

(2021) 09 PAT CK 0028

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 12736 Of 2021

Ramanand Rai

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Sept. 7, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 12, 14, 32, 226, 298
- Bihar Contractor Registration Rules, 2007 - Rule 11

Hon'ble Judges: Chakradhari Sharan Singh, J

Bench: Single Bench

Advocate: Ashish Giri, Sumit Kumar Jha, Ajay, Pratik Kumar Sinha

Final Decision: Allowed

Judgement

1. This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. This writ application has been filed seeking quashing of a letter no. 1908 dated 05.07.2021 issued under the signature of the Engineer-in-Chief,

Rural Works Department, Government of Bihar whereby the petitioner, among several other contractors, has been debarred from participating in any

tender process in future, by one stroke of pen, on the ground of them having defaulted in completing the works in question as contractors, as stipulated

under the respective terms of the contract agreements. The impugned order which has been brought on record by way of Annexure-6 to the writ

application does not refer to any provision under which the same has been issued.

3. The petitioner is admittedly a registered Class-I contractor under the provisions of Bihar Contractor Registration Rules, 2007 issued by the Rural

Works Department, Government of Bihar. Pursuant to the notices inviting tender issued by the Rural Works Department, Government of Bihar, the

petitioner was awarded two work contracts and two agreements in relation to construction works were entered into between him and the State of

Bihar. The details of the said agreements have been given in paragraph 4 of the writ application, which are as under:-

“(a) Agreement no. 03/PMGSY- SBD/2017-18 for construction of road and 5 years maintenance thereof from TO2 to Ruidhasa package no.

BR18R183 for a total value of Rs.1,82,82,319.00 inclusive of 5 years maintenance. The letter of acceptance being 10.06.2017 and agreement entered

on 05.07.2017. The period of completion being 12 months.

(b) Agreement no. 19/PMGSY- SBD/2017-18 for construction of road and 5 years maintenance thereof from TO4 to Tatpowa to Muslim Tola

(Track- 17), package no. BR18R228 for a total value of Rs.54,70,719.00 inclusive of 5 years maintenance. The letter of acceptance and letter to

proceed with the work being 05.12.2017 and agreement entered on 14.12.2017. The period of completion being 12 months.”

4. It is the petitioner’s case that he completed the works and payments were also made without any penalty. It is the further case of the petitioner

that he was doing maintenance works also, as per the agreements and he was demanding payment of maintenance cost, which was due. Instead of

making payment of the due amount against maintenance cost, the department came out with the impugned order, without giving the petitioner any

opportunity of being heard, alleges the petitioner. It has been specifically stated in the writ petition that no notice was ever issued either by the

concerned Executive Engineer or the Engineer-in-Chief alleging any default on the petitioner’s part and that none of the conditions provided under

Rule 11 of the Bihar Contractor Registration Rules, 2007 is attracted in the present case. It is accordingly the petitioner’s case that the impugned

order, to the extent it relates to petitioner is without jurisdiction.

5. A counter affidavit has been filed on behalf of the State of Bihar wherein it has not been disputed that the work was completed within 12 months,

as per the terms of agreement. It is admitted that payment of construction cost was also made to the petitioner. It has, however, been stated that after

completion of construction work, the petitioner, though had started maintenance work, he suddenly stopped the same. It has further been stated that

the Executive Engineer, Rural Works Department, Works Division, Kishanganj-II vide his letter no. 1481 dated 12.12.2020 and letter no. 1482 dated

12.12.2020 had sent notices to the petitioner directing him to get the maintenance work completed within 15 days and to send a report to the office in

this regard. The Executive Engineer, Rural Works Department, Works Division, Kishanganj-II vide his letters dated 25.02.2021 had informed the

petitioner that steps were being taken to put him in the list of debarred contractors. A reference has been made to letter no. 88 dated 10.04.2017

whereby the Secretary, Rural Works Department, Government of Bihar is said to have issued guidelines to all Chief Engineers, all Superintending

Engineers, Works Circle and all the Executive Engineers, Work Division, Rural Works Department regarding actions required to be taken against the

defaulting contractors who failed in completion of project work or maintenance work.

