

arrested, he, after the filing of his application and police verification, stands acquitted. Counsel for the petitioner further submitted that the FIR was under Section 326 IPC, which, according to her, does not constitute moral turpitude as according to her, only if the petitioner had been charge-sheeted with an offence, which involved moral turpitude, could he be denied appointment.

On my asking, the petitioner's application form and police verification form was produced by the State, a perusal of which disclosed that the application form, which was in the Hindi language, a rather simple question was posed as to whether the petitioner had ever been arrested, to which he had answered in the negative. This answer of his was false. The record further revealed that at the time when the petitioner had filled up his application form seeking consideration of his candidature for being appointed as a Constable in the Haryana Police, there was not one but two FIRs pending against him being FIR No. 502 dated 21.09.2001 and FIR No. 125 dated 01.11.1999. Thus, he has suppressed the factum of his arrest in not one, but two criminal cases, which were pending against him.

A photocopy of his application form is ordered to be placed on the record as Annexure-A and a photocopy of the form filled up by him at the time of police verification is ordered to be placed on the record as Annexure-B.

As observed above, the original records revealed that at the time the petitioner had applied for appointment as Constable, there were two FIRs pending against him. However, a perusal of the writ petition

shows that the pendency and acquittal in only one of them has been disclosed. In the entire pleadings in the writ petition, there is not even a whisper with regard to FIR No. 125 dated 01.11.1999 and its outcome. In my definite opinion, this was a crucial fact, which has been withheld by the petitioner apparently for mala fide reasons. On a query, the petitioner, who was present in the Court, through his counsel, admitted to the pendency of FIR No. 125 dated 01.11.1999 at the time when he had applied for consideration of his candidature for appointment as a Constable in the Haryana Police, but to the query so as to why this fact was withheld, there was no answer. Nothing was placed on the record to show the final outcome of FIR No. 125 dated 01.11.1999. For having suppressed the aforesaid fact in the present writ petition, I am convinced that the petitioner has not come to the Court with clean hands and thus, as per settled law, he has disentitled himself to be even heard on merits. This view of mine finds support from a Division Bench judgment of this Court in the case of **Pawan Kumar vs. State of Haryana and another – 1994 (5) SLR 73**, wherein it has been held as under :-

“13. The principle which can be deduced from the above referred decision is that the party who seeks relief from the High Court in exercise of requitable jurisdiction under Article 226 of the Constitution of India must come with all bona fides, must make true, candid and full

disclosure of the relevant facts. Its conduct must be above board. There should be no attempt by a party to mislead the Court. The petitioner is under an obligation to collect all material facts with due care and attention and he will not be heard to say that facts were not within his knowledge although the same could have come to his knowledge had he taken due care and had made efforts to find them out. The High Court will be fully justified in declining exercise of extraordinary jurisdiction in favour of a party who is guilty of suppression veri and suggestio falsi or who makes an attempt to mislead the Court.

14. In this case, the petitioner has made a deceitful attempt to mislead the Court and, therefore, we find little justification to give relief to him.”

Similarly, in a Full Bench judgment of this Court in **Jai Singh Rathi and others vs. State of Haryana and others – 1970 AIR (Punjab) 379**, suppression of facts was condemned by holding as under :-

“20. It was pointed out by Mr. Nambyar that in their petition the

petitioners have totally suppressed their part of the conduct both on February 4 and 5, 1969, in that they persistently disobeyed and defied the Chair and their conduct was not, in the least, orderly in the House, They also suppressed the fact that after the introduction of the budget the opposition walked out and took no part in the proceedings of the House in regard to the acceptance of budget estimates, money grants and the passage of the appropriation bill He referred to this observation of Viscount Reading C. J., in [Rex v. Kensington Income Tax Commissioners](#), (1917) 1 KB 486, at page 495. 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."On this consideration also the petitioners are not entitled to the exercise of the discretion of this Court in their favour so far

as *Article 226* of the Constitution is concerned.

