

(2024) 05 GAU CK 0029

In the Gauhati High Court

Case No : Writ Petition (C) No. 7232 Of 2021

Nur Mohal Begum

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 08-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 32, 226

Citation : (2024) 05 GAU CK 0029

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : S.C. Biswas, N. Upadhyay, C. Baruah

Final Decision : Dismissed

Judgement

1. Heard Shri S.C. Biswas, learned counsel for the petitioner. Also heard Shri N. Upadhyay, learned counsel appearing for the respondent nos. 1, 2 & 3 and Shri C. Baruah, learned Standing Counsel, Accountant General.
2. This is another glaring example of gross abuse of the process of the Court by means of this petition stated to have been filed under Article 226 of the Constitution of India.
3. At the outset, this Court reminds itself that the powers under Article 226 of the Constitution of India are a power of equity wherein the conduct of the parties are of paramount importance. It is unfortunate to observe that in this case, it is not only the conduct of the party but also the conduct of the counsel for the petitioner which are in serious doubt and lack bona fide.
4. Bereft of details, the facts projected in this writ petition is that the husband of the petitioner Abdul Baten SK was a Khalasi (Grade-IV employee) in the establishment of the Irrigation Department posted at Mankachar. The husband had passed away on 17.07.2011 leaving behind the petitioner and 9 children. The petitioner claims to have applied for family pension on the strength of being the legally married wife of the deceased Government Employee. She also claims

to be the nominee in the Service Book. However, as no action was taken on her claim, the present writ petition was filed in the year 2021.

5. This Court had issued notice on 03.01.2022 and pursuant to such notice, the respondent no. 3 has filed an affidavit-in-opposition on 19.05.2022. The disclosures made in the said affidavit-in-opposition and the annexure would make a startling revelation. A perusal of the said affidavit-in-opposition, more specifically, the averments made in paragraph 4 would disclose that the petitioner had filed a Succession Case before the learned District Judge, Dhubri in Misc. (S/C) Case No 52/2012 against one Nur Jahan Khatun, the first wife of the deceased which was disposed of vide judgment dated 13.12.2016. The said judgment was however challenged by the said Nur Jahan Khatun by filing an appeal in this High Court which was registered as FAO /10/2017. This Court had initially passed an order dated 19.04.2017 stayed the judgment of the learned District Judge, Dhubri. On receipt of notice of the appeal, the present petitioner had appeared and had filed I.A. (C) /2966/2017 for modification of the interim order.

6. This Court had disposed of I.A. (C)/2966/2017 filed by the present petitioner vide order dated 13.08.2018 whereby the interim order dated 19.04.2017 was modified with a direction that 1/8th of the total amount be left aside and the rest be released to the applicant (writ petitioner herein)

7. The affidavit-in-opposition has stated that pursuant to the said order dated 13.08.2018 of this Court passed in the I.A. (C) /2966/2017, an amount of Rs.4,45,649/- (Rupees Four Lakhs Forty Five Thousand Six Hundred Forty Nine) has already been paid to the petitioner. A perusal of the copy of the order dated 13.08.2018 by this Court would show that the present petitioner was the applicant in the said I.A. and was represented by the same Counsel, Shri S.C. Biswas. The FAO also appears to be pending as on date.

8. The facts observed above and which has been brought to light by way of an affidavit were not only very much within the knowledge of the petitioner, what is surprising is that the facts were very much within the knowledge of the learned counsel also who was the same in the pending F.A.O. and the I.A. and the order was passed in the year 2018 whereas the present writ petition has been filed in the year 2021.

9. Apart from the fact that no parallel proceedings can be instituted on the same subject matter, what is more important is the act of deliberate and gross suppression of materials fact. This Court has noticed that even the principal contesting party in the appeal has not been made party respondent in the present writ petition. It ex-facie appears that the process of this Court has been grossly abused and the approach of the petitioner is not with clean hands. The conduct of the counsel also appears to be lacking bona fide as the same counsel has represented the writ petitioner in the connected F.A.O. 10/2017 pending in this Court.

10. When this matter was heard in the first half, a junior associate of Shri S.C. Biswas, the leading counsel had appeared and upon consideration of the matter, the same was deferred to the second half. In the second half, when the learned counsel Shri Biswas, had appeared, this Court has indicated the aspect of imposition of cost both on the petitioner and the concerned counsel. However, no effective response has been given towards denial of the fact of having knowledge of the earlier proceedings. In any case, no explanation is plausible in view of the fact that the same counsel had appeared for the petitioner in the pending F.A.O. and I.A. /2966/2017 connected thereto.

11. A proceeding under Article 226 of the Constitution of India is sacrosanct in nature wherein a litigant is mandatorily required to approach the Court with clean hands. The conduct of the counsel is equally important in fairly placing all the relevant facts to enable the Court to arrive at a just finding. This aspect has been reiterated in a number of judicial pronouncements and in this regard, the decision rendered in the case of K.D. Sharma v. SAIL, reported in (2008) 12 SCC 481 can be gainfully referred, the relevant observations of which is extracted herein below:

"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.³ 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.* 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.* 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."

12. In a subsequent case of *Kishore Samrite v. State of U.P.*, reported in (2013) 2 SCC 398, the Honb'le Supreme Court while emphasizing the requirement of approaching the Court with clean hands has also dealt with the aspect of imposing cost to deter suppression / misrepresentation of facts. For ready reference, the relevant observations are extracted herein below:

"32. The cases of abuse of process of court and such allied matters have been arising before the courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.

32.2. The people, who approach the court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5. 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.

32.6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.

..."

13. In view of the aforesaid discussion and the taking aid of the guidelines of the Hon'ble Supreme Court, this writ petition is accordingly dismissed.

14. For the reason of abusing the process of this Court and for want of bona fide, this Court imposes cost of Rs. 25,000/- (Rupees Twenty Five Thousand) upon the petitioner and an equal amount of Rs. 25,000/- (Rupees Twenty Five Thousand) on the learned Counsel, Shri S.C. Biswas. Cost to be paid in the name of the Gauhati High Court Bar Association Welfare Fund.