

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 14786 of 2016 (O&M)
Date of decision: 29.9.2016

M/s Manu Sharma and Company

.. Petitioner

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vivek Singla, Advocate for the petitioner.
Mr. Ankur Mittal, Addl. Advocate General, Haryana.

...

Rajesh Bindal J.

1. The petitioner approached this court with a grievance that his liquor vends have been sealed by the respondents without any show cause notice or opportunity of hearing.
2. At the time of issuance of notice of motion on 27.7.2016, the following contentions made by learned counsel for the petitioner were noticed:

“Learned counsel for the petitioner submitted that the petitioner was a successful bidder for Group No. 3 for L-14-A licence for country liquor for which auction was held on 16.5.2016. As per clause 3.3.3 of the Excise Policy applicable for the year 2016-17, licensee was required to deposit 10% of the bid amount, thereafter, he was entitled to lift upto 5% of annual quota. Though the petitioner deposited a sum of 19.66 lacs by 25.5.2016 but till date no quota has been released to the petitioner. Without even issuing any notice, liquor vend was sealed on 5.7.2016.”

3. Learned counsel for the petitioner submitted that the petitioner was successful bidder for liquor vends in Group No. 3 for L-14A licence, the auction for which was held on 16.5.2016. After depositing 10% of the licence fee upto 25.5.2016, the petitioner was entitled for issuance of permit for lifting 5% of the quota. The permit was applied on 13.6.2016. When it was not issued till 25.6.2016, request was made for cancellation of request. As the department had failed to issue permit to the petitioner for 5% of the annual quota, demand for balance 11% of the licence fee was not justified. As a result of the action of the respondents, the petitioner had not been able to operate the vends.

4. Learned counsel for the State submitted that the petitioner herein is guilty of concealment of material facts. In the case in hand, as per the terms of policy, 10% of the bid money was to be deposited on the date of auction itself and the balance 11% was to be deposited within 10 days thereof. Total 21% was the security amount. In case of failure, in terms of clause 6.4 of the policy, the licence automatically stood cancelled. He further submitted that balance 11% of the security having not been deposited by the petitioner, show cause notice was issued on 9.6.2016. On 13.6.2016, the petitioner applied for issuance of permit for 5% of the annual quota for two vends, out of three in group. On 17.6.2016, all three liquor vends of the petitioner were inspected by the Excise Inspector and it was found that he was selling liquor without any permit. Thereafter, the petitioner was issued permits for two vends on 23.6.2016 in view of application of the petitioner dated 13.6.2016. Thereafter, the petitioner made a request for cancellation of his request for issuance of permit, on 25.6.2016, which was accepted and the permit already issued to the

petitioner was cancelled on 28.6.2016. The inspection report dated 17.6.2016 with regard to the vend on Jind Road, Kaithal was forwarded by the Deputy Excise and Taxation Commissioner (Excise), Kaithal to the Collector-cum-Additional Excise & Taxation Commissioner, Panchkula, vide memo dated 27.6.2016. Thereafter, again inspection was carried out at the liquor vend of the petitioner on Devigarh Road on 24.6.2016 and it was found that without any permit, he was in possession of liquor. The inspection report was duly signed by the persons, who were available at the liquor vend. The report thereof was forwarded by Deputy Excise and Taxation Commissioner (Excise), Kaithal to the Collector-cum-Additional Excise & Taxation Commissioner, Panchkula, vide memo dated 27.6.2016.

5. He further referred to the photographs of the liquor vends taken at the time of inspection at Devigarh road, Kaithal. Thereafter, another inspection was carried out on 28.6.2016 at the liquor vend of the petitioner at Railway Road, Kaithal. There also, without any permit, the liquor was found. Ram Kumar Yadav, present at the spot, refused to sign the inspection memo. The report of this inspection was also forwarded by Deputy Excise and Taxation Commissioner (Excise), Kaithal to the Collector-cum-Additional Excise & Taxation Commissioner, Panchkula, vide memo dated 28.6.2016. The photographs thereof have also been annexed with the reply. On 2.7.2016, Pnixit Sharma, brother of Manu Sharma, made a statement before the Excise Inspector that balance 11% of the security and licence fee shall be deposited by him by 4.7.2016. The matter was put up before Deputy Excise and Taxation Commissioner (Excise). On 2.7.2016, the inspection of the liquor vend of the petitioner at Devigarh Road, Kaithal was carried out and the liquor without any permit was found. At that time, Pnixit Sharma,

