

**M/s A.K.G. Construction and Developers Pvt. Ltd
v.**

State of Jharkhand & Ors.

(Civil Appeal No. 4152 of 2026)

02 April 2026

[Pamidighantam Sri Narasimha and Alok Aradhe, JJ.]

Issue for Consideration

Whether the black listing order, in the instant case, suffers from patent infirmities; whether the blacklisting, being stigmatic and exclusionary in nature, can be imposed mechanistically.

Headnotes[†]

Contract – Termination – Blacklisting – The appellant, a registered contractor with the Water and Sanitation Department was contracted for construction of an Elevated Service Reservoir (ESR) by issuance of a Letter of Acceptance (LOA) on 06.03.2023 – During the subsistence of the contract, on 01.06.2024, the top dome of the reservoir collapsed – Department issued a show cause notice dated 04.06.2024 seeking explanation as to why action should not be taken for the negligence and bad quality of work – Upon receiving concurrent reports indicating negligence on part of appellant, respondent no. 3, Chief Engineer, Drinking Water and Sanitation Department, passed the termination cum blacklisting order dated 23.08.2024 – Aggrieved, the appellant filed an appeal, which was dismissed by the Appellate Authority – Appellant filed writ petition, which was also dismissed – Correctness:

Held: In view of the clear findings of negligence as articulated in the order of termination, this Court will not interfere with the decision of termination – In so far as the order relating to blacklisting is concerned, 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

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in nature, cannot be imposed mechanistically but must comport with principles of natural justice and reasonableness – The final order of blacklisting, dated 23.08.2024, does not list the reasons as to why an order of blacklisting has become necessary – A blacklisting order assumes that the contractor is an incorrigible entity, at least for some time to come, in this case such an assumption was intended to operate for five years – For giving effect to such a premise, there has to be sufficient evidence, clear application of mind and stronger adherence to principles of natural justice – The blacklisting order dated 23.08.2004 falls short of this requirement and is liable to be set aside – Thus, the decision of blacklisting of the appellant is illegal, arbitrary and unreasonable – The declaration of blacklisting is set aside. [Paras 15, 16, 3, 23, 25]

Contract – Termination – Blacklisting:

Held: The contractual conditions governing termination on the one hand and those that relate to blacklisting on the other are distinct and will be exercised independently – A decision of blacklisting is not automatic and certainly not a logical consequence of a decision of termination – Even after the Department decides to terminate the contract, there is still a choice of exercising the power of blacklisting – These decisions operate in two dimensions-past and subsisting for termination and future for blacklisting – In other words, an order of blacklisting transcends the existing contract and debars the contractor from contracts that could probably be executed in the next five years – In view of the serious consequences, it is necessary for the Department to issue a specific notice proposing blacklisting of a contractor and call for an explanation as to why an order of blacklisting should not be passed. [Para 18]

Case Law Cited

Erusian Equipment & Chemicals Ltd. v. State of West Bengal, [1975] 2 SCR 674 : (1975) 1 SCC 70; *UMC Technologies Pvt Ltd v. Food Corporation of India* [2020] 13 SCR 1175 : (2021) 2 SCC 551; *M/s Techno Prints v. Chhattisgarh Textbook Corporation & Anr.*, 2025 INSC 236 : [2025] 3 SCR 208 – relied on.

Raghunath Thakur v. State of Bihar, [1988] 3 Supp. SCR 867 : (1989) 1 SCC 229; *Gorkha Security Services v. Govt. (NCT of Delhi)*

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[2014] 13 SCR 617 : (2014) 9 SCC 105; *Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL* [2013] 14 SCR 430 : (2014) 14 SCC 731; *The Blue Dreamz Advertising Pvt Ltd. & Anr. v. Kolkata Municipal Corporation & Ors.*, 2024 INSC 589 : [2024] 8 SCR 189 – referred to.

List of Acts

Contractor Registration Rules, 2012.

List of Keywords

Contract; Termination; Blacklisting; *Audi alteram partem*; Negligence; Principles of natural justice; Show-cause notice; Non-application of mind; Reasonableness.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4152 of 2026

From the Judgment and Order dated 07.02.2025 of the High Court of Jharkhand at Ranchi in WPC No. 6886 of 2024.

