

**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 10709/2025

M/s Dhanlaxmi Electricals Pvt. Ltd., Having Registered Office At 905, 9Th Floor, Concorde Building, Plot No. 66, Sector 11 Cbd Belapur, Navi Mumbai- 400614, Through Its Chief Operating Officer Mr. Gousaheb A. Nadaf S/o Mr. Abdul Rashid, Aged About 44 Years, R/o Flat No. 207, Crecent Cornor, Sector-20, Cbd Belapur, Navi Mumbai- 400614.

----Petitioner

Versus

1. Ajmer Vidyut Vitran Nigam Limited, Through Managing Director, Having Office At Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer- 305004.
2. Superintending Engineer (Project), Ajmer Vidyut Vitran Nigam Limited, Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer- 305004.
3. Axis Bank Limited, Having Its Branch Office At Ellora, Commercial Unit 1-4, Plot No. 27, Sector 11, Cbd Belapur, Navi Mumbai- 400614, Through Its Authorized Officer.
4. Bank Of India, Having Its Branch Office At Belapur, Navi Mumbai- 400614, Through Its Authorized Officer.
5. Bank Of Baroda, Having Its Branch Office At Bijasan Branch, Bijasan, Post- Bhawti, Distt. Barwani (M.p.)- 451551, Through Its Authorized Officer.

----Respondents

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For Petitioner(s) : Mr. Kamlakar Sharma, Sr.Adv. With  
Mr. Yash Sharma

For Respondent(s) : Mr. Vigyan Shah, AAG with  
Mrs. Anuradha Upadhyay  
Mr. Priyam Agarwal  
Ms. Muskan Harlalika  
Ms. Aditi Sharma  
Ms. Shruti Sharma for  
Mr. Ram Naresh Vijay – for

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**HON'BLE MR. JUSTICE SAMEER JAIN**

**Judgment**

**Reserved on        ::    06/10/2025**

**Pronounced on    ::    31/10/2025**

**REPORTABLE**

**PREFATORY NOTE:**

1.            Before adverting to the rival submissions and entering upon the arena of arguments advanced by the learned counsel for the respective parties, it is considered apposite to delineate the factual background and the circumstances which have culminated in the present adjudication. Accordingly, the factual matrix, as set forth in the writ petition, is recapitulated hereinbelow for the sake of clarity and proper appreciation of the controversy involved:

1.1            That the petitioner is a Private Limited Company, duly registered under the provisions of the Companies Act.

1.2            That respondent no.1 invited online bids for developing distribution infrastructure at twelve circles of Ajmer DISCOMs in Rajasthan under Revamped Reforms-based and Results-linked, Distribution Sector Scheme (hereinafter referred to as "RDSS") on 21.10.2022; and the present petition pertains to tender for Chittorgrah Circle bearing RFB No. AVVNL/RDSS/CHR/TN-100 for estimated cost of Rs. 20536 Crore 60 Lacs.

1.3            That the NIT provides total time of frame of twenty seven months including the survey and approval period for completion of project. As per the tender terms, the survey work

was to be completed within a period of three months from the date of award, while the supply, erection, testing and commissioning were to be completed within twenty four months, with 25% of the work to be achieved in each six-month block.

1.4 The petitioner, having been declared as the successful bidder, was issued a Letter of Intent (LoI) on 22.03.2023. The Letter of Award followed on 04.04.2023, and thereafter, on 27.06.2023, a formal contract for both supply and erection was executed between the parties. The petitioner also furnished the requisite Performance Bank Guarantees in accordance with the contractual terms.

**SUBMISSIONS BY LEARNED SENIOR COUNSEL APPEARING ON BEHALF OF THE PETITIONER:**

2. The controversy giving rise to the present proceedings emerged when, vide the impugned order dated 19.06.2025 (Annexure-25), the respondents terminated the contract, invoking Clause 42.2.2 of General Conditions of Contract (hereinafter referred to as "GCC"). The termination was based on allegations of unsatisfactory performance, delay in execution, and failure to achieve scheduled progress; and it being alleged that only 7.29% of the work had been completed against the contractual target of 100%, despite repeated notices and opportunities granted to the petitioner.

