THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARYANA MURTHY

WRIT PETITION NO.15029 OF 2006

ORDER: *(Per Hon'ble Sri Justice M. Satyanarayana Murthy)*

This petition is filed under Article 226 of the Constitution of India to set-aside the notice dated 15.07.2006 issued in Form No.4 and seizure of the property M/s Vinayaka Cinema Hall, while declaring the action of the respondents as illegal and arbitrary.

The petitioner is the cinema theatre by name M/s Vinayaka Cinema Hall which belongs to the Endowments Department, the petitioner obtained the theatre on lease from the Deputy Commissioner, Endowments Department vide proceedings D.Dis No.14/22967/2002 dated 07.06.2002. Thus, the petitioner is a lessee of the cinema theatre belonging to Sri Arani Kandappa Maistry Choultry, Santhapet, Nellore, which is under the direct control of Endowments Department. Though the theatre was taken on lease in the year 2002, he obtained B-Form to run the theatre from the Joint Collector, Nellore on 12.02.2004 in R.Dis.(M)/1315/2003 dated 12.02.2004. Initially, the license was valid up to 31.12.2005 and latter renewed upto 21.12.2006 vide proceedings D.Dis.No.4363/2005 dated 25.11.2005 of the Revenue Divisional Officer, Nellore under the provisions of the Cinematograph Act. Thus, the petitioner is running cinema theatre with great difficulty to meet both ends and pay taxes to the concerned department.

In the year 2002, the lease was granted to the petitioner but he could not run the theatre due to extensive damage to the structure, but renewed the same by spending huge amounts. As the matter stood thus, the second respondent sent Form No.4 dated 15.07.2006 claiming huge arrears amounting to Rs.2,78,798/- towards

Entertainment Tax for the years 1994-1995 and arrears amounting to Rs.83,288/- for the period 2005-2006 and called upon the petitioner to pay the same within seven days with a threat to attach the cinema theatre. The first respondent made a publication in the Telugu Eenadu daily newspaper on 16.07.2006 with a threat to seize the property and consequently closure of the theatre.

The notice dated 15.07.2006 is illegal and untenable, as the petitioner was not put on any notice for the proposed recovery and that apart, the proposed recovery is towards arrears of Entertainment Tax for the years 1994-1995 and the petitioner being a lessee cannot be made liable to pay Entertainment Tax due to the respondents. At best, the petitioner is liable to pay the tax from the date of obtaining his license and not liable for the arrears if any, due by the earlier lessee. Therefore, the demand notice issued by the second respondent is illegal.

It is further admitted that an amount of Rs.83,288/- for the period 2005-2006 towards Entertainment Tax was due and he is ready and willing to pay the same within eight weeks from the date of filing the writ petition.

It is further contended that, in case the property is seized by the respondents, the petitioner would be put to irreparable loss, since it leads to closure of the cinema business. Therefore, he sought for the aforesaid relief. The second respondent filed counter affidavit denying material allegations of the petition, *inter-alia* contending that the theatre was leased by the Endowments Department to the petitioner for a period commencing from 01.06.2002 to 31.03.2005 on a monthly rent of Rs.15,000/-. Pursuant to the lease, the petitioner approached the Joint Collector, Nellore who is the licensing authority under the Cinematographic. Act, for the purpose of obtaining Form-B license for exhibiting the Cinematographic Films in the said theatre. However, before issuing the Form-B license by the licensing authority, the petitioner was directed to obtain a clearance certificate from the Commercial Taxes Department with regard to arrears of Entertainment Tax if any, in respect of the above theatre. Further, the petitioner addressed a letter on 28.11.2003 to the Assistant Commercial Taxes Department-IV, Nellore who is also Entertainment Tax Officer requesting him to issue clearance certificate. The Entertainment Tax Officer through the letter dated 28.11.2003 informed the petitioner that a sum of Rs.2,83,942/- is due as Entertainment Tax for the period 31.03.1994 to 31.03.1995. It was also informed that the Show Tax of Rs.14,856/- for the same period is due from the management of the Vinayaka Cinema Theatre and clearance certificate as required by him would be issued on payment of the above amounts. In response to the letter, the petitioner executed a letter of undertaking to clear the entire arrears of Rs.2,98,798/- (2,83,942/- + 14,856/-) in 15 equal monthly instalments. He also addressed a letter dated 22.12.2003 on Rs.100/- non-judicial paper to the Entertainment Tax Officer promising to pay the entire arrears of tax in 15 instalments. Accordingly, he paid first instalment of Rs.20,000/- vide challan No.5041 dated 22.12.2003. Thereafter, the petitioner committed default and therefore, breach of contract is committed between the petitioner and the second respondent. The second respondent to safeguard the interests of the State Revenue, initiated proceedings under A.P. Revenue Recovery Act, 1864 and issued notice in Form No.4 for recovery of the total tax of Rs.3,62,086/-. The petitioner having undertaken to pay the arrears of tax due by the previous management of the theatre for the year 1994-1995, cannot now turn around and deny his liability. The term 'proprietor' under Section 3(9) of the A.P. Entertainments Tax Act, 1939, defines that in relation to any entertainment includes any person responsible for the management thereof and as such the petitioner herein falls under the category of proprietor and he is liable to pay the tax due by the theatre. Therefore, the petitioner is liable to pay the arrears of Entertainment Tax, as undertaken by him.

