RESERVED ON 21.04.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT APPEAL NO. 2026 OF 2025 (GM-TEN)

C/W

WRIT APPEAL NO. 2028 OF 2025 (GM-TEN)

IN WA No. 2026/2025

BETWEEN:

1. M/S MP24 CONSTRUCTION COMPANY
(LEAD MEMBER OF CONSORTITUM WITH
RAMALINGAM CONSTRUCTION COMPANY PVT. LTD.)
A PROPRIETORY CONCERN
HAVING ITS HEAD OFFICE AT:
NO. 95, HADENAHALLI VILLAGE
SHRAVANABELAOAL ROAD, BARALU POST
CHANNARAYAATNA TALUK
HASSAN DISTRICT

BRANCH OFFICE:
B2, 1201, BRAHMAGIRI
MALAGALA BDA FLATS, PHASE 2
5TH NORTH CROSS ROAD
BENGALURU - 560 072
REPRESENTED BY ITS PROPRIETOR

…APPELLANT

(BY SRI K.G. RAGHAVAN, SENIOR ADVOCATE A/W
SRI PRASHANTH MURTHY S.G., ADVOCATE)

AND:

1. STATE OF KARNATAKA
   PUBLIC WORKS DEPARTMENT
   NO. 28, VIKASA SOUDHA
   BENGALURU - 560 001
   REPRESENTED BY ITS
   PRINCIPAL SECRETARY

2. KARNATAKA ROAD DEVELOPMENT
   CORPORATION LIMITED
   A COMPANY INCORPORATED UNDER
   THE PROVISIONS OF COMPANIES ACT 1956
   HAVING ITS REGISTERED OFFICE AT
   SURVEY NO.8, "SAMPARKA SOUDHA"
   BEP PREMISES, DR. RAJKUMAR ROAD
   RAJAJINAGAR 1ST BLOCK
   BENGALURU - 560 010
   REPRERSENTED BY ITS
   MANAGING DIRECTOR

3. CHIEF ENGINEER
   KARNATAKA ROAD DEVELOPMENT
   CORPORATION LIMITED
   SURVEY NO.8, "SAMPARKA SOUDHA"
   BEP PREMISES, DR. RAJKUMAR ROAD
   RAJAJINAGAR FIRST BLOCK
   BENGALURU - 560 010

4. STATE LEVEL DEBARMENT COMMITTEE
   ROOM NO. 317, 3RD FLOOR
   VIKASA SOUDHA
   BENGALURU - 560 001
   REPRESENTED BY ITS CHAIRMAN

5. BHARAT VANIJYA EASTERN PVT. LTD.
   A COMPANY REGISTERED UNDER
   THE PROVISIONS OF

THE COMPANIES ACT
HAVING ITS REGISTERED OFFICE AT:
126, CHITTARANJAN AVENUE
2ND FLOOR, KOLKATA - 700 073
REPRESENTED BY ITS DIRECTOR

6. VASANT VALAPPA NAIK
SON OF VALAPPA RAMAPPA NAIK
CHIEF ENGINEER
KARNATAKA ROAD
DEVELOPMENT CORPORATION LIMITED
SURVEY NO.8, SAMPARKA SOUDHA
BEP PREMISES, DR. RAJKUMAR ROAD
RAJAJINAGAR FIRST BLOCK
BENGALURU - 560 010

7. N. SUSHELAMMA
MANAGING DIRECTOR
KARNATAKA ROAD DEVELOPMENT
CORPORATION LIMITED
SURVEY NO.8, "SAMPARKA SOUDHA"
BEP PREMISES, DR. RAJKUMAR ROAD
RAJAJINAGAR FIRST BLOCK
BENGALURU - 560 010

…RESPONDENTS

(BY SRI KIRAN V. RON, AAG A/W
SMT. NAMITHA MAHESH B.G., AGA FOR C/R-1 & 4,
SRI VEERESH R. BUDIHAL, ADVOCATE FOR C/R-2 & 3,
SRI NAMAN JHABAKH, ADVOCATE FOR R-5 &
MS. JAITRA J. NARAYAN, ADVOCATE FOR R-6 & 7)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 09/12/2025 PASSED BY THE LEARNED SINGLE JUDGE IN W.P. NO.25668/2025 (GM-TEN) AND ALLOW THE SAID WRIT PETITIONS ALONG WITH THE APPLICATIONS.

IN WA NO. 2028/2025

BETWEEN:

1. M/S MP 24 CONSTRUCTION COMPANY
(LEAD MEMBER OF CONSORTITUM WITH
RAMALINGAM CONSTRUCTION COMPANY PVT. LTD.)
A PROPRIETORY CONCERN
HAVING ITS HEAD OFFICE AT:
NO. 95, HADENAHALLI VILLAGE
SHRAVANABELAOAL ROAD
BARALU POST, CHANNARAYAATNA TALUK
HASSAN DISTRICT
BRANCH OFFICE: B2, 1201, BRAHMAGIRI
MALAGALA BDA FLATS, PHASE 2
5TH NORTH CROSS ROAD
BENGALURU - 560 072
REPRESENTED BY ITS PROPRIETOR

...APPELLANT

(BY SRI K.G. RAGHAVAN, SENIOR ADVOCATE A/W
SRI PRASHANTH MURTHY S.G., ADVOCATE)

AND:

1. STATE OF KARNATAKA
PUBLIC WORKS DEPARTMENT
NO. 28, VIKASA SOUDHA
BENGALURU - 560 001
REPRESENTED BY ITS
PRINCIPAL SECRETARY

2. KARNATAKA ROAD DEVELOPMENT
CORPORATION LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF COMPANIES ACT,1956
HAVING ITS REGISTERED OFFICE AT
SURVEY NO.8, "SAMPARKA SOUDHA"
BEP PREMISES, DR. RAJKUMAR ROAD
RAJAJINAGAR 1ST BLOCK

BENGALURU - 560 010
REPRRESENTED BY ITS
MANAGING DIRECTOR

3. CHIEF ENGINEER
KARNATAKA ROAD DEVELOPMENT
CORPORATION LIMITED
SURVEY NO.8
SAMPARKA SOUDHA
BEP PREMISES,
DR. RAJKUMAR ROAD
RAJAJINAGAR FIRST BLOCK
BENGALURU - 560 010

4. TENDER EVALUATION COMMITTEE
KRDCL SURVEY NO.8
SAMPARKA SOUDHA
BEP PREMISES,
DR. RAJKUMAR ROAD
RAJAJINAGAR 1ST BLOCK
BENGALURU - 560 010
REPRESENTED BY ITS CHAIRMAN

5. STATE LEVEL DEBARMENT COMMITTEE
ROOM NO. 317, 3RD FLOOR
VIKASA SOUDHA, BENGALURU - 560 001
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SRI NAMAN JHABAKH, ADVOCATE FOR R-5 &
MS. JAITRA J. NARAYAN, ADVOCATE FOR R-6 & 7)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 09/12/2025 PASSED BY THE LEARNED SINGLE JUDGE IN W.P. NO.22904/2025 (GM-TEN) AND ALLOW THE SAID WRIT PETITIONS ALONG WITH THE APPLICATIONS.

THESE WRIT APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

INDEX

I. INTRODUCTION

1. These two intra-court appeals stem from a common order dated 09.12.2025 [**the impugned order**] passed by the learned Single Judge of this Court, whereby three writ petitions—W.P. No.25668 of 2025 (GM-TEN), W.P. No.22904 of 2025 (GM-TEN), and W.P. No.31906 of 2025 (GM-TEN)—were dismissed. Whereas Writ Appeal No.2026 of 2025 (GM-TEN) arises from W.P. No.25668 of 2025, Writ Appeal No.2028 of 2025 (GM-TEN) challenges the impugned order insofar as it relates to W.P. No.22904 of 2025. These two writ petitions were instituted by the appellant.

2. The appellant in both appeals — M/s MP24 Construction Company [**MP24**] — is a sole proprietary concern of Sri Kantharaju H.M. The consortium partner of MP24, namely M/s. Ramalingam Construction Company Pvt. Ltd. [**RCCL**] had separately assailed the order debarring it in W.P. No. 24912 of 2025 (GM-RES), which was dismissed in terms of the common order. RCCL has filed a separate appeal, Writ Appeal No.2140 of 2025 (GM-RES).

3. The respondents in the two writ petitions are the State of Karnataka, represented by the Principal Secretary, Public Works

Department [**the State**]; the Karnataka Road Development Corporation Limited [**KRDCL**], a wholly owned company of the Government of Karnataka, which acted as the procuring entity for the tender in question; the Tender Evaluation Committee constituted by KRDCL [**the TEC**]; the State Level Debarment Committee [**the SLDC**], constituted under Rule 26-B of the Karnataka Transparency in Public Procurement Rules, 2000; and M/s. Bharat Vanijya Eastern Pvt. Ltd. [**BVEPL**], which the procuring entity treats as the lowest responsive (L1) bidder, following the disqualification of the Consortium. Two officials of KRDCL have also been arrayed in their personal capacities.

4. The controversy has a common origin. The dispute pertains to a Request for Proposal dated 25.02.2025 [**the RFP**] issued by KRDCL for the development of road from Devanahalli-Vemagal-Kolar (from 0.000 km to 49.284 km, of design length 48.20 km) of State Highway-96 in the State of Karnataka, on PPP-DBFOMT-Hybrid Annuity Mode [**the project**]. MP24 and RCCL formed a consortium [**the Consortium**], with MP24 as the lead member, to submit their tender pursuant to the RFP. The Consortium's bid was the lowest (L1), and BVEPL's was the second-lowest (L2). The State issued the Government Order bearing No.PWD 203 BMS

2025 dated 13.08.2025 [**the impugned debarment order**] under Section 14-A(2) of the Karnataka Transparency in Public Procurement Act, 1999 [**the KTPP Act**] read with Rule 26-B of the Karnataka Transparency in Public Procurement Rules, 2000 [**the KTPP Rules**], debarring MP24 for a period of three years and RCCL for a period of two years from all works in the State of Karnataka, on the ground of furnishing a false and forged work experience certificate. The State found that the members of the Consortium had committed a fraudulent act by uploading a forged work-experience certificate purportedly issued by the Andhra Pradesh Water Resources Department [**the APWRD**] to secure the contract. The impugned Order also directed the registration of an FIR against MP24 and to treat RCCL as an "abettor".

5. Before considering the import of the reliefs sought by MP24 in the two writ petitions and the challenge in the present appeals, it is relevant to set out the factual context in which the controversy arises.

II. PREFATORY FACTS

6. KRDCL is a wholly-owned company of the Government of Karnataka, established to develop and improve road infrastructure

in the State of Karnataka. KRDCL invited bids by Notification No.KRDCL/IFB/2024-25/28 dated 25.02.2025, in the form of an "International Competitive Bidding under Single Stage Bidding Process for Development of Road from Devanahalli-Vemagal-Kolar (from 0.000 km to 49.284 km) of SH-96, (design length 48.20 km), in the State of Karnataka on PPP-DBFOMT-Hybrid Annuity Mode". The estimated project value was □762,86,00,000/- (Rupees Seven Hundred and Sixty-Two Crores and Eighty-Six Lakhs only). The bid was administered through the Karnataka Public Procurement Portal [**the KPP Portal**]. The terms and conditions of the tender were set out in the RFP, which formed part of the bid document.

7. It is material to note that the RFP expressly contemplated bidding both individually and through a consortium. Section 2.1.9 of the RFP provided that, in case the bidder is a consortium, the members thereof shall furnish a Power of Attorney in favour of any Member, who shall thereafter be identified as the Lead Member. Section 2.1.15(g) of the RFP provided that the members of the consortium shall enter into a binding Joint Bidding Agreement and submit the same to KRDCL. Section 2.2.1(a) provided that the bidder may be a single entity or a group of entities (the consortium) coming together to implement the Project.

