

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 2527 of 2026

M/s SK Electricals, a proprietorship firm, having its office at Bye Pass Road, P.O. & P.S.-Daltonganj, Palamu, Jharkhand, represented through its proprietor, Shri Santosh Kumar, S/o Pancham Saw, R/o New Sahdeo Nagar, P.O. & P.S.-Hehal, Behind Colony of OTC Ground, Ratu Pandra Road, near Chota Hanuman Mandir, P.O. & P.S.-Hehal, District-Ranchi Petitioner

Versus

1. RITES Ltd., a Government of India enterprise and a company registered under Companies Act, 1956, having its registered office at SCOPE Minar, Laxmi Nagar, New Delhi, represented through its Group General Manager (Civil) & PU-Head, ERPO, Kolkata, having its office at Plot No. DJ/20, Action Area-1D, Street No. 326, New Town, P.O. & P.S.-New Town, District-Kolkata
 2. Group General Manager (Civil) & PU-Head, RITES Limited, ERPO, Kolkata, Plot No. DJ/20, Action Area-1D, Street No. 326, P.O. & P.S.-New Town, Kolkata
 3. Neyveli Uttar Pradesh Power Limited (NUPPL), through its Chairman, having its registered office at KH-419, G.N. Extension, Gomti Nagar, P.O. & P.S.-Gomti Nagar, District-Lucknow (U.P.), having its site office at near Village-Lahurimau-Kasimpur, Ghatampur, Tehsil, P.O. & P.S.-Samuhi, District-Kanpur (U.P.)
- Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner	:	Mr. Indrajit Sinha, Advocate Mr. Vipul Poddar, Advocate Mr. Pradyumna Poddar, Advocate Ms. Sugandha Jaiswal Poddar, Advocate
For the Respondents:		Mr. Srijit Choudhary, Advocate Ms. Tanya Rai, Advocate

Reserved on 31.08.2026
Per : Rajesh Shankar, J. :

Pronounced on 07.09.2026

1. The present writ petition has been filed making multiple prayers, however, in course of argument, the learned counsel for the petitioner confines the prayer to the following extent: -

f. For issuance of an appropriate writ(s), order(s) or direction(s) for quashing and setting aside the order contained in Serial No. RITES/PU-

KOL/OHE/NUPPL/2026/718 dated 22.04.2026 issued under the signature of General Manager (Civil), PU Head, Kolkata, whereby the respondent-department has declared the petitioner as a 'Poor Performer' and subsequently placed the petitioner in the 'Negative List of Contractors'.

g. Upon quashing of the aforesaid order a further writ(s), order(s) or direction(s) be issued declaring that Clause 3(b) of the General Conditions of Contract so far as it relates to declaration as Poor Performer without giving appropriate opportunity of notice and hearing is violative of the principles of natural justice and thus is liable to struck down.

Submissions made by the learned counsel for the petitioner:

2. Mr. Indrajit Sinha, the learned counsel appearing on behalf of the petitioner submits that RITES Limited (respondent no.1) floated an e-tender no. 09/OT/RITES/ERPO/PU-KOL/NUPPL-Kurwa/OHE-General Electrical/2023 dated 31.10.2023 for the work-"Design, Drawing, Supply, Erection, Testing & Commissioning of 25 KV OHE system with SSP, Yard Illuminations & Electrification of Different Buildings for Construction of new Railway Siding at NUPPL Dumka Siding under Eastern Railway, Howrah Division for Pachwara South Coal Block/ Neyveli Uttar Pradesh Power Limited (NUPPL) for transportation of coal from Pachwara South Coal Block through Indian Railway network." The said tender was issued by the respondent no. 1 in the capacity of an agent/duly authorized

Power of Attorney Holder, acting for and on behalf of Neyveli Uttar Pradesh Power Limited (NUPPL).

