
(1995) 09 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7211 of 1994

Kaka Ram Pars Ram and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 04-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1996) 112 PLR 691

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : R.L. Batta and Sanjay Tangri, for the Appellant; M.L. Sarin and Hemant Sarin, for the Respondents 4 to 7, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—While deciding C.W.P. No. 15448 of 1993 (Jai Bhagwan Jain versus Haryana State Electricity Board, Panchkula, District, Ambala), a Division Bench of this Court lamented on the growing tendency of the litigating public to pollute the ends of justice and observed as under:-

"Satya (truth) and Ahimsa (non-violence) are the two basic values of life, which have been cherished for centuries in this land of Mahavir and Mahatma Gandhi. People from different parts of the world come here to learn these fundamental principles of life. However, post-independence era and particularly the last two decades have witnessed sharp decline in these two basic values of life. Materialism has over-shadowed the old ethos and quest for personal gain is so immense that people do not have any regard for the "truth". Proceedings in the Courts, which were at one time considered to be pious and the people considered it their duty to tell the truth in the Court, now stand vitiated by the attempts made by the parties to pollute the ends of justice."

2. As will be seen here-in-after the present one is also a case in which the petitioners have successfully misled this Court in admitting the writ petition and

passing a stay order in their favour. The petitioners have claimed that they are carrying on business of sale and purchase of food grains in Old Food Grain Market, Jagraon for the last five to six decades on the basis of the licences granted to them by the Market Committee, Jagraon. That Grain Market was declared as Principal Market Yard vide notification dated 23.8.1963 of the Punjab Government. In the year 1978, the Government of Punjab issued notification dated 27.3.1978 to create a New Mandi Complex at Jagraon. At the same time, a Sub Market yard was declared at a distance of about 15 kilometres from Old Grain Market. This was followed by notification dated 17.9.1984 (Annexure P1) issued u/s 7(2) of the Punjab Agricultural Produce Markets Act, 1961 (for short, the Act) whereby the Principal Market Yard i.e. Old Grain Market was denotified and by another notification (Annexure P2) issued on the, same day, New Grain Market was declared as Principal Market Yard. Another notification dated 30.3.1988 (Annexure P3) was issued by the Punjab Government u/s 8 of the Act declaring that no transaction in agricultural produce will be permitted within 5 kilometres of the New Grain Market, Jagraon. This notification was challenged in C.W.P. No. 6174 of 1988 filed by 92 petitioners. Petitioners 1, 3, 6, 7, 8, 9, 12, 15, 20, 22, 26, 32, 33 and 34 of this petition were also petitioners in the said writ petition. Initially this Court stayed the operation of the impugned notification. However, after hearing the parties, a learned single Judge dismissed the writ petition vide order dated 26.7.1990. The petitioners filed L.P.A. No. 1107 of 1990 which was ordered to be listed for hearing along with CWP No. 5693 of 1985. This L.P.A. was referred to a Full Bench vide order dated 2.12.1991 of a Division Bench and ultimately it has been dismissed vide 1995 (1) P.L.R. 712 (Sheo Prashad Rajiv Modi and Ors. v. State of Punjab and Ors. 1985 C.W.P 5693 of was dismissed earlier vide order dated 23.9.1993.

3. Before the Division Bench which was hearing L.P.A. No. 1107 of 1990, a prayer for grant of stay was made but no order was passed in favour of the appellants by the High Court. Thereafter, 149 person jointly filed C.W.P. No. 15831 of 1993. Petitioners No. 2, 4, 5, 10, 11, 14, 16, 17, 18, 19, 21, 24, 25, 28, 29, 30 and 31 of this writ petition were also petitioners in that case. On 21.11.1993, a Division Bench admitted the writ petition to Full Bench and directed that it be heard along with 1991 CWP 4199 and at the same time, granted stay order in favour of the petitioners. Respondent No. 4 herein filed an application for being impleaded as a party in CWP No. 15831 of 1993 and also filed an application for vacation of the stay order. The Division Bench accepted the prayer made by respondent No. 4 and ordered his impleadment as a respondent to CWP No. 15831 of 1993. The said Division Bench also vacated the stay order on 17.2.1994. Thereafter, the writ petitioners filed SLP No. 12360 of 1994 before the Apex Court, which came to be dismissed on 16.8.1994.

