
(2003) 02 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No's. 1050 and 3836 of 1998

Sunita Gowardhan Kutemate

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 6 BomCR 283

Hon'ble Judges : V.M. Kanade, J;V.C. Daga, J

Bench : Division Bench

Advocate : A.M. Ghare, in W.P. No. 1050/1998 and P.C. Madkholkar, in W.P. No. 3836/1998, for the Appellant; S.W. Deshpande in W.P. No. 1050/1998, for Respondents 1 and 2, Indira Bodade in W.P. No. 1050/1998 and in W.P. No. 3836/1998, for Respondent No. 2, A.S. Fulzele, A.G.P., in W.P. No. 3836/1998 and N.W. Sambre in W.P. No. 3836/1998, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—Writ Petition No. 1050 of 1998 has been filed by petitioner on 6-4-1998. The petitioner is working as a Primary Teacher with Zilla Parishad, Akola. She is seeking to challenge the order dated 6-11-1997 whereby the caste certificate issued in her favour come to be invalidated by the respondent No. 2, the Committee for scrutiny and verification of tribe claims, Nagpur. When this petition came up for motion hearing on 6-4-1998, the order was "Notice before admission, returnable in two weeks." No interim relief, as prayed for, was granted in favour of the petitioner. On the subsequent date of hearing i.e. 17-10-1998, this Court was pleased to send for records and proceedings only. The petition since April 1998 is pending for admission though it came up before this Court for hearing from time to time i.e. on 11-9-1998, 9-11-1998, 2-12-2002, 9-12-2002, 13-1-2003 and 28-1-2003.

2. The learned Counsel for respondent No. 2 brought to our notice that the very same petitioner has filed another petition challenging the very same order

passed by the respondent No. 2 invalidating her caste claim, being Writ Petition No. 3836 of 1998. In this writ petition, the petitioner could obtain favourable orders from another Division Bench of this Court on 16-12-1998, reading as under:---

"Rule. Interim relief in terms of para 2 of prayers."

It was thus brought to our notice that even though the petitioner was unsuccessful in obtaining rule and, interim relief in the earlier instituted petition being Writ Petition No. 1050 of 1998, the very same petitioner against identical impugned order could obtain rule and interim relief from another Division Bench.

3. The above facts came to light because of the order of this Court in Writ Petition No. 1050 of 1998 wherein the order to send for record and proceedings of the Scrutiny Committee was made. The record and proceedings of both the writ petition being common the cat came out of back. The learned Counsel for the respondent No. 2, in the circumstances of the case, requested that both petitions be placed on board so as to consider the impact of the conduct of the petitioner in indulging in such type of game while invoking the writ jurisdiction of this Court. Consequently, both these petitions vide our order dated 28-1-2003 were ordered to be tagged together and were order to be placed before this Court for consideration.

4. On the adjourned date of hearing i.e. 11-2-2003 when these petitions were placed before us, we compared both of them with each other. Our comparison revealed that the petitioner in both the petitions is one and the same person challenging one and the same action and the impugned orders in both petitions are identical, passed by the same person.

5. The subsequently filed petition, being Writ Petition No. 3836 of 1998 contains a solemn declaration, reading as under:---

"9. The petitioner has not moved this Hon"ble Court or the Supreme Court in past against the impugned order."

5-A. The petitioner is a teacher. She cannot be said to be unaware of the two petitions filed by her. She cannot be said to be ignorant of the fact that in her first petition, she was unsuccessful in obtaining interim relief from this Court. She cannot be said to be unmindful of the consequences of absence of interim relief. In the circumstances; it could not be said that filing of second petition was through inadvertence as sought to canvassed. The answer to this question has to be in negative.

6. Before filing any litigation in any Court of Law, litigant has no approach his or her Counsel or Advocate. Such Advocate or Counsel has to be briefed. His professional charges with expenses are required to be paid. The petition is required to be affirmed on oath. No petition can be prepared and filed without handing over relevant information and papers to the Counsel. The facts involved herein will reveal that two different lawyers were engaged in two different

petitions. Both of them must have been brief. Both of them must have been paid their professional charges. Expenses for filing petition must have been incurred by the petitioner on two different occasions. No sane person would, inadvertently, incur expenses unnecessarily for the same litigation twice. No same person would engage two different lawyers for the same litigation and keep each of them in dark so far as the name of the another is concerned. Normal approach would be to have a joint meeting; joint conference to hold joint consultation so as to find out maximum possible favourable legal points. If it was by mistake, then how did petitioner approach another Advocate (Mr. P.C. Madkholkar) and failed to approach earlier Counsel (Mr. A.M. Ghare) when both of them are staying in the same locality of the city of Nagpur. Both of them claim that they are unaware of another litigation/petition.