3. The petitioner participated in the said e- tender process and emerged as the successful bidder. Thereafter, a Letter of Acceptance dated 24.01.2024 was issued in its favour awarding the work at a total contract price of Rs 6,40,10,551/- excluding GST. Subsequently, Agreement No. RITES/PU- KOL/NUPPL-OHE/RT760-00168/2024/637, dated 29.04.2024 was executed between the petitioner and the respondent no. 1.
4. It is submitted that from the very inception of the work, the petitioner was prevented from executing the contractual obligations on account of multiple hindrances attributable to the respondents due to which the execution of the work could not be commenced and/or proceeded with as per the contractual schedule.
5. The General Manager (Civil), PU Head, Kolkata (respondent no. 2) issued letter no. RITES/PU-KOL/OHE/NUPPL/2026/293 dated 16.02.2026 under Clause 3(iii) of GCC whereby the petitioner was directed to take necessary action to accelerate the progress of work within seven days of issuance of the said letter, failing which a recommendation was to be made to the competent authority for determination of the contract. It was mentioned in the said letter that the performance guarantee as well as the security deposit would also be forfeited by the employer. It was further warned in the said letter that in the event of determination of the contract, the petitioner would be declared as 'poor performer' in terms with

Clause 3(a)(i) of the General Conditions of Contract (in short 'GCC').

6. The petitioner replied the said letter of the respondent no. 2, however vide letter no. RITES/PU-KOL/OHE/NUPPL/ 2026/378 dated 25.02.2026, the respondent no. 2 again issued a similar direction with warning as was given to the petitioner in the letter dated 16.02.2026. The petitioner replied the said letter on this occasion also denying all the allegations made against it.
7. Finally, vide letter dated 16.03.2026 issued by the respondent no. 2, the contract of the petitioner was terminated alleging, inter alia, that there was no concrete planning on the part of the petitioner for procurement of copper materials, which were vital for completion of the project. It was further alleged that the petitioner's communications did not reflect any firm commitment for timely completion of the work as well as there was no assurance regarding completion of SSP work and other electrical general works. It was also alleged that the petitioner had declined to undertake certain additional works relating to providing 11 KV local power supply to the proposed siding. Consequently, the performance guarantee amounting to Rs. 32,00,528/- and the security deposit of Rs. 13,50,491.66/- were forfeited.
8. Subsequently, the respondent no. 2, vide letter no. RITES/PU-KOL/OHE/NUPPL/ 2026/718 dated 22.04.2026, declared the petitioner as a 'Poor Performer'. It was also placed in the 'Negative List of Contractors' and was debarred from participating in any further tender to be invited by the respondent no. 1 for a period of

two years i.e., from 22.04.2026 to 21.04.2028.

9. Learned counsel for the petitioner contends that the legal position on the subject of blacklisting has been settled in the cases of ***Erusian Equipment & Chemicals Ltd. Vs. State of W.B. & Another*** reported in **(1975) 1 SCC 70**, ***UMC Technologies (P) Ltd. Vs. Food Corpn. of India & Another*** reported in **(2021) 2 SCC 551**, ***Techno Prints Vs. Chhattisgarh Textbook Corporation and Another*** reported in **2025 SCC OnLine SC 343** and ***A.K.G Construction and Developers Pvt. Ltd. Vs. State of Jharkhand & others*** reported in **2026 SCC OnLine SC 520**. The ratio culled out from the aforesaid judgments is that the blacklisting has the effect of preventing a person from entering into lawful relationship with the government for the purposes of gains and as such the authority is required to give a fair hearing to the concerned contractor before passing an order of blacklisting against it.
10. It is submitted that the notices dated 16.02.2026 and 25.02.2026 were issued under Clause 3(iii) of GCC by way of warning that upon determination of contract, the petitioner would be declared as a 'Poor performer' in terms of clause 3(a)(i) and not under Clause 3(b) of the GCC. The said notices cannot be said to have been issued proposing the punishment of debarment.
11. It is further submitted that every action of the State or its instrumentality, in exercise of its executive power, must be supported by reason. An action uninformed by reasons may be questioned as arbitrary in a proceeding under Article 226 of the

Constitution.

