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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.36978 of 2025

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

* * *

Dharitree Enterprises
Represented through its
Managing Partner
Kuldip Kumar Agrawal
Aged about 42 years
Son of Late Sitaram Agrawal
At/P.O./P.S.: Kesinga
District: Kalahandi. ... Petitioner

-VERSUS-

1. Odisha State Warehousing
Corporation (OSWC)
Represented through its
Managing Director
Plot No.2, Cuttack Road
Bhubaneswar – 751 006
District: Khordha.
2. Chairman, Tender Committee
Odisha State Warehousing Corporation
At: Plot No.2, Cuttack Road
Bhubaneswar – 751 006
District: Khordha ... Opposite Parties.

Advocates appeared in this case:

For the Petitioner : Mr. Gautam Mukherji
Senior Advocate



Assisted by
M/s. Krushna Chandra Dash,
Manoj Kumar Sahoo,
Sanjay Kumar Das,
Prangya Paramita Barik,
Advocates

For the Opposite Parties : Mr. Bijaya Kumar Dash,
Senior Advocate
Assisted by
M/s. Smruti Ranjan Das,
Ritesh Pradhan,
Subhashree Samantaray,
Advocates

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Dates of Hearing	:	31.03.2026, 08.07.2025 & 15.07.2026
	::	
Date of Judgment	:	22.07.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

The petitioner, Handling and Transporting Contractor selected as the lowest bidder in response to Notice Inviting e-Tender *vide* No. COM/H&T/Tender/13/2025/3660, dated 04.10.2025, assails Office Order dated 15.12.2025 purported to have been signed by the



Managing Director, Odisha State Warehousing Corporation, Bhubaneswar on 12.12.2025 (Annexure-1), whereby besides debarring it from participating in any future tenders of the Odisha State Warehousing Corporation for a period of three years from the date of issuance of said order under Clause 8(iv) and IX(f) of the HTC Model Tender Form, terminated the contract for handling of food grains at the State Warehousing Corporation, Kesinga (Internal and RH Kesinga) for a period of three years on the ground of non-submission of Security Deposit and Bank Guarantee within stipulated period, *i.e.*, on or before 09.12.2025, and beseeches invocation of 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):

“In the above premises, it is therefore prayed that the Hon’ble Court may graciously be pleased to consider the fact stated in this writ application, admit the same, issue notices/rule nisi to the opposite parties, calling upon them to file show cause as to why the prayer made in this writ petition shall not be allowed.

And in the event, the opposite parties fail to show cause or show insufficient cause then the Hon’ble Court may graciously be pleased to make the rule absolute and this writ application may be allowed, thereby the impugned Office Order dated 15.12.2025 illegally terminating of contract of petitioner and debarring him to participate in future tender for three years under Annexure-1 may be quashed.



And further a writ of mandamus be issued, directing the opposite party No.1 to allow petitioner to operate/execute his Handling and Transporting work in Kesinga (Internal and RH) warehouse forthwith.

And/or pass such other order/orders, direction/directions, writ/writs as the Hon'ble Court may deem fit and proper under the facts and circumstances of the present case in the interest of justice and equity. And for this he shall ever pray."

Facts:

2. The Odisha State Warehousing Corporation (for brevity, "OSWC") has its warehouses/godowns situated at different places/locations of the State and most of the warehouses are utilized/hired by the Food Corporation of India. As per the guideline and parameters of the Food Corporation of India, the Schedule of Rate (SOR) and the period of contract as well as the terms and conditions of the Handling and Transport Contractors are regulated through the OSWC. The Food Corporation of India hires the warehouses of the OSWC and pays the amount/bills of Handling and Transporting Contractors by adding 8% supervision charge to the OSWC. In this usual practice/process Handling and Transporting Contractors are appointed by the OSWC through e-tender and they operate their Handling and Transporting of food grain stock of the Food Corporation of India.



- 2.1. The petitioner participated in response to the Notice Inviting e-Tender No. COM/H&T/Tender/13/2025/3660, dated 04.10.2025 (for convenience referred to as “NIT”) floated by the OSWC-opposite party No.1 inviting application for appointment of Handling and Transporting Contractors in three warehouses for operation of food grain stock of Food Corporation of India and got selected as the L-I bidder in respect two warehouses, but so far as the subject warehouse namely Kesinga (Internal & RH) is concerned, the Letter of Acceptance dated 20.11.2025 was issued in its favour with instruction to submit “required security amount in shape of Demand Draft and in shape of Bank Guarantee”, *i.e.*, 5% of the value of the contract within 15 working days and to execute agreement.
- 2.2. The petitioner received the Letter of Acceptance dated 20.11.2025 through e-mail on 21.11.2025, when the son of the Managing Partner was being under treatment in a hospital in Bhubaneswar since 19.11.2025 for around three days. After returning to Kesinga the Managing Partner fell sick and was under medication since 25.11.2025 for around two weeks. Disclosing such fact a representation dated 07.12.2025 was stated to have been submitted to the Managing Director, OSWC with a request to grant two weeks’ time for submission of security deposit and Bank Guarantee. After recovery, the



petitioner submitted an amount of Rs.32,25,000/- through RTGS, *i.e.*, 50% of the requisite total security deposit of Rs.64,50,000/- on 16.12.2025 in terms of Clause 8(a) of Model Tender Form.

2.3. A letter dated 16.12.2025 was communicated to the Managing Director informing deposit being made towards Security Deposit through RTGS and reiterated that due to medical issues there was some delay in compliance of terms of Letter of Acceptance. A request was also made to allow the petitioner to execute the agreement in respect of OSWC, Kesinga.

2.4. Having acknowledged to have received the above amount towards Security Deposit and the Representation dated 16.12.2025, the opposite party No.1 (OSWC) communicated the Office Order passed by the Managing Director *vide* Annexure-1 to the petitioner through Chief General Manager, OSWC, Bhubaneswar enclosed with the Forwarding Letter dated 16.12.2025 (Annexure-6) being sent *via* e-mail dated 17.12.2025 (07:44PM). By dint of said Office Order not only the Handling and Transporting Contract is stated to have been terminated in view of sub-clauses (a) and (b) of Clause XI, but also the petitioner is debarred for three years from the date of issue of the said order in terms of sub-clauses (iv) of Clause 8 read with sub-clause (f) of Clause XI of the Model Tender Form ("MTF", abbreviated).



2.5. Questioning the propriety of Office Order, dated 12.12.2025 bearing No.4595/Com/H&T/Ten/13/2025, 15.12.2025 issued by the Odisha State Warehousing Corporation, Bhubaneswar and legality of the decision taken by the Managing Director, OSWC, the petitioner filed the instant writ petition.

Counter affidavit of the opposite parties:

3. A counter affidavit dated 16.03.2026, sworn to by the Assistant Manager (Commercial) of the OSWC having stated to have been authorized by the opposite parties, has come to be filed on 17.03.2026 by asserting that in view of item (a) of sub-clause (i) of Clause 8 of the NIT, the petitioner was required to furnish 5% of the contract value as Security Deposit and item (b) of sub-clause (i) of Clause 8 of said NIT does not apply to the instant fact-situation. There being no provision provided for extension of period within which the successful bidder was to furnish Security Deposit in shape of Demand Draft or Pay Order in order to satisfy the requirement under item (a) of sub-clause (i) of Clause 8 of the NIT, the Office Order dated 15.12.2025 cannot be said to be faulted with.

3.1. It is categorically asserted by the opposite parties that “no such representation (dated 07.12.2025) or medical documents were ever received by the OSWC prior to the



due date for submission of the Security Deposit”. As contradictory statements are made by the petitioner with respect to “medical emergency” in the representation dated 16.12.2025, its plea can be regarded as “afterthought”.

3.2. Sub-clause (iv) of Clause 8 of the NIT/MTF empowers opposite parties to summarily terminate the contract in default of furnishing Security Deposit as envisaged under items (a), (b) or (c) of sub-clause (i) of Clause 8. Stand of the opposite parties is made clear by stating that the deposit of Rs.32,25,000/- (50% of the total Security Deposit of Rs.64,50,000/- to be ensured) through RTGS on 16.12.2025 is beyond the due date, *i.e.*, 09.12.2025.

