

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20831 of 2025

M/s Mavin Switchgears and Control Pvt. Ltd. and M/s GCKC Projects and Works Pvt. Ltd. a joint venture of two Private Limited Companies, Regd. Office of lead partner at Plot No. 9, N-11, CIDCO, Aurangabad, Maharashtra 431003 through its authorized signatory, namely, Pinkesh Jain, Male, aged about 46 years, Son of Surendra Kumar, Resident of Daftariyon ki gali, Nagaur, P.O. and P.S. Nagaur, Dist. Nagaur, Rajasthan.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Energy, Government of Bihar, Patna.
2. The Bihar State Power Holding Company Limited, through its Chairman-cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna-800021.
3. Bihar State Power Transmission Company Limited (BSPTCL), through its Managing Director, Vidyut Bhawan, Bailey Road, Patna-800021.
4. The Director (Project), Bihar State Power Transmission Company Limited, Vidyut Bhawan, Bailey Road, Patna - 800021.
5. The Chief Engineer (Project-1), Bihar State Power Transmission Company Limited, Vidyut Bhawan, Bailey Road, Patna - 800021.
6. The Electrical Superintendent Engineer, Bihar State Power Transmission Company Limited, Vidyut Bhawan, Bailey Road, Patna-800021.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Lalit Kishore, Sr. Advocate with Mr. Ayush Kumar, Advocate Mr. Kanishka Shankar, Advocate Mr. Sanjeev Kumar, Advocate
For Respondent Nos2 to 6	:	Dr. Anand Kumar, Advocate
For the State	:	Mr. Manish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

3 24-02-2026 The present writ application has been filed seeking the following relief(s):-

“(i) For issuance of a writ in the nature of certiorari for quashing the Office Order No. 80 dated 15/10/2025 issued by Respondent No. 5, the Chief Engineer (Project-1), Bihar State



Power Transmission Company Limited, wherein and whereby the Notification of Award issued to the Petitioner in reference to Tender Notice (NIT) No. 02/PR/BSPTCL/2025 has been cancelled, the Earnest Money Deposit (E.M.D.) has been forfeited, and the Petitioner has been debarred for a period of 03 (three) years.

(ii) For issuance of a writ in the nature of mandamus directing the Respondent authorities to accept the Bank Guarantee for Performance Security from the Petitioner and allow the Petitioner to execute the work awarded under NIT No. 02/PR/BSPTCL/2025.

(iii) For issuance of a writ in the nature of mandamus for staying the operation, implementation, and execution of the Office Order No. 80 dated 15/10/2025 issued by Respondent No. 5, the Chief Engineer (Project-I), Bihar State Power Transmission Company Limited during pendency of the instant writ application.

(iv) For any other relief or reliefs for which the Petitioner may be deemed entitled to in the facts and circumstances of the case.”

2. The brief facts of the case are that the petitioner is a Joint Venture comprising M/s Mavin Switchgears and Control Pvt. Ltd. (Lead Partner) and M/s GCKC Projects and Works Pvt. Ltd. The Joint Venture participated in NIT No. 02/PR/BSPTCL/2025 dated 07.01.2025 issued by BSPTCL for construction of three 132 KV D/C Transmission Lines. Upon



being declared L-1, Notification of Award (NOA) Nos. 09 and 10 dated 01.07.2025 were issued in favour of the petitioner, which were duly accepted. In terms of the General Conditions of Contract, the petitioner was required to furnish Performance Security equivalent to 10% of the contract value and execute the agreement within 30 days. It is the case of the petitioner that due to internal compliance requirements and technical issues faced by its bank in issuing the Performance Bank Guarantee in the name of the Joint Venture entity, there was delay in submission of the same. The petitioner communicated its difficulty to the respondents vide letters dated 29.08.2025, 02.09.2025 and 10.09.2025, seeking short accommodation of time. Since the Performance Security was not furnished within the stipulated period, the employer issued Letter No. 1046 dated 18.09.2025 (Annexure-P/5) referring to GCC Clause 11.4.7 of Standard Bidding Document (SBD) directing submission of the Performance Security within seven days, failing which cancellation of award, forfeiture of Earnest Money, and subsequent debarment were proposed. Despite the petitioner seeking short extension vide letter dated 25.09.2025 and reiterating its readiness and willingness to execute the work, the respondent invoking Clause 11.4.7 of Section IV (General Conditions of Contract) of the Standard Bidding Document, passed the impugned Office Order No. 80 dated 15.10.2025



(Annexure–P/7), which reads as follows:-

“In light of the above, on account of non-submission of Performance Security Bank Guarantee by the L-1 bidder M/s Mavin Switchgears and Control Pvt. Ltd. in JV with M/s GCKC Projects and Works Pvt. Ltd. as per the terms & conditions as specified in the Clause 11.4.7 of Sec-IV: General Condition of Contract of the Standard Bidding Document, the14 following decisions have been taken by BSPTCL:

(a) Cancellation of notification of award issued to firm vide BSPTCL Notification of Award (NOA) No: 09 & 10 both dated 01.07.2025.

