



HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CJ Court

LPA No. 49/2018

IA No. 1/2018

Reserved on: 29.01.2026

Pronounced on: 13.02.2026

Uploaded on: 13.02.2026

Whether the operative part or full judgment
is pronounced: Full judgment.

1. **Union of India** through Secretary to Govt. Ministry of Defence, Govt. of India, New Delhi.
2. **Military Engineering Service (MES)**, through Engineer-in-Chief, Integrated Hqrs., Ministry of Defence (Army) Kashmir House, Rajaji Marg, New Delhi.
3. **Chief Engineer**, Northern Command,Appellant(s)/Petitioner(s) Udhampur, C/o 56 APO.
4. **Chief Engineer Headquarter**, Air Force Zone, Udhampur.

Through: Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC

Vs

1. **M/s Tarmat Ltd., Tarmat Chambers, Plot No. 19, Sector 24, Near Turbhe Flyover, Sanpada, Navi Mumbai-400705**, Through its Respondent Attorney Holder Sh. Parvez Ahmed Dar, aged 53 years, S/o Shri Ghulam Mohammad Dar, R/o H. No. 13, Sector 3, Trikuta Nagar, Jammu.
2. **Lt. Gen. Sanjeev Talwar (AVSM)**, Engineer-in-Chief, Integrated Headquarters/Registering Authority, Military Engineering Services (MES) Ministry of Defence (Army), Kashmir House, Rajaji Marg, New Delhi.Performa Respondent

Through: Mr. R. K. Gupta, Sr. Advocate with
Mr. Uday Bhaskar, Advocate



**Coram: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

JUDGMENT

1. The respondent-company was awarded a contract work of resurfacing of runway at Air Force Station, Awantipora, Kashmir for an amount of Rs. 87,99,24,814.26/-. During execution of the above-mentioned contract, the respondent-company forged an invoice No. 8918061840 dated 21.05.2015 for an amount of Rs. 51,27,948/- instead of actual amount of Rs. 23,74,750/- issued by the Ultra Tech Cement Limited. On the basis of said invoice, an inflated amount of Rs. 51,27,948/- was released in favour of the respondent-company by the appellants and as such, the respondent - company received Rs. 26.99 lacs in excess. When the tampered invoice was forwarded by the appellants to Ultra Tech Cement Limited for its verification, it was conveyed vide communication dated 10.08.2015 by the Ultra Tech Cement Limited that the above referred invoice was not its invoice and was forged. It was further conveyed that the original invoice of the same number and date issued to the respondent-company was forwarded to Mr. K. N. Gupta, A.E. (Civil). M/S Ultra Tech Cement Limited sought an explanation from the respondent-company, as to how the company's invoice was forged.
2. Thereafter, the appellant No. 2/Engineer-in-Chief i.e. the competent authority issued a show cause notice dated 31.12.2015 to the respondent-company to submit justification and reply for the alleged act of forgery as mentioned above and further, as to why their firm be not **“removed and debarred”** from doing any further business with the Government.



Respondent-company was directed to submit its reply by or before 20.01.2016.

3. The respondent-company sought an extension of time until 31.01.2016 and in its reply dated 28.01.2016, it admitted its guilt but left the quantum of reasonable punishment to the discretion of appellant No. 2. Thereafter, the competent authority vide communication dated 18.02.2016, after considering the reply of the respondent-company, downgraded the respondent-company from 'SS' class to 'S' class and suspended the business dealing with the respondent-company for a period of two years from the date of issuance of the communication.
4. The said communication was assailed by the respondent-company through the medium of OWP No. 624/2016 and the learned writ court vide interim order dated 28.04.2016, while issuing the notice in the main writ petition, directed the appellants that until the decision of the application seeking review filed by the respondent-company on 13.04.2016, the penalty imposed in terms of communication dated 18.02.2016 shall not be acted upon.
5. Vide communication dated 11.05.2016, the competent authority considered the review application and reduced the period of suspension of business dealing with the respondent-company from 2 years to 1 ½ years but keeping in view the serious lapse of tampering/forging the voucher, the decision to downgrade the respondent-company to 'S' class was kept intact.
6. The order/communication dated 11.05.2016 was assailed by the respondent-company through the medium of OWP No. 873/2016 with a prayer to allow it to participate in the further tendering process. The appellants filed detailed objections and vide judgment dated 27.03.2018,



the learned Writ Court quashed the downgrading of the respondent-company from 'SS' class to 'S' class with further direction to consider the issue of ban regarding the business dealing on the basis of recommendation made by the Garrison Engineer within a period of 20 days from the receipt of copy of the judgment.

