provisions of the Act. A company is liable to be proceeded against under*



*both the provisions. Section 68 is only a provision indicating who all in addition can be proceeded against when the contravention is by a company or who all should or could be roped in, in a contravention by a company. Section 68 only clarifies the nature and mode of proceeding when the contravention of any of the provisions of the Act is by a company, whether it be by way of adjudication to impose a penalty or by way of prosecution leading to imprisonment and a fine.”*

10.2. In *Black’s Law Dictionary* by Henry Campbell Black, Revised Fourth Edition [St. Paul, Minn., West Publishing Co., 1968] the meaning of the terms “cumulative”, “cumulative punishment” and “cumulative sentences” have been described as follows:

*“Cumulative.— Additional; heaping up; increasing; forming an aggregate. The word signifies that two things are to be added together, instead of one being a repetition or in substitution of the other. People Vrs. Superior Court, 10 Wend., N.Y., 285; Regina Vrs. Eastern Archipelago, Co., 18 Eng. Law & Eq. 183.*

*Cumulative punishment.—*

*An increased punishment inflicted for a second or third conviction of the same offense, under the statutes relating to habitual criminals. State Vrs. Hambly, 126 N.C. 1066, 35 S.E. 614.*

*Cumulative sentences.— Separate sentences (each additional to the others) imposed upon a defendant who has been convicted upon an indictment containing several counts, each of such counts charging a distinct offense, or*



*who is under conviction at the same time for several distinct offenses; one of such sentences being made to begin at the expiration of another. Carter Vrs. Mc-Claughry, 22 S.Ct. 181, 183 U.S. 365, 46 L.Ed. 236.”*

10.3. Thus being conspectus of the terms “offence”, “cumulative”, “cumulative offence”, and “cumulative sentences”, there can be no confusion rests in mind that there must first be a recording of finding that the various offences are charged and proved/established by clear evidence *vis-à-vis* explanation by the defender and such offences warrants imposition of punishments/penalties to be treated cumulatively. Ground contained in sub-rule (c) of Rule A of Appendix-XXXIV of the OPWD Code, Volume-II is clear indication that the twin conditions enumerated therein are required to be fulfilled before taking action for banning/blacklisting/debarring for more than one offence contemplated in the introduced provision by virtue of Office Memorandum dated 26.11.2021.

10.4. It may be pertinent to have regard to the interpretation of penal provisions as reiterated in *Fuleshwar Gope Vrs. Union of India, (2024) 10 SCR 315*:

*“31. It is well understood that penal statutes are statutes to be interpreted strictly. This canon of construction has been reiterated time and again. It is apposite here to refer to certain authorities in this context.*



31.1 Maxwell in *The Interpretation of Statutes* (11th Edn.) has observed:

*‘The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation failed to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischief aimed at our, if the language permits, to be held to fall within its remedial influence’*

*Observations in the twelfth edition, in this context, are also educative:*

***‘The strict construction of penal statutes seems to manifest itself in four ways:*** In the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfillment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction.’ \*\*\*”

10.5. Show Cause Notices dated 18.10.2023 (Annexure-11) and consequent order dated 30.03.2024 (Annexure-1) do not transpire that the authority has returned any finding as to “offence” being committed by the petitioner and there was scope in the circumstances to impose



penalties/punishments like debarment/blacklisting to have cumulative effect. In absence of such finding being recorded on the material available on record, this Court is of the opinion that the circumstances did not exist warranting the petitioner to ban “from participating or bidding for any work to be undertaken by the Government of Odisha” and “from transacting business with the Government of Odisha directly, in the name of proprietary bidder or indirectly under different name or title” for a period of “six years”.

