

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 32470 OF 2021

In the matter of an application under Articles 226 & 227
of the Constitution of India.

AFR

M/s. Sarala Security &
Facility Services, Bhadrak. Petitioner

-Versus-

State of Odisha & Ors. Opp. Parties

For Petitioner : Mr.Subhankar Rout, Advocate

For Opp. Parties : Mr. Abhimanyu Parida,
Advocate
(O.P.2)
Mr.LalitKumarMoharana,
Advocate
(O.P.3).

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MISS JUSTICE SAVITRI RATHO**

DECIDED ON : 02.05.2022

DR. B.R. SARANGI, J. M/s. Sarala Security and Facility
Services, which is a partnership firm, represented
through its Managing Partner Bhagirathi Nayak, has
filed this writ petition seeking direction to opposite party
no.2-Executive Officer, Basudevpur Municipality,

Bhadrak to consider its bid, being the lowest bidder, and allow it to compete with opposite parties no.3, 4 & 5 bidders, and to issue work order in its favour.

2. The factual matrix of the case, in brief, is that opposite party no.2 issued a tender call notice vide Annexure-2 inviting eligible agencies to submit their bids for providing services of different categories of manpowers (unskilled, semi skilled, skilled & highly skilled) to Basudevpur Municipality. It was detailed in the tender call notice, that the tender document can be purchased in person from the municipal office on any working day between 11 am to 4 pm from 06.09.2021 to 15.09.2021 against the prescribed bid document cost, or it can also be downloaded from the website of Basudevpur Municipality www.basudevpurmunicipality.in/District website www.bhadrak.nic.in from 11.00 am of 06.09.2021 up to 4.00 pm of 15.09.2021. The date and time for submission of tender document was on or before 17.09.2021 by 11.00 AM through Registered/Speed post only and the date and time for opening of technical bids was 17.09.2021 at 3.00 pm.

The technical presentation on work plan was to be made by the technically qualified bidders from 11 am onwards on 20.09.2021. The date and time of opening of financial bids of eligible bidders was on 22.09.2021 at 3 pm. It was also mentioned in the tender document that the likely date for commencement of deployment of required manpower would be 01.10.2021 or as may be decided by the authority.

2.1 The tender document also contained the scope of work and general instructions for bidders. Clause-3 thereof reads as follows:

"The tentative requirement of the Municipality is given hereunder which may increase/decrease in any/ all the categories

i.	Un-Skilled	=	60	No's
ii.	Semi- Skilled	=	2	No's
iii.	Skilled	=	3	No's
iv.	Highly Skilled	=	1	No's

The manpower under the above categories consists of Security Guard, Watchman, Mall, Sweepers, Coolie, Drain, gang , Amin, Driver for light/heavy vehicles , Driver for heavy construction on equipment , plumber , helper, Electrician, Data Entry Operator, Work Sarkar, Peon, Attendant, Jamadar etc. The selected agency shall provide manpower having requisite qualification and experience for the post required as per the Govt. guideline as and when required by the Basudevpur Municipality."

2.2. Under clause-13 of the said general instructions, it was stipulated that the tendering

manpower service providers are required to enclose the following documents:

“13. The tendering Manpower Service providers are required to enclose photocopies of the following self attested documents, along with the Technical Bid failing which their bids shall be summary/out rightly rejected and will not be considered any further.

(a) Application – Technical Bid

(b) Registration certificate of the applicant organization

(Proprietor/ Partnership/ Company/ NGO) such as (Any One or more)

- Registered under the Companies Act, 2013*
- Registered under the Indian Partnership Act, 1932*
- Registered under the Indian Trusts Act, 1882*
- Registered under the Societies Registration Act, 1860*
- Registered under the Limited Liability Partnership Act, 2008*
- Contract Labour (Regulation of Security Agency under Companies Act 1956/ Registrar of Firms , Odisha/ Private Security Agencies (Regulation) Act 2005.*
- Registered under Shops & Establishment Act, 1956*

(c) Demand Draft in support of Bid Document cost.

