

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION NO.39291 OF 2018

%13.11.2018

Siva Pavani Filling Station, rep.by its Partner,
C.Radha Krishnam Raju, s/o. Ramachandra Raju,
Aged 53 years, r/o. Sy.No.254/2, AIR Bypass Road,
M.R.Palle Road, Tirupati, Chittoor district,
Andhra Pradesh.

...Petitioner

Vs.

\$ State of Andhra Pradesh, rep.by its Prl.Secretary,
Civil Supplies Department, Vijayawada, Krishna
District and others.

...Respondents

!Counsel for the petitioner(s) : Sri C.Raghu

Counsel for the Respondent(s) : Govt.Pleader for Civil Supplies
(AP) for respondents 1 & 2;
Sri K.Murali Krishna for R3.

<Gist :

>Head Note:

? Cases referred:

(2008) 12 SCC 481
(2007) 8 SCC 449
(2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324
(1917) 1 K.B. 486



**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.39291 OF 2018

Between:

Siva Pavani Filling Station, rep.by its Partner,
C.Radha Krishnam Raju, s/o. Ramachandra Raju,
Aged 53 years, r/o. Sy.No.254/2, AIR Bypass Road,
M.R.Palle Road, Tirupati, Chittoor district,
Andhra Pradesh.

.....Petitioner

and

State of Andhra Pradesh, rep.by its Prl.Secretary,
Civil Supplies Department, Vijayawada, Krishna
District and others.

.....Respondents

JUDGMENT PRONOUNCED ON : 13.11.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : YES
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked :
to Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to :
see fair Copy of the Judgment ? :NO

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO. 39291 OF 2018

ORAL ORDER:-

This writ petition is filed praying to grant the following relief:

“.....to issue a Writ of Mandamus or any other appropriate writ order or direction declaring the action of the 2nd respondent in not considering the application submitted by the petitioner dated 17.08.2018 acknowledged by the 2nd respondent on 20.08.2018 for grant of Form -B license in relation to the existing retail outlet of the petitioner in Sy.No.254/2 Tirupati Chittoor District as illegal and arbitrary and pass....”

2. The license to run retail petroleum outlet of Hindustan Petroleum Corporation Limited (HPCL) in Tirupati is mired in controversy. Brothers-in-law are at loggerheads. Before appreciating the prayer in the writ petition, it is necessary to note the history of the controversy and litigation that ensued.

2.1. Material on record would disclose that Sri G.Venkatramaraju, father-in-law of Sri C.Radha Krishnam Raju and Smt C.Madhavi wife of C.Radha Krishnam Raju entered into lease agreement dated 15.12.2003 with M/s Sivapavani Filling Station to lease out land in Survey No.254/2 of MR Palli panchayat of Tirupathi mandal for 15 years which will end on 30.11.2018. In turn, the firm entered into lease agreement with Hindustan Petroleum Corporation Limited (for short HPCL) on 16.12.2003 to establish and run retail petroleum outlet. Vide document dated 29.4.2004, the earlier lease agreement was cancelled. Similarly, the lease agreement with HPCL was also cancelled vide document dated 29.12.2004. Simultaneously, fresh lease agreements were entered into with the owners of the property and HPCL as the case may be. The Joint Collector being the competent authority issued

Form-B licence under A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 to run the retail outlet in favour of M/s Sivapavani Filling Station represented by Sri G Sridhar Raju/brother-in-law of C Radha Krishnam Raju, who filed complaint to the Joint Collector, Chittoor to cancel the Form-B issued in favour of M/s Sivapavani Filling Station alleging that C Radha Krishnam Raju illegally entered his name in the Form-B license originally issued in favour of Sri K Manoj Kumar Reddy and has fabricated the documents in his favour to grab the dealership. On 22.6.2017 the Joint Collector suspended the Form-B license.