12. It is also contended that Clause 3(b) of the GCC, to the extent it contemplates deemed and automatic declaration of a contractor as "poor performer" and consequent debarment for a period up to two years as per Clause 52.7 of the GCC, which is inevitable consequence after determination of the contract under Clause 3(a), is manifestly unreasonable and arbitrary being violative of the principles of natural justice. The said clause operates mechanically and without any application of mind as it neither envisages an independent inquiry regarding conduct of the contractor, nor provides any opportunity of hearing to it before imputing the stigma of a "poor performer" and imposing a punishment of debarment.
13. It is further argued that a contractor whose contract stands determined, may have failed to proceed with the allotted work for the reasons entirely beyond its control, or on account of a genuine dispute with the employer, yet Clause 3(b) of GCC visits the contractor with debarment as an automatic and inescapable consequence, without distinction or discretion. Such a clause, which conflates determination with debarment, strips the contractor of any meaningful opportunity to demonstrate why the graver consequence should not follow. It treats unequal situations equally, which is contrary to the principles of natural justice being violative of the fundamental right guaranteed under Article 14 of the Constitution of India against arbitrary State action and is contrary to the settled legal proposition.

14. It is also submitted that the respondents, being the instrumentalities of the State, are bound to act fairly, reasonably, and in a non-arbitrarily manner even in contractual matters. The impugned termination has been issued in a mechanical manner, ignoring the undisputed hindrances at the site and the petitioner's repeated communications, thereby rendering the action arbitrary and unconstitutional.
15. It is further submitted that mere alleged breach of contract should not be a ground for blacklisting, rather for passing such an order, the conduct of contractor must be so deviant or aberrant so as to warrant a punitive measure of the said nature.
16. It is also urged that the petitioner was prevented from executing the work due to non-availability of site, non-readiness of track beds, absence of permissions, pending civil works and other impediments attributable to the faults on the part of the respondents for which the petitioner cannot be penalized.

Submissions on behalf of the respondents

17. Mr. Srijit Choudhary, Advocate, appearing on behalf of the respondents at the outset submits that the present writ petition is not maintainable in view of the fact that the petitioner has expressly agreed under the contract that the city of jurisdiction of Court would be "Kolkata" and as such it cannot now seek to invoke the jurisdiction of this Court contrary to the agreed contractual forum.
18. It is further submitted that the order declaring the petitioner as a "Poor Performer" and placing it in the "Negative List of

Contractors” was not founded upon a solitary incident or an unsubstantiated allegation, rather the respondents had issued several notices to the petitioner with respect to its repeated acts of breach of the contract. The petitioner kept on assuring the respondents that the requisite materials would be procured and supplied within the specified target dates, however despite repeated assurances, the petitioner failed to procure and supply the required copper materials within the contractual period. The repeated failure to honour its own commitments constituted clear and objective material suggesting that the petitioner had failed to perform its contractual obligations. Thus, the respondents had sufficient evidence before them to arrive at a conclusion that the petitioner's performance was unsatisfactory and that it could not be permitted to continue to deal with the respondents as a contractor. Moreover, it had to face the consequences contemplated under the contractual framework.

19. It is further submitted that the declaration of the petitioner as ‘Poor Performer’ was not an automatic consequence of termination, rather before making such declaration, the respondents considered the actual conduct and performance of the petitioner, including its failure to arrange the essential materials despite repeated assurances and opportunities. Thus, the present case is significantly different from the judgments relied upon by the petitioner where the contractors were automatically blacklisted merely because their contracts were terminated without any independent consideration of their conduct and without any

foundational facts.

20. It is also contended that the petitioner has placed much reliance on the judgments of the Hon'ble Supreme Court rendered in the cases of ***A.K.G Construction (Supra.)*** and ***UMC Technologies (Supra.)***, however, the said judgments are not applicable in the facts and circumstance of the present case. The correct proposition emerging from the aforesaid judgments is that the blacklisting must be supported by sufficient material, application of mind and procedural fairness. In the present case, the respondents were repeatedly confronted with the petitioner defaults and had provided several opportunities to it to rectify the same. The petitioner was also asked on numerous occasions to demonstrate its ability to supply the requisite materials, including copper, however, it failed to perform its contractual obligations even after giving repeated assurances.