6. It has also been stated in the counter affidavit that if the petitioner agrees to complete the maintenance work within 15 days or the time which he

reasonably requires, the respondents will remove the name of the petitioner from the "debarred" list and shall be allowed to participate in future

tenders invited by the department. The respondents have justified the action of debarment on the basis of facts asserted in the counter affidavit.

7. Mr. Ashish Giri, learned counsel appearing on behalf of the petitioner has submitted that evidently no show cause notice was ever issued to the

petitioner disclosing intention of the respondent department to put the petitioner in the list of debarred contractors. He has submitted that the said order

of debarment is evidently for an indefinite period, which has serious civil/evil consequences and, therefore, the action taken is in brazen defiance of the

principles of natural justice which requires interference by this Court exercising power of judicial review under Article 226 of the Constitution of India.

He has placed heavy reliance on the Supreme Court's decision in case of UMC Technologies (P) Ltd. v. Food Corporation of India reported in

(2021) 2 SCC 551 to contend that the consequence of blacklisting or debarment of a contractor is severe inasmuch as it has the effect of denying a

person or an entity, the privileged opportunity of entering into government contracts. He has also relied on a Supreme Court's decision in case of

Vetindia Pharmaceuticals Ltd. v. State of U.P. and Another reported in (2021) 1 SCC 804 to contend that before taking any action of debarment, the

petitioner had a right to be heard on the proposed action of the respondents. Reliance has also been placed by him on the Supreme Court's

decision in case of M/s Kulja Industries Limited v. Chief Gen. Manager W.T. Proj. BSNL & Ors. Reported in (2014) 14 SCC 731. Reference has also

been made to the decision of this Court dated 22.06.2021 rendered in C.W.J.C. 3441 of 2020 (Raj Kumar Singh Raja Constructions PVT. LTD. v.

The State of Bihar) and 19.07.2021 in C.W.J.C. 9597 of 2021 (M/s EMS Infracon PVT. LTD v. The State of Bihar).

8. In reply, learned AC to GA -5 representing the State of Bihar has on the other hand has placed reliance on Supreme Court's decision in case of

B.S.N. Joshi & Sons Ltd. v. Nair Coal Services and Others reported in (2006) 11 SCC 548 and Grosons Pharmaceuticals (P) Ltd and Anr. v. The

State of Uttar Pradesh and Others reported in 2001 (4) PLJR (SC) 145 and a coordinate Bench decision of this Court in case of Anand Consultants v.

The State of Bihar and Others reported in 2015 (5) BLJ 1.

9. As has been noticed at the outset, the impugned order does not indicate any provision conferring power on the Chief Engineer to issue the nature of

order, which has apparently the effect of denying the petitioner, opportunity to participate in any future tender process. The impugned

order/communication does not indicate issuance of any prior show-cause notice, before a decision was taken to debar the petitioner from participating

in future tender processes. The letter merely indicates a recommendation received from Chief Engineer-2 and 3, Rural Works Department as the

basis for issuing the impugned order of debarment. The reason, which has been assigned in the impugned letter for taking the penal action against the

petitioner and other similarly situated contractors, is that they did not accomplish the work within the stipulated time in accordance with the terms and

conditions of the respective agreements. There is no reference in the impugned order/communication to the clause(s) of the agreement, which the

petitioner has breached. The source of power for the Engineer-in-Chief to issue the order of debarment has not been disclosed in the impugned communication.

10. It is noteworthy at this juncture that the Bihar Registration of Contractors Rules (Rural Works Department), 2007 has been notified by the Rural

Works Department, Government of Bihar has issued. Though the nomenclature of the notification is in the nature of "rules", it is not statutory in

nature rather it is in the nature of executive instructions issued by the Department. The said notification deals with registration of different classes of

contractors, payment of registration fee and period for which registration can remain valid etc.. Clause 4 (c) of the said notification provides that

contractors registered in any of 3 classes namely Class-I, Class-II and Class-III shall be eligible to tender anywhere in the State of Bihar for the

works related with Rural Works Department and its agencies. The said provision reads as under:-

"(c) Contractors registered in any of the above three Classes shall be eligible to tender anywhere in the State of Bihar for works related with Rural

Works Department and its agencies."