brother of Manu Sharma, was present at the liquor vend. Upto 5.7.2016, when the petitioner failed to deposit any further amount on account of security and licence fee beyond 10% already deposited, on 5.7.2016 inspection of all three vends of the petitioner was carried out and finding that the petitioner was still in possession of the liquor without any permit, those were sealed. Report regarding sealing was submitted by the Excise Inspector to the Deputy Excise and Taxation Commissioner (Excise). On the same day, intimation was sent to the SHO of the area concerned. Thereafter, notice was issued to the petitioner on 8.7.2016 directing him to deposit balance security and the licence fee on or before 15.7.2016, failing which the licence was to be cancelled. Report thereof was sent by the Deputy Excise and Taxation Commissioner (Excise), Kaithal to the Collector-cum-Additional Excise & Taxation Commissioner, Panchkula, vide memo dated 8.7.2016. The Excise & Taxation Commissioner, Haryana vide memo dated 18.7.2016 conveyed to the Deputy Excise and Taxation Commissioner (Excise), Kaithal that licence of the petitioner stood automatically cancelled in terms of para No. 6.4 of the Excise Policy 2016-17. Thereafter, the liquor vend was re-allotted on 19.8.2016 at a licence fee of ₹ 1,16,11,111/-. On 13.7.2016, three show cause notices were sent to the petitioner on the basis of inspection of three liquor vends on 17.6.2016, 24.6.2016 and 28.6.2016, whereby the petitioner was found to be in possession of liquor without any permit. Despite repeated efforts, notices sent through speed post could not be delivered as the petitioner either refused to receive the same or was not present despite repeated attempts made by the Postman. On 27.8.2016, on the information received, the Excise Inspector inspected three liquor vends and found that seals thereof had been broken and the entire stock had been

taken away. Intimation thereof was given by Deputy Excise and Taxation Commissioner (Excise), Kaithal to Superintendent of Police, Kaithal vide memo dated 27.8.2016. As prior to that, the petitioner had got interim stay regarding coercive steps for recovery of the security or licence fee, no further steps were taken by the department.

6. The submission is that the petitioner having concealed material facts before this court in the present petition, he does not deserve to be heard on merits and the writ petition deserves to be dismissed with heavy cost.

7. The facts, as stated by learned counsel for the State and pleaded in the written statement filed, regarding inspection of the liquor vends and finding liquor without any permit, the statement made by the brother of the petitioner, breaking of seals have not been controverted, even though some of these events had taken place prior to the filing of the writ petition, whereas some during the pendency of the writ petition.

8. A litigant approaching the court with unclean hands and misleading the court is not entitled to be heard on merits. It has been so opined by Hon'ble the Supreme Court.

9. In Abhyudya Sanstha v. Union of India, (2011) 6 SCC 145, Hon'ble the Supreme Court, while declining relief to the petitioners, who did not approach the court with clean hands, opined as under:

“16. In our view, the appellants deserve to be non suited because they have not approached the Court with clean hands. The plea of inadvertent mistake put forward by the learned senior counsel for the appellants and their submission that the Court may take lenient view and order regularisation of the

