Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 671 OF 2019

1. M/s. Veejay Facility Management
Private Limited, #416, 4th Floor,
Gera's Imperium -II, EDC,
Patto Plaza, Panaji, Goa 403 001,
through the Director
Mr. Vijay Gopi.

2) Mr. Gijay Gopi,
The Director,
M/s. Veejay Facility Management
Pvt. Ltd. Flat No.G-1, Block B,
Darius Horizon
Opposite Orlando Garden,
Alto Torda, Porvorim,
North Goa – 403 521. …. Petitioners.

Versus.

1) The Zonal Manager,
Bank of India, A & S Department,
"Star House", Plot No.-10,
Patto Plaza, Panaji, Goa.

2) M/s. Raj Facility Management Services,
Techno Cidade Complex,
Near Bata Showroom,
CHOGM Road, Porvorim,
Goa 403 501.

3) Bank of India,
through its Goa Zonal Office,

Star House, Plot No.10,
EDC Complex, Patto Plaza,
Panaji, Goa.

4. HDFC Bank Ltd.,
having its Corporate & Head
Office at HDFC House,
Senapati Bapat Marg,
Lower Parel, Nearby Ambit
Mumbai 400 013 and having its
Panajim Branch on 18th June Road,
Near Mathias Plaza, Panaji, Goa. …. Respondents.

Mr. D. Lawande, with Mr. Pradosh Dangui, Amogh Prabhudessai, Akshayat Joglekar, and Mr. Jay Mathew, Advocates for the Petitioners.

Mr. Nikhil Vaze, Advocate for Respondent No.1.

Mr. Vishnuprasad Lawande, with Mr. Parimal Redkar, Advocate for Respondent No.2.

Mr. Galileo Geles, Advocate for Respondent No.4

Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.

Date : 7th February, 2020.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Leave to amend to correct the cause title in so far Respondent No.2 is concerned. The amendment to be carried out forthwith.

2. Heard Mr. D. Lawande with Mr. Pradosh Dangui and Mr. A. Prabhudessai for the Petitioners, Mr. Nikhil Vaze, along with Mr. P. Vaze for Respondents No.1 and 3, Mr. Vishnuprasad Lawande, with Mr. Parimal Redkar for Respondent No.2 and Mr. G. Teles for Respondent No.4.

3. Rule. Rule is made returnable forthwith, with the consent of and at the request of the learned Counsel for the parties.

4. The Petitioners, by instituting the present Petition, question the award of tender for Premises and Facility Management Service contract for a term of three years for Zonal Office building, at Patto Plaza, Panaji by Respondents No.1 and 3-Bank of India (BOI), in favour of Respondent No.2 *i.e.* M/s. Raj Facility Management Services (RFMS), a Proprietory concern of Kamlakant Chaturvedi.

5. The BOI floated tender in respect of the aforesaid works initially by notice dated 5th April, 2019. However, on 25th April, 2019, possibly on account of certain objections being raised by the participating bidders, the said tender notice dated 5th April, 2019, was scrapped. Fresh tenders were invited vide notice dated 16th May, 2019, in term of which, the bids were to be submitted upto 28th May,

2019 till 3 p.m.. It is the case of the Petitioners that technical bids were opened on 28th May, 2019, but only 5 to 7 minutes' time was given to the parties to see each other's documents/certificates in order to raise any objections to the same. The final bids were, ultimately, opened on 30th May, 2019 since all the three bidders were found to be eligible upon opening of the technical bids.

6. The records indicate that on 30th May, 2019 itself, the Petitioners addressed a letter to the BOI, seeking leave to inspect/examine the bid documents submitted by RFMS. In the final bid which was opened on 30th May, 2019, it was found that the bid of RFMS was the lowest and the difference between the bid submitted by the Petitioners and RFMS, was 21.45 lakhs over the contract period which was of 3 years. Accordingly, work order dated 19th July, 2019 was issued in favour of RFMS in respect of the tender works which were to commence with effect from 1st August, 2019.