3. Learned Senior counsel argued that vide the present petition the impugned order of termination is assailed primarily on the following grounds:

3.1 That by the impugned termination order, the petitioner has also been blacklisted, resulting in its "civil death" by way of debarment from participation in future tenders. It was urged that such blacklisting is contrary to Clause 42 of the contract and violative of the principles of natural justice, particularly in the absence of a specific 14 days' notice prior to blacklisting. The impugned termination order merely stated that despite the lapse of more than 26 months, the physical progress of work stood merely at 7.29%, which was termed as "exceptionally poor". The respondents also referred to earlier notices dated 09.04.2025 and 19.05.2025, wherein it had been stated that failure to accelerate the pace of work would result in termination of contract. Thence, respondents terminated the contract, withal debarred the petitioner from participation in tenders for a period of three years; and immediate forfeiture of the Bank Guarantee submitted by the petitioner against the performance security, as well as the additional Bank Guarantee in respect of the unbalanced bid.

3.2 That the provisions of Section 46 of the Rajasthan Transparency in Public Procurement Act, 2012 (hereinafter referred to as "RTPP Act") have been erroneously invoked by the respondents.

4. It was urged that the petitioner's execution plan dated 19.05.2025 had been duly accepted by the respondents, and hence, the termination was premature and unwarranted during the subsistence of the contractual period, which was to continue till 18.06.2026. It was further submitted that no prior notice of

debarment was issued to the petitioner before passing the impugned order, which per-se violates the principles of natural justice and *audi alteram partem*. Moreover, the respondents having extended the contractual period based on the petitioner's assurance to achieve the desired progress, created a legitimate expectation of continuation, which has been arbitrarily frustrated by the premature termination, and constituting a breach of trust.

5. It was further urged that the impugned action is arbitrary, hostile, and discriminatory. Although similar tenders were floated by various DISCOMs covering over twelve circles, where progress of works was below the desired benchmark, the petitioner alone has been subjected to termination, blacklisting, and debarment, in disregard of the reassessed and revised contractual schedule. Further, it was contended that without first resorting to the imposition of liquidated damages, as contemplated under the contractual terms, the respondents have precipitously resorted to termination and blacklisting. Such action, is disproportionate, excessive, and a wrongful exercise of power.

6. Learned counsel further drew attention to the admitted correspondence between the parties dated 22.05.2025 and 27.05.2025, wherein the issue of right-of-way hindrances was acknowledged by both sides. It was pointed out that the respondents themselves, vide letter dated 19.05.2025 (Annexure-R/4), had granted extension till July, 2025, recognising such impediments and prescribing revised targets. On these premises, it was submitted that invocation of the Bank Guarantee, issuance of a fresh tender, and blacklisting of the petitioner amount to

arbitrary and severe administrative actions, warranting interference by this Court.

7. In support of the submissions made insofar, learned senior counsel placed reliance upon a catena of judgments passed by Hon'ble Supreme Court, *inter alia*, as **Gorkha Security Services v. Government (NCT of Delhi) & Ors.: (2014) 9 SCC 105, The Blue Dreamz Advertising Pvt. Ltd. and anr. v. Kolkata Municipal Corporation: 2024 INSC 589, Welspun Specialty Solutions Limited v. Oil and Natural Gas Corporation Ltd.: (2022) 2 SCC 382; Techno prints vs. Chattisgrah Textbook Corporation and Anr.: 225 OnLine SC 343 and M.P. Power Management Company Limited v. Sky Power Southeast Solar India Pvt. Ltd.: (2023) 2 SCC 703.**

Relying upon the aforesaid, it was submitted that a writ petition is maintainable where the impugned action pertains to blacklisting or debarment, as such actions have civil consequences and must satisfy the requirements of fairness and due process.