4. In the meantime, another development took place. Gurbhag Singh Brar (respondent 4 in this petition) filed C.W.P. No. 15883 of 1993 for giving effect to the notification dated 30.3.1986. He pleaded that the Government was deliberately not giving effect to the notification restraining the transaction of

business in food grains within 5 Kilometres of the Principal Market Yard. One hundred and forty nine persons who were petitioners in C.W.P. No. 15831 of 1993 moved CM No. 893 of 1993 for their impleadment as respondents. Their request was accepted and they were added as respondents. Finally C.W.P. No. 15883 of 1993 was decided by a Division Bench on 8.4.1994 and a direction was given to the respondents to give effect to the notification dated 30.3.1988.

5. After the vacation of the stay order on 17.2.1994 in CWP No. 15831 of 1993, 34 persons some of whom were petitioners in CWP No. 6174 of 1988 and some of whom were petitioners in CWP No. 15831 of 1993, filed the present writ petition with the following prayers:-

"It is, therefore, respectfully prayed that:-

(i) Writ of Mandamus or any other writ, order or direction be issued declaring Section 8 of the Punjab Agricultural Produce Markets Act, 1961 as ultravires and unconstitutional;

(ii) Writ of Mandamus or any other writ, order or direction may be issued directing the respondents to declare the Old Grain Market Jagraon as sub-market yard u/s 7(2) of the Punjab Agricultural Produce Markets Act, 1961;

(iii) Writ of certiorari or any other writ, order or direction be issued quashing the impugnd notification dated 30.3.1986 as contained in Annexure P.3;

(iv) Any other suitable writ, order or direction be issued in favour of the petitioners which this Hon"ble Court may deem fit and proper in the circumstances of the case;

(v) Exemption may be allowed to the petitioners from filing the certified copies of the annexures annexed to the petition;

(vi) Service of advance notice of the respondents may be dispensed with,

(vii) Costs of the petition may be allowed in favour of the petitioners.

It is further prayed that during the pendency of this petition, operation of the impugned notification dated 30.3.1988, annexure P3, may kindly be stayed and the petitioners may be allowed to continue their business at Old Grain Market Jagraon."

6. In this writ petition, notice of motion was issued on 31.5.1994 and operation of the notification dated 30.3.1988 (Annexure P3) was stayed. Respondents 4 to 7 were not added as parties to the writ petition. However, on their application for impleadment as respondents, the Court passed an order dated 5.9.1994 in CM No. 7175 of 1994 and ordered their addition as respondents in the writ petition. The application for vacation of the stay order filed by respondents 4 to 7 came to be considered by the Division Bench on September 19, 1994. On that day, the Division Bench admitted the writ petition and reserved order on CM No. 7175-A of 1994. This order was ultimately pronounced on November 22, 1994 and the

application for vacation of stay was dismissed. At the same time, the Division Bench directed that the writ petition be listed for hearing within three months. Against this order, respondent No. 4 filed SLP No. 1811 of 1995 which came to be disposed of by the Supreme Court on 17.2.1995. The Supreme Court observed that in the face of the earlier litigation the High Court was not justified in granting interim stay but keeping in view the direction of the Division Bench that the case be heard within three months, their Lordships observed that the High Court should dispose of the writ petition within one month of the receipt of the order of the Supreme Court.

7. In the meantime, the respondents made an application dated 8.1.1995 for dismissal of the writ petition in view of the judgment of the Full Bench. When this application came up for consideration on 18.1.1995, the Court directed the issue of the notice to the opposite side. On 25.1.1995, counsel appearing for the writ petitioners sought time and the case was adjourned to 19.2.1995. The case was taken up on 20.2.1995 and again on 28.2.1995. On that day initially no one appeared for the parties and the miscellaneous application was ordered to be dismissed. Thereafter, learned counsel for the respondents appeared and made a request that in view of the order passed by the Supreme Court, the main case be heard within one month. Therefore, the Court set down the hearing on 2.3.1995. On that day, counsel for the respondents sought time to argue the case and the case was adjourned to 14.3.1995. Due to non-constitution of the Bench, the case could not be heard on 14.3.1995. It was taken up on 24.4.1995. On that day, the case was adjourned to 28.4.1995 at the request of learned counsel and again it was adjourned to 10.5.1995 at the request of learned counsel for the parties.

