

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1435 of 2025

Jai Hanuman Enterprises through its Proprietor Girish Kumar Singh, aged about 51 Years (Male), Son of Late Upendra Narayan Singh, Resident of Choudhary Tola, Patna P.S. Sultanganj, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary, Public Health Engineering Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
2. The Secretary, Public Health Engineering Department, Vishwesharaiya Bhawan, Bailey Road, Patna.
3. Chief Engineer (North Bihar), Public Health Department, Patna.
4. Regional Chief Engineer, Public Health Engineering Department, Purnea.
5. Superintending Engineer, Public Health Engineering Circle, Saharsa,
6. Executive Engineer, Public Health Department, Division, Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar, Advocate

For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

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

Date : 30-04-2026

Heard learned counsel for the parties.

2. The petitioner has sought the following reliefs in the present writ application:

“I. For issuance of direction/directions or order/orders, or writ/writs in the nature of mandamus for quashing of order of Executive Engineer, Public Health Division, Supaul (Respondent no. 6) who vide his official order no. 4 dated 7.1.2021 has debarred the petitioner from taking part in coming contract till further order as well as quashing of order dated 5.3.2024 passed by Principal Secretary, Public



Health Engineering Department, Bihar by which the appeal of the petitioner against order no. 4 memo no. 61 dated 7.1.2021 passed by Executive Engineer Division, Supaul has been rejected.

II. For any other relief/reliefs to which the petitioner is found legally entitled.”

3. The brief facts of the present case are that the petitioner's agency, registered under the Public Health Engineering Department (Registration No. 1646 of 2019), was awarded work under Agreement Nos. 169 MBD/2019-20 and 170 MBD/2019-20 dated 16.10.2019, which were to be completed within a period of six months. Owing to the outbreak of the COVID-19 pandemic, the petitioner sought extension of time for completion of the work, which was granted by the Chief Engineer vide Memo No. 67 dated 12.01.2021, extending time up to 31.01.2021. The petitioner completed the work within the extended period on 19.01.2021 and 25.01.2021, as evidenced by completion reports.

4. During the subsistence of the extended period, the petitioner's agency was debarred by the Executive Engineer, P.H.D., Supaul vide Order No. 4 dated 07.01.2021. Subsequently, upon coming to know about the debarment, the petitioner submitted an application dated 19.01.2024 seeking revocation of the same. Pursuant thereto, the Executive Engineer vide Letter No. 537 dated 22.01.2024, the



Superintending Engineer vide Letter No. 59 dated 23.01.2024, and the Chief Engineer, Purnea Region vide Letter No. 71 dated 31.01.2024, all recommended removal of the debarment noting completion of work. A satisfaction certificate was also issued on 09.02.2024.

5. However, the petitioner's appeal for removal of debarment was rejected by Respondent No. 2 vide order dated 05.03.2024, leading to the present writ petition.

6. Learned counsel for the petitioner submits that the impugned order of debarment dated 07.01.2021 has been passed in gross violation of the principles of natural justice, as no show cause notice or opportunity of hearing was ever afforded to the petitioner. Further, the said order was issued even before expiry of the extended time for completion of work, and despite this, the petitioner duly completed the work within the extended period on 19.01.2021 and 25.01.2021, which stands duly certified by the department.

7. It is further submitted that after completion of work, all competent authorities, including the Executive Engineer, Superintending Engineer, and Chief Engineer recommended removal of the debarment, and a satisfaction certificate dated 09.02.2024 was also issued. However,



Respondent No. 2, without considering these material facts and recommendations, arbitrarily rejected the petitioner's appeal vide order dated 05.03.2024, rendering the impugned action illegal, arbitrary, and unsustainable in law.

8. Per contra, learned counsel for the respondents submits that the order of debarment dated 07.01.2021 was passed in accordance with the terms of the contract due to delay and unsatisfactory performance on the part of the petitioner. Timely execution of public works being essential, the department was well within its power to take such action.