8. It was further argued that in the absence of a specific clause authorising blacklisting, such a penalty cannot be imposed merely on the basis of general terms and conditions of contract. Learned senior counsel emphasized that the impugned action violates the principles of natural justice as no personal hearing was granted and no 14-day specific notice was issued, as mandated under Clause 42.2 of the contract. It was also urged that once remedial measures had been initiated vide letter dated 19.05.2025 and the petitioner was acting in accordance therewith till July, 2025, the impugned action was premature, arbitrary, mala

fide, and disproportionate, particularly when the respondents had themselves admitted existence of right-of-way hindrances. Nevertheless, the respondents have failed to fulfill their own obligation under clause 10.2 of the GCC, hence, they cannot legally or equitably penalize the petitioner for delay. On the strength of the above submissions, it was prayed that the impugned order of termination dated 19.06.2025 be quashed and set aside, the contract be restored, and consequential reliefs and benefits be granted to the petitioner.

**SUBMISSIONS BY LEARNED COUNSEL APPEARING ON BEHALF OF THE RESPONDENTS:**

9. *Per contra*, learned Additional Advocate General, Mr. Vigyan Shah, appearing on behalf of the respondent–State and Ajmer Vidyut Vitran Nigam Limited (AVVNL), raised preliminary objections regarding the maintainability of the present writ petition. It was contended that the petition is not maintainable in view of the settled principles governing exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India, for the reason that there are no specific allegations of mala fides or bias against any of the respondents. In the absence of such pleadings, the extraordinary writ jurisdiction cannot be invoked merely to assail a contractual or administrative action, as the writ remedy is not intended to serve as a substitute for a civil or commercial proceeding.

10. Learned counsel further contended that the petitioner has not approached this Court with clean hands, moreover, the writ jurisdiction, being discretionary and equitable in nature,

requires utmost candour and disclosure. Therefore, suppression and concealment of material facts disentitle the petitioner from seeking any relief in such summary proceedings.

11. It was pointed out that notice for blacklisting the petitioner (Annexure-R/1) had, in fact, been issued, and the same contained specific reference to facts, annexures, and supporting material. However, these material particulars have been deliberately suppressed in the writ petition, thereby misleading the Court. It was submitted that various communications, including default notices, reminders, and follow-ups, were issued to the petitioner over an extended period of nearly twenty six months, highlighting persistent deficiencies and lack of progress. Despite such opportunities, there was no perceptible improvement. Consequently, the contract was rightly terminated under Clause 42.2 of the GCC. It was argued that in view of the petitioner's concealment of material facts and failure to perform its obligations, the writ petition deserves dismissal *in limine*.

12. Learned Additional Advocate General further contended that the present matter involves several disputed questions of fact, which cannot be conveniently adjudicated in the exercise of writ jurisdiction. The disputed factual issues include, as to whether the survey work was carried out in accordance with the contract; whether there existed any right-of-way hindrances; whether default lay on the part of the petitioner or the respondents; whether the petitioner failed to achieve the stipulated benchmark of work within the prescribed period; whether liquidated damages

were imposed or not; and whether the delay, if any, was attributable to the petitioner or to the respondents.

13. On the basis of the above, it was submitted that the only appropriate remedy available to the petitioner, if aggrieved, is to invoke the jurisdiction of the competent Civil or Commercial Court for adjudication of these disputed questions, rather than invoking the writ jurisdiction of this Court.

14. It was further contended that the contract itself contained an express clause permitting blacklisting, and in any case, such power also emanates from the statutory authority vested in the respondents under Section 46(4) of the RTPP Act. Nevertheless, the contention of learned senior counsel qua "civil death" is a misnomer, as the petitioner is debarred to apply for future bids and tenders only for a limited period of three years. Learned AAG placed reliance on the settled principle that statutory and inherent powers of blacklisting coexist, as affirmed by the Hon'ble Supreme Court in **Patel Engineering Ltd. v. Union of India, (2012) 11 SCC 257** and **Medipol Pharmaceutical India Pvt. Ltd. v. Post Graduate Institute of Medical Education and Research: (2021) 11 SCC 339**. To reinforce his contentions, learned counsel for the respondents relied upon a catena of judgments, *inter alia*, **Tata Cellular v. Union of India, (1994) 6 SCC 651**; for limited scope of writ jurisdiction in Contractual disputes, **State of Kerela and Ors. V. M.K. Jose: (2015) 9 SCC 433, Noble Resources Ltd. Vs. State of Orissa: (2006) 10 SCC 236**, to substantiate that extension of time, does not absolve the contractor's default, **Silppi Construction**

