Tele: 23015930

Email
Engineer-in-Chief's Branch
Military Engineer Services
Dte of Contract Management
Kashmir House, Rajaji Marg
New Delhi-110 011

No. 66546/SS/R-2 /QE MAR 2025/ 40 /E8 10 Jun 2025

List 'A'
ADG (Projects)
ADG (NEI)
ADG (North)
(On MES Website)

WORK LOAD RETURN OF "SS CLASS" CONTRACTORS AND UNENLISTED CONTRACTORS HAVING WORK LOAD MORE THAN 15 CRORES FOR QE MAR 2025

1. Reference this office letter No 66546/R-2/QE Mar 2025/39/E8 dated 06 June 2025.

2. Refer Appx 'A' to the letter under reference. Following amendments to the Appx 'A' may please be carried out :-

(a) Srl No 15 of Appx 'A' :-

For :-

Srl no	Name of Contractor	Index No	Whether considered for handling more work load
15	M/s ITD Cementation Ltd	SS-173	No, Slow Progress

Read :-

Srl No	Name of Contractor	Index No	Whether considered for handling more work load
15	BLANK		

(b) Following two new entries shall be added after Srl No 16 :-

Srl No	Name of Contractor	Index No	Whether considered for handling more work load
17	M/s RCC Infra Venture Ltd	SS-131	'No', Slow Progress
18	M/s Mangla Amit Builders Pvt Ltd	SS-133	'No', due to slow progress in respect of works under ADG (P) Chennai and CESWC

3. Please refer Appendix 'C' of letter referred above. The Court Orders mentioned as Appendix 'E', 'G', 'H', 'J', 'K', 'L', 'M' & 'N' which were left inadvertently earlier are also attached herewith.

4. All other entries shall remain unchanged.

(PKS Sengar)
Director (Contracts)
for Engineer-in-Chief

Encls : As above

Copy to:-

DGNP Mumbai, DGNP Vizag, DGMAP, New Delhi
All CCEs (CCE 1, 2, 3) CCE COD, CCE (NEP)
Nodal Officer – Please upload this letter on MES website

Appx 'E'

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 3207/2024

M/s Inderjit Mehta Constructions Private Limited, Through Its Director Amarjit Mehta S/o Shri Inderjit Mehta, Aged About 58 Years, Having Its Corporate Office At 5P, Hamilton Court Road, Sector-27, Gurugram - 122009 (Haryana).

----Petitioner

Versus

1. Union Of India, Through Secretary To The Ministry Of Defence, New Delhi.
2. Engineer-In-Chief, Military Engineer Services, Kashmir House, New Delhi.
3. Command Chief Engineer (Hq), Mes, Southern Command, Pune Maharashtra.
4. Chief Engineer (Hq), Jodhpur Zone, Echs Complex, Opp. Military Hospital, Jodhpur.
5. Commander Works Engineer (Hq), Jaisalmer.
6. Garrison Engineer (Army), Jaisalmer.

----Respondents

For Petitioner(s) : Mr. Himanshu Choudhary

HON'BLE DR. JUSTICE NUPUR BHATI

Order

01/03/2024

1. Learned counsel for the petitioner submits that as per the work order, the petitioner-company had completed the work on 14.09.2012, whereafter, the respondents finalized the bill of the petitioner-company. He further submits that as per Clause 46 of the General Clause Conditions, the Defect Liability Period (DLP) for the petitioner-company was only to the extent of one year from the date of completion of the work, the relevant part of Clause 46 is reproduced hereunder :-

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"MES officers concerned with the contract shall have power at any time to inspect and examination any part of the work and the contractor shall give such facilities as may require to be given inspection and examination should the G.E. consider, at any time during the construction or reconstruction or prior expiration of period of a twelve calendar months after the works have been handed over too government (hereinafter referred to as 'the defect liability period') that any work has been executed with unsound, imperfect unskilful workmanship or of a quality inferior to that contracted for or not otherwise in accordance with the contract (in respect whereof the decision of G.E. shall be final and binding) the contractor shall, on demand in writing from the G.E. specifying the fault notwithstanding the same may have been inadvertently passed, certified and paid for, forthwith rectify or remove and reconstruct the work so specified, in whole or in part as the case may require, at this own expense, and in the event of his failing to do so within a period to be specified by the G.E. in his demand aforesaid, the G.E. may carry out the work by other means at the risk and expenses in al respect of the contractor. Provided always that the liability of the contractor under this condition shall not extent beyond tha defect liability period except as regard workmanship which the G.E. shall have previously given notice to the contractor to rectify."

2. Learned counsel for the petitioner submits that the respondents issued a show cause notice to the petitioner-company on 23.10.2023, wherein, it was pointed out that the structure constructed by the petitioner-company is having major structural defects within ten years of completion of work and an explanation was sought from the petitioner-company. The petitioner-company gave a detailed reply to the said notice, however, on 04.12.2023, the respondents have issued a communication while directing that the petitioner-company would not be considered for further issuance of tender till rectification of structural defects to the entire satisfaction of the department. Learned counsel for the petitioner submits that as per Clause 46, once the Defect Liability Period (DLP) of one year has expired on 14.09.2013, then the

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petitioner-company cannot be compelled to remove the structural defects, if any.

