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K.D. SHARMA

v.

STEEL AUTHORITY OF INDIA LTD. & ORS.

(Civil Appeal No. 4270 of 2008)

JULY 9, 2008

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[C.K. THAKKER AND D.K. JAIN, JJ.]

Equity – Suppression of material facts – In the writ court – Effect of – Held: Under writ jurisdiction which is prerogative, C *equitable, discretionary and extraordinary jurisdiction, concealment of material facts, would amount to manipulation and misrepresentation – Prerogative remedy is not a matter of course – Such petition liable to be dismissed at the threshold without considering the merits of the case – Such applicant is* D *required to be dealt with for contempt of court for abusing the process of court – Constitution of India, 1950 – Articles 32 and 226.*

Contract – Tender notice – Cancellation of four tender notices – Grant of contract under fifth tender notice – One of E *the bidders challenging grant of contract under fifth tender notice – Challenge rejected – Review petition by the bidder as his bid was not considered – High Court directing the authorities to consider the bidder under fourth tender notice – Grant of contract to the bidder – Contractor under fifth tender* F *notice challenging the grant of contract – Application for disposal of matter under compromise allowed by High Court – Contractor under fifth tender notice denying to have entered any compromise and alleging fraud – Held: In the facts of the case no fraud played as the contractor actually was party to* G *the compromise – The contract given under fifth tender notice having expired, contractor not entitled to contract under fourth tender notice.*

Words and Phrases –"Fraud" – Meaning of.

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Respondent No. 1 Steel Authority of India (SAIL) issued tender for raising, transporting etc. of iron ore. In Part I of the tender (Techno-Commercial Parameters) only one bidder i.e. respondent No. 2 was qualified. Therefore Part II of the tender (Price Bid) was not opened because minimum three techno-commercially qualified offers were required for opening the same and hence the tender process was cancelled. Thereafter 2nd, 3rd and 4th tenders were floated, but the same were unsuccessful. The tender was floated for the fifth time, where under work was entrusted to the appellant for a period of 3 years. Respondent No. 2 filed a writ petition challenging the decision of respondent No. 1 in granting the work to the appellant alleging that the bid of the appellant was illegally accepted and respondent No. 1 had cancelled the previous tenders in order to oblige the appellant and entrust work to the appellant. The petition was dismissed by High Court. Respondent No. 2 on coming to know that despite being eligible his case was not considered, filed a review petition. The High Court directed respondent No. 1 to open the fourth tender and consider the case of respondent No. 2 and the appellant afresh. The order was unsuccessfully challenged upto Supreme Court. Thereafter respondent No. 1 opened the tender and decided to entrust the work to respondent No. 2. Appellant filed application praying to decide disqualification of respondent No. 2 . Two applications were also filed requesting the court to dispose of the matters in view of compromise and settlement arrived at between the parties. High Court disposed of all the applications on the basis of the settlement. Appellant filed an application alleging that fraud has been committed by the respondents on him as well as on the Court. The application was rejected by High Court. Hence the present appeal.

Appellant contended that fraud had been committed in as much as the appellant had never entered into any settlement or compromise.

Respondent No. 1 contended that compromise had been entered into in the presence of the Power of Attorney/representative of the appellant duly authorised by the appellant; and that the work entrusted to the appellant was under fifth tender notice for a period of three years and not under tender notice No. 4 and thus on expiry of period of three years there was no right in favour of the appellant.

Dismissing the appeal, the Court

HELD:1.1 The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution of India 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. [Para 24] [470 A-B]

S.P. Chengalvaraya Naidu (Dead) by Lrs. v. Jagannath (Dead) by Lrs. and Ors., **1994 (1) SCC 1**; *State of Haryana v. Karnal Distillery*, **1977 (2) SCC 431**; *Vijay Kumar v. State of Haryana*, **1983 (3) SCC 333**; *Welcom Hotel v. State of A.P.*, **1983 (4) SCC 575**; *Agricultural and Process Food Products v. Oswal Agro Furnae*, **1996 (4) SCC 297**; *State of Punjab v. Sarav Preet*, **2002 (9) SCC 601**; *Union of India v. Muneesh Suneja*, **2001 (3) SCC 92**; *All India Sate Bank Officers Federation v. Union of India*, **1990 Supp SCC 336**; *Vijay Syal and Anr. v. State of Punjab and Ors.*, **2003 (9) SCC 401 – relied on.**

