

(2012) 07 P&H CK 0284
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3502 of 2012

UEM India Private Limited

APPELLANT

Vs

Haryana Urban Development Authority and Others

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Water (Prevention and Control of Pollution) Act, 1974 — Section 33A

Citation : (2013) 1 RCR(Civil) 239

Hon'ble Judges : Gurmeet Singh Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Anmol Rattan Sidhu, with Mr. Vivek Sharma, for the Appellant; D.V. Sharma with Ms. Shivani Sharma, Advocate for the Respondent Nos. 1 and 2 and Mr. Rahul Sharma, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—The petitioner, an unsuccessful tenderer has filed this petition under Articles 226/ 227 of the Constitution of India challenging the action of respondent-Haryana Urban Development Authority in rejecting its bid vide notice dated 3.2.2012, Annexure P. 4 and awarding of contract in favour of respondent No. 3 in respect of the project for the construction of 120 MLD capacity Sewage Treatment Plant etc. at Village Behrampur, Gurgaon. Prayer has also been made for quashing Clause 3.1.7 of the Bid document, Annexure P. 1 being illegal, arbitrary and without any justification. A few facts relevant for the decision of this case, as narrated in the petition may be noticed. The petitioner is a company incorporated under the Companies Act, 1956. It is engaged in the business of providing services of project development like planning, feasibility studies, engineering design, equipment/system supply and construction/installation. On 25.12.2011, respondent No. 1 invited tenders from interested contractors having prescribed technical and financial credentials for construction of 120 MLD capacity Sewage Treatment Plant (STP) and Main Pumping Station (MPS) based on Activated Sludge Process(ASP)/Sequential Batch Reactor (SBR)

Technology and 30 MLD capacity Tertiary Treatment plant and all other works contingent thereto including design, construction of Civil Works, Supply of Mechanical, Electrical and Instrumentation Works, Erection, Testing, Commissioning alongwith operation and maintenance for 72 months after stabilization period of 90 days on turnkey basis at Village Behrampur, Gurgaon. Pursuant to the said invitation, respondent No. 1 issued bid documents for the project which were made available at its website. The petitioner-company filed its bid for the project through online submission as well as submission of physical documents on 21.1.2012 and 24.1.2012 respectively alongwith necessary documents within the stipulated period. Vide letter dated 31.1.2012, respondent No. 1 sought clarification from the petitioner on certain issues. The petitioner replied to the said letter and submitted the documents as required. On 3.2.2012, Annexure P. 4 the petitioner was informed that its bid had been rejected but no reasons were communicated. During the course of meeting with the officials of respondent No. 1, the petitioner was orally informed that its bid was rejected since it did not qualify the criteria of never having been blacklisted by any government authority.

2. According to the petitioner, earlier, it had bid for a project of Delhi Jal Board (DJB) for setting up of 70 MGD Kalyanpuri Pumping Station. The petitioner was in discussion with two pump suppliers viz. Grundfos and ITT Water and Wastewater LLC for providing technical assistance in relation to the said project. The petitioner first tied up with ITT Water and Wastewater LLC but subsequently, this firm refused to endorse Memorandum of Understanding on stamp paper and also refused to provide original Memorandum of Understanding duly signed by them on their letter head. Consequently, the petitioner entered into a Memorandum of Understanding with Grundfos on 3.8.2010 and submitted the same with DJB to fulfil the qualification criteria. On 11.2.2011, the petitioner received a show cause notice from DJB stating that decision had been taken to debar it from participating in the tenders on the ground that it had already forged certain documents to qualify for the project. On 30.5.2011, Annexure P. 5, DJB issued circular blacklisting and debarring the petitioner from participating in any tender for a period of one year for submitting forged documents for Kalyanpuri project. Thereafter, the petitioner submitted various representations before DJB. Ultimately, DJB reviewed its decision and withdrew the debarment vide letter dated 11.8.2011, Annexure P. 6. In spite of that, respondent No. 1 rejected the bid of the petitioner vide impugned notice dated 3.2.2012, Annexure P. 7. Hence this petition.