(d) Bid Security Declaration in lieu of EMD

(e) Copy of PAN card

(f) Copy of the IT return filed for the last three financial years

(g) Copy of valid labour license for at least 75 No's persons

(h) Copy of EPF and ESI certificates with copies of challan , ECR, contribution slip and payment confirmation slip for the last three months of at least 75 persons(Should be registered for at least 75 persons under the establishment);

(i) Copy of the GST registration certificate with up to date GST clearance certificate

(j) Copy of valid license under PSARA Act, 2005 (in case of Security Service)

(k) Copies of the Income/Expenditure statements along with Balance Sheet and Turn over for the last 3 years (2018-19,19-20,20-21,or 2017-18,18-19 and 19-20) duly certified by a chartered Accountant (average annual turnover should be Rs. 86 lakhs or more)

(l) Copies of work orders from the previous organizations for providing man power services during last Three years especially in the field of Sanitation and Manpower outstanding activities in any

- ULB/Government/ Semi Government /Government
/Government undertaking /PSU/Corporates
- (m) Attested copy of documents regarding Geographical presence in Odisha/ Multiple states.
 - (n) Undertaking regarding de-barring/non-blacklisting by any organization (On stamp paper)
 - (o) Undertaking regarding non-pending of any judicial proceedings (On bidder's letter head)
 - (p) Certified extracts of the Bank Account containing transactions during last three years
 - (q) Copy of ISO 9001:2005, ISO 14001:2015 & ISO 45001:2018 certificates in favour of the agency
 - (r) Affidavit in original regarding authenticity of submitted documents
 - (s) Undertaking for disbursement of wages/Salary to the respective bank account of all the deployed persons through on-line transfer by the first week of the succeeding month before being reimbursed by the Municipality to the MSPA and submission of wage/salary disbursement statement staff wise along with the claimed bill for the month before the month being paid by the Municipality."

The tender document also contained a format of "covering Letter of technical bid" and another format of "application-technical bid" for providing manpower services to Basudevpur Municipality.

2.3 The petitioner and eight other bidders, including opposite parties no.3, 4 & 5, submitted their bids before the competent authority. As per tender document, the bids were opened on 17.09.2021. The technical evaluation of bids, submitted by the bidders pursuant to tender call notice, was undertaken by the tender committee under the Chairmanship of the Additional District Magistrate, Basudevpur and

Administrator, Basudevpur Municipality and opposite parties no.3, 4 & 5, for fulfilling the minimum eligibility criteria, were qualified for the financial bid. As per the tender call notice dated 03.09.2021, the bidders were required to submit 23 number of documents, as indicated in clause-13 thereof. In the said technical evaluation process, opposite parties no.3, 4 and 5 had produced all the 23 number of documents, but the petitioner could not produce three documents, as mentioned in sub-clauses-p, q and r of clause-13. Therefore, the tender committee did not consider the bid of the petitioner as eligible. Thereby, the petitioner was disqualified and its technical bid was held to be non-responsive.

3. Mr. S. Rout, learned counsel for the petitioner contended that opposite party no.2 has acted arbitrarily and disputably while rejecting the bid of the petitioner, by ignoring the terms and conditions of the tender call notice and without assigning any cogent reason. As a matter of fact, none of the technically

qualified bidders, i.e. opposite parties no.3, 4 & 5 do have the license issued under Private Security Agencies (Regulation) Act, 2005. It is also contended that the tender call notice asserts that for presentation of work plan 5 marks to be awarded, and that in the evaluation of technical bids, the technically qualified bidders, who scored more than 60 marks, would qualify for financial bid. It is also contended that as the technical presentation on work plan could not be held on 20.09.2021, opposite party no.2 intimated all the bidders that due to delay in scrutinization of tender papers, the date and time of the technical presentation on work plan and financial bids of eligible bidders are rescheduled to 24.09.2021 and the financial bids would be opened on 28.09.2021. As much as nine bidders, including the petitioner, were participated in the tender process and they were intimated to remain present on 24.09.2021 for technical presentation on work plan. On 23.09.2021, opposite party no.2 again intimated to 9 bidders including the petitioner, assigning the self-same reason as stated above, that further intimation would be

made from the office of opposite party no.2. But, without any rhyme or reason, opposite party no.2 rejected the bids of 6 bidders, including the petitioner, without evaluation of their technical bids. Therefore, the action of the authority is arbitrary, unreasonable and contrary to the provisions of law. It is further contended that the eligibility criteria, as indicated in clause-13, stipulates that the bidder should have valid license under Private Security Agencies (Regulation) Act, 2005 for supply of manpower, which includes security guard, for which a valid license under the said Act is required. Therefore, since the license under the Private Security Agencies (Regulation) Act, 2005 is mandatory, and opposite parties no.3, 4 and 5 do not have such license, their bids should have been rejected. It is further contended that as per clause-16 of the tender call notice, the bidders' technical proposals should be evaluated on the basis of minimum eligibility criteria and only those bidders, whose technical proposals fulfill the minimum eligibility criteria, should qualify for further detail technical evaluation for presentation and award of

marks. Thereby, it is contended that the action taken by the authority is arbitrary, unreasonable and contrary to the provisions of law and, therefore, the same is liable to be quashed.

