

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:
The Hon'ble Justice Smita Das De

**W.P.A. No. 5673 of 2024
IA No. CAN 1 of 2025**

**Ram Babu Yadav
Vs.
Union of India & Ors.**

For the Petitioner : Mr. Saptarshi Roy
: Ms. Kakali Das Chakraborty

**For the
Respondents/Eastern
Railway** : Mr. Brajesh Jha,
: Mr. Debapriya Samanta

**Reserved on
Judgment on** : 06/01/2026
: 11/02/2026

Smita Das De, J.:-

1. The petitioner in the instant case challenges inter alia, the punitive charges imposed by the respondent railway authorities on the ground of an alleged declaration by preparing two manifests for a single loading point destined for two different terminals.
2. Apropo the facts of the case is that the petitioner is the sole proprietor of a firm namely, M/s. Maa Kali Enterprise, 140/H/6, Beliaghata Road, Kolkata-15 and is engaged in the business of transportation of goods through railways across the country.

3. The petitioner has participated in various tender process of the railway respondent authorities and has been awarded with the leasing of the several parcel vans. The petitioner has been awarded with a compartment of 3.9TF/B Van Ex-Sealdah (SDAH) to New Delhi (NDLS) for four days a week @ Rs. 43800/- per trip with the permission to load and unload at Kanpur Central (CNB) for a period of five years with effect from November 4, 2018 to November 3, 2023.
4. During subsistence of the contract in question a letter has been issued by the General Manager/ Vigilance vide letter No. G157/RB-Com/Misc/Pt.-V (Loose) dated May 8, 2019 with regard to preventive check done in leased FBV Train No. 12259 (SDAH - NDLS Duronto Express) on February 7, 2019 by Vigilance Board at CNB and NDLS.
5. On June 10, 2019 the petitioner has received a letter being No. CC3/FBV/12259/3rd -18(04.09) dated May 23, 2019 issued by the Assistant Commercial Manager on behalf of the Senior Divisional Commercial Manager on the ground of preventive check as conducted at New Delhi Station (NDLS) on February 7, 2019 for the total weight of the packages which have been found to be overweight by 1046.1 Kgs. (4946.1 Kg.) and two packages in excess contrary to the Clause 14 of the Agreement dated December 7, 2018.
6. Two manifests have been drawn by the petitioner Ex. Sealdah (i) for NDLS showing 120 packages weighing 3880 Kgs. and (ii) for CNB – 20 packages weighing 2000 Kgs. and NDLS – 100 packages of 1880 Kgs.
7. On the basis of the gross irregularities detected by the Railway authorities for violating clauses 12.4, 12.8 and 12.11 of the contract

agreement, a Show Cause Notice dated May 23, 2019 has been issued to the petitioner which has been replied by the petitioner accordingly on June 17, 2019.

- 8.** By a letter dated June 24, 2019 bearing No. CC3/FBV/12259/3rd -18 (04.09) the Senior Divisional Manager, Sealdah Division of Eastern Railway being the respondent No. 5 cancelled the petitioner's registration as a punitive measure as per clause 4.25 and 4.15 of the Railway Policy i.e. F.M. Circular No. 6 of 2014 (hereinafter referred to as the 'said circular') by forfeiting the registration fees of Rs. 50,000/- as deposited on September 12, 2018 terminating thereby the existing contracts of the petitioner along with the forfeiture of the security deposit debarring the petitioner to enter into a fresh registration for a period of 5 years.
- 9.** Thereafter, the petitioner preferred an appeal against the cancellation of the registration of the leasing contract before the Principal Chief Commercial Manager, Eastern Railway on July 4, 2019 and the same has been rejected by the Railway respondent authorities on September 12, 2019.
- 10.** Being aggrieved by the Order of rejection, the petitioner filed a Writ Petition before this Court being W.P.A No. 20106 of 2019 wherein by an Order dated April 26, 2023 the Learned Coordinate Bench of this Court has been pleased to set aside the order of the Appellate Authority dated September 12, 2019, directing inter alia, the appellate authority to re-visit the issue upon affording reasonable opportunity of hearing to the petitioner and other stake holders and to pass a

reasoned order within a month from the date of communication of the order in accordance with law.