10.6. In absence of proper, clear, unequivocal and specific charge being stated in the Show Cause Notices (Annexure-11) as indicated in the foregoing paragraphs, with reference to the Office Memorandum dated 26.11.2021 the Chief Engineer proceeded on an erroneous approach as if the blacklisting could be clamped consecutively for six years (limited to three years per offence) at the drop of the hat. As is already observed that the petitioner had had no opportunity to justify the reasons for not being able to complete the works within the period stipulated, the instruction to complete the works by the authority concerned appears to be during the pandemic, *i.e.*, 2020-21 or 2021-22. The reply dated 23.10.2023 cannot be construed to be explanation on the merit; rather it is only intimation regarding pendency of cases before this Court against



rescission of contract(s) by way of filing writ petitions. Be that be. In view of *A.K.G. Construction and Developers Pvt. Ltd. Vrs. State of Jharkhand, (2026) 4 SCR 331* since it is not forthcoming that the petitioner is incorrigible entity upon analysis of sufficient evidence, clear application of mind and stronger adherence to principles of natural justice, it is entitled to the benefit of *audi alteram partem* and right to reason with respect to banning/blacklisting/debarment having impact on its future transactions which in the considered view of this Court falls within the connotation of “civil death” and “civil consequences”.

10.7. In this respect the decision of the Hon’ble Supreme Court of India rendered in *ASP Traders Vrs. State of Uttar Pradesh, (2025) 7 SCR 1462* may be pertinent to derive guidelines for the administrative authorities to proceed with the Show Cause Notice. The following summation of principles as propounded in the said reported case may be taken as guidelines in the present matter:

“18. *The principles of natural justice mandate that when a taxpayer submits a response to a show cause notice, the adjudicating authority is required to consider such response and render a reasoned, speaking order. This is not a mere procedural formality, but a substantive safeguard ensuring fairness in quasi-judicial proceedings. The right to*



*appeal under Section 107 of the CGST Act, 2017, is predicated upon the existence of a formal adjudication. An appeal can lie only against an 'order', and in the absence of a reasoned order passed under Section 129(3) of the Act, the taxpayer is effectively deprived of the statutory remedy of appeal. Such a deprivation undermines the foundational principles of fairness, due process, and access to justice, rendering the right of appeal illusory or nugatory. It is now settled law that failure to issue a speaking order in response to a show cause notice creates a legal vacuum. Any consequential action including imposition of tax or penalty, would then be unsupported by authority of law, thereby potentially violating Article 265 of the Constitution of India, which prohibits the levy or collection of tax except by authority of law.*

*18.1. In this context, useful guidance may be drawn from the decision in M/s. Kranti Associates (P) Ltd & Anr. Vrs. Masood Ahmed Khan & Ors., (2010) 9 SCC 496, wherein, this Court emphasized that fairness, transparency, and accountability are inseparable from the duty to provide reasons. The Court held that failure to furnish reasons violates the principles of natural justice and renders the right of appeal or judicial review illusory. In paragraph 51 of the judgment, the Court distilled the following key principles:*

*'a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*



- b. *A quasi-judicial authority must record reasons in support of its conclusions.*
- c. *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- d. *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- e. *Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- f. *Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- g. *Reasons facilitate the process of judicial review by superior Courts.*
- h. *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*
- i. *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these*



*decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

- j. Insistence on reason is a requirement for both judicial accountability and transparency.*
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.*
- m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).*
- n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ*



405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.

o. *In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “Due Process”.*”

19. *Therefore, even assuming that the payment was made by the appellant, voluntarily or otherwise, the proper officer could not be absolved of the statutory obligation to pass a reasoned order in Form GST MOV-09 and upload the corresponding summary in Form GST DRC-07. Compliance with these procedural requirements is essential not only for ensuring transparency and accountability in tax administration, but also for safeguarding the taxpayer’s appellate rights under the CGST Act, 2017. Such adherence is in consonance with the constitutional mandate under Article 265 of the Constitution of India.”*

### **Conclusion:**

**11.** As discussed *supra* neither the order dated 30.03.2024 (Annexure-1) nor the Show Cause Notices dated 18.10.2023 (Annexure-11) indicate the grounds for blacklisting in terms of Rule A of Appendix-XXXIV of OPWD Code in clear and unequivocal terms. The Show Cause Notices are silent about existence of twin



conditions as a ground envisaged in sub-rule (a) of Rule A for blacklisting nor is there any finding of fact returned in the impugned order to show such ground (twin conditions) established. Therefore, this matter deserves intervention.

