



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10450 of 2024
Reserved on :21.05.2024
Pronounced on: 01.07.2024

M/s Shivam Engineers and FabricatorsPetitioner

V/s

State Bank of India and othersRespondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Vikram Satpal Anand, Advocate, for the petitioner.
Mr. Akshay Jain, Advocate,
Ms. Kajal, Advocate and
Mr. Mahesh, Advocate, for the respondent-State Bank of India.

(Through hybrid mode)

VIKRAM AGGARWAL, J.

1. A certiorari is prayed for quashing the order dated 04.12.2023 (Annexure P-2), vide which the petitioner has been debarred by the respondents from future bidding. The petitioner further prays that it be allowed to continue with the work allotted vide letter dated 06.09.2023 (Annexure P-1), as no separate termination of contract has been issued and no complaint had ever been submitted by anyone against the petitioner. The petitioner also seeks initiation of an inquiry by the Vigilance for the complaints made by the petitioner as well as by the empanelled Architect against the respondents. The release of payment qua the work done by the petitioner is also prayed for.

2. The petitioner claims to be a well established firm engaged in providing services as contractors and also claims to have executed various works assigned by the State Bank of India at different locations in India.

3. Facts, as pleaded, are that tenders were floated by the



respondents for electrical work of State Bank of India-Administrative Office, Ludhiana for a total cost of Rs.13,51,000/- plus GST. In pursuance of a bid having been submitted by the petitioner, the same was accepted and the petitioner was engaged vide letter dated 06.09.2023 (Annexure P-1).

4. The petitioner immediately commenced the work and completed almost 70/80 per cent of the same to the complete satisfaction of the respondents and not a single complaint was conveyed to the petitioner for the work done at the site at Ludhiana. However, despite the same, the payments due to the petitioner were not released. The petitioner suddenly received a communication dated 24.11.2023 vide which the contract of Bathinda Zone was terminated without assigning any valid reason and without providing any opportunity of hearing. Not only this, vide order dated 04.12.2023 (Annexure P-2), the petitioner was debarred for future bidding as well.

5. It has been averred in this petition that these steps were taken at the behest of one Malkhan Singh, AGM (P&E), SBI, LHO, Chandigarh against whom the petitioner had submitted complaint dated 08.11.2023 for demand of illegal gratification (Annexure P-3).

6. On 01.01.2024, the petitioner received an e-mail from the Local Head Office, Chandigarh for stoppage of ongoing contracts (Annexure P-4). The petitioner, therefore, issued a legal notice dated 15.01.2024 (Annexure P-5). Instead of replying to the same, a legal notice dated 15.03.2024 (Annexure P-6) was issued by the respondents to the petitioner alleging that the petitioner had not completed the work in time and, therefore, he had been debarred for a period of two years. The petitioner submitted a reply to the said legal notice on 20.03.2024 (Annexure P-7), mentioning the entire facts.

7. The case of the petitioner is that the order of termination and



that of debarment were issued without following the principles of natural justice and no show cause notice was ever issued to the petitioner, forcing him to knock the doors of this Court.

8. During the course of preliminary hearing, at the outset, learned counsel representing the respondents, who was present on advance notice having been served, submitted that the petitioner has not approached the Court with clean hands and that he has suppressed vital facts from the Court with a view to mislead the Court. It was submitted that a civil suit had been filed by the petitioner, challenging the debarment order dated 04.12.2023 and the termination order dated 24.11.2023 and in the said suit, application under Order XXXIX Rules 1 and 2 CPC filed by the petitioner for grant of ad interim injunction had also been dismissed vide order dated 06.03.2024, passed by the Court of Civil Judge (Jr. Divn.), Chandigarh.

Learned counsel also produced a copy of the plaint along with application under Order XXXIX Rules 1 and 2 CPC, as also the order dated 06.03.2024, vide which the application for grant of ad interim injunction was dismissed. The same were taken on record as Mark 'X' and 'Y'.

9. On a specific query having been put to learned counsel for the petitioner, as to why the DNIT, the order of termination 24.11.2023, the show cause notices referred to in the debarment order (Annexure P-2) and the other important documents had not been placed on record and as to why the factum of a civil suit having been instituted by the petitioner has been concealed, learned counsel had no valid explanation to offer. As regards the civil suit, it was simply submitted that the petitioner had not disclosed about the same to him. With regard to other documents, no valid response was forthcoming.

10. Faced with the situation, learned counsel for the petitioner made



a request that he may be permitted to withdraw the writ petition. However, keeping in view the blatant manner in which vital facts have been concealed and a clear attempt has been made to mislead this Court, we declined the request made by the learned counsel for the petitioner to withdraw the writ petition.

11. Before proceeding further, it would be essential to examine what would be the fall out of the conduct of the petitioner.