7. The appellants, being aggrieved of the judgment dated 27.03.2018, have challenged the same on the grounds *inter alia* that in communication dated 23.02.2011, the competent authority while issuing enlistment/renewal cum re-classification of the respondent Company as 'SS' class from 01.01.2011 to 31.12.2015 has provided in Para '9' that MES authority has the right to suspend, remove or blacklist the respondent from MES list of contractors in the event of submission of non-bonafide tenders or for technical or other delinquency and the competent authority by taking a lenient view instead of blacklisting/removing the respondent-company, downgraded it to 'S' class. It is also urged that the respondent-company was downgraded after affording due opportunity of hearing and more particularly when the respondent-company had admitted its guilt of tampering/forgery. It is also urged that the review application dated 13.04.2016 was considered and vide communication dated 11.05.2016, the competent authority after taking lenient view of the matter, reduced the ban in business dealing from 2 years to 1 ½ years, however downgrading of the respondent Company was maintained. It is also contended by the appellants that the learned Single Judge's decision to quash the downgrading is an error. The Show Cause Notice specifically noted that the respondent's conduct fell short of the standards expected of an 'SS' class contractor and the notice sufficiently covered the lesser penalty imposed. Given that the respondent was asked to



show cause as to why it should not be 'removed and debarred,' the appellants submit that downgrading is a minor punishment, as removal constitutes a far weightier penalty than a reduction in class.

8. Mr. Vishal Sharma, learned DSGI has submitted that respondent company unequivocally admitted of submitting a forged invoice to obtain an excess payment of Rs. 26.99 lacs. He vehemently argued that the Show Cause Notice explicitly stated such fraudulent conduct was unbecoming of an 'SS' class contractor. The respondent was initially asked to show cause against being 'removed and debarred' from future government business. However, the competent authority took a lenient view; rather than removing the company from the enlisted list, which would have stripped it of all privileges, the authority imposed the lesser punishment of downgrading the respondent from 'SS' to 'S' class. Additionally, the initial two years suspension was modified to 1 ½ years, further demonstrating that a mitigated penalty was awarded.
9. *Per contra*, Mr. R. K. Gupta, learned Senior counsel appearing for the respondent has argued that no show cause notice for downgrading the respondent-company was ever served upon the respondent-company, as such, the learned Writ Court has rightly set aside the downgrading of the respondent Company from 'SS' class to 'S' class.
10. Heard learned counsel for the parties and perused the record.
11. The requirement to issue a show-cause notice and the specific details it must contain to satisfy the principles of natural justice have already been established by the Hon'ble Supreme Court in case titled, '**Gorkha Security Services vs. Govt. of NCT of Delhi**' reported in **2014 INSC 521**. The relevant Para is extracted as under:-



“19. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.”

12. As established in the judgment *supra*, a show-cause notice must contain two key elements: (i) the specific charges against the noticee, and (ii) the nature of the action intended to be taken. This ensures the noticee understands the case they must answer and the potential consequences involved.
13. Applying the aforementioned legal parameters, we will now determine whether the notice dated 31.12.2015 meets the requirements of a valid notice. The relevant part of the show cause notice dated 31.12.2015 served upon the respondent-company is extracted as under:-

“SHOW CAUSE NOTICE FOR SUBMISSION OF FORGED
PURCHASE INVOICE IN CA NO. CEAUFU-09/2012-13
RESURFACING CF RUNWAY AT AWANTIPUR

Dear Sir,

1. Whereas GE (AF) Awantipur vide letter 8103/CEAFU-09/2012-13/1491/E8 dated 29 Aug 2015 **has issued show cause notice bringing out submission of forged invoice No. 8918061840 dated 21 May 2015 thereby wilfully claiming enhanced payment than contractually payable.**

2. And whereas you have failed to submit any justification to the GE (AF) Awantipur by due date of 02 Sep 2015 indicating you have nothing to reply.

3. You are hereby again requested to submit justification and reply for the alleged act of forgery in submission of documents so as to gain fraudulently. **This very act is a serious lapse and this conduct is not expected from a ‘SS’ Class contractor. Being Registering Authority of your enlistment this show cause notice is served on you giving you opportunity to forward your replies. Accordingly please show cause why your firm should not be removed & debarred from doing any further business with the Government.”**

(emphasis added)



14. A perusal of the show-cause notice reveals that the respondent-company was informed of its illegal act of claiming enhanced payment based on a forged invoice (No. 8918061840). The notice specifically noted that such conduct was unbecoming of an 'SS' class contractor. Consequently, the respondent was required to show cause as to why it should not be 'removed and debarred' from future government business.
15. The reply contains an unambiguous and unequivocal admission of guilt by the respondent-company. Although the company attributed the forgery to its Project Manager by claiming that he tampered with a third-party invoice without realizing the legal implications, it simultaneously deferred to the Registering Authority's discretion regarding the quantum of punishment. The relevant portion of the respondent's reply to the show-cause notice is extracted below:

"With our head hanging, due to the involvement of our site in charge, we accept that Tarmat Project Manager tampered with the Invoice of a third party without knowing its legal implications merely to claim an additional amount but recoverable amount on account of claiming advance for material brought to the site during the month of May-2015. Since the act of our Project Manager has tarnished our image which we have build past 30 years we accept our guilt and leave the quantum of reasonable punishment to the registering authority. Kindly consider while deciding the fate of our company that over Twelve hundred families associated with us are earning their lively hood and supporting their family over a long period may not suffer because of the act of one single person."