9. The following issues arise for consideration in the present writ application:

1. Whether the order of debarment dated 07.01.2021 is premature and unsustainable in law, having been passed during the subsistence of the extended period for completion of work (extended till 31.01.2021 vide Memo No. 67 dated 12.01.2021), and despite the petitioner having completed the work within such extended timeline.

2. Whether the impugned order of debarment is vitiated for non-compliance with the principles of natural justice, inasmuch as no show cause notice or opportunity of hearing was afforded to the petitioner prior to passing the



order, despite it entailing serious civil consequences.

Re. Issue No. (1)

10. Upon perusal of the materials available on record, it transpires that the time for completion of the work was extended by the competent authority vide Memo No. 67 dated 12.01.2021 up to 31.01.2021. The grant of such extension clearly indicates that the respondents had condoned the delay and permitted the petitioner to complete the work within the extended timeframe, thereby keeping the contractual relationship subsisting.

11. Despite the aforesaid extension, the order of debarment came to be issued on 07.01.2021, i.e., prior to the expiry of the extended period. The records further reflect that the petitioner completed the work on 19.01.2021 and 25.01.2021, well within the extended timeline, which was subsequently acknowledged by the department through issuance of completion reports and satisfaction certificate dated 09.02.2024. It also appears that, upon consideration of these aspects, the Executive Engineer (Letter No. 537 dated 22.01.2024), the Superintending Engineer (Letter No. 59 dated 23.01.2024), and the Chief Engineer, Purnea Region (Letter No. 71 dated 31.01.2024), recommended removal of



the debarment.

12. However, while rejecting the petitioner's appeal vide order dated 05.03.2024, the respondent authority has not adverted to the effect of extension of time, the fact of completion within the extended period, or the consistent recommendations made by the departmental authorities. The impugned order does not disclose any reasoning as to how debarment could still be justified once the delay stood condoned and the work stood completed to the satisfaction of the department.

13. In this context, the principle laid down in ***Tata Cellular v. Union of India reported in (1994) 6 SCC 651***, becomes relevant, wherein it has been held that administrative decisions are liable to be interfered with if they suffer from arbitrariness or non-application of mind. The relevant part of the said order reads as follows:

“94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.*
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*
- (4) The terms of the invitation to tender cannot be open*



to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

- (5) *The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*
- (6) *Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.*

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

14. Similarly, in ***State of Karnataka v. All India Manufacturers Organization reported in (2006) 4 SCC 683***, it has been reiterated that State action must conform to standards of reasonableness under Article 14. The relevant part of the said order reads as follows:

59. *.. It is trite law that when one of the contracting parties is “State” within the meaning of Article 12 of the Constitution, it does not cease to enjoy the character of “State” and, therefore, it is subjected to all the obligations that “State” has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is certainly subject to interference by the constitutional courts in this country...”*



15. In the absence of any consideration of these relevant factors, the continuation of debarment and rejection of the petitioner's claim appears to be unsupported by reasons and not in consonance with the settled principles governing administrative fairness.

16. Accordingly, this Court holds that the order of debarment dated 07.01.2021, having been passed prior to expiry of the extended period and continued despite completion of work within such period, is premature, arbitrary, and unsustainable in law.

Re. Issue No. (2)

17. At the outset, upon perusal of the impugned order dated 07.01.2021, it transpires that a reference has been made to a letter dated 02.01.2021, whereby the Executive Engineer is stated to have recommended calling for an explanation from the petitioner. However, the said order is completely silent as to whether any such show cause notice was in fact issued or served upon the petitioner, or whether any opportunity was afforded to him to submit his explanation.

18. It is further noticed that the petitioner, in paragraphs 9 and 10 of the writ application, has taken a



specific and categorical plea that prior to passing of the debarment order, no show cause notice was issued and no opportunity of hearing was granted to explain the alleged delay in execution of the work.