11.1. The ban/debarment/blacklisting is construed as “civil death” having substantial impact on the fundamental right to carry on business as envisioned under Article 19(1)(g) of the Constitution of India, and as such penal action leads to civil or evil consequence, the provisions vesting power on the authority to impose penalties are required to be conceived strictly.

11.2. It is true that penal provisions must be strictly construed; but having regard to the nature of the offence involved, such strict construction may be refused to be adopted. Looking to the gravity of offence, narrow and pedantic, literal and lexical construction of penal provisions can be eschewed. Reference may be had to *Murlidhar Meghraj Loya Vrs. State of Maharashtra, (1976) 3 SCC 684* and *Kisan Trimbak Kothula Vrs. State of Maharashtra, (1977) 1 SCC 300*. Having regard to the intent of the OPWD Code, harmonious construction may be adhered to while invoking the provisions of Appendix-XXXIV so as to strike a balance between the right of the contractee-Government and the right of the contractor.



11.3. This apart, one must bear in mind that Codal Provisions in Appendix-XXXVI is part of the OPWD Code, which are executive instructions and mere procedures facilitating smooth functioning of works entrusted to the contractors. It is well settled that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistress. [See, *Sardar Amarjit Singh Kalra Vrs. Pramod Gupta*, (2003) 3 SCC 272, *N. Balaji Vrs. Virendra Singh*, (2004) 8 SCC 312 and *Kailash Vrs. Nanhku*, (2005) 4 SCC 480].

11.4. In *G.J. Fernandez Vrs. State of Mysore*, (1967) 3 SCR 636 = AIR 1967 SC 1753 it has been observed thus:

*“12. Taking first the contention with respect to the Code not being followed in the matter of tenders, the question that arises is whether this Code consists of statutory rules or not. The High Court has observed that the so-called rules in the Code are not framed either under any statutory enactment or under any provision of the Constitution. They are merely in the nature of administrative instructions for the guidance of the department and have been issued under the executive power of the State. Even after having said so, the High Court has considered whether the instructions in the Code were followed in the present case or not. Before however we consider the question whether instructions in the Code have been followed or not, we have to decide whether these instructions have any statutory force. If they have no statutory force, they confer no right on any body and a tenderer cannot claim any rights*



*on the basis of these administrative instructions. If these are mere administrative instructions it may be open to Government to take disciplinary action against its servants who do not follow these instructions but non-observance of such administrative instructions does not in our opinion confer any right on any member of the public like a tenderer to ask for a writ against Government by a petition under Article 226. The matter may be different if the instructions contained in the Code are statutory rules. Learned counsel for the appellant is unable to point out any statute under which these instructions in the Code were framed. He also admits that they are administrative instructions by Government to its servants relating to the Public Works Department. But his contention is that they are rules issued under Article 162 of the Constitution. Now Article 162 provides that “executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws”. This Article in our opinion merely indicates the scope of the executive power of the State; it does not confer any power on the State Government to issue rules thereunder. As a matter of fact wherever the Constitution envisages issue of rules it has so provided in specific terms. We may for example, refer to Article 309, the proviso to which lays down in specific terms that the President or the Governor of a State may make rules regulating the recruitment and the conditions of service of persons appointed to services and posts under the Union or the State. We are therefore of opinion that Article 162 does not confer any power on the State Government to frame rules and it only indicates the scope of the executive power of the*



