

(2015) 05 MP CK 0018
In the Madhya Pradesh High Court
Case No : R.P. No. 161 of 2015

Central Ware House and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32

Citation : (2015) 05 MP CK 0018

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : K.N. Gupta, Senior Advocate and R.S. Dhakad, for the Appellant;
Shashank Indapurkar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—With the consent finally heard.

2. Learned senior counsel for review petitioners submits that petitioner has filed W.P. No.1764/2015 on 20.03.2015. His representation against transfer order was decided and communicated to respondent No. 2 on 18.02.2015. He deliberately suppressed this fact and, therefore, this court passed the order dated 27.3.2015. Because of suppression of material fact, it is prayed that order dated 27.3.2015 be recalled.

3. Prayer is opposed by Shri D.K. Katare. He submits that petitioner tendered unconditional apology for not disclosing the said order dated 18.02.2015 in the writ petition. He admitted that said order was within the knowledge of the petitioner. However, it is submitted that stand of employer is wrong that a decision is taken on his representation. The communication dated 18.02.2015 cannot be treated as a decision.

4. I have heard the learned counsel for the parties and perused the record.

5. This is settled in law that jurisdiction under Article 226 of the Constitution is

an equity jurisdiction. One must approach the court with clean hands, clean heart, clean mind and clean objective and person who has suppressed the material fact is not entitled for adjudication on merits.

6. In *Rajendra Singh Rawat Vs. State of M.P. and Others*, (2012) ILR (MP) 2660 : (2012) 5 MPHT 299 , this court gave following findings:-

"This is settled in law that one has to approach the Court with clean hands, clean mind, clean heart and clean objective. The petitioner should have disclosed full facts in the writ petition including the fact that he had engaged a counsel, participated in the proceedings and the said counsel actively participated in the said proceedings. The petitioner has not chosen to state those facts and merely stated that he was not impleaded as party-respondent in the Section 122 proceedings and he was not noticed and proceedings were not in consonance with the rules. The Apex Court in catena of judgments has held that such litigants who are invoking equitable, extraordinary and discretionary jurisdiction of the High Court under Article 226 of the Constitution should approach the Court with a pair of clean hands. In absence thereof they are not entitled for any adjudication on merits."

7. It is profitable to quote certain judgments on the subject:-

In *Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others*, (2008) 2 CLT 219 : (2008) 1 SCC 560 : (2007) 1 SCR 933 , the Apex Court held as under in para 16:-

16. 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. In *Advocate General, State of Bihar v. M.P. Khair Industries* this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.

In *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, (2008) 4 BC 557 : (2008) 8 JT 57 : (2008) 10 SCALE 227 : (2008) 12 SCC 481 , the Apex Court held as under:-

33. 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 was he 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 authorised Ramesh of Rithwik Projects to appear on his behalf. Ramesh duly appeared at the time of consideration of bids. Bid of Respondent 2 was found to be lowest and was accepted and the contract was given to him (under Tender Notice 4). The said contract had nothing to do

with Tender Notice 5 and the contract thereunder 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.

34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commrs* in the following words: (KB p. 514)

"... it 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. 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 *Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others*, (2008) 2 CLT 219 : (2008) 1 SCC 560 : (2007) 1 SCR 933 by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

(emphasis supplied)

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

37. In *Kensington Income Tax Commrs*. Viscount Reading, C.J. observed: (KB pp. 495-96)

"... 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 application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true 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 the Court has been deceived, then it will refuse to hear anything further from t Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, (2008) 2 CLT 219 : (2008) 1 SCC 560 : (2007) 1 SCR 933 he applicant in a proceeding which has only been set in motion by means of a misleading affidavit."

(emphasis supplied)

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

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

It is held that suppression or concealment of material facts is not even an advocacy. After taking note of various Supreme Court judgments on the subject, the Apex Court opined as under in para 51:-

51. Yet in another case in *Vijay Syal v. State of Punjab*, this Court stated: (SCC p. 420, para 24)

"24. In order to sustain and maintain the 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 the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice."