Finding of the Court:

Finding Qua Maintainability:

21. Respondents' have raised the issue of maintainability of the present writ petition asserting that in view of Clause 46.17 mentioned under the heading "Clauses of Contract" in the Section 4 (Proforma of Schedules) of Part-1 (Technical Bid) relating to the tender and contract document, the city of Jurisdiction of Court is 'Kolkata' and hence the said clause completely oust the jurisdiction of this Court to hear the matter.
22. In support of the said contention, the learned counsel for the respondents places reliance on the judgment of the Hon'ble

Supreme Court rendered in the case of ***M/s Swastik Gases (P) Ltd. Vs. Indian Oil Corpn. Ltd.*** reported in **(2013) 9 SCC 32.**

In the said case, the question for consideration before the Hon'ble Supreme Court was as to whether in view of Clause 18 of the consignment agency agreement, the Calcutta High Court had the exclusive jurisdiction in respect of the application made by the appellant under Section 11 of the Arbitration and Conciliation Act, 1996. Moreover, though the appellant did not dispute that the agreement was amenable to the jurisdiction of the Courts at Kolkata, however, it claimed that part of the cause of action had also arisen at Jaipur and, therefore, the Chief Justice of the Rajasthan High Court or the designate Judge had the territorial jurisdiction to consider the appellant's application seeking appointment of an arbitrator under Section 11. In the said case, Their Lordships held that by having Clause 18 in the agreement, the intention of the parties were clear and unambiguous that the courts at Kolkata alone had the jurisdiction. It was further held that to construe the jurisdiction clause like Clause 18 of the agreement, the maxim *expressio unius est exclusio alterius* comes into play which means that expression of one is the exclusion of another. Where the contract agreement specifies the jurisdiction of the courts at a particular place and such courts have the jurisdiction to deal with the matter, an inference may be drawn that parties intended to exclude all other courts.

23. We have also perused the judgment of the Hon'ble Supreme Court rendered in the case of ***Indus Mobile Distribution (P) Ltd. v.***

Datawind Innovations (P) Ltd. & Others reported in **(2017) 7 SCC 678**. In the said case, the question was as to whether, when the seat of arbitration was at Mumbai, an exclusive jurisdiction clause stating that the courts at Mumbai alone would have jurisdiction in respect of the disputes arising under the agreement, would oust all other courts including the High Court of Delhi, whose judgment was appealed against. In the said case, Their Lordships followed the judgment of ***M/S Swastik Gases (P) Ltd. (Supra.)*** and other similar judgments holding that the Mumbai Courts alone had the jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration was at Mumbai.

24. In both the aforesaid judgments, the matter was relating to fixing of jurisdictional seat of arbitration by the parties under the Act, 1996 to one court excluding all other courts in the country. In the said cases, there was no issue as to whether the parties to a private contract can oust jurisdiction of the High Court under Article 226 of the Constitution of India by a private agreement. Thus, the facts and circumstances involved in the cases relied upon by the learned counsel for the respondents is quite distinguishable from the facts of the present case.
25. We have also perused the judgment of the Hon'ble Supreme Court rendered in the case of ***Maharashtra Chess Association Vs. Union of India & Others*** reported in **(2020) 13 SCC 285** as has been relied by the learned counsel for the petitioner. In the said case, the issue was as to whether a private agreement

entered into between the appellant and the second respondent (the All India Chess Federation) in the form of the constitution and bye-laws of the latter, by conferring exclusive jurisdiction on the courts at Chennai, can oust the writ jurisdiction of the Bombay High Court under Article 226 of the Constitution.