12. It is well settled that every litigant, who approaches the Court, owes a duty that he does so with clean hands and is duty bound to disclose the complete facts to the Court. A petition which lacks *bona fide* and conceals vital facts is an abuse of the process of law and is liable to be discarded at the very threshold. In the case of *Kishore Samrite vs. State of U.P. and others, 2013 (2) SCC 398*, the Supreme Court of India was dealing with an appeal against an order dated 07.03.2011 passed by a Division Bench of the Allahabad High Court (Lucknow Bench) vide which, the High Court had dismissed a writ petition filed by one Kishore Samrite which contained wild allegations-insinuation against Sh. Rahul Gandhi with costs of Rs.50 lakh. Apart from other issues which were discussed, the issue of abuse of process of the Court was also dealt with by the Apex Court. The broad principles emerging from decisions in various cases were recapitulated by the Supreme Court and it was held as under:-

“29. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision. The cases of abuse of the process of court and such allied matters have been arising before the Courts



consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

- (i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.
- (ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.
- (iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.
- (iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.
- (v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.
- (vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.
- (vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.
- (viii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of



court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer *Dalip Singh v. State of U.P. & Ors.* (2010) 2 SCC 114; *Amar Singh v. Union of India & Ors.*, 2011(5) RCR (Civil) 386: (2011)7 SCC 69 and *State of Uttaranchal v. Balwant Singh Chauhal & Ors.*, 2010(1) RCR (Civil) 842: 2010(1) R.A.J. 372: 2010(1) S.C.T. 607: (2010)3 SCC 402].

13. It was held that the Supreme Court had consistently stated that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the justice delivery system. It was also held as under:-

“32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also



succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (*Refer: Tilokchand H.B. Motichand & Ors. v. Munshi & Anr., [1969(1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr., 2012(3) RCR (Civil) 1: 2012(3) Recent Apex Judgments (R.A.J.) 56: (2012)6 SCC 430; Chandra Shashi v. Anil Kumar Verma, 1995(1) RCR (Criminal) 210: (1995) SCC (1) 421; Abhyudya Sanstha v. Union of India & Ors., 2012(1) S.C.T. 641: (2011)6 SCC 145; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr., 2011(5) RCR (Civil) 397: (2011) 7 SCC 639; Kalyaneshwari v. Union of India & Anr., 2012(2) RCR (Civil) 626 2012(2) Recent Apex Judgments (R.A.J.) 242: 2012(2) S.C.T. 551: (2011)3 SCC 287).*

34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi- fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiore*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

35. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy.



In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. (*K.D. Sharma v. Steel Authority of India Ltd. & Ors., [(2008)12 SCC 481]*).

14. While concluding the issue of abuse of process of law, it was held as under:-

“45. From the above specific averments made in the writ petitions, it is clear that both these petitioners have approached the Court with falsehood, unclean hands and have misled the courts by showing urgency and exigencies in relation to an incident of 3rd December, 2006 which, in fact, according to the three petitioners and the police was false, have thus abused the process of the court and misused the judicial process. They maliciously and with ulterior motives encroached upon the valuable time of the Court and wasted public money. It is a settled canon that no litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. The privilege of easy access to justice has been abused by these petitioners by filing frivolous and misconceived petitions. On the basis of incorrect and incomplete allegations, they had created urgency for expeditious hearing of the petitions, which never existed. Even this Court had to spend days to reach at the truth. Prima facie it is clear that both these petitioners have misstated facts, withheld true facts and even given false and incorrect affidavits. They well knew that Courts are going to rely upon their pleadings and affidavits while passing appropriate orders. The Director General of Police, U.P., was required to file an affidavit and CBI directed to conduct investigation. Truth being the basis of justice delivery system, it was important for this Court to reach at the truth, which



we were able to reach at with the able assistance of all the counsel and have no hesitation in holding that the case of both the petitioners suffered from falsehood, was misconceived and was a patent misuse of judicial process. Abuse of the process of the Court and not approaching the Court with complete facts and clean hands, has compelled this Court to impose heavy and penal costs on the persons acting as next friends in the writ petitions before the High Court. This Court cannot permit the judicial process to become an instrument of oppression or abuse or to subvert justice by unscrupulous litigants like the petitioners in the present case.

15. This principle was reiterated by the Supreme Court of India in the case of *V. Chandrasekaran and another vs. Administrative Officer and others*, 2012 (12) SCC 133, holding that a petition containing misleading and/or inaccurate statements, only to achieve an ulterior purpose, amounts to an abuse of process of the Court. It was held that whenever a person approaches a Court of equity, in the exercise of its extra ordinary jurisdiction, it is expected that such person will approach the said Court not only with clean hands, but also with a clean mind, clean heart and clean objectives.

16. A perusal of the aforesaid clearly shows that such attempts concealing vital facts with a view to mislead the Court should be dealt with firmly so that it may serve as a sufficient deterrent to such unscrupulous litigants as the petitioner. The petition is bereft of any details. The notice inviting tender, the contract entered into between the parties, (if any), the work order, various show cause notices referred to in the debarment order (Annexure P-2) and the termination order dated 24.11.2023, have not been placed on record. Most importantly, there is no mention of a civil suit



having been filed by the petitioner, challenging the order of termination and debarment and the factum of application for grant of ad interim injunction having been dismissed.

17. It is, therefore, manifestly clear that there has been a clear attempt by the petitioner to mislead the Court by concealing the vital and material facts. This attempt is strongly deprecated. We, therefore, are dissuaded to advert to the merits of the case and solely on the ground of concealment and not having approached the Court with clean hands, are inclined to dismiss the instant writ petition.

18. In view of the aforesaid, the writ petition stands dismissed. Keeping in view the conduct of the petitioner as has been referred to above, we saddle the petitioner with exemplary costs of Rs.1 lakh, which shall be deposited by the petitioner with the High Court Legal Services Committee within a period of two weeks from today, failing which the same shall be recovered from the petitioner, in accordance with law.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on : 21.05.2024

Pronounced on : 01.07.2024.

vcgarg

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No