In *Dalip Singh Vs. State of U.P. and Others*, (2009) 15 JT 201 : (2009) 14 SCALE 473 : (2010) 2 SCC 114 : (2009) 16 SCR 111 : (2010) AIRSCW 50 : (2009) 8 Supreme 485 , the Apex Court held in para 7 as under:-

7. In *Prestige Lights Ltd. v. SBI* it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R. v. Kensington Income Tax Commissioners*, and observed: (*Prestige Lights Ltd. case*, SCC p. 462, para 35)

In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep 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, then the Court may dismiss the action without adjudicating the matter on merits. 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.

In *Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others*, (2010) 6 JT 41 : (2010) 6 SCALE 151 : (2010) 11 SCC 557 : (2010) AIRSCW 6282 : (2010) AIRSCW 6821 : (2011) AIRSCW 2158 , the Apex Court held in para 48 as under:-

48. The present appellants had also not disclosed that land allotted to them falls

in commercial area. When a person approaches a court of equity in exercise of its extraordinary jurisdiction under Articles 226/227 of the Constitution, he should approach the court not only with clean hands but also with clean mind, clean heart and clean objective. "Equally, the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice." Who seeks equity must do equity. The legal maxim "*Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*", means that it is a law of nature that one should not be enriched by the loss or injury to another.

(Vide *Ramjas Foundation v. Union of India*, *K.R. Srinivas v. R.M. Premchand and Noorduddin v. Dr. K.L. Anand* at SCC p. 249, para 9.)

8. In paragraph 53 of this judgment, the Apex Court held that in this kind of cases, the proceedings for criminal contempt can be initiated.

9. In *State of Madhya Pradesh Vs. Narmada Bachao Andolan and Another*, AIR 2012 SC 260 : (2011) 13 JT 225 : (2011) 11 SCALE 260 : (2011) 11 SCR 678 , the Apex Court in para 164 held that it is a settled proposition of law that a false statement made in the Court or in the pleadings intentionally to mislead the Court and obtains favourable order amounts to criminal contempt.

10. In a catena of judgments including *Prestige Lights Ltd. Vs. State Bank of India*, (2007) 4 BC 240 : (2007) 139 CompCas 169 : (2007) 3 CompLJ 547 : (2007) 4 CTC 727 : (2007) 10 JT 218 : (2007) 10 SCALE 131 : (2007) 8 SCC 449 : (2007) 78 SCL 467 : (2007) 9 SCR 112 the Apex Court held in para 35 as under:-

35. It is well settled that a prerogative remedy is not 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.

On the basis of said Supreme Court judgments, following principles may be culled out:-

1. A writ remedy is an equitable one. While exercising extraordinary power a Writ Court certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court.

2. Litigant before the Writ Court must come with clean hands, clean heart, clean mind and clean objective. He should disclose all facts without suppressing anything. Litigant cannot be allowed to play "hide and seek" or to "pick and

choose" the facts he likes to disclose and to suppress (keep back)/ conceal other facts.

3. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or mis representation which has no place in equitable and prerogative jurisdiction.

4. If litigant does not disclose all the material facts fairly and truly or states them in a distorted manner and misleads the Court, the Court has inherent power to refuse to proceed further with the examination of the case on merits. If Court does not reject the petition on that ground, the Court would be failing in its duty.

5. Such a litigant requires to be dealt with for Contempt of Court for abusing the process of the Court.

6. There is a compelling need to take a serious view in such matters to ensure purity and grace in the administration of justice.

7. The litigation in the Court of law is not a game of chess. The Court is bound to see the conduct of party who is invoking such jurisdiction.

11. The order dated 18.02.2015 shows that respondents have decided to defer the consideration for cancellation of transfer order for near future. In review petition, I am not concerned with the decision taken on 18.02.2015. This order was not under challenge in writ petition. This Court is concerned with the conduct of the respondent No. 2 for not disclosing the said fact. If the said fact would have been disclosed, naturally, the order for taking decision on his representation would not have been passed.

12. Considering the aforesaid, in my view, the respondent No. 2 is guilty of suppression of material fact. He is not entitled to enjoy the benefit of order dated 27.3.2015. Accordingly, the order dated 27.03.2015 passed in W.P. No.1764/2015 is re-called.

13. Review petition is allowed.