3.3. Being competent in terms of Clause 8(iv) of the NIT, the Managing Director of OSWC approved the decision for debarment and signed on 12.12.2025 upon consideration of material on record and issued the said Office Order on 15.12.2025 (since 13th and 14th of December, 2025 were holidays). However, the said order could be communicated by the Chief General Manager *vide* Forwarding Letter bearing No.4683— Com/H&T/ Tender/13/2025, dated 16.12.2025 *via* e-mail on 17.12.2025.

Hearing:



4. As the debarment/blacklisting order poses “civil death”¹ 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 on many occasions including 31.03.2026, 08.07.2025 and 15.07.2026.
- 4.1. The pleadings being completed, on the consent of counsel appearing for the respective parties the matter is heard and disposed of at the stage of “admission”.
- 4.2. Patiently heard Sri Gautam Mukherji, learned Senior Advocate assisted by Sri Krushna Chandra Dash, learned Advocate for the petitioner; Sri Bijaya Kumar Dash, learned Senior Advocate along with Sri Smruti Ranjan Dash, learned Advocate for the opposite parties.
- 4.3. Being directed to list the matter for “orders”, the matter being listed, and upon further hearing, the Judgment is delivered.

Relevant clauses of NIT/MTF:

5. Relevant clauses of the NIT/MTF (Annexure-8 of the writ petition and Annexure-A/1 enclosed with the counter

¹ In *Blue Dreamz Advertising (P) Ltd. Vrs. Kolkata Municipal Corporation*, (2024) 15 SCC 264, it is succinctly stated as follows:
“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.”



affidavit) necessary for the present purpose are extracted hereunder:

“8. Security Deposit.—

- (i) The successful tenderer shall furnish, within fifteen working days of acceptance of his tender, a security Deposit for the due performance of his obligations under the contract.*

The Security Deposit shall consist of:

- (a) A sum equivalent to 5% of the value of the Contract in the form of Demand Draft or Pay Order issued by a scheduled bank in favour of the OSWC. The contractor at his option may deposit 50 (fifty) percent of this amount within fifteen working days of acceptance of his tender while the balance 50 (fifty) percent may be paid by the contractor by deductions at the rate of 10 (ten) per cent from the admitted bills. The Security Deposit shall not earn any interest.*
- (b) Another sum equivalent to 05% of the value of contract, in the form of an irrevocable and unconditional Bank Guarantee issued by any Scheduled Bank in the format prescribed in Appendix-IV which shall be enforceable till six months after the expiry of the contract period.*
- (c) If applicable, an additional sum equivalent to 05% of the value of the contract (in addition to a & b above), in terms of an undertaking provided by the tenderer for relaxation of eligibility conditions, in the form of an*



irrevocable and unconditional Bank Guarantee issued by any Scheduled Bank in the format prescribed in Appendix-V which shall be enforceable till six months after the expiry of the contract period.

- (ii) *In case of failure of tenderer to deposit the Bank Guarantee as stipulated in clause-8(i) (b) & (c) within 15 working days of acceptance of his tender, further extension of 15 working days can be given subject to levy of penalty @ 1% of the whole amount of the Security Deposit and another 15 working days with levy of penalty @ 2% on the whole amount of the Security Deposit by Managing Director.*

Note.—

The penalty in second extension of 15 working days will be 2% in addition to the first penalty of 1% on the whole amount of the security deposit.

- (iii) *The Security deposit furnished by the Tenderer will be subject to the terms and conditions given in the tender and the Corporation will not be liable for payment of any interest on the security deposit.*
- (iv) *In the event of the Tenderer's failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Security Deposit under clause 8(i)a by the due date or requisite Security Deposit in the form of Bank Guarantee under 8(i)b & 8(i)c including extension period (applicable to submission of BG only), his contract shall be summarily terminated besides forfeiture of the Earnest Money and the Corporation shall proceed for appointment of another contractor. Any*



losses or damages arising out of and incurred by the Corporation by such conduct of the contractor will be recovered from the contractor, without prejudice to any other rights and remedies of the Corporation under the Contract and Law.

The contractor will also be debarred from participating in any future tenders of the Corporation for a period of three years. After the completion of prescribed period of three years, the party may be allowed to participate in the future tenders of OSWC provided all the recoveries/dues have been effected by the Corporation and there is no dispute pending with the contractor/party.

VIII Period of contract.—

- i) The contract shall remain in force for a period of two years from the date of award of the work or such later date as may be decided by the Managing Director.*
- ii) The Managing Director reserves the rights to terminate the contract at any time during its currency without assigning any reasons thereof by giving Thirty Days Notice in writing to the Contractor at the notified address and the Contractor shall not be entitled to any compensation by reason of such termination. The action of the Managing Director, OSWC, Bhubaneswar under this clause shall be final, conclusive and binding on the contractor.*

IX Security Deposit.—



- a) *The successful Tenderer shall furnish within a fifteen working days of acceptance of his tender, a Security Deposit for the due, proper and complete discharge of all their obligations under the contract. The Security Deposit will comprise of the total of the amounts specified in following clauses (i) (ii) and (iii):*
- (i) A sum equivalent to 5% of the value of the Contract in the form of Demand Draft or Pay Order issued by any scheduled bank in favour of the Odisha State Warehousing Corporation. The contractor at his option may deposit 50 (fifty) percent of this amount within fifteen working days of acceptance of his tender while the balance 50 (fifty) percent may be paid by the contractor by deductions at the rate of 10 (ten) percent from the admitted bills. The Security Deposit shall not earn any interest.*
 - (ii) Another sum equivalent to 05% of the value of contract, in the form of an irrevocable and unconditional Bank Guarantee issued by any Scheduled Bank in the format prescribed in Appendix-IV which shall be enforceable till six months after the expiry of contract period.*
 - (iii) If applicable, an additional sum equivalent to 05% of the value of contract (in addition to i & ii above), in terms of the undertaking provided by the Tenderer (without experience) for relaxation of eligibility conditions, in the form of an irrevocable and unconditional Bank Guarantee issued by any Scheduled Bank in the format prescribed in Appendix-V which shall be enforceable till six months after the expiry of contract period.*



- b) *In case of failure of tenderer to deposit the Bank Guarantee as stipulated in clause IX (a) (ii) & (iii) within 15 working days of acceptance of his tender, further extension of 15 working days can be given subject to levy of penalty @ 2% of the whole amount of the Security Deposit and another 15 working days with levy of penalty @ 2% on the whole amount of the security deposit by Managing Director.*

Note.—

The penalty in second extension of 15 working days will be 2% in addition to the first penalty of 1% on the whole amount of the security deposit.

- c) *Upon satisfactory performance of the services and on completion of all the obligations by the contractor under the terms of contract and on submission of "No Due Certificate" from the concerned authority designated under EPF and MP Act 1952 showing due and correct deposit in respect of the employees employed by or through him for the contract period and on obtaining a "No Demand Certificate" from the assigned authority of OSWC, the Security Deposit will be refunded to the contractor subject to deductions, if any from the Security as may be necessary for recovering the claims of OSWC against the contractor. The OSWC will not be liable for payment of any interest on the Security Deposit. For any EPF violations which may be detected at any later stage, the contractor shall be liable and will be proceeded against as per law. The tenderer should be registered with EFO as an independent employer, having separate code number as required for an employer under the provisions of EPF and MP Act 1952 and the EPF Scheme framed there under.*



- d) *The Managing Director shall have the rights to forfeit the entire or part of the amount of security deposit lodged by the contractors or to appropriate the security deposit or any part, thereof in or towards the satisfaction of any sum due to be claimed for any damages, losses charges, expenses or costs that may be suffered or incurred by the Corporation. The decision of the Managing Director in respect of such damages, losses, charges, costs or expenses shall be final and binding on the contractors.*
- e) *Whenever the Security Deposit falls short of the specified amount, the Contractor shall make good the deficit so that the total amount of Security Deposit shall not at any time be less than specified amount.*
- f) *In the event of the Tenderer's failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Security Deposit under clause 8(i)a by the due date or requisite security deposit in the form of Bank Guarantee under 8(i)b & 8(i)c including extension period (applicable to submission of BG only), his contract shall be summarily terminated besides forfeiture of the Earnest Money and the Corporation shall proceed for appointment of another contractor. Any losses or damages arising out of and incurred by the Corporation by such conduct of the contractor will be recovered from the contractor, without prejudice to any other rights and remedies of the Corporation under the Contract and Law. The contractor will also be debarred from participating in any future tenders of the Corporation for a period of three years. After the completion of prescribed period of three years,*



the party may be allowed to participate in the future tenders of OSWC provided all the recoveries/dues have been effected by the Corporation and there is no dispute pending with the contractor/party.”