7. During the period between 30th May, 2019 and 19th September, 2019 i.e. with the interregnum between the date of opening of the final bid and the issuance of work order in favour of RFMS, the Petitioners applied for the bid documents of RFMS by invoking the provisions of the Right to Information Act, 2005 (RTI). The record indicates that there was avoidable delay in supplying the

documents though, there was really no secrecy as such with respect to the documents. As late as on 24th July, 2019, the BOI, by email, informed the Petitioners that it was in the process of collating the documents which will be supplied *"after consulting with the legal department"*. However, on 27th July, 2019, the Petitioners came to know from the website that their application under the RTI had already been rejected by invoking the provisions of Section 8(1)(d) and Section 8(j) of the RTI Act.

8. This Petition was instituted on 30th July, 2019. In response to the notices issued, the BOI filed an affidavit on 5th August, 2019 placing on record bid documents relating to RFMS which were considered by the BOI for the purpose of awarding the tender to RFMS.

9. Therefore, it is only upon institution of the present Petition and the response from the BOI, that the Petitioners secured the bid documents of RFMS which were considered by the BOI for the purposes of awarding the tender in favour of RFMS. In these circumstances, the contention that this Petition was instituted after some delay is unacceptable.

10. Thereafter, pleadings were filed by all the parties, which are

part of the record in the present Petition. Based upon the pleadings, final hearing in this matter commenced on 11th November, 2019. In the course of the final hearing, the learned Counsel for the Petitioners invited our attention to the certificate dated 11th January, 2019, purportedly issued by and on behalf of the HDFC Bank and pointed out that the Petitioners, on oath, have stated that the signatory on the said certificate one Mr. Ravi Valecha had resigned from the HDFC Bank in the year 2016 itself and, therefore, it is not possible for Mr. Ravi Valecha to certify on behalf of the HDFC Bank on 11th January, 2019.

11. Since, such a statement was made on oath on behalf of the Petitioners, we made an order on 11th November, 2019, impleading the HDC Bank as Respondent in this matter only for the limited purpose of ascertaining whether the certificate dated 11th January, 2019 is indeed some certificate issued by and on behalf of the HDFC Bank and further, whether Mr. Ravi Valecha was authorised to issue such a certificate for and on behalf of the Bank. At the same time, we granted liberty to RFMS to produce the work orders, if any, in relation to the certificate dated 11th January, 2019 since, a serious charge was made that such certificate was nothing but a fabrication.

12. In pursuance of the liberty granted, RFMS failed to

produce on record any work order or documents in support of the certificate dated 11th January, 2019, purportedly issued by the HDFC Bank certifying the work experience of RFMS. Instead, on behalf the HDFC Bank statement was made that upon verifying the Bank records, the deponent has ascertained that Mr. Ravi Valecha was not associated with the HDFC Bank in any manner as on 11th January, 2019 and further there was no agreement or contract between said Ravi Valecha and the HDFC Bank for the period between 1st March, 2018 to 31st March, 2020 as was indicated in the certificate dated 11th January, 2019.

13. The affidavit, which was filed on behalf of the HDFC Bank, proceeds to state that even the certificate at page 386 of the Paper Book, again on the letter head of the HDFC Bank was never signed by Mr. Xavier Mathias and the HDFC Bank had never awarded any contract to M/s. RFMS or M/s. Raj Enterprises during the tenure of Xavier Mathias with the HDFC Bank. The Deponent at para 7 of the affidavit then states that both the certificates at pages 376 and 386 of the paper book are not genuine documents, since there is no record of M/s. Raj Enterprises or M/s. Raj Facility Management Services discharging any works referred to in the certificates/letter with the HDFC Bank. The affidavit is sworn on the basis of the records available with the HDFC Bank at its

Registered Office in Mumbai, as well as its office in Panaji, Goa.

14. In response to the aforesaid affidavit dated 2nd December, 2019 on behalf of the HDFC Bank, Proprietor of M/s. RFMS Mr. Kamlakant Chaturvedi has filed an additional affidavit dated 24th January, 2020. In this affidavit, Mr. Chaturvedi has tried to produce certain additional material on record, basically in relation to an experience certificate dated 9th August, 2018, purportedly issued on behalf of Inorbit Malls (Goa) Pvt. Ltd. In addition, Mr. Chaturvedi has produced certain affidavits, including an affidavit of the Principal of Kendriya Vidyalaya No.1 Vasco, along with an experience certificate dated 28th August, 2019. This certificate was never a part of the record before the BOI and, therefore, the same is quite irrelevant.

