

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2966 of 2025

Gupta Power Infrastructure Limited having its Corporate Officer at Cuttack Road, Bhubaneswar - 751006 (Odisha) through its Authorized Representative Pankaj Verma, aged about 42 years (Male), Son of Anant Ram Verma, resident of Jhanshi Road, Shanti Nagar, Orai, Jalaun, P.S. - Jalaun, District - Jalaun, Uttar Pradesh.

... .. Petitioner/s

Versus

1. The South Bihar Power Distribution Company Limited (SBPDCL) Patna through its Managing Director.
2. The Managing Director, South Bihar Power Distribution Company Limited (SBPDCL), Patna.
3. The Director (Project), South Bihar Power Distribution Company Limited (SBPDCL), Patna.
4. The Chief Engineer (Planning and Engineering) South Bihar Power Distribution Company Limited (SBPDCL), Patna.
5. The Chief Engineer (Project), South Bihar Power Distribution Company Limited (SBPDCL), Patna.
6. The Chief Engineer, Project-I (Rural), South Bihar Power Distribution Company Limited (SBPDCL), Patna.
7. The Electrical Superintending Engineer, Patna Circle South Bihar Power Distribution Company Limited (SBPDCL), Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anjani Kumar Jha, Advocate

For the Respondent/s : Mr. Anand Kr. Ojha, Sr. Advocate

Mr. Ashok Kr. Advocate

Mr. Abhishek Raj, Advocate



CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 13-05-2026

Heard learned counsel for the parties.

2. The present writ application has been filed seeking the following reliefs:

“a) To quash order as contained in Letter No. 2311 dated 31.12.2024 [Annexure P14] issued by the Respondent no. 6 whereby and whereunder, inter alia, the works allotted to the Petitioner [pursuant to NIT NO. 42/PR/SBPDCL/2019 and LOA Nos. 367 & 368 dated 19.09.2019] has been cancelled and the Petitioner has been blacklisted for a period of three years in a most arbitrary and illegal manner and in complete violation of principles of natural justice.

b) For a further direction upon the Respondents to not to give effect to impugned order as contained in Letter No. 2311 dated 31.12.2024 [Annexure P14] issued by Respondent No. 6 during the pendency of the writ application and allow the Petitioner to participate in departmental tenders.

c) To restrain the Respondent Authorities from invoking Bank Guarantees deposited by the Petitioner as performance security / guarantee with respect to LOA Nos. 367 & 368 dated 19.09.2019 [pursuant to NIT NO. 42/PR/SBPDCL/2019] during the



pendency of the instant writ application.

d) To restrain the Respondent Authorities from allotting the remaining work with respect to LOA Nos. 367 & 368 dated 19.09.2019 [pursuant to NIT NO. 42/PR/SBPDCL/2019] to any other agency / departmental authority during the pendency of the instant writ application.

e) For a direction upon the Respondent Authorities to make payment of all pending bills of the Petitioner with respect to LOA Nos. 367 & 368 dated 19.09.2019 [pursuant to NIT NO. 42/PR/SBPDCL/2019] forthwith and provide reasonable time to the Petitioner to execute remaining work.

f) To pass any other order/orders in shape of a consequential relief to which the Petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand.”

3. The brief facts of the case are that the petitioner, a registered company and contractor, participated in a tender floated by the Respondent-South Bihar Power Distribution Company Limited (SBPDCL) vide NIT No. 42/PR/SBPDCL/2019 for construction of five numbers of 2×5 MVA, 33/11 KV Power Sub-stations along with associated 33 KV and 11 KV lines on turnkey basis in Nalanda and Patna districts. Pursuant to the tender process, the work was awarded to the petitioner in two parts vide Letters of Award both dated 19.09.2019, namely: (i) supply of materials and equipment for construction of three numbers of 2×5 MVA, 33/11 KV Power



Sub-stations with associated lines; and (ii) erection, installation, testing and commissioning of the said works. Thereafter, Contract Agreement Nos. 07/2019 and 08/2019, both dated 16.10.2019, were executed between the parties. The scope of work related to three locations, namely Kosiyawan, Jaitipur and Kaladiyara, with a stipulated completion period linked to the date of award or handing over of land.

4. During execution of the work, the works at Kosiyawan and Jaitipur sites, comprising supply, civil, erection and commissioning of 2×5 MVA, 33/11 KV Power Sub-stations along with associated 33 KV and 11 KV lines, were completed and the substations were subsequently taken over and made operational. However, the work at Kaladiyara site, involving similar specifications, remained partly completed. Thereafter, notices dated 13.11.2024 and 21.11.2024 were issued to the petitioner seeking explanation with regard to non-completion of the work. Subsequently, by order dated 31.12.2024, the respondents terminated the contracts, invoked the performance bank guarantee and blacklisted the petitioner for a specified period, while also directing completion of the remaining work through other means.

