2026:AHC:59781-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 34251 of 2025

M/s Satish Chandra Dixit Through its Proprietor, Satish Chandra Dixit
…..Petitioner(s)

Versus

State of U.P. and 5 others
…..Respondent(s)

Counsel for Petitioner(s)	:	Akash Mishra, Yogendra Pati Tripathi, Hritudhwaj Pratap Sahi, Sanjay Kumar Tiwari, Sankalp Narain, Shreya Gupta, Suman Kumar Yadav, Vijai Kumar Tiwari
Counsel for Respondent(s)	:	C.S.C.

Reserved
AFR

In Chamber

HON'BLE ATUL SREEDHARAN, J.
HON'BLE SIDDHARTH NANDAN, J.

(Per: Hon'ble Siddharth Nandan,J.)

1. Heard Shri V.K. Singh, learned Senior Advocate assisted by Shri Vijay Kumar Tiwari, learned counsel for the petitioner and Ms. Subra Singh, learned Standing Counsel for the State-respondents.

2. The present writ petition has been filed seeking issuance of writ of certiorari quashing the order dated 30.08.2025 passed by the respondent no.4 by way of which the representation of the petitioner, in pursuance of the order dated 27.05.2025 passed in Writ Petition No. 23063 of 2024 (M/s Satish

Chandra Dixit vs. State of U.P. and 5 others), has been rejected, and upholding the order of debarment dated 21.06.2024 for the remaining period of 9 months 22 days (i.e. up to 21.02.2026) has been upheld.

Facts of the Case

3. The office of Superintendent Engineer Badaun, Pilibhit Circle, P.W.D. Bareilly had invited tender vide notification dated 11.12.2020 for the work of financial year 2020-21, i.e, for the construction of minor bridge; and the value of the work was 514.00 lacs. It is the case of the petitioner that on the basis of the false complaint made by one Shri Javed Khan proprietor of participating firm M/S A.M. Builders, the petitioner was debarred and the single tender of M/S A.M. Builders was accepted. Thereafter, the petitioner was debarred for the second time on 26.11.2021 and against which he had preferred Writ-C No.890 of 2022 (M/s Satish Chandra Dixit vs. State of U.P. and others) and this Court vide order dated 28.07.2022, held that the order of debarment, is a result of "whimsical and arbitrary" exercise of power and was quashed.

4. It is relevant to mention here that the notice was given on account of the fact that the declaration on e-stamp paper of Rs. 10 was made, while thereafter to rectify the said *bona fide* mistake, and by way his explanation, the petitioner submitted a declaration form on e-stamp paper worth Rs. 100/-; and therefore, the explanation furnished by the petitioner was not at all considered while passing of the impugned order, i.e. an order of debarment for a period of 1 year from entering into a fresh contract.

5. It further transpires that a complaint in the month of February, 2022 was made by the petitioner before the

Lokayukta at Lucknow, pointing out irregularities adopted in the tender which was given to M/s A.M. Builders and in pursuance thereof a High Level Committee was constituted and eventually the Committee submitted its report along with its recommendation dated 19.09.2023, finding culpability of 6 Engineers being guilty of 17 charges.

6. On account of the aforesaid penal action being proposed, it has been alleged by the petitioner that initially he was pressurized to enter into a compromise with the officials of the department, who were found guilty in the report of the Lokayukta dated 19.09.2023 and once he did not succumb to the pressure, he was given a show cause notice by the respondent no.3/Chief Engineer (Headquarter-2), Public Works Department at Lucknow; alleging that the petitioner has annexed erroneous experience certificate at the time of participating in tender proceedings in the year 2019, in District Badaun; and an erroneous experience certificate in Bareilly at the time of getting registration process, in the year 2018.

7. Thereafter, the petitioner was debarred for a period of 2 years, vide order dated 21.06.2024 and was also blacklisted on 09.10.2024.

8. The petitioner filed a petition being Writ-C No.23063 of 2024 and another petition being Writ-C No.42927 of 2024, against the aforesaid order. This Court vide order dated 27.05.2025 found that though a reply was submitted on 19.05.2024, against show cause notice dated 07.05.2024, the impugned order was passed placing reliance on alleged discovery made subsequent to the reply and accordingly, there was violation of principles of natural justice; and accordingly, petitioner was given liberty to file a fresh reply by

15.07.2025, after submitting his requisition on the documents which were discovered subsequent to his earlier reply by 09.06.2025. On submission of such a requisition on the discoveries by 09.06.2025, the petitioner be further allowed inspection and after considering the consolidated reply to be given by the petitioner by 15.07.2025, the authorities were directed to pass fresh orders.