26. In the said case, Their Lordships have held that there is a marked distinction between the jurisdiction of a civil court and the writ jurisdiction of a High Court under Article 226 of the Constitution of India. The parties to a contract can agree to submit their disputes to only one amongst several courts having jurisdiction so as to exclude of all other courts, however, the contractual exclusion clause cannot ipso facto exclude jurisdiction of a writ court. The writ jurisdiction of the High Court is fundamentally discretionary and even the existence of an alternate adequate remedy is merely an additional factor to be taken into consideration by the High Court in deciding whether or not to exercise its writ jurisdiction. In exercising its discretion to entertain a particular case under Article 226, the High Court may take into consideration various factors including the nature of injustice alleged by the petitioner, whether or not an alternate remedy exists, or whether the facts raise a question of constitutional interpretation. The High Court must take a holistic view of the facts as presented in the writ petition and make a determination on the facts and circumstances of each unique case.
27. The Hon'ble Supreme Court has further held that the Bombay High Court relied solely on Clause 21 of the constitution and bye-laws of

the All India Chess Federation to hold that its own writ jurisdiction was ousted. The Bombay High Court however failed to examine the case holistically and made a considered determination as to whether or not it should, in its discretion, exercise its powers under Article 226. The scrutiny to be applied by the High Court to every writ petition under Article 226 of the Constitution is a crucial safeguard of the rule of law. It is not open to a High Court to abdicate this responsibility merely due to the existence of a privately negotiated document ousting its jurisdiction.

28. Thus, it is no more *res integra* that jurisdiction of the High Court under Article 226 of the Constitution of India cannot be taken away by a private agreement between the parties to a contract. It is upon the High Court itself to decide as to whether the facts and circumstances of a particular case is fit one to exercise the extraordinary writ jurisdiction.
29. In the present case, the place of work was at 'Dumka'-a district in the State of Jharkhand and as such the same is within the territorial jurisdiction of this court. Even the alleged default has been committed by the petitioner within the State of Jharkhand and therefore major part of the cause of action qua the debarment of the petitioner has arisen within the territorial jurisdiction of this Court. Thus, it would not be in the interest of justice to relegate the petitioner to the jurisdiction of a Court at 'Kolkata' that too when the petitioner has confined its prayer with respect to challenging the order dated 22.04.2026 whereby it has been declared as a 'Poor Performer' and has been placed in the

'Negative List of Contractors' also debarring it for a period of two years from 22.04.2026 to 21.04.2028 making it ineligible to participate in future tenders of the respondent no. 1.

30. It is a well settled principle of law that the order of blacklisting amounts to civil death of a contractor and as such the same is amenable to judicial review on the touchstone of natural justice. In the case of **Techno Prints (Supra.)**, the Hon'ble Supreme Court has observed that once a blacklisting order is passed, the contractor is left with no other option but to take recourse before the High Court invoking writ jurisdiction under Article 226 of the Constitution. Thus, the writ court is the only forum where the order of blacklisting can be challenged and therefore the petitioner has no other alternative/efficacious remedy except filing of the present writ petition.
31. Even otherwise, the respondents have challenged the maintainability of the present writ petition by relying on the printed terms and conditions of the contract wherein the city of jurisdiction of court is mentioned as 'Kolkata'. In the case of ***Godrej Projects Development Ltd. Vs. Anil Karlekar & Others;*** reported in ***(2025) 4 SCC 259*** as has been relied upon by the learned counsel for the petitioner, the Hon'ble Supreme Court has held that keeping in view the principle enshrined in Article 14 of the Constitution, the courts should not enforce an unfair and unreasonable contract or any such clause in a contract entered into between the parties who are not equal in bargaining powers, rather the Courts should strike down such clause in a

contract. In the said case, Their Lordships have further referred few illustrations regarding inequality of bargaining power and out of those illustrations, one is that the aforesaid principle of equality before law will apply where a person has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted lines in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be.

32. In the present case also, though, the said contract was signed by the petitioner as well as the representative of the respondent no.1, at the time of signing of the said contract, the bargaining powers of the parties were not the same. The petitioner had no choice to deny the said term of the contract or to demand for change of the same. Thus, the petitioner was the weaker party in the said contract. Under the said circumstance, the writ petition is not liable to be dismissed merely on the ground that in the tender document, the place of jurisdiction of the Court has been shown to be at Kolkata.