3. Issue notice. Issue notice of stay application also, rule is made returnable within four weeks.

4. In the meanwhile, the petitioner-company shall be permitted to take part in ensuing tender process(es) while not refraining the petitioner from being considered for further issuance of tender till rectification of structural defects.

5. In case, petitioner's technical bid is found to be in order, its financial bid shall also be considered, but the contract shall not be finalized in its favour if petitioner is found to be a successful bidder, without the leave of the Court.

6. Petitioner's participation in the future tender process(es) shall be provisional and the same shall remain subject to outcome of the present writ petition.

7. Connect with SBCWP No.453/2024, as prayed.

(DR. NUPUR BHATI),J

surabhi/270-

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 24th MAY, 2024

IN THE MATTER OF:

\+ **W.P.(C) 7799/2021 & CM APPLs. 24293/2021, 58358/2023**

KTECH ENGINEER BUILDERS CO. PRIVATE LIMITED

..... Petitioner

Through: Mr. Raj Shekhar Rao, Sr. Advocate with Mr. Vikas Mishra, Mr. Nikhil Chawla, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court under Article 226 of the Constitution of India challenging two Work Load Returns dated 08.06.2021 & 26.07.2021 containing adverse remarks against the Petitioner, issued by the Respondent No.3 herein.

2. It is the contention of the Petitioner that due to the said adverse report, the Petitioner is not being awarded any tender and, therefore, it amounts to Petitioner being blacklisted. It is contended that the Petitioner has not been given any notice of blacklisting and the impugned order is contrary to the law laid down by the Apex Court in Gorkha Security Services vs. Govt. of NCT of Delhi, (2014) 9 SCC 105, and UMC Technologies (P) Ltd. v. Food Corpn. of India, (2021) 2 SCC 551.

3. The facts, in brief, leading to the present Writ Petition are as under:

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a. The Petitioner is engaged in the work of civil constructions, building constructions and other related works for more than half a decade and has been an enlisted contractor of the Military Engineering Services (MES) for the past 60 years and is enlisted in the "SS" Class with the MES with unlimited tendering since 2004.

b. It is stated that a tender bearing No. CA No. CEDZ-63/2005-2006 for construction of an Army Mess and Auditorium at Delhi Cantt was floated by the MES. The Petitioner placed its bid and was awarded the tender for a total contract amount of Rs.38.27 Crores. The said work was to be completed by 12.10.2007.

c. It is stated that on 30.06.2010 a commendation certificate was issued by the MES to the petitioner stating that the work for the Construction of the Army Mess and Auditorium at Delhi Cantt. had been completed in a commendable manner.

d. The project was completed by the Petitioner on 14.12.2010.

e. On 20.12.2010, a completion certificate was issued to the petitioner subject to rectification of defects which were pointed out to the petitioner.

f. On 16.03.2011, a Recommendation Letter was issued by the MES to the petitioner stating that the quality of workmanship is excellent and the project has been recognised by the Indian Building Congress. An Excellence certificate was awarded to the project in the Built Environment Category at the Annual Convention of the Indian Building Congress. The

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Recommendation letter stated that the petitioner firm is technically capable and financially sound for executing works of high Magnitude.

g. On 29.07.2011, a defect rectification certificate was issued by the Respondents to the petitioner against the project of construction of Army Mess and Auditorium at Delhi Cantt.

h. The defect liability period of the project lapsed in 2011.

i. Material on record indicates that disputes arose between the parties regarding payments and the matter was referred to arbitration pursuant to which an award dated 16.12.2013 was passed in favour of the Petitioner.

j. The Award was challenged by the Respondents by filing OMP 331/2014 before this Court and the same was rejected by this Court *vide* Order dated 11.05.2015 and the same was confirmed by the Division Bench of this Court vide Order dated 02.11.2015.

k. After a lapse of about six years of time of defect liability period, on 17.07.2017, the MES wrote a letter to the Petitioner stating that Leakage/seepage has developed at the ROC Roof at Mayur Hall and Zorawar Auditorium at the Manekshaw Centre located in the project and the Petitioner was requested to rectify the same to avoid further damage to the building.

l. Material on record indicates that a structural audit report was undertaken by the IIT, Delhi using Partial, Non- Destructive Tests and other on site investigations and it was found that the structure has deteriorated and damaged to the extent that it does

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not meet the criteria laid down in the National Building Code provisions. The audit report also stated that the quality of concrete used was doubtful.

m. A Show Cause Notice dated 28.02.2020 was issued to the Petitioner by the Respondents pointing out the defects primarily relying on the structural audit report of the IIT Delhi. Vide the said Show Cause Notice, the Petitioner was directed to take necessary steps to make up for the deficiencies and to show cause as to why the matter should not be reported to the competent authority for suspension of the Petitioner firm.