In similar circumstances, this Court while dealing with W.P.No.17854 of 2004 held that, the Commercial Tax Department proceeded to recover the arrears of sales tax prior to the lease and it is always open for them to recover the same by putting the theatre to auction, but however, the auction conducted by the Commercial Tax authorities will be subject to the tenancy rights of the petitioner. In such a case, if the principle laid down in the above judgment is followed, the petitioner is entitled to protect his rights, but he is not entitled to question the proposed auction of the theatre. Hence, it is prayed to dismiss the writ petition.

The petitioner filed reply to the counter affidavit while reiterating certain facts alleged in the pleadings in the writ petition, admitting execution of undertaking letter of payment of Rs.20,000/- in pursuance of undertaking, but such undertaking was given under tremendous financial pressure and to get the theatre started and that the respondents highhandedly entertained the letter. Therefore, the agreement covered by the letter is not enforceable under law and that the claim of the respondents is barred by limitation even to recover the amount under Andhra Pradesh Revenue Recovery Act.

During hearing Sri V. Hari Haran, learned counsel for the petitioner would submit that since the claim of the respondents is barred by limitation, the respondents are not entitled to recover the amount even by proceeding under the A.P. Revenue Recovery Act and he places reliance on the judgment of the Supreme Court in **State of Kerala and Ors. Vs. Kalliyanikutty and Anr.**[1]. The learned counsel for the petitioner admitted about the execution of letter of undertaking to pay the arrears and payment of Rs.20,000/- in pursuance of the letter, but did not disclose the material fact. However, it is the case of the petitioner that the said letter is not enforceable as it was obtained by duress by the respondents under great financial pressure and duress. Hence, the undertaking would not save limitation. More over, the petitioner was not a tenant for the period 1994-1995 and the tax due for the said period, the petitioner cannot be saddled with liability to pay the arrears of Entertainment Tax for the period 1994-1995, thereby issuing demand for payment of the amount with a threat to attach the property by issuing notice in Form No.4 is illegal and arbitrary and prayed to set-aside the same.

Whereas, the Special Standing Counsel for Commercial Taxes Sri S. Suri Babu contended that the petitioner suppressed a material fact about execution of letter of undertaking to pay arrears of Rs.2,78,798/- due for the year 1994-1995 and paid Rs.20,000/- in pursuance of the agreement between the petitioner and the second respondent. Thereafter, he committed in payment of Entertainment Tax, as agreed and even after obtaining an interim order from this Court, the petitioner did not comply with the directions issued by this Court. Therefore, the petitioner is guilty of concealment of a material fact. In such a case, this Court cannot exercise discretionary jurisdiction under Article 226 of the Constitution of India.

It is specifically contended that in terms of the agreement executed on Rs.100/- stamp paper dated 22.12.2003, a fresh period of limitation starts from the date of execution, thereby the claim of the respondents is within time and that the petitioner is only a lessee of the theatre and not competent to file the present writ petition, in view of the judgment rendered by this Court in W.P.No.17854 of 2004 and prayed to dismiss the writ petition.

