

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 211

Case No. : C. W. P.No. 14244 of 2012

Date of Decision : March 09, 2015

Pardeep Singh and another Petitioners

Vs.

Punjab Mandi Board and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Sameer Sachdeva, Advocate
for the petitioners.

Mr. I. S. Sidhu, Advocate
for respondent no. 1.

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DEEPAK SIBAL, J. :

The petitioners, who are two in number and belong to the Scheduled Caste category, have knocked the doors of this Court through the present petition seeking quashing of order dated 26.04.2012 (Annexure P-9), through which their representation, for allowing them to be counseled and then appointed to the post of Clerk, was rejected. The petitioners have

further prayed for the issuance of a direction to the respondents to appoint them as Clerks under the Scheduled Caste category on the ground that they are more meritorious than the persons already appointed.

In June 2011, the Punjab Mandi Board (hereinafter referred to as – the Board), got published an advertisement inviting applications, for appointment to the post of Clerks and Auction Recorders in the Market Committees under its control. In response to the advertisement, the petitioners applied for consideration of their case for the post of Clerk. The selection was to be made on the basis of a written test, in which both the petitioners appeared. On the declaration of the results, the petitioners found themselves placed at merit nos. 62 and 67 respectively. However, the petitioners did not appear in the first counseling, which was held on 22.11.2011. In this counseling, candidates from merit nos. 1 to 75 had been called. Before the second counseling, the petitioners made an application for consideration of their cases on the ground that they could not appear in the first counseling being unwell. When the representations made by the petitioners went undecided, they approached this Court through **C. W. P. No. 5519 of 2012** titled **Pardeep Singh and another vs. Punjab Mandi Board and another**. This writ petition was disposed of vide this Court's order dated 26.03.2012 directing the respondents to consider the claim of the petitioners and take an appropriate decision within one month from the receipt of a certified copy of the order.

In compliance of the above direction, the Board passed the order dated 26/27.04.2012 rejecting the claim of the petitioners, which gave them a cause to approach this Court through the present writ petition.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

Through the writ petition filed by the petitioners, it is sought to be projected by them that information regarding the schedule for the first counseling was available only on the internet and that they could not appear for the same as they were poor and ignorant people having no access to the internet. It has thus been submitted that they did not come to know about the date fixed for the counseling. The averments made in the writ petition in this regard are reproduced as under for ready reference :-

“...The petitioners who belong to poor and rural families having no resources or facilities at home learnt in the month of January 2012 that through website certain candidates appeared for counseling and have got selected. On inquiry from the respondents the petitioners were told that as per the website information pasted on 12.11.2011 (ANNEXURE P-5), the candidates having merit position upto 1-75

were called for counseling for verification of their documents. In fact during those days the petitioners were seriously ill and were confined to bed. The petitioners immediately requested that their claim may also be considered as they were never invited for the counseling and belonging to rural and poor families do not have proper access to internet.” [Emphasis supplied]

A perusal of the written statement filed on behalf of the Board presents a totally different picture. It has categorically been stated on behalf of the Board, to which there is no rebuttal by the petitioners, that vide advertisement dated 12/13.11.2011 in leading newspapers i.e. Ajit, The Tribune, Hindustan Times and Punjab Kesari, all the candidates were duly informed about the date and purpose of the first counseling. This unrebutted stand of respondent-Board when read with the averments made by the petitioners, as reproduced above, leaves no room for any doubt that the petitioners have suppressed from this Court the fact that the information with regard to the holding of first counseling was given wide publication through leading dailies. Further, the petitioners have sought to mislead this Court by projecting falsely that the information with regard to the date of first counseling was only on the internet and the petitioners, being poor and

ignorant persons, did not come to know of the same as they did not have proper access to the internet. Withholding of wide publication made by the Board with regard to the date of first counseling, according to me, is a fact, which was crucial and has apparently been suppressed by the petitioners from this Court for oblique reasons.