11. Clause 11 (a) of the said notification provides for blacklisting and suspension in case of any of malpractices mentioned therein. Following are the

malpractices enumerated in Clause 11(a) of the notification, which reads thus:-

11(a) Contractors registered in any of the classes shall be liable for black- listing or demotion to a lower class or suspension for a specified period if he

personally or any partner of the firm or company, or any of its director(s) or employee(s) or representative(s) indulge(s) in any of the following

malpractices:-

1. Indisciplined behavior with any officer or employee of the concerned department.
2. Creating law & order problem in Government Office during receipt of tender papers, opening of tenders or any work related thereto;
3. Threatening or attacking any officer or employee of the department.
4. Participating in or boycotting tenders by forming a cartel.
5. On failure to execute the agreement within the stipulated period after allotment of work if repeated on more than one occasion.

6. Failure to abide by conditions of Agreement and standing instructions therein during execution of work.
7. Subletting any work without consent of the department to another contractor or any other individual.
8. Selling Government material like Cement, Steel and Bitumen etc.
9. On submission of false or forged security as earnest money and forged documents.
10. On being convicted for any criminal activity.
11. Submission of tender in such circle in which his close relative(s) is/are posted as divisional accountant or any officer not below the rank of junior engineer. Close relative means husband/wife/mother/father/brother of sister.
12. In the event of a contractor being blacklisted by any other Government department.
12. Clause 11 (b) of the said notification reads thus:-

“(b) (i) If any person as mentioned in clause 11(a) of this rule indulges in any malpractice as described in sub-clause (i) to (v) of 11 (a) then the registration of the concerned contractor may be demoted to a lower class permanently. If he indulges in more than one malpractice as described in sub clause (i) to (v) of 11 (a) then the concerned contractor may be blacklisted.

(ii) If any person as mentioned in clause 11(a) of this rule indulges in any malpractice as described in sub clause (vi) to (xii) of 11(a) then the concerned contractor may be black listed.”
13. Clause 11 (c) of the notification reads thus:-

“(c) Before black-listing or demoting or suspending any contractor, he shall be given an opportunity to show-cause.”
14. There is no power vested in any authority even under the Rules of 2007 to debar a contractor from participating in any future tender process for an indefinite period.
15. It is noted at this juncture that the Supreme Court in case of M/s Kulja Industries Limited (supra) has emphasized the need for prescribing different periods of debarment depending upon the gravity of the offences, violations and breaches in the shape of guidelines for the sake of objectivity

and transparency in the matter of blacklisting a contractor. The State Government has formulated broad guidelines prescribing different periods of debarments/blacklisting depending upon the nature of violations/breaches by the contractors. Evidently, defying its own guidelines of the State Government, the Engineer-in-Chief has issued the order of debarment without prescribing any period.

16. In the matter of blacklisting of contractors, there are series of judicial pronouncements of the Supreme Court and this Court, touching, inter alia, following broad aspects:-

1. The grave consequences of debarment/blacklisting of contractors.
2. Requirement of adhering to the principles of natural justice before passing such order involving grave consequences and
3. The order of blacklisting/debarment cannot be for an indefinite period.

17. In case of *Erusian Equipment and Chemicals Ltd. v. State of West Bengal and Anr.* (AIR 1975 SC 266) the Supreme Court in no uncertain terms held that a blacklisting order involves civil consequences. It creates a barrier between the persons blacklisted and the government in the matter of transactions. It casts a slur and is an instrument of coercion. The Supreme Court further held that order of blacklisting has the effect of depriving a person of equal opportunity in the matter of contract.