In view of the contentions raised by both the learned counsel, the only point that arise for consideration is as follows:

1. ***Whether the petitioner suppressed the material fact i.e execution of undertaking letter dated 22.12.2003 on a non-judicial stamp paper worth Rs.100/-, amounting to suppression of material fact. If so, whether this Court can exercise the power of judicial review to grant discretionary relief under Article 226 of Constitution of India.***

Point No.1:

The petitioner admittedly obtained the theatre on lease from the Endowments Department vide proceedings D.Dis No.14/22967/2002 dated 07.06.2002 for a period commencing from 01.06.2002 upto 31.03.20065 on monthly rent of Rs.15,000/-. The petitioner being the lessee of the cinema theatre was required to obtained license in Form-B to exhibit Cinematographic Films. Accordingly, he applied for issue of Form-B license to the Joint Collector, Nellore and obtained Form-B license in R.Dis(M)/1315/2003 dated 12.02.2004, at the time of obtaining Form-B license, the petitioner was required to furnish Entertainment Tax Clearance Certificate from the concerned authorities in Form-H prescribed under the Andhra Pradesh Cinemas (Regulation) Rules, 1970 framed thereunder. Form-H is an application for transfer or assignment of license and Column No.4(a) in the said Form-H requires status, antecedents and previous experience of the applicant. It mandates that the owner of the theatre should furnish the particulars of tax or other dues to the government and whether in respect of any assessment for tax the matter is under consideration with the authorities of the government. Form-H also specified that the license holder shall furnish the clearance certificate from 1) Entertainment Tax

Authorities and 2) Films Division Authorities, to obtain Form-B license under A.P. Cinemas (Regulation) Rules, 1970 framed thereunder. The petitioner being the lessee of the theatre gave an undertaking to the second respondent, herein, to pay arrear of Entertainment Tax for the year 1994-1995 in 15 equal monthly instalments and on the strength of the same, the petitioner obtained B-Form license for exhibition of films. He also paid Rs.20,000/- as first instalment vide challan No.5041 dated 22.12.2003. Thus, the petitioner made an unequivocal and unconditional undertaking to pay the amount and the said undertaking was accepted by the second respondent, in pursuance of a concluded contract between the parties, the petitioner paid Rs.20,000/- as stated above. But, thereafter, the petitioner committed default in payment of Entertainment Tax, the factum of promise to pay debt i.e. arrears of Tax to the second respondent was totally suppressed by the petitioner in the entire petition, but for the first time after filing counter, as a reply to the counter affidavit, the petitioner disclosed about the execution of letter of undertaking and acting on payment of Rs.20,000/- vide challan No.5041 dated 22.12.2003. However, it is contended that it was obtained by duress and the same cannot be enforced under law. It is clear from the material available on record including the record produced before this Court by the learned Special Standing Counsel for the Commercial Tax that the petitioner executed a letter of undertaking to pay entire arrears amounting to Rs.2,98,798/- for the period 1994-1995 due towards Entertainment Tax and the same was acted upon by the respondent thereby created contractual relationship between the parties as fresh promise. The letter was executed by the petitioner claiming to be proprietor of the cinema theatre. Non disclosure of execution of the letter of undertaking and payment of Rs.20,000/-

acting upon the undertaking constituted a fresh agreement is a clear suppression of material fact and the same is sufficient to decline to grant discretionary relief in the writ petition, while exercising the power of judicial review under Article 226 of the Constitution of India.

There is a fine distinction between material fact and material particular. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Material Particulars' on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Material Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise. All 'Material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with. In the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, will entail dismissal of suit or petition. (vide **Virender Nath Gautham vs. Satpal Singh & ors.**[2]).

Here, the petitioner suppressed the factum of undertaking letter dated 22.12.2003. According to it, the arrears of Entertainment Tax were agreed to be paid within 15 equal monthly instalments and out of said agreement, an amount of Rs.20,000/- was paid towards first instalment vide challan No.5041 dated 22.12.2003, which constitutes fresh contract between the petitioner and the second respondent for payment of arrears of Entertainment Tax and it is a material fact which must be pleaded by the petitioner in support of his claim and suppression of such fact entails dismissal of the petition.

A false statement made in a Court or in a pleading, intentionally to mislead the Court and obtaining a favourable order, amounts to criminal contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the Court, for the reason that causing an obstruction in the due course of justice "undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity" (vide **Naraindas vs. Government of Madhya Pradesh & Ors.**[3]**, The Advocate General, State of Bihar vs. M/s Madhya Pradesh Khair Industries &Anr.**[4] **And Afzal & Anr. Vs. State of Haryana & Ors.**[5]**).**

In **K.D. Sharma vs. Steel Authority of India Limited & Ors.**[6]**,** the Supreme Court held as follows:

> "Prerogative writs……. 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. It 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".

The Supreme Court while relying on the case of **R. vs. General**

Commissioners for the purposes of the Income Tax for the District of Kensington, [(1917) 1 KB 486], held that such dispossession of any material fact or non-disclosure of any material or relevant fact or particular amounts to criminal contempt.