19. Though a counter affidavit has been filed on behalf of the respondents, the aforesaid assertion of the petitioner has not been specifically controverted. No material has been brought on record to demonstrate that any notice was issued or served. Significantly, the respondents have neither produced the alleged letter dated 02.01.2021, which finds mention in the impugned order, nor any show cause notice or service report substantiating communication of such notice to the petitioner.

20. In such circumstances, where a categorical assertion of denial of opportunity remains unrebutted and is unsupported by any cogent material from the side of the respondents, this Court has no reason to disbelieve the case set up by the petitioner that no opportunity of hearing was afforded prior to passing of the impugned order.

21. At this stage, it would be apposite to notice that under Rule 11(c) of the Bihar Contractor Registration Rules any action of blacklisting/debarment of a contractor is



required to be preceded by issuance of a show cause notice and consideration of the reply thereto. The requirement is not merely procedural but mandatory in nature, as such action entails serious civil and commercial consequences upon the contractor. The failure to adhere to the prescribed procedure renders the action contrary to the statutory framework itself.

22. Apart from the statutory requirement, it is a settled principle of administrative law that any order having civil consequences must conform to the principles of natural justice. The rule of *audi alteram partem* mandates that no person shall be condemned unheard. An order of debarment/blacklisting, which has the effect of excluding a person from participation in public contracts, undoubtedly visits the person with grave civil consequences affecting both reputation and business prospects.

23. The Hon'ble Supreme Court in *Erusian Equipment & Chemicals Ltd. v. State of West Bengal reported in (1975) 1 SCC 70*, has held that blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contracts and, therefore, cannot be resorted to without affording an opportunity of hearing. The relevant part of the said order reads as follows:

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.”

24. Further, in ***Gorkha Security Services v. Government (NCT of Delhi) reported in (2014) 9 SCC 105***, it has been held that a valid show cause notice must clearly indicate not only the allegations but also the proposed action of blacklisting so as to enable the affected party to effectively respond. The relevant part of the said order reads as follows:

“Necessity of serving show-cause notice as a requisite of the principles of natural justice

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..

20. Thus, there is no dispute about the requirement of serving show-cause notice. We may also hasten to add that once the show-cause notice is given and opportunity to reply to the show-cause notice is afforded, it is not even necessary to give an oral hearing...”



25. In ***Kulja Industries Ltd. v. Chief General Manager, BSNL reported in (2014) 14 SCC 731***, the Hon'ble Supreme Court has further emphasized that the power to blacklist must be exercised fairly, reasonably, and in compliance with the principles of natural justice. The relevant part of the said order reads 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.”

26. In the present case, the absence of any show cause notice or opportunity of hearing amounts to violation not only of the governing rules but also of the



fundamental principles of fairness embedded in Article 14 of the Constitution. The subsequent rejection of the petitioner's appeal vide order dated 05.03.2024 does not cure this inherent defect, as the initial action itself stood vitiated at its inception.

27. Accordingly, this Court holds that the impugned order of debarment, having been passed in breach of the mandatory requirement of prior notice under the applicable rules and in violation of the principles of natural justice, is unsustainable in law and liable to be set aside.

28. In view of the findings recorded hereinabove on Issue No. 1 and Issue No. 2, this Court is of the considered opinion that the impugned order of debarment dated 07.01.2021 is unsustainable in law, having been passed prematurely during the subsistence of the extended period for completion of work and in violation of the principles of natural justice.

29. Further, the order dated 05.03.2024 passed by the appellate authority, rejecting the petitioner's claim, also cannot be sustained as the same fails to consider the relevant materials on record, including completion of work within the extended period, recommendations of the competent authorities, and the procedural illegality vitiating the original



order.

30. Accordingly, both the impugned order of debarment dated 07.01.2021 and the appellate order dated 05.03.2024 are hereby set aside.

31. The present writ application stands allowed.

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

(Sudhir Singh, J)

(Shailendra Singh, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.05.2026
Transmission Date	NA