A.V. Papayya Sastry and Ors. v. Govt. of A.P. and Ors., **2007 (4) SCC 221 – distinguished.**

R. v. General Income Tax Commissioners for Kensington exparte Polignac **1917 (1) KB 486: 86 LJ KB 257:116 LT 136 – referred to.**

1.2 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". [Para 28] [471 F-H, 472-A]

1.3 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. [Para 29] [472 B-E]

1.4 A prerogative remedy is not a matter of course.

A While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving
B it. [Para 26] [470 G-H, 471 A]

1.5 In the case on hand, the appellant has not come forward with all the facts. He has chosen to state facts in the manner suited to him by giving an impression to the Writ Court that an instrumentality of State (Respondent
C No. 1) has not followed doctrine of natural justice and fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. [Para 46] [478 B-C]

D 2.1 Even on merits, no case has been made out by the appellant to interfere with the action of respondent No. 1 or the order passed by the High Court. Pursuant to the order passed by the High Court in Review and after dismissal of Special Leave Petitions by this Court, respon-
E dent No. 1 issued notices to the parties including the appellant. Respondent No.2 remained present for negotiation. The appellant received the notice but intimated SAIL that his Power of Attorney/representative would remain present on his behalf. At no point of time, the appellant had made any grievance against the Power of Attorney
F nor he had informed respondent No. 1 that he had withdrawn Power of Attorney issued earlier. It, therefore, cannot be said that the appellant was deceived or cheated, either by respondent No. 1 or by anyone else. It does lie in the mouth of the appellant that respondent No. 1 had
G acted in breach of natural justice. [Paras 19,20 and 46] [467-G, 468-A,B,C,D, 478-C]

2.2 From the record, it is clear that tender notice No.4 was wrongly ignored and no process thereunder was undertaken by respondent No. 1. What was granted to
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the appellant was a contract under tender notice No.5. The appellant was working under tender notice No.5. Meanwhile, the review of respondent No.2 against tender notice No.4 was allowed and after the order passed by this Court dismissing Special Leave Petitions, respondent No. 1 implemented the said order, bid of respondent No.2 was accepted and contract was given to him. Respondent No. 1 is right in urging that the appellant cannot insist that even under the contract under tender notice No.4, he should be allowed to continue the work. [Para 22] [469 B-C]

3. Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in *personam*. [Para 17] [467 E-F]

A.V. Papayya Sastry and Ors. v. Govt. of A.P. and Ors., **2007 (4) SCC 221 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4270 of 2008

From the Judgment & Order dated 16.2.2005 of the High Court of Orissa, Cuttack in Misc. Case Nos. 9 & 10 of 2005 in Review Petition No. 4/2002

Mahendra Anand, Kamal Behari Panda, Neeraj Kumar Jain, Sanjay Singh, Sandeep Chaturvedi and Ugra Shankar Prasad for the Appellant.

Jagdeep Dhankar, Sunil Kumar Jain for the Respondents No. 1, 3 & 4.

Kailash Vasdev, Kumud Lata Das for the Respondent No. 2

Santosh Mishra and Sharmila Upadhyay for Intervening Party.

A The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted.

2. The present appeal arises out of the judgment and order dated February 16, 2005 in Miscellaneous Case Nos. 9 B and 10 of 2005 and Miscellaneous Case No. 57 of 2004 in Review Petition No. 4 of 2002 passed by the High Court of Orissa.

