

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 29839 of 2025

Debopriyo Deb Roy

Vs.

Union of India & Ors.

Mr. Aritra Basu

Mr. Ritoban Sarkar

Mr. Tanmoy Sett

Mr. Pran Gopal Das

....For the petitioner.

Mr. Subrata Roy

Mr. Pralay Bhattacharjee

....For the Union of India.

Hearing Concluded On : 25.06.2026

For Clarification On : 13.07.2026

Judgment Delivered On : 23.07.2026

Judgment Uploaded On : 23.07.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition challenging the show cause notice dated 28th October, 2021, wherein the petitioner is directed to show cause as to why the firm of the petitioner shall not be removed from the approved list of contractors and communication dated 15th December, 2025.
2. The petitioner was an enlisted contractor with the respondent authorities for the period from 1st January, 2016 to 31st December, 2020, under Class “B” with index No. B-11. The petitioner by a representation dated 29th September, 2020, made a request for renewal of his enlistment from the circle period of 2021 to 2025.
3. The respondent authorities have issued show cause notice to the petitioner on 28th October, 2021, calling upon the petitioner to show cause as to why the name of the petitioner shall not be removed from the approved list of contractors as the petitioner is not fulfilling the criteria for renewal for the next cycle period of 2021-2025. The petitioner has submitted a detailed reply to the respondents on 29th November, 2021. In spite of receipt of reply from the petitioner, the respondents have not taken any steps and on 25th July, 2022, the petitioner has preferred an appeal before the Appellate Authority. No order is passed in the appeal filed by the petitioner.
4. On 20th November, 2025, the petitioner again made a request to the respondent authorities for renewal of his enlistment from January,

2026. On 15th December, 2025, the respondent authorities sent a detailed reply to the petitioner and refused to renew the enlistment of the petitioner for the cycle period from January, 2026. In the said communication, it was informed to the petitioner that recovery of an amount of Rs. 52,120/- is due from the petitioner as per letter dated 11th May, 2023 and as per record, an amount of Rs. 38,53,541/- is outstanding against the petitioner. The petitioner has submitted reply to the said refusal on 19th December, 2025.

- 5.** Mr. Aritra Basu, Learned Advocate, representing the petitioner submits that with regard to CA No. CE(AF) SZ/KUM/15 of 2015-16 for provision of parking area and pavement along with lightning facilities at AFS Kumbhigram, the authorities have illegally cancelled the said tender by the Shillong Zone on 23rd September, 2022, with effect from 30th September, 2022 and claimed Rs. 44,46,442/-. The petitioner has issued a notice to the authorities for appointment of Arbitrator on 20th December, 2024, making certain claims and also proposed three names to be appointed as an arbitrator but no arbitrator was appointed.
- 6.** Mr. Basu submits that with regard to recovery of Rs. 52,128/-, the concern work order was issued in the year 2004 and was duly completed in 2004 but after a lapse of 20 years, the respondent authorities have raised claim of the said amount.
- 7.** Mr. Basu submits that as regard to the claim of Rs. 38,53,541/-, the same was adjudicated by the Learned Arbitrator and as per the Award

dated 25th November, 2024, the said claim has been settled and no adverse consequence survived against the petitioner. He submits that during the period 2015 to 2020, the petitioner has completed the works and an amount of Rs. 1,81,23,173/- is remain due and payable by the respondents to the petitioner.

8. Mr. Basu submits that during the pendency of the present writ petition, by a letter dated 13th January, 2026, the respondent no.3 informed the petitioner that the name of the petitioner is removed from the approved list of the contractors by a letter dated 4th June, 2022. He submits that the respondents have ignored the facts that with respect to CA No. CCE/NAR/DIN-01 of 2015-16, an Award has been passed by the Learned Sole Arbitrator in favour of the petitioner and the respondents have not challenged the said Award.
9. Mr. Basu submits that the letter dated 4th June, 2022, was never served upon the petitioner. He submits that the respondents cannot remove the name of the petitioner from the approved list of contractors of the respondents for indefinite period. In support of his case, he has relied upon the judgment in the case of ***Vetindia Pharmaceuticals Limited vs. State of Uttar Pradesh and Another*** reported in **(2021) 1 SCC 804** and submits that an order of black listing beyond 3 years or maximum of 5 years was disproportionate.
10. Mr. Basu has further relied upon the judgment in the case of ***Kulja Industries Limited Vs. Chief General Manager, Western Telecom***

Project Bharat Sanchar Nigam Limited and Others reported in ***(2014) 14 SCC 731*** and submits that the debarment is never permanent and the period of debarment would invariably depend upon nature of the offence committed by the erring contractor.