15. In relation to the crucial averments in the affidavit filed on behalf of the HDFC Bank that the two certificates produced by Mr. Chaturvedi were not genuine documents, all that Mr. Chaturvedi has stated in his affidavit dated 24th January, 2020 at paragraph 4 reads as follows :

> *" 4) I say that I am producing the statement of account issued by the authorised signatory of ICICI Bank of the period June to July 2013, January 2014 of my account No.*

003005500113 in ICICI Bank which shows the amount received from HDFC bank towards the amount received for Housekeeping Services which has been received by me by online transaction."

16. According to us, the aforesaid averments at para 4 of the affidavit dated 24th January, 2020 are by no means sufficient to dispute the clear and categorical affidavit filed by Mr. Anand Naik on behalf of the HDFC Bank, who, without mincing any words, has stated that the certificate dated 11th January, 2019 and the certificate which bears no date, but which is to be found at page 386 of the paper book, are not genuine documents backed by any corresponding records with the HDFC Bank. In fact, Mr. Anand Naik has stated that Ravi Valecha was not even associated with the HDFC Bank as on 11th January, 2019, when the certificate was issued and further Mr. Xavier Mathias has also not signed the certificate at page 386 of the paper book. As if this was not sufficient, Mr. Anand Naik has categorically stated that no contracts as are indicated in the said certificates, were ever awarded in favour of RFMS.

17. From the aforesaid, it is very clear that RFMS submitted fabricated documents to the BOI in a bid to claim experience which, RFMS clearly lacked. These certificates were submitted by RFMS

with the knowledge that they were fabrications. Even, after the fabrication was discovered, the proprietor of RFMS Kamalakant Chaturvedi was quite defiant, which is evident from the patently false defence taken in the additional affidavit dated 24th January, 2020, in the form of averments in paragraph 4, which have been quoted above.

18. The averments in paragraph 4 of the affidavit dated 24th January, 2020 filed by Mr. Kamalakant Chaturvedi, suggest that the HDFC Bank for the period between June-July, 2013 and January, 2014, has paid certain amounts to him in his ICICI Bank account *"towards the amount received for Housekeeping Services which has been received by me by online transaction."*

19. Despite grant of opportunity, RFMS failed to produce any work orders or contemporaneous documents to indicate that the work referred to in the certificates which are given to be fabricated, had indeed been awarded to it. The certificates refer to the works allegedly undertaken between the period of 1st April, 2018 to 31st March, 2020. The payments referred to in para 4 of the affidavit of Mr. Chaturvedi referred to the period June-July, 2013 to January, 2014. Obviously, these payments have absolutely no nexus with the

certificate dated 11th January, 2019 or the certificate at page 386 of the paper book.

20. Besides, since Mr. Chaturvedi has produced his summary of account from the ICICI Bank pass book, and it is clear that the payments made to him have absolutely no nexus with any housekeeping activities for the period between 1st July, 2013 and 31st July, 2013. There are only two entries indicating that Mr. Chaturvedi received an amount of Rs.2247/- on two occasions. Similarly, for the period between 1st June, 2013 to 30th June, 2013, there are entries which suggest that Mr. Chaturvedi on several occasions received identical amounts of Rs.2247/-. Even, if all these amounts are added up, they come to not more than Rs.40,446/- and they have absolutely no correlation with the obviously fabricated certificates produced by Mr. Chaturvedi before the Bank, which fabricated certificates were defended as genuine by Mr. Chaturvedi before this Court.

21. Now that it is clearly established that RFMS by placing reliance upon the fabricated experience certificates, secured the tender from the BOI, it was expected that the BOI, which is a nationalized bank, treats this matter in seriousness and itself takes a decision to forthwith cancel the work order. In fact, once the HDFC filed the

affidavit before this Court, we not only granted RFMS some time to respond, but we directed the BOI to consider the effect of such subsequent developments and to inform this Court its decision on the returnable date.

22. Mr. Vaze, the learned Counsel for the BOI sought for some time in order to place on record the decision of the BOI. Finally, however, the BOI shirked its responsibility of taking any decision by simply saying that it leaves the matter to the Court.

