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

WRIT PETITION NO.950 OF 2020

Hai Mujahid Ekbal Abdul Siddiqui,
Age : 53 years, Occu. Service,
R/o Chelipura, In front of Tota Masjid,
Aurangabad, Tq. & Dist. Aurangabad

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Department of Rural Development,
Mantralaya, Mumbai-32

2. The Chief Executive Officer,
Zilla Parishad,
Aurangabad

3. The Sub-Divisional Engineer, Civil,
Zilla Parishad (Civil), Sub-Division,
Vaijapur, Tq. Vaijapur,
Dist. Aurangabad

4. The Chief Account and Finance Officer,
Zilla Parishad,
Aurangabad

..RESPONDENTS

Mr. S.K. Chavan , Advocate for petitioner;
Mr. S.B. Yawalkar, A.G.P. for respondent no.1;
Mr. U.B. Bondar, Advocate for respondent nos.2 to 4

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 7th October, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

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2. The petitioner, an in-service candidate, is aggrieved by the order dated 18.11.2019 and 22.11.2019 issued by the employer directing recovery of excess payments made to him. The petitioner has put-forth prayer clauses (B) and (C) as under:-

“(B) To issue writ of Certiorari or any other appropriate writ, order or directions in the like nature, the impugned orders dated 18.11.2019 and 22.11.2019 (**Exhibit-B and D**), issued by the Sub-Divisional Engineer, Civil, Zilla Parishad (Civil), Sub-Division, Vaijapur, Tq. Vaijapur, Dist. Aurangabad, may kindly be quashed and set aside to the extent of recovery.

(C) To issue writ of mandamus or any other appropriate writ, order or directions in the like nature, thereby, if any recovery already effected in pursuant to impugned orders dated 18.11.2019 and 22.11.2019 (Exhibit-B and D), issued by the Sub-Divisional Engineer, Civil, Zilla Parishad (Civil), Sub-Division, Vaijapur, Tq. Vaijapur, Dist. Aurangabad, the same shall be refunded to the petitioner within stipulated time period, which this Hon’ble Court may please to direct.”

3. Having considered the strenuous submissions of the learned advocates for the respective sides, we have gone through the petition paper-book and the re-joinder affidavit filed by the petitioner, dated 7.10.2021.

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4. Considering the submissions, we find that the following factors deserve consideration while deciding this petition:-

a) The petitioner has nowhere stated in this petition as to what is his designation today, except making a contention that he is a class-III employee.

b) The petitioner, having filed this petition on 10.1.2020, has shrewdly suppressed a material fact from the Court that he has executed an unequivocal undertaking on 22.7.2019 before the employer, vide which he bound himself to refund the excess amounts which may have been paid to him on account of an incorrect fixation of pay or any excess payment of any nature, as may be detected.

c) The petitioner is still in employment and considering his date of birth being 29.1.1964, he is due for retirement in 2024.

5. The contention of the petitioner is, that this Court has considered a similar situation in an order delivered in Writ Petition No.3441 of 2019, dated 24.9.2019 and the order dated 26.2.2021 delivered in Review Application (St.) No.9580 of 2020. The contention is, that this Court had taken into account the undertaking tendered by the petitioner Abasaheb Dhondiram Kakade and in a short order, has allowed the petition. In view of such submissions, we have perused the order dated 29.9.2021 delivered by a co-ordinate Bench and we find that though an undertaking was given by Abasaheb Kakade, the recovery was sought to be effected

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much after his retirement. This Court, therefore, considered the law laid down by the Honourable Apex Court in **Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475** and **State of Punjab & Ors. vs. Rafiq Masih (White Washer), (2015) 4 SCC 334**.

6. It is undisputed that the petitioner is in employment and the employer initiated the action of recovery of excess amounts paid, by the order dated 18.11.2019 when he had almost five years for retirement. So also, the petitioner has conspicuously suppressed the fact of having executed an undertaking in unequivocal terms that he would refund the excess amounts if such excess payments are detected either in the payment of the pay scale or under any head. The Honourable Apex Court has dealt with cases of suppression of material facts which are likely to affect the conclusion in a matter, in **Bhaskar Laxman Jadhav vs. Karmveer Kakasaheb Wagh Education Society, (2013) 11 SCC 531** and in the matter of **Kishore Samrite vs. State of Uttar Pradesh & Ors., (2013) 2 SCC 398**.

7. In Kishore Samrite (supra), the Honourable Apex Court in paragraph nos. 32 to 32.8, has held as under:-

“**32.** The cases of abuse of 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 process of court. We may recapitulate and state some of the principles. It is difficult to state

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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 are 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 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 the strictest vigilance over the abuse of process of court and ordinarily meddlesome bystanders should not be granted “visa”. Many

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societal pollutants create new problems of unredressed grievances and the court should endure to take cases where the justice of the law 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”.

