

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.35352 OF 2017

DATED :07.02.2018

Between :

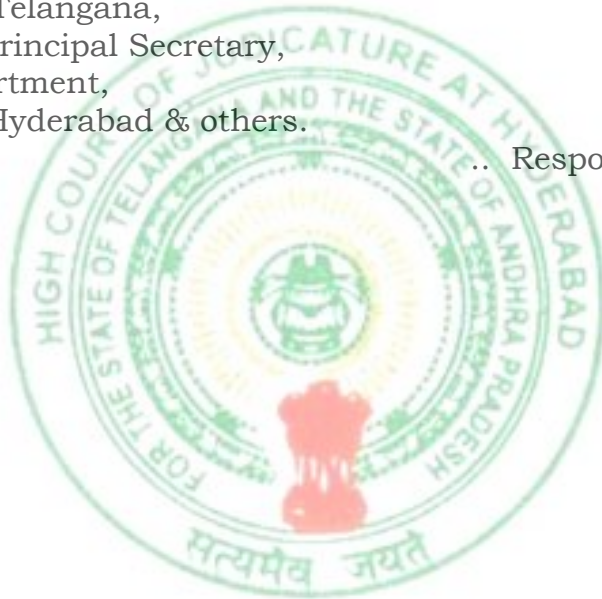
Mohammed Habeeb Shareef S/o.Mohammed Ismail Shareef,
Aged about 29 yrs, Occu : Proprietor Hai Zoom Ac
And Car Mechanic Works, R/o.Plot No.7,
Mehrajanagar, Allapur, Borabanda, Hyderabad.

.. Petitioner

And

The State of Telangana,
Rep., by its Principal Secretary,
Energy Department,
Secretariat, Hyderabad & others.

... Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.35352 OF 2017

ORDER :

This writ petition is filed alleging disconnection of electricity supply service bearing Unique Service Number (USC) 109636284, in Plot No.365, Diamond Hills, Gachibowli, Sherlingampally, Ranga Reddy District.

2. Petitioner claims to be tenant of above mentioned property and respondents 5 and 6 are owners of the said property. The tenancy was granted to the petitioner with effect from 25.11.2013. The electric power supply was earlier standing as a domestic power supply connection, later converted into commercial category. It appears there are disputes between the owner and the tenant-petitioner herein. The petitioner filed O.S.No.480 of 2016 on the file of Additional Junior Civil Judge, Cyberabad, Kukatpally at Miyapur. In the said suit, injunction was granted in I.A.No.896 of 2016 against interference by the owner of the property. While so, the Southern Power Distribution Company Limited, which supplies electricity to the subject property disconnected power supply on the request of owner of the building in whose name power supply connection stands.

3. In the writ petition, petitioner contended that the civil Court has granted injunction order in his favour; that the commercial category connection was obtained by the tenant and he is paying the electricity charges and that there are no dues. Having regard to the submissions made, this Court while issuing notice before

admission, directed restoration of electricity supply, subject to petitioner paying the regular electricity charges.

4. Praying to vacate the said interim order, the unofficial respondents 5 and 6 filed W.V.M.P.No.4566 of 2017.

5. Heard learned counsel for the petitioner, learned Standing counsel for Respondents 2 to 4 and Ms.Hamsa Devineni, learned counsel for the unofficial respondents 5 and 6.

6. Learned counsel for the petitioner contends that subject premises where electricity supply connection stands was leased to petitioner and there are no dues on the said electricity connection. Therefore, the distribution company cannot disconnect power supply and at any rate without putting petitioner on notice and without affording due opportunity. Even if electricity connection is standing in the name of owner of the property, petitioner being the consumer he must be put on notice before taking any penal action and disconnection of power supply is *ex-facie* illegal. In support of the contention that even if electricity connection is standing in the name of the owner, there cannot be disconnection without following due procedure of putting. Reliance is placed on the decision of Calcutta High Court in **“Ashit Kumar Palit Vs West Bengal Steel Electricity Distribution Company Ltd., and others¹”**, and the decision of Karnataka High Court in **“Noble Plastic Industry Vs Karnataka Power Transmission²”**.

