

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10501 OF 2017

THE AGRICULTURAL PRODUCE MARKET COMMITTEE, DHULE.
THROUGH ITS SECRETARY AND ANOTHER.
VERSUS
PARASHRAM DAGA PATIL

...

Advocate for Petitioners : Shri Anjanwatikar Vinay B..
Advocate for Respondent : Shri Patil Shrikant S..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th August, 2017

Oral Order:

1 The Petitioner/APMC is aggrieved by the judgment of the Industrial Court dated 12.06.2017 by which Complaint (ULP) No.138/1997 has been allowed and the suspension order issued to the Respondent/ Employee dated 06.07.1981 has been set aside.

2 The operative part of the impugned order reads as under:-

- "1. *The complaint is allowed.*
2. *It is declared that the respondent has engaged in unfair labour practice by putting the complainant under suspension illegal. The respondent is directed to cease and desist from the said act in future.*
3. *It is declared that the suspension order dated 06.07.1981 is illegal and hence set aside.*
4. *The respondent is directed to pay all consequential arrears of pay and allowances including gratuity and*

pension to the complainant within 02 months from the date of this order, failing which, the amount shall carry interest @ 8% p.a. from the date of filing of the complaint till realization.

5. *The respondent shall also pay cost of this litigation of Rs.5000/- (Rupees Five Thousand only) to the complainant."*

3 I have considered the strenuous submissions of Shri Anjanwatikar, learned Advocate for the Petitioner on 23.08.2017 and today and the submissions of Shri Patil, learned Advocate appearing on behalf of the Respondent.

4 The Petitioner has primarily raised the following grounds:-

- (a) The Respondent was suspended by an order dated 06.07.1981.
- (b) The suspension was by way of punishment in eternity till the Respondent attended the age of retirement.
- (c) A departmental enquiry was conducted against the Respondent before awarding the punishment of suspension.
- (d) The Respondent could not have approached the Industrial Court for challenging his suspension in the light of Rule 102(v) and Rule 104 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 (for short "the 1967 Rules").
- (e) The Maharashtra Recognition of Trade Unions and Prevention

of Unfair Labour Practices Act, 1971 (for short "the MRTU & PULP Act, 1971") is not applicable to the Petitioner Organization.

- (f) The Respondent will not be entitled for any suspension allowance.
- (g) The Respondent owned a printing press and hence, he is not entitled to suspension allowance.

5 Learned Advocate for the Respondent/ Employee submits as under:-

- (a) No enquiry was conducted against him.
- (b) The Petitioner has failed to produce any document before the Industrial Court, which can be said to be a part of the domestic enquiry record.
- (c) No charge sheet was produced before the Industrial Court.
- (d) A copy of the purported enquiry report was also not produced before the Industrial Court.
- (e) No show cause notice was given to him, if at all any punishment was to be imposed.
- (f) The printing press at issue was being conducted by his wife and even while he was in employment, the printing press was being operated by his wife.

- (g) The Petitioner could not establish before the Industrial Court that the Respondent was drawing salary from the printing press or was in gainful employment.

6 After considering the submissions of the learned Advocates and upon going through the record available, I find the case in hand to be quite peculiar. In fact, it shocks my judicial conscience for the reasons recorded herein below.

7 Insofar as the contention of the Petitioner that the complaint under the MRTU & PULP Act, 1971 could not have been filed before the Industrial Court is concerned, the same is fallacious. The 1967 Rules of the APMC will not overbear the State of Maharashtra Legislation by which the MRTU & PULP Act, 1971 was brought into effect in 1975. Any person falling within the definition of "workman" under Section 2(s) of the Industrial Disputes Act, 1947 and the definition of "employee" under Section 3(5) of the MRTU & PULP Act, 1971, could file a complaint of unfair labour practice before the Labour Court to the extent of Item 1 of Schedule IV and before the Industrial Court to the extent of Schedules II, III and Items 2 to 10 of Schedule IV of the MRTU and PULP Act, 1971. The precondition was that the employer should also be an industry.

8 The Petitioner/ APMC is an industry in the light of the law laid down by the Seven Judges Bench of the Honourable Supreme Court

in the matter of The Bangalore Water Supply and Sewerage Board vs. A.Rajappa and others, AIR 1978 SC 548. In this backdrop, the contention of the Petitioner cannot be sustained that the MRTU & PULP Act, 1971 will not apply to the Petitioner.