- 11.** In pursuance of the Order dated April 26, 2023 passed by the Coordinate Bench of this Court, the appellate authority by an order dated August 14, 2023 has been pleased to dispose of the appeal by confirming the order dated June 24, 2019 upholding punitive charges inflicted upon the petitioner as per the penal provisions provided in clause 28.0 and 8.4 of the contract agreement which is the subject matter of challenge in the instant writ petition.

Contention of the petitioner

- 12.** Learned counsel on behalf of the petitioner submits that the allegation involved herein pertains to operational violation relating to weight and manifest under clauses 12.4, 12.8, 12.11 of the contract agreement.
- 13.** The petitioner submits that the preparation of the two manifests have been a logistical necessity for unloading at two different terminals and the same have been done with the knowledge of the rake handling staff. The standard weighment variation is not a false declaration since the difference in weight falls very much within the permissible limit as per the contract agreement.
- 14.** It is further contended that in the show-cause notice, the Respondent Authority invoked Clauses 12.4, 12.8 and 12.11 of the Contract Agreement, which is *ex facie* inapplicable to the factual matrix of the instant case, since only one manifest has been produced at the originating station as permitted and contemplated in clause 12.4 of the contract agreement. The Railway authorities proceeded on a wrong

premises by levelling charges of preparing and suppressing multiple manifests in a fraudulent manner.

- 15.** By placing reliance upon Section 74 of the Indian Contract Act, 1872 the petitioner submits that the said section provides a complete statutory mechanism for levy, recovery and realization of charges or penalties arising out of carriage of goods. Impugned action is violative of Section 74 of the Indian Contract Act, 1872 as these provisions operate exclusively in the financial domain, empowering the Railway Administration to recover prescribed dues, undercharges, or penalties by way of railway charges or arrears. The statute does not authorize cancellation of Registration by termination of contracts, forfeiture of security deposits, debarment, or escalation beyond financial recovery.
- 16.** Learned counsel for the petitioner submits that a detailed reply has been submitted on June 17, 2019, to the show cause notice dated May 23, 2019 by refuting the allegations of excess weight and procedural issues relating to manifests, attributing malafide intent of the petitioner, for “mischievous” preparation and endorsement of an additional manifest with an intent to keep the Railways in the dark about loading particulars.
- 17.** By a letter dated June 24, 2019, the petitioner has been debarred from registration for a period of five years, however, before taking such steps of debarment, no specific notice indicating that the petitioner will be debarred from registration and consequent participation in the fresh tender for a period of five years has been given to the petitioner.

- 18.** The Petitioner states that by a covering letter bearing no. C.375/SLR Leasing/12259/W.P. 20106 (W) of 2019/FM dated August 14, 2023 issued by the Deputy Chief Commercial Manager/FS for Principal Chief Commercial Manager, the Respondent communicated the order of the Appellate Authority, upholding thereby the decision taken by Sealdah Division which has been duly communicated vide its letter no. CC3/FBV/12259/3rd- 18(04.09) dated June 24, 2019.
- 19.** It is contended that the Appellate Authority at the time of passing the impugned order dated August 14, 2023 failed to consider the points raised by the Petitioner in its true letter and spirit. The finding of the Appellate Authority to defraud the railways is devoid of any substance as no case has been met out by the respondent to show that the Railways have suffered loss.
- 20.** It is also submitted that the Appellate Authority has failed to appreciate the intent and purport of clause 4.25 of the said circular can only be invoked in respect of any false information and /or declaration as formulated by the leaseholder while participating in the tender as per clause 4.24 of the said circular.
- 21.** The finding of the Appellate Authority is perverse to the extent that an allegation has been made of 'Deliberate Fraud' with false signature putting a seal on manifest to which the petitioner states that the same is a wild allegation, as no regular criminal proceedings has been initiated nor conviction through judicial process from Appropriate Criminal Court has been made.

