

M/S Sciemed Overseas Inc vs Boc India Limited & Ors on 11 January, 2016

Equivalent citations: AIR 2016 SUPREME COURT 345, 2016 (3) SCC 70, 2016 (1) AJR 377, AIR 2016 SC (CIVIL) 1170, (2016) 2 ICC 609, (2016) 2 ADJ 143 (SC), (2016) 121 CUT LT 567, (2016) 1 ORISSA LR 655, (2016) 2 JLJR 80, (2016) 1 ALL RENTCAS 498, (2016) 4 MAD LW 820, (2016) 1 RECCRIR 835, (2016) 1 RECCIVR 869, (2016) 158 ALLINDCAS 123 (SC), (2016) 2 ALL WC 1885, (2016) 1 SCALE 264, (2016) 2 CIVILCOURTC 1, (2016) 4 MPLJ 11, (2016) 63 OCR 600, (2016) 114 ALL LR 907, (2016) 2 CAL HN 149, (2016) 2 CALLT 98, (2016) 2 CIVLJ 843, (2016) 2 JCR 234 (SC), (2016) 5 MAH LJ 482, (2016) 1 MAD LJ 504, (2016) 3 ANDHLD 11, (2016) 1 UC 282, (2016) 1 CURCC 40, 2016 (1) SCC (CRI) 718, 2016 (3) KCCR SN 327 (SC)

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Bench: Madan B. Lokur, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 29125 OF 2008

M/s Sciemed Overseas Inc.

...Petitioner

Versus

BOC India Limited & Ors.

...Respondents

J U D G M E N T

Madan B. Lokur, J.

1. The only question for our consideration is whether the High Court was correct in imposing costs of Rs. 10 lakhs on the petitioner for filing a false or misleading affidavit in this Court. In our opinion,

the imposition of costs, although somewhat steep, was fully justified given that the High Court also held that the contract in favour of the petitioner was awarded improperly and was of a commercial nature, the last two findings not being under challenge.

2. A global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that. This ' is illustrative of the malaise that is slowly but surely creeping in. This 'trend' is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair.

3. The petitioner is aggrieved by a judgment and order dated 22nd September, 2008 passed by the Division Bench of the High Court of Jharkhand in L.P.A. No. 212 of 2008 only to the extent of imposition of costs.[1] In our opinion, there is no merit in this petition and it deserves to be dismissed.

4. The Rajendra Institute of Medical Sciences, Ranchi, (for short "the RIMS") issued a notice inviting tender on 10th February, 2007. The tender was for installation and supply of a complete system of Centralized Liquid Medical Oxygen with medical gas pipe line for Oxygen, Carbon Dioxide, Nitrous Oxide and compressed air, etc. The work was to be executed on a turnkey basis within 150 days in the 1000 bedded departments and wards of the RIMS.

5. Responses to the notice inviting tender were submitted by the petitioner (Sciemed Overseas) and respondent No.1 (BOC India). Their tenders were processed by the RIMS and a memorandum dated 25th June, 2007 was issued by its Director informing Sciemed and BOC regarding opening of the price bid of commercially and technically successful bidders.

6. According to BOC, the conditions of the technical bid were not fulfilled by Sciemed and, therefore, there was no reason to invite it for opening the price bid. A representation was made in this regard by BOC to the RIMS but that was not considered and, therefore, BOC filed W.P.(C) No. 4203 of 2007 in the High Court of Jharkhand in respect of its grievance against Sciemed and the RIMS.

7. The High Court considered the writ petition filed by BOC and by an order dated 31st July, 2007 the writ petition was disposed of giving liberty to BOC to file another representation in continuation of its earlier representation to the RIMS. It was directed that both the representations should be considered by the Director of the RIMS and an appropriate reasoned order be passed thereon.

8. It is important to note that when the aforesaid writ petition was disposed of on 31st July, 2007 no intimation was given to the High Court by the RIMS or by Sciemed to the effect that about a week earlier, that is, on 25th July, 2007 a work order had already been issued to Sciemed in respect of the notice inviting tender.

9. This fact was first brought to the notice of BOC when the Director of the RIMS in his letter dated 8th September, 2007 informed BOC, in response to the representations, that the work order had already been issued to Sciemed on 25th July, 2007.

10. Under these circumstances, BOC preferred yet another petition being W.P. (C) No. 4830 of 2007 challenging the issuance of the work order in favour of Sciemed.

11. By an order dated 10th September, 2007 the High Court dismissed the second writ petition filed by BOC holding that the question whether the work order had or had not been issued to Sciemed was a question of fact. That apart, BOC had also raised several other questions of fact. The High Court was of the opinion that since the factual controversies could not be adjudicated upon in its writ jurisdiction, there was no reason to entertain the writ petition and it was, accordingly, dismissed.

12. Feeling aggrieved, BOC preferred L.P.A. No. 319 of 2007 which was heard and dismissed by a Division Bench of the High Court on 10th October, 2007 thereby upholding the view taken by the learned Single Judge that the second writ petition filed by BOC raised disputed questions of fact.