**Contractors v. Union of India and ors.: (2020) 16 SCC 489;**  
**Subodh Kumar Singh Rathour v. Chief Executive Officer:**  
**2024 SCC OnLine SC 1682, Uflex Ltd. v. Government of**  
**Tamil Nadu and Ors.: (2022) 1 SCC 165 and Jagdish Mandal**  
**v. State of Orissa: (2007) 14 SCC 517.**

15. It was submitted that the petitioner had been served with multiple notices regarding invocation of liquidated damages, poor performance, delay in execution, and intended termination and blacklisting under various clauses of the contract, including Clauses 26 and 42. The respondents, had afforded adequate opportunities to the petitioner to rectify deficiencies and improve progress before resorting to termination. It was contended that termination is always considered a measure of last resort, particularly in public utility and infrastructure projects. However, when repeated reminders and notices fail to yield improvement and public interest stands jeopardized, the authority is left with no alternative but to invoke termination and issue fresh tenders, in order to ensure timely completion of essential public works.

16. It was emphasized that the petitioner's performance was abysmally poor. The first notice was issued when the work progress was merely 1.84%, and despite repeated indulgence, at the time of termination, the petitioner had achieved only 7.29% progress against the contractual obligation of 100%, though time was expressly made the essence of the contract.

17. Learned AAG also pointed out that the petitioner has concealed the material fact that its electrical licence had been revoked vide order dated 08.01.2024 and was restored only after

a lapse of four months. Such suspension of licence had materially impacted the petitioner's capacity to perform contractual obligations. It was further submitted that the petitioner himself, in several of his communications, had admitted to delays attributable to personal reasons, including the illness of his spouse and his own health concerns, as well as financial constraints. These admissions completely belie the petitioner's present plea that delays were due to respondents' inaction.

18. It was contended that, as per the contractual scheme, the survey work was required to be carried out in the presence of a third-party agency and that extension of timelines could not be presumed or deemed, but had to be specifically approved by the competent authority. Hence, the petitioner's plea of implied extension or arbitrariness in termination is misconceived and self-serving. Learned AAG further argued that the plea of "right of way" hindrances was an afterthought, raised for the first time in the petitioner's reply to the termination notice in the year 2025 and no such grievance had been raised contemporaneously during the progress of work.

19. In this regard, reference was made to several internal communications demonstrating that major sites were, in fact, free from any right-of-way impediments. Therefore, it can be deduced that the cause of delay, lay squarely with the petitioner's inefficiency and lack of preparedness, resulting in loss of public trust. Thus the impugned action was not a case of hostile discrimination but a legitimate administrative decision founded on poor and unsatisfactory performance; and accordingly, the

petitioner's termination and blacklisting were both justified and proportionate to the default.

20. It was lastly urged that the judgments cited by the petitioner are clearly distinguishable on facts and have no application to the present case, since in the instant matter, the contract contained a specific clause authorising blacklisting; due process and multiple notices were followed; and there is no element of arbitrariness, mala fides, or violation of the principles of natural justice.

21. On these premises, learned counsel for the respondents prayed that the writ petition be dismissed as misconceived, not maintainable, and devoid of merit.

**DISCUSSION AND FINDINGS:**

22. Having heard the rival arguments advanced by the learned counsel for all the parties, undertaking a scrupulous examination of the record pertaining to the case, and juxtaposing the contentions noted herein above, this Court is of a view that prior to a substantive adjudication of the matter on its merits, it is appropriate to delineate and formally note down the issues before the Court, thereby providing a clear foundation upon which the subsequent legal analysis shall be constructed:

22.1 Whether the writ petition challenging the termination and blacklisting order dated 19.06.2025 is maintainable under Article 226 of the Constitution of India, in view of the disputed questions of fact involved and existence of an alternate efficacious remedy?

22.2 Whether the petitioner has approached this Court with clean hands, or there has been concealment of material facts and suppression of relevant communications, thereby inviting the principle of *suppressio veri, suggestio falsi* (suppression of truth is equivalent to the suggestion of falsehood)?