3. Shortly stated the facts of the case are that respondent No. 1, Steel Authority of India Ltd. ('SAIL' for short) issued ten- C ders for raising, transporting and loading of iron ore lump and fines into railway wagons at Kalta Iron Mine. The tender was required to be submitted in two parts: (i) Techno-Commercial Parameters (Part-I) and (ii) Price Bid (Part-II). Price bid of the tender was to be opened only after opening of the Techno-Com- D mercial Parameters and if the bidder was found qualified. In response to the first notice dated June 5, 2000, 19 tender papers were sold. The authorities, however, received response only from 10 persons. Techno-Commercial Parameters (Part-I) was opened and it was found that only one bidder, namely, M/s E Ores India Pvt. Ltd. (respondent NO. 2 herein) was qualified. The process, therefore, had to be cancelled because for opening of Price Bid (Part-II), minimum three Techno-Commercially qualified offers ought to have been there as per Clause 7.7 of Purchase/Contract Procedure, 2000. Re-tender was, therefore, F issued on September 8, 2000, but it was also required to be cancelled owing to 'no perceptible improvement' in the situation. The tender was floated for the third time, which was unsuccessful. The fourth notice inviting tenders was issued on January 22, 2001. It met with the same fate. Then fifth time, tenders G were invited on May 7, 2001 wherein the appellant was found eligible and qualified. His bid was the lowest. The said bid was accepted and the work was entrusted to him. The decision taken by the first respondent (SAIL) came to be challenged by respondent No. 2 in the High Court of Orissa by filing a Writ Petition being OJC No. 3508 of 2002. The main allegation of the peti- H

tioner before the High Court (respondent No. 2 herein) was that first respondent (SAIL) cancelled previous four notices inviting tenders only with a view to oblige the appellant and to entrust work to him who could not qualify himself earlier for want of requisite eligible criteria in tender process. Ultimately, the standard as prescribed earlier was relaxed and lowered down in the 5th tender notice. When the present appellant became eligible and qualified, the tenders were opened and his bid was illegally accepted by SAIL. The petition was heard on merits and the High Court *vide* its judgment and order dated May 30, 2002 dismissed the petition. Respondent No. 2, however, came to know that he was eligible and yet his case was not considered. He, therefore, filed a review in the High Court which was registered as Review Petition No. 4 of 2002. By a judgment and order dated February 3, 2003, the Division Bench allowed the Review Petition and directed the authorities (SAIL) to open fourth tender and consider the case of the petitioner (respondent No. 2) and respondent No. 3 (appellant) afresh in accordance with law within a period of one month from the receipt of the writ. The above order was challenged by the appellant by filing Special Leave Petition in this Court. Special Leave Petition was also filed by SAIL. Both the Special Leave Petitions, however, were dismissed by this Court on November 28, 2003.

4. It is alleged by the appellant that after dismissal of Special Leave Petitions by this Court, SAIL opened tender in presence of the second respondent only without intimating the appellant and in his absence. SAIL also negotiated the rates with the second respondent and decided to entrust the work to him. Meanwhile, several applications were filed before the High Court for clarification and/or modification/ alteration of the order passed in Review Petition. Miscellaneous Case No. 46 of 2004 was filed by respondent No. 2 seeking implementation of the order of the High Court dated February 3, 2003. Miscellaneous Case No. 48 of 2004 was filed by SAIL for clarification while Miscellaneous Case No. 57 of 2004 was filed by the appellant to decide disqualification of respondent No. 2. Miscellaneous

A Cases 9 and 10 of 2005 were also said to have been filed requesting the High Court to dispose of matters in view of compromise and settlement arrived at between the parties.

5. The High Court by the impugned order dated February 16, 2005, disposed of all the applications on the basis of the B settlement said to have been arrived at between the parties which was duly recorded in the order wherein the present appellant was also a party-respondent. The appellant came to know that fraud had been committed by the respondents upon him as well as upon the Court. He, therefore, filed Miscellaneous Case C No. 63 of 2005 on June 28, 2005 to recall the order dated February 16, 2005 alleging *inter alia* that fraud has been perpetrated by the opposite party on him as well as on the Hon'ble Court. A prayer was also made to investigate the matter by Central Bureau of Investigation (CBI) or Vigilance Authorities. D Since nothing was done by the High Court, he again approached this Court by filing Special Leave Petition which was registered as Special Leave Petition (Civil) No. ..... of 2006 (CC 2486 of 2006). The said petition came up for hearing before this Court and was dismissed on May 12, 2006 as "not pressed at this E stage". It was observed that if the petitioner would make a prayer before the High Court for expeditious disposal of the application to recall the order, the said prayer would be considered appropriately and application would be disposed of accordingly. It is the case of the applicant that even thereafter the recall ap- F plication had not been placed before the Court and was not decided as directed by this Court. In the circumstances, the appellant approached this Court by filing a Special Leave Petition on September 6, 2006.