9. The petitioner submits that he had sought information from the department vide his application dated 03.06.2025 but the department did not provide him the complete information, as desired by him and as directed by this Court; and while in a highly arbitrary and illegal manner, by way of colourable exercise of power, they had lodged an FIR against him, in order to coerce him further, in collusion with M/s A.M. Builders through its proprietor Shri Javed Khan.

10. However, the department had provided information on 3 points on 11.07.2025.

11. The petitioner with the information received and in order to meet the deadline set by this Court, submitted his reply dated 15.07.2025 and supplemented the same by another reply dated 14.08.2025, before the department.

12. The learned Standing Counsel has submitted that a letter dated 11.08.2025 was sent by the Chief Engineer, to the petitioner asking him to appear in person within a period of 3 days and in case he does not appear he will not be granted any further indulgence and on the basis of the reply dated 15.07.2025, the proceedings will be concluded. Thereafter, the impugned order has been passed by the respondents.

Issues

(i) Whether it was incumbent upon the respondents, even in the case of the petitioner failing to appear in person before the authority, to consider the reply dated 15.07.2025 and 14.08.2025 and pass a reasoned order, on the basis of replies and documents on record?

(ii) Whether in the factual background and the directions by this Hon'ble High Court, instance of legal mala fide and colourable exercise of power can be inferred.

(iii) Whether after repeated opportunities and directions when the authorities have failed to consider the reply of the petitioner and legal mala fide being writ large, can the matter be again relegated back to the authorities for fresh decision considering that petitioner has suffered debarment and blacklisting, without adequate consideration.

> ***Issue No. I*** *- Whether it was incumbent upon the respondents, even in the case of the petitioner failing to appear in person before the authority, to consider the reply dated 15.07.2025 and 14.08.2025 and pass an appropriate order on the basis of replies and documents on record.*

Discussion/Conclusion

13. Shri V.K. Singh, learned Senior Counsel has emphasized on the fact that since the petitioner had filed a complaint in the month of February 2022 against the officials of the Public Works Department and the High Level Committee by the Lokayukta also found the complaint of the petitioner to be genuine and had recommended vide its letter dated 19.09.2023 to the Chief Secretary, to take appropriate action; the department was having legal mala fides and ill intentions against the petitioner, and accordingly in spite of the specific direction and timeline being fixed by the High Court in its

order dated 27.05.2025, primarily the department did not supply the complete information as desired by him and secondly though a detailed explanation in the form of reply dated 15.02.2025 and 14.08.2025, was very much before the authority concerned; but in spite of the same, in the impugned order it has merely been stated that the reply which has been submitted by the petitioner is not beyond or in addition to what they had already submitted on 12.12.2024, which was the basis of passing of the earlier impugned orders dated 21.06.2024 and 09.10.2024; and which was set aside by this Court vide order dated 27.05.2025.

14. He has also argued that once the order dated 21.06.2024 was set aside by this Court vide its judgment and order dated 29.05.2025 passed in Writ-C No.26063 of 2024, it was not open for the authorities to revive the said order vide its impugned order dated 30.08.2025; and on this count alone the impugned order dated 30.08.2025 is liable to be set aside.

15. He has also argued that the legal mala fides of the respondents are writ large right from the inception; and as found by this Court while setting aside the earlier blacklisting order in its order dated 28.07.2022 in Writ-C No.890 of 2022. He has relied on the observations of this Court in the said judgment, where the Court had recorded that the impugned order of debarment, is a result of "whimsical and arbitrary" exercise of power, while quashing the same. The impugned order speaks volume of the wrong doings, intentionally and without a just cause and there being no reasonable relation to the purpose of exercise of statutory power, which is a facet indicative of "Malice in law".

16. He has forcefully submitted that once this Court vide its order dated 27.05.2025 had permitted the petitioner to file a

reply by 15.07.2025, after applying for the documents which was discovered subsequently; it was incumbent upon the authorities to consider the reply dated 15.07.2025 and 14.08.2025.