22. It is stated that the impugned cancellation of Registration Order dated June 24, 2019 duly affirmed by Appellate Authority's Order dated August 14, 2023 violates Constitutional provisions of Article 20(1) of the Constitution of India (Double Jeopardy).

23. Learned Counsel appearing for the petitioner submits that during preventive check of two respective manifests reveals that a variation in the weight for NDLS showing 120 packaging weighing 3880 kgs and in second manifest showing 20 packages weighing 2000 kgs for Kanpur Central and 100 packages weighing 1880 kgs for New Delhi without varying the weight, keeping the total weight within the permissible limit i.e. 3880 kgs.

24. The Appellate Authority has mistakenly cancelled the registration and terminated the contract by overriding the effect of the penal provision enshrined in the policy.

25. It is also stated that the punitive measure so adopted and exercised through Appellate Authority's Order is shockingly disproportionate which runs contrary to the mandate of the statutory provisions under Indian Railways Act, 1989 and the same has no legal basis and sanction of law since the imputations of intent has been made without any enquiry, verification, or supporting material, amounting to a pre-judgment of culpability at the show cause stage itself.

26. It is submitted that without considering the reply of the petitioner, the respondent authorities issued letter of termination dated June 24, 2019 contrary to the allegations made in the show cause notice dated June 23, 2019 by inflicting upon harsher punishment as per clause

4.15 and 4.25 by cancelling the registration contrary to the allegations mentioned in the show cause notice dated June 23, 2019.

27. The petitioner contends that the termination order dated June 24, 2019 as per clause 4.15, is attracted only where a bidder or registrant is found to have furnished false or misleading information at the stage of registration or tender participation. The petitioner asserts by submitting that there is no whisper in the show cause notice of any misrepresentation in respect of registration or at the bidding stage, nor with the petitioner's eligibility or registration has been questioned by the railway authorities. In absence of any allegation, of securing registration of a tender by misrepresentation renders the same to be unsustainable in the eye of law.
28. Learned counsel for the petitioner relies upon the Judgment reported in **AIR 2014 SC 3371 (Gorkha Security Services vs Government of Nct of Delhi & Ors.)** in which the Hon'ble Apex Court solidifies the necessity of adhering to natural justice in blacklisting. The court defined blacklisting as a "civil death" due to its harsh, stigmatic, and far-reaching consequences, necessitating a show-cause notice that explicitly warns of potential blacklisting, and in **(M/s. Kulja Industries Ltd. vs Chief General Manager, BSNL)** reported in **AIR 2014 SC 9** the Hon'ble Apex Court has emphasized that while state instrumentalities have the inherent power to blacklist contractors for poor performance or breach of contract, such debarment must be proportionate. The Court ruled that permanent blacklisting is unjustified; rather, the debarment period must be reasonable and

based on the severity of the misconduct and in **(UMC Technologies Private Limited vs Food Corporation of India & Anr)** reported in **(2021) 2 SCC 551** the Hon'ble Apex Court has held that blacklisting, which carries severe stigma and civil consequences, cannot be imposed without an explicit, unambiguous show-cause notice and in **(Kailash Nath Associates vs Delhi Development Authority & Anr.)** reported in **(2015) 4 SCC 136** the Hon'ble Apex Court has held that under Section 74 of the Contract Act, 1872, affirms that for forfeiture of earnest money, there must be a breach of contract and the forfeiture amount must be a reasonable pre-estimate of loss and in **(Union of India & Ors vs Anil Bareja) (FMA No 853 of 2022)** the Hon'ble Court has held that the termination of the contract and subsequent forfeiture of security deposit/earnest money is unlawful.

Contention of the respondent –

- 29.** Per Contra, the respondent submits that the preparation of two manifests from a single loading point runs contrary to the provisions and guidelines of agreement and policy provided vide Clause 12.4 and 12.11 of relevant agreement and Para 22.4 and 22.10 of the said circular. The manifests prepared for unloading at CNB (Kanpur) and NDLS (New Delhi) station has not been presented for endorsement at SDAH (Sealdah) parcel office and also not submitted for record. Further on scrutiny of the manifest (submitted at CNB) it has been discovered that the stamps which have been kept in safe custody of railway staff has either been used mischievously by the leaseholder or the leaseholder has procured the stamps illegally from open market

for endorsement on manifest. Moreover, the leaseholder forged signatures of Railway staff to bypass the check and balance system.

