

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

WRIT PETITION NO. 1092 OF 2018

SANGITA AMBADAS KHANDAGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri Kakde Yuvraj V.
AGP for Respondents 1 to 4 : Shri S.K.Tambe.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 31st January, 2018

ORAL ORDER :

1 The Petitioner is aggrieved by the order dated 16.09.2016 delivered by Respondent No.3/ Additional Collector, Ahmednagar by which, the Petitioner has been disqualified under Section 14(1)(j-1) of the Maharashtra Village Panchayats Act for having more than two children. The Petitioner is further aggrieved by the judgment of Respondent No.2/ Additional Divisional Commissioner dated 10.08.2017 by which, the judgment of the Additional Collector is confirmed and the disqualification is sustained.

2 This Writ Petition was heard at length on 30.01.2018 and today. After the hearing was concluded, the learned Advocate for the Petitioner prayed for leave to withdraw this petition. It is in the peculiar

facts of this case and in the larger interest of the society that I am refusing leave to the Petitioner to withdraw this petition. The reasons for such refusal would follow in this order.

3 I have considered the strenuous submissions of the learned Advocate for the Petitioner, who has criticized the impugned judgments. I have also considered the submissions of Shri Tambe, learned AGP, who submits that the players in the political arena have become emboldened to defraud and hoodwink the law and such tendency has grown. This has become a disease and the time has come that the Courts should take a strict view about the frauds being played by the citizens when it comes to the declaration of children or the dates of birth of children, only to advance their political aspirations.

4 The Petitioner has taken a specific stand, which is as under:-

- (a) First son Akshay was born on 18.08.1997.
- (b) Second son Pravin was born on 10.08.1999.
- (c) Third child, who is a girl child Komal, is born on 02.09.2001.
- (d) The Petitioner was elected as a member of the Village Panchayat, Kolgaon, Taluka Shevgaon, District Ahmednagar in 2001.
- (e) Her husband was elected as a member of the said Village Panchayat in 2010.
- (f) The Petitioner was once again elected as a member of the said

Village Panchayat on 12.09.2015.

- (g) Her husband applied for correction of the date of birth of Komal from 07.12.2001 to 02.09.2001 and the said advertisement was published in the Gazette of the State of Maharashtra.
- (h) An application was made by the husband of the Petitioner on 23.07.2015 to the Education Officer for seeking such correction of her date of birth.
- (i) An affidavit was sworn before the Tahasildar-cum- Taluka Executive Magistrate by the husband of the Petitioner on 23.07.2015 stating that the date of birth of Komal was 02.09.2001 and not 07.12.2001.
- (j) The medical certificate was obtained from a Hospital known as Dr.Kamble's Hospital, Shevgaon, District Ahmednagar to indicate that Komal was born on 02.09.2001 in the said hospital.
- (k) The bonafide certificate of Komal was corrected on 18.06.2016 and the date of birth of Komal was corrected from 07.12.2001 to 02.09.2001.

5 The record of the enquiry conducted by the District Collector, in order to properly assess the contentions of the Petitioner and the

Complainant, reveals the following aspects :-

- (a) The Petitioner and her husband had approached the competent authority which maintains the birth and death register as soon as Komal was born and have recorded in the said register that her date of birth is 07.12.2001.
- (b) The date of birth of Komal was, therefore, recorded with the school as 07.12.2001.
- (c) The enquiry conducted with Dr.Kamble's Hospital revealed that it did not have any record pertaining to the birth of Komal in their hospital and yet, the certificate was issued that Komal was born on 02.09.2001, only to suit the Petitioner.
- (d) This Court, by order dated 30.07.2015 in Writ Petition No.7503/2015 filed by the original Complainant Arun Chataru Khandagale against this Petitioner, had made a prima facie observation that there appears to be a dispute with regard to the birth of the third child Komal and that needs to be investigated.
- (e) The husband of the Petitioner has sworn in the affidavit dated 23.07.2015 that if it is found that the date of birth of Komal is 07.12.2001 and not 02.09.2001, he shall be liable for criminal prosecution and punishment under Sections 193, 199 and 200 of the Indian Penal Code.

