

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 12709 of 2016 (O&M)
Date of decision: 19.8.2016

Manoj Kumar Tiwari

.. Petitioner

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vikas Behl, Senior Advocate with
Mr. Himanshu Puri, Advocate for the petitioner.
Mr. Ankur Mittal, Addl. Advocate General, Haryana.

Rajesh Bindal J.

The petitioner has approached this court impugning the communication dated 18.6.2016 (Annexure P-10), vide which the Assistant Excise & Taxation Officer (Excise), Gurgaon directed the petitioner to shift his L-2 vend to a proper location in the rural area, for which the licence had been granted to the petitioner.

Learned counsel for the petitioner submitted that the petitioner was granted licence for location within the revenue estate of village Naharpur. As per the excise policy for the year in question, the Government

or its agencies were to make efforts to provide space to the licensees for running the vends at reasonable cost. In view of that clause in the policy, the Deputy Excise & Taxation Commissioner (Excise), Gurgaon [for short, 'DETC (E)'] vide memo dated 18.3.2016 requested the Manager, Haryana State Industrial & Infrastructure Development Corporation, Manesar, Gurgaon (for short, 'HSIIDC') to provide space to the petitioner for locating his vend within the revenue limits of village Naharpur. The site was approved by HSIIDC finally vide communication dated 4.5.2016 (Annexure P-5). It was a communication from District Town Planner, HSIIDC to Senior Town Planner, HSIIDC, Gurgaon. It is not in dispute that the aforesaid letter was not communicated to the petitioner. Still he opened his liquor vend at the place mentioned in the aforesaid letter and claimed that amount mentioned in the letter was deposited by him with HSIIDC. The petitioner has not referred to any communication from the Department of Excise and Taxation approving the site where the liquor vend had been opened. The grievance is that despite the licence having been granted to the petitioner for the area in revenue estate of village Naharpur, he has been directed to shift the same to rural area.

On the other hand, learned counsel for the State submitted that present petition deserves to be dismissed on account of concealment of material facts and also misleading this court.

Firstly, he referred to the order dated 21.6.2016, wherein the counsel appearing for the petitioner made a statement that he had been granted liquor vend in urban area but has been asked to shift the same to rural area. Referring to the location of the vend, which was allotted to the petitioner, as was provided for in the excise policy, it was submitted that the

petitioner was allotted liquor vend for location within the revenue estate of village Naharpur, Command Area- Naharpur and vend area 'Rural'. He further referred to clause 1.3.1 in the excise policy, defining command area and the rural vend, which provided that the command area has to be prescribed by the DETC (E). The licensee shall have the freedom to locate his vend falling in the command area with prior approval of the site plan from the DETC (E). The petitioner had opened his liquor vend in the urban area without any approval of the site plan from the DETC (E). The matter came to the notice of the department. Vide communication dated 2.6.2016, the District Town Planner, Gurgaon (Planning) informed the DETC (E) that plot No. 30, Sector 2A, Manesar, developed by HSIIDC, falls within urban area. Copy thereof was duly served upon the petitioner. It is the location where the petitioner had opened his liquor vend. A request was made by the DETC (E) to the Senior Town Planner, HSIIDC, Gurgaon for withdrawal of the permission granted to the petitioner to open the liquor vend as the licence granted to the petitioner was for rural area.

He further referred to the statement made by the petitioner on 15.6.2016 before the Assistant Excise and Taxation Officer (Excise) and Excise Inspector, when they inspected the liquor vend of the petitioner. The petitioner admitted that the liquor vend opened by him was located in urban area. He stated that he had received the communication sent by the department in this regard and will shift the liquor vend to the proper location within 3-4 days. The submission is that the letter dated 2.6.2016 and the statement made by the petitioner on 15.6.2016 were concealed by the petitioner while filing the writ petition, which is supported by an affidavit dated 18.6.2016. As the petitioner had concealed material facts

from this court, the writ petition deserves to be dismissed with heavy cost. To the written statement filed by the State, no replication was filed by the petitioner.

Heard learned counsel for the parties and perused the paper book.

From the facts, which are available on record, it is evident that the petitioner was granted liquor vend for location within the revenue limits of village Naharpur with vend area “rural”. As per clause 12.17 of the excise policy for the year in question, the Government or its agencies were to make efforts to provide spaces to the licensees for running of vends in urban areas wherever required, at reasonable rates for operating liquor vends in pre-fabricated structures. The relevant clause is extracted below:

“12.17 PROVISION OF SPACE FOR RUNNING OF VENDS IN URBAN AREAS:

The Government and its agencies shall strive to provide spaces to the licensees for running of vends in urban areas wherever required and available at reasonable rates for operating liquor vends in pre-fabricated structures.”

Despite the fact that the petitioner knew that his allotment of liquor vend was for rural area, he made a request to the DETC (E) for providing space for opening the liquor vend. On his request, as is evident from letter dated 18.3.2016 (Annexure P-1) from the DETC (E) to the Manager, HSIIDC, Manesar, Gurgaon, the matter was referred for providing suitable site to the petitioner. The issue was considered in the internal correspondence amongst the officers of HSIIDC and finally, as is referred to by the petitioner, vide communication dated 4.5.2016 (Annexure

P-5), Divisional Town Planner, HSIIDC, addressed to Senior Town Planner, HSIIDC accorded permission for providing space for opening of liquor vend in Plot No. 30, Sector 2A, IMT Manesar, subject to prescribed conditions. There is nothing on record, referred to by the petitioner, showing that the aforesaid letter was communicated to the petitioner, but still, as the stand is, that the petitioner opened the liquor vend at the place mentioned in the letter dated 4.5.2016 by depositing the amount as specified. It is further not in dispute that site plan of the proposed liquor vend was not got approved from the DETC (E).