3. Notice of the petition was issued. Separate written statements have been filed on behalf of respondent Nos. 1 & 2 on one hand and respondent No. 3 on the other. In the reply filed on behalf of respondent Nos. 1 and 2, the averment regarding withdrawal of the action for debarment of the petitioner on 11.8.2011 has been disputed. It has been stated that the order dated 30.5.2011 had never been withdrawn vide Annexure P. 6 but the period had been reduced after review from one year upto the date of issuance of the review letter. It has been further

stated that financial bid of the petitioner was never opened. As regards the averment of the petitioner that financial bid had been opened on 3.2.2012, it has been submitted that as per the information available on the website, the message shown is "Financial/Price Bid cancelled or Rejected Bid.", Annexure R. 2. According to respondent Nos. 1 and 2, the petitioner seems to have created a forged web site/portal of HUD A to show that its commercial bid was opened. In this regard, the petitioner has produced Annexure P. 9 with the writ petition. On enquiry, it has been found that the petitioner has committed cyber crime by creating/forging a web site/portal of HUDA. As regards the prayer of the petitioner for quashing of Clause 3.1.7 of the Bid document, Annexure P. 1, it has been stated that the petitioner had accepted each and every term and condition of the tender document by signing the same. It is now estopped from challenging the said clause. It is also submitted that the petitioner was earlier awarded a contract for design, supply, construction, installation etc. for a period of three years. The petitioner delayed the said project as a result of which penalty was imposed upon it by HUDA. A show cause notice dated 29.3.2012, Annexure R. 4 was also issued by Haryana State Pollution Control Board, Gurgaon to the petitioner u/s 33A of Water (Prevention and Control of Pollution) Act, 1974 as the samples were not found in accordance with the specified standards. It has been further submitted that in view of clause 3.1.10, the petitioner was not eligible for allotment of tender as the performance of the applicant for execution of similar work in HUDA was also required to be considered. On these premises, prayer for dismissal of the petition has been made.

4. An additional affidavit on behalf of respondent-HUDA was also filed explaining the position with regard to Annexure P. 9 appended by the petitioner. It was submitted that a unique user ID and password had been assigned to all the bidders who had given bid for tender No. 306. Therefore, all the bidders could only use the same to submit their price bid. During the technical evaluation, bid of the petitioner had been rejected as is evident from Open tender details, Annexure R. 7. Thus, as a result once the bid of the petitioner had been rejected, the same could not have been opened by respondent HUDA. It was also clarified that e-tendering system of HUDA allows opening of financial bid of only those participating agencies which are duly shortlisted by the department during the technical evaluation stage. According to the respondents, Annexure P. 9 is a screenshot which has been managed by the petitioner on 3.5.2012 after the price bids of the qualified bidders had been opened by the respondent on 3.2.2012.

5. In the reply filed on behalf of respondent No. 3, the averments made in the writ petition have been controverted on the similar grounds as have been taken by respondent Nos. 1 and 2. It has been further stated that respondent No. 3 has already deposited a sum of Rs. 90 lacs as security with respondent No. 1. The possession of the site has also been handed over to it and it has completed the Survey work and soil investigation work. The designs and drawing of the project have also been submitted to respondent No. 1 and the work of the

excavation of the soil has already commenced at the site. It has thus been prayed that the writ petition may be dismissed with costs.

6. Learned counsel for the petitioner has raised following four contentions:-

i) Reference was made to the condition of blacklisting incorporated in the notice inviting tenders for Joint Ventures in Sub Clause (e) of Clause 1.6 of Condition No. 3.1.2.7 which is as under:-

(e) All the members of the JV shall certify that they have not been blacklisted or debarred by HUDA or any other Ministry/Department of the Government of India/ State Government from participation in tenders/contract on the date of opening of bids either in their individual capacity or the JV firm or partnership firm in which they were members/partners.