8. Sections 2.6.2 and 2.6.3 of the RFP, which lie at the centre of the controversy provide for the cancellation of the bid and the forfeiture of the Earnest Money Deposit [**the EMD**], are set out below:

> "2.6.2 The Authority reserves the right to reject any Bid and appropriate the Bid Security if:
>
> (a) at any time, a material misrepresentation is made or uncovered, or
>
> (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.
>
> Such misrepresentation/improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member of the Consortium may be disqualified/rejected. If such disqualification/rejection occurs after the Bids have been opened and the lowest Bidder gets disqualified/rejected, then the Authority reserves the right to annul the Bidding Process and invites fresh Bids.
>
> 2.6.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Authority, that one or more of the eligibility and/or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOA or the SPV has entered into the Concession Agreement, as the case may be, the same shall,

> notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under this RFP, the Bidding Documents, the Concession Agreement or otherwise."

9. Section 4.1 of the RFP, in turn, provided for the disqualification of the bidder if it engaged in "fraud" and/or "corrupt practices", with the said terms separately defined. The said Section is set out below:

> "4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the

> Bidding Documents and/ or the Agreement, or otherwise."

10. By a Memorandum of Understanding dated 02.04.2025 [**the MoU**], MP24 and RCCL agreed to participate in the tender as a consortium under the name and style of "MP24CC-RCCL". In furtherance of the said MoU, MP24 and RCCL executed a Joint Bidding Agreement dated 11.04.2025 (entered into on a stamp paper purchased on 07.04.2025) and a Power of Attorney dated 11.04.2025 (entered into on a stamp paper purchased on 07.04.2025) in favour of MP24 as the Lead Member. Clause 5 of the Joint Bidding Agreement provided, inter alia, that the parties undertake to be jointly and severally responsible for all obligations and liabilities relating to the project. MP24 (as Lead Member) held 74% participation share in the consortium, and RCCL held 26% participation share as a non-active partner.

11. In response to the bid invitation, four bidders submitted their bids on 16.04.2025, namely (i) MP24CC-RCCL (the Consortium); (ii) BVEPL; (iii) M/s. Dineshchandra R. Agrawal Infracon Pvt. Ltd.; and (iv) M/s. Bhartia Infra Projects Ltd.

12. It is material to note that at 02:37 PM on 16.04.2025 — that is, about three hours before the time for submission of bids was to expire — RCCL sent an e-mail with a letter bearing reference No. RCCL/KARO/MP-24/2025-26/02 to MP24, communicating its withdrawal from the Consortium and the Joint Bidding Agreement. MP24 states that it responded by sending an e-mail at 04:07 PM, rejecting the said withdrawal as unacceptable and contrary to the binding consortium arrangement.

13. Notwithstanding the said e-mail, MP24 submitted the bid on behalf of the Consortium on 16.04.2025. The Technical Bids of the four bidders were opened by KRDCL on 19.04.2025 in the bidders' presence. The bids were thereafter evaluated by the Transaction Advisor, M/s. iDECK, as per the Eligibility and Qualification requirements set forth in the RFP, and were placed before the TEC at its meetings held on 12.05.2025 and 15.05.2025. As per the proceedings of the TEC, all four bidders were declared technically qualified.

14. In terms of the said determination, the Financial Bids were opened on 16.05.2025 in the presence of the bidders. The Consortium's bid with an annuity amount of ₹50.50 crores

(excluding GST) was the lowest. BVEPL's bid of ₹53.25 crores was the second lowest. According to MP24, its L1 status was reflected in the Karnataka e-Procurement Portal screenshot, the report of KRDCL, and the minutes of the 149th meeting of the Board of Directors of KRDCL held on 20.06.2025.

15. By letter No. BVEPL/HO/25-26/2159, dated 19.05.2025, addressed to KRDCL and the State Government, BVEPL made allegations regarding the authenticity of certain documents submitted by MP24 in the Technical Bid. BVEPL questioned the genuineness of a work-experience certificate purportedly issued by the APWRD in respect of a project described as "Remodeling of HNSS canal from 45.6 km to 110 km and Distributary of P9, P10, P11, P12, and P13 coming under HNSS Main Canal at Kadiri, Anantha Puram District". In the case of MP24, the said complaint by the L2 bidder triggered the chain of events culminating in the impugned Order.

16. By a separate letter bearing reference No.RCCL/KARO/ KRDCL/2025-26-01 dated 22.05.2025, addressed to KRDCL (received by KRDCL through e-mail on 26.05.2025), RCCL formally informed KRDCL that MP24 had participated in the tender using

RCCL's credentials illegally and without RCCL's consent, and that RCCL had withdrawn from the Joint Bidding Agreement by its earlier communication dated 16.04.2025. Accordingly, RCCL requested KRDCL to reject the tender submitted by the Consortium.

17. Pursuant to BVEPL's complaint, KRDCL addressed communications to the concerned authorities of the APWRD, seeking confirmation of the authenticity of the experience certificate. By communication dated 28.05.2025, the Executive Engineer, APWRD, informed the Chief Engineer, KRDCL, that the certificate had not been issued by the said authority. By a further communication dated 30.05.2025, the Superintending Engineer, HNSS Circle No. 3, Madanapalle, stated that the agreement for the work in question was not concluded by the said office. By a communication dated 04.06.2025 from the Chief Engineer (Projects), Water Resources Department, Ananthapuram, the experience certificate was confirmed to be "purely bogus and forged".

18. While the APWRD certificate was under scrutiny, MP24 also brought to the attention of KRDCL and the State that BVEPL had

relied on fabricated and inadmissible documents to establish its eligibility, namely:

> (i) a work-done certificate dated 14.08.2024 purportedly issued by the National Highways Authority of India [**NHAI**], which MP24 contended had been disowned by NHAI as forged by its e-mail dated 10.06.2025;
>
> (ii) a certificate issued by M/s. Ashoka Buildcon Limited, certifying that BVEPL had carried out Operation and Maintenance (O&M), as a sub-contractor, on the “Four laning of Arrah to Pararia section of NH-319 (Old NH-30)” in the State of Bihar, being the document on the strength of which BVEPL claimed the Operation and Maintenance (O&M) experience required of a single-entity bidder under Clause 2.2.3 of the RFP, which MP24 contended was inadmissible — not qualifying as O&M experience under the RFP — and which was purportedly withdrawn such that, without it, BVEPL would have lacked the requisite O&M experience;

(iii) a fabricated statutory auditor's / net-worth certificate overstating its financial particulars; and

(iv) a non-submission of the mandatory Income Tax Returns.

19. MP24 further placed on record that the Central Bureau of Investigation had registered FIR No.RC2172025A0077 dated 11.07.2025 against BVEPL and certain officials of NHAI, in connection with a project relied upon by BVEPL to establish its eligibility in the present tender.

20. It is MP24's case that the respondents treated MP24's bona fide and non-essential certificate as fraud while ignoring the inadmissible and fabricated documents of BVEPL, and that this constituted hostile discrimination, mala fides and a colourable exercise of power. BVEPL, for its part, denied having submitted any fabricated document and contended that the said CBI FIR post-dated the bid and rested upon a motivated complaint; the procuring entity maintained that MP24's own bid was *non est* on account of the forged certificate.

21. By letter dated 12.06.2025, KRDCL communicated its findings regarding the APWRD certificate to MP24 and invited it to

attend a meeting on 19.06.2025. By letter dated 18.06.2025, MP24 sought an adjournment of the meeting on the ground of its proprietor's ill health, supported by a certificate purportedly issued by an Ayurvedic doctor. By a subsequent letter dated 19.06.2025, MP24, inter alia, represented to KRDCL that, even if the disputed APWRD certificate were disregarded, the Consortium's technical capacity exceeded the required threshold of ₹762.86 crores, with its total claimed capacity at ₹776.05 crores, and that the disputed certificate was, in any event, not essential for qualification. MP24 accordingly requested the issuance of the letter of award.

22. The 149th meeting of the Board of Directors of KRDCL was held on 20.06.2025, during which the matter relating to the disputed certificate was discussed. The Board resolved to grant MP24 one further opportunity to present its case, with action thereafter to follow as per law.

23. By letter dated 11.07.2025, KRDCL directed MP24 to attend a hearing on 16.07.2025. The representatives of MP24 attended the said meeting on 16.07.2025 and filed written submissions explaining their position, the substance of which was recorded by KRDCL as follows:

> (a) a detailed explanation had been submitted by letter dated 30.06.2025 that an employee, without authorisation, had obtained the certificate, which came to light after the receipt of the KRDCL letter dated 12.06.2025;
>
> (b) a criminal complaint had been filed against the said person, who had been suspended; and
>
> (c) even without the said document, the bidder would have qualified, the said document being non-essential.

24. By Proceedings dated 19.07.2025 bearing reference No.KRDCL / MD / EE-3 / D-V-K Road / 2025-26 /1415, KRDCL forwarded to the State Government the recommendations made by the TEC at its 137th meeting held on 18.07.2025. The TEC had recommended that action be taken against MP24 on the ground of fraudulent participation in the tender, and that the matter be placed before the State Government for consideration of action under Section 14-A of the KTPP Act and Rule 26-B of the KTPP Rules.

25. The State, by notice dated 24.07.2025 (received by MP24 by e-mail dated 28.07.2025), called upon MP24 and RCCL to appear before the SLDC on 01.08.2025. By e-mail dated 31.07.2025, MP24 sought postponement of the said hearing, citing religious commitments, and offered to appear on any date after 07.08.2025. By a fresh notice dated 05.08.2025, MP24 was called upon to

appear before the SLDC on 08.08.2025. According to KRDCL, the proceedings scheduled for 08.08.2025 were adjourned due to the absence of MP24 and the late commencement, and a further notice was issued for 12.08.2025. By email dated 08.08.2025, MP24 sought a postponement to a date after 15.08.2025 in view of Independence Day celebrations. By a fresh notice dated 11.08.2025, the SLDC fixed 12.08.2025 for the hearing. By letter dated 12.08.2025, MP24 again sought an adjournment to a date after 15.08.2025. However, the proceedings of the SLDC commenced on 12.08.2025 at 4:00 PM and MP24 did not participate in the meeting.

26. In the meanwhile, by letter dated 11.08.2025 bearing reference No.KRDCL/CE/EE-3/D-K Road Tender/2025-26/727 (communicated to MP24 by e-mail on 12.08.2025), the Chief Engineer, KRDCL, invoking Clauses 2.6.2 and 2.6.3 of the RFP, communicated to MP24 the cancellation of its bid and the forfeiture of the EMD in the sum of ₹7,63,00,000/- (Rupees Seven Crore Sixty-Three Lakhs only). It is relevant to note that the said EMD comprised a bank guarantee of ₹7.62 crores and an e-payment of ₹1,00,000/- (Rupees One Lakh only). MP24 had additionally paid

₹10,00,000/- (Rupees Ten Lakh only) towards the non-refundable bid-document fee.

27. Aggrieved by the said sequence of events, MP24 filed a petition, W.P.No.22904 of 2025, before this Court, inter alia, impugning (i) the proceedings dated 19.07.2025; (ii) the letter dated 24.07.2025 issued by the State to KRDCL;(iii) the letter dated 25.07.2025 issued by KRDCL; and (iv) the letter dated 11.08.2025 invoking the EMD. MP24 also sought a direction to KRDCL to issue the letter of award to MP24 in pursuance of the RFP.

28. On 13.08.2025, the learned Single Judge passed an interim order in W.P.No.22904 of 2025 [**the first interim order**], whereby the respondents were, inter alia, restrained from invoking the EMD and awarding the contract to the L2 bidder. The respondents were also directed to make their stand clear in light of the policy relied upon by MP24, namely the Government Circular dated 11.05.2022.

29. On the very same day, that is, on 13.08.2025, the State issued the impugned debarment order bearing No.PWD 203 BMS 2025, debarring MP24 for a period of three years and RCCL for a period of two years from all works in the State of Karnataka, and

directing the registration of an FIR against MP24 within 24 hours. The operative part of the said Order is reproduced below:[1]

> "(i) M/s MP24 Construction Company and Respondent 1 herein is debarred from all works in the state of Karnataka for 3 years from this date. The order to be uploaded on E-procurement immediately.
>
> (ii) Complaint and FIR against Respondent 1, MP 24 Company to be filed in jurisdictional police station in 24 hours by EE, KRDCL on charges of forgery, cheating and fraud for gain and submitting false document and false evidence to a public servant and violation of KTPP Act and Rules. As Respondent 2 failed to make any report against his partner till complaint, he should be treated as abettor in the FIR.
>
> (iii) Respondent 2 for deliberate connivance is debarred for 2 years from all PWD works in Karnataka state, from this date.
>
> Further action to be taken as per 26(C) of the KTPP Rules, 2000."