11. Mr. Basu has relied upon the judgment in the case of ***M/s. Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*** reported in ***(1975) 1 SCC 70*** and submits that fundamentals of fair play require that the person concern should be given an opportunity to represent his case before he is put on the blacklist.
12. Mr. Basu has further relied upon the judgment in the case of ***Lt. Governor, Delhi and Others Vs. HC Narinder Singh*** reported in ***(2004) 13 SCC 342*** and submits that second penalty based on the same cause of action would amount to double jeopardy.
13. Mr. Subrata Roy, Learned Advocate, representing the respondent authorities submits that by a letter dated 28th October, 2021, a show case notice was issued to the petitioner, as the firm falls under Para 7(a) of Engineer-in-Chief's Branch letter dated 24th April, 2020, calling upon the petitioner as to why his name shall not be removed from the approved list of contractors as the petitioner not full filling the criteria for renewal of his enlistment for the next cyclic period of 2021 to 2025.
14. Mr. Roy submits that the petitioner has not submitted any show cause reply and accordingly the renewal of the firm has not been considered. He submits that the term "removal" has been used in the letter dated

4th June, 2022, but the said letter is to be read in conjunction with Engineer-in-Chief's Branch letter dated 24th April, 2020, which clearly specifies that if the firm falls under para 7, renewal of the firm shall not be carried out for the next cycle period i.e. 2021-2025.

- 15.** Mr. Roy submits that no specific time period is applicable to Head Quarter, CEEC letter dated 4th June, 2022 and the petitioner can apply for renewal/ fresh enlistment provided the petitioner satisfied all the criteria of renewal / fresh enlistment.
- 16.** Mr. Roy submits that the petitioner is relying upon the Award passed by the Learned Sole Arbitrator but the Learned Sole Arbitrator has opined that there is no illegality or irregularity in cancelling the contract by the respondents. He submits that the cancellation of the contract has not been declared invalid or illegal by the Learned Arbitrator.
- 17.** Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied by the petitioner. The petitioner was the enlisted contractor of the respondent authorities. On 29th September, 2020, the petitioner has applied for renewal of his enlistment from the year 2021 to 2025. On 28th October, 2021, the respondents have issued show cause notice to the petitioner on the allegation that the work order issued to the petitioner by the ADG (NEI) Guwahati in the month of June, 2021, was cancelled, therefore, renewal of the enlistment falls under para 7 of the Engineer-in-Chief's

Branch letter dated 24th April, 2020 and directed to show cause as to why the name of the petitioner is not removed from the approved list of contractors as the petitioner was not fulfilling the criteria for renewal of his enlistment for the next circle i.e. 2021-2025. The petitioner has submitted his reply to the show cause notice which is appearing at page 30 being Annexure “P/5” of the writ petition but the respondents are denying with respect to any reply submitted by the petitioner. The petitioner has relied upon the Award passed by the Learned Sole Arbitrator dated 25th November, 2024, wherein the Learned Arbitrator has partly awarded the claim of the petitioner to the tune of Rs. 22,84,010/- with interest at the rate of 2% higher than the prevailing rate of interest.

- 18.** Enlistment of the petitioner was not renewed for the period from 2021 to 2025, the petitioner has made another request to the respondent authorities on 20th November, 2025, for renewal of the enlistment of the petitioner for the period from 2026 onwards but by a communication dated 15th December, 2025, the respondent authorities informed the petitioner that the work order being CA No. CE(AF)SZ/KUM/15 of 2015-16 was cancelled on 23rd September, 2022, in which an amount of Rs.44,46,442/- is due against the petitioner. In the said communication, it was further informed to the petitioner that claim of Rs. 52,120/- and Rs. 38,53,541/- are also outstanding dues against the petitioner.