4. Mr. A. Parida, learned counsel appearing for opposite party no.2 contended that whatever contentions raised by learned counsel for the petitioner are not justified in view of fact that as per requirement of sub-clauses-p, q & r of clause-23 of the tender call notice, the petitioner could not produce those documents, which are vital for consideration for technical bid. Therefore, while making technical assessment, the technical bid of the petitioner was held to be non-responsive. So far as allegation made with regard to non-production of license under the Private Security Agencies (Regulation) Act, 2005 by opposite parties no.3, 4 & 5 is concerned, the same is not vitally required, in view of clause-13(b) of the tender call notice, which indicates that registration certificate of the applicant organization requires “any one or more” out of

seven, as enumerated therein. As such, submission of license under the Private Security Agencies (Regulation) Act, 2005 is not mandatory. Therefore, it is contended that the steps taken by opposite party no.2 for disqualifying the petitioner in the technical bid is well justified and as such, the petitioner has no locus standi to challenge the same before this Court by filing the writ petition.

5. Mr. L.K. Moharana, learned counsel appearing for opposite party no.3 vehemently contended that the contentions raised by learned counsel for the petitioner are not legally tenable, as the petitioner, having participated in the process of tender, cannot turn around and challenge the same by filing the writ petition, when it did not come out successful. It is further contended that since Clause-13(b) requires submission of registration certificate of the applicant's organization, such as, "any one or more" out of 7 types of documents mentioned therein, one of which is "Contract Labour (Regulation of Security Agency) under

Companies Act 1956/Registrar of Firms, Odisha/Private Security Agencies (Regulation) Act, 2005". Opposite party no.3 possesses the registration certificates of Contract Labour (Regulation of Security Agency) under Companies Act, 1956 and also Registrar of Firms, Odisha. As such, registration certificate of Private Security Agencies (Regulation) Act, 2005 is not mandatory, as anyone of the three registration certificates mentioned therein will satisfy the requirement and opposite party no.3 has possessed such document. In view of such position, the claim of the petitioner that opposite parties no.3, 4 & 5 does not satisfy the requirement of tender call notice cannot have any justification. Accordingly, the petitioner, having not come to the Court with clean hands, is not entitled to get relief as prayed in the writ petition.

6. This Court heard Mr. S. Rout, learned counsel for the petitioner; Mr. A. Parida, learned counsel for opposite party no.2; and Mr. L.K. Moharana, learned counsel for opposite party no.3 by hybrid mode.

Pleadings have been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

7. On careful perusal of the factual matrix, as delineated above, it revealed that the petitioner has challenged its disqualification in technical evaluation contending that it has satisfied the requirements, whereas opposite parties no.3, 4 & 5 have not satisfied the requirements of the tender call notice by producing the license/registration certificate under the Private Security Agencies (Regulation) Act, 2005. Therefore, if the petitioner was disqualified, the opposite parties no.3, 4 and 5 should have been equally disqualified with the petitioner. But, opposite party no.2, having declared them successful in the technical evaluation, has acted arbitrarily.

8. But fact remains, while evaluating technical bids of nine bidders, the tender committee had recorded following findings:

“xxxx Further after careful scrutiny of all documents in the Technical bids of the above bidders and thread bare discussion, the Tender Committee have pleased to declare all the bidders except M/s Bharat Security Service ,Panikoili , Jajpur .Group no-5 Security Services, Cuttack Puri Road, Rasulgarh , BBSR, Ganesh Infosystem, Budanga ,Dola Sahi, Bhadrak ,Oriental Security Services, Famous Security Services, Canal road Naharkanta, Hanspal BBSR, Sarala Security & Facility Services, Sahid Nagar, BBSR, as qualified in 1st phase Technical evaluation to be eligible for the next round for presentation of their detailed work plan and technical evaluation basing on the fixed criteria of marking system. The Committee has rejected the tender of the following agencies due to the given reason as mentioned at Para -13 (Page No.-07) & check list of the tender paper