5. Learned counsel for the petitioner submits that the



impugned order dated 31.12.2024 is arbitrary and violative of the principles of natural justice. It is submitted that although the petitioner had submitted a detailed reply to the show cause notices issued by the respondents, the same has not been properly considered while passing the impugned order.

6. It is further submitted that the respondent authorities lacked jurisdiction to blacklist the petitioner in absence of any enabling provision in the Notice Inviting Tender, Letters of Award or Agreements executed between the parties. It is contended that in absence of any specific clause authorising blacklisting, the impugned action of blacklisting is without authority of law and liable to be set aside.

7. Per contra, learned counsel for the respondents submits that adequate opportunity was afforded to the petitioner before passing the impugned order. It is submitted that notices/show cause notices were issued to the petitioner on 10.09.2024, 13.11.2024 and 21.11.2024 under Clause 39 of the NIT, wherein the proposed actions, including termination and blacklisting, were specifically indicated. Pursuant thereto, the petitioner submitted its reply, which was duly considered by the competent authority before passing the impugned order dated 31.12.2024. It is thus submitted that the principles of natural



justice were fully complied with and the impugned order is a reasoned and speaking order passed upon due consideration of the materials available on record.

8. It is further submitted that merely because the NIT or agreement does not expressly contain a clause relating to blacklisting, the same does not denude the respondent authorities of such power. Reliance in this regard has been placed upon the judgments of the Hon'ble Supreme Court in *Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Ors.* reported in (2014) 14 SCC 731 and *Patel Engineering Limited v. Union of India and Anr.* reported in (2012) 11 SCC 257 to contend that the State and its instrumentalities possess inherent power to blacklist a contractor in exercise of executive powers, even in absence of an express stipulation in the contract or NIT, provided the action is taken in a fair and reasonable manner following due process.

9. The following issues arise for consideration before this Court:

(i) *Whether, in absence of any express provision or specific clause in the Notice Inviting Tender (NIT), Letters of Award or Agreements executed between the parties authorising*



blacklisting, the respondent-State or its instrumentalities can nevertheless exercise the power to blacklist the petitioner; and

(ii) Whether the impugned order dated 31.12.2024 has been passed in compliance with the principles of natural justice, particularly with regard to issuance of adequate show cause notices and consideration of the petitioner's reply.

Re: Issue No. (i)

10. The principal contention advanced on behalf of the petitioner is that neither the Notice Inviting Tender (NIT), nor the Letters of Award, nor the Agreements executed between the parties contain any express stipulation empowering the respondent authorities to blacklist the petitioner and, therefore, the impugned action of blacklisting is wholly without jurisdiction.

11. The aforesaid issue is no longer *res integra*. Even in absence of an express provision in the Notice Inviting Tender (NIT) or the contract, the respondent, being a State instrumentality, retains the inherent power to blacklist a contractor in exercise of its executive authority. However, such power is not unfettered and must be exercised in a fair, reasonable and non-arbitrary manner, strictly in compliance with the principles of natural justice. The decision to blacklist must



be preceded by a clear and specific show cause notice, disclosure of grounds and a meaningful opportunity of hearing. Further, the order of blacklisting must be reasoned, proportionate and based on relevant material. Any deviation from these requirements would render the action vulnerable to judicial review.

12. It is well settled that even in absence of an express provision in the Notice Inviting Tender (NIT) or the contract, the State or its instrumentalities possess the inherent executive power to blacklist a contractor.

13. The Hon'ble Supreme Court in ***Kulja Industries Limited*** (*supra*) and ***Patel Engineering Limited*** (*supra*) has categorically held that the power to blacklist is an inherent power of the State and its instrumentalities flowing from Article 298 of the Constitution of India and such power is not dependent upon existence of an express clause in the contract or tender document.

14. In ***Kulja Industries Ltd.*** (*supra*), the Hon'ble Supreme Court observed as follows:

“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.”

15. Similarly, in ***Patel Engg.*** (*supra*), the Hon’ble Supreme Court recognised that the State possesses the right to decide with whom it would enter into contractual relations and such power includes the authority to blacklist a contractor even in absence of a specific contractual stipulation. The relevant part of the said order reads as follows:

“13. The concept of “blacklisting” is explained by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70] as under: (SCC p. 75, para 20)

“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.”