admissions already made sounds attractive but does not merit acceptance. Each of the appellants consciously made a statement that it had been granted recognition by the NCTE, which necessarily implies that recognition was granted in terms of Section 14 of the Act read with Regulations 7 and 8 of the 2007 Regulations. Those managing the affairs of the appellants do not belong to the category of innocent, illiterate/uneducated persons, who are not conversant with the relevant statutory provisions and the court process. The very fact that each of the appellants had submitted application in terms of Regulation 7 and made itself available for inspection by the team constituted by WRC, Bhopal shows that they were fully aware of the fact that they can get recognition only after fulfilling the conditions specified in the Act and the Regulations and that WRC, Bhopal had not granted recognition to them. Notwithstanding this, they made bold statement that they had been granted recognition by the competent authority and thereby succeeded in persuading this Court to entertain the special leave petitions and pass interim orders. The minimum, which can be said about the appellants is that they have not approached the Court with clean hands and succeeded in polluting the stream of justice by making patently false statement. Therefore, they are not entitled to relief under Article 136 of the Constitution. This view finds support from plethora of precedents. In **Hari Narain v. Badri Das** AIR 1963 SC 1558, **G. Narayanaswamy Reddy v. Govt. of Karnataka** (1991) 3 SCC 261 and large number of other

cases, this Court denied relief to the petitioner/appellant on the ground that he had not approached the Court with clean hands. In **Hari Narain v. Badri Das** (supra), the Court revoked the leave granted to the appellant and observed:

“It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, 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. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.”

In **G. Narayanaswamy Reddy v. Govt. of Karnataka** (supra),

the Court noted that the appellant had concealed the fact that the award could not be made by the Land Acquisition Officer within the time prescribed under Section 11A of the Land Acquisition Act because of the stay order passed by the High Court and observed:

“..... Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions.”

In Dalip Singh v. State of U.P. (2010) 2 SCC 114, this Court noticed the progressive decline in the values of life and observed:

“For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahinsa” (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. 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.”

10. In Moti Lal Songara v. Prem Prakash @ Pappu and another, (2013) 9 SCC 199, Hon'ble the Supreme Court, considering the issue

regarding concealment of facts before the court, while observing that “court is not a laboratory where children come to play, opined as under:

“18. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused-respondent is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim *suppressio veri, expression falsi*, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the revisional court. It can be stated with certitude that the accused-respondent tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum. The High Court, as we have seen, applied the principle “when infrastructure collapses, the superstructure is bound to collapse”. However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand.”

11. Similar view has been expressed in Amar Singh v. Union of India and others, (2011) 7 SCC 69 and Kishore Samrite v. State of Uttar Pradesh and others, (2013) 2 SCC 398.

12. Considering the undisputed facts on record, where the petitioner had approached this court by concealing material facts, as have already been noticed above, he does not deserve to be heard on merits and the writ petition is liable to be dismissed with heavy costs, which is assessed at ₹ 1,00,000/-. Ordered accordingly. The cost shall be deposited within a period of one month with this court. In case of failure, the case shall be put in court.

13. Before parting with the order, we find that the conduct of the officer(s) of the department is also questionable. The liquor vend was allotted to the petitioner on 16.5.2016. 10% of the bid money was to be deposited on the same day. Balance 11% to make it a security of 21%, was to be deposited within 10 days thereafter. The petitioner merely deposited 10% upto 25.5.2016, that too in three instalments. As per clause 6.4 of the policy, on failure to deposit 21% of the bid money as security within 10 days, the licence was automatically cancelled. No action was taken. The petitioner applied for issuance of permit on 13.6.2016 without depositing 21% of the licence fee as security. Though on 17.6.2016, inspection of one of the liquor vends of the petitioner at Devigarh Road, Kaithal was carried out and the petitioner was found to be selling liquor without permit, but still on 23.6.2016, permits for two liquor vends, i.e., Railway Road, Kaithal and Devigarh Road, Kaithal were issued. Meaning thereby, the fact that the petitioner was selling liquor without there being any permit issued in his favour to lift the liquor from L-13 was not considered. Even thereafter, on

two occasions, namely, 24.6.2016 and 28.6.2016, the petitioner was found to be selling liquor without any permit. Still the petitioner was granted time on 2.7.2016 for deposit of the balance fee. As a consequence thereof, the State suffered loss. There was huge delay in re-allotment of the liquor vend. The matter is required to be enquired into. The Excise & Taxation Commissioner, Panchkula shall do the needful or get it done from some senior officer and fix the responsibility of the guilty officer(s)/official(s). Report thereof shall be furnished in court. For that, the matter be listed in court on 18.1.2017.



(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

29.9.2016
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No