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GOVERNMENTAL BLACKLISTING OF CONTRACTORS

The Supreme Court (SC), in April 2026 in the *AKG Construction* case,¹ has underscored the rigorous procedural standards required to sustain a blacklisting order. It ruled that blacklisting by the arms of government is a stigmatic and exclusionary measure acting as an instrument of coercion that cannot be treated as an automatic consequence of contract termination. It reinforced that a specific, particularized, and unambiguous show-cause notice (SCN) is a mandatory prerequisite for blacklisting to satisfy the principles of natural justice.

Brief Facts

A.K.G. Construction (AKG) was contracted by the Jharkhand Drinking Water and Sanitation Department (Department) of the Government of Jharkhand to construct an Elevated Service Reservoir (ESR). In June 2024, the top dome of the under-construction ESR collapsed. While AKG offered to reconstruct the dome at its own expense, the Department issued a general SCN on AKG asking it as to why action should not be taken against it for negligence and bad quality of work. Following multi-level enquiries that corroborated the findings of negligence, the Department passed a common order on August 23, 2024, terminating the contract and blacklisting AKG for five years.

AKG challenged this order before the High Court of Jharkhand (HC). The HC dismissed the challenge, holding that blacklisting was a logical inference of the established negligence. AKG subsequently approached the SC.

SC's Judgement & Reasoning

The SC analysed the distinction between contractual termination and administrative blacklisting based on the following key principles:

- **Distinct Standards for Termination and Blacklisting:**² It that courts must apply separate standards of legality and proportionality for termination and blacklisting. While termination relates to the past and subsisting breaches of a specific contract, blacklisting operates in a future dimension by debarring a contractor from potential government business.
- **Requirement of Specific SCN:**³ For a blacklisting order to be valid, the preceding SCN must clearly and unambiguously specify the intention to blacklist. A general SCN regarding negligence or why action

¹ *M/S A.K.G. Construction and Developers Pvt. Ltd v. State Of Jharkhand & Ors.*, 2026 LiveLaw (SC) 321.

² Paragraph 18 of the Judgement.

³ Paragraphs 21 to 23 of the Judgement.

should not be taken as insufficient. It noted that the Department must demonstrate a separate application of mind before deciding to blacklist a contractor beyond merely terminating their contract.

- **Blacklisting as a Civil Death:**⁴ Citing the *Erusian Equipment* precedent,⁵ the SC emphasized that blacklisting involves severe civil consequences and creates a barrier to lawful relationships with the Government. It observed that since it tarnishes reputation and affects future business prospects, the authority must have an objective satisfaction and provide a meaningful opportunity to the noticee to defend themselves.

Despite finding the blacklisting order patently infirm for lack of a proper SCN, the SC observed that over one and a half years had passed since the order was issued. To avoid further protracted litigation through a remand for a fresh SCN, it moulded the relief by directing that the blacklisting shall cease to operate immediately from the date of the judgment.⁶

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⁴ Paragraph 14 of the Judgment.

⁵ *Erusian Equipment & Chemicals Ltd. v. State of West Bengal*, (1975) 1 SCC 70.

⁶ Paragraph 24 of the Judgement.