2.2. Challenging the order of suspension C Radha Krishnam Raju filed W.P.No.20961 of 2017. The said writ petition was disposed of by order dated 12.6.2017 setting aside the order of suspension dated 22.6.2017. Aggrieved thereby, G Sridhar Raju filed W A No. 1036 of 2017. Said writ appeal was disposed of on 27.7.2017 setting aside the order of the learned single Judge and granting liberty to the Joint Collector to give opportunity to all the parties and to pass orders. By order dated 18.11.2017, the Joint Collector passed final orders cancelling the Form-B license issued to M/s Sivapavani Filling Station. This order of Joint Collector was challenged in W P No. 39768 of 2017 by M/s Sivapavani Filling Station represented by C Radha Krishnam Raju. Since remedy of appeal is available against the order of cancellation, the Court was not inclined to entertain the writ petition and disposed of the writ petition granting liberty to the petitioner to avail the remedy available. C.Radha Krishnam Raju claiming as partner of M/s Sivapavani Filling Station preferred appeal before the Commissioner of Civil Supplies. G Sridhar Raju was also heard

and the Commissioner by order dated 8.8.2018 affirmed the decision of the Joint Collector cancelling the Form-B license. However, he issued direction to Joint Collector to issue fresh Form-B license. Aggrieved by this portion of the order of the Commissioner of Civil Supplies directing the Joint Collector to issue fresh Form-B license G Sridhar Raju filed W.P.No.36972 of 2018. This Court by order dated 11.10.2018 made in IA No.1 of 2018 granted interim suspension of the order impugned to the extent Commissioner directing Joint Collector to issue fresh Form-B license. The petitioner herein is 5th respondent in the said writ petition. The said writ petition is pending consideration of this Court. While so, HPCL submitted application to Joint Collector, Chittoor on 17.8.2018 to issue Form-B license referring to the orders passed by the Commissioner of Civil Supplies dated 8.8.2018. Alleging inaction on the said application to grant Form-B license, this writ petition is filed by M/s Sivapavani Filling Station represented by C Radha Krishnam Raju.

3. The application dated 17.8.2018 is made based on the directions issued by the Commissioner of Civil Supplies to the Joint Collector to issue fresh Form-B license in his orders dated 8.8.2018 while disposing the appeal preferred by C.Radha Krishnam Raju. This very direction was challenged in W.P.No.36972 of 2018 and this Court suspended the direction issued by the Commissioner of Civil Supplies.

4. It is noted from record that in independent writ petition M/s Sivapavani Filling Station seek to issue writ of mandamus to declare the action of the second respondent in not

considering the application submitted on 17.8.2018 for issuing Form-B license which prayer is contrary to the interim orders passed by this Court in W.P.No.36972 of 2018. Further Sri G.Sridhar Raju who is petitioner in WP No. 36972 of 2018 and who has been contesting the legality of Form-B license in the name of C.Radha Krishnam Raju as illegal and who has been fighting the litigation against petitioner firm and Sri C.Radha Krishna Raju is not made a party to this writ petition. Further C Radha Krishnam Raju is 5th respondent in W P No. 36972 of 2018. In paragraph 6 of the affidavit filed in support of the writ petition, C Radha Krishnam Raju deposed that aggrieved by the stay granted by this Court, he filed Vacate petition in IA No. 2 of 2018 in WP 36972 of 2018 and same is pending. Having regard to the controversy, feud between two family members and history of litigation noted above, learned counsel for petitioner was requested to address the Court on maintainability of the writ petition.

5. According to learned counsel for petitioner, though the directions issued by the Commissioner of Civil Supplies directing the Joint Collector, Chittoor to issue fresh Form-B licenses is suspended, on expiry of the existing license, independently the person in whose favour license was granted earlier can apply for issuance of fresh license, therefore application made on 17.8.2018 is maintainable and not considering the said application would amount to arbitrary exercise of power and authority by the second respondent Joint Collector. He would submit that this writ petition is filed alleging inaction of the Joint Collector on the application made by HPCL and, therefore, writ petition is maintainable. He would submit that even assuming that such

application is not maintainable in view of the stay granted by this Court, the Joint Collector ought to have passed orders instead of keeping the application pending. Learned counsel therefore submits that notwithstanding pendency of WP No.36972 of 2018, wherein stay of the orders directing the Joint Collector to issue fresh Form-B license is in operation, the application submitted by HPCL on 17.8.2018 is validly made in accordance with Order, 1980. He would submit that petitioner has not suppressed material facts and by referring to averments in paragraph 6 of the writ petition, he would submit that earlier writ petition filed by G.Sridhar Raju is disclosed, thus, petitioner has not filed the writ petition making wrong averments/without disclosing the true and correct facts to obtain an order. He would submit that Sri G.Sridhar Raju need not be a party to this writ petition as grievance of petitioner is against inaction of Joint Collector in passing orders on the application dated 17.08.2018.