Further, the writ petition was filed by the petitioner on 20.6.2016 impugning the order dated 18.6.2016. With the written statement, letter dated 2.6.2016 (Annexure R-3) has been annexed. It was addressed by District Town Planner, Gurgaon to the DETC (E) mentioning therein that the plot, where the petitioner had opened the liquor vend was within the urban area. Copy of the said letter was duly acknowledged by the petitioner. Further, when the Assistant Excise and Taxation Officer (Excise) and one Excise Inspector inspected the liquor vend of the petitioner on 15.6.2016, the petitioner admitted that the place, where he had opened the liquor vend, falls within the urban area as confirmed by the District Town Planner vide letter dated 2.6.2016. He further admitted that he had received notice in this regard from the department. He undertook to shift the liquor vend to proper location within a period of 3-4 days. The aforesaid communications were annexed by the respondents by filing the written statement dated 6.7.2016, which was filed in court on 11.7.2016. To this, no replication has been filed. Meaning thereby, receipt of the aforesaid letter dated 2.6.2016 and the statement made by the petitioner at the time of inspection of the liquor vend

was concealed while filing the writ petition.

The petition was listed for the first in court on 21.6.2016 during vacations. At the time of notice of motion, following stand taken by the learned counsel for the petitioner appearing at that time was noticed:

“Grievance of the writ petitioner is that though the license was granted under Annexure P-1 dated 18.3.2016 to run the liquor vend in urban area, he has been asked to shift the liquor vending business to rural area.”

A perusal of the aforesaid stand taken by learned counsel for the petitioner shows that it was stated that though the licence was granted to run the liquor vend in urban area, he was being asked to shift in the rural area, which was factually incorrect. Hence, at that stage as well, the petitioner misled this court.

A litigant approaching the court with unclean hands and misleading the court is not entitled to be heard on merits. It has been so opined by Hon'ble the Supreme Court.

In Abhyudya Sanstha v. Union of India, (2011) 6 SCC 145, Hon'ble the Supreme Court, while declining relief to the petitioners, who did not approach the court with clean hands, opined as under:

“16. In our view, the appellants deserve to be non suited because they have not approached the Court with clean hands. The plea of inadvertent mistake put forward by the learned senior counsel for the appellants and their submission that the Court may take lenient view and order regularisation of the admissions already made sounds attractive but does not merit acceptance. Each of the appellants consciously made a

statement that it had been granted recognition by the NCTE, which necessarily implies that recognition was granted in terms of Section 14 of the Act read with Regulations 7 and 8 of the 2007 Regulations. Those managing the affairs of the appellants do not belong to the category of innocent, illiterate/uneducated persons, who are not conversant with the relevant statutory provisions and the court process. The very fact that each of the appellants had submitted application in terms of Regulation 7 and made itself available for inspection by the team constituted by WRC, Bhopal shows that they were fully aware of the fact that they can get recognition only after fulfilling the conditions specified in the Act and the Regulations and that WRC, Bhopal had not granted recognition to them. Notwithstanding this, they made bold statement that they had been granted recognition by the competent authority and thereby succeeded in persuading this Court to entertain the special leave petitions and pass interim orders. The minimum, which can be said about the appellants is that they have not approached the Court with clean hands and succeeded in polluting the stream of justice by making patently false statement. Therefore, they are not entitled to relief under Article 136 of the Constitution. This view finds support from plethora of precedents. In **Hari Narain v. Badri Das** AIR 1963 SC 1558, **G. Narayanaswamy Reddy v. Govt. of Karnataka** (1991) 3 SCC 261 and large number of other cases, this Court denied relief to the petitioner/appellant on the ground that he had not approached the Court with clean hands.

In **Hari Narain v. Badri Das** (supra), the Court revoked the leave granted to the appellant and observed:

“It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.”

In **G. Narayanaswamy Reddy v. Govt. of Karnataka** (supra), the Court noted that the appellant had concealed the fact that the award could not be made by the Land Acquisition Officer

within the time prescribed under Section 11A of the Land Acquisition Act because of the stay order passed by the High Court and observed:

“..... Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions.”

In **Dalip Singh v. State of U.P.** (2010) 2 SCC 114, this Court noticed the progressive decline in the values of life and observed:

“For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahinsa” (non-

violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

In Moti Lal Songara v. Prem Prakash @ Pappu and another, (2013) 9 SCC 199, Hon'ble the Supreme Court, considering the issue regarding concealment of facts before the court, while observing that “court is not a laboratory where children come to play, opined as under:

“18. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused-respondent is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim *suppressio veri, expressio falsi*, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the revisional court. It can be stated with certitude that the accused- respondent tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum. The High Court, as we have seen, applied the principle “when infrastructure collapses, the superstructure is bound to collapse”. However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand.”

Similar view has been expressed in Amar Singh v. Union of

India and others, (2011) 7 SCC 69 and Kishore Samrite v. State of Uttar

Pradesh and others, (2013) 2 SCC 398.

Considering the conduct of the petitioner, in our opinion, he cannot be heard on merits. Accordingly, the writ petition is dismissed subject to cost of ₹ 1,00,000/-, which shall be deposited with this court within one month. In case of failure, the case be put up in court.

Before we part with the order, we deem it appropriate to notice the conduct of the DETC (E) as well. No doubt, the policy provides for a condition that the Government and its agencies shall make efforts to provide space to the licensees for running liquor vends in urban area. It does not envisage that Excise and Taxation Department is to be involved in the process in recommending the case for allotment of space. The provision is applicable for liquor vends in urban area. Admittedly, the petitioner was allotted liquor vend in rural area. Still the DETC (E) forwarded the application filed before him by the petitioner for providing space to HSIIDC, which was totally un-called for.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

19.8.2016
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Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No