22.3 Whether the action of the respondents in terminating the contract and blacklisting the petitioner suffers from arbitrariness, mala fides, violation of principles of natural justice, or absence of authority under the contractual and statutory framework?

22.4 Whether the petitioner has made out a case warranting interference by this Court in the administrative decision of the respondents pertaining to a commercial contract, executed pursuant to a public tender process and whether the petitioner is entitled to any equitable or discretionary relief under Article 226 of the Constitution of India in light of his own contractual defaults and deficient performance?

23. At the outset, this Court deems it appropriate to reiterate the well-settled principle that the scope of judicial review in contractual and tender matters is narrow and confined to cases of arbitrariness, mala fides, or actions taken in violation of statutory provisions. The Court does not sit as an appellate authority over administrative or commercial decisions, nor does it substitute its own opinion for that of the competent authority. Reliance in this regard may be placed upon a catena of judgments passed by the Apex Court over the years, asmuchas in, **Tata Cellular (supra), M.K. Jose (supra), Noble Resources Ltd.**

**(supra)**. For the sake of clarity, relevant extract from **M.K. Jose** **(supra)** is reproduced herein below:

**"13. A writ court should ordinarily not entertain a writ petition, if there is a breach of contract involving disputed questions of fact. The present case clearly indicates that the factual disputes are involved.**

14. In *State of Bihar v. Jain Plastics and Chemicals Ltd.* [(2002) 1 SCC 216], a two-Judge Bench reiterating the exercise of power under Article 226 of the Constitution in respect of enforcement of contractual obligations has stated: (SCC p. 217, para 3)

**"3. ... It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudicating such disputes. Under the law, it was open to the respondent to approach the court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226."**

In the said case, it has been further observed: (SCC p. 218, para 7)

**"7. ... It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ**

***petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs."***

15. In *National Highways Authority of India v. Ganga Enterprises* [(2003) 7 SCC 410], the respondent therein had filed a writ petition before the High Court for refund of the amount. The High Court posed two questions, namely, (a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act; and (b) whether the writ petition is maintainable in a claim arising out of breach of contract. While dealing with the said issue, this Court opined that: (SCC p. 415, para 6)

"6. ... It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in *Kerala SEB v. Kurien E. Kalathil* [(2000) 6 SCC 293], *State of U.P. v. Bridge & Roof Co. (India) Ltd.* [(1996) 6 SCC 22] and *Bareilly Development Authority v. Ajai Pal Singh* [(1989) 2 SCC 116]. This is settled law. The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr Dave, however, relied upon the cases of *Verigamto Naveen v. State of A.P.* [(2001) 8 SCC 344] and *Harminder Singh Arora v. Union of India* [(1986) 3 SCC 247]. These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed."

**20. We have referred to the aforesaid authorities to highlight under what circumstances in respect of contractual claim or challenge to violation of contract can be entertained by a writ court. It depends upon facts of each case.** The issue that had arisen in *ABL International* [(2004) 3 SCC 553] was that an instrumentality of a State was placing a different construction on the clauses of the contract of insurance and the insured was interpreting the contract differently. The Court thought it apt merely because something is disputed by the insurer, it should not enter into the realm of disputed questions of fact. In fact, there was no disputed question of fact, but it required interpretation of the terms of the contract of insurance. Similarly, if the materials that come on record from which it is clearly evincible, the writ court may exercise the power of judicial review but, a pregnant one, in the case at hand, the High Court has appointed a Commission to collect the evidence, accepted the same without calling for objections from the respondent and quashed the order of termination of contract."

*(Emphasis laid)*

Withal, it is made explicitly clear by the ratio encapsulated in **Tata Cellular (supra)** that the duty of the Courts' is limited, when the disputes are purely contractual in nature. At this juncture, it appropriate to apply the *Wednesbury* principle the legal doctrine in administrative law, that allows for judicial review of decisions made by public authorities, only when a decision can be overturned if it is "so unreasonable that no sensible authority could ever have come to it". However, in the matter at hand no cogent reasons of such judicial warranted are articulated. The relevant extract from the above discussed judicial precedent is reproduced herein below:

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual

powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. **Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government.** But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

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**77. The duty of the court is to confine itself to the question of legality. Its concern should be:**

- 1. Whether a decision-making authority exceeded its powers?**
- 2. Committed an error of law,**
- 3. committed a breach of the rules of natural justice,**
- 4. reached a decision which no reasonable tribunal would have reached or,**
- 5. abused its powers.**

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

**(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.**

**(ii) Irrationality, namely, Wednesbury unreasonableness.**

**(iii) Procedural impropriety.**

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696] ,

Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

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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."