n. Material on record shows that the Petitioner placed its bid for another tender floated by the Respondents on 04.11.2020 and the same was rejected by the Respondents on 29.12.2020.

o. It is stated that the Petitioner challenged the rejection by filing an appeal before the competent authority, i.e. the Chief Engineer, Western Command.

p. The Petitioner also filed a Writ Petition before this Court challenging the rejection, being W.P.(C) 154/2021, and the same was disposed of by the Division Bench of this Court permitting the Petitioner to file a fresh appeal before the competent authority. It is stated that the Petitioner filed a supplementary appeal before the competent authority and the same was allowed vide Order dated 24.02.2021. Resultantly, the Petitioner was awarded the tender for Provision of Deficient Sailors MD ACN (72 DUS) at Naraina Bagh, New Delhi.

q. It is stated that on 08.06.2021 and 26.07.2021 the impugned

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work load returns were issued by the MES for the quarters ending in December, 2020 and March, 2021 respectively and the Petitioner was not considered for handling more workload as the work of the Petitioner had 'serious defects'.

r. The Petitioner has approached this Court challenging the impugned work load returns.

4. The Writ Petition came up for hearing on 05.08.2021 and a co-ordinate Bench of this Court held that the effect of the adverse remarks tantamounts to blacklisting of the Petitioner without giving any reason or affording any hearing to the Petitioner. The learned Single Judge, therefore, stayed the operation of work load return. In the same Order, the learned Single Judge has also recorded the case of the Respondent that the Respondents have not issued any show cause notice to the Petitioner as they were awaiting a report from the Technical Board of Officers which had been constituted to look into the defects.

5. Pleadings were completed.

6. In the interregnum, the report of the Technical Board of Officers has also been filed which primarily indicates that the problem has arisen because of the faults in designing of the building.

7. Learned Counsel for the Petitioner contends that the impugned work load return is actually an order of blacklisting which has been passed without issuing any Show Cause Notice to the Petitioner and the same is contrary to the law laid down by the Apex Court. He also places reliance on the report of the Technical Board of Officers which categorically states that the leakage/seepage has developed at the ROC Roof at Mayur Hall and Zorawar Auditorium at the Manekshaw Centre primarily because of the

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defects in the design given by the designing consultant. The report recommends a strict action against the Consultant. Learned Counsel for the Petitioner states that the Petitioner has received commendations for the work done by it and the grudge of the Respondent has arisen primarily after the award dated 16.12.2013 has been passed in favour of the Petitioner. He also states that the work at Mayur Hall and Zorawar Auditorium at the Manekshaw Centre was completed way back in 2010 and the defect period is also over. He states that the problems in the aforesaid buildings have arisen after six years of the lapse of the defect period and, therefore, that alone cannot lead to passing an adverse work load return against the Petitioner having the effect of blacklisting the Petitioner. He also states that the Petitioner had also requested the IIT Roorkee to examine the structure and the IIT Roorkee has also found fault with the designing of the buildings in question. He states that the Report of the IIT Roorkee came prior to the report of the Technical Board of Officers which also confirms that the defect is primarily in the design of the building. He states that once reports from two entities state the same fact, the report of IIT Delhi cannot be completely relied on for the purpose of issuance of adverse remarks on work load returns which amounts to blacklisting.

8. *Per contra*, learned Counsel for the Respondent contends that before issuing adverse work load return, the Respondent had requested IIT Delhi to conduct a structural audit of the buildings in question and the report of IIT Delhi shows that the work of the Petitioner is shoddy and on this basis, a Show Cause Notice was issued to the Petitioner. He, therefore, states that the decision not to award any further work to the Petitioner because serious defects were found in the Petitioner's earlier work, cannot be found fault

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with. He also contends that the work load return is not a blacklisting order but is only a decision by the Respondent not to award any further work to the Petitioner because of the defects that have been found in the Petitioners earlier completed projects.

9. Heard the Counsels for the parties and perused the material on record.

10. The Material on record discloses that a decision has been taken by the Respondent not to award any further work to the Petitioner on the ground that the work done by the Petitioner is defective.

11. A perusal of the impugned work load returns indicates that contractors have been held ineligible from entailing more work load either because of the fact change in the constitution of the firm had not been intimated to the Respondent or because of slow progress made by the firms in completing the projects. However, in the case of the Petitioner, the reason for not awarding any work to the Petitioner are the defects that have been found in the Petitioner's earlier completed work. The decision not to give any further work to the Petitioner is because of defective work. The order certainly amounts to a blacklisting order. The Petitioner would now never be given any work by the MES and a stigma has been cast upon the Petitioner by way of the adverse remarks. In light of the above, the contention of the Petitioner that the Petitioner has been blacklisted without giving any show cause notice has to be sustained and it can be said that the impugned adverse remarks on the work load returns which actually amounts to a blacklisting order is violative of the law laid down by the Apex Court in Gorkha Security Services (supra) and UMC Technologies (P) Ltd.(supra).