30. In the meantime, on 14.08.2025, pursuant to the directions issued by the impugned Order, an FIR came to be registered by the Subramanyanagar Police Station, Bengaluru, in Crime No.106 of 2025 against MP24, on charges of offences punishable under Sections 318(4), 336(2), 336(3) and 340(2) of the Bharatiya Nyaya Sanhita, 2023.

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[1] In the impugned debarment order, the expression "Respondent 1" denotes MP24 and the expression "Respondent 2" denotes RCCL, in accordance with the array of parties before the State Level Debarment Committee.

31. Thereafter, MP24 instituted W.P.No.25668 of 2025 before this Court, inter alia, impugning the impugned debarment order dated 13.08.2025. The said petition was heard along with W.P.No.22904 of 2025. By an order dated 25.09.2025 [**the second interim order**], the learned Single Judge, in W.P.No.25668 of 2025 and connected matters, permitted MP24 to participate in the tender floated by M/s. Cauvery Niravari Nigam Limited [**CNNL**] —a wholly owned undertaking of the State of Karnataka — subject to the outcome of the writ petitions, with a clarification that MP24 would not claim any equities or any advantage under the said interim order except to the extent that it removed the disability flowing from the impugned Order.

32. The State, being aggrieved by the second interim order dated 25.09.2025, filed an appeal, Writ Appeal No.1729 of 2025, before this Court. By judgment dated 03.11.2025, a Division Bench of this Court disposed of the said writ appeal, declining to interfere with the interim arrangement. This Court, while doing so, observed that the question whether the contract was required to be awarded to the L2 bidder or whether fresh tenders were required to be invited would necessarily have to be subject to the orders to be passed in the writ petitions, and that, if MP24 were to succeed in

the writ petitions and the impugned debarment order was set aside, MP24 could not be visited with any disadvantages on the ground of having been excluded during the interim period. This Court further reserved liberty to the State to apply afresh in the event of delay in disposal of the writ petitions.

33. In the meantime, MP24 instituted W.P.No.31906 of 2025 (GM-TEN), contending that the State had failed to restore access to the Karnataka e-Procurement Portal, thereby depriving MP24 of the benefit of the said interim arrangement. MP24 sought a writ of mandamus directing the restoration of access to the said portal in compliance with the interim order dated 25.09.2025.

34. The three writ petitions, namely W.P.No.25668 of 2025, W.P.No.22904 of 2025 and W.P.No.31906 of 2025, were thereafter heard together by the learned Single Judge and, by the impugned common order dated 09.12.2025, came to be dismissed.

35. It is also relevant to note that, on or about 10.12.2025 — that is, the day after the dismissal of the writ petitions — KRDCL invoked the bank guarantees furnished by MP24 by way of the EMD.

36. In the aforesaid context, the reliefs sought by MP24 in the two writ petitions out of which the present appeals arise may now be noted.

37. In W.P.No.25668 of 2025 (out of which Writ Appeal No.2026 of 2025 arises), MP24 sought the quashing of the impugned Order bearing No.PWD 203 BMS 2025 dated 13.08.2025 issued by the State.

38. In W.P.No.22904 of 2025 (out of which Writ Appeal No.2028 of 2025 arises), MP24 sought[2] the following reliefs:

> (a) quashing of the proceedings dated 19.07.2025 bearing reference No.KRDCL/MD/EE-3/D-V-K Road/2025-26/1415;
>
> (b) quashing of the letter dated 25.07.2025 bearing reference No.KRDCL/MD/Ka.Aa-3/HAM/2025-26/498;
>
> (c) quashing of the letter dated 24.07.2025 bearing No.PWD 203 BMS 2025;
>
> (d) a direction to KRDCL and its Chief Engineer to issue the letter of award in pursuance of the RFP;
>
> (e) quashing of the letter dated 11.08.2025 bearing reference No.KRDCL/CE/EE-3/D-K Road Tender/2025-26/727, and a consequential direction to refund a sum of ₹7,36,00,000/- ; and

[2] By way of its amended petition filed pursuant to the order dated 05.11.2025

> (f) quashing of the letter dated 24.07.2025 bearing No.PWD 797 EAP 2025 addressed by the State to KRDCL.

III. IMPUGNED ORDER

39. The learned Single Judge, by the impugned common order dated 09.12.2025, dismissed W.P.No.25668 of 2025, W.P.No.22904 of 2025 and W.P.No.31906 of 2025. The learned Single Judge framed three points for consideration:

> "(i) whether MP24 had made out a case for interference;
>
> (ii) whether MP24 was justified in stating that principles of natural justice were curtailed; and
>
> (iii) whether the impugned Order dated 13.08.2025 was arbitrary and required interference under Article 226 of the Constitution."

40. The learned Single Judge examined the relevant clauses of the RFP, including Sections 2.1.9, 2.1.15, 2.2.1, 2.6.2, 2.11.2, 2.11.5, 3.2.1(e) and 4.1, and observed that, where a Bidder is a Consortium and indulges in misrepresentation, the said misrepresentation shall lead to disqualification of the Bidder, with the result that "each member of the consortium, irrespective of their active / non-active / limited/lead bidder/advisory or any of incidental

nature of participation in the tender process would suffer penalty of disqualification, being a member of the consortium".

41. On the central factual question, the learned Single Judge observed that the Consortium consisting of MP24 and RCCL had uploaded a fabricated work-experience certificate purportedly issued by the APWRD, which fact was not disputed; that RCCL, by its e-mail dated 16.04.2025, had communicated its withdrawal from the Consortium to MP24, but did not mark a copy of the said e-mail to KRDCL; that MP24, having received the said e-mail before the opening of the Technical Bid on 19.04.2025, did not disclose either the fact of the e-mail or the alleged unauthorised conduct of its employee to KRDCL; that the conduct of MP24 in suppressing the said facts till the conclusion of the Technical Bid was deserving of deprecation; and that MP24 had not approached the Court with clean hands and was not entitled to equitable relief under Article 226 of the Constitution.

42. The learned Single Judge further observed that MP24, in its letter dated 30.06.2025, admitted that an employee had uploaded the disputed certificate; that the FIR registered by MP24 against its employee indicated vicarious liability of MP24 for the fraudulent

practice committed by its employee; and that this admission, coupled with the violation of Section 4 of the RFP, rendered MP24 liable to be disqualified.

43. On the question of natural justice, the learned Single Judge referred to the judgment of the High Court of Delhi in **CCS Computers Private Ltd. v. New Delhi Municipal Council**[3] and held that where a forged document has been uploaded by an authorised employee, the bidder cannot avoid vicarious liability. The learned Single Judge further held that the doctrine of "useless formality", as enunciated by the Supreme Court in **Aligarh Muslim University v. Mansoor Ali Khan**[4]**,** would apply, since the end result would have been the same — namely, the disqualification of MP24 — even if a personal hearing had been afforded.

44. The learned Single Judge further observed that the Tendering Authority is empowered, under Section 14 of the KTPP Act, to reject all tenders before taking a final decision; that the tender process had not been finalised by KRDCL upon completion of the Financial Bid; that the question of awarding the contract to

[3] 2025 SCC OnLine Del 5354

[4] (2000) 7 SCC 529

the L2 bidder or calling for fresh tenders lay within the Tendering Authority's domain; and that the Court would not interfere with the tender process at that stage. As regards the Government Circulars dated 03.12.2002, 11.05.2022 and 16.01.2025 — relied upon by MP24 to contend that fresh tenders were mandatorily required and that no negotiation could take place with the L2 bidder — the learned Single Judge observed that, since the tender process was not yet concluded, it was for KRDCL to take a decision in accordance with the tender documents, and that any observation by the Court at that stage on the said circulars would be premature.

45. On the question of the alleged disobedience of the interim orders by the State, the learned Single Judge observed that, since MP24 had approached the Court with unclean hands, the said contention could not be accepted. The learned Single Judge further took note of the Division Bench's order dated 03.11.2025 in Writ Appeal No.1729 of 2025, the operative paragraphs whereof were extracted in the impugned common order.

46. On the relationship between MP24 and RCCL, the learned Single Judge observed that the e-mail dated 16.04.2025 from RCCL to MP24 — withdrawing from the Consortium just before the

close of bidding — was not communicated to KRDCL by either of the Consortium's constituents until RCCL's letter dated 22.05.2025; that this omission, by itself, demonstrated that MP24 was not entitled to equitable relief; and that, since RCCL's communication dated 22.05.2025 was made after the opening of the Technical Bid, the conduct of MP24 in suppressing material facts vitiated its offer at the threshold.

47. In the aforesaid premises, the learned Single Judge concluded that MP24 had failed to establish that the principles of natural justice were not complied with; that MP24 had uploaded a forged document; and that MP24 had approached the Court with unclean hands. Accordingly, the learned Single Judge held that W.P.No.22904 of 2025 and W.P.No.25668 of 2025 deserved to be dismissed as devoid of merit, and that, in light of the said dismissal, the prayer made in W.P.No.31906 of 2025 did not survive for consideration. All three writ petitions were dismissed along with the pending applications.

48. Thereafter, on 12.12.2025, MP24 filed the Writ Appeal No.2026 of 2025 (assailing the dismissal in W.P.No.25668 of 2025)

and Writ Appeal No.2028 of 2025 (assailing the dismissal in W.P.No.22904 of 2025).

IV. SUBMISSIONS

49. It would be apposite at this stage to briefly note the principal submissions urged on behalf of the parties.

50. The learned Senior Counsel appearing for MP24 had assailed the debarment order on several fronts.

51. First, it was contended that no valid show-cause notice was issued by SLDC; therefore, the debarment order is contrary to the principles of natural justice. It was contended that SLDC had issued emails, notices, and communications inviting MP24 to meetings; however, the said notices neither specified any charge of fraud or misconduct nor proposed any penalty such as blacklisting. The notices did not inform MP24 of the consequences that it could face at the culmination of the proceedings. It is submitted that in the absence of any such information, the debarment order violated the principles of natural justice and is thus liable to be set aside.

52. Second, it was submitted that the State Government issued the debarment order without any specific recommendation under Rule 26-B(5) of the KTPP Rules.

53. Third, it is submitted that the State Government is required to take a conscious decision after considering the recommendations made by SLDC under Rule 26-B(5) of KTPP Rules. Further, the principles of natural justice also require that MP24 be given an opportunity to make a representation and be afforded a hearing at that stage. However, the State Government did not follow any such procedure prior to issuing the debarment order. Thus, the debarment order is liable to be set aside as it was passed mechanically and without following due process.

54. Fourth, it was contended that the debarment order does not consider any of the mitigating factors, such as absence of *mens rea;* that the document in question was unauthorizedly uploaded by an employee; and MP24 had taken immediate remedial action and had lodged an FIR against the concerned employee.

55. Fifth, it is submitted that the debarment order is excessively harsh, and there are other measures that could be imposed that are less harsh.

56. Sixth, it was submitted that the decision to debar was taken by the Principal Secretary, Public Works Department (PWD), in his capacity as chairman of the SLDC and head of the department, and was subsequently issued as a Government Order No. PWD 203 BMS 2025, Bengaluru, dated: 13.08.2025, authenticated by the Under Secretary to the Government, Public Works Department (Buildings) in the name of the Governor. It is contended that the concerned officials were not authorised to take this decision. It was contended that under the Karnataka Government (Transaction of Business) Rules, 1977, the Minister in-charge is primarily responsible for disposal of the business pertaining to his department, and the records do not indicate that the Minister had approved the said decision.

57. Seventh, that the forfeiture of the EMD was illegal. It was contended that EMD could be forfeited only as damages, and MP 24 had not suffered any loss on account of the alleged misrepresentation. The learned counsel relied on the decision of the Supreme Court in **Kailash Nath Associates** (supra) and on the strength of the said decision contended that no damages could be recovered without proving the same.