Arguments advanced by the counsel representing respective parties:

6. Sri Gautam Mukherji, learned Senior Advocate alleging ante-dating of the Office Order purported to have been signed on 12.12.2025 after receipt of Representation dated 07.12.2025 along with documents showing medical exigency which prevented the petitioner from complying with the terms of Clause 8 within the period stipulated. Expanding his argument further, it is submitted that incorrect fact has been stated in the counter affidavit that the opposite parties have not received any “medical document”, though it is admitted by them and the Representation dated 07.12.2025 reveals the following:

“I received your acceptance letter dated 20.11.2025, at that time I was in Kalinga Hospital, Bhubaneswar to treat of my son for liver disease. After return since 22.11.2025 I fell in sever viral fever and undergoing treatment with routine medication for 2 weeks as advised by doctor. Therefore, your goodself is earnestly requested to grant me two weeks’ time enabling me to submit the Security Deposit and Bank Guarantee. Such unavoidable situation due to ill health may kindly be accommodated.”



6.1. In furtherance to such submission, Sri Gautam Mukherji, learned Senior Advocate would point out that the OSWC has acknowledged receipt of the Representation dated 16.12.2025 of the petitioner along with a copy of "ICICI Bank Advice Receipt" depicting transaction to the tune of Rs.32,25,000/- being made through RTGS on 16.12.2025 (evidence of such receipt is available at the bottom portion of Annexure-5 of the writ petition and Annexure-D/1 of counter affidavit). Refuting the contention of Sri Bijaya Kumar Dash, learned Senior Advocate for OSWC, the learned Senior Counsel for the petitioner would argue that had the Office Order been signed on 12.12.2025 by the Managing Director and stated to have been issued *vide* No.4595/Com/H&T/Ten/13/2025/OSWC, dated 15.12.2025, his office should/could have refused to acknowledge the receipt of the Representation dated 16.12.2025. The opposite parties of the OSWC having shown such sanguine approach to terminate the contract with the petitioner and clamping debarment from participating in future tender "from the date of issuance of this order under the HTC MTF Clause 8(iv) and IX(f)" there is no explanation as to why the communication thereof was made on 17.12.2025 at 7:44PM. [See, Annexure-6 series enclosed with the writ petition]. The factual details so far as medical exigency is concerned, the authorities of the OSWC having not



discussed nor decided on its merit appreciating the difficulty faced by the petitioner, it is insisted by Sri Gautam Mukherji, learned Senior Advocate to show indulgence in the Office Order dated 15.12.2026 by exercising power under Articles 226 and 227 of the Constitution of India.

- 6.2. Laying emphasis on the averment made at paragraph 10 of the writ petition that in view of Clause 10.5.4 of the Guidelines issued by the Central Vigilance Commission it is obligated on the opposite parties to consider the exceptional case, like the present one, and extend the time to furnish Security Deposit as required under Clause 8 of the NIT/MTF. Having not done such exercise by the opposite party No.1, his Office Order dated 15.12.2025 is arbitrary, whimsical and fanciful.
- 6.3. Sri Gautam Mukherji, learned Senior Advocate, elaborating the statement made at paragraph 14 of the writ petition, would vehemently contend that the punitive action like debarring the petitioner from participating in future tenders for three years without affording a opportunity of hearing violates the principles of natural justice and it is infraction of fair-play in action. It is urged that such unilateral decision of the Managing Director of OSWC coupled with termination of contract *vide* Office Order dated 15.12.2026 would fall within the meaning of “unreasonableness” as envisioned



in Article 14 and the action impinges upon the petitioner's fundamental right to carry on business as postulated under Article 19(1)(g) of the Constitution of India.

7. Repelling the contention of Sri Gautam Mukherji, learned Senior Advocate for the petitioner, Sri Bijaya Kumar Dash, learned Senior Advocate for the OSWC submitted that the theory of ante-dating or back-dating the Office Order is not supported by any material particulars. There is no denial of the fact by the petitioner that it received the Letter of Acceptance dated 20.11.2025 *via* e-mail on 21.11.2025 and fifteen working days period stipulated for submission of Security Deposit in shape of Demand Draft or Pay Order lapsed on 09.12.2025 (*vide* paragraph 2 of the rejoinder affidavit of the petitioner). Hence, he urged that failure to comply with the terms of NIT/MTF triggered exercise of power under Clause 8(iv) inasmuch as the petitioner deposited Rs.32,25,000/- through RTGS, which is 50% of the sum equivalent to 5% of the value of the contract as per the requirement under item (a) of sub-clause (i) of Clause 8 thereof. Since the circumstances enumerated by the petitioner very well comprehended in item (a) of sub-clause (i) of Clause 8, and the nature of deposit made is not within the ken of either item (b) or item (c) of sub-clause (i) of Clause 8, there was no impediment for



the Managing Director to take a decision not only to terminate the contract but also to debar the petitioner from participating in future tender for three years.

7.1. With vehemence it is submitted by Sri Bijaya Kumar Dash, learned Senior Advocate that the Managing Director being apprised of the factual details as available on record, approved and signed the Office Order on 12.12.2025, which could be issued from the Office of the Odisha State Warehousing Corporation, Bhubaneswar only on 15.12.2025, as two days' holidays intervened in between.

7.2. It is discernible from Letter dated 07.12.2025 that no document was enclosed showing medical attendance. Therefore, the statement of the petitioner is fallacious that medical documents formed part thereof. It is the Representation dated 16.12.2025 which was received in the Office of OSWC. Therefore, there was no scope for the Managing Director of OSWC to consider the medical emergency or otherwise at the relevant point of time when the Office Order was prepared and signed.

Analysis:

8. Having heard the counsel for the respective parties and perused the record, the relevant facts emerge as follows:



- i. Clause 8 of subject E-Tender for appointment of Handling and Transport Contractor under item (a) of sub-clause (i) requires *“a sum equivalent to 5% of the value of contract in the form of Demand Draft or Pay Order issued by a Scheduled Bank in favour of the OSWC”* to be deposited towards Security Deposit; nonetheless, the successful tenderer within fifteen days of acceptance of the tender at his option deposit 50% of such amount while the balance 50% can be left for being deducted at the rate of 10% from the admitted bills. Items (b) and (c) of sub-clause (i) of Clause 8 speaks about *“another sum”* and *“additional sum”* to be secured in the form of Bank Guarantee.
- ii. The petitioner in his Letter (Representation) dated 16.12.2025 clarified that *“we have deposited the requisite security deposit for SWC, Kesinga (Internal and RH Kesinga) amounting to Rs.32,25,000/- through RTGS to corporate account number vide ICICR52025121600742299, dated 16.12.2025 (copy enclosed) and rest fifty percent of Security Deposit may kindly be deducted from out running bills”*. Therefore, there is no confusion in mind that the petitioner has impressed upon the OSWC to treat such Security Deposit to fall within the purview of item (a) of sub-clause (i) of Clause 8.



