



2025:CGHC:43803-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 1135 of 2025**

Recorders And Medicare Systems Pvt. Limited, Through Its Authorised Representative Having Its Office At Plot No. 11, HSIDC, IT Park, Sector 22, Panchkula, Haryana.

... Petitioner(s)**Versus**

1 - State Of Chhattisgarh Through Secretary, Department Of Health And Family Welfare And Medical Education, Mantralaya, Mahanadi Bhavan, Atal Nagar, New Raipur, Chhattisgarh.

2 - Chhattisgarh Medical Services Corporation Limited Through Its Managing Director, Housing Board, Commercial Complex, 4th Floor, South East Corner, Sector 27, New Raipur, Chhattisgarh.

3 - Directorate Of Health Services Through Directorate, Swastha Bhawan, Sector 19, Naya Raipur, District- Raipur, Chhattisgarh.

... Respondent(s)

For Petitioner(s)	:	Mr. Kishore Bhaduri, Senior Advocate assisted by Mr. Harsh Dave, Advocate.
For Respondent No. 1 and 3/State	:	Mr. Sangharsh Pandey, Government Advocate.
For Respondent No. 2	:	Mr. Trivikram Nayak, Advocate.

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Bibhu Datta Guru, Judge

Judgment on Board**Per Ramesh Sinha, Chief Justice****28/08/2025**

- 1 Heard Mr. Kishore Bhaduri, learned counsel for the petitioner assisted by Mr. Harsh Dave, learned counsel. Also heard Mr. Sangharsh Pandey, learned Government Advocate appearing for the State/respondents No. 1 and 3 as well as Mr. Trivikram Nayak, learned counsel for the respondent No. 2.
- 2 By this petition under Article 226 of the Constitution of India, the petitioner seeks for the following relief(s):

“a. This Hon'ble Court may issue an appropriate writ and be pleased to quash/set aside the impugned order dated 05.02.2025 bearing number 14209/ CGMSCL/ EQP/ 2025 issued by the Respondent No. 2 against the Petitioner and all consequences arising thereof and related thereto; and

b. This Hon'ble Court may be pleased to hold and declare that the ground raised by the Respondent No. 2-Corporation to effect the impugned order of blacklisting is illegal, arbitrary and non- est; and

c. This Hon'ble Court may be pleased to direct the Respondents, particularly Respondent No. 2-Corporation to remove the Petitioner's name from the blacklist and allow the Petitioner to participate in future tenders;

d. This Hon'ble Court may be pleased to direct the Respondent No. 2-Corporation to adequately compensate the Petitioner for the loss of goodwill and business causing owing to its transgression; and

e. This Hon'ble Court may also, be pleased to pass any other order in favor of the Petitioner as it may deems fit and proper under the facts and circumstances of the case with cost.”

- 3** The facts, as projected by the petitioner, are that the petitioner, being fully eligible, had participated in Tender Ref.No.182/EQP/CGMSC/2022-23, dated 26.08.2022, floated by the respondent No. 2 for the supply of medical equipment. Petitioner had submitted its bid in accordance with the terms and conditions of the tender and had participated in the process with utmost honesty and transparency. The petitioner was unsuccessful in the tender process and was never awarded the tender to supply of medical equipment. Despite the same, on 30.01.2025, respondent No. 2-Corporation issued a show-cause- notice to the petitioner alleging therein that the petitioner had engaged in fraudulent and corrupt practices, collusive bidding, and concealment of material facts during the tender process to which a detailed reply was submitted by the petitioner on 01.02.2025 refuting the unsubstantiated allegations *inter-alia* pointing out that there was no connection between the petitioner-Company and the successful tenderer, i.e. Mokshit Corporation. Despite the petitioner's detailed reply, the respondent No. 2 vide its order dated 05.02.2025, has blacklisted the petitioner for a period of three (3) years on the sole ground that an FIR has been registered by the ACB/EOW, Chhattisgarh, under Sections 7(c), 12(1)(a), 13(2) of the Prevention of Corruption Act and Section 409, 120B of the Indian Penal Code wherein it has been alleged that the petitioner, along with other entities, had engaged in collusive bidding and corrupt practices during the tender process.
- 4** Mr. Bhaduri, learned Senior Advocate appearing for the petitioner-Company submits that no charges have been proved till date against the petitioner in any Court of law and as such, merely on the basis of the fact that an FIR has been registered by the ACB/EOW, the petitioner cannot be blacklisted. There is no material on record to hold that the petitioner