8. At the commencement of hearing of the writ petition, Mr. M.L. Sarin, Senior Advocate appearing for respondents 4 to 7 submitted that the petitioners should not be heard on the merits of the case because they are guilty of deliberately not placing full and correct facts before the Court. Shri Sarin pointed out that the petitioners deliberately withheld the fact from the Court that in LPA No. 1107 of 1990 no stay order was passed by the High Court and also that in CWP No. 15831 of 1993 the stay order was vacated on 17.2.1994 on the ground of concealment of facts. Learned counsel also pointed out that although the petitioners have made reference to CWP No. 15883 of 1993, they have not brought to the notice of the Court that the said writ petition was decided by the High Court with a direction to the respondents to implement the notification dated 30.3.1988. Shri Sarin submitted that by not bringing full facts to the notice of the Court the petitioners have successfully misled the Court in granting interim stay order on the same subject matter in which the stay order was vacated on 17.2.1994 and even the SLP was dismissed by the Supreme Court on 16.8.1994 and, therefore, the petitioners have disintitiled themselves from hearing of the case on its merits.

9. Shri R.L.Batta, Senior Advocate appearing for the petitioners, argued that the petitioners have made reference to the entire previous litigation and non-

mentioning of factum of vacation of stay order on 17.2.1994 or non-mentioning of the fact that CWP No. 15883 of 1993 was decided by the High Court with a direction to the Government to implement the notification dated 30.3.1988 are inconsequential and do not have any bearing on the merits of the case. Shri Batta contended that issue relating to the validity of Section 8 of the Act was not involved in other cases and, therefore, the mere fact that the stay order was vacated on 17.2.1994 could not have resulted in rejection of the prayer for stay made by the petitioners in this case. Learned counsel further argued that all these objections must be deemed to have been considered and rejected when the Division Bench declined to vacate the stay order on 22.11.1994.

10. In paragraphs 8,19 and 23 of the writ petition, following averments have been made by the writ petitioners:

"8. That aggrieved from the action of the Government 92 dealers of the Old Grain Market filed Civil Writ Petition No. 6174 of 1988 in this Hon"ble Court and interim stay order granted. However, the said writ petition was dismissed on 26.7.1990 by the learned Single Judge and the dealers in that case filed L.P.A. No. 1107 of 1990 which has been ordered to be heard along with Civil Writ Petition No. 4199 of 1991 admitted to Full Bench. It will be relevant to mention here that the Civil Writ Petition No. 4199 of 1991 which was filed by the dealers of Sirhind Mandi of Patiala District in which interim order was passed on 18.3.1991 as under:

Notice of motion for 14.4.1991.

Meanwhile auction shall remain stayed.

Subsequently it was admitted to Full Bench on 2.12.1991.

19. That the petitioners are challenging in this writ petition the vires of Section 8 of the Punjab Agricultural Produce Markets Act, 1961 which has not been challenged in C.W.P. No. 6174 of 1988 and the L.P.A. No. 1107 of 1990 and also C.W.P. No. 15831 of 1993 filed by the petitioners. The petitioners also challenging notification dated 30.3.1988 (annexure P3) which has been issued on additional grounds. In C.W.P. No. 6174 of 1988, out of which L.P.A. No. 1107 of 1990 has arisen was filed by 92 dealers including some of the petitioners of the Old Grain Market Jagraon. In the said writ petition, the petitioners have challenged Notifications contained in Annexures P1, P2 and P3 merely on the grounds that the petitioners are entitled to allotment of plots on reserve price in the new Grain Market. In Civil Writ Petition No. 15831 of 1993, filed by the 149 dealers of the Old Grain Market Jagraon including some of the petitioners contained in Annexures P1, P2 and P3, were challenged. The main point agitated is that the petitioners of the said writ petition have claimed plots in the New Mandi on concessional rates or reserve price. As stated above, the said petition has been admitted to Full Bench and has been ordered to be heard along with Civil Writ Petition No. 1499 of 1991, which has been admitted to Full Bench in which the question involved is whether the oustees of the Old Grain Market

(Sirhind) are entitled to have new sites in the New Mandi (Sirhind) on reserve price. In the present writ petition, the petitioners are also praying for writ of Mandamus that the Old Grain Market Jagraon may be declared as Sub Market Yard. This point has also not been agitated in the previous writ petition No. 6174 of 1988, L.P.A. No. 1107 of 1990 and C.W.P. No. 15831 of 1993.

