

(2023) 09 MP CK 0118
In the Madhya Pradesh High Court
Case No : Writ Petition No. 21944 Of 2023

Manna Lal Jadhav

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 26-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 32, 136, 226
Land Acquisition Act, 1894 — Section 11A

Citation : (2023) 09 MP CK 0118

Hon'ble Judges : Gurpal Singh Ahluwalia, J

Bench : Single Bench

Advocate : V.D.S. Chouhan, Naveen Dubey

Final Decision : Dismissed

Judgement

Gurpal Singh Ahluwalia, J

1. This petition under Article 226 of Constitution of India has been filed seeking following reliefs:-

"I. Issue a writ nature of certiorari to quash the impugned order dated 17/08/2023 passed by the respondent No.2 vide Annexure-P/1 in the interest of justice.

II. Issue any other writ, order or direction as this Hon'ble court deems fit."

2. By order dated 29.08.2023, Government Advocate was directed to seek instructions in the matter. Thereafter, a further time was granted by order dated 21.09.2023.

3. Shri Naveen Dubey on the basis of instructions received from the authorities submitted that in fact petitioner himself had filed an application pointing out that he may be considered for transfer to Khargone or Khandwa or Harda. It was also mentioned in the said application that he has already spent 11 long years. It is submitted that although first priority of the petitioner was Khargone but after

considering the administrative requirements, petitioner has been transferred to Harda which was also one of the options submitted by petitioner. It is further submitted that petitioner has suppressed this fact and therefore, the petition is liable to be dismissed with cost. It is further submitted that the signatures of the petitioner on affidavit and Vakalatnama are substantially different from his admitted signature on his application or representation as Annexure P/5.

4. In the first round of the day, counsel for petitioner prayed for pass over so that he may seek instructions in the matter in the light of submissions made by counsel for State.

5. In the second round, after seeking instructions from petitioner, it was fairly conceded by Shri V.D.S. Chouhan that petitioner had moved an application for his transfer to either Khargone or Khandwa or Harda but he did not disclose the same in the writ petition.

6. Considered the submissions made by counsel for parties.

7. In the writ petition, it has not been disclosed that petitioner had moved an application for his transfer either to Khargone or Khandwa or Harda. Therefore, it is clear that petition has been filed by suppressing material facts. Under these circumstances, this Court is of considered opinion that petitioner is guilty of suppressing the material facts.

8. The Supreme Court in the case of *Arunima Baruah v. Union of India and others* reported in (2007) 6 SCC 120 has held as under:

10. On the one hand, judicial review is a basic feature of the Constitution, on the other, it provides for a discretionary remedy. Access to justice is a human right. (See *Dwarka Prasad Agarwal v. B.D. Agarwal* [(2003) 6 SCC 230] and *Bhagubhai Dhanabhai Khalasi v. State of Gujarat* [(2007) 4 SCC 241 : (2007) 2 SCC (Cri) 260 : (2007) 5 Scale 357].) A person who has a grievance against a State, a forum must be provided for redressal thereof. (See *Hatton v. United Kingdom* [15 BHRC 259] . For reference see also *Zee Telefilms Ltd. v. Union of India* [(2005) 4 SCC 649].)

11. The court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concept of access to justice. The same, however, would not mean that the court will have no jurisdiction to deny equitable relief when the complainant does not approach the court with a pair of clean hands; but to what extent such relief should be denied is the question.

12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for

determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

9. The Supreme Court in the case of Dalip Singh v. State of Uttar Pradesh and others reported in (2010) 2 SCC 114 has held as under:

1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

3. In Hari Narain v. Badri Das [AIR 1963 SC 1558] this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558)

"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 fact 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 appellant may have obtained special leave from 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."

4. In Welcom Hotel v. State of A.P. [(1983) 4 SCC 575 : 1983 SCC (Cri) 872 :

AIR 1983 SC 1015] the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

5. In *G. Narayanaswamy Reddy v. Govt. of Karnataka* [(1991) 3 SCC 261 : AIR 1991 SC 1726] the Court denied relief to the appellant who had 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 because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed: (SCC p. 263, para 2)

"2. ... Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came 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."

6. In *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1 : JT (1993) 6 SC 331] the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd. v. SBI* [(2007) 8 SCC 449] 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* [(1917) 1 KB 486 (CA)] , and observed: (*Prestige Lights Ltd. case* [(2007) 8 SCC 449] , 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.

10. The Supreme Court in the case of Shri K. Jayaram and others Vs. Bangalore Development Authority and others decided on 08.12.2021 in Civil Appeal No.7550-7553 of 2021 has held as under:

15. In K.D. Sharma v. Steel Authority of India Limited and Others, it was held thus:

"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.-(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) 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 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.(supra), 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 the 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. (supra) 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, manoeuvring 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."

16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all

legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.

11. The Supreme Court in the case of Bhaskar Laxman Jadhav and others v. Karamveer Kakasaheb Wagh Education Society and others reported in (2013) 11 SCC 531 has held as under:

"44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.

45. We may only refer to two cases on this subject. In Hari Narain v. Badri Das [AIR 1963 SC 1558] stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows: (AIR p. 1560, para 9)

"9. ... It is of utmost importance that in making material statements and setting forth grounds in applications for special leave 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 fact 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. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent."

46. More recently, in Ramjas Foundation v. Union of India [(2010) 14 SCC 38 : (2011) 4 SCC (Civ) 889] the case law on the subject was discussed. It was held that if a litigant does not come to the court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said: (SCC p. 51, para 21)

"21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty-bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making

misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.”

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof.”

12. Therefore where, material facts are suppressed, then the Court can refuse to exercise its equitable jurisdiction. However, substantial difference in the signatures on affidavit and Vakalatnama with admitted signatures is not being considered at this stage.

13. Under these circumstances, petition is dismissed with cost of Rs.20,000/- (Rupees Twenty Thousand Only) to be deposited by petitioner before Registry of this Court within a period of 15 days from today, failing which, Registrar General is directed to not only initiate proceedings for recovery of cost but shall also register the case for contempt of Court.

14. Petition fails and is hereby dismissed.