

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18373 OF 2024

Bio Clean System India Pvt. Ltd.

..... Petitioner

VERSUS

**The Commissioner,
Sangli Miraj & Kupwad
Municipal Corporation**

..... Respondent

Mr. Amol A. Gatne for the Petitioner.

Mr. Vikram N. Walawalkar a/w. Mr. Amey C. Sawant for the Respondent.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 10th DECEMBER, 2024

JUDGMENT (PER - RAJESH S.PATIL, J.) :-

The challenge raised in this writ petition is the action of the respondent Corporation in declaring the petitioner as disqualified/ineligible candidate the E Tender No. 15/2024 dated 3rd October 2024 floated by it for running common Bio-Medical Waste Treatment Facility.

2. In the writ petition, the petitioner's case is that the respondent no.1 Corporation has floated tender for the running of Bio-Medical Waste Treatment Facility for a period of 10 years. As per the tender, the petitioner alongwith others participants, filed their technical bids for the said tender. The dates of declaring the eligible or ineligible bids and the auction date were extended and the last of such date for declaration of eligible candidates was 29th November 2024 and the auction date as 2nd December 2024. On 29th November 2024 the petitioner came to know through the Corporation's portal that the petitioner was declared as disqualified/ineligible candidate. The reason for disqualification being a receipt of complaint by the respondent Corporation, informing that the performance of the petitioner for similar kind of work with Solapur Municipal Corporation, was unsatisfactory. It is further case of the petitioner that immediately on 29th November 2024, the petitioner addressed a letter to the respondent Corporation pointing out that the petitioner in fact was the second highest bidder in the tender

floated by the Solapur Municipal Corporation, and it was neither black-listed nor any complaint was pending against the petitioner, hence they should be declared as qualified and be permitted to take part in the present auction for the tender floated by the respondent Corporation.

3. The present writ petition was circulated by the petitioner on 2nd December 2024 before us when we issued notice to the respondent and by an *ad-interim* direction we permitted the petitioner to participate in the e-auction which was scheduled on the same day i.e. 2nd December 2024 from 11:00 a.m. to 3:00 p.m. It was clarified that this participation, however, would be at risk of the petitioner and subject to further orders being passed in the present proceedings.

4. After the notices were served on the respondent Corporation, the respondent Corporation has filed their affidavit in reply and have opposed passing of any order in the present petition setting aside the disqualification of the petitioner.

5. Mr. Amol Gatne, learned counsel appeared on behalf of the petitioner and submitted that as per the tender document, a party can be disqualified if the bidder was black-listed by any Department of the Government of Maharashtra or the Corporation itself. He submitted that in the present proceedings, the petitioner is shown as disqualified on a receipt of some kind of a complaint. He submitted that only on the receipt of the complaint, the petitioner could not have been disqualified and the reason of such disqualification is beyond the scope of the terms and conditions of the tender. He further submitted that as far as the work of the petitioner with Solapur Municipal Corporation is concerned, the petitioner had successfully completed the period of 20 years of the tender period awarded by the Solapur Municipal Corporation, for running the common Bio-Medical Waste Treatment Facility in the year 2003. Further it was declared qualified to participate in the auction for fresh tender in the year 2023, wherein his bid was the second highest, and they are neither disqualified or black-listed by the Solapur

Municipal Corporation. Therefore, there was no substance in the enormous complaint dated 28th November 2024 received by the respondent Corporation. He submitted that before disqualifying the petitioner, the respondent ought to have given an opportunity of hearing to the petitioner. Therefore, the disqualification of the petitioner, was infact violating the principles of natural justice. He submitted that therefore the present petition requires to be allowed and the decision of the respondent Corporation dated 29th November 2024 disqualifying the petitioner should be quashed and set aside and the petitioner be permitted to participate in the e-auction tender of common Bio-Medical Waste Treatment Facility.

6. Mr. Gatne, in support of his submissions relied upon following judgments :-

(a) Judgment of Supreme Court in case of *Punjab State Power Corporation Limited & Anr. vs. Emta Coal Limited*, (2022) 2 SCC 1.

