

**(2025) 12 GAU CK 0040**

**Gauhati HC**

**Case No:** WPC Of 3438 Of 2022

T K Engineering Consortium Pvt  
Ltd

APPELLANT

Vs

National Highways And  
Infrastructure Development  
Corp Ltd. And 4 Ors

RESPONDENT

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**Date of Decision:** Dec. 9, 2025

**Hon'ble Judges:** Devashis Baruah, J

**Bench:** Single Bench

**Advocate:** D. Mozumder, Somila, P. J. Saikia, R. K. Talukdar, S. Choudhury, J. Kalita

**Final Decision:** Disposed Of

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### **Judgement**

Devashis Baruah, J

1. Heard Mr. D. Mozumder, the learned Senior Counsel assisted by Ms. Somila, the learned counsel appearing on behalf of the petitioner. Mr. P. J. Saikia, the learned Senior Counsel assisted by Mr. R. K. Talukdar appears on behalf of the NHIDCL; Ms. S. Choudhury, the learned counsel appears on behalf of the respondent Nos.1 to 4 and Mr. J. Kalita, the learned counsel appears on behalf of the respondent No.5.

2. The present writ petition has been filed by the petitioner challenging the communication dated 04.05.2022 issued by the Deputy General Manager (P) of the NHIDCL whereby the petitioners firm was declared as a non-performer.

3. The dispute involved in the instant proceedings is on a very small issue as to whether the Respondent Authorities were justified in declaring the petitioner as a non-performer without assigning any reasons. It is seen that the Respondent Authorities have issued a show cause notice on 14.03.2022 thereby alleging various deficiencies in the work of the petitioner and the petitioner was therefore asked to submit the explanation within 15 days from the date of the notice as to why the petitioner's firm be not declared as a non-performer in view of the

provision stipulated in the Circular dated 06.10.2021 and the provisions of the EPC Contract Agreement.

4. The petitioner, on receipt of the said show cause notice, submitted a detailed reply on 29.03.2022. It is also alleged that there was no personal hearing given to the petitioner.

5. Pursuant to the reply so submitted on 04.05.2022, the impugned communication was issued whereby the petitioner was declared to be a non-performer. Taking into account the relevance, the contents of the communication dated 04.05.2022 is reproduced herein under:-

**RO/A-T/J-BC/2020/104/1/8972 Dated: 04.05.2022**

**To,**

**The Authorised Signatory**

**M/s T.K. Engineering Consortium Pvt Ltd**

**Model Village, Naharlagun**

**Arunachal Pradesh, PIN-791110**

**(Kind Attention: Shri Tara Techi, Director)**

**Subject: Four laning of Jamugurihat to end of Biswanath Chariali Bypass from Km 182 to Km 208 of NH-52 in Assam under SARDP-NE phase 'A' project on EPC Basis: DECLARATION AS NON-PERFORMER-Reg.**

**Ref: Letter No RO/A-T/J-BC/2020/104/1/8655 dated: 14.03.2022 Sir,**

**Please refer to this office's letter dated 14.03.2022, cited under reference, vide which the NOTICE for declaration as NON-PERFORMER was served, in light of the stipulations of the MoRT&H Circular issued vide File No.: RW/NH-33044/76/2021-S&R(P&B) dated 06.10.2021.**

**2. Subsequent upon the evaluation of your written reply, the Competent Authority has accorded approval to declare the firm M/s T.K. Engineering Consortium Pvt. Ltd. as a NON-PERFORMER.**

**3. This issues with the approval of the Competent Authority.**

**Yours Faithfully,**

**(Raj Kisor Singh)**

**Dy. General Manager (P)**

6. The petitioner being aggrieved by the communication dated 04.05.2022 has approached this Court by filing the present writ petition. The record reveals that vide a detailed order dated 25. 05.2022, the learned Coordinate Bench of this Court

taking into account that the impugned communication dated 04.05.2022 was without assigning reasons have stayed the communication dated 04.05.2022. The interim order thereupon has been continued from time to time.

7. The record further reveals that the respondents have duly filed an affidavit-in-opposition justifying their stand for issuance of the communication dated 04.05.2022. Taking into account the order which this Court proposes to pass, this Court would not like to go in detail as regards the justification provided taking into account that the impugned communication did not contain any reasons.

8. This Court duly heard the learned counsels appearing on behalf of the parties whose submissions were in tune with the respective pleadings.

9. Upon hearing the learned counsels appearing on behalf of the parties and taking into account the show cause notice, the reply so submitted by the petitioner and the impugned communication dated 04.05.2022, it is the opinion of this Court that the impugned communication dated 04.05.2022 is devoid of any reasons. Reference to a Circular dated 06.10.2021 cannot be regarded as a substitute for the purpose of assigning due reasons, more particularly, taking into account the consequences which would befall upon the noticee, if declared to be a non-performer.

10. This Court also duly takes note of that in the affidavit-in-opposition filed by the respondents, the respondents have tried to justify the impugned communication dated 04.05.2022 by providing due reasons. It is a well settled principle of law that administrative orders are required to be tested on the reasons so assigned. It is also no longer res integra that the reasons need not be stated in verbatim in the communication for blacklisting so long they can be discerned from the file and are not post justifications. In other words, what is permissible is elucidation of contemporaneous reasoning already traceable on the record and what is impermissible is the invention of fresh grounds to retrospectively justify an otherwise unreasoned order.

11. In the instant case, there is no reasons assigned in the impugned communication dated 04.05.2022. What is mentioned is as regards the Circular dated 06.10.2021 and further that the said communication had been issued with the approval of the Competent Authority.

12. At this stage, this Court finds it very pertinent to take note of a recent judgment of the Supreme Court in the case of State of Himachal Pradesh & Another vs. OASYS Cybernetics Private Limited, reported in 2025 SCC OnLine SC 2536, wherein the Supreme Court observed that what course of action should be taken in such situation. Paragraph No.31 of the said judgment being relevant is reproduced herein under:-

**31. The more appropriate course, in our considered view, would have been to adopt a two-step approach: first, to hold the cancellation vitiated for want of**

**reasoning; and second, to remit the matter to the Competent Authority to reconsider the question upon recording cogent reasons and affording due opportunity to the affected bidder. Such a calibrated remedy would have preserved both the evolving constitutional discipline of fair procedure and the administrative necessity of efficiency in public procurement.**

13. Taking into account the above proposition, this Court therefore disposes of the instant writ petition with the following observations and directions:-

(i) The impugned communication dated 04.05.2022 is set aside and quashed.

(ii) This Court remits the matter to the Competent Authority to reconsider the question as to whether the petitioner herein can be declared to be a non-performer.

(iii) Taking into account paragraph No.5 of the Circular dated 06.10.2021, this Court gives a liberty to the petitioner to request the Competent Authority for a personal hearing and this liberty is for a period of 15 days from the date of the present order. It is observed that if the petitioner exercises in consequence to the liberty herein provided, the Competent Authority shall provide the petitioner an opportunity of personal hearing.

(iv) The Competent Authority while deciding the said question as to whether the petitioner is to be declared as a non-performer or not, shall record cogent reasons and duly intimate the petitioner the outcome.

(v) There shall be no order as to costs.