- iii. The petitioner having transmitted such amount through RTGS in terms of item (a) of sub-clause (i) of Clause 8) on 16.12.2025, admittedly said payment towards Security Deposit was made beyond 09.12.2025, i.e., fifteen working days from date of issue of Letter of Acceptance dated 20.11.2025.
- iv. There is no denial of the fact by the OSWC that Letter/Representation dated 16.12.2025 of the petitioner was received by it on 16.12.2025. However, the opposite parties disputed the fact that *“no such Representation (dated 07.12.2025) or medical documents were ever received by the OSWC prior to the due date for submission of the Security Deposit”*.
- v. However, the Representations dated 07.12.2026 and 16.12.2026 clarify that due to medical emergency of the Managing Partner and his son, the petitioner-firm could not satisfy the conditions stipulated in Clause 8 of the NIT/MTF.

9. With the above background of factual scenario, minute study of the documents available on record reveals that no plausible reason to persuade this Court has been ascribed to indicate as to why the Office Order being signed on 12.12.2025 by the Managing Director of



OSWC and issued *vide* No.4595/Com/H&T/Ten/13/2025, dated 15.12.2025 (though 13.12.2025 and 14.12.2025 were holidays on account of Second Saturday and Sunday respectively) could be forwarded to the petitioner on 17.12.2025 at 7:44PM even as Letter/Representation dated 16.12.2025 enclosed with the ICICI Bank Advice Receipt showing time at 4:15PM was received by the OSWC on 16.12.2025.

- 9.1. The matter can be looked into from another angle. Whereas the opposite parties have admitted by stating that the due date for furnishing Security Deposit was 09.12.2025 (See paragraph 4 of the counter affidavit), there is nothing placed on record with explanation to suggest as to why immediate step on 10th or 11th of December, 2025 could not be taken to terminate the contract and pass orders thereon. All these events being not sufficiently explained, the apprehension of the petitioner that the Office Order purported to have been signed on 12.12.2025 and stated have been issued on 15.12.2025 cannot be overlooked, the contention of the petitioner cannot be discarded at the threshold. The impugned Office Order (Annexure-1) terminating the contract has impact of civil/evil consequences and inflicting punishment like debarring the petitioner from participating in future tenders for three years would



affect the livelihood of the personnel engaged for carrying out the business.

9.2. In the case of *Canara Bank Vrs. Debasis Das*, (2003) 4 SCC 557 = (2003) 2 SCR 968 the principles of natural justice has illuminatingly been discussed in the following manner: (SCC)

- “12. Residual and crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice does not improve the situation, “useless formality theory” can be pressed into service.*
- 13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.*
- 14. The expressions “natural justice” and “legal justice” do not present a watertight classification. It is the substance of justice which is to be secured by both,*



and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. **Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law.** As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. **These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule.** It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". **The classic**



exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate”. In the celebrated case of *Cooper Vrs. Wandsworth Board of Works*, (1863) 143 ER 414 = 14 CBNS 180 = (1861-73) All ER Rep Ext 1554 the principle was thus stated : (ER p. 420)

*‘[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. ‘Adam’ (says God), ‘where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?’ ***’*

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. **Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights.** These rules are intended to prevent such authority from doing injustice.
17. What is meant by the term “principles of natural justice” is not easy to determine. Lord Sumner (then Hamilton, L.J.) in *R. Vrs. Local Govt. Board*, (1914) 1 KB 160 = 83 LJKB 86 (KB at p. 199) described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K. Vrs. Spackman*, 1943 AC 627 = (1943) 2 All ER 337 = 112 LJKB 529 (HL) Lord Wright observed that it



was not desirable to attempt “to force it into any Procrustean bed” and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give “a full and fair opportunity” to every party of being heard.

18. Lord Wright referred to the leading cases on the subject. The most important of them is Board of Education Vrs. Rice, 1911 AC 179 = 80 LJKB 796 = (1911-13) All ER Rep 36 (HL) where Lord Loreburn, L.C. observed as follows: (All ER p. 38 C-F)

*‘Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. *** The Board is in the nature of the arbitral tribunal, and a court of law has no jurisdiction to hear appeals from their determination, either upon law or upon fact. But if the court is satisfied either that the Board have not acted judicially in the way which I have described, or have not determined the question which they are required by the Act to determine,*



then there is a remedy by mandamus and certiorari.'

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that "the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Selbourne, L.O. in Spackman Vrs. Plumstead District Board of Works, (1885) 10 AC 229 = 54 LJMC 81 = 53 LT 151 where the learned and noble Lord Chancellor observed as follows:

'No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice.'

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be



brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase “justice should not only be done, but should be seen to be done”.

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. **Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression “civil consequences” encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages.** In its wide umbrella comes everything that affects a citizen in his civil life.
20. Natural justice has been variously defined by different Judges. A few instances will suffice. In *Drew Vrs. Drew and Lebura*, (1855) 2 Macq 1 = 25 LTOS 282 (HL) (Macq at p. 8), Lord Cranworth defined it as “universal justice”. In *James Dunbar Smith Vrs. Her Majesty the Queen*, (1877-78) 3 AC 614 (PC) (AC at p. 623) Sir Robert P. Collier, speaking for the Judicial Committee of the Privy



Council, used the phrase “the requirements of substantial justice”, while in *Arthur John Spackman Vrs. Plumstead District Board of Works*, (1885) 10 AC 229 = 54 LJMC 81 = 53 LT 151 (AC at p. 240), the *Earl of Selbourne, S.C.* preferred the phrase “the substantial requirement of justice”. In *Vionet Vrs. Barrett*, (1885) 55 LJRD 39 (LJRD at p. 41), Lord Esher, M.R. defined natural justice as “the natural sense of what is right and wrong”. While, however, deciding *Hookings Vrs. Smethwick Local Board of Health*, (1890) 24 QBD 712 Lord Esher, M.R. instead of using the definition given earlier by him in *Vionet case*, (1885) 55 LJRD 39 chose to define natural justice as “fundamental justice”. In *Ridge Vrs. Baldwin*, (1963) 1 QB 539 = (1962) 1 All ER 834 = (1962) 2 WLR 716 (CA) (QB at p. 578), Harman, L.J., in the Court of Appeal countered natural justice with “fair play in action”, a phrase favoured by Bhagwati, J. in *Maneka Gandhi Vrs. Union of India*, (1978) 1 SCC 248 = (1978) 2 SCR 621. In *H.K. (An Infant), Re* (1967) 2 QB 617 = (1967) 1 All ER 226 = (1967) 2 WLR 962 (QB at p. 630), Lord Parker, C.J. preferred to describe natural justice as “a duty to act fairly”. In *Fairmount Investments Ltd. Vrs. Secy. of State for Environment*, (1976) 1 WLR 1255 = (1976) 2 All ER 865 (HL) Lord Russell of Killowen somewhat picturesquely described natural justice as “a fair crack of the whip” while Geoffrey Lane, L.J. in *R. Vrs. Secy. of State for Home Affairs, ex p Hosenball*, (1977) 1 WLR 766 = (1977) 3 All ER 452 (CA) preferred the homely phrase “common fairness”.

21. How then have the principles of natural justice been interpreted in the courts and within what limits are



they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is “*nemo judex in causa sua*” or “*nemo debet esse judex in propria causa sua*” as stated in *Earl of Derby’s case*, (1605) 12 Co Rep 114 = 77 ER 1390 that is, “no man shall be a judge in his own cause”. Coke used the form “*aliquis non debet esse judex in propria causa, quia non potest esse judex et pars*” (Co. Litt. 1418), that is, “no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party”. The form “*nemo potest esse simul actor et judex*”, that is, “no one can be at once suitor and judge” is also at times used. The second rule is “*audi alteram partem*”, that is, “hear the other side”. At times and particularly in continental countries, the form “*audietur et altera pars*” is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the *audi alteram partem* rule, namely “*qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit*” that is, **“he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right”** [see *Boswel’s case*, (1605) 6 Co Rep 48b = 77 ER 326 (Co Rep at p. 52-a) or in other words, as it is now expressed, “justice should not only be done but should manifestly be seen to be



done”. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic. open). **All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.**

22. What is known as “useless formality theory” has received consideration of this Court in *M.C. Mehta Vrs. Union of India*, (1999) 6 SCC 237. It was observed as under: (SCC pp. 245-47, paras 22-23)