18. The Supreme Court reiterated its views in a subsequent decision in case of *Raghunath Thakur v. The State of Bihar and Others* reported in (1989)

1 SCC 229 stating that it need to be realized that blacklisting any person in respect of business ventures has civil consequences of future business of

the person. In case of *Gorkha Security Services v. Govt. (NCT of Delhi) and Others* reported in (2014) 9 SCC 105, the Supreme Court went further

in describing blacklisting as being equivalent to civil death of a person because blacklisting is stigmatic in nature and debars a person from participating

in the government tenders and thereby precluding him from award of government contracts. In *M/s Kulja Industries Limited (supra)*, the Supreme

Court again noticed the grave consequences of blacklisting/debarment of a contractor. In a recent decision, in case of *UMC Technologies (P) Ltd.*

(supra), noticing aforementioned decisions, the Supreme Court has emphasized the requirement of adherence to the principles of natural justice before

blacklisting/debarment of a contractor.

19. The law laid down by the Supreme Court in the aforementioned decisions emphasizing on the gravity of consequences of an order of

blacklisting/debarment of contractors can safely be presumed to be within the knowledge of the authorities in the State of Bihar exercising their

powers to blacklist or debar a contractor from participating in any future tender process.

20. The seriousness/gravity of the consequence of blacklisting/debarment, which is penal in nature, mandates strict adherence to the principles of

natural justice before such action is taken.

21. Clause 11(c) of Bihar Contractors Registration Rules, 2007 provides that before blacklisting or demoting or suspending any contractor, he should

be given an opportunity to show cause. It is trite that the requirement of giving an opportunity to show cause, as stipulated in Clause 11 (c) of the

Rules, is not an empty formality and mere issuance of show-cause notice before passing a blacklisting order cannot satisfy the requirement of

principles of natural justice.

22. It may be noted that strict observance of the principles of natural justice before passing an order of blacklisting has been highlighted in case of

Erusian Equipment and Chemicals Ltd.(supra) Raghunath Thakur (supra) Gorkha Security Services (supra) UMC Technologies (P) Ltd (supra). In

M/s Kulja Industries Limited (supra) the Supreme Court laid down that any decision of blacklisting will be open to scrutiny not only on the touchstone

of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted is an essential precondition for

a proper exercise of power and a valid order of blacklisting made pursuant thereto. Paragraph 17 of the decision in case of M/s Kulja Industries

Limited (supra) can be usefully referred to, which reads as under:-

“17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other

work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by

statute or reserved by contractor. That is because “blacklisting” simply signifies a business decision by which the party affected by the breach

decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such

decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private

parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any

such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair

hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made

pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.â€

23. The Supreme Court further held in case of M/s Kulja Industries Limited (supra) that even though the right of a contractor is in the nature of

contractual right, the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to

judicial review on the touchstone of â€œâ€¦â€¦ fairness, relevance, natural justice, non-discrimination, equality and proportionalityâ€¦. All these

considerations that go to determine whether the action is sustainable in law, have been sanctified by judicial pronouncements of this Court are of

seminal importance in a system committed to the rule of law. The Court referred to paragraph 12 of an earlier decision in case of Mahabir Auto

Stores and Ors. v. Indian Oil Corporation and Ors. reported in (1990) 3 SCC 752, which reads as under:-

â€œ12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by

reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the

Constitution. Reliance in this connection may be placed on the observations of this Court in Radha Krishna Agarwal v. State of Bihar [(1977) 3 SCC

457] . It appears to us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an

instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the

Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of

power. Therefore, the action of State organ under Article 14 can be checked. See *Radha Krishna Agarwal v. State of Bihar* [(1977) 3 SCC 457] at p.