*14. The nature of the authority of the State to blacklist the persons was considered by this Court in the abovementioned case [“12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. 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 has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation.” (Erusian Equipment case) and took note of the constitutional provision (Article 298) [“**298. Power to carry on trade, etc.**—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose: Provided that—(a) the said executive power of the Union shall, insofar as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and (b) the said executive power of each State shall, insofar as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.”] , which authorises both the Union of India and the States to*



make contracts for any purpose and to carry on any trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though nobody has any right to compel the State to enter into a contract, everybody has a right to be treated equally when the State seeks to establish contractual relationships [“17. The Government is a Government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation.”(Erusian Equipment case [(1975) 1 SCC 70] , SCC p. 75, para 17)] . The effect of excluding a person from entering into a contractual relationship with the State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.

15. It follows from the above judgment in Erusian Equipment case [(1975) 1 SCC 70] that the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting. The State can decline to enter into a contractual relationship with a person or a class of



persons for a legitimate purpose. The authority of the State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors.”

16. In the present case, therefore, merely because the NIT or contractual documents do not expressly provide for blacklisting would not denude the respondent authorities of such power. The Respondent-SBPDCL, being an instrumentality of the State, was legally competent to initiate and pass an order of blacklisting, subject, however, to compliance with the principles of natural justice and fairness in decision making.

Re: Issue No. (ii)

17. The petitioner has challenged the impugned order primarily on the ground of violation of principles of natural justice. However, from the impugned order itself, it appears that the respondent authorities had, from time to time, afforded sufficient opportunity to the petitioner to improve the progress of the work relating to construction of three numbers of 2×5 MVA, 33/11 KV Power Sub-stations along with associated 33 KV and 11 KV lines at Kosiyawan, Jaitipur and Kaladiyara.



18. The impugned order reflects that the petitioner was repeatedly directed in various weekly and monthly review meetings to expedite the work progress in terms of the LOA and NIT. It further appears that prior to the impugned action, the respondent authorities had issued several communications and notices to the petitioner, including Letter No. 247 dated 06.03.2023 calling upon the petitioner to show cause as to why action of debarment/blacklisting be not taken. In response thereto, the petitioner itself undertook to complete the Kaladiyara PSS by 31.06.2023 and requested the authorities not to debar it.

19. The impugned order further records that despite expiry of the timeline assured by the petitioner, no significant progress in the work was observed. Thereafter, the petitioner was debarred from participating in future tenders till completion of the project or for two years vide Letter No. 263 dated 28.02.2024. Subsequently, notices of termination under Clause 39 of the NIT were issued vide Letter No. 607 dated 13.05.2024 granting 30 days' time, Letter No. 1447 dated 10.09.2024 granting 15 days' time, Letter No. 1920 dated 13.11.2024 granting 7 days' time, and finally Letter No. 1963 dated 21.11.2024 granting 48 hours' final notice to explain as to why



the contract be not terminated and further action including invocation of bank guarantee and blacklisting be not taken.

20. It further transpires from the impugned order that no reply was submitted by the petitioner pursuant to the earlier notices and only after issuance of the final notice dated 21.11.2024 did the petitioner submit its reply vide Letter No. 328 dated 23.11.2024. The said reply was examined by the respondent authorities and was found unsatisfactory. The impugned order thereafter proceeds to discuss the physical progress of the work and records that out of three allotted PSS works, only two had been completed even after lapse of more than five years from commencement of the project. The authority ultimately concluded that the delay in execution was attributable to consistent non-performance and negligence on the part of the petitioner despite repeated opportunities for improvement.

21. The Hon'ble Supreme Court in ***Kulja Industries Limited (supra)***, ***Patel Engineering Limited (supra)*** and ***Erusian Equipment & Chemicals Ltd. (supra)*** has consistently held that before passing an order of blacklisting, the affected party must be put to notice and afforded reasonable opportunity of hearing.



22. In the present case, this Court finds that repeated notices were issued to the petitioner over a considerable period of time, sufficient opportunity was granted to improve the work progress, and the proposed actions including blacklisting were specifically disclosed in the notices themselves. The petitioner was also afforded opportunity to submit its explanation, which was considered before passing the impugned order. Moreover, the impugned order records reasons and cannot be said to be either cryptic or non-speaking in nature.

23. In such circumstances, this Court is of the considered opinion that the requirement of compliance with principles of natural justice stood adequately satisfied in the facts of the present case.

24. In view of the discussions made hereinabove, this Court is of the view that the impugned order does not warrant interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

25. Accordingly, the writ application stands dismissed.

26. However, insofar as the grievance of the petitioner relating to alleged non-payment/release of dues for the work already executed is concerned, liberty is reserved to the petitioner to avail such remedy as may be available to it in



accordance with law before the appropriate forum/authority.

27. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

Shailendra Singh, J: I agree

(Shailendra Singh, J)

Anushka/-

AFR/NAFR	AFR
CAV DATE	06.05.2026
Uploading Date	13.05.2026
Transmission Date	

