

A.F.R.

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:36589
Court No. - 1

WRIT TAX NO. 542 OF 2023

M/S GENIUS ORTHO INDUSTRIES

v.

UNION OF INDIA AND OTHERS

For the Petitioner : Hari Shanker Srivastava and Nikhil Srivastava,
Advocates

For the Respondents : Sudarshan Singh and Amit Mahajan, Advocates

Hon'ble Shekhar B. Saraf, J.

1. Heard learned counsel appearing on behalf of the petitioner, Sri Sudarshan Singh, learned counsel appearing on behalf of respondent No.1 and Sri Amit Mahajan, learned counsel appearing on behalf of respondent Nos. 2 and 3.

2. Physical verification report filed by the learned counsel for the respondents in Court today be kept on record.

3. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the order dated February 27, 2023 passed by the Joint Commissioner, C.G.S.T. (Appeal), Meerut cancelling its GST registration.

4. The ground for cancelling the GST registration of the petitioner was that upon physical verification, it was found by the authorities that no business activity was being carried out at the said premises. Authorities also called the proprietor on several occasions but his phone was switched off and he did not pick up the calls. A show cause notice was issued by the Department, which was replied by the petitioner and subsequently the order cancelling the registration was passed. Against the order cancelling

registration, the petitioner went up in appeal and the said appeal was also dismissed after passing a detailed order.

5. Counsel appearing on behalf of the respondents submits that there has been suppression of material fact, as the petitioner has not revealed before this Court that a new registration was obtained by the petitioner subsequent to cancellation of the earlier registration.

6. The Court having heard the learned counsel appearing on behalf of the petitioner had directed for verification of the premises without having knowledge of the fact that a new registration has been obtained by the petitioner. In the verification, which was done pursuant to the order of this Court dated February 22, 2024, it was found that the factory was operational and the proprietor informed the authorities that he had obtained a new registration prior to filing of the writ petition.

7. I am of the view that having obtained a new registration was a material fact that should have been brought into the knowledge of this Court. In fact, the Court was hoodwinked by the petitioner in passing an order for verification of the premises by the authorities. The fact that neither was there any averment in the writ petition nor the counsel for the petitioner informed the Court that a new registration has been obtained resulted in sheer wastage of time of the authorities in carrying out the second verification.

8. I had the occasion to deal with the aspect of suppression of material facts in **Bhriguram De v. State of West Bengal and others** reported in **(2018) SCC OnLine Cal 8141** wherein I had examined the aspect of fraud, fraudulent concealment and doctrine of clean hands in great detail. One may delineate the relevant paragraphs of the said judgment below:

“13. ‘Fraud’, according to Black's law Dictionary, 10th Edition, is a knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment; a reckless misrepresentation made without justified belief in its truth to induce another person to act; a tort arising from a knowing or reckless misrepresentation or concealment of material fact made to induce another to act to his or her detriment.

14. “Fraudulent concealment” as defined in Black's law Dictionary, 10th Edition, is the affirmative suppression or hiding, with the intent to deceive or defraud, of a material fact or circumstance that one is legally (or, sometimes, morally) bound to reveal.

15. According to the Law Lexicon, Third Edition (2012), the Latin Maxim “*Suppressio veri, suggestio falsi*” defines that the suppression of the truth is equivalent to the suggestion of falsehood. The suppression or failure to disclose what one party is bound to disclose to another, may amount to fraud. Where a person is found to be guilty of *suppressio veri suggestio falsi* for having concealed material information from scrutiny of the Court, he is not entitled for any equitable relief under order 39 of CPC (5 of 1908). [*Arbind Kumar Pal v. Hazi Md. Faizullah Khan*, AIR 2007 (NOC) 1035 (Pat) : (2006) 1 BLJR 430].

16. The maxim that one who comes to Court must come with “clean hands” is based on conscience and good faith. The maxim is confined to misconduct in regard to, or at all events connected with, the matter in litigation. “Clean hands” means a clean record with respect to the transaction with the defendant, and not with respect to any third person.