was involved in collusive bidding or any fraudulent or corrupt practice. He places reliance on the judgment of the Apex Court in ***M/s Erusian Equipment & Chemicals Ltd. v. State of West Bengal***, (1975) 1 SCC 70, wherein it has been emphasized that blacklisting must be based on objective satisfaction and should not be arbitrary. He further places reliance on the decision of the Apex Court in the celebrated cases of ***New Horizons Ltd v. UoI***, {(1995) 1 SCC 478} and ***R.D. Shetty v. International Airport Authority of India*** {(1979) 3 SCC 489}, wherein it has been held that in matters of contracts, State cannot act like private persons as such contracts have public elements, hence, must desist from acting arbitrarily and capriciously.

- 5 Mr. Bhaduri further submits that the fundamental right to trade and business is part of the basic structure of the Constitution and is an extension of fundamental right to life, hence, the conduct of respondent/ Corporation strikes at the very root of constitutional fabric of our country. The e-Tender (Annexure P/2) duly specifies the conditions under which a bidder can be blacklisted. As per Clause 9-b of Section II of the tender document, blacklisting can only be imposed if the bidder submits false, forged, or fabricated documents or conceals material facts. However, in the present case, no such evidence has been provided by respondent No. 2-Corporation so as to justify the passing of the impugned order of blacklisting. In fact, the respondent No. 2-Corporation has violated the terms and conditions stipulated in Clause 9 b of Section II of the tender document. Hence, this petition deserves to be allowed. In support of his contentions, Mr. Bhaduri relies on the decision of the Supreme Court in ***Baccarose Perfumes & Beauty Products Pvt. Ltd. v. Central Bureau of Investigation & Another*** {(2025) 1 SCC 384}, ***Madhyamam Broadcasting Ltd. v. Union of India & Others*** {(2023)

13 SCC 401}, ***Techno Prints v. Chhattisgarh Textbook Corporation & Another*** {2025 SCC OnLine SC 343}, decision of the Allahabad High Court in ***M/s. Asian Fertilizers Ltd. v. State of U.P. & 3 Others*** {2015 SCC OnLine All 7829}.

- 6 On the other hand, Mr. Sangharsh Pandey, learned Government Advocate appearing for the State/respondent No. 1 and 3 submits that the main contesting party in this petition is the respondent No. 2/ Corporation which had passed the impugned order and blacklisted the petitioner from future participation.
- 7 Mr. Trivikram Nayak, learned counsel appearing for the respondent No.2/ Corporation submits that the issue of entertaining a writ petition is the sole discretion of the Hon'ble High Court, however, it is submitted that the petitioner has failed to exercise its efficacious alternate remedy available under the law *i.e.* Clause 20 of Section III of the NIT specifically provides for resolution of disputes through arbitration as per the Arbitration and Conciliation Act, 1996. Furthermore, it also provides for an appeal before the Secretary Health, Government of Chhattisgarh against any order of the tender accepting authority. Hence, the petition deserves to be dismissed at the very threshold and the petitioner should be relegated to exercise efficacious alternate remedy as per law before approaching this Hon'ble High Court under writ jurisdiction.
- 8 Apart from the above, it is submitted by Mr. Nayak that the order passed by the respondent authority on 05.02.2025 is proper, just and reasonable and is in conformity with the settled jurisprudence on blacklisting. Moreover, it is also submitted that the principles of natural justice were duly followed in the said matter. Section II Clause 9 (b) deals with blacklisting and as per sub-clause 2 of Clause 9(b)- Any bidder, who