6. G.Sridhar Raju alleged that in his absence his brother-in-law surreptitiously entered his name in Form-B license and that without his consent and knowledge, Sri C.Radha Krishnam Raju and K.Manoj Kumar Reddy entered into a partnership on 1.4.2008 claiming that M/s Sivapavani Filling Station is a partnership firm even though by that date father of G.Sridhar Raju and father-in-law of Sri C.Radha Krishnam Raju died and the original partnership came to an end on 29.4.2004; C.Radha Krishnam Raju was swallowing the profits of the property belonging to him and indulging in making unlawful gains.

7. The contentions of G.Sridhar Raju were accepted by Joint Collector and passed orders on 18.11.2017 cancelling the Form-B license. It is relevant to note the observations and conclusions recorded by the Joint Collector in his order, they read as under:

“Hence, the Dealership Agreement dated 4.1.2005 is between the M/s.Hindustan Petroleum Corporation Limited and M/s. M/s Sivapavani Filling Station, a partnership firm with K Manoj Kumar Reddy and C.Radha Krishnam Raju is no way related to the petrol bunk located at Sy No. 254/2, MRPalli Road, Tirupathi. Once there is no valid agreement between the said dealers and the HPCL the question of conducting petrol bunk business at is totally against the rules at Sy No. 254/2, MR Palli road, Tirupathi and moreover as per the observations it is concluded that K.Manoj Kumar Reddy and C.Radha Krishnam Raju are doing business as dealers of petroleum jointly before the inclusion of the name of C Radha Krishnam Raju in the year 2007.

In view of the above observations, ***it is therefore clear that K Manoj Kumar Reddy and C Radha Krishnam Raju are conducting petrol bunk business in the name of M/s Sivapavani Filling Station at Sy No. 254/2, M.R.Palli Road, Tirupathi by submitting the agreement deed executed by them with HPCL for the filling station at Dorvarisatram Mandal of SPSR Nellore District and moreover they are jointly running the filling station as authorized dealers by having the license issued to the one person namely K Manoj Kumar Reddy which is far against the rules and therefore the Form-B license bearing No. 73/TPT/2004 issued for M/s Sivapavani Filling Station located at Sy No. 254/2, M.R.Palli Road, Tirupathi is liable for cancellation.***

Hence, it is ordered that Form-B license bearing No. 73/TPT/2004 issued in favour of M/s Sivapavani Filling Station at Sy No. 254/2, M.R.Palli Road, Tirupathi is hereby cancelled with a direction to the K Manok Kumar Reddy and C Radha Krishnam Raju to file fresh application for issuance of license for conducting the M/s Sivapavani Filling Station located at Sy No. 254/2, M R Palli Road, Tirupathi.”

(emphasis supplied)

8. Reading of the above extracted portion of the order of Joint Collector would show that Joint Collector holds that K.Manoj Kumar Reddy and C.Radha Krishnam Raju conducting business in sale of petroleum products in the name of M/s Sivapavani Filling Station in Sy.No.254/2, M R Palli Road, Tirupathi by

submitting agreement deed executed by them with HPCL for filling station at Doravari Satram of SPSR Nellore district and they are jointly running the filling station as authorized dealers by having the license issued to one person Manoj Kumar Reddy and same is against the Rules. The decision of the Joint Collector is affirmed by the Commissioner on appeal preferred by C.Radha Krishnam Raju. Thus, Form-B issued on 21.7.2004 was held to be illegal.

9. While upholding the decision of the Joint Collector, direction issued by the Commissioner to the Joint Collector to issue fresh Form-B license is challenged in W.P.No.36972 of 2018 and same is suspended by this Court. Thus, as long as, interim suspension granted by this Court is in operation, Joint Collector cannot grant Form-B license to M/s Sivapavani Filling Station. C.Radha Krishnam Raju is 5th respondent to the said writ petition and he claims that he filed vacate petition to vacate the stay order. So far, the vacate petition is not considered and no further orders are passed. Unless this Court accepts the contention of 5th respondent in W.P.No.36972 of 2018, vacates interim order/ dismisses the writ petition upholding the decision of the Commissioner for Civil Supplies in directing the Joint Collector to issue fresh Form-B license, the Joint Collector cannot entertain the application and issue Form-B license. Thus, petitioner could not have filed the present writ petition, while the earlier writ petition is pending on the issue, particularly when deponent to the affidavit filed in support of this writ petition, being a party to the said writ petition and the petitioner firm is aware of the litigation pending before this Court.