- 30.** It is further submitted that since CNB (Kanpur Central) is permitted for loading/unloading under the subject contract; hence there has been no restriction on the part of railways to provoke the party to make such ulterior move. By preparing and submitting one manifest at originating station and sending another changed manifest in the train which has been utilized for unloading at CNB and copy of manifest received at NDLS shows the malafide intention of the leaseholder to keep the Railway in the dark about loading particulars, consignments loaded and total weight of consignment.
- 31.** After detection of irregularities/malafide intention of the petitioner, a show cause notice dated May 23, 2019 has been issued inter alia, giving an opportunity to defend him before taking any punitive action in terms of the provisions covered under the agreement. The petitioner replied the same on June 17, 2019 .Upon consideration of the reply given by the petitioner, the Railway authorities, vide letter dated June 24, 2019 cancelled the registration and leasing contracts of the petitioner for committing fraudulent activity. Thereafter, the petitioner preferred an appeal against the above cancellation of registration of leasing contract before the Principal Chief Commercial Manager, Eastern Railway, vide letters dated July 4, 2019 and September 8, 2019.
- 32.** It has been further submitted that the respondent authorities vide letter dated September 12, 2019 has been pleased to reject the appeal.

Being aggrieved by the dismissal of appeal, the petitioner preferred a writ petition being W.P.A. No. 20106 of 2019 before this Hon'ble Court on the ground that he has not been given an opportunity of hearing by the authority prior to passing such order and the Coordinate Bench by an order dated April 26, 2023 has been pleased to direct the appellate authority to revisit the issue upon affording reasonable opportunity of hearing to the petitioner and also other stake holders, if any and pass a reasoned and speaking order within one month from the date of communication of the order. In pursuance of the order dated April 26, 2023 the petitioner has been afforded with an opportunity of hearing upon considering the reply dated June 14, 2023 accordingly. The Principal Chief Commercial Manager, Eastern Railway, Kolkata passed a speaking order dated August 14, 2023 in accordance with law.

- 33.** By referring to various clauses namely Clause 12.4 & 12.8 (Para 22.4 and 22.7) of the Agreement the respondents made an attempt to demonstrate that only one manifest is required to be submitted for loading from an originating station to different destinations which are mandatorily to be signed and stamped by the panel officer at the originating station.
- 34.** Clause 12.11 (Para 22.10) of the Agreement makes the leaseholder responsible for correctness of entries made in the manifests and Para 22.8 provides for submission of copy of manifest at the parcel office before starting loading in leased compartment.

35. Learned counsel on behalf of the respondent submits that in the instant case the leaseholder has prepared a manifest in addition to the first one by forging the signatures of Parcel staffs and used stamp of parcel office illegally. Agreement Clause 28.0 covered under policy provisions contained in Para 4.25 of the said circular is reproduced below:-

“If any information/declaration made by the leaseholder is found false at any stage before or after award of contract or deliberately defraud with the Railways, his registration will be cancelled and registration fee will be forfeited. In addition to the forfeiture of the registration fee all his existing leasing contracts being operated from that division would also be cancelled”.

36. Policy provision 4.15 incorporated in the agreement vide Clause 8.4 provides that:

“If the registration of a leaseholder is cancelled as a punitive measure either for reasons of repeated overloading or for repeated failure to start loading after award of contract or for attempt to deliberately defraud railways or for repeated violation of any of the existing stipulations where cancellation of registration has been legislated as the penalty, then the entire registration fee would be forfeited.

In case of cancellation of registration and thereby forfeiture of registration fee, all his existing leasing contracts in operation from that division would also be terminated/cancelled by forfeiting the security/performance deposit.