The material and deliberate suppression of crucial and important facts is a ground to dismiss the petition at the threshold while declining to exercise discretionary jurisdiction under Article 226 of Indian Constitution in favour of the petitioner, who approached the Court without clean hands, as held by the Apex Court in **All India State Bank Officers Federation Through its President and others vs. Union of India and others**[7]. The Supreme Court in the above case also observed that making of reckless statements in petitions and affidavits is deprecated.

In view of the observation of the Apex Court that 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. 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 any 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.

In view of the perspective pronouncement of the Apex Court, the petitioner is bound to disclose the material fact in a writ petition filed under Article 226 of the Indian Constitution, so as to enable the writ court to exercise equitable and discretional jurisdiction under Article 226 of Constitution of India. Non-disclosure or concealment of any material fact deliberately amounts to attract criminal contempt, besides loosing claim before the Court in a petition filed under Article 226 of Constitution of India.

In the present case, the petitioner admittedly executed undertaking letter to pay the arrears of Entertainment Tax for the year 1994-1995 and paid Rs.20,000/- in pursuance of the undertaking/fresh contract or promise. But the said fact was suppressed deliberately in the writ petition, thereby the writ petition is liable to be dismissed on this ground alone and there is no need to examine any merits of the case of the petitioner. At the same time, the petitioner is liable to be dealt with appropriately for criminal contempt for suppression of material fact and obtained an interim order for payment of Rs.83,288/- within six months vide order dated 21.07.2006. But, he did not comply with the directions issued by the Division Bench of this Court for the reasons best known to him. The petitioner suppressed the letter of undertaking/fresh concluded contract, mislead the Court and obtained an interim order, which he did not comply. The petitioner contended that in the reply to the counter that the letter was obtained by duress. This cannot be enquired into and this contention cannot be upheld for the reason that having executed undertaking dated 22.12.2003 on non-judicial stamp paper worth Rs.100/-, the petitioner paid Rs.20,000/- vide challan No.5041 and thereby created a fresh concluded contractual obligations between the petitioner and the second respondent. On this ground also, the petitioner is liable for criminal contempt.

In view of the foregoing discussions, we hold that the petitioner suppressed the material fact, mislead the Court and obtained an interim order dated 21.07.2006 in WPMPNo.18725 of 2016 in W.P.No. W.P.No.15029 of 2006. On this ground alone, the writ petition is liable to be dismissed and the petitioner is liable for criminal contempt. Accordingly, the point is answered in favour of the respondents and against the petitioner.

The petitioner by making a promise made the second respondent to believe that the petitioner would discharge the debt and agreed to pay the Entertainment Tax for the year 2005-2006 within 15 days which the petitioner specifically undertook in paragraph 7 of the writ affidavit, obtained an interim order dated 21.07.2006 in WPMPNo.18725 of 2016, in W.P.No. W.P.No.15029 of 2006, in utter disregard of the direction issued by this Court, the petitioner did not comply with the directions of this Court, so also failed to discharge the liability under the fresh promise dated 22.12.2003, it amounts to abuse of process of law. Now, the petitioner went back and contended that the claim of the respondent is barred by limitation. When the petitioner admitted his liability to pay by executing fresh agreement and giving an undertaking in the affidavit for payment of arrears of Entertainment Tax due for the year 2005-2006 and failed to pay the same against the directions of this Court, amounts to abuse of process of law and thereby the petitioner is liable for payment of exemplary costs.

In view of the aforesaid discussion, we find no merits in this writ petition and this writ petition is liable to be dismissed.

In the result, the Writ Petition is dismissed, but however with exemplary costs quantified at Rs.10,000/- (Rupees Ten Thousand

Only). As the petitioner has suppressed material facts in the affidavit filed in support of the Writ Petition, they have abused the process of Court and have thereby sought to interfere with the administration of justice. It is necessary that *suo motu* contempt proceedings are initiated against the petitioner under Section 15(1) read with Section2(c) of the Contempt of Courts Act, 1971. *Suo motu* contempt proceedings shall be registered separately, and listed before the appropriate bench after obtaining orders of the Hon'ble the Acting Chief Justice.

Consequently, miscellaneous applications pending if any shall also stand dismissed.

JUSTICE RAMESH RANGANATHAN

JUSTICE M. SATYANARYANA MURTHY

14.07.2016
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[1] 1999 (1) KLJ 811

[2] AIR 2007 SUPREME COURT 581

[3] AIR 1974 SC 1252

[4] AIR 1980 SC 946

[5] (1996) 7 SCC 397

[6] (2008) 12 SCC 481

[7] 1990 (Supp) Supreme Court Cases 336