

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 17642 of 2016
Date of Decision: 9.12.2019**

Surmukh Singh

...Petitioner

Vs.

Union of India and others

...Respondents

CWP No. 17681 of 2016

Kusum

...Petitioner

Vs.

Union of India and others

...Respondents

CWP No. 13386 of 2016

Sukhwant Kaur

...Petitioner

Vs.

Union of India and others

...Respondents

CWP No. 12855 of 2016

Rajinder Kumar Gill

...Petitioner

Vs.

Union of India and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. Arvindpal Singh, Advocate
for the petitioner (in CWP 17642 of 2016)

Mr. Jagdish Manchanda, Advocate with
Mr. Gurpreet Jayia, Advocate
for the petitioner(s)
(in CWP Nos.17681 & 13386 of 2016)

Mr.T.S.Chauhan, Advocate
for the petitioner (in CWP 12855 of 2016)

Mr. Dheeraj Jain, Advocate
for respondent No.1 (Union of India).

Mr. Ashish Kapoor, Advocate
for respondent Nos. 2 (Indian Oil Corporation)

Mr Raman Sharma, Advocate
For respondents No.3 and 4
(Bharat Petroleum Corpn. Ltd. & Hindustan Petroleum
Corpn. Ltd.)

RAJIV NARAIN RAINA, J. (Oral)

1. This order will dispose of the above-mentioned case as well as three other writ petitions as common questions of law and facts are involved in them which can conveniently be decided by a common order.

2. When this matter came up for hearing on 27.11.2017 along with four connected writ petitions, parties were heard and the following order was passed:

“Respondents have produced order dated 05.09.2018 passed in CWP No.6968 of 2016 titled ‘Ramandeep & another Vs. Union of India & others’ dismissing 11 cases out of a larger bunch of 17 cases.

In the Index of CWP No.13386 of 2016, reference is to CWP No.2968 of 2016, which has now been dismissed. On the strength of this Index, notice of motion as well as the interim order in terms of the order dated 01.06.2016 in CWP No.6968 of 2016 was secured.

I would normally have dismissed the petition on the ground of a declaration of similarity of cause of action, but Mr. Manchanda submits that the bunch of 11 cases was segregated from the rest.

On the other hand, Mr. Raman Sharma submits that there was no order of segregation.

In these circumstances, Mr. Manchanda to produce the order of segregation of cases or to say on affidavit that there was a conscious partition of bunch of 17 cases with 11 disposed of while the remaining in the present bunch listed today.

The 17th case has been dismissed according to Mr. Raman Sharma. He may produce the order on the next date.

To give time to the parties to show why these cases should be treated differently from the one which has suffered a dismissal order, the cases are adjourned to 09.12.2019.

Mr. Atul Lakhanpal's case i.e. CWP No.17642 of 2016 be listed separately from the rest of the batch of 5 cases, but posted on the same day to be taken up one after the other. Mr. Lakhanpal will be heard first.

To be shown in urgent list.

It is made clear that in case the case is not argued by any of the counsel/senior counsel appearing for the petitioners or fail to appear and argue the case, the interim order shall stand vacated automatically without reference to the Court and the Corporation will be free to proceed further with the allotment/s."

3. None of the learned counsel/Senior counsel can dispute the written word in the Index to the writ petitions against the column which elicits a response as to whether reliance on any similar case pending is

placed, they have emphatically mentioned CWP No. 6968 of 2016 and/or another petition in which reference is to the connected CWP No.6968 of 2016 in which notice of motion and interim directions of stay had been issued on 12.04.2016 against the respondent Oil Companies in the matter of allotment of LPG distributorships in the State of Punjab.

4. These petitions have been filed on different dates, either before the date fixed in the lead petition (CWP No. 6968 of 2016) or thereafter, and in all these cases interim stay was granted in the same terms as was granted in the petition mentioned in the Index. Mr. Lakhanpal states that in their petition (CWP No. 17681 of 2016) notice of motion was issued but there was no interim order granted while in the other three petitions interim orders were passed. It is a matter of regret for the petitioners that the Court has dismissed CWP No. 6968 of 2016 by a reasoned judgment and order which comprised a bunch of 11 writ petitions. But the present petitions remain to be decided, which cases have come up for hearing today. Once the petitioners have mentioned in the Index the pendency of a writ petition and now since that petition has been dismissed, these writ petitions have to meet the same fate. This pointed issue regarding declarations in the Index turning against the declarants has been dealt with elaborately by brother R.K. Jain, J in his judgment and order delivered in CWP No. 11032 of 2014, “H.S. Gas Service and others Vs. UOI and others” decided on

09.02.2016 and reported as MANU/PH/0204/2016 which included CWP No. 6968 of 2016 mentioned in the Indexes and in the formal paragraph to the petitions.

5. The learned Single Judge dealt with the objection raised by the respondents praying for dismissal of the petitions on account of dismissal of writ petition mentioned as “similar case” by the petitioners in the Index. This Court while examining the legal position in Part F of Chapter 4, Volume 5 of High Court Rules and Orders read with Rule 20 (vi) of the Writ Jurisdiction (Punjab and Haryana) Rules, 1976 coupled with other legal principles held in paragraphs No. 15 to 20 of the judgment as follows:

“15. I would first deal with the objection raised by the respondents to dismiss the writ petition on account of dismissal of writ petition mentioned as similar case by the petitioners.