21. In consequence, this petition of the petitioners is dismissed with costs, counsel's fee being Rs. 500/-.”

To the same effect is another Full Bench judgment of this Court in the case of **Chiranji Lal and others vs. Financial Commissioner Haryana and others – 1978 AIR (Punjab) 326,**

“9. It is, thus, plain that even at the stage the writ petition was filed, the petitioner therein were more than well aware that the identical issues of law and fact regarding which they claimed relief in this Court had already been already been conclusively decided against them in a civil Court to which they had themselves resorted. Nevertheless, they deliberately and conclusively suppressed this fact entirely from the writ Court. There can hardly be any doubt that if all these facts were candidly disclosed at that stage as the writ petitioners were bound to do, then the Court would have stayed its hands altogether or in any case would have been very reluctant and chary to grant any

interim relief. This is not all. In the writ petition it was further averred that no other remedy was available to the petitioners. This has to be viewed in the context of the fact that meanwhile the writ petitioners had then filed an appeal against the order of the learned Subordinate Judge which to their knowledge was pending decision and in which also they were seeking the identical relief. There can be, thus, no manner of doubt that the averments in this context were deliberately and calculatedly designed to keep the writ Court in the dark with regard to these material facts and to procure an interim or ultimate relief by keeping these facts out of the way. It is perhaps equally significant that during this interval the writ petitioners continued to proseture remedy by way of appeal before the Additional District Judge, Kamal and ultimately he dismissed the same on merits after considering all the arguments raised on behalf of the appellants (writ petitioners) on August 17, 1976. Nevertheless, this fact

was also not remotely sought to be brought to the notice of this Court at any stage on behalf of the writ petitioners.

10. *In the aforesaid context, we cannot but hold that there has been mala fide and calculated suppression 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 the interim and ultimate relief claimed. We categorically reject the plea of the writ petitioners that the failure to mention all these material facts clearly within their knowledge was either inadvertent or was occasioned by any bona fide omission.*

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13. *Within this jurisdiction a Division Bench in Mr. U.C. Rekhi v. The Income Tax officer, (1.950)52 P.L.R. 267, has held that if there is any suppression of the material facts on the basis of which the writ is sought to be claimed the Court*

would refuse to grant the same without going into the merits. This judgment was then followed by another Division Bench in Narain Das v. The State of Punjab, (1.952) 54 P.L.R. 366, Tek Chand, J., in Shrimati Bhupinderpal Kaur v. The Financial Commissioner (Revenue) Punjab, (1.968) 70 P.L.R. 1.69, took even a stricter view in holding that there was no distinction between an averment in a petition which is a positive statement of fact and an affidavit which is sworn or an affirmed statement reduced to writing. He dismissed the writ petition on the short ground that a wrong averment in the writ petition was made to the effect that a notice of motion was served on the respondents; whilst in fact, it had not been so done.

14. *Agreeing with the long line of precedent and affirming a rule which appears to us hoary by usage, we hold that the writ petitioners, in the present case, have by their own conduct disentitled themselves to the relief which they sought to*

claim. We dismiss the writ petition with costs on this ground alone without adverting to merits.”

On this issue, the Apex Court, in **Kishore Samrite vs. State of U.P. and others – 2013 (2) SCC 398**, has held as under :-

“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”... [Emphasis supplied]”

On a similar issue, the Apex Court in **Dalip Singh vs. State of Uttar Pradesh and others – 2010 (2) SCC 114** has observed as follows :-

“6. In Prestige Lights Ltd. V. State

Bank of India (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 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 K.B. 486 (CA), and observed :

"*When 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."

In view of the aforementioned facts and the settled position of law, the petitioner, having not come to this Court with clean hands, has disentitled himself to be granted any relief.