*State. Of course, under such executive power, the State can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor. It is not in dispute that there is no statute which confers any authority on the State Government to issue rules in matters with which the Code is concerned; nor has any provision of the Constitution been pointed out to us under which these instructions can be issued as statutory rules except Article 162. But as we have already indicated, Article 162 does not confer any authority on the State Government to issue statutory rules. It only provides for the extent and scope of the executive power of the State Government, and that coincides with the legislative power of the State Legislature. Thus under Article 162, the State Government can take executive action in all matters in which the legislature of the State can pass laws. But Article 162 itself does not confer any rule making power on the State Government in that behalf. We are therefore of opinion that instructions contained in the Code are mere administrative instructions and are not statutory rules. Therefore even if there has been any breach of such executive instructions that does not confer any right on the appellant to apply to the court for quashing orders in breach of such instructions. It is unnecessary for us to decide whether there has been in fact a breach of any*



*instruction contained in the Code with respect to tenders and we do not therefore so decide. But assuming that there has been any breach that is a matter between the State Government and its servant, and the State Government may take disciplinary action against the servant concerned who disobeyed these instructions. But such disobedience did not confer any right on a person like the appellant, to come to court for any relief based on the breach of these instructions. It is for this reason that we are not referring to the Code, though the High Court did consider whether there was any breach of these administrative instructions and came to the conclusion that there was no breach. In the view we take it is unnecessary for us to consider this, for we are of opinion that no claim for any relief before a court of law can be founded by a member of the public, like the appellant, on the breach of mere administrative instructions.”*

11.5. In *P. Tulsi Das Vrs. Government of Andhra Pradesh*, (2002) Supp.3 SCR 306 it has been laid down as follows:

*“On a careful consideration of the principles laid down in the above decisions in the light of the fact situation in these appeals we are of the view that they squarely apply on all fours to the cases on hand in favour of the appellants. The submissions on behalf of the respondent-State that the rights derived and claimed by the appellants must be under any statutory enactment or Rules made under Article 309 of the Constitution of India and that in other respects there could not be any acquisition of rights validly, so as to disentitle the State to enact the law of the nature under challenge to set right serious anomalies which crept in and deserved to*



*undone, does not merit our acceptance. It is by now well settled that in the absence of Rules under Article 309 of the Constitution in respect of a particular area, aspect or subject, it was permissible for the State to make provisions in exercise of its executive powers under Article 162 which is co-extensive with its Legislative powers laying conditions of service and rights accrued to or acquired by a citizen would be as much rights acquired under law and protected to that extent. The orders passed by the Government, from time to time beginning from February 1967 till 1985 and at any rate upto the passing of the Act, to meet the administrative exigencies and cater to the needs of public interest really and effectively provided sufficient legal basis for the acquisition of rights during the period when they were in full force and effect. The orders of the High Court as well as the Tribunal also recognised and upheld such rights and those orders attained finality without being further challenged by the Government, in the manner known to law. Such rights, benefits and perquisites acquired by the Teachers concerned cannot be said to be rights acquired otherwise than in accordance with law or brushed aside and trampled at the sweet will and pleasure of the Government, with impunity. Consequently we are unable to agree that the Legislature could have validly denied those rights acquired by the appellants retrospectively, not only depriving them of such rights but also enact a provision to repay and restore the amounts paid to them to State. The provisions of the Act, though can be valid in its operation 'in futuro' cannot be held valid in so far as it purports to restore status quo ante for the past period taking away the benefits already available, accrued and acquired by them. For all the reasons stated above the reasons assigned by the majority opinion of the Tribunal could not be approved in our hands. The provisions of*



*Section 2 and 3(a) insofar as they purport to take away the rights from 10.02.1967 and obligates those who had them to repay or restore it back to the State is hereby struck down as arbitrary, unreasonable and expropriatory and as such is violative of Articles 14 and 16 of the Constitution of India. No exception could be taken, in our view, to the prospective exercise of powers thereunder without infringing the rights already acquired by the appellants and the category of the persons similarly situated whether approached courts or not seeking relief individually. The provisions contained in Section 2 have to be read down so as to make it only prospective, to save the same from the unconstitutionality arising out of its retrospective application.”*