58. Eighth, it was contended that respondents applied different yardsticks by treating MP24's bona fide and non-essential certificate as fraud, while ignoring the fabricated and inadmissible documents of BVEPL including the NHAI work-done certificate dated 14.08.2024 and the Ashoka Buildcon O&M certificate.

59. Lastly, it was contended that in terms of the Government Circulars dated 11.05.2022 and 16.01.2025, KRDCL could not award the contract to any person other than the Consortium, which was declared as L1. It was contended that said circulars mandated that where the contract is not awarded to the L1 bidder for any reason, fresh tenders must be invited.

60. The learned counsel appearing on behalf of the State and KRDCL submitted that MP24, being an unregistered proprietary concern, had uploaded a fabricated work-experience certificate to hold itself out as eligible; that fraud vitiated the entire transaction and a bidder guilty of fraud is not entitled to equitable relief under Article 226; that, the since the Consortium had uploaded a forged document, each member was liable to be disqualified irrespective of the nature of its participation; that MP24 had suppressed RCCL's withdrawal e-mail dated 16.04.2025 until after the opening

of the bids; and that, since the tender process had not been finalised and no letter of award had been issued, it remained within the domain of the Tendering Authority to decide whether to award the contract to the L2 bidder or to call for fresh tenders.

61. In regard to the Government Circulars, the State and KRDCL submitted that the said circulars had no application. The Consortium's bid was *non est,* and the evaluation has not culminated in a binding determination or the issuance of a letter of award. Thus, the Consortium could not be considered as the L1. On its disqualification, BVEPL became the L1 bidder.

62. It was also contended that MP24 had no locus to insist upon a re-tender; and that the question was, at best, discretionary and one for the Government to decide.

63. The learned counsel appearing for BVEPL submitted that it had produced no fabricated document and that the certificate issued by NHAI was withdrawn prior to the opening of the bids; thus, the same could not have been considered.

V. REASONS AND CONCLUSION

64. The subject matter of the present appeals is confined to three main challenges; first, the challenge to the order of debarment dated 13.08.2025 passed by the State Government, debarring MP24 from participation in any procurement activity within the State of Karnataka; second, the challenge to the award of contract to BVEPL; and third, the forfeiture of the EMD.

RE: THE STATUTORY SCHEME FOR DEBARMENT

65. Before proceeding to address the issues raised, we consider it relevant to refer to the statutory provisions governing the blacklisting of any person.

66. Section 14A of the KTPP Act, 1999, contains the provisions regarding debarment of tenderers, contractors or suppliers. Section 14A of the KTPP Act is reproduced below:

> "14A. **Debarment of Tenderers**.--(1) The Procurement Entity may debar tenderers, for a period not exceeding three years, from participation in its tenders, following such procedure as may be prescribed on the ground that tenderer is engaged in corrupt or fraudulent practices in competing or executing the contract including misleading the procuring entity at any stage of Procurement Activity with a fraudulent intention:

> Provided that, no tenderer shall be debarred without giving opportunity of being heard.
>
> (2) The State Government may debar tenderers for a period not exceeding three years, from participating in any procurement activity within the State, following such procedure as may be prescribed, on grounds of, but not restricted to, criminal offence, corruption, integrity, honesty and work ethics: Provided that no tenderer shall be debarred without giving opportunity of being heard.
>
> (3) The State Government shall publish the list of so debarred tenderers under sub-section (2) from participating in any procurement activity on the Karnataka Public Procurement portal.
>
> (4) The tenderer so debarred under sub section (2) shall not be entitled to apply to participate in tenders called by any procurement entity under this Act during the period so debarred."

67. A plain reading of Section 14A(1) of the KTPP Act indicates that a tenderer can be debarred for a period not exceeding three years after following the procedure as may be prescribed. The State Government can take such action on the grounds that the tenderer is engaged in corrupt or fraudulent practices in competing for the procurement or in executing the contract. This would include misleading the procuring entity at any stage of the procurement process with a fraudulent intent. However, no adverse action could be imposed without affording the tenderer an opportunity to be heard.

68. Rules 26-A and 26-B of the KTPP Rules prescribe the procedure for debarment of a tenderer, contractor or supplier. The said Rules are set out below.

> "**26-A. Debarment of Tenderers by Procurement Entity**.- (1) The Procurement Entity may proceed with debarring such tenderer or contractor or supplier or any of the successor of the tenderer or contractor or supplier who has engaged directly or through an agent in a corrupt or fraudulent practices in participating or competing or executing the contract including misleading the Procurement Entity at any stage of procurement and executing activity.
>
> (2) The Procurement Entity may, by order, appoint a Committee consisting of such officers not below the rank of Tender Inviting Authority to be the Debarment Committee to consider the proposals for debarring bidder or contractor or supplier and to take a decision thereof.
>
> (3) On the receipt of information, Debarment Committee shall provide a reasonable opportunity, including an oral hearing, to the concerned for making representations before taking a decision.
>
> (4) For consideration of debarment, Tender Inviting Authority or any other officer authorized by Tender Accepting Authority shall furnish the details of such bidders or contractors or suppliers who have engaged in corrupt practice and fraudulent practices to the Debarment Committee constituted under sub-rule (2) above.
>
> (5) The Debarment Committee may make recommendations with reasoning in writing, within thirty days from date of receipt of information.

Provided that, the said period may be extended by another fifteen days by Procurement Entity for the reasons to be recorded in writing.

(6) On the recommendations of the Debarment Committee, the Procurement Entity shall by notification debar any of tenderer or contractor or supplier and publish the same on its website and Karnataka Public Procurement Portal and also maintain the list of such tenderer or contractor or the supplier or any of its successors.

(7) The order of debarment shall be deemed to have been automatically revoked on the expiry of the period specified in the debarment order.

26-B. Debarment by the Government.- (1) The Government may debar a tenderer or contractor or supplier, in the public interest and on the grounds specified in the Act.

(2) There shall be a State Level Debarment Committee consisting of such Officers as may be notified by the State Government to consider the proposals for debarring bidder or contractor or supplier and to take a decision thereof.

(3) On the receipt of the information, the State Level Debarment Committee shall provide a reasonable opportunity, including an oral hearing, to the concerned for making representations before taking a decision on the debarment.

(4) For consideration of debarment of the bidders or contractors or suppliers, the officer authorized by the Procurement Entity shall furnish the details of such bidders or contractors or suppliers to the State Level Debarment Committee constituted under sub rule (2) above;

(5) The State Level Debarment Committee may make recommendation to the State Government to such an effect, within thirty days, from the date of receipt of the information:

> Provided that, the said period may be extended by another fifteen days for the reasons to be recorded in writing by the Debarment Committee.
>
> (6) On the recommendation of the State Level Debarment Committee, the Government shall debar by notification such tenderer or contractor or supplier and publish the same on the Department website as well as Karnataka Public Procurement Portal and shall maintain the list of such bidder or contractor or the supplier or any of its successor.
>
> (7) The debarred tenderer or contractor or supplier shall be removed from the list of registered contractors or vendors.
>
> (8) The order of debarment shall be deemed to have been automatically revoked on the expiry of the specified period in the debarment order."

69. As is apparent from the above, Rule 26-A contemplates debarment by a Procurement Entity. Sub-rule (2) of 26-A provides that an action of debarment shall be taken by the debarment committee constituted by the Procurement Entity, which shall not be below the rank of the tender inviting authority. Sub-rule (5) of Rule 26-A provides that the debarment committee is required to make a recommendation in writing. Sub-rule (6) of Rule 26-A provides that the Procurement Entity shall debar a tenderer on the recommendation of the debarment committee by issuing a

notification and publishing the same on the Karnataka Public Procurement Portal.

70. Rule 26-B of the KTPP Rules provides that the State Government may debar a tenderer, contractor or a supplier in public interest on the grounds specified in the Act.

71. As noted earlier, Section 14A of the KTPP Act sets out the grounds on which a tenderer, contractor or supplier may be debarred or blacklisted. Sub-rule (2) of Rule 26-B of the KTPP Rules provides for the constitution of a State Level Debarment Committee [SLDC] comprising officers as may be notified by the State Government. SLDC is required to consider proposals for debarring a bidder, contractor or supplier and “to take a decision” in this regard.

72. Under sub-rule (3), the SLDC (State Level Debarment Committee) is required to provide a reasonable opportunity to the tenderer, contractor or supplier to make a representation, including an oral hearing, before taking a decision on debarment.

73. Sub-rule (6) of Rule 26-B provides that the Government shall debar a tenderer by a notification on the recommendation of the SLDC.

74. We may also refer to Rule 26-C of the KTPP Rules, which sets out the measures that the Procurement Entity may take after the debarment of the tenderer, contractor, or supplier, as the case may be. The said rule is set out below.

> **"26-C. Measures to be taken after Debarment**.- The Procurement Entity may take appropriate measures in respect of debarred tenderer or contractor or supplier including one or more of the following, namely:-
>
> (i) reject the bid and forfeit or encash EMD or Bid Security;
>
> (ii) terminate the contract; forfeit or encash the performance guarantee; recover the compensation of loss incurred by Procurement Entity;
>
> (iii) forfeit or encash any other security or guarantee or bond provided by such tenderer or contractor or supplier in relation to the such procurement; and
>
> (iv) recover payments including advance payments, if any, made by the Procurement Entity along with the interest thereon at the prevailing rate of Nationalized Bank."

75. As is apparent from the scheme of Rule 26-A and 26-B of the KTPP Rules, a tenderer, contractor or supplier may be debarred

either by the Procurement Entity or by the State Government. In either event, the grounds of debarment are identical. Sub-rule (1) of Rule 26-A of the KTPP Rules provides that a tenderer, contractor, or supplier who is directly or indirectly engaged in corrupt or fraudulent practices in participating in, competing for, or executing the contract –including misleading the Procurement Entity –may be debarred. These grounds are materially similar to those set out in Section 14A of the KTPP Act.. The grounds on which the State Government may take action under Rule 26-B(1) of the KTPP Rules are the same.

76. Although the State Government has enacted the KTPP Act and KTPP Rules for the debarment of a tenderer, contractor, or supplier that has engaged, directly or indirectly, in fraudulent or corrupt practices at any stage of procurement or execution of the contract, such power is also inherent in the State. In Patel Engineering Ltd. v. Union of India and another[5] the Supreme Court had observed as under:

> **"**The State can decline to enter into a contractual relationship with a person or class of persons for legitimate purpose. The authority of the State of blacklist a person is necessary concomitant to the executive power of the State to

[5] (2012) 11 SCC 257

> carry on the trade or the business and making of contracts for any purpose etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary - thereby such a decision can be taking for some legitimate purpose."

77. It is necessary to bear the aforesaid in mind while considering the challenge to the debarment order. The proceedings before the SLDC are not quasi-judicial or judicial proceedings. Thus, a debarment order is not required to be tested against the parameters of a judicial or quasi-judicial decision. It is by its very nature an administrative order, and thus its validity must be tested on the anvil of administrative law.

78. It is a trite principle of law that the Courts will not interfere with administrative action unless it is found to infringe any constitutional or statutory rights.

RE: VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE

79. We will now proceed to address the first question, whether the debarment order is liable to be set aside on the ground that it violates the principles of natural justice.

80. MP24 argues that the communications issued by the State Government merely called the tenderer to a hearing without specifying the proposed action or the grounds on which it was proposed. There is no cavil that MP24 was required to be afforded a reasonable opportunity to be heard.

81. The question whether MP24 was afforded sufficient opportunity to respond to the allegation of using fraudulent means is required to be answered by examining the correspondence between MP24 and KRDCL, as well as the correspondence with the State. KRDCL, being the procurement entity, had issued a letter dated 12.06.2025. A plain reading of the said letter indicates that MP24 was informed that KRDCL had sought confirmation from the issuing authority – the APWRD – regarding the authenticity of the certificate furnished by MP24 for the project of “Remodelling of HNSS main canal from 45.6 KM to 110 KM and Distributary of P-9, P-10, P-11, P-12, and P-13 coming under HNSS main canal at Kadiri, Ananthapuram District”. The APWRD confirmed that the experience certificate furnished by MP24 had not been issued by its office and that is the certificate was “bogus and forged”. MP24 was informed that, given the serious nature of the observations, it should come for a meeting at the office on 19.06.2025 at 11.00 AM

"along with a detailed written explanation and other supporting documents".