1. M/s Bharat Security Service , Panikoili, Jajpur
 - Debarred by Angul Municipality for 3 years vide its letter no- 642/10.02.2021.
2. Group no-5 Security Services , Cuttack Puri Road , Rasulgarh , BBSR –
 - Debarred & Blacklisted by DHH Sambalpur vide its letter no- 96/09.01.2018
3. Ganesh Info system, Budanga,Dola Sahi, Bhadrak-
 - Not submitted affidavit in original regarding Authenticity of submitted documents.
4. Oriental Security Services-
 - Last 3 months of ESI challan at least 75 persons not submitted.
5. Famous Security Services, Canal Road Naharkanta , Hanspala BBSR.
 - Last 3 months of EPF challan at least 75 persons not submitted.
6. Sarala Security & Facility Services, Sahid Nagar , BBSR-
 - Not Submitted certified extract of the Bank account containing Transactions during last 3 years.
 - Not submitted affidavit in original regarding Authenticity of submitted documents.
 - Available only ISO Certification 9001:2005.
 - Not submitted turnover of last 3 financial years.”

With the above findings, the tender committee disqualified the above noted six bidders in technical evaluation as because they did not satisfy the requirements of the tender call notice. As it appears, the petitioner, whose name finds place at serial no.6, was disqualified for not satisfying the requirements of tender

call notice mentioned therein. The petitioner, having not satisfied the requirements of tender call notice and having become unsuccessful, cannot challenge the decision of the tender committee with regard to selection of opposite parties no.3, 4 & 5 in technical evaluation on the plea that they had not submitted the license/registration certificate under the Private Security Agencies (Regulation) Act, 2005. If clause-13(b) of the tender call notice is taken into consideration, then submission of license/registration certificate under Private Security Agencies (Regulation) Act, 2005 cannot be construed to be mandatory. As such, the tender committee, having evaluated the technical bids submitted by nine bidders in terms of the tender call notice, found that six tenderers have not satisfied the requirements of tender call notice and accordingly disqualified them and qualified opposite parties no.3, 4 and 5.

9. Much emphasis was laid by the learned counsel for the petitioner that the opposite parties no.3,

4 & 5 had not produced the license/registration certificate under the Private Security Agencies (Regulation) Act, 2005, therefore they should not have been qualified in the technical evaluation. If the provisions contained in clause-13(b) are examined, though seven documents are mentioned therein, but registration certificate of the applicant's organization is required to be submitted in respect of "any one or more". As such, opposite party no.3, having satisfied the requirement therein, was found technically qualified. The extract of the proceedings of the tender committee, as quoted above, clearly indicates that the petitioner, having not satisfied different clauses of the tender call notice which are required for the purpose of succeeding in the technical evaluation, the committee rejected its technical bid. Thereby, the tender committee has not committed any error in rejecting the technical bid of the petitioner. In any case, the analysis made above, makes it amply clear that the petitioner has not approached this Court with clean hands.

10. In **Chancellor v. Bijayananda Kar**, AIR 1994 SC 579, the apex Court held that a writ petition is liable to be dismissed on the ground that the petitioner did not approach the Court with clean hands.

11. In **Amar Singh** (supra), the apex Court in paragraphs-46 to 58 held as follows:

46. *The said affidavit of the petitioner filed in February, 2011, completely knocks the bottom out of the petitioner's case, inasmuch as by the said affidavit the petitioner seeks to withdraw all averments, allegations and contentions against the respondent no. 7. The main case of the petitioner is based on his allegations against respondent no.7. The burden of the song in the writ petition is that the respondent no. 7, acting out of a political vendetta and exercising its influence on Delhi Police administration caused interception of the telephone lines of various political leaders of the opposition including that of the petitioner. The subsequent affidavit also acknowledges that the petitioner is satisfied with the investigation by the Delhi Police in connection with the forgery alleged to have been committed, namely the fabrication of orders on the basis of which the phone lines of the petitioner were tapped. Petitioner also makes a statement that the said Anurag Singh edited and tampered some of the conversations of the petitioner.*

47. *It is very interesting to note that when the petitioner filed a detailed affidavit in support of his writ petition, pursuant to the order of this Court, the petitioner admitted that he relied on the information from the same Anurag Singh, and the main annexures to the petition, namely A and B were received by him from the same Anurag Singh. Paragraphs 2 (2), 2 (3), 2 (4) and 2 (6) are based on the information received from Mr. Anurag Singh. But he did not say all these in his affidavit when he filed the writ petition on 21st January 2006.*

48. *It may be noted that when the writ petitioner filed the petition on 21st January, 2006, he was aware of an investigation that was going on by the Delhi Police in connection of the forgery of annexures A and B. Even then he filed the petition with those annexures and without a proper affidavit. It therefore appears that the petitioner has been shifting his stand to suit his convenience.*

