

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 02.11.2015

+W.P.(C) 2551/2013

SHAMIM KHAN

..... Petitioner

Through: Mr G.S. Singh, Adv.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr Varun Nischal and Mr Anuj Aggarwal,
Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J. (ORAL)

1. By way of this writ petition, the petitioner challenges the order dated 20.02.2013 and the recovery certificate dated 21.03.2011 issued pursuant to suo moto action initiated by the Commissioner Workmen's Compensation (CWC), South District, Government of NCT of Delhi.
2. The facts as borne out in the writ petition are that vide order dated 12.09.2012 passed by this Court in W.P.(C) No. 5812/2011 titled as "*Taskinuddin & Ors. v. The State (NCT of Delhi) & Anr.*", the petitioner was served with a copy of the petition from which he came to know that the Commissioner Workmen's Compensation, Pushp Vihar, New Delhi (hereinafter referred to as 'CWC') had issued a recovery certificate for recovery of Rs.79,74,841/- along with interest @ 12% from the date of accident till the date of payment along with penalty of 50% on the principal amount from the petitioner as arrears of land revenue. On 08.10.2012, the petitioner moved an application before the CWC for setting aside the order dated 21.03.2011 vide which the above recovery certificate was issued to him. However, the said application was dismissed vide order dated 20.02.2013.
3. The petitioner has claimed vide this petition that the suo moto action as well as the proceedings thereto including the recovery certificate are in violation of principles of

natural justice inter alia on the ground that the petitioner has not been given any opportunity of being heard by the CWC before issuing the recovery certificate as the petitioner is also one of the victims in the alleged accident dated 25.01.2011 and sustained burn injuries, remained hospitalized and is still under treatment in government hospital. No case was filed by anybody before CWC as such the question of service of notice upon the petitioner or issuance of recovery certificate does not arise at all. The matter of fire accident had been investigated with scientific method and failed to conclude the exact reason of accident of fire dated 25.01.2011. The Government of NCT of Delhi has given *ex gratia* / compensation to the legal heirs of all the deceased at the rate of Rs.1 lac each and Rs.20,000/- each to all the injured persons including the petitioner. The petitioner was running the dry-cleaning business in the name and style of M/s Amazing Creation Co. which was not a manufacturing process as such the provisions of the Workmen's Compensation Act were not applicable. The petitioner was neither running any factory nor engaged any employee or worker. There was no relationship of master and servant. Moreover, no activity was being carried out which comes within the purview of manufacturing process as such the order of CWC was without any jurisdiction. The petitioner is not responsible for the fateful accident and hence is not liable to pay any amount. The place of accident has been sealed by the police/SDM for the purpose of further scientific investigation and the title deeds of the property has also been seized as such the petitioner has no means and requested the government for financial help to survive but the government has not helped for rehabilitation and for better treatment. Hence, the present petition.

4. The learned counsel for the petitioner submits that a fire took place on 25.01.2011 wherein certain persons died and some sustained injuries including the petitioner. The recovery certificate was issued without affording any opportunity of being heard. The notice, as per the allegation, was pasted at site, however, at that time the petitioner was in hospital. The petitioner moved an application for setting aside the recovery certificate, however, the same was dismissed due to pendency of the writ petition which was filed by the legal heirs of some of the deceased before this Court. It was submitted that disputed questions of facts are involved and without giving any finding or holding the petitioner to be responsible for the fateful accident, issuance of the recovery certificate is bad in law

which was issued in violation of principles of natural justice, as such, the same be set aside.

5. The learned counsel for the respondent, on the other hand, submits that the legal heirs of deceased workmen filed a writ petition being W.P.(C) No.5812 before this Court against the respondent herein as well as the petitioner herein who was impleaded as the respondent no.2. Vide a detailed judgment both the State as well as the present petitioner were held responsible for the accident and were held liable to pay compensation to the legal heirs of the deceased as well as one of the injured who had filed the writ petition. The petitioner herein, however, did not challenge the order and only respondent had preferred an LPA. The issuance of recovery certificate does not suffer from any infirmity as before initiation of proceedings due notice was sent to the petitioner on 04.02.2011. However, no response was received. Thereafter, reminder was sent which was duly received. The wife of the petitioner approached the Competent Authority and sent letter dated 10.03.2011. Under the circumstances, the petitioner cannot allege that he was not aware of the proceedings. All the submissions made by the petitioner were also taken by him in the aforesaid writ petition and same were duly considered and only thereafter the compensation was granted. That being so, nothing survives in this writ petition and the same is liable to be dismissed.