6. On October 9, 2006, the matter was placed before this G Court for admission hearing. Notice was issued to the respondents. When the matter was placed for further hearing on March 8, 2007, the following order was passed;

"Service is complete.

H Though served, nobody appears on behalf of respondent

No. 2 (original petitioner). With a view to give one more opportunity, list the matter after two weeks". A

7. According to the appellant, it is only after the above order that the wheels moved very fast. The respondents made all attempts to get the matter on Board before the High Court. The Court finally rejected the prayer of the appellant for recalling of the order and dismissed the application. According to the appellant, all those actions were illegal, contrary to law and deserve interference by this Court. B

8. We have heard the learned counsel for the parties. C

9. Learned counsel for the appellant contended that fraud has been played upon the Court as well as upon the appellant and all orders passed by the High Court deserve to be quashed and set aside only on that ground. According to the appellant, when Miscellaneous Petitions were placed before the High Court, the Court was bound to decide them in accordance with law after hearing the parties. Instead, the High Court disposed of all the petitions on the basis of 'so-called' settlement said to have been arrived at between the parties. So far as appellant is concerned, he had never entered into any settlement or compromise. Mr. C.M. Ramesh, Chairman and Managing Director of Rithwik Projects who was earlier representative of the appellant and in whose favour the appellant had issued Power of Attorney had joined hands with respondent No. 2 and was virtually won over by him. The appellant had also revoked and withdrawn Power of Attorney issued in favour of Ramesh and, obviously therefore, he had no authority to represent the appellant and could not have appeared either before SAIL for negotiations for him or entered into any compromise or settlement on behalf of the appellant. It was also contended that though for a substantial long period, application for recalling of order instituted by the appellant had not come on Board and he had to approach this Court making grievance about non-hearing of the matter, there was no progress whatsoever. It was only after the order passed by this Court and affording an opportunity to the respon- D E F G H

A dent stating that if he would not appear, an appropriate order would be passed that respondent No. 2 got the matter hurriedly disposed of in the High Court. It was also the allegation of the appellant that at the time of hearing of Miscellaneous Cases, a new advocate appeared on his behalf who was not engaged by
B the appellant. Some blank papers on which the appellant might have singed earlier came to be utilized for the purpose of making applications for settlement showing that the appellant was agreeable to such settlement; the settlement was produced before the Court and on that basis, the matter were finally dis-
C posed of on the assumption that all the parties had compromised and amicably settled the matter and nothing was required to be done. Accordingly all the three Miscellaneous Petitions Nos. 46, 48 and 57 of 2004 were disposed of. It was submitted that in these circumstances, the order passed by the High Court
D deserves to be quashed and set aside by remitting the matter to the High Court so that the recall-application filed by the appellant be decided afresh after hearing the parties.

10. The learned counsel for Respondent No. 1-SAIL strongly refuted the allegations levelled by the appellant. An
E affidavit-in-reply is filed denying all the averments and allegations against SAIL. It was stated that the order passed by the High Court in Review Petition was challenged by SAIL, but Special Leave Petition was dismissed. Thereafter obviously, SAIL was required to act in accordance with the order passed by the
F High Court in the Review Petition and confirmed by this Court. It was also submitted by learned counsel for SAIL that bald allegations have been levelled against SAIL by the appellant without there being any material whatsoever in support of such allegations. On the contrary, all throughout SAIL has acted strictly
G in consonance with law. The Counsel stated that in accordance with the order passed by the High Court in Review Petition, 4th Tender was considered, notices were issued to respondent No. 2 as also to the appellant herein. The appellant received the notice. He addressed a letter to SAIL stating therein that he would remain present in pursuance of the notice issued by SAIL
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through his Power of Attorney and representative Ramesh of Rithwik Projects. Accordingly, Rithwik Projects through its Chairman and Managing Director Ramesh appeared and a decision was taken to entrust contract to respondent No. 2. In the circumstances, it cannot be said that any fraud has been committed by SAIL either on the appellant or on the Court. The counsel for SAIL further stated that the appellant has not been affected at all. It was stated that work entrusted to the appellant was under tender notice 5 and not under tender notice 4. Period of tender notice 5 was for three years. The said period of three years was over and the appellant had completed the said work. Thereafter there was no right in favour of the appellant nor he could insist continuance of the contract. The counsel, therefore, submitted that the appeal should be dismissed by this Court.