With

Civil Appeal No. 4153 of 2026.

Appearances for Parties

Advs. for the Appellant(s):

M.S. Ganesh, Sr.Adv., R. Ayyam Perumal, Ms. Archana Sharma, Rao Raj Bahadur Singh, A. Sai Kumar.

Advs. for the Respondent(s):

Kumar Anurag Singh, Jayant Mohan, Ms. Meenakshi Chatterjee, Zain A. Khan, Ms. Adya Shree Dutta, Ms. Dorjee Ongmu Lachungpa, Priyanshu Teotia, Dev Aaryan, Mohd. Abran Khan.

Judgment / Order of the Supreme Court

Judgment

1. Leave granted.
2. While exercising judicial review over administrative actions of the State and its instrumentalities in relation to contracts provisioning clauses

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and rules relating to *termination* and/or *blacklisting*, Courts must apply distinct standards of legality, rationality and proportionality. Such an approach is compelling as conditions for imposing such measures, as also the consequences of such actions, have differing gravity.

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.
4. For the reasons detailed hereafter, we uphold the order of termination and the impugned judgement and review order affirming the same, but set aside the decision to blacklist the appellant.
5. Having upheld the order of termination, we were of the opinion that the assumed logical consequence of blacklisting is neither supported by application of mind nor followed by a clear notice proposing blacklisting. For the reasons to follow, we set aside the order of blacklisting. However, in the facts and circumstances of the case, due to passage of time, we have suitably moulded the relief and directed that the order of blacklisting shall not continue for five years as directed by the Department but will cease to operate from the date of our judgment.

Facts

6. The appellant, a registered contractor with the Water and Sanitation Department was contracted for construction of an Elevated Service Reservoir (ESR) by issuance of a Letter of Acceptance (LOA) on 06.03.2023. During the subsistence of the contract, on 01.06.2024, the top dome of the reservoir collapsed. Though it was justified as being a result of an unexpected cyclone, the appellant offered to reconstruct it at own expense. However, the Department issued a show cause notice dated 04.06.2024, seeking explanation as to why action should not be taken for the negligence and bad quality of work. The contents of the show cause notice are as follows -

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*“(PURPOTED SHOW CAUSE)
GOVERNMENT OF JHARKHAND
DRINKING WATER & SANITATION DEPARTMENT*

Letter No. 4/A.V.-01-1019/2024-1311

From,

*Navneet Kumar
Under Secretary to the Government.*

To,

*M/s. A.K.G. Construction & Developers
Pvt. Ltd. Ranchi.*

Ranchi, Date- 4/6/24

Subject: Regarding submitting clarification.

*Context: Letter No. 727 of Executive Engineer, Drinking
Water and Sanitation Division, Jhumritilaiya, dated
01.06.2024.*

Sir,

*As per the directions, the department received information
about collapse of the under-construction water tower in
Neemadhi village under Koderma-Demchongch Jaynagar
Mega Rural Water Supply Scheme through the relevant
letter on the above subject.*

*The collapse of the under-construction water tower proves
that quality was not taken care of in the construction of
the water tower.*

*Due to your not doing quality work as per the agreement
in the construction of the water tower, the water tower
collapsed due to which the image of the department got
tarnished.*

*Therefore, it is directed by attaching a copy of the letter
describing tire incident that why action should not be taken
against you as per rules for negligence shown by you and
not doing quality construction and, ensure to submit your
explanation within 03 (three) days. In case of not receiving
the explanation on time, it will be considered that you have*

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nothing to say regarding the allegation and the department will be free to take unilateral action.

Translation- As Aforesaid

Yours sincerely,

Sd./Illegible

04/06/2024

(Navneet Kumar)

Under Secretary to the Government."