462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been

entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature

certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to

Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration;

it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right

conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be

taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into

contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule

of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should

meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy

the test of reasonableness, the same would be unreasonable. In this connection reference may be made to *E.P. Royappa v. State of Tamil Nadu*

[(1974) 4 SCC 3 : 1974 SCC (L&S) 165] , *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] , *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1

SCC 722 : 1981 SCC (L&S) 258] , *R.D. Shetty v. International Airport Authority of India* [(1979) 3 SCC 489] and also *Dwarkadas Marfatia and Sons*

v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293] . It appears to us that rule of reason and rule against arbitrariness and discrimination,

rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a

situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.â€

24. The need of adherence to the principles of natural justice in the matter of blacklisting/debarment of a contractor has been emphasized

subsequently in case of *Vetindia Pharmaceuticals Ltd. (supra)*. Paragraph 11 of which reads thus:-

â€œ11. 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.â€

25. In case of *M/s Daffodills Pharmaceuticals Ltd. and Anr. v. The State of Uttar Pradesh and Anr.* reported in 2019 SCC OnLine SC 1607, the

Supreme Court held in paragraph 14 as under:-

â€œ14. Although, State of U.P. has argued that the impugned order requiring that no procurement ought to be made from Daffodills, is neither a

blacklisting nor a debarring order, in our opinion, in fact and in reality, that order is nothing but an order or a directive, debarring and preventing the

State of U.P. from local purchase of medicines from Daffodills for an indefinite duration. Unlike a â€œnormalâ€ blacklisting order which has a finite

life span (of three or maximum five years), the indefinite directive (which appears to be co-terminus with the lifetime of the criminal case) is facially

far more disproportionate than a blacklisting order. Even as on date, it is not clear whether formal charges have been framed against the accused i.e.

Surender Chaudhary.â€

26. Coming back to the facts of this case, apparently no show cause was issued to the petitioner indicating that an action of debarment shall be taken

against him. In the impugned communication, order of debarment has been passed in respect of 75 contractors. Surprisingly the impugned order refers to the name of the project with the name of the contractors. The petitioner's name figures twice at serial no. 22 and 23. If literally understood, the petitioner has been debarred twice in respect of his two work contracts after declaring him defaulter in execution of the said schemes. The Court fails to understand the manner in which the decision has been taken and has been communicated by the Engineer-in-Chief debarring the petitioner from participating in any future contracts. The Chief Engineer could have, while debarring the petitioner, taken into account the failure on his part in execution of two work contracts. Putting his name at two places separately for the purpose of debarment, in Court's opinion, does not appear to be serving a logical purpose, which is apparently a result of complete non-application of mind. The impugned order, to the extent it relates to the petitioner, therefore, deserves interference.

27. In case of *Kranti Associates Private Limited and Anr. v. Masood Ahmed Khan and Ors.* reported in (2010) 9 SCC 496, the Supreme Court after considering various earlier decisions formulated certain principles in paragraph 47, which are being set out hereinbelow:-

“47. (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.”

28. In case of *Oryx Fisheries Private Limited (supra)* reported (2010) 13 SCC 427, the Supreme Court has laid down that if the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness, which is manifested by the language, in which, the charges are framed and conveyed to the person proceeded against.

29. In case of *Khem Chand v. The Union of India and Others* (AIR 1958 SC 300), the Supreme Court has observed that the opportunity to deny guilt and establish innocence can be given only if he is told what the charges levelled against a person are and the allegations on which such charges are based. Noticing the said decision in case of *Khem Chand (supra)*, the Supreme Court in case of *Oryx Fisheries Private Limited (supra)* observed in

paragraph 31 as under:-

“31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show- cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.”

30. Since the Court has noticed the officials of the State Government acting mostly in breach, even of the basic requirements of principles of natural justice in the matter of passing of orders of blacklisting/debarment of a contractor, the Court deems it fit and proper to lay down the minimum requirements for the respondents to follow while taking such action, in consonance with the principles of natural justice.

31. In the Court’s opinion, following would be the minimum requirement of principles of natural justice for a State or its instrumentality to follow if it intends to blacklist/debar or suspend a contractor having the effect of creating disability and thereby preventing a person/body from the privilege and advantage of entering into lawful relationship with the State or its instrumentality for purposes of gains, either invoking provisions under Bihar

Contractor Registration Rules, 2007 or otherwise:-

I. The person/contractor must be given an opportunity to show cause by issuing to him a show cause notice with clear, definite and distinct charge of deficiency/misconduct/deviance/indiscipline/ any other breach warranting such action, as stipulated in the Rules, standard bidding documents or for any other reason which is considered appropriate inviting such action.

