

Court No. - 2**Case :-** WRIT - C No. - 6285 of 2025**Petitioner :-** M/S Cropscare Infotech Pvt. Ltd. Lucknow
Thru. Its Director Ankit Dixit**Respondent :-** State Of U.P. Thru. Addl. Chief/Prin. Secy.
Deptt. Of Basic Education Lko. And 3 Others**Counsel for Petitioner :-** Amit Jaiswal, Adesh
Srivastava, Shobhit Mohan Shukla**Counsel for Respondent :-** C.S.C., Abhinav Singh

along with

Case :- WRIT - C No. - 6589 of 2025**Petitioner :-** M/S Aero Infomedia Pvt. Ltd. Thru. Director
Arpit Gupta**Respondent :-** State Of U.P. Thru. Addl. Chief/ Prin. Secy.
Deptt. Of Basic Education Lko. And 3 Others**Counsel for Petitioner :-** Amit Jaiswal**Counsel for Respondent :-** C.S.C., Abhinav Singh**Hon'ble Rajan Roy, J.****Hon'ble Manish Kumar, J.**

As both these writ petitions involve similar facts and issues, therefore, with the consent of learned counsel for the parties, they are being decided together by a common judgment.

By means of these writ petitions, the petitioners have challenged the decision of their blacklisting.

After hearing, we had passed an order on 07.07.2025, in the following terms:-

"Heard.

Legal position is well settled that an order of black listing cannot be passed without show cause notice, and certainly not for an indefinite period. The law in this regard has been explained by Hon'ble the Supreme Court in the case of Eursian Equipment and Chemicals Vs. State of W.B.; (1975) 1 SCC 70; Josheph Vilangadan Vs. The Executive Engineer (PWD) Earnakulam & Ors.; (1978) 3 SCC 36; Raghunath Thakur Vs. State of Bihar; (1989) 1 SCC 229; Gorkha Security Services Vs. State (N.C.T. of Delhi); (2014) 9 SCC 105; Kulja Industries Ltd. Vs. Chief General Manager, Western Telecom Project, BSNL; (2014) 14 SCC 731; M/S Daffodills Pharmaceuticals Ltd. Vs. State of U.P.; (2020) 18 SCC 550; Vetindia Pharmaceuticals Ltd. Vs. State of U.P. & Anr.; (2021) 1 SCC 804; U.M.C. Technologies Pvt. Ltd. Vs FCI & Anr.; 2021 (2) SCC 551;.

VERDICTUM.IN

In spite of the said law declared by Hon'ble the Supreme Court which all authorities are bound to comply in view of the constitutional mandate contained in Article 144 of the Constitution of India, everyday we are flooded with such petitions challenging orders of debarment or black listing on the aforesaid ground, therefore, it is high time we make the officers accountable for such lapse, as ultimately, the petitioner has been made to run to this Court which would have necessarily entail financial and expenses apart from other hardships, and this also wastes the time of the Court.

Let the District Magistrate, Unnao and District Basic Education Officer, Unnao file their own affidavits within 10 days justifying the impugned action, and also, as to why, if it is found that the action is in the teeth of the law declared by Hon'ble the Supreme Court which they are bound to follow, heavy cost of at least Rs. 50,000/- each be not imposed upon them.

Till the next date of listing, all the three impugned orders shall remain stayed.

List/Put up this case on 21.07.2025 as fresh."

Apparently, the order of blacklisting is in the teeth of the judgments referred in our order quoted hereinabove and is not sustainable for the reason firstly, no show cause notice was given to the petitioners proposing an action of blacklisting, secondly, an order of blacklisting cannot be passed for an indefinite period.

As observed earlier everyday we are flooded with such petitions where blacklisting orders are being passed either without issuing any show cause notice or for an indefinite period. After all, how many times the Court will pronounce their judgment as to the procedure and the law on the subject of blacklisting. The Officers should be aware of it especially when they have a battery of lawyers to assist them right from the High Court to the District level. In such matters, if they are not aware about the law, they should take legal opinion before proceeding against any firm as it may have serious consequences for a firm/company which is blacklisted. None of this exercise was done. That is why we were compelled to pass the aforesaid order.