9 Insofar as the contention that without exhausting the remedy of appeal under Rule 104 of the APMC Rules, the Respondent cannot approach the Industrial Court is concerned, the said argument is also unsustainable for the reason that Rule 104(1) does not make it mandatory for every employee to prefer an appeal to the Director and thereafter, to the State Government.

10 The Respondent was a Cashier and not a Manager or discharging Managerial functions. He was, therefore, a workman under Section 2(s) of the Industrial Disputes Act, 1947. He has approached the Industrial Court since the order of suspension was not preceded by any enquiry proceedings.

11 For the sake of clarity, Rule 102 and Rule 104 of the 1967 Rules read as under:-

"102. *Penalties.*

The following penalties may, for good and sufficient reasons, be imposed upon any officer or servant of a Market Committee, namely :-

- (i) *censure,*
- (ii) *withholding of increments or promotions including stoppage at an efficiency bar,*
- (iii) *reduction to a lower post or a time scale or to a lower*

- stage in a time scale,*
- (iv) *recovery from pay of the whole or part of any pecuniary loss caused to Market Committee by negligence or breach of orders,*
- (v) *suspension,*
- (vi) *removal from the service of the Market Committee which does not disqualify him from future employment, or*
- (vii) *dismissal from the service of the Market Committee which ordinarily disqualifies him from further employment,*
- (viii) *withdrawal of privileges, if any."*

"104. Appeal.

- (1) *Any person aggrieved by an order imposing any of the penalties referred to in rule 102 may, subject to the provisions of this rule, appeal to Director; and any such person aggrieved by the order of the Director may appeal to the State Government.*
- (2) *No appeal shall except for sufficient cause, be entertained after the expiry of 30 days from the date of communication in writing of the order which is appealed against.*
- (3) *Every appeal shall be made in the form of a petition in writing, and shall unless the appellate authority otherwise directs, be presented in person or sent by post."*

12 The word "may" is used in Rule 104(1). It precedes with a penalty being imposed on the employee under Rule 102. It cannot be said to be a mandate because it is a department appeal and the option of preferring an appeal is granted to the employee by using the word "may" and provided he is punished by imposition of a penalty.

13 Rule 102 indicates that the punishment of suspension can be imposed only after good and sufficient reasons are assigned by the

Petitioner.

14 Considering the above, I do not find that the complaint filed by the Respondent before the Industrial Court could be termed as being untenable in law and more so in the light of the view taken by the learned Division Bench of this Court in the matter of Agricultural Produce Marketing Committee, Umrer vs. Divisional Joint Registrar, Cooperative Societies, Nagpur and others, 2002 (2) Mh.L.J. 583.

15 This brings the case to the stage of scrutinizing whether, the contention of the Petitioner that the departmental enquiry was conducted against the Respondent and the order of suspension is by way of punishment/ penalty as he was held guilty of the charges levelled upon him.

16 The suspension order dated 06.07.1981 is self explanatory and would speak louder than words. Humans may lie, but documents would not lie. If the Petitioner indeed has conducted a departmental enquiry against the Respondent, the order of imposing penalty would have been preceded by a second show cause notice as the Petitioner contends that a grave and serious charge of misappropriation of about Rs.21,000/- was purportedly proved against the Respondent. The suspension order does not even whisper about any domestic enquiry having been conducted and the Respondent being punished for a proved misconduct. In fact, the suspension order which is in Marathi indicates that the Chairman of the

Petitioner concluded that the Respondent has misappropriated the money and hence, he stands suspended. It is thus, obvious that the Petitioner is taking a defence of having conducted an enquiry, only for self serving purposes and is in fact a blatant lie.

17 The Industrial Court has analyzed the evidence of the Petitioner through it's witness, namely, Gorakh Tulshiram Patil. The said evidence further exposes the falsehood resorted to by the Petitioner. On the one hand, the witness Gorakh stated that the Respondent had committed misappropriation and on the other hand, he admitted in cross-examination that no document proving misappropriation is available as that has been destroyed.

18 The witness Gorakh thereafter, stated that the departmental enquiry was conducted by appointing an independent Enquiry Officer. This would mean that a person unconnected with the Establishment was appointed as an Enquiry Officer. In cross-examination, Gorakh stated that the Chairman of the Petitioner/ APMC Dattatraya Bhadane was the Enquiry Officer and he conducted the enquiry. It is the same Chairman, who has issued the order of suspension dated 06.07.1981.