- (f) The Headmaster of Shri Tukaram Patil Gadakh Vidyalaya, Hasnapur, Taluka Shevgaon, District Ahmednagar has issued a fresh bonafide certificate on 18.06.2016 mentioning the date of birth of Komal as 02.09.2001 on an application made by the husband of the Petitioner on 27.08.2015.
- (g) The said correction is made on the basis of the advertisement published in the Maharashtra Gazette and the affidavit.
- (h) The Maharashtra Gazette placed on record carries an important cautionary note that the contents of the said advertisement would not bind the State Government and the State Government does not confirm that the contents of the advertisement are true and correct.
- (i) It is in this Maharashtra State Gazette dated 05.08.2010 that the husband of the Petitioner merely declared that the date of birth of Komal is changed from 07.12.2001 to 02.09.2001.
- (j) Based on the above, the District Collector concluded that the Petitioner has attempted to create the record to indicate that the date of birth of Komal is before the cut off date prescribed under Section 14(1)(j-1), which is 12.09.2001 (with an exemption period of one year from 13.09.2000).

this petition are as under:-

- (a) The Petitioner and her husband have left no stone unturned to dishonestly change the date of birth of Komal from 07.12.2001 to 02.09.2001 only to advance their political aspirations.
- (b) In the above backdrop, the Petitioner and her husband contested the proceedings before the Additional Collector, Additional Divisional Commissioner and even before this Court hoping that two authorities or even this Court could be misled or hoodwinked to secure an order confirming Komal's date of birth as 02.09.2001.
- (c) The authorities like the School Headmaster or a Doctor operating the hospital or citizens, who are in political arena or outside, should not be emboldened by playing a fraud on the system and then digest such fraud by tendering an apology by seeking withdrawal of the petition.
- (d) As has been rightly canvassed by the learned AGP, I find that such tendencies have assumed epidemic proportions. Fear of the rule of law must strike in the hearts of all dishonest citizens so as to ensure that they should not dare to defraud the system and attempt to abuse the process of law.

7 It is obvious from the record that firstly, the husband of the Petitioner had sworn an affidavit on 23.07.2015 stating the falsehood about the date of birth of Komal. Secondly, he also got an advertisement published in the Government Gazette on 05.08.2010 changing the date of birth of Komal. Thirdly, apparently under his influence, the Headmaster issued a fresh bonafide certificate dated 18.06.2016 showing the date of birth of Komal as 02.09.2001. Fourthly, Dr.Kamble's Hospital has also issued a certificate, without there being any record about her birth, during the proceedings before the Additional Collector and till this date, indicating that Komal was born on 02.09.2001. It is quite possible that after the passing of this order, Dr.Kamble's Hospital now may create a fresh record.

8 Considering the above factors, I do not find that the impugned orders could be termed as being perverse or erroneous. As such, this Writ Petition is dismissed.

9 However, I would be failing in my duties if I turn a blind eye to the fraud played by the Petitioner and her husband (Ambadas Khandagale), Chief Doctor of Dr.Kamble's Hospital and the Headmaster of Shri Tukaram Patil Gadakh Vidyalaya.

10 The Honourable Supreme Court, in the matter of S.P.Chengalvaraya Naidu vs. Jagannath and others, (1994) 1 SCC 1, has dealt with an act of fraud on the court and has observed on the said aspect

in paragraph 6 as under:-

"6. *The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.*"

11 The Honourable Supreme Court, in the matter of Kishore Samrite v/s State of Uttar Pradesh, (2013) 2 SCC 398, has observed in strict words that a litigant should not be permitted to play mischief for seeking benefits from the Court. Relevant observations of the Apex Court read thus:-

“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:-*
 - 32.1 *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.*
 - 32.2 *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.*
 - 32.3 *The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.*
 - 32.4 *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.

32.5 *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.*

32.6 *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.*

32.7 *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.*

32.8 *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 locupletiore, 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.”*

12 The Honourable Supreme Court, in the matter of Dnyandeo Sabaji Naik and another vs. Pradnya Prakash Khadekar and others, (2017).

5 SCC 496, has observed in paragraphs 13 and 14 as under:-

- "13. *This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.*
14. *Courts across the legal system - this Court not being an exception – are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the*

balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."

13 In this backdrop, in order to ensure that clean persons remain in the political arena and, for that reason, in all walks of life, I am directing the Collector, Ahmednagar, to lodge a criminal offence with the concerned Police Station against the Petitioner, her husband (Ambadas Khandagale), Chief Doctor of Dr.Kamble's Hospital and the concerned

Headmaster of Shri Tukaram Patil Gadakh Vidyalaya, within TWO WEEKS from today.

14 Needless to state, after lodging the criminal offence, the Police Authorities would cause an investigation and deal with the offence against those stated above, by following the procedure laid down in law.

15 Needless to state further, the Collector, Ahmednagar shall report compliance of these directions within FOUR WEEKS from today to the Registrar (Judicial) of this Court, Aurangabad Bench.

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(RAVINDRA V. GHUGE, J.)