Attention of the Court was also drawn to Blacklisting Condition No. 3.1.7 in the case of an applicant other than Joint Venture which reads thus:-

3.1.7. The applicant should submit an undertaking in the form of an affidavit on stamp paper of Rs. 10/- to the effect that they (Applicant/firm) have never been blacklisted/debarred in any Government Department. If any applicant is black-listed by any department, they will not be considered.

It was urged that the condition of blacklisting in Condition No. 3.1.7 viz-a-viz blacklisting in Sub Clause (e) of Clause 1.6 of Condition No. 3.1.2.7 was arbitrary as in case of a joint venture, it was only on the date of opening of bids that the person was not required to be blacklisted whereas in the case of an individual applicant/firm, who has been blacklisted by any department was debarred from furnishing the tender;

ii) the eligibility of respondent No. 3 was sought to be challenged as technical eligibility in condition 3.1.2.1 of the tender notice was not complied with. It was also submitted that no parity was being maintained by the respondents as under similar circumstances, the bids of other tenderers had been rejected by the respondent Nos. 1 and 2;

(iii) the price bid of the petitioner was opened on 3.2.2012 and once that was so, the petitioner being the lowest bidder, the price bid should have been accepted. The petitioner had given a bid of Rs. 87,90,90,000/- whereas the bid which had been accepted of respondent No. 3 was Rs. 98,10,00,000/-. In such a situation, acceptance of bid of respondent No. 3 was malafide and liable to be struck down;

(iv) blacklisting of the petitioner had been waived by the respondent and in such a situation, there was no bar for the petitioner's price bid to be considered.

7. Mr. D.V. Sharma, learned Senior counsel for respondent Nos. 1 and 2, controverting the submissions of learned counsel for the petitioner, had vehemently disputed that the price bid of the petitioner was opened by the respondents. It was urged that Annexure P. 9 appended alongwith the writ petition was a forged document. It was also urged that respondent Nos. 1 and 2

had filed an affidavit refuting the averment of the petitioner that the price bid had been opened to which no rejoinder had been filed. Reference was also made to Annexures R. 1, R. 2 and R. 3 appended alongwith the written statement wherein a communication addressed by the petitioner was relied upon in which it was admitted by the petitioner that the price bid had not been opened till 20.2.2012. It was further submitted that in the original unamended writ petition, there was no averment with regard to opening of price bid of the petitioner on 3.2.2012. Learned counsel further submitted that cumulative effect of this fact only leads to one conclusion that the petitioner had fabricated Annexure P9 as the date thereon shows that it was generated on 3.5.2012. Conversely, it was argued that in case price bid had been opened then there was no reason for the petitioner not to mention this fact in the communications which had been appended as Annexures R. 1, R. 2 and R. 3. Learned counsel further submitted that the petitioner had not approached this Court with clean hands and therefore, the writ petition was liable to be dismissed with exemplary costs. It was also argued that the petitioner itself did not fulfil the condition as it was debarred from submitting the tender for three months from 30.5.2011 to 11.8.2011. With regard to the argument that the condition of debarring in case of joint venture and individual was bad, it was submitted that the petitioner had misinterpreted the provisions. Condition No. 3.1.7 related to individual/firm and therefore, any person who had been blacklisted was not entitled to submit a tender. It was more onerous condition than in the case of joint venture that an applicant who had been debarred till the date of submission of the application form was blacklisted, was not entitled to submit a tender. It could not thus be arbitrary. It was also submitted that the petitioner having participated in the tender process could not now be allowed to raise this objection.

8. Mr. Rahul Sharma, learned counsel for respondent No. 3 in addition to the submissions already made by respondent Nos. 1 and 2 submitted that debarring of the petitioner was not disputed and therefore he had no locus standi to file the writ petition. Reliance was placed on the Division Bench judgments of this Court in U.G. Hospitals Pvt. Ltd. Vs. State of Haryana and Others, and Baba Bhani Girt Ji Warehousing v. Food Corporation of India and others, CWP No. 228 of 2012 decided on 6.3.2012. It was also urged that there was no malafide attributed to any bid on the basis of which it could be said that the contract had been given for extraneous considerations. Learned counsel argued that the respondent No. 3 fulfilled the technical eligibility condition mentioned in Condition No. 3.1.2.1 and the argument of learned counsel for the petitioner to the contrary did not carry any weight. Lastly, it was contended that under the circumstances, the action of respondent Nos. 1 and 2 was not open to judicial review in view of various pronouncements of the Hon"ble Apex Court.

9. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the petition.

10. The issues raised in this petition would require to be examined with respect

to the following points:-

- a) Whether the petitioner after having participated and being unsuccessful is entitled to challenge the validity of Condition No. 3.1.7?
- b) Whether the respondent No. 3 did not fulfil the conditions enumerated in technical eligibility under Condition No. 3.1.2.1?
- c) Whether the petitioner was eligible for opening of technical bid especially when the blacklisting of the petitioner had not been waived completely?
- d) the scope of judicial review to evaluate the respective bids of the petitioner and respondent No. 3.

Additionally, on the basis of argument raised by the respondent whether petitioner has not come to the Court with clean hands? If so, its effect?

11. Examining the challenge of the petitioner to validity of condition of blacklisting contained in Clause 3.1.7 viz-a-viz condition in sub clause (e) of Clause 1.6 of Condition No. 3.1.2.7, it would not be open to the petitioner to question the legality of the aforesaid condition at this stage after having participated in the tender and remaining unsuccessful therein. A Division Bench of this Court in U.G. Hospitals Private Limited's case (supra), examining similar issue where the petitioner had participated in the selection process for allotment of plot and later on had sought to challenge the validity of the criterion adopted by the respondents, in para 7 had held as under:-

Having heard the learned counsel for the parties and perusing the paper book with their able assistance we are of the considered view that the advertisement Annexure P. 1 clearly postulates the eligibility criterion. According to the criterion an individual/society/trust/institution/company was eligible to apply but preference was to be given to (i) reputed/renowned institution/trust/society already running multi speciality hospitals (ii) NRI professionals in the field of Medical Science (iii) A team/group of Doctors/Specialists (iv) Retired Doctor/Retiring Doctors in the near future from an eminent medical institutions/government hospitals (v) Doctors already running hospitals/nursing homes. It is stipulated that preference was to be given to applicants hailing from Haryana State and (vi) allotment was to be made on the basis of professionals as well as financial capability to run the hospital. The petitioner as well as respondent No. 5 had applied in time alongwith requisite earnest money. Both the applicants are private limited companies. The petitioner is associated with Metro Heart Institute whereas respondent No. 5 has been attached with Apollo Hospital Group. After interview of both the applicants, the high profile committee recommended the case of respondent No. 5 for allotment which has been accepted by the Government. It is well settled mat once the petitioner has participated in the selection process for allotment of a plot then it looses the right to question the allotment on the ground of adopting irrational criterion. The principle in the nature of estoppel would be attracted in such a case. In a number of cases where

the candidate has participated in the selection process for induction in service, the Supreme Court has held that such a candidate cannot be permitted to question the selection process when he has remained unsuccessful. The principles laid down in those cases would fully apply to the facts of the present case. We may place reliance in that regard on the judgements of Hon''ble the Supreme Court in the case of Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others,

12. Under the aforesaid condition, the applicant was required to certify that he has not been black-listed or debarred by any Government department. The petitioner having participated fully knowing the implication of eligibility condition contained in 3.1.7 in the tender document is not entitled to challenge the validity thereof. Even otherwise, the petitioner was unable to demonstrate in what manner the said condition was arbitrary, unreasonable or irrational. The plea is, thus, rejected.

13. Taking up second point, it would be apposite to reproduce technical eligibility as contained in Condition No. 3.1.2.1 of the tender document relevant portion of which relating to the dispute reads thus:-

a. In case of individual bidder:

The bidder must have successfully completed and commissioned in India during last 10 years ending 30.11.2011, either of the following:-

One work of similar nature and capacity not less than 70 MLD. OR

Two works of similar nature and capacity, each not less than 35 MLD.