7. Learned Standing counsel for the respondent-Company do not dispute the contention of learned counsel for the petitioner that the tenant is a consumer and ordinarily the power supply

¹ 2009 0 AIR (Cal) 1

² AIR 2000 (6) Kar LJ 410

connection is not disconnected without putting tenant on notice and that company was not aware that tenant is in occupation of subject premises. He also does not dispute that there are no arrears of electricity charges.

8. *Per contra*, learned counsel representing unofficial respondents submits that tenancy granted was only for 11 months and after lapse of tenancy, no renewal was granted and tenant is illegally occupying premises and defaulted in paying rents. Aggrieved by the conduct of petitioner, unofficial respondents filed O.S.No.541 of 2017 praying to grant decree of eviction and it is pending on the file of I-Additional Senior Civil Judge, Ranga Reddy District. She would further submit that aggrieved by injunction order granted in I.A.No.896/2016, unofficial respondents moved application to vacate injunction order. On detail consideration of respective contentions, trial Court vacated injunction order. She pointed out that injunction order was vacated holding that there was suppression of true and correct facts by the petitioner. She further submitted that in the instant case, true and correct facts are not placed before this Court. The factum of vacation of injunction order which was passed on 31.03.2017 was not placed on record and was not stated. But the earlier injunction order was filed and mention was also made in the affidavit about injunction order granted. She further submits that contention of petitioner that domestic electricity connection was converted into commercial category by the petitioner was also a wrong statement. She therefore, points out that these two statements would clearly show suppression of true facts and misleading the Court by making the said statements an *ex-parte* order was obtained by the petitioner.

She therefore, submits that on the ground of suppression and non-disclosure of true and correct facts, petitioner is disentitled to get the equitable relief under Article 226 of the Constitution of India and that writ petition is liable to be dismissed on that ground alone. In support of the said contention, she placed reliance on the decision of the Hon'ble Supreme Court in ***"K.D.Sharma Vs Steel Authority of India Ltd., & others"***³.

9. In response to the said contention learned counsel for the petitioner submits that non-disclosure of vacation of injunction order and the statement that power supply connection was converted into commercial category by the petitioner was not intended to mislead the Court and they were made only due to ignorance and over sight. He would submit that said statements are not material to the issue involved in this writ petition. Issue involved in the writ petition is with reference to disconnection of power supply to the subject premises without putting consumer on notice and petitioner as tenant of subject premises is consumer and therefore, the writ petition needs to be considered on that issue. Issue of rival claims on the tenancy has no bearing to the issue involved in this writ petition. He would further submit that petitioner is in occupation of subject premises is not in dispute and therefore on the said premise writ petition need not be dismissed. In support of said contention, he placed reliance on ***"Arunima Baruah Vs Union of India & others"***⁴ and ***S.J.S.Business Enterprises (P) Ltd., Vs State of Bihar and others"***⁵.

³ 2008 (12) SCC 481

⁴ 2007 6 SCC 120

⁵ (2004) 7 SCC 166

10. The issue of petitioner is in occupation of the subject premises and that the electrical power supply was disconnected without notice to the petitioner are not in dispute. The distribution company also does not dispute the fact that there are no arrears in payment of electricity charges. In fact, learned Standing counsel is fair in submitting that if the company was aware of occupation of the subject premises by tenant, they would not have disconnected power supply without putting the petitioner on notice.

11. However, the only issue for consideration is maintainability of writ petition in the light of averments made by petitioner and contention urged by learned counsel representing the unofficial respondents on non-disclosure of true and correct facts. In other words, whether averments made in the affidavit filed in support of the writ petition would amount to deliberate and wilful suppression of material facts which have a bearing on grant of equitable relief by the writ Court.

12. In paragraph No.2 of the affidavit, petitioner stated that he is a tenant of subject premises and is running a work shop. In paragraph No.3 it is stated that earlier electricity power supply was under domestic category. Since he is carrying on commercial activity, he got it converted into commercial category. In Paragraph No.4, he stated that aggrieved by action of owner of the property, he filed O.S.No.480 of 2016 to grant perpetual injunction and in I.A.No.896 of 2016, he was granted *Ad-Interim* injunction.