17. However, since they were having grudge against the petitioner, since he had made complaint in the month of February, 2022 before the Lokayukta and which has resulted in a recommendation dated 19.09.2023, holding prima facie guilty, 6 Engineers, on 17 charges; therefore, they never intended either to give an adequate opportunity of hearing or to consider whatever reply the petitioner has been submitting. He has submitted that all the exercise was at the behest of M/s A.M. Builders proprietor i.e. Shri Javed Khan and otherwise there was no allegation/charge, except that of having submitted irregular experience certificate, which was denied with proof on record by way of petitioner's reply dated 15.07.2025. However, no consideration was given to the same.

18. Per contra, the learned Standing Counsel has submitted that adequate opportunity was given to the petitioner and though he was asked to appear in person within a period of 3 days, which is evident from the letter dated 11.08.2025; but he failed to do so and accordingly authorities concerned had proceeded to pass an order on the basis of reply submitted by the petitioner.

19. However, the learned Standing Counsel fairly admitted that apart from stating that the reply dated 15.07.2025 and 14.08.2025, does not state any new defence but what was already stated in their earlier reply dated 12.12.2024, no other consideration was given, in the impugned order. For ready

reference, the relevant extract of the order dated **30.08.2025** is being quoted:

> **"**अतः मा० उच्च न्यायालय, इलाहाबाद में रिट याचिका सं0- 42927/2024 मै० सतीश चन्द्र दीक्षित बनाम उ०प्र० राज्य व 4 अन्य में पारित आदेश दिनांक 27.05.2025 एवं रिट याचिका सं0- 23063/2024 मैसर्स सतीश चन्द्र दीक्षित बनाम उ०प्र० राज्य व 05 15 अन्य में पारित आदेश दिनांक 27.05.2025 के समादर में नैसर्गिक न्याय के दृष्टिगत याची मैसर्स सतीश चन्द्र दीक्षित, कॉन्ट्रैक्टर को अपना पक्ष रखने हेतु दिये गये अवसर के क्रम में याची द्वारा प्रस्तुत किये गये उत्तर दिनांक 15.07.2025 एवं 14.08.2025 में पुनः उन्हीं तथ्यों का उल्लेख किया गया है, जोकि उनके द्वारा अपने पूर्व प्रेषित उत्तर दिनांक 12.12.2024 किया गया है। याची द्वारा प्रस्तुत प्रत्यावेदन में अतिरिक्त रूप से कुछ बिन्दुओं पर अभिकथन किया गया, जोकि इस प्रकरण से सम्बन्धित/ आच्छादित नहीं है।
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> अतः मैसर्स सतीश चन्द्र दीक्षित, कॉन्ट्रैक्टर, बदायूं द्वारा प्रस्तुत अभ्यावेदन में किसी नवीन तथ्य का उल्लेख न होने, उक्त प्रकरण के इतर जनपद पीलीभीत की निविदा सम्बन्धी प्रकरण पर मा० लोकायुक्त की जाँच इत्यादि का उल्लेख किये जाने, जिसकी इस प्रकरण में कोई प्रासंगिकता नहीं है, के दृष्टिगत ठेकेदार का उत्तर बलहीन एवं तर्कहीन पाया गया।
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> अतः प्रकरण के सम्यक् विचारोपरान्त मैसर्स श्री सतीश चन्द्र दीक्षित, ठेकेदार का उत्तर दिनांक 15.07.2025 एवं 14.08.2025 बलहीन पाये जाने के दृष्टिगत, प्रकरण पर प्राप्त विधि परामर्श एवं अधिशासी अभियन्ता, निर्माण खण्ड-2, लो०नि०वि०, बदायूं एवं अधीक्षण अभियन्ता, बदायूं-पीलीभीत वृत, लो०नि०वि०, बरेली द्वारा दिये गये अभिमत/संस्तुति के आधार पर मा० न्यायालय द्वारा पारित आदेशों के समादर में पूर्व पारित डिबार आदेश दिनांक 21.06.2024 की तिथि से वर्तमान अवधि को चटाते हुए शेष अवधि 09 माह 22 दिन (तिथि 21.06.2026 तक) के लिए मै० सतीश चन्द्र दीक्षित, ठेकेदार को ब्लैक लिस्ट/डिबार किये जाने के आदेश एतद् द्वारा पारित किये जाते हैं।
>
> उक्त आदेश तत्काल रूप से प्रभावी होंगे"

20. As far as the confirmation of the order dated **21.06.2024** vide the impugned order dated **30.08.2025**, is concerned the learned Standing Counsel do not dispute that the order dated **21.06.2024** was already set aside by this Court vide its order dated **27.05.2025** and therefore, this Court finds that the same cannot be revived by the impugned order.