In addition to cancellation such a leaseholder would be debarred from fresh registration for a period of 5 years. All the zonal railways shall be informed the name of the firm who has been debarred. Fresh registration would not be done by any of the zonal railways/division by the name of such firm or leaseholder for a period of 5 years”.

37. The petitioner committed two offences namely-

First, by overloading and for such overloading, undercharges amounting to Rs. 79,803/- has been paid by the petitioner.

Secondly, it has been found that the petitioner has prepared two sets of manifests, – one with a declaration in respect of packages weighing 3880 kg to be unloaded at New Delhi only and the second manifest with declaration of packages to be part

unloaded partly at Kanpur, meaning thereby that the second manifest produced at Kanpur Central Railway Station has been manufactured by the petitioner.

- 38.** It has also been contended that Clause 4.24 should be read with 4.25 of the comprehensive parcel leasing policy in a conjoint manner which clearly postulates that “If any information/declaration made by the leaseholder is found to be false at any stage before or after award of contract or deliberately defraud the railways, his registration will be cancelled and registration fee will be forfeited”.
- 39.** The petitioner has violated clause 12.4, 12.8 and 12.11. Since, the petitioner has signed both the agreement as well as comprehensive parcel leasing policy at the time of awarding the lease.
- 40.** It is stated that it has been well within the knowledge of the petitioner for acting contrary to the clauses mentioned in the show cause notice namely 12.4, 12.8 &12.11 of the contract agreement. There is no denial by the petitioner of committing the alleged offence involving a false signature of a railway staff member.

Analysis-

- 41.** The moot question involved herein is with regard to the imposition of penalties on the ground of a declaration held to be false in respect of two manifests being prepared from the single loading point for unloading at two terminals having a difference on the weight of consignment contrary to the said circular.

42. The said circular does not treat manifest discrepancies or operational lapses to be an offence nor does it empower the railway officers to presume or declare any guilt. It does not authorise punitive termination and cancellation or debarment without prior show cause notice. This Court in the case of W.P.A No 13131 of 2025 **Sri Manoj Kumar Verma vs The Union of India**, has also held that -

"Having heard the parties and considering the documents available on record I am of the considered view that the petitioner should not be penalized by forfeiting his EMD on the ground of uploading incorrect documents without arriving at a finding that there exist an element of an intent to mislead.

And categorically blacklisting and forfeiture being penal in nature should be read in harmony with the doctrine of mens rea.

It is a settled proposition of law that any administrative action must be proportionate." (emphasis supplied)

43. From plain reading of Clause 4.24, 4.25 and 4.15 of the said circular it appears that the tender can only be revoked at pre-contractual stage and not on post contractual stage. In the letter dated June 24, 2019 the respondent has sought to terminate the contract relying upon Clause 4.25 of the said circular to be read conjointly with Clause 4.24. The Clause 4.24 of the circular is reproduced below-

"4.24 The applicant, while submitting his tender/bid, shall be required to give declaration that his registration has not been cancelled earlier by any zonal railway /division on punitive measure and he/his firm has not been debarred from entering into any new tender. The declaration shall be as under-

- (i) *Whether the tendered is already registered leaseholder in any Zonal Railway/ Divisions, if so, details thereof whether their Registration has been cancelled by any Zonal Railway /division. If so details thereof.*

- (ii) Whether they have been debarred for fresh registration by any Division/zonal Railway. In details thereof;
- (iii) Whether any punitive action has been taken by any of the zonal railway/ division, if so the details thereof;
- (iv) Whether any punitive action has been taken by any of the zonal railway/ division, if so the details thereof
- (v) Why Railway's dues are pending against them at any Zonal railway/Division.

Clause 4.25 can only be applicable in case of any mis-declaration or false declaration made at the time of Registration of leaseholder.

It is not the case of the respondent that the leaseholder has made any false declaration at the time of the registration as a result

Clause 4.25 is not attracted and has no manner of application in the present case. Clause 4.15 of the policy is also consequently inapplicable in the present case.