13. It is not in dispute that said injunction order was vacated by order dated 31.03.2017. This writ petition was filed on 20.10.2017 i.e., much later to vacation of injunction order. Along with the writ

petition, petitioner has enclosed injunction order granted to him on 07.12.2016 and averments are made in the affidavit accordingly. In other words, petitioner has not disclosed the subsequent vacation of injunction order but asserted as if injunction order was granted in his favour and the same is in force.

14. As rightly pointed out by learned counsel for the unofficial respondents, these two are clear mis-statement of facts and amounts to non-disclosure of true and correct position.

15. The question is whether non-disclosure of these two aspects are material for consideration of issue in the writ petition?

16. Scope of writ jurisdiction under Article 226 of the Constitution of India and conduct of parties invoking extraordinary jurisdiction/equitable jurisdiction of this Court under Article 226 was elaborately dealt with by the Division Bench of this Court in ***Mohammadiya Educational Society, Ramarajupally, YSR Kadapa District, Andhra Pradesh and another Vs Union of India and others***⁶. Petitioners therein filed W.P.No.31371 of 2015 to declare action of respondents therein in rejecting to grant recognition/approval to 2nd petitioner-Medical College, as unconstitutional and sought for consequential reliefs. The very same petitioners also filed W.P.(C) No.9215 of 2015 in the Delhi High Court praying to grant almost identical relief. Thus, objection was raised on maintainability of second writ petition before this Court on the same issue and institution of writ petitions before two high courts by the same party praying to grant same reliefs. It was contended that this amounts to clear suppression of true and

⁶ 2016 (4) ALD 464 (DB)

correct facts and on that ground alone the party is disentitled to claim any relief from the writ Court. In the light of the said contentions, issue of maintainability of writ petition vis-à-vis the conduct of the parties was elaborately considered by the Division Bench. It is appropriate to note the observations of the Division Bench in paragraphs 29, 30, 33, 33 (A) & (B). They read as under:

29. Remedy under Article 226 of the Constitution is an extraordinary remedy available to every aggrieved person. In exercise of this power, writ Court stretches its hand to reach out wherever injustice is caused and in whatever manner injustice is meted out. The remedy under Article 226 is equitable and discretionary. The writ Court has no bounds in issuing prerogative writs except self imposed restraint. To exercise such extraordinary remedy, the Court expects the person coming before it to be fair and frank in stating the facts which constitute cause of action to ventilate his grievance, leaving it to Court to decide whether relief can be granted and if so, what relief. Thus, the minimum that is required by petitioner, knocking the doors of the High Court under Article 226 of the Constitution, is to state the true and correct facts and project the grievance.

30. Court would be disinclined to lean in favour of a petitioner to grant equitable relief who do not disclose the true facts, tries to mislead the Court or suppress true facts deliberately in order to gain undue advantage while invoking the writ Court to exercise extraordinary jurisdiction under Article 226 of the Constitution.

33. In **K.D.Sharma**, Supreme Court observed that the party invoking extraordinary jurisdiction of writ Court is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “**hide and seek**” or to “**pick and choose**” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts” (paragraph 38).

33.A. It would be relevant to reproduce paragraphs 34 to 39 **K.D.Sharma** (supra), which read thus:

34. 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.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commrs. (1917) 1 KB 486* in the following words: (KB p. 514)

“... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.”

(Emphasis supplied)

36. 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 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 by stating, “We will not listen to your application because of what you have done.”* The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.* Viscount Reading, C.J. observed: (KB pp. 495-96)

“... 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 application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true 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 the 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.*”

(Emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, *the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot*

be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.