23. No sooner the submission was made before us on behalf of the HDFC that the two certificates are fabrications, we, by order dated 26th November, 2019, restrained the BOI from making any further payments to the RFMS because, if we were to ultimately come to the conclusion that the contract was secured by RFMS on the basis of some false or fabricated documents, then, apart from the issue of criminal liability, we may also have to consider whether RFMS should be called upon to refund the amounts, if any, that were received from the BOI in the execution of the contract which RFMS secured on the basis of the fabricated documents.

24. The BOI had already filed an affidavit in this Petition, even before the issue of fabrication came up or before the HDFC could

file its affidavit, In the affidavit filed by Mr. Pramod Joshi on 5th August, 2019, at paragraph 14 there is a reference to the precise documents which were considered by the BOI in the context of technical eligibility of RFMS. These documents are as follows :

a) Experience certificate dated 9th August, 2018 issued by Inorbit Malls (India) Pvt. Ltd.;

(b) Certificate dated 11th January, 2019 issued by the HDFC Bank Ltd.;

(c) Certificate dated 5th May, 2015, issued by Bharat Granite and Marbles;

(d) Certificate dated 21st September, 2018 issued by Boston University;

(e) Certificate issued by (North-16) Convention Hotels Pvt. Ltd.

25. The affidavit on behalf of the BOI also states that RFMS, apart from the aforesaid documents, had submitted several other certificates of work experience of other nature which were *"beyond the scope of tendered work"*. In other words, in order to determine the technical eligibility of RFMS, the BOI took into consideration only the aforesaid five certificates.

26. Out of the 5 certificates, certificate dated 11th January, 2019 on the letter head of the HDFC Bank and signed by one Ravi

Valecha is established as a fabricated document. This is, as noted earlier, on account of the clear and categorical averments in the affidavit filed on behalf of the HDFC Bank, coupled with the absence of or in any case, evasive denials in the affidavit of Chaturvedi. This is also established by the fact that despite opportunities, RFMS failed to produce any documents whatsoever like work order or agreement in order to substantiate that the HDFC Bank had indeed awarded any works or that RFMS had indeed executed any work of housekeeping for the HDFC Bank during the period indicated in the certificates or even otherwise. Mr. Chaturvedi even went to the extent of filing an affidavit, in which he attempted to link some paltry payments made by HDFC Bank in his account way back in the year 2013-2014 to the certificates which he produced before the BOI in order to secure the works.

27. Once it is established that RFMS submitted fabricated documents to the BOI and on such basis secured the contract/work order from the BOI, there is really no option, but to quash the decision of the BOI to accept the bid of RFMS. In a matter of this nature, RFMS, who has not even candid to this Court, cannot be heard to say that this Court should for the first time examine the said certificates produced by it before the BOI and determine whether, on

the basis of such certificates RFMS is nevertheless adequately qualified.

28. From the material on record, we are satisfied that Mr. Kamalakant Chaturvedi, Proprietor of RFMS has scant regard for the truth, as well as solemnity of the Court proceedings. Obviously, in exercise of our extraordinary and equitable jurisdiction under Article 226 of the Constitution of India, no indulgence can be extended to such a party.

29. In *Maria Margarida Sequeira Fernandes and ors. vs. Erasmo Jack de Sequeira*[1], the Hon'ble Supreme Court has held that the truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth. What people expect is that the court should discharge its obligation to find out where in fact the truth lies. Right from the inception of the judicial system it has been accepted that discovery, vindication and

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[1] (2012) 5 SCC 370,

establishment of truth are the main purposes underlying the existence of the courts of justice. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and Judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.

30. In *Chandra Shashi vs. Anil Kumar Verma*[2], the Hon'ble Supreme Court has held that in order to enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that truth alone triumphs in the courts.

31. Even, otherwise, considering the persuasiveness of the submissions made by Mr. Vishnuprasad Lawande, learned Counsel for RFMS, we did examine in some detail, several other certificates submitted on behalf of RFMS. Even, upon examination of the same, we find that such certificates are themselves doubtful in nature and,

[2] (1995) 1 SCC 421

in any case, even if such certificates are to be believed, the same do not render RFMS eligible to bid, taking into consideration the eligibility conditions prescribed in the Notice Inviting Tenders.