23. That the petitioners have not filed any such or similar writ petition in this matter either in this Hon''ble Court or in the Hon''ble Supreme Court of India, except C.W.P. No. 6174 of 1988, L.P.A. No. 1107 of 1990 and C.W.P. 15831 of 1993. The petitioners were impleaded as respondents in C.W.P.No. 15883 of 1993 which has been disposed of."

11. On a careful reading of these averments, one easily reaches to a conclusion that there is no mention of the fact that the stay order passed on 21.12.1993 in CWP No. 15831 of 1993 was vacated by the Division Bench on 17.2.1994 and against that order a SLP had been filed by the petitioners. It is also clearly revealed that the petitioners have not made a mention of the fact that while disposing of CWP No. 15883 of 1993 the Division Bench had given an unequivocal direction to the Government and its functionaries to implement the notification dated March 30, 1988.

12. The extract of the order dated 17.2.1994 passed by the Division Bench reads as under:-

" A new grain market was established at Jagraon vide notification (Annexure P2) dated September 17, 1984. On that very day the old mandi was denotified vide another notification (Annexure P1). Subsequently on March 30, 1988, notification Annexure P4 was issued by the State that no business would be done within five Kms. of the new mandi. A Civil Writ Petition No. 6174 of 1988 was filed, challenging the aforesaid notifications on behalf of the shopkeepers, who were doing business in the old mandi, Jagraon. On July 26, 1990, the same was dismissed. Letters Patent Appeal No. 1107 of 1990 is stated to have been filed against the aforesaid decision, which came up for preliminary hearing on December 21, 1993. It was ordered to be taken up alongwith Civil Writ Petition No. 4199 of 1991 by the Letters Patent Bench. At this stage, it may be observed that the aforesaid writ petition as well as letters patent Appeal was filed by 92 persons.

The present writ petition (No. 15831/93) was filed by 149 petitioners, which incidentally included 19 such persons who had joined in filing Civil Writ Petition No. 6174 of 1988. The present writ petition also came up for preliminary hearing on December 21, 1993 and was admitted to Full Bench, to be heard with Civil Writ Petition No. 4199 of 1991. Civil Miscellaneous Application filed there in was allowed with the further direction that in the meantime auctioning of food grains in the old market already in existence, shall continue.

Civil Writ Petition No. 4199/1991 was admitted to Full Bench on December 2, 1991. The point sought to be urged at that time was "whether the oustees of the

old mandi are entitled to have new sites in the new mandi on reserved price.
"This case relates to Sirhind.

From the perusal of the aforesaid orders and the assertions made in the application, it has transpired that on December 21, 1993, when the present writ petition came up for hearing, on that very day letters patent Appeal aforesaid was also taken up for hearing. Incidentally counsel for the petitioners who addressed the Full Benches aforesaid on behalf of the petitioners and the appellants respectively, was the same, namely Shri G.C. Dhuriwala, Advocate. The fact that some of the petitioners were common in the two writ petitions, referred to above, was concealed. No interim directions were obtained in the letters Patent Appeal, filed against the judgment of Single Judge upholding validity of the notifications aforesaid. It was not mentioned that the writ petition earlier challenging the notifications stood dismissed, while appearing in the present writ petition on December 21, 1993. It is indeed regretted that the counsel concealed the material facts knowingly and obtained interim order from the Motion Bench.

While vacating the interim directions, we direct the office to put up the file of CWP No. 4199 of 1994 before the Hon'ble Chief Justice for constitution of the Full Bench, as earlier the Full Bench could not meet due to retirement of M.R. Agnihotri. J."

In C.W.P. No. 15883 of 1993, the Division Bench held as under:-

"We have heard learned counsel for the parties and we are of the view that this is a case where a direction needs to be issued to the official respondents to enforce the notifications aforesaid, declaring the new mandi as the "Principal Market Yard" and that no mandi can be established within five kilometers area of the new mandi. Shri Batta, learned counsel for the added respondents, argued that the petitioners should have approached the Court with the prayer of impleading them as parties in the previous writ petition (No. 15831 of 1993) and should have got the same decided. There is no merit in this contention. When all the parties are present in this writ petition and the case is complete, we find no ground to further adjourn this case. As the present position exists, there is no direction of the Court staying operation of the notification aforesaid. Rather with the dismissal of the previous writ petition on July 26, 1990, the notifications have been declared to be valid. We expect official respondents now to implement the notifications aforesaid and we do direct.