Petitioner is educated. She has carefully taken a care to engage two different lawyers for two different petitions. She took care not to affirm petition before the same oath officer. First petition appears to have been affirmed at Akola and the other at Nagpur. Both petitions came up for hearing before the different benches consisting of altogether different Judges. Can all this be said to be an accidental so as to brush aside the conduct of the petitioner and issue certificate in favour of the petitioner that she has approached this Court with clean hands. We are afraid, we cannot.

7. It is needless to mention that writ petitions are decided on the basis of statements on affidavit. If the petition contains misleading, inaccurate statements or there are suppression of material facts, the Court will not entertain the petition. The prerogative writ is not a matter of course, the petitioner must come in the manner prescribed and must be perfectly frank and open with the Court. It has been for many years, the rule of the Court and one which it is of greatest importance to maintain that where an applicant comes to the Court to obtain relief on an ex parte statement, he should make full and fair disclosure of material facts not law. He must not mistake the law if he can help it the Court is supposed to know 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 statements.

8. Where an ex parte application has been made to the 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 abuse of its process to refuse to proceed any further with the examination of its merit.

9. In State of Haryana and Others Vs. Karnal Distillery Co. Ltd. and Another, , the Supreme Court refused to grant relief on the ground that the applicant has misled the Court. The Apex Court observed that the purpose of mandamus is to

remedy a wrong and not promote one and it will not be granted in the aid of those who do not come into Court with clean hands.

10. In *Welcom Hotel and Others Vs. State of Andhra Pradesh and Others*, , a writ petition was filed challenging the maximum price of the commodity fixed by the Government as being uneconomical. The fact that the said price was fixed as agreed by the petitioner and the Government, was suppressed in the petition. The Apex Court observed that the petitioners have behaved in such a manner that they were not entitled for any consideration in the hands of the Court.

11. In *The Chancellor and Another Vs. Dr Bijayananda Kar and Others*, , the Apex Court held that a writ petition is liable to be dismissed on the ground that the petitioner did not approach the Court with clean hands. The Supreme Court held that suppression of material fact made when the petitioner had knowledge of the same, is fatal for maintainable a petition.

12. On the aforesaid canvass of the law laid down by the Apex Court, by no stretch of imagination, petitioner can be allowed to maintain these petitions. When we called upon the learned Counsel appearing in both the petitions to address us as to why petitions should not be dismissed for suppression of material facts, Mr. A.M. Ghare, learned Counsel appearing for petitioner in Writ Petition No. 1050 of 1998 fairly conceded that he is unable to support the conduct of his client. He further submitted that at any rate since the second writ petition being subsequent, the petitioner can be blamed, but no fault can be found with the act of the Counsel filing writ petition. We quite appreciate the submission advanced by Mr. A.M. Ghare, learned Counsel for the petitioner. Since Mr. Ghare fairly conceded the misconduct committed by his client, the petitioner, he rightly did not proceed to address us on merits. In the second petition, being Writ Petition No. 3836 of 1998, Mr. P.C. Madkholkar, learned Counsel tried to justify the action of the petitioner on the ground that the second petition is a mistake on the part of the petitioner. The explanation sought to be offered is not acceptable to us for the reasons recorded hereinabove. We also reject the contention of Mr. Madkholkar that both petitions cannot be dismissed and one of them has to be decided on merits.

13. In our view, looking to the conduct of the petitioner, both the petitions are liable to be dismissed. We accordingly dismiss both the petitions with costs. Rule in Writ Petition No. 3386 of 1998 stands discharged. The cost in both petitions stands quantified in the sum of Rs. 5,000/- (Rupees Five Thousand) to be deposited with this Court within fifteen days from today for being paid to the respondents in equal ratio.