7. Following the show cause notice, multi-level enquiries were conducted. Initially, a three-member committee gave its report on 06.06.2024. Thereafter, the Superintending Engineer also examined the matter in detail. These enquiries drew inputs from Birsa Institute of Technology, Sindri and also IITs of Delhi, Madras and Bombay. Upon receiving concurrent reports indicating negligence on part of the appellant, respondent no. 3, Chief Engineer, Drinking Water and Sanitation Department, passed the termination cum blacklisting order dated 23.08.2024. The order containing the reasons for termination and blacklisting is reproduced below for ready reference;

**“GOVERNMENT OF JHARKHAND
DRINKING WATER & SANITATION DEPARTMENT
Order No.-4/A.V.-01-1021/2024-20(CDO), Ranchi,
Date- 23/08/2024**

ORDER

It was informed by letter no. 727 dated 01.06.2024 of Executive Engineer, Drinking Water and Sanitation Division, Jhumritilaiya that the water tower under construction in Neemadhi village under the work of Koderma-Domchonch Jaynagar Large Rural Water Supply Scheme, which is allotted to the contractor M/s A.K.G. Construction & Developers Pvt. Ltd., Ranchi, collapsed on 01.06.2024.

In the light of the above, the contractor was asked for clarification by departmental letter no. 1311 dated 04.06.2024, in the light of which the contractor submitted clarification through letter no. AKG/24-25/26 dated 06.06.2024 in which the contractor has reported that no laxity has been shown in the construction of the under-construction water tower and the under-construction water

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tower fell due to natural disaster/cyclonic storm. In the light of the above, by letter no. 663 (CDO) dated 21.06.2024 of this office, the Superintending Engineer, Drinking Water and Sanitation Zone, Hazaribagh was directed to review the clarification received from the contractor point by point and provide a report with his clear opinion. The opinion was provided by letter no. 545 dated 21.06.2024 of the Superintending Engineer, Drinking Water and Sanitation Zone, Hazaribagh in which it is reported that the work described has not been done as per the approved Design & Drawing and the quality of the overall work has not been taken care of.

In the matter described by the department, an inquiry was conducted by a three-member inquiry committee. The inquiry committee submitted the inquiry report through departmental G.S.P. No.-283 dated 06.06.2024 in which it is reported that negligence was shown in getting the construction work of the water tower completed as per the approved Design & Drawing and quality was not taken care of, due to which the incident of collapse/demolition of the water tower occurred. Thus, the contractor is responsible/guilty for negligence and negligence in getting the quality work done.

The contractor informed the concerned Executive Engineer through his letter-AKG/24-25/23 dated-01.06.2024 that he is ready to construct ESR again at his own expense in place of the demolished ESR under construction. It was never appropriate for him to construct ESR again without departmental order. This act of his reflects an attempt to hide his wrongdoings.

The department condemns this modus operandi of the contractor.

It is clear from the above that the contractor got low quality construction work done in the work of the scheme, which tarnished the image of the department and created obstacles in achieving the objectives of the department. This is a clear violation of rule number-10.1.8 and 10.1.15 of the Contractor Registration Rules 2012. Therefore,

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after review by the department, the explanation of the contractor is rejected.

Therefore, after due consideration by the department in the light of Rule No. 10.1.8 and 10.01.15 of Contractor Registration Rules 2012, the contractor M/s A.K.G. Construction & Developers Pvt. Ltd., Panna Enclave, Flat No-202, Kadru, Ranchi-834002, e-mail: ketan.kumar007@gmail.com is blacklisted for 5 (five) years with immediate effect and in this context, the following order is given in the light of Rule No. 10.3 and 10.4 of Contractor Registration Rules 2012:-

2. It is decided to stop all the works being done by the contractor from the date of issuance of the order and to confiscate the security deposit of all the works. Also, the concerned regional Chief Engineer/Superintending Engineer/Executive Engineer will ensure to take appropriate action as per the requirement to complete the remaining work being done by the contractor.

3. The registration of the contractor in all categories in the department is cancelled with immediate effect.

4. The proposal has received the approval of the Hon'ble Departmental Minister.

*(Prabhat Kumar Singh)
Chief Engineer, C.D.O
Date: 23/08/2024"*

8. Aggrieved, the appellant filed an appeal, which came to be dismissed vide order dated 05.12.2024 of the Appellate Authority cum Principal Secretary, Drinking Water and Sanitation Department. The appellant filed a writ petition challenging orders dated 23.08.2024 and 05.12.2024. By impugned judgement and order dated 07.02.2025, the High Court dismissed the writ petition, while also imposing a cost of Rs. 2 lakhs on the appellant. It was held that the corroborated findings of the enquiries conducted, as also the appellant's own admission in the form of offering to reconstruct the entire ESR at its own cost, leads to a logical inference of negligence in carrying out the construction as per the approved design and drawings. It was also held that the orders impugned were neither illegal nor

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arbitrary as proper opportunity was given to the appellant at every stage.