13. Feeling dissatisfied with the order passed by the Division Bench, BOC preferred a petition for Special Leave to Appeal to this Court in which leave was granted on 14th March, 2008. This Court disposed of the appeal being Civil Appeal No.2028 of 2008 on that day itself holding that there is hardly any disputed question of fact. On the contrary, the facts of the case were evident from the documents already on record and oral evidence was required to be led. Accordingly, this Court was of the view that the matter ought to be heard on merits by the High Court and an appropriate direction was given in this regard.

14. During the pendency of the Civil Appeal, an affidavit was filed on 20th February, 2008 by Sciemed through its proprietor Shailendra Prasad Singh in which it was stated as follows:-

“It is submitted that the NIT, after having been relaxed and technical and financial bids having been opened, the respondent No.5 was declared as the lowest bidder by a margin of Rs.1.12 crores as compared to the petitioner and the work order has already been acted upon and the project is almost near completion and 85% of the amount has already been released to the answering respondent, rendering the present SLP, in any case, infructuous and liable to be rejected.”

15. It is this passage in the affidavit that has given rise to the controversy before us.

16. Pursuant to the order passed by this Court, the writ petition filed by BOC was taken up for consideration by a learned Single Judge of the High Court. By an order dated 14th May, 2008, the learned Single Judge dismissed the writ petition. While disposing of the writ petition, it was held that though the decision making process by which Sciemed was declared to be qualified was improper, it could not be held that the RIMS had acted in an arbitrary, mala fide or discriminatory manner. The learned Single Judge noted that Sciemed had stated before this Court that the work was almost complete. The High Court observed that since the work awarded to Sciemed had progressed to a considerable extent and a major portion of money had been advanced or paid to Sciemed, therefore if the work order were to be set aside it would involve dismantling and uprooting the system that had so far been fixed which would not be in the interest of the patients or the

exchequer. Accordingly, the learned Single Judge declined to interfere with the award of the contract to Sciemed but left it open to BOC to file a suit for damages against Sciemed.

17. Feeling aggrieved, Sciemed preferred a Letters Patent Appeal before the Division Bench of the High Court which came to be dismissed by the impugned judgment and order dated 22nd September, 2008. While doing so, the Division Bench of the High Court noted that the reason why the learned Single Judge did not interfere with the award of the contract to Sciemed was because of its statement made before this Court on affidavit that the work was almost near completion. It was also noted that cancellation of the award of contract at his stage would entail a heavy administrative and financial burden on the Government and lead to increase and double expenditure to the tune of crores of rupees.

18. However, the High Court, on the submission of learned counsel for BOC decided to verify whether the installation and supply of the complete system as per the notice of tender was near completion as stated by Sciemed in its affidavit filed in this Court. For this purpose, the High Court appointed a respected advocate of that Court as a one-man committee to visit the work site and submit a report with regard to the extent of work completed or at the stage of completion.

19. The learned advocate so appointed by the High Court submitted his Report on 3rd July, 2008. It was stated in the Report, which was accepted by the High Court, that the originating point/inlet of the main Liquid Oxygen Gas Tank of the required specification had not yet been installed. It was also found that a separate 3-Phase Electric Supply System for commissioning the project had not yet been installed. In view of these two major deficiencies, the commissioning of the complete system was being delayed. Additionally, it was noted that the Oxygen Gas Tank was in transit from Bangalore at that time.

20. On a consideration of the Report, the High Court took the view that Sciemed had given a false affidavit in this Court to the effect that the work was near completion. In this view of the matter, the High Court dismissed the appeal filed by Sciemed and imposed costs of Rs. 10 lakhs to be deposited with the Jharkhand State Legal Services Authority.

21. At this stage, it is important to mention that Sciemed through its proprietor Shailendra Prasad Singh son of Rameshwar Prasad Singh, had filed an affidavit on or about 10th July, 2008 in the High Court in which it was explained that the statement made in this Court on affidavit was because the deponent was of the view that the installation of the complete system of gas pipeline is one part of the award and installation of liquid oxygen tank is a separate work. It was stated that the affidavit filed in this Court was due to some misconception and was not with a view to mislead this Court. In other words, the deponent sought to justify his affidavit in this Court notwithstanding the Report of the learned advocate. The deponent after giving the above explanation, tendered an unconditional and unqualified apology to the High Court for the statement regarding the near completion of the project.

22. The High Court did not accept the apology given by the proprietor of Sciemed and, therefore, imposed costs of Rs.10 lakhs on Sciemed.

23. While impugning the order passed by the High Court, it was submitted by the learned counsel for Sciemed that in fact the statement made in the affidavit filed in this Court was not a false statement but was bona fide and not a deliberate attempt to mislead this Court. It was also submitted that the allegedly false or misleading statement had no impact on the decision taken by this Court and should, therefore, be ignored.