12. In UMC Technologies (P) Ltd.(supra) the Apex Court has observed as under:

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"*13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Custodian General, Evacuee Property [Nasir Ahmad v. Custodian General, Evacuee Property, (1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.*

14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without

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arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

15. In the present case as well, the appellant has submitted that serious prejudice has been caused to it due to the Corporation's order of blacklisting as several other government corporations have now terminated their contracts with the appellant and/or prevented the appellant from participating in future tenders even though the impugned blacklisting order was, in fact, limited to the Corporation's Madhya Pradesh regional office. This domino effect, which can effectively lead to the civil death of a person, shows that the consequences of blacklisting travel far beyond the dealings of the blacklisted person with one particular government corporation and in view thereof, this Court has consistently prescribed strict adherence to principles of natural justice whenever an entity is sought to be blacklisted.

16. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] in the following terms: (SCC pp. 74-75, paras 12, 15 & 20)

> "12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who

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has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

***

15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

***

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

17. Similarly, this Court in Raghunath Thakur v. State of Bihar [Raghunath Thakur v. State of Bihar, (1989) 1 SCC 229] struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgment in that case is as follows: (SCC p. 230, para 4)

> *"4. ... [I]t is an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. It has to be realised*

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that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order."

18. This Court in Gorkha Security Services v. State (NCT of Delhi) [Gorkha Security Services v. State (NCT of Delhi), (2014) 9 SCC 105] has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts. It has been held thus: (SCC p. 115, para 16)

> *"16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts."*

19. In light of the above decisions, it is clear that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so

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in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show-cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.

****

25. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show-cause notice to blacklist, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show-cause notice dated 10-4-2018 does not fulfil the requirements of a valid show-cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show-cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 9-1-2019 cannot be sustained."

13. In any event, the report of the Technical Board of Officers has already held that the defects have occurred due to fault in the design of the constructions. At this juncture, it is pertinent to reproduce the recommendations of the Technical Board of Officers and the same reads as under:

"In view of deliberations, analysis and findings of the TBOO, following are recommendations of the TBOO: -

93) The TBOO acknowledges timely start of remedial

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measures and rehabilitation to take care of the imminent danger to the structure.

94) It is beyond reasonable doubt that the leakage seepage and structure distress in Main Entrance Area and Banquet Dining Area is on account of deficiency in design service by the consultant. Deficiency is also in failure in visualizing, identifying and resolving the problems related to leakage seepage and structural distress during weekly site visits. TBOO is of the opinion that had adequate attention been paid by the consultant with requisite deliberations among all the stake holders, some of these issues could have been addressed at the time of execution itself.

Therefore, the TBOO recommends that the convening authority may consider taking up the case with the enlisting authority to consider action for such deficiency of service by the consultant in terms of enlistment and extant policies/rules.

95) The TBOO recommends that the repairs and rehabilitation work must be executed strictly as advised by IITD.

96) While carrying out rehabilitation of the structure for leakage seepage and structural distress, surgical precision is required in understanding the distress and executing rehabilitation work. Accordingly, consultation with IITD or similar specialist agency may be considered for continuous consultation till conclusion of the repairs.

97) The TBOO recommends that considering the importance of the structure, utmost care is required in use & maintenance of the structure. Any alterations like mobile towers, solar plants etc should be taken up only after consultations with all stakeholders. Similarly systematic and timely disposal of rainwater must be

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ensured.

98) The TBOO recommends that deliberations and analysis in these BPs may be shared, if considered in order, with the executives supervising the ongoing Special repair work, for better appreciation of the problem and accordingly ensuring targeted repairs."

14. A perusal of the recommendations shows that the leekage, seepage and structural distress in the buildings in question is primarily on account of deficiencies in designing of the building by the design consultant and the Petitioner has not been found fault with.

15. In view of the report of the Technical Board of Officers, which is a Committee of the Officers of the Respondents, the adverse remarks on the work load returns against the Petitioner cannot be permitted to survive. The Petitioner cannot be blacklisted only on the basis of the report of IIT Delhi without giving any opportunity to the Petitioner to defend itself.

16. In view of the above, this Court is inclined to allow the Writ Petition. The adverse remarks in the work load report against the Petitioner stands expunged. However, it is always open to the Respondents to issue a fresh Show Cause Notice to the Petitioner and proceed further in accordance with law if they still feel that the Petitioner is at fault or that the seepage/leakage in the building has occurred only because of the defective work of the Petitioner.

17. Accordingly, the Writ Petition is allowed. Pending application(s), any, stand disposed of.

SUBRAMONIUM PRASAD

MAY 24, 2024/*Rahul*

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Sr. No. 128
Supp. List-I

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

WP(C) No. 652/2025
CM No. 1549/2025

M/s Onkar Nath Bhalla and Sons .... Petitioner/Appellant(s)

Through:- Mr. R.K. Gupta, Sr. Advocate
with Ms. Ishna Vaid. Advocate.