- 19.** The show cause notice dated 28th October, 2021, issued on the allegation that ADG (NEI) Guwahati, has issued WLR for the Qtr. Ending June 2021 by a letter dated 15th September, 2021, wherein it was informed that the contract awarded to the petitioner was cancelled. After issuance of the said show cause notice, the respondents have not taken any action. From the communication dated 13th January, 2026, the petitioner came to know that the respondents have removed the name of the petitioner from the approved list of contractors by a letter dated 4th June, 2022. It is the specific case of the petitioner that the said communication was not served to the petitioner and the respondents have also not produced any record to show that the letter dated 4th June, 2022, was served upon the petitioner.
- 20.** The respondents have relied upon Para 7 (a) of the Engineer-in-Chief's Letter dated 24th April, 2020, on the basis of which renewal of the enlistment of the petitioner was not considered which reads as follows:

"Criteria for Renewal"

7. All contractors who apply for renewal will be re-enlisted in the same Class/categories of enlistment. Renewal of enlistment of all contractors who submit required documents and fulfill the criteria of renewal shall be carried out except those falling under the following categories. Renewal of enlistment of such contractors shall be carried out only after obtaining approval of this HQ:-

(a) Contractors whose contracts have been cancelled and unrealized recoveries exist thereto and cases, where cancellation of contract has been declared invalid/ illegal in arbitration/ court of law.

(b) Contractors in whose completed works during last five years, serious defects were noticed which are substantially attributed to the performance of Contractors, established through Court of Inquiry or Tech Boards of Officers and disciplinary action is pending/ initiated.

(c) Contractors who could not secure any work in the last five years ending last date of receipt of application for renewal (refer Para 6 (a)) either in MES/DG MAP or any Govt Dept/Public Sector undertaking/AWHO/ANWHO/DGsNP/CGEWHO or in case they could not secure any works, they have not participated in tendering in MES or have participated in tendering but have not been in first three lowest quotations.

(d) Contractors who are habitual litigants.

(e) Contractors not found fit for renewal for reasons other than (a) to (d) above, ie unethical conduct.

(f) Contractors who are already removed on account of any default on their part, or debarred, but period of debarment is not yet over. Contractors against whom the debarment would be over after the stipulated date(s), the stipulated date(s) would be deemed to be extended accordingly.

(g) Any case of unusual nature shall be referred to this HQ well within time for advice/ clearance.

[Notes: Regarding (a) to (e) above, action shall to be taken to obtain the explanation of the contractor(s) by serving notice to him bringing out the issue as applicable and allowing four weeks' time to furnish replies. The issue shall be decided taking into account the replies of the contractor(s) and after referring the complete case to this HQ. In respect of (d) above, a contractor will be considered a habitual litigant if he moves the Court more than once ignoring arbitration clause and the Court does not upload his view.]”

- 21.** The petitioner has relied upon the Award passed by the Learned Arbitrator dated 25th November, 2024. In the said Award, a specific issue is decided *“Whether the termination of the contract vide order dated 31st July, 2020, is legally valid and justified or not?”* While deciding the said issue, the Learned Arbitrator held that *“In view of the above discussions, the Tribunal is of the opinion that there is no illegality or irregularity in cancelling the contract by the respondent and as such the said issue answered in negative and in favour of the respondent.”*
- 22.** The Learned Arbitrator has decided the issue in negative but has passed an Award directing the respondents for payment of the amount of Rs. 22,84,010/- along with interest. The respondents raised counter claim against the petitioner in the arbitration proceedings. The Learned Arbitrator decided four counter claims of the respondents in the said award by rejecting all counter claims of the respondents, which reads as follows:

“COUNTER CLAIM NO.1:

19. *In para 53 of the Statement of Defence the respondent has asserted that as per Special Conditions of Contract, as indicated in Appx. 'E' (R-24), the qualification for deployment of Engineer has been prescribed wherein the qualification for Resident Engineer is BE/ B.Tech (Civil) with 15 years experience; Project Engineer is BE/B.Tech (Civil) with 10 years experience or Diploma in Civil Engineering with 15 years experience and for Site Supervisor - Civil Engineering or Electrical Engineering. The respondent has raised a counter claim amounting to Rs.2,16,68,000/- as per Clause 67(a) of IAFE-2249 on the ground that no experience certificate has been produced by the claimant in respect of the aforesaid employees. There is no adequate pleading from the*

respondent's side in this respect. Further, the scrutiny for experience certificate is to be done at initial stage by the respondent, but that has not been done nor the respondent asked for such certificate. Even if there is any violation, the respondent has waived it allowing the concerned workers to continue. The respondent has failed to substantiate this claim for recovery in terms of Clause 67(F) of IAFW-2249. Hence, this counter claim stands rejected.