(b) Judgment of Supreme Court in case of *M/s.Star Enterprises & Ors. vs. City & Industrial Development Corporation of Maharashtra Ltd. & Ors.*, (1990) 3

SCC 280.

7. On the other hand Mr. Vikram Walawalkar, learned counsel appeared on behalf of the respondent Corporation and opposed the present writ petition. Mr. Walawalkar submitted that the Corporation had created a committee of five responsible officers of the Corporation to scrutinize the bids and proceed with the tender process. The said committee on 16th October 2024 received a complaint from one M/s. S. S. Services, Kolhapur informing that the petitioner company was given a tender for 20 years by Solapur Municipal Corporation for similar kind of work as mentioned in the present tender and for the said work of Solapur Municipal Corporation, the petitioner's performance was unsatisfactory and there were several false statements made by the petitioner in the bid submitted therein. The said letter also informed that the Maharashtra Pollution Control Board (for short "MPCB") at the instance of the Solapur Municipal Corporation had slapped a fine in the nature of the payment of double bank guarantee, to the petitioner for malfunction and misfeasance.

Even the Solapur Municipal Corporation had written a letter dated 18th October 2023 to the Solapur Office of Maharashtra Pollution Control Board informing that the petitioner company had mislead and misrepresented various Government Offices and had shown itself as owner and operator of the project. The Solapur Municipal Corporation in its letter dated 18th October 2023, which is annexed to the complaint received by the Corporation from M/s. S. S. Services used strong words that the petitioner had misled and cheated the Corporation. Further another letter dated 23rd May 2022 issued to the petitioner company by the Medical Health Officer of Solapur Corporation sought information as to the difference between the amount collected and the royalty to be paid. Further by Panchanama dated 3rd January 2024, proved that there was financial and documentary deceit committed by the petitioner in the tender of Solapur Municipal Corporation. Mr. Walawalkar further submitted that the Panchanama shows that the petitioner had just stashed 40 – 50 tonnes of biomedical waste without any

process over it. The Effluent Treatment Plant, Sludge, carbon and incineration ash of about 40 tonnes being hazardous waste was stashed in open space. An about 20 – 30 tonnes of biomedical waste of various types was also seen scattered adjacent to a well near to the compound of the project. Certain machinery on the project was seen defunct and obsolete. The unsatisfactory work leading to cheating of Solapur Municipal Corporation was so gross and serious that MPCB through its Principal Scientific Officer had directed the Solapur Municipal Corporation vide its letter dated 15th March 2024 that the remaining work left unattended by the present petitioner was required to be completed and fulfilled immediately and compliance of this report will have to be submitted within 15 days failing which the MPCB will be constrained to issue closure against the facility without further notice.

8. Mr. Walawalkar further submitted that after going through the various complaints made against the petitioner company, it shows that it had cheated the Solapur Municipal Corporation.

Hence, to verify the complaint made by M/s. S. S. Services, the respondent Corporation addressed a email to the Solapur Municipal Corporation dated 7th November 2024. The Solapur Municipal Corporation by its letter dated 11th November 2024 addressed to the respondent Corporation informed that the petitioner had violated certain regulations of Maharashtra Pollution Control Board and had stashed 52 tonnes of biomedical waste and approximately 90 tonnes of hazardous waste without any treatment on it. The Solapur Corporation had informed the petitioner to process the biomedical waste but nothing was done by the petitioner. Moreover, during the COVID pandemic period, the performance of the petitioner was unsatisfactory and the petitioner had stashed the garbage in unsafe manner. It was further informed that the petitioner was reprimanded many times by written communication by the Solapur Municipal Corporation and inspite of the same, the petitioner continued with its dismal performance. Due to said act of the petitioner, the Solapur Municipal Corporation had to suffer financial loss for the balance

work and the same is going to be recovered from the petitioner soon. After receiving the said letter dated 11th November 2024, the respondent Corporation could gather that the petitioner's performance was unsatisfactory and if the petitioner acted in the same manner in the present tender floated by the respondent Corporation, there will be huge financial loss to the Corporation and since the respondent Corporation is financially weakest amongst the categories of the Municipal Corporation in the State of Maharashtra, it will be difficult to sustain the loss. After considering the entire situation, the respondent Corporation took a decision that the petitioner was disqualified as per Condition No.25 of the tender.

