

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR**

<b>Case No.</b>	<b>W.A. No.768 OF 2021</b>
<b>Parties Name</b>	Pratham National Security vs. Union of India & Others
<b>Date of order</b>	<b>14/12/2021</b>
<b>Bench Constituted</b>	<b>Division Bench :</b> Justice Sheel Nagu and Justice Purushaindra Kumar Kaurav
<b>Order passed by</b>	Justice Purushaindra Kumar Kaurav
<b>Whether approved for reporting</b>	yes
<b>Name of counsel for parties</b>	<b>For Petitioner:</b> Shri Sanjay K. Agrawal, Advocate <b>For Respondents/State:</b> Shri J.K. Jain, learned Assistant Solicitor General.
<b>Law laid down</b>	<b>Held :</b>  1. In case of availability of alternate remedy, the High Court, normally should not entertain a petition under Article 226 of the Constitution. However, there is no complete bar in exercising such a plenary power in exceptional circumstances when High Court finds that the action of the State or its instrumentality is arbitrary, unreasonable and violative of Article 14 of the Constitution.  2. The order of debarment is passed on the basis of non-existing fact, therefore, such an order is unreasonable, arbitrary and without application of mind.  3. The order of blacklisting is issued

	without affording an opportunity of hearing and the high Court has jurisdiction to intervene in exercise of its power conferred under Article 226 of the Constitution, regardless of the existence of other remedies.
<b>Significant paragraph numbers</b>	<b>Para No.5 to 8</b>

## **JUDGEMENT**

**(14/12/2021)**

**Per: Purushaindra Kumar Kaurav, J.**

This *intra* Court appeal, filed under Section 2 of the Madhya Pradesh Uchcha Nayalaya Khandpeeth Ko Appeal Adhiniyam, 2005, is directed against final order dated 17.03.2021, passed by the learned Single Judge in W.P.No.3470/2021, whereby, the writ petition filed by the appellant has been dismissed, on the ground of availability of alternative remedy.

The appellant-petitioner assails the impugned order mainly on ground that the High Court is not precluded from entertaining a petition under Article 226 of the Constitution, if the action of the State authorities is arbitrary, unreasonable, and violative of Article 14 of the Constitution.

**2.** Some of the facts which are necessary for the decision of the present appeal are as under:-

(i) The appellant-petitioner is an agency engaged in providing

man- power and security services to various organizations. On 17.12.2017 (Annexure P/1), respondent No.2 – Archaeological Survey of India, issued a tender for providing unskilled casual labour for the work of annual maintenance of protected monuments under Sanchi Sub Circle, Madhya Pradesh. The last date for submission of bid was 27.12.2017 and the date for opening of technical bid was 28.12.2017.

(ii) After evaluating the technical and financial bid, the appellant-petitioner was found to be suitable, hence, bid of the appellant-petitioner was accepted by respondent No.2 and consequently on 20.04.2018 (Annexure P/2) Work-Order was issued in favour of the appellant-petitioner.

(iii) On 20.06.2018 (Annexure P/3), a show cause notice was issued to the appellant-petitioner by respondent No.2 seeking explanation as to why the appellant-petitioner should not be debarred from participating in tender process of ASI so also for cancellation of the work order dated 20.04.2018, as according to respondent No.2, the Central Bureau of Narcotics Department, Gwalior had blacklisted the appellant-petitioner and, such an information was not furnished by the appellant-petitioner while submitting the bid.

(iv) On 06.07.2018 (Annexure P/4), appellant-petitioner

submitted the reply to the aforesaid show cause notice and it was specifically stated that when the bid/tender in question was submitted to the respondent No.2, no order of blacklisting by the Central Bureau of Narcotics, Gwalior was in existence and, hence, there was no question of furnishing such an information.

(v) On 11.07.2018 (Annexure P/5), respondent No.2 took a decision to debar the appellant-petitioner from participating in any tender process of respondent No.2 and cancelled the Work Order dated 20.04.2018. This was the first impugned order before the learned writ Court.

(vi) Another impugned order, which was assailed by the appellant-petitioner, before the writ Court was dated 11.09.2019 (Annexure P/9), whereby on account of non-payment of salary to the labourers engaged by him, the appellant-petitioner was blacklisted and security deposit of Rs.1,79,220/- has been forfeited. The petitioner has taken a specific ground in para-6.4 of the petition that before passing of an order of blacklisting, no show cause notice or opportunity of hearing was given, and hence, such an action of respondent No.2 is violative of the principles enshrined under Article 14 read with Article 19(1)(g) of the Constitution.