Sri Gaurang Rathi, the District Magistrate, Unnao has filed his affidavit in response to our order, which *inter alia* states that the petitioners'-Firm was declared technically disqualified on the ground that the "EMD submitted by the firm has not been verified by the respective bank". An information in this regard was communicated to the petitioner as per the mechanism on the GeM portal, on registered mobile number and e-mail address, while granting 48 hours time to furnish reason or explaining assailing the said disqualification. The District Magistrate in

VERDICTUM.IN

his affidavit based on the aforesaid says that "thus, it is wrong to say that the petitioner firm was not given any notice". He has then referred to condition no. 29 of the additional terms of the Bid process, which reads as under:-

"जेम पोर्टल पर अपलोड अभिलेखों का सत्यापन कराया जा सकता है। आमंत्रित निविदा में किसी भी समय आवश्यक होने पर/मांगे जाने पर समस्त संलग्न प्रमाण पत्र/अभिलेखों की मूल प्रति प्रस्तुत करना अनिवार्य होगा। यदि किसी भी स्तर पर यह पाया जाता है कि अभिलेख जाली अथवा कूटरचित कर के निविदा में प्रतिभाग किया गया है तो तत्काल सम्बंधित फर्म की अर्नेस्ट मनी जब्त करते हुए , निविदा/अनुबंध निरस्त करते हुए विधिक कार्यवाही करते हुए फर्म को काली सूची में डाला जायेगा।"

In para 13, it has been stated that it has also been provided in the terms and conditions of the tender that if any seller has any objection/grievance against these additional clauses or otherwise on any aspect of this bid, they can raise their representation against the same by using the representation window provided in the bid details field in seller dashboard after logging in as a seller within four days of bid publication on GeM. However, the firm in question did not submit any explanation in furtherance of the said notice, therefore, the impugned action was taken against the firms in question.

He has then referred to a Circular dated 02.11.2021 issued by Procurement Policy Division, Department of Expenditure, Ministry of Finance, Government of India, which provides that "Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule of GFRs 2017." In this regard, learned counsel for the petitioners says that the GeM has not debarred the petitioners.

Certain other provisions are mentioned. In para 17, it is stated that when no response was received within 48 hours time as referred in para 11 of the short counter affidavit of the District Magistrate, the seven firms were directed to be blacklisted and the B.S.A. was informed about the decision of blacklisting vide letter dated 21.03.2025. Even thereafter, no response was sent by the firms in question and in such circumstances, the impugned order dated 23.06.2025 was passed.

The District Magistrate has not even referred to the judgments which we have referred in our order. This is the response of the District Magistrate on a question of law explained by Hon'ble Supreme Court which is binding on all authorities under Article 144 of the Constitution of India. Article 144 reads as under:-

"144. Civil and judicial authorities to act in aid of the Supreme Court

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court."

It appears that he has not even bothered to go through the said decisions, referred in our order dated 07.07.2025, quoted hereinabove, otherwise he would not have offered the explanation which he has tried to put forth before us. This is nothing but an intransigent attempt to justify an unjustifiable act in the teeth of law declared by Hon'ble the Supreme Court. The provisions cited by him could not be applied without putting the petitioners to notice proposing the action of blacklisting giving them reasonable opportunity to respond and the basis/material on which such action was proposed, with opportunity to it to respond and consider such response. It is settled law that apart from other aspects proportionality is also an issue to be considered in such matters.

Most important, in para 20 he has stated as under:-

"That thus the deponent has not willfully violated any order passed by this Hon'ble Court or Hon'ble Supreme Court. However, in case there is any violation the same is only due to inadvertence, it is neither deliberate nor intentional. Therefore, any action taken by the deponent may not be construed as violation of the orders passed by the Hon'ble Court."

He does not even accept that he has erred in view of the law declared by Hon'ble Supreme Court but offers a conditional explanation. It is not a case of inadvertence but one of absolute lack of application of mind to the law on the subject.

As regards, the blacklisting order being for an indefinite period, in para 19 he has stated as under:-

"That with regard to the duration of the Black listing it is submitted that in ordinary course the Black listing on the GeM portal is done for one year only and it is only after approval from the competent authority the same can be extended for a maximum of 2 years and not for an indefinite period. Thus, the petitioner's contention that the firm has been Black listed for indefinite period is also wrong. In the instant case, the firm has been Black listed in ordinary course only for one year."

The period of blacklisting is to be mentioned in the order, which has not been done. No document has been annexed to show any provision known to the petitioners prescribing a time limit of one year of blacklisting. The explanation is an eyewash and does not stand scrutiny on the anvil of law declared by Hon'ble the Supreme Court.