submits false, forged or fabricated documents or conceals facts with intent to win over the Bid or procure purchase order then they shall be liable for blacklisting for a period of 03 years. The bidder will also be liable for other legal action depending upon the facts and circumstances of the case. Clause 9 also provides the procedure of blacklisting as per which the only requirement is that before blacklisting, a show cause notice shall be issued to the supplier calling for explanation and in case of non-reply within time frame specified in such notice, or in case of unsatisfactory reply, the Managing Director, CGMSCL may take appropriate action on merits of the case and impose penalty, including blacklisting. In clause 20, Section III of the tender alternate remedy of arbitration under Arbitration and Conciliation Act, 1996 as well as remedy for appeal has been provided for any dispute/issue regarding the said matter. Clause 25 of Section III of the NIT/Tender deals with fraud and corruption and clause 25(b)(i)-(iii) defines corrupt, fraudulent and collusive practice.

- 9 It is also submitted by Mr. Nayak that any firm participating in the tender at hand had to mandatorily furnish Annexure-8, which is the Pre-Contract Integrity Pact and as per Clause 4 of the pact, the bidder vis-à-vis the petitioner has specifically undertaken that it commits itself to take all measures necessary to prevent corrupt practices, unfair means an illegal activity during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following including such activities like the condition prescribed in Clause 4 itself. The bidder shall not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. Furthermore,

Clause 7 calls for sanctions for violations and as per Clause 7(vii) of the Annexure-8, the bidder vis-à-vis the petitioner is liable for being debarred for a minimum period of 3 years for violation, etc. With respect to tender Ref No: 182/EQP/CGMSC/2022-23, the ACB/EOW (Anti-Corruption Bureau/ Economic Offences Wing) has registered an FIR dated 22.01.2025 bearing FIR No. 05/2025 at PS, EOW, Raipur, not only against the petitioner firm but Mokshit Corporation and other officials as well for offence(s) under Section 409, 120-B of IPC and offence(s) under Sections 13(1)(a), 7(c) of the Prevention of Corruption Act and specific allegations are made out against the petitioner who had participated in the tender with a motive for allotment of the same in favour of Mokshit Corporation and the parties had colluded therein and the petitioner has concealed material and crucial facts. A detailed and thorough investigation is ongoing in the matter at hand by the ACB/EOW and the ACB/EOW has seized all the original records of the instant tender matter, its proceedings and also the soft copy of the tender and its related documents vide letter dated 27.01.2025 from which it is clear that the said records have been handed over to the ACB/EOW.

- 10** The respondent/Corporation, in furtherance of the registration of case and after perusal of the matter had issued a show cause notice dated 30.01.2025 against the petitioner to show cause as to why the petitioner should not be blacklisted under Clause 9(b)(2) of Section II of the Tender Terms and Conditions/NIT for participating, engaging and acting in fraudulent, corrupt manner by adopting such malpractices and the participation of the firm has been in the nature of collusive bidding, etc. in order to cause unlawful gain to the L-1 Mokshit Corporation and hence, it has concealed material facts. Further, it appears that the petitioner has prima facie indulged in nefarious criminal activities and acted in a

collusive manner with an intent to defraud the Department. As per clause 9 of Section II of NIT/Tender documents, the procedure for blacklisting in the instant matter has been clearly specified as per which before blacklisting, a show cause notice shall be issued to the supplier calling for explanation and in case of non-reply within time-frame specified in such notice, or in case of unsatisfactory reply, the Managing Director, CGMSCL may take appropriate action on merits of the case and impose penalty, including blacklisting. In the matter at hand the aforementioned prescribed procedure has been duly complied with and the Reply of Petitioner has been taken into consideration and it was found unsatisfactory. Furthermore, considering the reply of any party does not ipso facto imply that its contents are accepted verbatim, and in the matter at hand the petitioner has merely stated that the allegations are completely false and as such no criminal activity has been undertaken by the petitioner and there was no nexus as such, it furthermore states that there is no prima facie case against the Company and they reiterate their innocence. Clause 9(b)(2) empowers CGMSC to blacklist any bidder for a period of 3 years who submits false, forged or fabricated documents or conceals facts with intent to win over the bid or procure purchase order. Furthermore, Clause 9(b)(2) provides and empowers the Department as per which the bidder will also be liable for other legal action depending upon the facts and circumstances of the case.