32. The eligibility conditions have been set out in the Notice Inviting Tender and the same read as follows :

> " *MINIMUM ELIGIBILITY CRITERIA FOR PRE-QUALIFICATION*
>
> *a) Applicants should have minimum 05 years' experience in the field as on the date of this advertisement.*
>
> *b) Relevant experience in the field should be as under:*
>
> *i. Completed/in hand 3 similar assignment during last 5 years of an office or institutional building of carpet area not less than 2000 sq. mtr. Out of the three assignments, one should be in and around Panaji/Margao/Vasco/Ponda.*
>
> *OR*
>
> *ii. Completed/in hand 2 similar assignments during last 5 years of an office building of carpet area not less than 3000 sq. mtr. Out of the two assignments, one should be in and around Panaji/Margao/Vasco/Ponda.*
>
> *iii. Completed/in hand at least one similar assignment of an office/institutional building of carpet area not less than 4500 sq. mtr. If this assignment is outside Panaji/Margao/Vasco/Ponda, at least one additional completed/in hand assignment*

of an office/institutional building of carpet area not less than 2000 sq. mtr. should be in and around Panaji/Margao/Vasco/Ponda.

c) Relevant experience shall mean experience in housekeeping and at least four of the following services:

i. Building Maintenance System;

ii. Garden Maintenance;

iii. Plumbing Maintenance;

iv. Maintenance and Operation of Electrical Installations.

d) Average turnover of the applicant company during last 3 years should not be less than Rs.100.00 lac. (Please attach Certificate from CA for three years)

e) Applicant company should have well established office in and around Panaji/Margao/Vasco/Ponda (Please attach telephone bill for address proof).

f) Applicant Company must be ISO certified firm in the area of housekeeping.

g) Applicant should file undertaking that they are not blacklisted for any reason by any organization.

h) Applicant Company should submit the certificate for their satisfactory housekeeping services rendered to existing clients."

33. There is really no serious dispute that even if the four certificates, excluding, obviously, the certificate dated 11th January, 2019 on the HDFC letterhead are considered as genuine, RFMS does not qualify under clause (b)(i) and b(ii) of the eligibility conditions, when it comes to the relevant experience in the field. This is evident

because the certificate issued by Navbharat Granite & Marbles refers to housekeeping and allied services as an integrated work of other housekeeping, security, gardening, pest control, STP, running lifts, plumbing and electrical maintenance etc. for multi-storeyed building of at least ground + 5 floors, of minimum floor area of 450 sq. metres per floor and 2000 sq. metres open spaces. The certificate dated 21st September, 2018 issued by Boston University again speaks about a similar contract in respect of a building of ground + 4 floors with minimum floor area of 3217 sq. metres per floor and 325 sq. metres open spaces. The certificate issued by Convention Hotels Pvt. Ltd. also speaks of housekeeping and allied services for multi-storyed building of ground + 4 floors of minimum floor area of 150 sq. metres per floor and 275 of open space. Both these certificates hardly inspires any confidence and even if these certificates are held as genuine, they do not qualify RFMS under clause (b)(i) and (b)(ii) as aforesaid.

34. However, since the experience under clauses (i), (ii) and (iii) of Clause (b) are to be read disjunctively, Mr. Vishnuprasad Lawande submits that the certificate dated 9th August, 2018 issued by Inorbit Malls (India) Private Limited is sufficient to qualify RFMS under clause (iii) of clause (b) as aforesaid, particularly when

such certificate is read along with other certificates produced by RFMS before the BOI.

35. Therefore, at the outset, it is necessary to focus on the certificate dated 9th August, 2018, purportedly issued on behalf of Inorbit Malls (India) Pvt. Ltd. Such certificate is to be found at page 375 of the paper book and it states that the scope of the work is to provide the technical and non-technical staff for facility management at Viva, Kadamba Plateau Old Goa since last 3 years. The admeasuring area of the building would be (Appoximately) 9.0 acre and the awarded value of contract was Rs.27,60,000/- per annum. This certificate is signed by Mr. Pravin Shirke. who has filed an affidavit in this Court. However, from the affidavit, it appears that Mr. Pravin Shirke, at least on the date of filing of the affidavit was no longer in employment of Inorbit Mall Private Limited as Project Manager or otherwise.