V/s

Union of India and others .....Respondent(s)

Through:- Ms. Parkhi Parihar, Advocate vice
Mr. Vishal Sharma, DSGI.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

18.03.2025

01. The petitioner is aggrieved by the impugned order No. 66546/SS/R-2/QE Dec 2024/19/E8, dated 19.02.2025, issued by respondent No. 1, whereby the petitioner has been held incapable of handling additional workload and consequently debarred from participating in future tendering contracts by the department.

02. Learned counsel for the petitioner submits that ever since the enlistment/registration of the petitioner company as a Class "SS" contractor with the MES Department, the petitioner has successfully executed various contractual works for the department to its complete satisfaction.

03. It is further submitted that as per the provisions governing the quarterly review of works undertaken by contractors, the procedure in this

Under Section 33.2, the Work Load Return (WLR) is initiated by the department. The WLR for contractors with a total workload of up to ₹ 50.00 lakh is issued by the Zonal Chief Engineer, whereas for contractors with a total workload exceeding ₹ 50.00 lakh and up to ₹ 15.00 crore, it is issued by the Command Chief Engineer.

04. Learned counsel further contends that Section 33.2(vii) explicitly provides that in the event of any adverse remarks in the WLR regarding any contractor, the same must be communicated to the concerned contractor by the accepting officer no later than the 10th day of the last month of the quarter. A copy of the adverse remarks, along with the contractor's reply, is required to be enclosed with the WLR while forwarding the report to the competent authority for final decision-making.

05. It is vehemently argued that respondent Nos. 3 and 4 were under an obligation to serve a show cause notice to the petitioner company before making any adverse recommendation against it. The petitioner asserts that respondent Nos. 3 and 4 failed to issue any such notice before the 10th of the last month of the quarter, as mandated, before forwarding their recommendations to respondent No. 1. The petitioner contends that this procedural lapse constitutes a violation of the prescribed procedure.

06. Learned counsel further submits that the impugned order has effectively debarred the petitioner company from participating in the tendering process for the allotment of contractual works, thereby depriving it of its right to participate in the bidding process. Consequently, the impugned order is in

blacklisting the petitioner company without adhering to the due process prescribed under the MES Manual on Contracts.

07. Learned counsel for the petitioner has placed reliance on an identical order passed by this Court in WP(C) No. 1835/2024 and prays for a similar order in the present case. In the interest of maintaining parity, and after hearing learned counsel for the petitioner and perusing the record, this Court deems it appropriate to grant similar prima facie relief in the instant matter.

08. Notice.

09. Ms. Parkhi Parihar, Advocate accepts notice on behalf of the respondents.

10. Reply be filed within a period of four weeks.

11. List along with WP(C) No. 1835/2024.

12. Meanwhile, subject to objections from the other side and until the next date of hearing, the operation of the impugned order No. 66546/SS/R-2/QE Dec 2024/19/E8, dated 19.02.2025, issued by respondent No. 1, insofar as it pertains to the petitioner, shall remain stayed.

13. A copy of this order be provided to the learned counsel for the petitioner under the seal and signature of Bench Secretary of this Court.

(Wasim Sadiq Nargal)
Judge

Jammu:
18.03.2025

Appx 'K'

$-91

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 15480/2024

NSC PROJECTS PVT LTD .....Petitioner

Through: Mr. Darpan Wadhwa, Senior Advocate with Ms. Kanika Singh, Mr. Nikhil Saini and Mr. Amir, Advocates.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Deepak Tanwar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 06.11.2024

CM APPL. 64971/2024 *(seeking exemption from filing certified copies/ originals of documents and from filing fair/ typed copies of dim documents)*

1. Exemption is granted, subject to all just exceptions.

2. The Applicant shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

3. Accordingly, the application stands disposed of.

CM APPL. 64972/2024 *(seeking stay)* & W.P.(C) 15480/2024

4. The Petitioner, NSC Projects Pvt. Ltd., a contractor of Military Engineer Services,[1] has successfully executed 25 projects for the Respondents and currently has 11 contracts in progress. They have filed the instant petition, assailing order dated 22nd October, 2024[2] passed by Respondent No. 1, whereby the Petitioner has been listed in "Work Load

[1] "MES"

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Return of "SS Class" Contractor for the Quarter Ending in June 2024"[3] at S. No. 71. The Petitioner is aggrieved by the adverse remark in the column "whether considered for handling more work" recorded as "No, Slow Progress".

5. Mr. Darpan Wadhwa, Senior Counsel for Petitioner, asserts that the impugned listing has the effect of blacklisting/ debarment of the Petitioner from participating in any future contracts of the Respondents. To substantiate the same, he points out to communication dated 25th October, 2024, highlighting that the Petitioner's bid for another contract with the MES, has been rejected at the stage of technical evaluation, on account of adverse remark in the WLR.