9. Mr. Walawalkar further submitted that the petitioner had circulated the present writ petition before this Hon'ble Court on 2nd December 2024 without even properly servicing the Corporation or to the standing counsel of the Corporation. As this Court on 2nd December 2024 had issued notice to the Corporation and had permitted the petitioner to participate in

the e-auction conducted on the same day i.e. 2nd December 2024 and the said order been communicated around 11.00 a.m. on 2nd December 2024 the day of e-auction the Corporation postponed the e-auction to 11th of December 2024. Mr. Walawalkar submits that there is no merit in the present writ petition and the same should be dismissed with exemplary cost.

10. Mr. Walawalkar to buttress his submissions relied upon following judgments :-

(a) Judgment of Supreme Court in case of *Tata Motors Limited vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) & Ors. with connected matters*, 2023 SCC OnLine SC 671.

(b) Judgment of this Court in case of *H. D. Enterprises vs. Western Coalfields Limited with connected matters*, 2023 SCC OnLine Bom 2573.

(c) Judgment of Supreme Court in case of *K. D. Sharma vs. Steel Authority of India Limited & Ors.*, (2008) 12 SCC 481.

11. We have heard learned counsel for both the sides and through their help have gone through the documents on record.

12. The respondent/Municipal Corporation has floated a tender for the running of common Bio-Medical Waste Treatment Facility for a period of 10 years. In the terms and conditions of the tender, Condition No. 25 mentioned about what is not expected of the bidder. The English translation of the Condition No.25 reads as under :-

“The bidder ought not to have duped/indulged in deceit/cheating of any CBMWTF owner/Municipal Council/Municipal Corporation/Government”.

13. Therefore as per Condition No.25, if any bidder participated in the present tender had earlier duped or indulge in deceit/cheating of any of the Government body, the said bidder was to be disqualified. In the present tender, the Municipal Corporation has disqualified the petitioner as per Condition No.25.

14. The Municipal Corporation had received a letter from S. S.

Services, Kolhapur on 16th October 2024 wherein certain allegations were made against the petitioner. Alongwith the said letter, communication of Solapur Municipal Corporation and Maharashtra Pollution Control Board letter were enclosed. The contents of the complaint and of the letters and the contents of the letters enclosed with the complaint would clearly meant that the petitioner had cheated the Municipal Corporation. However, the respondent Corporation after going through the complaint, for the sake of verification addressed an e-mail dated 7th November 2024 to the Solapur Municipal Corporation seeking their response on the complaint received by them against the petitioner. The Solapur Municipal Corporation by its letter dated 11th November 2024 confirmed about the various act of the petitioner which has resulted them into a financial loss and soon they are going to recover the financial loss. The Solapur Municipal Corporation also confirmed that they had given various warnings to the petitioner and the performance of the petitioner was not satisfactory during the pandemic period. It

also informed the petitioner to process the biomedical waste but nothing was done in that regard by the petitioner. Hence the respondent Corporation was satisfied that the petitioner's performance with Solapur Municipal Corporation was not satisfactory at all, in order to protect own interest the respondent Corporation who is a 'D' Group Municipal Corporation i.e. financially weakest amongst the categories of the Municipal Corporation, decided that the present tender which is substantial long period of ten years and if the petitioner's performance is not upto the mark, in order to take care of own financial interest, the respondent Corporation decided being satisfied that the petitioner was to be disqualified as per Condition No.25, took a decision and accordingly the petitioner was disqualified.

15. The petitioner's counsel has relied upon the ratio laid down in two Supreme Court judgments. Supreme Court in case of *M/s. Star Enterprises* (supra) was dealing with the situation where the highest offer in response to invitation was rejected by the public authority. Hence, it was held that the public authority is required

to provide reasons for such action. Since the facts in this judgment are quite different than the present proceedings, the ratio laid down in this judgment will not be applicable to the present proceedings.