‘22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of “real substance” or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed see *Malloch Vrs. Aberdeen Corpn.*, (1971) 2 All ER 1278 = (1971) 1 WLR 1578 (HL) (per Lord Reid and Lord Wilberforce), *Glynn Vrs. Keele University*, (1971) 2 All ER 89 = (1971) 1 WLR 487, *Cinnamond Vrs. British Airports Authority*, (1980) 2 All ER 368 = (1980) 1 WLR 582 (CA) and other cases where such a view has been held. The latest addition to this view is *R. Vrs. Ealing Magistrates’ Court*, ex p *Fannaran*, (1996) 8 Admn LR 351 (Admn LR at p. 358)



[see de Smith, Suppl. p. 89 (1998)] where Straughton, L.J. held that there must be ‘demonstrable beyond doubt’ that the result would have been different. Lord Woolf in Lloyd Vrs. McMahon, (1987) 1 All ER 1118 = 1987 AC 625 = (1987) 2 WLR 821 (CA) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy Vrs. Grant, 1959 NZLR 1014 however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is “real likelihood — not certainty — of prejudice”. On the other hand, Garner’s Administrative Law (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge Vrs. Baldwin, 1964 AC 40 = (1963) 2 All ER 66 = (1963) 2 WLR 935 (HL), Megarry, J. in John Vrs. Rees, (1969) 2 All ER 274 = 1970 Ch 345 = (1969) 2 WLR 1294 stating that there are always “open and shut cases” and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the “useless formality theory” is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that “convenience and justice are often not on speaking terms”. More recently, Lord Bingham has deprecated the “useless formality theory” in R. Vrs. Chief Constable of the Thames Valley Police Forces, ex p Cotton, 1990 IRLR 344 by giving six reasons. (See also his article “Should Public



Law Remedies be Discretionary?" 1991 PL, p.64.) A detailed and emphatic criticism of the "useless formality theory" has been made much earlier in "Natural Justice, Substance or Shadow" by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that Malloch, (1971) 2 All ER 1278 = (1971) 1 WLR 1578 (HL) and Glynn, (1971) 2 All ER 89 = (1971) 1 WLR 487 were wrongly decided. Foulkes (Administrative Law, 8th Edn., 1996, p. 323), Craig (Administrative Law, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. de Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their "discretion", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not



followed. We may also state that there is yet another line of cases as in State Bank of Patiala Vrs. S.K. Sharma, (1996) 3 SCC 364, Rajendra Singh Vrs. State of M.P., (1996) 5 SCC 460 that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

23. *We do not propose to express any opinion on the correctness or otherwise of the “useless formality” theory and leave the matter for decision in an appropriate case, inasmuch as in the case before us, “admitted and indisputable” facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J.’*

23. *As was observed by this Court we need not go into “useless formality theory” in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants, unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise the said jurisdiction (see Gadde Venkateswara Rao Vrs. Govt. of A.P., AIR 1966 SC 828). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the*



procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu Vrs. Union of India, (1990) 1 SCC 613 = AIR 1990 SC 1480.)

24. *Additionally, there was no material placed by the employee to show as to how he has been prejudiced. Though in all cases the post-decisional hearing cannot be a substitute for pre-decisional hearing, in the case at hand the position is different. The position was illuminatingly stated by this Court in Managing Director, ECIL Vrs. B. Karunakar, (1993) 4 SCC 727 which reads as follows:*

'31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the



question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the court/tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the state of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for



the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.'

***”

9.3. At this stage it is apposite to reproduce the observation of a Division Bench of this Court made in the case of *Sponge Udyog Pvt. Ltd. Vrs. The Assistant Commissioner of Sales Tax, Rourkela-II Circle, Rourkela*, 2010 SCC OnLine Ori 68:

“5. Admittedly before issuance of the order of suspension, the petitioner had not been served with any notice to show cause. Admittedly there is no provision in the Act or the Rules for service of a notice to show cause before an order of suspension is passed. Under these circumstances, the Court is called upon to decide as to whether a notice in the present case is required to be served on the petitioner to show cause before the order of suspension was passed or not. In the case of *M/s. Ramkumar Jaigopal Vrs. Assistant Commissioner of Sales Tax, Sambalpur*, 2007 (I) OLR 534 the challenge was in relation to cancellation of registration certificate. The petitioner therein was a registered dealer under the Sales Tax authorities for more than 58 years and without giving an opportunity of hearing, the registration certificate was cancelled. The Court not only dealt with Section 31 of the Act dealing with cancellation of certificate of registration but also Section 30 of the Act which dealing with suspension of registration certificate. In



paragraph-8 of the judgment relying on an earlier decision of the Hon''ble Supreme Court in the case of Smt. Maneka Gandhi Vrs. Union of India and another, reported in AIR 1978 SC 597, the Court made the following observation:

*“*** It must be kept in mind that the power of suspension/cancellation of registration certificate of a dealer, clearly imposes civil consequence and in this respect law is well settled in the case of Smt. Maneka Gandhi Vrs. Union of India and another reported in AIR 1978 SC 597 wherein, the Apex Court has held that the rule of natural justice is embodied in every Statute and even where there is no specific provision for the same and when an administrative action involves civil consequence, the doctrine of natural justice must be held to be applicable.’*

6. *As is evident from reading of the judgment though the case related to cancellation of registration certificate, the Court not only considered the question of cancellation of registration certificate but also suspension thereof and came to hold that the power of suspension/cancellation of registration certificate of a dealer clearly imposes civil consequence and therefore, even where there is no specific provision to follow the principles of natural justice, when an administrative action involves civil consequence, the doctrine of natural justice must be held to be applicable. In the case of Sidhartha Engineering Pvt. Ltd. Vrs. Assistant Commissioner of Sales Tax and another, (1999) 115 Sales Tax Cases 478 in paragraph-8 of the judgment, the Court held that natural justice is an inseparable ingredient of*



fairness and reasonableness. Observance of the principles is the pragmatic requirement of fair play in action. The rules of natural justice operate as implied mandatory procedural requirement and non-observance whereof invalidates the action. Reference may also be made to some other decisions in this connection. In the case of Sahara India (Firm) Vrs. Commissioner of Income-Tax and another, reported in (2008) 300 ITR 403 (SC) referring to large number of earlier decisions including the case of Maneka Gandhi (Mrs.) Vrs. Union of India (supra), the Hon'ble Supreme Court came to a conclusion that even an administrative order or decision in matters involving civil consequences has to be made consistently with the rules of natural justice. The concept of natural justice is invariably read into administrative actions involving civil consequences, unless the statute conferring the power excludes its application by express language. A similar view was expressed by this Court in the case of M/s. Iron Exchange India Ltd. Vrs. State of Orissa and others, reported in 1995 (I) OLR 402. The Court held in the aforesaid decision that principles of natural justice must be read into unoccupied interstices of the statute unless there is a clear mandate to the contrary. Such power is inherent in every Tribunal, judicial or quasi-judicial character and the purpose is to avoid miscarriage of justice. In the case of Basanta Kumar Sahoo Vrs. The State of Orissa and others, reported in 1990 (II) OLR 408 while dealing with the case under the Urban Land (Ceiling and Regulation) Act, 1976, the Court held that where valuable right is sought to be taken away, an opportunity of hearing though not specifically provided in the Act, is desirable to be given. In the



case of Kanak Cement Pvt. Ltd. Vrs. Sales Tax Officer, Assessment Unit, Rajgangpur, reported in (1997) 105 Sales Tax Cases 112, the Court observed that it is a fundamental requirement of the principles of natural justice that if any person is likely to be affected by the use of any material collected by the Revenue, those are to be brought to his notice, and disclosed to him. The requirement of natural justice is to disclose by way of confrontation the materials collected and proposed to be used against a dealer.

Admitted in the Act and the Rules, though there is no provision for affording an opportunity of hearing before an order of suspension is passed, the said principle of natural justice has also not been expressly excluded.