9. The appellant sought a review of the decision arrived by the High Court on self-same grounds, which naturally came to be dismissed by the High Court vide impugned order dated 04.08.2025. Thus, the present appeals have been filed against the main judgement as well as the review order.

Submissions

10. Mr. M.S. Ganesh, learned senior counsel appearing on behalf of the appellant, would submit that the termination as well as the blacklisting are illegal and arbitrary. He would submit that constitution of the three-member committee, followed by its report and subsequent reports, were without giving any opportunity to the appellant. He would also submit that the arbitrariness is writ large as the decision to blacklist had the effect of terminating all subsisting contracts.
11. Mr. Kumar Anurag Singh, learned counsel for the respondent Department would submit that Clause 59 of the General Conditions of Contract (GCC), dealing with termination of contract does not provide for a prior notice. He would also rely on Rule 10 of the Contractor Registration Rules, 2012, dealing with blacklisting, which mandates issuance of a show cause notice before blacklisting a contractor upon misconduct. He would submit that the show cause notice 04.06.2024 was specifically for purpose of blacklisting the appellant, which according to him, is further cemented by express use of the phrase “*why action should not be taken against it as per the rules*”. In view of the concurrent operation of GCC and the 2012 Rules, he submits that the common order of termination cum blacklisting is compliant of all conditions and therefore legal and valid.

Analysis

12. The controversy revolves around a true and correct interpretation of Clause 59 of GCC, relating to termination, and Rule 10 of 2012 Rules, relating to blacklisting. The Clause and the Rule is reproduced herein for ready reference.
13. Clause 59 of GCC is as follows -

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"59. Termination

59.1. The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

59.2. Fundamental breaches of Contract include, but shall not be limited to the following:

(a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Engineer;

(b) The Engineer instructs the Contractor to delay the progress of the Works and the instruction is not withdrawn within 28 days;

(c) The Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation.

(d) The Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer.

(e) The Contractor does not maintain a security which is required;

(f) The Contractor has delayed the completion of works by the number of days for which the maximum amount of liquidated damages can be paid as defined in the Contract data; and

(g) If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph: "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes

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collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.”

59.3. When either party to the Contract gives notice of a breach of contract to the Engineer for a cause other than those listed under Sub Clause 59.2. above, the Engineer shall decide whether the breach is fundamental or not.

59.4. Notwithstanding the above, the Employer may terminate the Contract for convenience.

59.5. If the Contract is terminated the Contractor shall stop work immediately, make the Site safe and secure and leave the Site as soon as reasonably possible”

14. Rule 10 of Contractor Registration Rules, 2012 is as follows -

“10. BLACKLISTING

10.1 A contractor in person or any partner of a registered firm or any director of a private public limited company or his technical staff or any of his authorized representatives, registered in any of the above categories, may be blacklisted for any of the following misconducts:

10.1.1 Creating law and order problem in Government office while receiving tender documents, submitting tender documents or doing any work related thereto.

10.1.2 Intimidating or assaulting concerned officer or employee.

10.1.3 If the contractor is found selling or misusing Government goods such as cement, steel and pipes etc..

10.1.4 If convicted in any criminal activity.

10.1.5 If wrong documents are submitted for registration under these rules.

10.1.6 In case of being banned or blacklisted by any department/undertaking of the Government of India or any State Government.

10.1.7 In case of violation of Rule 6.2 of these rules.

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10.1.8 Failure to execute the work as per the agreement and prescribed specifications.

10.1.9 In case of the contractor handing over his work to another contractor or any person without departmental order (subletting).

10.1.10 No improvement is reflected in the conduct of the suspended contractor.

10.1.11 Corrupting or attempting to corrupt the tender process.

10.1.12 indulging in malpractices likes bribery, corruption or fraud.