82. MP24 was also informed that in case of failure to attend the meeting along with the requisite documents/information, KRDCL would be constrained to disqualify MP24 and take further necessary action as per the tender conditions and applicable laws.

83. MP24 responded to the said letter by stating that its proprietor Mr. Kantharaju H.M. is unable to attend the said meeting on account of illness. The said reply letter dated 18.06.2025 with the subject – "Inability to Attend Meeting Scheduled on 19.06.2025 — Due to Unforeseen Medical Emergency", was also accompanied by a handwritten medical certificate dated 10.06.2025 issued by the Principal & Chief Medical Officer of the Rajeev Institute of Ayurvedic Medical Science and Research Centre. The said certificate states that it is certified that Sri Kantharaju H.M. was suffering from sciatica and he had been advised medication along with complete bed rest for a period of three weeks.

84. MP24 sent another letter the very next day – that is, on 19.06.2025 –confirming its willingness to execute the work as per the RFP and all technical eligibility criteria. It also stated that it had

proactively mobilised key machinery resources and initiated preparatory arrangements required for the commencement of the project activities.

85. The inconsistency in the communication is ex facie evident. On the one hand, MP24 sent a letter on 18.06.2025 stating that it is unable to attend the meeting scheduled for 19.06.2025 due to the ill health of its proprietor. However, the very next day, it sent a letter stating that it had already made preparatory arrangements and was ready to start work immediately.

86. KRDCL sent another letter dated 11.07.2025, in continuation of its earlier letter dated 12.06.2025, once again requesting MP24 to attend a meeting scheduled for 16.07.2025, along with a detailed written explanation and supporting documents. MP24 responded to the said letter stating that it had already provided “detailed explanation and clarification” regarding the information in its letter dated 30.06.2025. Relevant extracts of the said letter read as under:

> “6. In relation to A.P certificate is concerned, we would like to bring to your kind attention that one employee of MP24 without authorization and knowledge of the Management has obtained the certificate. It was only after teg receipt we initiated an internal inquire and found the said employee

had obtained the said certificate even though the same was not required for qualification of the award of the subject tender proceeding. In fact, we have suspended the said employee and initiated a criminal complaint before the jurisdictional police station.

7. At this juncture we would like to bring to your notice the law laid down by the Hon'ble Supreme Court of India in tender matters with respect to the essential and non-essential documents. The Hon'ble Supreme Court of India has categorically held that non-essential documents are those that, while potentially helpful in demonstrating bidder's capabilities, are not strictly required for eligibility. In this regard, Banshidhar Construction (P) Ltd. v. Bharat Coking Coal Ltd., (2024) 10 SCC 273 is relied upon; wherein the Hon'ble Supreme Court has held that rejection of a bid on such grounds is unjustified.

8. MP24 having been technically qualified, the work done certificate mistakenly submitted by our employee is at best a non-essential document for the purposes of considering the MP24's tender. Even as highlighted in our letter dated 19.06.2025, MP24 has produced such other work done certificates of seven high value projects with a cumulative capacity of Rs.776.05- Crores. Hence, the A.P certificatė need not be considered for the purposes of award of contract to MP24.

9. Pertinently, the law recognizes the distinction between fraud and mistake. Even though, the terms fraud and mistake are used interchangeably, the have distinct meanings and implications in law. 'Mistake' refers to an error or misunderstanding which is bona fide in nature. While on the other hand, fraud involves intentional deception. These aspects are clearly delineated under the provisions of Contract Act, 1872. Secondly, Section 4 of the RFP which deals with 'fraud and corruption practices' to disqualify a bidder from the subject tender proceedings. The said provision also defines corrupt practice,

> fraudulent practice and coercive practice. The fact that Section 4 of the RFP does not include within its ambit a "mistake" to disqualify a bidder is only demonstrative that the mistakes are condonable and are non-essential. Thirdly and similarly, the Karnataka Transparency in Public Procurement Rules 2000 also debars a tender of corrupt and fraudulent practices but not a bona fide mistake.
>
> 10. The enquiry that has been commenced against MP24 by way of letter dated 12.06.2025 will have far reaching adverse implications in all our pending contracts, future projects and financial arrangements. Infact, our JV Partner RCCL also addressed a letter to KRDCL showing reluctance to participate in the subject tender proceeding. Even today, RCCL has communicated to us that it will go ahead with the project if KRDCL is kind enough to withdraw or close the enquiry proceeding initiated under letter dated 12.06.2025."

87. MP24 was clearly aware of the inquiry being conducted and the allegation that it had indulged in fraud and corrupt practices. This is clear from its response, which states that the certificate was mistakenly submitted and a mistake could not be considered as fraud and/or corrupt practices as set out in section 4 of the RFP. MP24 explained that the forged certificate was furnished by one of its employees. It also contended that the said certificate was not essential, as, according to MP24, it qualified the technical eligibility criteria without any credit in respect of the works covered under the forged certificate.

88. MP24 was fully aware of the implications of the inquiry. In paragraph 10 of its letter, it clearly stated that the inquiry, which had commenced with a letter dated 12.06.2025, has “far-reaching adverse implications in all the pending contracts, future projects and financial arrangements”.

89. MP24 participated in the meeting held on 16.07.2025 and tendered its written submissions. It was at this meeting that the discrepancy between the net worth certified by MP24’s Chartered Accountant and the information stated to have been obtained from the Income Tax Department was put to MP24 for the first time. Thereafter, by its letter dated 22.07.2025, it raised issues relating to TEC’s proceedings. MP24 also raised a grievance that, since the allegation cast a stigma, a fair opportunity ought to have been granted before it was placed before the TEC. The grievance was made in the context of a clarification sought by KRDCL regarding RCCL’s withdrawal from the consortium and the tender.

90. Proceedings of the TEC meeting held on 18.07.2025 are placed on record. The same indicates that TEC rejected MP24’s contention that the fabricated work experience certificate is a non-essential document. It also rejected the contention that the

furnishing of the said document was a mistake. It was noted that the authorised signatory of MP24 had certified that all information provided in the Bid documents and in Annexures I to IV was true and correct. It further affirmed that nothing has been omitted, which renders such information misleading, and all documents accompanying such Bid are true copies of their respective originals.

91. After considering the response furnished by MP24, the TEC made recommendations. The relevant extract of the proceedings setting out the recommendations made is set out below:

> "f) Based on the above discussions and deliberations, the Tender Evaluation Committee recommended the following;
>
> a. The claim made by the L1 Bidder regarding the work experience certificate as a mistake in the technical proposal is not valid and hence cannot be considered as per the provisions of the RFP.
>
> b. The withdrawal letter submitted by the JV member of the legally formed consortium cannot be accepted. Further as per Clause 8 of the Joint Bidding agreement executed among the Parties, the, JVr agreement stands terminated only in case the bidder is not qualified for the Project.
> c. The details regarding the financial documents of L1 bidder shared by the L2 Bidder and the details obtained from the Income Tax Department are matching.

> d. As per the directions of the 149th Board Meeting, the Tender Evaluation Committee has reviewed the documents furnished by the L1 Bidder and based on the same, the Committee is of the opinion that the documents submitted by the L1 Bidder are not sufficient to justify their claim and tantamount to misrepresentation of the information as per the provisions of the RFP
>
> e. Therefore, the Committee proposes to proceed as per the direction of the Board to take action as per RFP on the grounds of fraudulent participation in the tender and to submit a letter to Government requesting to place the subject in the State Level Debarment Committee.
>
> f. The above facts may be submitted to Govt. for further action."

92. A plain reading of the recommendations indicates that the TEC proposed placing the matter before the State or the SLDC.

93. MP24's letter dated 22.07.2025 reflects that MP24 was aware that the matter stood referred to the TEC for consideration and that MP24 was aware of the TEC's meeting held on 18.07.2025, albeit belatedly.

94. On 28.07.2025, the State (Under Secretary to the Government) sent an email regarding the subject, which read as "Notice regarding submitting fake documents in the Devanahalli-Kolara Highway Development work Tender". The said email

enclosed an attachment of a soft .pdf file named “debarment.pdf”. The body of the email read as under:

> “Please find the attachment and request that you attend the meeting with the supporting documents.”

95. The email’s subject line and the file name, “Debarment”, clearly indicated the purpose of the meeting. The translated copy of the “meeting notice letter” attached with the notice dated 24.07.2025 reads as under:

> “GOVERNMENT OF KARNATAKA
>
> No: PWD 203 BMS 2025
>
> Karnataka Government Secretariat,
> Vikasa Soudha,
> Bengaluru, Date: 24.07.2025
>
> **MEETING NOTICE LETTER**
>
> Regarding the tender for developing the road from Devanahalli-Vemagal-Kolar State Highway-96 (Chainage 0.00 km to 49.284 km) under the PPP-DBFOMT Hybrid Annuity Model; whereas it has been alleged that the Consortium of M/s MP24 Construction Company and M/s Ramalingam Construction Company Pvt. Limited created and submitted fake documents to obtain the work in the said tender; a meeting of the State Level Debarment Committee, under the chairmanship of the Principal Secretary to the Government, Public Works Department, has been scheduled on Date: 01.08.2025 at 4:00 PM at Room No. 317, 3rd Floor, Vikasa Soudha, Bengaluru to conduct an inquiry regarding this matter. You are requested to attend the said committee meeting.

Agenda details will be sent subsequently.

(Signed)
(Rajashekhar M.G.)
Under Secretary to Government,
Public Works Department (Buildings)."

96. The said notice was addressed to various officials and the proprietor of MP24. A note which reads as "sent to you, requesting you to appear for the inquiry on the above-mentioned date and provide your explanation" was recorded against the name of the proprietor of MP24. A plain reading of the notice indicates that it was regarding the submission of a fake document by the consortium of MP24 and RCCL to secure the contract for the project. The MP24 was informed that a meeting of the SLDC has been scheduled in this regard. As observed above, the notice clearly asked MP24 to submit its explanation. It is clear from the above that MP24 was aware that SLDC would take up the matter regarding the issuance of a fake certificate at its meeting scheduled on 01.08.2025.

97. MP24 sent an email dated 31.07.2025 at 10:29 PM stating that he was outstation "due to religious commitment personal reason and requested that the meeting be postponed." Sri Kantharaju acknowledged that he was fully aware of the relevance

of the said meeting, as is evident from the following statement made in his email:

> "I understand the importance of the Debarment Committee meeting scheduled on 01.08.2025, and as this matter requires my personal presence and explanation I am unable to authorize any representative at this stage."

He also assured his full cooperation, and he undertook to appear at the meeting on the rescheduled date without fail.

98. The SLDC deferred the meeting and rescheduled it for 08.08.2025. A notice dated 05.08.2025 for the said meeting was issued in similar terms as the earlier notice dated 24.07.2025. There is controversy over whether MP24 attended the meeting in question. According to MP24, its proprietor, Sri Kantharaju, was present at the venue at 4 PM. He claims that he was informed that the meeting was cancelled. However, the State submitted that there was some delay in commencing the meeting, and the members convened around 4.45 PM. However, Sri Kantharaju had left without signing the register.

99. Sri Kantharaju sent an email on the very same day, i.e. 08.08.2025 at 9.25PM, inter alia, requesting that the meeting now be scheduled after 15.08.2025 in view of the national festival

(Independence Day). He stated that his organisation manages educational institutions, and he has planned certain events in advance.

100. SLDC did not accede to the request to reschedule the meeting after 15.08.2025; instead, it scheduled it for 12.08.2025 at 4 PM. Accordingly, it sent a letter dated 11.08.2025 by post and email, stating that RCCL had already attended the meeting held on 01.08.2025 and had furnished its written statement. The meeting was deferred to accommodate MP24, and it appeared that MP24's request for deferment was to "avoid the inquiry".

101. MP24 responded to the email again, requesting a deferral of the hearing scheduled for 12.08.2025. Sri Kanthraju stated that since he had to personally oversee and organise arrangements for the upcoming Independence Day celebrations, it was difficult for him to attend the meeting. He also made a grievance that the meeting was being held on an emergency basis.