19 This again establishes that even if it is assumed for a moment that an enquiry was conducted, the Chairman of the Petitioner has allegedly conducted the enquiry and he himself has awarded the punishment of suspension. The Industrial Court has specifically analyzed

the evidence and recorded the finding that not a single piece of paper, which can be said to be the record of the departmental enquiry, was produced on record. This becomes more conspicuous in the light of the contention of the Respondent that he was straightaway suspended for time immemorial, without following the due procedure of law.

20 What intrigues me is that how could the Petitioner adopts a stand of having conducted the enquiry when the suspension order itself exposes the fact that no enquiry was conducted and the Respondent was never held guilty of any misconduct which can be said to have been proved by following the due procedure of law.

21 Considering the above, I find the instant case to be squarely covered by the observations of the Honourable Supreme Court in paragraphs 31 to 40 of the judgment delivered in the case of Kishore Samrite v/s State of Uttar Pradesh, (2013) 2 SCC 398, which read as under:-

“Abuse of the process of Court :

31. *Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision.*
32. *The cases of abuse of the process of court and such*

allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:-

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) 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.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of

serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(vii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer : Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chaufal & Ors. (2010) 3 SCC 402].

33. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R. Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141, the Court held:-

"15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic 'human-right' of a system which purports to guarantee legal rights."

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical.

Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition.”

34. *It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.*
35. *With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.*

36. *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". (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287]).*
37. *The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.*

38. *No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].*
39. *Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530).*
40. *In light of these settled principles, if we examine the facts of the present case, next friends in both the petitions are guilty of suppressing material facts, approaching the court with unclean hands, filing petitions with ulterior motive and finally for abusing the process of the court."*

22 Considering the above, it is apparent that the Petitioner has resorted to falsehood and the Respondent has suffered suspension without payment of a single penny from 1981 till he is superannuated in 1997.

23 The Petitioner has raised one more ground that the complaint filed by the Respondent was barred by limitation. The said contention also appears to be fallacious for the reason that an illegal suspension which

continued on day to day basis amounts to a suspension on each day. Though this rendered the Respondent/ Employee entitled for suspension allowance for each day of suspension imposed upon him, it would be a recurring/ continuous cause of action.

24 Insofar as the gainful employment of the Respondent is concerned, the onus and burden of proving gainful employment lies on the party that alleges such employment. One, who alleges, has to prove, is the law. The Respondent has proved before the Industrial Court that the printing press was operated by his wife and the press was operational even when the Respondent was in employment of the Petitioner. It is, therefore, not a case of the Respondent having taken up a fresh employment after the suspension order was issued to him. So also, the onus and burden lies on the Petitioner to prove that the Respondent had acquired employment in the printing press or that he was the proprietor and owner of the printing press and that the said printing press was started after he was placed under suspension. If the press was a family business and which continued even when the Respondent was in employment, cannot be a ground for depriving the Respondent of the suspension allowance or back wages.

25 Considering the above, this Writ Petition is devoid of merit and stands dismissed.

26 However, I cannot turn a blind eye and be a silent spectator to

an act of falsehood resorted to by the Petitioner. The Petitioner has tried to mislead the Industrial Court that a domestic enquiry was conducted when none was conducted. The same is being canvassed before this Court. This falsehood is exposed for the reasons stated above. This act of falsehood and trying to mislead the Industrial Court as well as this Court is unpardonable and cannot be countenanced in the light of the observations of the Honourable Supreme Court in the matter of Kishore Samrite (supra).

27 As such, this Writ Petition is dismissed by imposing costs of Rs.50,000/- (Rupees Fifty Thousand) on the Petitioner. The same shall be deposited before the Industrial Court at Dhule within a period of FOUR WEEKS from today and the Respondent would be at liberty to withdraw the said amount without conditions.

28 In the event of failure to deposit the said amount, the Respondent would be at liberty to initiate appropriate proceedings for disobedience of the Court's order.

29 Before parting with this matter, I deem it proper to express my anxiety and doubt about Rule 102(v) of the 1967 Rules, which prescribes a penalty by way of suspension. The said Rule does not speak of any duration of the suspension. The suspension is normally construed to be a minor punishment under various enactments especially in Labour, Industrial and Service Industry. The unlimited suspension without wages

as a penalty and as like in this case, which was continued for 17 years, is unheard of. I am, therefore, of the view that the Petitioner/ APMC should initiate steps for suitably amending Rule 102(v) of the 1967 Rules.

30 The Registrar (Judicial) of this Court shall forward a copy of this order to the Principal Secretary, Department of Agriculture, State of Maharashtra for perusal and necessary action.

kps

(RAVINDRA V. GHUGE, J.)