7. *On reading of above judgments, it is clear that even in respect of suspension of registration certificate, civil consequence follows and therefore, observance of principle of natural justice is a necessity. We are, therefore, of the view that even though the statute is silent about issuance of a notice to show cause prior to passing of an order of suspension under Section 30 of the Act, when such order of suspension results in civil consequences, the principles of natural justice should be followed. We are, therefore, of the view that the order of suspension of registration certificate is liable to be quashed even though it is open for the petitioner under the Act to seek for restoration of the same.”*

10. It is canvassed before this Court that mere termination of contract does not contemplate step to be taken for debarment/blacklisting the contractor in exercise of



Clause 8(iv) of the NIT (Annexure-A/1 enclosed with the counter affidavit). The authority prior to taking a decision to debar 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 such drastic action restricting business activity, thereby affecting his right to livelihood inasmuch as order of debarment/blacklisting would tantamount to “civil death”². Careful reading of Clause 8(iv) of the NIT unequivocally lays down three circumstances to take action or decide to pass order of debarment:

- i.* In the event of the Tenderer’s failure, after the communication of acceptance of the tender by the Corporation, to furnish the requisite Security Deposit under item (a) of sub-clause (i) of Clause 8 by the due date, his contract shall be summarily terminated besides forfeiture of the Earnest Money and the Corporation shall proceed for appointment of another contractor.
- ii.* Any losses or damages arising out of and incurred by the Corporation by such conduct of the contractor will be recovered from the contractor, without prejudice to any other rights and remedies of the Corporation under the Contract and Law.

² See discussion of this Court in *Shri Artatran Bhuyan Vrs. State of Odisha*, 2025 (II) ILR-CUT 1042; *Rinabala Sethi Vrs. State of Odisha*, 2025 SCC OnLine Ori 4785.



iii. The contractor will also be debarred from participating in any future tenders of the Corporation for a period of three years.

10.1. As is laid down in the foregoing discussion, adherence of *audi alteram partem*, one of the facets of the principles of natural justice, is *sine qua non* consideration even for taking administrative action. Without granting reasonable, fair and meaningful opportunity of hearing to the petitioner, the impugned order *vide* Annexure-1, being vulnerable, whimsical and arbitrary, is liable to be quashed.

10.2. Reference can be had to *Swadeshi Cotton Mills Vrs. Union of India*, (1981) 1 SCC 664, wherein the following has been stated:

“34. Be that as it may, the fact remains that there is no consensus of judicial opinion on whether mere urgency of a decision is a practical consideration which would uniformly justify non-observance of even an abridged form of this principle of natural justice. In *Durayappah Vrs. Fernando*, (1967) 2 AC 337 Lord Upjohn observed that “while urgency may rightly limit such opportunity timeously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable.”

10.3. It does deserve to be quoted from *Mangilal Vrs. State of Madhya Pradesh*, (2004) 2 SCC 447:



“Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant’s defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See Swadeshi Cotton Mills Vrs. Union of India, (1981) 1 SCC 664 = AIR 1981 SC 818). Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are: notice of the case to be met, and opportunity to explain.”



10.4. Assistance of the following decisions may be beneficial in the context of blacklisting/debarment:

- 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.

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.*

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.

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.***

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.”

10.5. Mere allegation of breach of contractual obligations without anything more, *per se*, does not invite punitive action, which has been succinctly laid down by the Hon'ble Supreme Court of India 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.***

10.6. The impugned Office Order dated 15.12.2025 is manifestation of haste approach on the part of the Managing Director of the OSWC. To reiterate, it can be



said that whereas it is purported to have been signed on 12.12.2025, the said order is shown to have been issued on 15.12.2025 (Annexure-1) and communicated *via* e-mail on 17.12.2025 (Annexure-6). If the authority is so sanguine about the fact of passing the Office Order on 12.12.2025 terminating contract and inflicting punishment of debarment on the petitioner, even in absence of affording opportunity of hearing, the Office Order could have been issued/communicated on the same day of making it, *i.e.*, 12.12.2025. The assumption of backdating the Office Order is fortified by the fact that the Office of OSWC acknowledged to have received the Representation dated 16.12.2025, which evinces that the Office Order did not come to exist even on 16.12.2025. It can, thus, be observed that in order to avoid giving *audi alteram partem* and consider the merit or testing the veracity of “medical emergency”, which led the petitioner to comply with the formalities as per terms of NIT/MTF with a delay for about 7-8 days counted from the due date 09.12.2025, the impugned decision has been taken in hot-haste and is shown as if the same was passed on 12.12.2025.

10.7. Sri Gautam Mukherji, learned Senior Advocate drew attention of this Court to Guidelines issued by the Central Vigilance Commission (Annexure-9 of the writ



petition and Annexure-E/1) wherein Paragraph 10.5.4 reads thus:

“If, however, a request is received from the contractor for extension of time for submission of Security Deposit, the same may be considered in exceptional cases on merit and additional time may be considered as per the conditions of NIT with the approval of competent authority.”

10.8. Having not denied availability and applicability of scope for extension of time to comply with the conditions of NIT, *vide* Paragraph 11 of the counter affidavit, it is asserted by the deponent (opposite parties) that:

“In the present case, the petitioner never made any request seeking extension of time for submission of the Security Deposit within the stipulated period, either in the form of Demand Draft or Bank Guarantee, nor did he intimate the opposite party about any medical emergency prior to the expiry of the prescribed time. On the contrary, as stated by the petitioner himself in his representation dated 16.12.2025, ‘due to unforeseen medical issues, neither we had intimated to your good office nor deposited the Security Deposit in time’. This admission unequivocally establishes that no request for extension was ever made within the permissible timeframe.”

10.9. Be that be, though dispute has been set up by contending that no Representation dated 07.12.2025 (prior to due date for compliance, *i.e.*, 09.12.2025) was received by the OSWC, it is not denied that the documents showing medical treatment of son of the



Managing Partner and the Managing Partner himself are fake or false. Be that as it may, the afore-discussed fact and circumstances would lead to demonstrate that the petitioner has not been afforded fair-deal and/or opportunity of hearing when decisions of termination of contract and debarment/blacklisting for three years have been taken to the detriment of the petitioner.

10.10. Even assuming that the opposite party No.1 has jurisdiction to terminate the contract and debar the petitioner in adherence to Clause 8 of the NIT, the same could not have been exercised in the absence of thorough examination of jurisdictional facts³. Existence of power is one thing and its exercise is another. Mere existence least justifies the exercise. [Refer, *Sarda Mines Private Limited Vrs. State of Odisha*, 2026 SCC OnLine Ori 2303].

10.11. True it is that the factum of receipt of Representation dated 07.12.2025 and medical exigency are disputed questions to be left for taking a decision by the competent authority. The fact remains that though

³ Following paragraphs in *Arun Kumar Vrs. Union of India*, (2007) 1 SCC 732 may throw light on “jurisdictional fact”:

“A “jurisdictional fact” is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.”



Representation dated 16.12.2025 enclosed with the documents showing medical treatment was received by the OSWC, the same were not considered. The petitioner is, thus, deprived of fair chance of presenting its case for extension in terms of Paragraph 10.5.4 of the Guidelines as enclosed at Annexure-E/1 of the counter affidavit, which is not disputed or denied, but for objection that *“the petitioner never made any request seeking extension of time for submission of Security Deposit within the stipulated time”*. Representation dated 07.12.2025 and Representation dated 16.12.2025 are testimony to the fact that the petitioner made request for extension. If the contention of the opposite parties is considered to be true, then they could have placed on record showing return of amount received towards Security Deposit made in terms item (i) of sub-clause (a) of Clause 8 of the NIT (Annexure-5 series).

