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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C)238/2012 & CM.Nos. 1660/2012, 492/2012 and 1101/2012

ARUNESH BANSAL

..... Petitioner

Through: Mr. Subhiksh Vasudev with Mr.
Rajbir Singh, Advs.

versus

DIRECTORATE OF EDUCATION

..... Respondent

Through: Mr.Nishant Datta, Adv in
CM. No.1101/2012
Ms.Zubeda Begum, Adv for the
respondent/DOE.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.02.2012

1. The writ petition is filed impugning the following eligibility criteria for bidding in the Notice Inviting Tender (NIT) dated 15th December, 2011 issued by the respondent Directorate of Education, Government of NCT of Delhi for printing, supply and processing of OMR Sheets and results analysis of Certified Compliance and Ethics Professional-II (CCEP-II) Examination, 2011-2012.

“The printer blacklisted/penalized by any Government department or by any other agency shall not be eligible for

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bidding. Every printer would be required to submit an affidavit that the bidder has never been blacklisted/penalized by any Government department/Government undertaking/any other agency.”

2. The petitioner pleads in the writ petition that he had submitted a bid in response to the NIT aforesaid though without submitting the affidavit as per the aforesaid clause; that his bid was thus not even opened. The petitioner in para 9 of the petition has pleaded as under :

“9. That pursuant thereto, the petitioner also communicated to the respondent vide letter dated 03.01.2012 that the respondent had never intimated imposition of any penalty being imposed on the petitioner prior to the evaluation of petitioner’s bid for the NIT dated 24.11.2011. The petitioner also refuted the overall reasoning given by the respondent in its summary report dated 13.12.2011 on various legal grounds. Copy of the said letter dated 03.01.2012 is attached herewith and marked as Annexure P-6.”

3. Contending the aforesaid eligibility criteria to be violative of his fundamental rights and counter-productive to the public interest for wider participation in the tenders and further contending that penalization irrespective of the grounds thereof equates the same to blacklisting, the aforesaid eligibility criteria was challenged and sought to be quashed. By way of application for interim relief, direction was sought to the respondent

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to allow the petitioner to participate in subsequent NITs also containing the same eligibility criteria.

4. Notice of the writ petition as also of the application for interim relief was issued.

5. The respondent in its counter affidavit has *inter alia* contended that the petitioner has mis-stated the facts in para 9 (supra) of the writ petition. It is pleaded that the petitioner has not approached this Court with clean hands and has suppressed from this Court the factum of having filed a Civil Suit being CS(OS) 299/2010 in this Court for waiving off the penalty imposed on him for breach of the contract.

6. Opportunity was given to the petitioner to file rejoinder. The petitioner therein has not controverted the factum of the institution of the suit aforesaid and has filed a copy of the plaint therein alongwith the rejoinder. It is however contended that the said suit is for recovery of the earnest money deposited under an earlier contract not refunded by the respondent.

7. We have today enquired from the counsel for the petitioner as to whether in response to the suit aforesaid filed by the petitioner it is the defence of the respondent that the petitioner is not entitled to the amounts

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claimed in the suit for the reason of any sum having been forfeited by way of penalty. The counsel for the petitioner conveniently states that he is not aware of the said fact. The counsel for the respondent however has handed over in the Court a copy of the written statement filed by the respondent in the said suit and prior to the filing of this writ petition and in which the respondent has *inter alia* pleaded that the amount claimed in the suit is not recoverable for the reason of the penalty having been imposed on the petitioner.

8. It is thus quite evident that the petitioner at the time of filing of the writ petition was aware of the respondent having imposed penalty on him. Notwithstanding so, the petitioner in the writ petition pleaded that the respondent had never intimated to the petitioner the imposition of any penalty on him.

9. The counsel for the petitioner upon being confronted states that the respondent had not intimated imposition of the penalty as pleaded in the written statement prior to the filing of the written statement. He also contends that the legality of the said penalty was under challenge in the suit aforesaid.

10. We are afraid the aforesaid explanations do not come to the rescue of

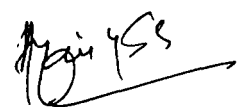
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the petitioner. Even if it were to be believed that the respondent, prior to the filing of the written statement in the suit had not intimated imposition of penalty on the petitioner, the petitioner from the filing of the written statement stood informed of such imposition. The petitioner thus could not have pleaded that the respondent had never intimated imposition of any penalty to the petitioner. The statement in para 9 of the petition is palpably false. The second explanation also has no value. The petitioner even if were to contend that he was contesting the said penalty, ought to have informed of the same in the writ petition. A clear case of mis-statement is made out. We may in this regard notice that the petitioner in the rejoinder has also pleaded that though the aforesaid suit has not been disclosed in the writ petition but was orally informed when the writ petition first came up for hearing. Such arguments again have no place in a Court of law. The Apex Court in *S.P. Chengalvaraya Naidu Vs. Jagannath* (1994) 1 SCC 1 has unequivocally held that one who comes to the court, must come with clean hands; a person whose case is based on falsehood, has no right to approach the Court; he can be summarily thrown out at any stage of litigation; a litigant who approaches the court is bound to produce all the documents relevant to the litigation and if he withholds a vital document in order to gain advantage then he would be

guilty of playing fraud on the court as well as on the opposite party.

11. We may highlight that the petitioner in the present case has sought to perpetuate the fraud in the filing of the writ petition; in the filing of the rejoinder also. The petitioner at that stage also did not make a clean breast of the state of affairs and again placed only the plaint in the suit before this Court and sought to conceal the written statement wherein the respondent has pleaded of the imposition of penalty on the petitioner. The petitioner from the filing of the said written statement at least had come to know of his having been penalized. In these circumstances, it was necessary for the petitioner to disclose the said facts which were material to the lis brought by the petitioner.

12. In view thereof, we are not inclined to entertain this writ petition on this ground alone. This writ petition along with all the pending CMs are accordingly dismissed. Date of hearing of 21st February, 2012 stands deleted.


ACTING CHIEF JUSTICE

FEBRUARY 10, 2012
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RAJIV SAHAI ENDLAW, J

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gnd.
... for filing writ petition to set aside
the order of the court.

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ORDER

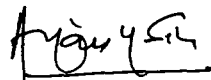
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01.03.2012

CM No.2260/2012 (for placing addl. Documents on record and recall of order).

The respondent no.3 had also filed W.P.(C) No. 799/2012 which in today's date has been decided. Though the petition of the petitioner herein was dismissed on the ground that he did not come to Court with clean hands and suppressed relevant facts, we make it clear that the principle laid down in the said judgment in W.P.(C) No. 799/2012 would be applicable in the case of the petitioner herein as well.

The CM stands disposed of.



ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

MARCH 01, 2012

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