6. Mr. Wadhwa submits that although the Respondents had issued a show cause notice dated 11th September, 2024[4] prior to the issuance of the impugned order, the same was responded to by the Petitioner, providing complete details of the reasons for the delay. He submits that the Respondents did not issue any communications to the Petitioner with respect to their response to the impugned SNC, but instead proceeded to list them in the WLR. Further, Mr. Wadhwa emphasises that the delay in the execution of the contract is attributable to the Respondents.

7. Additionally, Mr. Wadhwa submits that in respect of the contract mentioned in the impugned SCN, the Petitioner has been granted Extension of Time ['EOT'] on multiple occasions, without imposition of any liquidated damages. He submits that even subsequent to the issuance of the impugned SCN, the Petitioner's request for EOT had been accepted by the Respondent

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[3] "impugned order"
[4] "WLR"
[5] "impugned SCN"

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through communication dated 11th October, 2024. In light of the foregoing, Mr. Wadhwa argues that since the Respondents themselves agreed to grant extensions to the Petitioner, the adverse remark regarding "slow work progress" is unjustified.

8. The Court has considered the submissions of the Petitioner, and is of the opinion that the Petitioner has made a *prima facie* case. Accordingly, the following directions are issued:

(i) Till the next date of hearing, the impugned communication dated 22nd October, 2024, shall be kept in abeyance.

(ii) The Respondents are directed to remove the adverse remark recorded against the Petitioner from the WLR.

9. It is clarified that the Petitioner's participation in subsequent tenders will not be rejected on ground of the remarks recorded in the impugned order dated 22nd October, 2024.

10. Issue notice. Mr. Deepak Tanwar, counsel for the Respondents, accept notice. Counter affidavit, if any, be filed within a period of four weeks from today. Rejoinder thereto, if any, be filed within a period of two weeks thereafter.

11. Re-notify on 30th January, 2025.

SANJEEV NARULA, J

NOVEMBER 6, 2024
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Appx - L

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]
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WPA/300/2024

Surendra Infrastructure Private Limited

Vs.

Engineer-in-Chief Branch and others

Mr. Md.Tabraiz ... for the petitioner

Mr. V.D.Sivabalan ... for the respondents

June 21, 2024
[SR]
Item Nos.14

Learned counsel for the petitioner has made out a strong *prima facie* case for hearing the writ petition on merits. The petitioner, classified as an enlisted contractor of the category of Super Special Class, having considerable expertise in its field of work, was engaged for completing an incomplete work of construction in respect of a Defence school.

Learned counsel for the petitioner points out from the annexures to the writ petition that at every stage there was a provision for scrutiny which was exercised by the respondent authorities. The entire work was done, upon a scrutiny being effected by the respondent authorities and/or representatives at every stage, strictly in terms of the plan supplied by the respondent authorities.

After completion of the work, satisfactory completion certificate was issued and the bills of the petitioner were paid substantially, apart from in respect of subsequent further works. The defect liability period was also over, when a 'Chajja' (eaves) of the school building collapsed. The respondent authorities gave a show cause notice to the petitioner, to which a reply was given by

the petitioner. However, despite the petitioner having approached the authorities on several occasions, neither any hearing was given to the petitioner nor any decision was taken on the show cause notice.

In fact, the petitioner wrote to the respondent authority in the reply giving adequate reasons as to why the 'Chhajja' (eaves) might have been broken, which was not a defect in the 'Chhajja' (eaves) itself but could be traced otherwise, apparently to the architecture plan for which the petitioner was not responsible.

The report obtained by the petitioner from an independent expert organization of repute in the field also corroborated such stand of the petitioner.

Apart from the show cause notice having not been proceeded with further, a 'Board of Officers' was constituted by the respondent authority but no inspection or meeting was held at any point of time by the Board of Officers, nor any notice was given by the said Board of Officers to the petitioner regarding any such proposed inspection.

Thirdly, a tender has been issued by the respondent authorities for consultancy services for carrying out structural inspection for primary and secondary wings of the said Defence School, apparently to explore the plausible reason for the collapse of the 'Chhajja' (eaves).

Hence, the respondent authorities have opened up three fronts for ascertaining the reasons of the accident – first, the issuance of the show cause notice, second, the appointment of a Board of Officers and thirdly, floating a tender for appointment of consultancy services to carry out structural inspection - none of which has culminated as yet. Before such exercise being taken to its logical culmination and/or giving any hearing to the petitioner, however, by

an endorsement in a communication dated June 12, 2024, it was observed that the SS (Super Special) Class contractors mentioned in the list enclosed therewith were not considered capable of handling more load.

In fact, it is submitted that subsequently in a different tender floated by the respondent authorities, the petitioner was considered to be technically ineligible due to such adverse endorsement against the petitioner.

It is submitted that the adverse endorsement is completely violative of principles of natural justice and *audi alterm partem* in particular.