102. The communications referred to above between MP24 and SLDC clearly indicate that MP24 was aware that the meeting was held to conduct an inquiry regarding the furnishing of a forged certificate. He unequivocally stated that he would personally attend

the meeting and provide information regarding the inquiry being conducted.

103. MP24's contention that the debarment order had been passed without following the principles of natural justice has to be viewed in the context of the aforesaid communications.

104. It was argued on behalf of MP24 that, since the notice did not specifically state that it proposed to debar MP24 from participating in contracts, the debarment order is vitiated. The learned senior Counsel appearing for MP24 also relied on the decisions of the Supreme Court in Gorkha Security Services vs Govt. of (NCT of Delhi)[6] and Vetindia Pharmaceuticals Ltd. vs State of UP[7]. It is relevant to refer to the following extract of the decision of Supreme Court in Gorkha Security Services (supra):

> **"27.** We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show-cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show-cause notice, it can be clearly inferred that such an action was proposed, that would fulfil this requirement. In the

[6] (2014) 9 SCC 105

[7] (2021) 1 SCC 804

> present case, however, reading of the show-cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter."

105. A plain reading of the aforesaid passage indicates that the rationale for ensuring that the show-cause notice discloses the intention to impose a penalty of backlisting is to provide an adequate and meaningful opportunity for the concerned party to show cause against the same. There is no cavil that a person who is proposed to be blacklisted – a measure which has severe consequences and is also described as a civil death[8] – must be afforded a fair opportunity to meet the allegations on which such action is proposed and respond as to why such action should not be taken. The Supreme Court also clarified that if the proposed action of blacklisting could be inferred from the show-cause notice, the said requirement would be satisfied. In Vetindia Pharmaceuticals (supra) the Supreme Court referred to the earlier decision in Gorkha Securities (supra) and held as under:

> "**8.** There is no dispute that the injection was not supplied to the respondents by the appellant. Yet the show-cause notice dated 21-10-2008 referred to further action in terms of the tender for supplying misbranded medicine to the appellant. Furthermore, the show-cause notice did not state

[8] Erusian Equipment & Chemicals Ltd. v. State of West Bengal, (1975) 1 SCC 70

that action by blacklisting was to be taken, or was under contemplation. It only mentioned appropriate action in accordance with the rules of the tender. The fact that the terms of the tender may have provided for blacklisting is irrelevant in the facts of the case. In the absence of any supply by the appellant, the order of blacklisting dated 8-9-2009 invoking Clauses 8.12 and 8.23 of the tender is a fundamental flaw, vitiating the impugned order on the face of it reflecting non-application of mind to the issues involved. Even after the appellant brought this fact to the attention of the respondents, they refused to pay any heed to it. Further, it specifies no duration for the same.

9.*Erusian Equipment & Chemicals Ltd.* v. *State of W.B.* [*Erusian Equipment & Chemicals Ltd.* v. *State of W.B.*, (1975) 1 SCC 70] , held that there could not be arbitrary blacklisting and that too in violation of the principles of natural justice. In *Joseph Vilangandan* v. *Executive Engineer (PWD)* [*Joseph Vilangandan* v. *Executive Engineer (PWD)*, (1978) 3 SCC 36] , this Court was considering a show-cause notice as follows : (*Joseph Vilangandan case*[*Joseph Vilangandan* v. *Executive Engineer (PWD)*, (1978) 3 SCC 36] , SCC pp. 41-42, para 17)

> "*17*. … 'You are therefore requested to show cause … why the work may not be arranged otherwise at your risk and loss, through other agencies *after debarring you as a defaulter* …'
>
> The crucial words are those that have been underlined [**Ed.** : Herein italicised.] . They take their colour from the context. Construed along with the links of the sentence which precede and succeed them, the words "debarring you as a defaulter", could be understood as conveying no more than that an action with reference to the contract in question, only, was under contemplation. There are no words in the notice which could give a clear intimation to the addressee that it was proposed to debar

> him from taking any contract, whatever, in future under the Department."
> ** ** **
>
> **11.** If the respondents had expressed their mind in the show-cause notice to blacklist, the appellant could have filed an appropriate response to the same. The insistence of the respondents to support the impugned order [*Vetindia Pharmaceuticals Ltd.* v. *State of U.P.*, 2019 SCC OnLine All 6734] by reference to the terms of the tender cannot cure the illegality in the absence of the appellant being a successful tenderer and supplier. We therefore hold that the order of blacklisting dated 8-9-2009 stands vitiated from the very inception on more than one ground and merits interference."

106. It is clear from the above that the rationale of ensuring that the show cause notice sets out the proposed adverse action is to put the concerned party on notice of the same so as to enable it to respond to the said allegation. In both the cases referred to by the learned counsel for MP24 – Gorka Securities and Vetindia Pharmaceuticals – the authority could take a myriad of punitive actions, including blacklisting of the tenderer. In such circumstances, the show-cause notice, which did not refer to the adverse action proposed, was vulnerable on the ground that it was insufficient in as much as it did not put the concerned party on notice regarding the adverse action and therefore disabled it from responding to it.

107. However, in the given facts of this case, the SLDC could not take any other punitive measure except to debar the tenderer, contractor, or supplier, as the case may be. SLDC could either issue a debarment order or close the proceedings. It was not open for SLDC to impose any other penalty or take any other action. Therefore, the fact that the notice had been issued with regard to the inquiry being conducted by SLDC is self-indicative of the fact that the inquiry was to determine whether the order debarring MP24 and RCCL should be issued. MP24 could have no doubt as to the nature and possible outcome of the proceedings before the SLDC. The subject matter of the notice clearly indicated that SLDC would examine the allegation that the notices, MP24 and RCCL, had indulged in a fraudulent practice by submitting a fake certificate in an attempt to procure the contract.

108. Rule 26-B of the KTPP Rules also clearly indicates the scope of proceedings before SLDC is whether the tenderer, contractor or supplier is required to be debarred in the public interest and on the grounds as set out under the KTPP Act. Sub-rule (3) of Rule 26-B expressly provides that the SLDC may afford a reasonable

opportunity to the concerned person/entity to make a representation before taking a decision on debarment.

109. In the given facts, it is clear that such an opportunity was provided to MP24. Meetings had been convened at least twice, and MP24 was called upon to submit its explanation. On the first occasion (meeting scheduled on 01.08.2025), the proprietor of MP24 declined to participate on the grounds that he is travelling for religious purposes for personal reasons. On the second occasion (hearing scheduled on 12.8.2025), he declined to participate on the grounds that he was involved in organising Independence Day celebrations. Thus, undeniably, a reasonable opportunity was granted to MP24. The fact that it declined to avail itself of the same does not entitle it to now claim the opportunity was not provided. MP24's grievance in this regard is completely unjustified. We are inclined to accept that MP24 deliberately refrained from participating in the proceedings before the SLDC, as is contended on behalf of the State.

110. There is no straitjacket formula for applying the principles of natural justice. The question of whether principles of natural justice have been followed must be viewed in the factual context of each

case. It would be apposite to remind us of the following observation made by the Supreme Court in **Board of Mining Examination vs. Ramjee**[9]:

> *"13*. … Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt—that is the conscience of the matter."

111. It is necessary for us to ask whether,

(a) MP24 knew that the inquiry was being conducted for the purpose of considering its debarment;

(b) it had notice of such inquiry;

(c) it had the opportunity to furnish its explanation / representation; and

(d) had an opportunity to be heard.

[9] (1977) 2 SCC 256

In our view all of these aforesaid questions must be answered in affirmative in the given facts.

112. In this view, we reject the contention that the impugned debarment order is liable to be set aside as having been passed without following the principles of natural justice.

RE: THE SCOPE OF RULES 26-A, 26-B AND 26-C

113. Having rejected the challenge founded on the principles of natural justice, we turn to the scope of Rules 26-A, 26-B and 26-C of the KTPP Rules, which is material to the further contentions raised.

114. It is material to note the scheme of Rule 26-A, 26-B and 26-C of the KTPP Rules. Rule 26-A refers to the debarment of the tenderers by the procurement entity. The procurement entity can debar a tenderer, a contractor, or a supplier if it is found to be engaged in fraudulent practices. Rule 26-B refers to such measures as may be taken by SLDC.

115. Rule 26-C of the KTPP Rules provides for further measures can be taken by the procurement entity after a debarment order has been passed.

116. The scope of proceedings under Rule 26-A and 26-B are confined to debarment of the tenderer, contractor or supplier, as the case may be. Thereafter, the procurement entity can also take certain other measures as provided under Rule 26-C. However, there is no provision for the State government to take any further action; its jurisdiction is thus confined to considering whether the concerned tenderer, contractor or supplier is required to be debarred.

RE: PROPORTIONALITY

117. Next, it is necessary to examine whether the debarment order imposes excessive and disproportionate punishment?

118. An administrative action can be amenable to judicial review on the ground of irrationality or unreasonableness and is applicable only if the action fails the test of reasonableness on the anvil of Wednesbury principle.

119. The **Supreme Court in Om Kumar v. Union of India**[10] referred to the opinion of Lord Diplock in **Council of Civil Service**

[10] (2001) 2 SCC 386

Unions v. Minister for the Civil Service[11], wherein Lord Diplock had held that a judicial review of an administrative action is permissible on the grounds of illegality, procedural irregularity and irrationality. The Supreme Court also took note of Lord Diplock's view that in addition to the said grounds of judicial review, the ground of 'proportionality' was a 'future possibility'. In this regard, the Supreme Court explained the principle of proportionality as under:

> "27. The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court has applied the principle of "*proportionality*" to legislative action since 1950, as stated in detail below.
>
> 28. By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority

[11] [1984] 3 All ER 935

> are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality."

120. In **R. (Daly) v. Secretary of State for the Home Department**[12], the House of Lords observed that the ground of proportionality was more precise and sophisticated than any other grounds of judicial review. The court mentioned the differences between the test of proportionality and other grounds as under:

> "(1) Proportionality may require the reviewing court to assess the balance which the decision-maker has struck, not merely whether it is within the range of rational or reasonable decisions.
>
> (2) Proportionality test may go further than the traditional grounds of review inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations.
>
> (3) Even the heightened scrutiny test is not necessarily appropriate to the protection of human rights."

121. In a later decision, the Supreme Court in **State of U.P. v. Sheo Shanker Lal Srivastava**[13], referred to the decision of House of Lords in **R. (Daly)** (supra) and observed as under:

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[12] (2001) UKHL 26

[13] (2006) 3 SCC 276

> "24. While saying so, we are not oblivious of the fact that the doctrine of unreasonableness is giving way to the doctrine of proportionality.
>
> 25. It is interesting to note that the Wednesbury principles may not now be held to be applicable in view of the development in constitutional law in this behalf. See, for example, Huang v.Secy. of State for the Home Deptt. 2006 QB 1 wherein referring to R. (Daly) v. Secy. of State for the Home Deptt. (2001) 2 AC 532 it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than Wednesbury, but involves a full-blown merit judgment, which is yet more than R. (Daly) [(2001) 2 AC 532, requires on a judicial review where the court has to decide aproportionality issue."

122. It is also relevant to refer to the decision of the Supreme Court in **All India Railway Recruitment Board v. K. Shyam Kumar**[14]. In this decision, the court referred to various earlier decisions and observed as under:

> "36. Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to "assess the balance or equation" struck by the decision-maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard the

[14] (2010) 6 SCC 614

fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice it to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalise or lay down a straitjacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognise the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a State burial, with full honours is surely not to happen in the near future.

37. Proportionality requires the court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decisionmaker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate i.e. well balanced and harmonious, to this extent the court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere."

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"39. The courts have to develop an indefeasible and principled approach to proportionality, till that is done there will always be an overlapping between the traditional grounds of review and the principle of proportionality and the cases would continue to be decided in the same manner whoever principle is adopted. Proportionality as the word indicates has reference to variables or comparison, it enables the court to apply the principle with various degrees of intensity and

> offers a potentially deeper inquiry into the reasons, projected by the decision-maker."

123. In **Ranjit Thakur v. Union of India**[15], the Supreme Court observed as under:

> "25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In *Council of Civil Service Unions* v. *Minister for the Civil Service* [(1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950] Lord Diplock said:
>
> "Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the

[15] (1987) 4 SCC 611

> administrative law of several of our fellow members of the European Economic Community;…."

