

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

WRIT PETITION NO.6613 OF 2021

PRERNA BAHUHUDDHESHIV SANSTHA THR SECRETARY GANESH
ABARAO KALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioner : Mr.N.R.Katneshwarkar h/f Mr.Nagargoje
Prashant M.

AGP for the Respondent Nos.1 to 3 / State : Mrs.VN. Patil Jadhav
Advocate for the Respondent No.4/ University : Mr.S.S. Tope

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**CORAM : DIPANKAR DATTA, C.J.
&
RAVINDRA V. GHUGE, J.**

DATE :- 18th JUNE, 2021

PER COURT (Per Ravindra V. Ghuge, J.) :-

1. The petitioner educational institution has put forth prayer clauses A and B as under :-

- “A) *By issuing the writ of certiorari or any other appropriate writ like in nature under Article 226 of Constitution of India, this Hon’ble Court may kindly quash and set aside the letter of intent dated 18.02.2021 issued in favour of the Respondent No.5 Institution.*
- B) *Pending hearing and final disposal of this writ petition, this Hon’ble Court may kindly stay to the implementation and execution of the letter of interest dated 18.02.2021 issued in favour of the Respondent No.5.”*

2. We have extensively heard Shri N.R.Katneshwarkar, learned advocate for the petitioner, Mrs.VN.Patil-Jadhav, learned AGP on behalf of respondent Nos.1 to 3 and Shri S.S. Tope, learned advocate representing

the respondent No.4/ University.

3. In the peculiar facts of this case and for the reasons that we are recording for the dismissal of this petition, we find it appropriate to refer to the observations of the Honourable Apex Court in ***Kishore Samrite vs. State of U.P., (2013) 2 SCC 398***, in paragraph Nos.31 to 38 which are as under:-

“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:-*

(i) 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.

(ii) 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.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

(vii) 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 locupletioem, 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]."*

(Emphasis supplied)

4. The crux of this matter is that the present petitioner and respondent No.5 Educational Society had applied for opening a new college at Chikalthan, Taluka Kannad, District Aurangabad for the academic year 2019-2020. Though the present petitioner was granted a letter of intent, final approval for opening a new senior college was refused by the State Government on 25.07.2019. Respondent No.5 herein had approached this Court in Writ Petition No.4313/2019 (Sai Sakal Shikshan Prasarak Mandal, Aurangabad vs. The State of Maharashtra and others) as it's proposal for opening a new Arts, Science and Commerce College at Chikalthan was not considered by the State on the ground that the present

petitioner was granted the letter of intent. It was brought to the notice of the Court that the proposal of this petitioner was also negated subsequently and the letter of intent was also cancelled. In these circumstances, this Court vide order dated 25.11.2019, directed the State Government to consider the proposal of respondent No.5 herein for the academic year 2020-2021.

5. In Writ Petition No.4313/2019, respondent No.5 herein alleged that the present petitioner had forged and fabricated the F.D.R. which was required to be filed along with its proposal for grant of permission to open a new college. It is necessary to record that, under the Maharashtra Public Universities Act, 2016, a new proposal, complete in all respects, has to be filed on or before the 30th day of September and the said cut-off date cannot be altered or extended. The F.D.R. dated “18.12.2018” was interpolated by the present petitioner by inserting the date as 10.09.2018, which was tendered subsequently. The present petitioner did not contradict the said position and did not dispute the allegation that it had interpolated a document issued by the Central Bank of India.