44. The petitioner has relied upon a judgment reported in **2014 (9) SCC 105 Gorkha Security Services vs Govt. of Nct of Delhi & Ors.** On 4th August, 2014 in which the Hon'ble Apex court has held that –

“16) We have heard the learned Counsel for the parties appearing on the either side on the aforesaid aspects, in detail. Before we proceed to answer the question we may restate and highlight the legal position about which there is neither any dispute, nor can there be as there is no escape from the below stated legal principle:

Necessity of serving show cause notice as requisite of the Principles of Natural Justice:

17) 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. Way back in the year 1975, this Court in the case of M/s. Erusian Equipment & Chemicals Ltd. V. State of West Bengal & Anr.; (1975) 1 SCC 70, highlighted the necessity of giving an opportunity to such a person by serving a show cause notice thereby giving him opportunity to meet the allegations which were in the mind of the authority contemplating blacklisting of such a person. This is clear from the reading of Para Nos. 12 and 20 of the said judgment. Necessitating this requirement, the court observed thus:

“12. Under Article 298 of the Constitution 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 of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry an 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 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 as a legitimate interest of expectation. When the state acts to the prejudice of a person it has to be supported by legality.

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 have an objective satisfaction. Fundamentals of fair play required that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

45. Cancellation of Registration dated June 24, 2019 followed by Appellate Authority's letter dated August 14, 2023 is contrary to section 163 read with section 66(1) and (4) of the Railways Act, 1989 (hereinafter referred to as the said Act). The quantum of punishment which has been inflicted upon on the ground of mis declaration has been shockingly disproportionate.

46. The respondents have failed to show any loss of freight therefore, inflicting punitive charges upon the petitioner is confiscatory and deterrent in nature. Mere presenting separate manifests for separate terminals under a single loading point does not per se amount to be a false declaration unless there is evidence of weight or commodity concealment.

47. Under Section 66 of the said Act contemplates a declaration must be materially false with an intent to defraud. In the said instance the description of weight and the nature of the goods remains to be accurate.

48. Since the said circular provides a specific framework for freight operation, the respondents have failed to demonstrate before this Court that the petitioner has bypassed the physical weighment bridge or suppressed the actual load during the loading process. An allegation of fraud requires a high standard of proof, mere existence of a second manifest for a second terminal does not *prima facie* constitute a false declaration if the total weight mentioned in both manifests matches the physical load weight by the railways. Difference in weight recorded at different points do not automatically imply

malafide intent unless a deliberate attempt of concealment is proven. The respondents have failed to adhere to the guidelines laid down in the said circular. In case of multi terminal unloading, the freight shall be calculated on the actual weight recorded at the primary loading point. It is trite law that unless a physical shortage or concealment of goods is discovered upon inspection, no charges can be declared to be false. Similarly in the instant case solely on the ground of split manifest the declaration cannot have the stamp of being false unless the same is proven.

49. In the instant case the respondents have failed to establish the mens rea and imposed penal charges erroneously by invoking under section 73 read with section 66 of the said Act. The said circular also does not mandate any punitive measures in absence of intentional falsification.
50. It is a well settled proposition of law as held by the Apex Court in the case of **Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another** reported in **1975 (1) SCC 70** as relied upon by the petitioner is that -

“blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the government for the 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 in the black list”.

Similarly in the case of **Kulja Industries Ltd. Vs. Chief General Manager, WTCROJ BSNL & Others** reported at **AIR 2014 SC 9** wherein it has been observed that -

“24. Suffice it to say that ‘debarment’ is recognized and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentation , 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.

Blacklisting is in the nature of penalty the quantum whereof is a matter that rests primarily with the authority competent to impose the same.