Writ Petition disposed of as above."

13. In my opinion, the factum of vacation of the stay order by the Division Bench in CWP No. 15831 of 1993 vide order dated 17.2.1994 was a very relevant fact in the context of the prayer made by the petitioners for grant of an interim order in this petition. Persons who are petitioners 2, 4, 5, 10, 11, 14, 16, 17, 18, 19, 21, 24, 25, 28, 29, 30 and 31 were also petitioners in CWP No. 15831 of 1993 and they fully knew that stay order passed in their favour had been vacated by

the Division Bench on 17.2.1994. They also knew that if this fact was mentioned in the writ petition, the Court would not pass an ex parte interim order in their favour. Therefore, With the object of misleading the Court to pass an interim order in their favour, the petitioners withheld this important fact from the notice of the Court. Similarly, the fact that on 8.4.1994 a Division Bench had directed the Government to give effect to the notification dated 30.3.1988 was within the knowledge of 149 petitioners because they were added as respondents in that writ petition on an application moved by them if contents of order dated 8.4.1994 had been made known to the Bench which considered this writ petition at the motion stage, the Bench would not have issued an order staying the operation of the notification dated 30.3.1988. It is impossible to think that a Bench of this Court would have stayed the operation of the same very notification regarding which interim stay was vacated vide order dated 17.2.1994 and which was directed to be implemented by another order of this Court dated 8.4.1994.

14. The argument of the learned counsel for the petitioners that all these objections must be deemed to have been rejected by the Court with the admission of the writ petition and with the rejection of the application for vacation of the stay order cannot stand scrutiny even for a moment. No doubt, in its order dated 22.11.1994 the Division Bench did take note of the argument advanced by learned counsel for the parties, the order of the Division Bench does not make a reference to the fact that the SLP filed against the order dated 17.2.1994 passed by this Court was dismissed by the Supreme Court on 16.8.1994 as is evident from Annexure R2/3. Moreover, the Division Bench itself left various questions open for decision at a subsequent stage as would appear from the following observations made by it:-

"Without intending to take a final view of the various questions involved including the question of res judicata, we are of the view that vacating the stay order would deprive the petitioners of their fundamental right to carry on their business or trade in the Old Mandi and prima facie this cannot be done without providing them alternative sites in the New Mandi. In this view of the matter, we find no merit in the application for vacation of the stay order. The said application is accordingly dismissed."

When the Division Bench has not decided any of the objections raised on behalf of the respondents, it is not possible to accept the contention of the learned counsel that even now this Court should ignore the objections which go to the root of the matter and acceptance of which would logically result in dismissal of the writ petition.

15. In view of the above, I am of the considered opinion that the petitioners who have deliberately refrained from making disclosure of full facts before the Court and who have thereby succeeded in misleading the Court in passing interim order in their favour, have disentitled themselves from getting any relief from this Court in the exercise of its extra ordinary jurisdiction under Article 226 of the

Constitution of India.

16. In *Rex, V. Kensington* 1917 (1) KB 486, Cozens Hardy M.R. made the following observations on the conduct of a party in an ex parte application in the following words:-

"On an ex parte application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done."

Lord Scrutton L.J. said -

"It has for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any 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, facts not law..... The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that it finds out that the facts have 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."

17. It is interesting to note that in *Kensington Commissioner's* case, the Court declined relief even though it had found that the Commissioner had no jurisdiction to make the assessment. The Court observed :-

"We refuse the writ of prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us."

In *R.V. Churchwardens of All Saints Wigan* (1876) 1 AC 611, Lord Haterlay observed :-

"Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it - matters connected with delay or possibly with the conduct of the parties."

In *Req. v. Gerland* (1870) 39 LJQB 86 it was held :-

"Where a process is ex debito justitiae the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bona fides."