- 11** Mr. Nayak further submits that it is also settled law that even if assuming a blacklisting has been carried out, the cause of which is not mentioned in the bid document, however, that would not be determinative of the authority of any Department to blacklist any bidder. Moreover, even assuming any action has been taken outside the purview of bid document, the bid document neither confer powers which are not

conferred by law on the Department, nor can it subtract the powers, which are conferred by law either by express provision or by necessary implication. Hence, even on the failure to mention blacklisting to be one of the probable actions that could be taken against the delinquent bidder does not, by itself, disable the CGMSC from blacklisting such a bidder who involves in fraudulent, corrupt and collusive practices to defraud the department and to cause unlawful gain to Mokshit Corporation. In the matter at hand, the petitioner has been clearly issued show cause notice for blacklisting on 30.01.2025 to which reply had been filed by petitioner on 01.02.2025 and after careful perusal of the same the final order of blacklisting dated 05.02.2025 has been carried out in consonance with the tender terms and conditions. The petitioner had participated in the tender for 9 category of products and had also submitted its bid and the bids of all the participating and eligible firms was opened and wherein the petitioner along with two other firms- M/s Mokshit Corporation and Shree Sharda Industries were found eligible in the tender. Furthermore, on evaluation of technical and financial bid, the said 3 firms including petitioner were found eligible. All the 3 firms had participated for same 9 category of products out of 11 as mentioned in Annexure-23. The NIT/Tender Document in Section II, Clause 6- regarding Tender Process under the heading of Evaluation Process clearly specified that price bids/financial evaluation of only those items would be opened and evaluated which qualify in the Cover A and Cover B (technical bid) and the bid of bidder is also found satisfactory and responsive during technical evaluation, etc. As a corollary of being eligible in the technical rounds as aforementioned, the price bid of petitioner had been opened along with the 2 other eligible participating firms namely M/s Mokshit Corporation and Shree Sharda Industries. From the data available on the

e-procurement portal of Government, the details regarding the instant tender can be seen from the downloaded page Further, through the access of the e-procurement portal which is in public domain the financial bid regarding the products in which the petitioner and other eligible firms had participated is available as per which, very craftly and cunningly the petitioner has kept itself L-3 for all category of products with a margin of 20-25% consistently and carefully with complex criminal design so that Mokshit Corporation is awarded the tender by declaring Mokshit as L-1. It is an undisputed fact that the tender proceedings had finally culminated in favour of M/s Mokshit Corporation who was declared L-1 bidder and ultimately rate contract dated 13.08.2023 had been executed in favour of Mokshit Corporation. However, it was the petitioner who along with the other eligible Company had played pivotal role in declaration of L-1 in favour of Mokshit Corporation as on detailed scrutiny, it is clear that the petitioner along with Mokshit Corporation and Shree Sharda Industries has colluded and adopted fraudulent practices through their with concerted efforts, malafide motive and nexus so that the tender is allotted to Mokshit Corporation. The said facts clearly show collusion between the petitioner and its nexus with the other two participating firms including Mokshit Corporation (L-1) in the said manner to defraud CGMSC so that unlawful gain is caused to Mokshit Corporation in light of their criminal nexus and the petitioner has concealed material and crucial facts. Henceforth, the order of blacklisting is right, just, appropriate, reasonable and proper.

- 12 Reliance is placed on the decisions of the Supreme Court in ***State of Odisha & Others v. Panda Infraproject Ltd. {(2022) 4 SCC 393}*** and ***Patel Engineering Ltd. v. Union of India & Another {(2012) 11 SCC 257}***.