Even otherwise, on merits also, the petitioner has no case. Learned counsel for the petitioner has submitted that the factum of pendency of the criminal cases against the petitioner, though were not disclosed by him in his application form, were mentioned by him at the time of police verification and thus, that would absolve him of his misdeeds. It is further submitted that the criminal cases against the petitioner did not involve moral turpitude and thus, could not stand between him and his appointment as a Constable in the Haryana Police.

The aforesaid submissions are to be considered only to be rejected. Admittedly, the petitioner did not disclose the factum of his arrest in two criminal cases in his application form, which was submitted on 09.08.2004. Later, in the month of December 2004, at the time of police verification, the original record reveals that he played hot and cold. Though he admitted to having been arrested and gave the factum of the criminal cases pending against him, but to specific questions whether he

had ever been prosecuted, whether he had ever been kept under detention and whether any case was pending against him in a Court of law or with the police, he had clearly answered in the negative.

Giving false information in the application form, by making misleading and half disclosures at the time of police verification, coupled with his non-disclosure of the pendency and outcome of FIR No. 125 dated 01.11.1999 in the present writ petition, shows the consistency in the mind of the petitioner with regard to non-disclosure of relevant information. There has not been full disclosure by him at any step and to permit such a person to be appointed as a Constable in the Police Force would be too dangerous a proposition for me to accept.

On the issue that the involvement of the petitioner in criminal cases does not involve moral turpitude, the observations made by the Apex Court in **Devendra Kumar vs. State of Uttaranchal and Ors. - 2013 (9) SCC 363** can usefully be referred to, wherein it has been held that submission of a false affidavit during the selection process in itself is morally incorrect. Filing of false information in the process of selection was equated akin to fraud and thus, was held to vitiate the whole process. In that case, which also pertained to selection of a Constable, the appellant therein had submitted an affidavit that he had never been involved in a criminal case. When that fact was revealed, he was discharged. The challenge to such discharge was negatived by a learned Single Judge of the High Court of Uttaranchal. The appeal against the same was also dismissed by the Division Bench, against which the challenge was made before the

Apex Court, which was also rejected by holding as under :-

“11. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. “Fraud avoids all judicial acts, ecclesiastical or temporal.” (Vide: S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors., AIR 1994 SC 853. In Lazarus Estate Ltd. v. Besalay, 1956 All E.R. 349, the Court observed without equivocation that “no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

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22. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority.

The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.

23. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. “Subla Fundamento cedit opus”- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim Nullus Commodum Capere Potest De Injuria Sua Propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide: [Union of India v. Maj. Gen. Madan Lal Yadav](#), AIR 1996 SC 1340; and [Lily Thomas v. Union of India & Ors.](#), AIR 2000 SC 1650).

Nor can a person claim any right arising out of his own wrong doing. (Juri Ex Injuria

Non Oritur).

24. *The courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case.*

In view of the above, the appeal is devoid of any merit and is accordingly dismissed.

[Emphasis supplied]

The judgment of the Apex Court relied upon by the counsel for the petitioner in the case of **Commr. of Police and Ors. vs. Sandeep Kumar – Civil Appeal No. 1430 of 2007**, decided on **17.03.2011** and judgments of this Court in **Arvind Kumar vs. Kendriya Vidyalaya Sangathan and others – 2010 (2) SLR 749** and **Labh Singh vs. Union of India and others – C. W. P. No. 19877 of 2011**, decided on **18.11.2014** would have no application to the facts of the case in hand as in those cases, the petitioners therein were acquitted long before they had filled up their respective application forms and keeping in mind that fact, those cases have been decided. As observed earlier, the facts of the case in hand are materially different and thus, the judgments cited by learned counsel for the petitioner would have no application to the facts of the case in hand.

In view of the aforesaid discussion on facts and the settled

position of law, the present petition is dismissed. For having not come to the Court with clean hands, the petitioner is burdened with costs, which are quantified at ₹ 25,000/-.

**(DEEPAK SIBAL)
JUDGE**

December 03, 2015
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