(emphasis added)

16. By an order dated 18.12.2016, the competent authority downgraded the respondent-company from 'SS' class to 'S' class and suspended its business dealings for two years. Upon review of the respondent's application, the authority reduced the suspension period to 1.5 years but maintained the downgrade to 'S' class. Simultaneously, the authority noted that the disciplinary action would be reviewed based on the respondent's



performance and the successful completion of the runway contract by the end of October 2016.

17. As previously noted, the respondent-company admitted its guilt and deferred to the Registering Authority's discretion regarding the quantum of punishment. Concerning the first requirement of the show-cause notice, the respondent was fully apprised of the allegations regarding the forged invoice, a fact it expressly admitted in its reply. However, Mr. R.K. Gupta, learned Senior Counsel for the respondent, contended that the notice failed to propose the specific penalty of downgrading the company from 'SS' to 'S' class, stressing that the only actions proposed in the notice were 'removal and debarment'.
18. An order of 'removal' would result in the respondent's name being struck from the list of approved contractors; however, even without enlistment, the company might still have participated in certain tendering processes. In contrast, 'debarment' would have caused a total cessation of business dealings with the appellants. While the respondent's business dealings were initially suspended for two years, a period later reduced to 1.5 years following a review application, that suspension has since expired. Neither party has raised a grievance regarding the suspension itself. Instead, the learned DSGI vehemently contends that downgrading the company's classification was a 'lesser' punishment, given that the competent authority had the power to impose the far more severe penalty of total removal from the enlistment list.
19. The respondent-company was not removed from the list of enlisted contractors; rather, it was downgraded from 'SS' to 'S' class. The show-cause notice explicitly noted that such misconduct was unbecoming of an



‘SS’ class contractor. We find merit in the submission of Mr. Vishal Sharma, learned DSGI, that the competent authority opted for a lesser punishment despite the respondent's unequivocal admission of guilt. Ultimately, the respondent's status was merely reduced from ‘SS’ to ‘S’ class, rather than being entirely removed from the list of enlisted contractors.

20. The respondent was duly notified of the potential for removal and debarment. By choosing to downgrade the company from ‘SS’ to ‘S’ class instead, the competent authority imposed a lesser punishment within its jurisdiction. We find no deficiency in the show-cause notice regarding the charges or the proposed actions; therefore, the downgrading was legally valid. The relevant observations of the Hon'ble Apex Court in case titled, **‘Gorkha Security Services** (supra) are extracted below:

*26. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show-cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. **However, we may also add that even if it is not mentioned specifically but from the reading of the show-cause notice, it can be clearly inferred that such an action was proposed, that would fulfil this requirement.** In the present case, however, reading of the show-cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.*

(emphasis added)

21. Upon examination of the impugned judgment, we find that the learned Writ Court set aside the downgrading of the respondent company primarily because no specific show-cause notice for 'downgrading' had been issued. We cannot concur with this finding. Given that a show-cause notice for 'removal' was duly served, the award of a lesser punishment of downgrading falls within the authority's jurisdiction. Consequently, the



Writ Court's decision vide judgment dated 27.03.2018 to quash the downgrade cannot be sustained.

22. However, it is equally true that such a penalty cannot continue indefinitely. Ten years have elapsed since the respondent was downgraded, and we note that its original 'SS' class registration was valid only from 2011 to 2015. We are also mindful of the respondent's expressed remorse and the fact that the excess payments have been adjusted, resulting in no pecuniary loss to the appellants. In *"Kulja Industries Ltd. v. Western Telecom Project BSNL"*, (2014) 14 SCC 731, the Hon'ble Supreme 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.**

26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. **Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back.**

23. In view of the foregoing, we are of the considered opinion that should the respondent company apply for fresh registration or renewal as an 'SS' class contractor, its application deserves to be considered on its own merits. The previous downgrading from 'SS' to 'S' class shall not act as a bar to such



consideration, provided the application otherwise complies with all applicable rules and regulations.

24. Accordingly, we allow this appeal and set aside the order dated 27.03.2018 passed by the learned Writ Court and the respondent-company is granted liberty to approach the appellants for enlistment or renewal as an 'SS' class contractor. In the event such an application is made, the appellants shall consider the same in accordance with the law/rules, uninfluenced by the previous decision to downgrade the respondent from 'SS' to 'S' class.

25. **Disposed of.**

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Jammu
13.02.2026
Neha-II