11.6. In the case of *R. Sai Bharathi Vrs. J. Jayalalitha*, (2003) Supp.6 SCR 85, the Hon'ble Supreme Court held:

***“Even if the Government order is traced to have been issued under executive power of the State under Article 162, such a Code will not be enforceable when the language used is not in mandatory terms and they are intended to be mere guidelines or instructions to the concerned persons in authority. Therefore, as long as such a Code of Conduct is not enforceable in any court of law and does not even provide what action could possibly be taken in case of breach by the Chief Minister, the prohibition contained therein is only having ethical or moral effect and any breach thereof cannot be treated to be unlawful or even illegal within the meaning of Section 43 IPC. To constitute a ground for civil action under Section 43, there must be a right in a party which can be enforced. It may be a breach of contract or a claim for damages or some such similar right accruing under any law. There is no law which debars the Chief***



*Minister from participating in a sale conducted by any Department of the Government or any of the Corporations or any public sector undertaking affording a cause for civil action especially when no fraud or illegal gain is involved. Therefore, we are constrained to hold that the offence under the aforesaid provision has not been established. In fact, there is nothing in the charge to indicate nor did the prosecution take a specific stand at any stage of the trial that the purchase of T ANSI foundry property by A-I from the Government would furnish a ground for a particular civil action. The nature of civil action that could be initiated cannot be left to the guess work and the accused cannot be expected to meet such case at this stage.”*

11.7. Thus, with the above conspectus of legal position with respect to executive instructions compiled in the form of a Code (here OPWD Code), they are construed to be guidelines to the authorities of the Departments of the Government and the language of any of such instructions is in the nature of mandatory character, the authority is obligated to strictly adhere to the same. While the provisions dealing with procedural aspect conferring power to invoke authority and arrive at the conclusion are procedural in nature which can be construed liberally, the provision enabling the authority to impose penalty like banning/blacklisting/debarring is to be interpreted strictly as the same would involve civil or evil consequence having restrictive impact on the business of the contractor offending Article 14 read with



Article 19(1)(g) of the Constitution of India. Any decision to blacklist/debar a contractor from participating in tenders need to be taken strictly within the parameters of law and has to comport with the principle of proportionality.

11.8. Such view has explicitly been stated in *Blue Dreamz Advertising (P) Ltd. Vrs. Kolkata Municipal Corporation*, (2024) 15 SCC 264 with the following observations:

*“24. What is significant is that while setting out the guidelines prescribed in USA, the Court noticed that comprehensive guidelines for debarment were issued there for protecting public interest from those contractors and recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily. The illustrative cases set out also demonstrate that debarment as a remedy is to be invoked in cases where there is harm or potential harm for public interest particularly in cases where the person’s conduct has demonstrated that debarment as a penalty alone will protect public interest and deter the person from repeating his actions which have a tendency to put public interest in jeopardy. In fact, it is common knowledge that in notice inviting tenders, any person blacklisted is rendered ineligible. Hence, blacklisting will not only debar the person concerned from dealing with the employer concerned, but because of the disqualification, their dealings with other entities also is proscribed. Even in the terms and conditions of tender in the present case, one of the conditions of*



*eligibility is that the agency should not be blacklisted from anywhere.*

- 25. In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracised resulting in serious consequences for the person and those who are employed by him.*
- 26. Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto.*
- 27. Examining the facts of this case from that perspective, we find that the appellant, after the award of the tender, has admittedly paid an amount of Rs.3,71,96,265, though, according to the Corporation, the outstanding amount as on the date of the debarment was Rs.14,63,24,727. However, as would be clear from the facts discussed hereinabove, right from the inception there have been issues between the appellant and the Corporation with regard to the fulfilment of the reciprocal obligations in the bid document. There has been exchange of correspondence between the parties with each side blaming the other for not performing the reciprocal obligations. While the appellant had a case with regard to the non-issuance of work orders; non-receipt of formal format of bank guarantee; refusal of no-objection certificate for obtaining connection from Calcutta Electric*