24. We are unable to accept either contention raised by learned counsel.

25. The correctness of the statement made by Sciemed was examined threadbare not only by the learned Single Judge but also by the Division Bench and it was found that a considerable amount of work had still to be completed by Sciemed and it was not as if the work was nearing completion as represented to this Court. Additionally, the Report independently given by the learned advocate appointed to make an assessment, also clearly indicated that a considerable amount of work had still to be performed by Sciemed. The Report was not ex parte but was carefully prepared after an inspection of the site and discussing the matter with Shailendra Prasad Singh the proprietor of Sciemed and an engineer of Sciemed as well as officers from the RIMS.

26. The conclusion drawn by the learned advocate after a thorough inspection and discussion of the issues is as follows:-

“From a detailed inspection of the entire Liquid Oxygen Gas System as required to be installed under the tender conditions and the work Order, I was able to gather that at the originating point/inlet the main Liquid Oxygen Gas Tank of the required specification has not yet been installed. I also found that a separate 3-Phase Electric Supply System for commissioning of the project has not yet been installed and is reportedly in the process. I was informed by the hospital authorities that the 3- Phase electricity connection is to be supplied by the hospital authorities and are not required under the tender conditions or work order to be done on the part of the Contractor i.e. M/s Sciemed Overseas Inc. On the part of the Contractor i.e. respondent no.5 I was repeatedly informed that the delay in the execution of the work has occasioned primarily due to repeated thefts of the costly Copper pipes, whitewashing and distemper work underway in the RIMS and also the operational and practical difficulties in installation in the ICU's, OT's, Labour Rooms in the Gynae Department which had to be vacated by the hospital authorities completely after much persuasion, before any installation could be carried out.

It appears that on account of delay in installation of the Main Liquid Oxygen Tank and the 3 Phase electrical connection, the commissioning of the complete system of Liquid Medical Oxygen Gas together with other gases. Vacuum and Air are being delayed. The entire outlet system upto the individual outlets have been put in place as already stated above. I also noticed that at the point of the final outlets at the end of the Branch pipeline at the Bed heads wherever they are specified by the Work Order, the double lockout with parking facility has been installed but the electrical switches for which space is left in the panel has not yet been fixed.”

27. After the Report was filed in the High Court, Sciemed also realized that it had in fact misled this Court. Nevertheless, Sciemed tried to justify the false or misleading affidavit filed in this Court. After giving the justification, Sciemed tendered an unconditional and unqualified apology through Shailendra Prasad Singh, proprietor of Sciemed. There was no need for the proprietor to have tendered an unconditional and unqualified apology unless there was an admission that the statement made before this Court was false or misleading. It would have been a different matter if Sciemed had tendered an unconditional and unqualified apology without tendering a justification.

28. As far as the alternative submission of the learned counsel is concerned, we are not in a position to accept this submission also particularly if the entire matter is looked at in a broad conspectus.

29. In the first instance, the work order was issued to Sciemed on 25th July, 2007 but this was not disclosed to the High Court when it disposed of W.P.(C) No.4203 of 2007 on 31st July, 2007. Had the factual position been disclosed to the High Court, perhaps the outcome of the writ petition filed by BOC would have been different and the issue might not have even travelled up to this Court. Furthermore, apparently to ensure that work order goes through, a false or misleading statement was made before this Court on affidavit when the matter was taken up on 14th March, 2008 to the effect that the work was nearing completion. It is not possible to accept the view canvassed by learned counsel that the false or misleading statement had no impact on the decision rendered by this Court on 14th March, 2008. We cannot hypothesize on what transpired in the proceedings before this Court nor can we imagine what could or could not have weighed with this Court when it rendered its decision on 14th March, 2008. The fact of the matter is that a false or misleading statement was made before this Court and that by itself is enough to invite an adverse reaction.

30. In the case of *Suo Moto Proceedings Against R. Karuppan, Advocate*[2] this Court had observed that the sanctity of affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged. It was observed by this Court as follows:

“Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.”

31. Similarly, in *Muthu Karuppan v. Parithi Ilamvazhuthi*[3] this Court expressed the view that the filing of a false affidavit should be effectively curbed with a strong hand. It is true that the observation was made in the context of contempt of Court proceedings, but the view expressed must be generally endorsed to preserve the purity of judicial proceedings. This is what was said:

“Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a *prima facie* case of “deliberate falsehood” on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.”

32. On the material before us and the material considered by the High Court, we are satisfied that the imposition of costs by the High Court was justified. We find no reason to interfere with the impugned judgment and order. The petition is dismissed.

33. However, we grant six weeks to the petitioner to make the deposit of costs as directed by the High Court with the Jharkhand Legal Services Authority (JHALSA). On the deposit being made, the JHALSA should forward the amount to BOC India. The matter should be listed in the High Court after eight weeks for compliance.

.....J (Madan B. Lokur)J (R.K. Agrawal) New Delhi;

January 11, 2016

[2] *BOC India Limited v. State of Jharkhand*, MANU/JH/0938/2008 [4] (2001) 5 SCC 289 [6] (2011) 5 SCC 496