(Emphasis laid)

24. In the present case, it is an admitted position that the petitioner was awarded the contract for execution of RDSS works for the Chittorgarh Circle, valued at ₹20536 Crore 60 Lacs, with a

stipulated completion period of twenty seven months. A formal Letter of Intent was issued in favor of the petitioners on 22.03.2023 and on 25.03.2023 the LoI acceptance was communicated by the petitioner. The contractual timeline was clearly defined, and time was the essence of the contract. However, even after an extended period of nearly two years, the petitioner had managed to achieve a meagre progress of 7.29% of the total work.

25. The contract envisaged completion within twenty seven months from the date of award, inclusive of all ancillary activities such as survey and execution. Despite repeated default notices and opportunities for compliance, the petitioner persistently failed to adhere to prescribed milestones. Various communications dated 17.05.2023, 04.07.2023, 07.08.2023, 06.10.2023, 03.11.2023, 20.11.2023, 30.11.2023, 01.08.2024, 02.09.2024, 24.10.2024, 27.11.2024, 28.11.2024, 19.12.2024, 20.12.2024, 25.02.2025, 09.04.2025, and 19.05.2025 clearly demonstrate persistent default and lack of due diligence on part of the petitioner, and that the petitioner had persistently failed to complete even the preliminary survey and erection activities within the stipulated period.

26. In spite of repeated opportunities, the petitioner could execute only about 7% (approx.) of the work against the targeted progress within 27 months. The plea regarding hindrances in right of way was neither raised contemporaneously nor substantiated by cogent evidence; rather, it was an afterthought to justify prolonged inaction. The record further indicates that multiple show

cause notices were issued, affording ample opportunity of hearing, including notices dated 30.11.2023, 11.01.2024 and 12.02.2024. The petitioner was also accorded a personal hearing before the Contract Level Purchase Committee (CLPC). Howsoever, despite such opportunities, no satisfactory explanation or remedial action was forthcoming.

27. This Court finds no merit in the plea of violation of natural justice. The material placed on record establishes that notices for default, performance, and even for blacklisting (Annexure-R/1) were duly issued, containing detailed reasons and inviting explanations. The petitioner submitted replies thereto, which were duly considered. The requirement of fair opportunity was, therefore, satisfied in both letter and spirit. Hence, termination of the contract and consequential blacklisting were effectuated vide speaking order dated 19.06.2025, in accordance with Clause 47 read with Section 46(4) of the RTPP Act.

28. It is further observed that, upon due examination of the various terms and conditions contained in the Request for Bid (RFB), which forms part of the record and has been relied upon by the petitioner, explicitly states that the provisions of RTPP Act, 2012 and RTPP Rules, 2013, as amended from time to time, are expressly applicable to the contract executed between the parties. Nevertheless, in terms of Section 46(4) of RTPP Act, the procuring entity is expressly empowered to debar a bidder from participation in future procurement processes where the performance security has been forfeited. For the sake of convenience clause 46(4) is reproduced herein below:

"Where the entire bid security or the entire performance security or any substitute thereof, as the case may be, of a bidder has been forfeited by a procuring entity in respect of any procurement process or procurement contract, **the bidder may be debarred from participating in any procurement process undertaken by the procuring entity for a period not exceeding three years.**"

29. The petitioner had signed and submitted an undertaking at the time of participating in the tender (under RDSS TN-100) (Annexure-R2) confirming its unconditional acceptance of all the provisions of the RFB document, including the right of the employer to take actions for non-performance or default. Thence, the petitioner is barred by the doctrine of estoppel.

30. The petitioner's conduct reflects material suppression of relevant facts. The notice dated 25.02.2025 and subsequent communications were deliberately withheld from the pleadings. Such concealment amounts to a direct abuse of process of law and falls within the maxim *suppressio veri, suggestio falsi*. It is a settled proposition that one who seeks equity must do equity and come with clean hands i.e. he who comes into equity must come with clean hands.