- 11.** Aforesaid discussion takes this Court to consider the affirmation of the opposite parties in Paragraph 3 of the reply-affidavit to the rejoinder-affidavit of the petitioner that:

“Contrary to the petitioner’s claim of backdating the termination order was duly signed by the competent authority on 12.12.2025. The delay in communication was solely due to intervening public holidays (13th and 14th December, 2025). In matters of commercial tenders where time is of the essence— specifically for the Public



*Distribution System (PDS)— **the automatic consequences of default under Clause 8(iv) do not require a separate show cause notice once the deadline has passed.***

11.1. Such a harsh, draconian, and capricious approach is fundamentally offensive, falling foul of the core tenets of natural justice and designed to prevent the petitioner from taking part in future tenders. It is not the case of the opposite parties that after termination of contract with the petitioner any other person has been offered with the contract in terms of sub-clause (iv) of Clause 8 of the NIT and the amount paid by the petitioner and received by the opposite parties towards Security Deposit on 16.12.2025 in the corporate account has been refunded or restored to the petitioner. On the other hand, the opposite parties are candid in making statement at Paragraph 9 of the counter affidavit that *“the provision regarding extension is not automatic or vested as a matter of right, but **purely discretionary and conditional**”*. With reference to Paragraph 11 of said counter affidavit Sri Bijaya Kumar Dash, learned Senior Advocate, made attempt to suggest that that in absence of request for extension or deposit of the Security Deposit within the prescribed timeframe as required under Clause 8 of the NIT dated 04.10.2025, the contract with the petitioner was summarily terminated and such action cannot be said to be



unjustified. Reading of said paragraph would transpire that ***“Consequently, the petitioner has been **debarred** from participating in future tenders of OSWC for a period of three years, in accordance with the applicable rules and guidelines”.***

11.2. On meticulous scrutiny of the Guidelines issued by Central Vigilance Commission (Annexure-E/1 to the counter affidavit) read with Clause 8 of the NIT (Annexure-A/1 to the counter affidavit) it can unequivocally be culled out that application of the basic norms of natural justice before taking any action for termination of contract and/or debarring the petitioner from participating in future tenders has not been excluded or carved out.

11.3. Repelling the contention of the opposite parties that the termination of the contract and the debarment of the petitioner are cause and effect, it is observed that the OSWC has rather admitted, discretion is vested in the authority concerned to consider. Of course, such discretion is required to be exercised on the basis of analysis of facts and circumstances of each case coupled with rational in application of mind. What is not explicitly excluded, it can be construed to have been implicitly included.



11.4. It is trite on a conspectus of catena of decisions rendered by different Courts that “discretion” means use of private and independent thought. When anything is left to be done according to one’s discretion the law intends it to be done with sound discretion and according to law. Discretion is discerning between right and wrong and one who has power to act at discretion is bound by rule of reason. Discretion must not be arbitrary. The very term itself stands unsupported by circumstances imports the exercise of judgment, wisdom and skill as contra-distinguished from unthinking folly, heady violence or rash injustice. When applied to a Court of Justice or Tribunal or *quasi* judicial body, it means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful but legal and regular. Discretion must be exercised honestly and in the spirit of the statute. It is the power given by a statute to make choice among competing considerations. It implies power to choose between alternative courses of action. It is not unconfined and vagrant. It is canalized within banks that keep it from overflowing.

11.5. 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 condemned without affording opportunity of hearing. Such is the facet of principles of natural justice, *e.g., audi alteram partem*.

11.6. 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.'

- 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 inhered 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.

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.’ ***”*

11.7. 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 21.08.2025⁴ 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**

⁴ Referred to in *Rinabala Sethi Vrs. State of Odisha*, W.P.(C) No.21309 of 2024, vide Judgment dated 22.12.2025 reported at 2025 SCC OnLine Ori 4785.



instrumentalities and above all impacts the livelihood. In effect such debarment has a far-reaching consequence in public contracts and, 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.**’ ***”*

11.8. It requires no authority to state that before taking action for blacklisting/debarring contractor from participating in the future tenders issue of a Show Cause Notice indicating the reason for so doing is a necessary requirement. Such show cause notice also requires explicit mention about reasons for exercising such power and resultant thereof. Had the authority wanted real reason for the delay and non-accomplishment of the terms of the NIT/MTF, it should/could have issued notice to submit explanation for the delay and affording opportunity of hearing. Failure to give such an opportunity would render the Office Order dated 16.12.2025 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 petitioner-tenderer, must be afforded to him prior to the finalization of the decision. See, *Commissioner of Income Tax Vrs. Amitabh Bachchan*, (2016) 3 SCR 516.

11.9. 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.

- 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.”

11.10. 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.”*

11.11. The Supreme Court of India in case of *Commissioner of Customs, Mumbai Vrs. Toyo Engineering India Limited, (2006) Supp.5 SCR 657* noted that the Department cannot be allowed to 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.

11.12. In the instant case, no show cause notice was issued to the petitioner to place material to indicate there were circumstances beyond his control which caused the delay in complying with the terms of the NIT/MTF; yet the opposite parties have taken decision to inflict punishment not only by cancelling the contract but also debarred it from participating in future tender.



11.13. 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 justice⁵. The blacklisting order dated 23.08.2004 falls short of this requirement and is liable to be set aside.”

11.14. Mere existence of power would not be considered that in every fact situation of default in complying with the terms of NIT would attract debarment or blacklisting of the tenderer/contractor. No finding of fact is rendered by the authority in the Office Order of the Managing Director, OSWC (Annexure-1) and therefore, it cannot withstand judicial scrutiny.

⁵ *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.



12. In absence of show cause notice with proper, clear, unequivocal and specific charge in adherence to the tenet of natural justice, the approach of the Managing Director of OSWC is not above reproach. 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 cancellation of tender and banning/blacklisting/debarment having impact on its future transactions, which in the considered view of this Court falls within the connotation of the expressions “civil death” and “civil consequences”.

12.1. 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.”*

12.2. The record would reveal that the petitioner after receipt of Office Order dated 15.12.2025 filed a Representation on 17.12.2025 (Annexure-7), which is stated to be pending consideration. The petitioner by way of said



representation made fervent prayer to revoke/cancel the Office Order dated 15.12.2025 and furnished material particulars therewith.

Conclusion:

13. With the above discussions and having at hand authoritative exposition of law on the subject of adherence to the principles of natural *vis-à-vis* termination of contract contemporaneous with imposition of punishment like debarment from participation in future tenders, it can safely be concluded that the petitioner was not afforded fair opportunity to present its case. The drastic step taken pursuant to such decision resulting in civil consequences to the detriment of the petitioner as if debarment is automatic consequence of termination of contract is oppressive, unconscionable and inexplicable.

13.1. In *Mohinder Singh Gill Vrs. The Chief Election Commissioner*, (1978) 2 SCR 272, it has been discussed as follows:

“CIVIL CONSEQUENCE undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.

CIVIL is defined by Black (Law Dictionary, 4th Edn.) at p. 311:



“Ordinarily, pertaining or appropriate to a member of a civitas of free political community; natural or proper to a citizen. Also, relating to the community, or to the policy and Government of the citizens and subjects of a State. The word is derived from the Latin civilie, a citizen. In law, it has various significations.’

*‘Civil Rights’ arc such as belong to every citizen of the State or country, or, in a wider sense, to all its inhabitants, and are not connected with the organisation or administration of Government. They include the rights of property, marriage protection by the laws, freedom of contract, trial by jury, etc. ... Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a State or community. Rights capable or being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof. (p. 1487-Black’s Legal Dictionary). ***”*

13.2.The debarment, being construed as “civil death”, has 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 consequences. Hence, the provisions vesting power on the authority to impose penalties are required to be conceived strictly.

13.3.It is true that penal provisions must be strictly construed; but having regard to the nature of the violation/contravention alleged/involved, such strict construction may be refused to be adopted. Looking at



the gravity of non-compliance, 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.

13.4.Regard can be had to the nature of requirement under the Letter of Acceptance dated 20.11.2025 with reference to the documents enclosed with the writ petition relating to demonstrating medical exigency which led the petitioner to comply with the requirement with a delay for around 7-8 days in making Security Deposit. It is explained by the petitioner, such delay cannot be treated as deliberate as circumstances beyond control of the Managing Partner rendered it impossible at the relevant period to satisfy the terms of Letter of Acceptance. Reference can be had to the decision of the Hon'ble Supreme Court of India in the case of *Om Gurusai Construction Company Vrs. M/s. V.N. Reddy and Ors.*, (2023) 11 SCR 379, wherein it has been observed that:

“19. This is a case where the appellant has complied with the condition of furnishing the additional performance security at the earliest possible time, that it could possibly comply. That no one can be compelled to perform an impossible task— Lex non



cogit ad impossibilia— is a well-accepted legal principle.