11. Even otherwise, according to the counsel, no communication was sent at any point of time by the appellant to SAIL that though earlier he had issued Power of Attorney in favour of Ramesh of Rithwik Projects, it was subsequently withdrawn or revoked and that he would not represent the appellant in future before SAIL. On the contrary, though notice was issued by SAIL and received by the appellant, he did not remain present and sent a communication to SAIL that Ramesh of Rithwik Projects would represent him. It was, therefore, not open to the appellant thereafter to turn round and make wild allegations against SAIL nor is he entitled to any relief.

12. On behalf of respondent No. 2 - M/s Ores India Pvt. Ltd., the counsel contended that no case whatsoever has been made out by the appellant so as to interfere with the order passed by the High Court. According to the counsel, in fact SAIL had obliged appellant which was clear from the facts and proved from the decision in the Review Petition by the High Court. When 4th tender notice was cancelled, respondent No. 2 instituted a writ petition challenging the said action of SAIL. Meanwhile, 5th tender notice was issued and the bid of the present appellant was accepted by SAIL. The petition filed by respondent No. 2

A in relation to 4th tender notice came to be dismissed. Subsequently, however, respondent No. 2 came to know that though respondent No. 2 was eligible and qualified, SAIL had obliged the present appellant by canceling the process of 4th tender notice considering other bidders ineligible and unqualified. He, B hence, filed Review Petition. In Review Petition, the Court was convinced that the grievance voiced by respondent No. 2 was correct and the action of SAIL was wholly illegal and improper. Review Petition was, therefore, allowed and SAIL was directed to reconsider the Tender Notice by treating the respondent No. C 2 as eligible and qualified. Even observations were made by the High Court against the conduct of officers of SAIL. The said order was challenged by SAIL as also by the appellant but this Court did not interfere. 4th Tender was thereafter considered. Notices were given to all bidders including the appellant. The D bid of respondent No. 2 was accepted and the work was entrusted to him. It is, therefore, submitted that the appellant has no reason or ground to make grievance against that action and the appeal filed by him is liable to be dismissed.

13. We have considered rival contentions of the parties.

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14. The learned counsel for the appellant alleged that fraud had been committed by the respondents on the appellant as well as on the Court. Only on that ground, the impugned action of SAIL granting contract in favour of respondent No.2 deserves to be set aside. According to the counsel, Ramesh, Chairman F and Managing Director of Rithwik Projects, in whose favour the appellant had issued Power of Attorney, had taken side of respondent No.2. The Power of Attorney was, therefore, later on withdrawn by the appellant and yet he was allowed to be represented for the appellant before SAIL as also before the High G Court and 'so called' compromise and settlement was arrived at. He was not authorized to do so against the interest of the appellant and on his representation, the High Court could not have disposed of Miscellaneous Cases.

15. It is well settled that "fraud avoids all judicial acts, eccle-

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siastical or temporal" proclaimed Chief Justice Edward Coke of England before about three centuries. Reference was made by the counsel to a leading decision of this Court in *S.P. Chengalvaraya Naidu (Dead) by Lrs. V. Jagannath (Dead) by Lrs. & Ors.*, (1994) 1 SCC 1 wherein quoting the above observations, this Court held that a judgment/decree obtained by fraud has to be treated as a nullity by every Court.

16. Reference was also made to a recent decision of this Court in *A.V. Papayya Sastry & Ors. V. Govt. of A.P. & Ors.*, (2007) 4 SCC 221. Considering English and Indian cases, one of us (C.K. Thakker, J.) stated:

> "It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order —by the first Court or by the final Court— has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings".

17. The Court defined fraud as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether *in rem* or *in personam*.

18. So far as the proposition of law is concerned, there can be no two opinions. The learned counsel for the respondents also did not dispute the principles laid down in the above decisions as also in several other judgments. They, however, stated that on the facts and in the circumstances of the case, the ratio laid down in the above cases has no application.