18. The principal that the Court will not assist a party which does not approach the Court with clean hands has been applied by the apex Court in *Hari Narain Vs. Badri Das*, . That is an interesting case in which special leave to appeal was granted by the apex Court under Article 136 of the Constitution of India. When that matter came up for hearing before the Court, an objection was raised to the grant of leave on the ground that the appellant had made misstatement of facts and a prayer was made that the leave should be revoked. While allowing the prayer made by the respondent for revocation on the leave, the Supreme Court, observed :-

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the court naturally takes statements of facts and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

19. In *Welcom Hotel and Others Vs. State of Andhra Pradesh and Others*, , the Supreme Court once again held that a party which has misled the Court in passing an order in its favour is not entitled to any consideration at the hands of the Court.

21. In *Nand Lal and Ors. v. State of Jammu and Kashmir and Anr.* AIR 1960 J&K 19 a learned Judge of Jammu and Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, it is not entitled to be heard on the merits of the case. Following observations made in that case are quite instructive and are, therefore, reproduced below :-

"Where the petitioners under Article 226 have not stated the relevant facts correctly and candidly either in their petition, or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits, and even if the petitioners have a good case on merits the Court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the petitioners has been such as to mislead the Court."

22. In *S.H. Motor Transport Co. Vs. Motilal and Others*, a Division Bench of the Bombay High Court enunciated the principle regarding exercise of equity jurisdiction by the High Court in the following, words :-

"Petitioners who invoke the extraordinary jurisdiction of the High Court under Article 227 of the Constitution are required to exercise utmost care, inform themselves fully of every stage of the proceedings that has taken place upto the date the petition is filed, give a full and true account of those proceedings, file all the necessary documents in support of their averments and then claim relief on the basis of facts disclosed in the petition. It is not open to a petitioner under Article 226 or Article 227 of the Constitution to pick and choose his own facts or to determine in advance what is relevant and material, omit to mention all material facts and proceedings and orders and then claim that he has acted bona fide even though he has made untrue statements, omitted to inform the Court of

all the proceedings and the orders passed at different stages in the proceedings upto date and claim indulgence."

23. In *G. Appukkuttan Pillai Vs. Government of India and Others*, a Full Bench of the Kerala High Court held that where a Government servant has not made full and true disclosure of facts but has in order to put forward that case of violation of the principles of natural justice chosen to suppress his representation and the adverse order thereon, is not entitled to hearing on the merits of the case.

24. In *Abdul Gafoor Vs. State of M.P. and Another*, a Division Bench of the Madhya Pradesh High Court invoked this principle for denying relief to a person whose conduct with reference to the subject matter of the petition was found to be inequitable and unfair.

25. In *Om Prakash and Others Vs. State of Rajasthan*, a learned Single Judge of that High Court reiterated the principles of law on the subject in the following words :-

"The position of law is well established that the party who seeks to invoke extraordinary jurisdiction of the High Court must come with all bona fides, must make true, full and candid disclosure of all the relevant facts and further should not be wanting in bona fides in its conduct. By "bona fides" what is meant is that the party is to collect all material facts with due care and attention and it will be not sufficient on the part of the party seeking to invoke extraordinary jurisdiction to say that the facts were not within the knowledge although, the same could have come to the knowledge after taking due care and efforts to find them out. If it does not do so and suppresses any material fact and thereby obtains a rule nisi or stay order the court will not grant any relief to it on merits."

26. In *G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another*, the Supreme Court declined relief to the appellant who has concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While rejecting the special leave petition, the Court observed :-

"Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we come to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

27. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, the Supreme Court has held that one who comes to Court must come with clean hands and where a preliminary decree was obtained by playing fraud on the Court in-as-much as a vital document was withheld in order to gain advantage on the other side, such party would be guilty of playing fraud and such party deserves to be thrown out at any stage of the litigation.

28. This Court has also taken a serious view of the contumacious conduct of a party and has declined relief in a large number of cases. In *Smt. Bhupinderpal Kaur v. The Financial Commissioner (Revenue), Punjab* (1968) 70 P.L.R. 169, a learned Single Judge of this Court has held that if the High Court comes to the conclusion that affidavit in support of the application for grant of a writ was not candid and did not fully state the facts but either suppressed the material facts or 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 and where there is such a conduct which is calculated to deceive the Court into granting the order of rule nisi, the petition should on that short ground be dismissed.

29. In *Chiranji Lal and Ors. v. Financial Commissioner, Haryana and Ors.* (1978) 80 P.L.R. 582, a Full Bench of this Court has approved the observations made in *Bhupinderpal Kaur's* case (*supra*) and has held that where there has been a mala fide and calculated suppressions of material facts which, if disclosed, would have disentitled the petitioners to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the merits on both (he interim and ultimate relief claimed, the writ petition should not be entertained.