Learned counsel for the respondents submits that in the communication dated June 12, 2024 annexed at page 98, the concerned authorities have left it open for the contractors having grievance against the same to approach the concerned Accepting Officer for change/amendment to the remarks about their performance. It is submitted that in view of such availability of alternative remedy, which has been universally opened up for all contractors against whom such allegation is made, the present writ petition ought not to be entertained.

Moreover, learned counsel for the respondents also seeks to file an affidavit-in-opposition to controvert the allegations made in the writ petition.

On a bare consideration of the alternative remedy plea of the respondents, it transpires that the same is merely the whim of the respondent authorities, not being provided as an alternative forum in the agreement between the parties at any point of time.

Hence, mere advice of the respondents for aggrieved contractors to approach the concerned Accepting Officer does not, by

any stretch of imagination, operate as an alternative remedy worth the name.

I find from the records and from the discussions as narrated above that a sufficiently strong prima facie case has been made out by the petitioner for the purpose of setting aside the impugned endorsement castigating the petitioner as incapable for handling more load, without giving opportunity of hearing to the petitioner.

The writ petition is thus required to be heard on merits on the above issues.

Accordingly, the respondents shall file their affidavit-in-opposition within four weeks from date. Reply, if any, shall be filed within two weeks thereafter.

Liberty is given to the parties to mention the matter before the appropriate Bench in the Circuit succeeding the aforesaid time-frame for enlistment for the purpose of hearing.

There shall be stay of operation of the order declaring that the endorsement made in the workload return vide letter dated June 12, 2024 as well as of the endorsement to the effect that the present petitioner is incapable of handling more load till the disposal of the writ petition.

It is reiterated that the above stay order shall operate only insofar as the present petitioner no.1 company is concerned.

(Sabyasachi Bhattacharyya, J.)

Appx 'M'

Court No. - 2

Case :- WRIT - C No. - 2200 of 2025

Petitioner :- M/S Akruti Techstment Ltd Thru Director Sanjeev Mittal
Respondent :- Union Of India Thru. Secy Ministry Of Defence New Delhi And 5 Others
Counsel for Petitioner :- Ashish Kumar Singh
Counsel for Respondent :- A.S.G.I.

Hon'ble Rajan Roy,J.
Hon'ble Om Prakash Shukla,J.

1. Two supplementary affidavits on behalf of petitioner filed today in Court are taken on record.

2. Heard Mr. S.C. Mishra, learned Senior Advocate assisted by Mr. Ashish Kumar Singh, learned counsel appearing for the petitioner and Mr. S.B. Pandey, learned Senior Advocate and Deputy Solicitor General of India assisted by Mr. Varun Pandey, learned counsel for the opposite parties.

3. The facts, in brief, are that the petitioner entered into a contract with the opposite parties for construction of an Army School, in that context the opposite party no. 4 required petitioner to do some roof treatment work and also work relating to acoustics, however, the petitioner claimed that this was not part of the contract, but, on account of insistence of the concerned opposite parties the petitioner approached the Independent External Monitors (IEM) raising a grievance in this regard as, it was a forum provided in the contract itself for dispute resolution. The said IEM passed an order on 24.01.2025 noticing the contentions of rival parties to the contract, but, opining that as the contractor has already invoked remedy before the Dispute Resolution Board (DRB), therefore, the said DRB shall hear the case expeditiously and decide the matter within four weeks. In case, any party is not satisfied with decision of DRB, they can take further action as per the contract provisions. After the decision of DRB, the contractor may again approach IEMs if there are any grievances left. Further, regarding the additional works, the IEM opined that the same shall be measured and paid. Now, the DRB is seized with the aforesaid dispute and a date was fixed as 20/21.02.2025 for hearing in the matter before which the pleadings, etc. were to be completed by the parties.

appearing for the petitioner is that the pleadings were completed by the petitioner by 18.02.2025, but the opposite party no. 4 which has issued the impugned show cause notice did not file a reply and sought time which was granted till 01.03.2025, but, the said reply was not filed by the opposite party no. 4 even till 01.03.2025, therefore the matter has been adjourned by the DRB indefinitely and during its pendency the opposite party no. 4, who on the one hand is not filing his reply before the DRB so as to facilitate expeditious disposal of the dispute in terms of the contract has issued a show cause notice to the petitioner *inter alia* asking the petitioner to show cause as to why he should not be banned for future tenders for non-performance of the two works, i.e. the very two works which are the subject matter of the dispute before the DRB which is a remedy prescribed in the contract itself. It is also informed that the petitioner completed the construction of the school and handed it over on 24.02.2025. It is also stated that the opposite parties themselves granted another contract to the petitioner on 26.11.2024, therefore, obviously they are otherwise satisfied with the work being performed by the petitioner.