COUNTER CLAIM NO.2:

20. In para 54 the respondent has pleaded that the department's claim for the expenditure incurred in execution of the balance work left by the claimant, which was done under risk and cost of the contractor due to non-completion of the work, with effect from September 2020 to June 2022 i.e. for 22 months. But in support of this counter claim the respondent has not produced any document of payment to the respective officer/employees as well as amount spent in other respect as mentioned in the said paragraph. The claimant has denied the claim. There is no adequate pleading and evidence in this respect from the respondent. The respondent has failed to prove their claim with reliable and sufficient materials

In view of the above fact situation this counter claim stands rejected.

COUNTER CLAIM NO.3:

21. In para 55 of the Statement of Defence, the respondent has made a counter claim of Rs.7,00,000/- for non-providing of Site Lab as per Clause 33 of the Contract and Rs.5,75,000/-, for not providing furnished site office as per Clause 34(E) of the Contract Agreement (as amended).

In this counter claim the respondent has not furnished the adequate and relevant materials to come to a finding as prayed for. Further, the respondent has also not indicated the provisions in the contract agreement for recovery of such amount for failure of the claimant. There is no adequate pleading in support of the claim. The respondent

allowed the claimant to continue with the work in spite absence of such requirement.

In view of the above discussions, this counter claim stands rejected.

COUNTER CLAIM NO.4:

22. *At para-56 of the Statement of Defence the respondent has prayed for an amount of Rs.25,00,000/- on the ground that due to non-completion of the work in time for the fault of the claimant related tender for furniture was not completed by the respondent as the procedure was in vogue and the cost of furniture tendered has been escalated and as such the respondent has prayed for recovery of the same from the claimant. Further, an amount of Rs.7,50,00,000/- has been claimed by the respondent for defamation of the respondent organization due to non-completion of the project in time. Apart from making this bald statement in the Statement of Defence, no other materials have been produced by the respondent. The claim for Rs.25,00,000/- on account of escalation of furniture cost is remote one. Further, the respondent has not made any whisper as to how and in what manner they have been defamed due to non-execution of the work in time. The respondent has not been able to substantiate this counter claim and accordingly this claim stands rejected.”*

23. In the month of November, 2025, the petitioner has further requested for renewal of its enlistment and in reply to the same, the respondents have informed the petitioner about several pending dues against the petitioner by a communication dated 15th December, 2025. The petitioner has submitted detailed reply to the respondents on 19th December, 2025. In the said reply, the petitioner has taken the stand that with regard to the provision of parking area and pavement in connection with CA No. CE(AF)/SZ/KUM/15 of 2015-16, the petitioner

has already issued notice under Section 21 of the Arbitration and Conciliation Act, 1996 but no Arbitrator is appointed. With regard to the recovery of Rs. 52,128/-, the alleged claim is in connection with the work order of 2004 and the petitioner has completed the work in the year 2004 and lapse of about 20 years, the respondents have raised the alleged claim. As regard to the claim of Rs. 38,53,541/-, the said claim was the subject-matter of arbitration proceeding and an Award was passed on 25th November, 2024 and no Award was passed with respect to the said amount in favour of the respondents, thus the respondents cannot claim any further amount from the petitioner.

24. In the show cause notice, the respondents have relied upon one cancellation order and subsequently, the respondents have raised further claims. The petitioner has submitted reply to the said claims but in the impugned order dated 13th June, 2026, the authorities have only relied upon para 7(a) of the Engineer-in-Chief's Branch Letter dated 24th April, 2020, but have not considered the details submitted by the petitioner.

25. As per Clause 1.14(d) of the Enlistment of Contractors, Standing Security Deposit, upgrading, removal and down grading of the contractors provides that *"the contractors whose contracts have been cancelled and unrealized recoveries exist thereto, cases, where cancellation of contract has been declared invalid/illegal in arbitration/court of law, shall be decided after obtaining approval of E-in-C Branch."*

- 26.** The respondents have issued show cause notice only on the basis of cancellation of work order but in the impugned order of removal dated 4th June, 2022, the respondents have taken further ground that the petitioner has not submitted complete requisite documents for renewal. The petitioner could not get an opportunity of hearing with regard to the non-submission of complete documents for renewal. Thus, the impugned order dated 4th June, 2022, is set aside and quashed.
- 27.** Considering the above, the Engineer-in-Chief, the respondent no. 2 is directed to consider the reply submitted by the petitioner dated 19th December, 2025 and if necessary, an opportunity of personal hearing be given to the petitioner and pass reasoned and speaking order within a period of four weeks from the date of receipt of this order and to communicate the same to the petitioner within a week thereafter.
- 28. WPA No. 29839 of 2025 is disposed of.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)