21. It is a settled law that even if an authority, has to proceed *ex parte*, it is incumbent upon it, to take into account, the reply and documents on record, before passing of an order, which has not been done in the present case, inspite of specific direction of this Court.

22. In view of the aforesaid, this Court has no hesitation in holding that the impugned order dated **30.08.2025**, has not

only been passed, in non adherence to the directions given by this Court vide its judgment dated 27.05.2025 passed in Writ-C No.23063 of 2024; but also has perpetuated the illegality, which was made in the earlier proceedings, and was set at naught by this Court vide its judgment and order dated 27.05.2025.

23. This Court also finds that vide impugned order dated 30.08.2025, the authorities have confirmed the order dated 21.06.2024 which was already set aside vide judgment and order dated 27.05.2025; and for this reason also the impugned order cannot be sustained.

> ***Issue No. II*** *- Whether in the factual background and the directions by this Hon'ble High Court, instance of legal mala fide and colourable exercise of power can be inferred.*

Discussion & Conclusion

24. The learned Senior Counsel, has submitted that, the chronological order in which the various orders have been passed by the authorities, for debarment of the petitioner's firm one after another and this Court had found that the said orders were being passed not only in violation of the principles of natural justice but also were "whimsical and arbitrary", is a deliberate act, in disregard to the rights of the petitioner.

25. Learned counsel for the petitioner has further submitted that the legal mala fides and colourable exercise of power is also evident from the fact that though this Court had directed that the proceedings were to be concluded adhering to the principles of natural justice, the authorities concerned in utter disregard to the same, has proceeded to confirm an order

which was already set aside by this Court, in violation of the principles of natural justice.

26. Per contra, learned Standing Counsel though had tried to defend the decision, on the ground that sufficient opportunity was given to the petitioner prior to passing of the order dated 30.08.2025 but could not demonstrate from the record that in spite of specific direction by this Court, replies of the petitioner dated 15.02.2025 and 14.08.2025 were ever considered and on the contrary a reply dated 12.12.2024 which was prior to the discoveries, was made the foundation. The said act, is plausibly taken with an oblique or an indirect object, to defeat the claim of the petitioners.

27. It has also not been disputed that the Lokayukta had found the officials of the department to be guilty on several counts for example one Shri D.K. Mishra the then Chief Engineer, Bareilly Region, Bareilly, Public Works Department, Badaun and Executive Engineer Pilibhit (Finance) Public Works Department, Bareilly were found to have misused their position for ulterior motive; and similarly one Shri Harswaroop Singh, the then Executive Engineer, Badaun along with one Shri M.M. Ansari, Chief Engineer, District Saharanpur, Construction Division-I etc. culpability was found by the High Level Committee and recommendations were made in exercise of powers under Section 12(5) of the U.P. Lokayukta and Up Lokayukta Adhiniyam, 1975.

28. On a pointed query to the learned Standing Counsel as to what action was taken on the basis of the said recommendations of the Lokayukta and as to whether any FIR was lodged against them, she could not state as to whether any action has been taken on the basis of the recommendation dated 20.09.2023; and on the contrary we find that a vague

show cause notice dated 07.05.2024 was given, on a flimsy ground that an erroneous experience certificate was given by the petitioner which is in violation of the instructions contained in clause 4.4A(b) for a work which was awarded for the financial year 2018-19. In case a contract was awarded on the basis of an erroneous experience certificate, the authorities was required to also take action against the concerned officials, who had awarded the contract but the same was not done. The petitioner's reply challenging the same and that after due verification by the concerned authorities, the experience certificate was accepted, was neither contradicted nor accepted.

29. We find it necessary to observe that a State which is a welfare State is expected to uphold the majesty of the rights enshrined under Part-3 of the Constitution of India; and any illegal or colourable action, on part of the State or its agency *viz. a viz.* a citizen, is far too serious and damaging to society. To meet the rival contention of the parties, we may also address the distinction between "malice in fact" and "malice in law".