19. As already adverted to earlier, according to SAIL, pursuant to the order passed by the High Court in Review and after dismissal of Special Leave Petitions by this Court, it issued

notices to the parties including the present appellant. Respondent No.2 remained present for negotiation. The appellant received the notice but intimated SAIL that Ramesh of Rithwik Projects would remain present on his behalf. At no point of time, the appellant had made any grievance against Ramesh nor he had informed SAIL that he had withdrawn Power of Attorney issued earlier in favour of Ramesh. It, therefore, cannot be said that the appellant was deceived or cheated, either by SAIL or by anyone else.

20. The argument of the learned counsel for the appellant of violation of principles of natural justice and fair play also has no force. When notice was issued by SAIL to the appellant and he had informed SAIL by a written communication that Ramesh would remain present as his representative, it does not lie in the mouth of the appellant that SAIL had acted in breach of natural justice.

21. SAIL in its written submissions contended that the appeal filed by the appellant is liable to be dismissed on account of suppression of material facts and deliberate misrepresentation by him. An impression was sought to be created by the appellant, submitted the counsel, that the appellant could not complete the work given to him and was assigned to respondent No.2. It is clear that after tender notice No. 4 was cancelled, *albeit* illegally as held by the High Court and by this Court, tender notice No. 5 was issued. The bid of the appellant was accepted and contract was given to him. It was for 2002-05 i.e. for three years. The appellant was allowed to complete the said period and the contract had not been terminated or abruptly discontinued during the said period. It was over in 2005 by efflux of time. What was done by SAIL was to implement the order of High Court in connection with tender notice No. 4 which was not acted upon. In that process, parties were called for negotiations, offer of respondent No.2 was accepted and work was given to him. It is, therefore, not correct to say that the appellant had suffered. The appellant wanted to continue the work even though the period of tender notice No. 5 was over and he had

taken the benefit thereunder. The appellant had no right or reason to make grievance so far as tender notice No. 4 was concerned. Hence, the appellant is not entitled to any relief.

22. We find considerable force in the argument of the learned counsel. From the record, it is clear that tender notice No.4 was wrongly ignored and no process thereunder was undertaken by SAIL. What was granted to the appellant was a contract under tender notice No.5. The appellant was working under tender notice No.5. Meanwhile, the review of respondent No.2 against tender notice No.4 was allowed and after the order passed by this Court dismissing Special Leave Petitions, SAIL implemented the said order, bid of respondent No.2 was accepted and contract was given to him. To us, SAIL is right in urging that the appellant cannot insist that even under the contract under tender notice No. 4, he should be allowed to continue the work. We, therefore, see no substance in the argument of the learned counsel for the appellant and the contention is rejected.

23. The learned counsel for SAIL is also right in urging that the appellant has not approached the Court with clean hands by disclosing all facts. An impression is sought to be created as if no notice was ever given to him nor he was informed about the consideration of cases of eligible and qualified bidders in pursuance of the order passed by the High Court in Review and confirmed by this Court. The true facts, however, were just contrary to what was sought to be placed before the Court. A notice was issued by SAIL to the appellant, he received the notice, intimated in writing to SAIL that he had authorized Ramesh of Rithwick Projects to appear on his behalf. Ramesh duly appeared at the time of consideration of bids, bid of respondent No.2 was found to be lowest and was accepted and contract was given to him (under tender notice No.4). The said contract had nothing to do with tender notice No.5 and contract thereunder which had been given to the appellant herein and he had completed the work. Thus, it is clear that the appellant had not placed all the facts before the Court clearly, candidly and frankly.

A 24. 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 B 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 C threshold without considering the merits of the claim.

25. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. General Income Tax Commissioners for Kensington, Ex Parte Polignac* (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

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> "[I]t 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- it says facts, not law. E 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 not been F fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".
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> (emphasis supplied)

26. A prerogative remedy is not a matter of course. While G 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 H 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.

27. In *Kensington Income Tax Commissioners, (Supra)* Viscount Reading, C.J. observed:

> "Where an *ex parte* application has been made to this Court for a *rule nisi* or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. *But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".*
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> (emphasis supplied)

28. 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

A 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".