II. The show cause notice should be accompanied with such documents which the competent authority intends to rely on, for taking such action. If the

documents are voluminous or it is not otherwise found practical to enclose them with the show cause notice, the competent authority must give the contractor an opportunity to inspect such documents at a given place and time. There shall not be any requirement of supply of such documents which are supposed to be in possession of the contractor in normal course of business.

III. The contractor must be given at least 15 days time from the date of service of show cause notice for submitting reply.

IV. If the contractor demands from the competent authority supply of any document(s) for the purpose of replying to the show cause notice, the competent authority shall either supply those documents or reject such request if, in the opinion of the competent authority, those documents are not relevant for the reply and for the purpose of the proposed action.

V. The competent authority may extend the time for submission of reply to the show cause notice, on a request made by the contractor for valid reasons.

VI. If the allegation is such which would require adduction of oral evidence before the competent authority, the competent authority shall be required to proceed accordingly by ensuring that witnesses for the department are examined in presence of the contractor and he is given an opportunity of cross-examination of such witnesses. This observation is in the background of some of the malpractices mentioned in Clause 11(a) of Rule, 2007 which can be a basis for passing an order of blacklisting/debarment illustratively items no. (i), (ii), (iii), (iv) and (viii) which would require proof by adducing oral evidence and cannot be proved on the basis of documentary evidence only.

VII. In case the competent authority decides to impose either of the punishments under the Rules, the competent authority must record reasons in his punishment order as to why the explanation, if any, submitted by a contractor in his reply to the show cause notice, is not acceptable to it. Further, the competent authority shall be required to pass a reasoned and speaking order disclosing due application of mind on relevant materials available before him, before imposing any of the punishments under the Rules.

VIII. The competent authority shall not take into account any material, not disclosed to the contractor at the time of issuance of the show cause notice

or at appropriate stage, after issuance of the show cause notice.

32. The aforesaid direction is being issued primarily for the reason that an authority exercising power of blacklisting or debarring a contractor

exercises quasi-judicial authority and, therefore, it is incumbent upon him to act fairly and with open mind. It is a requirement of the principles of

natural justice that the person against whom the action is proposed must be informed of the charges against him, so that he may take his defence and

prove his innocence. Unfortunately, the respondents have not evolved nor laid down any procedure, let alone a well defined procedure in conformity

with the requirements of principles of natural justice. Resultantly, a substantial number of such orders become vulnerable and are interfered with in

judicial scrutiny. This in turn defeats the public interest since even delinquent contractors go scot free by getting over the action taken against them on

technical grounds of violation of principles of natural justice. It is clarified that the minimum requirements to satisfy the principles of natural justice as

enumerated above are not exhaustive and have been set forth in the absence of any clear procedure prescribed by the State Government of Bihar. It

will open for the State of Bihar to make appropriate provisions adequately meeting the requirements of principles of natural justice.

33. For the foregoing reasons the impugned letter no. 1908 dated 05.07.2021 issued under the signature of the Engineer-in-Chief, Rural Works

Department, Government of Bihar, to the extent it relates to the petitioner deserves interference on two counts. Firstly, it is in clear breach of

principles of natural justice and secondly, an order of debarment in any case cannot be for an indefinite period.

34. The stand taken in the counter affidavit that the order of debarment shall be recalled if the petitioner starts maintenance work, cannot be treated to

be a fair stand and it amounts to putting a contractor under the threat of debarment for execution of the work allotted to him.

35. It goes without saying that the parties to a contract, have remedy of approaching appropriate forum in accordance with terms of agreement, in case of breach thereof.

36. This application is allowed with the aforesaid observations and directions.

37. There shall be no order as to costs.