10.1.13 any such act which obstructs the achievement of the objectives of the works department.

10.1.14 applying political pressure directly or indirectly.

10.1.15 doing work of poor quality.

10.1.16 directly or indirectly threatening or intimidating departmental officers/employees.

10.1.17 not achieving physical targets in proportion to the time elapsed.

10.2 The blacklisted contractor will be debarred from working in any Government Department / Undertaking in future and his registration will be cancelled with immediate effect.

10.3 If a registered contractor is blacklisted in any one category in the light of Rule 10.1, then the registration of the said contractor in all other categories, if any, will also be deemed to be cancelled with immediate effect.

10.4 All the works being carried out by the blacklisted contractor in the Department of Drinking Water and Sanitation, Jharkhand will be stopped from the date of the order issued in the light of Rule 10.1, and the security deposit of all the works will be forfeited and appropriate action will be taken as per requirement to complete the remaining works.

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10.5. Before blacklisting a contractor of a particular category, it will be necessary to issue a show cause notice.

10.6 The order of blacklisting can be passed by the registration officer of the concerned category or the officer under who's supervision/under whose supervision the registration officer is working.

10.7 Against the penalty imposed, the contractor may file an appeal before the departmental secretary within thirty days.

10.8 After approval by the government, the blacklisting order will be issued by the concerned registration officer."

15. Before we proceed to consider the Rules relating to blacklisting and its adverse consequences, we may state that it was made clear to Mr. M.S. Ganesh, learned senior counsel for the appellant, that in view of the clear findings of negligence as articulated in the order of termination, we will not interfere with the decision of termination. As regards the submission of Mr. M.S. Ganesh that the appellant did not have sufficient opportunity to defend himself, notwithstanding the submission of Mr. Kumar Anurag Singh that termination does not require prior notice, we are of the opinion that the appellant had sufficient opportunity at the common hearing for termination and blacklisting. Further, the appellant argued the entire case before the Appellate Authority. Appellant also raised and contested the case on merits before the Division Bench. Having examined the contest and its due consideration all through, we are of the opinion that the decision as regards termination is unimpeachable, on merits as well as on the grounds of due process.
16. In so far as the order relating to blacklisting is concerned, we are of the opinion that this issue requires close scrutiny and that will be undertaken by reference to Rule 10 of the 2012 Rules.
17. A cursory reading of Rule 10 makes it evident that an order of blacklisting has serious consequences, effecting not only the existing contracts but also bars future business transactions for some years. Under Rule 10.3, if a registered contractor is blacklisted for any one category as per Rule 10.1, then the registration of the said contractor in all other categories, if any, will be deemed to be cancelled with immediate effect. Upon such cancellation, under Rule 10.4, all the

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works carried out by the blacklisted contractor in the department will be stopped from the date of issuance of order under Rule 10.1. It also provides that the security deposit for all the works will be forfeited.

18. The contractual conditions governing termination on the one hand and those that relate to blacklisting on the other are distinct and will be exercised independently. A decision of blacklisting is not automatic and certainly not a logical consequence of a decision of termination. Even after the Department decides to terminate the contract, there is still a choice of exercising the power of blacklisting. These decisions operate in two dimensions - *past and subsisting* for termination and *future* for blacklisting. In other words, an order of blacklisting transcends the existing contract and debars the contractor from contracts that could probably be executed in the next five years. In view of the serious consequences, it is necessary for the Department to issue a specific notice proposing blacklisting of a contractor and call for an explanation as to why an order of blacklisting should not be passed. This is exactly the purpose and object behind Rule 10.5.
19. The requirement under Clause 10.5 is a clear case of legislative (in this case subordinate legislation) incorporation of principles of natural justice. This Court has time and again emphasised the need to adhere to principles of natural justice while passing blacklisting orders, given the grave consequences that follow. In *Eurasian Equipment & Chemicals Ltd. v. State of West Bengal*¹, it was observed that –

“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”.

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

¹ (1975) 1 SCC 70. The principle in *Eurasian Equipment* has been reiterated by this Court in many subsequent judgements such as *Raghunath Thakur v. State of Bihar* (1989) 1 SCC 229, *Gorkha Security Services v. Govt. (NCT of Delhi)*, (2014) 9 SCC 105, etc.