6. The present petitioner then filed Writ Petition No.14811/2019 before this Court on 04.12.2019 praying for quashing the order dated 25.07.2019 passed by the State of Maharashtra cancelling its letter of intent on the ground that it did not have any land having N.A. 44 permission (a statutory order that the land can be used for non agricultural purpose) and for forgery in the F.D.R.. In paragraph 12 of the said writ petition, the petitioner had tried to clarify that it had brought on

record a letter of the Central Bank of India, in Writ Petition No.4313/2019, for clarifying the issue in respect of the said F.D.R.. The Joint Director, Higher Education, Aurangabad entered an affidavit in Writ Petition No.14811/2019 on 23.01.2020 and exposed this petitioner by specifically mentioning on internal page 11 of the affidavit as under :-

“14. While submitting the proposal by the petitioner there was date of issue of F.D.R. as 10.09.2018. Now it revealed that the concerned authorities of the Bank have certified that the date of issue of F.D.R. was 10.12.2018. It means that the petitioner has corrected the Bank certificate date of 10.12.2018 for submission of proposal in the month of September. This fact has been traced out by the office of the Joint Director Higher Education, Aurangabad while making the enquiry with the authorities of the Central Bank of India. It was clear by the authorities of the Bank vide letter 31.07.2019 that the date of FDR bearing No.3721149848 is 10.12.2018. Therefore the petitioner has corrected the date and such fabricated documents submitted to the Government and has obtained the letter of intent....”

7. After this affidavit in reply seeking to sufficiently expose the fraud played by the present petitioner, instead of seeking to convince the Court that it had not resorted to fabrication of documents, the present petitioner conveniently withdrew Writ Petition No.14811/2019, which was so permitted by the order of this Court dated 03.02.2020. This was an unconditional withdrawal of the petition by the present petitioner. The allegations as regards the fabrication of the F.D.R. and the unconditional withdrawal of Writ Petition No.14811/2019 when the Court was inclined to dismiss the said writ petition, with an intention to avoid a dismissal on merits (as informed to us in course of this proceeding and referred to

hereafter), have been suppressed by the petitioner in the present petition.

8. It is thus, writ large on the face of the record that the present petitioner had acted fraudulently while seeking to acquire permission to start a new college. The fraud was exposed by the Joint Director of Higher Education, Aurangabad. One of the grounds for refusing approval to the present petitioner to start a new college was the fraud played by it on the University and the State of Maharashtra.

9. In the above backdrop, the petitioner has now engaged a different set of lawyers in the present petition to represent its cause. We are circumspect as to whether, the learned advocate for the petitioner before us was made aware of the fraud played by the petitioner. Shri Katneshwarkar is instructed by the present petitioner to contend that it withdrew Writ Petition No.14811/2019 under the belief that the entire process of considering the proposals for starting a new college for the academic year 2019-2020 had lapsed. Contrary to such instructions given to the learned advocate, it is the submission before us by Shri Tope, learned advocate for the University that the present petitioner had withdrawn its above stated petition after it realized that this Court was on the verge of dismissing its petition owing to the fraud that was played. He submits on instructions as well as on the basis of his personal knowledge, as he had represented the University in Writ Petition No.14811/2019, that the petitioner realized that the dismissal of the said petition on account of the fraud played by it, was imminent and it was then that instead of suffering

a dismissal on merits, the petitioner withdrew the said writ petition.

10. Considering the above, we have no hesitation in concluding that the petitioner has approached this Court with tainted hands. Having played a fraud as noted above, this sole factor convinces us to dismiss this petition without going into the challenge posed to the letter of intent issued to respondent No.5 by the State Government which is in pursuance of a consideration of the claim as directed by the order of this Court dated 25.11.2019, in the light of *Kishore Samrite (supra)*. As the obligation to approach the Court with clean hands is an absolute obligation and has been reiterated by the Honourable Apex Court and 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, [paragraph 32.3 and 32.5, *Kishore Samrite (supra)*], this Writ Petition is dismissed by imposing costs of Rs.10,000/- (Rupees Ten Thousand), which the petitioner shall deposit in this Court on or before 15.07.2021. On failure to deposit the said amount, the District Collector, Aurangabad shall recover the said amount from the petitioner as arrears of land revenue and deposit the said amount in this Court. This amount shall be transferred by the Registry of this Court to the High Court Legal Services Sub Committee, Aurangabad.