B 29. 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, ma-
C nipulation, 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
D 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
E the Court.

30. Let us consider some important decisions on the point:

31. In *State of Haryana v. Karnal Distillery,* (1977) 2 SCC 431, almost an agreed order was passed by the Court that on
F expiry of the licence for manufacturing of liquor on September 6, 1976, the distillery would cease to manufacture liquor under the licence issued in its favour. Then, the Company filed a petition in the High Court for renewal of licence for manufacture of liquor for 1976-77, and the Court granted stay of dispossession. In appeal, the Supreme Court set aside the order granting
G stay of dispossession on the ground that the petitioner-Company in filing the petition in the High Court had misled it and started the proceedings for oblique and ulterior motive.

32. In *Vijay Kumar v. State of Haryana,* (1983) 3 SCC
H 333, it was the case of the petitioners that the provisional ad-

missions granted to them were not cancelled and they were continuing their studies as post-graduate students in Medical College on the relevant date. On the basis of that statement, they obtained an order of *status quo.* The Supreme Court ordered inquiry and the District Judge was asked to submit his report whether the provisional admissions granted to the petitioners were continued till October 1, 1982 or were cancelled. The report revealed that to the knowledge of the petitioners their provisional admissions were cancelled long before October 1, 1982 and thus, the petitioners had made false representation to the Court and obtained a favourable order.

33. Dismissing the petition, this Court observed:

> "But for the misrepresentation this Court would never have passed the said order. By reason of such conduct they have disentitled. themselves from getting any relief or assistance from this Court and the Special Leave Petitions are liable to be dismissed".

34. Deprecating the reprehensible conduct of the petitioners as well as of their counsel, the Court stated;

> "Before parting with the case, however, we cannot help observing that the conduct or behaviour of the two petitioners as well as their counsel (Dr. A.K. Kapoor who happens to be a medico-legal consultant practising in Courts) is most reprehensible and deserves to be deprecated. The District Judge's report in that behalf is eloquent and most revealing as it points out how the two petitioners and their counsel, (who also gave evidence in support of the petitioner's case before the District Judge) have indulged in telling lies and making reckless allegation of fabrication and manipulation of records against the College Authorities and how in fact the boot is on their leg. It is a sad commentary on the scruples of these three young gentlemen who are on the threshold of their carriers. In fact, at one stage we were inclined to refer the District Judge's report both to the Medical Council as well as the

A Bar Council for appropriate action but we refrained from doing so as the petitioners' counsel both on behalf of his clients as well as on his own behalf tendered unqualified apology and sought mercy from the Court. *We, however, part with the case with a heavy heart expressing our strong* B *disapproval of their conduct and behaviour...*"

(emphasis supplied)

35. In *Welcom Hotel v. State of A.P.,* (1983) 4 SCC 575, certain hoteliers filed a petition in this Court under Article 32 of C the Constitution challenging the maximum price of foodstuffs fixed by the Government contending that it was uneconomical and obtained *ex parte* stay order. The price, however, was fixed as per the agreement between the petitioners and the Government but the said fact was suppressed.

D 36. Describing the fact as material, the Court said:

"Petitioners who have behaved in this manner are not entitled to any consideration at the hands of the Court".

37. In *Agricultural & Process Food Products v. Oswal Agro* E *Furnae,* (1996) 4 SCC 297, the petitioner filed a petition in the High Court of Punjab and Haryana which was pending. Suppressing that fact, it filed another petition in the High Court of Delhi and obtained an order in its favour. Observing that the petitioner was guilty of suppression of 'very important fact', this F Court set aside the order of the High Court.

38. In *State of Punjab v. Sarav Preet,* (2002) 9 SCC 601, *A* obtained relief from the High Court on her assertion that a test in a particular subject was not conducted by the State. In an appeal by the State, it was stated that not only the requisite test G was conducted but the petitioner appeared in the said test and failed. Observing that the petitioner was under an obligation to disclose the said fact before the High Court, this Court dismissed the petition.