10. It is also appropriate to note that HPCL submitted application on 17.08.2018 to issue fresh Form-B license by referring to the direction issued by Commissioner of Civil Supplies in his order dated 8.8.2018. Thus, it is not an independent application made by HPCL, as sought to be contended by learned counsel for petitioner. It is further noted that G.Sridhar Raju has been contesting the issuance of Form-B in favour of M/s Sivapavani Filling Station showing C.Radha Krishnam Raju also as licensee and was successful before the original authority as well as appellate authority in declaring the license granted as illegal. Aggrieved by the order passed in W.P.No.20961 of 2017, he filed W.A.No.1036 of 2017. Later when the appellate authority was delaying consideration of the appeal, he filed WP No. 13893 of 2018 and this Court directed the Commissioner of Civil Supplies to dispose of the appeal within three months. W.P.No.36972 of 2018 filed by him is pending consideration of this Court. Licence granted to petitioner was cancelled at his instance. The decision of Joint Collector cancelling the licence as affirmed by the Commissioner has become final. It is not a case of mere renewal of licence/issue of fresh licence or expiry of earlier licence. The renewal is sought for the same firm at same location. In paragraph-5 of the affidavit deponent refers to Sri G.Sridhar Raju and in paragraph-8 he makes allegations against him, behind his back. Thus, it cannot be said that Sri G Sridhar Raju is no way concerned to the issue in this writ petition. No averment is made why Sri G.Sridhar Raju is not made party to this writ petition. It appears from the material on record and history of the litigation, this writ petition is filed to secure direction to Joint Collector to

process the application filed by HPCL on 17.8.2018 behind the back of G.Sridhar Raju and without reference to order in W.P.No.36972 of 2018. The Joint Collector is bound by the interim order passed by this Court in W.P.No.36972 of 2018. In an independent writ petition no direction can be issued to consider the application to issue Form-B Licence contrary to the orders in the said writ petition.

11. 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 and does not mislead or abuse the process of Court.

12. Court would be disinclined to lean in favour of a petitioner to grant equitable relief who does not disclose the true facts, tries to mislead the Court or abuses the process of the Court for selfish end and to gain undue advantage by invoking the writ remedy to exercise extraordinary jurisdiction under Article 226 of the Constitution.

13. In **K.D.Sharma v. Steel Authority of India Limited and others**¹, 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.

14. Apropos to reproduce paragraphs 36, 37 and 39, **K.D.Sharma** (supra), which read thus:

“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.**”

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,**

¹ (2008) 12 SCC 481

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)

15. In **Prestige Lights Limited v. SBI**² 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.”*

16. In **DALIP SINGH V. STATE OF U.P.**,³ Supreme Court observed,

“1. For many centuries Indian society cherished two basic values of life i.e. “satya’ (truth_ and “ahimsa” (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.

² (2007) 8 SCC 449

³ (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324

2. 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.** (emphasis supplied)

17. It is apt to consider the further observations made in the decision of the King's Bench Division in **THE KING v. THE GENERAL COMMISSIONERS FOR THE PURPOSES OF THE INCOME TAX ACTS FOR THE DISTRICT OF KENSINGTON. Ex parte PRINCESS EDMOND DE POLIGNAC**,⁴ which decision is treated in India as an authority for the proposition on good faith required by a person applying for a writ.

“55.2. WARRINGTON L.J., observed,

“It is perfectly well settled that a person who makes an *ex parte* application to the Court — that is to say, in the absence of the person who will be affected by that which the Court is asked to do — **is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him.**”

(emphasis supplied)

18. From the facts, controversy and history of litigation noted in earlier paragraphs, I am of the considered opinion that this writ petition is not filed by the petitioner in a *bona fide* manner to prosecute his grievance against not processing the application for grant of Form-B license by the Joint Collector, but

⁴ (1917) 1 K.B. 486

clear objective to secure Form-B license surreptitiously and by all means. Petitioner has come to this Court with tainted hands and not entitled to maintain writ petition to grant equitable relief. The Writ Petition fails and accordingly dismissed with costs of 10,000/- (Rupees ten thousand only) payable to the Secretary, High Court Legal Services Authority within three weeks from today. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 13.11.2018
Tvkk/kkm



HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.39291 OF 2018

Date: 13.11.2018

Tvk/kkm