16. In case of *Punjab State Power Corporation Limited* (supra), the Supreme Court was dealing with a short question relating to Interpretation of Section 11 of the Coal Mines Act, 2015 and an ancillary question pertaining to scope of judicial review of an administrative action of State Authority. The High Court of Punjab and Haryana allowed the writ petition filed by successful bidder. The Punjab State Electricity Board challenged the said judgment before the Supreme Court. The Supreme Court held that while exercising powers of judicial review, the Court is not concerned with the ultimate decision but the decision making process. The court can inquire as to whether the decision making authority has exceeded its power, or has committed an error of law or committed breach of principles of natural justice. The

Supreme Court held that the Electricity Board's decision cannot be questioned on the ground of illegality or procedural impropriety. Hence, the Supreme Court allowed the Special Leave Petition & set aside the judgment of High Court. In the present proceedings we have no doubts that the decision of disqualifying the petitioner is anyway breached the principles of natural justice or there is any kind of error committed by the Municipal Corporation.

17. Mr. Walawalkar, has harped upon the ratio laid down in two Supreme Court judgments. Supreme Court in case of *Tata Motors Limited* (supra) has held that the power of judicial review in tender matters – interference only when arbitrariness, irrationality, malafides and bias is shown. Paragraph no. 52 of the said judgment reads as under:-

52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this

stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in *Association of Registration Plates v. Union of India*, reported in (2005) 1 SCC 679.

[Emphasis supplied]

18. Supreme Court in the judgment of *K.D.Sharma* (supra) has held that the writ remedy under Article 226 is extraordinary, equitable and discretionary. Therefore the petitioner before the writ Court must come with clean hands, and put forward all the facts before the Court. If there is no candid disclosure of the relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. Paragraph nos. 34, 36, 38 and 39 of the said judgment reads as under :-

34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with

clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

39. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant 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 not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.

[Emphasis supplied]

19. In the affidavit filed by the Corporation, it has been stated that on 16th October 2024 it received a complaint from one S.S. Services Kolhapur referring to the manner in which similar work was carried out by the petitioner at the Solapur Municipal Corporation. It is stated that on the basis of various documents attached to the complaint, it could be seen that the Solapur Municipal Corporation and the Maharashtra Pollution Control Board were not at all satisfied with the manner in which the

petitioner had carried out such work. The Corporation therefore on 7th November 2024 issued an E-mail to the Solapur Municipal Corporation and sought further details. On 11th November 2024, the Solapur Municipal Corporation replied that the treatment of hazardous waste by the petitioner had not been satisfactorily carried out despite directions by the Maharashtra Pollution Control Board. The expenses incurred by the Solapur Municipal Corporation were to be recovered from the petitioner.

These aspects have weighed with the Corporation while proceeding to treat the petitioner's bid as non-responsive. In our view, there is nothing arbitrary in treating the petitioner's bid as non-responsive. The Corporation was within its rights in making enquiries with Solapur Municipal Corporation with regard to similar work carried out by one of the bidders. After receiving necessary details, the petitioner's bid has been rejected. This rejection can be supported by Clause 25 of the tender conditions.

20. In our view in the present proceedings, the petitioner has not disclosed the penalty imposed upon them in the earlier tender

by the Solapur Municipal Corporation and by the Maharashtra Pollution Control Board. The respondent Corporation has already submitted that it is a one of the weakest financial Corporation in the State who can't burden any substantial loss. The present tender floated by the respondent Corporation is for a period of ten years. In our view the respondent Corporation as an employer has a right to reject a bid of the tender who in their view has on earlier occasion had not satisfactorily completed an earlier work. Taking into consideration the law laid down by the Supreme Court in case of *Tata Motors Limited* (supra) and in *K.D.Sharma* (supra) we are of the view that no case is made out by the petitioner to entertain this writ petition.

21. Hence the writ petition is dismissed. No costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]