31. The plea of discrimination vis-à-vis other contractors is untenable, as the record demonstrates that out of twelve similarly situated contractors, the petitioner was the poorest performer, having executed a mere 7% (approx.) of the contractual work despite substantial mobilisation advances and opportunities for compliance. The plea of "right of way" hindrances is found to be an afterthought. Moreover, the contemporaneous record does not indicate that such impediments were raised or substantiated at

the relevant time. On the contrary, communications on record indicate that most sites were available and accessible for execution; the petitioner's own correspondence admits personal as it was stated that due to certain medical conditions (cancer treatment) and financial constraints as well as suspension of its electrical license for a period of four months, which clearly impacted its capacity to perform; self-admitted lapses disentitle the petitioner from alleging arbitrariness against the respondents.

32. Nevertheless, it is evident that the petitioner failed to complete the survey within the stipulated period and has attempted to justify such failure on untenable grounds. A conjoint reading of the provisions qua time, commencement and completion, the employer's responsibility, and the mandatory provision for submission of defined progress reports, clearly reveals that it was incumbent upon the contractor to prepare and submit periodic progress reports to establish compliance and seek extension of time, if required. Under Clause 40, such an extension could only be granted upon a specific and reasoned application by the contractor and by a speaking order of the competent authority under Clause 40.2. In the present case, no such application for extension of time was ever submitted nor any order of extension obtained in accordance with the contractual stipulations. Consequently, the plea of the petitioner alleging an implied extension or arbitrary action on the part of the respondents is wholly misconceived, contrary to the express provisions of the contract, and therefore, devoid of merit.

33. Consecutively, the contention made by the petitioner that blacklisting was carried out in violation of *audi alteram partem* is misconceived. The respondent authority scrupulously followed the principles of natural justice by providing multiple opportunities of hearing and by issuing a reasoned, self-speaking order. The inherent power of the State to blacklist a contractor stands settled by the Hon'ble Supreme Court in **Medipol Pharmaceutical India Pvt. Ltd. (supra)**, the relevant extract from which is reproduced herein below:

*"14. When it comes to the penalty of blacklisting, the classic formulation of principles in regard to blacklisting have been laid down in Erusian Equipment & Chemicals Ltd. v. State of W.B. This Court put it thus:*

*"12. Under Article 298 of the Constitution of 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. When the State acts to the prejudice of a person it has to be supported by legality.*

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*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.*

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*19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein.*

**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."**

15. This judgment has been followed in several later judgments. Thus, in *Patel Engg. Ltd. v. Union of India* [*Patel Engg. Ltd. v. Union of India*, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445], this Court after referring to judgment in *Erusian Equipment & Chemicals Ltd. v. State of W.B.*, (1975) 1 SCC 70], then held : (*Patel Engg. Case [Patel Engg. Ltd. v. Union of India*, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445] , SCC p. 263, para 15)

**"15. It follows from the above judgment in *Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (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 Kulja Industries Ltd. v. BSNL [Kulja Industries Ltd. v. BSNL, (2014) 14 SCC 731], this Court referred to the leading judgment of Erusian Equipment [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] and subsequent decisions of this Court, following the ratio of this decision, as follows : (Kulja Industries case [Kulja Industries Ltd. v. BSNL, (2014) 14 SCC 731], SCC pp. 740-41, paras 18-19)*

*“18. The legal position on the subject is settled by a long line of decisions rendered by this Court starting with Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed : (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. 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.’*

*Subsequent decisions of this Court in Southern Painters v. Fertilizers & Chemicals Travancore Ltd. [Southern Painters v. Fertilizers & Chemicals Travancore Ltd., 1994 Supp (2) SCC 699] ; Patel Engg. Ltd. v. Union of India [Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257 ; (2013) 1 SCC (Civ) 445]; B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. [B.S.N. Joshi & Sons Ltd. v. Nair Coal*

