



Sakshi Singhal
Senior Associate

STATE'S INHERENT POWER TO BLACKLIST

The Patna High Court (HC), in May 2026 in the *Gupta Power* case,¹ has reaffirmed that state instrumentalities possess an inherent executive power to blacklist contractors, even in the absence of an express provision in the tender or contract. While emphasizing that this power is not unfettered, the HC ruled that the action will be valid if preceded by specific show-cause notices (SCN) and a meaningful opportunity to the contractor to be heard, thereby satisfying the principles of natural justice.

Brief Facts

Gupta Power Infrastructure Limited (GPIL) was awarded a turnkey contract in September 2019 by the state, South Bihar Power Distribution Company Limited (SBPD) for the construction of five power sub-stations. While two sites were completed and made operational, the work at the Kaladiyara site remained incomplete after more than five years.

Following repeated review meetings and multiple communications calling for progress, SBPD issued a series of SCNs, including a final SCN on November 21, 2024, explicitly warning of contract termination and blacklisting. On December 31, 2024, SBPD issued an order terminating the contracts and blacklisting GPIL for three years.

GPIL challenged this order, arguing that the authorities lacked jurisdiction to blacklist in the absence of a specific contractual clause and that the order violated principles of natural justice.

HC's Judgement & Reasoning

The HC dismissed the challenge, basing its decision on the following key legal principles:

- **Inherent Powers of the State:**² It held that the power to blacklist is an inherent executive power of the State and its instrumentalities flowing from Article 298 of the Constitution.³ Citing the judgments in *Kulja Industries* case⁴ and *Patel Engineering* case⁵, it clarified that this authority exists even if the Notice Inviting Tender or the contract is silent on the matter. Blacklisting is essentially a business decision by the state to not enter into future contractual relations with a party that has committed a breach.

¹ *Gupta Power Infrastructure Limited v. The South Bihar Power Distribution Company Limited (SBPDCL)*, Patna., Civil Writ Jurisdiction Case No. 2966 of 2025.

² Paragraphs 11 to 16 of the Judgement.

³ Article 298. *Power to carry on trade, etc.*

⁴ *Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Ors.*, (2014) 14 SCC 731.

⁵ *Patel Engineering Limited v. Union of India and Anr.*, (2012) 11 SCC 257.

- **Adequacy of SCN⁶:** Unlike cases where blacklisting were set aside due to vague notices, the HC found that SBPD had issued multiple specific SCNs over a considerable period of time. These SCNs explicitly disclosed the proposed action of blacklisting, ensuring GPIL was fully aware of the potential consequences.
- **Compliance with Natural Justice⁷:** The HC observed that GPIL had been afforded sufficient opportunities to improve work progress and submit explanations. Since GPIL’s reply was duly considered and the final order was reasoned and ‘speaking’ (not cryptic), the requirements of fairness and natural justice were adequately satisfied.
- **Judicial Review vs. Merits⁸:** The HC reiterated that while the state’s decision to blacklist is subject to judicial review, it is examined on the touchstone of proportionality and procedural fairness. Given GPIL’s consistent non-performance over 5 years, the HC found no grounds to interfere with the administrative decision taken by SBPD.

The HC dismissed the writ petition, upholding the three-year blacklisting order. However, it reserved liberty for GPIL to seek legal remedies regarding any pending dues for work already executed⁹.

This *Counselence Connect* contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For any clarifications, please contact us at: info@counselence.com. Past issues of *Counselence Connect* are available at the ‘Newsletters’ page of our website (www.counselence.com).

⁶ Paragraphs 17 to 23 of the Judgement.

⁷ *Ibid.*

⁸ Paragraph 24 of the Judgement.

⁹ Paragraph 26 of the Judgement.