124. In **Dev Singh v. Punjab Tourism Development Corporation Ltd., and another**[16], the Supreme Court referred to the earlier decision in **Ranjit Thakur** (supra) and observed as under:

> "6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case."

[16] (2003) 8 SCC 9

The aforesaid principle also resonates in later decisions of the Supreme Court, including in **Union of India v. G. Ganayutham**[17]; and **Ex-Naik Sardar Singh v. Union of India**[18]**.**

125. In **Management of Coimbatore District Central Co-operative Bank v. Secretary, Coimbatore District Central Co-operative Bank Employees Association**[19], the Supreme Court examined the question of Doctrine of Proportionality in the context of imposing punishment on workmen who had gone on a strike from work. In the said context, the court observed as under:

> "17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".
>
> 18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has

[17] (1997) 7 SCC 463
[18] (1991) 3 SCC 213
[19] (2007) 4 SCC 669

ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

** ** **

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no “pick and choose”, selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a “sledgehammer to crack a nut”. As has been said many a time; “where paring knife suffices, battle axe is precluded”.

*** *** *** ***

24. So far as our legal system is concerned, the doctrine is well settled. Even prior to CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , this Court has held that if punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a court to interfere with such penalty in appropriate cases."

126. We are also guided by the principles set out in **Kulja Industries Ltd. v. Chief General Manager, BSNL**[20]. The Supreme Court had observed that blacklisting a contractor for an indefinite period was impermissible. In this context, we consider it apposite to refer to the following observations made by the court:

> "24. Suffice it to say that 'debarment' is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the 'debarment' is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

127. As observed by the Supreme Court, the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

128. It would be apposite to refer to a recent decision of the Supreme Court in **Punjab and Sind Bank v. Sh. Raj Kumar**[21], in which the doctrine of proportionality was considered. After an exhaustive survey of the precedents — including several of the

[20] (2014) 14 SCC 731

[21] 2026 INSC 313

decisions already adverted to hereinabove — the Supreme Court restated the position of law. The Supreme Court held as under:

> "9. What follows from the precedents noted above is that courts should exercise restraint while interdicting orders of punishment. Normally, no court in exercise of its power of judicial review should interfere with an order of punishment imposed on a delinquent as a measure of disciplinary action by the competent authority and substitute its own judgment for that of the former. This is premised on the reason that the disciplinary authority is the best judge of the situation, and the requirements of maintaining discipline within the work force. While it is not the law that the courts should invariably stay at a distance when legality and/or propriety of a particular punishment is questioned, judicial scrutiny of the disciplinary action by way of punishment could arise only if the circumstances are such that no reasonable person would impose the punishment which is questioned and/or such punishment has the effect of shocking the conscience of the court. To put in simpler words, interference could be warranted if it appeals to the court that the disciplinary authority has 'used a sledgehammer for cracking a nut'. A punishment, which is strikingly or shockingly disproportionate and is not commensurate with the gravity of misconduct, proved to have been committed in course of inquiry or otherwise, would border on arbitrariness and offend Article 14 of the Constitution.
>
> 10. Where a court, upon due consideration, arrives at the conclusion that the punishment imposed is disproportionate, its intervention is circumscribed in nature. Judicial scrutiny and interference, if at all, has to be based on reasons in support of the court's ultimate satisfaction that the disciplinary authority has faltered in the exercise of his discretion. In such a situation, the court may adopt one of two courses: it may remit the matter to the competent authority for reconsideration of the punishment; or, in the rarest of cases, it may

> substitute the punishment while supporting such a course with cogent reasons."

129. We may note that insofar as administrative action is concerned, the Doctrine of Proportionality is applicable only in a limited measure. It does not require the court, as the first appellate court, to examine the administrative action to decide whether it is excessively disproportionate, thereby rendering the decision vulnerable on the grounds of arbitrariness and perversity. The court must find that there is no reasonable relationship between the import of the action and its objective; it is malicious or capricious, or it shocks the conscience of the court.

130. It was argued that the court must explore the least harsh measure that ought to have been imposed on account of the offending act of furnishing a wrong certificate. However, we find no merit in the said contention. The doctrine of proportionality, which requires the Court to set aside a harsh measure when a lesser alternative would suffice, is typically applied in cases involving the infringement of human rights.

131. In the present case, we are unable to accept that the debarment order is excessively disproportionate. The KTPP Act

has confined the period of term of debarment to a maximum of three years in case of fraudulent or corrupt practices.

132. As noted at the outset, the State cannot be compelled to enter into a transaction or contract with a party, which it finds has engaged in fraudulent or corrupt practices.

133. Plainly, the debarment of a contractor for a period of three years cannot be considered excessive where it is found that the contractor has engaged in fraudulent and corrupt practices and has sought to gain an advantage in a bidding process by submitting a false experience certificate.

134. In view of the above, we find no merit in the contention that the debarment order is liable to be interfered with on the ground of punitive measure being excessively harsh or onerous. Accordingly, we reject this contention.

RE: MITIGATING CIRCUMSTANCES

135. The contention that the SLDC had failed to consider the mitigating circumstances is also unpersuasive. MP24 is a sole proprietorship concern. It is also undisputed that the tender in question is a valuable contract, and it is difficult for us to accept

that the tender was submitted without the full knowledge of MP24's proprietor. It is not MP24's case that its sole proprietor (Mr Kantharaju H.M) is not fully engaged in the business operations. Thus, in any event, we are unable to accept that MP24 could be absolved of its responsibility of furnishing a false certificate by attributing the filing of that certificate to an unauthorised action of his employee.

136. The contention that the false certificate from APWRD was of no significance is also seriously contested. The learned counsel for the KRDCL contended that, leaving aside the work covered by the false certificate in question, the consortium would not qualify the tender. The learned counsel has furnished a tabular statement which indicates that previous eligibility would have been considered as per the Experience Score. As per the tabular statement, the Experience Score of the consortium was computed at ₹758.93 crores, which was short of the threshold technical Experience Score of ₹762.86 crores. The learned counsel appearing for MP24 disputes the same.

137. The controversy in this regard relates to the work of the Electrical Distribution Network, 11 KV and LT cable (BDA), which is

stated to have been completed by RCCL at a project cost of ₹232.50 crores. However, the KRDCL has excluded this project from the Experience Score calculation on the grounds that the project was electrical work and did not fall under any category in the RFP. According to MP24 the works in question fell within the definition of works of the core sector.

138. We are unable to accept that the false experience certificate furnished along with bid in order to establish the technical qualifications could be considered as insignificant or of no relevance. If the contention of KRDCL is accepted, the MP24 and RCCL would not qualify the technical criteria on account of their Experience Score falling below the threshold limit. However, even if MP24's contention is accepted, that the Experience Score of consortium would exceed the threshold by including the electrical work project executed by RCCL, the filing of false experience certificate could not be ignored. It is difficult to accept that the false certificate was introduced casually without any reason to rely on it. It is clear that the certificate in question was filed to hold out that the consortium had technical experience of a certain value, which it did not.

139. We reject the contention that the debarment order is vitiated as having been passed without taking into account relevant considerations.

RE: WHETHER A FRESH DECISION BY THE STATE GOVERNMENT WAS REQUIRED

140. The next question to be examined is whether the State Government was required to take a fresh decision to issue the debarment order after receiving the recommendations of SLDC. As noted above, MP24 had argued that SLDC was only required to give a recommendation, and the State Government was required to examine the same and take a fresh decision after affording MP24 an opportunity to be heard.

141. We find no merit in the said contention.

142. Section 14-A(2) of the KTPP Act empowers the State Government to debar tenderers for a period not exceeding three years, from participating in any procurement activity within the State, following the procedure as may be prescribed.

143. Rule 26-B of the KTPP Rules, prescribes the procedure to be followed. Sub-rule (2) of Rule 26-B expressly provides for constitution of the SLDC (State Level Debarment Committee) to

consider the proposals for debarring a bidder or contractor or supplier and "to take a decision thereof". The language of Sub-rule (2) of Rule 26-B makes it amply clear that the decision to debar a bidder, contractor or supplier is to be taken by SLDC. Under Sub-Rule (3) of Rule 26-B, the SLDC is required to provide a reasonable opportunity, including an oral hearing to the concerned for making representations before taking a decision on the debarment. This also plainly indicates that it is SLDC's decision to be taken following the principles of natural justice.

144. Sub-Rule (6) of Rule 26-B of the KTPP Rules mandates that the Government shall debar such tenderer, contractor or supplier on the recommendation of SLDC. The use of the word 'shall' clearly indicates that the Government is required to implement the recommendations to give effect to the decision of SLDC by issuing a notification and publishing the same on the Department website, as well as the Karnataka Public Procurement Portal.

145. The contention that the word 'shall' as used in Sub-Rule (6) of Rule 26-B of the KTPP Rules should be read as 'may' is unpersuasive as there is no ground to infer the same. Given the procedural scheme of Rule 26-B of the KTPP Rules, the

contention that a fresh consideration is required by the State Government is not in conformity with the procedure set out therein.

146. In view of the above, we reject the contention that the debarment order is vitiated on account of any procedural irregularity. We also find no merit in the contention that the Under Secretary to the Government is not authorised to issue the debarment order setting out the decision of the State Government.

RE: AUTHORITY TO ISSUE AND AUTHENTICATE THE DEBARMENT ORDER

147. Rule 19 of the Karnataka Government (Transaction of Business) Rules, 1977, expressly provides that the orders and instruments made and executed in the name of Governor of Karnataka shall be authenticated by the signature of an Additional Chief Secretary, Principal Secretary, a Secretary, a Special Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary, a Desk Officer or any other officer holding these posts on ex-officio basis.

RE: CHALLENGE TO THE AWARD OF THE CONTRACT TO BVEPL

148. We may now address MP24's challenge to the award of the contract in favour of BVEPL, which MP24 seeks to challenge on

two fronts. First, that BVEPL had also furnished certificates which were forged and fabricated and therefore, BVEPL was also required to be debarred for the same reasons as MP24. Second, it is submitted that in the event the contract was not awarded to L1 bidder, in terms of the circular dated 11.05.2022 and 16.01.2025 issued by the Government of Karnataka, KRDCL was required to invite fresh tenders.

149. According to MP24, the BVEPL has furnished two false certificates. The first, is a certificate dated 14.08.2024 purportedly issued by National Highway Authority of India, in regard to the following works.

> "Four laning of NH-39 (Old NH-75) from design KM 147+540 (existing KM 148+020) (Bhogu Village) to design KM 196+870 (existing KM 197+420) (Sankha, Gorhwa Road) in the State of Jharkhand on Hybrid Annuity Mode."

150. The second certificate is issued by Ashoka Buildcon Limited for the execution of the project.

> "Four laning of Arrah to Pararia section of NH-319 (Old NH-30) from KM 0+000 to KM 54+530

(Design Chainage) in the State of Bihar under Bharatmala Pariyojana Phase - 1 on EPC Mode (Package-1)."

151. In respect to the certificate issued by NHAI, the respondent submitted that actually the said certificate was withdrawn by letter dated 17.04.2025, which was prior to opening of the technical bids. It was argued by the KRDCL that the said certificate was not included as a part of the evaluation. BVEPL has produced a copy of the letter dated 17.04.2025, which is duly acknowledged by KRDCL. In this view, we are unable to find fault with the KRDCL's view not to take further action on the basis of the said certificate, which was voluntarily withdrawn by the BVEPL prior to the evaluation process.

152. Insofar as the certificate issued by Ashoka Buildcon Limited is concerned, BVEPL stoutly disputes that the certificate is forged or fabricated as contended. It is stated that the project in question was executed under the defect liability period. In view of the pleadings, we are unable to accept that the certificate issued by Ashoka Buildcon Limited was forged or fabricated. However, since an allegation to that effect has been made, we consider that it

would be necessary for KRDCL to examine the genuineness of the said certificate.