VERDICTUM.IN

Nowhere has he stated in the counter affidavit that any show cause notice was issued to the petitioners proposing an action of blacklisting against it even if it was permissible in additional terms and condition no. 29 of the GeM tender process. The Officer, it seems is adamant not only to defy the law declared by Hon'ble the Supreme Court but he has even tried to justify it on unacceptable grounds rather than accepting his error. This is the reason we had proposed a cost of at least Rs. 50,000/- to be imposed. We reject the reasons given in the counter affidavit of the District Magistrate outrightly.

The District Basic Education Officer, Unnao (opposite party no. 3), who has passed the consequential order of blacklisting has also filed her response to our order dated 07.07.2025 wherein she has reiterated the stand of the District Magistrate. In para 25 of her response, in the first line, she has stated that the deponent has not willfully violated any order passed by this Hon'ble Court or Hon'ble Supreme Court. However, she has stated that in case, there is any violation of the same, it is only due to inadvertence, it is neither deliberate nor intentional. In para 26, she has ensured that she will take due care in future so that no action taken by her may be perceived to be in violation or any orders passed by this Hon'ble court or Hon'ble Supreme Court or any other Hon'ble Court. She has only passed a consequential order. In para 28, she has also submitted an apology.

We do not find any such apology in the affidavit filed by the District Magistrate, Unnao.

It is fruitful to refer to relevant extract of the decision taken by the District Level Committee headed by the District Magistrate which clearly points that the decision to blacklist the firms was taken by the District Magistrate, though the said document is signed by the other members of the Committee also. The relevant extract of the said decision reads as under:-

"उक्त के क्रम में जिलाधिकारी महोदय द्वारा गे० वेदरत्न मल्टी सर्विसेज प्रा०लि० . में० श्री गोविन्द इण्टरप्रेन्योर, मे० ऐरो इन्फोमीडिया प्रा०लि० तथा मे० कार्प्सकेयर इन्फोटेक प्रा०लि० द्वारा प्रस्तुत ई०एम०डी० बैंक से प्रमाणित न होने के फलस्वरूप एवं छद्म पाये जाने के कारण सम्बन्धित फर्मों को जेम पोर्टल पर ब्लैक लिस्ट करने की नियमानुसार कार्यवाही किये जाने तथा मे० बी०बी०एन० एसोसिएट, मे० शिवम सिक्क्योरिटी गार्ड सर्विसेज तथा मे० स्मार्टलाइट जोन इण्डिया मार्केटिंग प्रा०लि० द्वारा प्रथमतः छद्म ई०एम०डी० प्रस्तुत करने एवं जेम पर अपलोड की गयी ई०एम०डी० तथा पत्रावली में उपलब्ध ई०एम०डी० में भिन्नता पाये जाने के फलस्वरूप सम्बन्धित फर्म को जेम पोर्टल पर ब्लैक

लिस्ट करते हुए समस्त सम्बन्धित के विरुद्ध एफ०आई०आर० दर्ज कराने के उपरान्त आमंत्रित विड निरस्त करते हुए सेवाप्रदाता के चयन हेतु नवीन विड आमंत्रित किये जाने के निर्देश प्रदान किये गये हैं।"

The District Magistrate in fact circulated the order of blacklisting petitioners Firm vide its letter dated 26.06.2025 to all the District Magistrates of Uttar Pradesh without verifying as to whether the blacklisting order had been issued in accordance with law declared by Hon'ble Supreme Court.

In pursuance to the decision taken by the District Magistrate in the meeting of District Level Committee, the District Basic Education Officer issued the blacklisting order on 23.06.2025, without satisfying herself as to what was the procedure before blacklisting the firm or the company and what was the law on this subject.

For the reasons aforesaid, we not only quash the impugned orders with liberty however to the opposite parties to proceed against the petitioners afresh in accordance with law keeping in mind the observations made hereinabove, but also impose a cost of Rs. 50,000/- upon the District Magistrate, Unnao in each of the cases, payable to the petitioners. A cost of Rs. 25,000/- is imposed upon the District Basic Education Officer, Unnao.

The cost shall be paid within a period of one month from receipt of a certified copy of the order.

Both these writ petitions are allowed in the aforesaid terms.

[Manish Kumar, J.] [Rajan Roy,J]

Order Date :- 23.7.2025

Nitesh