For the sake of brevity, without going into intrinsic details of the aforesaid two legal propositions, we may just outline the difference between the same, in the following tabular form:

Malice in fact	Malice in law
1. Meaning **Malice in Fact (Actual Malice)** means person acts with **ill-will, spite, hatred, or personal animosity** towards another. The wrongful act is motivated by a bad intention or desire to harm a particular person. It is a wrongful act done **with knowledge of its illegality or with intention to cause harm.**	1. Meaning **Malice in Law (Legal Malice)** refers to doing a **wrongful act intentionally without just cause or lawful excuse**, even if there is **no personal hatred or ill-will against the person affected.**

2. Proof Malice in Fact must be **specifically proved** by showing evidence of personal hostility, ill-will, or bad intention. For malice in fact, the same has to be expressly pleaded, alongwith the allegations in support thereof, and the concerned person also has to be impleaded.	**2. Proof** Malice in Law **does not require proof** of personal hatred. it is presumed by law when a person intentionally commits an unlawful act because **Malice in law** is a deliberate act in disregard to the rights of others, the conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. *Viscount Haldane* described Malice in law as follows in **Shearer v. Shields [[1914]A.C.808, 813]**: "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently." Thus malice in its legal sense means malice such a may be assumed from the doing of a wrongful act intentionally but without just cause excuse, or for want of reasonable or probable cause"
"Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The determination of a plea of mala fides involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power." **Rajneesh Khajuria v. Wockhardt Ltd.** **State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222: 1992 SCC (Cri) 192**	**"legal malice" or "malice in law"** means "something done without lawful excuse". It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others." **HMT Ltd. v. Mudappa [(2007) 9 SCC 768]** **State of A.P v. Goverdhanlal Pitti, (2003) 4 SCC 739]**

* An action is said to be vitiated by malice in fact when the same lacks good faith and is motivated by personal bias, grudge, oblique or improper motive or ulterior purpose. The malice in fact needs to be pleaded, the party concerned against whom malice in fact is alleged, needs to be impleaded and an opportunity has to be given to the party so impleaded, to respond to the allegations. The said allegations have to be established before the Court.	*An Order or action can be said to be vitiated by malice in law in one or more of the following circumstances: (a) From doing of a wrongful act intentionally without any just cause, or excuse, or without there being reasonable relation to the purpose of exercise of statutory power. **Rajneesh Khajuria (supra), quoting from State of Bihar v. P.P. Sharma (supra)** (b) It is the attainment of ends beyond the sanctioned purposes of power by simulation or pretention of gaining legitimate goal. When the custodian of power is influenced in its exercise by consideration outside those for the promotion of which the power is vested, the Court calls it colourable exercise and is undeceived by illusion. **State of Punjab v. Gurdayal Singh** (c) It is a deliberate act in disregard to the rights of others. **Kalabharti Advertising v. Hemant Narichania (2010) 9 SCC 437** (d) It is an act taken with an oblique or indirect object. **Kalabharati Advertising (supra)** (e) Conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. **Kalabharati Advertising (supra)** (f) Passing an Order for unauthorized purpose. **Kalabharati Advertising (supra)** iii. Malice in law need not be pleaded and does not need proof. **(State of Punjab v. Gurdayal Singh (1980) 2 SCC 471).** For malice in law, intention is immaterial. **(S.R. Venkataraman v. Union of India [(1979) 2 SCC 491)**

30. In cognizance of the aforesaid distinction, we find that there is no necessity for specific pleadings in cases where the admitted events and documents establishes a malice in law; and action can be said to be vitiated by malice in law when the intention without a just cause or excuse becomes writ large on the facts of the case i.e, when an act can be said to be done without any lawful excuses.

31. In the present case, when the debarment order was passed on the second occasion against the petitioner, based on documents which were relied upon and the same being subsequent to the point in time, when the reply was submitted by the petitioner; an inference may have been remotely possible that the authorities misguided itself and relied upon the said subsequent discoveries, while inflicting the petitioner with the debarment order for an advertent reason.