153. With regard to the contention that KRDCL was precluded, in view of the circulars issued by the Government of Karnataka, from awarding the tender to BVEPL – which had submitted the second lowest bid – is also unmerited. The Government of Karnataka had issued a circular dated 03.12.2002 [PWD 1359 SO/FC 2001 (P-2)]. A plain reading of the said circular indicates that it was found that the tender accepting authorities were sometimes negotiating with the lowest tenderer before accepting the same. In this regard, the Government had issued guidelines highlighting that negotiations even with the lowest tenderer defeats the ethics of competitive bidding. Thus, it should be resorted to only in exceptional circumstances. The circular specified that negotiations would be appropriate only in circumstances such as lack of competition, single bid, suspected collusion or where the lowest evaluated accepted bid was substantially above the estimated cost. It is stated that even in such cases, the first choice should be to reject the tender. A plain reading of the said circular does not support the contention that tenders of the lowest responsive bid should be rejected.

154. Since the consortium was disqualified and its bid had to be rejected as not responsive, as it was not in conformity with the tender conditions, it would follow that the BVEPL's bid would be the lowest responsive bid, notwithstanding that the consortium's bid was lower in value.

155. The circular dated 11.05.2022 is also issued, inter alia, in reference to the earlier circular dated 25.10.2002. Para 5 of the said circular is set out below:

> "5. As per Section (6) of the Karnataka Transparency in Public Procurements Act, 1999, all tender processes must be conducted strictly in accordance with the procedures prescribed in the Act and Rules. Similarly, in the Karnataka Transparency in Public Procurements Rules, 2000 Rule 21, the criteria prescribed in the tender documents must be applied mandatorily to conduct the tender evaluation, identify the bidder with the Lowest Evaluated Price (LI) as per Rule (25), and award the contract. In the Circular at reference (2),22 it is informed to explain this matter comprehensively and award the contract to the technically and commercially responsive L1 bidder. Reiterating this again, it is informed to strictly undertake the tender process by applying the opportunities under the KTPP Act and Rules and award the contract only to the L1 bidder. There is no provision in the KTPP Act and Rules to negotiate with the L1 bidder to reduce the price or to allow awarding the contract to others excluding the L1 bidder. If for any reason the L1 contractor does not agree to enter into an

[22] PWD 1359 So /FC/2001 (P-2) Dated 25.10.2002,

> agreement or does not come forward to execute the contract, or is disqualified for any reason, the EMD amount of such bidder shall be forfeited as per rules, and action shall be taken to call for a mandatory re-tender."

156. It is clear from the above that the guidelines to not award tender to any person other than the L1 bidder was stipulated in the context of the practice of the tendering authorities negotiating with the bidders post-submission of tenders. In this regard, the L1 tender bidder does not agree to enter into an agreement or execute the contract. The EMD of such bidder should be forfeited and action should be taken for re-tender.

157. KRDCL has proceeded on the basis that since the consortium's tender was rejected as non responsive, BVEPL's tender would be the lowest. We are unable to accept that the said view militates against the circular dated 11.05.2022.

158. The Circular dated 16.01.2025 refers to circular dated 11.05.2022 and highlights other cases where L1 tenderers had been excluded or the work is split by awarding work orders to more than one contractors; Calling for tenders for indefinite periods without mentioning the contract duration; On issuing LoI via letters/offline outside the software and cases for preparing an

empanelment list. The said circular would have little application in the facts of this case.

RE: FORFEITURE OF THE EARNEST MONEY DEPOSIT

159. The last question to be addressed is regarding forfeiture of the EMD. It was contended on behalf of MP24 that EMD could not be forfeited, as KRDCL had not suffered any damages.

160. The learned counsel refers to Section 20.20.6 and 2.20.7 of the RFP (which provides for forfeiture of the Bid Security as Damages) and submitted that the tender conditions provided forfeiture as damages. The learned counsel relied on the decision of the Supreme Court in **Kailash Nath Associates v. Delhi Development Authority**[23] in support of his contention. It is contended that the KRDCL was entitled to claim only reasonable damages, subject to the same being proved under Section 74 of the Contract Act.

161. The aforesaid contention is unmerited. In **Kailash Nath's** case (supra), the Supreme Court had expressly clarified that Section 74 will not apply to cases of forfeiture of earnest money,

[23] (2015) 4 SCC 136

where the same is in accordance with the terms and conditions of a public auction before agreement is reached. Para 43.7 of the said decision is set out below:

> "43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application. "

162. Section 74 of the Contract Act is attracted only where forfeiture of earnest money takes place under a concluded contract; it does not apply where forfeiture takes place under the terms and conditions of the tender before any agreement is reached. In **Kailash Nath Associates** (supra) the forfeiture was at a post-agreement stage. The plot in question had been re-auctioned by the Delhi Development Authority at a higher price, and no loss whatsoever had resulted; it was in that context that the Supreme Court held the forfeiture to be unjustified.

163. The legal foundation of this position is also found in **National Highways Authority of India v. Ganga Enterprises**[24]. In this decision, the Supreme court had observed as under:

> "By invoking the bank guarantee and/or enforcing the bid security, there is no statutory right,

[24] (2003) 7 SCC 410

> exercise of which was being fettered. There is no term in the contract which is contrary to the provisions of the Indian Contract Act. The Indian Contract Act merely provides that a person can withdraw his offer before its acceptance. But withdrawal of an offer, before it is accepted, is a completely different aspect from forfeiture of earnest/security money which has been given for a particular purpose. A person may have a right to withdraw his offer but if he has made his offer on a condition that some earnest money will be forfeited for not entering into contract or if some act is not performed, then even though he may have a right to withdraw his offer, he has no right to claim that the earnest/security be returned to him. Forfeiture of such earnest/security, in no way, affects any statutory right under the Indian Contract Act. Such earnest/security is given and taken to ensure that a contract comes into existence. It would be an anomalous situation that a person who, by his own conduct, precludes the coming into existence of the contract is then given advantage or benefit of his own wrong by not allowing forfeiture. It must be remembered that, particularly in government contracts, such a term is always included in order to ensure that only a genuine party makes a bid. If such a term was not there even a person who does not have the capacity or a person who has no intention of entering into the contract will make a bid. The whole purpose of such a clause i.e. to see that only genuine bids are received would be lost if forfeiture was not permitted."

164. It is thus well settled that the forfeiture of earnest or bid security does not affect any statutory right under the Contract Act; such security is taken in government contracts to ensure that only a genuine party makes a bid, and a person who, by his own conduct,

precludes the coming into existence of the contract cannot be permitted to take advantage of his own wrong.

165. In **M/s Simplex Infrastructures Ltd. v. National Highways Authority of India**[25]. The Delhi High Court considered a case where the bidder's bid security of ₹8.14 crores was forfeited as the bidder had filed a false 'NIL' declaration concealing a subsisting order of debarment. In the said context the Court held as follows:

> "26. The Supreme Court in *Satish Batra* (supra), held that only the earnest money paid as pledge for due performance of the contract can be forfeited on account of buyer's default and in the same vein, earnest money can be doubled and paid back to the buyer if the contract falls through due to seller's default. An amount which is the nature of an advance cannot be forfeited unless it is a guarantee for due performance of the contract. It was further held that to justify forfeiture of advance money being part of earnest money, terms of the contract should be clear and explicit. … It is thus clear that the Bid Security was a real earnest for entering into the agreement and was not an advance for future performance of the contract. Clauses 2.20.4 and 2.20.5 evidence that Bid Security was a genuine pre-estimate of damages likely to be suffered by NHAI, more particularly, when conditions of RFP were violated or the conduct of the bidder was found to be fraudulent. Therefore, being in the nature of an earnest money, the Bid Security was liable to be forfeited if the circumstances so required and beyond a doubt the terms of RFP were explicit in this regard.

[25] CS(COMM) 16/2016, decided on 13.10.2025

> 29. The only other argument of the Plaintiff is that sans any proof of loss, it was not open to NHAI to forfeit and appropriate the Bid Security/earnest money. … As noted above the Bid Security in the present case is in the nature of earnest money and was liable to be forfeited on misrepresentation/concealment of material facts. In such an event, the forfeiture did not infringe any statutory right under the Contract Act and did not require proof of loss from NHAI."

166. The Court distinguished an earlier decision between the same parties, in which forfeiture had been struck down, on the ground that the bidder there was unaware of the disqualifying fact, observing:

> "35. … the said judgment is distinguishable on a very important fact … that Petitioner was not aware of the order of debarment when the technical bid was submitted … In this context, it was held that the forfeiture of the entire Bid Security was penal in nature and unreasonable. In the present case, Plaintiff was well aware of the debarment orders on the Bid Due Date as also at the time of bidding. …"

and concluded:

> "37. Therefore, in light of the specific clauses of RFP providing for submission of the Bid Security as also its forfeiture in circumstances enumerated therein, the contention of the Plaintiff that the Bid Security was in the nature of a penalty and/or the same could not be forfeited in the absence of proof of loss by NHAI, is rejected being bereft of merit."

167. We may also refer to the decision of the High Court of Madras in **M/s P.S.T. Engineering Construction v. HSCC (India) Ltd.**[26], where the EMD was forfeited at the pre-award stage for suppression of pending litigation. In the said context, the Court held as follows:

> "10.16. Thus, upon considering the overview of the above rulings of the Hon'ble Supreme Court of India, it can be seen that: (a) the forfeiture of the EMD applies and relates only to the performance of the contract; (b) In cases of public auction where the terms are clear and explicit, it may be resorted to; (c) Section 74 of the Indian Contract Act, 1872 does not apply to such cases where the contract is not concluded, more so in public auction/tenders and shall apply if only the damages claimed is penal in nature whereby the reasonable quantum has to be determined; (d) Whether the forfeiture is penal in nature must be determined by considering the nature of the contract and the consequences envisaged by it, based on the facts and circumstances of each case; (e) The clauses regarding disclosure are designed to identify only genuine parties with the capacity to place a bid and these disclosure clauses also serve to ensure performance … and in such cases, the terms of the contract being clear and explicit, the forfeiture must be deemed justified.
>
> 10.17. Therefore, I hold that this is not a case where Section 74 would apply, and the entire EMD amount, as agreed upon by the parties, has to be forfeited. HSCC is entitled to this, as the clause is solely for ensuring the performance of the contract, meaning that only genuine parties bid in the tender.

[26] 2025:MHC:981, decided on 16.04.2025

> 10.18. Aside from this, in this case, even assuming that the forfeiture in the current contract serves two purposes — one for the performance of the contract and the other as a penalty for concealing material facts — reasonable compensation, according to the principles in Section 73, can still be allowed, regardless of the stipulation in the contract subject to the maximum stipulated. … the forfeited sum is minimal and entirely reasonable."

168. We may also refer to the decision in **Diwan Chand Goyal v. National Capital Region Transport Corporation**[27], where a forged experience certificate was submitted with the bid. Upholding the forfeiture of the bid security, the High Court of Delhi held as under:

> "36. … The Court has to, under such circumstances, only to go by the record which shows the fact that this certificate was submitted with the bid and the same turned out to be forged. Whether the Petitioner gained an advantage by submission of this certificate is irrelevant. In any bidding process, every bidder is expected to submit genuine and correct documents. There can be no justification whatsoever for the submission of any misrepresentative facts or fabricated/manipulated documents. To that extent there can be no doubt that the Petitioner has indulged in wrong doing. The definition of fraudulent practice [in the bid document] would clearly cover submission of a forged certificate as such submission would be a misrepresentation to influence bid/procurement process.
>
> 47. In the present case, the bidder/Petitioner was to establish that it had experience in executing the

[27] 2020:DHC:2685, decided on 02.09.2020

> similar works. … the submission of certificate dated 20th September, 2019 was neither superfluous nor an innocent act. It was a conscious and deliberate act on behalf of the bidder. The said certificate has later turned out to be forged. Submission of such certificate would clearly, in the opinion of this Court, constitute a fraudulent practice, which was meant to affect the bidding/procurement process."

169. In view of the above, we are unable to accept that the forfeiture of the EMD under the RFP is vitiated by any illegality.

CONCLUSION

170. KRDCL is directed to re-examine the genuineness of the certificates (other than the certificate withdrawn prior to opening of the bids) furnished by BVEPL. Needless to state that if any certificate is found to be false, KRDCL shall take the necessary steps in accordance with law.

171. The appeals are dismissed with the aforesaid directions.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE

SD/KPS/KMV