5. On being confronted, Mr. Pandey submitted that he will have to seek instructions in this regard.

6. As regards the contention of Mr. Pandey that it is only a show cause notice, therefore, the petitioner should file a response, we do not accept this plea, at this stage, for the reason, *prima facie*, it appears that a dispute which is the subject matter of the show cause notice is pending consideration before the DRB in terms of the directions of the high level body i.e. IEM and it is the case of the petitioner that opposite party no. 4 who has issued the impugned notice has himself required to file a reply before the Board but has not filed it till date, therefore, we cannot possibly permit such an action where on the one hand the dispute is pending in which the allegation is of non-cooperation by the opposite party no. 4 and on the other hand in respect of the same subject matter the opposite party no. 4 proposes to proceed against the petitioner to ban it from future tenders.

7. Let a counter affidavit be filed in the matter within three weeks. Rejoinder affidavit, if any, may be filed within one week thereafter.

9. In the meantime, in view of the facts noticed above, it is provided that the impugned show cause notice shall remain stayed and shall be subject to decision, if any taken by the Dispute Resolution Board.

10. We further direct the opposite party no. 4 or whosoever is responsible in this regard to submit his reply, etc. if it is to be submitted before the Board at the earliest, say, within 15 days thereafter the Board shall resolve the matter as per the contract and the jurisdiction vested in it within the next three weeks. The parties are expected to cooperate in the matter before D.R.B.

[Om Prakash Shukla, J.] [Rajan Roy, J.]

Order Date :- 5.3.2025
Santosh/

F/2.

Appx 'N'

S-3

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2859/2025

M/S KENGE CONSTRUCTION CO ....Petitioner

Through: Mr. Shashank Garg, Sr. Adv., Ms. Kanika Singh, Ms. Aradhya Chaturvedi, Mr. Nikhil Saini and Mr. Ananyay, Advs.

versus

UOI AND ORS ....Respondents

Through: Mr. Vikram Jetly, CGSC, Ms. Shreya Jetly, Advs. and Mr. Chetan Jaggi, GP for R-1, 2 and 3.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

ORDER
19.03.2025

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CM APPL. 13580/2025 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 2859/2025 and CM APPL. 13581/2025 (Stay)

3. By way of the present petition, the petitioner assails the respondent no. 3's communications bearing No. 66546/SS/R-2/QE/SEP/2024/37/E8 dated 16.12.2024 and bearing No. 66546/SS/R-2/QE/DEC/2024/19/E8 dated 19.02.2025, to the extent that the petitioner has been given adverse remarks ["No, slow progress"], in the "work load return" issued by the respondent no. 3.

4. Broadly, three submissions have been made by learned senior counsel for the petitioner.

5. Firstly, it is contended that the impugned communications are in the nature of a blacklisting / debarring order inasmuch they render the petitioner ineligible from participating in all other tenders / work of the respondents. This is on account of the fact that all tenders of respondents prescribe, as an eligibility condition, that the intending tenderer (seller / bidder) should not have adverse remarks in a "work load return" issued by the concerned employer. As such, it is contended that the impugned communication will result in civil and commercial death of the petitioner. He contends that if at all such adverse remarks were sought to made against the petitioner, the same should have been preceded by an opportunity of hearing and compliance with the principles of natural justice, which has not been done in the present case.

6. Secondly, it is contended that the allegation of 'slow progress' against the petitioner are factually unwarranted. It is submitted that the circumstances which occasioned slow progress in respect of the work in question, have been set out by the petitioner in communication dated 29.11.2024 in response to the Show Cause Notices (SCNs), issued by the concerned contractual authorities.

7. It is pointed out that the SCNs are premised on the basis that the site in question was handed over to the petitioner on 24.05.2023 whereas it is borne out from the record that the actual date of handing over the site is 08.11.2023. This is evident from an extract of the site order book, which is filed as Annexure-P5 to the present petition.

8. Thirdly, it is contended that the SCNs which form the basis of the adverse remarks, are yet to be adjudicated by the respondents.

9. It is submitted that no communication has been received by the

petitioner pursuant to the elaborate responses sent by the petitioner in response to the SCNs issued to it. As such, it is completely unwarranted to make any adverse observation against the petitioner, when the response of the petitioner to the SCNs is pending consideration.

10. Issue notice.

11. Learned counsel, as aforesaid, accepts notice on behalf of the respondents.

12. Let reply be filed within a period of four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

13. In view of the aforesaid circumstances, there shall be a stay of the respondent no.1's communication bearing No.66546 SS R-2 QE SEP 2024 37 ES dated 16.12.2024 and 66546 SS R-2 QE DEC2024 19 ES dated 19.02.2025 to the extent that the petitioner has been given the remarks "No/slow progress" in the "Work load return list" issued by the respondents against the petitioner in Entry No.7 in Appendix-B of impugned order dated 19.02.2025, and Entry No.8 in Appendix-B of impugned order dated 16.12.2024.

14. Needless to say, this order shall not be construed as interdicting either of the parties from availing appropriate contractual remedies, in accordance with law.

15. List on 21.08.2025.

SACHIN DATTA, J

MARCH 10, 2025