Further, a perusal of the schedule for first counseling, which the petitioners say was on the internet and annexed by them to the writ petition as Annexure P-5, is found by me to be an incomplete document. The schedule for first counseling not only contained the date and time so fixed for the first counseling but also spelt out the terms and conditions governing the same. The relevant condition which is part of the schedule, in Punjabi language, is (after translation) reproduced as under :-

“4. This will be the last opportunity for the candidates to get their certificates checked. After this, no other opportunity will be given. Therefore, the concerned candidate should report in time at 09:00 A.M. on the date fixed as per the schedule available in Kisan Bhawan.”

The above condition was categorical to the effect that the persons, who do not appear in the first counseling, would be barred from availing further chances. Though the earlier part of the schedule, which

gave the date and time of the first counseling, has been annexed by the petitioners as Annexure P-5 but conveniently, the conditions attached to the same including the above reproduced condition, which was adverse to their cause, has been withheld. Going by the nature of the condition, I find that the omission is not bona fide.

The original document purportedly annexed with the petition as Annexure P-5, on my directions, was produced by the learned counsel appearing for the Board. The same is taken on record as **Mark `X'**. On going through the same, I found it to be in Punjabi language and thus, if a copy of the same was to be attached as an annexure to the writ petition, the same could only have been a true translation of the document. Annexure P-5 as annexed by the petitioner is not a true translation but surprisingly a true copy which it could not be as the original is in the Punjabi language.

Still further, the document appended as Annexure P-5 is an incomplete document, which withholds the above quoted relevant condition, which went against the interest of the petitioners.

Thus, I find that the petitioners have not come to this Court with clean hands. Rather, they have suppressed crucial facts from this Court for personal gain. The law is well settled that in case the petitioners have not come to the Court with clean hands, they disentitle themselves to be even heard on merits.

In this regard, I may usefully refer to the judgment of the Apex

Court in the case of **Kishore Samrite vs. State of U.P. and others** reported as **2013 (2) SCC 398**, in which it has been categorically held that the party, which does not approach the Court with clean hands, is liable to be non-suited on that count alone. The relevant portion of the judgment is reproduced hereunder for ready reference :-

“32. *With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts*

to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. *The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot*

claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts".

(Refer : [Tilokchand H.B. Motichand & Ors. v. Munshi & Anr.](#) [1969 (1) SCC 110]; [A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr.](#) [(2012) 6 SCC 430]; [Chandra Shashi v. Anil Kumar Verma](#) [(1995) SCC 1 421]; [Abhyudya Sanstha v.](#)

Union of India & Ors. [(2011) 6 SCC 145];
State of Madhya Pradesh v. Narmada
Bachao Andolan & Anr. [(2011) 7 SCC
639]; *Kalyaneshwari v. Union of India &*
Anr. [(2011) 3 SCC 287)].

34. *The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the*

true facts and approach the court with clean hands.”

My view is further strengthened by another judgment of the Apex Court passed in the case of **Smt. Badami (Deceased) By her L. R. vs. Bhali** reported as **2012 (11) SCC 574**. In that case, withholding of documents was considered to be a fraud played on the Court as well as with the opposite party. The important extract of the judgment is being reproduced hereunder :-

“21. In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.”

To reach the above conclusion, I am further supported by

another judgment of Apex Court namely **Ramjas Foundation and another vs. Union of India and others** reported as **2010 (14) SCC 38**, relevant portion of which is as under :-

“14. 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 bearing on adjudication of the issue(s) arising in the case.”

In view of the above facts and the settled proposition of law,

the petitioners have disentitled themselves to be even heard on merits.

Even otherwise, in addition to ignorance and poor access to the internet, the other reason given by the petitioners to have not attended the first counseling is that they were unwell. No medical certificates in support of such an averment have been appended.

Further, once the above reproduced condition no. 4 is there as one of the conditions governing the first counseling, which specifically provides that a candidate, who does not appear in the first counseling, would not be given another chance to appear in any subsequent counseling and that clause remains unchallenged by the petitioners, on merits as well, the petitioners have no case.

Still further, it is the un rebutted stand of the respondent Board that the above criteria had been applied by the Board for one and all. I am further informed that all appointments have been made and at this stage, it would not be proper to unsettle the settled issues, especially at the hands of the petitioners, whose petition lacks bona fides.

In view of the above, the present writ petition is dismissed with costs quantified at ₹ 10,000/-.

(DEEPAK SIBAL)
JUDGE

March 09, 2015

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