8. In Bhaskar Jadhav, the Honourable Apex Court in paragraph nos. 42 to 47, has concluded as under:-

“42. While dealing with the conduct of the parties, we may also notice the submission of the learned counsel for respondent 1 to the effect that the petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2-5-2003 of the first application for extension of time filed by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the petitioners. It was submitted that in view of the suppression, special leave to appeal should not be granted to the petitioners.

43. The learned counsel for the petitioners submitted that no material facts have been withheld from this Court. It was submitted that while the order dated 2-5-2003 was undoubtedly not filed, its existence was not material in view of subsequent developments that had taken place. We cannot agree.

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.

45. We may only refer to two cases on this subject. *In Hari Narain v. Badri Das* [AIR 1963 SC 1558], stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise

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leave granted to an appellant may be revoked. It was observed as follows: (AIR p. 1560, para 9)

“9. It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent.”

46. More recently, in *Ramjas Foundation v. Union of India* [(2010) 14 SCC 38], the case law on the subject was discussed. It was held that if a litigant does not come to the Court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said: (SCC p. 51, para 21)

“21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.”

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the Court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the Court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof.”

9. It is, therefore, trite that it is not for a litigant to filter the facts to be narrated to the Court. He is duty bound to narrate the entire facts and is expected not to suppress anything from the Court. If certain factors which would have a close nexus or bearing on the outcome of the case and are germane to the cause of action are suppressed, such suppression shall tantamount to a litigant attempting to mislead and misrepresent the Court for self serving purposes. The Honourable Apex Court has, therefore, ruled that such a litigant should be deprived of any relief, even if he may have an arguable case in hand.

10. In **High Court of Punjab & Haryana & Ors. vs. Jagdev Singh, (2016) 14 SCC 267**, the Honourable Apex Court has held that every possible situation or circumstance cannot be postulated or anticipated in such matters. The list of instances can only be said to be illustrative and can never be termed as being exhaustive. Neither the Legislators nor the Court can speculate every circumstance while framing the law or while delivering the judgment. Some of the circumstances which would weigh against the recovery of excess amounts are, viz. an employee belonging to

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the Class – III or the Class – IV category, an employee having retired from service or due to retire within one month, recovery when excess payment has been made in excess of five years, the recovery is inequitable or harsh or arbitrary as would far outweigh the equitable balance of the employer's right to recover.

11. No doubt, in the present case, the petitioner claims to be a Class-III employee and there seems to be no dispute on this aspect. However, the petitioner has consciously executed an unequivocal undertaking on 22.7.2019 thereby agreeing to repay/deposit such amounts as may be detected to have been paid in excess to him under any head. The impugned order is dated 18.11.2019 followed with the consequential order dated 22.11.2019 which is after about 4 months from the undertaking having been executed by the petitioner. Moreover, we do not find that hardships would be caused to the petitioner if the excess amount to which he was dis-entitled to, is recovered from him since he is still in employment and has a few years for retirement. Coupled with these factors, the act and conduct of the petitioner of suppressing the specific undertaking tendered to the employer, and on the basis of such suppression, securing an ad-interim protective order on 15.1.2020, is a glaring aspect which cannot be overlooked in the light of the law laid down by the Honourable Apex Court in *Kishore Samrite* (supra) and *Bhaskar Jadhav* (supra). These factors are not noticeable in the order dated 29.9.2021 cited before us by the petitioner, delivered in *Abasaheb Kakade* (supra).

12. The petitioner has then relied upon a judgment delivered by the Nagpur Bench of this Court on 12.12.2012 in writ petition no. 4882 of 2012 and connected matters. Even in these cases, the petitioners were retired employees. So also, there was no undertaking tendered by any of those petitioners. In addition to these factors, the Honourable Apex Court has delivered the judgment in the High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh (supra) thereby enabling recovery of excess payments in certain circumstances.

13. In view of the above, it is apparent that the petitioner is dis-entitled to any relief and specifically on account of a deliberate suppression of a material fact. This petition is, therefore, dismissed.

14. As has been observed in the reproduced paragraphs from the judgment of the Honourable Apex Court in Kishore Samrite (supra), litigants who suppress material aspects from the Court need to be penalized with heavy costs. While quantifying costs, we are taking into account the fact that the petitioner is a Class-III employee and, therefore, we are imposing lesser costs of Rs.25,000/- which shall be deposited in this Court on or before 15.11.2021. The said amount shall be utilized for the creche-day care centre in this Court.

15. Rule is made absolute in the above terms.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)