(b) Forfeiture of Earnest Money/bid guarantee submitted by the bidder M/s Mavin Switchgears and Control Pvt. Ltd. in JV with M/s GCKC Projects and Works Pvt. Ltd. against NIT No. 02/PR.BSPTCL/2025 and

(c) Debarment of firm M/s Mavin Switchgears and Control Pvt. Ltd., Aurangabad (Maharashtra) in JV with M/s GCKC Projects and Works Pvt. Ltd., Jaipur (Rajasthan) from all future tenders of BSPTCL and other subsidiary companies of BSPHCL for next 03 (Three) years from the date of issue of this Order.”

3. Thereafter, the employer cancelled the tender and issued a fresh tender for the same project, bearing NIT No.69/PR/BSPTCL/2026.

4. Learned counsel for the petitioner submits that the challenge is confined only to that portion of the impugned order



whereby the petitioner has been debarred from participating in future tenders for a period of three years.

5. Learned counsel for the petitioner further submits that Clause 11.4.7 of the General Conditions of Contract (GCC), does not provide for debarment and is not applicable in the petitioner's case. Clause 11.4.7 reads as follows:

“11.4.7. The successful bidder, after receipt of LOA, shall execute the agreement within 30 days of award of the contract after duly furnishing the 10% bank guarantee. If there is delay beyond the specified period in submission of contract performance BG, 15 days' notice will be given to the successful bidder and after which the Employer may entail cancellation of letter of award after giving another 15 days final notice and forfeiting of Earnest Money/bid guarantee as also detailed under Earnest Money Clause.”

6. Learned counsel for the petitioner submits that Clause 11.4.7 contemplates only cancellation of the Letter of Award and forfeiture of Earnest Money, but does not provide for debarment. Hence, the debarment of the petitioner is bad in the eye of law.

7. Per contra, learned counsel for the respondent submits that the order of debarment has been passed in pursuance of Clause 51 of the SBD, which reads as follows:

“51. DEBARMENT FROM FUTURE



TENDERS:-

51.1 In the event of non-completion of 80% of any mile stone during contract period for any reason other than those attributable to Employer and Force Majeure, then the Employer may debar the contractor to participate in the future tenders of BSPHCL and its subsidiary companies till whole project is completed by the contractor.”

8. Upon perusal of the impugned Office Order dated 15.10.2025, it is evident that the action has been taken “as per the terms & conditions as specified in Clause 11.4.7 of Sec-IV: General Condition of Contract of the Standard Bidding Document.” Thus, the foundation of the impugned order, on its own showing, is Clause 11.4.7 of the GCC.

9. Clause 11.4.7, as quoted hereinabove, provides that in case of delay in submission of the Performance Security Bank Guarantee, the employer may, after issuance of notice, cancel the Letter of Award and forfeit the Earnest Money. The consequences contemplated under the said clause are specific and limited. The provision does not stipulate debarment, much less debarment for a fixed tenure of three years.

10. However, in the supplementary counter affidavit filed before this Court, the respondent-authority has sought to justify the order of debarment by placing reliance upon Clause 51 of the Standard Bidding Document.



11. At this stage, it becomes necessary to observe that the validity of an administrative order must be tested on the reasons recorded in the order itself and cannot be supplemented by fresh reasons assigned in an affidavit. An order must stand or fall on the reasons contained therein. The respondents cannot be permitted to improve or substitute the basis of the impugned order through pleadings filed before this Court.

12. Even otherwise, upon bare perusal of Clause 51, it is evident that the same deals with debarment in respect of an ongoing work after execution of a formal agreement between the employer and the contractor. The provision is attracted in a situation where milestones are not completed during the contract period. In the present case, admittedly only a Notification Of Award was issued. Due to non-deposit of the Performance Security, no agreement could be executed between the parties. Thus, the stage of commencement of contractual performance never arose.

13. In such circumstances, Clause 51 of the SBD, which presupposes existence of a subsisting contract and failure to complete milestones during the contract period, cannot be invoked.

14. In view of the above, the position that emerges is twofold, firstly, Clause 11.4.7, which forms the basis of the impugned order, does not provide for debarment as a



consequence of non-submission of Performance Security i.e. Bank Guarantee. Secondly, Clause 51, now sought to be relied upon in the supplementary counter affidavit, neither finds mention in the impugned order nor is attracted on facts in the present case.

15. Debarment, which results in serious civil consequences by restricting future commercial participation, must necessarily be founded upon an express provision in the applicable terms and conditions of the tender, or under any statutory rule or regulation governing the tender. In the absence of such enabling provision, the action of debarment cannot be legally sustained.

16. Considering the facts referred to above, this Court is of the considered view that the order of debarment for a period of three years, issued by the employer, is unjustified and the same cannot be sustained in the eyes of law.

17. Accordingly, the impugned Office Order No. 80 dated 15.10.2025 is set aside only to the extent it debars the petitioner from participating in future tenders for a period of three years. The cancellation of Notification Of Award and forfeiture of Earnest Money are not interfered with.

18. The present writ application is, therefore, allowed in part to the extent indicated above.

19. Pending application(s), if any, shall also stands



disposed of.

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

*Gaurav Kumar,
Ibrar/ A.F.R.-*

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