20. This Court in *Raj Kumar Dey and Others Vrs. Tarapada Dey and Others*, (1987) 4 SCC 398, while quoting, approving and applying the maxim to the facts of that case, had the following to say:

‘6. ... The other maxim is *lex non cogit ad impossibilia* (Broom’s *Legal Maxims—* page 162)— The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases.’

21. Applying the same maxim and highlighting its principle, this Court in *HUDA and Another Vrs. Dr. Babeswar Kanhar and Another*, (2005) 1 SCC 191 stated that every consideration of justice and expediency would require that the accepted principle which underlies Section 10 of the General Clauses Act should be applied in cases where it does not otherwise in terms apply [Para 5].

22. Closer to the facts of the present case is the judgment in *Rosali V. Vrs. TAICO Bank and Others* (2009) 17 SCC 690. In that case, an auction was held after 4.00 p.m. when the banks were closed.



Order XXI Rule 84 of the Code of Civil Procedure mandates that “on every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold”. In Rosali (supra), the 25% bid amount under Order XXI Rule 84 of the CPC was directed to be paid the next day and it was so paid. While accepting it as a valid deposit, this Court quoted the following paragraph from the judgment of the Karnataka High Court in Dakshayani vs. Branch Manager, Indian Overseas Bank, AIR 1998 Kant 114:

- ‘4. On that basis if we interpret the law though there is no power in the Court to extend the time fixed by the statute still the expression immediately is capable of taking within its sweep a situation where an act is impossible of performance on the day on which the auction is held as it happened in Savithramma case, ILR 1973 Kant 1277 when the bank itself was on strike and no deposit could have been made in the bank or in the event the auction-sale is held after court hours, a receipt order in that regard cannot be obtained for deposit of such an amount. Such amount could be deposited only after obtaining a receipt order. If next day also happens to be a holiday, the day immediately thereafter coming up which is a working day will be the day on which such act will have to be performed. If any other interpretation is given it would stultify the very object of law.’



23. *In view of the above, we have no hesitation to hold that the deposit of the additional performance security on 17.03.2021 was in due compliance of Clause 2.22.0 (ix) of the tender conditions. There was no breach of that clause.*

24. ***Decision making authorities, like the tendering authority here, could not have turned a blind eye to undisputed ground realities and compelling necessities, like the one that presented itself here. After all, they do not live in ivory towers.”***

13.5. Thus, with the above discussed conspectus of legal position with the power granted on the tendering authority in Clause 8(iv) of the NIT, when the Office Order purported to have been signed on 12.12.2025, but issued on 15.12.2025 and communicated *via* e-mail on 17.12.2025 at 7:44PM with the Forwarding Letter dated 16.12.2025 issued from Corporate Office of OSWC is scrutinized, it is emerged that the Representation dated 16.12.2025 indicating transfer of Security Deposit to the account of the OSWC through RTGS (Annexure-5) clearly depicts that the OSWC acknowledged the same to have been received on the said date. Nonetheless, the Forwarding Letter at Annexure-6 reflects that it is prepared on 16.12.2025 to communicate the Office Order dated 15.12.2025. It is demonstrably manifest from the e-mail details dated 17.12.2025 (7:44PM) that the Forwarding Letter dated 16.12.2025 and the Office



Order No.4595, dated 15.12.2025 from the “General Manager Commercial gm@oswc.in” to “Kuldip Kumar Agrawal dharitreeenterprises@gmail.com” were attached and transmitted. Sri Gautam Mukherji, learned Senior Advocate, rightly pointed out, the OSWC explained that the mail was sent on 17.12.2025 because the preceding days— 13.12.2025 (second Saturday) and 14.12.2025 (Sunday)— were holidays. However, there is no explanation as to why the Office Order, if indeed signed on 12.12.2025, could not have been sent on 15.12.2025. Even if it is considered that there was no proof of Representation dated 07.12.2025 being received by the OSWC, the circumstances, as set out in writ petition, counter affidavit, rejoinder affidavit and reply to rejoinder affidavit, do lead this Court to believe that the Office Order was not passed on 12.12.2025. This assumption is fortified by the fact that there is no whisper in Letter dated 16.12.2025 of the Chief General Manager (Annexure-6) to indicate that the amount of Security Deposit made over in the corporate account by RTGS was refunded/returned to the petitioner or steps in this regards being taken, even as it is the stand of the OSWC that by passing Office Order dated 15.12.2025 (purported to have been signed on 12.12.2015) besides terminating the contract, the petitioner was debarred from participating in future tenders for three years.



13.6. The provision enabling the authority to impose a penalty like banning/blacklisting/debarring is to be interpreted strictly as the same would involve civil or evil consequences having a restrictive impact on the business of the petitioner (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 future tenders does need to be taken strictly within the parameters of law and has to comport with the principle of proportionality.

13.7. 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.”*

13.8. In the wake of the above the Order dated 15.12.2025 passed by the Managing Director, Odisha State Warehousing Corporation (Annexure-1) cannot be held to be tenable in the eye of law and hence, the same is liable to be quashed and set aside.

14. It was the plea of the OSWC in the counter affidavit that it had no occasion to consider the documents showing there was medical exigency at the relevant period as it did not receive the Representation dated 07.12.2025. Furthermore, though the Representation dated



16.12.2025 is not denied to have been received, it is stated that there was no occasion to consider the same inasmuch as the Office Order was signed on 12.12.2025. It is asserted by the petitioner that Representation dated 17.12.2025 with a prayer to revoke the Office Order dated 15.12.2025 is pending consideration. It is, therefore, emanated from the events narrated hitherto suggest that the OSWC had not considered the medical documents enclosed with the writ petition and the Representations dated 16.12.2025 and 17.12.2025 are pending.

14.1. In *Bharat Coking Coal Ltd. Vrs. AMR Dev Prabha*, (2020) 16 SCC 759, it has been observed as follows:

“47. With regard to other allegations concerning condonation of Respondent No. 6’s delay in producing guarantees, we would only reiterate that **there is no prohibition in law against public authorities granting relaxations for bona fide reasons**. In *Shobikaa Impex (P) Ltd. Vrs. Central Medical Services Society*, (2016) 16 SCC 233, it has been noted that:

‘... the State can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It has been further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the Court must exercise its



discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point.'

48. *Even if there had been a minor deviation from explicit terms of the NIT, it would not be sufficient by itself in the absence of mala fide for courts to set aside the tender at the behest of an unsuccessful bidder. [Central Coalfields Ltd Vrs. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622]. This is because notice must be kept of the impact of overturning an executive decision and its impact on the larger public interest in the form of cost overruns or delays."*

14.2. The documents enclosed with the writ petition explaining the medical emergency evinces, in the present case, the security deposit was delayed by barely 7-8 days.

15. This Court having thus quashed and set aside the Office Order dated 15.12.2025 (Annexure-1), the matter deserves to be reverted to the Managing Director, Odisha State Warehousing Corporation, Bhubaneswar to consider the facts in its proper perspective in order to exercise the powers granted under the Notice Inviting Tender and/or Model Tender Form, as the case may be, along with CVC Guidelines as enclosed and marked as Annexure-E/1 with the counter affidavit in the light of the discussions made herein above and taking into



account the legal perspective as explained through various judgments of the Court(s) referred to *supra*.

15.1. However, liberty is reserved to the petitioner to file its reply/explanation with necessary documents in course of hearing. Needless to observe that the authority shall afford reasonable opportunity of hearing and pass appropriate order afresh without being swayed away by the decision already taken while passing the Office Order dated 15.12.2025.

15.2. It is directed that the decision taken by the said authority shall be communicated to the petitioner forthwith. It is clarified that until the ground(s) taken by the petitioner is examined in the light of discussions made above and appropriate finding is recorded thereon, the order of banning/blacklisting/debarment ceases to operate.

16. 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