49. *In 2006, the gravamen of the petitioner's grievances was against the respondent no. 7, and the basis of his petition was the information that he derived from the said Anurag Singh. On the basis of such a petition, he invoked the jurisdiction of this Court and an interim order was issued in his favour, which is still continuing. Now when the matter has come up for contested hearing, he suddenly withdraws his allegations against the respondent no. 7 and feels satisfied with the investigation of the Police in connection with the aforesaid case of forgery and also states that the same Anurag Singh "edited and tampered certain conversations of the petitioner.*

50. *This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.*

51. *Apart from the aforesaid, in the writ petition which was filed on 21st January, 2006, there is no mention of the fact that the petitioner gave a statement under section 161, Code of Criminal Procedure in connection with the investigation arising out of FIR lodged on 30th December, 2005. From the records of the case it appears the petitioner gave 161 statement on 13th January, 2006. In the writ petition there is a complete suppression of the aforesaid fact. A statement under Section 161 is certainly a material fact in a police investigation in connection with an FIR. The investigation is to find out the genuineness of those very documents on the basis of which the writ petition was moved. In that factual context, total suppression in the writ petition of the fact that the petitioner gave a 161 statement in that investigation is, in our judgment, suppression of a very material fact.*

52. *It is, therefore, clear that writ petition is frivolous and is speculative in character. This Court is*

of the opinion that the so called legal questions on tapping of telephone cannot be gone into on the basis of a petition which is so weak in its foundation.

53. *Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.*

54. *In Dalglish v. Jarvie {2 Mac. & G. 231,238}, the Court, speaking through Lord Langdale and Rolfe B., laid down:*

"It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward."

55. *In Castelli v. Cook {1849 (7) Hare, 89,94}, Vice Chancellor Wigram, formulated the same principles as follows:*

"A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as has broken faith with the Court, the injunction must go."

56. *In the case of Republic of Peru v. Dreyfus Brothers & Company {55 L.T. 802,803}, Justice Kay reminded us of the same position by holding:*

"...If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good

faith with the Court when ex parte applications are made."

57. *In one of the most celebrated cases upholding this principle, in the Court of Appeal in R. v. Kensington Income Tax Commissioner {1917 (1) K.B. 486} Lord Justice Scrutton formulated as under:*

"and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-facts, now law. He must not misstate the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

58. *It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by principles of 'uberrima fide'."*

12. Similar view has also been taken by the apex Court in the cases of ***Hari Narain v. Badri Das***, AIR 1963 SC 1558, ***Welcome Hotel v. State of A.P.***, (1983) 4 SCC 575, ***G. Narayanaswamy Reddy v. Govt. of Karnataka***, (1991) 3 SCC 261, ***S.P. Chegalvaraya Naidu v. Jagannath***, (1994) 1 SCC 1, ***A.V. Papayya Sastry v. Govt. of A.P.***, (2007) 4 SCC 221, ***Prestige***

Lights Ltd. v. SBI, (2007) 8 SCC 449, **Sunil Poddar v. Union Bank of India**, (2008) 2 SCC 326, **K.D. Sharma v. SAIL**, (2008) 12 SCC 481, **G. Jayashree v. Bhagwandas S. Patel**, (2009) 3 SCC 141 and **Dalip Singh v. State of U.P.**, (2010) 2 SCC 114.

13. In view of the law laid down by the apex Court, as mentioned supra, this Court is of the considered view that an action at law is not a game of chess. Therefore, the litigant who comes to Court and invokes its writ jurisdiction must come with clean hands and he cannot prevaricate and take inconsistent positions. In view of the aforesaid situation, it is made clear that the petitioner has taken a prevaricating and inconsistent position and, as such, it has not come to the Court with clean hands invoking writ jurisdiction.

14. In view of facts & law, as discussed above, the petitioner has not approached this Court with clean hands and it does not satisfy the requirements of tender call notice. Therefore, this Court is of the view that the

petitioner is not entitled to get any relief as sought for in the writ petition.

15. Thereby, the writ petition merits no consideration and the same is hereby dismissed. Interim orders passed earlier stand vacated. There shall be no order as to costs.

SAVITRI RATHO,J.

I agree.

*Orissa High Court, Cuttack
The 2nd May, 2022, Alok*

**(DR. B.R. SARANGI)
JUDGE**

**(SAVITRI RATHO)
JUDGE**