39. In *Union of India v. Muneesh Suneja,* (2001) 3 SCC H

92, the detenu challenged an order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1973 (COFEPOSA) by filing a petition in the High Court of Delhi which was withdrawn. Then he filed a similar petition in the High Court of Punjab & Haryana wherein he did not disclose the fact as to filing of the earlier petition and withdrawal thereof and obtained relief. In an appeal by the Union of India against the order of the High Court, this Court observed that non-disclosure of the fact of filing a similar petition and withdrawal thereof was indeed fatal to the subsequent petition.

40. A special reference may be made to a decision of this Court in *All India Sate Bank Officers Federation v. Union of India,* 1990 Supp SCC 336. In that case, promotion policy of the Bank was challenged by the Federation by filing a petition in this Court under Article 32 of the Constitution. It was supported by an affidavit and the contents were affirmed by the President of the Federation to be true to his 'personal knowledge'. It was stated: "The petitioners have not filed any other similar writ petition in this Honourable Court or any other High Court".

41. In the counter-affidavit filed on behalf of the Bank, however, it was asserted that the statement was 'false'. The Federation had filed a writ petition in the High Court of Andhra Pradesh which was admitted but interim stay was refused. Another petition was also filed in the High Court of Karnataka. It was further pointed out that Promotion Policy was implemented and 58 officers were promoted who were not made parties to the petition.

42. In affidavit-in-rejoinder, once again, the stand taken by the petitioner was sought to be justified. It was stated: "The deponent had no knowledge of the writ petition filed before the High Court of Andhra Pradesh, hence as soon as it came to his knowledge the same has been withdrawn. Secondly, the petitioners even today do not know the names of all such 58 candidates who have been promoted/favoured". It was contended on

behalf of the Bank that even that statement was false. Not only the petitioner-Federation was aware of the names of all the 58 officers who had been promoted to the higher post, but they had been joined as party-respondents in the writ petition filed in the Karnataka High Court, seeking stay of promotion of those respondents. It was, therefore, submitted that the petitioner had not come with clean hands and the petition should be dismissed on that ground alone.

43. 'Strongly disapproving' the explanation put forth by the petitioner and describing the tactics adopted by the Federation as 'abuse of process of court', this Court observed:

> "There is no doubt left in our minds that the petitioner has not only suppressed material facts in the petition but has also tried to abuse judicial process.
>
> . . .
>
> Apart from misstatements in the affidavits filed before this Court, the petitioner Federation has clearly resorted to tactics which can only be described as abuse of the process of court. The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of the Officers of the Bank, is a practice which has to be discouraged. Sri Sachhar and Sri Ramamurthy wished to pinpoint the necessity and importance of petitions being filed by different associations in order to discharge satisfactorily their responsibilities towards their respective members. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filing a petition in a Single Court. *It seems the object here in filing different petitions in different Courts was a totally different and not very laudable one*".
>
> (emphasis supplied)

44. 'Deeply grieved' by the situation and adversely commenting on the conduct and behaviour of the responsible officers of a Premier Bank of the country, the Court observed; A

> "We have set out the facts in this case at some length and passed a detailed order because we are deeply grieved to come across such conduct on the part of an association, which claims to represent high placed officers of a premier bank of this country. One expects such officers to fight their battles fairly and squarely and not to stoop low to gain, what can only be, temporary victories by keeping away material facts from the court. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly and without proper verification not to speak of dishonest and deliberate misstatements. *We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the petitioners in this ease and hope that this will be a lesson to the present petitioner as well as to other litigants and that at least in future people will act more truthfully and with a greater sense of responsibility.*
>
> (emphasis supplied)

B C D E

45. Yet in another case in *Vijay Syal & Anr. v. State of Punjab & Ors.,* (2003) 9 SCC 401; this Court stated;

> "In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous

F G H

A treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice".

B 46. In the case on hand, the appellant has not come forward with all the facts. He has chosen to state facts in the manner suited to him by giving an impression to the Writ Court that an instrumentality of State (SAIL) has not followed doctrine of natural justice and fundamental principles of fair procedure. This C is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. But we have also considered the merits of the case and even on merits, we are convinced that no case has been made out by him to interfere with the action of SAIL, or the order passed by the High Court.

D 47. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed with costs.

K.K.T. Appeal dismissed.