16. Part F of Chapter 4, Volume 5 of High Court Rules and Orders deals with writ jurisdiction (Punjab and Haryana) Rules, 1976 (for short “the Rules”). Rule 20 (vi) of the Rules provides that every petition shall consist of paragraphs numbered consecutively and shall contain “a statement whether a similar petition has been made to the Supreme Court or previously in the Court or in any other Court in respect of the same matter, and if made, with what result.

17. This provision has been made to avoid concealment of facts of having filed similar petition either before this Court or same matter so that any case, which has already been disposed of by this Court, in any

manner, may not be re-agitated by an unscrupulous litigant. It also helps the litigant, in case, similar matter has been allowed or at least assist the Court in examining in the light of the result of the similar matter already pending or decided.

18. *The question, which arises in this case, is as to whether present petition deserves to be dismissed on the ground that the writ petition mentioned in the Index as similar case, has already been dismissed and if it is not, as alleged by the petitioners, then whether the petitioners are guilty of suppressio veri and suggestio falsi?*

19. *Since the petitioners have contested the objection raised by the respondents of dismissing the writ petition in view of dismissal of the similar writ petition, therefore, it would be apt to observe that if the said writ petition was different from the present writ petition, the petitioners had no right to mention it as a similar case in the Index of the writ petition even though the same Advertisement was involved and if the petitioners are trying to explain the difference between the two cases, it should have been specifically mentioned concisely in the Index itself. This matter has, thus, assumed an utmost importance in the present scenario, where the courts tends to believe the averments made in the writ petition, which is supported by an affidavit filed in terms of Rule 20 (iii) of the writ Rules.*

20. *I would also examine the case on the basis of the facts pleaded in both the petitions. The first writ petition i.e CWP No.25738 of 2013 was filed by the LPG distributors federation (North Western Region) being aggrieved against the impugned Advertisement. As I have already mentioned in the earlier part of the order that specific questions of law have been framed in the said*

writ petition about the illegal appointment of 198 LPG distributors throughout the Punjab and also a prayer has been made for quashing of Advertisement for appointment of 198 LPG distributors. The notice of motion was issued in this case for the date, for which the similar case bearing CWP No.25738 of 2013 was already adjourned. There was no prayer by the petitioners for stay at the time of notice of motion because of the reason that the stay was already operating in the similar writ bearing CWP No.25738 of 2013 and filing of application for stay after the stay was vacated in CWP No.25738 of 2013 would all collectively show that the CWP No.25738 of 2013 and the present petition are similar, if not in the form then in substance as the petitioners in both the writ petitions were espousing the same cause.”

(emphasis added)

6. I can hardly add a word extra to the reasoning and the ratio of the judgment on the aspects traversed which have been fully considered and dealt with including applicability of the principles relating to concealment of facts, of petitioners being guilty of *suppressio veri* and *suggestio falsi* and the effects of “over-reaching” the Court. Therefore, whenever a petitioner approaches this Court and takes advantage of pendency of a petition by mentioning it in the Index seeking similar interim relief, whether he obtains it or not, his or her rights must exhaust or remain alive, as the case may be, with the final result of the said petition. It is a rule of prudence that the fate of the petitioners making such a declaration on affidavit will be tied up with the outcome of the final judgment and order which may be passed by

the Court. As they say: those who live by the sword must die by the sword. Litigants should desist from testing judicial providence expecting different results on the core, ancillary and incidental issues decided. This is inevitable when the entire range of pleas were available to canvass in the main cases/s. The present petitioners had an option to have argued their cases on the day the batch of 11 cases were decided which they failed to exercise by shying away from addressing arguments for the consideration of the Court. The legal fall out of the judgment in *H.S. Gas Service* case (Supra) is that this Court is not compelled to look into the merits of the case once the road is barricaded by the declaration in the Index mentioning similar petition relied upon by the petitioner, if later it is dismissed.

7. Mr. Lakhanpal submits that there was an additional point involved in his and the other cases. He further submits that these petitions were segregated. The word “segregated” is harped on by Mr. Lakhanpal to come to his rescue for a decision on merits. The order sheets of these petitions or in CWP 6968 of 2016, as produced before me, do not support this statement. The word ‘segregation’ or any suggestion of the kind has not been used. Merely because some cases have been adjourned and not decided along with a bunch will not make those cases to be read as segregated from the bunch by a judicial order or to mean that a different point is involved which requires determination. One can only go by the order-sheet and not read

anything which is not there. If the petitioners had any complaint on this count they could have moved an appropriate application before the same Hon'ble Judge for appropriate orders. I am in no position to read into those orders what is not expressly stated therein. Nor can I read anything of the kind by necessary implication. If the parties had an additional grouse that will stand subsumed in the judgment and order dated 5.9.2016 dismissing CWP No.6968 of 2016 as these petitions were not 'segregated' and accordingly have to meet the same fate in substance, if not the form.

8. For the reasons recorded, I am constrained to dismiss these petitions. Needless to say, that interim orders will no longer survive.

(RAJIV NARAIN RAINA)
JUDGE

9.12.2019

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Whether speaking/reasoned : *Yes*
Whether reportable : *Yes*