*Supply Corporation Ltd.; existence of only 200 out of 250 allotted street hoardings and so on demonstrating breach of obligations by the Corporation, the Corporation had a case that bank guarantee was not the mode of payment and as such there was no reason to insist on bank guarantee; that in the joint inspection the appellant's men failed to cover all the areas and thereafter when the appellant was asked to submit a list of allotted location, the appellant failed to furnish the same and further there was huge default on the part of the appellant.*

- 28. Even in the order dated 02.03.2016 by which the appellant was debarred for a period of five years, the reason given is that the tender notice had clearly stated that the street hoardings in the annexures would be allotted on "as is where is" basis; that the company having understood the scope and effect of the terms and conditions of the notice accepted the award; that "no-objection certificate" is not required in respect of the existing hoardings; that there was no document to show that the company had applied to Calcutta Electric Supply Corporation Ltd. for connection and that it appeared to the Corporation that the company did not have the financial capacity to pay and as such the company was creating problems on one pretext or the other since obtaining the allotment of sites. The order also stated that the appellant had set up a bad example to others having interest to enjoy the advertisement rights.*
- 29. All these reasons fall far short of rendering the conduct of the appellant in the present case, so abhorrent as to justify the invocation of the drastic*



*remedy of blacklisting/debarment. The appellant very clearly has been subjected to a disproportionate penalty. The Corporation has lifted a sledgehammer to crack a nut. We disapprove of the said course of action on the facts of this case.*

*\*\*\**

- 34. The Division Bench has, in our opinion, not appreciated the case in its proper perspective. Merely saying that the blacklisting order carried reasons is not good enough. Do the reasons justify the invocation of the penalty of blacklisting and is the penalty proportionate, was the real question.*
- 35. The Division Bench has observed that blacklisting is a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. It also observed that between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The observations are too sweeping in their ambit and wholly overlook the fact that the respondent Corporation is a statutory body vested with the duty to discharge public functions. It is not a private party. Any decision to blacklist should be strictly within the parameters of law and has to comport with the principle of proportionality.*
- 36. The Division Bench having noticed the fact that any decision to blacklist will be open to scrutiny on the anvil of the doctrine of proportionality has failed to apply the principle to the facts of the case in the correct perspective. The Division Bench has also failed to correctly appreciate the ratio of the decision*



*in B.S.N. Joshi & Sons Ltd. Vrs. Nair Coal Services Ltd., (2006) 11 SCC 548.*

37. *There has been no enquiry by the Division Bench as to whether the conduct of the appellant was part of the normal vicissitudes in business and common place hazards in commerce or whether the appellant had crossed the rubicon warranting a banishment order, albeit for a temporary period in larger public interest.”*

11.9. In the wake of the above the order dated 30.03.2024 passed by the Chief Engineer, Bridges (WBP), Odisha (Annexure-1) cannot be held to be tenable in the eye of law and hence, the same is hereby quashed and set aside. The matter is thus reverted to the stage of Show Cause Notices dated 18.10.2023. However, liberty is reserved to the petitioner to file reply to Show Cause Notices and the authority may take this opportunity to intimate the petitioner about existence of twin conditions in clear, unambiguous and specific terms, if such material is available on record, so that proper defence/explanation can be prepared and reasons explaining the ground suggested by the opposite parties for banning/blacklisting/debarring can be cited.

11.10. In such event the authority concerned would be required to consider such explanation and afford the petitioner opportunity of hearing. After adhering to formalities required for adhering to the principles of



natural justice, appropriate action may be taken by the authority assigning reason for such decision.

*11.11.* Needless to observe that the decision taken thereon shall be communicated to the petitioner forthwith. It is clarified that until the ground(s) are examined in the light of discussions made above and appropriate finding is recorded thereon, the order of banning/blacklisting/debarment ceases to operate.

**12.** In the result, finding merit in the writ petition the same is allowed to the above extent and pending Interlocutory Application(s), if any, shall stand disposed of, but in the circumstances, there shall be no order as to costs.

I agree

**(HARISH TANDON)**  
**CHIEF JUSTICE**

**(MURAHARI SRI RAMAN)**  
**JUDGE**