6. The basic thrust in challenging the proceedings before CWC resulting in issuance of recovery certificate dated 21.03.2011 is on the ground that before issuance of the said certificate the petitioner was not granted any opportunity of being heard by CWC. In this regard the case of the respondent is that an FIR No. 23 dated 26.01.2011 was lodged at Police Station Govind Puri, New Delhi regarding the incident at M/s Amazing Creation Co. owned by the petitioner wherein twelve workers died while seven workers were injured besides the petitioner. Thereupon suo moto action was initiated by the CWC by issuing notice dated 04.02.2011 to the petitioner for depositing the provisional amount of compensation to the tune of Rs.5 lac in respect of each deceased workman and Rs.50,000/- in respect of each injured workman within three days from the date of issue of notice. The Labour Inspector reported that the factory premises were found locked, as such, notice was pasted on the premises in the presence of beat officer Jaiveer Singh – Head Constable. As no response was received from the management as such another

notice dated 03.03.2011 was sent at the residential address of the petitioner at E-12/61, Hauz Khas, New Delhi. In response to the notice sent at the residential address of the owner, a request letter was received from the wife of the owner seeking four weeks time. The reply was considered to be unsatisfactory as such recovery certificate as per Employees Compensation Act, 1923 was issued on 21.03.2011 to District Collector, South District. Thereafter, subsequent reminders dated 11.11.2011 and 05.12.2011 were sent to the factory owner as well as to Deputy Commissioner South for recovery of the amount from grant of compensation. In the rejoinder, the petitioner denied service of any notice dated 04.02.2011 as well as 03.03.2011. It is pertinent to note that although the petitioner denied having received notice dated 03.03.2011 yet admitted that his wife sought four weeks time which was declined.

7. Needless to say, the writ jurisdiction is an extraordinary remedy and is to be exercised in exceptional cases. A person who approaches the court for seeking relief must come with clean hands. The writ petition gives an impression as if the petitioner was not aware about the issuance of the recovery certificate dated 21.03.2011 till he was served with the copy of the petition in W.P.(C) No.5812/2011 filed by the legal heirs of some of the deceased workmen and one injured from which he came to know about passing of the impugned recovery certificate. Thereafter, it is alleged that he moved an application on 08.10.2012 for setting aside the *ex parte* order which was dismissed vide order dated 20.02.2013. Even after specific averments have been made by the respondent in the counter affidavit that a notice dated 04.02.2011 was sent to the petitioner which was pasted at his premises in the presence of beat officer Head Constable Jaiveer Singh and having not received any response from the petitioner, another notice dated 03.03.2011 was sent at his residential address pursuant to which request letter was sent by the wife, he had the audacity to deny having received reminder notice dated 03.03.2011. However, he admitted that his wife sought four (4) weeks time which was declined meaning thereby that the petitioner was aware of the proceedings before the CWC, yet no steps were taken by him to set up his case. The petitioner is guilty of suppressing material facts and, therefore, is not entitled for the discretionary relief.

8. In ***G.M. Haryana Roadways v. Jai Bhagwan & Anr.***, (2008) 4 SCC 127, an SLP was filed which was barred by time. Reinstatement and regularization of service was not

brought to the notice of the Court. The petition was dismissed by observing as under:-

*"12. ...Suppression of material fact is viewed seriously by the Superior Courts exercising their discretionary jurisdiction. In **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors.**, AIR 2004 SC 2421, this Court on suppression of fact held:*

"As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case."

*The said observation was quoted with approved by one of us in **Arunima Baruah v. Union of India (UOI) and Ors.**, (2007) 6 SCC 120, wherein the question which was raised was; How far and to what extent suppression of fact by way of non-disclosure would affect a person's right of access to justice?*

The court notices that so as to enable it to refuse to exercise its discretionary jurisdiction, the 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."

9. In **Prestige Lights Ltd. v. State Bank of India**, (2007) 8 SCC 449, the Supreme Court observed and held as under:

"The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

In view of this legal position, since the petitioner is guilty of suppressing material facts, on this ground alone, the petition deserves to be dismissed.

10. Moreover, the respondent has placed on record copy of the judgment dated 11.09.2013 in W.P.(C) No. 5812/2011 in which the petitioner herein was arrayed as respondent no. 2 and all the pleas which are urged by him in this petition were also taken.

Same were duly considered. After a detailed discussion, a learned Single Judge of this Court held that the liability of the State is co-extensive with that of respondent no. 2 (petitioner herein) on the ground that had the State been vigilant, the factory / unit could not have been set up or operated in a low residential premises; had the State been vigilant, fire protection mechanism, proper fire escape, clear passage and ventilation would have been ensured; had the State been vigilant, the respondent no.2 would not have been permitted to store highly inflammable substances without license and without making proper arrangement therefor. Neither of the respondents paid heed to these aspects, which is what led to the incident. The liability of the State is coextensive with that of the respondent no.2 (petitioner herein).

11. It is not in dispute that only the respondent has filed LPA challenging the judgment but the petitioner has not even bothered to challenge the same.

12. Looking from any angle, there is no merits in the petition. Same is accordingly dismissed leaving the parties to bear their own costs.

The petition stands disposed of accordingly.

Trial Court record be returned forthwith.

(SUNITA GUPTA)
JUDGE

NOVEMBER 02, 2015/rd