17. As authored by Ruma Pal, J. in *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar* reported in (2004) 7 SCC 166 [Coram: Ruma Pal and P. Venkatarama Reddi, J.J.], suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. The relevant portion is provided below:

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material from the consideration of the court, whatever view the court may have taken.....”

18. In *S.P. Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs* reported in (1994) 1 SCC 1 [Coram: Kuldip Singh and P.B. Sawant, J.J.], the Supreme Court came down heavily on petitioners filing cases based on falsehood and suppression and observed as follows:

“5.The Courts of law are meant for imparting justice between the parties. One, who comes to the Court, must come

with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of litigation.

6. A fraud is an act of deliberate deception with the design of securing something by taking advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage of another A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.”

19. In a well-known Calcutta High Court case in Chittaranjan Das v. Durgapore Project Ltd. reported in 99 C.W.N. 897 [Coram: Satya Brata Sinha and Basudeva Panigrahi, J.J.], the Court observed at paragraph 64 that “Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied with in such a situation. It is now well known that a fraud vitiates all solemn acts.”

20. In Asiatic Engineering Co. v. Achhru Ram reported in AIR 1951 Allahabad 746 (Full Bench) [Coram: Malik, C.J., Sapru and V. Bhargava, J.J.], the Court observed that no relief can be granted in a writ petition under Article 226 which is based on misstatement or suppression of material facts. The Court observed in paragraph 51, at page 767 as follows:

“51. In our opinion, the salutary principle laid down in the cases quoted above should appropriately be applied by Courts in our country when parties seek the aid of the extraordinary powers granted to the Court under Art. 226 of the Constitution. A person obtaining an ex parte order or a rule nisi by means of a petition for exercise of the extraordinary powers under Art. 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that

persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex parte orders by suppression, misrepresentation or misstatement of facts.”

21. *In Indian Bank v. Satyam Fibres (India) Pvt. Ltd. reported in (1996) 5 SCC 550 : J.T. 1996 (7) SC 135 [Coram: Kuldip Singh & S. Saghir Ahmad, J.J.], the Apex Court further observed as follows:*

“23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court, it also amounts to an abuse of the process of the Court, that the Courts have inherent power to set aside an order obtained by practising fraud upon the Court, and that where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.”

22. *Similar principles have been enunciated in English cases. In The King v. Williams reported in (1914) 1 K.B. 608 [Coram: Channell, Rowlatt, Atkin, J.J.], the Court observed at page 614 as follows:*

“..... In my view the writ is discretionary. A party may by his conduct preclude himself from claiming the writ ex debito justitiae, no matter whether the proceedings which he seeks to quash are void or voidable. If they are void it is true that no conduct of his will validate them; but such considerations do not affect the principles on which the Court acts in granting or refusing the writ of certiorari. This special remedy will not be granted ex debito justitiae to a person who fails to state in his evidence on moving for the rule nisi that at the time of the proceedings impugned he was unaware of the facts on which he relies to impugn them.”

23. *As seen from the various judgments discussed above, the Indian and English Courts have consistently taken the view that one who approaches the Court must come with clean hands. It is the bounden duty of the Court to keep the stream of justice absolutely clean. Anyone who approaches must give full and fair disclosure of all the materials. The Courts must not allow anyone to abuse the court process. In case the petitioner conceals anything that is known to be material such an action would lead to an inference of fraud, and even if not fraud, definitely would lead to a presumption that the petitioner has not approached the court with clean hands.”*

9. Article 226 of the Constitution of India is a discretionary jurisdiction which is to be exercised for petitioners who are acting in a good faith. The

principle of *uberrima fides* requires a party that comes to a Court to act in utmost good faith. The above principle is the genesis of the expectation of the Court to pass orders at the behest of the petitioner who has approached the Court with clean hands. The moment this trust is broken and it is discovered that there is suppression of material facts, the Court is bound to dismiss the said petition without granting any relief whatsoever to the petitioner.

10. In light of the same, this writ petition is dismissed on the ground of suppression of material facts. The petitioner shall be at liberty to approach any other forum for appropriate relief.

Date :- 29.2.2024
Kuldeep

(Shekhar B. Saraf,J.)