Note: Similar nature of work means Sewage Treatment Plants (STP) based on conventional Activated Sludge Process/Extended Aeration/Sequential Batch Reactor (SBR)/Moving Bed Bio Reactor (MBBR).

Learned counsel for the petitioner, however, could not refer to any material on record and was unable to demonstrate as to which condition of the technical eligibility was not fulfilled by respondent No. 3. Thus, this issue is adjudicated against the petitioner.

14. Adverting to the plea of waiver of blacklisting, on examining the order of blacklisting, it is discerned that originally the petitioner was blacklisted for one year vide Annexure P. 5 which period was reduced to three months vide Annexure P. 6. It was not disputed that the petitioner had been debarred for three months and in such a situation, the petitioner was not technically qualified to submit the tender in view of Clause 3.1.7 of the bid document, Annexure P. 1. The penalty of blacklisting was never waived completely which would have entitled the petitioner to draw any help. The contention, thus, is meritless.

15. Adverting to the fourth point, the scope of judicial review in the matter of allotment of tenders would require to be examined. It was considered in detail by

a three Judge Bench of the Hon''ble Apex Court in Tata Cellular Vs. Union of India, , wherein it was observed as under:-

94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

16. In Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, , law relating to award of contract by State and Public Sector Corporation was discussed. It was held:-

The award of a contract, whether it is by a private party or by a public body or the State is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedure laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision-making process and interfere if it is found vitiated by malafides, unreasonableness and arbitrariness.

17. Hon''ble Supreme Court summarizing the scope of judicial review and the

interference of superior courts in the awards of contracts in B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, , noticed as under:-

67. We are not oblivious of the expansive role of the superior courts on judicial review.

68. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under:

- i) If there are essential conditions, the same must be adhered to;
- ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;
- iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing
- iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance of another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction.
- v) When a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with.
- (vi) The contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority.
- (vii) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint.

18. Recently, the Hon"ble Supreme Court in Siemens Public Communication Networks Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, , after analysing the judicial precedents in para 39 had concluded as under:-

39. On examining the facts and circumstances of the present case, we are of the view that none of the criteria has been satisfied justifying Court's interference in the grant of contract in favour of the appellants. When the power of judicial review is invoked in the matters relating to tenders or award of contracts, certain special features have to be considered. A contract is a commercial transaction

and evaluating tenders and awarding contracts are essentially commercial functions. In such cases principles of equity and natural justice stay at a distance. If the decision relating to award of contracts is bona fide and is in public interest, Courts will not exercise the power of judicial review and interfere even if it is accepted for the sake of argument that there is a procedural lacuna.

19. For the Courts to examine validity of allotment of tenders, it is essential for the person approaching the Court with a grievance to establish that the decision making process is faulty and it is vitiated by malafides, unreasonableness or arbitrariness. The award of contract in the case of a private party or by a public body or the State is essentially a commercial transaction for which commercial considerations shall have precedence. It is open to the State to evolve its own methodology for arriving at a decision. The courts shall exercise judicial restraint in such administrative action as they do not sit as a Court of appeal to substitute its own views.

20. Examining the factual matrix involved herein, in our opinion, none of the grounds for Court's intervention in the grant of contract in favour of respondent No. 3 has been satisfied. The respondents No. 1 and 2 had evaluated the tenders and found respondent No. 3 to be competitive and more suitable to perform the contract successfully. No malafides, arbitrariness, unreasonableness or variation in any procedure had been pointed out so as to nullify the award of the contract to respondent No. 3.