36. RFMS, in support of the experience certificate, along with its bid, had placed on record two pages of *"draft work order"* dated 25th May, 2017. The draft work order bears date 25th May, 2017. Very clearly, the two pages indicated that it was only a draft and there is a specific note that the work order is still not approved. In fact,

there is no signature of the authorised signatory on behalf of Inorbit Mall Pvt. Ltd. The experience certificate, on the other hand, refers to RFMS or rather M/s. Raj Enterprises undertaking works with Inorbit Malls (India) Private Limited for the last 3 years. This is clearly inexplicable.

37. Besides, as is pointed out by Mr. Dattaprasad Lawande, the facility at Viva, Kadamba Plateau Old Gao is a residential facility and the tender conditions were quite clear that the experience had to be in a office or in institutional building. There is also an issue as to whether the facility at Kadamba Plateau Old Goa can at all be regarded as a facility within Panaji since, obviously, it has no relevance to Margao, Vasco, or Ponda. If the facility is not a part of Panaji, then, RFMS was required to submit experience in respect of at least one completed/in hand assignment of an office or institutional building of carpet area not less than 2000 sq. metres which is in and around Panaji/Margao/Vasco/Ponda and it makes distinction between office/institution, outside Panaji/Margao/ Vasco/ Ponda and office/institutional building in and around Panaji/Margao/Vasco/Ponda. Such distinction will have to be given some proper meaning.

38. In any case, we are clear that there is total non-application on the part of BOI, when it comes to scrutiny of the experience certificates furnished by and on behalf of RFMS. From the experience certificates submitted by RFMS, it was quite clear that it did not comply with the eligibility conditions and it is only on account of or perhaps casual approach on the part of the BOI that the glaring discrepancies were not noticed.

39. As noted earlier, even the remaining three certificates produced by RFMS hardly inspires any confidence. One of the certificates is on the letter head of Navbharat Granite & Marbles, but the same has been signed by one Gajendra Sigh Rajpurohit in his capacity as Chairman of the Society *"Soccoro Garden Association"*. Now the eligibility conditions are quite clear inasmuch as they refer to office or institutional buildings. In the course of arguments, Mr. Vishnuprasad Lawande submitted that this certificate, though on the letterhead of Navbharat Granite & Marbles, is on behalf of *"Soccoro Garden Association"* In the affidavit-in-rejoinder to the affidavit in Reply on behalf of Respondents No.1 and 3 and 2, the Petitioners have made categorical averments that the multi-storeyed building of Navbharat Granite & Marbles referred to in the Certificate dated 5.5.2015

consists of only ground plus one floor. Building photographs have been placed on record. This position has not been contested by RFMS. In such circumstances, there is no question of placing any reliance upon such certificates.

40. Similarly, the certificate on the letterhead of Boston University is signed by Mr. Vinod Sarin, on behalf of Sage House Owners Association. The letterhead bears the address of Boston University In U.S.A. From the certificate, it is not at all clear as to whether the building which is referred to therein is some office or institutional building. Again, on the basis of such vague certificate, the BOI was not at all justified in treating RFMS as eligible.

41. Same is the fate of such certificates issued on the letterhead of North Goa. North 16 GOA. In any case, this certificate is in respect of a building of ground plus 4 floors, of minimum floor area of 150 sq. metres. This certificate, in no manner, confers any eligibility upon RFMS.

42. Besides, we cannot help noting that if RFMS is in a position to produce before the BOI certificates from HDFC Bank which have been established as fabrication, nothing prevents M/s. RFMS, to produce even more fabricated documents in a bid to

secure the contract, for which he was not eligible. It is in this context that we have observed that the BOI, at least upon detection of the fabrication, should have taken a decision on its own to cancel this work order forthwith, or at least, issued a show cause notice to RFMS in the matter. It is obvious, however, that the BOI wished to shirk its responsibility by stating that it leaves the matter to this Court.

43. Several decisions were relied upon by Mr. Dattaprasad Lawande to point out that the fraud vitiates even the most solemn proceedings. According to us, this proposition is well settled and there is no necessity to advert to all those decisions relied upon by Mr. Lawande in support of this proposition.

