

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.7347 of 2014
Date of decision:21.10.2016**

Achhra Singh Chahal

...Petitioner

Versus

Union of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Dinesh Kumar, Advocate for the petitioner.
Mr.Dheeraj Jain, Advocate, Senior Panel counsel for
UOI.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the alleged inaction on the part of respondent authorities, petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus.

Notice of motion was issued and in compliance thereof, written statement was filed on behalf of respondent No.2.

Heard learned counsel for the parties.

Learned counsel for the respondents, while raising a preliminary objection, strongly opposed the present writ petition, contending that petitioner is not entitled to be heard on merits of the case, because he has tried to overreach this Court by withholding the material information and also moved misleading and factually incorrect application, before the respondent authorities, seeking issuance of the passport.

It has gone undisputed before this Court that when petitioner applied for re-issue/issue of the passport before the respondent authorities, he did not disclose the material fact that he was facing a criminal trial. When the passport was not issued, petitioner served the respondents by way of legal notice dated 18.10.2013 (Annexure P-3) and in reply thereto, respondent No.2 pointed out the reason for not issuing the passport, as the petitioner was found involved in FIR No.100 dated 10.6.2005 under Section 409 of the Indian Penal Code, Police Station Malerkotla.

Although respondent No.2 filed the written statement in the month of January 2015, yet no replication has been filed by the petitioner. In fact, concealment of material fact of his involvement in the criminal case, at the hands of the petitioner, came to be detected in the police verification report (Annexure R-2/1). Thereafter, letter dated 28.1.2014 (Annexure R-2) was written to the petitioner by the respondent authorities, seeking his explanation as to why he suppressed the material information in his passport application. However, petitioner furnished no reply to the said communication dated 28.1.2014 (Annexure R-2), for the reasons best known to him. When confronted with the above-said fact situation, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that petitioner has no case either on facts or in law.

Learned counsel for the respondents has been found justified in contending that in the circumstances of the case, petitioner is not found entitled to be heard on merits and the writ petition is liable to be dismissed only on account of concealment of material fact. The relevant part of the

communication dated 28.1.2014 (Annexure R-2), addressed by the respondent authorities to the petitioner, reads as under:-

“This is in reference to receipt of an adverse Police Verification Report corresponding to your application for passport issue, with file number CH2070915216813 dated 22/03/2013.

*We have been informed by the police authorities that
(1) Criminal case has been registered against you and is still under trial in the court of law. Please furnish final judgment order from the court.*

You are therefore, called upon to provide a suitable explanation within 30 days. Please note that you are required to furnish a proper explanation regarding the circumstances under which you had suppressed the material information in your passport application.

Please be informed that in case of non response within the specified period, or a non-satisfactory response, you will be denied the passport against this or any future application unless cleared in appeal by the Consular, Passport & Visa Division or Court.”

Despite lapse of period of more than 2 ½ years, petitioner has not submitted his appropriate reply to the above-said official communication nor he has filed any replication to the written statement, which would go a long way against the petitioner to show that he has tried to conceal and suppress the material information from the notice of the respondent authorities as well as this Court, thereby rendering himself disentitled for any kind of relief, at the hands of this Court. Petitioner has not been found to be a bonafide litigant. Conduct of the parties to the litigation is also a very relevant factor to be kept in view. In the present

case, petitioner has misconducted himself to such an extent that he has not been found entitled for any relief much less discretionary relief from this Court.

It is also a matter of record that petitioner has been convicted by the learned court of competent jurisdiction by way of judgment of conviction dated 16.1.2010. Thereafter, even his appeal came to be dismissed by the learned appellate court vide judgment dated 15.11.2011. His Criminal Revision No.2892 of 2011 is pending decision before this Court. In this view of the matter, petitioner has not been found entitled for issuance of passport in his favour on merits as well.

The above-said view taken by this Court also finds support from a judgment of the Hon'ble Supreme Court of India in ***Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration) Bareilly Division Bareilly, 2010 (4) SCC 728***. The relevant observations made by the Hon'ble Supreme Court in paras 14 and 15 of its judgment, which can be gainfully followed in the present case, read as under:-

“It is quite intriguing and surprising that the lease agreement was not brought to the notice of the Additional Commissioner and the learned Single Judge of the High Court and neither of them was apprised of the fact that the appellant had taken 27.95 acres land on lease from the Government by unequivocally conceding that it had purchased excess land in violation of Section 154(1) of the Act and the same vested in the State Government. In the list of dates and the memo of special leave petition filed in this Court also there is no mention of lease agreement dated 15.10.1994. This shows that the appellant has not approached the Court with clean hands. The withholding of the lease agreement from the Additional

Commissioner, the High Court and this Court appears to be a part of the strategy adopted by the appellant to keep the quasi-judicial and judicial forums including this Court in dark about the nature of its possession over the excess land and make them believe that it has been subjected to unfair treatment. If the factum of execution of lease agreement and its contents were disclosed to the Additional Commissioner, he would have definitely incorporated the same in order dated 30.5.2001. In that event, the High Court or for that reason this Court would have non suited the appellant at the threshold. However, by concealing a material fact, the appellant succeeded in persuading the High Court and this Court to entertain adventurous litigation instituted by it and pass interim orders. If either of the courts had been apprised of the fact that by virtue of lease deed dated 15.10.1994, the appellant has succeeded in securing temporary legitimacy for its possession over excess land, then there would have been no occasion for the High Court or this Court to entertain the writ petition or the special leave petition.

*It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person. In one of the earliest decisions on the subject i.e., - **R. v. Kensington Income Tax Commissioner (1917) 1 KB 486,***

Viscount Reading, Chief Justice of the Divisional Court observed:

"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 applicant was not candid and did not fairly state the 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. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."

In the circumstances of the case, this Court is of the view that such a frivolous petition is liable to be dismissed with costs. However, owing to the age of the petitioner, who claims to be a senior citizen, coupled with the repeated requests made by the learned counsel for the petitioner in this regard, costs are not being imposed on the petitioner with the hope that he will not indulge in such kind of unwarranted activity in future.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.

21.10.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No