21. Lastly, the respondents have raised a plea relating to the conduct of the petitioner in misleading and fabricating by way of cyber crime whereby petitioner had manipulated the entry dated 3.2.2012. The petitioner had shown that its technical bid was opened on 3.2.2012 whereas the sequence of events unambiguously show that no such event had taken place. The glaring factor which requires notice is that the petitioner had appended document Annexure P. 9 which was forged. The respondents had categorically filed additional affidavit and also denied opening of financial bid of the petitioner to which no rejoinder had been filed by the petitioner controverting the same. However, the petitioner had itself accepted that the financial bid had not been opened till 20.2.2012 in letters Annexures R. 1, R. 2 and R. 3. Further fact which requires notice is that the unamended writ petition which was filed did not stipulate that price bid had been opened. The same was an after-thought, particularly in view of the averments made in the additional affidavit which has been filed by respondent Nos. 1 and 2. Paras 3 to 7 of the written statement on behalf of respondent Nos. 1 and 2 read as under:-

3. That the petitioner has tried to overreach the Hon''ble High Court by alleging that he has come to know that his commercial bid was opened. It is respectfully submitted that the financial bid of the petitioner was never opened. Therefore, petitioner has not approached the Hon''ble High Court with clean hands and in view of the law laid down by the Hon''ble Court, a person who does not come to the court with clean hands is not entitled to be heard on merits of his claim.

Petitioner has written a letter dated UEM/MKT/MCP/640 dated 3.2.2012 stated that they have come to know from the website that UEM's bid has been disqualified by HUDA and on further perusal, they have come to know that the bid has been disqualified on the ground of debarment of the company for a period of three months (30.5.2011 to 11.8.2011). A copy of the letter dated 3.2.2012 is attached as Annexure R. 1 to this amended written statement.

4. That another letter has been written by the petitioner that the financial bid has been opened on 3.2.2012. As per the information available on the website the message shown is "Financial/Price bid cancelled or Rejected Bid". A copy of the letter dated 10.2.2012 is attached as Annexure R. 2 to this amended written statement.

5. That yet another letter has been written by the petitioner vide No. UEM/MKT/MCP/671A dated 20.2.2012 to the Chief Administrator, Haryana Urban Development Authority, Panchkula that despite repeated follow-ups including meetings in person with the concerned official, the bid of the petitioner has not been opened. He has further mentioned that it is most shocking that none of the representations have been responded. Petitioner has further mentioned that as per the information available on the website, their financial bid was not being considered and hence was not opened. A copy of the letter dated 20.2.2012 is attached as Annexure R. 3 to this written statement.

6. That now the petitioner seems to have created a forged web site/portal of HUDA to show that his commercial bid was opened. He has attached undated Annexure P. 9 with the writ petition. Unfortunately, the copy of the said letter has not been supplied to the counsel for the answering-respondents or to the answering respondents when the amended writ petition has been filed. Enquiry by the counsel for HUDA from the counsel for respondent No. 3 also showed that he has also not been supplied the copy of Annexure P. 9. Infact petitioner has committed the cyber crime by creating/forging a website/portal of HUDA. In any case, the answering respondent reserves the right to file an additional reply, if need be, after receipt of Annexure P. 9. Thus, the writ petition of the petitioner is liable to be dismissed with exemplary costs.

22. The trite law is that petitioner is required to approach the Court with clean hands. The law has been succinctly summarized in that regard in the under noted terms.

23. This Court in Pawan Kumar v. State of Haryana and another, 1995 (2) S.C.T. 43 : 1994 (5) SLR 73 had an occasion to consider the situation wherein petitioner had attempted to mislead the Court. The petitioner was held not entitled to any relief under Article 226 of the Constitution of India.

24. The Hon"ble Apex Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, had observed as under:-

The courts of law are meant for imparting justice between the parties. One who

comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that 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 the litigation.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Nonproduction and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

9. We, therefore, allow the appeal, set aside the impugned judgment of the High Court and restore that of the trial court. The appellants shall be entitled to their costs which we quantify as Rs. 11,000.

25. Similarly, the Hon'ble Apex Court in Chandra Shashi Vs. Anil Kumar Verma, noted as under:-

The stream of administration of justice has to remain unpolluted so that purity of Court's atmosphere may give vitality to all the organs of the state. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of Court's environment; so as to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of

administration of justice.

In view of above, we do not find any merit in this writ petition and the same is dismissed with costs quantified at Rs. 50,000/-. Respondents No. 1 and 2 and respondent No. 3 shall be entitled to costs equally i.e., Rs. 25,000/- each.