32. However, with this Court specifically fixed a time frame and permitted the petitioner to seek those documents which were subsequent in time and thereafter fixed an outer time limit for the petitioner to submit his reply, which he also did; then in the said circumstances, by not adverting to the reply submitted by him, does not given any lawful excuse to the respondents.

33. The respondents by their action have clearly made the petitioner to suffer debarment without any opportunity, by considering his explanation, which was required to be considered by the respondent authorities and in doing so, the authorities have travelled beyond their authority in utter disregard to the rights of the petitioner, which demonstrates the intent to manifest injury to the petitioner.

34. In the aforesaid action, the petitioner inspite of having submitted a plausible explanation, to a technical objection of the respondent authorities, i.e. assuming that the experience certificate was faulty; and the authorities themselves have examined the said certificate, whereafter the contract was granted to the petitioner, no consideration was made. There was no allegations of insufficiency in performance of the contract or any financial irregularity.

35. We do not find anything in the show cause notices, as to whether, there was any deficiency in the execution of the contract or financial irregularities, so that at such a belated stage, on technical ground, especially after petitioner has already suffered the penalty period substantially, cannot be permitted; and the impugned action of the respondents, also tilt the equity, in favour of the petitioner.

36. Be that as it may be, in the admitted factual position, what can be seen is that the petitioner was given a debarment order thrice and all of them were found to have been passed either in violation of the principles of natural justice or being "whimsical and arbitrary"; and on account of the aforesaid colourable exercise of power, the petitioner has been made made to run from pillar to post for the last 8 years. It is also borne out from the documents and the record before this Court is that, the impugned action is on account of the fact that the petitioner was a whistle blower and had made a complaint against top officials of the Public works Department which was found to be correct, in the fact finding enquiry by the Lokayukta.

37. In view of the aforesaid, we hold the entire proceedings is a classical case of a legal mala fide and colourable exercise of power.

Issue No. III *- Whether after repeated opportunities and directions when the authorities have failed to consider the reply of the petitioner and legal mala fide being writ large, can the matter be again relegated back to the authorities for fresh decision.*

Discussion & Conclusion

38. Learned counsel for the respondents had urged that no doubt that the earlier orders dated 21.06.2024 was set aside by this Court and there was specific directions and cut off dates, when the documents/information was required to be given to the petitioner and consequently a reply was also to be submitted, which was as a matter of fact was submitted; but the authorities assuming though not admitting had not complied with the directions of this Court, by not giving consideration to the reply dated 15.07.2025 and 14.08.2025, the matter may again be relegated to the authorities concerned for fresh consideration.

39. Learned counsel for the petitioner has submitted in reply to the aforesaid that he is a contractor and has a fundamental right to carry out his profession or any trade or business as guaranteed under Article 19(1)(g) of the Constitution and on account of the fact that he has made complaints against the erring higher officials of the Public Works Department, he has suffered the consequences for the last eight years and repeated debarment orders being passed against him, has resulted in loss of reputation and financial loss. He has submitted that in spite of the directions of this Court, the authorities concerned have not considered the reply and accordingly after more than eight years, the matter may not be relegated to the authorities for fresh consideration, especially in the circumstances where legal mala fide and colourable exercise of power are writ

large on the facts of the present case, as also no action has been taken on the recommendation of the Lokayukt, whereas the petitioner’s firm, has been targetted.

40. We find that the show cause notice based on which the proceedings were initiated against the petitioner, is on a flimsy technical ground which has no efficacy at this belated stage, when the work has been completed satisfactorily and as far as the charges pertaining to submission of erroneous experience certificate is concerned, assuming that the said charge may have been correct but it is the authorities concerned, who had proceeded to grant the contract after due verification, at that time and has not shown any grievance against the work executed by the petitioner's firm. There are no allegations of insufficiency in the work concluded, in pursuance of the contract or that of irregularities and misappropriation in any form.

41. The petitioner had repeatedly submitted reply affirming the correctness of the experience certificate, which was duly examined by the authorities, prior to grant of contract, and the said explanation the authorities had absolutely failed to consider while now after 8 years since the completion of the work, the matter has become stale; and also in view of the legal mala fides being established on the basis of the documents and records before this Court and having held that the authorities were continuously trying to penalize the petitioner, without adhering to the principles of natural justice or to the directions issued by this Court; we find that the ball again cannot be thrown in the court of the respondents, especially when the petitioner, has already undergone a substantial period of stigma of debarment period and that too in violation of the principles of natural justice.