While, it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or violation of contractual obligations by a contractor, the respondent-corporation may do so as far as possible to reduce if not totally eliminate arbitrariness in the exercise of the power vested in order which the competent in the fairness of the order which the competent authority may pass against a defaulting contractor.”(emphasis supplied)

The case of **M/S P.S Represented by Syed Najmuddin vs The Union of India** reported in **2025 Supreme(Online)(Ker)3750** has specifically held that-

“debarring or blacklisting a person from future contracts is a serious matter. The termination of the contract may be a mode of ending and existing contractual relationship, but blacklisting a bidder is a mode of pre-emptively disqualifying him from participating in any future contractual relationship”.(emphasis supplied)

51. As per Section 66 of the said Act the penalty for false declaration requires deliberate intent to give a description i.e. materially false. Since the weight has been declared by the railway's own electronic in-motion weighbridge and not by the leaseholders, therefore the contention of giving a false declaration by the petitioner has no basis at all. The allegation with regard to preparation of 2nd manifest at the back of the railways is not factually sustainable since a rake for all practical purposes, cannot be moved, shunted or diverted to a second terminal without a generated railway receipt and the physical authorisation of the Station Master. The intention of the legislature is

quite clear from plain reading of section 79 of the said Act, which contemplates that a variance between two manifests pertaining to the weighment at the destination, is either due to moisture loss or mechanical tolerances in different weighbridges, being beyond human probability thus the allegation of fraud or acting at the back of the railway is contrary to the procedural safeguards provided in the said circular, which regulates the movement and the weighment of such consignment. A weight difference within the permissible limits of error due to standard weighment variations is not a false declaration.

- 52.** The splitting of the manifest has been an operational necessity for two different terminals and is not a 'materially false declaration' with an intent to evade freight. It is apparent from the record that the demand raised by the respondent is legally unsustainable since the payment of total freight covers the 'actual rate' and the 'distance transported', as such there is no financial loss sustained by the respondents therefore, imposing punitive charges upon the petitioner is purely confiscatory and disproportionate.
- 53.** The total freight paid across both the manifests equal or exceeds would have been paid on a single manifests. In the present case the description of goods and the total weight remains undisputed. To prove a charge to be 'punitive' there must be an existence of an intention of 'malafides'. Splitting of documentation for delivery at two different geographical terminals for administrative convenience per se, does not *prima facie* establish the intent to defraud.

54. The respondents have failed to demonstrate any actual loss of freight. If the total freight paid across both manifests matches the distance and weight scale in that event the contention of sustaining loss by the respondent ‘falls flat’.

55. With the above observation and direction it is held that, forfeiture is permissible only upon establishing that the bidder has misdeclared with an intent to mislead. The punitive charges levelled against the petitioner is *ex facie*, bad, illegal and not sustainable in the eye of law. Mere allegation of obtaining a false signature from the panel of handling staff is a matter of investigation by a competent Court of law since no such finding has been recorded by the authorities to prove the same. Moreover, the respondent authority mechanically and arbitrarily, without proper application of mind has invoked the relevant clauses of the said circular which are inapplicable in the instant case. A bidder cannot be penalized or disqualified for a bonafide clerical error as long as the essential eligibility remains to be undisputed. The said circular also does not mandate punitive measure in absence of an intentional falsification.

56. In conspectus of the above as adumbrated the respondents have failed to establish the mens rea (guilty intent) as required to invoke the penalty under Section 73 read with Section 66 of the said Act.

57. Having heard the parties at length and considering the materials available on records I am of the considered view that the cancellation of registration and termination of the contract dated June 24, 2019 along with the impugned order dated August 14, 2023 passed by the

Senior Divisional Commercial Manager is hereby quashed and set aside.

- 58.** It is clarified that the Railways may reject manifest procedures but cannot assume that a transparent logistical split to be a false declaration. For the reasons recorded above this court finds the actions of the respondents is disproportionate and legally infirm. The petitioner shall not be debarred from participating/operating in existing and future contracts.
- 59.** The respondents are directed to refund the sum of Rs. 50,000/- along with money deposited on account of security deposit in respect of the agreement as indicated at page 107 in Annexure P14, within a period of eight weeks from the date of this order failing which, the amount shall carry an interest of 2% p.a. from the date of deposit upto the date of actual payment.
- 60.** In view of the above **Writ Petition No. 5673 of 2024** along with **CAN 1 of 2025** is allowed and disposed of. No order as to cost.
- 61.** Urgent Photostat certified copy of this order if applied for be supplied to the parties on priority basis upon compliance of all requisite formalities.

(Smita Das De, J.)