
(2008) 10 KAR CK 0078
In the Karnataka High Court
Case No : Writ Petition No. 7602 of 2008

Balaji Recreation Association	Vs	APPELLANT
State of Karnataka and Others		RESPONDENT

Date of Decision : 31-10-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227

Citation : (2009) 1 KarLJ 337 : (2008) 5 KCCR 3224

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Laxman T. Mantagani, for the Appellant; H.T. Narendra Prasad, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner in this petition is a Recreation Association represented by its Secretary, Sri Prakash. Petitioner has sought for a

direction, directing the respondents not to insist upon the petitioner-Association to obtain a licence for the play of dart game, chess, rummy,

snooker and carrom either under the Karnataka Police Act, 1963 or under the Licensing and Controlling of Places of Public Amusements

(Bangalore City) Order, 1989, as the above said games are declared as games of skill by this Hon'ble Court.

2. I have heard learned Counsel appearing for petitioner-Association and learned Government Pleader appearing for respondents.

3. Learned Government Pleader appearing for respondents, at the outset, submitted that, the writ petition filed by petitioner-Association is liable to

be rejected at the threshold itself by imposing exemplary cost for the reason that, petitioner-Association has not approached this Court with clean

hands and stated true facts before this Court. In substantiation of the said submission, he pointed out that, petitioner-Association, had earlier filed a writ petition in W.P. No. 5051 of 2008 on the same cause of action and seeking the same reliefs before the Court. The said writ petition was dismissed by this Court by its order dated 28th March, 2008 with cost of Rs. 5,000/-. This relevant material which was well-within the knowledge of the petitioner has been deliberately and intentionally suppressed by petitioner in the instant . writ petition. After going through the earlier writ petition filed by petitioner-Association, it is noticed that, the averments made therein, paragraphs, page numbers, affidavit sworn to by petitioner, etc. are exactly the same as that of in the present writ petition. The only difference between the earlier writ petition and the present one is the date of filing the writ petitions. Therefore, he vehemently submitted that, the writ petition filed by petitioner is liable to be dismissed with exemplary cost in view of suppression of material facts before this Court.

4. Further, it is specifically stated at paragraph 4 of the objections statement filed on behalf of respondents by learned Government Pleader that, in pursuance of the notice ordered, the Jurisdictional Officer of the Police Department has made spot inspection to verify as to whether, petitioner is running the Recreation Association in the address given by petitioner in the cause title of the writ petition and found that, no Association by the name of the petitioner is functioning in the Venkateswara Complex and on further investigation, the owner of the Complex Sri Puttaraju and other tenants in the said complex have made statements before the sixth respondent that, the owner of the complex has not leased any portion of his complex to the petitioner. In fact, the owner of the complex has leased the said complex in favour of three tenants and the statement of the owner of the complex and the tenants in occupation are also recorded and produced along with the statement of objections as Annexures-R1 to R4. Further, it is specifically stated in the objections statement filed on behalf of respondents that, when petitioner is not at all in existence in the place shown by it and not running the recreation association, the question of interference by police in the activities/affairs of the petitioner and insisting upon the petitioner to obtain licence under the Police Act or other Act, etc. does not arise at all.

5. After hearing the learned Government Pleader appearing for respondents, after going through the statement of objections filed on behalf of respondents, specifically paragraphs 3 and 4, and after perusal of the order passed by this Court in the earlier round of litigation on the same cause of action, dismissing the petition with cost of Rs. 5,000/-, it cannot be disputed that, petitioner has flagrantly and wantonly concealed this vital information and mislead the Court. This is nothing but abuse of process of Court and fraud committed on this Court by suppressing the material facts and redressing their grievances by filing writ petition after writ petition. Such litigants are not entitled to redress their grievance by invoking the extraordinary jurisdiction as envisaged under Articles 226 and 227 of the Constitution of India and such unhealthy practices should be curbed at the first instance. Therefore, the writ petition filed by petitioner is liable to be dismissed with exemplary cost.

6. Further, in one of the recent judgments of the Apex Court, in the case of Prestige Lights Ltd. Vs. State Bank of India, , it is held that, when a party has suppressed the material facts, he is not entitled to ask for an extraordinary remedy under Article 226 of the Constitution from the High Court as also equitable remedy from the Supreme Court under Article 136 of the Constitution and a party, whose hands are soiled, cannot hold the writ of the Court. It is worthwhile to extract the relevant portion of the judgment which reads thus:

A prerogative remedy is not available as a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the Writ Courts would become impossible.

(emphasis supplied)

7. In another judgment of the Supreme Court of the year 2008, in the case of

Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs.

State of U.P. and Others, , the Apex Court has held as follows.-

A writ remedy is an equitable one. A person approaching a superior Court must come with a pair of clean hands. It not only should not suppress

any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law.

(emphasis supplied)

8. Further, it was observed by the Apex Court that, taking recourse to legal proceedings on same core issue again and again amounts to fraud on

Court and abuse of process of law and ultimately dismissed the appeal with costs of Rs. 50,000/-.

9. Therefore, in view of the well-settled law laid down by the Apex Court in catena of judgments including the aforesaid ones, petitioner is not at all

entitled to invoke the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India and hence, the writ petition

filed by petitioner deserves to be dismissed with exemplary cost.

10. In the light of the facts and circumstances of the case, the writ petition filed by petitioner is dismissed with cost of Rs. 10,000/- (Rupees Ten

Thousand Only) and the said amount is directed to be deposited before the High Court Legal Services Committee, Bangalore within a period of

two weeks from today, failing which, the Member-Secretary of the High Court Legal Services Committee shall initiate appropriate proceedings for

recovery of the said amount. Registry is directed to communicate the order passed by this Court to the Member-Secretary, Karnataka High Court

Legal Services Committee, Bangalore, forthwith.