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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.”

20. In order to emphasise the requirement of a show cause notice preceding an order of blacklisting, this Court in *UMC Technologies Pvt Ltd v. Food Corporation of India*² held that –

“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 v. Custodian General, Evacuee Property*³ 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

² (2021) 2 SCC 551.

³ *Nasir Ahmad v. Custodian General, Evacuee Property*, (1980) 3 SCC 1.

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*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.***

*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."*

21. The judgment in *M/S Techno Prints v. Chhattisgarh Textbook Corporation & Anr.*⁴ underscored the need for a detailed consideration of the consequences of blacklisting right at the outset, that is, from the stage of issuing of show cause notice. The Court held as follows –

*"29. However, **what is important for us to say is that when there are guiding principles explained by this Court as to when & in what circumstances a blacklisting order can be passed then, in our opinion such principles should also be borne in mind by the Authority at the time of issuing a show cause notice.** We say so because in the facts of a given case like the*

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one on hand, on the face of which it could be said that there was no good reason for the Authority to issue a show cause notice calling upon the contractor why he should not be blacklisted. Why ask the contractor to face the proceedings when applying the aforesaid principles, the issue of show cause notice would be an empty formality. We are saying all this keeping in mind the peculiar facts of this case.

30. Therefore, the Authority is expected to be very careful before issuing a show cause notice. It is expected to understand the facts well and try to ascertain what sort of violation is said to have been committed by the contractor. As noted above, there is always an inherent power in the Authority to blacklist a contractor. But possessing such inherent power and exercising such power are two different situations and connotations. There may be a power but there should be reasonable ground to exercise such power.

31. To put it by way of an illustration, the Police has the power to arrest but it is not necessary that in all cases arrest must be effected. The Police should know whether at all arrest is necessary.

*32. We may put it in a slightly different way. **Take for instance, the show cause notice in the present case is the final order of blacklisting. The final order in any case cannot travel beyond the show cause notice. Therefore, we take the show cause notice as the final order. Whether it makes out a case for blacklisting? This should be the test to determine whether it is a genuine case to blacklist a contractor or visit him with any other penalty like forfeiture of EMD, recovery of damages etc. We say so because once an order of blacklisting is passed the same would put an end to the business of the person concerned. It is a drastic step. Once the final order blacklisting the Contractor is passed then the Contractor is left with no other option but to go to the High Court invoking writ jurisdiction under Article 226 of the Constitution***

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and challenge the same. If he succeeds before the Single Judge then it is well and good otherwise he may have to prefer a writ appeal or LPA as the case may be. This again would lead to unnecessary litigation in the High Courts. The endeavour should be to curtail the litigation and not to overburden the High Courts with litigations of the present type more particularly when the law by and large is very well settled and there is no further scope of any debate."

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.
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

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

24. As a consequence of our decision to set aside the blacklisting order, we would have required the Department to issue a fresh show cause notice indicative of the reasons as to why a blacklisting order is felt necessary and to thereby call upon the contractor to show cause. However, in view of the fact that the order of termination cum blacklisting was passed on 23.08.2024, and since then almost more than one and a half year has already passed, without there being a stay of the said order in the meantime, we are of the opinion that the relief to be granted can suitably be moulded by directing that the order of blacklisting will cease to operate with immediate effect. This order will benefit the appellant more than the Department, because directing issuance of a fresh show cause notice will only lead to further litigation.
25. Having considered the matter in detail and taking into account the unimpeachable material about the negligence of the appellant leading to collapse of the top dome of the ESR, we are of the opinion that the order of termination of all contracts is legal and valid. Civil Appeals to this extent are dismissed. However, the decision of blacklisting of the appellant is illegal, arbitrary and unreasonable. The declaration of blacklisting is set aside, and shall cease to operate with immediate effect.

Result of the case: Appeals disposed of.

[†]Headnotes prepared by: Ankit Gyan

⁵ *Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL*, (2014) 14 SCC 731; *The Blue Dreamz Advertising Pvt Ltd. & Anr. v. Kolkata Municipal Corporation & Ors*, 2024 INSC 589, *M/s Techno Prints* (supra).