30. In *Harbhajan Kaur v. State of Punjab and Ors.* 1994 PLJ 287 a Division Bench of this Court held as under :-

" The writ petitioners have tried to approach the Court. They did not bring the correct facts to the notice of the Court and obtained an order from us by concealing material facts and without impleading vitally affected party to the writ petition. They have been fighting litigation against the Punjab Walkf Board since 1986 as is revealed from a perusal of the order passed in petition No. 363 of 1986 (*Sham Singh and Anr. v. Punjab Wakf Board*). They did not disclose that their applications for transfer of land were dismissed by the Tehsildar (Sales) and, on appeal, the orders were affirmed by the Sales Commissioner and that the appeals against the orders of the Sales Commissioner were pending before the Chief Sales Commissioner; that the Punjab Walkf Board had been contesting their claim and in those proceedings it had been held that the Punjab Wakf Board was the owner of the disputed land and that in judicial proceedings *Smt. Kuldeep Kaur* and her husband had made admission that the Punjab Wakf Board was the owner of the disputed land."

The Court further held this conduct of the petitioners amounted to contempt of Court and, therefore, issued a notice of contempt of Court.

31. In *Pawan Kumar v. State of Haryana and Anr.* 1994 (5) S.L.R. 73 Anr. Division Bench of this Court has held that a party who seeks relief from the High Court in the exercise of its equitable jurisdiction under Article 226 of the Constitution, must come with all bona fides, must make true, candid and full disclosure of all the relevant facts. Its conduct must be above board and there should be no attempt by a party to mislead the Court.

32. In *Jai Bhagwan Jain v. Haryana State Electricity Board, Panchkula* (supra), Anr. Division Bench of this Court considered various decided cases and then held as under :-

"It is the duty of the party seeking relief under Article 226 or 136 of the Constitution to make full and candid disclosure of all the facts and leave it to the Court to determine whether relief deserves to be given to the petitioner or not. The petitioner is also under a duty to make all efforts to find out full facts of the case before filing the petition and he cannot be heard to say that he is not aware of the facts concerning him. The petitioners has to demonstrate his bona fides before seeking relief from the Court in exercise of its equitable jurisdiction. It is not for the petitioner to decide as to which of the facts are relevant, and which are not relevant. The petitioner cannot become a Judge on the question of relevancy of facts. Non-disclosure of all the facts in a candid and straight forward manner will necessarily warrant dismissal of a petition." In the same very case, the Division Bench further held :

"We may further add that a petitioner will not be entitled to be heard on the merits of the case where he is found guilty of concealment of facts or of making misstatement before the Court only on the ground that no stay order has been passed by the Court, It is to be remembered that the Court considers a petition with the assumption that the averments made in the petition are true and correct. In a given situation, the Court may finally decide a petition ex parte where the non-petitioner does not appear despite service of notice. If a party suppressed facts from the Court, such ex parte decision may be rendered on the basis of incorrect or incomplete facts. Therefore, it is no answer to the charge of suppression of facts or misstatement of facts before the Court to say that no interim relief has been given to the petitioner or that he has not derived any benefit. In our opinion, the very issue of a notice on a petition is a benefit derived by the petitioner. If subsequent it is found that the petitioner has misled the Court or persuaded it in issuing notice by concealment of true facts of the case there will be ample jurisdiction for dismissing the petition."

33. In view of the factual and legal position discussed above, it is held that the petitioners have deliberately withheld the facts from the Court and succeeded in misleading the Court to pass interim order in their favour despite the fact that the similar stay order passed in CWP No. 15831 of 1993 was vacated by a Co-ordinate bench and also that a mandamus had been issued by the Court on 8.4.1994 for implementation of the notification dated March 30, 1988. The conduct of the petitioners, who have Jailed in successive petitions to challenge

various notifications issued u/s 7(2) and Section 8 of the Act on one or the other ground, is condemnable and they have disentitled themselves from hearing on the merits of the case.

34. Consequently, the writ petition is dismissed with costs which are quantified as Rs. 20,000/- of which Rs. 10,000/- shall be paid to respondents 4 to 7 and the remaining Rs. 10,000/- shall be paid to respondents 1 to 3.