33. For the reasons as aforesaid, the objection regarding maintainability of the present writ petition raised by the learned counsel for the respondents is not liable to be sustained and is rejected.

Finding on the issue of declaring the petitioner as 'poor performer' and placing it in the negative list of contractors and thereby debarring it from participating in further

tender process to be floated by the respondent no. 1 for a period of two years:

34. On perusal of the GCC, it is evident that one of the consequences of determination of contract has been detailed under clause Cause 3(b) of GCC which provides that the contractor shall be deemed to be declared a 'Poor Performer' as per Clause 52.7 of GCC and shall not be eligible for a period up to two years, to participate in tenders of other works which may be invited by the respondent no. 1. Further, Clause 52.7 of GCC provides that the Engineer-in-Chief without prejudice to the other rights against the contractor, may declare the contractor to be a 'poor performer' after giving him written notice of seven days in any of the following cases: -

"i. The contractor abandons the work for 30 days or more without valid reasons.

ii. Progress on the work is behind schedule by 25% or more of the stipulated contract period for reasons solely attributable to the contractor.

iii. Completion of work is delayed by 25% or more of the stipulated contract period for reasons solely attributable to the contractor.

iv. The contractor repeatedly (twice or more) makes claims on frivolous grounds or goes to court or seeks arbitration for such claims.

v. The contractor repeatedly (twice or more) seeks extra-contractual financial support from RITES for completing the work.

vi. If there are more than two instances of financial failure of contractor in making timely payments to his labour or sub-contractors or to suppliers of materials."

35. The said clause further provides that upon declaration of a contractor as 'poor performer', his name will be placed in the

RITES 'Negative List of Contractors' and will not be eligible for a period up to two years, to participate in tenders of other works which may be invited by the RITES.

36. The learned counsel for the respondents puts much stress on the notices dated 16.02.2026 and 25.02.2026 contending that the petitioner was provided reasonable opportunity of hearing before putting it in the 'Negative List of Contractors' and debarring it for a period of two years from participating in the tenders of other works of the respondent no. 1.
37. To appreciate the said contentions of the learned counsel for the respondent no. 1, we have perused both the aforesaid letters which were issued to the petitioner under Clause 3(iii) of GCC. In the said letters, it was alleged against the petitioner that it had failed to execute and complete the contract as per its commitment. The petitioner was further advised to accelerate the progress of work within seven days of issuance of the said notice, otherwise a recommendation was to be made to the competent authority to determine the contract and in such event, the bank guarantee as well as security deposit were to be forfeited. In the said letters, it was further mentioned that in the event of determination of contract in terms with clause 3(iii) of contract, the petitioner would also be declared a 'poor performer' as per clause 3(a)(i) of the contract. In the said letters, it was however not specifically mentioned that the petitioner would be put in the 'Negative List of the Contractors' and would be debarred from participating in the future tenders to be invited by the respondent no. 1 for a period

up to two years.

38. In the case of ***Erusian Equipment & Chemicals Ltd. (Supra.)***, the Hon'ble Supreme Court has held that the order of blacklisting 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". 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. Moreover, the 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.
39. In the case of ***UMC Technologies (P) Ltd. (Supra.)***, the Hon'ble Supreme Court has held 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 factor of the principles of natural justice is that before an adjudication starts, the authority should issue notice to the concerned party disclosing the precise reason for drawing the proceeding against him so that he can defend himself. Such notice should specifically and unambiguously mention the grounds necessitating action and the proposed penalty/action. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. It has further been held that in the context of blacklisting of a person or an entity by the State or its instrumentality, the requirement of a valid, particularised and unambiguous show-cause notice is crucial particularly due to the

severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted.