39. If the primary object as highlighted in *Kensington Income Tax Commrs.* is kept in mind, *an applicant 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 not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

(Emphasis supplied)

33.B. In **Prestige Lights Limited v. SBI, (2007) 8 SCC 449** the Supreme Court observed that *“in exercising power under Article 226 of the Constitution of India the High Court is not just a ‘Court of Appeal’, but it is also a ‘Court of Equity’ and a person who invokes the High Court’s jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. The High Court would be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution if there is suppression of material facts or if the facts are twisted.”*

17. Learned counsel for petitioner placed reliance on the decision of the Hon’ble Supreme Court in the Case of **Arunima Baruah**, to contend that non-disclosure of the facts noted above by the Court are not material facts to disentitle relief to the writ petitioner. In **Arunima Baruah** the Supreme Court followed the earlier decision in **S.J.S.Business Enterprises (P) Ltd.**

18. In both the cases the party has invoked jurisdiction of the civil Court and thereafter instituted writ petitions on the same cause of action. Holding that parties have not disclosed institution of suits in the writ petitions respectively, in both cases the High

Court declared that non-disclosure would amount to suppression and therefore, the writ petitions are not maintainable.

19. The Hon'ble Supreme Court noticed that by the time the writ petitions were taken up for consideration the civil suits were already dismissed as withdrawn and they were not pending. In **Arunima Baruah**, the application for withdrawal of the suit was filed even before the suit came up for preliminary hearing but was not actually withdrawn as the advocates were on strike during that period and later it was withdrawn. However, in both cases, by the time the writ petitions were taken up for consideration before the respective high Courts, the suits were withdrawn.

20. The Hon'ble Supreme Court noticed that the issue was with reference to availing of alternative remedy before invoking the jurisdiction of the High Court; that there is no absolute bar in instituting writ petition even if party has an alternative and efficacious remedy and availed such remedy; that ordinarily writ Court does not entertain writ petition, if the alternative remedy is available. Having regard to the fact that suits were already dismissed as withdrawn by the time the writ petitions were taken up for consideration, the Supreme Court held that the High Court ought not to have dismissed the writ petitions, respectively, on that ground.

21. As noted above, the petitioner pleaded in the affidavit filed in support of the writ petition that an injunction order was granted, and that commercial power supply connection was obtained by him. These are the two material facts which would persuade Court to grant an order at interlocutory stage. It is pertinent to note that

in the instant case power supply was disconnected to the petitioner on 23.07.2017, whereas, writ petition was instituted on 20.10.2017 i.e., almost three months after the disconnection. Much before writ petition was filed the injunction order was vacated. In the normal circumstances, the Court could not have been persuaded to grant an *ex-parte* order, if these facts are disclosed, more so, when power supply was already disconnected. Thus, in the facts of this case, as held by the Division Bench referred to supra, it amounts to non-disclosure of true and correct facts and that the petitioner has not come to this Court with clean hands.

22. At this stage, it is also appropriate to note that the civil Court also noticed that in obtaining injunction order, the petitioner has not disclosed true facts and the civil Court took exception to non-disclosure of true and correct facts and held that persons approaching with unclean hands are not entitled to any relief and vacated the injunction order.

23. Having faced adverse order from the civil Court on the allegation of suppression, petitioner could not have repeated the said mistake before this Court and should have been more diligent.

24. Having regard to the facts of this case, it cannot be said that non-disclosure of facts noted above, cannot be said as due to oversight or unintentional to entertain the writ petition. As noted by the Division Bench, in ***Mohammadiya Educational Society***, the Court expects a person coming before the Court to be fair and frank in stating the facts which constitute cause of action to ventilate his grievance, leaving it to the Court to decide whether the relief can be granted, if so, in what manner. Therefore, the

minimum requirement for a person knocking the doors of the Court under Article 226 of the Constitution of India is to state the true and correct facts and then project the grievance. As fairly submitted by learned Standing counsel, even if the rift between tenant and the owner, and institution of two rival suits are disclosed, probably petitioner could have got the relief against disconnection of power supply. Therefore, there is no justification for the petitioner not to disclose true and correct facts, which were within his knowledge and was fully aware of consequences of non-disclosure of facts relevant for the case.

25. Thus, having regard to the facts noted above and following the decision of the Division Bench referred to supra, petitioner is disentitled to maintain the writ petition and the writ petition is liable to be dismissed on this ground.

26. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

7th February, 2018
Rds

P.NAVEEN RAO,J