**3.** The learned Single Judge, while taking into consideration

Clause- 55 of the request for proposal/N.I.T. (Annexure P/1) regarding “dispute resolution clause through Arbitrator”, declined to invoke the jurisdiction under Article 226 of the Constitution and has held that there is an alternate remedy available to the appellant-petitioner to take the recourse for ventilation of his grievances before the Arbitrator.

4. We have heard Shri Sanjay K. Agrawal, learned counsel for the appellant and Shri J.K.Jain, learned Assistant Solicitor General of India appearing for the respondents.

5. In case of availability of alternative remedy, the High Court normally, should not entertain a petition under Article 226 of the Constitution. However, there is no complete bar in exercising such a plenary power in exceptional circumstances. When the High Court finds that the action of the State or its instrumentality is arbitrary, unreasonable and, violative of Article 14 of the Constitution, the High Court has jurisdiction to intervene in exercise of its power conferred under Article 226 of the Constitution, regardless of the existence of other remedies (See: *Uttar Pradesh Power Transmission Corporation Ltd. and Another Vs. C.G. Power and Industrial Solutions Ltd. and Another, Union Of India & Ors vs Tania Construction Pvt.Ltd<sup>1</sup>*).

6. In the present case, the entire case of the appellant-petitioner

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<sup>1</sup> 2021 (6) SCC 15, 2011(5) SCC 697

before the writ Court was that at the time of submission of the bid relating to tender in question, in the month of December' 2017 there existed no order of any blacklisting against the appellant-petitioner, and the order of blacklisting of the appellant-petitioner was passed only on 23.05.2018.

7. We have carefully perused the record. We find that the appellant-petitioner is correct in submitting that the order of Central Bureau of Narcotics, Gwalior dated 23.05.2018 was not existing when the bid for the present tender was submitted by the appellant-petitioner before 27.12.2017 and, therefore, disclosure of such a non-existent fact was not possible. Although, such an explanation was given by the appellant-petitioner vide its reply dated 06.07.2018 (Annexure P/4) but on perusal of the impugned order dated 11.07.2018 (Annexure P/5), it is clear that the same has not been considered at all. It is therefore, held that the impugned order dated 11.07.2018 is without application of mind, arbitrary and violative of Article 14 of the Constitution.

8. So far as, the order dated 11.09.2019 (second impugned order) is concerned, indisputably, no notice had been given to the appellant-petitioner regarding proposal of its blacklisting. It is an implied principle and rule of law that any order having civil consequences should be passed only after following the principles of

natural justice. The Supreme Court in case of *Erusian Equipment & Chemicals Ltd. Vs. State of W.B.*<sup>2</sup> highlighted the necessity of giving an opportunity to such a person by serving a show-cause notice. In the matter of public contract, the same is described as a civil death of the contractor. The view of the Supreme Court in the case of *Erusian Equipment & Chemicals Ltd.*<sup>2</sup> is being consistently followed till date and there is no departure from the said principle. The same principles have been laid down in the case of *Gorkha Security Services Vs. State (NCT of Delhi)*,<sup>3</sup> *Patel Engineering Ltd. Vs. Union of India & Anr.*<sup>4</sup>, *Raghunath Thakur Vs. State of Bihar & Ors.*<sup>5</sup>, *Vetindia Pharamaceuticals Limited Vs. State of Uttar Pradesh & Anr.*<sup>6</sup> and *UMC Technologies Private Limited Vs. Food Corporation of India and Another*<sup>7</sup>. In view of the aforesaid, the action of the respondent/authority in passing an order of blacklisting and forfeiture of security deposit is also found to be contrary to law and violative of the principles of natural justice. Therefore, we are of the view that only because the dispute pertains to contractual arena, the writ Court should not have declined to entertain a writ petition.

9. In view of aforesaid analysis, we find that the learned Single

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2 (1975) 1 SCC 70  
3 (2014) 9 SCC 105  
4 (2012) 11 SCC 257  
5 (1989) 1 SCC 229  
6 (2021) 1 SCC 804  
7 (2021) 2 SCC 551

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Judge has erred while dismissing the writ petition. Accordingly, order dated 17.3.2021 passed by the learned Single Judge is set aside. The impugned orders before the writ Court dated 11.07.2018 (Annexure P/5) and 11.09.2019 are quashed. The present writ appeal is **allowed**. There shall be no order as to costs.

**(SHEEL NAGU)**  
**JUDGE**

**(PURUSHAINDR KUMAR KAURAV)**  
**JUDGE**

Jasleen