*Services Ltd., (2006) 11 SCC 548]; Joseph Vilangandan v. PWD [Joseph Vilangandan v. PWD, (1978) 3 SCC 36] among others have followed the ratio of that decision and applied the principle of audi alteram partem to the process that may eventually culminate in the blacklisting of a contractor.*

*19. Even the second facet of the scrutiny which the blacklisting order must suffer is no longer res integra. The decisions of this Court in Radhakrishna Agarwal v. State of Bihar [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457]; E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3: 1974 SCC (L&S) 165]; Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248]; Ajay Hasia v. Khalid Mujib Sehravardi [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722: 1981 SCC (L&S) 258]; Ramana Dayaram Shetty v. International Airport Authority of India [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] and Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay [Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293] have ruled against arbitrariness and discrimination in every matter that is subject to judicial review before a writ court exercising powers under Article 226 or Article 32 of the Constitution.”*

*(Emphasis laid)*

34. The petitioner's reliance upon **Welspun Specialty Solutions Limited (Supra), Techno paints (Supra)** and other judgments is misplaced, as those decisions were rendered in distinct factual contexts, particularly concerning the COVID-19 pandemic and not in relation to continuous contractual default in public infrastructure projects. The petitioner's reliance on **Gorkha Security Services (supra)**, is misplaced. In the said case, there was no prior notice of blacklisting or opportunity to represent,

whereas, in the present matter, such procedural safeguards were duly followed.

**CONCLUSION AND DIRECTIONS:**

35. In the totality of circumstances, this Court finds no arbitrariness or mala fides in the actions of the respondent authorities. The decision to terminate the contract and debar the petitioner is a reasoned administrative action taken in accordance with the contractual stipulations and statutory provisions. The writ petition thus raises disputed questions of fact, which are beyond the scope of judicial review under Article 226 of the Constitution of India. This Court also finds substance in the preliminary objection of the respondents regarding maintainability, as the present dispute is essentially contractual in nature and laden with disputed questions of fact, relating to survey completion, site access, and attribution of delay, which can only be effectively adjudicated upon evidence before a competent Civil or Commercial Court. The writ court, exercising limited judicial review, cannot enter into such factual controversies.

36. Withal, the action of the respondents cannot be said to be arbitrary, disproportionate, or violative of any statutory or constitutional right of the petitioner. On the contrary, the decision to terminate and blacklist appears to be based on objective material, prolonged non-performance, and considerations of larger public interest, to ensure timely completion of an essential public utility project. The conduct of the petitioner, in concealing material facts, particularly the revocation of its electricity licence and repeated extensions granted by the respondents amounts to lack

of bona fides. The writ jurisdiction being equitable in nature cannot be invoked by a party that has suppressed facts or failed to perform its own contractual obligations.

37. In view of the foregoing discussion and for the reasons recorded hereinabove, this Court finds no merit in the writ petition. The impugned order dated 19.06.2025 terminating the contract and blacklisting the petitioner is based on due consideration, supported by reasons, and in conformity with law. The petition, being devoid of substance, is dismissed *in limine*.

38. Having regard to the repeated indulgence shown to the petitioner by the respondents; the suppression of material facts by the petitioner; the interim protection thus obtained resulting in disruption of ongoing public utility work, causing financial loss to the State exchequer and unwarranted delay in the execution of a public welfare project; and as such conduct warrants imposition of exemplary cost in order to curb the rising tendency of misleading the Court and misusing its extraordinary jurisdiction and the undue wastage of judicial time in a matter that is essentially contractual, this Court deems it appropriate to impose exemplary costs upon the petitioner.

39. Consequently, the writ petition is **dismissed** with costs quantified at ₹10,00,000 (Rupees Ten Lakhs only), payable by the petitioner to the respondent–Ajmer Vidyut Vitran Nigam Limited (AVVNL) within a period of sixty days from the date of pronouncement of this judgment. In case of default, the said amount shall be recoverable as arrears of land revenue or the said

amount shall be adjusted and recovered as part of the petitioner's contractual liability in accordance with law.

40. The plea of the petitioner seeking declaration that the invocation of the Bank Guarantee bearing no. 08610100000695 for Rs. 4,10,73,200/- is also rejected. Pending applications, if any, stand disposed of accordingly.

(SAMEER JAIN),J

Preeti Asopa