44. Mr. Vishnuprasad Lawande, the learned Counsel for the RFMS, relied upon (1) *AIR India Ltd. vs. Cochin International Airport Ltd. and ors.*[3]; (2) *Jagdish Mandal vs. State of Orissa and ors.*[4]; (3) *Central Coalfields Ltd. and another* vs. *SLL-SML (Joint Venture Consortium) and ors.*[5]; *(4) AFCONS Infrastructure Ltd. vs. Nagpur Metro Rail Corporation Ltd. and another*[6] to contend that

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3 (2002) 2 SCC 617
4 (2007) 14 SCC 517
5 (2016) 8 SCC 622
6 (2016) 16 SCC 818

the scope of interference in the matters of award of tenders by a Court, exercising powers under Article 226 of the Constitution of India is limited. Relying upon these decisions, Mr. Vishnuprasad Lawande submitted that it is not open to this Court to inquire as to whether the decision of the BOI in this case is *'sound',* but this Court should restrict to examine it whether the decision is legal. He further submits that in this case, the BOI, on affidavit has stated that the bid of M/s. RFMS was Rs.21.34 lakhs lower than the bid of the Petitioners in respect of the contractual term of three years. He submits that there is no allegation of malafides against the BOI and there is absolutely no public interest involved in questioning the award of work in favour of M/s. RFMS, particularly when the BOI is saving an amount of Rs.21.34 lakhs over a period of three years.

45. According to us, such contentions, at least in the facts of the present case, are entirely misconceived. Public interest is not measured in terms of the amount of money which the Bank may save by awarding the works to M/s. RFMS. Public interest is also involved in maintaining probity and sanctity of the tender process. Public interest is also involved in ensuring that the parties who furnish false, fraudulent and fabricated documents are not awarded contracts by the State or instrumentalities of the State. Public interest is also

involved in sending a clear message that such fabrications and frauds do not, in the long run, pay. If M/s. RFMS is capable of furnishing the fabricated documents in order to secure such works, is it not reasonable to proceed on the basis that such fabrications will continue even if the works are awarded in favour of such a party ? In fact, these are relevant considerations, which should have been taken into account by the BOI, at least, after the affidavit was filed by the HDFC Bank.

46. In any case, even independent of the affidavit of the HDFC Bank, we are quite satisfied that if the BOI were to apply its mind to the certificates produced by RFMS, it would be evident that RFMS was not at all eligible in terms of the eligibility conditions. The contention that the BOI is deemed to have relaxed the eligibility conditions, is, again quite misconceived. These are all essential eligibility conditions and there was no question of any relaxation. Even the BOI does not say that it has relaxed any of the conditions of eligibility.

47. For all the aforesaid reasons, we are quite satisfied that the decision of the BOI in accepting the bid of RFMS and further awarding the work/contract in favour of RFMS is vitiated by non-application of mind, arbitrariness, as also fabrication practised by

RFMS in the matter. On these grounds, the decision to accept the bid of RFMS and the subsequent decision of awarding the contract/work in favour of RFMS is liable to be quashed and is, hereby, quashed.

48. In the case of *Ramrameshwari Devi v. Nirmala Devi*[7], the Hon'ble Supreme Court has held that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. This problem can be solved or at least can be minimised if exemplary costs is imposed for instituting frivolous litigation. Imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

49. By our interim order, we had restrained the BOI from

[7] (2011) 8 SCC 249

making any further payments to RFMS. This was in respect of the works undertaken by RFMS between the period 1st August, 2019 and 26th November, 2019. There is no clarity as to whether RFMS has already been paid any amount by the BOI for the period 1st August, 2019 and 26th November, 2019. In the facts of the present case, we are of the opinion that if no amounts have been paid to RFMS, then, the BOI should not make any payments to RFMS. The interim order made by us on 26th November, 2019 is, hereby made absolute.

50. In addition to the aforesaid, we direct RFMS to pay costs, which we assess at Rs.50,000/- to the Petitioners in the present case. Such costs are not awarded in favour of the BOI, because the BOI, despite the opportunities, failed to take any decision in the matter, even after the affidavit of HDFC was filed on record.

51. Rule is made absolute in the aforesaid terms.

52. After this order was dictated, Mr. Dattaprasad Lawande, learned Counsel for the Petitioners, on the basis of the instructions from the Petitioners, who are present in the Court, states that the amount of costs may be paid to the Goa State Legal Services

Authority. Accordingly, the costs to be paid to the Goa State Legal Services Authority, within a period of four weeks from today.

53. All concerned to act on the basis of an authenticated copy of this Judgment and Order.

Smt. M.S. Jawalkar, J. ***M.S. Sonak, J.***