40. In the case of ***Techno Prints (Supra.)***, the ratio laid down in the judgment of the Hon'ble Supreme Court rendered in the case of ***Erusian Equipment & Chemicals Ltd. (Supra.)*** has been followed holding that there have to be strong, independent and overwhelming materials to resort to the power of blacklisting which has the drastic consequences on a contractor. It has further been held that the power to blacklist cannot be resorted to when the grounds for the same are only breach or violation of the term or condition of a particular contract and when legal redress is available to both parties. If a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that it has committed a breach of contract, the nature of its conduct must be so deviant or aberrant so as to warrant such a punitive measure.
41. In the case of ***A.K.G Construction and Developers Pvt. Ltd. (Supra.)***, the Hon'ble Supreme Court has held that while exercising judicial review over administrative actions of the State or its instrumentalities in relation to contracts provisioning clauses and rules relating to termination and/or blacklisting, the Courts must apply distinct standards of legality, rationality and proportionality. Such an approach is compelling since the conditions for imposing such measures, as also the consequences of such actions, have differing gravity. It has further been held that the contractual conditions governing termination vis-à-vis those

relating to blacklisting are distinct and are to 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 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.

42. In the present case, before putting the petitioner in the 'Negative List of Contractors' and debarring it from participating in future tenders of the respondent no. 1 for a period of two years, no specific show cause notice was issued to it stating the grounds of action and the proposed penalty/action, so as to afford an opportunity to the petitioner to defend the same. Even in the order dated 22.04.2026, no ground has been mentioned on which the order of debarment of the petitioner from participating in future tenders invited by the respondent no. 1, has been passed. It merely discloses that the contract awarded to the petitioner has been determined and it has been declared as 'Poor Performer' and in view of the said reason, it has been placed in the 'Negative List of the Contractors' as well as has been debarred from participating in the future tenders of the respondent no. 1 for a period of two years.

43. It transpires from the conduct of the respondents particularly the respondent no. 2 that the order of debarment was passed mechanically without any application of mind. Thus, the action of the debarment was taken against the petitioner as an automatic consequence of determination of the awarded contract. In the case of ***Techno Prints (Supra.)***, it has been specifically held by the Hon'ble Supreme Court that the order of debarment of a contractor cannot be automatic after determination of contract on the ground of failure to fulfill the terms and conditions of the contract. The order of debarment or blacklisting cannot be passed unless the conduct of the contractor is shown to be so deviant that warrants punitive action.
44. Even if the petitioner may not have much to say regarding termination of the contract, however this does not mean that it has nothing to say against the action of debarment. An order of debarment cannot be passed merely for violation of the terms and conditions of the contract, unless it is found that the nature of the conduct of the petitioner is so deviant or aberrant which warrants the punitive measure.
45. Under the said circumstance, we are of the considered view that the letters dated 16.02.2026 and 25.02.2026 on which much stress has been given by the respondents, do not fulfill the requirement of issuance of show cause notice for blacklisting. The said letters merely contain warning to the petitioner for not expediting the progress of work and those cannot to be said to be the show cause notices in true sense.

46. For the reasons as aforesaid, the impugned letter dated 22.04.2026 to the extent of placing the petitioner in the 'Negative List of Contractors' for a period of two years from 22.04.2026 to 21.04.2028 and debarring it from participating in the tenders to be invited by the respondent no. 1 for the said period, is hereby quashed and set aside.
47. So far as, the other actions of the respondents relating to the said contract including that of the petitioner being declared as a 'Poor Performer' is concerned, the same do not warrant interference by this Court under its extraordinary writ jurisdiction. The petitioner is however at liberty to challenge the same in accordance with law. The respondents will also have the liberty, if so advised, to initiate fresh proceeding for debarment against the petitioner and pass appropriate order after following due process of law.
48. The writ petition is, accordingly, disposed of with the aforesaid observations.
49. Pending interlocutory application, if any, also stands disposed of.

(M.S. Sonak, C.J.)

(Rajesh Shankar, J.)

07.09.2026

Vikas/A.F.R.

Uploaded on 07.09.2026