42. At this juncture, we may also refer gainfully to the decision of the Apex Court in ***Mahendra Prasad Agarwal Vs. Arvind Kumar Singh and Ors.***[1]. Relevant paragraph nos. **8, 13, 14, 15** of the aforesaid judgment as quoted herein below:

> *8. Further narration of facts would sadly indicate that, as the "First Season" with multiple episodes of rejection orders followed by successive 'consider' and 'reconsider' directions of the High Court reached nowhere, commencement of contempt proceedings seem to have only opened up the "Second Season" of inconclusive directions for filing affidavits after affidavits.*
>
> *…..*
>
> *13. Facts that we have recounted till now reveal a sad reflection, not our laws, but the way we practice our laws and work our judicial remedies. We are not be mistaken as sermonising, for such episodic disposal could feature even in the practice of Supreme Court. Our endeavour is to ensure that we take notice of it and adopt course correction.*
>
> *14. There is no doubt about the fact that the "consider jurisprudence", so routinely adopted these days and if we may use the expression - to throw the ball out of the Court, is counterproductive and harms the system.*
>
> *15. When a claim of a right is legal and justified, relief must follow. The Constitutional or statutory remedies are not intended for academic discourse. If a case deserves relief, it must be granted then and there, unflinchingly if need be. Balancing of equities is not to be confused with avoiding or postponing the relief. These are not matters of law, but of its working and practice. Unlike law and its procedures, good practices that evolve over a period of time are far more precious than written laws, as it is in this practice that we see acceptance and internalization of the spirit of law. It is necessary to recognize, nurture and develop good practices which become habits. These habits come from the shared belief, values and attitudes that breathe vitality into Rule of law. Legal culture integrates collective beliefs, fostering habits. It is necessary and in fact compelling to keep our remedies simple, effective and efficient.***"**

43. The doctrine of colourable exercise of power clearly prescribed that even if a party has a legal right, but it is being exercised in an improper or an illegal manner, the said action renders the act invalid. This principle applies when an authority acts out side its scope. We also see reasons to rely on the principle, that "What cannot be done directly, cannot

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be done indirectly", which is also the core of the aforementioned doctrine. This Court also find that the action of the authorities was nothing but an abuse of its power. Since they have utilized their power with an improper motive, for victimization of the petitioner.

44. The facts of the case, is like a belief that dark forces lie behind us unwelcome circumstance, and concomitantly that nobody will notice them; and in these scenario, it is the duty of the courts (even in absence of any pleading) to ascertain that whether a remand would at the stage, only perpetuate an illegality or be necessary for a substantial justice. In the first case, remand, will be futility.

45. We also find that the respondents cannot be permitted to take advantage of their own wrong and persistently harass the petitioner for an indefinite period and when they had every recourse, under the law to proceed against the petitioner but palpably they failed to do so; and the orders which were being passed from time to time, were not in consonance with the principles of natural justice and other statutory requirements; and though this Court had intervened on various occasions, while still given repeated opportunity to rectify the anomalies but the respondents being persistent towards harassing the petitioner and not given him the opportunity through the due process, we at this stage find that since the contract was completed satisfactorily, the matter has become stale, and now much water has flown, to be remanded back for scrutiny by the respondents-authorities, on technical ground.

46. We also decline the request of the learned Standing counsel, to remand the matter and permit them to examine the reply of the petitioner, on the ground that it is no longer

res integra that when a claim of a right is legal and justified, a relief must followed. We have examined the reply of the petitioner regarding the subject matter of the show cause, which was the genesis of the present proceeding and find that the experience certificate cannot be said to be faulted, in view of the explanation of the petitioner and as such the petitioner deserves the relief to bring quietus to the proceedings. Undoubtedly, the balancing of equities is not to be confused when avoiding or postponing the relief, which otherwise one is entitled under law. We also fortified in our view by the judgment of the Apex Court in the case on ***Mahendra Prasad Agarwal (supra)***.

47. In view of the foregoing discussions, the present writ petition stands ***allowed*** and the impugned order dated 30.08.2025 is hereby set aside.

(Siddharth Nandan,J.) (Atul Sreedharan,J.)

March 23, 2026
S.Prakash