- 13 We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
- 14 The grievance of the petitioner is that though he has participated in the tender proceedings floated by the respondent-CGMSC, he has been blacklisted for a period of three years from future participation vide order dated 05.02.2025 on the allegation that the petitioner was involved in fraudulent and corrupt practices alongwith Mokshit Corporation who has been awarded the contract.
- 15 It is not in dispute that an FIR bearing Crime No. 5/2025 has been registered against the petitioner firm by the ACB/EOW under various Sections of the Prevention of Corruption Act, 1988 and the IPC, however, the investigation in that matter has not yet been concluded. The contention of the respondent/CGMSC is that the petitioner was involved in collusive bidding as the rates offered by the petitioner was mere 20-25% higher than the Mokshit Corporation so as to make the Mokshit Corporation as the L-1. Mere registration of an offence against the petitioner Company would not automatically mean that the petitioner Company is a convict for the offence which it has been alleged. The investigation is yet to be completed and final report has not yet been filed by the ACB/EOW before the competent Court of law. If there was a difference of margin of 20-25% in the rates offered by the petitioner and the rates offered by the Mokshit Corporation, that cannot be a conclusive proof that there was a collusive bidding.
- 16 The Supreme Court, in ***Baccarose Perfumes & Beauty Products Pvt. Ltd.*** (supra) has observed as under:

“22. A perusal of the scheme of CrPC, 1973 allows us to infer that mere registration of FIR cannot be interpreted to

mean that it constitutes the initiation of such proceedings. A registration of FIR necessitates an investigation by a competent officer as per the detailed process outlined in Section 155 to 176 CrPC. It is only after a final report (or as referred in the common parlance, a challan or a charge-sheet) is submitted as per the compliance of Section 173(2) CrPC, cognizance for the offence(s) concerned is taken. However, undoubtedly, the court is not bound by the said report.”

- 17 In ***M/s. Erusian Equipment & chemicals Ltd.*** (supra), it has been observed by the Apex Court as under:

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government 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. ”

- 18 In ***B.S.N. Joshi & Sons Ltd. vs Nair Coal Services Ltd. & Ors.*** {(2006) 11 SCC 548}, the Apex Court held as under:

“41. ... When a contractor is blacklisted by a department he is debarred from obtaining a contract, but in terms of the notice inviting tender when a tenderer is declared to be a defaulter, he may not get any contract at all. It may have to wind up its business. The same would, thus, have a disastrous effect on him. Whether a person defaults in making payment or not would depend upon the context in which the allegations are made as also the relevant statute operating in the field. When a demand is made, if the person concerned raises a bona fide dispute in regard to the claim, so long as the dispute is not resolved, he may not be declared to be defaulter.”

- 19 The order of blacklisting appears to be disproportionate and contrary to the ratio laid down by the Apex Court in ***Kulja Industries Ltd. vs Chief General Manager Western Telecom Project BSNL & Ors.*** {(2014) 14 SCC 731}, wherein the Apex Court has observed as under:

“25. Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant

suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the “debarment” is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.”

- 20 Though the petitioner has been issued show cause notice before issuance of the impugned order of blacklisting, however, since the ACB/EOW has not yet concluded the investigation, it cannot be said that there was collusive bidding by the petitioner-Company in favour of Mokshit Corporation and as such, the drastic measure of blacklisting the petitioner merely for participating in the tender process, seems to be quite disproportionate. In the event the ACB/EOW files the final report and if any offence is made out and if the competent Court of law takes cognizance of the same, the respondent/CGMSCL would have opportunity to take appropriate action, but the present order of blacklisting appears to be premature and as such, the same deserves to be quashed.
- 21 An order of blacklisting should not be issued in ordinary cases of breach of contract because it has severe civil consequences, amounting to “civil death” and "commercial exile" for the affected party. This drastic penalty, which bars a party from future contracts and damages their reputation, must be reserved for egregious cases, not for minor violations or bona fide disputes, and must always adhere to principles of proportionality and natural justice.
- 22 Accordingly, the order dated 05.02.2025 (Annexure P/1) bearing No. 14209/CGMSCL/EQP/2025 issued by the respondent No. 2-CGMSCL against the petitioner and the consequences arising therefrom, are

quashed.

23 Resultantly, this petition stands **allowed**.

24 It is made clear that the criminal case registered against the petitioner Company and its authorised representative shall be brought to its logical end in accordance with law without being influenced with any observation made in this order.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

HEAD NOTE

An order of blacklisting should not be issued in ordinary cases of breach of contract because it has severe civil consequences, amounting to “civil death” and "commercial exile" for the affected party which bars a party from future contracts and damages their reputation. Blacklisting must be resorted to for egregious cases and not for minor violations or bona fide disputes, and must always adhere to principles of proportionality and natural justice.